

TORBAY COUNCIL

Application Site Address	12-14 Victoria Street Paignton TQ4 5DN
Proposal	Change of use from offices (Class E) to 12no residential flats (Class C) with external alterations including two dormer windows.
Application Number	P/2024/0293
Applicant	1stavenue.co.uk LTD
Agent	Charles Blake Associates
Date Application Valid	18.07.2024
Decision Due Date	17.10.2024
Extension of Time	N/A.
Recommendation	Approval: Subject to; <ul style="list-style-type: none"> 1. The conditions as outlined, with final drafting delegated to the Divisional Director of Planning, Housing and Climate Emergency. 2. Legal agreement to secure a Berry Head ecological mitigation payment of £1,620. 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.
Reason for Referral to Planning Committee	Major Development
Planning Case Officer	Scott Jones



Site Details

The site is located in Paignton Town Centre and consists of an end-of-terrace building set on a corner plot facing Victoria Street to the front, with Commercial Road to the side and a service lane to the rear. The plot is fully covered with the building and presents a varied height of three and four storeys.

The site sits within the Old Paignton Conservation Area and the building is identified as a 'key building' of architectural importance and part of a wider 'important building group' within the Old Paignton Conservation Area Character Appraisal.

The site has two established commercial uses with Boots operating over the ground and lower ground floors, and with the three upper floors being operating as offices prior to the use ceasing approximately 10 years ago, having most recently been occupied by a solicitor's firm.

In terms of the building form, the front of the building facing Victoria Street dates from between 1870 and 1904 and has three principal floors together with further internal useable space within a slate-finished mansard roof, which is inset with small dormers. Walls are finished in stucco render and upper floor windows are timber sliding sash set within ornate detailing. The ground floor walls are interrupted to the front and side with large elements of modern commercial glazing. Behind this main element of the building a later wing fronts Commercial Road to the side, which then turns the corner to the rear service lane. This rear element is initially subordinate in scale where it presents two principal storeys and a mansard roof storey inset with small dormers, before rising where it turns the rear corner of the plot. Walls are again rendered and windows are largely timber sliding sash, but less grand in scale and absent of ornate surround or glazing bar detailing. The window detailing towards the rear is more varied and modern in form, with a mix of materials and styles, and the rear elevation includes commercial access points within the partial lower ground floor.

In terms of local character, the site clearly sits within the commercially dominant town centre, however the area does include residential uses within upper floors of buildings and within nearby roads.

Description of Development

The proposal is for change of use of the former office space at first, second and third floors to provide 12 flats, 8x1-bed and 4x2-bed, which range from 38sqm to 68sqm in terms of internal floor area.

A number of external changes are proposed which include two new dormers at roof level, replacement of modern casement windows towards the rear of the building, retention and refurbishment of all timber sliding sash windows (with secondary glazing fitted internally), and minor works to create a new emergency exit door to the side from the new staircase, and creation of the residential access points to the side and rear, and waste and cycle storage. The provision of these revised access and storage points presents some minor changes to the internal floor area of the retail unit through the provision of a replacement staircase across 'back-office' basement space and ground floor shop space.

For clarity there is no off-road vehicle parking or outdoor amenity space proposed, as the building covers the entirety of the site.

Revised plans have also been submitted through the course of the application to address concerns on the cycle and waste storage areas, and to also retain the timber sash windows

within the side/rear element of the building to address concerns in terms of design and visual impact.

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 Paignton Neighbourhood Plan (PNP)

Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Published standing Advice
- Section 72 of the Planning (List Building and Conservation Areas) Act 1990 requires that Local Planning Authorities pay special attention in the exercise of planning functions to the desirability of preserving or enhancing the character or appearance of a conservation area.

Relevant Planning History

None.

Summary of Representations

1 objection with concerns regarding:

- Lack of parking.
- Overdevelopment.
- Impact on local doctors.

Summary of Consultation Responses

Principal Historic Environment Officer

No objections to the proposals and would just ask that a condition be included to secure external joinery details.

Supplementary comment that the timber sliding sash windows should be retained where possible or replaced on a like-for-like basis. Upvc casement windows are not supported to the rear of the main building or within the public facing elevations of the side and rear additions where timber sash windows are present.

Highway Authority (SWISCo)

The site is located in a sustainable location and no changes are proposed to the local highway or existing access arrangements.

However, no cycle parking design details have been provided. This is essential as the site is car-free. This must be clarified before the Highway Authority is able to raise no objection to the proposals.

A Construction Traffic Management Plan is required to be submitted prior to construction works taking place. This would be sufficiently covered by planning condition attached to any planning consent granted.

As the proposals are car free, ensuring future residents of the proposed site are able to travel on a high-quality sustainable transport network is essential.

There is some uncertainty around the proposed cycle storage where 2 stores are noted in supporting documents but 2 are not shown on the plans. a further review is needed and the applicant must ensure these cycle parking spaces are easily accessible, not impeded by doorways or stairs and of suitable size for manoeuvring cycles.

The Highway Authority will seek the necessary S106 planning contributions that are essential to make the scheme acceptable in planning terms.

Waste and Recycling Officer (SWISCo)

The initial arrangements proposed for recycling and waste are not adequate for the number of proposed properties at this development, and based on this there is an objection to this development.

Request a formal waste management plan for this development, which details the full arrangements for recycling and waste at the development; scaled plans showing that the bin store can fit the bins and that there is adequate space for them to be useable for residents and collection teams; how the shared bin store will be managed once the development is operational; and how the requirements of Building Regulations document H6 are being met.

Request Waste Management Contributions for this development, in line with the table below. As a communal recycling and waste arrangement is proposed, I would seek the higher rate of contributions.

Torbay Council Drainage Engineer

No objections on drainage ground to planning permission being granted, the site is in Flood Zone 1 and the planning application relates only to a change of use for the upper floors.

Devon County Council Ecologist

No objection. Recommend a planning condition to secure the recommendations contained within the submitted ecology report.

Torbay Council Community Safety Officer

No objection.

Police Designing Out Crime Officer

Note that the Design and Access Statement (DAS) includes reference to Designing Out Crime. Offers that if a Secured by Design award is being sought that this is incorporated at the earliest opportunity and assistance is possible.

Consultation offers further advice that the security element of the building regulations, namely Approved Document Q (ADQ), sits outside the decision-making process for the planning authority, for the applicant to inform redevelopment detail.

Secured by design comments:

It is noted that the existing structure has numerous recessed doorways which provide access into the building, it is recommended that these are removed where possible as recessed

doorways can create a concealed and sheltered area which can provide cover for criminal activity, unwanted loitering and impede on natural and formal surveillance.

It is recommended that a visitor door entry system and access control system is installed.

All communal areas should have 24 hour lighting (switched using a daylight sensor formally called photoelectric cells), this can be dimmed at hours of low occupancy.

The expectation that all doors at the entrance to the building and all ground floor, basement and other easily accessible windows, will be units manufactured to a design that has been tested to an acceptable security standard i.e. PAS 24, is welcomed. It is recommended that all ground floor and easily accessible windows should also be fitted with window restrictors to prevent reach in burglaries where the offender reaches in an open window and steals anything within reach.

It is welcomed that the plans show the inclusion of the proposed post boxes. Due to the potential disputes and crime associated with post and or parcels with apartments and multi occupancy buildings. It is recommended this is within an access control area, ideally covered by CCTV.

The bicycle rack system should be certified to one of the standards listed within Secured By Design Homes Guide 2024 section 32.6.

A clear management and maintenance policy should be in place prior to the occupancy of any part of the proposed building to ensure that communal areas are maintained and where damage occurs, repairs are undertaken within a suitable time frame especially where the security of the building is affected.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Housing Supply
3. Design and Visual Impact (Including Heritage Impact)
4. Residential Amenity
5. Highways and Movement
6. Ecology
7. Flood Risk and Drainage
8. Low Carbon / Climate Change
9. Secure Design

1. Principle of Development

The site is principally that of town centre disused upper floor office space, it has been empty for approximately 10 years, hence a brownfield site. It sits in an area where there is a strong commercial character, but a mixed commercial and residential character on upper floors. As a town centre site, it sits well-located in terms of access for shops, services, employment opportunities and transport options.

National guidance contained within the NPPF states that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation, furthering that policies should recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites (Paragraph

90). The NPPF also promotes the effective use of land in meeting the need for homes and other uses, and also guides that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and promotes support for the development of under-utilised land and buildings, especially where it would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops) (Paragraph 124).

In terms of the local Development Plan the principle of residential development is supported considering the sites brownfield character and its well-located urban location. Central guidance is offered in Policies SS3, SS12 and H1 of the Torbay Local Plan, supporting proposals for new homes in the built-up area (subject to wider policy consistency) and promoting the re-use of brownfield land, and the need to provide homes and meet housing needs. In terms of the Paignton Neighbourhood Plan Policy PNP1 offers broad support for development proposals to help meet housing needs and for the provision of additional homes by the conversions of existing buildings, or the more efficient use of vacant buildings in all use classes. Policy PNP2, which relates to the town centre, offers positive support for proposals that improve vibrancy and increase residential accommodation within the area. Policy PNP16, which relates directly to Victoria Street, also guides support for proposals that enhance the vitality and viability of the area, including where proposals make more efficient use of vacant floors at upper levels to facilitate the delivery of residential units.

In terms of general principle having regard to the policy framework outlined above the provision of town centre residential units is supported generally. It is also supported in this particular context, where it presents a sustainable location for housing and a good use for the empty upper floors of the building, which will also through its use increase the vibrancy and vitality of the town centre.

For the reasons above the principle of the change of use is considered to be comfortably aligned with national guidance contained within the NPPF and aligned with the aspirations of the Development Plan, specifically in regard to the aims and ambitions of Policies SS3, SS12 and H1 of the Torbay Local plan and Policies PNP1, PNP2 and PNP16 of the Paignton Neighbourhood Plan. The principle of residential conversion of the upper floors is supported.

2. Housing Supply

The Council is currently falling short of a 3 and 5-year housing land supply and that the proposal would make a moderate contribution to this shortfall being addressed as a windfall brownfield development. Torbay's most recent housing land supply (April 2023) is that there is 2.17 years, which is a significant shortfall. This housing supply context means that Torbay must apply the presumption in favour of sustainable development as required by Paragraph 11 of the NPPF.

The 'tilted balance' guides towards granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF. However, as previously stated within Section 1 of the Officer Assessment, the principle of residential is supported for the reasons stated.

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.

Having regard to the NPPF and the 'tilted balance' there is a clearly stated government objective of boosting the supply of housing. There is also a pressing need for housing in Torbay. In addition, in accordance with Section 1 of the officer assessment, there is also broad policy support for the principle of housing within the upper floors in this location. All these matters weigh in favour of the development.

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).

As concluded within this report neither of the above positions are breached in order to signify the proposal should be refused. The provision of housing and the local housing supply context weighs heavily in favour of the grant of planning permission.

3. Design and Visual Impact (Including Heritage Impacts)

Achieving good design runs through national guidance where the NPPF outlines that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, and that good design is a key aspect of sustainable development (Paragraph 131). Guidance furthers that developments should be visually attractive, be sympathetic to local character (whilst not preventing or discouraging innovation) and maintain a strong sense of place (Paragraph 135). Similar design expectations are engrained within the Development Plan through Policies SS10, SS11 and DE1 of the Torbay Local Plan, and through PNP1 and PNP1(c) of the Paignton Neighbourhood Plan, which seeks development to enhance and strengthen local identity.

As the building sits within a designated heritage asset, the Old Paignton Conservation Area, and where it is identified as a key building and part of an important building group within the Conservation Character Appraisal, heritage policy guidance is also relevant in terms of the proposals impact upon both the building (as a non-designated heritage asset) and the Old Paignton Conservation Area (as a designated heritage asset). The general thrust of policy guidance within the Development Plan and NPPF is for development to sustain and enhance character, to take opportunities to remove deleterious features, and to give great weight to

the conservation of assets within the decision-making process. In addition, Section 72 of the Planning (List Building and Conservation Areas) Act 1990 requires that Local Planning Authorities pay special attention in the exercise of planning functions to the desirability of preserving or enhancing the character or appearance of a conservation area.

As a summary there are a number of external changes to the building, which include the addition of 2 (small) dormers within the roofscape, ground and lower ground floor amendments to support the creation of access points and required ancillary storage space, and to provide revised fire escape provision for the retained ground floor retail unit. The proposals also include the replacement windows, which through revised plans presents a reduced extent of change to that originally proposed. The scheme now retains all timber sliding sash windows (so now includes the retention of those within the rear wing), with these being refurbished and fitted with secondary glazing, and proposes replacement windows to be limited to replacing single glazed metal casement windows to the towards the rear with Upvc double glazed casement windows. The proposals also include the provision of solar panels on the flat roof of the rear wing.

The application is supported by a Heritage Assessment that states that the proposal has been designed to conserve the significance of the heritage asset(s) and setting by;

- The two dormer windows have been designed to match those already existing and have been positioned to align with existing openings. Materials will match those existing.
- Replacement doors/windows will complement the existing architectural style of the building and be of similar materials to those found on the building and locally nearby.
- The proposed use will require minimal external alterations and as such there is no material effect on the visual character and appearance of the conservation area.

The justification for the works is offered in terms of presenting minimal external changes that are required to enable safe access and egress from the building and to introduce natural light to residential spaces to promote a positive and healthy living environment. It is further added that there is a public benefit through the re-use of the building to provide small housing units that are needed in the area.

In terms of the key elements the proposed dormers are considered acceptable as small additions to a roofscape, suitably scaled and detailed, where dormers are more widely present and characteristic in the locality. Materials should match and can be conditioned as such. Refurbishment of the timber sash windows within the ornate openings towards the front of the site is supported, where this retains key historic fabric. The removal of timber sliding sash windows around the side and rear of the building and their replacement with Upvc casement windows was not supported. This concern has been positively addressed and these windows are now retained and are to be refurbished and fitted with internal secondary glazing. This change is a positive response to the broad policy position on the requirement to conserve or enhance, and to take opportunities to better reveal significance. Away from the timber sash windows the use of Upvc casement is considered acceptable subject to detail design elements being agreed. Finally in terms of the ground and lower ground floor changes to facilitate essential elements of residential occupancy, i.e. access and ancillary elements such as waste and cycle storage, there is some minor harm from the increased presence of openings punctuating the public-facing walls, however these elements appear suitably detailed and the ambitions for the material choice is supported, where timber is predominantly detailed. The minor harm is justified to facilitate the efficient use of the building and to support the provision of housing as part of a wider judgment on the change of use. Solar panels are proposed for the flat roof of the side/rear wing, the location appears suitable however some scrutiny is required on the form and height of these,

which can be secured by condition, to ensure no undue visual prominence in a sensitive context.

All matters considered the proposals are supported from the design, visual and heritage impact perspective, subject to some scrutiny of the detailed design of replacement windows and new doors, and the detail of the solar array, as explored above. When considering policy guidance, the proposal is deemed to be in accordance with Policies DE1, SS10 and SS11 of the Torbay Local Plan, PNP1 and PNP1(c) of the Paignton Neighbourhood Plan, and aligned with the guidance contained in the NPPF in terms of good design and heritage assets.

This conclusion takes into account the provisions of 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.

4. 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.

In terms of location the upper floor town centre setting is considered positive for residential occupancy moving forward, presenting good opportunities for future occupants in terms of access to services, facilities and sustainable transport options, which is all positive influences on a habitable environment.

In terms of the proposed units the proposed building will deliver 8x1-bed and 4x2-bed apartments ranging in size from 38sqm to 68sqm. All units meet or exceed the minimum National Space Standards, which are also engrained within Policy DE3 of the Torbay Local Plan, and key living spaces are also generally well scaled and proportioned and offered good levels of natural lighting. These aspects are positive influences in terms of future amenity levels for occupiers.

In terms of outdoor amenity space guidance is offered in Policy DE3 of the Torbay Local Plan, with a guideline that flats or apartments are supported by no less than 10sqm per unit of outdoor space either privately or communally. The development does not provide outdoor amenity space, but this is not uncommon for town centre upper floor conversion schemes, where constraints often limit such opportunities. In the context the town centre location and the site's obvious constraints to the delivery of outdoor space, whilst also appreciating the access available to central parks and open spaces, the lack of outdoor amenity space is considered acceptable within a wider judgment on amenity levels and the quality of the living environment.

In terms of key ancillary elements cycle parking, which has been enhanced following the receipt of revised plans, is to be provided in a safe and secure facility to the side of the building at a level in accordance with policy guidance (1 space per apartment). The revised cycle parking is considered adequate. In terms of waste provision initial concerns regarding the access distance to, and the size of, a single waste facility has been positively responded

to and revised plans have been submitted to show two waste storage areas located near to each of the entrance points. The location and capacity of the waste storage areas is considered acceptable. As the waste storage areas are designed for commercial sized bins and are located within the building a private waste collection service would be necessary and considering this a planning condition to secure details of waste management is recommended. This is to ensure suitable collection and recycling arrangements are achieved.

In terms of potential impacts on neighbouring amenity residential occupancy of the upper floors as a general use would sit comfortably aside the commercial and residential uses nearby and is not expected to present any undue noise or disturbance in the locality. In terms of intervisibility and privacy the more continued use of the building for residential occupancy would not present any undue harm from existing openings or the new dormer openings, where outlooks are largely not sensitive to such change. Intervisibility across the service lane, Commercial Road, and the Victoria Street to upper floor openings reflects locally characteristic relationships and their does not appear any unduly close and sensitive levels of intervisibility. This position is also concluded for the 'inward' facing relationships out of public view.

Having regard to the expected amenity levels provided within the proposal for future occupants and the future relationship of the development with adjacent plots and neighbouring occupants, the scheme is considered sufficiently aligned with the aims and objectives of Policies SS11, DE1 and DE3 of the Torbay Local Plan and guidance contained within the NPPF.

5. Highways and Movement

In terms of context the proposal is set in the town centre and does not propose any parking facilities. It does propose cycle parking within a secure facility. There is no clear opportunity for parking within such a constrained site, which is noted.

Policy TA1 of the Torbay Local Plan presents a general emphasis on promoting sustainable modes of transport, promoting development in areas that reduce the reliance on unsustainable modes such as cars, and offers that development is designed to reduce car use wherever possible. Policy TA3 of the Torbay Local Plan, supported by Appendix F, presents the parking standards expected for different development types and details that residential apartments should generally be supported by 1 parking space and 1 cycle parking space. Within the notes for dwellings there is acceptance that parking levels can be reduced in locations such as town centres, and this guidance is considered relevant to apartments as well.

Considering the inherent site constraints that inhibit parking provision, and considering the sustainable town centre location, which offers good access to services, facilities and sustainable transport modes such as buses and train links, the lack of parking is not a concern, and a car-free development is considered acceptable. It is noted that the public representation states concern over the lack of parking, however the Highway Authority does not raise concern on this issue and there is policy guidance that clearly offers flexibility on parking provision within town centres. In the context the proposal appears a suitable use in a sustainable location that would not present any undue impact from an absence of parking facilities.

There is cycle parking facilities identified within the layout and the facility has been improved in terms of design and usability through positive and proactive discussions with the agent, resulting in the subsequent receipt of revised plans. The revised provision is considered acceptable and is deemed to respond positively to the initial concerns of officers and the

Highway Authority and would now provide a suitable secure facility which will facilitate and promote cycle ownership and aid the potential for a car-free lifestyle.

In terms of short term impacts the construction phase has the potential to present a degree of impact in terms of the construction traffic etc. Such impacts can be duly managed to minimise any disruption, and this can be achieved by the placement of a pre-commencement planning condition on any grant of permission, subject to the agreement of the applicant.

In terms of other matters, it is noted that the Highway Authority seeks the necessary S106 planning contributions that are essential to make the scheme acceptable in planning terms, referencing sustainable transport obligations. As the proposal is CIL liable funding for community infrastructure is secured through CIL payment rather than a S106 legal agreement, unless for site acceptability matters. The identified obligation is not a site acceptability matters and hence it is concluded that the request cannot be furthered.

For the reasons above the proposal is considered acceptable on highway and movement grounds, providing development in a sustainable location with adequate cycle parking facilities, in accordance with Policies TA1, TA3 and DE1 of the Torbay Local Plan, PNP1(d) of the Paignton Neighbourhood Plan, and the NPPF.

6. Ecology

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 Policies SS12 and NC1 of The Local Plan and Policy PNP1 of the Paignton Neighbourhood Plan which includes area-wide guidance that development will not be supported if the proposal would result in an adverse impact on a European protected site.

There is limited ecological value within the site due to the full coverage from the building, however the supporting ecology report explores any sensitivity.

It is reported that the building contained no evidence of roosting bats and is classified as having negligible potential for roosting bats. It suggests no further survey or compensation measures are required.

In terms of nesting birds the report details that the flat roofed section is used by herring gulls for nesting and that the upper floor rooms and stairwell are used by pigeons for roosting. No evidence of pigeons nesting within the building was found however it is reported as being possible that they may do so in the future.

In light of the matters above the report concludes that works to the upper floors and roof should not take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately beforehand and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest. In terms of addressing biodiversity enhancement expectations engrained in policy the report also suggests enhancement measures for nesting birds, consisting of 6 sparrow nest boxes, with locations to be agreed. The findings of the report and the proposed mitigation is supported by the Devon County Council ecologist and hence, with suitable conditions to secure the stated outcomes, the general ecology matters are considered duly addressed.

In terms of wider ecological matters, the site is within the newly extended Berry Head Recreational Zone of influence, where Berry Head is part of a designated European Site.

Recreational use of the calcareous grassland at the Berry Head has the potential to cause degradation through scrub encroachment, erosion by walkers and eutrophication through dog fouling and new housing within the zone of influence therefore requires mitigation in order to manage the additional pressure on this habitat, in accordance with the Local Plan Habitat Regulations Assessment. This concluded that the impacts of qualifying developments on the SAC can be mitigated through developer contributions, which is set out in the Planning Contributions and Affordable Housing SPD. Due to its location the proposal would therefore constitute habitats development and a contribution of £135 per new residential unit is therefore required, which is £1,620 in total. This is a site delivery matter and requires securing prior to the formal grant of planning permission to make the development acceptable. If not secured it would warrant a reason for refusal.

As a further matter in England Biodiversity Net Gain (BNG) has been mandatory from 12 February 2024 under the Town and Country Planning Act 1990 (as inserted by the Environment Act 2021). This means that, subject to certain exemptions, development must deliver a 10% gain in biodiversity. In terms of this application the site is absent of habitat and is principally a change of use of a building with minor physical modifications to its exterior. The development is deemed exempt from BNG.

Subject to conditions secure protection to nesting birds during construction, and to secure nesting enhancements, and subject to securing the identified financial mitigation, the proposal is considered in accordance with the aspirations of Policies SS8 and NC1 of The Torbay Local Plan, Policy PNP1 of the Paignton Neighbourhood Plan, and advice contained within the NPPF.

7. 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 local 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. 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 site is in a low-risk flood zone (Flood Zone 1) and is not in an area susceptible to surface water flooding, and if for the upper floor conversion of office space to residential apartments. From this it is concluded that a change of use to residential is not sensitive in terms of flood risk, and the risk of flooding will not be increased within the site or to land or buildings adjacent, where the extent of building is not changed on what is an urban site with 100% building coverage.

The council's drainage engineer offers no objection to the grant of planning permission on drainage grounds.

The proposal is considered acceptable on drainage and flood risk grounds. The proposal is considered comfortably aligned with the aims and objectives of Policies ER1 and ER2 of the Torbay Local Plan and the NPPF.

8. Low Carbon / 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), and for new development to be planned in ways that can help reduce greenhouse gas emissions (Paragraph 159). The NPPF also guides that in determining planning applications, local planning authorities should give significant weight to the need to support energy efficiency and low carbon heating improvements to existing buildings, both domestic and non-domestic (including through installation of heat pumps and solar panels) (Paragraph 164).

In terms of the local Development Plan Policy SS14 (TLP) supports national guidance and seeks major development to minimise carbon emissions, and Policy ES1 (TLP) 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. Policy PNP1(f) (PNP) offers further relevant policy guidance towards a sustainable low carbon energy efficient economy for new development to aim to achieve, where appropriate and viable, on-site renewable energy generation to achieve 20% of subsequent in-use requirement wherever possible, and that solar arrays are encouraged where they do not adversely affect residential amenity, a vista of landscape value, or designated conservation area.

The Design and Access Statement submitted in support of the proposal includes an Energy Statement that outlines the strategy of being 'lean' (minimise energy demand through passive and active measures), being 'clean' (select the most energy-efficient heating and cooling infrastructure) and being 'green' (show intelligent use of renewable energy and technologies). In addition to the Energy Statement there is a Sustainability Checklist supporting the application which provides some additional commentary on the sustainability credentials of the development.

In terms of being 'lean' the submitted detail states that the project will adopt a fabric-first approach to include high levels of insulation to the walls and roofs, as well as being air-tight, that the dwellings will benefit from energy efficient LED light fittings with modern controls, and that all new windows will be double-glazed to reduce heat loss and carbon emissions. It also states that existing windows to be retained will have secondary glazing installed. Through positive and proactive discussions the ambition to replace 14 timber windows with Upvc windows has been revisited and all timber sash windows are now proposed to be retained, which itself reduces waste and the extent of new materials. In terms of other design elements the submitted detail includes the provision low volume taps and shower heads to reduce mains water consumption, and the potential provision of greywater use within the waste water systems.

In terms of being 'clean' the detail states that the flats will be heated using modern energy-efficient systems.

In terms of being 'green' the ambition is to secure renewable energy production as part of the conversion through the installation of solar panels to a large section of the flat roof. The development proposals include the arrangement of 48 panels which is expected to generate approximately 19kW of power. The proposition of solar panels is considered a positive response to the policy aspirations towards development including renewable energy sources with considerations of the context and constraints of the site. There is however no detail on the rooftop solar array and further detail would be necessary on this in terms of height and general form from a visual impact perspective.

The ambitions of the energy statement are supported and should be secured by a detailed planning condition, which also captures the delivery and detail of renewable energy solar array on the roof.

The development is, for the reasons above and subject to the detailed condition, considered suitable for approval, in accordance with Policies PNP1(f) of the Paignton Neighbourhood Plan, SS14 and ES1 of the Torbay Local Plan, and guidance contained within the NPPF.

9. Secure Design

The NPPF guides that decisions should aim to achieve buildings and places that are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion (Paragraph 96). Policy PNP1(g) of the Paignton Neighbourhood Plan states that all developments will be expected to show how crime and the fear of crime have been taken into account in the proposals submitted having regard to “Designing Out Crime” Guidance. Similarly, Policies SS11 and DE1 of the Torbay Local Plan includes reference that schemes should help prevent and/or design out opportunities for crime and disorder.

The Design and Access Statement submitted in support of the application offers detail on designing out crime and states that all doors at the entrance to the building and all ground floor, basement and other easily accessible windows, will be units manufactured to a design that has been tested to an acceptable security standard, and that all external doors and easily accessible windows that are to be replaced will be sourced from a Secured by Design (SBD) member-company. It furthers that Secured by Design will be consulted further at the appropriate stage.

The Police Designing-Out Crime Officer was consulted on the application and has made recommendations intended to ensure that the proposal would be adequately designed to prevent opportunities for crime and anti-social behaviour. Officers recommend the use of a planning condition to secure a scheme of crime prevention measures.

Subject to the use of this planning condition, the proposal is considered to be in accordance with Policy SS11 of the Local Plan, and PNP1(g) of the Paignton Neighbourhood Plan.

Sustainability

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

The Economic Role

Housing provision is a driver of economic growth and there would be economic benefits of bringing the upper floors of this town centre site into use and into a residential use. Aside the longer-term economic benefits of local spend from occupants the conversion phase would also create jobs within the local economy. There are no adverse economic impacts that would arise from this development. The office space in the upper floors has not been used for 10 years and the provision of 12 households in a sustainable location will help local centre vitality and viability. 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 the provision of housing within a long-empty upper floors within a very central and sustainable location. The proposed development presents a mix of small units which due to their location could be viable starter homes or homes for those wishing to downsize. Although the development predominately provides single occupancy flats there are larger units within the scheme suitable for more spacious single occupancy, couples or co-habitants, or small families, which does present some diversity within the scheme where there are broad ambitions to promote mixed and

balanced communities. In respect of the social element of sustainable development the balance is in favour of the development.

The Environmental role

The proposal presents a viable use for a long-empty floorspace and thus utilises the embodied energy of the structure, which weighs positively for the scheme. There are also proposed enhancements to the thermal efficiency of the building through the conversion process to modern building standards, and there are proposals to engrain renewable energy production with solar panels on the roof area. Timber windows are retained and refurbished, thus limiting waste and the requirement for new windows. Secondary glazing is also proposed to improve the thermal efficiency. The development is also car-free with no parking, which is considered viable for such a central location scheme and promotes car-free living for more sustainable modes of local transport. In terms of wider environmental considerations, the scheme will deliver enhancement nesting facilities for birds as a positive, and the potential impact upon Berry Head is proposed to be mitigated by a financial payment towards positive management, which is a neutral outcome. All matters considered in terms of the environmental element of sustainable development the balance is in favour of the development.

Sustainability Conclusion

Having regard to the above assessment the proposed development is considered to represent sustainable development when considered in the round.

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

CIL

The land is situated in Charging Zone 1 in the Council's CIL Charging Schedule and the residential floorspace created would be CIL liable based on the information submitted as the floorspace has not been within a lawful use within the last 3 years. As chargeable development this means that all new floorspace will be charged at a rate of £30/sqm unless exempt.

Based on the submitted CIL form, which provides an indication and is subject to formal determination, the proposal includes 659sqm of CIL liable floorspace which would present which would present a CIL liability of £19,770.

Site Acceptability Matters:

Ecology mitigation of £1,620:

The site is within the Berry Head Recreational Zone of influence in terms of the designated European Site. Additional recreational pressure from all new residential development within the zone of influence is a site acceptability matter that requires mitigating to make the development acceptable on planning terms. On this basis a contribution of £135 per new residential unit is therefore required, which is £1,620 in total. The payment needs securing prior to the grant of planning permission by a legal agreement under S106 of the Town and Country Planning Act 1990. This is reflected within the officer recommendation.

Affordable Housing:

N/A for this scale of development on a brownfield site.

Sustainable Development Matters:

N/A as CIL liable development.

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 beyond the identified issue of recreational pressure.

BNG

The site is absent of habitat and is principally a change of use of a building with minor physical modifications to its exterior. The development is therefore deemed exempt from BNG.

Planning Balance

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme in terms of addressing the Development Plan aspiration to promote the reuse of brownfield sites and provide housing within sustainable locations would produce a positive impact overall and is in accordance with the development plan as a whole. It is also noted that it will also trigger CIL payment in the region of £19,770 towards community infrastructure.

Conclusions and Reasons for Decision

The proposed use of the site for residential purposes is considered acceptable, where it will provide much needed housing in a sustainable location, compatible with the wider commercial and upper floor residential character of the area. The loss of office space is not objected to where it is replaced with housing and where there is a critical need for housing.

The proposal will provide an acceptable standard of accommodation that is in a sustainable location with good local access to shops, facilities, schools, sustainable transport modes, and local parks, and would not unduly impact the amenity of adjacent uses/occupiers. The lack of parking is considered acceptable within the town centre location.

The external modifications to the building are considered acceptable subject to the proposed conditions for detailed design matters, which will enable compliance with policy expectations to conserve or enhance heritage assets and to seek ways to better reveal the significance of assets and giving these matters great weight within the decision-making process.

Ecology matters are deemed to be duly considered subject to conditions to secure enhancements within the building's external fabric and subject to the stated financial mitigation towards managing recreational pressures at Berry Head.

The proposed development is considered to represent sustainable development and is acceptable, having regard to the Torbay Local Plan, the Paignton Neighbourhood Plan, the NPPF, and all other material considerations for the reasons stated within this report.

Consideration of the application of the presumption in favour of sustainable development (NPPF Paragraph 11) offers that developments proposals that accord with an up-to-date development plan should be approved without delay. Where out-of-date planning permission should be granted unless policies within the NPPF regarding protected areas or assets of particular importance provides a clear reason for refusing the development proposed, or where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. There is no impact or harm to protected areas or assets of particular importance subject to the matters identified, and there are no adverse impacts that significantly and demonstrably outweigh the benefits of the development.

Officer Recommendation

Approval: Subject to;

1. The conditions as outlined, with final drafting delegated to the Divisional Director of Planning, Housing and Climate Emergency.
2. Legal agreement to secure a Berry Head ecological mitigation payment of £1,620.
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.

Conditions

1. Construction Management Plan (Pre-Commencement and by agreement)

Prior to the commencement of development a site specific Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan should include, but not be limited to:

- a) Procedures for maintaining good neighbour relations including complaint management.
- b) The parking of vehicles of site operatives and visitors.
- c) Loading and unloading of plant and materials.
- d) Storage of plant and materials used in constructing the development.
- e) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- f) The adoption and use of the best practicable means to reduce and control the emission of dust and other airborne pollutants and dirt during construction.
- g) A scheme for recycling/disposing of waste resulting from construction works, with priority given to reuse of building materials on site wherever practicable.
- h) The adoption and use of the best practicable means to reduce and control noise.
- i) 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.

j) Construction working hours from 08:00 to 18:00 Monday to Friday, 09:00 to 13:00 on Saturdays and at no time at weekends or 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.

The approved Construction Management Plan shall be adhered to and implemented throughout the construction period of the development strictly in accordance with the approved details.

Reason: In the interests of highway safety and the amenities of surrounding occupiers during the construction of the development, in accordance with Policy DE3 of the Torbay Local Plan 2012-2030. These details are required pre-commencement as specified to ensure that highway safety and neighbouring amenity is not harmed by building operations or site preparation.

2. Detailed Design windows and doors (Pre-installation)

Prior to the installation of any replacement window or new external door the following details, to a scale between 1:1 and 1:5 where appropriate, shall be submitted to and approved in writing by the Local Planning Authority;

- i) Broken sections at a scale of 1:1 and elevations at a scale of 1:10, of all new windows and doors.
- ii) Reveal sections, drawn to a scale of 1:1-1:10.
- iii) Sill sections, drawn to a scale of 1:1-1:10.

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

Reason: To secure appropriate form of development in accordance with Policies SS10 and DE1 of the Torbay Local Plan 2012-2030, Policies PNP1, PNP1(c) and PNP2 of the Paignton Neighbourhood Plan, and the NPPF.

3. Cycle parking provision (Pre-occupation)

Prior to the first use of the development the approved cycle parking facilities shall be completed and made available for the purpose of cycle parking to serve the development. Once provided, the cycle parking facilities shall be retained for the life of the development for such purposes.

Reason: In interests of amenity and in accordance with Policies DE1, DE3 and TA3 of the Torbay Local Plan 2012-2030.

4. Waste provision (Pre-occupation)

Prior to the first occupation of the development the waste and recycling storage facilities shall be completed and made available for the purposes of waste storage to serve the development. The approved waste storage arrangements shall thereafter be retained for the life of the development.

Reason: In interests of amenity and in accordance with Policies DE1, DE3 and W1 of the Torbay Local Plan 2012-2030.

5. Waste Management Plan (Pre-occupation)

Prior to the first occupation of the development a Waste Management Plan (WMP) for the building, setting out recycling and waste collections methods which follow the waste hierarchy to ensure locally established recycling targets at the that time are met, together

with measures to review and respond to evolving targets, shall be submitted to and approved in writing by the Local Planning Authority. The approved WMP shall be implemented prior to the first occupation of the building and maintained at all times thereafter as a working document and strategy for the lifetime of the development.

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

6. Secured by Design (Pre-occupation)

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

The approved measures shall be incorporated within the development in full prior to occupation of the development and thereafter be maintained and operational.

Reason: In the interests of crime prevention in accordance with Policies DE1 and SS11 of the Torbay Local Plan 2012-2030, and PNP1(g) of the Paignton Neighbourhood Plan.

7. Energy / Low Carbon (Pre-occupation)

Prior to the first occupancy of the development the energy efficiency measures detailed within the submitted Energy Statement, including the provision of the solar panels serving the development, shall be implemented and operational in full prior shall be maintained thereafter.

Reason: In the interests of sustainable development and to minimise carbon emissions in accordance with Policy SS14 and ES1 of the adopted Torbay Local Plan 2012-2030 and Policy PNP1(f) of the Paignton Neighbourhood Plan.

8. Solar Array (Pre-installation)

Notwithstanding the submitted and approved plans prior to installation the precise location, height and general form of the solar array consented on the flat roof shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved detail without variance prior to the first use of the development.

Reason: To ensure that the solar array is, so far as is practicable, sited, arranged and designed, so as to minimise its effect on the external appearance of the building and the wider Old Paignton Conservation Area, in accordance with Policy SS10, SS11, DE1 of the Torbay Local Plan 2012-2030 and the NPPF.

9. Detailed Design dormers

The external material finish of the proposed dormer walls and roofs shall match, in terms of material, form and finish, the immediate host roofscape.

Reason: To secure appropriate form of development in accordance with Policies SS10 and DE1 of the Torbay Local Plan 2012-2030, Policies PNP1, PNP1(c) and PNP2 of the Paignton Neighbourhood Plan, and the NPPF.

10. Nesting Season

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

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

11. Ecology: biodiversity enhancement

Development shall be carried out in accordance with the actions set out in the submitted and approved Ecological Report (Sout West Ecology: Reference SWE 2081), dated 16th July 2024.

Prior to the first use of the proposed development the identified nest boxes shall be provided in full, in locations agreed in consultation with a suitably qualified ecologist, which shall then be maintained for their purpose thereafter through the life of the development.

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

12. Ancillary equipment

No equipment, signage or plant shall be located on the roof, walls or in the grounds of the development hereby permitted (other than those indicated on the approved plans) unless otherwise approved in writing by the Local Planning Authority, including air conditioning units, extraction equipment, aerials, tanks, satellite dishes and external lighting.

Reason: In the interests of the visual and general amenities of the area and in accordance with Policies SS10, DE1 and DE3 of the Torbay Local Plan 2012-2030 and the NPPF.

Informative(s)

Working positively and proactively:

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

Responsibilities of the applicant / developer:

All bats are protected by law. If bats are found, works must immediately cease, and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed.

Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

Community Infrastructure Levy (CIL)

This development is liable for contributions under the CIL regulations to provide essential infrastructure to support development in the Borough.

CIL next steps required under the CIL Regulations 2010 (as amended):

Where planning permission has been granted for development, the Council (as the collecting authority) requires the developer, landowner or another interested party to assume liability for the levy by submitting an assumption of liability form.

The Council, as the collecting authority, will then as soon as reasonably practicable, issue a Liability Notice to the applicant, the developer, and/or whoever has assumed liability for the scheme, which sets out the charge due and details of the payment procedure.

Any claims for exemption or relief can only be considered from parties who have already assumed liability, prior to commencement of development.

The relevant liable person(s) must then submit a notice to the Council setting out when development is going to start - a Commencement Notice. The Commencement Notice must be submitted to the Council for their written acknowledgement at least 48 hours prior to the start of any development on the site. No development must commence without written acknowledgement of receipt of a Commencement Notice.

The Council will then issue a demand notice to the landowner, or whoever has assumed liability, setting out the payment due dates in line with the payment procedure. On receipt of the demand notice and commencement of the development, the landowner, or whoever has assumed liability, should follow the correct payment procedure.

Failure to inform the Council of Commencement or to follow the CIL process and payment procedure correctly may result in the addition of surcharges and/or late payment interest. It must be noted that it is an offence for a person to 'knowingly or recklessly' supply false or misleading information to a charging or collecting authority in response to a requirement under the levy regulations (Regulation 110 as amended by the 2011 Regulations).

Further CIL information and Forms can be found at:

<https://www.gov.uk/guidance/community-infrastructure-levy#forms-andtemplate-notices>

Relevant Policies

Development Plan Relevant Policies

SS1 - Growth Strategy for a prosperous Torbay

SS3 - Presumption in favour of sustainable dev

SS10 – Conservation and the Historic Environment

SS11 – Sustainable communities

SS12 – Housing

SS13 – Five-year housing land supply

SS14 – Low carbon development and adaption to climate change

TA1 - Transport and accessibility

TA2 - Development access

TA3 – Parking requirements

DE1 - Design

DE3 - Development Amenity

ER1 - Flood Risk

ER2 - Water Management

ES1 – Energy

W1 - Waste management facilities

W2 – Waste audit for major development and significant waste generating developments

NC1 - Biodiversity and geodiversity

C4 – Trees, hedgerows and natural landscape features

PNP1 – Area Wide

PNP1(c) – Design Principles

PNP1(d) – Residential Development

PNP1(f) - Towards a sustainable low carbon energy efficient economy

PNP1(g) – Designing Out Crime

PNP1(i) – Surface Water

PNP2 – Town Centre

PNP16 – Victoria Street