

## TORBAY COUNCIL

Application Site Address	Land Off St Mary's Road Brixham TQ5 9NH
Proposal	Demolition of existing industrial buildings and erection of 28 residential dwellings (22 open market and 6 affordable) together with access, landscaping and associated works on land to the north and south of St Mary's Road.
Application Number	P/2023/0553
Applicant	Westcountry Land Enterprises (South West) Ltd
Agent	Mr R Dodge
Date Application Valid	05/07/2023
Decision Due date	04/10/2023
Extension of Time Date	18/10/2024
Recommendation	<p>Refusal for the reasons given at the end of this report. Final drafting of these reasons, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Divisional Director responsible for Planning, Housing and Climate Emergency.</p> <p>If Members of Planning Committee are minded to approve the application against officer recommendation, final drafting of the planning condition(s) will be delegated to the Divisional Director of Planning, Housing and Climate Emergency and in consultation with the chairperson.</p>
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due it being of a major nature.
Planning Case Officer	Emily Elliott



## **Site Details**

The site, land off St Mary's Road, comprises of two parcels of land that contain several buildings to the northern and southern flanks of St Mary's Road, Brixham. The site comprises a site area of 0.54ha.

The northern buildings ("St Marys Industrial Estate") are located within the South Devon National Landscape, while the buildings ("Old Dairy") to the south abut the South Devon National Landscape. The Levelling Up and Regeneration Act gained Royal Assent in October 2023, this has renamed the Areas of Outstanding Natural Beauty as National Landscapes.

The site is allocated in the Brixham Peninsula Neighbourhood Plan as a housing site for 25 units (St. Mary's/Old Dairy, Policy H11 of the Neighbourhood Plan). The site is located within the Brixham Peninsula Strategic Delivery Area (Policy SS1 of the Local Plan). The site is close to the Berry Head/South Hams Greater Horseshoe Bat (GHB) Special Area of Conservation (SAC) and is within the Sustenance Zone for such. The application site lies within a curlew bunting consultation zone. The site is designated as Flood Zone 1. There is a group Tree Preservation Order (1999.015 G1) north of the application site.

The northern parcel of land is bounded by:

- To the north: Residential development that falls within the South Devon National Landscape.
- To the east: Open countryside located within the South Devon National Landscape.
- To the south: St Mary's Road which is an adopted public highway and beyond is the southern parcel of the application site.
- To the west: St Mary's Road which is an adopted public highway and beyond is residential development.

The southern parcel of land is bounded by:

- To the north: St Mary's Road which is an adopted public highway and beyond is the northern parcel of the application site.
- To the east: Orchard House which is a detached private residential dwelling and other large, detached dwellings beyond and South Bay Holiday Park. The South Bay Holiday Park falls within the South Devon National Landscape.
- To the south: Springdale Close a residential close which contains a number of dwellings, beyond is open countryside.
- To the west: Springdale Close is an adopted public highway directly abutting the application site and beyond is residential development.

Despite nearby development, the character of the site cannot be fully appreciated from a top-down map and the existing historic traditional stone buildings serve a gateway function into the much more rural area designated a National Landscape.

Note: For the purposes of this report the term National Landscape and Area of Outstanding Natural Beauty (AONB) are both used and should be considered interchangeable. This reflects policies as written, retained wording towards AONBs within the Development Plan, and comments made prior to the renaming of AONBs as National Landscapes that occurred during the period of this application.

## **Description of Development**

The proposal seeks permission for the demolition of the existing industrial buildings onsite and the erection of 28no. residential dwellings (22no. open market and 6no. affordable) together with access, landscaping and associated works on land to the north and south of St Mary's Road.

The proposed 28no. residential units would include the following mix:

### **Affordable housing:**

- 2no. x 1-bed apartments; and
- 4no. x 2-bed apartments.

### **Open market housing:**

- 10no. x 2-bed apartments;
- 1no. x 3-bed apartment;
- 7no. x 3-bed dwellinghouses (terraced, semi-detached); and
- 4no. x 4-bed dwellinghouses (end-of-terrace, semi-detached and detached).

The northern parcel of the application site is proposed to be occupied by 13no. residential units, which are in the form of flatted, detached, semi-detached and terraced development. The vehicular access would be from the northern side of St Mary's Road and 20no. allocated parking spaces are proposed (1no. per apartment, 2no. per dwellinghouse and 1no. visitor space).

The southern parcel of the application site is proposed to be occupied by 15no. residential units, which are flatted, semi-detached or terraced development. The vehicular access would be from the southern side of St Mary's Road and 24no. allocated parking spaces are proposed (1no. per apartment, 2no. per dwellinghouse, 4no. visitor spaces), 6no. of which are included within integral garages and 8no. of which are undercroft.

Across the proposed development, the residential units vary in two to three storeys in height. The proposed design incorporates a variety of gabled and hipped roofscapes. The proposed material palette includes natural stone, vertical timber cladding, standing seam metal cladding, and natural slate roofs. As well as metal fenestrations, balconies, and rainwater goods.

## **Relevant Planning History**

### **Application site formed part of a wider planning applications:**

P/2021/0890: Construction of 130 residential dwellings with access roads, infrastructure and public open space in outline, the proposal includes the demolition of existing buildings on the site. This application is accompanied by an Environmental Statement. The application is a departure from the Local Plan. Refused 30/06/2022 for the following reasons:

1. This proposal for major development would have a significant detrimental impact on the landscape character and scenic beauty of this part of the South Devon AONB that is not mitigated by exceptional circumstances in the public interest. The proposal is therefore contrary to Policies SS8, C1, SDB1, SDB3 and DE1 of the

Torbay Local Plan, 2015 and Policies E1 & E2 of the Brixham Peninsula Neighbourhood Plan and the National Planning Policy Framework, 2021 in particular paragraphs 176 and 177.

2. The site contains distinctive landscape features and characteristics, some of which would be permanently lost or degraded and the adverse landscape effects are considered to be significant and adverse and irreversible. The LVIA does not fully consider effects of the proposals on the special qualities and valued features of the AONB and its conclusions therefore cannot be relied upon. As such the proposed development is contrary to C1, SS8 of the Torbay Local Plan, 2015 and Policies E1, E6 & E7 of the Brixham Peninsular Neighbourhood Plan and para 174 of the National Planning Policy Framework, 2021.
3. The layout does not enable refuse vehicles safe or acceptable access and egress to and within the site. There is no gateway or street barrier at the connection between the footway behind the hedge bank (to the east of the main access) and St Mary's Road. In addition insufficient information has been submitted to confirm that the proposal would not have an impact on highways safety for all road users including cyclists and pedestrians (in particular the RSA identifies concerns in relation to pedestrian access and visibility splays within the wider highway network which have not been addressed) nor as to whether the proposal would provide internal roads which would be to the level of quality suitable for the Local Highways Department to adopt, or for the residential units to be served by refuse vehicles. As such the proposal is considered to be contrary to Policy TA2 of the Torbay Local Plan, 2015, Policy BH8 of the Brixham Peninsular Neighbourhood Plan and guidance within the NPPF in particular paragraphs 8, 130,104, and 110.
4. The lack of safe pedestrian access to local facilities and services is likely to result in a development over-reliant on the private car. The development will result in adverse environmental and social impacts, it fails to provide quality housing in a sustainable location, it is not well connected and accessible and does not include safe walking and cycling access. The number of dwellings in this location represent an overdevelopment of the site and the undersized gardens will inevitably result in increased footfall and pressure to the AONB and wider Special Area of Conservation. The development therefore does not accord with the development plan when considered as a whole and material considerations do not indicate that a decision should be made counter to the development plan. This conclusion is made in accordance with guidance contained within the NPPF, notably Paras. 11, 12 and 14. As such it is considered that the development presents a clear level of conflict with Policies SS1 and SS11 of the Torbay Local Plan ,2015 and Policy T1 of the Brixham Peninsular Neighbourhood Plan.
5. The number of dwellings in this location represents an overdevelopment of the site. The increase in scale to the north and south of St. Mary's Road here is not considered to be a sensitive addition to the character and appearance of the area. The layout is substantially dominated by the road network with proportions of parking located to the front of dwellings emphasising the urban character of the development contrary to Policies C1, SDB1, SDB3, DE1 and DE3 of the Torbay Local Plan, Policies E1 & E2 of the Brixham Peninsula Neighbourhood Plan and

contrary to the National Planning Policy Framework, 2021, in particular paragraphs 130 and 176.

6. Insufficient arboricultural information has been submitted to confirm that the proposal would not have a significant impact on the current trees on site and those potentially impacted by the development off site which contribute to the surrounding street scene character. As such the proposed development is contrary to Policy C4 of the Torbay Local Plan, 2015 and the National Planning Policy Framework, 2021 in particular paragraph 131.
7. The proposal, in the absence of a signed S106 Legal Agreement, fails to secure the necessary provision of sustainable development, Public Open Space, Sport and Recreation, ecological mitigation, Education. Lifelong Learning Obligations, waste disposal and health contributions, provision and maintenance of the public open space, play areas, public access routes and allotments, and affordable housing, contrary to Policy H2 of the Torbay Local Plan 2012-2030 and the adopted Planning Contribution and Affordable Housing SPD.
8. In the absence of sufficient ecology assessment information, it has not been possible for the Council to undertake the necessary appropriate assessment exercise in accordance with the Habitats Regulations, and therefore to conclude whether or not the proposal would have acceptable effects in relation to ecology. As such, the proposal is considered to be contrary to Policy NC1 of the Torbay Local Plan, and the guidance contained in the National Planning Policy Framework.
9. The proposed development results in the loss of employment and loss of a tourism facility on a site where it has not been demonstrated that it is not viable to continue in tourism use. As such it is contrary to Policies TO1 & TO2 of the Torbay Local Plan 2015-2030 and Policy TO1 of the Brixham Peninsula Neighbourhood Plan.

P/1989/0566: Change Of Use Of Existing Camp Site To Static Caravan Site. Refused 11/05/1989.

Appeal relating to P/1988/1135 and P/1988/2393 was dismissed 11/12/1989.

P/1988/2392: Change Of Use Of Existing Camp Site To Touring Caravan Site. Refused 23/01/1989.

P/1988/1135: Erection Of 150 Dwellings (In Outline). Refused 15/08/1988.

Application site formed part of a wider area involved in a pre-application enquiry:

Pre-application enquiry - DE/2019/0049: Formation of 145 dwellings. Summary: Development within the BPNP allocation is suitable in principle, however it is considered that the layout for this area would need to be revised to consider its visual impact and be a landscape led scheme. The principle of development beyond the BPNP allocation is not considered to be acceptable based on the information provided. If an application is to be submitted that it would need to be supported by suitable levels of ecological and landscape impact surveys.

No pre-application enquiry was submitted for this proposal.

### **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 Brixham Peninsula Neighbourhood Plan 2012-2030 ("The Neighbourhood Plan").

### **Material Considerations**

- National Planning Policy Framework (NPPF);
- Planning Practice Guidance (PPG);
- Planning Contributions and Affordable Housing Supplementary Planning Document (SPD);
- South Devon Area of Outstanding Natural Beauty Management Plan 2019 - 2024
- Published Standing Advice; 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.

### **Summary of Representations**

The application was publicised through a site notice, newspaper advert and neighbour notification letters and has been re-advertised. At the time of writing approximately 45 letters of objection (2 letters of objection have been made from the same household, 3 letters of representation and 1 letter of support have been received.

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

The following provides a summary of the main issues identified:

### **Objections include:**

- Impact on local area
- Not in keeping with local area
- Overdevelopment
- Privacy/overlooking
- Drainage
- Traffic and access
- Impact on infrastructure, services and welfare facilities
- Noise
- Sets a precedent
- Trees and wildlife
- Impact on the Area of Outstanding Natural Beauty/National Landscape
- Construction impacts

- Pedestrian permeability and accessibility
- Air pollution
- Impact on climate change
- Loss of traditional stone buildings
- Impact on historic landscape
- Height of development
- It's shown in the Local Plan
- Lack of affordable housing
- Quantum of development
- Marine pollution
- Residential amenity
- Loss of employment uses
- Loss of light
- Housing mix
- Sewage

Comments in support include:

- It removes an eyesore
- It provides houses

### **Summary of Consultation Responses**

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

#### **Brixham Town Council:**

Updated response not dated

No objection.

Response not dated

Objection. Brixham Town Council considers the number of dwellings in this location represents overdevelopment of the site.

#### **National Health Service Devon:**

Response dated 23/08/2023

#### **Introduction:**

This document provides a summary of the impacts of new housing developments on the primary care's capacity to provide health services, as well as a calculation of the contribution sought to mitigate the impact of the development on the local primary care infrastructure. It explains:

- The role and responsibility of Integrated Care Boards (ICBs) and Health and Wellbeing Boards;



- How GP facilities are funded;
- The planning policy context and decision-making process;
- The Impact created by the proposed development and;
- How the impact on the capacity to provide primary healthcare services can be mitigated by way of developer contribution and Community Infrastructure Levy (CIL) compliance

### **Integrated Care Board (ICB):**

The ICB plans and commissions health care services from providers and has delegated responsibility for commissioning primary health care services. ICBs exist to maintain and improve the health of their registered population and are, therefore, concerned with preventing as well as treating ill-health.

### **Integrated Care Partnership (ICP):**

The Local Authority together with the ICB, have an obligation to prepare joint strategic needs assessments. These strategies then inform joint health and wellbeing strategies to meet the assessed needs<sup>1</sup>. Both the needs assessments and wellbeing strategies **must** then be taken into account when an ICB and the responsible Local Authority exercise **any** of their functions.<sup>2</sup>

1 s. 116A of the 2007 Act and the Health and Social Care Act 2012

2 S116B of the Health and Care Act 2022

### **Commissioning Health Care Services/Facilities Through NHS Funding**

In a given year, central government through the Comprehensive Spending Review process sets the level of NHS funding. The process estimates how much funding the NHS will receive from central sources. The NHS receives about 80% of the health budget, which is allocated in England to NHS England/Improvement (NHSE/I), the governing body of the NHS in England. In turn, NHSE/I allocate funds to Integrated Care Boards (ICBs) which are clinically-led, statutory NHS bodies.

NHS-funded primary care services are delivered by independent contractors, usually GP partnerships, through General Medical Services (GMS), Alternative Provider of Medical Services (APMS) or Personal Medical Services (PMS) Contracts. GMS and PMS contracts are in perpetuity whereas APMS are a fixed-term, generally 5-10 years.

General Practices are funded using a weighted capitation formula based on existing registered patients which is updated quarterly in arrears. In addition, practices get income from achieving quality indicators as part of the Quality Outcomes Framework (QOF) and participating in nationally commissioned Direct Enhanced Services (DES) and ICB commissioned Locally Commissioned Services (LCS).

The projected ICB allocations by NHS England makes an allowance for growth in the number of people registered with GP practices. This population growth is based on mid-year estimates from the ONS age-sex specific population projections. Local housing projections, local housing land supply or existing planning permissions are not taken into consideration. The population projections only consider natural trends based upon births, deaths and natural migration and make a number of assumptions about future levels of fertility; mortality and migration based previously observed levels. The funding for ICB is reactive and the funding received from the Central

Government is limited. In the case of patient movement, the funding does not follow the patient in any given year.

### **Infrastructure Facilities Funding:**

NHS England does not routinely allocate any additional funding to the ICB in the form of capital or revenue towards infrastructure projects to cater for the impact from new residential developments.

Within the service contracts between the ICB and GP practices, practices are required to provide premises which are suitable for the delivery of primary care services and meet the reasonable needs of patients within their catchment area.

The Regulations governing GP contracts require ICBs to reimburse the practices for their premises through rents payable for lease property or pay a “notional rent” (a market rent assessed by the District Valuer on the assumption of a “notional” 15-year lease) in respect of a GP-owned building<sup>3</sup>. For new builds or extensions, the ICB needs to agree the additional rent from a limited revenue budget. If the ICB has no ability to reimburse then the project to increase the capacity by way of alteration extension, or building a new facility will be at risk.

3 <https://www.kingsfund.org.uk/publications/gp-funding-and-contracts-explained>

### **Premises Development in Primary Care:**

Delivering GP services in a new location represents a challenge for the ICB as no new GMS service contracts are now available. Therefore, for the new location to operate, either:

- the existing GMS service providers will have to relocate/expand; or
- a new (APMS or PMS) contract will need to be created and procured for the new premises' location

At the moment the ICB does not hold capital and does not own buildings, the procurement of new premises is either by:

- a Third-Party development (where a third-party developer funds the capital to build a new building, owns it and charges a commercial rent via a normally 25-year lease that represents the developer's return on capital, with the ICB reimbursing that rent); or
- a GP owner-occupied scheme (where the GPs own and develop but receive a notional rent, as described above), to fund the cost of the build.

Either way, such developments are most likely to occur for occupiers who hold an existing GMS or PMS contract, as APMS contract holders will not have a sufficient contract term to either enter a 25-year lease or invest in a new GP premises development.

### **The Decision-Making Process and Planning Policy Context:**

#### **Decision-Making**

The starting point for the determination of planning applications is the development plan. Section 70(1) of the Town and Country Planning Act 1990 (“TCPA 1990”) provides that a Local Planning Authority (LPA) may grant planning permission unconditionally or subject to such conditions as it thinks fit. Section 70(2) of the TCPA

1990 provides that in determining an application for planning permission, the LPA; “shall have regard to the provisions of the development plan, so far as material to the application, and to any other material consideration. Section 38(6) Planning Compulsory Purchase Act 2004 states that applications for planning permission should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

Whether or not a particular factor is capable of being a material consideration is a matter of law albeit that its factual context and weight are matters for the decision-maker. The health of communities has been a key element of government policy for many years and is reflected in adopted development plan.

### **Development Plan Policy:**

The Torbay Council Local Plan 2011 to 2031 (adopted 29th October 2018.) states that:

#### *“Policy SS11 Sustainable Communities*

*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 achieve the following criteria, insofar as they are relevant and proportionate to the development:*

- 1. Meet the needs of residents and enhance their quality of life;...*
- 4. Promote social inclusion, and seek to eliminate exclusion based on access to housing, health, education, recreation or other facilities;...*

### **Policy SC1 Healthy Bay**

*“All development should contribute to improving the health and well-being of the community, reducing health inequalities and helping to deliver healthy lifestyles and sustainable neighbourhoods proportionate to the scale of the proposal.*

*To achieve these requirements, applicants should demonstrate that they have had regard to the following:*

- 1. Consideration of the opportunities available to address the cause of ill-health in the local area;*
- 2. Promotion of healthy, safe and active living for all age groups, including healthy living, options for older people; and*
- 3. Improvement of access to medical treatment services, including the provision of healthcare clusters where appropriate”.*

### **National Planning Policy Framework (NPPF):**

Paragraph 2 of the NPPF states:

The National Planning Policy Framework (NPPF) must be considered in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements. Please also see paragraph 3 above.

The ICB is delivering primary care services at the point of demand through General Practice under the statutory requirement. Paragraph 2 of the NPPF contains an imperative upon the decision makers to reflect statutory obligations.

In addition, the health of communities has been a key element of government policy for many years and is, as stated above, reflected in adopted development plans. Please see NPPF Section 2 paragraph 8, Section 8 paragraphs 91 and 93.

The developer contributions are only sought from new development applications proposals where the contribution requested complies with the Community Infrastructure Levy (CIL) Regulation 122 tests:

1. This regulation applies where a relevant determination is made which results in planning permission being granted for development.
2. A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
  - a) necessary to make the development acceptable in planning terms;
  - b) directly related to the development; and
  - c) fairly and reasonably related in scale and kind to the development.
3. In this regulation—

“planning obligation” means a planning obligation under section 106 of TCPA 1990 and includes a proposed planning obligation.

### **The Impact Created by the Proposed Development:**

The proposed development is for 28 dwellings and this will create an estimated of population of 61 new residents within the development based an average household size of 2.17.

The closest GP surgeries to the proposed development are:

- Compass House Medical Centre - Compass House Medical Centre
- Compass House Medical Centre - Brixham Hospital
- Mayfield Medical Centre - Brixham Hospital
- Compass House Medical Centre – Galmpton Surgery

It is envisaged that the vast majority of the residents of the proposed development will register as patients with these practices.

The current combined medical centres providing primary care are up to their capacity and will not be able to absorb the increased patients arising from the proposed development.

The only way to mitigate the impact is to increase the physical capacity of the existing surgeries. The ICB has carefully calculated the space needed to mitigate the impact, drawing upon the document “*Devon Health Contributions Approach: GP Provision document*” (<https://www.devon.gov.uk/planning/planning-policies/other-county-policy-and-guidance>) which was agreed by NHS England. The detailed calculation is attached to this document as Appendix 1. The calculation is directly linked to the proposed development and is fairly and reasonably related in scale and kind to the development.

Compass House Medical Centre in Brixham has no room to expand on its present site and the Compass House and Mayfield branch surgeries at Brixham Hospital are at their maximum size.

Compass House Branch surgery at Galmpton has advanced plans to expand the surgery building on to land adjacent to the surgery building. Funds have been raised to help support this expansion and s106 contributions from this potential planning development could be used to be part of the pooled funding to support the surgery 's expansion

The contribution requested is necessary. Without the contribution to increase the physical capacity, the proposed development will put too much strain on the said health infrastructure, putting people at risk. Waiting times would increase and access to adequate health service would decline, resulting in poorer health outcomes and prolonged health problems. Such an outcome is not sustainable as it will have a detrimental socio-economic impact.

In addition, having no or limited access to the primary care will have a knock-on effect on secondary healthcare, in particular on A&E services, as those people who cannot access their primary care usually will present themselves at the A&E adding additional pressure on the already stretched secondary care.

The development directly affects the ability to provide the health service required to those who live in the development and the community at large. Without securing such contributions, the ICB would be unable to support the proposals and would object to the application because the direct and adverse impact that the development will have on the delivery of primary health care.

### **Torbay Council's Affordable Housing Officer:**

Response dated 02/08/2024

#### Summary

The Strategic Housing Service conditionally supports the proposal:

- The scheme delivers 21% affordable housing which accords with the policy requirement of a minimum of 20% on brownfield sites of 20 or more homes.
- The proposed affordable housing tenure mix of 5 (83.3%) social rent and 1 (16.7%) shared ownership is strongly supported. The high level of provision of social rent should be given considerable weight due to the severe need for social rented dwellings in Torbay,
- The proposed inclusion of a single 2-bed flat for shared ownership is not supported. This unit should either be provided as an additional 2-bed flat for social rent, or as a shared ownership house.

#### Policy Context

The policy framework in relation to the proposal can be summarised as follows:

- The site is allocated for 25 homes in terms of Policy BH3 of the Brixham Peninsula Neighbourhood Plan.
- Policy H2 of the Torbay Local Plan sets out an affordable housing requirement of 20% on brownfield sites of 20 or more dwellings, with an affordable housing tenure mix of 1/3 social rent, 1/3 affordable rent and 1/3 intermediate/shared ownership.
- Policy SC5 of the Torbay Local Plan seeks to reduce child poverty including through the provision of affordable homes to meet the needs of low-income families.

- Policy SS11 of the Torbay Local Plan seeks to create sustainable communities and to close the gap between the most and least disadvantaged neighbourhoods, including by (amongst other things) eliminating exclusion based on lack of access to housing.
- Policy BH2 of the Brixham Peninsula Neighbourhood Plan supports the provision of affordable homes in the peninsula to persons with a local connection to the peninsula or by key workers working within the peninsula.
- Policy BH4 of the Brixham Peninsula Neighbourhood Plan supports the development of housing on brownfield sites in preference to greenfield sites.
- The Planning Contributions and Affordable Housing SPD provides additional guidance on requirements for the provision of affordable housing.

#### Housing Need Justification Affordable

As of 24 June 2024, Torbay has 1,678 households on the Devon HomeChoice register. In terms of the number of households with a local connection to Brixham, the housing need as of 5 July 2024 is as follows:

	1 Bed	2 Bed	3 Bed	4 Bed	5 Bed	Total
<b>Band A</b>	0	0	0	0	0	0
<b>Band B</b>	11	10	11	2	2	36
<b>Band C</b>	20	23	18	10	0	71
<b>Band D</b>	61	19	7	2	0	89
<b>Total</b>	<b>92</b>	<b>52</b>	<b>36</b>	<b>14</b>	<b>2</b>	<b>196</b>

Source: Devon HomeChoice data for households with a local connection to Brixham – 05 July 2024

The figures above provide a snapshot in time of the current number of households registered on Devon HomeChoice that need an affordable home for rent. In Torbay, only households that fall within the top four housing need categories are currently recorded. Households that would otherwise fall within Band E are not included in the assessment of local need in Torbay. It should be noted, however, that the above does not take account of the need and demand for shared ownership, which is recorded by individual RPs as homes come on stream (similar to the way private sale housing works in respect of expressions of interest from interested purchasers). It is therefore not necessarily the full extent of all affordable housing needs, but is an indication of minimum demand in the local area.

Torbay's 2021 Housing and Economic Needs Assessment quantifies the amount of affordable housing for rent and for sale that needs to be delivered across The Bay from 2021 to 2031 in order to meet Torbay's affordable housing needs. This identified a need to provide an additional 387 affordable homes for rent and 334 affordable homes for sale each year.

The Council needs to have a strong pipeline of affordable housing in Brixham and throughout The Bay in order to meet current affordable housing needs as well as the needs that will arise in the future; this proposal will make a noteworthy contribution in this regard, and therefore gains the support of the Strategic Housing Service.

Proposal:

The application proposes the development of an allocated brownfield site for 28 homes. From a Strategic Housing perspective, the scheme would provide an inclusive, good quality development with a contemporary design approach, with tenure blind design. If approved, the proposal would make use of an underutilised site to provide much needed homes for local people through an attractive form of development.

The proposal includes the provision of 6 (21.4%) affordable homes on site. This accords with the Local Plan Policy H2 requirement of a minimum of 20% affordable housing on brownfield sites of 20 or more homes.

The Strategic Housing Service strongly supports the high level of provision of social rented homes due to the significant need for social rented housing in Torbay.

The Planning Contributions and Affordable Housing SPD states that, as a starting point, the housing mix (in terms of sizes and types) of the affordable housing should be in proportion with that of the open market dwellings within the scheme. The open market dwellings in the scheme comprise 10 x 2-bed flats (45.5%), 1 x 3-bed flat (4.5%), 7 x 3-bed houses (31.8%) and 4 x 4-bed houses (18.2%).

The proposed affordable housing provision comprises 2 x 1-bed flats for social rent, 3 x 2-bed flats for social rent, and 1 x 2-bed flat for shared ownership. The Strategic Housing Service does not support the proposed provision of a single 2-bed flat for shared ownership as this is very likely to present site management complications for the RP. Rather, this unit should either be provided as an additional 2-bed flat for social rent, or as a 2-bed or 3-bed shared ownership house. The Strategic Housing Service's support for this proposal is therefore subject to a revised affordable housing schedule comprising:

Either:

	Social rent		Affordable rent		Shared ownership	
	Number	(% of total AH)	Number	(% of total AH)	Number	(% of total AH)
1-bed (2-person) flats	2	33.3%	0	0%	0	0%
2-bed (3-person) flats	4	66.6%	0	0%	0	0%

Or:

	Social rent		Affordable rent		Shared ownership	
	Number	(% of total AH)	Number	(% of total AH)	Number	(% of total AH)
1-bed (2-person) flats	2	33.3%	0	0%	0	0%
2-bed (3-person) flats	3	50%	0	0%	0	0%
2/3-bed (4-person) house	0	0	0	0	1	16.7%

Torbay faces a particularly severe need for social rented homes which is the tenure that is the most affordable to households in the highest priority categories of need. Given the level of need for social rented homes, and the specifics of the proposed site layout and the management requirements that this presents for the RP, the Strategic Housing Service consider either of the above to be a suitable and acceptable affordable housing provision for this particular scheme. Considerable weight should be given to the high level of social rented housing that is proposed.

In accordance with the requirements of Policy DE3, all of the affordable homes comply with the minimum sizes set out in the Nationally Described Space Standards (NDSS). The submission is silent on whether any of the proposed affordable homes would be provided to meet the standards in Building Regulations Part M(4)(2) for accessible and adaptable dwellings. While the proposed affordable homes on the first and second floors of the apartment block on the northern half of the site would appear to be unable to meet the requirement in Part M(4)(2) for step free access (as the upper floors are accessed by stairs rather than by a lift), Unit 03 (a 1-bed social rented flat on the ground floor) has the potential to be provided as an accessible dwelling.

#### S.106 Provision and Requirements

In respect of the detailed obligations required to make the scheme compliant, these must be captured within a Section 106 agreement securing the following:

- An affordable housing mix as set out above, with obligations to be agreed in writing with the Council prior to start on site;
- A minimum of one affordable home to meet Building Regulations Part M(4)(2), in respect of accessible housing;
- The developer to have agreed in writing with the Head of Strategic Housing prior to start on site, the approved purchaser of the Registered Provider (RP) that will be transferred the completed affordable homes, and to use all reasonable endeavours to get into contract for delivery with that RP within 3 months of start on site;
- If the original approved RP withdraws from the purchase, to sell to a second (and subsequent, as necessary) RP, approved in writing by the Council;
- The on-site affordable homes to be transferred to the approved Registered Provider on a nil-grant basis, and prior to the transfer, sale or occupation of any open market dwellings, with nomination rights granted to the Council in perpetuity;
- The affordable and open market homes to be delivered tenure blind, such that there is no visual or quality difference between the tenures of homes on-site.

#### More Information

Applicants should refer to the adopted Planning Contributions and Affordable Housing Supplementary Planning Document which is available to view online on the Council web site.

#### **Torbay Council's Principal Policy and Project Planner:**

Updated response dated 17/01/2025

#### **The implications of the December 2024 NPPF:**

The most recent Planning Policy comments on application P/2023/0553 are from 2<sup>nd</sup> July 2024 advised that changes to the NPPF and other material considerations must be taken into account. This note does not repeat previous policy comments, but considers the policy changes in the updated NPPF published in December 2024. The new Framework took immediate effect for decision making purposes. The overall effect of the NPPF is to significantly increase the case for approving housing applications, in line with the Government's express policy objectives. This clearly needs to be taken into account alongside other material considerations, such as the LPA's legal duty towards National Landscapes and heritage assets.



The Framework, along with a revised Standard Method set a binding minimum Local Housing Need figure for Torbay of 940 dwellings a year. This is no longer an “advisory starting point” but a binding need figure. There must be “strong” constraints not to meet this level of need. This figure is not achievable in Torbay, but the council needs to do all it can to maximise housing delivery insofar as consistent with the Presumption in Favour of Sustainable Development at Paragraph 11 of the Framework. This is especially the case for Brixham which is highly constrained and needs to maximise its limited housing opportunities, especially on sites that are already allocated for development.

The starting point for an allocated site would be to approve the application under paragraph 11(c). However, I note from discussions that the proposal has been assessed to conflict with the development plan, despite being allocated in the Brixham Peninsula Neighbourhood Plan (H3-12). Therefore, the “Sharpened” Presumption in Favour of Sustainable Development and paragraph 11(d) of the Framework becomes central to reaching a view.

11....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<sup>8</sup>, granting permission unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed<sup>7</sup>; 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.<sup>9</sup>

When considering “Footnote 7” constraints such as National Landscape, Special Area of Conservation or Designated Heritage Assets, the wording of 11 d)(i) has been revised to indicate that there must present a “strong reason” for refusal. This is a higher bar than the previous test of a “clear reason”. This reinforces the Government’s clear policy of increasing housebuilding. The Framework’s policies on conserving and enhancing the natural environment (ch 15) and the historic environment (ch 16) remain largely unchanged, except for rebranding of AONBs as “National Landscapes” to reflect the change to their status in the Levelling Up and Regeneration Act.

The “tilted balance” at 11(d)(ii) has been revised to require particular attention to be given to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places, and providing affordable housing individually or in combination. Footnote 9 indicates that paragraphs 66,84,91,110,

115,129, 135 and 139 of the Framework are the policies that should be given “particular regard”. The changes to the “tilted balance” at paragraph 11(d) (ii) have added additional complexity to the Presumption, and some of the policies flagged at Footnote 9 may pull in different directions. I would suggest the following, but this is a matter for detailed site specific assessment:

- paragraph 66 (affordable housing) clearly points in favour of approval and reflects the importance that the Framework gives to the provision of affordable housing.
- 84 and 91 are broadly neutral.
- Paragraphs 110 (sustainable locations) and 115 (transport and access considerations) are a matter for detailed site specific assessment.
- Paragraph 129 (a-e) (making effective use of land) generally point in the application’s favour in terms of promoting densification of the built up area to meet needs.. However, 129 d) refers to the desirability of maintaining an area’s prevailing character and setting...or of promoting regeneration and change”. Paragraph 129e) refers to the importance of securing well designed, attractive and healthy places. These highlight the importance that the framework attaches to maintaining an area’s character, and is dependent upon a detailed assessment of proposals.
- Paragraph 135 (a-f) refer to achieving well designed places in relation to a) function and overall quality of the area over the lifetime of the development; b) visual attractiveness as a result of good architecture, layout and landscaping; c) sympathetic to local character and history including the surrounding built environment and landscape setting (whilst not preventing appropriate innovation or change, such as increased densities); d) strong sense of place; e) optimise the potential for development; and e) create safe and inclusive environments that promote health and well-being with a high standard of amenity for users. These will require a detailed site assessment, and it is clear that St Marys Road does have a special character as a gateway site into the National Landscape. The requirements of 135(c) for development to be sympathetic to local character and history may be especially pertinent.
- Paragraph 139 indicates that development which is not well designed should be refused, having regard to design codes etc., whilst good quality design should be approved. As above, this is a matter for detailed consideration of the proposal.

Paragraph 125 (c) of the Framework, which has been amended to indicate that suitable brownfield land within settlements should be approved for homes unless “substantial harm” would be caused. This is a higher test than the previous wording that such sites were “acceptable in principle”. This is not one of the policies highlighted in Footnotes 7 or 9.

Taken as a whole, the crux of the changes to the Framework are to support the development of allocated brownfield sites within the built up area. But the Framework does retain significant emphasis on good design.

As set out in previous comments, it is clear that the application raises a number of complex issues in relation to the South Devon National Landscape, designated and undesignated heritage assets, design, neighbour amenity, ecology and accessibility issues etc. The consideration of these matters is for yourselves and other specialist

consultees. I have noted above that the amended presumption draws particular attention to design and local character considerations as part of a “tilted balance” assessment (should one be necessary).

I fully endorse the comments that the site’s merits can only be understood from visiting the area in person, and that a top-down map view does not provide an accurate assessment of the area’s character and setting. In reaching a “Planning Balance” view I would ask that the Presumption tests are applied, and that substantial weight is given to the provision of housing, and particularly to the provision of affordable housing.

Previous response dated 02/07/2024

I refer to the above consultation to P/2023/0553 for the demolition of existing barns and erection of 28 dwellings, land to the north and south of St Marys Road, Brixham. I previously provided comments in March 2024 and August 2023. I have updated these to reflect the wider policy position at July 2024. I note that amended plans and an addendum to the Heritage Assessment have been submitted since my March comments. The December 2023 NPPF may be further amended, and changes to the Framework should be kept under review.

The northern buildings (“St Marys Industrial Estate”) are located within the South Devon National Landscape (AONB); the buildings to the south (Old Dairy) abut the AONB. The site is close to the South Hams SAC, and Berry Head to Sharkham Point area that is covered by multiple environmental designations.

The site is allocated for 25 dwellings in the Brixham Peninsula Neighbourhood Plan (H3-I2) (BPNP). It was formerly allocated for housing in previous Torbay Local Plans, and is shown as a potential housing site BPNPH11 on the Local Plan 2012-30. In this context I would not regard the 3 additional dwellings as a departure from the development plan, although Brixham Town Council has raised this as an objection. An assessment of the three additional dwellings’ impact on the wider layout, design and built-form issues is relevant. The BPNP Housing Site Assessment does not have the force of Section 38(6) but is still a material consideration as it sets the background to the housing allocation in the main plan. The housing site assessment document states that *“The current buildings at the St Mary’s Industrial Estate and Old Dairy sites are in a lower state of repair. The land could be developed either through conversations of existing buildings or demolition and new build to provide a more efficient use of land”*.

The BPNP settlement boundary (E3) is more tightly drawn to the buildings than the Torbay Local Plan countryside area boundary (Policy C1 area). The application appears to be within the BPNP settlement boundary, which extends directly north from the boundary of the Old Dairy with Orchard House.

Previous responses dated 02/08/2023 and 13/03/2024 can be found online that relate to the original submission.

**Torbay Council’s Principal Historic Environment Officer:**

Updated response dated 16/10/2024

I previously provided comments on the scheme in March 2024 which identified that the proposed development would cause clear harm to a number of identified non-designated heritage assets and the single identified designated heritage asset. This being the case, the proposals were considered to be contrary to Policy SS10 of the Torbay Local Plan.

Further comments were then provided for a revised scheme which still included the demolition of a number of non-designated heritage assets on the site rather than their conversion as part of a heritage-led regeneration scheme. Therefore, harm to heritage assets continued to be identified.

These comments are in response to the submission of further landscape plans and information.

Although the further submissions provide some clarity on proposed landscaping, they do not include the retention of the historic buildings on the site and therefore my previous comments and the harm identified to the historic environment can still be applied.

I would continue to advise that in line with the requirements of the NPPF, the identified harm to heritage assets will need to be weighed against the associated public benefits of the proposed development, whilst being mindful of the great weight which should be given to the conservation, and special regard afforded to the protection, of heritage assets. This would be a matter for the overall planning assessment of the proposals.

Should the application be approved, my previous comments with regards to potential conditions can still be applied.

#### Updated response dated 23/07/2024

I previously provided comments on the scheme in March 2024 which identified that the proposed development would cause clear harm to a number of identified non-designated heritage assets and the single identified designated heritage asset. This being the case, the proposals were considered to be contrary to Policy SS10 of the Torbay Local Plan.

These comments are in response to the submission of the following:

- Addendum to the Heritage Assessment
- Revised Design and Access Statement
- Revised plans and elevations

The proposed revisions to the scheme include a revised palette of external materials which are proposed to incorporate salvaged material from the demolition of the existing structures on the site, along with the reduction of scale, height and massing of some elements of the scheme. This approach is quoted within the submitted supporting information to reference a more agricultural rather than an industrial style as previously proposed.

Whilst the overall design approach can be considered to be an improvement on the previous scheme, the opportunity for a heritage-led regeneration scheme which incorporates the existing heritage assets on the site which have demonstrable heritage value has not been taken.

As a result, although the overall design approach has improved, the proposed development would still cause clear harm to a number of identified non-designated heritage assets and the single identified designated heritage asset, as outlined within my previous comments.

In line with the requirements of the NPPF, the identified harm to heritage assets will need to be weighed against the associated public benefits of the proposed development, whilst being mindful of the great weight which should be given to the conservation, and special regard afforded to the protection, of heritage assets. This would be a matter for the overall planning assessment of the proposals.

Should the application be approved, I would request that the following be secured through condition:

- A full record of the buildings to be demolished made and deposited into the HER prior to their removal.
- Existing natural stone walling materials to be salvaged, stored and reused on the site.
- Samples of all external walling and roofing materials.
- Details of all external joinery including windows, doors, rainwater goods etc.
- Details of boundary treatments (it should be noted that stone boundary walls should be used over timber fencing, as stone walls are an important characteristic of the site).

Previous response dated 15/03/2024 that relates to the original submission

#### Detailed Proposals:

Demolition of existing industrial buildings and erection of 28 residential dwellings (22 open market and 6 affordable) together with access, landscaping and associated works on land to the north and south of St. Mary's Road.

#### Relevant Policy:

Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State 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".

This statutory requirement needs to be considered alongside relevant heritage guidance contained in the National Planning Policy Framework (2023) which recognises that heritage assets range from sites and buildings of local historic value to those of the highest significance. It requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by a proposal (Para 195).

Paragraph 197 goes on to state that 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 205 considers 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'.

Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification' (Para 206).

Paragraph 208 adds 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'.

With regards to non-designated heritage assets, paragraph 209 advises that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Should a heritage asset be lost either wholly or in part, paragraph 210 requires local planning authorities to take all reasonable steps to ensure that the new development will proceed after the loss has occurred.

In terms of the Development Plan, it is guided that development proposals should have special regard to the desirability of preserving heritage assets and their setting (Policy SS10 of the Local Plan).

#### Significance of Identified Heritage Assets:

With regards to heritage assets, the site contains a number of non-designated heritage assets and there is one Grade II listed building located approximately 20m to the northwest of the site, 1, 2 and 3 St. Mary's Road.

#### Designated:

##### *1, 2 and 3 St. Mary's Road*

This property was listed in 1975 and is believed to date from the 17th century but with a later remodelling in the early 19th century.

Its significance relates predominantly to its evidential value through the survival of 17th century fabric, historic value through being a physical embodiment of the historic

occupation of the area and the evidence of past inhabitants on the site, and its aesthetic value from its contribution to the surrounding townscape.

It is considered that with regards to its setting, the building may have formed part of a wider designed landscape, however, the perception of this former landscape has now been largely lost through 20th century development. The asset is now predominantly experienced from St. Mary's Road and Upton Manor Road and from within its own curtilage.

The setting of the asset is therefore considered to make some contribution to its significance. The application site, due to its proximity, past agricultural use and historical relationship is considered to form a part of the asset's setting.

*Non-Designated Heritage Assets:*

There are a number of structures on the site which can be classed as non-designated heritage assets. These include both the northern and southern groups of buildings, a stone boundary wall along St. Mary's Road and potentially other structures associated with the former agricultural/industrial use of the site.

It is believed that the site contains built fabric and features which date from the 18th century and possibly earlier set within a predominantly 19th century agricultural landscape. The site has a complex narrative which the submitted Heritage Statement suggests should be further explored.

The structures on the site are assessed to demonstrate the following heritage values:

*Evidential value*

The northern group of buildings appear to have been built around an earlier structure, elements of which still survive. There are many features including the former farm buildings, boundary walls and archaeological remains which have a high evidential value.

The southern group of buildings, although more heavily altered in the 20th century, share a similar value with clear evidence of significant historic fabric being present within the existing structures and potentially as archaeological remains.

*Aesthetic/Architectural value*

The northern group of buildings retain some architectural features of significance, such as external segmental arches with voussoirs, keystones and stonework. Although the site has been unsympathetically altered in the past, these features can still be easily read and make a positive contribution to the site.

The southern group of buildings still demonstrate some vernacular architectural details, although, 20th century development on the site has had a greater impact on its readability. However, some buildings, particularly the eastern range, do continue to make a positive contribution to the site.

*Historical value*

Both groups of buildings provide physical evidence of the historical agricultural use of the site and the contribution that this has made to the evolution of the site and the historical landscape of the surrounding area.

#### *Communal value*

The site has some communal value through the past employment uses of the site and its recognition as a local business. The historic structures would make a small contribution to this value.

#### *Archaeological value*

Upton Farm is recorded on the Devon Historic Environment Record (HER) as a post-medieval farm and the Site is located in a landscape of known archaeological potential. The Devon and Torbay HER records finds of prehistoric and Romano-British date in the wider area, indicating reasonable potential for widespread settlement activity. The site has demonstrable archaeological value which would benefit from further study.

#### Summary:

Although the buildings have been altered as a result of past unsympathetic development within the site, the site has clear demonstrable evidential, architectural and historic value.

The existing historic buildings on the site can therefore be considered to be non-designated heritage assets.

#### Impact on Significance of Heritage Assets:

The wholesale demolition and clearance of the site would cause substantial harm (through complete loss of significance) to the existing historic buildings and their historic relationship with each other and the wider landscape. This would need to be assessed within the context of paragraph 203 of the NPPF and the heritage harm appropriately considered within the overall planning balance. The current proposals for wholesale demolition appear to lack adequate justification and would also therefore be contrary to the requirements of paragraph 206 of the NPPF.

With regards to designated heritage assets, the application site is in relatively close proximity to 1, 2 and 3 St. Mary's Road, a Grade II listed building. The site is currently well screened due to the presence of a band of mature vegetation and walling; however, it is considered that intervisibility between the two sites is possible.

The proposed development would remove the historic/former agricultural character of the application site and replace it with residential development of a notably different scale, massing and character to that existing.

Although the setting of this asset only makes a modest contribution to its significance, the impact of the proposed development would result in an adverse change within its setting and would therefore cause a low degree of 'less than substantial' harm to the significance of the designated heritage asset. This would be required to be assessed within the context of paragraph 208 of the NPPF and should be weighed against the public benefits of the proposals as part of the overall planning balance. There are no demonstrable heritage benefits associated with the proposals.



With regards to the proposed replacement buildings on the site, it is not considered that the design of the proposed development adequately reflects the historic use and special characteristics of the site. Whereas the introduction of contemporary architecture can be successful within historic settings, it is not considered that the proposed development is of sufficient architectural or visual interest for this sensitive site.

The principle of residential use of the site is likely acceptable, however, it is advised that the heritage harm identified could be reduced or potentially removed should a heritage-led regeneration approach to the site be considered.

#### Conclusions:

As a result of the above, it is clear that the proposed development would cause clear harm to a number of identified non-designated heritage assets and the single identified designated heritage asset. This being the case, the proposals are considered to be contrary to Policy SS10 of the Torbay Local Plan.

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, and special regard afforded to the protection, of heritage assets. This would be a matter for the overall planning assessment of the proposals.

#### **Torbay Council's Drainage Engineer:**

##### Updated response dated 30/10/2024

I can confirm that providing the surface water drainage is constructed in accordance with the latest submitted drawing and hydraulic design, I have no objections on drainage grounds to planning permission being granted for this development.

Previous responses dated 02/08/2023, 09/10/2023, 16/07/2024 and 04/09/2024 relate to the original submission

#### **Environment Agency:**

##### Response dated 17/07/2024:

##### Environment Agency position

We have no objection to the proposed development subject to the inclusion of a condition which relates to the management of contaminated land on site. Suggested wording for this condition and the reason for our position is provided below.

##### Condition

Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:

1. A site investigation scheme, based on the information gained in the desk study to provide information for an assessment of the risk to all receptors that may be affected, including those off site.
2. The results of the site investigation and risk assessment (1) and a method statement based on those results giving full details of the remediation measures required and how they are to be undertaken.
3. A verification report on completion of the works set out in (2) confirming the remediation measures that have been undertaken in accordance with the method statement and setting out measures for maintenance, further monitoring and reporting.

Any changes to these agreed elements require the express consent of the Local Planning Authority.

Reason: For the protection of controlled waters.

#### Reason for position

Firstly, thank you for obtaining clarity from the applicant about the nature of the previous use of the buildings as a garage/car service business. We have reviewed the submitted Preliminary Investigation Report (PIR) (ref.: C62033-1(00), dated May 2019) and the Ground Investigation Report, (ref.: C62033, dated June 2019 submitted in support of this application. We note that structures were still present at the time of the investigation and agree that it may be prudent to undertake some further confirmatory testing once the buildings in the west of the site are decommissioned and / or demolished. Given the limited testing across the site, we consider that planning permission should only be granted to the proposed development as submitted if the above planning condition is included. Without this condition, the proposed development on this site poses an unacceptable risk to the environment and we would wish to object to the application.

#### **South West Water:**

Updated response dated 11/07/2024:

#### Asset Protection

Please find enclosed a plan showing the approximate location of a public 150mm sewer in the vicinity. Please note that no development will be permitted within 3 metres of the sewer, and ground cover should not be substantially altered.

Should the development encroach on the 3 metre easement, the sewer will need to be diverted at the expense of the applicant.

#### Surface Water Services

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. South West Water response relates to surface water discharge to our network, where the discharge is from buildings and yards belonging to buildings. Where the applicant has highlighted that the surface water does not connect to South West Water network, we are not commenting on this as it is not our responsibility.

South West Water has no duty to accept land drainage runoff, flows from natural watercourses or groundwater to the public sewer system, and this is not permitted to discharge to the South West Water network. The applicant should make alternative arrangements to deal with this separately during the development and once the construction work is complete.

South West Water are not responsible for Highway Drainage and our comments do not relate to accepting any of these flows. The applicant should discuss and agree with the Highway Authority, where the highway water connects to.

If the applicant wishes to connect this to South West Water network, then they should engage with us separately to see if we can accommodate this. No highway drainage will be permitted to be discharged to SWW foul or combined public sewer network either directly or indirectly.

If the applicant is looking to get their sewers adopted (surface and foul), then they should design and construction the sewers to the current version of the Design and Construction Guidance. The process for doing this can be found on South West Water's website at [Adoption of new sewers | Building & Development | South West Water](#)

#### Clean Potable Water

South West Water is able to provide clean potable water services from the existing public water main for the above proposal. The practical point of connection will be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network.

#### Foul Sewerage Services

South West Water is able to provide foul sewerage services from the existing public foul or combined sewer in the vicinity of the site. The practical point of connection will

be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network.

The applicant can apply to South West Water for clarification of the point of connection for either clean potable water services and/or foul sewerage services. For more information and to download the application form, please visit our website:

[www.southwestwater.co.uk/building-and-development/services/pre-development-services](http://www.southwestwater.co.uk/building-and-development/services/pre-development-services)

Previous response dated 02/08/2023 can be viewed online that relates to the original submission.

**Devon County Council's Ecologist:**

Updated response dated 04/09/2024:

Based on the provided BNG metric and relevant site plans, that a not net loss in biodiversity is achieved at the very least through this development, which would be in line with both national and local planning policy.

Please add the following condition to any decision notice:

Condition: The development shall not commence until a Habitat Management and Monitoring Plan (the **HMMP**), prepared in accordance with the approved Biodiversity Metric Spreadsheet and including:

- a) a non-technical summary;
- b) the roles and responsibilities of the people or organisation(s) delivering the HMMP;
- c) the planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan;
- d) the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the completion of development; and
- e) the monitoring methodology and frequency in respect of the created or enhanced habitat to be submitted to the local planning authority.

has been submitted to, and approved in writing by, the local planning authority.

Previous response dated 07/08/2023:

Further information required prior to determination.

**Statutory designated sites - SAC, SPA (HRA requirements), SSSI, NNR, LNR**  
South Hams SAC Sustenance Zone

The development site lies within the South Hams SAC Sustenance Zone for greater horseshoe bats.

In 2019, 10x activity surveys were completed between April and October, with at least 1 survey each month. 4x static detectors deployed in 2019. Habitats the same in 2023, no further activity surveys undertaken.

GHB activity: single GHB recorded during building surveys, to the east of within the site. No GHB recorded during activity surveys.

No suitable habitat for foraging, and no linear commuting features present on site. The site is dominated by hardstanding. Surrounding area is predominantly urbanised.

The proposed development will not lead to the loss, damage, or disturbance to GHB foraging habitat within a sustenance zone. Nor will it lead to the loss, damage or disturbance to a pinch point or an existing mitigation feature. This is due to the location of the development, in an area unfavourable to greater horseshoe bats, with no suitable foraging habitat or linear habitats.

In line with the South Hams SAC Habitats Regulations Assessment Guidance document (DCC et al.,2019), and given the above, there is unlikely to be a likely significant effect on the South Hams SAC. Appropriate Assessment is not deemed to be required. No mitigation required.

#### South Hams SAC Berry Head Recreation Zone

The development falls within the SAC Recreation Zone for Berry Head Country Park, where the potential for recreational pressure due to new developments may affect the wildlife interests of the Berry Head component of the South Hams SAC. Qualifying features include calcareous grassland and sea cliffs (with their associated species).

Policy NC1 of the Torbay Local Plan states that “development contributions will be sought from development within the Brixham Peninsula (Policy SDB1) towards measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure.”

In the absence of mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland and so Appropriate Assessment is needed.

#### Appropriate Assessment:

For CIL liable developments such as this, applications for additional dwellings within the Brixham Peninsula Neighbourhood Plan Area are required to pay a monetary contribution to offset the resultant additional recreational pressure on the calcareous grassland at the Berry Head to Sharkham Point Component of the South Hams Special Area of Conservation.

Therefore, if approved, this development would be required to pay contributions towards mitigating in-combination recreational impacts on the SAC.

HRA Conclusion - With this measure secured, there will be no adverse effect on the integrity of the SAC. If approved, this development will be required to pay CIL contributions towards mitigating in-combination recreational impacts on the South Hams SAC.

## Lyme Bay and Torbay SAC

### Recreational Impacts:

On advice received by Natural England (July 2022), recreational impacts from development on the marine SAC can be screened out unless there is a direct link between the application and increased recreational use on the SAC.

The reasons for this are: at present the SAC seacaves are recorded as being in Favourable condition. There is no evidence currently available to conclude that recreational activities are damaging the SAC features, or that recreational activities are attributable to the housing numbers identified in the Local Plan.

Individual planning applications that have a clear link to increased recreational use of the coast will need to be subject to project-level HRA, and that a bespoke package of measures will need to be secured to address the specific impacts of the proposed project.

If the evidence relating to (i) the accessibility of the seacaves; (ii) the possible damage to the seacaves; (iii) monitoring of the types of activity, the location of activities, and the levels of access; and (iv) understanding where individuals are originating from, becomes available then that evidence, depending on the findings, will become a material consideration in the determination of planning applications for housing developments and future Local Plan reviews.

### **Other habitats**

#### Trees:

Two heavily pruned early mature sycamore in southwest of the site. Not in good condition.

Both trees to be removed for development.

New native and ornamental tree planting across the site. This is deemed suitable and sufficient to compensate for the loss of trees and to enhance the site with this habitat type.

Condition: A Landscape and Ecological Management Plan, which will include details relating to habitat creation, species specification and management. *This will need to be agreed with the LPA.*

#### Ruderal vegetation:

Ruderal vegetation present at margins of hardstanding and buildings, occasionally managed.

Amenity grassland and non-native planting with species of wildlife value across the site. This is deemed suitable and sufficient to compensate for the loss of ruderal vegetation and to enhance the site for biodiversity.

Condition: A Landscape and Ecological Management Plan, which will include details relating to habitat creation, species specification and management. *This will need to be agreed with the LPA.*

### Scrub:

Small areas of scrub present on margins of the site, not subject to any regular management, some areas cut on occasion. Majority of scrub to be retained.

Enhancement of scrub to create more diverse species mix and management for biodiversity. This is deemed suitable and sufficient to enhance this habitat type.

Condition: A Landscape and Ecological Management Plan, which will include details relating to habitat creation, species specification and management. *This will need to be agreed with the LPA.*

### Hardstanding:

Roads and parking areas present and generally well maintained. No ecological importance.

No negative impacts due to negligible ecological importance of this habitat. No mitigation required.

## **European Protected Species**

### Bat commuting / foraging:

In 2019, 10x activity surveys were completed between April and October, with at least 1 survey each month. 4x static detectors deployed in 2019. Habitats the same in 2023, no further activity surveys undertaken.

Most activity recorded on habitats to the east, outside site boundary. Common pip foraging around street lighting within site. Single GHB recorded during building surveys, to the east of within the site. No linear features on site. Lack of favourable foraging habitat.

Lighting scheme implemented to follow best practice guidance from BCT and ILP. Luminaires lacking UV elements. Use of LEDs. Warm white spectrum, peak wavelengths higher than 550nm. Internal luminaires recessed. Specialist bollard or low-level luminaires. 0% upward light ratio. Security lighting on motion-sensors and short timers. Baffles, hoods, or louvres used to reduce light spill. This is deemed suitable and sufficient to mitigate against potential negative impacts on foraging and commuting bats.

Condition: No external lighting shall be installed at any time at the application site without the written permission of the Local Planning Authority. Reason: In the interests of nocturnal biodiversity.

Condition: Development shall be carried out in accordance with the actions set out in the Ecological Assessment. This condition shall be discharged when the consultant ecologist confirms in writing to the LPA that the recommendations have been implemented.

### Bat roosts – buildings / trees:

A ground-level tree assessment was undertaken in April 2019 and again in April 2023. The 9 buildings on site were inspected in July 2019 and again in April 2023. DNA analysis of bat droppings in 2019 and 2023.

Buildings B2-9 subject to two emergence and single re-entry survey in 2019. 2023 no access into B1, parts of B4 and B5, and B9. Emergence survey of B6 scheduled during optimal bat survey period in 2023.

B3 – scattered old and new individual BLE droppings, 2019 and 2023.

B4 – accumulations of <10 old and new LHB droppings, 2019.

B6 – accumulations approx. 20 old and new droppings in 2023, likely LHB or BLE.

B7 – scattered old and new individual BLE droppings, 2019 and 2023.

B9 – accumulation of <10 old and new LHB droppings, 2019.

#### Roost summary:

B2 = day roost for individual / low numbers of common pipistrelle. B3 and B7 = day or night roosts for individual / low numbers of brown long-eared bats. B4 and B9 = day or night roosts for individual / low numbers of lesser horseshoe bats. B6 = further surveys required to determine the species of this roost, current evidence suggests BLE or LHB. No trees within site boundary that have potential to support roosting bats.

Further information required: The consultant ecologist has noted that emergence surveys of B6 have been scheduled during the 2023 bat survey period. The results of these surveys are required to be submitted for the LPA ecologist prior to determination, in order to comment upon the suitability of proposed mitigation.

Prior to any works commencing that will impact existing roosts, 3x bat boxes installed within or adjacent to the site. Works only undertaken during favourable weather conditions. Check of buildings for bats by licensed ecologist immediately prior to work commencing. Roofs to be soft stripped during suitable weather conditions. Purpose built bat roost above units 25-28 to replace lost roosting opportunities, for common pip, BLE and LHB. Large space to fly within building. Adjacent to retained and enhanced scrub for access to linear habitat features. Area around roost to remain dark. 1x integrated bat box per 2x units. Conditions will be required upon receipt of requested information.

#### GCN:

The development site does not lie within a GCN consultation zone. No waterbodies present within or adjacent to the site. GCN considered absent. GCN are unlikely to be negatively impacted by this development. No mitigation required.

#### **Other Protected Species**

##### Nesting birds:

Small areas of scrub provide suitable nesting habitat. B2, 5 and 7 had nesting house sparrow and wood pigeon in 2019 and 2023.

Removal of vegetation outside bird nesting season. 1x integrated nest box per 2x units. This is deemed suitable and sufficient to mitigate against potential negative impacts on nesting birds and to enhance the site with nesting opportunities.

Condition: No vegetation clearance 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 clearance will not disturb nesting birds and a record of this kept.



Condition: Development shall be carried out in accordance with the actions set out in the Ecological Assessment. This condition shall be discharged when the consultant ecologist confirms in writing to the LPA that the recommendations have been implemented.

Cirl buntings:

The development site lies within a cirl bunting consultation zone. No habitats suitable to support the species. Cirl buntings are unlikely to be negatively impacted by this development. No mitigation required.

Reptiles:

Reptile surveys undertaken in 2019 using refugia deployed in April and checked between May and June. Habitats remain unchanged, as such, results deemed to remain valid. Low population of slow worm within the site, peak 2x adults in scrub/ruderal in south of site.

Reptile translocation into retained scrub in north with connectivity off-site. Captured using artificial refugia. Habitat manipulation prior to works commencing to make areas unsuitable for reptiles. Post-development log piles created within translocated area. This is deemed suitable and sufficient to mitigate against potential negative impacts on reptiles and to enhance the site with refuge opportunities.

Condition: A Landscape and Ecological Management Plan, which will include details relating to habitat creation, species specification and management. This will need to be agreed with the LPA.

Condition: Development shall be carried out in accordance with the actions set out in the Ecological Assessment. This condition shall be discharged when the consultant ecologist confirms in writing to the LPA that the recommendations have been implemented.

Badgers:

A badger survey was undertaken in April 2019, and again in April 2023. No evidence of badger setts within site or 30m radius surround the site during 2019 and 2023 surveys. Badgers may commute across the site.

Any trenches or deep pits left open overnight covered or means of escape provided. Inspected each morning. Pipework to be capped overnight. Inspection of storage mounds. This is deemed suitable and sufficient to mitigate against potential negative impacts on badgers.

Condition: Prior to the commencement of any site works, a repeat survey for the presence of badgers on the site and surrounding suitable habitat, with associated mitigation/ compensation measures, shall be submitted to and approved in writing by the local planning authority.

Condition: A Construction and Environmental Management Plan will be submitted prior to construction which will include details of environmental protection throughout the construction phase. This will need to be agreed with the LPA.

## **Priority species**

### Hedgehog:

Hedgehog may commute across the site. Any piles of leaves or brash cleared by hand. This is deemed suitable and sufficient to mitigate against potential negative impacts on hedgehogs.

Condition: A Construction and Environmental Management Plan will be submitted prior to construction which will include details of environmental protection throughout the construction phase. This will need to be agreed with the LPA.

## **Overall enhancement / net gain (as per NPPF)**

### Net gain:

Further information required: The Biodiversity Net Gain Report refers to a completed BNG Metric Assessment. This metric spreadsheet is required to be submitted, in its original format, for the LPA to assess the results. Details are also required to clarify who will be responsible for managing and maintaining the habitats. Conditions will be required upon receipt of requested information.

### Response dated 07/02/2024

I can confirm that the bat surveys for building B6 were carried out correctly. I am satisfied that the bespoke bat loft above plot 25 is sufficient. My only comment would be that the bat access and proposed bat tubes are not visible on the elevation plans for the plots. I would like them to be added so they can be conditioned, but I do not believe it is a reason for refusal.

One other comment is that the BNG metric stated within the BNG report has not been submitted for review – I am therefore unable to state definitively that the net gain achieved as stated in the BNG report is correct. Given the site baseline habitats are ecologically poor, I believe that a net gain in biodiversity is easily achieved, however I am not yet able to fully review this.

## **Natural England:**

### Updated response not dated

The advice provided in our previous response applies equally to this amendment. The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.

### Response dated 25/07/2023 that related to the original submission

## **FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES**

Your authority will need to determine whether the proposal is likely to have a significant effect on the South Hams Special Area of Conservation (SAC) greater horseshoe bat population by undertaking a Habitats Regulations Assessment, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out.

Natural England is a statutory consultee at the Appropriate Assessment stage.

### **DESIGNATED SITES**

The development is within a greater horseshoe bat *Sustenance Zone* and *Landscape Connectivity Zone* associated with the **South Hams Special Area of Conservation (SAC)**, designated in part due to its internationally important population of greater horseshoe bats. *Sustenance Zones* are key bat feeding and foraging areas.

As a competent authority under the provisions of the Habitats Regulations, you should have regard for any potential impacts that this proposed development may have and are required (by Regulations 63 and 64 of The Conservation of Habitats and Species Regulations 2017) to conduct a Habitat Regulations Assessment (HRA) to determine the significance of these impacts on European sites and the scope for mitigation. Our guidance on the use of HRA can be found here.

The Conservation Objectives for the South Hams SAC explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts the proposal may have.

Your HRA should assess whether the proposal could result in impacts on greater horseshoe bat roosts or foraging and commuting routes, for example by removing lengths of hedgerow or from artificial lighting. We advise that you follow the detailed guidance in the *South Hams SAC – Greater horseshoe bat Habitats Regulations Assessment Guidance* (October 2019).

Impacts should be avoided wherever possible, for example by retention of hedgerows and through restricting lighting. The Institute of Lighting Professionals has produced practical guidance on considering the impact on bats when designing lighting schemes - *Guidance Note 8 Bats and Artificial Lighting*<sup>1</sup>. They have partnered with the Bat Conservation Trust and ecological consultants to write this document on avoiding or reducing the harmful effects which artificial lighting may have on bats and their habitats.

Where impacts on bat habitat cannot be avoided, a detailed HRA may be required and surveys may be necessary, as set out in the guidance. Any mitigation measures deemed necessary must be secured through planning conditions or obligations.

### **Other protected species**

We have not assessed this application and associated documents for impacts on other protected species.

Natural England has produced standing advice<sup>2</sup> to help planning authorities understand the impact of particular developments on other protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

### **Sites of Special Scientific Interest Impact Risk Zones**

The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires local planning authorities to consult Natural England on “Development in or likely to affect a Site of Special Scientific Interest” (Schedule 4, w).

Our SSSI Impact Risk Zones are a GIS dataset designed to be used during the planning application validation process to help local planning authorities decide when to consult Natural England on developments likely to affect a SSSI. The dataset and user guidance can be accessed from the [data.gov.uk](https://data.gov.uk) website.

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries regarding this letter, for new consultations, or to provide further information on this consultation please send your correspondences to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

**SWISCo's Waste (Strategy and Performance) Team Manager:**

Updated response dated 14/10/2024:

I note the information provided resolves the issues I raised with Building Regulations H6 and with accessibility to my satisfaction.

I still have concerns about management of parking outside of allocated spaces and how this will be managed / discouraged.

With regard to the need to drive onto unadopted highway to collect, I trust that the developer received the indemnity template and would encourage them to contact me once planning has been resolved, to take this forward. Although, ask the developer to be aware of the comments below, made previously;

Providing that the developer can prove that all roads (either adopted or unadopted) have been built to adoptable standards, this would be an acceptable option to us. I have attached a copy of a standard indemnity agreement for the developer to comment upon. As per the conditions of our insurance, we will also have to complete a risk assessment of the site once built before we can agree to drive on to the unadopted highway, which we will only do if the level of risk to our employees and others is found to be acceptable.

The agent has stated: *"We had proposed that parking enforcement would be dealt with by a private parking enforcement company to be managed by the resident's management company."*

This would be a satisfactory solution, especially if there is scope for us to liaise with a managing agent if there were access issues preventing collections taking place.

Previous responses dated 22/08/2023, 25/03/2024, 25/06/2024 and 27/08/2024 can be found online that related to the original submission and subsequent iterations.

**Torbay Council's Senior Environmental Health Officer:**

Updated response dated 01/07/2024

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

Previous response dated 12/07/2023 can be found online that related to the original submission.

**Police Designing Out Crime Officer:**

Updated response dated 26/06/2024

Previous response remains relevant.

Response dated 18/07/2023:

From a designing out crime, fear of crime and anti-social behaviour perspective, it is disappointing to see that the DAS makes no mention to crime prevention or security measures as such it is not known if this has already been considered, however, please find my advice and recommendations below.

As the security element of the building regulations, namely Approved Document Q (ADQ), sits outside the decision making process for the planning authority the following is to inform the applicant:-

ADQ creates security requirements in relation to all new dwellings. All doors that provide entry into a building, including garage doors where there is a connecting door to the dwelling, and all ground floor, basement and other easily accessible windows, including roof lights, must be shown to have been manufactured to a design that has been tested to an acceptable security standard i.e. PAS 24.

As such it is recommended that all external doors and easily accessible windows are sourced from a Secured by Design (SBD) member-company List of Member Companies (Alphabetical). The requirements of SBD are that doors Accredited Product Search for Doors and windows Accredited Product Search for Windows are not only tested to meet PAS 24 (2022) standard by the product manufacturer, but independent third-party certification from a UKAS accredited independent third-party certification authority is also in place, thus exceeding the requirements of ADQ and reducing much time and effort in establishing provenance of non SBD approved products.

*Secured By Design is a free from charge police owned crime prevention initiative which aims to improve the security of buildings and their immediate surroundings in order to provide safer places and more secure places.*

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

**Access and movement (Permeability)** - Places with well-defined routes, spaces and entrances that provide for convenient movement without compromising security.

The communal entrances to the flat/apartments must also meet the minimum security standard of PAS24:2022. There must be a visitor door entry system and an access control system to enable management oversight of the security of the building. The visitor entry system should allow occupants to be able to grant access to visitors remotely at all restricted communal points. Please note a tradesperson or timed-release mechanism are not supported by the police as they have proven to be the cause of anti-social behaviour and unlawful access to communal developments. The visitor door entry system should allow the occupant to have a two way conversation and also be able to visually identify the visitor prior to granting access. It would be beneficial if the monitors displayed in colour to assist the occupier with the identification.

The access control system should grant occupants and authorised persons via an electronic key card or key fob as opposed to a key code entry system which has proven also to cause issue with regards to unlawful entry where the codes have been shared or not changed regularly.

**Structure – (Design & Layout)** - Places that are structured so that different uses do not cause conflict

**Surveillance (Natural, Formal & Informal)** - Places where all publicly accessible spaces are overlooked.

Lighting should be installed to all elevations containing a doorset, Please be advised that we would not support the use of low level bollard lighting as these should only be used for wayfinding and demarcation purposes as they generally do not provide sufficient up lighting to aid facial recognition, which can increase the fear of crime. A dusk till dawn lighting solution would be preferred over a PIR lighting solution as evidence suggests it can increase the fear of crime with the constant activation. The lighting on private dwellings could be on a switch, so allowing the occupant to make an informed decision as to having the light on or off.

Lighting for communal areas within the apartments/flat buildings should be 24 hour lighting (switched using a daylight sensor formally a photoelectric cells), it is acceptable for this to be dimmed during hours of low occupancy to save energy. This would normally include the communal entrance hall, lobby area, corridors and stairwells.

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

**Physical protection** - Places that include necessary, well-designed security features as required by ADQ and SBD Homes 2023.

It is welcomed that where fencing is being considered as a rear boundary perimeter treatment that this will attain a height of 1.8m. Where Devon Hedging is being proposed to act as rear boundary treatments for dwellings, it must attain a minimum height of 1.8m, they also must be robust enough to prevent and deter unauthorised access to the rear of the properties. It is also important that the plants being used for

the hedging do not go through any drastic seasonal change which could undermine the security of the boundary. Given it can take some time for the hedging to grow and thicken to be an appropriate boundary treatment, it should be supported by a temporary solution, such as wooden fencing for example.

It is not clear from the plans however if the intention is to install gates to provide access to the rear gardens, these must be lockable from both sides by means of a key for example. The gate must also attain the same height (1.8m) as the adjoining boundary treatment. Gates should be fitted as flush to the front building line as possible to prevent creating a recessed area.

The refuse and bin stores must be lockable to prevent unauthorised access. The internal side of the door should be fitted with a thumbturn or emergency furniture to allow for emergency egress and to avoid someone being locked inside the store. It would also be beneficial if the stores have lighting so the persons using either store have a clear line of sight into the store thus reducing any potential fear of crime especially during the hours of darkness.

It is not clear how mail delivery is being considered for the apartments and I would respectfully seek clarification on this, as theft of mail and associated offences can become problems when not carefully considered.

If Smart Meters are not being installed these should where possible be installed outside the dwelling at the front or as close to the front of the building ensuring they are visible and benefit from natural surveillance.

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

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

It is also recommended that a management and maintenance policy is drawn up prior to the first occupancy of the building to ensure that all communal areas are well maintained, and repairs are undertaken in a speedy manner so not to detract from the sense of ownership or undermine the security of the building.

### **Parking**

All parking spaces should be clearly marked and allocated especially in the communal parking courtyards. It is appreciated that sensitive lighting is being considered from an ecological perspective however I would respectfully ask that lighting is considered from a crime, fear of crime and anti-social behaviour perspective as where parking courtyards are unlit they can increase the potential of crime, and also the fear of crime for the occupants parking in the hours of darkness. Please be advised that we would not support the use of low level bollard due to the reasons previously mentioned. Also, once a car is parked adjacent to a bollard light the light spill will be reduced to lighting the car only.

It is noted that units 25, to 28 have two tandem parking spaces each within their own garages, a concern regarding the tandem parking as it is likely from a practical and convenient point of view only one of the spaces will be used which will encourage

unplanned parking elsewhere, which can cause parking related issues. Where garages are proposed it would be recommended that they are constructed to be wide enough to allow for the occupant to remove the bicycle or bin whilst a car is parked within the garage. This would prevent the need to park elsewhere and any potential parking related issues.

### **Torbay Council's Senior Tree Officer:**

Updated response dated 15/10/2024

No objections to principal of development. Soft landscaping to be secured by a planning condition subject to any minor amendments.

The application proposes the loss of G2 which is a low-quality group of sycamore on the roadside boundary. G1 & G3 are shown as retained. G1 is inaccessible to construction activity and not at risk from operational pressures. G3 is shown within tree protective fence.

Ornamental tree species are proposed for the southern boundary in a loose, scattered arrangement. The proposals will not create any obvious shading conflicts in the long term.

Trees in the northern section of the site continue the ornamental theme. The proposed Cotoneaster adjacent to the communal amenity space, conflicts with the drainage alignment and will need to be repositioned. Opportunities to incorporate narrow columnar or fastigate trees into the verge is a missed opportunity to provide natural screening to help soften the massing of the building in the street scene.

Soil volumes for trees have been stated with tree pit designs specified. This is encouraging and should assist with tree establishment and trees achieving their species potential.

The overall reliance on non-native and smaller ornamental trees in order to work with the site constraints will not lead to any future public amenity provision or enhancement of the local landscape. The site is constrained by the overall scale and layout of the development with associated infrastructure further reducing opportunities for structural planting.

### Recommendations

The relocation of the single tree (*Cotoneaster cornubia*) could be achieved practically on site at the planting stage, provided any drainage runs are identified to ensure no future conflict with services. The landscaping plan could be amended to reflect this requirement.

Secure the provision of the soft landscaping plan in accordance with the Evolve Tree Consultancy Arboricultural Impact Plan & Landscaping Ref: EV-3528-Landscaping-AIA-09-24.



Previous responses received 07/08/2023 01/02/2024 and 10/07/2024 can be found online that related to the original submission and previous revisions.

**WSP on behalf of the Highway Authority:**

Updated response dated 08/07/2024

Introduction and Planning History:

The Highway Authority has previously issued two statutory consultee responses dated 16<sup>th</sup> August 2023, 6<sup>th</sup> October 2023 and 25<sup>th</sup> March 2024 which found insufficient information had been submitted.

The Applicant has since submitted additional details, dated 18<sup>th</sup> June 2024, which aims to address the outstanding highway issues. The Highway Authority has reviewed this in the sections below.

Analysis:

Confirm locations and quantum of cycle parking:

The updated Site Masterplan (Drawing No 172-003 Rev G) shows the following Bike Storage:

- |  |                             |                     |
|--|-----------------------------|---------------------|
| • Units 01-07 (flats):<br>spaces each  | 1no Bike Store for 14 bikes | 2no                 |
| • Units 08-15 (houses):<br>spaces each | 1no Bike Store on each plot | 2no                 |
| • Units 16-23 (flats):<br>spaces each  | 1no Bike Store for 16 bikes | 2no                 |
| • Units 24-25 (Maisonettes):           | 1no Bike Store for 4 bikes  | 2no spaces each     |
| • Units 26-28 (houses):                | Bike in Garages             | number not defined. |

The updated Transport Statement (dated May 2024) states that “*each dwelling will be constructed with appropriate provision for the parking of at least two bicycles within the overall property demise,...*”. Confirmation is sought of the number of bikes to be stored within the garages of plots 26-28, as this is not specified on the Site Masterplan.

The type of cycle stand has still not been clarified. (i.e. 7 Sheffield stands / Two-Tier stands will be required for 14 cycles, and Sheffield stands need to be spaced at 1m minimum gaps, whilst Two-Tier stands need a ceiling height of at least 2.7m based on the DfT’s LTN1/20 standards).

The design details of the cycle stands are required to demonstrate the quantum of cycle parking can be accommodated in the shown Bike Stores, otherwise the proposals are considered contrary to NPPF para 114c. The Planning Officer should consider whether this matter can be dealt with by way of Planning Condition.

Submit a S38 Highway Adoption Plan:

The Applicant has submitted a proposed Highways Adoption Plan (Drawing No 012 Rev A).

The following comments were included within the 25<sup>th</sup> March 2024 response and are still applicable:

*The updated Site Masterplan includes the provision of block paving along the footway on both sides of the site that fronts St Mary's Road which has been marked for adoption (the Site Masterplan key defines this as 'Paving to Pedestrian Routes'). The Highway Authority require the sections that are to be adopted to be tarmac/asphalt as this will avoid excessive maintenance / liability issues. The Site Masterplan should be updated at this stage of planning to avoid confusion at a later date.*

For the northern site, the Highway Authority are satisfied with the adoption of the on-site turning head as this will be suitable for refuse collection.

For the southern site, the on-site turning head has not been offered for adoption, and the applicant is proposing this is a shared private drive. The applicant must be aware that Torbay Council refuse collection vehicles will not drive on unadopted highways, and therefore the waste collection arrangement must be clarified.... Therefore, based on this current arrangement, in order to provide a deliverable refuse strategy the turning head on the southern site will need to be adopted in order for refuse collection. The Torbay Highways Design Guide (Adopted Feb 2024) states that Shared Private Drives that are not adoptable are only permitted where fewer than 5 properties are served.

This is further supported by Policy BH8 of the Brixham Peninsula Neighbourhood Plan (Adopted Jun 2019) which requires new developments to comply with relevant adopted standards.

#### Bin Stores:

The updated Site Masterplan (Drawing No 172-003 Rev G) shows a Bin Store in front of Units 01-07 in the northern site. Bins stores are shown in the southern site, adjacent to Units 16-23; between Units 16-23 and Units 24-25 and within the garages for Units 26-28. Unit 28 within the Site Layout Plan (Drawing No 172-003 Rev G) appears to be greater than 30m from the public highway, which exceeds the drag distance for collections based on Building Regulations.

It is recommended that the Torbay Waste Collection team reviews whether the Bin Stores proposed in both the northern and southern sites are an adequate size to accommodate the waste all units.

#### Parking arrangements:

The updated Site Masterplan (Drawing No 172-003 Rev G) shows the following parking arrangements:

- Units 01-07 (flats): 1no space each
- Units 08-15 (houses): 2no spaces each, 1no with Electric Charger
- Units 16-23 (flats): 1no space each
- Units 24-25 (Maisonettes): 1no space each
- Units 26-28 (houses): 2no spaces each in tandem arrangement, 1no with electric charger

The above parking for the units totals 39 spaces and the plan presents seven additional visitor spaces, of which, three have electric charging. This totals 46 spaces.

The number of spaces per flat / maisonette / house complies with Appendix F of the Torbay Local Plan 2012-2030.

Confirm that height of the western perimeter treatment of the northern section of the site shall be kept to within 600m height to aid pedestrian / vehicle intervisibility:

It is unclear from documents submitted what height the boundary wall is. This wall extends where the pedestrian access is situated.

Stage 1 Road Safety Audit:

An updated Stage 1 Road Safety Audit has been submitted (May 2024, Revision C). No issues within the scope of the Road Safety Audit were identified.

CTMP:

The CTMP provides a comprehensive overview of the management of construction vehicles and presents a prescribed Construction Traffic Route, Construction Programme and working hours. These elements are acceptable.

The number of on-site workers is at this stage unknown although it is stated that staff will utilise the designated workforce site car park. However, the document does not provide a plan to identify the designated workforce site car park.

Conclusion:

The Highway Authority wishes to raise an objection to the application due to insufficient details in relation to the cycle parking provision, refuse strategy & highway adoption, pedestrian safety at the western boundary crossing of the northern site, and construction workers site car park.

It should be clear that the Highway Authority are of the position that these design issues can all be resolved through the submission of amended plans/additional information.

Previous responses dated 16/08/2023, 06/10/2023 and 26/03/2024 can be found online that related to the original submission.

**Western Power:**

No response received.

**Wales & West Utilities:**

No response received.

**South Devon National Landscape Office:**

No response received.

**WSP Landscape and Visual Peer Review:**

Response dated 01/12/2023

**To see full report please refer to the Council's website, extracts are provided below due to length of report.**

A desk-based landscape and visual impact peer review has been undertaken aimed at identifying:

- Potential gaps in the baseline analysis data presented;
- Issues in relation to the methodology used and technical guidance followed (e.g. Viewpoint Selection, AVR representation); and
- The appropriateness of the findings and conclusions (including recommending additional assessment in relation to potential effects upon the South Devon Area of Outstanding Natural Beauty (AONB) if deemed necessary).

The Assessment indicates that there are likely to be effects arising as a result of the Proposed Development. It finds that these effects will be most noticeable during the construction phase, reducing over time, as the Proposed Development matures within its setting and proposed vegetation provides screening.

In terms of effects upon Landscape receptors, The Assessment finds that the greatest level of effect occurs at the site level, most notably during the construction phase. Effects upon larger Landscape receptors such as the South Devon AONB and Landscape Character Areas/Types are noted to be less, largely due to the relatively small scale of the Proposed Development, as well as the character of the PDS being defined by local context rather than that of the wider receptor.

In terms of effects upon Visual Receptors, the Assessment finds that the greatest level of effect is experienced by those receptors in close proximity to the PDS, and in particular during the construction phase, largely due to the presence of incongruent features such as plant and machinery, as well as noise and activity. Effects upon visual receptors further from the PDS, are notably less and further reduced over time during the operational phase.

The Assessment indicates that whilst there are likely to be both landscape and visual effects associated with the Proposed Development, particularly during the construction phase, these effects do not rise to the level where they are deemed to be significant.

WSP considered these findings to be reasonable, well justified and in accordance with the methodology.

### **Devon County Council's Landscape Officer**

Updated response dated 07/11/2024

HEADLINE SUMMARY RESPONSE: Recognising policies SS10 and DE1 of the adopted Torbay Local Plan, and Policy LAN/P1 of the South Devon AONB Management Plan 2019-2024, the permanent harm to the historic character of the area and rich time depth the South Devon National Landscape that would result from the demolition of non-designated heritage assets should be weighed against the benefits of the scheme in the planning balance. Should the benefits of the scheme be determined to outweigh such harm, suitably worded conditions should be imposed requiring hard and soft landscape design as per my previous comments.

Following my response dated 10 October 2024, I have been made aware of further information submitted regarding the reasons why it is not feasible to convert and re-purpose the historic buildings on site for residential use. This comprises a letter dated 26 September 2024 from Gwella Contracting Services (Licenced Asbestos removal Specialists). This confirms that Asbestos Containing Materials are present and in a poor condition, and that the existing structural condition of the building presents numerous complications for retention and conversion, including the existing damp proofing that is insufficient and that would need complete replacement to satisfy Building Regulations.

I am not a structural engineer or a building surveyor, but a reasonable conclusion that I draw from this letter is that it is not feasible to convert and re-purpose the historic buildings on site for residential use, as encouraged through my previous comments which were in line with Aspiration 3 of the Torbay Local Plan and Urban Design Guide SPD.

#### Previous response dated 10/10/2024

HEADLINE SUMMARY RESPONSE: The proposed demolition of non-designated heritage assets would result in permanent harm to the historic character of the area and rich time depth the South Devon National Landscape, and there is insufficient information submitted to justify why these buildings of historic interest on the site cannot be included and repurposed as part of the development, therefore contrary to policies SS10 and DE1 of the adopted Torbay Local Plan, and Policy LAN/P1 of the South Devon AONB Management Plan 2019-2024. Such harm to be weighed against the benefits of the scheme in the planning balance.

Further to my response dated 22 August 2024, I have reviewed the revised information subsequently received, including the Arboricultural Impact Plan & Landscaping drawing and revised Tree Constraints Report, Arboricultural Impact Assessment and Tree Protection Plan dated September 2024. I conclude that:

- a) Proposals for tree removal are now clearer: tree group G3 would remain and would be enriched by planting of native shrubs. Whilst the proposals would require the removal of a group of sycamore (G2), these are not in good condition, and are outgrowing their location. I therefore agree with the assessment that the overall impact on trees would be low, and losses would be offset over time by proposed tree planting within the development.
- b) The proposals have not been revised to convert and re-purpose the historic buildings on site for residential use, as encouraged through my previous comments which were in line with Aspiration 3 of the Torbay Local Plan and Urban Design Guide SPD. The submitted documents still lack information on the reasons why such repurposing cannot be achieved. Given these buildings are undesignated heritage assets whose character and vernacular details contribute positively to the historic character of the area and 'rich time depth' of the South Devon National Landscape (one of its noted special qualities), their proposed demolition would remain contrary to policies SS10 and DE1 of the adopted Torbay Local Plan, and Policy LAN/P1 of the South Devon AONB Management Plan 2019-2024.

- c) Landscaping proposals now include details of proposed tree and shrub species, stock size and position, although detail is still lacking on the proposed 'Devon hedge,' and the estimated ultimate canopy spread, height and shadow of proposed tree species, and position of existing and proposed underground services. Whilst the proposed tree and shrub planting shown on the landscaping drawing are acceptable, I remain concerned that there is insufficient width allowed for creation of a proposed Devon hedgebank along the northern side of St Mary's Road. This normally requires 1.8m minimum. I therefore do not think this proposed landscape element is practically deliverable and represents a missed opportunity to extend the existing hedge along this lane to enhance its natural beauty. This is disappointing. The further information submitted also still lacks detail on proposed hard surfacing. If permission were granted, I therefore recommend a suitably worded condition requiring details of proposed landscaping including proposed walls, surfacing and edgings to be submitted for approval prior to commencement. I would encourage a rural rather than suburban style of design outcome, and robust planting to withstand drought conditions in a likely very narrow planter.

See also recommendations for conditions in my previous response.

Previous response dated 22/08/2024

HEADLINE SUMMARY RESPONSE: Request further information / clarification. Whilst the principle of residential development at the site is acceptable, including that part which falls within the South Devon National Landscape (SDNL), some key aspects of the proposed design are unclear, or raise key concerns.

Until the issues highlighted below are resolved, I consider there are grounds for a holding objection as contrary to policies DE1, SDB3, SS8C4, SS9, and SS10 of the Torbay Local Plan and LAN/P1 of the SDNL Management Plan. There is a risk of permanent harm to the special qualities, distinctive character and key features of the landscape context. The submitted design proposals lack information to assess whether opportunity has been (or could be) taken to enhance green infrastructure assets and the natural beauty of the SDNL. The demolition of heritage assets rather than incorporating them into the development would also be contrary to Torbay Local Plan Aspirations, Policy and Urban Design Guidance.

The LVIA has been carried out in line with good practice, although there are some issues that should be noted before the LVIA is relied upon by decision-makers. See LVIA Review below.

The proposed conversion of the site to residential use would be broadly consistent with the existing built previously developed character of the site. Given that parts of the site are unsightly and detract from the quality of the area, the proposals in principle can offer potential to contribute positively to the street scene and enhance the gateway into the South Devon National Landscape (SDNL).

However, there is concern about the design of the current proposal, notably the proposed demolition of historic stone buildings that make a positive contribution to the historic character and 'rich time depth' of the South Devon National Landscape (one

of its noted special qualities). The proposed reclamation of building stone from these buildings and re-use within the development would go some way to mitigating the loss, and the overall architectural design and palate of materials is more sympathetic to the character of the traditional buildings than the original application. However, the vernacular details and historic legacy of these buildings would be permanently lost.

Clarification is also needed around proposals for tree removal and landscaping, due to conflicting information and lack of detail on proposed hard surfacing, Devon hedgebanks, and planting.

These issues are also important to address given the northern part of the site falls within the South Devon National Landscape, and the southern part therefore within its setting. Torbay Council has a statutory duty (strengthened through the Levelling Up and Regeneration Act 2023) to 'further the purposes' of the SDNL by seeking to conserve and enhance its natural beauty. See Justification below for details and recommendations on how to address issues.

Should the application be determined on the basis of the currently submitted information, suitably worded conditions are recommended covering the following.

- a) Details of landscape proposals (hard and soft) to be submitted for approval prior to commencement. To include estimated ultimate canopy spread, height and shadow of proposed tree species, along with existing and proposed underground services.
- b) Landscape proposals to be implemented within the first available planting season following substantial completion of the development and maintained for a period of 5 years until established well. Any failed planting to be replaced to the same specification.
- c) Soft landscape /proposed habitats to be protected, managed and monitored for the lifetime of the development according to a Landscape and Ecological Management Plan (LEMP) submitted and approved within 5 years of date of commencement. To include a plan, accompanying report and timetable covering the intended purpose and structure/composition of all soft landscape elements, and details of management interventions and arrangements after the initial 5-year aftercare period that would ensure their intended design purpose and structure/composition would be fulfilled and sustained.
- d) Protection of trees in accordance with BS5837 and recommendations within the submitted AIA (as advised by Torbay Tree Officer).

## **JUSTIFICATION**

### **1. Concern about loss of historic stone buildings.**

These buildings are what remains of the historic farmstead of Upton Farm and have merit as non-designated heritage assets (with reference to Heritage Officer's response). They make a positive contribution to the character of Brixham's built environment and serve as a transition point from urban to rural character, providing a gateway into the National Landscape from the town of Brixham – as noted by others and in previous planning applications. Every effort should be made to conserve these heritage assets by converting and re-purposing them for residential use. However, the

submitted documents lack information on the reasons why such repurposing cannot be achieved.

*Recommendation:* Request revised designs that would allow retention of the traditional stone buildings OR request further information from applicant to justify why this is not reasonable or practical, for example a structural survey that demonstrates that a conversion of these buildings is not possible.

Reason: Aspiration 3 of the Torbay Local Plan which seeks to ‘*conserve and enhance the richness and diversity of the built, historic, marine and natural environments, which provide Torbay with its unique setting and important economic benefits...To safeguard heritage assets including those at risk in a manner appropriate to their significance, having regard to their ability to deliver economic regeneration, express local identity, reveal social histories and narratives and increase the connection of communities with place.... To ensure new development makes a positive contribution to local character and identity, including the wider landscape character...*’. See also policies highlighted.

2. Lack of detail about proposed species, planting density, stock size and means of establishment.

Neither the ‘Site layout plan’ nor the ‘Building application- post development habitats’ Drawing shows details of proposed tree and shrub planting species, density

*Recommend:* prior to determination submission of a Landscape Proposals Plan that identifies the typical species, stock size and planting density for areas of proposed soft landscaping, together with typical details showing design of proposed Devon hedgebank (including width and height dimensions), tree pits within hard landscaping, and hard landscaping. To include details of the intended purpose and structure/composition of such landscape elements.

*Reason:* to enable judgement as to whether the proposals would relate well to the character of the area, enhance the natural beauty of the SDNL, and be able to be delivered and sustained for the lifetime of the development.

3. Lack of detail about proposed Devon hedgebanks

These are mentioned in the Design and Access Statement and LVIA and indicated on the site layout plan. However, no details are provided, and the appearance of these features on the visualisations recently submitted look like low stone-faced planters with ornamental shrubs. Whilst I cannot scale from the submitted drawings, the width of these features do not look wide enough. Opportunity should be explored to match in and extend the existing Devon hedge along St Mary’s Road on the north side, even if this means losing some of the footway on the north side. This would contribute to enhancing the natural beauty of the SDNL.

*Recommendation:* see 2. above

4. Lack of or conflicting information regarding trees to be removed and retained

There is conflicting information regarding tree removal and new planting when comparing latest Design and Access Statement with Proposed Site Plan (Drg 003/G),



Tree Constraints Plan and the 'Building application- post development habitats' Drawing. Some documents indicate no trees would be retained, the Design and Access Statement states that all trees within the site would be retained. The LVIA lacks mention of tree removal at all.

The Tree Constraints Plan lacks detail of reference numbers and Categories of trees that would allow cross-reference to their descriptions stated in the submitted Tree Survey. The LVIA states that trees are of moderate or poor quality but does not cross-refer to detail in the tree survey to justify this.

No information has been found that allows the importance and value of trees on and adjacent to the site to be understood.

Proposals would require removal of street trees outside the red line yet no information is submitted that confirms the landowner is in agreement /any requirements for replacement planting. Street trees provide multiple benefits, including for climate adaptation so it is important to provide for their replacement. Can be covered by s.106 agreement.

*Recommendation:* See Torbay Tree Officer's response

**N.B. The full response can be viewed online.**

**Torbay Council's Senior Structural Engineer:**

Response dated 14/11/2024

I would generally observe that comments supporting the demolition of buildings within this application have been made on a speculative basis (e.g. 'suggesting' structural remediation work [Conversion vs New Build Viability], Section 2, para 1). Unverified claim of defective structural condition has been used to then conjecture need for extensive propping and/or realise significant risk to safety.

Little to no justification or evidence has been offered to substantiate statements. Meanwhile, and somewhat contrary to other statements made within the submitted documents, the hierarchy of sustainability might propose repurpose of buildings ahead of demolish/new build.

Some further points:

- How the installation of new service ducts and drainage requires *substantial* work to building structure is unclear.
- Gwella is primarily an asbestos removals contractor, not known to have structural engineering expertise or experience, and not known to be possessed, or claimed by the writer.
- Much discussion around the cost of asbestos removal might be deemed somewhat irrelevant, since removal will be required regardless of how the site is developed (some may even be retained in the case that it were to remain undisturbed); claims of ACMs likely to affect structural integrity have not been substantiated.

- Desktop inspection of the buildings finds very little of concern - a vertical crack to a northern elevation of buildings on the southern side of St Mary's Road is not clearly of major structural significance.
- Timber elements are described to be extensively rotten and requiring replacement, in turn necessitating costly propping. Demonstration and quantification of the extent of timber rot, and its influence on structure would be useful. If indeed timber elements require widespread replacement, phased works may avoid need for the extensive propping described.
- Specific demonstration of structural conflict in 'potential foundation issues' (Gwella, para 4) might provide a more convincing argument for demolitions.

### Conclusions

The applicant might be invited to engage a structural engineer to provide a report of structural condition/propensity to structural repair. If it remains that some buildings cannot be justified to be removed, partial building retention on the site may alternatively be agreed.

The applicant might also be invited to provide a qualified/competent consultant's carbon calculation to demonstrate how new build might be more favourable than repurposing. Torbay Council's Climate Emergency Officer might be invited to comment further, and might be invited to validate any forthcoming calculation.

### **Planning Officer Assessment**

#### Key Issues/Material Considerations

1. Policies Relating to Housing Development
2. The South Devon National Landscape
3. Design, Visual Appearance and the Character of the Area
4. Impact on Designated and Non-Designated Heritage Assets
5. Impact on Residential Amenity
6. Impact on Highway Safety
7. Impact on Trees
8. Impact on Ecology and Biodiversity
9. Impact on Flood Risk and Drainage
10. Affordable Housing Contributions
11. Designing Out Crime
12. Low Carbon Development

#### **1. Policies Relating to Housing Development**

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 in the case of applications such as this involving the provision of housing, it retains its statutory force, but the focus shifts onto the NPPF and presumption in favour of sustainable development. Policy SS3 of the Local Plan sets out its own Presumption in Favour of Sustainable Development. Policies SS12 and SS13 of the Local Plan set out measures to maintain a five year supply and to

“consider favourably” applications for new housing as far as consistent with other policies in the Plan.

The site is allocated under Policy BH3 in the Neighbourhood Plan as a housing site for 25no. units (St. Mary’s/Old Dairy) which covers the area of the existing buildings north and south of St. Mary’s Road. The buildings currently in this location have no policy requirement that require them to be retained and the principle of meeting the Neighbourhood Plan allocation of 25no. residential units is considered to be acceptable. The proposed development is for 28no. residential units in this location, which exceeds the policy allocation. The application site was previously allocated for housing in previous Torbay Local Plans, and is shown as a potential housing site BPNPH11 on the Local Plan. The Council’s Principal Policy and Project Planner has stated that they would not regard the 3no. additional dwellings as a departure from the Development Plan.

Policy BH3 of the Neighbourhood Plan allocates residential development for the Neighbourhood Plan area, subject to proposals demonstrating that there is no likely significant effect, either alone or in combination with other plans or projects on the integrity of European sites. As previously confirmed, the application site is an allocated residential development site, known as “H3-I2 St Mary’s/Old Dairy”.

The Housing Site Assessment describes the application site as *“St Mary’s Industrial Estate site is located to the north of St Mary’s Road while the Old Dairy site is to the south. The Industrial Estate site consists of a series of older buildings which form an industrial estate variously used for car repair workshops etc. It also includes, as per the maps which accompanied the Local Plan and the SHLAA, an adjacent field to the east of the main industrial estate. This field includes the remains of a former building which has largely blended into the landscape in the process of time. The Old Dairy site consists of the currently disused buildings of a former dairy”*.

The Assessment outlines the opportunities for the application site as *“The current buildings at the St Mary’s Industrial Estate and Old Dairy sites are in a lower state of repair. The land could be developed either through conversions of existing buildings or demolition and new build to provide a more efficient use of land”*. It also outlines the constraints as *“The St Mary’s Industrial Estate site lies within the AONB and only part of this site is assessed to be previously developed land. Any development would need to take account of Greater Horseshoe Bats which are known to fly across or adjacent to the site. The Ecological Assessment undertaken by Kestrel of the St Mary’s Industrial Estate site made reference to the importance of retaining the hedge (which separates the Industrial Estate from the adjacent field). Access to the site is also quite tortuous”*.

Policy BH4 of the Neighbourhood Plan outlines that subject to compliance with other policies in the Neighbourhood Plan, residential development on brownfield site in preference to greenfield sites will be encouraged and supported. Policy BH4 confirms that brownfield sites within defined settlement boundaries, as designated under Policy E2 of the Neighbourhood Plan, are the preferred locations for development. The application site is brownfield in nature.

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 guides that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and promotes support for the development of under-utilised land and buildings, especially where it would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively.

Policy E2 of the Neighbourhood Plan defines the settlement boundaries in the Neighbourhood Plan area. The supporting Policy Map confirms that the application site is located within the settlement boundary. Policy E2 goes on further to outline that subject to compliance with other policies in the Neighbourhood Plan, proposals for sustainable developments within settlement boundaries will be supported where developments demonstrate good design and follow the guidance in the relevant Design Statement as outlined in Policy BH5 of the Neighbourhood Plan.

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. Letters of representation supporting the proposal highlight that the proposal would provide housing, whereas those objecting have raised concerns regarding the quantum of development and the housing mix. Letters of representation have also indicated that the application site is shown in the Local Plan. Objectors have raised concerns over the loss of employment uses.

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 concluded within this report, there is substantial conflict with the Development Plan, namely Policies DE1, DE3, H1, H2, NC1, SDB1, SDB3, SS3, SS7, SS8 and SS10 of the Local Plan, and Policies BE1, BH5, E1 and E2 of the Neighbourhood Plan.

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. There is a pressing need for housing in Torbay, and the site is allocated for housing in the Development Plan. 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:

- The application of policies in the Framework that protect the National Landscape or designated heritage assets provides a strong reason for refusal (i.e. the “tilted balance” at Paragraph (d)i) or
- 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.

For reasons set out in this report there is material harm to the South Devon National Landscape, contrary to the NPPF, notably Paragraphs 187 and 189, which confirms such is a protected asset that presents a strong reason for refusing the application. There is also less than substantial harm to the setting of a Grade II listed building, a designated heritage asset, contrary to the NPPF, notably Paragraph 214, whereby the public benefits of the proposal do not outweigh the identified harm. Paragraph 212 of

the 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. As such, the harm to the South Devon National Landscape and designated heritage assets presents a strong reason for refusing the application.

As such the 'tilted balance' identified in Paragraph 11(d)(ii) of the NPPF is not enacted. National Landscapes and designated heritage assets are defined protected assets under Paragraph 11(d)i and given the harm to such, the policies in the Framework which seek to protect the protected areas of particular importance provide a strong reason for refusing the development. The "tilted balance" aspect of the presumption in favour of sustainable development at Paragraph 11(d)(ii) of the Framework therefore does not need to be applied.

It is also considered that the impacts of approving the development 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 Paragraph 11(d)(ii)). This is set out in the final section of the report dealing with the planning balance.

For completeness, it is noted that Footnote 9 and Paragraph 11(d)(ii) draw particular attention to key policies for directing development to sustainable locations, making effective use of land, securing well designed places and providing affordable homes. Whilst these considerations may also pull in different directions, the proposal presents significant and demonstrable conflict with the objective of securing well designed places.

## **2. The South Devon National Landscape**

The northern parcel of the application site is located within the South Devon National Landscape, which is 1 of 46 areas within England, Wales and Northern Ireland safeguarded in the national interest for its distinctive character and beauty. The legal designation is as an Area of Outstanding Natural Beauty (AONB). The Levelling Up and Regeneration Act has renamed the Areas of Outstanding Natural Beauty as National Landscapes.

Section 85 of the Countryside and Rights of Way Act 2000 places a general duty on public bodies in exercising or performing any functions in relation to, or so as to affect, land in an Area of Outstanding Natural Beauty in England, to further the purpose of conserving and enhancing the natural beauty of the Area of Outstanding Natural Beauty. The Levelling Up and Regeneration Act replaced the former "*duty of regard*" with a stipulation that authorities "*must seek to further the purpose of conserving and enhancing the natural beauty*" of the Area of Outstanding Natural Beauty.

Planning Practice Guidance states that "*All development in National Parks, the Broads and Areas of Outstanding Beauty will need to be located and designed in a way that reflects their status as landscapes of the highest quality*" (Paragraph: 041 Reference ID: 8-041-20190721).

Policy SS8 of the Local Plan states within the AONB, the conservation of the landscape and scenic beauty, biodiversity and geodiversity will be given great weight and afforded the highest status of protection. Development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest. The policy goes on to advise that planning applications should include an assessment of need for the development, economic impacts, alternative means and locations of provision, the impacts of the proposal on the environment, landscape and recreation, and the extent to which impacts could be moderated.

Policy SDB1 of the Local Plan advises that Brixham is expected to provide 660 new homes over the plan period but that this should be done without prejudicing the integrity of the AONB and Special Areas of Conservation, and provided that the interests of priority species, such as the Greater Horseshoe Bat and Cirl Buntings, can be safeguarded.

Policy SDB3 of the Local Plan confirms that the AONB around Brixham, including Berry Head National Nature Reserve, St. Mary's Bay and the wider Brixham urban coastal fringe, will be conserved and enhanced to protect its intrinsic landscape and biodiversity value, and for recreational and tourism purposes.

Policy E1 of the Neighbourhood Plan states that the natural beauty, landscape character, tranquillity and biodiversity of the Brixham Peninsula will be preserved and enhanced, and new development will need to respect these qualities and wherever possible enhance them.

In accordance with paragraph 189 of the NPPF, great weight should be given to conserving and enhancing landscape and scenic beauty of designated areas, including National Landscapes, which have the highest status of protection. The NPPF outlines that the scale and extent of development within National Landscape should be limited, and development within its setting to be sensitively located and designed to avoid or minimise adverse impact on the designated areas.

Paragraph 190 of the NPPF confirms that when considering applications for development in protected areas, including National Landscapes, permission should be refused for major development [see Footnote 67] other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

*Footnote 67: For the purposes of paragraphs 190 and 191, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.*

The application site serves strongly as a gateway to the South Devon National Landscape. Objectors have raised concerns about the proposed development and its impact on the National Landscape. Whilst technically, the application is a major planning application as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015, consideration must be given as to whether the proposed development in the northern parcel of the site would be considered major development within the National Landscape. The section of the application site which is located within the National Landscape is the northern parcel and the proposal in this part of the application site is for 13no. residential units, the parcel is within the built up area and the site, together with the southern parcel, is allocated for residential development. It is considered that the proposal in the northern parcel of the application site does not constitute “*major development*” in the National Landscape as defined in Footnote 67 of the NPPF due to the reasons stated above.

The overriding policy intent in the Local Plan, Neighbourhood Plan and the guidance contained within the NPPF points towards protecting the National Landscape and now requires the Council to seek to further the purpose of conserving and enhancing its natural beauty, and providing quality housing in sustainable locations.

The application site is situated within the “*Main Cities and Towns*” character type as per the Devon Landscape Character Assessment and the Torbay Landscape Character Assessment. The application is accompanied by a Landscape Visual Impact Assessment (LVIA) which has been updated given the revised scheme. The LVIA that was submitted with the original submission was reviewed by the Councils Landscape consultant WSP. The updated LVIA has been reviewed by Devon County Council’s Landscape Officer. The South Devon National Landscape Office have not commented upon the application.

The South Devon Area of Outstanding Natural Beauty Management Plan 2019 - 2024 (South Devon AONB Partnership, 2019) identifies ten special qualities of the South Devon AONB, which are:

- *Fine, undeveloped, wild and rugged coastline;*
- *Ria estuaries (drowned river valleys), steep combes and a network of associated watercourses;*
- *Deeply rural rolling patchwork agricultural landscape;*
- *Deeply incised landscape that is intimate, hidden and secretive away from the plateau tops;*
- *Iconic wide, unspoilt and expansive panoramic views;*
- *A landscape with a rich time depth and a wealth of historic features and cultural associations;*
- *A breadth and depth of significant habitats, species and associated natural events;*
- *An ancient and intricate network of winding lanes, paths and recreational routes;*
- *Areas of high tranquillity, natural nightscapes, distinctive natural soundscapes and visible movement; and*
- *A variety in the setting to the AONB formed by the marine environment.*

The applicant has updated their LVIA (July 2024), which concludes that:  
“*The likely effects on the South Devon AONB have been assessed as minor adverse at construction and year 1, reducing to minor adverse to negligible at year 15. The*



*Proposed Development will not be wholly uncharacteristic given the existing developed nature of the Site and its local context, the characteristic materiality used and will not result in unacceptable effects upon the special qualities or wider character of the AONB.*

*In summary, the Proposed Development at the Site will be on a previously developed and allocated site within the Settlement Boundary of Brixham. Whilst the Site partially lies within the South Devon AONB, the Site and its surrounding context are clearly of a suburban and previously developed character, representing a far less sensitive area of the AONB. The loss of landscape features as a result of the Proposed Development will be limited to a traditional stone building and other buildings located on Site and two trees on the south-western Site boundary. Traditional stone and wooden cladding will be used in the design of the scheme to provide characteristic features and a sense of time-depth to the development with the Site's previous usages. Additional tree and characteristic hedgebank planting is also proposed within the Site as part of the proposals. Residual effects at year 15 on views of the Site from the surrounding landscape are at worst, negligible where the Proposed Development will always be viewed within the context of Brixham."*

The Council's Landscape Consultant (WSP) undertook a desk-based peer review of the originally submitted LVIA. The peer review being aimed at concluding on the soundness of the report rather than being a stand-alone assessment, including in relation to potential effects upon the National Landscape. WSP as consultant landscape advisers notes that whilst there are likely to be both landscape and visual effects associated with the proposed development, particularly during the construction phase, these effects do not arise to the level which WSP consider from their desk-based study to be deemed to be significant.

It should be noted the Devon County Council's Landscape Officer previously commented upon the previous planning application (ref: P/2021/0890) which was an outline application for 130no. residential units, which included the application site. The Landscape Officer noted that there would be "*degree of harm to the rural landscape character, and AONB special qualities resulting from the removal of the traditional stone buildings of Upton Farm and the widening of St Mary's Lane with consequent need to remove the existing stone-faced hedgebank to the north of the lane*".

Whilst this current proposal is subject of only the brownfield northern and southern parcels either side of St Mary's Road, it is evident that the existing traditional stone buildings provide rural landscape character and offer a special quality of the National Landscape. The Landscape Officer on the previous application identified that the application site offered a special quality to the National Landscape – "*The cluster of traditional historic stone buildings of Upton Farm along St Mary's lane and the historic hedgebanks along St Mary's lane contribute to "A landscape with a rich time depth and a wealth of historic features and cultural associations"*".

The applicant has provided an updated LVIA, which Devon County Council's Landscape Officer has reviewed. The Landscape Officer has provided three formal responses to the application. The first two responses concluded that the proposed demolition of the non-designated heritage assets would result in permanent harm to the historic character of the area and rich time depth of the South Devon National Landscape. The Landscape Officer stated that insufficient information had been

provided to justify why the non-designated heritage assets which are of historic interest cannot be included or repurposed as part of the proposed development, therefore contrary to Policies DE1 and SS10 of the Local Plan and Policy LAN/P1 of the South Devon AONB Management Plan.

The applicant requested the Landscape Officer reviewed two supporting documents (a letter dated September 2024 from Gwella Contracting Services and a document dated November 2023 from Westcountry Land & Homes). The Landscape Officer provided a third formal response, which maintained the concerns relating to the harm the demolition would present. Within the third consultation response, the Landscape Officer highlighted that they are not a Structural Engineer or Building Surveyor and caveats their response accordingly. Following this response, the Council's Senior Structural Engineer was consulted and concluded that the commentary provided within the two documents are made on a speculative basis and little to no justification or evidence has been offered to substantiate statements. The applicant was invited to engage a Structural Engineer to provide a report of structural condition/propensity to structural repair, the invitation was rejected by the agent.

The proposal involves the total demolition of the existing traditional historic buildings which offer a wealth of historic features and cultural associations. The proposal would remove this special quality of the National Landscape. The existing buildings provide a rural character and "gateway" into the National Landscape as it transitions from town into countryside. Whilst the proposed reclamation of the stone from the non-designated heritage assets and re-use within the palette of materials is considered to go some way to mitigating the loss of the buildings, the overall architectural design and palette is considered to be more sympathetic to the character of the traditional buildings than the original submission. However, the vernacular details and historic legacy of the non-designated heritage assets would be permanently lost.

It is therefore considered that the harm identified by the Landscape Officer remains and must be weighed against the benefits of the scheme in the planning balance. Such harm should be given great weight in the planning balance when weighing against the benefits of the scheme, as per Paragraph 189 of the NPPF.

Given the proposed development, particularly in relation to the loss of the existing traditional historic stone buildings, and its location within and adjacent to the South Devon National Landscape, it is considered that the proposed development would result in permanent harm to the historic character of the area and the rich time depth of the South Devon National Landscape, as it fails to conserve and enhance such. The proposal is therefore contrary to Policies SS3, SS8, SS10 SS11, SDB1, SDB3, DE1 and H1 of the Local Plan, Policy E1 of the Neighbourhood Plan, and the guidance contained within the NPPF.

### **3. Design, Visual Appearance and the Character of the Area**

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, taking into account any local design guidance and supplementary planning documents such as design guides and codes'. 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 BH5 of the Neighbourhood Plan requires that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area. To achieve good design, an important part is to respond to and integrate with local character and landscape context as well as the built environment. Policy BH5 reiterates the NPPF, that planning permission will be refused where poor design fails to take opportunities available for improving local character and quality of an area and the way it functions. Policy BH6 of the Neighbourhood Plan provides design guidance in relation to roofscape and dormer management.

It should be noted that this application has been submitted without any prior engagement with the Local Planning Authority, this is a missed opportunity given the pre-application service the Council offers. There is also the opportunity for the independent Torbay Design Review Panel to review the proposal to which the applicant has not engaged with either. It is also unfortunate that the applicant has failed to provide suitably scaled existing drawings, namely elevations, floorplans and sections of the buildings. The applicant submitted two plans (refs: 172-006 and 172-008) which are a collection of distorted 3D images of the existing site and surrounding area. It should be noted that the submitted Heritage Statement by Southwest Archaeology contains existing floorplans, however such are caveated with '*sizes are approximate*' and it states that some buildings have not been surveyed. This is simply not sufficient, as it is not clear as to the existing heights, levels and openings within the site which are material to this application given the sensitivity of the site within the South Devon National Landscape, being in close proximity to the South Hams Special Area of Conservation (SAC) and in relation to neighbouring properties.

The application site comprises of existing built form in the way of a mixture of one, two and three storey period stone and render commercial buildings, with areas of hardstanding. The application site is allocated for residential development and there are no policy constraints to prevent the demolition of the existing buildings onsite. It should be noted that the Planning Inspector when assessing P/1988/1135 and P/1988/2392 considered that the existing traditional stone buildings on the application offered a "*significant contribution to the character of the area*".

Units 1-7 is flatted development that comprises of a main two storeys built form, with a three storey corner feature. The proposed roofscape would have a mixture of hipped and gable features. The proposal will be constructed of natural stone and vertical natural timber cladding. The roofing materials would comprise of natural slate. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The proposal varies in height, the two storey element ranges from 7.5-8 metres in height whereas the three storey element is approximately 10.8 metres in height.

Unit 8 is a detached, two-storey dwellinghouse, that would have a gable roofscape. The proposal would be finished in natural stone and natural vertical timber cladding with a natural slate and standing seam metal panel finish. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The detached dwellinghouse would be approximately 7.6 metres in height.

Units 9-10 are semi-detached two-and-a-half storey dwellinghouses. The proposed units would have flat roof, off-set dormers to their frontage. The proposal would be finished in natural stone, black stained vertical timber cladding with a natural slate and standing seam metal panel finish. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. These semi-detached dwellinghouses would be approximately 9.1 metres in height.

Units 11-13 are two storey terraced dwellinghouses that would have a gable roofscape. The proposal will be finished in natural stone, vertical natural timber cladding and grey standing seam metal panel. The roofing materials would comprise of natural slate. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. These terraced dwellinghouses would be some 8.1 metres in height.

Units 14-15 are two storey semi-detached dwellinghouses. The proposed roofscape would be gabled. The proposal will be finished in natural stone and vertical black timber cladding. The roofing materials would comprise of natural slate. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The semi-detached dwellinghouses would be some 7.6 metres in height.

Units 16-25 is flatted development that comprises of three storey built form with a pitched roof that has gable features. The proposal will be finished in natural stone, vertical natural timber cladding and grey standing seam metal cladding. The roofing materials would comprise of natural slate and standing seam metal panels. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The proposed flatted development is contained within two main blocks, one of which measures approximately 9.3 metres and the other approximately 10.3 metres. There is an adjoining link between the largest flatted development block and the 2no. flats that are sited above the undercroft parking.

Units 26-28 are three storey terraced dwellinghouses. The proposed roofscape would be pitched with gable features. The proposal will be finished in natural stone and vertical black timber cladding. The roofing materials would comprise of standing seam grey metal. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The terraced dwellinghouses would be some 9.9 metres in height.

It should be noted that the revisions throughout the lifetime of this application have not reduced the height or scale of the proposed development.

Letters of representation supporting the proposal state that the proposed development would remove an eyesore. Whilst objectors have raised concerns that the proposal would have a negative impact on the local area, is not in keeping with the local area, would result in overdevelopment of the site, and would set an unwanted precedent. Objectors have also raised concerns regarding the height of the development.

The proposed layout indicates the external finishes of the application site, however the submitted Proposed Layout (ref: 172-003 Rev E) does not provide a complete key of all the material choices. There are limited datum levels and details of the height extents of the proposed boundary treatments, which makes it not possible to comment upon the visual impact of such and whether some would impinge on highway visibility splays.

The application site provides a gateway to the South Devon National Landscape. The existing buildings onsite provide a rural gateway and former agricultural cultural heritage characteristic to the National Landscape.

The proposed design of the entire proposal has been revised during the lifetime of the planning application, originally the design was poor and not in keeping with the surrounding area, given its somewhat modern and contemporary industrial design. However, the revision does include some improvement however it fails to demonstrate a heritage-led approach to the regeneration of the site.

It is considered that the proposal fails to acknowledge the local character and destroys the rural gateway. The proposal in totality, given its siting, scale and design would fail to integrate within the existing street scene and does not positively enhance the built environment. The Neighbourhood Plan emphasises the need for new development to respect the character and appearance of the surrounding area, whilst the existing buildings are of a differing character and appearance to the existing surrounding residential development, the use of the existing buildings differs from the existing residential development given it serves a commercial purpose. The proposal seeks to align with the surrounding residential use, but demonstrably fails to respect it through its scale and design.

The existing buildings are formed of traditional stone or block and render, with the surrounding properties displaying mixes of render and buff brick. The proposal seeks to introduce vertical black timber cladding which is considered to be unacceptable as it would appear a stark contrast and is not evident elsewhere in the surrounding area. The revised proposal provides a revised palette of materials which is broadly satisfactory with the exception of the black timber cladding, as the application site is the gateway site in and into the National Landscape.

Whilst the existing buildings particularly dominate the southern section of the site in terms of footprint, the buildings respond to the changes in level, whereas the proposal provides a stark difference. The roofscapes of the existing buildings are varied but somewhat hidden from the public realm, whereas the varying roofscapes of the proposal would be dominant and visible given the increase in height. The proposal would remove the rural gateway to the South Devon National Landscape and would present a dominant stark built form.

Whilst the proposal has been revised, the proposed height of the development is concerning. Limited details have been provided with regards to levels and so the following comments are caveated on that basis. Given the existing buildings and structures on site which appear to adapt to the topography of the site, the proposal in contrast would introduce additional height. The proposed development in terms of height would be at prevailing odds with the surrounding area. It is considered that the proposed scale would not respect or enhance the local character and would fail to relate to the surrounding built environment in terms of height.

There are several locations within the proposed development where openings are either disproportionate or at odds with the other openings included on the same elevation, most of which would be visible from the street scene and are considered to be unacceptable. The inclusion of flat roofed dormer to Units 9 and 10 is unsympathetic and uncharacteristic. The quantum of floor to ceiling glazing on the flatted development block for Units 16-25 would not positively contribute to the streetscene given future occupiers belongings and paraphernalia being easily visible to passersby.

The NPPF focuses on securing well-designed places, it is considered that the current proposal does not provide such, instead demonstratively stark and incongruous built form that is at prevailing odds with the existing residential development and removes a rural gateway into the National Landscape. The proposed development would result in built form that would be wholly out of character with the existing area and would result in the loss of traditional stone buildings that make an important contribution to the character of the area. The development as a whole would be dominant and visually intrusive, and the overall scale and design is considered to result in a detrimental impact upon the existing street scene and locality, contrary to Policies DE1 and SS10 of the Local Plan, Policy BH5 of the Neighbourhood Plan and the guidance contained within the NPPF, in particular Paragraph 139.

#### **4. Impact on Designated and Non-Designated Heritage Assets**

Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that "*In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State 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*".

This statutory requirement needs to be considered alongside the NPPF which recognises that heritage assets range from sites and buildings of local historic value to those of the highest significance.

Paragraph 210 of the NPPF goes onto to state that 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 considers 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 213 of the NPPF states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

Paragraph 215 of the NPPF outlines 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.

With regards to non-designated heritage assets, Paragraph 216 of the NPPF advises that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Paragraph 217 of the NPPF confirms that should a heritage asset be lost either wholly or in part, local planning authorities should take all reasonable steps to ensure that the new development will proceed after the loss has occurred.

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. Policy BE1 of the Neighbourhood Plan confirms that proposals which affect designated and non-designated heritage assets must comply with the requirements of the NPPF and relevant policies of the Local Plan. Policy BE1 goes on to state that all developments should ensure a high quality of design that respects the specific character and historic legacy of each settlement and the surrounding area.

Objectors have raised concerns regarding the loss of the existing traditional stone buildings, as well as impact on the historic landscape.

The Council’s Principal Historic Environment Officer has confirmed that the application site contains a number of non-designated heritage assets and there is a Grade II listed building (1, 2 and 3 St. Mary’s Road) located approximately 20 metres to the northwest of the application site. The significance of 1, 2 and 3 St Mary’s Road relates predominantly to its evidential value through the survival of 17th century fabric, historic value through being a physical embodiment of the historic occupation of the area and the evidence of past inhabitants on the site, and its aesthetic value from its contribution to the surrounding townscape. The Officer considers that with regards to its setting, the building may have formed part of a wider designed landscape, however, the perception of this former landscape has now been largely lost through 20th century development. The asset is now predominantly experienced from St. Mary’s Road and

Upton Manor Road and from within its own curtilage. The setting of the asset is therefore considered to make some contribution to its significance. The application site, due to its proximity, past agricultural use and historical relationship is considered to form a part of the asset's setting.

The Council's Principal Historic Environment Officer has outlined that both the northern and southern groups of buildings, a stone boundary wall along St. Mary's Road and potentially other structures associated with the former agricultural/industrial use of the site could be classed as non-designated heritage assets. It is believed that the site contains built fabric and features which date from the 18th century and possibly earlier set within a predominantly 19th century agricultural landscape. The Council's Principal Historic Environment Officer has outlined the heritage values of the application site, such can be found in the consultation responses on the public file. Whilst the existing buildings have been altered as a result of past unsympathetic development within the site, the site has clear demonstrable evidential, architectural and historic value. The Council's Principal Historic Environment Officer confirms that the existing historic buildings on the site can therefore be considered to be non-designated heritage assets.

The total demolition and clearance of the site would cause substantial harm, through complete loss of significance, to the existing historic buildings and their historic relationship with each other and the wider landscape. This loss should be assessed within the context of Paragraph 210 of the NPPF and the heritage harm appropriately considered within the overall planning balance. The proposed development lacks convincing justification and would therefore be contrary to the requirements of Paragraph 213 of the NPPF.

The application site is in close proximity to 1,2 and 3 St. Mary's Road. The site is currently well screened due to the presence of a band of mature vegetation and walling. The proposed development would remove the historic/former agricultural buildings on the application site, but would utilise the salvaged materials from the traditional stone buildings into the external materials palette. The Council's Principal Historic Environment Officer has stated that the setting of this asset only makes a modest contribution to its significance, the impact of the proposed development would result in an adverse change within its setting and would therefore cause a low degree of 'less than substantial' harm to the significance of the designated heritage asset. This would be required to be assessed within the context of Paragraph 215 of the NPPF and should be weighed against the public benefits of the proposals as part of the overall planning balance.

With regards to the proposed development, the Council's Principal Historic Environment Officer does not consider that the design of the proposed development is heritage-led and therefore does not take into account or incorporate the existing heritage assets which have demonstrable heritage value. The Officer has confirmed that the revised palette of external materials including the salvaged material from the demolition of the traditional stone buildings would provide an agricultural style. The introduction of contemporary architecture can be successful within historic settings, however it is considered that the proposed development is not of sufficient architectural or visual interest for this sensitive site and fails to provide a heritage-led regeneration scheme that incorporates the existing assets which have demonstrable



heritage value. The Officer has advised that whilst the revised scheme is an improvement upon the originally submitted scheme, the heritage harm identified could be reduced or potentially removed should a heritage-led regeneration approach to the site be considered.

The Council's Principal Historic Environment Officer has concluded that the proposed development would cause clear harm to a number of identified non-designated heritage assets and the designated Grade II listed building (1, 2 and 3 St Mary's Road) heritage asset.

Within the context of Paragraph 214 of the NPPF, it is considered that the proposed development would result in less than substantial harm to designated and non-designated heritage assets, whereas the main public benefits of the scheme would result from the provision of 28 no. residential units. In this instance the benefits that are offered by the development do not outweigh the harm to the designated heritage asset and the loss of the non-designated heritage assets, the traditional stone buildings. The public benefits in this case do not provide a clear and convincing justification to outweigh the identified harm. In addition, by virtue of the identified heritage harm, which provides a strong reason for refusing the proposed development, the presumption in favour of sustainable development has been considered in this recommendation.

Therefore, the proposed development is considered to be contrary to Policy SS10 of the Local Plan, Policy BE1 of the Neighbourhood Plan and the guidance contained within the NPPF.

The above conclusion has consideration of Paragraph 212 of the NPPF which identifies 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.

This conclusion has taken account of the statutory duty under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the local planning authority, when making a decision on any decision on a planning application for development that affects a listed building or its setting, to pay special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

## **5. Impact on Residential Amenity**

Policy DE3 of the Local Plan states that development proposals should be designed to provide a good level of amenity for future residents and will be assessed in terms of the impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution, provision of useable amenity space, and an adequate internal living space.

### *Internal Living Space*

Policy DE3 of the Local Plan requires that new residential units provide adequate internal floor space in order to achieve a pleasant and healthy environment. The Neighbourhood Plan is largely silent on the matter of amenity. Paragraph 135 of 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.

Policy DE3 sets out the minimum floor space standards for new dwellings and apartments. The proposed residential units feature the following approximate floor areas:

<b>Unit Number</b>	<b>Number of Bedrooms</b>	<b>Number of Bed Spaces</b>	<b>Number of Storeys</b>	<b>Total Floorspace (sq.m)</b>	<b>NDSS Requirement (sq.m)</b>	<b>Complies?</b>
<b>1</b>	2	4	1	80.7	70	Yes
<b>2</b>	2	4	1	88.6	70	Yes
<b>3</b>	1	2	1	58.5	50	Yes
<b>4</b>	1	2	1	59.2	50	Yes
<b>5</b>	2	4	1	78.0	70	Yes
<b>6</b>	2	4	1	78.1	70	Yes
<b>7</b>	2	4	1	78.1	70	Yes
<b>8</b>	4	5	2	118.9	97	Yes
<b>9</b>	4	7	3	125.0	121	Yes
<b>10</b>	4	7	3	125.0	121	Yes
<b>11</b>	2	4	2	78.6	79	No
<b>12</b>	2	4	2	78.6	79	No
<b>13</b>	3	5	2	96.5	93	Yes
<b>14</b>	3	5	2	95.0	93	Yes
<b>15</b>	3	5	2	95.0	93	Yes
<b>16</b>	2	4	1	76.0	70	Yes
<b>17</b>	2	4	1	76.0	70	Yes
<b>18</b>	2	4	1	73.1	70	Yes
<b>19</b>	2	4	1	76.0	70	Yes
<b>20</b>	2	4	1	76.0	70	Yes
<b>21</b>	2	4	1	73.1	70	Yes
<b>22</b>	3	6	1	130.0	95	Yes
<b>23</b>	2	4	1	73.1	70	Yes
<b>24</b>	2	3	2	80.0	70	Yes
<b>25</b>	2	3	2	80.0	70	Yes
<b>26</b>	2	4	2*	79.4	70	Yes
<b>27</b>	2	4	2*	79.4	70	Yes
<b>28</b>	2	4	2*	79.4	70	Yes

\* - These residential units are three storeys in height, however the ground floor is used as an integral garage and therefore is not included within the NDSS calculation.

The majority (26no.) of the units comply with the minimum floor space requirements apart from units 11 and 12 which very marginally fall below such. Whilst the floor areas of these units are very marginally below the recommended floor area, the units are considered to have a usable layout for all day to day needs, adequate light and outlook and private outside amenity spaces. Therefore, whilst the floor area is slightly below standards, the quality of the internal environment is considered to be satisfactory. It

should also be noted that units 24 and 25 both have a substandard single bedroom.

All other units across the site are considered to provide a good quality internal environment for future occupiers with habitable rooms served by adequate light and outlook and layouts set out in a functional manner. Therefore, the proposed residential accommodation is considered to comply with this criterion of Policy DE3 of the Local Plan.

#### *External Amenity Space*

Policy DE3 of the Local Plan states that new dwellings should provide 55 square metres of outdoor amenity space and flatted development should provide 10 square metres of outdoor amenity space, which can be provided individually or communally.

The revised proposed layout (ref: 172-003J (Site Layout)) is annotated with the outdoor amenity spaces for each residential unit, in some instances this is sought communally for elements of the flatted development. The annotations which state the size of the outdoor amenity spaces include paved areas that are for access purposes only and are not useable for any other purpose. It is noted that Units 26 and 27 have unusually shaped outdoor amenity spaces to meet the policy aspiration. Limited information has been provided to establish the levels of the outdoor amenity spaces, some contour lines have been provided on the proposed layout which confirms that these spaces would be sloping, the useability of such is questioned.

It is considered that the proposal would provide the future occupiers with an adequate amount of external amenity space, but the usability of such is unknown.

#### *Neighbour Amenity*

Objectors have raised concerns regarding privacy/overlooking, noise, loss of light and the proposed development having a negative impact on residential amenity.

The proposed submission is supported by proposed sectional drawings. The northern parcel of the application site is surrounded to the northern and western flanks by existing residential development on St Mary's Road, whereas to the south is the southern parcel of the application site. The northern parcel's northern flank is screened by existing vegetation. The southern parcel of the application site is surrounded to the eastern, southern and western flanks by existing neighbouring properties either on Springdale Close or St Mary's Road, whereas the northern flank would look upon the northern parcel of the application site.

The proposed flatted development block that contains Units 16-25 would be some 18 metres from the frontages of Nos.2 and 4 Springdale Close, these properties as well as some nearby others on Springdale Close are bungalows, it is considered that the proposed two and a half storey built form (some 9.4 metres in height) would be dominant and overbearing on this property. The submitted information fails to demonstrate or provide certainty that the proposal would provide an acceptable relationship to adjacent neighbouring properties on Springdale Close.

It is considered that the northern parcel of the application site would not have a detrimental impact on adjacent existing neighbouring properties given the siting, scale and design of the proposed built form, existing vegetation and subject to suitable

proposed vegetation and boundary treatments. Consideration is also given to 'Orchard House' which sits east of the southern parcel of the application site, and is elevated from the public highway. It is considered that Unit 14 is unlikely to result in a detrimental impact upon the occupiers of the property given its siting, orientation and separation distance. However, Units 26 and 27 are some 12.5 metres to 13.5 metres from the western elevation of Orchard House, this elevation is served by several openings. The proposed layout states the eaves height of Orchard House is +68.37, and Units 26-28 have a finished ridge height of +67.01, therefore the proposed built form would be +1.36m lower than the eaves/flat roof extension of Orchard House. It is uncertain whether there would be intervisibility issues between the second floor of Units 26 and 27 given that the proposed sections are unscalable, but there might be intervisibility issues the eastern (rear) elevations of Units 26 and 27 onto the western elevation of Orchard House is between 12-5-13.5 metres away.

It is considered that the proposal would result in a layout that may result in overlooking/intervisibility issues between future occupiers and Orchard House. The proposal would also result in an overbearing and overtly dominant for existing properties on Springdale Close. It is considered that the proposal fails to accord with Policy DE3 of the Local Plan.

Should planning permission be granted, planning conditions should be employed to secure a Construction Method Statement prior to the commencement of the development; a suitable scheme of boundary treatments; and where necessary and reasonable the removal of permitted development rights.

## **6. Impact on Highway Safety**

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.

Policy DE3 of the Local Plan specifies that new development proposals should have satisfactory provision for off-road motor vehicle parking, bicycles and storage of containers for waste and recycling. Policy TA1 of the Local Plan sets out promoting improvements to road safety. Policy TA2 of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy TA3 of the Local Plan details that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development. Policy BH8 of the Neighbourhood Plan states that all new development should comply with the relevant adopted standards. Policy T1 of the Neighbourhood

Plan advises that all developments should include safe walking and cycling access and that all development should seek to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists.

The application site is located on the northern and southern flanks of St Mary's Road, which is an adopted public highway. St Marys Road varies in width between 2.8 metres to 4.5 metres with limited street lighting and no footway provision. There are bus stops situated within 50 metres of the application on Springdale Close and additional bus stops are located 100 metres north-west of the site on St Marys Road. These bus stops are served by an approximate hourly frequency to Brixham, Summercombe, South Bay and Higher Ranscombe.

Objectors have raised concerns regarding traffic and access, as well as pedestrian accessibility and permeability.

The applicant used the TRICS database to undertake a comparative trip generation exercise between the extant and proposed uses on the site. The comparative trip generation has identified that the proposed development will likely generate one additional trip in the AM peak and four additional trips in the PM peak period. The Local Highway Authority considered these findings to be acceptable and that the minor increase in trip generation would result in a negligible impact on the operation and safety of the local highway network.

#### Visibility Splays

The application site is currently accessed via two access points from St Marys Road. The proposal seeks to retain the location of the two access points, but upgrade such to provide two priority-controlled junction arrangements. This section of St Mary's Road has a 30mph speed limit, a speed survey was conducted in September 2020 which identified 85th percentile speeds of 20.1mph and 19.3mph eastbound and westbound respectively. With regards to the visibility splay calculator contained within Chapter 7 of *Manual for Streets*, these speeds would result in a 'Y' distance requirement of 22.6 metres and 21.4 metres respectively. The applicant has demonstrated visibility splays of 2.4 metres x 25 metres and 2.4 metres x 24 metres can be achieved, the Local Highway Authority consider this to be acceptable.

#### Pedestrian and Cycle Connectivity

The proposal outlines that pedestrian and cycle access will be achieved via footways provided either side of the proposed access points. The proposed footway to the west of the northern access point onto St Mary's Road will connect to the extent of St Mary's Road that routes in a north to south alignment from Upton Manor Road. The proposed footway to the west of the southern access point will connect to formalised footway provision on the eastern extent of Springdale Close.

The applicant submitted an updated Stage 1 Road Safety Audit (May 2024, Revision C) and the Local Highway Authority have concluded that no issues within the scope of the Road Safety Audit were identified.

#### Swept Path Analysis

The application has been supported by a swept path analysis that demonstrates a large refuse vehicle can manoeuvre within the application site.

### Car and Cycle Parking Provision

Appendix F of the Local Plan requires two car parking spaces (of which one should provide electric vehicle charging infrastructure) and two cycle parking spaces should be provided per dwelling. Appendix F of the Local Plan requires one car parking space (of which 20% should provide electric vehicle charging infrastructure) and one cycle parking space should be provided per flat. The proposal is for 28no. residential units, of which 17no. flats and 11no. dwellinghouses are proposed. This calculates a total requirement of 39no. car parking spaces across the application site (of which 14 car parking spaces should provide electric vehicle charging infrastructure, 1no. per dwellinghouse and 20% of the 17no. flats (20% = 3.4)) plus the requirement for an element of visitor parking. The submitted layout indicates a total of 44no. car parking spaces will be provided across the site. The submitted layout indicates a total of 14no. car parking spaces with electric vehicle charging infrastructure across the site. The submitted layout also includes communal areas of cycle storage for Units 1-7, Units 16-23 and Units 24-25 and individual cycle storage for the other units.

The Local Highway Authority and the Police Designing-Out Crime Officer have both raised concerns regarding the elements of proposed tandem parking. These concerns revolve around the parking arrangement leading to an overspill of car parking occurring on the local highway network due to residents not wishing to park in the garage.

The adopted Highways Standing Advice outlines that where properties have shared or adjoining parking spaces, sufficient access/egress for vehicles and waste/cycle storage should be provided as 6.4 metres wide (3.2 metres for each property), an illustrative diagram of such is contained within Appendix 3 of the Standing Advice. The Standing Advice also confirms that a 3.2 metre wide parking space is required when the parking space is adjacent to a solid obstruction. The proposed parking provision has a couple of pinch points, at least 3no. parking spaces do not provide individuals with sufficient space to access/egress their vehicles without conflicting with either built form or the neighbouring vehicles. For example, the 3no. parking spaces adjacent to Unit 15 are substandard in size, whilst they provide 6 metres in length, they propose a width of 2.4 metres but the eastern edge of the space would abut the side elevation of Unit 15 and the subsequent boundary treatment to enclose Unit 15's outdoor amenity space, the width of such spaces should be 3.2 metres. It is unclear whether the undercroft parking area would be fully functional as limited details have been provided with regard to if columns are needed to support the above structure and if so where such would be placed.

It is considered that the proposed development would provide the requisite quantum of parking spaces that meet the required standards. As such, the proposal is considered to comply to Policies TA2 and TA3 of the Local Plan, the adopted Highways Standing Advice and Policy BH8 of the Neighbourhood Plan, and the guidance contained in the National Planning Policy Framework.

### Bin Storage

Policy DE3 of the Local Plan requires the satisfactory provision for the storage of containers for waste and recycling. Policy W1 of the Local Plan states that as a minimum, all developments should make provision for appropriate storage, recycling,

treatment and removal of waste likely to be generated and with particular reference to residential developments, they should provide adequate space within the curtilage for waste and accessible kerbside recycle bins and boxes.

Building Regulations H6 which stipulates that “*Storage areas for waste containers and chutes should be sited so that the distance householders are required to carry refuse does not usually exceed 30m (excluding any vertical distance). Containers should be within 25m of the waste collection point specified by the waste collection authority*”. It states that the distance from the external door to the bin storage location should be no more than 30 metres and the bin storage location to the nominated collection point should be no more than 25 metres.

The submitted layout (ref: 172-005 B (Waste Management)) indicates areas of bin storage for the proposed development. The Local Highway Authority initially raised concerns regarding the drag distance for collections based on Building Regulations, this matter has been resolved.

SWISCo have confirmed that they would not collect refuse and recycling until a formal indemnity is in place once the road had been adopted by the Local Highway Authority. SWISCo have also requested waste management contributions in line with the Planning Contributions and Affordable Housing Supplementary Planning Document (2022), which would be the cost of bin, recycling boxes, food waste caddy and recycling information at £90 per dwelling and contributions towards waste collection vehicles at £72 per dwelling. Table 4.12. of the Supplementary Planning Document equates to a contribution of  $£90 \times 28 = £2,520$  and  $£72 \times 28 = £2,016$ .

The proposed layout would secure acceptable waste storage and collection facilities that would accord with adopted waste storage requirements, in compliance with Policies DE3 and W1 of the Local Plan.

The applicant has submitted a lighting design and location plan to illustrate how the internal (and connection to external) footways/carriageways will be lit, in the interest of highway and pedestrian safety. The Local Highway Authority considered it to be acceptable.

#### Sustainable Travel Contributions

The Local Highway Authority have confirmed that they would seek the necessary S278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Section 4.3 of Planning Contributions and Affordable Housing Supplementary Planning Document (2022) seeks additional Sustainable Transport contributions for major schemes, referencing Table 4.2. of the Supplementary Planning Document this equates to a contribution of  $£1,290 \times 28 = £36,120$ .

#### Section 38 Agreement

The applicant has submitted a Highways Adoption Plan (ref: 172-012A (Highway Adoption)), for the northern parcel of the application site, the Local Highway Authority are satisfied with the adoption of the on-site turning head as this will be suitable for refuse collection. However, the southern parcel of the application site, in particular the on-site turning head has not been offered for adoption, and the applicant is proposing

this is a shared private drive. The applicant must be aware that SWISCo will not drive on unadopted highways for refuse collections, the SWISCo Manager has stated subject to the road being built to adoptable standards, and an indemnity agreement and risk assessment being undertaken, the Waste Authority may drive onto an unadopted highway if such is considered acceptable.

It is important to note that the Torbay Highways Design Guide (Adopted February 2024) states that shared private drives that are not adoptable are only permitted where fewer than five properties are served. This is further supported by Policy BH8 of the Neighbourhood Plan which requires new developments to comply with relevant adopted standards.

### Concluding Remarks

The proposal is considered to comply with Policies DE3, TA1, TA2 and TA3 of the Local Plan, Policy BH8 of the Neighbourhood Plan and the guidance contained within the NPPF.

The Committee should note that whilst the Council can require the estate roads to be constructed to an acceptable (adoptable) standard, it cannot secure the adoption of estate roads through the planning process. Its policy is to encourage adoption, as far as it can. If planning permission is granted then a planning condition is required which secures the construction of the estate roads to acceptable (adoptable) standards and (if not adopted) secures their retention and future maintenance for the lifetime of the development.

### **7. Impact on Trees**

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.

There is a group Tree Preservation Order (1999.015 G1) north of the application site. Objectors have raised concerns regarding the impact on trees. The application was originally supported by a tree constraints plan and an Arboricultural Impact Assessment, and such has been updated in line with the revisions to the scheme.

SWISCo's Senior Tree Officer has been consulted on the application and confirms that the proposal proposes the loss of G2 which is a low-quality group of sycamore on the roadside boundary, whilst G1 and G3 are shown as retained. The Officer has confirmed that G1 is inaccessible to construction activity and not at risk from operational pressures and G3 is shown within tree protective fence.

The Officer has confirmed that ornamental tree species is proposed for the southern boundary in a loose, scattered arrangement, which will not create any obvious shading conflicts in the long term. The proposed trees in the northern section of the site continue the ornamental theme. The Officer has stated that opportunities to incorporate narrow columnar or fastigiate trees into the verge is a missed opportunity



to provide natural screening to help soften the massing of the building in the street scene.

The Officer has also confirmed that the overall reliance on non-native and smaller ornamental trees in order to work with the site constraints will not lead to any future public amenity provision or enhancement of the local landscape. The site is constrained by the overall scale and layout of the development with associated infrastructure further reducing opportunities for structural planting.

The Officer recommends that should planning permission be granted, the Cotoneaster cornubia should be relocated to ensure no future conflict with utilities and this could be reflected within a revised landscaping scheme. The Officer also recommends securing soft landscaping in accordance with the Evolve Tree Consultancy Arboricultural Impact Plan & Landscaping.

Subject to the aforementioned planning conditions should planning permission be granted, the proposal is considered to comply with Policy C4 of the Local Plan.

## **8. Impact on Ecology and Biodiversity**

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy SS8, particularly criterion 1, of the Local Plans states sites, species and habitats protected under European, or equivalent legislation will be protected from development. Development around the edge of the built up area will be required to protect and manage wildlife and habitats, including corridors between them, in accordance with Policy NC1 of the Local Plan and particular attention must be paid to Greater Horseshoe Bat flightpaths. Policy E8 of the Neighbourhood Plan states that internationally important sites and species will be protected. Development affecting internationally protected site and species will only be approved where it can be demonstrated there is no likely significant effect, either alone or in combination with other plans or projects and regard has been given to the NPPF and conforms to Policy NC1 of the Local Plan. Guidance within the NPPF provides similar guidance to the above and notably Paragraph 193 guides that when determining planning applications, local planning authorities should apply principles that include opportunities to improve biodiversity in and around developments should be integrated as part of the design, especially where this can secure measurable net gains for biodiversity.

The site is close to the Berry Head/South Hams Greater Horseshoe Bat (GHB) Special Area of Conservation (SAC) and is within the Sustainance Zone for such. The application is supported by an Ecological Assessment (June 2023) and a Biodiversity Net Gain Report (June 2023). However, following initial comments from Devon County Council's Ecologist, a Bat Survey Addendum (August 2023) was produced. Objectors have raised concerns regarding the impact on wildlife.

### South Hams SAC Sustainance Zone

The development site lies within the South Hams SAC Sustainance Zone for greater horseshoe bats (GHBs). The survey work found that there was no suitable habitat for foraging, and no linear commuting features present on site for the GHB. The site is dominated by hardstanding and the surrounding area is predominantly urbanised. Devon County Council's Ecologist concluded that the proposed development would

not lead to the loss, damage, or disturbance to GHB foraging habitat within a sustenance zone. Nor would it lead to the loss, damage or disturbance to a pinch point or an existing mitigation feature. This is due to the location of the development, in an area unfavourable to GHBS, with no suitable foraging habitat or linear habitats. In line with the South Hams SAC Habitats Regulations Assessment Guidance document (DCC et al.,2019), there is unlikely to be a likely significant effect on the South Hams SAC. Therefore, an Appropriate Assessment is not deemed to be required and no mitigation is required.

#### South Hams SAC Berry Head Recreation Zone

The development falls within the SAC Recreation Zone for Berry Head Country Park, where the potential for recreational pressure due to new developments may affect the wildlife interests of the Berry Head component of the South Hams SAC. Qualifying features include calcareous grassland and sea cliffs (with their associated species).

Policy NC1 of the Local Plan states all development which creates recreational pressure upon the Annex I habitats (European dry heath, semi-natural grasslands and scrubland facies on calcareous substrates) at the Berry Head to Sharkham Point Component of the South Hams SAC must pay a contribution towards mitigating the impact of increased visitor pressure. This mitigation has been costed at £135 per new dwellings. Providing that the proposed development provides a monetary contribution via s.106 legal agreement/unilateral undertaking equivalent to £135 per new unit, the resultant increases in recreational pressure can be mitigated and the development will not have an adverse effect upon the integrity of the European site. The HRA developed and agreed with Natural England for the Local Plan concluded that as long as new developments provide the contributions as described above to deliver the required mitigation measures, there will be no adverse effect upon the integrity of the European site as a result of increased recreational pressures impacting the Annex I habitats, and the conservation objectives would be sustained.

The Planning contributions and Affordable Housing SPD (2022) requires S106 contributions towards mitigating the recreational impact of development upon the South Hams Special Area of Conservation arising from recreational impacts on limestone grassland between Berry Head and Sharkham Point. These are sought as a “site deliverability matter”, and are especially relevant given the proximity of the proposal to the SAC.

In the absence of a legal agreement to secure the mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland and so an Appropriate Assessment is required. Given the recommendation, a legal agreement to secure the mitigation of £3,780 has not been furthered with the applicant, however the lack of mitigation secured is contrary to Policy NC1 of the Local Plan and Policy E8 of the Neighbourhood Plan.

#### Lyme Bay and Torbay SAC

On advice received by Natural England (July 2022), recreational impacts from development on the marine SAC can be screened out unless there is a direct link between the application and increased recreational use on the SAC. The reasons for this are: at present the SAC seacaves are recorded as being in Favourable condition.

There is no evidence currently available to conclude that recreational activities are damaging the SAC features, or that recreational activities are attributable to the housing numbers identified in the Local Plan. Devon County Council's Ecologist has stated that individual planning applications that have a clear link to increased recreational use of the coast will need to be subject to project-level HRA, and that a bespoke package of measures will need to be secured to address the specific impacts of the proposed project. If the evidence relating to (i) the accessibility of the seacaves; (ii) the possible damage to the seacaves; (iii) monitoring of the types of activity, the location of activities, and the levels of access; and (iv) understanding where individuals are originating from, becomes available then that evidence, depending on the findings, will become a material consideration in the determination of planning applications for housing developments and future Local Plan reviews.

### Biodiversity Net Gain

The submission is accompanied by the statutory Biodiversity Net Gain Metric, which demonstrates that the proposal does not result in a net loss in biodiversity, but at the very least provides a gain in line with national and local planning policy. Devon County Council's Ecologist is satisfied with such.

As a further matter 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) for major developments. This means that, subject to certain exemptions, development must deliver a 10% gain in biodiversity. In terms of this application, the application was received and validated prior to BNG becoming mandatory in England and therefore the development is deemed exempt from delivering 10% gain in biodiversity, it would default to providing a (1%) gain.

### Concluding Remarks

In the absence of a legal agreement to secure the mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland and so an Appropriate Assessment is required, the proposal is therefore contrary to Policy NC1 of the Local Plan and Policy E8 of the Neighbourhood Plan.

## **9. Impact on 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 and the application is accompanied by a Flood Risk Assessment and drainage strategy for the proposed development. Objectors have raised concerns regarding drainage and sewage. Due to the ground conditions encountered during the site investigation 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.

The Council's Drainage Engineer has reviewed the Flood Risk Assessment and drainage strategy and has confirmed that the proposed discharge rate of 1.0l/sec complies with the requirements of the Torbay Critical Drainage Area.

The developer has submitted a drawing showing the proposed drainage strategy together with hydraulic calculations for the surface water drainage design. The drainage strategy drawing identifies manhole cover levels and invert levels, pipe diameters and pipe lengths, and has also identified the actual impermeable area discharging to each pipe length within the hydraulic model. The Council's Drainage Engineer has confirmed that the surface water drainage would be constructed in accordance with the drainage strategy and that they have no objections on drainage grounds should planning permission be granted. The proposal is considered to comply with Policies ER1 and ER2 of the Local Plan.

### **10. Affordable Housing Contributions**

Paragraph 65 of the NPPF states that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). The NPPF goes on to state that to support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount [Footnote 30].

Footnote 30 of the NPPF states: *Equivalent to the existing gross floorspace of the existing buildings. This does not apply to vacant buildings which have been abandoned, or to major development on land within or released from the Green Belt, for which the 'Golden Rules' requirements set out in paragraphs 156-157 of this Framework should apply.*

The Planning Contributions and Affordable Housing Supplementary Planning Document (2022) have applied the NPPF threshold as a material consideration, despite the starting point being Policy H2 of the Local Plan. The current proposal is major in nature, as the proposed number of residential units is over 10no. residential units, and therefore it triggers the requirement for affordable housing contributions in Policy H2 of the Local Plan.

The proposal falls within the threshold for affordable housing contributions as outlined in Policy H2 of the Local Plan which seeks affordable housing contributions on brownfield sites of 15no. dwellings or more. For a net increase of 20+ dwellings, it would have an affordable housing target of 20% which is delivered on-site, commuted sums would only be accepted where this would achieve more effective provision of affordable housing or bring significant regeneration benefits.

The proposal seeks to provide 6no. affordable residential units, in the form of 2no. x 1-bed apartments and 4no. x 2-bed apartments. This would present a 21.4% affordable housing provision onsite. Objectors have raised concerns regarding the lack of affordable housing.

In the absence of a legal agreement to secure the affordable housing provision, it is considered that such would constitute a further reason for refusal. The proposal fails to secure the necessary provision of affordable housing, contrary to Policy H2 of the Local Plan and the Adopted Planning Contribution and Affordable Housing Supplementary Planning Document (2022).

## **11. 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 BH5 of the Neighbourhood Plan outlines that major housing developments should adequately take into account the safety and security of the users of the facilities and the neighbouring residents.

The Police Designing Out Crime Officer was consulted and commented upon the application. The proposal does not include a scheme of designing-out crime measures. If approved, a planning condition is recommended to secure such prior to the occupation of the development.

## **12. Low Carbon Development and Energy**

Paragraph 166 of the NPPF states that Local Planning Authorities should expect new development to:

- a) Comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and
- b) Take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.

Policy SS14 of the Local Plan 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 states that the Local Plan will seek to ensure that carbon emissions associated with energy use from new and existing buildings (space heating, cooling, lighting and other energy consumption) are limited. All major development proposals should make it clear how low-carbon design has been achieved, and how the following sequential energy hierarchy has been applied in doing so. Proposals should identify ways in which the development will maximise opportunities to achieve the following:

1. Conserve energy by reducing energy demand through siting and design. This includes the use of building orientation, layout and landscaping to optimise solar gain, ventilation and cooling;
2. Use energy efficiently within the fabric of the building;
3. Incorporate the use of decentralised heat, cooling and power systems; and
4. Use on-site or near-site renewable technologies to achieve further reductions in carbon emissions.

Objectors have raised concerns regarding the impact on climate change, air pollution, marine pollution and construction impacts. The applicant has submitted an Energy Statement (July 2023) and completed the Torbay Sustainability Checklist for Major Development.

The Statement outlines that the proposal reduces energy demand through the siting and design, ensuring that the majority of units are positioned to maximise solar gain and minimise the need for artificial lighting and heating. The Statement outlines that the layout encourages natural ventilation and cooling, with the incorporation of large

openings, cross-ventilation strategies, and the use of external louvered shading devices to regulate internal temperatures. The proposal would be constructed in full accordance with the relevant Building Regulation, specifically Approved Document L which defines the minimum U-Values for all elements and air tightness targets. The proposal will include the following features:

- Heating: Individual ASHP units.
- Underfloor heating with 35°C max operating temperature
- 100% low energy lighting
- Multi-point extract systems(continuous), Appendix Q certified
- MVHR system (continuous), Appendix Q certified
- Air permeability with MVHR: 3 m<sup>3</sup>/m<sup>2</sup>/hr @ 50Pa
- Wall U-value: 0.16 W/m<sup>2</sup>/K
- Corridor communal walls U-value: 0.25 W/m<sup>2</sup>/K
- Corridors: Heated
- Party walls between flats fully insulated
- Roof U-value: 0.11 W/m<sup>2</sup>/K
- Doors U-value: 1.4 W/m<sup>2</sup>/K
- Windows U-value: 1.5 W/m<sup>2</sup>/K
- Floor U-value: 0.10 W/m<sup>2</sup>/K
- Thermal bridging: Accredited construction
- Window G-value: Mixture of 0.42 and 0.46
- Rooflight G-value: 0.33

The Council's Senior Structural Engineer has been consulted on this application and has stated that the applicant is invited to provide a qualified/competent consultant's carbon calculation to demonstrate how new build might be more favourable than repurposing, such has not been provided.

## **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.

Once the dwellings 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 terms of the economic element of sustainable development, the balance is considered to be positive.

### **The Social Role**

The proposal is likely to have an adverse impact on the occupiers of neighbouring properties on Springdale Close.

There would be a detrimental impact on local services i.e. schools, Doctors surgeries etc, however this can be mitigated via S106 contributions.

However, the principal social benefit of the proposed development would be the provision of additional housing including affordable housing. Given the NPPF priority to significantly boost the supply of housing the additional dwellings to be provided must carry significant weight in this balance.

### **The Environmental Role**

With respect to the environmental role of sustainable development, the development of the site within the South Devon National Landscape would fail to conserve or enhance the natural beauty of the National Landscape. Great weight should be given to harmful impact on the South Devon National Landscape.

The proposed development would cause clear harm to a number of identified non-designated heritage assets and the Grade II listed building (1, 2 and 3 St Mary's Road).

Insufficient information has been provided to establish whether the proposed development would provide a biodiversity net gain.

It is concluded that the adverse environmental impacts of the development weigh against the development.

### **Sustainability Conclusion**

Having regard to the above assessment the proposed development is not 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**

### **S106:**

The following are to be included in Heads of Terms for a legal agreement, which should be completed prior to any planning consent being issued. Triggers and instalments in relation to the proposed financial contributions would be agreed as part of the detailed negotiation of the legal agreement. If Members consider that the application is acceptable is recommended that authority to progress and complete the legal agreement be delegated to officers.

### **Ecology**

Recreational impacts financial obligation to mitigate additional pressures upon the South Hams SAC in accordance with Policy NC1 of the Local Plan and as identified as a necessary mitigation.

£135 per new dwelling in the Brixham Peninsula towards management/reduction of impacts on the Berry Head grassland, in accordance with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022). For 28 dwellings this would equate to an obligation of £3,780.00.

### **Affordable Housing**

Policy H2 of the Local Plan states that developments of 20+ residential units on brownfield sites should provide 20% affordable housing. The provision of affordable housing is to be provided on-site, through 6no. residential units, which equates to 21.4%.

The proposal provides details of the affordable housing provision, mix of unit types and sizes. Should the development be approved, a 20% level of affordable housing should be secured within an accompanying legal agreement to include;

- 1) An affordable housing tenure split set out in accordance with Policy H2.
- 2) An Affordable Housing Scheme to be submitted for the agreement of the Council.
- 3) Occupancy to accord with Policy BH2 of the Neighbourhood Plan.

### **Sustainable Transport**

In accordance with Policy SS7 of the Local Plan and the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) (to open market housing only) Sustainable Transport obligations should be secured.

This equates to a contribution of £1,290 x 22 = £28,380, as the 6no. affordable housing units would be discounted due to site deliverability matters. However, as for the 22no. units such cannot be sought due to the units being CIL liable.

### **Public Open Space, Sport and Recreation**

In accordance with the Council's Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022), residential developments are expected to provide public open space as part of their layouts to match the types of open space likely to be needed by residents, and enable a good level of access to sport, leisure and recreation facilities.

The breadth of facilities to support development are identified as:

- Playing Pitches
- Other Sport and Recreation Facilities



- Equipped play facilities for young people
- Greenspace/Open spaces
- Allotments/sustainable food production

However, such contributions cannot be sought due to 22no. open market units being CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

### **Employment**

Obligations in-line with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure loss of employment for use classes B2, B8 or E(g) uses, however such cannot be sought on the 22no. open market units as such are CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

### **Education**

Obligations in-line with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure increased school capacity within Brixham, based on the provision of open market housing, however such cannot be sought due to 22no. open market units being CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

### **NHS Devon**

The site is allocated in the Development Plan for 25no. units and as such the development in this area is anticipated and therefore the demand on the GP surgeries was considered at the time of allocation.

### **Lifelong Learning Obligations**

Obligations in-line with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure library improvements within the area. This contribution is not sought as 22no. open market units being CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

### **Waste and Recycling**

Obligations in-line with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be secured to provide waste and recycling facilities for properties that will be served by the Local Authority waste collection provider.

### **CIL:**

The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £70/sqm.

The estimated CIL liability is £166,378.41. 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.

### **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.

HRA:

In the absence of a legal agreement to secure the mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland.

### **Planning Balance**

The relevant legislation requires that the application be determined in accordance with the statutory development plan unless material considerations indicate otherwise. As concluded within this report there is substantial conflict with the Development Plan, namely Policies DE1, DE3, H1, H2, NC1, SDB1, SDB3, SS3, SS7, SS8, and SS10 of the Local Plan, and Policies BE1, BH5, BH8, E1 and E2 of the Neighbourhood Plan.

As the proposal is not in accordance with the Development Plan, consideration needs to be given as to whether material considerations indicate that the application should be approved.

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 (April 2023) is that there is 2.17 years, which is a significant shortfall.

In terms of benefits, the proposal of 28no. residential units, would make a moderate contribution to local housing supply. This would be consistent with national guidance that seeks to significantly boost the supply of homes. The proposal includes 6no. affordable housing units which boosts the public benefit. In addition, social, economic and environmental benefits associated with building and occupying homes weigh in favour of the development, and there is also some minor benefit from the discounted CIL payment. The fact that the site is allocated for housing, and would therefore provide housing if an acceptable scheme comes forward, is material.

The proposed development would present acceptable internal and external residential environments that principally accord with development plan expectations and National Space Standards. This compliance weighs neutrally in the decision making. However, the development will present harm to adjacent neighbours, as identified within this report, which weighs negatively against the development.

However, the NPPF gives great weight to conserving and enhancing the landscape and scenic beauty of areas of outstanding natural beauty, as they have the highest status of protection in relation to such issues. The NPPF confirms that development within such areas should be sensitively located and designed to avoid or minimise adverse impacts on the designated area.

Weight must also be afforded the duties within the Countryside and Rights of Way Act 2000, S85, in exercising or performing any functions in relation to, or so as to affect, land in a National Landscape in England, the Council must seek to further the purpose of conserving and enhancing the natural beauty of the National Landscape.

Additionally, the NPPF gives great weight to a designated heritage asset's conservation, irrespective of the amount of harm. The NPPF confirms that the significance of a non-designated heritage asset should be taken into account when determining planning applications, as such a balanced judgement is required. Weight must also be afforded to the statutory duties within the Planning (Listed Buildings and Conservation Areas) Act 1990, for the local planning authority, when making a decision on any decision on a planning application for development that affects a listed building or its setting, to pay special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

Furthermore, this report has set out a number of adverse material considerations that lie behind the conflict with the Development Plan, such are detailed within the reasons for refusal.

Housing need is itself an important factor but must be balanced with other considerations to inform whether development is sustainable development in the round. It is concluded that other material considerations do not justify the grant of planning permission.

Finally, the presumption in favour of sustainable development has been considered in this recommendation. The identified harm to the South Devon National Landscape, provides a strong reason for refusing the proposed development. Furthermore, the identified harm to the setting of the Grade II designated heritage asset, provides a strong reason for refusing the proposed development. The adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

### **Conclusions and Reasons for Decision**

In reaching a planning balance view, it is recognised that the Presumption in Favour of Sustainable Development at Paragraph 11 of the NPPF, as revised in December 2024 must be applied. Substantial weight has been given to delivering an allocated housing site, and the provision of affordable housing.

However, based on the consideration of matters detailed within this report, it is concluded that the proposal would fail to conserve and enhance the South Devon National Landscape, due to the demolition of the non-designated heritage assets which would result in permanent harm to the historic character of the area and the rich time depth of the South Devon National Landscape. The NPPF guides that when considering the impact of proposed development on the significance of a designated protected area (National Landscape), great weight should be given to conserving and enhancing the landscape and scenic beauty of such. It is concluded that the public benefits of the proposal do not outweigh the adverse impacts that would result to the South Devon National Landscape. Furthermore, it is concluded that the proposed

development would result in less than substantial harm to the setting of 1, 2 and 3 St Mary's Road (Grade II listed building) and the public benefits do not outweigh the adverse impacts that result on the setting of the listed building. These matters are considered to constitute "strong reasons" to refuse the application under Paragraph 11(d)(i) of the Framework.

It is further assessed that scale, design and harm to the character of the area conflict with particular policies of the Framework that Paragraph 11(d)(ii) directs decision makers to have particular regard to when assessing whether adverse impacts of development would significantly and demonstrably outweigh the benefits.

For these reasons the application is recommended for refusal, as detailed below.

### **Officer Recommendation**

That planning permission is refused, subject to the reasons detailed below. The final drafting of reasons for refusal and addressing any further material considerations that may come to light to be delegated to the Divisional Director for Planning, Housing and Climate Emergency.

### **Reason(s) for Refusal**

1. The proposed development, by reason of the demolition of the non-designated heritage assets including the lack of convincing justification for such, would result in permanent harm to the historic character of the area and the rich time depth of the South Devon National Landscape, which would fail to conserve and enhance the landscape and scenic beauty of this part of the South Devon National Landscape. The proposal is therefore contrary to Policies DE1, SS3, SS8, SS10, SDB1, SDB3 and H1 of the Adopted Torbay Local Plan, Policy E1 of the Adopted Brixham Peninsula Neighbourhood Plan, Policy LAN/P1 of the South Devon AONB Management Plan, and the guidance contained within the NPPF, notably Paragraphs 11, 187 and 189.
2. The total demolition and clearance of the application site would cause substantial harm to the existing non-designated heritage assets that has not been adequately justified. The proposed total demolition and clearance appears to lack convincing justification. The proposal fails to provide a heritage-led regeneration scheme and incorporate the existing non-designated heritage assets which offer demonstrable heritage value. The proposed development would result in less than substantial harm to the setting of 1, 2 and 3 St Mary's Road (Grade II) and this is not outweighed by the public benefits of the proposed development. The proposed development is contrary to Policy SS10 of the Local Plan, Policy BE1 of the Neighbourhood Plan and the guidance contained within the NPPF, namely Paragraphs 213, 214 and 215.
3. Given the scale and design of the proposal, it is considered the proposal would fail to relate to the surrounding built environment in terms of scale, height and massing. The proposed scale and design of the proposal is incongruous and dominant within the street scene. As such it would be inappropriate and out of character with the context of the site and surrounding area and fail to respect the local character and area as a gateway to the South Devon National Landscape. The proposal is considered to be contrary to Policies DE1 of the Adopted Local Plan 2012-2030,

Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030 and the guidance contained within the National Planning Policy Framework, in particular Paragraph 139.

4. The proposal, by reason of its siting, scale and design would have an unacceptable impact upon the occupiers of Nos.2 and 4 Springdale Close, in terms of the proposed built form being in close proximity to these neighbouring properties, which would result in an overbearing, and overtly dominant environment for the occupiers of such. Therefore, the proposal fails to accord with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained within the National Planning Policy Framework, in particular Paragraph 135.
5. The proposal, in the absence of a signed Section 106 Legal Agreement, fails to secure the necessary mechanism to deliver site acceptability mitigation regarding ecology, and affordable housing, contrary to Policies H2, NC1, SS7 and SS8 of the Adopted Torbay Local Plan 2012-2030, Policy E8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030 and the Adopted Planning Contribution and Affordable Housing Supplementary Planning Document (December 2022).

### **Informative(s)**

#### **Positive and Proactive Working**

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, in determining this application, Torbay Council has worked with the applicant in a positive and proactive way by clearly setting out concerns relating to the proposal and providing an opportunity for the applicant to withdraw the application. However, the applicant elected not to withdraw the application, thereby resulting in this refusal of planning permission.

#### **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**

BE1 – Heritage Assets and Their Setting  
BH3 – Delivery of New Homes  
BH4 – Housing Development – Brownfield (Previously Developed) and Greenfield (Not Previously Developed) Sites  
BH5 – Good Design and the Town and Village Design Statements  
BH6 – Roofscape and Dormer Management  
BH8 – Access to New Dwellings  
C4 – Trees, Hedgerows and Natural Landscape Features  
DE1 – Design  
DE3 – Development Amenity  
E1 – Landscape Beauty and Protected Areas  
E2 – Settlement Boundaries  
E8 – Internationally and Nationally Important Ecological Sites  
ER1 – Flood Risk  
ES1 – Energy  
H1 – Applications for New Homes  
H2 – Affordable Housing  
NC1 – Biodiversity and Geodiversity  
SDB1 – Brixham Peninsula  
SDB3 – Brixham Urban Fringe and Area of Outstanding Natural Beauty  
SS3 – Presumption In Favour Of Sustainable Development  
SS8 – Natural Environment  
SS11 – Sustainable Communities  
SS14 – Low Carbon Development and Adaptation to Climate Change  
T1 – Linking of New Developments to Travel Improvements  
TA1 – Transport and Accessibility  
TA2 – Development Access  
TA3 – Parking Requirements  
W1 – Waste Hierarchy