

PLANNING APPLICATION REPORT

Case Officer: Steven Stroud

Parish: Totnes **Ward:** Totnes

Application No: 4021/21/VAR

Agent:

Melissa Magee
Carless & Adams Architects
6 Progress Business Centre
Whittle Parkway
Slough
SL1 6DQ

Applicant:

Stephen Patrick
Luna Rock Ltd
57/63 Line Wall Road
Gibraltar

Site Address: Development site at SX 809597, Steamer Quay Road, Totnes

Development: Application for variation of condition 2 (approved drawings) of planning consent 4165/17/FUL [*erection of a 68 bed Care Home (use class C2) with associated car parking, refuse and external landscaping*]



Reasons for taking item to committee –

It was at the request of Cllr Birch, for the following reason(s):

“The variation application is contrary to the following sections of the JLP

DEV20

The proposal does not have proper regard to the requirements of para 2 and para 8

DEV23

Specifically the amended design is not of high quality architecture and has lost most of the benefits of the consented scheme.

DEV2

The large volume of construction traffic having to move through an Air Quality Management Area conflicts with para 2. This exacerbated by the additional excavation and materials required by this revision.

TTV22

This is a major over-development of the site which SHDC only consider suitable for 3,200 Sq.M.”

Recommendation: Grant Conditional Planning Permission

Conditions (summarised; in full at end of report):

- i. Approved/varied Plans
- ii. All 68no. residential units to be single occupancy
- iii. No part of the building including any related or attached structures or plant shall exceed 20.00m AOD
- iv. No external plant to be installed without agreement (subject to demonstration of no adverse impact on amenity)
- v. Compliance with updated lighting strategy
- vi. Compliance with DEV32 energy statement/agreement of final measures
- vii. Updated drainage scheme condition
- viii. Tree protection
- ix. Updated hard and soft landscape scheme (inc. increased sedum provision)
- x. Green wall details
- xi. Secured by Design compliance/scheme to be agreed
- xii. Land Stability Strategy
- xiii. Revised Construction Management Plan (accounting for additional excavation)
- xiv. Balcony glazing to be obscured; details to be agreed before occupation
- xv. Conditions that remain relevant from the host permission/compliance with previously approved details. [including contamination, noise and emissions/as required by EHO]

Key issues for consideration:

- Whether a s73 application can be made
- Housing Mix/Quality of Accommodation
- Design, Landscape/Townscape Character and Appearance; Trees
- Highways
- Residential Amenity
- Flood Risk and Drainage
- Ecology and Biodiversity
- Energy Efficiency and Climate Change
- Planning Balance and Conclusion

Financial Implications (Potential New Homes Bonus for major applications):

The application may give rise to income through the New Homes Bonus. However, no material weight is afforded to this consideration in accordance with advice contained within the national Planning Practice Guidance ('PPG').

Site Description:

The site (0.45ha) is located on the north-east side of Steamer Quay, close to the River Dart, to the south of the town of Totnes. The site is on sloping land and has a considerable fall in levels of c.11m from east to west; new housing to the east is set on significantly higher land than the application site (albeit the rear gardens of those properties also fall westwards towards the river). As well as residential development abutting the eastern site boundary, the 'Quayside' extra care facility (Guinness Partnership) is immediately to the north. Agricultural land bounds to the south/southeast, beyond the 'Paradise Walk' footpath/cycleway that snakes its way along the southern boundary linking the upper part of Camomile Lawn/Sparkays Drive with Steamer Quay. The Longmarsh public car park is immediately to the southwest. By foot, the site is around 1km from the centre of town.

The access to the site, shared with the Guinness scheme is within Flood Zones 2 and 3 (however the development would be sited within Flood Zone 1).

The site is allocated for employment uses in the Joint Local Plan, under policy TTV22(4). Historically the site was also allocated under policy T7 of the previous local plan.

The site is within a Greater Horseshoe Bat ('GHB') Special Area of Conservation ('SAC').

There are no heritage assets that would be affected by the development.

The Proposal:

Planning permission was granted in 2018 (application ref. 4165/17/FUL) for the following development:

'Application for erection of a 68 bed Care Home (use class C2) with associated car parking, refuse and external landscaping.'

The above description of development is the operative part of the permission that fixed the nature of the development. It cannot be amended save for any immaterial changes approved pursuant to s96A of the Town and Country Planning Act 1990 ('1990 Act') i.e. it is not possible to derogate from that description.

The present application is made pursuant to s73 of the same 1990 Act where the applicant seeks to vary condition 2 (approved plans) of the planning permission to provide for an alternative form of development but remaining as a 68-bed care home with associated car parking, refuse and external landscaping. The access to the site would remain unchanged.

In essence, it is the scale, form and certain design elements of the care home building that vary between the permitted scheme and the new proposal, and those changes are discernible from the submitted drawings (which include overlays to show how the two schemes compare against one another, at least in terms of height and massing). Where the new proposal is taller in certain places than the previously approved building, it is however generally of a lower overall height and this is due to additional excavation/cut proposed into the site, making use of the significantly sloping topography (the building's ground floor finish level lowered c.1m below the approved).

However, for ease, a broad summary of differences and common elements are described below, and these are consistent with explanations provided by the Applicant in response to

questions raised by the Town Council and other interested parties [a more detailed schedule is also provided within the submitted Design and Access Statement]:

- The building will remain a 68-bed care home, save for 5no. upper floor rooms comprising a bedroom with en-suite, lounge and kitchenette. They would remain single occupancy with the C2 use class. [For the avoidance of doubt can be secured by condition]
- The overall height of the building would not exceed 20m above AOD, identified as around 19.93m on the submitted drawings and undulating between 19.15m and 19.98mAOD, in contrast to the permitted scheme which had a parapet height of c.21m. The proposed building is therefore of a lower height in real terms overall due to the additional 1m of excavation. It remains a four-storey building but must be acknowledged that the three-storey southern block would now have an additional storey. It would still sit significantly lower than the adjacent Guinness development.
- The overall building footprint remains essentially unchanged from permitted, albeit the basement area has been extended within that footprint, and balcony features have been incorporated/extended beyond the approved silhouette.
- Balcony side widths have increased from 1.62m to 2.95m. This is to accommodate chairs and circulation space. The 2.95m figure includes a 450mm-wide upstand wall, so the actual useable space by width is 2.5m.
- “Back-to-back” distances between the building and nearby residential properties to the east would remain similar, more than 23m at the closest point. The more slender, southern block would be over 35m away from the nearest dwelling.
- The garden area would be reconfigured to provide a larger, single space, rather than an additional small first-floor/split-level garden area in the permitted scheme.
- Introduction of green/living walls to the large bays on the front/western elevation (details can be secured by condition).
- Continued provision of sedum roofing on southern block, measured at around 85% of the previous scheme. An updated landscape plan is to be secured.
- Additional communal/activity and service areas and improved natural lighting.
- The total parking provision remains unchanged (19 spaces plus two disabled)
- The same number of resultant job opportunities are anticipated (68no. FTE).

In terms of floor areas between permitted and proposed, the differences are as follows:

Original/Permitted:

Total GIFA (gross internal floor area): 4120sqm

Lower ground floor: 825sqm

Ground floor: 1166sqm

First floor: 1360sqm

Second floor: 769sqm

Proposed:

Total GIFA: 5185sqm

Lower ground floor: 1456sqm

Ground floor: 1393sqm

First floor: 1385sqm

Second floor: 951sqm

The total overall increase in GIFA: 1065sqm.

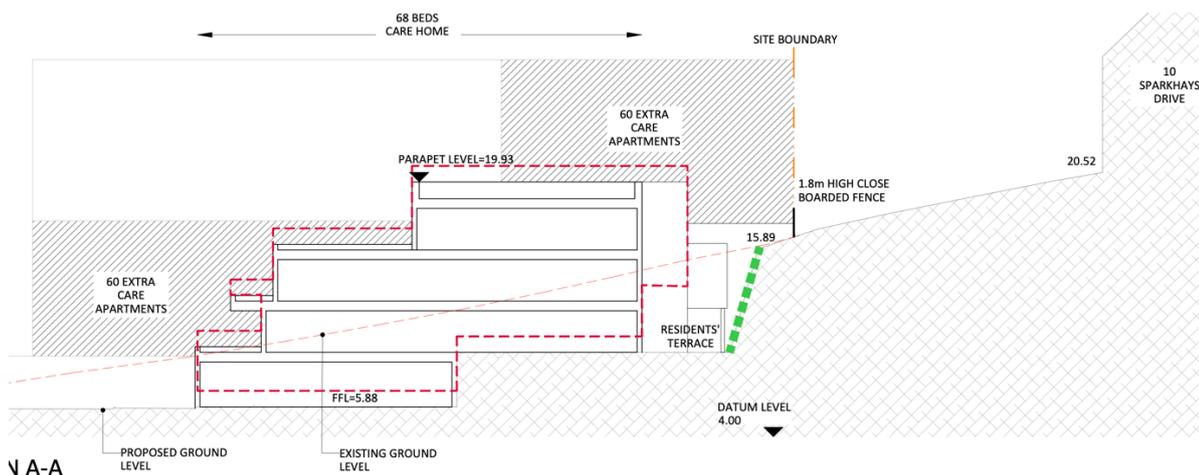
It should be noted that 631sqm is in the lower ground floor area which is an enlarged basement.

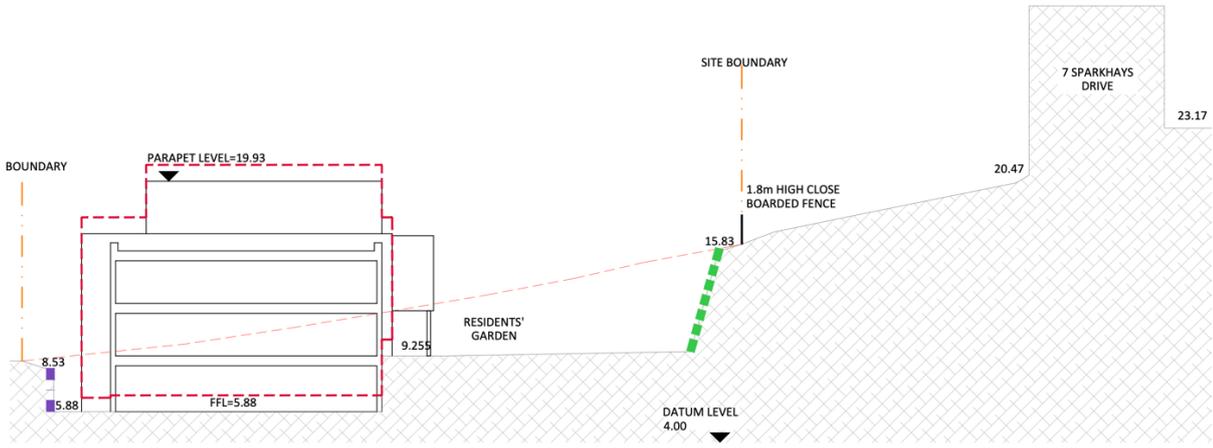
Regarding the additional excavation proposed and potential issues regarding stability, the Applicant has explained as follows:

'Prior to any excavations for the building on site, a row Contig pile retaining wall will be constructed. Contiguous pile wall will be constructed by drilling successive, adjacent piles. The retaining wall will extend into the ground approximately 11m below the targeted ground level, to ensure safety of the retaining wall. Only after the construction of the retaining wall is complete, excavations for the building will commence. This sequence of actions will ensure stability of the gardens at Sparkhays.'

Whilst matters of potential damage to properties during construction are typically of a civil nature such that they go beyond the scope of planning assessment, in this case the applicant has agreed to the imposition of a planning condition to ensure that the final strategy is agreed before any further development takes place. [such condition is provided as part of the proposed schedule of conditions at the end of this report and would run alongside the existing condition requiring agreement of boundary/retaining walls]

Extracts of submitted drawings are set out below which illustrate the nature of some of the changes referred to and in relation to the silhouette (outlined in red) of the permitted scheme.





Further elevational differences highlighted as follows, extracts show: 'Elevation A' as the western/frontage elevation; 'Elevation E', which is the southern block facing Paradise Walk that has increased from three to four storeys; and 'Elevation F' which is the same block as facing the rear of properties on Sparkhays Drive >35m away.



[Approved Elevation A]



[Proposed Elevation A]



ELEVATION E

[Approved Elevation E]



ELEVATION E

SLATE

[Proposed Elevation E]



ELEVATION F

[Approved Elevation F]



ELEVATION F

Consultations:

The application has been through several rounds of consultation as the application has been amended. The most up to date comments received from each consultee is summarised below. Full details are available for viewing on the planning pages of the Council's website and due to the lengthy nature of some of the responses received, Members are directed to review them at:

<https://southhams.planning-register.co.uk/Planning/Display/4021/21/VAR>

All consultee responses and representations received have been read, duly considered, and taken into account when preparing this report for Members.

Totnes Town Council – objects, and the previous concerns raised still stand:

- Overmassing of the site in the revised extension plans which seem too significant a change to be a variation to an application that has expired in terms of the volume of the building (rather than footprint), and the Committee would suggest that a new application is submitted given timing and the scale of the changes applied for.
- Flood risk
- Car Parking – there are very few spaces (19) provided for the number of staff and visitors which will exacerbate parking on neighbouring residential roads.
- Design – the building will look very monolithic from the river which is a tourist access point to the town (contrary to DEV20 Place shaping and the quality of the built environment). The previous stepping down of the top storey at the South Eastern end towards Paradise Walk was critical to ensuring that the building form responded to its landscape context, this has now been lost.
- On reviewing the latest variations to revised plans, the Committee also has concerns about:
 - o Facade treatment – appears fussy and incoherent in appearance.
 - o Fencing – the Committee understands the requirement of the high fence to ensure the safety of residents but is concerned that running alongside the existing Paradise Walk footpath in its entirety is detrimental to the public realm. Could the fence return to the side of the building to enclose the residents garden, thereby lessening the impact?
 - o Lack of a revised hydrology report to address the lowering of the building and additional excavation required.
 - o NHS provision – how the overstretched local NHS provision in the town will bear the additional pressure brought on it by this facility.

[Officer comment: so far as possible the Town Council's concerns are dealt with in this report, but it is important to recognise that, as will be explained, the application is made under s73 so any 'in-principle' issues raised cannot be used to withhold a grant of permission. The NHS have been consulted and they raise no objection, as below.]

Environmental Health Officer – no objection:

- We have considered the documents submitted and have no environmental health concerns. We note that the Town Council mentioned concerns about light pollution, but the changes suggested will not alter the situation regarding this and it is the responsibility of the applicant to select outside light fittings that will not cause local light pollution or glare that could impact on residents living nearby.

[Officer comment: notwithstanding the EHO comments, it is recommended to include conditions relating to external lighting and the requirement to agree any external plant to be installed including on the roof.]

Landscape Specialist – support:

- Overall, the amendments are welcomed, which suggest that the site has the capacity to provide an acceptable layout with the quantum of development proposed, whilst complying with adopted policy on design (DEV20), landscape character (DEV23), trees, woodlands and hedgerows (DEV28).
- Retain previous relevant conditions and seek submissions of any necessary mitigation measures for the roofscape.

Trees – no objection, subject to TPP condition.

OSSR – no objection:

- The proposed variations to the approved drawings make a number of changes to the external form of the building. However, the level of resident's greenspace proposed remains similar to the consented scheme and is considered to provide suitable amenity and landscape benefit.

DCC Ecology – no objection:

- This application is for the amendment of Condition 2 to allow for a change to design of the care home compared with already approved plans. Multiple internal and external changes to the design of the building are proposed.
- A Habitats Regulations Assessment (HRA) was completed by the LPA and agreed with Natural England for application 4165/17/FUL. This HRA made it a requirement of the development to ensure that light levels did not exceed 0.5 LUX at features identified as likely to be used by Greater Horseshoe Bats. These features included the western boundary hedgerow. Despite this feature being 'off-site' in terms of being outside the red line of this current planning application, the requirement applies equally to this development, to ensure illumination associated with the care home does not have an impact on GHS bats use of the feature.
- The previously approved proposal accorded with these HRA requirements and showed that light levels did not exceed 0.1 LUX at the off-site western boundary hedgerow, and that light levels did not exceed 0.5 LUX within 10m of this hedgerow.
- The lighting proposed for this variation of conditions application is in line with the approved HRA for application 4165/17/FUL. No further ecological comments.

Local Highway Authority – no comments to make.

Lead Local Flood Authority – no objection subject to condition.

[a pre-commencement condition has been requested but as development has already begun it is sufficient to direct that the required details be agreed before any further development takes place – the recommend condition is included within the schedule at the end of this report]

DCC Heritage – no comments to make.

Historic England – do not wish to offer comments.

Devon and Cornwall Police – no objection/comments:

- No in-principle objection but disappointing that the crime considerations are not contained within the DAS.
- Recommend a condition in lieu of further information.

Environment Agency – no objection:

- The flood map indicates that a small area of flood zone 3 encroaches within the red line boundary but there does not appear to be any development taking place within that area.
- Refer to standing advice.

NHS Devon ICB – comments:

- Residents of care homes often have complex health needs and therefore create additional operational pressures on GP services however rather than visiting the GP surgery for treatment they are visited at their place of residence. Therefore, on this occasion the ICB will not be requesting a contribution for additional infrastructure capacity.
- However, the ICB would like to highlight that if there is already sufficient Care Home capacity within the area then this development could lead to a population increase of patients who will have higher than average health and care needs.

Representations:

A significant number of representations have been received through the life of the application and rounds of consultation undertaken; some respondents have made multiple representations. For sake of prudence the material issues raised in all responses received are summarised below, but Members are directed to read them in full on the Councils website:

<https://southhams.planning-register.co.uk/Planning/Display/4021/21/VAR>

Objections

- The application is in breach of policy TTV22 which sets a limit of 3,200sqm of employment floorspace.
- The GIA of the proposed scheme is 25% greater than permitted. This cannot be assessed under s73.
- Pre-commencement conditions were not discharged / the permission was not lawfully implemented.
- Poor design/contrary to DEV20.
- Land stability concerns; breach of DEV2.
- Noise concerns.
- Light concerns on amenity/ dark skies.
- Odour concerns.
- The original profile has been significantly altered in raising to four-storeys at southern end.
- Concern about loss of sedum roofing.

- Dwellings on Sparkhays Drive are not shown on drawings.
- No reasonable sections have been provided.
- Concern regarding capacity from 68 to 73 beds.
- Inconsistent and contradictory drawings/application material.
- Highway safety concerns.
- Construction management concerns / evidence of previous damage.
- Insufficient parking.
- Flood risk issues/contrary to policy.
- Overlooking/harm to residential amenity.
- Harm to infrastructure/pressure on healthcare.
- Object to planned route of foul and surface water drainage.
- Access safety issues due to flooding.
- Harm to ecology.
- Harm to townscape/landscape character and appearance.
- No social housing.
- Impedes public right of way.
- Siting of plant on the roof needs to be considered (noise and heights above the parapet).
- Flood evacuation needs consideration.
- Traffic increase issues.
- Concern regarding management of the spoil from excavation
- No longer blends into hillside.
- No provision for EV.
- Building will overshadow neighbouring residents.

Undecided (inc. comments from Dart Totnes Rowing Club, and Totnes and District Society)

- No objection to building but object to proposed route of foul and surface water drainage close to clubhouse.
- Groundworks to facilitate the strategy are likely to be disruptive to club activities.
- Alternative route should be found/utilise our own compound adjacent to Unit D.
- Surface water outfall should be located within the sheet piling of the former Baltic Wharf turning bay.
- Details of roof plant should be provided.

Relevant Planning History:

The Host Permission

Planning permission was granted 22nd May 2018 (application ref. 4165/17/FUL) for the following development: *'Application for erection of a 68 bed Care Home (use class C2) with associated car parking, refuse and external landscaping.'* That is the 'host permission' for the determination of this s73 application.

Pre-commencement and other conditions imposed upon the host permission were discharged under the follow application references, and this will be considered further in the next section of this report:

- 3088/18/ARC
Application for approval of details reserved by conditions 6, 9, 11, 15, 22, 23 and 24 of planning consent 4165/17/FUL – approved, 6th September 2019.
- 4006/19/ARC

Application for approval of details reserved by conditions 3, 16, 17, 18, 19, 20, and 21 of planning consent 4165/17/FUL – approved, 11th January 2021.

- 2082/20/ARC

Application for approval of details reserved by condition 8 of planning consent 4165/17/FUL – approved, 25th January 2021.

Other History

Other history relevant to the site and adjacent land, includes:

- 03_56/0447/12/0, which was allowed on appeal.

Outline application for mixed use development comprising about 100 dwellings. Up to 5350 sqm of office/light industrial floorspace. Up to 60 units of extra care accommodation and associated communal facilities. Up to 350 sq.m of floorspace for community use. Provision of public open space. Creation of new vehicular and pedestrian/cycle accesses and associated works.

- 03_56/0695/14/RM, approved.

Approval of reserved matters following outline consent 03_56/0447/12/0 for landscaping, scale, appearance and layout solely for Weston Lane access road (Phase 1 of the development)

- 03_56/1419/14/RM, approved.

Approval of reserved matters following outline consent 03_56/0447/12/0 for landscaping, scale, appearance, and layout of 100 dwellings (Phase 2 of the development).

- 56/1792/15/RM, approved.

Approval of reserved matters (appearance, landscaping, layout and scale) following outline approval 03_56/0447/12/0 increasing number of dwellings on western portion of site from 29 to 35.

- 56/3099/14/RM, approved.

Approval of reserved matters following outline approval 03_56/0447/12/0 for appearance, landscaping, layout and scale of mixed use Extra Care Scheme development.

Concern has been raised that there is a potential breach of the legal agreement relating to outline permission ref. 56/0447/12/O and its related employment land obligations that would affect the application site. However, the host permission in this case is a stand-alone planning permission that is unrelated to, and independent of, the outline permission ref: 56/0447/12/O. It relates to a new planning unit and is a full planning permission and there is no reference to the legal obligations applying to the other permission. To all intents and purposes, the host permission has opened a new chapter in the planning history of the site. As explained below, the host permission has not lapsed and has been implemented, so any previous employment land obligations no longer apply and are incapable of applying in this case.

ANALYSIS

Whether a s73 application can be made:

A number of objections to the application have alleged that it is invalid and cannot be determined because either the host permission is no longer extant, or that the proposed

scheme is so different from the development approved under the host permission that it is more than a “minor material amendment” and therefore cannot be made under s73.

This section of the report will respond to those in-principle issues as well as explaining the ambit of assessment for this s73 application.

Whether the host permission (4165/17/FUL) was lawfully implemented/can be relied upon

This issue itself comprises two parts: first, whether all the relevant pre-commencement conditions were satisfied; and second, whether a material operation was undertaken to implement permission in time (the permission due to expire on 22nd May 2021).

The planning permission, which was issued 22nd May 2018, is subject to conditions, some of which require certain things to happen before the commencement of development. The relevant conditions are conditions, 3, 6, 8, 15,16, 17, 19, 20, 21 and 23.

Conditions 6, 15, and 23 were approved 6th September 2019 (3088/18/ARC). The details reserved for approval by conditions 3, 16, 17, 18, 19, 20, and 21 were approved 11th January 2021 (ref. 4006/19/ARC). The details reserved for approval by condition 8 were approved 25th January 2021 (ref. 2082/20/ARC). [all as listed above under relevant planning history]

The details approved in relation to condition 18 are important. These include a proposed drainage strategy and related drawing ref. 10230-500 P2. That drawing is important because it shows a hydrobrake flow-control chamber in the location of the works said to have been undertaken to implement the permission.

Those works were undertaken on or before 30th April 2021 and photographic evidence has been provided by the applicant to that effect, alongside an Initial Notice under the Building Regulations dated 26th March 2021. Topographical survey data shows that the works in question accord with the hydrobrake chamber shown on the approved drainage drawing. The nature of those works is sufficient to amount to a material operation in accordance with s56 of the 1990 Act and were clearly undertaken to further the permission (i.e. they were not random or unrelated to it).

Having sought legal advice, officers are content that on the balance of probabilities (which is the legal burden of proof in such cases): all pre-commencement conditions were settled in time; that works to implement the permission accorded with the approved details and were carried out in time; and the nature of those works amounted to a material operation in accordance with the Town and Country Planning Act 1990 (‘1990 Act’).

On that basis officers are satisfied that the planning permission was lawfully implemented and is extant.

Whether the current application is capable of determination

As above, officers’ view taken under legal advice is that the 2018 planning permission was lawfully implemented and can be relied upon. It therefore follows that the applicant is entitled to make an application under s73 of the 1990 Act.

The next issue which arises is the breadth of changes that may be permissible under such an application, recognising that until very recently the national Planning Practice Guidance described such an application as only being for “minor material amendments”.

However, officers consider it to be clear that planning law does not stipulate that s73 applications are for 'minor' variations only, and this is not a phrase recognised in the 1990 Act. The power to make changes to existing permissions is wider than making 'minor' amendments and this has been repeatedly confirmed by the courts (recent case law going so far as to direct that previous advice published by Government was incorrect in implying that only minor material amendments could be made, hence the recent PPG updates).

Having sought legal advice, and where the nature of the development proposed remains consistent with the description of development (being a 68-bed care home with associated car parking, refuse and external landscaping), officers are content that the plans condition is capable of being varied in the manner proposed. The newly proposed scheme is obviously different, and this report tests the merits of the changes sought, but it is not fundamentally at odds with the permission that was granted.

It follows that the application has been properly made and should be determined.

Determination of s73 Applications

The application is made under s73 of the 1990 Act. s73(2) explains how in such circumstances an application should be determined:

'On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and –

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.'

The updated national PPG, at paras. 13, 14, and 15 of the 'Flexible options for planning permissions' chapter, provides further advice regarding such applications, now reflecting updated case law, stating:

'Amending the conditions attached to a permission (application under Section 73 TCPA 1990):

- *How are the conditions attached to a planning permission amended?*
 - o *In contrast to section 96A, an application made under section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission.*
 - o *Provisions relating to statutory consultation and publicity do not apply. However, local planning authorities have discretion to consider whether the scale or nature of the change warrants consultation, in which case the authority can choose how to inform interested parties.*
- *Are there any restrictions on what section 73 can be used for?*
 - o *Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of*

reserved matters must be made. Section 73 cannot be used to change the description of the development.

- *What is the effect of a grant of permission under section 73?*
 - o *Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.*
 - o *A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.*
 - o *As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. If the original permission was subject to a planning obligation then this may need to be the subject of a deed of variation.*

Section 73 applications are commonly referred to as variation applications, but that is a misnomer. They result in an independent permission to carry out the same development as previously permitted, but subject to the new or amended conditions.

In that context the key issue for the purposes of determining the current application would be to consider whether the amended design and other related changes proposed would be acceptable in planning terms when judged against the development plan and other material considerations. The compass of assessment is necessarily narrower because it is only the subject matter of the changes proposed/condition to be varied that is under assessment. In this case, that relates to the proposed changes to the scale, form, and appearance of the proposed revisions including reconfiguration of accommodation and other spaces within the site and care home building.

Thus, under a s73 application the nature of the development i.e., its principle, is fixed and cannot be set aside. The scope of assessment is confined solely to the conditions proposed to be varied or removed. Therefore, whether objected to in principle or not, it should be settled that a 68-bed care home can be delivered on the site because the planning permission is extant. This is relevant when considering matters of flood risk later in this report.

The Council must also have regard to the practical consequences of refusing the current application because the extant host permission is a material consideration as a 'fallback' position. The host permission is a fallback because, notwithstanding correspondence suggesting that there is a covenant on the land that would currently prevent the host permission from being carried out (a civil matter), there remains a prospect of it being brought forward and this has been confirmed with the applicant alongside their intention to do so should this application fail. To be clear: a fallback does not have to be probable or even likely. A mere possibility is sufficient to establish the position.

Obviously, by law material considerations must be taken into account (as s70(2) of the 1990 Act) and planning decisions are taken in accordance with the development plan unless other material considerations indicate otherwise (as s38(6) of the 2004 Planning and Compulsory Purchase Act). In such circumstances where the host permission is a fallback for the applicant, case law directs that the Council must consider whether the implications of the proposed revisions be better, worse, or broadly similar to the already permitted/host scheme.

For the reasons that will be given in this report, officers conclude that the proposed changes are in accordance with the development plan such that the direction is to grant planning permission without delay. However, even if that is disputed, the overall effects of the proposed development are considered to be broadly similar to those of the host permission as a fallback position and this is a material consideration sufficient to decisively direct that approval should be given in any event.

Objectors point out that the application is in breach of policy TTV22, which sets a limit of 3,200sqm of employment floorspace. This is not a point that can form a reason for refusal: firstly, as the above decision-taking framework makes clear, the nature of a s73 application is such that the principle of development cannot be revisited in this case; secondly, the permitted and extant scheme is *already* in breach of that policy requirement where it has a GIFA of 4,120sqm so the proposed scheme is no different in exceeding the 3,200sqm threshold.

The appropriateness of the changes sought are now considered in the subsequent sections of this report.

Housing Mix/Quality of Accommodation

It is already established that the principle of development is settled and cannot be revisited under the s73 application that has been made. However, in consideration of the internal reconfiguration of flats, particularly in relation to the 5no. 'suites', it is important to ensure that the overall mix remains both compliant with planning policy and consistent with the operative part of the host permission being a 68-bed care home.

Firstly, it should be uncontroversial that, as made clear by Government, the need to provide housing for older people is *critical*: people are living longer lives and the proportion of older people in the population is increasing. Likewise extra care and other specialist housing is crucial in helping people to live safe and independent lives. Those objectives are consistent with the JLP (e.g. policy DEV8) and Totnes Neighbourhood Plan ('TNP', policy C4) in seeking to meet housing needs, and the housing crisis declared by the Council. The proposed development would continue to satisfy those objectives and compared with the host permission there would be improvements to the quality of accommodation provided recognising the increased balcony sizes/circulation space and improved communal and service areas.

Consideration has been given to the concern that the development would increase from a 68-bed scheme to a 73-bed scheme. This is due to the provision of 5no. suites on the upper/2nd floor (rooms 59, 60, 62, 66, and 68), where the DAS has described them as being suitable for residents and their partners. The relevant floor plan extract is copied below:



The applicant has since confirmed that in respect of those rooms:

'The building will remain a 68-bed care home, the upper floor units offer unique proposal where the resident's accommodation will comprise of bedroom with en-suite, lounge and kitchenette but it will remain a single occupancy unit.'

This can be secured by planning condition and officers are therefore satisfied that the accommodation meets the policies of the development plan and remains consistent with the operative part of the host permission as a 68-bed care home.

Design, Landscape/Townscape Character and Appearance; Trees:

The policies of the development plan seek to secure high-quality design (policy DEV10) and recognise the intrinsic character and beauty of the countryside; the application of JLP policies DEV20 and DEV23 seek to secure development that is compatible with it. Relevant TNP policies include V1, En2, En3, and En4.

The above local policies are consistent with the policies of the NPPF where national policy also directs that local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (para. 140).

The application site is on rising land close to the River Dart and is in a sensitive location potentially visible from a number of locations within and around Tones; in particular the site is visible from the public footpath/Paradise Walk [see Elevations A and E extracts, above].

The Council's reasons for granting the host permission included consideration of the significant reduction in height in comparison to the Guinness Partnership scheme, and varieties in height and articulation of the subject building so that it would not appear monolithic or dominant in the landscape, with the use of sedum roofing on the southern block to soften roofscape views from Paradise Walk. Officers consider that those same considerations apply in this case and the views of the two landscape specialists that have passed comment on the application, and who raise no objection, are endorsed. As the first specialist officer noted:

'The proposed variation does introduce a variety of changes to the external form of the previously consented scheme on the site. Nevertheless, the changes being proposed to the previously consented scheme are not considered so great as to bring about any notable changes to the level of effects on visual amenity or landscape character than previously identified; the proposed variation would remain consistent with the requirements of DEV20 and DEV23 in landscape and visual terms.

The submission is supported by a Soft and Hardworks Plan – 07530-1 that if implemented as shown, would provide a suitable landscape and green setting to the proposed development.'

The second officer states:

'As previously recognised the proposed variation introduces a number of changes to the external form and appearance of the consented scheme and earlier iterations. These includes changes to the building profiles across the site and reduced areas of sedum roof on the eastern end. Additionally, the proposed landscape plan submitted with the current proposal has been revised with increased tree planting at the eastern elevation. The areas of planted land beyond the application site remain the same.

The building heights overall are consistent with the approved scheme but with some elements of the roofscape having changed, with some slightly higher profiles in places. However, there is indication of roof mounted services which are not illustrated; this has the potential to be visually discernible from some limited, but more elevated, public views. This should therefore be fully mitigated with physical screening and mechanical structures should not exceed the current parapet heights (currently at circa. 20.93m).

In reviewing the overall variations to the design in the context of the wider landscape, including more sensitive views some distance to the south from within the AONB, the changes are not considered significant against the approved scheme; in particular recognising the site context with the existing Extra Care Home and Camomile Lawn developments, above and beyond views from locations to the south and west. Officers are therefore satisfied that any resulting effects on the visual amenity and landscape character remain consistent with those previously assessed, and therefore accord with the requirements of JLP Policies DEV20 and DEV23.'

In respect of roof plant, the applicant has commented as follows:

'No part of the building including any related or attached structures or plant equipment would exceed 20.00m AOD however, as the line of the parapet undulates to height between 19.15m AOD and 19.98m AOD, some parts of the equipment would be visible above the parapet should we look at a flat elevational drawings.

In real life, it is unrealistic that any elements of the plant would be visible from the pedestrian level as all elements are pushed inwards in comparison with the façade. As for the residents of Sparkhays Drive, their properties' first floor windows are placed above the roofline of the proposed care home therefore they would be looking onto the roof from a height and whether the plant would protrude above the parapet is not relevant.'

Officers are inclined to accept the applicant's position. However, recognising the importance of the issue to local stakeholders it has been agreed that by planning condition it will be ensured

that no part of the building (including any plant), shall break the 20.00m AOD line. Officers additionally propose to condition the final approval of the location and treatment of any plant including enclosures/screening, to ensure that impacts are minimised noting the potential for visibility from Paradise Walk (this would also deal with potential emissions issues, as considered later in this report). Likewise, the inclusion of living/green walling is a positive addition that offers betterment to the host scheme; the final details of this element can also be secured by condition including measures for future management and aftercare.

Overall, the development is considered to be compatible with the wider townscape pattern of development and setting and would respect local distinctiveness in accordance with the aforementioned planning policies. In comparison to the host permission the overall effects are considered to be broadly similar.

Highways:

The LHA has raised no objection to the application/does not wish to make any comments. This is understandable because the nature of the proposed development is fundamentally the same as the host permission.

It continues to be the case that safe and suitable access can be achieved for all users and that impacts upon the local highway network would be acceptable. The application therefore accords with policy DEV29 and the NPPF in that respect. Relevant parking conditions and implementation of EV charging would remain/would be transferred from the host permission to the new permission.

In having regard to the above, it is considered that the proposal accords with JLP Policy DEV29. Even if the level of parking proposed was deficient when tested against any improved or new policy standard or guidance, because the parking arrangements would remain unchanged from the fallback position this would not be a justifiable reason to refuse permission.

Respondents have observed that the new scheme involves a greater level of excavation such that increased construction movements are likely (also recognising the nearby Air Quality Management Area). Officers agree. However, the effects of such an impact would be relatively short-lived and can be adequately managed through a revised Construction Management Plan, controlled by condition. The effects between schemes would remain broadly similar.

Residential Amenity:

It is always necessary for developments to take into account the amenities of neighbours, third parties and impact on the environment. In this case, the proposed development would continue to comply with the principles of good neighbourliness and the protection of existing residential amenities.

Following a request from a member of the public, the drawings were annotated to show the back-to-back distances between the proposed building and existing residential properties on Sparkhays Drive. Those distances all exceed usually acceptable tolerances (noting also the guidance in the JLP SPD): there would be no unacceptable loss of outlook to residents (existing or future occupants) and risk relating to overlooking would be manageable through planning condition ensuring that balcony features are obscurely glazed. Overshadowing issues also do not arise due to the degree of separation and the nature of topography.

Respondents have also raised concern regarding the likelihood of plant being installed on the roof of the development and where the plant room(s) have also been reconfigured so that they are closer to existing properties. Notwithstanding that the EHO raises no objection, and that

existing conditions relating to noise and odour would continue to apply (as imposed on the host permission, as conditions 6 and 7) officers additionally recommend that no external plant shall be installed without prior approval so that adverse impacts can be avoided.

The development would therefore accord with JLP Policies DEV1, DEV2, DEV10 and the requirements of the NPPF. The effects between the proposed scheme and host permission would remain broadly similar.

Flood Risk and Drainage:

Most of the application site is within Flood Zone 1, and it is only the access that falls within Flood Zone 3. The application therefore takes a sequential approach in siting the vulnerable aspects of the development to an acceptable area of reduced flood risk.

There is inconsistency and debate within planning and appeal decisions regarding the requirement to comply with the 'Sequential Test' and 'Exception Test' in such circumstances. In this case the Environment Agency raise no objection but as part of their standing advice have indicated that this should be carried out. However, regardless of whether policy DEV35 or the NPPF are complied with in this discrete respect, this would not be a reason for refusing the current application because the principle of development (with the development being permitted to be sited as it is) is already settled and so this is beyond the scope of the s73 process.

Nevertheless, the applicant has amended the proposed plans to include a safe, paved passage labelled a 'Flood Exceedance Route', to be used in case of the site entrance being flooded while the site was to be vacated. This flood evacuation route has been consulted with Environmental Agency and their latest response raises no objection.

In respect of the management of surface water, the LLFA no longer raise any objection to the application based on updated information from the applicant where it is proposed that water is drained via an attenuated discharge offsite to the River Dart, via a dedicated new requisitioned sewer by South West Water. Officers are satisfied that there remains a technical solution to drainage matters (recognising that the host permission has already been signed off in that respect) and the reimposition of a condition to agree a final strategy, as recommended by the LLFA, is recommended. This routing is then also capable of taking into account the views of the local rowing club, and this has been confirmed with the applicant.

SWW raise no objection. The relevant foul water condition would be re-imposed for agreement before any further development takes place.

The application is considered to accord with policy DEV35 but insofar as there is any objection due to the access falling within Flood Zone 3 this is not fatal to the application because it remains similar to the host permission in that regard and permission for development in the location proposed already exists.

Ecology and Biodiversity:

The key consideration in relation to this issue is the potential for impact upon bats, as recognised when the host permission was granted. As set out by the county ecologist, a Habitats Regulations Assessment (HRA) was completed by the Council and agreed with Natural England for application 4165/17/FUL. This HRA made it a requirement of the development to ensure that light levels did not exceed 0.5 LUX at features identified as likely to be used by Greater Horseshoe Bats. These features included the western boundary hedgerow.

Despite this feature being 'off-site' in terms of being outside the red line of this current planning application, the requirement applies equally to this development, to ensure illumination associated with the care home does not have an impact on the bats' use of the feature.

The previously approved proposal accorded with these HRA requirements and showed that light levels did not exceed 0.1 LUX at the off-site western boundary hedgerow, and that light levels did not exceed 0.5 LUX within 10m of this hedgerow. The lighting proposed for this variation of conditions application is in line with the approved HRA for application 4165/17/FUL. It is therefore acceptable in this regard. Other conditions from the host permission relating to landscape and ecological management would continue to apply.

No Biodiversity Net Gain has been proposed as part of the application but as a s73 application for a permission that precedes the current legislation, it is exempt. Policy DEV26 does require an element of BNG on all major schemes but the latest Government policy is that:

'Decision makers should not give weight to local policy which requires biodiversity gains for types of development which would now be exempt under the statutory framework.'

Therefore, despite an overall compliance with policy DEV26 there is a degree of conflict due to the lack of BNG. However, the Government is clear that no weight should be given to this matter and in any event, this was not a requirement of the host permission so the impacts remain broadly similar. General enhancements to biodiversity can be secured and the condition from the host permission (bat/bird boxes) will be carried across alongside the LEMP requirement.

Energy Efficiency and Climate Change

The application is accompanied by an Energy and Sustainability/DEV32 statement which details how the policy requirements are capable of being met. Relevant measures include energy-efficient building design as well as low and zero-carbon technologies such as air-source heat pumps and PV.

Because the final details are not yet known, they can be secured by condition to ensure that such measures are appropriately sited. In doing so, it should be recognised that this is a significant improvement upon the host permission where no such provision was made.

Planning Balance and Conclusion:

Case law has emphasised that a key part of the s38(6) statutory duty is to determine whether the development accords with the development plan when viewed as a whole. It has long been recognised by the courts that it is not unusual for development plan policies to pull in different directions and that the decision taker must therefore make a judgement as to whether a proposal is in accordance with the plan as a whole, bearing in mind the relative importance of the policies which are complied with or infringed and the extent of the compliance or breach.

Overall and in the round, the application is considered to accord with the development plan insofar as the changes proposed under this s73 application.

However, the issue for the Council in determining the s73 application is not to revisit the questions of principle (i.e. should there be any development of this nature and scale on this site at all in the first place). The compass of debate is narrower, i.e. would the implications of the proposed revisions be better, worse or broadly similar to the already permitted scheme

which is a fallback position. For the reasons given, the impacts and effects of the proposed scheme are broadly similar to those of the host permission.

In light of the above analysis the application falls in favour of a grant of planning permission, consistent with the direction of the development plan where the proposed development – in so far as the issues raised by the amended details and the delta of change between “as permitted” and “as now proposed” – complies with the plan as a whole.

Permission can be granted subject to the proposed conditions, including those that remain relevant from the host permission being re-imposed as required.

This application has been considered in accordance with Section 38 of the Planning and Compulsory Purchase Act 2004 and Sections 70 and 73 of the Town and Country Planning Act 1990.

Planning Policy

Relevant policy framework

Section 70 of the Town and Country Planning Act 1990 requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the Planning and Compensation Act 2004 requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of decision making, as of March 26th 2019, the Plymouth & South West Devon Joint Local Plan 2014 - 2034 is now part of the development plan for Plymouth City Council, South Hams District Council and West Devon Borough Council (other than parts of South Hams and West Devon within Dartmoor National Park).

Following adoption, the three authorities jointly notified the Ministry of Housing, Communities and Local Government (MHCLG)* of their choice to monitor the Housing Requirement at the whole plan level. This is for the purposes of the Housing Delivery Test (HDT) and the 5 Year Housing Land Supply assessment. A letter from MHCLG to the Authorities was received on 13th May 2019 confirming the change.

On 19th December 2023 DLUHC published the HDT 2022 measurement. This confirmed the Plymouth, South Hams and West Devon’s joint HDT measurement as 121% and the consequences are “None”.

The combined authorities can demonstrate a 5-year land supply of 5.84 years at end March 2023 (the 2023 Monitoring Point). This is set out in the Plymouth, South Hams & West Devon Local Planning Authorities’ Housing Position Statement 2023 (published February 2024).

[*now known as Department for Levelling Up, Housing and Communities]

The relevant development plan policies are set out below:

The Plymouth & South West Devon Joint Local Plan was adopted by South Hams District Council on March 21st 2019 and West Devon Borough Council on March 26th 2019.

SPT1 Delivering sustainable development

SPT2 Sustainable linked neighbourhoods and sustainable rural communities

SPT3 Provision for new homes

SPT14 European Protected Sites – mitigation of recreational impacts from development

TTV1 Prioritising growth through a hierarchy of sustainable settlements

TTV2 Delivering sustainable development in the Thriving Towns and Villages Policy Area
TTV26 Development in the Countryside
TTV27 Meeting local housing needs in rural areas
DEV1 Protecting health and amenity
DEV2 Air, water, soil, noise, land and light
DEV8 Meeting local housing need in the Thriving Towns and Villages Policy Area
DEV9 Meeting local housing need in the Plan Area
DEV10 Delivering high quality housing
DEV20 Place shaping and the quality of the built environment
DEV23 Landscape character
DEV26 Protecting and enhancing biodiversity and geological conservation
DEV28 Trees, woodlands and hedgerows
DEV29 Specific provisions relating to transport
DEV30 Meeting the community infrastructure needs of new homes
DEV31 Waste management
DEV32 Delivering low carbon development
DEV35 Managing flood risk and Water Quality Impacts
DEL1 Approach to development delivery and viability, planning obligations and the Community Infrastructure Levy

Neighbourhood Plan:

Following a successful referendum, the Totnes Neighbourhood Plan was adopted on 30th November 2023. It now forms part of the Development Plan and should be used in determining planning applications within the Totnes Parish.

Relevant policies include:

V1 Local Identity
En1 Sustainable Development and the Settlement Boundary
En2 Development and Design
En3 Historic and Built Character
En4 Landscape Setting of Totnes
En5 The River Dart
En6 Enhancing Local Environmental Capacity
C4 Housing

Other Material Considerations:

Additionally, the following planning documents are also material considerations in the determination of the application:

- The Plymouth and South West Devon Supplementary Planning Document (JLP SPD)

Other material considerations include the policies of the NPPF and guidance or policy in the national Planning Practice Guidance (PPG).

The development complies with the policies of the NPPF when considered as a whole. That consideration reinforces the direction of the development plan in approving the development and, in accordance with the presumption in favour of sustainable development (para. 11.c)), planning permission should be granted without delay.

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

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Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - A-730 01 Rev C Location Plan
 - A-730 02 Rev G Proposed Site Plan
 - A-730 03 Rev C Floor Plans
 - A-730 04 Rev C Floor Plans
 - A-730 05 Rev C Roof Plan
 - A-730 06 Rev A Site Sections
 - A-730 07 Rev A Site Sections
 - A-730 08 Rev B Site Plan with Sections
 - A-730 09 Rev D Site Sections
 - A-730 10 Rev A Site Sections
 - A-730 11 Rev D Proposed Elevations
 - A-730 12 Rev D Proposed Elevations
 - A-730 20 Rev E Retaining Structures and Site Boundary Treatments
 - 1156 EXT-001 Rev C External Lighting

2. All 68no. residential units shall be single occupancy.

[Reasons for conditions 1 – 2: For the avoidance of doubt and in the interests of proper planning to secure an orderly development and to ensure that the resultant development is consistent with the operative part of the planning permission]

3. No part of the building including any related or attached structures or plant shall exceed 20.00m AOD.
4. No external plant shall be installed without the prior written agreement of the planning authority, following a submission of details including the nature of the plant to be installed, any related emissions, means of enclosure and/or screening and the timescale for their installation, and arrangements for future management and maintenance). The development shall be carried out in accordance with the approved details.

[Reasons for conditions 3 – 4: In interests of conserving landscape/townscape character and visual amenity, as well as residential amenity (condition 4), in accordance with policies DEV1, DEV2, DEV10, DEV20, and DEV23.]

5. The development shall be carried out in strict accordance with the External Lighting Proposal (Betton Consulting Rev C, April 2023) including drawing no. 1156-EXT-001 Rev B. All lighting shall be installed prior to first occupation and no other external lighting shall be installed and the approved lighting levels shall not be exceeded at any time.

[Reason: To safeguard ecology consistent with the previous HRA, and to safeguard residential and public amenity in accordance with policies DEV1, DEV2, DEV20, DEV23, and DEV26.]

6. No further development shall take place until details of how the development will meet with the objectives of policy DEV32 of the Plymouth and South West Devon Joint Local Plan have been submitted to and approved in writing by the local planning authority. Such details shall be based on the measures contained within the Energy and Sustainability Statement (Aval Consulting, April 2023). The development shall be carried out in accordance with the approved details and maintained in perpetuity thereafter.

[Reason: To demonstrate that the development that the development can deliver low carbon development in accordance with Policy DEV32 of the Plymouth and South West Devon Joint Local Plan.]

7. No further development shall take place until the following information has been submitted to and approved in writing by the Local Planning Authority:
- a. A detailed drainage design based upon the approved Steamer Quay Drainage Strategy Report (Report Ref. CB2324-CAM-ZZ-XX-RP-C-001, Rev. P02, dated 10th July 2023).
 - b. Detailed proposals for the management of surface water and silt runoff from the site during construction of the development hereby permitted.
 - c. Proposals for the adoption and maintenance of the permanent surface water drainage system.
 - d. A plan indicating how exceedance flows will be safely managed at the site.

No building hereby permitted shall be occupied until the works have been approved and implemented in accordance with the details under (a) - (d) above.

[Reason: The above conditions are required to ensure the proposed surface water drainage system will operate effectively and will not cause an increase in flood risk either on the site, adjacent land or downstream in line with SuDS for Devon Guidance (2017), policy DEV35, and national policies including NPPF and PPG.]

8. No further development shall take place until a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) has been submitted to and approved in writing by the Local Planning Authority. Specific issues to be dealt with in the TPP and AMS:
- a. Location and installation of services/ utilities/ drainage.
 - b. Details of construction within the RPA or that may impact on the retained trees.
 - c. Full specification for the installation of boundary treatment works.
 - d. Full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using a no-dig specification. Details shall include relevant sections through them.
 - e. Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.
 - f. A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.
 - g. Tree protection during construction indicated on a TPP and construction and construction activities clearly identified as prohibited in this area.

- h. Details of site access, temporary parking, on site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing and use of fires.
- i. Reporting of inspection and supervision

The development thereafter shall be implemented in strict accordance with the approved details.

[Reason: Required to satisfy the Local Planning Authority that the trees to be retained will not be damaged during construction and to protect and enhance the appearance and character of the site and locality, in accordance with policy DEV28.]

9. No further development shall take place until an updated hard and soft landscaping plan generally based on drawing ref. 07530-1 (HCUK) has been submitted to and approved in writing by the Local Planning Authority. The details shall include:
- a. Location, species and spread of all trees, shrubs, hedges, hard landscaping, boundary treatments existing on the site, distinguishing those proposed to be removed and those to be retained;
 - b. a landscaping scheme showing ground moulding, screen banks, hedgebanks, trees, shrubs, and hedges, including proposals for protection and maintenance of the landscaping;
 - c. details of materials to be used for hard landscaping and the provision of samples if requested by the LPA.

The scheme submitted shall be fully implemented in the planting season following the substantial completion of the development and the plants shall be protected, maintained and replaced as necessary to the reasonable satisfaction of the Local Planning Authority for a minimum period of five years following the date of the completion of the planting.

[Reason: To protect and enhance the visual amenities of the site and locality, in accordance with policies DEV20 and DEV23. The currently submitted plan is broadly acceptable but does not account for recent scheme amendments including and agreed increased provision of sedum roofing.]

10. Prior to development proceeding above slab level, full details for the green "living walls" as shown on the approved elevations shall be submitted to and approved in writing by the Local Planning Authority. The details to be submitted shall include:
- a. Planting details including planting schedules, noting species, planting sizes and proposed numbers/densities where appropriate, written specifications (including cultivation and other operations associated with plant establishment).
 - b. Management plan, including management responsibilities, and a schedule of maintenance operations.

The development shall be carried out in accordance with the details as agreed and thereafter on completion retained as such. The approved green walls shall be installed prior to first occupation.

[Reason: In the interests of the character and appearance of the area in accordance with policies DEV20 and DEV23.]

11. The development shall be constructed to achieve Secured by Design compliance.

[Reason: In accordance with policies DEV10 and DEV20, to ensure a consistent level of security throughout and opportunity for crime, fear of crime, ASB and conflict are minimised.]

12. No further development shall take place until a site investigation in relation to the retaining walls has been carried out in accordance with a methodology which shall have previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development takes place. If any land instability issues are found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development takes place.

13. If, during the course of development, any unexpected land instability issues are found which were not identified in the site investigation, additional measures for their remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

[Reason for conditions 12 – 13: To ensure that surrounding land is safeguarded noting the severe topography/levels difference and extensive excavations required to facilitate the development adjacent to existing properties.]

14. Notwithstanding any previously approved details, no further development shall take place until a revised Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority, detailing measures to mitigate or reduce the impact of the construction activities. The revised CEMP shall be based upon the details previously approved under condition 8 of the host permission (discharge ref. 2082/20/ARC) and shall additionally deal with considerations arising from the additional excavation and retaining features proposed. Once approved all construction activities shall be carried out in accordance with this management plan.

Reason: In the interests of the safety and amenities of neighbouring occupiers and the safety of highway users. A revised CEMP is required recognising the additional excavation and retaining features proposed.

15. The development shall not be occupied until details of the glazing of the balcony features (as identifiable on the approved drawings) have been submitted to and approved in writing by the Local Planning Authority. The balconies shall be obscurely glazed.

[Reason: In the interests of residential amenity in accordance with policies DEV1 and DEV2.]

16. Notwithstanding any previously approved details, no further development shall take place until a revised acoustic assessment of the site and proposed development with details of any attenuation necessary, in accordance with BS8233:2014 and BS4142:2014, has been submitted to and approved in writing by the Local Planning Authority for approval. This scheme once approved shall be implemented and maintained in perpetuity.

[Reason: In the interests of amenity for future and neighbouring residential occupants in accordance with policies DEV1 and DEV2. A revised assessment is required accounting for the amendments to the scheme including reconfigured internal layout.]

17. Prior to occupation of the development, a scheme for the installation of equipment to control the emission of fumes and smell from the premises shall be submitted to, and approved in writing by, the local planning authority and the approved scheme shall be implemented. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.

[Reason: In the interests of amenity for future and neighbouring residential occupants in accordance with policies DEV1 and DEV2. This condition remains relevant from the host permission and is reimposed.]

18. Prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the previously approved remediation strategy (under condition 3 of the host permission, approved under application 4006/19/ARC) and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out to demonstrate that the site remediation criteria have been met. It shall also include, where relevant, a plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the local planning authority.

[Reason: To safeguard against environmental risks in accordance with policy DEV2. This condition remains relevant from the host permission and is reimposed.]

19. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amended investigation and risk assessment and, where necessary, an amended remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.

[Reason: No site investigation can completely characterise a site. This condition is required to ensure that any unexpected contamination that is uncovered during remediation or other site works is dealt with appropriately, in accordance with policy DEV2. This condition remains relevant from the host permission and is reimposed.]

20. Notwithstanding any previously approved details, prior to development continuing above slab level the applicant shall submit for approval, full details of proposed electric vehicle charging points to be provided, these details shall include the location, number and power rating of the charging points. This shall accord with good practice guidance on mitigating air quality impacts from developments produced by the Institute of Air Quality Management.

[Reason: In the interests of air quality. This condition remains relevant from the host permission and is reimposed. Previously approved details require resubmission to ensure compliance noting that whilst the overall provision of parking remains the same, the layout has been revised.]

21. The measures set out to reduce reliance on use of the private car as set out in the Travel Plan prepared by Transport, Planning & Highways Ltd dated November 2017 shall be adhered to during the lifetime of the development, including monitoring of the plan. Monitoring records shall be made available for inspection by the Local Planning Authority for a period of time of a minimum of the preceding 12 months of the request and shall be provided within 10 working days of such a request being made to the site operator.

[Reason: To minimise the use of the private car in the interests of air quality and the safety and convenience of users of the highway. This condition remains relevant from the host permission and is reimposed.]

22. Notwithstanding any details indicated within the application, prior to development continuing above slab level full details, including samples, of the materials to be used in the external elevations and roofs and including details of doors, windows and rainwater goods, shall be submitted to and approved in writing by the Local Planning Authority. Development shall take place in accordance with the approved details.

[Reason: In the interests of visual amenity. This condition remains relevant from the host permission and is reimposed.]

23. No part of the development hereby approved shall be brought into its intended use until the parking facilities, including parking and electrical charging facilities and turning area have been provided in accordance with the approved plans. The approved parking and turning areas shall be maintained and retained for that purpose at all times.

[Reason: To ensure that adequate facilities are available for the traffic attracted to the site and in the interests of the safety and convenience of users of the highway This condition remains relevant from the host permission and is reimposed.]

24. Prior to occupation of the development the pedestrian access onto Paradise Walk in the south east corner of the site shall be provided in accordance with details that shall have previously been approved in writing by the Local planning Authority.

[Reason: To provide an alternative safe pedestrian access in the event of flood. This condition remains relevant from the host permission and is reimposed.]

25. Notwithstanding any previously approved details, no further development shall take place until full details for the management of foul water have been submitted to and approved in writing by the Local Planning Authority. Development shall take place in accordance with the approved details and shall be maintained in perpetuity.

[Reason: In the interests of managing flood risk and pollution, in accordance with policies DEV2 and DEV35. This condition remains relevant from the host permission and is reimposed. Updated details are required noting the amended nature of the scheme.]

26. Prior to development continuing above slab level details of bat and bird boxes to be incorporated into the fabric of the building shall be submitted to and approved in writing by the Local Planning Authority. The approved boxes shall be installed prior to the occupation of the building, and they shall be retained and maintained in perpetuity.

[Reason: In the interest of biodiversity, in accordance with policy DEV26. This condition remains relevant from the host permission and is reimposed.]

27. Notwithstanding any previously approved details, no further development shall take place until an updated Landscape and Ecology Management Plan has been prepared, submitted to and approved in writing by the Local Planning Authority. The plan shall be fully implemented and adhered to at all times and shall include measures for on-going monitoring.

[Reason: In the interests of bio-diversity in accordance with policy DEV26. This condition remains relevant from the host permission and is reimposed. Updated details are required noting the amended nature of the scheme.]

28. Prior to development continuing above slab level full details of all boundary treatments and any retaining walls shall be submitted to and approved in writing by the Local Planning Authority. Development shall take place in accordance with the approved details and shall be maintained and retained in perpetuity.

[Reason: In the interests of visual amenity in accordance with policies DEV20 and DEV23. This condition remains relevant from the host permission and is reimposed. Updated details are required noting the amended nature of the scheme.]