

Friday, 19 April 2024

PLANNING COMMITTEE

A meeting of **Planning Committee** will be held on

Monday, 29 April 2024

commencing at **4.30 pm**

The meeting will be held in the Brixham Theatre, Brixham Town Hall, New Road,
Brixham, TQ5 8TA

Members of the Committee

Councillor Maddison (Chairwoman)

Councillor Billings (Vice-Chair)

Councillor Tolchard

Councillor Mandy Darling

Councillor Virdee

Councillor Fox

Councillor Brook

Councillor Pentney

Councillor Strang

A Healthy, Happy and Prosperous Torbay

Download this agenda via the free modern.gov app on your [iPad](#), [Android Device](#) or [Blackberry Playbook](#). For information relating to this meeting or to request a copy in another format or language please contact:

Governance Support, Town Hall, Castle Circus, Torquay, TQ1 3DR

Email: governance.support@torbay.gov.uk - www.torbay.gov.uk

PLANNING COMMITTEE AGENDA

1. **Apologies for absence**

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

2. **Minutes**

To confirm as a correct record the Minutes of the meeting of this Committee held on 2 April 2024.

(Pages 5 - 7)

3. **Disclosure of Interests**

(a) To receive declarations of non pecuniary interests in respect of items on this agenda.

For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda.

For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(Please Note: If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)

4. **Urgent Items**

To consider any other items that the Chairwoman decides are urgent.

5. **Land to the Southwest of Copythorne Road, Brixham (P/2023/0480)**

(Pages 8 - 46)

Outline planning application for the erection of up to 77 dwellings, including affordable housing (35%), areas of open space (including public park), landscaping, biodiversity net gain and site infrastructure, with all matters reserved apart from access. This application is accompanied by an Environmental Statement. This application is a departure from the Development Plan.

6. **Land at Princess Gardens, off Torbay Road, Torquay (P/2024/0138)** (Pages 47 - 65)
Change of use of land for the temporary erection and operation of a 45m high observation wheel and ancillary development, for a one-year season (between the period of March to October 2024).
7. **Land off St Mary's Road, Brixham (P/2023/0553)** (Pages 66 - 159)
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.
8. **Seabury Hotel, 11 Manor Road, Torquay (P/2023/0721)** (Pages 160 - 205)
Demolition of existing hotel building and erection of 14 residential apartments, and associated parking and landscaping.

Site Visits

If Members consider that site visits are required on any of the applications they are requested to let Governance Support know by 5.00 p.m. on Wednesday, 24 April 2024. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

Public Speaking

If you wish to speak on any applications shown on this agenda, please contact Governance Support on 207087 or email governance.support@torbay.gov.uk before 11 am on the day of the meeting.

We are using hybrid meeting arrangements to give registered speakers the opportunity to either attend the meeting in person to give their views or to attend the meeting remotely via Zoom. If you would like to attend the meeting remotely to speak you will be provided with a Zoom link to join the meeting. We also ask that you provide a copy of your speech to governance.support@torbay.gov.uk, before 11 am on the day of the meeting, so that the Clerk will be able to continue to read out your speech if you lose connection or cannot be heard in the physical meeting. Remote attendees who lose connection may still be able to follow the meeting via the live stream on the Council's YouTube channel.

Councillors who are not members of the Planning Committee will also be able to join the meeting via Zoom and must use their raise hand function to declare any interests.

Live Streaming

To encourage more people to engage in our public meetings the Council is trialling streaming our Planning Committee meetings on our YouTube channel in addition to recording the meetings and publishing the recording on our website. To watch the meeting live please visit <https://www.youtube.com/user/torbaycouncil>.

We are also using hybrid meeting arrangements to enable registered speakers to either attend the meeting in person or to attend the meeting remotely via Zoom. **Anyone attending the meeting remotely must register their intention to do so by 11 am on the day of the meeting and provide a copy of their speech to governance.support@torbay.gov.uk by this deadline.** If anyone attending the meeting remotely loses connection the meeting will continue and their speech will be read out by the Clerk and they will have the option to follow the meeting via the YouTube live stream.

Minutes of the Planning Committee

2 April 2024

-: Present :-

Councillor Maddison (Chairwoman)

Councillors Billings (Vice-Chair), Fox, Tolchard, Virdee, Brook and Strang

(Also in attendance: Councillors Law, David Thomas, Barbara Lewis, Chris Lewis and Stevens)

47. Apologies for absence

Apologies for absence were received from Councillors Mandy Darling and Pentney.

48. Minutes

The minutes of the meeting of the Committee held on 4 March 2024 were confirmed as a correct record and signed by the Chairwoman.

49. Mouse Cottage, Brim Hill, Torquay (P/2023/0750)

The Committee considered an application for demolition of existing dwelling, construction of replacement dwelling, alterations to parking areas, landscaping works to include decking, terraces and swimming pool and associated works.

Prior to the meeting, Members of the Planning Committee undertook a site visit and written representations were available on the Council's website. At the meeting Mr Nigel Goodman from Maidencombe Residents' Association addressed the Committee against the application. Mr Mike Cowdery addressed the Committee on behalf of the Torquay Neighbourhood Forum against the application. Mr James Wells addressed the Committee in support of the application.

Resolved (unanimously):

Approved subject to:

1. the conditions as outlined in the submitted report with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency; and
2. the resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of

Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

50. Riviera International Conference Centre, Chestnut Avenue, Torquay (P/2023/1044)

The Committee considered an application for change from disused tennis courts to four padel courts with additional parking and lighting.

Prior to the meeting, Members of the Planning Committee undertook a site visit and written representations were available on the Council's website. At the meeting Mr Paul Daniels addressed the Committee against the application. Mr Rodney Horder addressed the Committee on behalf of the Torquay Neighbourhood Forum in support of the application. Mr Miles Bromilow addressed the Committee in support of the application.

In accordance with Standing Order B4.1 Councillor Law addressed the Committee against the application.

At the meeting the Planning Officer advised, that since the report had been published a late response to the public consultation had been received on 26 March 2024 objecting to the application on the basis that the proposed parking would use valuable amenity space and that there was plenty of public car parking across the road and on site, that the layout did not maximise the use of space and there was an opportunity for more inclusive sport and play such as a multi-use games area. The Planning Officer informed Members that a multi-use games area was not part of the planning application.

Resolved (unanimously):

Approved subject to:

1. The planning conditions outlined in the submitted report, with the following amendments:

Revised Condition 6: Prior to the first use of the car parking hereby permitted a scheme of soft landscaping and timetable for implementation, for the grass area immediately to the west of the application site within the RICC grounds, shall be submitted to and agreed by the Local Planning Authority. The scheme shall include appropriate species for the setting to provide a visual screen for views from Torre Abbey towards the proposed car parking area. The approved scheme shall be implemented in the first planting season after the car parking hereby permitted is brought into use.

Any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species.

Reason for Variation: In the interests of visual amenity and enhancement of heritage assets in accordance with Policies HE1, DE1, SS10 and C5 of the Adopted Torbay Local Plan 2012-2030 and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030.

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

51. St Kilda, 15 Drew Street, Brixham (P/2023/1026)

The Committee considered an application for variation of conditions relating to application number P/2021/0531 (partial demolition of existing care home and development of 23 'later living' flats with associated parking; change of use of retained villa to single dwelling (24 units total), and minor works to retained villa. Vary Condition 08: Wording for Schedule of Internal Repair, Condition P1 - Approved Plans: Alter roof material to natural slate and addition of Solar PV. (Revised plans received 05.03.2024).

Prior to the meeting, Members of the Planning Committee undertook a site visit and written representations were available on the Council's website.

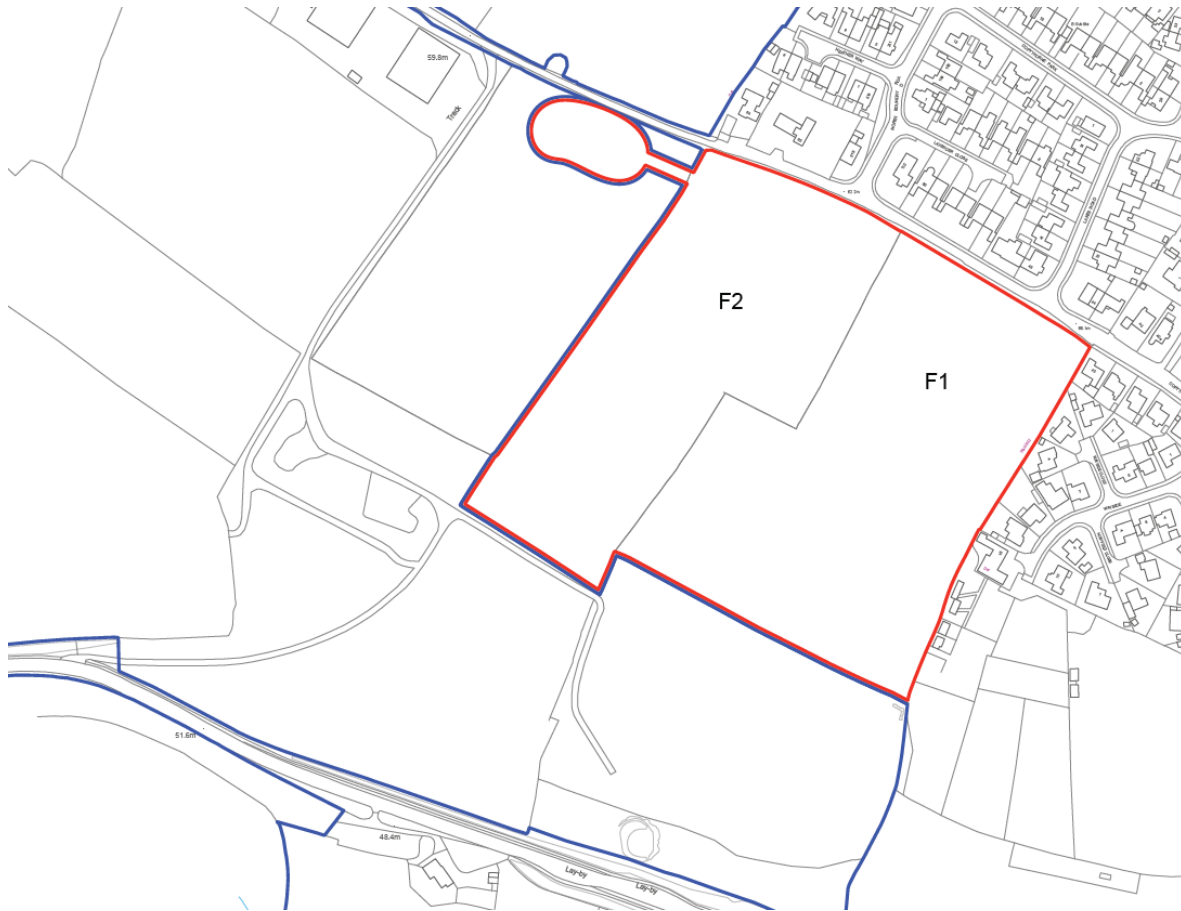
Resolved (unanimously):

Approved subject to:

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

Chairwoman

Application Site Address	Land to the Southwest of Copythorne Road, Brixham.
Proposal	Outline planning application for the erection of up to 77 dwellings, including affordable housing (35%), areas of open space (including public park), landscaping, biodiversity net gain and site infrastructure, with all matters reserved apart from access. This application is accompanied by an Environmental Statement. This application is a departure from the Development Plan.
Application Number	P/2023/0480
Applicant	Peloton Land Limited
Agent	AR Land & Planning Limited
Date Application Valid	02.06.2023
Decision Due date	22.09.2023
Extension of Time Date	18.12.2023
Recommendation	Refusal: Reasons being; <ul style="list-style-type: none"> 1. Overriding conflict with the Development Plan. 2. Impact on the South Devon National Landscape. 3. Lack of S106 legal agreement to secure obligations as identified.
Reason for Referral to Planning Committee	Major Development.
Planning Case Officer	Scott Jones



Site Details

The application site measures approximately 6.35 hectares of agricultural land located to the south of Copythorne Road, at the northwestern edge of the built-up area of Brixham.

The site comprises of two fields which are separated by an existing hedgerow which runs from the northern hedge boundary with Copythorne Road to southern hedge boundary, and a small part of the third field to the west adjacent to Copythorne Road. The topography of the site gradually falls from a high point in the southeastern corner to the northwestern corner of the site, where it drops approximately 11m from corner to corner.

The site sits adjacent to residential development to the east (Wayside and Wayside Close) and to the north across Copythorne Road, where the form of the adjacent development is low-rise mid-20th century suburban development. The overriding form and character is one of detached dwellings, mostly single-storey with some two-storey properties. To the south of the site are fields which drop down towards the A3022 (New Road), the main road into and out of Brixham, before the land rises again to higher hilltops further south. To the west is further agricultural land with fields present until Churston Ferris, approximately 650m away, which presents pockets of residential buildings around Churston Road and Bascombe Road. In terms of distance to central Brixham the central harbour area is approximately 1500m to the northeast.

In terms of context the site sits within the South Devon National Landscape (formerly called the South Devon Area of Outstanding Natural Beauty) and is within the Sustenance Zone and Landscape Connectivity Zone associated with the South Hams Special Area of Conservation (designation related to the Greater Horseshow Bat colony at Berry Head). In terms of the local Development Plan the site is within the Open Countryside and is within the Torbay-wide Critical Drainage Area. The small element of the site within the westernmost field (Field 3) also lies within the Undeveloped Coast as designated within the Torbay Local Plan. There are no further site-specific designations however the site is identified within the Brixham Peninsula Neighbourhood Plan as a rejected housing site for information.

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 NPPF (2023), and comments made prior to the renaming of AONBs as National Landscapes that occurred during the period of this application.

Description of Development

The application seeks outline planning permission for up to 77 dwellings including affordable housing (35%) and areas of open space (including a public park), with all matters reserved apart from access. Matters of layout, scale, appearance and landscaping are therefore reserved for future consideration with only indicative detail on these matters submitted as part of the current outline application.

The proposed access is for a single vehicular junction onto Copythorne Road opposite the existing junction of Lakes Road with Copythorne Road. The proposed junction's carriageway width is 5.5m wide with 2m wide footways to either side. Associated highway works proposed include the provision of an east-west footpath along the southern side of Copythorne Road running adjacent to the site's frontage, which will connect to the existing footway to the east and terminate towards the end of the site to the west. Highway works will include two dropped kerb crossing points across Copythorne Road and within the site the detail includes a dropped crossing across the proposed junction into the site.

In accordance with the description of development 65% of dwellings would be open market housing and 35% of dwellings would be affordable housing. This is consequently a fixed matter that would, for 77 dwellings, present 50 open market dwellings and 27 affordable dwellings.

In terms of the broader outline proposals the submitted indicative masterplan presents a potential layout that seeks to demonstrate the amount of development could be achieved, and further detail is outlined within a Design and Access Statement. Outline detail presented includes the following key parameters:

- The focus of housing is for it to be contained within the northern part of the site, shown to be offered through a mix of detached, semi-detached and short terraces.

- The illustrative detail offers a variety of residential house types and sizes, providing dwellings from 1-bedroom apartments through to 5-bedroom detached houses.
- The scale of the development is suggested as a mix of one and two storeys, with one storey expected on the higher ground.
- The layout of the development is to be presented off a main spine road with shorter spur roads and private drives.
- Parking is to be largely on-plot with driveways and garages the predominant provision, and with electric charging facilities throughout.
- The architectural language is suggested as possibly presenting a simple and contemporary aesthetic that responds to the built form and landscape setting.
- Surface water drainage is to be managed on site through SUDS, including swales and an infiltration basin within the third field.
- Trees and hedgerows are maintained where possible and ecological mitigation is proposed for both bats and cirl buntings, together with a wider net gain for biodiversity.
- The southern part of the site is considered a non-developable area and is proposed to provide both ecological mitigation (1.88 hectares) and public open space (1.34 hectares), including a Locally Equipped Area of Play (LEAP) and a community orchard.

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 (TLP)
- The Adopted Brixham Peninsula Neighbourhood Plan (BPNP)

Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Published Standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:
- South Devon AONB Management Plan 2109-2024
- Countryside and Wildlife Act (Section 85): A relevant authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

Relevant Planning History

None.

Pre-Application History

The proposal has not been subject to the pre-application enquiry and has not been through a formal independent design panel process.

Summary of Representations

183 submissions objecting together with an addition 200 'standard letters' received citing objections on grounds of AONB impact and highway impact. 1 submission of support received.

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

Key issues as follows:

- Contrary to the Local Plan and Neighbourhood Plan
- Contrary to the NPPF
- Impact on the AONB and public views
- Highway and road safety impacts
- Safety of junction opposite Lakes Road
- Impact on Copythorne Road
- Impact on Bascombe Road
- Impact on 'Windy Corner'
- Impact of more traffic on the smaller roads/lanes in the area
- Impact on health care services
- Impact on education services
- Impact on foul water treatment capacity
- Loss of public views to the countryside
- Ecology impacts
- Impact on Greater Horseshoe Bats
- Should be building on brownfield sites
- Overdevelopment
- More pressure on the water system
- Impacting the AONB impacts tourism
- Not enough affordable housing
- No exceptional circumstances
- No in the public interest

Summary of Consultation Responses

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

Broadsands, Churston and Galmpton Neighbourhood Forum: No comments.

Brixham Town Council: Objection.

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 contrary to Policies SS8, C1, SDB1, SDB3, and DE1 of the Torbay Local Plan and Policies E1 & E2 of the Brixham Peninsula Neighbourhood Plan and the NPPF Paragraphs 176 and 177.

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 irreversible. The proposal is contrary to C1, SS8 of the Torbay Local Plan and Policies E1, E6 & E7 of the Brixham Peninsular Neighbourhood Plan and Paragraph 174 of the NPPF.

The lack of safe pedestrian access to local facilities and services is likely to result in a development that is over-reliant on the private car. The layout does not enable vehicles safe or acceptable access and egress to the site. The proposal is contrary to Policies BH8 and T1 of the Brixham Peninsular Neighbourhood Plan.

The proposed development is within a greater horseshoe bat Sustenance Zone and Landscape Connectivity Zone associated with the South Hams Special Area of Conservation (SAC), and the development will have a significant impact on the South Hams SAC and will be detrimental to the greater horseshoe bat and ciril buntings. This is contrary to Policy E8 of the Brixham Peninsular Neighbourhood Plan.

South Devon AONB Unit: Objection.

Opinion is that the proposal constitutes major development due to its nature, scale and location within the South Devon AONB together with the scheme's significant adverse impact on AONB special qualities. The proposal represents an unacceptable loss of agricultural land to built development in a strategically important location for maintaining the open and rural character of the AONB. The proposal fails the principal policy tests as set out in the development plan and NPPF, in particular that there are no exceptional circumstances that have been demonstrated to be in the public interest and permission must therefore be refused. In this instance public interest means the nation's interest as the decision affects a nationally protected landscape.

Any lack of five-year housing supply does not remove the requirement for Torbay Council as the Local Planning Authority to correctly apply Paragraph 11d(i) together with footnote 7 of the NPPF. As the development proposal is located within the South Devon AONB, Paragraph 177 of the NPPF provides a clear reason for refusing the development. As such, public interest and exceptional circumstances tests must be applied. NPPF Paragraph 176 additionally requires great weight to be given to conserving and enhancing the landscape and scenic beauty of the South Devon AONB. Due to the cumulative impacts of a series of damaging developments since designation in 1960, land use change and management in this part of the South Devon AONB, further loss of landscape and scenic beauty cannot be accepted.

(Officer Note: The NPPF paragraph references above are made in respect to the NPPF(2021), the version current at the time of submission).

Council for the Protection of Rural England: Objection.

In terms of principle as Major Development in the AONB the applicant needs to demonstrate that “exceptional circumstances” justify the proposals and that they are in the public interest, having regard to the considerations set out in NPPF.

It is acknowledged that the proposal will provide 77 homes (27 affordable) and there is a 5-year housing land supply issue. The Socio-Economic Statement suggests that the scheme will generate 238 jobs, but there is no reference as to how a local workforce will be secured. Question whether the submitted evidence is sufficient to justify the proposal in line with the NPPF. In terms of the NPPF guidance (the cost of and scope for developing elsewhere) has sufficient evidence been presented to demonstrate that there are no other suitable or deliverable sites outside the AONB to address the identified housing need in a timely fashion. It is also not satisfactory to pre-empt the emerging plan process, which will deal with the current housing need. In terms of NPPF guidance on detrimental effect on the environment, development of this site would be significantly harmful to the AONB and the landscape setting of Brixham and would conflict with AONB Management Plan policies Plan/P1 Plan-making, Lan/P1 Character and Lan/P5 Skylines & visual intrusion.

In terms of design the NPPF states that local authorities should ensure that they have access to, and make appropriate use of, and that they should give weight to the recommendations of design review panels. If the Council considers this proposal acceptable in principle, the scheme should be reviewed, to ensure high quality in this highly sensitive location.

In terms of sustainability, the Design and Access Statement demonstrates little ambition in this area e.g. the scheme fails to consider solar orientation and opportunities for passive solar gain in the layout of buildings, as well as the need to avoid overheating. The consideration of the building’s end-of-life (recycling of materials) as well as upfront and in use stages should be considered.

The proposal is not demonstrated to be high quality sustainable development, which would enhance this important landscape.

The Council’s Landscape Consultant (WSP):

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 (eg. 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).

Conclusions are that whilst the review has arrived at a small number of decisions that differ from the ARLP Assessment in relation to sensitivity, none of these materially affect the outcome of the Assessment in terms of findings of significance.

The only significant effects occur during the construction phase, but these are temporary in nature, restricted to the construction period only.

WSP agree with the findings of the Assessment by ARLP, that the proposed development would result in no permanent significant adverse landscape and visual effects.

In terms of the South Devon AONB agree with the conclusion that the special qualities have a low to medium sensitivity to change, and that during construction agree with the ARLP Assessment findings that the overall effect would be 'slight adverse', whilst during operation agree with the findings that the overall effect would be 'minimal adverse'. In terms of the immediate host landscape of the site itself the effects would be 'moderate adverse' during both phases.

Summary of design:

The Proposed Development appears to be a well-considered scheme, responding to local context, as well as considering the potential impacts of the design across the wider study area. Key planning policy and environmental constraints have been identified and have clearly informed the design decision-making process. Existing vegetation is retained where possible and screening vegetation to the south and west of the site is of a suitable specification and density to deliver screening of views once established.

Devon County Council Ecologist: No objection.

In terms of general ecology all previous concerns have been adequately addressed through further information.

In terms of potential impact on European Sites the mitigation proposed would ensure no likely significant effect upon the South Hams SAC, as concluded within the Habitat Regulations Assessment Appropriate Assessment, agreed in consultation with Natural England.

Natural England: No objection.

The Appropriate Assessment undertaken by Torbay Council concludes that the proposal will not result in adverse effects on the integrity of the South Hams Special Area of Conservation (SAC). Having considered the revised assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures specified in the Appropriate Assessment are appropriately secured by conditions in any planning permission given.

RSPB: No Objection.

Should this outline application be granted then (as stated in section 4.4, p16 of the Ecological Appraisal (Devon Wildlife Consultancy, March 2024) all new and retained on and off-site habitat mitigation measures need to be secured and managed in perpetuity (eg, via a s106 agreement).

We recommend that no hedge or scrub vegetation is removed between the months of March to mid-September inclusive.

For the on and off-site mitigation habitat proposed, to be judged successful in mitigating adverse impacts on curlew buntings, it is reasonable that the same number of breeding territories are still present on/within 250m of the proposed on and off-site mitigation habitats after development.

Torbay Council Strategic Planning Team: Objection.

The proposal presents a clear conflict with the development plan and therefore there is a policy objection purely in terms of conflict with the Local and Neighbourhood Plan.

Recent national policy developments including the December 2023 National Planning Policy Framework (NPPF), Written Ministerial Statement, and change to the status of AONBs are relevant, notably in terms that;

- The December 2023 NPPF provides additional protection to the Brixham Peninsula Neighbourhood Plan.
- The NPPF rolls forward the former Framework's policy on AONBs with National Landscapes enjoy the "highest status" of protection (Paragraph 182) and indicating that major development in the AONB should be refused other than in exceptional circumstances (and subject to tests of need, alternative ways to meet need and consideration of detrimental impacts (Paragraph 183)).
- The Levelling Up and Regeneration Act LURA has amended Section 85 of the Countryside and Wildlife Act and replaces a "duty of regard" with a stipulation that authorities "must seek to further the purpose of conserving and enhancing the natural beauty" of the AONB.

However, the presumption in favour of sustainable development should be applied to housing applications (but subject to Paragraph 14 protections for the BPNP). Brixham has a pressing need for housing. Torbay's wider housing shortfall means that the weight that must be given to boosting housing supply should not be underestimated.

In terms of housing need in the context of the site it is offered that the most important housing need issue relates to the extent of Brixham's housing need, rather than the Bay-wide figure. Brixham Peninsula has to date met its housing requirement as set out in Policy SDB1 of the Local Plan and the major development at Inglewood will provide an ongoing supply in the peninsula, albeit at the north end of the area, furthest from Brixham town, and functionally more closely related to White Rock.

In terms of context several different AONB sites have been promoted by prospective developers to the Local Plan Housing Site Options Consultation (October 2022). Development further away from the town could be located outside of the AONB but will also have landscape impacts and will be less well located in relation to the town's facilities. Such growth options would ideally take place as part of a plan making process, along with a more detailed assessment of local growth needs. Paragraphs 49-50 of the NPPF set out a high bar for resisting proposals on prematurity grounds, particularly when plans are at an early stage of preparation. Therefore, I do not consider that "prematurity" reasons for refusal would find support in the Framework. However, the requirement in NPPF 183(b) to consider "the cost and scope for

developing outside of the designated area, or meeting the need in some other way” is a relevant issue.

In terms of housing supply there is concern in terms of meeting the needs arising from outside the AONB by developing inside the AONB. The AONB Partnership has expressed a clear preference for major development to be located outside of the AONB and objected to the current proposal.

In terms of guidance there has been involvement by the Courts in issues relating to major development in the AONB, and the application of the presumption in favour of sustainable development and other AONB tests. Although not the only ruling on the matter, Mr Justice Holgate in *Monkhill Limited and S of S MHCLG and Waverley Borough Council* [2019] EWHC 1993 (Admin) set out a “practical summary” to assist practitioners in paragraph 45 of his Judgement.

S106 and Other matters

The site is in CIL Charging Zone 3, so infrastructure needs would be sought through S106 obligations, as set out in the Planning Contributions and Affordable Housing SPD (December 2022). These include site delivery matters, sustainable transport, open space, waste, education, and lifelong learning. I have not considered highways or sustainable transport issues in this note. If approved, traffic calming measures to reduce “rat running” through Bascombe Road would need to be secured.

The proposal will impact on recreational opportunities in the South Hams Special Area of Conservation (SAC), which would trigger the need for S106 contributions to mitigate the impact on calcareous grassland.

Most of the flat farmland in Torbay is in the Churston area. Policy SC4 of the Local Plan and paragraph 181 and expanded footnote 62 of the NPPF seek to push development to the lowest grade of agricultural land. In the light of global events protecting best and most versatile agricultural land is likely to increase in significance. On that basis, it would be useful to understand more about the impact on the loss of agricultural land.

The application, if approved, would see housing development in a location not anticipated by the development plan. The December 2022 version of the Planning contributions and Affordable Housing SPD supports healthcare contributions towards primary care, and secondary care facilities where a particular need has been identified. There is a bay wide shortfall in Primary Care facilities (GP surgeries). I would note that a shortfall in healthcare infrastructure also relates to staff shortages and the need for affordable key worker accommodation, which could be an exceptional circumstance to support a development if it was primarily aimed at meeting local needs affordable or key worker housing for Brixham.

Since a key justification for the proposal, if approved, would be to meet very localised needs, I would suggest that a primary occupancy or key worker requirement should be sought on all dwellings. I appreciate that this is likely to require additional negotiation with the applicant.

Development of the site will result in loss of large areas of Grade 2 and small parts of Grade 3a BMV agricultural land. An agricultural land assessment will be required to mitigate impact. A Habitat Regulations Assessment would be required to assess and mitigate impact in line with the South Hams SAC Guidance. The site has Archaeological potential. A programme of archaeological mitigation will be required.

The Highway Authority (SWISCo/WSP): No objection.

The additional information provided by the Applicant has resolved all queries / concerns previously raised by the Local Highway Authority and are now in a position to recommend approval from a Highways perspective (comments dated 14.11.2023).

Retained comments:

The main vehicular access to the site will be achieved via a simple priority junction with Copythorne Road to the north-east of the site, which will form a crossroads with Lakes Road. The junction will provide direct pedestrian connectivity from the site to Lakes Road. Visibility splays of 2.4m x 46.7m can be achieved to the northwest with splays of 2.4m x 45.3m to the east. These splays are in accordance with Manual for Streets guidance for 85th percentile speeds of 32.6mph and 33.0mph respectively. This is considered acceptable.

The submitted Travel Plan is considered acceptable. Monitoring fee of £1,500 will be required as a contribution for the five-year Travel Plan monitoring period.

Sustainable Transport contribution: For a major proposal likely to result in increased trips, Sustainable Transport contributions sought in accordance with the Planning Contributions SPD. For the development proposals of 50 Open Market Housing this would equate to £61,598.

Drainage Engineer: No objection.

Following the receipt of additional drainage information no objection to planning permission being granted subject to a condition requiring the developer to submit their final drainage design for approval, aligning with the design expectation of demonstrating that there is no risk of flooding to properties on the site or adjacent for the critical 1 in 100-year storm event plus 50% for climate change and 10% for urban creep.

South West Water: No objection.

Comment that no development will be permitted within 3.5 metres of the water main, and ground cover should not be substantially altered, unless agreed with SWW. No comments on surface water as this is proposed to be discharged via infiltration and not back to a South West Water asset. In terms of foul water connecting to the public network the applicant should contact SWW to discuss arrangements for this.

Environment Agency: No comments returned.

Affordable Housing Officer: No objection.

The applicant is proposing the provision of 35% affordable housing, which complies with Policy H2 and indeed exceeds its requirement. The applicant has proposed 9 social rent dwellings, 9 affordable rent dwellings and 9 shared ownership dwellings.

Hence the tenure split is compliant with Policy H2 and the relevant SPD. I am happy with the house types and layout of the affordable dwellings. I have no objection to the scheme from a H2, H6 policy perspective. The section 106 agreement will need to include the following provisions which the applicant has agreed to.

- 1) Provision for Adapted Housing (Policy H6) at 5% of the total dwellings.
- 2) An Affordable Housing Scheme to be submitted for the agreement of the Council either prior to or as part of the reserved matters application

Tree Officer (SWISCo): No objection.

Following a review of the updated information support the that the length of proposed hedge removal (H3) has been reduced. This is a notable improvement. The loss of T4 & T5 is inevitable with the highway improvement works and footway creation. The proposed mitigation planting is broadly acceptable and should be secured by a planning condition. The additional planting on the roadside frontage is also beneficial. No objections to the proposal in light of the amendments and additional information, subject to conditions being applied to secure tree protection and the soft landscape scheme.

Green Infrastructure Officer: No objection.

Section 4.6 Open Space, Sports and Recreation of the Planning Contributions SPD (2022) identifies the framework for s106 requests. In particular is the cost of open space per dwelling. The proposed development is to provide 77 residential units. It is understood that 35% are affordable housing but should be included within the calculation as there is likely to be increased pressure on existing resources irrespective of housing allocation. All elements are shown in the SPD and further detailed discussion may be required to disaggregate the contributions between the relevant sub – categories of open space and recreation etc. This should be proportionately reduced to take account of any on-site provision in negotiation with the Green Infrastructure Team. All off site contributions are to be in accordance with the stated SPD. Without prejudice SWISCo would be seeking to take on the management of the open space provision for a period of 25 years.

Waste and Recycling Team (SWISCo): No objection.

I note the document providing details of the proposed waste and recycling collection arrangements and that finer details will be provided at a later stage.

The collection point for each property will be at the public highway and residents will be expected to bring waste to this location for collection. I support the proposal for a hardstanding area where there are private roads / drives, to facilitate this. I also note that the roads will be built to adoptable standards, if they are not to be adopted SWISCo would require a formal indemnity against damage to the road, to be in place before collections could begin.

The swept path analysis is inadequate as our Romaquip collection vehicles are wider than the vehicle used for the analysis.

Request waste management contributions for this development.

Education Officer: No objection.

Over the last 4 years we have experienced a fall in the local birth rate and local primary schools are reporting surplus places; this surplus is projected to continue until the rate recovers. As there is little pupil movement into the area at primary level, the LA and schools would welcome any primary growth from new housing. In contrast, both the secondary sector and specialist provision in the area are oversubscribed and forecasts show that they are likely to be for some time. The LAs current forecasts do not include any adjustments or increases for population growth from new housing. This intended development is expected to generate more demand and the LA, therefore, would be wanting to see recompense from the developers to cover costs with increasing existing capacity.

Police Designing out Crime Officer: No objection.

General advice and recommendations offered to the applicant as the security element of the building regulations, namely Approved Document Q (ADQ), sits outside the decision-making process for the planning authority.

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

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

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

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

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

Physical protection: Places that include necessary, well-designed security features

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

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

Parking: It is welcomed that where garages are being proposed they are going to be wide enough for wheelie bins and bicycles to pass. The amount of tandem parking is a concern 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.

Active Travel England: Standing advice note applies.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Visual Impact (including the impact upon the National Landscape), Layout and Design
3. Residential Amenity
4. Highways, Movement and Parking
5. Ecology, Biodiversity and Trees

6. Flood Risk and Drainage
7. Low Carbon Development and Climate Change
8. Other Material Considerations

1. Principle of Development

The land is a greenfield site, adjacent to the built-up area of Brixham, which is presently agricultural land located in the open countryside, as designated within the Torbay Local Plan under Policy C1. It is also within the designated South Devon National Landscape. The land is not allocated for housing or employment within the local Development Plan and is identified as a rejected housing site within the Brixham Peninsula Neighbourhood Plan.

In terms of the Torbay Local Plan Policy C1 principally seeks to resist development that would result in the loss of open countryside or creation of urban sprawl, and guard against the merging of urban areas and settlements where it would be to the detriment of any special rural character and setting. The policy outlines forms of development that may be acceptable within the open countryside and does not cite general housing as a compatible form of development, albeit it does offer support for homes which have a proven agricultural need or self-build housing, where shown to be meeting local needs as a rural exception. The principle of the general housing proposed on this site is hence not supported through Policy C1.

In terms of wider policy guidance on the principle of development within the Torbay Local Plan Policy SS2 and SS8 are relevant. SS2 frames the growth agenda for Torbay in terms of stating that all major development outside of the established built-up area should be within the identified Future Growth Areas and furthers that major development outside of these areas will only be permitted where the site has been identified by the relevant Neighbourhood Plan or a subsequent development plan document. The development is contrary to SS2 as a major housing proposal outside the built-up area, not within a Future Growth Area, on land that is not allocated through the Neighbourhood Plan or other development plan document. In terms of Policy SS8 it states that for development 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. The policy furthers that development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest and 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. The application is supported by reports covering housing needs, economic benefits, ecology and landscape and recreation. However, it has not been demonstrated that there is no alternative means and locations that could deliver 77 units to support the proposal. The proposal is considered contrary to Policy SS8 when drawing broader conclusions as detailed within the report, including a lack of exceptional circumstance and the development not being in the public interest.

In terms of the Brixham Peninsula Neighbourhood Plan Policy E1 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. Para E1.4 follows that priority will be given to protecting and enhancing the countryside from inappropriate development in accordance with Policy C1 of the Torbay Local Plan. As detailed the form of development is considered contrary to Policy C1 and hence the development holds conflict with Policy E1.

Policy E2 of the Neighbourhood Plan also provides central advice for development within the open countryside, which offers policy guidance that outside settlement boundaries, as is the case, certain forms of development may be permitted, provided that the rural and landscape character, wildlife habitats, green corridors and historic features are not adversely affected, and necessary mitigation measures are carried out to minimise any harm to the environment. General market and affordable housing are not one of the 8 forms of development that may be supported in principle through Policy C1 and hence the development is considered contrary to Policy E2 of the Neighbourhood Plan.

Policy BH9 of the Neighbourhood Plan outlines guidance for rural exception sites, which is aimed at helping deliver small scale specialist housing. As a major and predominantly market-led housing scheme with an affordable housing element the development is not considered a rural exception housing scheme, however the policy is relevant in terms of it stating the intent to resist major development within the AONB.

Turning to national guidance contained within the NPPF there is clear guidance regarding valued landscapes (which includes AONBs). Paragraph 180 includes guidance that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Paragraph 182 guides that great weight should be given to conserving and enhancing landscape and scenic beauty in such areas and furthers that the scale and extent of development within all these designated areas should be limited. Paragraph 183 concludes the specific advice on such landscapes and states that when considering applications for development within Areas of Outstanding Natural Beauty (and National Parks and the Broads) permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. The guidance cites that 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.

For the reasons stated the principle of the development is considered contrary to the Development Plan and is deemed contrary to the NPPFs guidance in terms of the sites AONB context, as the Framework principally seeks to steer major development away from such designated areas and seeks development that protects and enhances the scenic beauty of AONBs. As detailed with Paragraph 183 guidance this should also be subject to considerations of any exceptional circumstances and

public interest, and the application of the presumption in favour of sustainable development, which are explored below.

Exceptional Circumstances

As discussed as the site is within the designated South Devon National Landscape the NPPF (Paragraph 183) guides that, when considering applications for development, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. The guidance cites that 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.

The application presents the case that the development of this site is a logical and sustainable extension to the existing settlement and will enable the delivery of acutely needed dwellings (in particular affordable homes) that will add to the housing supply in a positive manner, meeting the tests of the NPPF, where the acute housing need presents an exceptional circumstance, resulting in a high-quality landscape and ecology led scheme, with no significant landscape or visual effects. The central question is hence does the supply of housing, in the context of the current housing land supply and delivery shortfall, present an exceptional circumstance in this particular case.

It is not disputed that Torbay has a pressing housing shortage and urgent need for affordable homes. However, the Council's Strategic Planning Officer has advised that the Brixham Peninsula has to date met its housing requirement as set out in Policy SDB1 of the Local Plan, and noted that the major development at Inglewood, which has been recently commenced, will provide up to 373 dwellings (Planning Reference P/2017/1133 etc.) as an ongoing supply within the Peninsula. In the context of what appears a relatively strong housing supply within the Brixham Peninsula, certainly compared to the wider Torbay context, the Strategic Planning Officer has raised concerns in terms of the case for meeting the needs arising from outside the AONB by developing within the AONB, citing relevant guidance within the Planning Practice Guidance (Paragraph: 041 Reference ID: 8-041-20190721). In terms of the PGG guidance it relates to how development within AONBs should be approached and cites the following:

“The National Planning Policy Framework makes clear that the scale and extent of development in these areas should be limited, in view of the importance of conserving and enhancing their landscapes and scenic beauty. Its policies for protecting these areas may mean that it is not possible to meet objectively assessed needs for development in full through the plan-making process, and they are unlikely to be suitable areas for accommodating unmet needs from adjoining (non-designated) areas...”

In the context that the Brixham Peninsula appears to be meeting the housing needs for the area that are identified within the Local Plan and has an ongoing supply forecast from the build-out of the consented development for 373 dwellings at Inglewood, together with some allocated sites within the built up area, the housing supply context is not considered to present an exceptional circumstance to justify the development in this particular context. As such, without an exceptional circumstance, Paragraph 183 guides that permission should be refused for major development.

Presumption in Favour of Sustainable Development.

Torbay's wider housing shortfall means that the NPPF's presumption in favour of sustainable development must be applied to housing applications.

Applying the Presumption in Favour of Sustainable Development, as outlined within Paragraph 11(d) of the NPPF, means granting permission unless:

(i) the application of policies in the NPPF that protect areas or assets of particular importance (this includes the policies relating to an Area of Outstanding Natural Beauty) provides a clear 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.

In accordance with Footnote 8 and Paragraph 11(d) of the NPPF the policies within the Local Plan which are most important for determining the proposal are out-of-date, however the Neighbourhood Plan policies are not, having been afforded protection until June 2024 through the NPPF(2023). The presumption in favour of sustainable development indicates that planning permission should be granted unless one of two circumstances apply. Limb (i) of Paragraph 11(d) which refers to a situation where the application of policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. As detailed in this instance this is relevant in terms to the AONB context for the site.

The policy guidance in Paragraph 180 of the NPPF seeks to protect and enhance AONBs and Paragraph 182 states that great weight should be given to conserving and enhancing scenic beauty within AONBs. Paragraph 183 further states that permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. As detailed within this report the development will present harm to the of AONB's landscape and scenic beauty, and the application of these policies which protects the AONB, is considered to provide a clear reason for refusing the development proposed and hence the presumption in favour of sustainable development does not apply.

Notwithstanding that the 'tilted balance' is not engaged (although having been considered) the supply of housing should still be considered within the balancing exercise as a public benefit, which will be addressed within this report.

In addition to the above matters regarding Paragraph 11 the NPPF also outlines within Paragraph 12 that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making, and that where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

In regard to Paragraph 12 the overriding policy intent in the Local Plan and the Neighbourhood Plan is to deliver major housing growth within Future Growth Areas and the built-up area, and to protect the integrity of the AONB and the open countryside. The proposal is, as concluded above, counter to these policy ambitions. The Neighbourhood Plan, under the NPPF (2023) is afforded additional protection until June 2024 and Paragraph 14 of the NPPF states that in situations where the presumption applies the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits.

Conclusion on the principle of development:

The development is considered contrary to the Development Plan and national guidance contained within the NPPF and, as major development within the AONB, without exceptional circumstances, the development is considered unacceptable in principle.

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

2. Visual Impact (Including Impact on the National Landscape), Layout and Design

Whilst the proposal only seeks detailed consent for the proposed access, being in outline with all other matters reserved for future consideration, the submitted information does include an indicative proposed site layout and indicative detail on the likely character and appearance of the development proposed in outline. In terms of the consideration of this application it is necessary to determine on the likely visual impact and impact upon the South Devon National Landscape, and to determine whether the submitted detail provides sufficient comfort that the amount of development (up to 77 dwellings) could be appropriately achieved in terms of its layout, design, and character.

Visual Impact (Including Impact on the National Landscape),

Policy SS8 of the Torbay Local Plan states that 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. Policy SDB3 furthers that the Area of Outstanding Natural Beauty 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 C1 states that in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, development will be resisted where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting. Policy E1 of the Brixham Peninsula Neighbourhood Plan offers a similar policy landscape, as does national guidance contained within the NPPF.

The application is accompanied by an Environmental Statement which includes a Landscape Visual Impact Assessment (LVIA). A desk-based study of the LVIA has been undertaken by the Councils Landscape consultant to consider its findings (WSP) and the South Devon AONB Unit have also provided comments.

In terms of the applicant's submission the LVIA concludes that the landscape effects are considered to be not significant. It is suggested that the greatest level of change would be at the very local level, with direct effects on the site and the immediately surrounding area, and furthers that wider effects are limited to areas of higher ground at some distance from the site. The submission concludes that overall, the effects would not result in widespread or substantial degradation of the landscape as a resource and that there would be no loss of integrity of the designated AONB. In terms of impacts on visual receptors it is reported that there would be moderate effects on the quality of views from houses overlooking the site, and that overall, whilst adverse visual effects are predicted, they will not lead to widespread or present a substantial visual impact.

The Councils' landscape consultant for this application (WSP) has undertaken a desk-based peer review of the LVIA. The peer review being aimed at concluding on the soundness of the report, including in relation to potential effects upon the South Devon AONB. WSP as consultant landscape advisers conclude that whilst there are a small number of slightly differing conclusions none of these materially affect the outcome of the LVIA in terms of findings of significance. The advice offers that the only significant effects are deemed to occur during the construction phase, but these are temporary in nature and restricted to the construction period only. In terms of the central questions around the AONB, WSP agree with the conclusion that the special qualities have a low to medium sensitivity to change, and that construction impacts would be 'slight adverse' and operational impacts would be 'minimal adverse'.

In terms of the South Devon AONB units' comments the response offers a significantly different position on the developments impact upon the AONB, stating that the scheme would have a significant adverse impact on the AONBs special qualities. The comments cite an unacceptable loss of agricultural land to built development in what is stated as being a strategically important location for maintaining the open and rural character of the AONB. The suggested position is that the proposal fails the principal policy tests as set out in the development plan and NPPF, and that there are no exceptional circumstances that have been demonstrated to be in the public interest and permission must therefore be refused.

In terms of concluding on the likely impacts it seems clear that the development would fundamentally and permanently alter the character of the site itself, resulting in a loss agricultural land with a rural character and subsequently presenting a somewhat suburban built form and character on the land. The extent of built form would demonstrably impact the site and the existing field pattern and it is clear that open countryside within the AONB would be lost. It is noted that rolling farmland is one of the special qualities of the South Devon AONB as detailed within the South Devon AONB Management Plan. The proposals include the removal of the existing field hedge along the boundary of the site with Copythorne Road to deliver the detailed access and present access to dwellings for the amount of development shown within the indicative layout. The removal of this prominent natural feature to deliver a suburban frontage will present demonstrable harm to the landscape and scenic beauty.

In terms of material considerations there is reference within the application to the sites position immediately adjacent to detracting housing development. The presence of residential development adjacent to the site does influence the setting but not the sites character within the AONB. The site itself remains undeveloped and is deemed to be a visually pleasant field system that is a positive element to the AONB, and one that is publicly evident when kinetically experiencing the area.

Drawing matters together it is concluded that the proposed development is likely to have some adverse impacts on the AONB in terms of an impact upon the special qualities that define its scenic beauty. It would not conserve or enhance the beauty of the AONB and would therefore conflict with Policies SS8, SDB3 and E1 of the Development Plan, and advice contained within the NPPF, notably Paragraphs 180, 182 and 183. Consideration has been given to the adverse effects of the development being seen within the context of the existing housing development, but this factor would not demonstrably diminish the overall impact of the development within the AONB.

Layout and Design

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 and beautiful places” offers key guidance on this. Guidance within Part 12 broadly offers that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, that good design is a key aspect of sustainable development, and it being integral that developments function well and add to the overall quality of an area, are visually attractive, are sympathetic to local character, establish or maintain a strong sense of place, and create safe, inclusive and accessible environments. The NPPF also guides that development that is not well-designed should be refused.

Similar design expectations are engrained within the Development Plan through Polices SS11, DE1 and DE4 of the Torbay Local Plan and BH5 of the Brixham Peninsula Neighbourhood Plan.

The submitted information on the layout and general design characteristics are indicative only and seek to demonstrate that the amount of development can be

provided satisfactorily. This is the key consideration at this stage.

The indicative layout presents a relatively loose density of development with housing on the lower areas of the site with open space on the higher parts, which appears a reasonable concept. Commentary supporting the application details a hierarchy of roads with a primary route feeding secondary routes and private drives, with properties generally fronting the road. The concept of a street hierarchy is supported, as is a 'perimeter' form of development with principal active elevations fronting the public realm. A mix of building types is suggested, and this is supported in terms of delivering detached, semi-detached, and terraced properties. In terms of scale the proposal suggests a mix of single and two storey dwellings, which also appears a suitable response to the context. In terms of appearance the indicative concept seeks to reflect the variety in the townscape and to have simple and contemporary aesthetic that references the local vernacular. Materials suggested include brick, render and tiled roofs. The appearance and materials should seek to respond positively to the rural context and duly reflect the National Landscape context within which it sits. It is uncertain that sufficient reference is currently offered on delivering high-quality contextual buildings. In terms of landscaping the proposal is for a landscape-led approach, which is a supported concept. The extent of public open space is supported, as is the retention of features, such as trees and hedges, where possible. National guidance support street trees and the indicative layout does to a degree offer trees within the public realm and plot frontages. There is a central spine of retained green infrastructure which is welcomed, although there is a question whether the layout makes best use of this green infrastructure as an integrated element of the development.

The proposals, as an outline package, are considered to provide sufficient comfort that the amount of development could be achieved on the site, in terms of delivering a good residential standard in terms of buildings, parking, open space etc.

However, notwithstanding the above it is noted that the proposals have not been subject to or engaged with the design review process, which is supported within national guidance, and it would appear beneficial that any future reserved matters are evolved and informed by such a key design planning tool, certainly when considering the sites context within a National Landscape, in order to aid delivery of an adequately positive development, should outline consent be granted.

To conclude in terms of layout and design it is considered that the proposed detailed access arrangement and indicative layout, sufficiently demonstrates that the proposed development is likely to be achievable within an acceptable layout and design through an appropriate design process. The proposal is therefore on balance considered to be in accordance with Policies SS11, H1 and DE1 of the Torbay Local Plan, Policy BH5 of the Brixham Peninsula Neighbourhood Plan, and the NPPF.

3. Access, Movement and Highway Safety

In terms of national guidance the NPPF (Paragraph 114) guides that when assessing developments it should be ensured that (a) appropriate opportunities to promote sustainable transport modes can be (or have been) taken up, given the type of development and its location; (b) safe and suitable access to the site can be achieved

for all users; (c), the design of streets, parking areas, other transport elements reflects current national guidance, 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. Paragraph 115 furthers that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

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

The Brixham Peninsula Neighbourhood Plan offers some guidance in regard to access to new developments should comply with the relevant adopted standards (Policy BH8), and that all new development should include safe walking and cycling access and seek to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists (Policy T1).

In terms of access the application seeks detailed approval for a new vehicular junction off Copythorne Road, which is to be located opposite the existing Lakes Road junction. The junction presents a 5.5m carriageway into the site with 2m wide footways to both sides. The proposals also include highway works to provide a 2m wide footway along the frontage of the site along Copythorne Road and include proposal for dropped kerbs across Copythorne Road near to Norther Boundary Road and near to Lakes Road, and across the proposed carriageway into the site.

The proposed junction and connected highways works are considered acceptable and are considered to provide a suitable and safe access for the amount of development proposed, having the support of the local highway authority.

In terms of the broader strategic capacity of the road network and potential impacts further information submitted, responding to highway authority questions regarding growth factor and other committed development, has satisfied the local highway authority that the development would not unduly impact the wider network, citing only a negligible impact on strategic junctions and no notable cumulative impacts on the network. The highway authority is also satisfied that the conclusions made would remain sound should Copythorne Road become a location of a potential traffic free cycle route, as detailed within the Torbay Council Local Cycling and Walking Infrastructure Plan (LCWIP), adopted by the Council in April 2021.

In terms of broad movement patterns and opportunities the site sits at the edge of the existing Brixham settlement boundary and any development would directly connect to the adopted highway network serving the existing suburbs and wider town. The development would hence benefit from safe walking and cycling routes utilising the public network to local services, and the wider town centre, which is roughly a 5-minute cycle or 15–20-minute walk. In terms of other non-car modes options, the site would be close to local bus routes with an hourly local service being available immediately adjacent to the site and the Number 12 Brixham-Newton Abbot route

being available a few hundred metres away along New Road (A3022). The site is hence relatively sustainable in terms of travel and movement options.

In terms of the development itself as the application seeks to reserve all matters other than access the internal network of roads and walking and cycling permeability will ultimately be determined through a future reserved matters application should planning permission be granted. This would include, via a planning condition, for all roads and footpaths to be built to an adoptable standard and for maintenance and management regimes to be agreed should the road not be put up for adoption by any future developer. In additional swept path detail would be necessary to understand that waste and emergency vehicles could adequately access the site. These matters are required to ensure that road safety and occupier amenity through the life of the development are not compromised.

Considering the points above and having regard to guidance contained within the NPPF, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (Paragraph 115), the proposal is considered acceptable on highway and movements grounds, and in accordance with the Policies TA1 and TA2 of the Local Plan, and in broad accordance with the Brixham Peninsula Neighbourhood Plan and the NPPF.

4. Drainage and Flood Risk

National guidance contained within the NPPF cites that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere (Paragraph 173). It also guides that Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate (Paragraph 175).

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. Policy ER2 of the Local Plan includes reference that development proposals should seek to minimise the generation of increased run-off, having regard to the drainage hierarchy, whereby surface water will discharge following the hierarchy of i) an adequate infiltration system (for example swales, soakaways, infiltration basins, filter drains, rain gardens), or where that is not reasonably practicable; ii) a main river or water course, or where that is not reasonably practicable; iii) a surface water sewer or highway drain, or in the last resort where none of the above are reasonably practicable; iv) to a combined (foul and surface water) sewer, where discharge is controlled to be at greenfield discharge rates.

The site is within Flood Zone 1, which is the lowest level of flood risk, however it does sit within the Torbay-wide Critical Drainage Area, as designated by the Environment Agency. Guidance relating to the Critical Drainage Area states that all new development should play its part in reducing current rainfall runoff rates, and that surface water runoff from future development must be managed to ensure that an overall reduction in flood risk is achieved.

The application is supported by drainage information that seeks to demonstrate that the amount of development proposed could be managed without increasing the risk of flooding within the site, or to land or buildings adjacent. Ultimately as the application is made in outline the layout and exact extent of buildings and hardstand is not known or fixed at this stage, it is acceptable to seek a demonstration that the likely form of development can be adequately managed. If granted planning permission a planning condition would be necessary to secure that any future reserved matters to include a detailed drainage solution.

The drainage system supporting the application details an infiltration surface water drainage strategy to manage the surface water runoff from the site. The system includes an infiltration basin sited to the northwest corner of the site, which will be supplemented with a series of swales that will form linear features within the public open space. It is proposed that wider soakaway options will be considered at a more detailed stage of design. Detailed information can be found within the Flood Risk Assessment and Drainage Strategy, and an addendum that responded to initial comments from the Council's drainage engineer.

The submitted detail, following the receipt of further information, has successfully shown that the proposed drainage strategy for the submitted indicative layout would adequately manage surface water and present no risk of flooding from the critical 1 in 100-year storm event plus 50% for climate change and 10% for urban creep.

Based on the above there is no objection to outline planning permission being granted for the development on drainage and flood risk grounds. Any grant of permission should however be subject to a condition requiring the developer to submit a final drainage design for approval once the reserved matters sets the detailed design parameters. The proposal is, for the reasons above, considered to be in accordance with Policies ER1, ER2, SS2 and SS7 of the Local Plan, and guidance contained within the NPPF.

5. Ecology and Biodiversity

Policy SS8 of the Local Plan states that all development should have regard to its environmental setting and should positively contribute to the conservation and enhancement of the natural assets and setting of the Bay. Policy NC1 of the Local Plan seeks for development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development. National guidance in the NPPF seeks similar outcomes in terms of minimising impacts on biodiversity through avoidance, mitigation or compensation and guides that where there is significant harm planning permission should be refused (Paragraph 186).

In terms of the ecology the site comprises of three fields within a wider agricultural landscape that spreads south and west. The fields are bound by hedgerows with occasional semi-mature and mature trees present. The use is a mix of pasture and intensive agriculture. In terms of ecological context, the site sits within the Sustenance Zone associated with the Greater Horseshoe Bat Roost at Berry Head that forms part of the South Hams Special Area of Conservation (SAC) and is within the Zone of Influence for recreational pressures upon the associated Calcareous Grasslands at Berry Head.

The application package includes an Environmental Statement and an ecology appraisal, which seek to identify ecological constraints and propose suitable management and mitigation to make the development acceptable on ecology grounds. The chief constraints identified within the submission package are the impact upon the Greater Horseshoe Bats (associated with the South Devon SAC) and associated recreational pressures at Berry Head, and potential impacts upon Cirl Bunting breeding territory and broader foraging and commuting bat species.

The application has been reviewed by Devon County Council ecologist acting on behalf of the Local Authority and consultation comments have been received from Natural England and the RSPB.

In regard to the potential impact upon GHBs associated with the South Hams SAC the County Ecologist has undertaken a Habitat Regulations Assessment / Appropriate Assessment (HRA/AA). The conclusions of the AA are that subject to mitigation the development would not have a likely significant effect on the South Hams SAC or the associated calcareous grassland in terms of mitigating additional recreational pressures. The conclusions of the Council's AA are supported by Natural England.

In terms of impact upon cirl buntings, habitat enhancement is detailed, and the County Ecologist is content to recommend a planning condition for future reserved matters to include repeat surveys together with associated mitigation. The RSPB advises that should outline consent be granted all habitat mitigation should be secured and managed in perpetuity.

In terms of foraging and commuting bats and other protected species and important habitats the County Ecologist is content that adequate management and mitigation can be secured by planning conditions to frame the construction and operational phases of the development.

In-line with advice from Natural England and the Council's ecology advisors the proposal is considered acceptable on ecological and biodiversity grounds for the reasons stated above, in-line with the aspirations of Policies SS8, NC1 and C4 of the Local Plan, The Paignton Neighbourhood Plan, and advice contained within the NPPF.

6. Residential Amenity

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

The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through restricting hours of construction and agreeing processes to limit delivery and construction movement and parking impacts using a planning condition/s if planning permission were granted. Such management would similarly protect the amenity of future occupiers that may move into the development during the construction phase.

In terms of the development itself the residential use aligns with the residential uses nearby and the additional dwellings would not result in undue noise or general disturbance for existing occupiers in the area.

In terms of location although the site sits outside of the settlement boundary for Brixham the fringe location, which is adjacent to established residential areas, will present a largely sustainable location for future occupiers. The development will abut and link to the existing suburban network of adopted roads and public footpaths, offering permeable routes to the wider urban area, and to the associated facilities and services found within Brixham. There is a bus stop opposite the site offering access to a local service and the site is relatively close to New Road, where the bay-wide Number 12 route is available. Local shops are also present within walking distance at Pillar Avenue, a designated Local Centre within the Torbay Local Plan. In terms of location of future occupier amenity alone the site would present a suitable, sustainable, location.

In terms of wider matters as the layout, scale, appearance and landscaping of the proposed development are reserved for future consideration at reserved matters stage considerations of amenity fixed solely on whether the indicative detail presents sufficient comfort that the amount of development could be delivered within an acceptable form without undue impact upon adjacent amenity or the amenity of future occupiers within the development. Hence should planning permission be granted impacts will be scrutinised at reserved matters stage when there is a detailed form of development presented.

In terms of the level of amenity afforded future occupiers of the development itself the indicative proposals are limited to layout plans, with no indicative housing types or internal layouts submitted. Information to scrutinise is therefore limited. In terms of general outlooks and natural levels of light the layout presents a relatively open and well-spaced development that is likely to offer good levels of both. Privacy levels are also likely to be adequate considering the likely relationships and distances between properties. Internal size standards cannot be scrutinised in any great detail, but the footprints appear to present dwellings that would achieve or exceed national space standards. It cannot be scrutinised whether bedroom standards would be met but if outline consent is granted the reserved matters stage would provide the opportunity to scrutinise the internal living environments. Gardens are largely generous within the indicative layout however plots 23 and 24 appear substandard to the local plan policy expectation of no less than 55sqm. Plots 26-29 would present similar concerns unless these plots are apartments with shared gardens. In terms of ancillary elements garages are prevalent through the indicative layout however the sizes do not meet the standard outlined within the Torbay Local Plan. the narrow width of these elements is likely to present conflict of use for parking and diminish their use for such purposes. Although parking standards are met with 2 spaces per

dwelling aside to these elements the expected internal sizes would be to the detriment of occupier amenity for future resident's wishing to park vehicles within them, and as a linked matter would likely present additional visible parking as an influencer to any likely visual character outcomes. In terms of other expected ancillary features cycle parking facilities should be delivered in terms of 2 spaces for dwellings and 1 for any apartments. This level of detail is not indicated on the indicative plans.

In terms of ancillary elements that influence residential quality parking, cycle parking and waste storage are key domestic elements to consider. The indicative plans show 2 parking spaces per dwelling, which is the policy expectation within the Development Plan. These are indicatively shown as being largely delivered on each plot, however there is a central shared rear courtyard for a few properties. Electric parking facilities should be delivered for every dwelling, and this is suggested to be clarified by a planning condition for future reserved matters to include. Cycle parking facilities are not shown and would need to be evolved within a future reserved matters application, to deliver 2 cycle spaces per dwelling. This is suggested to be secured by planning condition, similar to the final parking provision. Considering the likely form of dwellings cycle parking could readily be delivered within ancillary structures on-plot and hence the lack of indicative planning is not considered unacceptable in terms of consideration of this outline application. In terms of waste storage, like cycle parking, there appears to be the opportunity to deliver storage facilities within gardens. Where plots do not have natural collection areas to the frontage it would be expected that future reserved matters detail did include collection day point detail within the layout where needed. Within the indicative layout this may apply to a number of plots. Such detail would seek to ensure suitable 'drag' distances and collection areas that would minimise potential obstruction to footpaths or unsuitable use of landscaped areas.

In terms of existing adjacent occupiers considering the indicative detail presented it is expected that the amenity of occupiers across Copythorne Road would not be unduly impacted due to the likely front-to-front distances across the public highway. The indicative relationships across the eastern border towards properties within Wayside and Wayside Close do not appear unreasonable from an amenity perspective considering the likely scale and subsequent relationships. Fields sit to the south and west and hence there would be no impact from development in these directions. On the information available the indicative layout presents dwellings that are unlikely to cause undue loss of light, outlook, or privacy for adjacent occupiers. As the proposals are currently indicative any grant of consent would not fix the final form of development and the future reserved matters would present the point in time to scrutinise the relationship and likely impacts in detail, when the final layout and form, and hence distances to neighbours, levels etc will be proposed.

It is noted that the proposals have not been subject to or engaged with the design review process, which is supported within national guidance, and it would appear beneficial that any future reserved matters took advantage of such a key design planning tool, certainly when considering the sites context within a National Landscape, in order to aid delivery of an adequately positive development, should outline consent be granted.

In summary the proposal appears to demonstrate the potential to provide a satisfactory form of development in terms of protecting the amenities of adjacent occupiers, but greater scrutiny on this will be undertaken at reserved matters stage. On the information available the development is also considered to evidence scope to deliver the amount of development proposed in a form that could accord with Policies SS11, DE1 and DE3 of the Torbay Local Plan, and guidance contained within the NPPF.

7. Low Carbon Development and Climate Change

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources. Policy ES1 seeks to ensure that carbon emissions associated with existing buildings (heating, cooling, lighting and energy consumption) are limited.

National guidance in the NPPF contains similar goals and is clear that the planning system should support a transition to a low carbon future (Paragraph 157), and that new developments should be planned to reduce greenhouse gas emissions (Paragraph 159), and take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption (Paragraph 162).

The application is supported by an Energy Statement that details how site wide energy saving elements coupled with new building regulations are to ensure the development is a "step change" in terms of energy usage compared to the majority of the housing stock in Torbay. The Statement outlines the following energy saving elements;

- Scheme designed so that the orientation of the homes will benefit from solar gain.
- Charging points for electric cars.
- Provision of cycle storage.
- Encourage connectivity by foot and bicycle.
- Drainage strategy to adopt a SUDS approach.
- Provision of water butts to recycle rainwater for use on the gardens.
- Provision of ultra-fast broadband to allow/encourage home working.
- Travel Plan to provide information on pedestrian, cycle and bus routes/public transport services.
- An aspiration to recycle up to 90% of the building waste from the site whilst keeping the waste levels low in the first place.
- Wastewater Heat Recovery units to showers.
- Decentralised Mechanical Extract running extract fans.
- Double glazed windows with Planitherm 1 glass and Argon filled units.
- Smart time and temperature controls to heating zones.
- Measured thermal junctions.
- Low energy LED lighting to provide 80 lumen per circuit watt.

The Statement also details changes to Building Regulations that the homes will benefit from the new Building Regulation Part L changes, detailed as a significant

step forward towards the Government's zero carbon objectives. Key Changes to Approved Document L are to deliver a 31% reduction in CO2 emissions beyond the 2013 Part L and new dwellings will now be assessed on the following three criteria;

1. CO2 emissions
2. Fabric Energy Efficiency (FEES)
3. Primary Energy

The Statement offers that in practice Part L will mean that instead of gas boilers the primary energy will be from Air Source Heat Pumps, Photovoltaic cells on the roofs and on larger homes an electric battery which will help store the solar energy.

The principle of the sustainability approach proposed is acceptable however details would need to be conditioned and /or submitted at the reserved matters stage to ensure the development is in accordance with Policy SS14 and ES1 of the Torbay Local Plan and advice contained within the NPPF.

8. Other matters

Housing Supply (including affordable housing)

The Government published the most recent Housing Delivery Test in December 23, with Torbay's figure being 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required). This means that Torbay must apply the presumption in favour of sustainable development in Paragraph 11 of the NPPF. In terms of additional relevant information Torbay's most recent housing land supply (April 2023) is that there is 2.17 years supply, which is a significant shortfall.

In terms of the proposal being considered the development will deliver 77 dwellings, 50 of which would be open market units and 27 of which would be affordable units, which would present a significant benefit for the area.

However, notwithstanding the above despite the significant shortfall within Torbay it is apparent that Brixham (Peninsular) has to date met its housing requirement as set out in Policy SDB1 of the Local Plan, and the recently commenced major development of 373 houses at Inglewood (planning permission P/2017/1133) is set to provide an ongoing supply within the peninsula. In this context it is reasonable to balance the above referenced benefit of housing supply to address Torbay's wider housing supply shortfall, with the understanding that the more localised Brixham Peninsula housing needs being met. Consideration therefore should be given to the issues of meeting housing needs arising from outside the National Landscape by developing inside its borders, which is counter to Planning Practice Guidance ("How should development within National Parks, the Broads and Areas of Outstanding Natural Beauty be approached": Paragraph: 041 Reference ID: 8-041-20190721).

In the context of Brixham's local performance in terms of housing delivery the significant benefit of 77 open market and affordable units is deemed, on balance, to be reduced, when having regard to the sensitivity of the national Landscape designation within which the site sits. It is still however a significant benefit, but one of a lesser scale when factoring in localised needs.

In addition although the presumption in favour of sustainable development must be considered, as detailed within this report it does not apply in this case due to policies in the NPPF that protect areas or assets of particular importance providing a clear reason for refusing the development proposed (in accordance with paragraph 11(d) limb i. notwithstanding this the provision of housing still holds substantial weight in terms of a public benefit. In this particular context Policy BH4 of the Brixham Peninsular Neighbourhood Plan still holds full weight (albeit until June 2024), and the provision of housing within his site is clearly contrary to the policy when considered in conjunction with Policy C1 of the Local Plan.

Loss of agricultural land

Policy SC4 and Paragraph 180(b) of the NPPF recognises the natural capital associated with the Best and Most Versatile Agricultural Land (BMV)

It is acknowledged within the application that the land has value as it is currently used for sheep grazing/arable, but suggests it is a small parcel of land in agricultural terms. It does sit however as part of a wider field system and is not small and isolated. Supporting information furthers that sites of higher grade land close to sustainable settlements are preferential for meeting housing needs to lower grade sites being isolated from other development. It is presented that whilst the land is considered to have economic value attributed to agricultural production, the benefits in terms of the appropriate location for development (particularly given the deficit in a 5- or 3-year housing land supply), the social benefits should be balanced against the loss of a small area of agricultural land in terms of justification.

It is suggested that a condition be imposed to ensure appropriate re-use of soil in line with Natural England advice.

Strategic Planning Team has commented that the community orchard is welcomed as it will conserve and make best use of the BMV in the suggested orchard area. However away from this the top and sub soil on Field F1 and F2 should be removed in accordance with site-specific Soil Resource Plan (SRP), and applicable guidance (e.g., Defra Construction Code (2009)) to avoid/reduce impacts.

The constraint in terms of Best and Most Valuable agricultural land is considered to weigh against the development however, it does itself, not present a reason to refuse the application where design and planning conditions could partly mitigate and limit any impact.

Minerals Safeguarding Area

The application site is within a wider Minerals Safeguarding Area (MSA) for limestone, designated as a known location of this specific mineral resources and to ensure these resources are not needlessly sterilised by non-mineral development.

It is presented within the application that MSAs carry no presumption that the resource will be worked and offers that the landowner has no intention of quarrying the site. It is also presented that a commercial extraction may itself present some

conflict with the landscape sensitivity of the National Landscape. This assumption appears reasonable in terms of potential impact upon a nationally valued landscape.

When considering the designation and the sites context within the National Landscape the benefits of housing are likely to outweigh the harm in terms of mineral safeguarding, and is not considered a matter in itself that would outweigh the benefits of housing supply were the development be considered suitable for planning approval more widely.

Sustainability

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

The Economic Role

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

The submitted Economic Benefits Statement suggests that the construction phase would likely deliver 238 direct and indirect jobs based on an industry standard methodology. In addition, once the dwellings are occupied there would be an increase in the level of disposable income from the occupants some which would likely to be spent in the local area and an increase in the demand for local goods and services. Council tax revenue is also a cited benefit as are the S106 obligations, although it should be noted that such obligations are to mitigate the impact of development upon certain services or infrastructure. The Statement also cites the generation of new homes bonus to the Authority.

Aside the above matters contained within the Statement as detailed within this report there is deemed to be harm to the South Devon National Landscape and the landscape beauty of the area is a positive USP for the tourism industry. It is hence reasonable that the development may present some harm to the tourism industry as an economic impact. In addition, the loss of farmland and the potential food/crop production is considered to weigh negatively against the scheme as an economic impact.

On balance the economic element of sustainable development the balance is still considered to be slightly positive.

The Social Role

The principle 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 edge of settlement location presents access the services and facilities within the built-up area of Brixham, which is a positive element for future occupiers.

Public greenspace including play space and an orchard is to be provided, which is considered a social benefit of the scheme to the wider public.

The loss of farmland and potential food/crop production is considered to weigh negatively against the scheme as a social impact.

On balance, the social impacts of the development weigh in favour of the development.

The Environmental role

With respect to the environmental role of sustainable development, the development of the site within the South Devon National Landscape would result in the permanent loss of an area designated for its landscape quality and tranquillity and impact on the overall landscape quality and scenic beauty of National Landscape. Great weight should be given to harmful impact on the National Landscape.

The development would result in biodiversity net gain which is a positive impact. Drainage management is considered to present a neutral impact where the current site is farmland.

It is concluded that the adverse environmental impacts of the development weigh heavily against the development due to the impact upon landscape of national importance.

Sustainability Conclusion

Having regard to the above assessment the proposed development is not considered to represent sustainable development principally due to its significant impact upon a landscape of national importance.

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 Legal Agreement

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 it is recommended that authority to progress and complete the legal agreement is delegated to officers.

Ecology

Recreational impacts financial obligation to mitigate additional pressures upon the South Hams SAC in accordance with Policy SDB1 of the Torbay Local Plan and as identified as a necessary mitigation within the completed HRA/AA.

£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 77 dwellings this would equate to an obligation of £10,395.00.

Affordable Housing

For the proposal, which is a greenfield site and for over 30 dwellings, Policy H2 of the Torbay Local Plan identifies that 30% affordable housing should be provided on site. For a scheme of 77 dwellings this equates to an affordable housing provision of 23 units to provide a policy compliant development. Policy BH1 of the Brixham Peninsula Neighbourhood Plan re-states this ratio.

The proposal is to deliver 35% affordable housing on site, 5% above the policy expectation, which equates to 27 units. The proposal details that the design information regarding affordable housing provision, mix of unit types and sizes, is to be submitted for consideration at the Reserved Matters Stage to address local need.

Should the development be approved the proposed level of affordable housing (35%) should be secured within an accompanying legal agreement to include;

- 1) An affordable housing tenure split set out in accordance with Policy H2.
- 2) Provision for Adapted Housing (Policy H6) at 5% of the total dwellings.
- 3) An Affordable Housing Scheme to be submitted for the agreement of the Council as part of the reserved matters application.
- 4) Occupancy to accord with Policy BH2 of the Brixham Peninsula Neighbourhood Plan.

Sustainable Transport

In accordance with Torbay Local Plan Policy SS7 and the Planning Contributions and Affordable Housing SPD (to open marking housing only) Sustainable Transport obligations should be secured.

For the development proposals of 50 Open Market Housing this would equate to £61,598.

Travel Plan Monitoring fee: £1,500 (contribution for the five-year Travel Plan monitoring period).

Public Open Space, Sport and Recreation

In accordance with the Council's adopted Planning Contributions and Affordable Housing SPD 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 space
- Allotments/sustainable food production

The indicative layout includes a LEAP (locally Equipped Area of Play), general open space, and an orchard facility.

A development of the scale presented should include a LAP (Local Area of Play) for younger children as well as a LEAP and there appears opportunity to address this within a future reserved matters considering the indicative layout.

Were a LEAP, LAP, general open space, and an orchard secured through the grant of planning permission off site mitigation payment for playing pitches, other sports facilities, and allotments should be secured in accordance with the Councils Planning Contributions and Affordable Housing SPD for the open market dwellings. The level of obligation would be dependent on the detail contained within any future reserved matters application, based on property sizes.

Education

Obligations in-line with the adopted SPD should be sought to secure increased school capacity within Brixham, based on the provision of open market housing, the detail of which will come forward at reserved matters stage, with the level of obligations informed by property sizes.

Lifelong Learning Obligations

Obligations in-line with the adopted SPD should be sought to secure library improvements within the area, based on the provision of open market housing, the detail of which will come forward at reserved matters stage.

Waste and Recycling

Obligations in-line with the SPD should be secured to provide waste and recycling facilities for properties that will be served by the Local Authority waste collection provider.

NHS Devon

The site is not allocated in the Development Plan and as such development in this area would be additional to what the NHS is expecting.

Increase the physical capacity of GP surgeries to mitigate additional demand: £52,882.00.

CIL

The application is for residential development in Zone 3 where the Community Infrastructure Levy (CIL) is not liable.

EIA/HRA

EIA: The application is supported by an Environmental Assessment and is hence considered 'EIA' development in regard to the Environmental Impact Assessment Regulations 2017. The applicant's reasoning being that although the proposal is below the thresholds for EIA development the site is within a designated 'sensitive' area being within the South Devon AONB (now National Landscape), informed by a previous screening decision for 98 dwellings by the National Casework Unit. The submitted Environmental statement covers potential impacts on landscape/visual impact and ecology.

HRA: Due to the scale, nature and location the development has been subject to a HRA/AA under the Habitat Regulations to consider likely significant effect on European Sites. Please refer to the ecology section of the officer assessment.

Planning Balance

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

As the application is for major development within the South Devon National Landscape and open countryside, which impacts the National Landscape, the development is in clear conflict with the Development Plan.

In terms of material considerations, the provision of 77 dwellings, including the provision of 27 affordable units is a significant public benefit in favour of the development where national guidance seeks to significantly boost the supply of homes. The weight afforded housing supply is not insignificant where the most recent Housing Delivery Test (December 2023) for Torbay was published as 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required), and Torbay's most recent housing land supply (April 2023) is that there is 2.17 years, which is a significant shortfall.

In terms of other matters that weigh in the developments favour there will be economic benefits through construction phase in terms of created jobs, and post

construction in terms of local household spend within the local economy. The stated biodiversity net gain also weighs positively within the planning balance, as would be the provision of public greenspace including play space and orchard within the scheme.

Weighing negatively within the planning balance, as detailed within the report, the site sits entirely within the South Devon National Landscape and the proposal is for major development that will have adverse impacts on the special qualities that define its scenic beauty.

In terms of other matters that weigh negatively within the planning balance is the loss of agricultural land and, as a material consideration, there is an overriding position of objection within the submitted public representations.

In terms of the central policy considerations the development is for major development within the National Landscape and the NPPF guides that planning permission should be refused other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest (Paragraph 183). Guidance includes that considerations should include; the assessment of the need for the development, including national considerations and impact of approving or refusing it on the local economy; the cost and scope for developing outside the designated area, or meeting the need for it in some other way, and; any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

As set out within this report although there is a pressing housing need within Torbay the Brixham Peninsula area is delivering its required housing need and this is expected to continue within the coming years. In the context housing supply is not considered an exceptional circumstance where the very local supply is in accordance with the Development Plan and where the development would detrimentally affect a nationally valued landscape. In terms of other relevant considerations the economic benefits, largely around job creation through the construction phase, are not uncommon for housing development and are not exceptional. It has also not been demonstrated that the (housing) need could not be met outside of the National Landscape, or in some other way, and there would be severe and permanent harm to the National Landscape.

When considering the planning balance, it must also be noted that the NPPF guides that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues (Paragraph 182).

It is also relevant that The Levelling Up and Regeneration Act has amended Section 85 of the Countryside and Wildlife Act and replaces a “duty of regard” with a stipulation that authorities “must seek to further the purpose of conserving and enhancing the natural beauty” of the AONB. This offers a clearer duty towards conserving and enhancing.

As a final point, as concluded within this report, it is also relevant within the planning balance to consider that on the application of the Presumption in Favour of

Sustainable Development it is considered that the application of the policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusing the development proposed (in accordance with paragraph 11(d) limb i. as such the 'tilted balance' is not engaged in this case.

Conclusions and Reason for Decision

As major development within the South Devon National Landscape and open countryside, which presents harm to the National Landscape, the development is considered to be in overriding conflict with the Development Plan and national planning guidance. As it is concluded that there are no exception circumstances, and it is not deemed in the public interest, the recommendation is one of refusal.

Officer Recommendation

Refusal, for reasons of;

1. Conflict with the Development Plan

The site lies within the South Devon National Landscape, is outside of the settlement boundary of Brixham and in the open countryside, is not within an identified Future Growth Area, and is not allocated for housing within the Torbay Local Plan or Brixham Peninsula Neighbourhood Plan. In the context of the site the development, which is a major housing scheme, is considered to be in significant and overriding conflict with the Development Plan and guidance contained within the NPPF regarding Valued Landscapes. In the absence of exceptional circumstances and a demonstration that the development is in the public interest, and in the absence of other material considerations that indicate that the development plan should not be followed, the development is considered contrary to Policies SS2, SS3, SS8, SDB1, SDB3, C1 and H1 of the Torbay Local Plan, Policies BH4, BH9, E1 and E2 of the Brixham Peninsula Neighbourhood Plan, and guidance contained within the NPPF, notably Paragraphs 11, 12, 14, 180, 182 and 183.

2. Impact on the South Devon National Landscape

The development, by reason of its major scale and expected form as a housing scheme, and its location within the South Devon National Landscape, would have a significant detrimental impact on the landscape character and scenic beauty of this part of the South Devon National Landscape, where the impact is not mitigated by exceptional circumstances and demonstrated it would be in the public interest. The proposal is therefore contrary to Policies SS2, SS3, SS8, SS11, SDB1, SDB3, DE1, C1, C4 and H1 of the Torbay Local Plan, Policies BH4, BH9, E1 and E2 of the Brixham Peninsula Neighbourhood Plan, and guidance contained within the NPPF, notably Paragraphs 11, 12, 14, 180, 182 and 183.

3. Lack of a Signed Legal Agreement

The proposal, in the absence of a signed S106 Legal Agreement, fails to secure the necessary mechanism to deliver site acceptability mitigation regarding ecology, acceptable levels of affordable housing, and sustainable development obligations regarding Public Open Space, Sport and Recreation, Sustainable Transport, Education, Lifelong Learning, Waste and Recycling, and Health contributions, together with the provisions for the maintenance of the public open space, play areas,

public access routes, and transport plan monitoring obligations, contrary to Policies SS7, SS8, SS9, H2 of the Torbay Local Plan 2012-2030 and the adopted Planning Contribution and Affordable Housing SPD.

Informative(s)

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that, where possible, relevant planning concerns have been appropriately resolved. In this instance the Council has concluded that this application is not acceptable for planning approval for the reasons stated.

Relevant Policies

Development Plan Relevant Policies

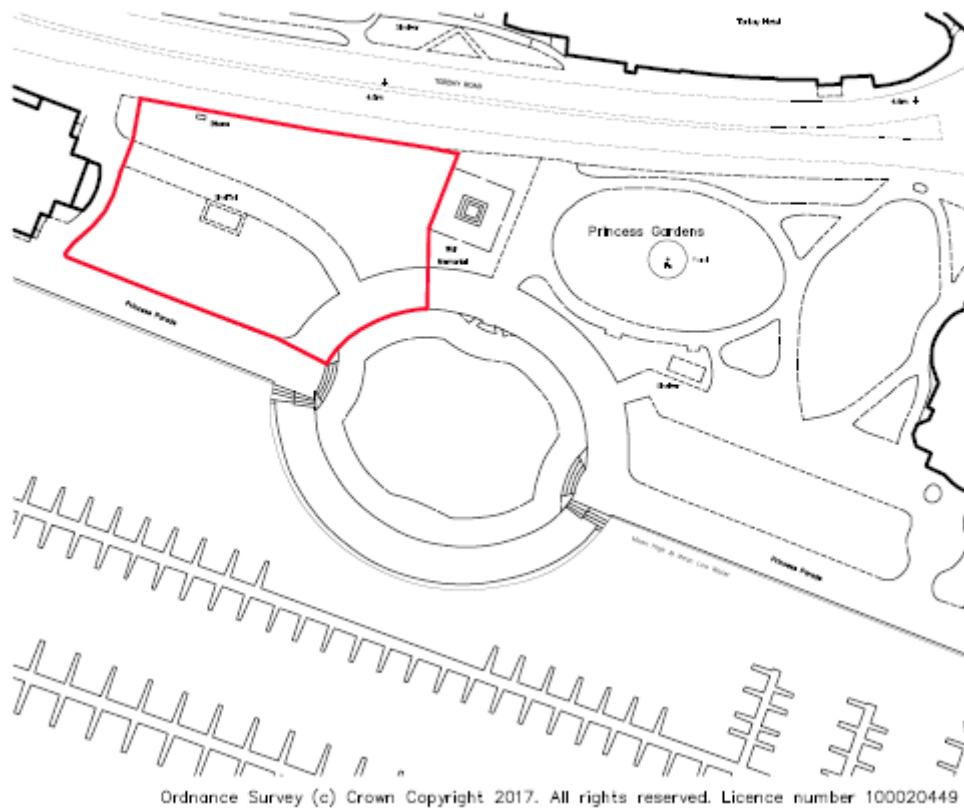
SS1 - Growth Strategy for a prosperous Torbay
SS2 – Future Growth Areas
SS3 - Presumption in favour of sustainable dev
SS8 - Natural Environment
SS9 - Green Infrastructure
SS11 - Sustainable Communities Strategy
SS12 - Housing
SS13 - Five Year Housing Land Supply
SS14 – Low carbon development and adaption to climate change
SC1 – Healthy Bay
SDB1 – Brixham Peninsula
SDB3 - Brixham Urban Fringe and Area of Outstanding Natural Beauty
TA1 - Transport and accessibility
TA2 - Development access
TA3 - Parking requirements
C1 – Countryside and the rural economy
C2 – The coastal landscape
C4 - Trees, hedgerows and natural landscape
H1 - Applications for new homes
HE1 - Listed buildings
DE1 - Design
DE3 - Development Amenity
DE4 – Building heights
ER1 - Flood Risk
ER2 - Water Management
ER3 – Contamination
ES1 – Energy
W1 - Waste management facilities
W2 – Waste Audit for major and significant waste generating development
NC1 - Biodiversity and geodiversity

SDB1 - Brixham strategic policy area
SDB3 - Brixham Urban Fringe and Area of Outstanding Natural Beauty

Bh2 - Occupation of new affordable homes
BH3 - Delivery of New Homes
BH8 - Access to New Dwellings
BH9 – Exception sites
E1 - Landscape beauty and protected areas
E2 - Settlement Boundaries
E7 - Protecting semi-natural and other landscape features
E8 - Internationally and nationally important ecological sites and species

TORBAY COUNCIL

Application Site Address	Land At Princess Gardens Off Torbay Road Torquay TQ2 5EY
Proposal	Change of use of land for the temporary erection and operation of a 45m high observation wheel and ancillary development, for a one-year season (between the period of March to October 2024).
Application Number	P/2024/0138
Applicant	James Mellor Ltd
Agent	GPS Planning and Design Ltd
Date Application Valid	23.02.2024
Decision Due Date	19.04.2024
Extension of Time Date	
Recommendation	Refusal: Reasons of; The development, for reasons of its scale, form and location, would cause harm to the character and appearance of the Princess Gardens and Royal Terrace Gardens Registered Park and Garden and the Torquay Harbour Conservation Area, and cause harm to the setting of the Grade II listed Pavilion, War Memorial and Fountain. The level of harm is not mitigated by the proposed conservation benefits and public benefits and as such the proposals are considered to be contrary to Policies SS10, HE1, DE1 and DE3 of the Torbay Local Plan and Policies TT2 and TH8 of the Torquay Neighbourhood Plan, and guidance contained within Paragraphs 203, 205 and 208 of the NPPF.
Reason for Referral to Planning Committee	Torbay Council Land.
Planning Case Officer	Scott Jones



Site Details

The site is in a sensitive location, it is prominent within the Torquay Harbour Conservation Area, near to a Grade II Listed building (Torquay Pavilion) and set within Princess Gardens which is a Grade II entry on the Register of Historic Parks and Gardens. It is adjacent to the War Memorial and near to the Fountain, which are both also Grade II listed structures.

The Registered Park and Garden is on Historic England's 'Heritage at Risk' register, with an improving trend, as confirmed by Historic England.

The site is also in a Core Tourism Investment Area (CTIA), a Coastal Change Management Area, and a Flood Risk Area, as designated within the Torbay Local Plan. The site and wider area is also a Local Green Space, as designated within the Torquay Neighbourhood Plan.

The land is owned by Torbay Council.

Description of Development

This application seeks the erection of a 45m observation wheel, ticket office, and an ancillary catering unit with seating area, within Princess Gardens, Torquay. The

application seeks the temporary change of use of land for these purposes between March and October 2024.

The observation wheel is to be sited between the War Memorial and Princess Theatre, perpendicular to the adjacent highway.

The ticket office is set at the foot of the wheel at the point of entry for customers and is a flat roofed portable building that is 3.5m by 3.5m and 2.3m high. The catering unit is 6m wide by 2.5m deep and 3.7m high (to the top of an affixed signage panel), to be located just to the seaward side of the wheel with a seating area adjacent. Revised plans have removed a proposed 'back-of-house' compound from the proposed layout.

The submission includes a revised draft legal document outlining the Developers' undertaking to pay the sum of £30,000 for conservation purposes, namely towards a resurfacing scheme for the pathways within the Registered Park and Garden, as identified within the submitted Princess Gardens Masterplan Update Report (LHC).

Pre-Application Enquiry

N/A.

Relevant Planning Policy Context

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

Development Plan

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

Material Considerations

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

Relevant Planning History

Observation Wheels:

P/2012/0690: Temporary consent for Observation Wheel between 13th August and November 2012. Approved.

P/2013/0167: Temporary Consent for period 24th May- 5th November. Approved.

P/2014/0193: Temporary consent for period March-October 2014. Approved.

P/2015/0042: Temporary consent for period March-November 2015. Approved.

P/2016/0384: Temporary consent for a period until 31st October 2016. Approved.

P/2017/0092: Change of use of land for the temporary erection and operation of a 50m observation wheel, carousel and associated ancillary development (5-year period between the period of March to the 31st October). Approved.

P/2021/0708: Variation of Condition relating to application P/2017/0092 (Change of use of land for the temporary erection and operation of a 50m observation wheel, carousel and associated ancillary development (5-year period between the period of March to the 31st October)). Condition: 01 - Temporary Use (Mar-Oct). Extension of usage time ending from October 2020 to October 2021. Approved.

P/2022/0211: Change of use of land for temporary erection/operation of observation wheel, with ancillary development. One-year season (between period of March to October 2022). Approved.

P/2022/1032: Change of use of land for temporary erection/operation of observation wheel, with ancillary development. One-year season (between period of March to October 2023). Approved.

Summary of Representations

4 submissions received from the Torbay Heritage Trust.

Summary of key comments:

- Not truly temporary.
- There is connected parking of vehicles within the gardens that is not considered.
- Trees previously removed and trees lopped to permit access.
- Impact of waste storage being visible.
- The wheel is contrary to Historic England advice on settings and views in terms of the listed pavilion and listed structures within the park and garden.
- Heritage impacts have consistently been downplayed.
- There are no very special circumstances to allow the wheel in this Local Green Space.

Note: Full responses are available to view on the public access system.

Summary of Consultation Responses

Note: Full responses are available to view on the public access system.

Historic England

Historic England's position:

Historic England remains strongly concerned about the harm that the wheel demonstrably generates to the heritage assets, in particular the Registered Park and Garden (RPG), the conservation area, Torquay Pavilion and the war memorial. The wheel is an overtly alien and dominant presence within the RPG that causes harm to the significance of the various heritage assets, through change to character, setting, views and experience.

The catering unit, seating area, fencing, storage container (with associated Astro-Turf overlying the grass) are additional features that cause harm to the RPG through the introduction of clutter, blocking impacts on views within and across the RPG, and harm

to the grass. We consider that these elements of the proposals are even less justified than the wheel and ticket booth.

Historic England's recommendation:

Historic England has concerns regarding the application on heritage grounds. Ideally the wheel would not be permitted. However, if your authority does allow its seasonal occupation of this part of the RPG we recommend that the associated paraphernalia. is not permitted, that the wheel is reoriented, and that all money raised contributes towards works to remove the RPG from the 'at risk' register.

Consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 205, 206 and 208 of the NPPF.

In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess; and section 72(1) of the same Act, to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas; and section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.

Torbay Council Principal Historic Environment Officer

In terms of context the Princess Gardens (and Royal Terrace Gardens) are the subject of a specific action within the Torbay Heritage Strategy (2021-2026) to remove the gardens from the Heritage at Risk Register. In addition, the Princess Gardens Registered Park and Garden (RPG) is currently on the Historic England 'At Risk Register' where its condition is identified as being "generally satisfactory but with significant localised problems" this includes "the seasonal installation of a Ferris wheel".

Through various consents the wheel has been in place (seasonally) for a total of 12 years.

The wheel and its associated structures appear as alien and incongruous features, wholly at odds with the character and appearance of the Registered Park and Garden (RPG) and the Torquay Harbour Conservation Area. As well as causing physical damage to the park and garden, the proposed development would block views of and out of the RPG as well as views within. It would also dominate the space thereby removing the sense of tranquillity of the gardens which would directly impact on the setting of the Grade II listed War Memorial and Fountain as well as the wider setting of the Pavilion, also a Grade II listed building.

The level of overall impact on the various heritage assets is as follows:

- Torquay Harbour Conservation Area: Moderate impact.
- Princess Gardens and Royal Terrace Gardens RPG: High impact.
- War Memorial (Grade II listed): High impact.

- Fountain (Grade II listed): Moderate impact.
- Pavilion (Grade II listed building): Low impact.

Following the above assessment the proposed development is considered to cause harm to the significance of a number of identified designated heritage assets. The level of harm varies from low to high within the 'less than substantial' category to a number of individual assets. However, when considering the number of heritage assets affected by the proposals, coupled with the 12 years impact the proposals have accrued, it is assessed that the proposals would ultimately cause a degree of harm which would be classed as a high level of 'less than substantial'.

In accordance with the requirements of Paragraph 208 of the NPPF, such level of harm should be weighed against the public benefits of the proposals whilst being mindful of the great weight which should be afforded to the conservation of heritage assets. The proposals include an amount of funding formed from the proportion of the rental yield for the siting of the wheel to be put towards to the resurfacing and improvement works to some of the pathways within the RPG. Whilst this can be classed as providing a heritage benefit, the benefit is low. The existing red tarmac pathways would benefit from resurfacing to a more traditional and aesthetically pleasing material; however, this would only act as a minor benefit to the significance of the RPG as a whole. The benefit would also be limited to a small proportion of the existing tarmacked paths within the park (indicated as Paving Improvement 1 within the submitted documentation). The proposed works identified as 'Paving Improvement 2' would provide negligible heritage benefit to the RPG as a whole.

As a result, it is assessed that the proposed heritage benefits which would result from the proposed development would fall considerably short of the level required to mitigate the harm caused.

Conclusion:

It is clear that the proposed development would cause clear harm to a number of identified heritage assets and that the proposals in their current form would neither preserve nor enhance the character or appearance of the identified conservation area. This being the case, the proposals are considered to be contrary to Policies SS10, HE1, TO2 and DE1 of the Torbay Local Plan and Policy TH8 of the Torquay Neighbourhood Plan which requires development to conserve and enhance the conservation area and to respect local character.

In line with the requirements of the NPPF, permission should be refused, unless it can be demonstrated that the harm caused can be outweighed by associated public benefits, whilst being mindful of the great weight which should be given to the conservation of heritage assets and the requirements of Section 66 (1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This would be a matter for the overall planning assessment of the proposals.

Green Infrastructure Manager (SWISCo)

Following the receipt of revised information, where Section 8.2.2 of the revised AMS identifies that no tree works are required in terms of access facilitation and operation,

we are therefore satisfied with the information submitted. In respect of the Palm tree previously identified (T27) we are still of the opinion that it will be retained.

Maintained that if funds are available for the betterment or improvement to provide a net gain to the Registered Park and Garden then consideration can be given to green infrastructure improvements works.

Torbay Council Drainage Engineer

The development lies within Flood Zones 1 and 2 and therefore the developer has submitted a site specific flood risk assessment, which addresses these issues.

The application form identifies that surface water run-off from the new development will be discharged to a soakaway.

Based on the above comments, I can confirm that that as the developer is proposing to discharge his surface water drainage to a soakaway, please use the recently agreed standing advice for this planning application.

Community Safety Officer

No objection to planning permission being granted.

Highway Authority (Swisco):

No objection. Request a pre commencement condition to secure a Traffic and Operational Management Plan.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of the development,
2. Impact on heritage assets,
3. Design and visual impact
4. Impact on adjacent amenity,
5. Impact on trees,
6. Ecology and the marine environment.
7. Flood risk

1. Principle of the development

The site is a designated Local Green Space within the Torquay Neighbourhood Plan under Policy TE2 (TLGST2). The policy guides that development is ruled out, other than in very special circumstances. The policy cites that very special circumstances may include minor improvements to community access, or facilities that support their use for public recreation or amateur sports, or development allowing reasonable small extensions in a style that reflects the setting and the local area which would be consistent with the LGS designation. The proposal is temporary in nature and is a unique tourism facility within an area that is also part of a wider Core Tourism Investment Area. In the context of the greenspace being part of a wider public frontage and key tourism area, and the development being contained within part of the wider park and thus retaining areas of openness for wider public use, and the development

being temporary and tourism related, the development, subject to wider considerations, is considered to accord with the ambitions of the policy and the guidance contained within Policy TE2, and thus is an acceptable form of development within the designated greenspace.

In terms of the Torbay Local Plan Policies SDT2 (Torquay Town Centre and Harbour), TC1 (Town centres), TO1 (Tourism, events and culture) and TO2 (Change of use of tourism accommodation and facilities) provide relevant policy guidance on the principal of a leisure attraction on the edge of Torquay Town Centre and Harbour.

Policy SDT2 seeks to reinforce Torquay Town Centre as the principal retail and leisure area, to become the key sub-regional retail and leisure destination and to provide a vibrant and more enjoyable shopping and leisure environment.

Policy TC1 centres on retail and town centre uses and reinforces the town centre first approach. Two criteria apply and there is a notion of support for development for mixed use edge of centre developments that help achieve more balanced communities by delivering a mix of uses including employment and leisure, which is relevant (Criterion v), and the use of heritage assets, public art and public space, events, exhibitions and festivals to provide a more enjoyable, creative environment (Criterion viii).

Policy TO1 seeks that Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. It furthers that tourist facilities will be improved, and modernised and new tourism facilities provided, in order to attract new visitors. The policy supports in principle the provision of new tourist attractions, subject to other Policies in the Local Plan. The policy supports the retention, improvement and creation of high-quality tourism and leisure attractions in sustainable, accessible, locations with a particular focus on Core Tourism Investment Areas as the areas for investment in tourism.

Policy TO2 seeks that within Core Tourism Investment Areas that the role of premises should be retained and enhanced commensurate with their contribution to the area's tourism offer.

The provision of an a 45m observation wheel, together with a ticket office, small catering unit and an associated outdoor seating area will temporarily remove a small section of the public park and will impact views in and around the areas. However, the public use of the park in terms of formal and informal seating, passage through, and general enjoyment, will be largely retained with the wheel sitting as a tourism facility within the space. When considering the location is a well-located local greenspace, which is in a central and sustainable location and within a Core Tourism Investment Area, the development is broadly considered to be supported in principle when considering the greenspace, town centre and tourism policies cited above.

In conclusion the principle of the temporary provision of an observation wheel and ancillary development is considered to align with the development plan aspirations in terms of supporting and promoting tourism facilities and the management of Local Green Spaces. This conclusion is however one of general principle and is subject to wider considerations which will be considered below, including the heritage impacts,

as the site is within a Registered Park and Garden and within the setting of the Pavilion, a Grade II listed building, and the setting of Grade II listed structures within the area (the Fountain and War Memorial).

2. Impact on the Heritage Assets

This is a sensitive location, it is prominent within the Torquay Harbour Conservation Area, is near to a Grade II Listed building (Pavilion) and set within Princess Gardens which is a Grade II entry on the Register of Historic Parks and Gardens. It is also adjacent to the War Memorial and near to the Fountain, which are both also Grade II listed structures.

In terms of the Torquay Neighbourhood Plan Policy TT2 (Change of Use in Conservation Areas and Listed Buildings) provides some key guidance. The policy guides that within designated Conservation Areas or where Listed Buildings are involved, whether inside or outside of a CTIA, change of use from tourist accommodation and other development proposals requiring consent will be supported in principle (subject to other policies in the Plan) to ensure a sound future for such heritage assets and wherever possible unsympathetic development of the past is removed or altered to enhance the historic environment.

Policies SS10 and HE1 provide key advice within the Torbay Local Plan. Policy SS10 requires development to sustain and enhance assets and adds that all assets will be conserved proportionate to their importance and concludes that proposals that enhance heritage assets or their setting will be supported. Policy HE1 offers central guidance in that development proposals should have special regard to the desirability of preserving any listed building and its setting.

It is also relevant that the Council adopted a Heritage Strategy in November 2020 within which objective RST04 is that Princess Gardens and Royal Terrace Gardens are maintained and protected for the future. The measure of success is cited as being that the Gardens continue to be maintained to a high quality and the Gardens are removed from the Heritage at Risk Register. As noted with the consultation response from Historic England the park and garden continues to be on Historic England's 'Heritage at Risk' register but with an improving trend.

The NPPF also provides guidance on heritage assets and cites that such assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations (Paragraph 195). The guidance furthers within Paragraph 203 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.

The NPPF also provides key advice in terms of considering potential impacts, with Paragraph 205 guiding that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Paragraphs 206, 207 and 208 provide further guidance relative to level of harm, which will be explored in more detail within this section below.

In terms of key considerations, the proposal is considered to present a significant change to the character of the registered park and garden for a temporary period, in this case one extended summer period (detailed as March to October). This is due to consideration that a large, modern, observation wheel is considered an overtly alien and dominant presence within the historic parkland setting. This conclusion is aligned with the views of Historic England and the Council's Principal Historic Environment Officer. There is also concern aligned to this conclusion within the public representations made by the Torbay Heritage Trust.

In addition to the temporary harm to the Registered Park and Garden the wheel would also present some temporary harm to the setting of the nearby Grade II listed Pavilion building and Grade II listed structures within the park (War Memorial and Fountain). The cumulative harm to a number of heritage assets is a relative matter to consider in the balancing exercise.

The application is supported by a heritage assessment and an updated conservation management plan for the registered park and garden. The supporting information seeks to identify the harm and propose mitigation to balance the harm.

In terms of heritage considerations, the key consideration is an assessment and judgment on the short term harm of placing the wheel and associated development, over the medium/long term benefit of any direct 'conservation gain' proposed and what works it could secure. In this application the proposal is to provide £30,000 for identified improvements works to the internal pathway network of the park and garden, towards a scheme to replace the existing red tarmac routes with a more contextual surface finish suitable for the heritage setting. The resurfacing proposals are detailed within the updated conservation plan for the park and garden. This obligation has been increased from £26,000 initially suggested and would part-fund a scheme costing circa £90,000.

The concept of seeking to offset short term harm with longer term conservation gains follows the concepts tabled and accepted within previous applications for the temporary placement of a wheel in the park. Notably a previous 5-year temporary permission for a wheel and carousel secured circa £130,000 that directly funded the recent restoration of the adjacent listed fountain, and more recent 1-year permissions providing funding of £40,000 across two permissions towards the renovation works to the War Memorial (£20,000 per annual permission).

In terms of the level of impact and harm to the various heritage assets the Council's Principal Historic Environment Officer concludes that the harm varies from low to high within the 'less than substantial' category, with the highest level of harm being to the registered park and garden and the setting of the listed war memorial, which sits immediately adjacent to the proposed location of the wheel. There is also some appreciation of the longer term impact of successive consents and with this in mind

the development would ultimately cause a degree of harm which would be classed as a high level of 'less than substantial' harm.

As detailed within the consultation response Historic England retain very strong concerns about the presence of the wheel in what is a prominent position in Torquay, which they consider causes a high degree of less than substantial harm to several heritage assets. They do however recognise the presence of the wheel has generated some heritage benefits in the past but continue to consider that the clear and convincing justification for the harm is very weak. They also offer opinion that the remaining elements identified within the Master Plan for the Registered Park and Garden are becoming relatively minor and thus they are becoming increasingly insufficient to demonstrate heritage gains. Historic England's ultimate position is that the wheel should not be permitted. However, if it is permitted that all of the revenue should contribute to towards works to remove it from the 'at risk' register.

There is also concern within public representations regarding the wheels impact upon heritage assets and also the harm presented from the ancillary elements, associated waste storage, parking, works to and loss of trees etc. Following discussions with the applicant the ancillary development has been reduced with the back-of-house compound removed and the enclosure of the seating area being confirmed as a visually inobtrusive post and cord detail. Taking these concerns and amendments into account any grant of consent should seek to ensure there is no external waste storage through a planning condition (excluding small scale customer bins), to ensure the loss of the compound doesn't expose unsightly storage. In terms of parking there is no parking areas proposed and it appears the vehicular access is restricted through bollards near to the Theatre. Parking is not considered a matter relevant to this application as none is proposed and access to the site for staff etc can be gained through sustainable travel modes to this central site or via public parking nearby. In terms of tree impacts the revised supporting tree detail has confirmed that there is no impact on the nearby street trees, which are a prominent and positive feature at the edge of the park and garden.

As detailed the proposal is expected to ultimately cause a degree of harm which would be classed as a high level of 'less than substantial' harm. This considers the high level of harm to the character and appearance of the Registered Park and Garden and setting of the listed War Memorial, more moderate harm to the listed Fountain and Torquay Harbour Conservation Area, and lower harm to the listed Pavilion.

For development proposals that present less than substantial harm to heritage assets the NPPF guides that the harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (Paragraph 208). This advice is tied to that detailed in Paragraph 205, in 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.

The submission presented that the heritage impact of granting permission for one season (March to October) could be offset through the proposed ring-fenced investment in the Registered Park and Garden of £26,000 to part-fund a resurfacing scheme within the park to remove the red tarmac path network with a surface treatment more appropriate for the heritage context, which had an initial projected cost

of £60,000. The resurfacing scheme being identified within the submitted Conservation Management Plan for the registered park and garden.

Considering of the level of harm to the various heritage assets impacted by the wheel, and considering the comments of consultees and public representations, concerns were raised with the applicant regarding the level of conservation gain / funding, in that it would not adequately mitigate the harm when considering the great weight that should be afforded the conservation of heritage assets. This judgment was informed by the heritage value of resurfacing footways and the extent that the funding would support. There was also a concern raised that the proposed resurfacing scheme excluded key pathway routes from the Banjo to the theatre and the pathway and hard realm area flanking the Pavilion. The applicant has considered these concerns and raised the proposed conservation obligation to £30,000 and has presented a more holistic pathway improvement plan that includes the additional key routes identified. The cost of the scheme is now projected to be circa £90,000. In addition, as detailed the concerns raised regarding the proliferation of the development have been considered by the applicant and the compound area has been removed and the enclosure detail of the seating area has been confirmed as a visually unobtrusive post-and-cord detail.

In terms of drawing matters of heritage impact together, it is not disputed that the form of the development has been moderately improved through revised plans and the level of consideration gain has seen a minor increase of £4,000 to £30,000, which will approximately provide a third of the funding necessary to deliver a pathway resurfacing scheme through the area of the Registered Park and Garden between the Theatre and the Pavilion. Although these are positive revisions it remains clear that the development would still cause clear harm to a number of identified heritage assets and would be considered to be contrary to heritage-based policies within the Development 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 of heritage assets and the requirements of Section 66 (1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In terms of the balancing exercise of heritage harm and heritage benefit despite the removal of the compound and slight rise in the level of the conservation gain obligation there is a retained concern that the level of conservation gain is not sufficient to outweigh the harm to the various heritage assets. Weighing in favour is that the harm is short term, and the benefit will be seen over a number of years in terms of any delivered resurfacing scheme. Weighing against the proposal is that funding a contextual surface treatment will provide a limited heritage gain and the proposal itself will not fund the whole scheme but only around one-third of the necessary funding. It is accepted that an improved surface treatment would enhance the character and appearance of the historic park and garden and would strengthen its historic character and appearance, and thus would itself be aligned with guidance contained within Paragraph 212 of the NPPF, which guides that local planning authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets, to enhance or better reveal their significance, and furthering that proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

However, there is some tension retained as the short term impact of the wheel remains substantial and the heritage value of the longer term gain is questionable when considering the advice from Historic England and the Council's Principal Historic Environment Officer.

Despite changes to the scheme that have reduced some of the 'clutter' of the ancillary development, and the increase proposed in the conservation gain, it is reasonable to conclude that there remains immediate short-term harm and that harm, notwithstanding the conservation obligation, is not mitigated by partial funding of a resurfacing scheme.

Where there is harm in accordance 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. In terms of public benefits, it remains pertinent that wheel has been popular and has no doubt attracted tourists to the seafront area. It does also create a striking feature within the townscape. However, counter to this it can be argued that the wheel may also lessen the visitor experience for some and lessen the public enjoyment of the historic park and garden due to its bold and alien presence in the park. As a positive there is some likely tourism 'spend' benefits within the area and some benefits to Torbay in terms of general visitor experience, and a small degree of economic benefit from seasonal job creation. All matters considered the public benefits are possibly limited but accepted as minorly beneficial.

In the circumstances, balancing the conservation harm and gain, and with assessment of the likely limited level of public benefit, the proposal is considered unacceptable on heritage grounds. This conclusion considers the aims and ambitions of Policies SS10 and HE1 of the Torbay Local Plan and Policy TT2 of the Torquay Neighbourhood Plan, and advice contained within the NPPF regarding heritage assets and less than substantial harm. It is also made having considered the duty to have special regard to (1) the desirability of preserving any listed building or its setting or any features of special architectural or historic interest which it possesses and (2) the desirability of preserving or enhancing the character or appearance of any conservation area, as detailed within the Planning (Listed Buildings and Conservation Areas) Act 1990.

3. Design and visual impact

Regarding the general impact of the development upon the wider townscape Policy DE1 (Design) provides pertinent advice, stating that development should be well-designed, respecting and enhancing Torbay's special qualities, with design considerations on (i) function, (ii) visual appeal and (iii) quality of public space.

The NPPF within Section 12 "Achieving well-designed and beautiful places" broadly seeks the creation of high quality, beautiful and sustainable buildings and places (Paragraph 131), and seeks that decisions should ensure that developments function well and add to an area, are visually attractive, and are sympathetic to local character (whilst not preventing or discouraging change), as outlined within broader guidance contained within Paragraph 135.

In terms of function the development is temporary in nature and the impact of placing

the wheel and associated ancillary development within Princess Gardens will not alter the adaptability of the space in terms of future change and need. The development is also aligned with functionality in terms of providing diversity to the park's longstanding tourism and recreation use. The development will also integrate within the constraints of the green infrastructure and principal routes through the park, with the main thoroughfares unaffected.

In terms of visual appeal, the observation wheel is a very prominent and distinguished structure that would be very striking within the townscape. The character and permeability of the wheel will however largely protect long-distance public views and, through its use, the wheel will also introduce new view-points for residents of and visitors to Torbay. Overall, in terms of visual appeal the wheel will have an impact upon the townscape due to its scale and prominence, however the impact is considered limited as the structure is temporary in character, lightweight in terms of how it retains views through it. As previously concluded though there is however visual impact concerns when considering the heritage context.

In terms of the quality of the public space the location of the development seeks to respond to and address the key public routes through the park and limit the impact upon these routes. As a unique attraction that is only in a handful of locations nationally the development has the potential to enlighten the experience of the park and wider promenade as a recreational destination. However as previously detailed the wheel also has the potential to detrimentally impact the public experience of the park in terms of enjoyment of the space as a historic park and garden, as it's a very large and imposing structure that is an alien presence.

Considering the character, form and location the development is considered generally suitable for the context and in accordance with the aims and objectives of Policy DE1 of the Local Plan 2012-2030 and guidance contained within the NPPF. This consideration does not consider the heritage impact of the development.

4. Amenity

Policy DE3 (Development amenity) of the Torbay Local Plan seeks to secure development that does not unduly impact upon the amenity of neighbouring and surrounding uses, with impact being assessed to include noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution.

The scale and location are consistent with a previous consents. Its form and location would have little impact upon the commercial operations around the gardens and immediate area, due to its form and location. The development may have a more demonstrable beneficial impact on neighbouring commercial operations where they may benefit from the additional footfall and tourism interest that the wheel and carousel is likely to generate.

In terms of residential impact, the nearest adjacent properties on Warren Road sit on higher ground to the north of the wheel, approximately 100 metres from the proposed location. It has previously been determined that the impact on privacy and noise nuisance to residential properties 100 meters away are not sustainable reasons to resist the wheel, subject to conditions to restrict the hours of operation and lighting.

This opinion is maintained. It is noted that the wheel is slightly smaller in scale than the previously consented 45m wheel in this location, which limits the impact on properties on higher ground. Previous consents have permitted a wheel of 50m in scale, which is a relevant material consideration.

The wheel will be lit in a similar way to the previous operations/consents. The lighting has been previously considered acceptable and if similarly lit the wheel would not unduly impact neighbours.

In terms of amenity the wheel would be acceptable and compliant with Policy DE3 of the Torbay Local Plan.

5. Arboricultural impact

There is a linear row of mature London Plane trees to the north of the proposed location, which are set along the adjacent footpath and frame the highway. These provide significant visual benefits to the character of the area and the setting of the Registered Park and Garden.

The location of the wheel appears to respond to the crown and rooting protection area of these trees and would appear to present a sustainable relationship. This location was previously considered acceptable on arboricultural grounds under the previous planning permissions for the wheel.

Following the receipt of revised supporting information that confirms that there will be no direct spatial conflict between the wheel and the adjacent trees, i.e. require no lopping etc, the proposal is considered acceptable and is now supported by the Council's Tree Officer.

The proposal is considered acceptable on arboricultural merit and aligned with policies DE1 and C4 of the Torbay Local Plan.

6. Ecology and Marine Environment

Policy TE7 - Marine Management Planning of the Torquay Neighbourhood Plan states that development proposals on land adjacent to the coastline will be supported where they do not have an adverse effect on a marine policy or management plan.

The proposal is not considered to present any ecological or marine impacts due to its location within an urban location and managed (closely mown) habitat.

Although close to the coast the development is temporary in nature and sits above ground without disturbing the land. The operation is unlikely to impact the adjacent marine environment for these reasons. The development is not in conflict with ecology-based policies of the development plan or guidance within the NPPF.

7. Flood Risk

The development is temporary in nature and involves limited areas where development/structures sit on top of the established land without presenting

permanent change. These are the foot pads for the wheel, the small catering and kiosk units, and the Astro turf covering.

The application form identifies that surface water run-off from the new development will be discharged to a soakaway.

The development is not considered likely to increase flood risk. There is no objection to the proposal from the Councils Drainage Officer.

Subject to a planning condition to secure the proposed surface water management, the development is considered to accord with Policies ER1 and ER2 of the Torbay Local Plan and is considered acceptable on flood risk grounds.

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

Tourism is an important economic sector and there would be economic benefits of from the wheel in supporting this sector and enhancing the facilities available during tourism trips and possible temporary employment opportunities. There are no adverse economic impacts that would arise from this development. In respect of the economic element of sustainable development the balance is in favour of the development.

The Social Role

The principle social benefit of the proposed development is that it would help deliver job opportunities in the local area. The development will support this aspiration. The short terms benefits weigh in favour of the development.

The Environmental role

The environmental benefits are considered negative due to the heritage impacts of the proposals, which is not adequately mitigated by the 'conservation gain' proposed.

Sustainability Conclusion

Having regard to the above assessment the proposed development is not considered to represent sustainable development when considering the negative environmental outcomes.

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

The development as a tourist attraction and is likely to increase footfall in the gardens to the benefit of local businesses.

There is proposed conservation payment of £30,000 to aid fund a resurfacing plan for the park and garden between the theatre and the Pavilion, to provide a more contextual heritage-informed surface treatment for the paths.

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

Planning Balance

The planning assessment considers the policy and material considerations in detail. There are no wider material considerations beyond the development plan.

Conclusions and Reasons for Decision

The development presents harm to a number of heritage assets, which is considered to be classed as a high level of 'less than substantial' harm.

To offset the harm the proposal presents a financial obligation of £30,000 to be spent specifically on a heritage-based resurfacing scheme as identified within the supporting updated conservation plan. This will deliver around one-third of the funding necessary to resurface the internal pathways between theatre and the pavilion (excluding the Banjo and promenade).

The resurfacing of pathways is deemed to present a relatively minor heritage benefit and the current proposal is not considered sufficient to offset the harm presented by permitting the continued presence of the wheel and its associated development within the Registered Park and Garden.

Considering the identified harm consideration must be given to the public benefits of the development which, as detailed within this report, are considered to be relatively minor and do not outweigh the identified harm to the number of heritage assets impacted by the development.

Having regard to the Development Plan as a whole (and regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, to determine planning applications in accordance with the development plan unless material considerations indicate otherwise), and guidance contained within the NPPF regarding considerations towards heritage assets and development, the development is recommended for refusal, as the public benefit does not outweigh the harm to heritage assets and material considerations do not indicate that the development should be approved where it is contrary to the Development Plan and NPPF.

The conclusions have regard to the duty to have special regard to the desirability of preserving the setting of listed buildings and to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas outlined within the Planning (Listed Buildings and Conservation Areas) Act 1990.

Officer Recommendation

Refusal: Reasons of;

The development, for reasons of its scale, form and location, would cause harm to the character and appearance of the Princess Gardens and Royal Terrace Gardens Registered Park and Garden and the Torquay Harbour Conservation Area, and cause harm to the setting of the Grade II listed Pavilion, War Memorial and Fountain. The level of harm is not mitigated by the proposed conservation benefits and public benefits and as such the proposals are considered to be contrary to Policies SS10, HE1, DE1 and DE3 of the Torbay Local Plan and Policies TT2 and TH8 of the Torquay Neighbourhood Plan, and guidance contained within Paragraphs 203, 205 and 208 of the NPPF.

Informative(s)

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 sought to work positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. In this instance the Council has concluded that this application is not acceptable for planning approval.

Relevant Policies

Development Plan Relevant Policies

DE1 - Design
DE3 - Development Amenity
TC1 - Town Centres
TC5 - Evening and night time economy
TO1 - Tourism, events and culture

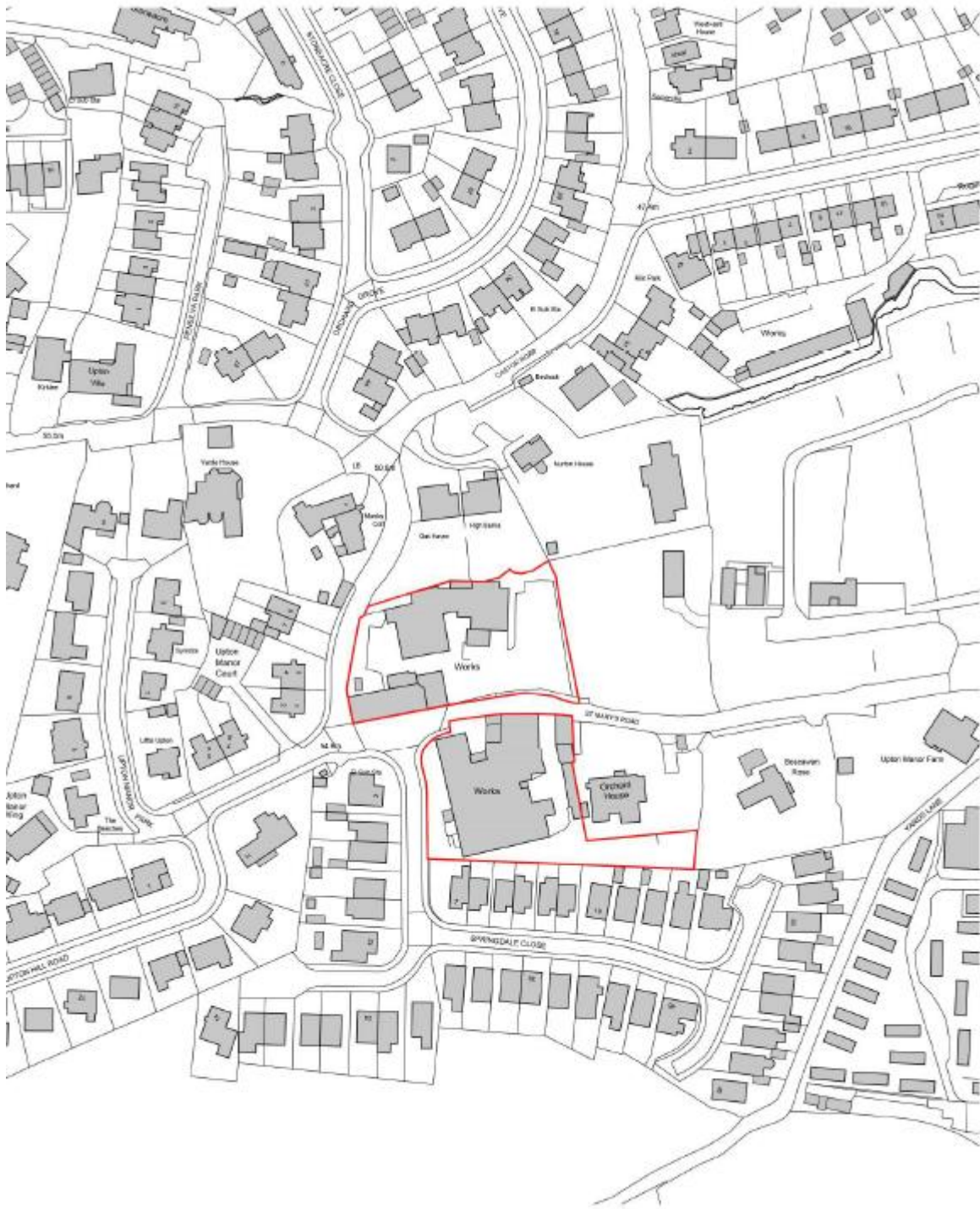
TA2 - Development access
HE1 - Listed Buildings
ER1 - Flood Risk
SS4 - The economy and employment
SS10 - Conservation and Historic Environment
SDT2 - Torquay town centre and harbour
C4 - Trees, hedgerows and natural landscape
NC1 - Biodiversity and Geodiversity_

TT2 - Change of Use in Conservation Areas and Listed Buildings
TE2 – Local Green Spaces
TS4 - Support for Brownfield and Greenfield development
TH8 - Established architecture
TE5 - Protected species habitats and biodiversity

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	11/12/2023
Recommendation	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.
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

Location Plan:



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 Area of Outstanding Natural Beauty, while the buildings ("Old Dairy") to the south abut the South Devon Area of Outstanding Natural Beauty. 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 term Area of Outstanding Natural Beauty is still used in guidance, and this report will continue to use that term here, with the caveat that it is formally now the South Devon National Landscape.

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 Sustainment 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 as an Area of Outstanding Natural Beauty/National Landscape.

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;
- 2no. x 2-bed dwellinghouses (terraced);
- 7no. x 3-bed dwellinghouses (terraced, semi-detached); and
- 3no. x 4-bed dwellinghouses (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. unallocated parking spaces are proposed.

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 28no. parking spaces are proposed, 8no. of which are included within integral garages, but the remainder are unallocated.

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, red brick, vertical timber cladding, standing seam metal cladding, and 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. At the time of writing approximately 39 letters of objection, 2 letters of representation and 1 letter of support have been received. 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
- 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

Brixham Town Council:

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 needs¹. 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.²

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 building³. 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 – Galampton 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 Galampton 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:

No response received.

Torbay Council's Principal Policy and Project Planner:

Response dated 02/08/2023

I refer to application 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. The northern buildings (industrial buildings) are located within the South Devon AONB; the buildings to the south (Old Dairy) abuts the AONB. The site is close to the South Hams SAC.

The site is allocated for 25 dwellings in the Brixham Peninsula Neighbourhood Plan (H3-I2). It was formerly allocated in the Torbay Local Plan 1995-2011. The BPNP housing site assessment does not in my view have the force of Section 38(6) but is still a material consideration as it sets the background to the housing allocation. This 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 conversions of existing buildings or demolition and new build to provide a more efficient use of land*". The Torbay Local Plan Site Options Consultation (October 2022) suggested a reduced number based on retaining the existing buildings (H2B06), but I would emphasise that this plan is at an early stage and only minimal weight.

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

Despite the proposal being proposed for development (of 25 homes) in the development plan, it does raise a number of strategic issues.

The main issue is likely to be the impact on the Berry Head SAC. The BPNP and its site assessment document (as well as Policies SDB1, SS8, NC1 etc of the Local Plan) note the possible impact on bats, particularly greater horseshoe bats. The application will also increase recreational pressure on calcareous grassland element of the SAC. I note that the application is supported by an ecological assessment by Tyler Grange, and that Natural England have made detailed comments. It seems to me that the proposal will rely on mitigation measures in relation to the SAC, and therefore an HRA Appropriate Assessment is likely to be required. However, this is a legal matter. In any event, I would flag up the need for S106 Obligations towards mitigating the recreational impact on the grassland. If the development does not pay CIL, these would be a site deliverability matter.

The development is partly within the South Devon AONB and paragraphs 174-177 of the NPPF give great weight to conserving landscape and scenic beauty in such areas (in addition to the development plan considerations in Local Plan Policy SS8 and E1 of the BPNP). Although the proposal is a "major application", only the northern half of the site is within the AONB (13 units). This part of the AONB is also within the built up area. The site is allocated for housing (at 25 dwellings) in the development plan. On this basis, it appears to me that the proposal is unlikely to constitute major development in the AONB as defined by footnote 60 of the NPPF, despite the application being for 3 more dwellings than the allocation. An alternative way of looking at it would be to say that the tests at paragraph 177 are met by virtue of the site's allocation.

Thirdly, the barns and former dairy have heritage value. They are not listed or within a designated conservation area, and appear to be undesignated heritage assets (paragraph 203 of the NPPF applies). They could be said to affect the setting of Monks Cott, but the main heritage value is likely to be in association with serving as a gateway to the AONB. St Marys Road has a much more rural feel on the ground than appears from a map. The applicant's own Heritage Assessment classifies the impact on heritage assets as "Moderate Adverse". This is a detailed consideration for yourself. I note that Brixham Town Council has objected to the proposal and are currently preparing an updated Neighbourhood Plan, but it will be material that the current BPNP countenances the demolition of the buildings (subject to an assessment of

impact on bats). If approved, the application will need to be subject to archaeological investigation and recording in light of its long use.

Torbay Council has a significant housing shortfall and is only able to demonstrate around 2.2 years' supply. Brixham is heavily constrained by AONB, the South Hams SAC, as well as designated heritage assets and the sea. As you are aware, there is housing pressure on unallocated sites within the AONB. Significant weight must be given to boosting housing supply, particularly given that the site is allocated for housing. The proposal will provide 6 affordable dwellings which is in accordance with Policy H2 of the Local Plan. Under Policy BH2 of the BPNP they would be prioritised for Peninsula residents or key workers. The provision of local needs affordable housing is a further consideration in favour of the application.

I note that the NHS Foundation Trust has made detailed comments in relation to the application, including a request for NHS gap funding. The site is allocated, albeit for 25 dwellings rather than 28, and the council is unable to support such requests on allocated sites. However, Brixham does have an acute shortage of primary care facilities (i.e. GP Capacity) and I would be inclined to be supportive of requests aimed at addressing a specific shortfall either on a whole development basis or for the 3 units additional to the development plan allocation.

My colleagues or WSP will comment on the application's highways and transport matters separately.

Subject to HRA matters being addressed, I have no policy objection to the proposal. I appreciate though that there are site specific details that you will need to take into account in the planning balance.

Updated response dated 13/03/2024

I have updated my earlier comments from 2nd August 2023 in the light of the levelling Up and Regeneration Act, December NPPF and other policy changes.

The key policy changes since August 2023 relevant to the current proposal are:

The Levelling Up and Regeneration Act (LURA) gained Royal Assent in October 2023. This has renamed the AONBs as National Landscape. The term AONB is still used in guidance, and I will continue to use that term here, with the caveat that it is formally now the South Devon National Landscape. More significantly the LURA has amended S85 of the Countryside and Wildlife Act. The former "duty of regard" is replaced with a stipulation that authorities "***must seek to further the purpose of conserving and enhancing the natural beauty***" of the AONB. This change has come into force.

The government published an updated NPPF in December 2023. This amends paragraph 14 which confers additional protection from the tilted balance to the Brixham Peninsula Neighbourhood Plan until June 2024. The December 2023 Framework also contains additional text about building for beauty and making the best use of urban areas. Paragraph 130 has been added to state that *“significant uplifts in density may be inappropriate if the resulting built form would be wholly out of character with the existing area”* Such circumstances should be evidenced through authority-wide design codes which are adopted or will be adopted as part of the development plan. This must be tempered by other advice in the Framework about making best use of urban land (e.g. inserted paragraph 125 and pre-existing paragraph 128 and 129). It is also noteworthy that the new paragraph 130 text has been “demoted” from the December 2022 Draft NPPF where it was initially included as part of the “Presumption” text. Other changes to the NPPF relate to boosting housing supply e.g. paragraph 1 and chapter 5.

Micheal Gove also issued a detailed Written Ministerial Statement in December 2023 (and wrote to LPAs in September 2023). This reiterates that the presumption will apply to areas without an up to date plan, but also highlights the importance of “heritage, beauty and community”, and that the character of existing areas is respected by development. It also promotes brownfield regeneration. The government published an updated Housing Delivery Test in December 2023. Torbay must apply the presumption in favour of sustainable development due to its score of 55%. However, my previous comments stated that the presumption in Favour of Sustainable Development must be applied, and this situation has not changed.

Most recently (February 2024) DLUHC has reiterated its support for brownfield regeneration and published a consultation on further revising the NPPF to introduce changes to 129 (c) of the NPPF to give significant weight to the benefits of delivering as many brownfield homes as possible. However, the consultation does confirm the government’s commitment to beauty.

The flurry of government announcements since my August 2023 comments can be said to “pull in different directions”. As a general principle, they seek to boost housing particularly on brownfield sites and allocated sites. They confirm a number of routes by which the “presumption in favour of sustainable development” applies to Torbay. However, the LURA’s amendments to the CROW Act and increased emphasis on building of beauty and resisting uplifts in density “wholly out of character with the existing area” pull in an opposite direction. In my assessment the change to the legislative duty on AONB is the more significant issue and is enshrined in primary legislation rather than policy “guidance”. Changes of this nature are frequently challenged in the Courts, but until such elucidation is available we need to take the words at face value. This imposes a higher test on AONBs/National Landscapes, but does not, in my view, go so far as to prohibit development in such areas.

Turning to the current application. The northern buildings (“St Marys Industrial Estate”) are located within the South Devon AONB; the buildings to the south (Old Dairy) about 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 previously allocated for housing in the 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 may be relevant to wider layout, design and built-form issues. 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 conversions of existing buildings or demolition and new build to provide a more efficient use of land”*.

The BPNP settlement boundary (E3) *appears 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.*

On that basis, Paragraph 11 (c) of the NPPF indicates that development proposals that accord with an up-to-date development plan should be approved without delay. There would need to be significant issues to overturn this assessment. However, despite the proposal being proposed for development in the development plan, it does potentially raise a number of important issues relating to NPPF “footnote 7” matters.

The first such matter is the impact on the South Hams SAC. The BPNP and its site assessment document (as well as Policies SDB1, SS8, NC1 etc of the Local Plan) note the possible impact on bats, particularly greater horseshoe bats. I understand from Tom Whitlock’s email of 7 February 2024 that the greater horseshoe bat impact is unlikely to require mitigation. However, biodiversity net gain remains an issue. The application will also increase recreational pressure on calcareous grassland element of the SAC. The application is supported by an ecological assessment by Tyler Grange. Natural England’s comments do not appear to have directly addressed the grassland element of the SAC, but I understand for Local Plan preparation work that there is ongoing concern about recreational pressure on the SAC and the likely need to identify additional mitigation measures to safeguard it. Because the application is proposed in the development plan (and part of the anticipated growth in the Peninsula), it seems to me likely that a recreational contribution should be sought. The December 2022 Planning Contributions and Affordable Housing SPD seeks this as £135 per dwelling as a site deliverability matter. I note that the development may be

CIL liable, but since councils are no longer required to identify a Reg123 list, my view is that a S106 obligation is needed to make development acceptable in planning terms.

The development is partly within the South Devon AONB/NL. The northern buildings being within the AONB and the southern ones abutting the AONB boundary. Whilst the buildings are in the built up area and have development on three sides, the area has a much more remote and rural character than is suggested by a top down view of the site. The site serves strongly as a gateway to the AONB/NL, and reinforces the remoteness of the AONB. Paragraphs 180-184 of the NPPF give great weight to conserving landscape and scenic beauty in such areas (in addition to the development plan considerations in Local Plan Policy SS8 and E1 of the BPNP). Although the proposal is a “major application”, only the northern half of the site is within the AONB (13 units). This part of the AONB is also within the built up area. The site is allocated for housing (at 25 dwellings) in the development plan. On this basis, it appears to me that the proposal is unlikely to constitute “major development” in the AONB as defined by footnote 64 of the NPPF. An alternative way of looking at it would be to say that the tests at paragraph 183 are not applicable to local plan allocations, and assumed to be met by virtue of the site’s allocation.

Thirdly, the barns and former dairy have heritage value. They are not listed or within a designated conservation area, and appear to be undesignated heritage assets. Paragraph 209 of the NPPF applies. This requires a “*balanced judgement... having regard to the scale of any harm or loss and the significance of the heritage asset*” They could be said to affect the setting of Monks Cott, but the main heritage value is likely to be in association with serving as a gateway to the AONB. Some of the buildings appear to be early Victorian or older from the Heritage Assessment. They have been allocated for development for many years, and rolled over from plan to plan. As noted St Marys Road has a much more rural and remote character on the ground than appears from a map. The applicant’s own Heritage Assessment classifies the impact on heritage assets as “Moderate Adverse”. This is a detailed consideration for yourself and Rob Palmer’s advice on the matter will be important. I note that non-designated heritage assets are not covered in the list of NPPF footnote 7 policies, subject to footnote 72 on their archaeological value. However, their contribution to the AONB may be, both in terms of its “rural gateway” and former agricultural cultural heritage characteristic on the AONB. Clearly, the advantages of demolition and new build need to be balanced against the loss of the non-designated heritage assets.

I note that Brixham Town Council has objected to the proposal on the grounds of overdevelopment and are currently preparing an updated Neighbourhood Plan, but it will be material that the current BPNP countenances the demolition of the buildings (subject to safeguards). If approved, the application will need to be subject to archaeological investigation, recording and curation of findings in light of its long use. On that basis I would suggest that a S106 contribution towards Brixham Museum or

Library to ensure that the findings of archaeological investigation, pictures of the former diary etc. are curated for posterity. The lifelong learning contributions at pp58-59 of the Planning Contributions and Affordable Housing SPD are the best starting point for this.

I note that the NHS Foundation Trust has made detailed comments in relation to the application, including a request for NHS gap funding. The site is allocated, albeit for 25 dwellings rather than 28, and the council is unable to support such requests on allocated sites. However, Brixham does have an acute shortage of primary care facilities (i.e. GP Capacity) and consider that requests for contributions towards primary care meet the tests of lawfulness and should be supported.

The application appears to be CIL liable at £70 per sq. m. and I note that a liability assumption form and affordable housing mandatory exemption forms have been submitted. I cannot see a figure for likely CIL liability. CIL is a local finance consideration in the applications favour. The proposal will provide 6 affordable dwellings which is in accordance with Policy H2 of the Local Plan. I cannot see anything to indicate that vacant building credit is being claimed, but the best way to avoid this becoming an issue is for it to be offered as a Unilateral Undertaking. Under Policy BH2 of the BPNP they would be prioritised for Peninsula residents or key workers. The provision of local needs affordable housing is a further consideration in favour of the application.

Policy Conclusion:

The site is allocated for development in the BPBP and the starting point from a policy point of view must be to support the application. This is reinforced by the shortfall in Torbay's housing land supply and operation of the presumption in favour of sustainable development. Development should be approved unless detailed assessment identifies "(NPPF footnote 7) clear reasons for refusal, or that the adverse effects of granting permission would "significantly and demonstrably outweigh the benefits". This is a high bar, but I note that detailed assessment of the site does throw up a number of difficult technical matters, particularly in relation to the SAC, AONB/NL, design and heritage. These are a matter for detailed assessment of the proposals and relevant expert advice and must be taken into account in the overall planning balance.

Torbay Council's Principal Historic Environment Officer:

Response dated 15/03/2024

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:

Response dated 02/08/2023

1. The site is located in Flood Zone 1 and the developer has submitted a flood risk assessment and drainage strategy for the proposed development.
2. 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.
3. The proposed discharge rate of 1.0l/sec complies with the requirements of the Torbay Critical Drainage Area. However, as identified within the Torbay Council SUDS design guide, where the 1 in 10year greenfield run-off rate is identified as less than 1.5l/sec the discharge rate allowed for the development is 1.5l/sec. By using 1.5l/sec the half drain down time for the proposed attenuation will be significantly reduced.
4. The only hydraulic modelling that has been submitted is for the size of the attenuation tanks. No hydraulic modelling has been submitted for the surface water drainage system discharging to the attenuation tanks or downstream of the attenuation tanks to the combined sewer system.
5. Within the drainage strategy there is a drawing showing the proposed surface water drainage for the development, however without the drainage system being included within the hydraulic modelling it is not possible to confirm whether there is a risk of flooding to properties on the site for the critical 1 in 100 year storm event plus 50% for climate change and 10% for urban creep. The developer must include the surface water drainage serving the properties within his hydraulic model.
6. The developer must supply a drawing showing the proposed surface water drainage for the development which provides details of the proposed manhole cover levels, invert levels, pipe diameters, pipe gradients, pipe lengths, pipe numbering used in the hydraulic modelling, attenuation tanks, together with details

of the impermeable areas discharging to each pipe length. All of this information is required to be included within the hydraulic modelling. Without this information it is not possible to confirm whether there is a risk of flooding to properties on the site for the critical 1 in 100 year storm event plus 50% for climate change and 10% for urban creep.

7. Based on the information that has been submitted to date, the developer has failed to demonstrate that the proposed surface water drainage has been designed in order that no properties on the development are at risk of flooding for the critical 1 in 100 year storm event plus 50% for climate change and 10% for urban creep. In addition, the surface water drainage system must be designed in order that there is no increased risk of flooding to properties or land adjacent to the site for the critical 1 in 100 year storm event plus 50% for climate change and 10% for urban creep.

Based on the above comments, before planning permission can be granted the applicant must supply the details requested above.

Response dated 09/10/2023:

Further to your email dated 14th September 2023 attaching revised details for the surface water drainage at the above development, I can confirm that providing the surface water drainage is constructed in accordance with the submitted hydraulic design and drawings, I have no objections on drainage grounds to planning permission being granted.

Environment Agency:

No response received.

South West Water:

Response dated 02/08/2023

Asset Protection

Please find enclosed a plan showing the **approximate** location of a public 150mm combined 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.

Further information regarding the options to divert a public sewer can be found on our website via the link below:

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. Discharge into the ground (infiltration); or where not reasonably practicable,
2. Discharge to a surface waterbody; or where not reasonably practicable,
3. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
4. 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, please note that method proposed to discharge into the ground (infiltration) is acceptable and meets with the Run-off Destination Hierarchy.

Devon County Council's Ecologist:

Response dated 07/08/2023:

Further information required prior to determination.

Phase 1 Walkover Survey

A phase 1 walkover survey was undertaken in April 2019 by Tyler Grange, with a survey in April 2023 to update the results of the previous survey.

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

The development site lies within the South Hams SAC Sustainance 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 sustainance 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:

Response dated 25/07/2023

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 Lighting¹. 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 advice² 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 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.

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

Response dated 22/08/2023

The operational waste management plan and swept path analysis provide adequate information about recycling and waste storage and collection. I am unable to see the dimensions of the large refuse vehicle that has been used for the swept path analysis to check that it is comparable to our refuse and recycling collection vehicles, so would be grateful if you could confirm this?

I am pleased to see that the roads within the development will be built to an adoptable standard, however I must stress that collections would not commence until a formal indemnity is in place.

Based on the information provided my request for waste management contributions would be at the basic level for individual properties.

Response dated 25/03/2024

I would object to this development based on the following;

- The southern turning head will only be sufficient for our collection vehicles providing there were no parked vehicles to hinder access. Because the road will be unadopted I am unsure how parking will be managed on the site.
- The swept path analysis provided would require SWISCo to drive onto an unadopted highway, which SWISCo wouldn't do as they are not insured for such. I am not aware of an agreement to indemnify us even though I am aware that the roads will be built to adoptable standards. This means that SWISCo would not drive onto unadopted highway to collect. The nominated collection point would be the closest point on the adopted highway to each property.
- Some of the bin storage locations would be inaccessible due to closed boundaries or parked vehicles. Residents would need to bring their waste and recycling to the adopted highway for collection anyway, our staff would not collect from the storage location unless an assisted collection was arranged. Regardless of this, residents need a clear pathway to move bins/boxes etc.
- Building Regulations H6 which stipulates that;
1.8 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.
30m = external door to bin storage location
25m = bin storage location to nominated collection point.

As part of the highway will remain unadopted, I believe that the distance between the storage location and the nominated collection point, for some properties will not comply with Building Regulations H6, but I would suggest checking this with someone who is more familiar with Building Regulations.

Torbay Council's Senior Environmental Health Officer:

Response dated 12/07/2023

I would confirm that I have no objections subject to the inclusion of the following condition:

Construction Management Plan:

No development shall take place until a site specific Construction Management Plan has been submitted to and been approved in writing by the Council. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, & dust. The plan should include, but not be limited to:

- Procedures for maintaining good neighbour relations including complaint management.
- All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours:
08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and; at no time on Sundays and Bank Holidays.
- Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- Mitigation measures as defined in BS 5528: Parts 1 and 2 : 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.
- Control measures for dust and other air-borne pollutants.

Reason: In the interests of the amenities of surrounding occupiers during the construction of the development.

Police Designing Out Crime Officer:

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:

Response dated 07/08/2023

Please could you refer this back to the applicant / agent and request that the Arboricultural Consultant reviews their report as it currently has a number of inconsistent areas of information which do not appear to relate to the development under consideration.

In addition, please could I ask for further information / clarification on the following points:

1. Trees on eastern boundary with St.Marys Road – the extent of trees visible on street view images (2019) does not correlate with the submitted Tree Constraints Plan.
2. Trees to the south of Orchard House – within red line boundary but not surveyed. What are the proposals for this area? Has tree protection been considered for this part of the site and if not required please could this be stated / evidenced.
3. Arboricultural Impact Assessment – please can this be provided with the updated report.
4. Mitigation for tree losses – please provide species, nursery stock size and planting locations.

On receipt of this information, I will be able to provide you with detailed comments.

Response dated 01/02/2024

The Evolve TPP (as shown on the pdf file name) is the tree constraints and AIA. It's clear from this what trees will be removed, and I am happy with the impact assessment. I will accept the loss of G1 as part of the development proposal, subject to soft landscaping works including structural tree planting to mitigate this loss and secure additional enhancement of the site.

Tree protection will be required to ensure trees below Orchard House remain unaffected by development. If a Tree Protection Plan has not been submitted (or submitted under a different file reference), a plan will be required for submission through a planning condition.

A soft landscaping scheme will be required by a planning condition. The tree planting should include a mixture of species which are suitable for the locations being proposed. The available soil rooting volume should be sufficient for the proposed species to reach their full species potential.

WSP on behalf of the Local Highway Authority:

Response dated 16/08/2023

INTRODUCTION AND PLANNING HISTORY

The proposals relate to the re-development of existing industrial buildings (M.O.T. and service centre) and a car park/yard to provide 28 dwellings together with access, landscaping and associated works on a parcel of land to the north and south of St Marys Road. The site is allocated in the Brixham Peninsula Neighbourhood Plan as suitable for housing.

The proposed development will provide 12 houses and 16 flats.

A previous Planning Application (ref. P/2021/0890) which included the application site and additional land to the east for 130 dwellings was refused on 30th June 2021. The Highway Authority commented that the lack of safe pedestrian access to local facilities and services would likely result in a development over-reliant on private car use. Additionally, it was stated that the site layout does not enable the safe access and egress of refuse vehicles from the site.

SITE LOCATION AND BASELINE CONDITIONS

The proposed site is located on the northern and southern bound of St Marys Road within the southern extent of Brixham. The site is bounded to the east by the former Upton Manor Campsite and to the north, south and west by residential use. St Marys Road varies in width between 2.8m – 4.5m with limited street lighting and no footway provision.

There are bus stops situated within 50m of the site access (known as Springdale Close stops). Additional bus stops are located 100m 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. Paignton Rail Station is located approximately 9.5km north-west of the site.

The applicant has obtained Personal Injury Collision (PIC) data for the local highway network extent from CrashMap for the latest available five-year period (2017 – 2021). The analysis undertaken by the applicant has identified that only one slight collision has occurred within the study extent at the entrance to Upton Manor Campsite. This involved a pedestrian being struck by a vehicle whilst walking in the carriageway.

Considering that one slight collision has occurred within the study extent and period it is considered that there does not exist any operational safety issues within the highway network. The analysis is acceptable.

VEHICULAR AND PEDESTRIAN ACCESS

The site is currently accessed via two access points from St Marys Road. It is proposed that the location of the two access points will be retained, however these will be upgraded to provide two priority-controlled junction arrangements. A speed survey was undertaken in September 2020 which identified 85th percentile speeds of 20.1mph and 19.3mph eastbound and westbound respectively. Referencing the visibility splay calculator in Chapter 7 of *Manual for Streets* these speeds would result in a 'Y' distance requirement of 22.6m and 21.4m respectively. The applicant has demonstrated visibility splays of 2.4m x 25m and 2.4m x 24m can be achieved on drawing (ref. C23041-TP001(A)). This is considered acceptable.

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.

There is some concern from the Highway Authority regarding the crossing provision for pedestrians across St Mary's Road at the south-western extent of the northern section of the site (see Figure 1). The Units 01 – 07 building appears to block pedestrian / driver visibility. The applicant will be required to update the submitted Road Safety Audit (RSA) Stage 1/2 to determine if there are safety concerns regarding this / any mitigation measures that could be undertaken, as this does not appear to have been reviewed.

Within Paragraph 3.1.1. of the RSA document it stated that the audit team have assumed that St Mary's Road will be subject to a 20mph speed limit. However, this is not a valid assumption as St Mary's Road is/will not be subject to a 20mph speed limit.

The applicant will be required to update the RSA to reflect the above and should also give further consideration as to how pedestrians will safely cross St Mary's Road when turning left and right out of each section of the site.

SITE LAYOUT / SERVICING

The applicant has submitted a swept path analysis (ref.C23041-A) to illustrate a refuse vehicle and fire engine accessing and egressing the site in a forward gear for the northern section of the site. This is considered acceptable. For the southern section of the site, it appears that a refuse vehicle would be required to reverse into the private parking courtyard in order to safely turn within the site layout and egress in a forward gear. The applicant will be required to extend the adopted turning head to ensure that the refuse vehicle does not have to enter the extent of the private courtyard.

The applicant will be required to identify the location of bin stores for the flats.

The Highway Authority will want to adopt the site layout as Highways Maintainable at Public Expense (HMPE) with the exception of the parking courtyard. The applicant will be required to confirm the extent of the site layout that will be offered for adoption through the submission of a S38 Highway Layout plan.

The applicant should note that there is some concern regarding the proposed materials used within the turning heads. The materials will be discussed in more detail at the S38 stage.

Noting the likely need for a Habitats Regulation Assessment (HRA) the applicant will be required to submit a lighting design and location plan to illustrate how the internal (and connection to external) footways/carriageways will be lit. This is in the interest of highway and pedestrian safety.

CAR AND CYCLE PARKING

Referencing Appendix F of the Torbay Local Plan (2012 – 2030) this states that two car (of which one should provide electric vehicle charging infrastructure) and two cycle parking spaces should be provided per dwelling. For flats a requirement of one car and one cycle parking space is required (of which 20% should provide electric vehicle charging infrastructure). This calculates a total requirement of 40 car parking spaces across the proposed site (of which 15 car parking spaces should provide electric vehicle charging infrastructure).

The applicant has stated that a total of 48 car parking spaces will be provided across the site layout with each dwelling having two cycle parking spaces and each flat having one cycle parking space. The applicant will be required to indicate the location of cycle parking spaces on the proposed site layout plan. Additionally, the applicant has stated that 20% of all car parking spaces will have electric vehicle charging infrastructure which equates to a total of 10 spaces. This is five fewer spaces than specified by Appendix F. The applicant will be required to amend the site layout plan to accommodate 15 electric vehicle charging spaces.

It is noted that tandem car parking has been proposed within the northern section of the site layout as well as in some of the proposed garages. The Highway Authority has some concern that this tandem parking arrangement will lead to overspill car parking occurring on the local highway network due to residents not wishing to park in the garage/have to swap cars around. This could create a highway safety issue and it is noted that the Police consultation for this Planning Application has raised a similar concern.

Additionally, there does not appear to be sufficient space on the surround of car parking spaces 13 – 16 for residents to freely wheel a bin from the rear to the front of the property if the spaces are occupied. This may result in bins being stored on the

highway network/blocking the available width of footways. The applicant will be required to amend the car parking space dimensions to ensure that sufficient space is provided to move bins from the rear to the front of the property. It is also noted that some of the car parking spaces do not conform to the required dimension requirements – the applicant will be required to ensure all car parking spaces measure 5.5m in length where they are accessed from the back of the highway. The applicant should refer to Page 33 of the Torbay Council Highways Standing Advice document for further reference (<https://www.torbay.gov.uk/media/16388/highways-standing-advice-revision-6.pdf>).

APC CONDITION

The Highway Authority would recommend a condition which requires highway details submitted which must indicate that the highways accord with adoptable standards and an informative which states that the Highway Authority intends to serve an Advance Payments Code notice on receipt of Building Regulations plans. This is to ensure that the road is constructed to adoptable standards. Our policy states we should adopt a road serving over 5 dwellings.

TRIP GENERATION

The applicant has used the TRICS database to undertake a comparative trip generation exercise between the extant and proposed uses on the site. The TRICS selection parameters are considered acceptable.

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. It is acknowledged that the proposed development is located within the vicinity of the 'Windy Corner' junction that is currently operating above capacity, however the negligible proportional impact of this development site has been taken into consideration. Considering the minor increase in trip generation it is considered that the development proposals will result in a negligible impact on the operation and safety of the local highway network.

SUSTAINABLE TRANSPORT CONTRIBUTIONS

The Local Highway Authority will seek the necessary S278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Please also refer to the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, Section 4.3 for the framework of seeking additional Sustainable Transport contributions for major schemes (PCAH SPD https://www.torbay.gov.uk/media/19610/planning-contributions-spd_2022.pdf). For major proposals that are likely to result in increased trips, Sustainable Transport contributions will be sought in accordance with the Planning Contributions SPD.

Referencing Table 4.2. of the Planning Contributions SPD this equates to a contribution of £1,290 x 28 = £36,120.

CONCLUSION

The Highway Authority welcomes the principle of development proposed within this Planning Application. Prior to a formal positive recommendation being made, the applicant will be required to provide the following information:

- Identify the location of cycle parking to be provided for the proposed flats;
- Submit a S38 Highway Adoption Plan;
- Amend the southern site turning head to ensure that a refuse vehicle does not reverse into the extent of the private parking courtyard;
- Amend the size and arrangement of car parking bays considering the requirement to wheel bins from the rear to the front of the property and remove the currently proposed tandem parking arrangement;
- Update the Road Safety Audit Stage 1/2 for the proposed pedestrian crossing provision from the south-western section of the northern section of the site and remove the assumption regarding a 20mph speed restriction;
- Submit a lighting design and location plan;
- Identify the location of bin stores provided for the proposed flats; and
- Update the site layout to include the provision of 15 electric vehicle charging infrastructure spaces (one space per house and 20% for the quantum of flats).

Response dated 06/10/2023 following the receipt of further information:

INTRODUCTION AND PLANNING HISTORY

The highway authority has previously prepared a response in relation to this application (ref V1. Dated 16/08/2023) which should be read in conjunction with this document. The previous response concluded with the following:

“The Highway Authority welcomes the principle of development proposed within this Planning Application. Prior to a formal positive recommendation being made, the applicant will be required to provide the following information:

- Identify the location of cycle parking to be provided for the proposed flats;
- Submit a S38 Highway Adoption Plan;
- Amend the southern site turning head to ensure that a refuse vehicle does not reverse into the extent of the private parking courtyard;
- Amend the size and arrangement of car parking bays considering the requirement to wheel bins from the rear to the front of the property and remove the currently proposed tandem parking arrangement;

- Update the Road Safety Audit Stage 1/2 for the proposed pedestrian crossing provision from the south-western section of the northern section of the site and remove the assumption regarding a 20mph speed restriction;
- Submit a lighting design and location plan;
- Identify the location of bin stores provided for the proposed flats; and
- Update the site layout to include the provision of 15 electric vehicle charging infrastructure spaces (one space per house and 20% for the quantum of flats).“

The applicant has submitted additional information in which this response will review in respect to the outstanding items listed above.

CYCLE PARKING

Based on the additional information provided, it can be seen that bicycle storage is located as part of the block of units 16-24 comprising 16 spaces. It is unclear where cycle parking is to be located associated with units 1-7. Appendix F of the Torbay Local Plan states that there should be at least one cycle parking space per flat. This item therefore remains outstanding.

S38 HIGHWAY ADOPTION PLAN

The Applicant was advised in the previous response provided by the Local Highway Authority that a S38 Highway Adoption Plan should be submitted in support of the application. The Highway Authority will want to adopt the site layout as Highways Maintainable at Public Expense (HMPE) with the exception of the parking courtyard. This item has not been provided thus this matter still remains outstanding.

SOUTHERN SITE TURNING HEAD

Amendments have not been made to the southern site turning head to ensure refuse vehicles do not reverse into the extent of the private parking courtyard thus this matter still remains outstanding. It is further noted that Torbay refuse vehicles will not service unadopted roads.

CAR PARKING BAY SIZE

It appears that no amendments have been made to the car parking spaces 13 16 to remove the current tandem parking and to allow the movement of bins from the front of the property to the rear thus this matter remains outstanding.

ROAD SAFETY AUDIT

Appropriate amendments have been made to the Road Safety Audit (RSA) regarding assumptions made regarding the 20mph speed restriction, this is considered acceptable.

Reference is made within the updated RSA to a Proposed Site Plan Revision E. This revised version of the site layout has not been fully presented as part of the further information received from the applicant. It is therefore unclear whether / how issues raised as part of the RSA have been addressed.

Previous concerns raised by the Highway Authority in relation to crossing provision for pedestrians across Springdale Close and St Mary's Road to the east and west of the site access, and at the proposed site access junctions. Suitable dropped kerbs and tactile paving should be indicated on any revised proposed layout drawings. This item therefore remains outstanding.

LIGHTING DESIGN

The applicant has submitted a lighting layout drawing (P2363-00-01) alongside additional information regarding the operation and performance of the lighting to be used, this is considered acceptable.

BIN STORES

The proposed location of the bin stores has been provided, this is considered acceptable.

ELECTRIC VEHICLE PROVISION

The site layout now displays provisions for 15 electric vehicle charging spaces, satisfying the required 1 EV space per house and 20% for the quantum of flats, this is considered acceptable.

CONCLUSION

Many of the prior matters have since been resolved, however, the applicant will still be required to provide the following prior to recommendation.

- Confirm locations and quantum of cycle parking;
- Submit a S38 Highway Adoption Plan;
- Amend the southern site turning head to ensure that a refuse vehicle does not reverse into the extent of the private parking courtyard;
- Amend the size and arrangement of car parking bays considering the requirement to wheel bins from the rear to the front of the property and remove the currently proposed tandem parking arrangement for Units 9 and 10; and

- Submit proposals for facilitating pedestrian crossing of Springdale Road and St Mary's Road, as recommended by the Stage 1 RSA.

Response dated 26/03/2024

Confirm locations and quantum of cycle parking

The updated Site Masterplan (Drawing No 172-003 Rev E) shows a Bike Store located in the parking forecourt for Units 01-07. The masterplan states this is for 14 cycles, however, the type of cycle stand and associating sitting of it has 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 -).

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. Units 25-28 appear to be greater than 30m from the public highway, which exceeds the drag distance for collections based on Building Regulations. 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.

Amend the southern site turning head to ensure that a refuse vehicle does not reverse into the extent of the private parking courtyard

For this issue to be resolved, the refuse strategy for the southern site that is discussed in the section above needs to be clarified.

Amend the size and arrangement of car parking bays considering the requirement to wheel bins from the rear to the front of the property and remove the currently proposed tandem parking arrangement for Units 9 and 10

The updated Site Masterplan Drawing No 003 Rev E shows a Bin Store at the front of Unit 11. The applicant's email dated 17th October 2023 states that this Bin Store is to be used by the Units 10-13. Whilst the Highway Authority are now satisfied with this arrangement, it is recommended that the Torbay Waste Collection team reviews whether the Bin Store proposed is an adequate size to accommodate the waste for Units 9-13.

Submit proposals for facilitating pedestrian crossing of Springdale Road and St Mary's Road, as recommended by the Stage 1 RSA

The updated Site Masterplan Drawing No 003 Rev E shows a dropped kerb and tactile paving crossing and therefore the Highway Authority are satisfied this has been resolved.

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

The previous Highway Authority response dated 6th October 2023 stated:

The Road Safety Audit Stage 1 identified a 'concern over the pedestrian / driver intervisibility at the south west corner of the northern section of the site for pedestrians crossing St Mary's Road. Confirmation is sought as to whether the perimeter treatment of the site shall be kept to below 600mm height in accordance with Manual for Streets guidance'.

The applicant's email dated 17th October 2023 states the above identified issue in the RSA S1 is not a highway safety concern. The Highway Authority are not satisfied with this response and consider this as an outstanding highway safety issue that requires resolving as all new developments must provide safe crossing environments for pedestrians of all ages and abilities and reduce possible conflicts (NPPF 114b, 116b/c) – the current unknown height and intervisibility is not suitable for vulnerable pedestrians (i.e. wheelchair users/children). Therefore, it is requested the applicant confirms on a drawing that the perimeter treatment will not exceed 600mm.

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, and pedestrian safety at the western boundary crossing of the northern site.

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.

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.

Planning Officer Assessment

Key Issues/Material Considerations

1. Policies Relating to Housing Development
2. The South Devon Area of Outstanding Natural Beauty (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.

The site is allocated under Policy BH3 in the Neighbourhood Plan as a housing site for 25 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 25 units is considered to be acceptable. The proposed development is for 28 residential units in this location, which exceeds the policy allocation. The application site was previously allocated for housing in the 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.

In February 2024, the Department for Levelling Up, Housing and Communities has reiterated its support for brownfield regeneration and published a consultation on further revisions to the NPPF to introduce changes to Paragraph 129(c) to give significant weight to the benefits of delivering as many brownfield homes as possible. However, the consultation does confirm the government's commitment to beauty.

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, SS10, SS11, TA2, TA3 and W1 of the Local Plan, and Policies BE1, BH5, BH8, 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, granting permission unless:

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

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 187) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, 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 72); 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 Area of Outstanding Natural Beauty or designated heritage assets provides a clear 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 (i.e. the “tilted balance” at Paragraph 11(d)ii).

The recent revision of the NPPF gives additional protection to Torbay's Neighbourhood Plans (Torquay, Paignton and Brixham Peninsula) until June 2024 and makes it clear that conflict with the Neighbourhood Plan is likely to significantly and demonstrably outweigh the benefits of development.

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 Area of Outstanding Natural Beauty (South Devon National Landscape) contrary to the NPPF, notably Paragraphs 180 and 182, which is a protected asset that presents a clear 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 208, whereby the public benefits of the proposal do not outweigh the identified harm. Paragraph 205 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 proposal presents a clear reason for refusing the application.

As such the ‘tilted balance’ identified in Paragraph 11 of the NPPF is not enacted. Areas of Outstanding Natural Beauty 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 clear reason for refusing the development. The presumption in favour of sustainable development therefore does not apply.

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.

2. The South Devon Area of Outstanding Natural Beauty (National Landscape)

The northern parcel of the application site is located within the South Devon Area of Outstanding Natural Beauty, 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. The Levelling Up and Regeneration Act has renamed the Areas of Outstanding Natural Beauty as National Landscapes. The term Area of Outstanding Natural Beauty will remain in this report, with the caveat that it is formally now the South Devon National Landscape.

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 Area of Outstanding Natural Beauty 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 Area of Outstanding Natural Beauty 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 Area of Outstanding Natural Beauty 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 182 of the NPPF, great weight should be given to conserving and enhancing landscape and scenic beauty of designated areas, including Areas of Outstanding Natural Beauty, which have the highest status of protection. The NPPF outlines that the scale and extent of development within Areas of Outstanding Natural Beauty 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 183 of the NPPF confirms that when considering applications for development in protected areas, including Areas of Outstanding Natural Beauty, permission should be refused for major development [see Footnote 64] 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 64: For the purposes of paragraphs 182 and 183, 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 Area of Outstanding Natural Beauty. Objectors have raised concerns about the proposed development and its impact on the South Devon Area of Outstanding Natural Beauty. 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 Area of Outstanding Natural Beauty. The section of the application site which is located within the Area of Outstanding Natural Beauty 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 Area of Outstanding Natural Beauty as defined in Footnote 64 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 Area of Outstanding Natural Beauty 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). The LVIA has been reviewed by the Councils Landscape consultant WSP. 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 for which the South Devon Areas of Outstanding Natural Beauty, 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's LVIA 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 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. 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, minor adverse-negligible where the Proposed Development will always be viewed within the context of Brixham."

The Councils' Landscape Consultant for this application (WSP) has only undertaken a desk-based peer review of the 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 South Devon Area of Outstanding Natural Beauty. 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 Area of Outstanding Natural Beauty. The Landscape Officer on the previous application identified that the application site offered a special quality of the Area of Outstanding Natural Beauty – "*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 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 Area of Outstanding Natural Beauty. The existing buildings provide a rural character and "gateway" into the Area of Outstanding Natural Beauty as it transitions from town into countryside. The proposal in terms of its siting, scale and design, would produce a visually harmful built form that would be at prevailing odds with the surrounding area and local character, that does not conserve or enhance the Area of Outstanding Natural Beauty and certainly does not seek to further the purpose of conserving and enhancing its natural beauty, and would therefore be contrary to National and Local Plan policies. Such harm should be given great weight in the planning balance when weighing against the benefits of the scheme.

Given the proposals siting, scale and design, the loss of the existing traditional historic stone buildings, and its location within and adjacent to the South Devon Area of Outstanding Natural Beauty, it is considered that the proposed development would have a detrimental impact on the landscape character and scenic beauty of this part of the South Devon National Landscape, as it fails to conserve and enhance such. The proposal is therefore contrary to Policies SS3, SS8, SS11, SDB1, SDB3, DE1 and H1 of the Local Plan, Policy E1 of the Neighbourhood Plan, and the guidance contained within the NPPF, notably Paragraphs 11, 180 and 182.

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 and beautiful 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’. 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. I note 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 Area of Outstanding Natural Beauty (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 black timber 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 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 constructed of rustic red brick 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 some 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 constructed of rustic red brick 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 some 9.1 metres in height.

Units 11-13 are two storey terraced dwellinghouses that would have a gable roofscape. The proposal will be constructed of rustic red brick, natural stone and vertical black timber 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. 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 constructed of natural stone and vertical black timber 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 semi-detached dwellinghouses would be some 7.6 metres in height.

Units 16-24 is flatted development that comprises of three storey built form with a pitched roof that has gable features. The proposal will be constructed of natural stone, rustic red brick, vertical black timber cladding and 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.

Units 25-28 are three storey terraced dwellinghouses. The proposed roofscape would be pitched with gable features. The proposal will be constructed of natural stone, vertical black timber cladding and grey standing seam metal 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.

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 no 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 Area of Outstanding Natural Beauty. The existing buildings onsite provide a rural gateway and former agricultural cultural heritage characteristic to the Area of Outstanding Natural Beauty.

The proposed design of the entire proposal is poor and not in keeping with the surrounding area, given its somewhat modern and contemporary industrial design. It is considered that the proposal fails to acknowledge the local character and lacks high quality architectural detail. 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 proposal fails to provide a sensitive palette of materials given it being the gateway site in and into the Area of Outstanding Natural Beauty.

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 Area of Outstanding Natural Beauty and would present a dominant stark built form and remove all former agricultural cultural heritage characteristics.

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 16-24 would not positively contribute to the streetscene given future occupiers belongings and paraphernalia being easily visible to passersby.

The recent revision to the NPPF contains additional text about building for beauty, it is considered that the current proposal does not provide beautiful buildings, instead demonstratively stark and incongruous built form that is at prevailing odds with the existing residential development and removes a rural gateway into the South Devon Area of Outstanding Natural Beauty. 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 203 of the NPPF 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 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 206 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), requires clear and convincing justification.

Paragraph 208 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 209 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 210 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 site has a complex narrative which the submitted Heritage Statement suggests should be further explored. The Council's Principal Historic Environment Officer has outlined the heritage values of the application site, such can be found in the consultation responses at the beginning of this committee report. 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 203 of the NPPF and the heritage harm appropriately considered within the overall planning balance. The proposed development lacks adequate justification and would therefore be contrary to the requirements of Paragraph 206 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 character of the application site and replace it with residential development of a notably different scale, massing and character to that existing. 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 208 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 adequately reflects the historic use and special characteristics of the site. The Officer has confirmed that 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. The Officer has advised that 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 208 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 clear 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 and Policy BE1 of the Neighbourhood Plan.

The above conclusion has consideration of Paragraph 205 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:

Unit Number	Number of Bedrooms	Number of Bed Spaces	Number of Storeys	Total Floorspace (sq.m)	NDSS Requirement (sq.m)	Complies?
1	2	4	1	80.7	70	Yes
2	2	4	1	88.5	70	Yes
3	1	2	1	58.1	50	Yes
4	1	2	1	59.3	50	Yes
5	2	4	1	78.1	70	Yes
6	2	4	1	78.1	70	Yes
7	2	4	1	78.2	70	Yes
8	4	5	2	118.9	97	Yes
9	4	7	3	125.0	121	Yes
10	4	7	3	125.0	121	Yes
11	2	4	2	78.6	79	No
12	2	4	2	78.3	79	No
13	3	5	2	95.8	93	Yes
14	3	5	2	95.0	93	Yes
15	3	5	2	95.0	93	Yes
16	2	4	1	75.8	70	Yes
17	2	4	1	75.8	70	Yes
18	2	4	1	73.0	70	Yes
19	2	4	1	75.8	70	Yes
20	2	4	1	75.8	70	Yes
21	2	4	1	73.0	70	Yes
22	2	4	1	75.8	70	Yes
23	2	4	1	75.8	70	Yes
24	2	4	1	73.0	70	Yes
25	2	4	2*	79.4	70	Yes
26	2	4	2*	79.4	70	Yes
27	2	4	2*	79.4	70	Yes
28	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.) units comply with the minimum floor space requirements apart from units 11 and 12 marginally fall below such. Whilst the floor areas of these units are 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.

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 proposed layout demonstrates that the site is overdeveloped by the quantum of development proposed, given that a number of units fall below the threshold. The proposed layout demonstrates that a number of residential units have undersized or no access to outdoor amenity space. In terms of dwellinghouses, Units 15, 27 and 28 are below the required 55 square metres, between 7.5-12 square metres below. The proposed layout shows the outdoor amenity space divided into three parcels for Units 16-34, however when reviewing the proposed internal floorplans for the units, it is apparent that only 2no. units (Units 16 and 17) face onto this space, there the middle section of outdoor amenity space would be accessed by both units. There is no proposed outdoor amenity space for the remaining flats (Units 18-24), as the two small parcels of landscaping to the north and south of the smaller block protect habitable room openings, some of which open onto these landscaped parcels. It is unclear whether these landscaped areas will be bounded to provide individual amenity areas. Furthermore, Units 1-7 have an area of outdoor amenity space to the western flank of the built form which measures approximately 61.5 square metres, if this is proposed to be a communal provision to which it is assumed it is given that Unit 1 does not have any openings onto such, is therefore a deficit of 8.5 square metres. Moreover, limited information has been provided to establish the levels of the outdoor amenity spaces relating to Units 25-28, 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 result in failing to provide a number of future occupiers with adequate and useable outdoor amenity space. Therefore, it is considered that the proposal fails to accord with Policy DE3 of the Local Plan.

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 limited proposed sectional drawings. There are concerns regarding the separation distances between proposed units within the scheme, as well as in relation to existing neighbouring properties. 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.

Unit 8 is separated from Units 9-10 by approximately 10 metres, however the proposed units front onto each other and would likely result in levels of intervisibility, given the limited information provided it is hard to establish the exact level of intervisibility. Furthermore, although St Mary's Road separates Units 1-7 from Units 16-24, it is considered that there would likely be intervisibility between the three storey element of Units 1-7 which contain Units 5-7 and the opposing proposed flatted development, namely Units 16, 19 and 22. It is also considered that there would be oblique intervisibility within the proposed flatted development block, in particular between Units 16 and 18; 19 and 21; and 22 and 24, although they pose secondary openings to the living space the openings are approximately 5 metres apart.

Given the limited information, it is unclear whether there would be any overlooking issues in relation to Units 25-28 and the existing adjacent properties on Springdale Close which are some 12 metres and beyond away. Furthermore, the proposed flatted development block that contains Units 16-24 would be some 18 metres from the frontage of No.2 Springdale Close, this property as well as others on Springdale Close are bungalows, it is considered that the proposed three storey built form (some 9.4 metres in height) would be dominant and overbearing on this property. Given the limited sections and levels provided, it is difficult to establish whether the proposal would result in overshadowing.

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 and separation distance. However, Unit 25 is some 5.6 metres to 6.5 metres from the western elevation of Orchard House, this elevation is served by a number of openings. Insufficient information has been provided in terms of levels, the proposed layout states the finished floor level is +58.15 and the eaves height of Orchard House is +68.37, Units 25-28 are approximately 9.9 metres in height, it is considered that this block of built form would be at a similar height to Orchard House and given the separation distances would have an unacceptable impact upon the occupiers in terms of being overbearing and overtly dominant. The proposed window on the eastern elevation of Unit 25, should planning permission be granted, should be obscurely

glazed to prevent any overlooking.

It is considered that the proposal would result in a layout that would result in overlooking/intervisibility issues between future occupiers and may result in a detrimental impact upon existing neighbouring properties on Springdale Close. The proposal would result in an overbearing and overtly dominant for existing properties on both Springdale Close and St Mary's Road. 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; notwithstanding the proposed layout confirmation of who the outdoor amenity spaces are allocated to; a suitable scheme of boundary treatments; obscure glazing where appropriate and necessary; and where necessary and appropriate the removal of permitted development rights.

6. Impact on Highway Safety

Paragraph 114 of the NPPF guides that in assessing specific applications for development it should be ensured that a) appropriate opportunities to promote sustainable transport modes can be - or have been - taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; 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. Paragraph 115 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 would be severe.

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 Local Highway Authority initially raised concern regarding the crossing provision for pedestrians across St Mary's Road at the south-western extent of the northern section of the site as Units 1-7 appear to block pedestrian / driver visibility and requested an updated Road Safety Audit (RSA) to determine there were any safety

concerns regarding this or any mitigation measures that could be undertaken. This concern remains unresolved, as the RSA considered it not a highway safety concern, however the Local Highway Authority are not satisfied with the response and consider this as an outstanding highway safety issue that requires resolving as all new developments must provide safe crossing environments for pedestrians of all ages and abilities and reduce possible conflicts. The current unknown height and intervisibility is not suitable for vulnerable pedestrians (i.e. wheelchair users/children). Therefore, it is requested the applicant confirms that the perimeter treatment will not exceed 600mm.

The RSA was also requested to be updated due to an assumption that St Mary's Road would be subject to a 20mph speed limit, however this was an invalid assumption. The RSA was amended to address the 20mph speed limit assumption.

The proposal shows a dropped kerb and tactile paving crossing and therefore the Local Highway Authority are satisfied that previous concerns has been resolved.

Swept Path Analysis

The application is supported by a swept path analysis (ref: C23041-A) which illustrates that a refuse vehicle and a fire engine can access and egress the site in a forward gear in the northern parcel of the application site, the Local Highway Authority consider this acceptable. However, the swept path analysis for the southern parcel of the application site illustrates that a refuse vehicle would be required to reverse into the private parking courtyard in order to safely turn within the site layout and egress in a forward gear. The Local Highway Authority requested that the applicant should extend the adopted turning head to ensure that the refuse vehicle does not have to enter the extent of the private courtyard. The applicant provided additional highways information, however the applicant failed to make amendments to the turning head, which would result in refuse vehicles reversing into the extent of the private parking courtyard, it was also stated that SWISCo would not drive onto unadopted roads.

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 16no. flats and 12no. dwellinghouses are proposed. This calculates a total requirement of 40no. car parking spaces across the application site (of which 15 car parking spaces should provide electric vehicle charging infrastructure) plus the requirement for an element of visitor parking. The submitted layout indicates a total of 48no. car parking spaces will be provided across the site. The submitted layout indicates a total of 15no. 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 and Units 16-24.

The Local Highway Authority and the Police Designing-Out Crime Officer have both raised concerns regarding the elements of proposed tandem parking in both parcels of the application site. 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 or requiring the vehicle that is parked in the rear space, which could create a highway safety issue.

The proposed parking arrangement of 48no. parking spaces is convoluted. There is no indication as to which parking spaces are allocated to which residential unit and whether there are any visitor parking spaces for the flatted development as per the requirement of Appendix F of the Local Plan.

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 several pinch points, the proposed parking spaces numbered 14 and 16 provide a combined width of 5.1 metres which are bounded either side by dwellings, it is unclear how individuals would access/egress their vehicles without conflicting with either the dwellings or the neighbour's vehicle. Similarly, where there are expansive rows of parking spaces, e.g. nos.1-6, 33-37 and 38-48, where the widths of such parking spaces are 2.4 metres and again is likely to result in conflicts between parties when trying to access/egress their vehicles. These pinch points demonstrate and confirm that the parking provision is contrived.

Furthermore, the proposed integral garages for Units 25-28 are contrary to the size dimensions provided by Standing Advice, a singular garage should have a minimum internal length of 6 metres, the proposal is for 4no. tandem integral garages which measure approximately 9.6 metres in length. Therefore, the proposed tandem integral garages are too small to serve as such and would likely result in vehicles protruding beyond the built form and resulting in garage doors being unable to close. The 2no. 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 Unit 15's wall, the width of such spaces should be 3.2 metres, similarly with parking space no.10 which is adjacent to a boundary treatment.

It is considered that 12no. parking spaces within the proposed layout are substandard, parking spaces numbered 10, 13, 14, 15, 16, 21, 22, 23, 25, 27, 29, 48, which are contrary to the adopted Highways Standing Advice. Therefore, only 36no. parking

spaces are considered to meet the requirements of the adopted Highways Standing Advice. The proposed parking arrangement would therefore exacerbate the existing parking issues in the area resulting in a poor form of development, with a resulting harmful effect on highway safety. As such, the proposal is contrary 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 (Waste Management)) indicates areas of bin storage for the proposed development. The applicant has submitted a Proposed Waste Management Plan (ref: 172-005). It is unclear how Units 9 and 10 will manoeuvre their bins from the rear gardens to their frontages given the issues of either closed boundary treatments or parked vehicles. The proposed bin storage by Unit 11 is poor, the proposed storage is sited against the window and access for Unit 11. The proposed bin storage and cycle store for Units 16-24 is poorly designed, it would require future occupiers to have to walk a considerable distance to dispose of their waste. The Local Highway Authority have also raised concerns regarding the manoeuvrability of bins in relation to Plot 10, which may result in bins being stored on the highway network/blocking the available width of footways. The applicant was advised to amend the layout to ensure that the proposed layout provided sufficient space to move bins from the rear to the front of properties.

SWISCo's Waste (Strategy and Performance) Team Manager has objected to the proposed development, due to some of the bin storage locations being inaccessible due to closed boundary treatments or parked vehicles. The SWISCo Manager has also objected due to the submitted swept path analysis showing refuse collection vehicles driving onto an unadopted highway, which SWISCo would not agree to due to insurance purposes. The SWISCo Manager also raises concerns that should the

southern turning head not be adopted, it is unclear where refuse collection vehicles would be able to park to collect waste and recycling.

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 development fails to secure acceptable waste storage and collection facilities that would not accord with adopted waste storage requirements, and thus the associated activity would result in the creation of an environment injurious to the amenity of future residents to the site, and highway safety, contrary to Policies DE1, DE3 and W1 of the Local Plan.

Lighting Design

The Local Highway Authority requested that the applicant submitted a lighting design and location plan to illustrate how the internal (and connection to external) footways/carrageways will be lit, in the interest of highway and pedestrian safety. This information was provided and 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 Local Highway Authority have confirmed that they would seek to adopt the site layout as Highways Maintainable at Public Expense (HMPE) with the exception of the parking courtyard. The Local Highway Authority requested that the applicant confirm the extent of the site layout that will be offered for adoption through the submission of a Section 38 Highway Layout plan, whilst noting the Local Highway Authority's concern regarding the materials used within the turning heads. The applicant has provided a Section 38 Highway Adoption Plan (ref: 172-012) which shows 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 Local Highway Authority have confirmed that they

would require the sections that are to be adopted to be tarmac/asphalt as this will avoid excessive maintenance and liability issues.

The Local Highway Authority are satisfied with the adoption of the on-site turning head on the northern parcel of the application site as this will be suitable for refuse collection. However, the on-site turning head on the southern parcel of the application site 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, and therefore the waste collection arrangement must be clarified. It is also 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 Local Highway Authority has raised an objection to the current proposals, given the insufficient information provided in relation to the refuse strategy and highway adoption, as well as the pedestrian safety at the western boundary crossing of the northern parcel of the application site. It should be noted that the Local Highway Authority does consider that these concerns can be overcome through amended plans and additional information, however the applicant has failed to provide such. Furthermore, the proposed parking arrangement would therefore exacerbate the existing parking issues in the area resulting in a poor form of development, with a resulting harmful effect on highway safety. The proposed development is therefore contrary to Policies TA2 and TA3 of the Local Plan, the adopted Highways Standing Advice, the adopted Highways Design Guide for New Developments, Policy BH8 of the Neighbourhood Plan, and the guidance contained in the National Planning Policy Framework, in particular Paragraphs 115 and 116.

SWISCo's Waste (Strategy and Performance) Team Manager has objected to the proposed development, due to inaccessible bin storage locations, the swept path analysis showing refuse collection vehicles driving onto an unadopted highway, which SWISCo would not agree to due to insurance purposes and concerns regarding the lack of adoption to the southern parcel of the application site. The proposed development is therefore contrary to Policies DE3 and W1 of the Local Plan.

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 is supported by a tree constraints plan and an Arboricultural Impact Assessment. The report confirms that there are two groups of trees, sycamores in G1 and beech trees in G2, both groups are in reasonable condition. The report outlines that the proposal has a very limited impact on the trees on and adjacent to the site excepting the loss of the sycamores in G1, which are highly visible but not in good condition and are outgrowing their situation regardless of the proposed development. The report confirms that the beech trees in G2 will not be affected by any of the proposals. Similarly, there are some trees to the south of Orchard House but these are not implicated or affected by the proposed development.

SWISCo's Senior Tree Officer has been consulted on the application and has confirmed that he is satisfied with the proposed removal of trees and the Arboricultural Impact Assessment. The Officer has stated that the loss of G1 would be acceptable subject to a soft landscaping works scheme that includes structural tree planting to mitigate this loss and secure additional enhancement of the site. Therefore, the proposal is considered to have an acceptable impact on trees in accordance 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 180

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 Sustenance 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 Sustenance Zone

The development site lies within the South Hams SAC Sustenance 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 CIL Regulation 123 list includes CIL payments towards the impacts on South Hams Special Area of Conservation (Berry Head to Sharkham Point, Brixham) arising from recreational impacts on limestone grassland between Berry Head and Sharkham Point. The Planning contributions and Affordable Housing SPD (2022) formalises the removal of pooling restrictions for S106 obligations.

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 submitted Biodiversity Net Gain Report refers to a completed Biodiversity Net Gain Metric Assessment, however this has not provided in its original format for Devon County Council's Ecologist to assess the results. Devon County Council's Ecologist also requested details of who will be responsible for managing and maintaining the habitats. The applicant has failed to provide this information, therefore Devon County Council's Ecologist is unable to state definitively that the net gain achieved as stated in the report is correct.

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.

Insufficient information has been provided to ensure that the proposal has secured a biodiversity net gain as per the NPPF, therefore the proposal is contrary to the guidance contained within the NPPF, namely Paragraph 180.

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. However, the Torbay Council SUDS design guide states that where the 1 in 10year greenfield run-off rate is identified as less than 1.5l/sec, the discharge rate allowed for the development is 1.5l/sec. By using 1.5l/sec the half drain down time for the proposed attenuation will be significantly reduced.

The applicant has submitted hydraulic modelling for the size of the attenuation tanks and for the surface water drainage system discharging to the attenuation tanks or downstream of the attenuation tanks to the combined sewer system. The submitted drainage strategy shows the proposed surface water drainage for the development, it confirms that there will not be a risk of flooding to properties on the site from the critical 1 in 100 year storm event plus 50% for climate change and 10% for urban creep. The Council's Drainage Engineer has confirmed that provided the surface water drainage is constructed in accordance with the submitted hydraulic design and drawings, they raise no objections on drainage grounds to planning permission being granted.

The proposal is therefore considered to accord with Policy ER1 of the Local Plan and the guidance contained in the NPPF.

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 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 10 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 15 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.

12. Low Carbon Development

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 35oC 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 m³/m²/hr @ 50Pa
- Wall U-value: 0.16 W/m²/K
- Corridor communal walls U-value: 0.25 W/m²/K
- Corridors: Heated
- Party walls between flats fully insulated

- Roof U-value: 0.11 W/m²/K
- Doors U-value: 1.4 W/m²/K
- Windows U-value: 1.5 W/m²/K
- Floor U-value: 0.10 W/m²/K
- Thermal bridging: Accredited construction
- Window G-value: Mixture of 0.42 and 0.46
- Rooflight G-value: 0.33

The proposal would incorporate electric vehicle charging points and cycle storage to promote sustainable travel. The proposal is considered to accord with Policies SS14 and ES1 of the Local Plan.

Sustainability

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

The Economic Role

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

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 would result in some dwellings having undersized gardens and has the potential to have an adverse impact on the occupiers of neighbouring properties.

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 Area of Outstanding Natural Beauty. Great weight should be given to harmful impact on the South Devon Area of Outstanding Natural Beauty.

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 Torbay 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, SS10, SS11, TA2, TA3 and W1 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 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 undue harm to the living conditions of some of the future occupiers given the undersized or lack of outdoor amenity spaces, and would harm adjacent neighbours and future occupiers, 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 an area of outstanding natural beauty in England, the Council must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

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.

In addition, insufficient information has been provided to enable a proper assessment and determination of important considerations given the sensitivity of the site within the South Devon Area of Outstanding Natural Beauty, being in close proximity to the South Hams SAC and in relation to neighbouring properties.

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 Area of Outstanding Natural Beauty (National Landscape), provides a clear reason for refusing the proposed development. Furthermore, the identified harm to the setting of the Grade II designated heritage asset, provides a clear 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

With all matters considered, as detailed within this report, it is concluded that the proposal would fail to conserve and enhance the natural beauty of the South Devon Area of Outstanding Natural Beauty. The NPPF guides that when considering the impact of proposed development on the significance of a designated protected area (areas of outstanding natural beauty), 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 Area of Outstanding Natural Beauty, the surrounding area, and the harm to neighbour amenity. 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. 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 its siting, scale and design, and its location within and adjacent to the South Devon National Landscape, would have a detrimental impact on the landscape character and scenic beauty of this part of the South Devon National Landscape, as it fails to conserve and enhance such. The proposal is therefore contrary to Policies SS3, SS8, SS11, SDB1, SDB3, DE1 and H1 of the Adopted Torbay Local Plan, Policy E1 of the Adopted Brixham

Peninsula Neighbourhood Plan, and the guidance contained within the NPPF, notably Paragraphs 11, 180 and 182.

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 adequate justification. The proposal does not adequately reflect the historic use and special characteristics of the application site, resulting in a poor architectural and visual proposal. 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 206, 207 and 208.
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 proposal lacks high quality architectural detail and a sensitive palette of materials, as such the proposal fails to integrate with the existing streetscene. The proposed scale and design of the proposal is stark, 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 proposed development would provide a poor quality residential environment by reason of failing to secure an acceptable level of outdoor amenity space for future occupiers, namely Units 1-7, 18-24, 27 and 28 due to either insufficiently sized parcels of outdoor amenity space or provided no outdoor amenity space, which would result in the creation of an environment injurious to the amenity of future residents, contrary to 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, by reason of its siting, scale and design would have an unacceptable impact upon the occupiers of No.2 Springdale Close and Orchard House St Mary's Road, in terms of the proposed built form being in close proximity to this dwelling, which would result in an overbearing, overtly dominant environment for the occupiers of such and also an overlooked environment for the occupiers of No.2 Springdale Close. The proposed layout would result in internal intervisibility issues between future occupiers, namely between Unit 8 and 9-10, and between Units 5-

7 and Units 16, 19 and 22 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.

6. The proposed layout presents a contrived parking layout, of which 12no. parking spaces within the proposed layout are substandard, those numbered 10, 13, 14, 15, 16, 21, 22, 23, 25, 27, 29, 48, which are contrary to the adopted Highways Standing Advice. The proposed layout presents 36no. parking spaces which are considered to meet the Highways Standing Advice, however the minimum required parking spaces for the proposed development is 41. The proposed parking arrangement would therefore exacerbate the existing parking issues in the area resulting in a poor form of development, with a resulting harmful effect on highway safety. As such, the proposal is contrary to Policies TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030, the adopted Highways Standing Advice and Policy BH8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030, and the guidance contained in the National Planning Policy Framework, in particular Paragraph 115.
7. The proposed layout does not enable refuse vehicles safely or acceptably access and egress to and within the site. 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 pedestrians due to visibility splays and boundary treatments, nor as to whether the proposal would provide internal roads which would be to an acceptable (adoptable standard), 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 Adopted Torbay Local Plan 2012-2030, and the guidance contained within the NPPF in particular Paragraphs 114 and 115.
8. The development fails to secure acceptable waste storage and collection facilities that would not accord with adopted waste storage requirements, and thus the associated activity would result in the creation of an environment injurious to the amenity of future residents to the site, and highway safety, contrary to Policies DE1, DE3 and W1 of the Adopted Torbay Local Plan 2012-2030.
9. The submitted ecological information provided is insufficient to demonstrate that the proposed development would result in a measurable net gain in biodiversity. The proposal is therefore contrary to Policies NC1 and SS8 and the guidance contained within the NPPF, namely Paragraph 180.
10. The proposal, in the absence of a signed S106 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)

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.

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

Application Site Address	Seabury Hotel 11 Manor Road Torquay TQ1 3JX
Proposal	Demolition of existing hotel building and erection of 14 residential apartments, and associated parking and landscaping.
Application Number	P/2023/0721
Applicant	8 Tech Homes Ltd
Agent	McMurdo Land Planning And Development
Date Application Valid	15.08.2023
Decision Due date	14.11.2023
Extension of Time Date	03.05.2024
Recommendation	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.
Reason for Referral to Planning Committee	Major Development.
Planning Case Officer	Emily Elliott



Location Plan
Scale (A1): 1:1000

Site Details

The site is occupied by a Victorian Villa and its curtilage, sited at the corner of Manor Road and Stanley Road, Torquay. While the original building dates from 1830s-1860s, it has been extended by way of a number of more recent extensions that detract from its historic character to some extent. The established hotel use has not operated since the COVID pandemic.

The site is located within the St Marychurch Conservation Area. The St Marychurch Conservation Area Appraisal (CAA) does not identify the subject property as a key building within the conservation area, but draws attention to the prominent stone walls and mature trees along the plot boundaries. The site is in proximity to a Grade II listed building, namely No.205 St Marychurch Road which is opposite the site on the north-western side of Manor Road. The site is also located within Flood Zone 1, which is a Critical Drainage Area. The site is located outside of, but around 200 metres to the northeast of, a Community Investment Area, and is located outside of the Core Tourism Investment Area.

Description of Development

This is a full application for the demolition of the existing hotel building and associated ancillary buildings and the erection of 14no. 2-bed residential apartments with associated parking and landscaping.

The apartment block is proposed central to the site, is a single L-shaped building and covers a footprint of approximately 36 metres long by 21.5 metres deep at the widest parts. The proposed apartment block would be three storeys with a turret corner element. The base material is white render with the intermittent use of grey render and a small element of stone facing to the south western elevation, under a hipped slate roof.

The vehicular access is maintained within the existing location which is access from Manor Road. In terms of car parking the development provides 14 spaces, which is located within the north western section of the application site. This presents 14 spaces for the proposed 14no. units which remain unassigned and no provision of visitor spaces.

Relevant Planning Policy Context

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

Development Plan

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

Material Considerations

- National Planning Policy Framework (NPPF);

- Planning Practice Guidance (PPG);
- Published Standing Advice;
- Heritage setting, within a Conservation Area (St Marychurch) and within the setting of the No.205 St Marychurch Road (Grade II listed building).
- Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990: Sections 66 and 72; and
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

Relevant Planning History

Planning Application: P/2022/0908: Demolition of the existing hotel building, erection of a self contained block of 21 flats with basement parking and associated works. Withdrawn 26/10/2022.

Planning Application: P/2021/0520: Change of use from hotel to 12 flats, including the demolition of existing extensions, and the erection of a new extension and new building. (as amended). Approved 18/03/2022.

Planning Application: P/2013/0909: Extend time limit (re P/2010/0736) First Floor Extension With Pitched Roof Over; Extended Reception Area. Approved 17/09/2013.

Planning Application: P/2010/0736: Extend time limit - first floor extension with pitched roof over; extended reception area - application P/2007/1576/PA. Approved 20/08/2010.

Planning Application: P/2007/1576: First Floor Extension With Pitched Roof Over; Extended Reception Area. Approved 06/11/2007.

Planning Application: P/1998/1187: Alterations And Erection Of Extension To Form Conservatory To Existing Lounge At Rear (As Revised By Plans Received 14/9/98). Approved 22/09/1998.

Summary of Representations

11 representations, 1 support, 10 objecting. Key issues as follows:

Comments in support include:

- it provides houses.
- It provides jobs.
- Impact on the local area.

Concerns include:

- Impact on the local area.
- Not in keeping with the local area.
- Impact on the conservation area.
- Sets a precedent.
- Drainage.

- Noise.
- Overdevelopment.
- Privacy/overlooking.
- Traffic and access.
- Trees and wildlife.
- Loss of tourist accommodation.

Summary of Consultation Responses

Torquay Neighbourhood Forum (Comments dated 29.10.2023):

The Applicants have engaged with the Steering Group, and presented their proposals at the Steering Group Meeting on 10 October 2023. The Forum has noted that a number of Objections have been submitted regarding the design. The current building, not being Listed, has accumulated some ugly extensions around the Victorian core. The Steering Group considered that the proposed design was an improvement over previous proposals, and probably represents the best compromise by maintaining some characteristics of the Victorian style while providing sufficient dwellings to be viable.

Seabury Hotel is outside the Core Tourism Investment Area (CTIA). In view of the housing shortage in Torbay, the Forum accepts the conversion to residential use.

Compliance with Development Policies has been assessed in the attached Policy Checklist, and the proposal complies with the majority of Policies.

In conclusion, the Forum supports the proposed development.

Torbay Council's Strategy & Project Management Officer (Comments dated 20.10.2023):

1. Housing delivery and efficient use of land

In the context of a lack of a five year supply of deliverable housing sites, Paragraph 11(d) of the NPPF sets up a 'tilted balance' in which permission should be granted unless:

- (i) The application of policies in the NPPF that protect areas or assets of particular importance (*which includes designated heritage assets including Conservation Areas and Listed Buildings*) provides a clear reason for refusing the development, or
- (ii) Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

The NPPF paragraphs on 'Conserving and enhancing the historic environment', together with Policy SS10 of the Local Plan, are therefore an important part of the assessment of the application. If there is a clear reason for refusal relating to the proposal's impact on a designated heritage asset, then the 'tilted balance' is not engaged. Matters of design and heritage impact are detailed Development Management matters that I will leave to your assessment.

Paragraphs 119 to 125 of the NPPF ("Making effective use of land") are also relevant to this application. In particular: Planning decisions should:

- Paragraph 120(c): “give substantial weight to the value of using suitable brownfield land within settlements for homes...”
- Paragraph 124: “support development that makes efficient use of land, taking into account:
 - (a) “the identified need for different types of housing ... and the availability of land suitable for accommodating it”
 - (d) “the desirability of maintaining an area’s prevailing character ... or of promoting regeneration and change”
 - (e) “the importance of securing well-designed, attractive and healthy places”.
- Paragraph 125: “... Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions ... ensure that developments make optimal use of the potential of each site.”

Setting aside matters of design, scale and massing which are detailed Development Management matters, the quantum of development proposed for the site (14 apartments on a 0.18ha site) appears to be generally suitable in relation to the intent of the abovementioned paragraphs which seek to promote the efficient use of brownfield land for housing delivery.

Policy TS4 of the Torquay Neighbourhood Plan states that development proposals for brownfield sites will be supported, provided there are no significant adverse impacts, having regard to other policies in the plan. Impacts would therefore need to be significant in order for brownfield development to not gain support from this policy.

Policy H1 and SS12 of the Local Plan provide support for housing delivery on sustainably located sites within the built up area, while Policy SS13 supports the maintenance of a five year supply of deliverable housing sites.

Weight therefore needs to be given to housing delivery and to making efficient use of a brownfield site, but this needs to be weighed against any potential heritage harm identified as part of your assessment of the proposal’s impact on the St Marychurch Conservation Area and the setting of nearby listed buildings, if applicable.

2. Principle of change of use from tourist accommodation to residential

Policy TO2 of the Torbay Local Plan states that, outside Core Tourism Investment Areas, the change of use of holiday accommodation will be permitted where:

1. The holiday character of the area and range of facilities and accommodation offered are not undermined; and,
2. One or more of the following apply: the site is of limited significance in terms of its holiday setting, views and relationship with tourism facilities; it can be demonstrated that there is no reasonable prospect of the site being used for tourism or related purposes, or; the redevelopment or change of use will bring regeneration or other benefits that outweigh the loss of holiday accommodation or facilities.

Policy TT1 of the Torquay Neighbourhood Plan states that change of use from tourist accommodation to residential on sites outside the Core Tourism Investment Areas will be

supported subject to, amongst other things, the site being of limited significance to the tourism setting, or the site lacking viability for tourism.

The previously approved application P/2021/0520 included viability reports which provide a reasonable basis for supporting the proposed change of use from holiday accommodation to residential in accordance with the criteria set out above. Although 12 months marketing data is not provided, other evidence pursuant to Policy TT1 of the TNP is provided. The character in the vicinity of the site is more defined by residential properties than by holiday accommodation, and the site is somewhat separate from the important tourism facilities and accommodation at Babbacombe Downs (which, unlike the application site, is designated as a Core Tourism Investment Area). Although the hotel has clearly received investment in the past, the type of accommodation and facilities appear to be available elsewhere, closer to key tourism locations. Given the site's location, the hotel's performance in recent years, and the pipeline of new hotels opening in the wider area, it appears unlikely that the loss of the hotel would adversely affect the tourism character of the area or the range of accommodation offered in Torbay. The proposed change of use would bring about public benefits in the form of housing delivery (in the context of a lack of a five year supply of deliverable housing sites).

In addition, Policy TT2 of the Torquay Neighbourhood Plan states that changes of use away from tourist accommodation within Conservation Areas will be supported in principle (subject to other policies) to ensure a sound future for such heritage assets. This policy therefore offers support in instances where a change of use helps enable the retention of a heritage asset, similarly to NPPF Paragraph 197a (which relates to putting heritage assets to viable uses consistent with their conservation). Given that this proposal is for the demolition of the building, this application does not benefit from the support offered by this policy. For clarity, the proposal is not in conflict with this policy (as the policy does not say that changes of use will *only* be supported where needed to enable the retention of a heritage asset), but rather should be seen as neutral with respect to this policy.

I therefore raise no objection to the principle of the proposed change of use.

3. Sustainable communities

Policy SS11 of the Torbay Local Plan seeks to secure development that contributes to improving the sustainability of existing and new communities within Torbay by, amongst other things, enhancing residents' quality of life, providing a good standard of residential accommodation, and delivering development of an appropriate type, scale, quality, mix and density in relation to its location.

The proposal is for the brownfield development of 14 flats all of which would be 2- bedroom flats. The proposal therefore avoids an over-proliferation of small (1-bed) self-contained flats, albeit that the proposal does not provide much of a range of flat sizes. The proposal appears to be broadly consistent with the intentions of Policy SS11. Residential amenity and the quality of the living environment provided by the development (Policy DE3, Policy SS11) is a detailed Development Management matter that I will leave to your judgement. It may be worth considering, however, the quality of living environment afforded to future occupants of Flats 3, 7 and 13 which are effectively single-aspect and northfacing.

In this location, the use of the site for non-self-contained residential accommodation (HMOs) would amount to an overly intensive use of the site with the potential for negative impacts on neighbourhood amenity, and the exacerbation of existing social and economic deprivation. Therefore, if the application is supported, a condition of approval should be included requiring that the flats be used solely for C3 use and not for C4 use.

4. Drainage

As a policy team we are aware of the growing importance of reducing surface water drainage so as to limit the occurrence of combined sewer overflows. I note that the proposal mentions the use of permeable paving for the parking area; if the application is supported, a condition to secure this is recommended.

5. Low carbon development

As part of the assessment of the proposal in relation to Policies ES1 and SS14 of the Local Plan, the impact of the loss of embodied carbon due to the demolition of the building should be considered. I note that the submitted Energy Statement appears to be silent on this. Any operational benefits arising from positive elements of the design (such as the proposed use of air source heat pumps) will need to be weighed against the loss of embodied carbon. Any reusable building materials would need to be salvaged from the demolition.

6. CIL/s106

As per the CIL Charging Schedule, the proposed development is liable for CIL at a rate of £70 per sq m of chargeable floor space.

Torbay Council's Strategy & Project Management Officer (Comments dated 09.02.2024):

I have reviewed the additional information submitted by the applicant on 17 January 2024 and I consider the policy consultation response below to remain up to date. Since the response below, the NPPF has been updated and a written ministerial statement was issued on 19 December 2023. In broad terms, both appear to demonstrate to some extent the Government's additional emphasis on brownfield development. The 2022 Housing Delivery Test result has also been issued (Torbay = 55%). The presumption in favour of sustainable development is applicable (both as a result of Torbay's housing land supply position and housing delivery test result), unless your assessment of the application identifies a clear reason for refusal relating to a footnote 7 constraint (which includes designated heritage assets). In addition, the changes to Paragraph 14 of the NPPF (Dec 2023) offer the Torquay Neighbourhood Plan protection until June 2024.

As a side note in addition to the matters raised below, Policy SS5 of the Local Plan and the 2022 Planning Contributions and Affordable Housing SPD both seek the payment of loss of employment contributions in instances such as this. I believe that this was suggested in a planning policy consultation response to application P/2021/0520, although I note that the application was subsequently approved without the said contribution. Naturally any potential planning contribution needs to meet the statutory tests of lawfulness set out in Regulation 122 of the CIL Regs and Paragraph 57 of the NPPF (Dec 2023), and this is a matter for the case officer to consider as part of the planning balance and alongside all other material considerations.

Historic England (Comments dated 14.09.2023):

Significance

The core of the former Seabury Hotel is a mid-nineteenth century villa, one of many built in the area as it was developed from farmland into a suburb of Torquay. It is within the St Marychurch conservation area, and as the conservation area appraisal sets out, the Victorian character of the area is **fundamental** to its character. The villa is a typical example of its type, with stucco elevations, sash windows, a Welsh slate roof, and generous grounds, bounded by characterful walls in local stone. Like many villas within the conservation area, it has had a number of insensitive twentieth century extensions, which have masked its character and caused harm to the conservation area. However, it is still possible to recognise the core historic villa at the heart of the site, and it still makes a limited contribution to the conservation area. It is within character area 3 of the conservation area, which is summarised in the conservation area appraisal as '19th century villas'.

Impact

It is proposed to demolish all the buildings on the site, including the historic villa, and redevelop with a three storey residential building, in a Victorian style, with rendered walls, portrait shaped windows, an octagonal corner tower, and a degree of articulation. The loss of the historic villa would cause harm to the conservation area. Despite its insensitive additions, it still makes a contribution to the conservation area, being legible as one of the historic villas that are fundamental to the character and interest of this part of the conservation area. The scale of the new building is uncharacteristic of the villas in this part of the conservation area, as is the ratio of building to garden area. While the Victorian style proposed does in theory respond to the character of the conservation area, the massing and detailing proposed is unconvincing. The paucity of chimney stacks, the use of semi-circular window heads over square-headed windows, and the elephantine scale of the building compared to the original villa are just a few of the reasons why the proposed design fails to be a convincing evocation of a Victorian villa.

Consent was given by your Council for a scheme that would retain the core of the villa, remove the unsightly later extensions, and replace them with new extensions (P/2021/0520). Historic England were not consulted on this application. However, we note that the approved scheme was respectful of the remaining elements of the villa, introduced new build at a sympathetic scale, allowed the villa to retain its primacy in views from the street, and did not cause harm to the conservation area's character. Had we been consulted we would not have raised concerns.

Policy

Heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations (National Planning Policy Framework (NPPF), paragraph 189).

The conservation of heritage assets should be given great weight in decision making (NPPF, paragraph 199). The incremental erosion of the Conservation Area through loss of buildings that contribute positively to its character and appearance does not conserve it as a heritage asset and is harmful. Where harm is caused this must be clearly and convincingly justified (NPPF, paragraph 200).

It is for your authority to consider if the harm that we have identified can be balanced against public benefit (NPPF, paragraph 202). We draw your attention to the fact that an alternative scheme that would generate no harm has been consented. Conflict between the conservation of heritage assets and any aspect of development proposals should be avoided or minimised where possible (NPPF, paragraph 195).

Position

Historic England considers that the complete demolition of the former Seabury Hotel would cause harm to the St Marychurch Conservation Area (a designated heritage asset). It is one of the Victorian villas laid out in spacious grounds that are fundamental to the character of the conservation area, even when degraded by inappropriate extensions. It is suggested that the previously consented scheme that would have retained and restored the villa with new build in the grounds would not be viable. The viability study should be given careful scrutiny, but if your Council agrees with its conclusions, we suggest that retention of the villa with a larger but well-designed separate new build element would potentially be less harmful to the conservation area than the proposed scheme. The St Marychurch conservation area has poor prospects if its characteristic Victorian villas are to be replaced with unconvincing and overscaled imitations. The proposal as a whole does not preserve or enhance the Conservation Area.

Recommendation

Historic England has concerns regarding the application on heritage grounds.

We consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 189-202 of the NPPF.

In determining this application you should bear in mind the statutory duty of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If there are any material changes to the proposals, or you would like further advice, please contact us.

Devon County Council's Archaeologist & Historic Environment Manager (Comments dated 11.09.2023):

I have no comments to make, as there does not appear to be any impact on any sites or features of archaeological interest.

The Victorian Society (Comments dated 13.10.2023):

Seabury Hotel is a historic building within the St Marychurch Conservation Area. The area was developed c1860 and although the building has undergone much alteration its form and some detail is recognisably mid-19th century. Therefore, it makes some contribution to the character and understanding of the Conservation Area.

This proposal would see the demolition of the existing historic building and its replacement with no.14 apartments, rising to 4 storeys and designed in a contemporary idiom. This would

harm the significance of the Conservation by introducing a building whose scale and design is out of character with surrounding historic buildings, it would also negatively impact the setting of the Grade II listed Berkshire Court that neighbours the site. The Victorian Society understand that an approved application proposed to retain some of the historic building on the site, with new development respecting the existing scale. This was a far more sensitive response to the site and character of the Conservation Area and we recommend that this is pursued.

The NPPF states: *'206. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance.'* This proposal would not enhance or better reveal the significance of the Conservation Area, therefore we recommend its refusal and object to the application.

Historic Buildings and Places (Comments dated 21.09.2023):

We have concerns with the application due to the impact the proposal would have on the St Marychurch Centre Conservation Area.

The area around Manor Road was developed around the 1860s and while a lot of change has occurred within the CA, the general character is that of detached and semi-detached 19th century villas set within large garden plots. One of these villas is at the core of the Seabury Hotel, and while several poorly considered extensions were added in the mid C20, the original villa is still discernible.

The previous approved scheme for this site (application P/2021/0520) demolished those later additions and constructed two new elements, a modest extension to the villa and a separate apartment building, achieving a total of 12 apartments. While it was disappointing that elements of the original submitted design were lost, such as the hipped roof forms, the overall massing was generally more appropriate for the conservation area.

This current scheme proposes complete demolition, including the original villa, and construction of a single apartment block. The design, length of the building and the additional massing without spacing between the different elements is somewhat out of scale with the characteristic villa form within the CA. The loss of the original villa within the CA would further harm its historic interest and, surprisingly, the additional bulk and scale of the proposed new build compared to what is already approved only achieves an additional 2 apartments.

The argument that it is not a non-designated heritage asset is merely a distraction from the fact that so many Victorian villas have been lost or disfigured within the St Marychurch Centre Conservation Area. The approved scheme offered an opportunity to make a positive contribution to the CA by restoring the original villa and this should be the basis for any new development on this site. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires Local Planning Authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation. Para 206 of the NPPF advises that new development is encouraged but must 'enhance or better reveal' the significance of the CA, stating:

‘Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.’

Further, chapter 12 of the NPPF (2021) seeks to achieve high quality places. Paragraph 126 states: *‘The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. 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.’* Paragraph 130 – in part – goes on to state:

(c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

(d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

Recommendation: Submission of amended plans HB&P acknowledges the opportunities to regenerate and redevelop this site, however, the priority should be to ensure any new development is sensitive to the historic environment and enhances the conservation area. HB&P therefore recommends that an appropriate scheme is prepared that is sympathetic to the original villa on the site as well as the context of the local conservation area.

Torbay Council’s Principal Historic Environment Officer (Comments dated 08.03.2024):
Relevant Policy

Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Section 66 (1) of the same act 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 requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by a proposal (Para 201).

Paragraph 203 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.

Finally, paragraph 212 of the NPPF states that Local planning authorities should look for opportunities for new development within Conservation Areas to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favorably.

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 and HE1 (Listed buildings) of the Local Plan).

Other relevant Local Plan policies for this application are Policy TO2 which states specifically that “where a change of use away from tourism is permitted, there will be a requirement to restore buildings or land to their original historic form.....A high priority will be given to restoring the character and appearance of buildings within conservation areas”.

With regards to the Torquay Neighbourhood Plan, Policy TH8 states that development must be of good quality design, respect the local character in terms of height, scale and bulk; and reflect the identity of its surroundings.

Policy TT2 also has some relevance which states that changes of use away from tourist accommodation within Conservation Areas will be supported in principle (subject to other policies) to ensure a sound future for heritage assets. This policy therefore offers support in instances where a change of use helps enable the retention of a heritage asset, which is not the case with the proposed development.

Significance of Identified Heritage Assets:

With regards to heritage assets, the site is within the St.Marychurch Conservation Area and the setting of a Grade II listed building - 205 St.Marychurch Road. The building itself can also be tested against established criteria to assess whether it can be classed as a non-designated heritage asset.

Designated:

St. Marychurch Conservation Area

The site sits within the St. Marychurch Conservation Area within an area designated as Character Area 3 – 19th century villas.

The original villa on the site was constructed in the mid-19th century and is a typical example of its type built upon former agricultural/scrub land along the western approaches to St.Marychurch as it expanded into a suburb of Torquay.

The building is set within generous grounds which is recognised as one of the special characteristics of the conservation area within the conservation area appraisal which states that “the layout and orientation of much of the villa developments gives rise to a well-founded air of spaciousness” and that on the most part the original scale and proportion of the villa development, mostly of two-storeys has been maintained.

The building itself has undergone insensitive alteration as a result of its conversion to a hotel in the later 20th century which has had a detrimental impact on its external and internal character and appearance, however, its original form and elements of architectural detailing remain legible and therefore its origins and contribution to the evolution and character of the area can still be read.

As a result, the building does make a positive contribution to the character and appearance of the St. Marychurch Conservation Area.

205 St Marychurch Road

This villa is believed to have been constructed in the 1840s and was designated as a Grade II listed building in 1975. It has demonstrable architectural and historic value and is recognised within the St. Marychurch Conservation Area Appraisal as having one of the few unspoiled frontages in the area.

Setting is defined in the NPPF as “The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of

a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”

The Planning Practice Guidance Notes that accompany the NPPF expand on this definition, stating: “The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.

It is considered that with regards to no.205’s setting, the asset is experienced within its own curtilage and also from a public perspective along Manor Road which allows views of the principal elevation and from the rear from St. Marychurch Road.

The building can still be read as part of the mid-19th century development of this part of St. Marychurch and therefore its wider setting and relationship with neighbouring villas of a similar age does make a contribution to its significance.

The application site can be found directly opposite on the other side of Manor Road and although the building is set back within the plot and is partially screen by a row of mature trees, the listed building and the application site can still be seen together in context. It is clear that the two sites share a visual and historic relationship between each other and other villas along Manor Road.

As a result, it can be concluded that the application site does form part of the setting of the Grade II listed building.

Non-Designated Heritage Asset:

The building has undergone insensitive alteration during its conversion to a hotel in the mid to late 20th century, however, the original core of the villa still remains and is legible. Therefore, it can also be tested to be a potential non-designated heritage asset using Historic England’s established criteria:

Asset Type	Detached villa in generous grounds, formerly residential use now vacant hotel. The building has undergone various extensions to accommodate additional rooms and spaces associated with its hotel use.
Age	mid C19th
Rarity	Detached and semi-detached Victorian villas are typical for the area and share a number of characteristics with regards to architectural detailing

	and materials. However, each villa appears to have been individually designed for their specific plot along Manor Road.
Architectural and Artistic Interest	Although the building has been insensitively altered and extended, some original external and internal detailing remains, and the form of the original building can still be read.
Group Value	Forms part of an informal group with a number of other villas of a similar age along Manor Road which denote this period of Victorian expansion.
Historic Interest	Demonstrates the mid-19th century development of this area and the expansion of St. Marychurch and the rise of Torquay as a fashionable destination in which to live and visit.
Landmark Status	Prominent feature within the street scene but is not specifically recognised as being a landmark feature within the local area.

Summary:

Although the building has been significantly altered as a result of its past conversion to a hotel, its original form and some areas of architectural detailing remain. The building has some architectural and historic interest and forms part of an informal group of buildings within the immediate area.

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

It can therefore be considered to be a non-designated heritage asset which has the potential to have its significance further revealed through the removal of unsympathetic alterations of the past.

Impact on Significance of Heritage Assets:

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

Heritage Asset	Proposed Works	Overall Impact	Harm/Enhancement/Neutral
Seabury Hotel - NDHA	Demolition and replacement of the Seabury Hotel	High	Harm

St.Marychurch Conservation Area	Demolition of the Seabury Hotel	Moderate	Harm
St.Marychurch Conservation Area	Construction of apartment building	Moderate	Harm
205 St. Marychurch Road	Demolition of the Seabury Hotel	Low	Harm
205 St. Marychurch Road	Construction of apartment building	Moderate	Harm

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

The form and elements of architectural detailing of the original villa are still legible and therefore, as identified above, the building does make a positive contribution to the character and appearance of the St. Marychurch Conservation Area thereby warranting retention.

It is also currently considered that the demolition of the original villa lacks justification. The structural survey submitted in support of the application states that “although concealed for the most part, the original portion of the building appears in reasonable condition for its age and type”. It goes on to say that it is in fact the unsympathetic 20th century additions that are most at risk, stating “the standard of build quality in the more recent extensions is notably lower than the original villa, and is displaying signs of inherent defects within the construction.” Finally, the submitted report recognises that although the retention of the original footprint would potentially incur additional costs, it is considered feasible with an appropriately experienced contractor. It is appreciated that viability information has been submitted as part of the application which seeks to justify wholesale demolition and redevelopment. It is considered that this would require independent assessment to judge what weight can be given to this within the overall assessment of the proposals.

This being the case, based on the information currently available the loss of the villa lacks justification and will inevitably have a detrimental impact on the St.Marychurch Conservation Area as a designated heritage asset, which is characterised in this location by individual Victorian villas set within generous grounds.

In addition, even if the proposed demolition of the existing villa could be adequately justified, the replacement structure as proposed would be assessed to cause harm to the character and appearance of the conservation area as a result of its scale, massing, design and appearance.

The increased bulk of the building and the subsequent impact on the ratio of building to open space within the plot, its over scaled and needlessly busy design, the distinguishable difference in the detailing and more generally, its unavoidable inauthenticity would significantly undermine the contribution the site makes within the streetscape.

The proposed scheme would therefore be harmful to the character and appearance of the conservation area. It would also have a detrimental impact on the setting and significance of the Grade II listed building (205 St Marychurch Road) directly opposite the site.

Conclusions:

The wholesale demolition of the existing building would cause substantial harm (through complete loss of significance) to the Hotel Seabury as a non-designated heritage asset. This would also result in 'less than substantial harm' to the significance of the St. Marychurch Conservation Area and no. 205 St. Marychurch Road as a Grade II listed building.

As a result of the above, it is clear that the proposed development would cause clear harm to a number of identified heritage assets and that the proposals in their current form would neither preserve nor enhance the character or appearance of the identified conservation area. This being the case, the proposals are considered to be contrary to Policies SS10, HE1, TO2 and DE1 of the Torbay Local Plan and Policy TH8 of the Torquay Neighbourhood Plan which requires development to conserve and enhance the conservation area and to respect local character.

In line with the requirements of the NPPF, permission should be refused, unless it can be demonstrated that the harm caused can be outweighed by associated public benefits, whilst being mindful of the great weight which should be given to the conservation of heritage assets and the requirements of Section 66 (1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This would be a matter for the overall planning assessment of the proposals.

South West Water (Comments dated 14.09.2023):

South West Water is committed to eliminating sewer flooding particularly from foul and combined sewers to safeguard both the environment and householders. We request the proposed strategy for the disposal of surface water is in accordance with the National Planning Policy Framework.

The applicant must demonstrate how its proposed development will have separate foul and surface water drainage systems and not be detrimental to existing infrastructure, the public and environment.

You will need to demonstrate that the 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): In all cases, where there is a risk of flooding the development will be made safe and flood risk not increased elsewhere.

1. Water re-use (smart water butts/rainwater harvesting etc.)

Provide written evidence as to why water re-use practises are not a viable option for your proposal.

2. Discharge into the ground (infiltration); or where not reasonably practicable,

Provide written evidence as to why Infiltration devices, including Soakaways, Swales, Infiltration Basins and Filter Drains do not meet the design standards as specified in either H3 Building Regulation standards for areas less than 100m². Soakaways serving larger areas must meet the design standard specified in BS EN 752-4 (para 3.36) or BRE Digest 365 Soakaway Design.

3. Discharge to a surface waterbody; or where not reasonably practicable,

Provide written evidence for refusal of discharge consent from owner of water body (Environment Agency, Local Authority, Riparian Owner etc)

4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,

Provide written evidence for refusal of discharge to drainage system (Highway Authority, Environment Agency, Local Authority, Private ownership)

5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

South West Water will carry out a hydraulic capacity review of the combined sewerage network before permission will be granted to discharge to the combined sewer.

Please note until we have seen the evidence as to why the applicant cannot discharge the surface water higher up the hierarchy their proposed discharge to the combined sewer is NOT permitted.

Torbay Council's Drainage Engineer (Comments dated 21.09.2023):

I would like to make the following comments:

1. As there is insufficient room on site for infiltration drainage the proposed drainage strategy for surface water run-off from the buildings is for a controlled discharge to the combined sewer system and the controlled discharge rate has been identified as 1.5l/sec which complies with the requirements of the Torbay Critical Drainage Area.
2. The developer has submitted a drawing showing the proposed drainage strategy together with hydraulic calculations for the surface water drainage design.
3. The drainage strategy drawing identifies manhole cover levels and invert levels, pipe diameters and pipe lengths however there is no drawing identifying the actual impermeable area discharging to each pipe length within the hydraulic model. This drawing is required in order that we can confirm that the data input to the hydraulic model matches the data included on the drawings.
4. The hydraulic modelling that has been submitted identifies that the surface water drainage system has been designed for the critical 1 in 100 year storm event plus 50% for climate change.

Based on the above comments, before this planning permission can be granted the applicant must supply details to address point 3 identified above.

Torbay Council's Drainage Engineer (Comments dated 17.04.2024):

Many thanks for forwarding the additional information. Based on the infiltration testing that has been carried out, the use of infiltration drainage is not feasible and therefore a controlled discharge to the combined sewer system will be acceptable, as identified in the previously submitted flood risk assessment.

As this planning application relates to 14 apartments and is classified as a major application, I expect to see the drainage design completed before planning was approved. We do not normally use planning conditions for surface water drainage on major applications.

As a result of the above, my previous consultation response for this application is still valid.

SWISCo's Senior Tree Officer (Comments dated 14.09.2023):

No objections to proposed development subject to planning conditions being applied in respect of tree protection and soft landscaping (tree planting).

Statutory Designations (Trees):

Tree Preservation Order –Not Applicable.

Conservation area – Applicable.

The application proposal includes the demolition of the existing hotel and removal of associated temporary and permanent structures. Rebuilding works are proposed on a reconfigured footprint within the curtilage of the property.

The existing property contains a number of variable quality trees and hedges. These have been identified in the BS5837 tree survey which supports this application.

The arboricultural report recommends the management and removal of trees within the property. I am satisfied that these works are reasonable and will not significantly impact the character or setting of the Conservation Area. Locally notable changes in appearance of the property are inevitable however.

The proposed pruning of T3 & T4 – I would advise the trees are reinstated into a cyclical pollarding regime without creating secondary pollard heads at higher points.

The Arboricultural Method Statement (Treecall Plan TC1 Ref: DS/77223/SC) clearly specifies the works and tree protection measures which are to be taken forward and their relative phasing within any construction programme. These works are also reasonable and adopt a precautionary approach to tree protection, enabling limited access to root protection areas in limited parts of the site in combination with ground protection measures.

The use of a pre-commencement planning condition is essential to the tree protection element of this project, if planning permission is granted. Enabling works (tree removal) may be

undertaken prior to any tree protection being installed (fencing, ground protection), but any demolition or construction works need to be undertaken only when the operational areas are defined and constrained.

The proposed tree planting is confined to the boundaries of the site. The species selection is generally acceptable but is reliant on only four species (Oak, Crab Apple, Wild Cherry and Field Maple). My preference would be to include one or two other species including Midland Hawthorn and Rowan for diversity and varying flowering and fruit attributes.

If planning permission is granted:

1. Secure by pre-commencement planning condition the implementation of the works specified in Treecall Plan TC1 Ref: DS/77223/SC and in conjunction with the Arboricultural Impact Assessment & Method Statement (Treecall REF DS/77223/SC).
2. Apply a planning condition to secure the proposed tree planting (with any species revisions) as per Tree Call Plan TC2 (Ref: DS/77223/SC).
3. Apply a condition requiring arboricultural site monitoring and reporting to the LPA including records of checks for tree protection / ground protection during the construction and landscape phases.

SWISCo's Senior Tree Officer (Comments dated 13.02.2024):

I've had a look at the updated ecology and landscape comments which are acceptable in terms of details and specifications. The landscape scheme has already been covered in previous comments and I'm generally happy with the proposal.

SWISCo's Waste (Strategy & Performance) Team Manager (Comments dated 19.09.2023):

The specification for the underground recycling and waste storage is not compatible with domestic recycling and waste collections in Torbay. A vehicle with a crane lift is required to empty these containers, which SWISCo do not use for recycling and waste collections.

I cannot find any detail of how the waste management solution identified would be applied to the circumstances of this development to maximise the amount of recycling and make positive behaviour change easy for the residents.

I would like to see a detailed waste management plan for the operational life of the development, explaining how the services will be tailored to the development and demonstrating compatibility with the domestic collection service, provided by SWISCo on behalf of Torbay Council. I would be keen to see this before a decision is made, rather than through a planning condition.

I would like to request waste management contributions for this development, in line with the table contained with the Council's Planning Contributions and Affordable Housing Supplementary Planning Document.

The Highway Authority (WSP: Comments dated 17.10.2023):

The site is currently accessed via Manor Road and this access is to be retained. It is unclear whether refuse vehicles are proposed to access the internal layout, or undertake refuse collections from Manor Road. This should be clarified by the applicant. Swept path analysis illustrating that access is possible for emergency vehicles (and refuse vehicles if applicable) to the site should be provided by the applicant.

Parking

Appendix F of the Torbay Local Plan details the parking provision to be provided, "1 car parking space per flat. Provision of secure and covered cycle storage for at least 1 cycle per flat.". The applicant has stated that 14 car and 14 cycle spaces are to be provided. The car spaces have been shown within the "Site Plan" drawing provided by the applicant. It is unclear whether any parking provision will be dedicated for use by disabled people and if so, these should be appropriately designed and illustrated on a site layout drawing. The Torbay Local Plan prescribes 10% of overall parking provision be designated for disabled use.

The Torbay Local Plan also states that "Electric vehicles and car clubs will be supported. 20% of available spaces should have electrical charging points". It is unclear whether electric vehicle charging facilities are to be provided and if so the location and quantum of these spaces. Further detail will be required confirming these details.

Confirmation as to whether residents will be assigned a specific car parking space respective to their dwelling is also requested from the applicant. On-street parking on Manor Road is generally at capacity and any visitor parking within the site would be welcomed by the Highway Authority.

The location of the secure, sheltered cycle store is shown on the "Proposed Ground Floor Plan" provided by the applicant, this is considered acceptable.

Refuse Collection

The application includes the proposal of underground waste containers. The specification for the underground recycling and waste storage is not compatible with domestic recycling and waste collections in Torbay. A vehicle with a crane lift is required to empty these containers, which SWISCo do not use for recycling and waste collections.

No detail has been provided of how the waste management solution identified would be applied to the circumstances of this development to maximise the amount of recycling and make positive behaviour change easy for the residents.

A detailed waste management plan for the operational life of the development is requested, explaining how the services will be tailored to the development and demonstrating compatibility with the domestic collection service provided by SWISCo on behalf of Torbay Council.

Trip Generation

The applicant has provided trip generation for this application, this is considered acceptable. It is not considered that the proposed development will result in a significant increase in generated traffic compared to the previous use.

Conclusion

Prior to recommendation the applicant will be required to provide the following:

- Vehicle tracking of emergency vehicles, and if applicable refuse vehicles, accessing the site and egressing in a forward gear;
- Further information regarding any assignment of car parking spaces and the inclusion of disabled and visitor parking, and electric vehicle charging; and
- A detailed waste management plan including information regarding how the waste management solution identified would be applied to the circumstances of this development.

Police Designing Out Crime Officer (Comments dated 25.08.2023):

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.

It is recommended that the communal entrance doorsets are controlled by a visitor door entry system. The system should allow the resident to have a two way conversation with the visitor from their own property, it should also allow the person to see the visitor so they can visually identify them before granting access. It would be beneficial if the system allowed the occupant to see an image before the call so the resident can decide if they wish to answer or not. The system must also allow the occupant to remotely operate the electric locking device from their terminal and any other subsequent doors.

Please note I would not support the use of a trades person button or time released mechanism due to anti-social behaviour and unauthorised access associated with these.

It is also recommended that an access control system is installed that allows residents and authorised persons to gain access to the building via an electronic card or fob. The system should have the facilitate to restricted access at certain times of the day for relevant users. The system must have the ability to record and identify the location, user, time and date of every system event and store this for no less than 30 days. It should also be fully programmable to expeditiously delete lost or stolen proximity cards, key fobs.

Please note I also would not support the use of a push button code access control system due to issues associated with these where the entry code has not been updated when previous residents have moved out or shared with unauthorised persons.

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 each elevation that contains a doorset where public visitors or occupants are expected to use. We would support the use of a low level dusk till dawn lighting that provides a constant lighting, opposed to a PIR lighting which has been known to increase the fear of crime with the constant activation.

Communal areas inside the property such as entrance hallways, landings and corridors should have 24-hour lighting (switched using a photoelectric cell).

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

All ground floor and easily accessible windows must be fitted with window restrictors which prevents reach in burglaries where the offender reaches in an open window and takes whatever's within reach.

It would be recommended that a secured lobby area is created on the communal entrances, this would prevent onward movement to other parts of the building without authorisation. A secured mail delivery system could also be installed within the secured lobby area.

As previously mentioned with the intention to retain the current boundary walls and hedges. Any hedge should be of sufficient height (1.8m) and depth to provide both a consistent and effective defensive boundary as soon as the residents move in. If additional planting will be required to achieve this then temporary fencing may be required until such planting has matured. Any hedge must be of a type which does not undergo radical seasonal change which would undermine the security of the boundary.

The cycle store should be lockable and it would be recommended its linked into the access control system. The internal side of the door should be fitted with a thumbturn lock or alternative emergency release system that would allow a person to exit in the event of being inadvertently locked inside. It would also be beneficial if the cycle store had lighting in which provides an even spread and illuminates the whole store making it feel safe to use at all times.

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.

Devon County Council's Principal Ecologist (Comments dated 07.02.2024):

Headline – Okay subject to conditions.

The bat presence/absence survey was undertaken in accordance with best practice guidance. No bats were recorded emerging from the building indicating the absence of bat roosts. No trees onsite deemed suitable in supporting bat roosts. No impacts on roosting bats are anticipated. The report states that no mitigation for bat roosts is required. A planning condition should be secured to ensure that no external lighting is to be installed or used in association with the development unless otherwise agreed with the Local Planning Authority.

The nesting birds survey was undertaken in accordance with common practice. The report acknowledges the potential for nesting birds to occur in the future. The report states that the works should be undertaken outside of the bird nesting season or following a check for the presence of nesting birds by an Ecologist. A planning condition should be secured to ensure that vegetation clearance works and enabling/demolition works are undertaken outside the bird nesting season, unless the site is inspected by an Ecologist prior to works commencing.

The report acknowledges the low potential for reptiles to be present. If present, these reptiles could be directly impacted by the demolition works. Mitigation for reptiles is mentioned in the Executive Summary of the Ecology report but this information is not detailed in the Conservation Action Statement, therefore it will need to be provided in a Construction and Environmental Management Plan document which is to be conditioned.

The Ecology report recommends the following biodiversity enhancement measures:

- Installation of artificial animal homes (no.) fitted to or integrated into the new building: bat boxes (4) and integrated bat bricks (4), integrated swift bricks (4), house martin (4 nests),

house sparrow terrace boxes (2), bee bricks (2); hedgehog homes (2); and bat boxes fitted to trees (2).

- Removal of 33 m of the non-native leylandii and replant a tall, native hedge with trees.
- Removal of invasive plant species - three-cornered leek and Rhododendron.
- Planting trees (13No. trees: 12No. native species, 1No. non-native species) at locations shown in arboricultural planting plan.
- Building a wildlife pond in northeast corner (surface area 35m²).
- Planting species-rich wildflower grassland (300m²) for pollinators. Location in northeast corner around the pond.
- Extensive green roofs total 116 m² , comprising drought tolerant grassland/sedum.
- Green walls total 371 m² (ground-planted 109 m² and façade-bound 262 m²) with planting native or non-native plants including climbing plants, such as honeysuckle (*Lonicera periclymenum*), hop (*Humulus lupulus*), passion flower (*Passiflora incarnata*), star jasmine (*Trachelospermum jasminoides*), Wisteria, Clematis, firethorn (*Pyrocantha*), climbing rose (*Rosa*), bryony (*Bryonia*) or ivy.
- Brush/log piles - the woody plants (trees/shrubs) removed will be cut and stacked to form a dead wood pile somewhere on the perimeter.

The above are deemed sufficient and the locations provided within the EclA will therefore be conditioned.

Planning Officer Assessment

Key Issues/Material Considerations

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

1. Principle of Development

The proposal is for the demolition of the existing hotel building and associated ancillary buildings and the erection of 14no. residential apartments. The site is a disused brownfield site that formerly operated as a hotel.

Policy TO2 of the Local Plan states that, outside Core Tourism Investment Areas, the change of use of holiday accommodation will be permitted where:

1. The holiday character of the area and range of facilities and accommodation offered are not undermined; and,

2. One or more of the following apply: the site is of limited significance in terms of its holiday setting, views and relationship with tourism facilities; it can be demonstrated that there is no reasonable prospect of the site being used for tourism or related purposes, or; the redevelopment or change of use will bring regeneration or other benefits that outweigh the loss of holiday accommodation or facilities.

Policy TO2 of the Local Plan states that, where a change of use away from tourism is permitted, there will be a requirement to (i) restore buildings or land to their original historic form by the removal of unsightly features, signage, clutter and extensions relating to the holiday accommodation use, (ii) to reinstate amenity space lost through over-development as a holiday use, and that (iii) a high priority will be given to restoring the character and appearance of buildings within conservation areas.

In light of the above, the proposal would not restore the building or land to its original historic form, it would demolish the existing buildings on site in totality, resulting in a loss of the character and appearance of non-designated heritage assets. The heritage impacts of the proposed development are discussed in the next section of this report.

Policy TO2 of the Local Plan also states that, whether inside or outside Core Tourism Investment Areas, change of use from holiday accommodation to small apartments and houses in multiple occupation (HMOs) will not be permitted where they would conflict with the tourism character and offer of the Bay. Similarly, Policy SS11 of the Local Plan seeks to secure, amongst other things, well-balanced communities with a range of good quality residential accommodation including small to medium sized homes (2-4 bedrooms), and to resist excessive numbers of small self-contained apartments and HMOs, with a particular emphasis on Community Investment Areas. While it is apparent that the site does not have a strongly tourism-based character and is not within a Community Investment Area, the site is located relatively close to the Core Tourism Investment Area anchored around Babbacombe Downs to the northeast and the nearby Community Investment Area to the southwest.

Policy TT1 of the Neighbourhood Plan states that change of use from tourist accommodation to residential on sites outside the Core Tourism Investment Areas will be supported subject to, amongst other things, the site being of limited significance to the tourism setting, or the site lacking viability for tourism.

Policy TT2 of the Neighbourhood Plan states that change of use away from tourist accommodation within Conservation Areas will be support in principle (subject to other policies) to ensure a sound future for such heritage assets and wherever possible unsympathetic development of the past is removed or altered to enhance the historic environment.

The previous planning application (ref: P/2021/0520) on the application site was supported by a viability report that supported the change of use from holiday accommodation to residential. Objectors have raised concerns regarding the loss of tourist accommodation. The former hotel is located in a secondary, residential area with limited passing trade and no sea views. The property is not well placed for Torquay's main attractions, all having negative

implications for occupancy and room rate. The local market has experienced an increase in the number of hotels and hotel bedrooms, all of which will compete for the existing business at the Seabury Hotel. Previous evidence suggests that the 2-star independent sector which the Seabury Hotel sits in, is the most sensitive to market challenges and the business is currently loss making due to declining revenue and high costs associated with property maintenance, payroll and credit card charges and is therefore not viable.

The character in the vicinity of the site is more defined by residential properties than by holiday accommodation, and the site is somewhat separate from the important tourism facilities and accommodation at Babbacombe Downs (which, unlike the application site, is designated as a Core Tourism Investment Area). Although the hotel contains a swimming pool and has clearly received investment, the type of accommodation and facilities appear to be available elsewhere, closer to key tourism locations. Given the site's location, the hotel's performance in recent years, and the pipeline of new hotels opening in the wider area, it appears unlikely that the loss of the hotel would adversely affect the tourism character of the area, or the range of accommodation offered in Torbay.

Policy H1 of the Local Plan states that proposals for new homes within Strategic Delivery Areas, and elsewhere within the built-up area, will be supported subject to consistency with other policies in the Local Plan. Letters of support state that the proposal would provide housing and jobs.

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

Policy TS4 of the Neighbourhood Plan states that development proposals for brownfield sites will be supported, providing there are no significant adverse impacts, having regard to other policies in the Plan.

The Government published the most recent Housing Delivery Test in December 2023. Torbay's result is 55%. This means that Torbay must apply the presumption in favour of sustainable development as required by Paragraph 11 of the NPPF. Torbay's most recent housing land supply (April 2023) is that there is 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, granting permission unless:

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

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 187) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, 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 72); 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 designated heritage assets provides a clear 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 (i.e. the “tilted balance” at Paragraph 11(d)ii).

The recent revision of the NPPF gives additional protection to Torbay’s Neighbourhood Plans (Torquay, Paignton and Brixham Peninsula) until June 2024 and makes it clear that conflict with the Neighbourhood Plan is likely to significantly and demonstrably outweigh the benefits of development.

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 less than substantial harm to the conservation area and the setting of a Grade II listed building, both designated heritage assets, contrary to the NPPF, notably Paragraph 208, whereby the public benefits of the proposal do not outweigh the identified harm. Paragraph 205 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 proposal presents a clear reason for refusing the application.

As such the 'tilted balance' identified in Paragraph 11 of the NPPF is not enacted. 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 clear reason for refusing the development. The presumption in favour of sustainable development therefore does not apply.

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.

2. Design and Visual Impact (including heritage impacts)

It is important to note that achieving good design is a central thread within national guidance and Part 12 of the NPPF "Achieving well-designed and beautiful 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*". Similar design expectations are engrained within the Development Plan through Policies SS11, DE1 and DE4 of the Local Plan and Policy TH8 of the Neighbourhood Plan.

The site is occupied by a Victorian villa and its curtilage, sited at the corner of Manor Road and Stanley Road, Torquay. While the original building dates from 1830s-1860s, the villa is a typical example of its type, with stucco elevations, sash windows, a Welsh slate roof, and generous grounds, bounded by characterful walls in local stone. Like many other villas within the St Marychurch Conservation Area, it has had a number of insensitive twentieth century extensions, which have masked its character and caused harm to the St Marychurch Conservation Area. However, it is still possible to recognise the core historic villa at the heart of the application site.

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.

The application is supported by a Heritage Statement. The St Marychurch CAA does not identify the subject property as a key building, but draws attention to the prominent stone walls and mature trees along the plot boundaries. The site is in close proximity to a Grade II listed building, namely No.205 St Marychurch Road, which is opposite the site on the north-western

side of Manor Road. The St Marychurch Conservation Area Character Appraisal sets out that the Victorian character of the area is fundamental to its character.

It is also incumbent on the Authority, in exercising its duties, under the provisions of The Planning (Listed Buildings and Conservation Areas) Act 1990 (Section 66(1)), to 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, and (Section 72(1)), to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

The proposal is to demolish all the existing buildings on the site, including the historic villa, and redevelop the site with a three storey residential building, in a Victorian style, with rendered walls, portrait shaped windows, hipped slate roofs, and an octagonal corner tower. Letters of support state that the proposal would have a positive impact on the local area, whereas letters of objection outline concerns that the proposed development would have a negative impact on the local area and the conservation area, would constitute overdevelopment, would set an unwanted precedent, and would not be in keeping with the local area.

Paragraph 195 of the NPPF states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. The NPPF outlines that the conservation of heritage assets should be given great weight in decision making (Paragraph 205 refers).

It is important to note that Historic England were not consulted on the former approval (ref: P/2021/0520), however Historic England in response to this planning application have reviewed the former consent to conclude that had they been consulted they would not have raised concerns, as the previous application sought to remove the insensitive twentieth century extensions and replace such with new extensions that were sympathetically scaled and respectfully retained the core of the villa. Historic England have confirmed that the former consent (P/2021/0520) would not generate harm.

Historic England have stated that the loss of the historic villa would cause harm to the St Marychurch conservation area, regardless of its insensitive twentieth century extensions, it makes a contribution to the conservation area, as a legible historic villa, which are fundamental to the character and interest of the conservation area. Historic England have outlined that the incremental erosion of the conservation area, including the loss of buildings that contribute positively to its character and appearance does not conserve a heritage asset, it results in harm. Historic England have commented "*the scale of the new building is uncharacteristic of the villas in this part of the conservation area, as is the ratio of building to garden area. Whilst the Victorian style proposed does in theory respond to the character of the conservation area, the massing and detailing proposed is unconvincing. The paucity of chimney stacks, the use of semi-circular window heads over square-headed windows, and the elephantine scale of the building compared to the original villa are just a few of the reasons why the proposed design fails to be a convincing evocation of a Victorian villa*". Historic

England conclude that they raise concerns about the proposed development on heritage grounds, and that the complete demolition of the former Seabury hotel would cause harm to the St Marychurch conservation area which is a designated heritage asset.

The NPPF confirms that harm must be clearly and convincingly justified (Paragraph 206). The loss of the villa lacks full and clear justification, whilst the applicant has undertaken viability work, further analysis has not been undertaken to explore alternative options. The wholesale demolition of the existing building would cause substantial harm (through complete loss of significance) to the former Seabury Hotel as a non-designated heritage asset. This would also result in 'less than substantial harm' to the significance of the St. Marychurch Conservation Area and no.205 St. Marychurch Road as a Grade II listed building.

The Council's Principal Historic Environment Officer has assessed the existing building through the tests Historic England provide on assessing whether a building has the potential to be a non-designated heritage asset. The Officer has concluded that although the villa has been significantly altered, it has some architectural and historic interest, which forms part of an informal group of buildings within the immediate area, it can be considered as a non-designated heritage asset and potentially further significance can be revealed through the removal of existing, unsympathetic extensions.

The Victorian Society have objected to the proposal, outlining that the existing villa makes some contribution to the character and understanding of the St Marychurch Conservation Area. The Victorian Society have stated that the proposal has a scale and design that is out of character with the surrounding historic buildings and would negatively impact the setting of the adjacent listed building Berkshire Court (Grade II). The Historic Buildings and Places body outlines that the design, scale and massing of the proposed development is out of scale with the characteristic form within the St Marychurch Conservation Area.

Objections and concerns have been raised regarding the demolition of the existing building and the form of the proposed replacement building by Historic England, The Victorian Society, The Historic Buildings and Places body, and the Council's Principal Historic Environment Officer. Summary guidance from the consultees cited are generally aligned, concluding that the building is a positive element within the designated heritage asset of the St Marychurch Conservation Area, and its' loss and replacement with the form of development proposed would be harmful, which would be counter to policy guidance. Considering the comments received from third parties, and having visited the site and immediate area, the existing building is deemed a positive element within the Conservation Area, this is notwithstanding deleterious extensions and incongruous expanse of hardstanding to the frontage.

The replacement building offers a larger footprint and additional height than the existing hotel. The resultant height and mass of the replacement building will be unduly dominant within the plot, which resultantly fails to respond positively to the historic character, and the sites constraints. To the frontage of the plot, the redevelopment presents little softening of the plot with a large area of hardstanding for the parking and manoeuvring of vehicles, which will dominate the frontage and will be apparent when travelling along Manor Road. The

existing hardstanding is a harmful and incongruous element of the current plot, and the proposal fails to respond positively in terms of the NPPFs aspirations for development to seek to better reveal the significance of heritage assets (in this case the conservation area as the designated heritage asset and the building as a non-designated heritage asset).

All matters considered, the summary position is that the existing villa is a positive element within the St Marychurch Conservation Area and the proposed development, by reason of the removal of the existing villa and the proposed replacement building presenting a scale and massing that would be unduly dominant within the plot, which would present a detailed but busy design that would be harmful to the character and appearance of the area.

In this circumstance, the development would lead to less than substantial harm to the St Marychurch Conservation Area, and less than substantial harm to the setting of no.205 St Marychurch Road, both of which are designated heritage assets. The loss of the existing building would also lead to the total loss of its significance as a non-designated heritage asset, and this should be taken into account within the balancing exercise in accordance with Paragraph 209 of the NPPF.

In light of the above context, it is relevant to note that when considering a proposal involving a number of heritage assets, if less than substantial harm is found in respect of a number of assets, more weight can reasonably be attached in the overall planning balance to a number of "less than substantial" harms than would be the case if only one asset were (less than substantially) harmed.

In such a circumstance where a proposal will lead to less than substantial harm to the significance of a designated heritage asset/s, Paragraph 208 of the NPPF requires the harm be weighed against the public benefits of the proposal. Paragraph 214 of the NPPF requires local planning authorities to assess whether the benefits of the proposal, which would otherwise conflict with planning policies but would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies. The main public benefit of the scheme would result from the provision 14 apartments. In this instance the benefits that are offered by the development do not outweigh the harm to the designated heritage assets and the loss of the non-designated heritage asset, the existing villa. This conclusion has regard to the duties within the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas, and to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.

For the reasons above the development is considered contrary to Paragraphs 135, 139, 195, 203, 205, 208, 209 and 212 of the NPPF and Policies DE1, SS10 and SS11 of the Local Plan, and Policy TH8 of the Neighbourhood Plan. The proposal would also conflict with the requirements of Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

3. Residential Amenity

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

In terms of location the application site is relatively close to the St Marychurch District Centre and the Plainmoor Local Centre and is therefore considered a positive sustainable location for the future use and well suited to a residential occupancy, presenting good opportunities for future occupants in terms of access to services, facilities and sustainable transport options.

Quality of living accommodation for future occupiers

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

<u>Flat Number</u>	<u>No. of Bedrooms</u>	<u>No. of Bed Spaces</u>	<u>Floorspace (sq m)</u>	<u>Minimum Requirement</u>
1	2	3	75.0	61
2	2	3	75.0	61
3	2	3	85.5	61
4	2	3	76.5	61
5	2	3	75.0	61
6	2	3	75.0	61
7	2	3	75.0	61
8	2	3	75.0	61
9	2	2	75.0	61
10	2	3	75.0	61
11	2	3	75.0	61
12	2	3	75.0	61

13	2	3	80.2	61
14	2	3	79.1	61

The proposal seeks to provide 14 x 2-bed apartments. The principal change to the housing mix from the previous consent is the increase of the number of units by two additional apartments, and less of a mix given that the previous consent sought four 1-bed apartments, six 2-bed apartments and two 3-bed apartments.

All apartments are considered to provide an acceptable scale of living accommodation with floor areas exceeding the prescribed standards. In addition to the size of the space, the quality of the space should be considered, in terms of how it is positively influenced by natural light levels and outlooks. In this regard, concerns are raised regarding the single aspect of Apartments 7 and 13. It is considered that Apartment 13 would receive limited natural daylight. Concerns are also raised in relation to the proposed openings for Apartments 2, 6 and 12 which are situated in the south west corner of the proposed replacement building and the retained trees, in terms of whether their outlook and access to natural daylight would be impacted. When compared to the previously approved scheme, the footprint of the current proposal is closer to the retained trees. The retained lime trees are a pruning tolerant species and are out of leaf in winter months, however the master bedrooms in Apartments 2, 6 and 12 are most likely to be affected by the retained trees.

Policy DE3 of the Local Plan also seeks secure the provision of usable outdoor amenity space where apartments should deliver 10 square metres per unit either individually or communally. The Neighbourhood Plan is in alignment with this guidance as advised within Policy THW4, either as balconies or communal space. The scheme provides a communal greenspace that accumulatively exceeds the policy-guided minimum of 140 square metres, which provides an acceptable level of outdoor space for future occupants of the apartments.

Adjacent neighbouring amenity

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

The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through positively managing the process through a Construction Method Statement, this should be conditioned should planning permission be granted.

In terms of the finished development the residential use aligns with the residential uses nearby and the proposed use would not result in undue noise or general disturbance. The move from a commercial use to a residential use is likely to be positive as although the site lies empty a future commercial use could create noise and disturbance.

Objectors have raised concerns in terms of noise and privacy/overlooking. The proposed development is some 12-14 metres from the nearest adjacent neighbours (residential care homes (Park House, No.7 Manor Road and Cary Park Lodge)). The existing use of the site is a hotel, it is considered that the proposed residential use would not result in any detrimental impact on adjacent neighbours in terms of noise. Given the proposal's siting, design and orientation in relation to adjacent neighbours it is considered that the proposed development would have the potential to overlook the grounds of Park House, which would impinge on the neighbouring occupiers privacy. Whereas the previously approved scheme retained more of the existing hedgerow between the application site and Park House to avoid such infringement.

Having regard to the amenities provided within the proposal for future occupants and the future relationship of the development with adjacent plots and neighbouring occupants, the majority of the scheme broadly aligns with the aims and objectives of Policies SS11 and DE3 of the Local Plan, Policy THW4 of the Neighbourhood Plan and the guidance contained within the NPPF.

4. Highways, Movement and Parking

Paragraph 114 of the NPPF guides that when assessing developments it should be ensured that (a) appropriate opportunities to promote sustainable transport modes can be (or have been) taken up, given the type of development and its location; (b) safe and suitable access to the site can be achieved for all users; (c) the design of streets, parking areas, other transport elements and the content of associated standards reflect 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. Paragraph 115 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 would be severe.

Development Plan objectives align with the aspirations of national guidance with principal guidance within Policies TA1, TA2 and TA3 of the Local Plan encompassing outcomes for developing a sustainable model of transport, providing a good standard of access for walking, cycling, public and private transport modes, standard for parking and cycling facilities. The Neighbourhood Plan reinforces the guideline parking requirements contained in the Local Plan through Policy TH9 and more broadly offers support for new development proposals where they are located on or near to public transport routes wherever possible and appropriate through Policy THW5.

The proposal proposes to maintain the existing vehicular access from Manor Road. The proposal includes 14 on-site parking spaces. Objectors have raised concerns regarding traffic and access. Local Plan policy guidance states that the proposed development should provide one off-street parking space per apartment, totalling 14 off-street parking spaces, plus an additional parking space for visitors. There is a deficit of 1 parking space, however it is considered that the existing use of the site with 23 hotel rooms available, the existing 12 off-

street parking spaces had to serve both guests and hotel staff. It is considered that the deficit of 1 parking space for the proposal, in relation to the existing situation would have a lesser impact on the local highway network. Furthermore, the site is in a sufficiently sustainable location as it is in close proximity to the St Marychurch District Centre and is in close proximity to local amenities and public transportation links to mitigate the insufficient onsite parking provision. The guidance notes also state that in flatted developments 20% of available spaces should have electric charging points and that there should be 10% of spaces suitable for disabled users. Should planning permission be granted, a planning condition should be employed to secure an appropriate level of electric charging points. The proposal also includes 18 bicycle storage spaces, which would exceed the policy requirement of 1 space per apartment. The proposed bicycle storage provision is considered to be acceptable, should planning permission be granted a planning condition should be employed to secure the provision prior to the first occupation of the development.

The proposed layout does not assign specific parking spaces to each apartment. WSP on behalf of the Local Highway Authority has confirmed that on-street parking on Manor Road is generally at capacity and any visitor parking within the site would be welcomed. WSP have confirmed that the trip generation for this application is acceptable, and it is not considered that the proposed development will result in a significant increase in generated traffic compared to the previous use. WSP requested that vehicle tracking for emergency vehicles should be provided to demonstrate that it would be possible to access the site and egress in a forward gear. The applicant has not provided this requested information at the time of writing this report. Considering the Development Plan and advice contained within the NPPF, the proposal is considered to be unacceptable on highway grounds, therefore contrary to Policies TA1 and TA2 of the Local Plan, and the guidance contained within the NPPF.

In terms of key ancillary elements Policy W1 of the Local Plan states that as a minimum, all developments should make provision for appropriate storage of waste. The applicant has proposed underground recycling and waste storage which SWISCo has confirmed is not compatible with domestic recycling and waste collections in Torbay. A vehicle with a crane lift is required to empty these containers, which SWISCo do not use for recycling and waste collections. SWISCo's Waste (Strategy & Performance) Team Manager was consulted on the application and requested a detailed waste management plan for the operational life of the development, explaining how the services will be tailored to the development and demonstrating compatibility with the domestic collection service, provided by SWISCo on behalf of Torbay Council. The applicant has not provided a revised scheme for the storage and collection of waste.

5. Ecology, Biodiversity and Trees

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

and protect existing hedgerows, trees and natural landscape features wherever possible, particularly where they serve an important biodiversity role.

Objectors have raised concerns regarding The application is supported by a Preliminary Ecological Appraisal, a Bat Survey report and a Biodiversity Metric Assessment and Landscape Plan. The bat presence/absence survey was undertaken in accordance with best practice guidance. No bats were recorded emerging from the building indicating the absence of bat roosts. No trees onsite deemed suitable in supporting bat roosts. No impacts on roosting bats are anticipated. The report acknowledges the potential for nesting birds to occur in the future. The report acknowledges the low potential for reptiles to be present. If present, these reptiles could be directly impacted by the demolition works, therefore a Construction and Environmental Management Plan should be secured prior to demolition. The Ecology report recommends the following biodiversity enhancement measures:

- Installation of artificial animal homes fitted to or integrated into the new building: bat boxes (4no.) and integrated bat bricks (4no.), integrated swift bricks (4no.), house martin (4 nests), house sparrow terrace boxes (2no.), bee bricks (2no.); hedgehog homes (2no.); and bat boxes fitted to trees (2no.).
- Removal of 33 metres of the non-native leylandii and replant a tall, native hedge with trees.
- Removal of invasive plant species - three-cornered leek and Rhododendron.
- Planting trees (13no. trees: 12no. native species, 1no. non-native species) at locations shown in arboricultural planting plan.
- Building a wildlife pond in northeast corner (surface area 35 square metres).
- Planting species-rich wildflower grassland (300 square metres) for pollinators. Location in northeast corner around the pond.
- Extensive green roofs total 116 square metres, comprising drought tolerant grassland/sedum.
- Green walls total 371 square metres (ground-planted 109 square metres and façade-bound 262 square metres) with planting native or non-native plants including climbing plants, such as honeysuckle (*Lonicera periclymenum*), hop (*Humulus lupulus*), passion flower (*Passiflora incarnata*), star jasmine (*Trachelospermum jasminoides*), Wisteria, Clematis, firethorn (*Pyrocantha*), climbing rose (*Rosa*), bryony (*Bryonia*) or ivy.
- Brash/log piles - the woody plants (trees/shrubs) removed will be cut and stacked to form a dead wood pile somewhere on the perimeter.

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

The application is supported by a Tree Protection Plan, an Arboricultural Method Statement and an Arboricultural Impact Assessment. The application site contains a number of variable quality trees and hedges. The Council's Senior Tree and Landscape Officer raises no objections to proposed development subject to planning conditions being applied in respect

of compliance to the submitted Arboricultural Impact Assessment and Arboricultural Method Statement; to secure the proposed tree planting; and arboricultural site monitoring and reporting to the LPA including records of checks for tree protection / ground protection during the construction and landscape phases. The development is considered acceptable, in-line with the aspirations of Policy C4 of the Local Plan, and advice contained within the NPPF.

6. Flood Risk and Drainage

The NPPF provides guidance towards avoiding inappropriate development in areas of flood risk by directing development away from areas at higher risk (Paragraph 165), and when determining applications seeks local planning authorities to ensure that flood risk is not increased elsewhere (Paragraph 173). The Development Plan offers similar expectations for ensuring the risk of flooding is not increased, together with expectations that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, through Policy ER1. Policy ER1 also outlines a hierarchy for water-flow management within new development, with similar guidance is contained within the Environment Agency's Critical Drainage Area Advice Note for Torbay.

The application site sits within the wider Torbay Critical Drainage Area as designated by the Environment Agency. Objectors have raised concerns regarding drainage. The submission has been reviewed by the Council's Drainage Engineer, who has confirmed that as there is insufficient room on site for infiltration drainage the proposed drainage strategy for surface water run-off from the buildings is for a controlled discharge to the combined sewer system and the controlled discharge rate has been identified as 1.5l/sec which 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, lengths however there is no drawing identifying the actual impermeable area discharging to each pipe length within the hydraulic model. This drawing is required in order to confirm that the data input to the hydraulic model matches the data included on the drawings. Certainty is required on this prior to the grant of consent. The hydraulic modelling that has been submitted identifies that the surface water drainage system has been designed for the critical 1 in 100 year storm event plus 50% for climate change.

In the absence of a detailed drainage design that shows that surface water can be attenuated and discharged at an acceptable rate, the proposal is considered contrary to Policies ER1 and ER2 of the Local Plan.

7. Low Carbon Development and Climate Change

The NPPF guides that the planning system should support the transition to a low carbon future in a changing climate, including helping to shape places in ways that contribute to radical reductions in greenhouse gas emissions, and support renewable and low carbon energy and associated infrastructure (Paragraph 157).

Policy SS14 of the Local Plan supports national guidance and seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials. Policy ES1 seeks that all major development proposals should make it clear how low-carbon design has been achieved, and that proposals should identify ways in which the development will maximise opportunities.

The application is supported by an Energy Statement. To reduce energy use for the proposed development, the following measures have been included:

- U-Values in line with Part L minimum requirements
- Heated access corridors
- Glazing (whole frame) u-value 1.2W/m²k with a g value of 0.50
- High efficiency lighting
- Natural ventilation (with extract fans only)
- Design Air Permeability (DAP) of 5.00
- Limiting thermal bridging – *for the purpose of the assessment, SAP Appendix R: Table R2 PSI values have been used*

The Statement outlines that electricity has been chosen as the most sustainable fuel and will future-proof the residential units. Heat pumps for both space and water heating have been selected to reducing carbon dioxide emissions. To further enhance the development's energy systems, enhanced controls and heat emission has been recommended.

The proposed heating system is an air source heat pump (ASHP). This will provide heating and hot water and replace the need for mains gas. Taking various factors into account such as location, ease of installation and the client's preferred solution, individual ASHP's have all been selected as the most desirable and feasible choice of renewable/low carbon technology for the development. As such, each apartment will have their own individual ASHP unit to supply electricity to from a renewable source. After consultation with the client and a review of the architect's drawings, it has been decided that the ASHP's will be situated within a plant room on the second floor.

The Statement concludes that the proposed development will reduce CO₂ emissions by approximately 58.99% beyond the requirements of Part L of the Building Regulations and therefore meets the planning requirement set by the Council '*to ensure that carbon emissions associated with energy use from new and existing buildings (space heating, cooling, lighting and other energy consumption) are limited*'.

The development is in accordance with Policies SS14 and ES1 of the Local Plan and advice contained within the NPPF.

8. Designing Out Crime

Policy SS11 of the Local Plan seeks that development proposals should help to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict. Policy TH2 of the Neighbourhood Plan sets out that

new development should provide a safe environment and consider opportunities to prevent crime or the fear of crime from undermining quality of life or community cohesion.

The Police Designing Out Crime Officer was consulted and commented upon the application. The proposal does not include a scheme of designing-out crime measures.

9. Viability

The applicant has submitted a viability assessment which concludes that it is not viable to deliver the previously approved scheme (ref: P/2021/0520). At the expense of the applicant, this information has been independently assessed. The conclusion of the independent assessment was that the previously approved scheme is not viable, and the current proposal is capable of delivering the scheme with a reasonable profit to the developer.

Sustainability

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

The Economic Role

Whilst the loss of the hotel use is regrettable, the 2-star independent sector which the Seabury Hotel sits in, is the most sensitive to market challenges.

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

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

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

The Social Role

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

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

The Environmental Role

With respect to the environmental role of sustainable development, for reasons set out in this report there is material harm to identified heritage assets (the St Marychurch Conservation Area and the setting of no.205 St Marychurch Road listed building) which presents a clear reason for refusing the application.

The proposal provides low carbon and energy measures. The environmental benefits identified are marginal in the case of any biodiversity net gain, where it is proposed to require enhancement measures through condition should planning permission be granted.

Concerns have also been raised with regards to access to natural light to habitable rooms when considering a number of the proposed apartments, as well as some being single aspect.

It is concluded that the environmental impacts of the development, in terms of the adverse impact on heritage assets and concerns over access to natural light and amount of aspect for some of the apartments, 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

Affordable Housing

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

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 £38,621.26. This figure is indexed linked, and the final figure will be calculated on the day of the decision.

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

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

S106

Site Acceptability Matters: None.

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

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

As such no S106 legal agreement is considered necessary were planning permission granted.

EIA/HRA

EIA

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

HRA

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

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

Planning Balance

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

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

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.

There are some 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 NPPF gives great weight to a designated heritage asset's conservation, irrespective of the amount of harm, of which the proposal is considered to result in less than substantial harm to the St Marychurch Conservation Area and less than substantial harm to the settling of no.205 St Marychurch Road. 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, the proposed total demolition is considered to result in substantial harm to the non-designated heritage asset. 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. The Act also places statutory duties on the local planning authority, to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

The design would result in permanent harm to the character and appearance of Manor Road and Stanley Road. It would therefore conflict with the NPPF's approach to design which advocates the creation of high quality, beautiful and sustainable buildings, which are visually attractive and will function well. This attracts substantial weight in the balance.

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 St Marychurch Conservation Area and the setting of the Grade II designated heritage asset, provides a clear 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

The Council cannot currently demonstrate a 5-year housing land supply, as sought by Government, and the proposal will help with the delivery of housing. Paragraph 11 of the NPPF outlines that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay. For reasons set out in this report there is material harm to identified heritage assets which presents a clear reason for refusing the application. As such, in applying the 'tilted balance' identified in Paragraph 11 of the NPPF, it is concluded that the application should be refused.

The provision of housing is a significant benefit within the planning balance. In the absence of 5-year housing land supply the NPPF advises that the policies most important for determining the application should be considered to be out of date.

It is concluded that the development is considered to conflict with the Development Plan however Paragraph 11(d)(ii) of the NPPF states that where the policies which are most important for determining the application are out-of-date, permission should be granted unless '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'. It should be noted that the absence of a 5 year housing supply principally sets a higher benchmark to resist development, however it is considered that notwithstanding the benefits of providing housing, the adverse impacts of the development, as set out in this report, significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

As such it is recommended that planning permission be refused.

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 development, by reason of the demolition of the existing building and the layout, height, massing, and detailed design of the proposed development, would fail to preserve or enhance the character and appearance of the St Marychurch Conservation Area,

which would result in harm to this designated heritage asset, would harm the setting of no.205 St Marychurch Road, and would lead to the total loss of the current buildings significance as a non-designated heritage asset. As such the development is considered contrary to Paragraphs 135, 139, 195, 203, 205, 208, 209 and 212 of the National Planning Policy Framework and Policies SS10, SS11 and DE1 of the Adopted Torbay Local Plan 2012-2030, and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030, and the requirements of Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2. There is insufficient information available to properly determine the proposal's highways and vehicular movement impacts in relation to Manor Road (C788) which is a classified public highway. The proposal could therefore have an adverse impact on highway safety. As such, the proposal is contrary to Policies TA1 and TA2 of the Adopted Torbay Local Plan 2012-2030 and the National Planning Policy Framework, in particular Paragraph 115.
3. The proposal, due to the lack of a detailed design for the management of surface water, fails to provide certainty that the risk of flooding would not be increased, within a Critical Drainage Area designated by the Environment Agency, contrary to Policies ER1 and ER2 of the Adopted Torbay Local Plan 2012-2030.

Informative(s)

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 amend the application. However, the local planning authority was unable to resolve these issues with the applicant and the applicant elected not to withdraw the application, thereby resulting in this refusal of planning permission.

Relevant Policies

Development Plan Relevant Policies

SS1 - Growth Strategy for a prosperous Torbay
SS3 - Presumption in favour of sustainable development
SS10 - Conservation and the historic environment
SS11 - Sustainable Communities Strategy
SS12 - Housing
SS13 - Five Year Housing Land Supply
SS14 – Low carbon development and adaption to climate change
TA1 - Transport and accessibility
TA2 - Development access
TA3 - Parking requirements
C4 - Trees, hedgerows and natural landscape
H1 - Applications for new homes

DE1 - Design
DE3 - Development amenity
DE4 – Building heights
ER1 - Flood risk
ES1 – Energy
W1 - Waste management facilities
NC1 - Biodiversity and geodiversity

TS1 - Sustainable Development
TS4 - Support for Brownfield and Greenfield development
TT1 – Change of use constraints within and outside a CTIA
TT2 – Change of use in conservation areas and listed buildings
TH8 - Established architecture
TH9 - Parking facilities
TE5 - Protected species habitats and biodiversity
TH2 - Designing out crime
THW4 - Outside space provision
THW5 - Access to sustainable transport