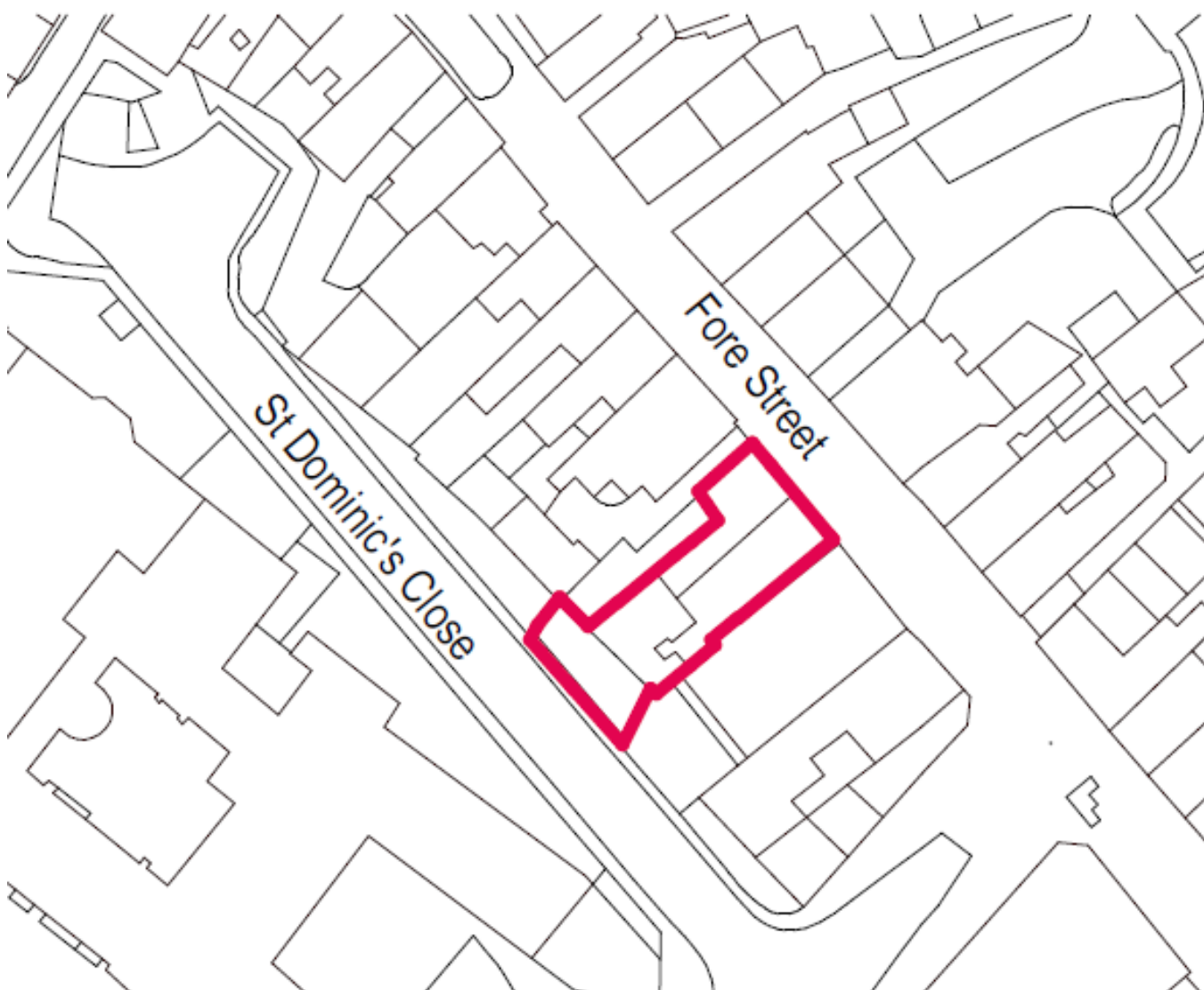


Application Site Address	44 Fore Street Torquay TQ1 4LX
Proposal	Extension and reconfiguration of mixed-use residential-commercial building to six apartments. Existing commercial space to be retained.
Application Number	P/2024/0432
Agent	Kay Elliott Architects
Applicant	Mr James Hill
Date Application Valid	07/08/24
Decision Due date	02/10/24
Extension of Time	20/12/24
Recommendation	Refusal
Reason for Referral to Planning Committee	The application has been referred to Planning Committee by Councillors.
Planning Case Officer	Sean Davies

Site location plan



Site Details

The site, 44 Fore Street Torquay TQ1 4LX is a flat roofed terraced building and its curtilage. The building presents as a three storey building (ground, first and second floors) from the front elevation with a ground floor retail unit opening onto the pedestrianised shopping precinct along Fore Street. The existing second

floor with flat roof has been created through the removal of a pre-existing pitched roof over the first floor at some point in the past.

A large three storey rear extension has been added to the rear of the building at some point in the past, again with a flat roof. The ground, first and second floors of the building contain what in the past would have been five flats. None of these are occupied or habitable now. The rear extension to the building has been allowed to decay to the extent that it is now uninhabitable and unsafe, with pronounced cracks in the external masonry, windows missing and sections of flooring rotted away.

The site is within a mapped Local Centre and is in Flood Zone 1. The site is in the St Marychurch Conservation Area. The site does not have any specific heritage designation itself and is neither a Listed nor a Key Building. The building to the immediate south east, and the three buildings to the immediate northwest have no heritage designation either. There is a small grouping of four terraced buildings opposite the site on the other side of Fore Street which are designated as Key Buildings, along with other adjacent buildings that have no heritage designation. Behind the site on the other side of St Dominics Close there are two religious buildings built in Victorian times. Grade II listed Margaret Clitherow House is approximately 26m distant from the rear of the existing building. Grade 1 listed Roman Church of Our Lady is approximately 50m away from the rear of the building.

Description of Development

“Extension and reconfiguration of mixed-use residential-commercial building to six apartments. Existing commercial space to be retained”.

The proposal would add a new pitched roof to the existing second floor flat roof in the front elevation of the building facing Fore Street to create a fourth storey. The existing rear three storey extension would be demolished and replaced with a new, deeper, four storey extension (including another new pitched roof to tie in with the proposed pitched roof over the front elevation of the building).

At the rear of the site an existing historic limestone boundary wall between the back garden to the site and a wide verge next to the pavement along St Dominics Close would be left in place. The verge itself would be built upon with ground levels lowered to provide two new parking spaces, as well as a communal bin store and a “bat house” to provide an occasional night roost for a Lesser Horseshoe Bat which is currently using the basement of the property for this purpose.

The building would need to be substantially remodelled internally to comply with Building Regulations and, externally, the ground level of the existing rear garden would be raised as a result of this.

The proposal would retain the existing ground floor retail unit onto Fore Street and would create six flats, with three being two bedroom flats over the front portion of the building at first second and new third floor (i.e. roof space) levels. Three one bedroom flats would be created in the replaced rear extension at ground, first and second floors.

Relevant Planning Policy Context

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

Development Plan

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

Material Considerations

- National Planning Policy Framework (NPPF)
- Proposed reforms to the National Planning Policy Framework and other changes to the planning system consultation document
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning Policy Guidance (PPG)
- St Marychurch Conservation Area Appraisal

- Torbay Council's Community and Corporate Plan 2023-2043
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

Summary of Consultation Responses

Community Safety: No objection.

Highways: No objection subject to clarification about which flats would be allocated parking spaces, cycle storage arrangements and condition for a Construction Traffic Management Plan.

Drainage: No objection subject to condition requiring drainage constructed in accordance with submitted documents.

Arboriculture: No objection subject to condition for replacement tree planting.

Devon County Council Ecology: No objection subject to condition for recommendations within submitted ecology report.

Torquay Neighbourhood Plan Forum:

"...This is a finely balanced proposal. The provision of 6 apartments contributes towards the housing needs of Torquay, and the Forum is pleased that the retail space is being retained. However, we are concerned about the heritage impact on the St Marychurch Conservation Area and the limited provision of parking spaces. Increasing the height of the building to 4 storeys will not be consistent with neighbouring properties. Although this may not be readily visible from the Precinct, the proposal will be incongruous when viewed from St Dominic Close at the rear. Although the impact on the nearby Listed buildings is minimal, we consider this will have a moderate adverse impact on the overall St Marychurch Conservation Area. The proposed balconies will be out of keeping with the neighbouring properties so, overall the Forum considers the proposal to be non-compliant with Policy TH8. The Torbay Local Plan Appendix F indicates the need for 6 parking spaces, but only 2 spaces are proposed. Although it can be argued that the apartments are close to hub facilities and there is a better than 20-minutes frequency of buses in St Marychurch the Forum considers that 2 spaces is insufficient, particularly bearing in mind that no provision has been made for the operator of the retail facility. The attached Policy Checklist shows a number of non-compliances with Policies, and we believe these could be resolved with a more modest development. The Forum recommends that this Application is referred to the Planning Committee where there can be a reasoned debate of the pros and cons".

(Officer note: the Forum considers that the proposals are contrary to the following policies in the Torbay Local Plan: SS10 (Conservation and the historic environment), SS14 (Low carbon development and adaption to climate change), TA3 (Parking requirements), DE1 (Design), DE4 (Building heights), ES1 (Energy), ES2 (Renewable and low-carbon infrastructure). Also, that the proposals are contrary to the following policies in the Torquay Neighbourhood Plan: TS3 (Community led planning), TH8 (Established architecture), TH9 (Parking facilities), TH10 (Protection of the historic built environment)).

Devon County Council Archaeology:

"... The boundary wall is recorded on the St Marychurch Tithe Map of 1840 (see screenshot below). This pre-dates the construction of the Roman Catholic Church and Convent precinct. At this date the plot now represented by 44 Fore Street is recorded as a cottage and garden. The plot (1297) south of the wall is recorded as a walled garden. The Ordnance Survey 1st Edition map of c. 1890, records that the land south of the boundary wall (still probably a garden) had become part of the Convent grounds. The construction of St Dominic's Close in the modern era has severed the direct connection, but the wall still forms part of the setting of the Grade II Listed Church and Grade II Listed convent, as well as reflecting the early 19th century and probably pre-19th century layout of the tenements and gardens along Fore Street. Given the historic interest and fabric of the wall, I would argue for its retention, or for the re-use of the stone within the new walling. However, I defer to your historic built environment colleagues on this matter. The proposal area also holds some archaeological potential. The settlement of St Marychurch has early medieval origins. 44 Fore Street is in the historic core of the settlement, and recorded as a cottage and garden by 1840. Groundworks for the building extension (foundations, services) have the potential to expose and*

destroy archaeological deposits that may be of medieval, post-medieval and early modern date. The impact of development upon the archaeological resource here should be mitigated by a programme of archaeological work that should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development. I therefore recommend that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets with archaeological interest. The WSI should be based on national standards and guidance and be approved by the Devon County Historic Environment Team. If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 211 of the National Planning Policy Framework (2023) and Policy SS10 in the Torbay Local Plan 2012 - 2030, that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby: 'No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority. Reason 'To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 211 of the National Planning Policy Framework (2023), that an appropriate record is made of archaeological evidence that may be affected by the development'. This pre-commencement condition is required to ensure that the archaeological works are agreed and implemented..."

Principal Historic Environment Officer:

“... The St. Marychurch Conservation Area Appraisal (CAA) identifies the area as being an important settlement in its own right and has a strong sense of its own identity. The application site is on a prominent plot characterised by the 19th century development of the area and its position within the commercial and communal heart of St. Marychurch. The property appears to have been heavily altered in the mid 20th century through the remodelling of its front façade to incorporate an additional storey and the introduction of a flat roof and rear extension which has compromised its original 19th century character. The site is therefore not identified as a key building within the CAA nor is it considered to meet the criteria to be classed as a non-designated heritage asset. However, the CAA does identify the site as having a 'largely unspoilt frontage' which is likely in recognition of its contribution to the established retail and traditional character of the street. Despite its remodelling, the site does appear to have retained some of its original character through the retention of its first-floor windows and the original eaves line just above the retained hopper head can still be read. As a result, the site currently makes a neutral to minor positive contribution to the significance of the conservation area and due to its prominent location and current condition has the potential to reinstate some of its original character which would enhance its significance and that of the conservation area.

Roman Church of Our Lady

Historic England identify this as a Grade I listed building, although, the St. Marychurch Conservation Area Appraisal and the Devon Historic Environment Viewer suggest that it is Grade II* listed. It is located to the NW of the site. The asset has clear architectural, artistic historic and communal value and a group value with the attached presbytery (Grade II) and former Dominican convent buildings, now Margaret Clitherow House (Grade II). The application site is within the urban setting of the asset and contributes to the overall quality of the historic environment within the area. The rear boundary wall which appears to have a close historic relationship with the church and the former Dominican convent buildings prior to the construction of St. Dominic's Close makes a positive contribution to the significance and setting of this asset.

Margaret Clitherow House

This is a Grade II listed building located to the west of the site. It was an orphanage, later used as priory and was constructed in 1865 to the designs of Joseph Hansom. The convent buildings were vacated by the Dominican nuns in the C20, and later became a residential home for older people. It also has clear architectural, artistic and historic value and a group value with the above-mentioned assets.

As above, the application site is within the urban setting of the asset and contributes to the overall quality of the historic environment within the area. The rear boundary wall which appears to have a close historic relationship with the church and the former Dominican convent buildings prior to the construction of St. Dominic's Close makes a positive contribution to the significance and setting of this 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:

Impact on Significance of Heritage Assets:

Proposed Works	Overall Impact	Harm/Enhancement/Neutral	Commentary
<i>Demolition of rear boundary wall to form parking spaces and its reconstruction further into the site</i>	Low to SMCA and Roman Church of Our Lady and Margaret Clitherow House listed buildings	Harm	The rear boundary wall appears to have had a close historic relationship with the church and the former Dominican convent buildings prior to the construction of St. Dominic's Close. The demolition of historic fabric in situ would have a detrimental impact to its significance. In addition to this, its rebuilding at a different location within the site would permanently impact on its authenticity and integrity as part of the historic environment. This
			would have a further harmful impact which would not be mitigated by the reuse of existing material.
<i>Raising of height of existing building through the addition of a single storey to the principal building, demolition and replacement chimney stacks, introduction of pitched slate roof and through eaves dormers</i>	Moderate to SMCA, negligible to low to Roman Church of Our Lady and Margaret Clitherow House listed buildings	Harm	It is clear that the existing building has been extended upwards in the mid 20 th century which has had a detrimental impact on the historic character and appearance of the original building and the wider streetscape. Whereas the reinstatement of a pitched slate roof delivers a more appropriate roof form and material, the proposal to raise the height of the building by an additional storey would further exacerbate the already harmful impacts of the previous extension and would neither preserve nor enhance the character or appearance of the conservation area. The prevailing height of historic development along the street is clearly readable. The proposed raising of the height of the building would result in a building which rises considerably above this and would result in an alien and incongruous feature which would be unduly prominent in the street scene. The proposed demolition and replacement of chimney stacks and use of uncharacteristic through eaves dormers would add to the level of harm caused. When considered collectively with the proposed rear extension, the increase in the height, scale and massing of the proposed development as a whole would

			cause a degree of harm to all identified heritage assets.
<i>Demolition and replacement of rear extension</i>	Low to SMCA, negligible to low to Roman Church of Our Lady and Margaret Clitherow House listed buildings	Harm	The existing rear extension is in poor condition and there is no objection to its demolition and sensitive replacement. However, the height, scale, massing and use of through dormers and inset balconies results in an extension at odds with the established character of this part of the conservation area. This would cause demonstrable harm to the significance of the identified heritage assets.
<i>Replacement of existing first-floor timber sash windows</i>	Low to SMCA, no impact to Roman Church of Our Lady and Margaret Clitherow	Harm	The loss of the existing historic windows and their apertures without adequate justification and replacement with uPVC equivalents which are designed to relate to those inappropriately added in the mid 20 th century would be a harmful alteration to the existing building and would further dilute the historic character of the host building and the wider street scene UPVC windows are historically incorrect in their detailing and dilute the historic character of the property. The size of frame and joinery detail would be both incongruous and conspicuous for the age of the building and would have an adverse impact on the special interest and significance of the conservation area.

As can be seen from the above table, the proposed development is considered to cause harm to a number of identified heritage assets.

Considering that harm to a Grade I listed building has been identified, it is advised that Historic England be consulted on the proposals along with DCC Archaeology to assess any potential impact on archaeological remains.

Conclusions:

Although the proposals are considered to result in a low to moderate degree of 'less than substantial' harm to the overall significance of the identified heritage assets, this does not equate to a less than substantial objection and any harm to a designated heritage asset requires clear and convincing justification in line with paragraph 206 of the NPPF. Furthermore, in line with the Framework's paragraph 208, such harm should be weighed against the public benefits of the proposal. Given the statutory duty set out in Sections 66 (1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses and the desirability of preserving or enhancing the character or appearance of the conservation area, significant weight should be given to the harm that I have identified to the historic environment. In line with the requirements of the NPPF, permission should be refused, unless it can be demonstrated that the harm caused can be outweighed by associated public benefits, whilst being mindful of the great weight which should be given to the conservation of heritage assets. This would be a matter for the overall planning assessment of the proposals. It is strongly advised that the proposals in their current form would be contrary to Policies SS10, HE1, DE1 and DE4 of the Torbay Local Plan and Policy TH8 of the Torquay Neighbourhood Plan which requires development to conserve and enhance the conservation area and to respect local character.

It should also be noted that should the impact on designated heritage assets be considered a reason for refusal for the proposed development then in line with footnote 7 of the NPPF, the presumption in favour of sustainable development may not apply.

Historic England

“... Historic England Advice

The significance of the heritage asset(s) To the south west of the application site lies the Roman Church of Our Lady, Help of Christians and St Denis – a Roman Catholic church, presbytery, convent and school buildings built between 1865-81 to designs by Joseph Hansom. The funds for the complex were provided by the Potts-Chatto family in thanksgiving for the recovery of their son Denis from a serious illness. The church was originally listed in 1972 at grade II* but was upgraded to grade I in 2014. Because this post-dates your authority’s conservation area appraisal (CAA) for St Marychurch (2005) the document now incorrectly identifies the building as grade II*. Adjacent and attached to the church are the presbytery, and Margaret Clitherow House (originally an orphanage, then a convent, now a residential home for the elderly). These buildings are grade II listed. Together these buildings form an important group of religious buildings in the heart of the neighbourhood. The application is within the St Marychurch Conservation Area (CA), in the ‘Town Centre and Ecclesiastical Quarter’ character area. The CAA provides a detailed description of the area and the main reasons for its designation as an area of special character and appearance. Point 7.2 (p13) of the CAA helpfully lists features of note, including the ecclesiastical buildings and also the survival of boundary walls. The impact of the proposals on the heritage assets The development would lead to the extension of an existing property, 44 Fore Street with the creation of six apartments and retail space at ground floor. The extension proposed is considerable, introducing a change of footprint, massing and height to the building that does not reflect the existing character of the properties along this street. The existing pattern is two or three storeys in height – almost domestic scale, and reflective of the neighbourhood character of the area. The introduction of a pitched roof with large dormers set at the front of the roof will disrupt this local character through the creation of a four storey building. However, our greater concern rests with the development to the rear of the property which is a long, four storey addition to an already wide extension. The proposal will be eye-catching and overbearing because of its scale and height, and due to the introduction of large areas of windows and balconies on the gable end. The setting of the grade I listed church and its ancillary grade II listed buildings would be harmed by the proposals. The design is out of keeping with the conservation area and certainly does not preserve or enhance it. We consider that these impacts represent a high degree of unjustified harm to these important heritage assets. Whilst Margaret Clitherow House is no longer a convent and therefore strict privacy is no longer a requirement for its function, we do have some concerns about the impact of the balconies and windows on the gable end on the inherent character of the residential accommodation opposite. Extensive overlooking by at least the third floor of the new accommodation will be a major change to the character and experience of enclosure and privacy. We note that it is proposed to demolish the historic boundary wall that lies to the rear of the property, albeit with a new wall reconstructed. However, the new wall will be a replica rather than original historic fabric, and it will be on a different line. This is another harmful element of the proposals.

Policy issues

The Planning (Listed Buildings and Conservation Areas) Act 1990 identifies that conservation areas are ‘areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance’ (section 69, (1a)). Section 72 (1) states that ‘special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area’. In our opinion, the current application does not align with these legislative requirements. Great weight should be given to the conservation of heritage assets, with greater weight applied the more important the asset (National Planning Policy Framework (NPPF), paragraph 205). Given that one of the heritage assets affected is grade I and that other grade II buildings and a conservation area are impacted by these proposals, we consider that very great weight should be given to their conservation in your determination of the application. When harm is the result of a proposal this should have clear and convincing justification (NPPF, paragraph 206). In our opinion it is perfectly possible to develop this property without causing harm to heritage assets. This could be achieved by reducing the scale of extension and changing the number and/type of apartments. This would balance conservation with the provision of new housing. Therefore, we do not believe that the current proposals are robustly justified. After any conflict between the conservation of heritage assets and development proposals has been avoided or minimised (NPPF, paragraph 201), any remaining harm should be balanced against any public benefits brought forward by the proposals. This is an exercise for your authority to undertake, bearing in mind NPPF, paragraph 201.

Historic England's position

We consider that the proposals cause unjustified harm to various heritage assets, in particular the ecclesiastical complex of the Church of Our Lady, Help of Christians, and St Denis. The significance of this ecclesiastical complex, where a part of that significance stems from its setting, would be harmed. Allowing an extension of this scale to a building in the conservation area would also cause harm, and potentially set a very unfortunate precedent for other development. There are opportunities to balance the positive redevelopment of this site and the enhancement of the conservation area. However, at present the overdevelopment of the site results in an unacceptable level of harm being caused.

Recommendation

We recommend that the proposals are radically altered to avoid the heritage harm that we have identified, or that the application is withdrawn or refused. We consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 201, 205, 206 and 208 of the NPPF. In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess; and section 72(1) of the same Act, to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If there are any material changes to the proposals, or you would like further advice, please contact us”.

Summary Of Representations

Approximately two objections, one representation and one representation in support of the proposals have been received:

OBJECTIONS

- Would dominate and undermine character of shopping precinct.
- Height would be out of line with prevailing roof heights.
- Rear extension would be over-dominant.
- Out of character with Conservation Area and character of local area.
- Concern about effect on tourism character of area.
- Concern about increased on street parking pressure.
- Proposed building would be too tall and overbearing when viewed from St Dominics Close.
- Concern about proposed on-site parking provision.
- Proposal does not appear to include any facility to rehouse resident bat species within property.

REPRESENTATIONS

“This building is in a poor state so redevelopment is to be welcomed and the mixed use of residential and commercial is appropriate. However, McCarthy have a habit of submitting proposals for buildings that are one storey too high in order to maximise their investment and this one is no exception. The surrounding buildings are 2 storey and this low rise development typifies the Victorian nature and charm of St MaryChurch and its conservation area. The front view shows a handsome building with quite graceful proportions, if one storey to high. The rear aspect however is not a happy design. It is quite messy, introduces balconies to an area where there are none, and the top window in the roof is incongruous. The buildings it faces -the Priory-are 3 storey maximum. The internal area of the flats appears small and the development might benefit from one flat and one storey being removed. The rear aspect in particular is going to tower over the street scene which is dominated at present by the Priory. Providing 2 parking spaces is clearly insufficient. Who are they expecting to purchase these flats? There is no secure parking close by and more needs to be provided on site. Introducing a four storey building here will set a precedent, so whilst not formally objecting, more support might be forthcoming if McCarthy respected the nature of St MaryChurch and scaled back their size ambitions a little. 186 St Marychurch Rd”

SUPPORT

“Welcome to maintain precinct as a shopping area and provide local homes”.

Relevant Planning History

None.

Planning Officer Assessment

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

1. Principle of Development, Housing and Affordable Housing
2. Visual Impact
3. Impact on Heritage Assets
4. Amenity
5. Highways and Movement
6. Ecology
7. Trees & Hedgerows
8. Flood Risk & Drainage
9. Low carbon Development.

1. Principle of Development, Housing and Affordable Housing

The proposal seeks permission for “*Extension and reconfiguration of mixed-use residential-commercial building to six apartments. Existing commercial space to be retained*”. There are no Local Plan policies indicating that the proposal is not acceptable in principle.

The proposal would retain the existing ground floor retail unit and would create six flats, comprising two, two bedroom flats at the front of the building facing Fore Street at first and second floor levels, with a third within the proposed pitched roof space. Additionally, three one bedroom flats within the rear ground, first and second floors of the replacement rear extension to be created.

Policy H1 of the Local Plan states that proposals for new homes within the built up area will be supported subject to consistency with other Policies and that proposals for new homes on unallocated sites will be assessed according to a range of criteria proportionate to the scale of the proposals.

The Council cannot demonstrate a 3 year housing land supply.

There is a pressing need for homes in Torbay. The Housing and Economic Needs Assessment (2022) indicates a comparable level of need and that there are around 1600 households on the waiting list for housing. At April 2024, the Council could only demonstrate a housing land supply of about 2.69 year’s supply of deliverable housing sites. This is a significant shortfall.

The draft consultation NPPF, although of limited weight, places further emphasis on the need for housing, securing affordable homes and the need for different groups in the community including looked after children.

Policy SS13 supports residential development in accordance with the Local Plan and Policies of the NPPF. The site is not allocated in the Local Plan or Neighbourhood Plan for housing.

The Development Plan (i.e. the Local Plan and the relevant Neighbourhood Plan) is the legal starting point for determining planning applications, and proposals should be assessed against it. A judgement should be made as to whether a proposal is in compliance with the Development Plan (when taken as a whole). Where the Development Plan is out of date, it retains its statutory force, but the focus shifts onto other material considerations particularly the NPPF and presumption in favour of sustainable development. Material considerations such as the Housing Delivery Test state that the presumption in favour of sustainable development should be applied. 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. There is a pressing need for housing in Torbay. Accordingly, it is recommended that the presumption in favour of sustainable development is applied to applications involving the provision of housing.

It is important to note that the presumption cannot lawfully be treated as a sanction. Planning decisions must be made in the public interest, balancing all the relevant factors. Operation of the presumption gives greater weight to the provision of housing in the planning balance. The NPPF (11(d)i indicates that

permission should be granted unless either (i) conflict with specific Framework policies may constitute clear reason for refusal (these are set out in footnote 7 and include, SSSI, Local Green Space, National Landscapes, irreplaceable habitats, designated heritage assets (including archaeology) and areas at risk of flooding or coastal change); or (ii) any adverse impacts of approving a proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole (i.e. the “tilted balance” at 11(d)ii). Development plan policies are taken into account when assessing whether the harm caused would “significantly and demonstrably” outweigh the benefit.

The proposal would help to address the need to provide a range of homes and would contribute to housing delivery through the addition of new accommodation. However, in this case, officers consider that the proposal would conflict with Policies DE1, DE4, SS10 and HE1 of the Torbay Local Plan and Policy TH8 of the Torquay Neighbourhood Plan and that the associated harm would significantly outweigh the benefits.

The proposal is therefore considered to be contrary to Policy H1 of the Torbay Local Plan.

2. Visual impact

Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy DE4 states that the height of new buildings should be appropriate to the location, historic character and the setting of the development. Further, that new development should be constructed to the prevailing height (the most commonly occurring height) within the character area in which it is located, unless there are sound urban or socio economic benefits to justify deviation from this approach. Policy TH8 of the Torquay Neighbourhood Plan states that development proposals must be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings.

The site is a terraced building along the pedestrianised section of Fore Street. It would originally have been built as a two storey house but in common with all other buildings along Fore Street has been converted into a retail unit at ground floor. At some point in the past the original pitched slate roof has been removed to create a new third storey with a flat roof leading to a three storey building when viewed from Fore Street (ground, first and second floors). To the rear a modern three storey extension has also been built (basement/ground, first and second floors), again with a flat roof.

It is evident that the first and second floors at the front of the building were previously used as flats (first and second floors). It also appears that the rear sections of the building (basement/ground, first and second floors) would also have been used as flats in the past.

The building has been allowed to decay and is now dilapidated and unsafe to live in. The front portion of the building is in relatively good repair. However, the modern three storey rear extension is in a visible state of disrepair, with windows missing, cracks in exterior walls and sections of flooring missing, having rotted away. A lesser Horseshoe Bat currently uses the basement section of the building as an occasional roost (see ECOLOGY below), being able to fly in through the broken window apertures at the rear.

Officers have asked the applicant whether the existing rear extension could be repaired and made good. The applicant has advised that it has deteriorated too far, would be unsafe to work in and that, in the applicant’s estimation, it will collapse within 12 months if not demolished first. The applicant has also made the point that the rear extension is too small to accommodate even one bedroom flats on each level and would not meet Nationally Described Space Standards. Also, that the position of the internal staircase within the building, which separates the front part of the building from the rear extension, and which runs parallel to Fore Street is not wide enough to meet current Building Regulations and will need to be adjusted, along with internal floor levels.

Having visited the site externally and internally officers cannot see any obvious way in which the rear extension could be salvaged in its current condition.

The proposal

The proposal is to retain the existing retail space at ground floor level. It appears that the existing retail unit may have comprised two separate smaller retail units in the past, with an external door from Fore Street to both spaces, and it is possible that the site may be subdivided again in future through the creation/re-instatement of an internal partition wall. This would not need permission as the building is not a listed building.

The building would be extended upwards to create an additional storey (i.e. a fourth floor). The rear of the building would be extended to create five flats within the ground, first and second floors of the building. A sixth flat would be created in the new roof of the building as proposed (i.e. the fourth floor). The proposal is to create three two bedroom flats above the existing retail unit facing onto Fore Street (at existing first and second floor levels and within the proposed additional storey) and three one bedroom flats within the rear section of the building as extended (ground, first and second floors).

The proposal involved changing some internal floor levels within the building (which does not need planning permission) as well as changing ground levels at the rear of the building and within the existing rear garden.

The proposal has three main elements:

Rear extension

The existing rear extension would be demolished and replaced with a new rear extension which would extend back a total of approximately 19.3m from Fore Street, as compared with the current depth of approximately 14.3m. Both of these figures include the depth of the original building itself and so, in other words, the proposal involves demolishing the existing rear extension and rebuilding it approximately 5m further beyond the existing rear wall of the building.

The new rear extension as proposed would necessarily have different fenestration to the existing rear extension and would incorporate new inset balconies at first and second floor levels.

New roof and additional storey

The proposal would introduce a new pitched roof over the front section of the building facing onto Fore Street. The building is built on a slight incline heading uphill towards the northwest. Measured from the centre of the door to the existing retail unit in the middle of the building, the proposed additional storey would raise the existing flat roof height from approximately 10.5m to 13.5m (i.e. to the ridge of the new proposed ridge). The rear extension as extended in depth would also be covered by a new pitched roof, raising the height of the existing flat roof from approximately 8m to 12m. It is important to remember that the ground level at the rear of the building is lower than at the front and so the extension in roof height would still be marginally below, by approximately 25cm, the ridge height of the new pitched roof covering the front of the building and so would appear as being subservient to it. The new roof sections at the front and rear of the building would be used to accommodate a new two bedroom flat.

The new pitched roof would have three new dormer windows in the front elevation facing Fore Street and a new dormer facing St Dominic's Close in the rear. Existing windows in the front elevation facing onto Fore Street would be left unchanged.

Rear garden and parking

The existing rear garden is bordered by a tall historic limestone wall which would have dated from the time when the original house was constructed. The existing garden would be reduced in size due to the proposed increase in depth of the existing rear extension.

Outside of the rear boundary wall there is a sizeable verge between the wall and the pavement along St Dominic's Close. This verge would be replaced with two parking spaces for two of the proposed flats as well as a stone clad bin store for all six flats proposed and a new stone clad "bat house" to provide an

alternative occasional night roost for the Lesser Horseshoe Bat which is currently using the rear of the building as an occasional night roost. There are two existing self-seeded sycamore trees within the verge. The creation of new parking spaces etc. may damage the root protection area of these trees. The Council's arboriculture officer has advised that these trees should be replaced with two ornamental pear trees.

A small dwarf limestone wall at the back of the verge next to the pavement would be removed to facilitate the parking spaces.

Assessment

Building heights and building styles along the pedestrianised precinct of Fore Street are not uniform. The ground slopes up from the south east to the north west and as a consequence buildings step up the slope. There are nevertheless a number of prominent buildings that far exceed prevailing roof heights of neighbouring buildings. Most obviously, a red brick building (no. 11 Fore Street, a Victorian Key Building) on the other side of Fore Street a few metres further down the precinct to the south east is noticeably taller than the neighbouring buildings on either side. Some buildings, including several opposite the site, have existing modern dormer extensions, though these are not readily visible from Fore Street itself as they are set back up the roof slope of the buildings concerned and Fore Street itself is quite narrow. There are wide variety of window styles at upper stories within the properties along Fore Street, including oriel windows bay windows, windows with square heads and curved heads. There is no uniform dimension to windows and many appear to be modern uPVC.

Front elevation

With that said, it is apparent that the proposals would raise the ridge of the building facing Fore Street by around 3m and, in doing so, would extend the roof line of no. 44 above the ridges of the buildings on either side by approximately 3m. Officers are mindful that no. 44 has already had one additional storey added to it at some point in the past through the removal of the pre-existing pitched roof and replacement with the existing flat roof. In this case, officers consider that the creation of what would be in effect a second additional storey, creating a four storey building, would amount to overdevelopment and would not be appropriate to the location, historic character and setting of the development. Officers consider that the proposed additional storey is unacceptable for this reason. Officers also consider that the proposals, by disrupting the general (albeit not uniform) appearance of buildings stepping up Fore Street, would be detrimental to the existing street scene to an unacceptable degree. The proposal is therefore considered to be contrary to Policies DE1 and DE4 of the Torbay Local Plan and Policy TH8 of the Torquay Neighbourhood Plan.

Officers have checked how tall the site with the proposed additional storey would be relative to no. 11, which appears to be the tallest existing building along Fore Street. The Council has records for two planning applications at no. 11 (P/1989/1906 and P/1989/1907). Unfortunately, neither of these cases include complete elevation plans and so it has not been possible for officers to measure the height of no. 11. It does nevertheless appear that, if the current application were to be approved, then no. 11 would remain as being the tallest building along Fore Street.

As noted above, Fore Street is relatively narrow. When walking along Fore Street the eye is naturally drawn towards the existing shop fronts along Fore Street rather than to the roofscape. Again, as noted above, some existing dormer extensions to buildings along Fore Street are not readily visible from it due to the relative narrowness of Fore Street.

Officers consider that it is unlikely that the new proposed pitched roof or associated dormers in the front elevation of the building facing Fore Street would be substantially visible, or visible at all, from directly outside of the site due to the angles involved. The applicant has provided CAD drawings that show what would be visible from a few metres away from either side of the building along Fore Street and these drawings indicate that very little of the proposed pitched roof and associated dormers would be visible. On balance, it appears that the additional storey to the building as proposed (i.e. the proposed new pitched

roof) would be most prominent when viewed from around the pedestrianised cut through from St Dominic's Close to the south east of the site (i.e. next to the Dolphin Inn pub) and from higher up Fore Street towards the junction of Rowley Road with Fore Street to the north west, although this is difficult to determine with any accuracy.

Rear/side elevations

Officers consider that the proposed rear balconies, increase in footprint of the proposed rear extension and rise in height of the roof over the rear extension are unlikely to be substantially visible from St Dominic's Close behind the site given the presence of the existing tall limestone wall and, in common with the proposed new parking area and bin store/bat house, would be unlikely to be detrimental to the existing street scene such that refusal is warranted.

The proposed rear extension is likely to be most prominent viewed from outside of the rear of no. 42 Fore Street on St Dominic's Close. From this vantage point the side of the proposed replacement rear extension would present as a largely featureless wall, as it does today. That said, the proposed side of the replacement rear extension would be approximately 5m deeper than the current extension and would have an increased height of approximately 9.3m to eaves level, as compared with approximately 8.3m today, and with the pitched roof replacing the existing flat roof approximately 3.5m high. The proposed rear extension would include privacy screens to the proposed recessed balconies at first and second floors, which would add some visual interest and help to break up the otherwise featureless wall comprising this side of the building. Officers have considered this issue carefully but do not consider that the visual appearance of the rear of the building as proposed amounts to a reason for refusal.

The proposed elevation plans identify that new glazing (i.e. for the new proposed dormers in the front of the building and the new fenestration in the rear of the building) would be uPVC. Officers do not consider that this would be an appropriate materials choice within the St Marychurch Conservation Area. If planning permission were to be granted, however, then planning conditions could be used to require the use of timber window frames and so this is not of itself seen as being a reason for refusal.

On balance, the proposal is therefore considered to be contrary to Policies DE1 and DE4 of the Torbay Local Plan and Policy TH8 of the Torquay Neighbourhood Plan.

3. Impact on Heritage Assets

The Planning (Listed Buildings and Conservation Areas) Act 1990 identifies that conservation areas are 'areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance' (section 69, (1a)). Section 72 (1) states that 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area'.

The Planning (Listed Buildings and Conservation Areas) Act 1990 also states that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses (Section 66).

Paragraph 205 of the National Planning Policy Framework (NPPF) states that, 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 208 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The Planning Practice Guidance states that "The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience that setting".

Policy SS10 of the Local Plan states that development proposals that may affect heritage assets will be assessed in view of their impact on listed and historic buildings and their settings. Policy HE1 also states that development proposals should have special regard to the desirability of preserving any listed building and its setting.

The site is within the St Marychurch Conservation Area. Neither no. 44 itself, nor the buildings on either side, have any individual heritage designation of their own. However, the site is nevertheless within the Conservation Area and is in relatively close proximity to Grade I and Grade II listed religious buildings behind the site on the other side of St Dominic's Close. As noted above, Grade II listed Margaret Clitherow House is approximately 26m from the rear of the existing building and the Grade I Roman Church of Our Lady is approximately 50m distant from the existing rear elevation of the site. If planning permission were to be granted these distances would reduce to approximately 21m and 45m respectively.

It is important to note that some of the specific aspects of the proposals that both Council's Principal Historic Environment Officer and Historic England have raised concerns about are no longer included within the proposals.

The applicant has submitted revised plans that post-date comments from the Council's Principal Historic Environment Officer, and which cross with comments from Historic England. The date of Planning Committee means that there has been no opportunity to reconsult on the revised proposals.

The main differences between the plans that the Council's Principal Historic Environment Officer and Historic England have advised on and the current revised proposals are that; (i) the proposals now retain existing fenestration in the front elevation of the building facing onto Fore Street (the proposals previously included replacing all such openings), (ii) the proposals now include new dormer windows set further up the proposed new roofs in the front and rear elevations (these dormers were previously proposed to extend down to eaves level), although this has in turn led to the proposed ridge height of the building rising by approximately 30cm, and (iii) the existing tall rear limestone boundary wall is now proposed to be left in place (previously it was proposed to be demolished and rebuilt).

The applicant has clearly attempted to respond to the heritage and design related concerns that officers have raised with them over a period of several weeks. The applicant has also made it clear that they would be willing to make other design concessions, including for example the removal of the proposed balconies from the plans. It should be noted that this is not something officers have asked for, as officers consider that the proposals are unacceptable in other respects, and so the proposed balconies are still included with the current application.

The comments received from the Council's Principal Historic Environment Officer and Historic England both identify that the (i) proposed additional storey (to both the front and rear elevations of the building); (ii) the increase in footprint of the existing rear extension; (iii) the proposed rear balconies; and (iv) the proposed use of materials as regards new fenestration, are unacceptable.

Historic England have advised variously that

"...The introduction of a pitched roof with large dormers set at the front of the roof will disrupt this local character through the creation of a four storey building. However, our greater concern rests with the development to the rear of the property, which is a long, four storey addition to an already wide extension. The proposal will be eye-catching and overbearing because of its scale and height, and due to the introduction of large areas of windows and balconies on the gable end. The setting of the grade I listed church and its ancillary grade II listed buildings would be harmed by the proposals. The design is out of keeping with the conservation area and certainly does not preserve or enhance it. We consider that these impacts represent a high degree of unjustified harm to these important heritage assets..."

Historic England's position

We consider that the proposals cause unjustified harm to various heritage assets, in particular the ecclesiastical complex of the Church of Our Lady, Help of Christians, and St Denis. The significance of this ecclesiastical complex, where a part of that significance stems from its setting, would be harmed. Allowing an extension of this scale to a building in the conservation area would also cause harm, and potentially set

a very unfortunate precedent for other development. There are opportunities to balance the positive redevelopment of this site and the enhancement of the conservation area. However, at present the overdevelopment of the site results in an unacceptable level of harm being caused.

Recommendation

We recommend that the proposals are radically altered to avoid the heritage harm that we have identified, or that the application is withdrawn or refused..."

Given the assessment by Historic England as paraphrased above, and as echoed in advice from the Council's own Principal Historic Environment Officer, then, notwithstanding changes to the design of the proposals that have been made (i.e. retention of existing fenestration in the front elevation and the existing tall limestone wall bordering the rear of the site) it is clear that the proposals do not go far enough to counter the less than substantial harm to the character of the Conservation Area and setting of the adjacent listed buildings that has been identified.

Officers have carefully considered whether the public benefits associated with the proposals outweigh the harm to heritage assets that has been identified. These include (i) the creation of new residential accommodation at a time when the Council cannot demonstrate a three year housing land supply; (ii) jobs for local people during construction; (iii) the redevelopment of a building in a very clear state of disrepair and possibly at risk of partial collapse; (iv) safeguarding the future of the existing ground floor retail unit (which may become too dangerous to use in future if the building as a whole is not renovated); (v) the financial benefits that future occupiers of the building, if planning permission were to be granted, could be expected to bring to local shops in close proximity to the site through day to day shopping etc.

Officers have considered these benefits both from the perspective of the details within the submitted application, which states that the proposals involve the addition of one new additional residential unit (the proposed two bedroom flat in the proposed new roof space, in addition to five "existing" residential units), and also from the perhaps more realistic perspective that the proposals would provide six new high quality residential flats in a building that it currently too unsafe and dilapidated to accommodate any.

In both cases, officers have concluded that, notwithstanding the recent design revisions that have been made, the public benefits associated with the proposals are not sufficient to outweigh the harm that has been identified.

With the above in mind officers therefore consider that the proposal is contrary to Policies SS10 and HE1 of the Torbay Local Plan, Policy TH8 of the Torquay Neighbourhood Plan and advice contained in the National Planning Policy Framework; in particular paragraphs 205 and 208.

4. Amenity

Policy DE3 states that development should provide a good level of amenity for future residents or occupiers and should not impact upon the amenity of neighbouring uses with reference to criteria including, noise, nuisance, visual intrusion, overlooking, and privacy, light and air pollution and the scale and nature of the proposed use where this would be overbearing. Policy THW4 of the Torquay Neighbourhood Plan states that new flats should have at least 10sqm of usable outdoor amenity space. Policy W1 of the Local Plan sets out that development proposals will be expected to make provision for the appropriate storage, recycling, treatment and removal of waste likely to be generated.

Amenity for future occupiers

Ground floor (floor 1)

- Unit 0.1 would have a Gross Internal Area(GIA) of approximately 50sqm with a double bedroom and access to the rear garden with a GIA of approximately 17sqm.

First floor (floor 2)

- Unit 1.1 would have a Gross Internal Area(GIA) of approximately 53sqm with a double bedroom and a balcony with a GIA of approximately 7sqm.

- Unit 1.2 would have a Gross Internal Area(GIA) of approximately 72sqm with two double bedrooms and no outdoor amenity space.

Second Floor (floor 3)

- Unit 2.1 would have a Gross Internal Area(GIA) of approximately 54sqm with a double bedrooms and a balcony with a GIA of approximately 7sqm.
- Unit 2.2 would have a Gross Internal Area(GIA) of approximately 74sqm with a double bedroom and two single bedrooms and no outdoor amenity space.

Third Floor (floor 4)

- Unit 3.1 would have a Gross Internal Area(GIA) of approximately 87sqm with two double bedrooms and no outdoor amenity space.

All six units meet or exceed Nationally Described Space Standards. Units 0.1, 1.1 and 2.1 would have some limited outdoor amenity space, whereas units 1.2, 2.2 and 3.1 would have no outdoor amenity space. Whilst not ideal, officers consider that the lack of adequate outdoor amenity space (a minimum of 10sqm per flat) is acceptable here given the site's location in a sustainable Local Centre and given its proximity to green open spaces.

Outlook from the proposed new flats and access to natural light appears to be acceptable. It is apparent from the proposed plans that the bedroom within Unit 0.1 would not have any windows or direct access to natural light. Officers understand from the applicant that Unit 0.1 is intended to be a studio flat with light provided from the proposed patio doors leading onto the rear garden area. If planning permission is granted then a planning condition could be used to require the plans to be amended to remove the internal partition walls shown on the plans separating the bedroom from the proposed kitchen, living room, dining room space to increase natural light to the bedroom area.

A Communal bin and bike store has been identified at the rear of the property.

Neighbour amenity

Officers consider it unlikely that any significant new neighbour impacts would occur. Units 1.1, 2.1 and 3.1 would have windows facing onto Fore Street. Fore Street is a relatively narrow pedestrianised street in the region of 8m wide. However, officers are mindful that many of the upper stories to properties along Fore street appear to have already been converted into flats and that the site itself previously had residential flats in the upper stories. Significant new overlooking to and from the properties opposite therefore appears unlikely to occur.

At the rear of the site, overlooking to any property would not be possible from Unit 01. Units 1.1 and 2.1 would be approximately 20m distant from St Mary's Dominican Convent behind the site and as such officers do not consider that any significant new overlooking is likely to occur. Again, it should be remembered in this respect that the rear rooms of the existing dilapidated rear extension also appears to have been used for residential purposes in the past. The proposed balconies for Units 1.1 and 2.1 would be fitted with privacy screens to prevent any overlooking to properties to the south east.

Officers consider it is unlikely that the proposals would result in any significant new overshadowing to properties on either side at the rear and would not be visually intrusive or overbearing to neighbours.

Given its siting, scale, and design, it is considered that the proposal would provide future occupiers with a good standard of living and not result in any unacceptable harm to the amenities of neighbours.

The proposal is therefore considered to be in accordance with Policies DE3 and W1 of the Torbay Local Plan and Policy THW4 of the Torquay Neighbourhood Plan.

5. Highways and Movement

Policy TA2 of the Local Plan states that all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety and that schemes which require new access to/from the highway network will be supported where they provide vehicular and pedestrian access to a safe standard, including a satisfactory standard of visibility. Policy TA3 and Appendix F of the Local Plan states that new residential flats should be served by a single parking space each. Policy TH9 of the Torquay Neighbourhood Plan states that all housing developments must meet the guideline parking requirements contained in the Local Plan unless it can be shown that there is not likely to be an increase in on-street parking arising from the development.

The site is within a sustainable location within a successful Local Centre. It is in close proximity to bus stop providing access to other parts of Torquay. The site is in close walking distance to at least two Council car parks.

The proposal would create a total of six flats (three two bedroom and three one bedroom) above the existing retail unit to be retained and would create two new parking spaces at the rear of the site across the existing verge. Torbay Highways have reviewed the proposed parking provision and have found it to be acceptable subject to a condition allocating each parking space to an identified flat.

Highways have also commented that cycle storage should be provided via Sheffield Stands (which enable cycles to be stored on the ground) as opposed to via hanging racks (as was originally proposed), so that they can be used by all future occupants of the building regardless of physical condition.

The current proposed layout plans show six covered cycle storage spaces in a Sheffield Stand arrangement.

The proposal is therefore considered to be acceptable with regards to Policies TA2 and TA3 of the Torbay Local Plan and Policy TH9 of the Torquay Neighbourhood Plan.

6. Ecology

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale.

The proposed layout has been revised on advice from officers such that, if planning permission were to be granted, no more than 25 sqm of habitat would be lost. The proposals are therefore considered to benefit from the De-minimis exemption from Bio-diversity Net Gain requirements.

As noted above, a single lesser Horseshoe Bat is currently using a part of the building as an occasional night roost.

The proposals include a "bat house" next to the proposed bin store to provide the bat with a replacement roost facility. The proposal and the submitted ecology reports provide by the applicant have been reviewed by a Senior Ecologist at Devon County Council and have been found to be acceptable.

The proposed development is therefore considered to be in accordance with Policy NC1 of the Torbay Local Plan.

7. Trees and Hedgerows

Policy C4 of the Local Plan states that development will not be permitted where it would seriously harm, either directly or indirectly, protected or veteran trees, hedgerows, ancient woodlands or other natural features of significant landscape, historic or nature conservation value.

The proposals would remove one self-seeded Sycamore tree at the rear of the property and has the potential (through formation of the proposed parking area, bin store and bat house) to affect the root protection areas of two self-seeded Sycamore trees to remain.

The proposals have been reviewed by the Council's Arboriculture officer who has advised that:

"... I would not require a BS5837 tree survey and would accept the loss of both trees, if we could secure better quality replacement planting. New trees located in the centre of each retained soft landscape area would make a positive contribution to the street scene, which is currently quite urban with little soft / natural features. I would recommend planting with an ornamental Pear (Pyrus calleryana 'Chanticleer') which performs well in the area. 6 - 8cm girth nursery stock are widely available from various nursery suppliers. So no objections to the development on arboricultural grounds, and opportunities to enhance the setting of the CA with new planting".

With the above in mind, if planning permission is granted then a planning condition can be used to ensure the removal of the existing trees and their replacement with two ornamental pear trees.

The proposal is therefore considered to be in accordance with Policy C4 of the Torbay Local Plan.

8. Flood risk and Drainage

Policy ER1 of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere.

The site is located within the Critical Drainage Area. It is within Flood Zone 1 and is accompanied by a site specific Flood Risk Assessment which has been reviewed by the Council's Drainage engineer and found to be acceptable.

The proposal is therefore considered to be in accordance with Policy ER1 of the Torbay Local Plan.

9. Low carbon development

Policy SS14 requires development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials.

Policy ES1 seeks to ensure that carbon emissions associated with energy use from new and existing buildings (space heating, cooling, lighting and other energy consumption) are limited.

The proposed development utilises existing openings where possible and includes new double glazed windows. The proposed development is therefore considered to meet the requirements of Policies SS14 and ES1 of the Torbay Local Plan.

Sustainability

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. The NPPF definition of sustainability has three aspects which are economic, social and environmental. Each of which shall be discussed in turn:

The Economic Role

Housing development is recognised as an important driver of economic growth and there would be economic benefits to the construction industry from the proposed development. As discussed above, future occupants of the proposed flats are likely to carry out some of their shopping for goods and services from existing shops within the Fore Street shopping precinct and this could be expected to contribute to the viability of the precinct as a whole. The proposal would also safeguard the future operation of the existing ground floor retail unit which, without the wholesale renovation of the building, may become unsafe to work in in the future.

The Social Role

The principal social benefit of the proposed development would be the provision of high quality accommodation at a time when the Council cannot demonstrate a three year housing supply. As discussed above, whilst the submitted plans show an increase of a single residential unit (the new two bedroom flat proposed in the proposed additional storey) in practice the proposal will deliver six flats (three one bedroom and three two bedroom) in a building that is currently unoccupied and unsafe to live in.

The Environmental role

With respect to the environmental role of sustainable development, the elements that are considered to be relevant to the proposed development are impacts on the heritage, streetscape, ecology, biodiversity and surface water drainage. These matters have been considered in detail above. The proposed development is in a sustainable location with a range of public transportation links and promotes a car free form of development with suitable cycle storage for occupants.

Sustainability Conclusion

Having regard to the above assessment the proposed development is considered to represent sustainable development excepting that the impact on heritage assets as identified by the Council's Principal Historic Environment Officer and Historic England are considered to be unacceptable.

Human Rights and Equalities Issues

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

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

Local Finance Considerations

S106/CIL

S106:

Not applicable.

CIL:

To be determined.

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.

BNG

Not liable give the date of the submission.

Planning Balance

This report gives consideration to the key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. It is concluded that significant adverse impacts will arise from this development. As such it is concluded that the planning balance is against supporting this proposal.

Conclusions and Reasons for Decision

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

Officer Recommendation

Refusal for the following reasons.

REASONS FOR REFUSAL

Housing & Sustainable development

The proposal would help to address the need to provide a range of homes and would contribute to housing delivery through the addition of new accommodation. However, the proposal would conflict with policies DE1, DE4, SS10 and HE1 of the Torbay Local Plan and policy TH8 Torquay Neighbourhood Plan (the Development Plan) and the associated harm would significantly outweigh the benefits. The proposal is therefore deemed to be contrary to the requirements of Policies H1 of the Torbay Local Plan.

Impact on heritage assets & visual appearance

The proposed development, by reason of the additional height involved with the additional storey, the increase in footprint to the existing rear extension, its unsympathetic design, location within the St Marychurch Conservation Area and proximity to Grade I and Grade II listed religious buildings behind the site fails to preserve or enhance the character and appearance of the conservation area and would result in less than substantial harm to the setting of the designated heritage assets. The public benefit of the provision of the residential units included with the proposals is clearly outweighed by the visual impact on the Conservation Area and listed buildings. The proposed development does not, therefore, meet the requirements set out in the National Planning Policy Framework for the presumption in favour of residential development where the Local Plan is not up to date. The proposal is deemed to be contrary to the requirements of Policies DE1, DE4, SS10 and HE1 of the Torbay Local Plan and Policy TH8 of the Torquay Neighbourhood Plan, the guidance contained in the National Planning Policy Framework (in particular paragraphs 205 and 208) and the requirements of sections 66 and 72(1) of Planning (Listed Buildings and Conservation Areas) Act 1990.

Planning balance

The benefit of the provision new accommodation on the site (whether this is viewed as the addition of one new unit of accommodation or six units of accommodation) is clearly outweighed by the visual impact on the adjacent heritage assets and harm to the visual character of the area. The proposed development does not, therefore, meet the requirements set out in the National Planning Policy Framework for the presumption in favour of residential development where the Local Plan is not up to date.