

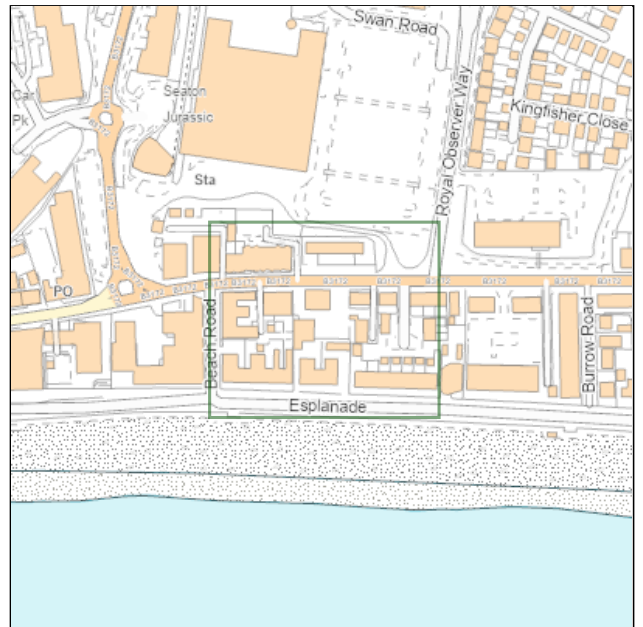
**Ward** Seaton

**Reference** 22/1478/FUL

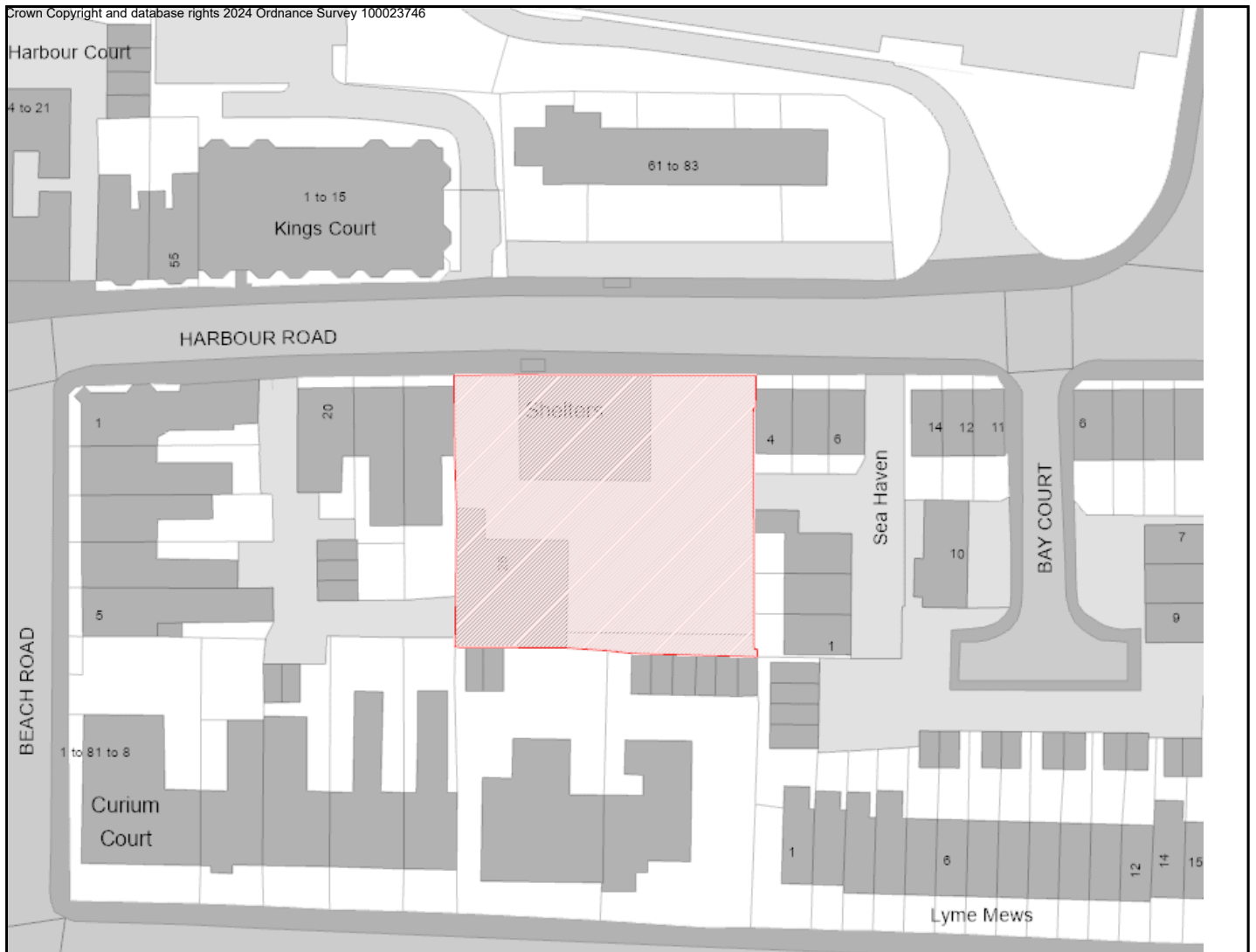
**Applicant** Mr T Sidhu

**Location** Axe Valley Mini Travel 26 Harbour Road Seaton EX12 2NA

**Proposal** Demolition of existing STC store and Bus Garage on site to be replaced by 7 residential units, 198 square metres of commercial floorspace (Use Class E) and landscaped gardens and private parking.



**RECOMMENDATION: Refusal**



		<b>Committee Date: 26.03.2024</b>
<b>Seaton (Seaton)</b>	<b>22/1478/FUL</b>	<b>Target Date: 02.09.2022</b>
<b>Applicant:</b>	<b>Mr T Sidhu</b>	
<b>Location:</b>	<b>Axe Valley Mini Travel 26 Harbour Road</b>	
<b>Proposal:</b>	<b>Demolition of existing STC store and Bus Garage on site to be replaced by 7 residential units, 198 square metres of commercial floorspace (Use Class E) and landscaped gardens and private parking.</b>	

**RECOMMENDATION:** Refuse

### **EXECUTIVE SUMMARY**

The application is before committee as the officer recommendation is contrary to the Ward Members views.

The development would see an existing employment site redeveloped to provide a block of 7 flats, one class E commercial unit and associated development. The site lies within the Built-Up Area Boundary of Seaton and also within Flood Zone 3.

The site is considered to be an employment site. The marketing effort described in the application is considered to be inadequate. In such circumstances the development is in conflict with not only Strategy 32 but also Strategies 3, 4 and 25 of the Local Plan which try to plan for sustainable balanced communities and with a specific focus on protecting existing and allocated employment sites for Seaton. This conflict is sufficient to bring the development into conflict the Local Plan read as a whole.

The development is required to pass the sequential test regarding flood risk, whereby it has to be demonstrated that there are no other reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. This has not been achieved and there are other reasonably available sites in the District that can be used for housing that are at less risk of flooding. Furthermore the Exceptions Test as it has not been shown to be designed to be safe for the lifetime of the development. The proposed dwellings and their occupants would therefore be placed at unnecessary risk of flooding, contrary to policy EN21.

**While the design would enhance the architectural character of the site and the street and also provide some additional market housing, this is not considered sufficient to overcome the harms identified above.**

## **CONSULTATIONS**

### **Local Consultations**

Seaton - Cllr Marcus Hartnell – 23/1/23

I support this application. Harbour Road has become predominantly residential, and the Bus Garage is now out of keeping with the surrounding properties. Historically it was surrounded by similar commercial uses, but over time planning permission has been granted to develop residential flats and town houses nearby. The proposed development is therefore in keeping with its surroundings.

The nature of the existing business means that emissions and noise from the buses are common and can be detrimental to the locality. There is no architectural merit to the existing buildings. I understand that the bus company can relocate within Seaton, retaining current jobs. The recent amended plans also retain commercial use on the first floor for class use E which is positive. Should this application be approved I would request that a flood warning and evacuation plan is submitted by the applicant.

Parish/Town Council - 22/3/23

Seaton Town Council have no objections to this application.

### **Technical Consultations**

Economic Development Officer

Recommend refusal due to inadequate marketing.

Environment Agency

**Comment Date: Fri 12 Jan 2024**

Object on grounds of flood risk; it has not been demonstrated that the development can be made safe for its lifetime.

County Highway Authority

**Comment Date: Tue 09 Aug 2022**

No objection.

Environmental Health

**Comment Date: Tue 12 Jul 2022**

Recommend approval with conditions.

## Contaminated Land Officer

### **Comment Date: Tue 14 Mar 2023**

No objection, condition recommended regarding unexpected contamination.

## Other Representations

3 letters of objection:

- Previously supported but now object due to increase in height.
- Unplanned gull netting would increase its height further and would be ugly.
- The building is bulky in scale.
- Totally out of keeping with surrounding buildings.
- EV chargers just add more traffic rather than promoting public transport.
- More power will be required for the building.
- More low cost housing is needed in Seaton for youngsters.
- Concern about damage to third party property adjacent to site.
- Noise and air pollution during construction could affect adjacent hotel business.

2 letters of support:

- Bus depot has a suitable, approved location to transfer to and the development now includes commercial premises.
- It will be a huge improvement on the appearance of the site.
- Noise and dust during construction can be controlled.
- Bus depot unable to use the workshop as it is unsafe.
- Commercial unit has been empty for many years.

## **PLANNING HISTORY**

<b>Reference</b>	<b>Description</b>	<b>Decision</b>	<b>Date</b>
21/0649/FUL	Demolition of existing retail store and Bus Garage and construction of residential apartment block containing 9 residential units together with associated landscaped gardens and private parking.	Refusal	17.12.2021

## **POLICIES**

Adopted East Devon Local Plan 2013-2031 Policies  
Strategy 2 (Scale and Distribution of Residential Development)

Strategy 3 (Sustainable Development)

Strategy 4 (Balanced Communities)

Strategy 5B (Sustainable Transport)

Strategy 6 (Development within Built-up Area Boundaries)

Strategy 25 (Development at Seaton)

Strategy 32 (Resisting Loss of Employment, Retail and Community Sites and Buildings)

Strategy 36 (Accessible and Adaptable Homes and Care/Extra Care Homes)

Strategy 38 (Sustainable Design and Construction)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

EN16 (Contaminated Land)

EN21 (River and Coastal Flooding)

EN22 (Surface Run-Off Implications of New Development)

H2 (Range and Mix of New Housing Development)

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

TC9 (Parking Provision in New Development)

### Site Location and Description

The site lies near to the town centre and seafront in Seaton along Harbour Road, from which it is accessed via two separate vehicular access points.

It is occupied by two main buildings and an open yard. The site is occupied by the STC computer store and the bus service garage business, both reportedly at the end of their tenancies. The proposal began with 9 residential units but has since been revised down to 7 residential units, comprised of 2 x 2 bed units and 5 x 3 bed units. The ground floor is occupied by undercroft parking, cycle parking, a plant room and bin storage. The first floor contains a commercial (E use class) units and the lower floors of residential units 1,2 and 3.

The site lies in the Built Up Area Boundary and Flood Zone 3 for the purposes of the development plan.

A previous application (21/0649/FUL - Demolition of existing retail store and Bus Garage and construction of residential apartment block containing 9 residential units together with associated landscaped gardens and private parking.) was refused planning permission following the Planning Committee on 12 December 2021 for the following reasons:

1. The development would harm business and employment opportunities in the area and result in the loss of existing employment land, without it first being rigorously demonstrated through an appropriate marketing exercise that there is no interest in re- using the site for employment generating uses. Furthermore it has not been demonstrated that there is a surplus of land or provision of employment sites in the locality. The development would therefore not ensure that the local community remains vibrant and viable by reducing employment opportunities in favour of additional housing, which would not represent sustainable development and is therefore contrary to Strategies 3, 4, 25 and 32 of the East Devon Local Plan 2013 - 2031 and to the policies in the National Planning Policy Framework (paragraphs 7 - 10).

2. The proposal for housing is a 'more vulnerable' use that would be situated within Flood Zone 3, an area of high flood risk, and policy EN21 of the East Devon Local Plan 2013 - 2031 and the National Planning Policy Framework (NPPF) require, amongst other matters, for development of this kind within Flood Zone 3 to pass a Sequential Test. It has not been demonstrated why the area of search for this test should be less than the whole of the East Devon District area. Furthermore, it has not been demonstrated that there are a lack of alternative sites available for the proposed development that are at less risk of flooding and therefore the development does not pass the Sequential Test and unnecessarily puts a 'more vulnerable' development type, at risk of flooding. Furthermore the development has not been demonstrated to be designed with safe finished floor and ground levels, therefore also failing the Exception Test, contrary to Policy EN21 of the East Devon Local Plan 2013 - 2031 and Guidance in the NPPF and the National Planning Practice Guidance.

This application seeks to overcome these matters.

## **ANALYSIS**

The main issues to be considered in the assessment of this application are:

- Whether the loss of an employment site is acceptable;
- Whether the development is appropriate in a flood risk area and can be made safe;
- Whether the design is acceptable;
- Whether the amenity and privacy of neighbours is reasonably maintained, and adequate amenity provided for future occupiers;
- The effects of the development on highway safety; and
- ~~The Council's lack of a 5 year supply of land for housing~~

## Principle

**“Strategy 32 of the Local Plan addresses Resisting Loss of Employment, Retail and Community Sites and Buildings and reads as follows:**

*In order to ensure that local communities remain vibrant and viable and are able to meet the needs of residents we will resist the loss of employment, retail and community uses. This will include facilities such as buildings and spaces used by or for job generating uses and community and social gathering purposes, such as pubs, shops and Post Offices.*

*Permission will not be granted for the change of use of current or allocated employment land and premises or social or community facilities, where it would harm social or community gathering and/or business and employment opportunities in the area, unless:*

- 1. Continued use (or new use on a specifically allocated site) would significantly harm the quality of a locality whether through traffic, amenity, environmental or other associated problems; or*
- 2. The new use would safeguard a listed building where current uses are detrimental to it and where it would otherwise not be afforded protection; or*
- 3. Options for retention of the site or premises for its current or similar use have been fully explored without success for at least 12 months (and up to 2 years depending on market conditions) and there is a clear demonstration of surplus supply of land or provision in a locality; or*
- 4. The proposed use would result in the provision or restoration of retail (Class A1) facilities in a settlement otherwise bereft of shops. Such facilities should be commensurate with the needs of the settlement.*

*Employment uses include those falling into Class B of the Use Classes Order or similar uses classified under planning legislation as ‘Sui Generis’ uses. Redundant petrol filling stations and associated garage facilities will fall within the scope of this policy as do public and community uses and main town centre uses and other uses that directly provide jobs or employment, community meeting space or serve a community or social function.”*

The site in question is an employment site for the purposes of Strategy 32 and according to the application form supports 3 full-time roles on the site. The proposal would result in the loss of existing employment space, totalling 212m<sup>2</sup> of class E use and 198 m<sup>2</sup> of the bus depot (a *sui generis* use) floorspace. The proposal would establish 116m<sup>2</sup> of class E floorspace, leading to a net loss of 96m<sup>2</sup> class E floorspace, but an overall loss of 294m<sup>2</sup> of employment space.

It has been held on appeal elsewhere in the District (the Doyle Centre, Exmouth) that before considering criteria 1-4 of S32 it must first be established if there is any harm to social or community gathering and/or business and employment opportunities occurs. As noted above, the site has 3 full-time jobs on it, although it is not stated if these jobs relate to the bus depot use, the E use floorspace or a combination of the two. The application form states that 3 retail jobs would be created therefore leading

to no net loss of employment (purely in terms of job numbers). The Design and Access Statement suggests the class E unit proposed 'could be an office or shop space and could employ between 3-5 people. No evidence is supplied to explain how 3 (or up to 5) full time roles would be created in the proposed class E unit when the space available for class E uses is changing from 212m<sup>2</sup> down to 116m<sup>2</sup>. No specific end user is identified, nor any expressions of interest in such a unit. If retail is considered to be an option it is disadvantaged by being at first floor level (due to flooding concerns) with no obvious route in for customers. Consequently, it is considered that given there would be a significant reduction in the overall employment floorspace and there is no certainty as to how many jobs, if any, would be generated that harm is likely to result in respect of S32 and the policy should be applied in full.

S32 states that permission will not be granted unless one of the following criteria is satisfied:

1. *Continued use (or new use on a specifically allocated site) would significantly harm the quality of a locality whether through traffic, amenity, environmental or other associated problems;*

The site has been in its current use since at least the late 1990s and none of the respondents to the planning application have described it as a nuisance site. The Council's Environmental Health team has been consulted and there is no suggestion in its response that there is an amenity issue with the use of the site.

2. *The new use would safeguard a listed building where current uses are detrimental to it and where it would otherwise not be afforded protection;*

This is not applicable in this case as no listed buildings are present on the site.

3. *Options for retention of the site or premises for its current or similar use have been fully explored without success for at least 12 months (and up to 2 years depending on market conditions) and there is a clear demonstration of surplus supply of land or provision in a locality;*

Although this is a single criterion, it has two requirements. First of all, the site must have been marketed (ideally in accordance with the guidance provided on the Council's website provided to aid applicants) for at least 12 months, not only for the existing use but for similar uses (which will be subject to planning if needed). This exercise is required to identify any interest in bringing the site back into a suitable use as identified in S32.

Second, there is a requirement to clearly demonstrate that there is a surplus supply of land or provision locally for similar uses. Similar uses in this respect would include employment generating uses which could include retail.

On the first matter, the applicant has supplied a letter from a local sales and letting agency. The Economic Development Team has analysed this letter and found it lacking in detail and concludes that it is not evidence that a sufficient marketing effort



has been made to justify the loss of this employment site. This is a clear failure to comply with criterion 3 of S32 and so the proposal is unacceptable on this count alone.

On the second matter, the bus depot is defined as a *Sui Generis* use, from which there are no permitted changes under the GPDO. The site is surrounded by a number of dwellings and flats but also a hotel, so it is not purely a residential area. Further, the permission for the bus/coach depot use (P96/1751) is limited by conditions to that use only and limits hours of movement/operation of any bus/coach engine between 8pm and 6.45am the following day. Use of the workshop is limited in relation to the granted use only and for the same hours. There is no evidence that any nuisance suggested from such a use has occurred. Therefore, the current use is not considered unsuitable in its context and other alternative employment uses have not been explored.

Fundamentally there is no compelling evidence that a sufficient marketing effort has been made and neither has it been demonstrated that there is a surplus of land for employment in the locality. The development therefore fails to accord with criterion 3 of S32.

4. *The proposed use would result in the provision or restoration of retail (Class A1) facilities in a settlement otherwise bereft of shops. Such facilities should be commensurate with the needs of the settlement.*

This is not the case in this instance.

In summary, the proposal is not considered to meet the requirements of Strategy 32 and would be harmful to local employment opportunities.

### Flooding

The site lies in Flood Zone 3 the 1 in 100 year flood risk area. This is predominantly related to coastal and estuarine flooding events.

The NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere (paragraph 165). Therefore it is necessary for the Local Planning Authority to perform the Sequential Test. The aim of the Sequential Test is to steer development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. This falls to be considered in advance of any other flooding matters. It is only if the Sequential Test is passed that the Exception Test is applied (a test to see if the wider sustainability benefits of the development outweigh the flood risk and to ensure the development can be made safe for its lifetime, without increasing flood risk elsewhere). These requirements are repeated under policy EN21 of the Local Plan.

### Sequential Test

There is some limited national guidance (NPPG) on what information is required to inform the Sequential Test, which essentially suggests that a developer discuss with a local planning authority (LPA) what it requires.

The guidance states that for individual planning applications where there has been no sequential testing of the allocations in the development plan, or where the use of the site being proposed is not in accordance with the development plan, the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases it may be identified from other Local Plan policies, such as the need for affordable housing within a town centre, or a specific area identified for regeneration.

The applicant has submitted (and revised several times) a Flood Risk Assessment (FRA) and Drainage Strategy (Structure Haus Ltd). Section 5 of the FRA states that the Sequential Test 'is required but is to be undertaken by others' and so is not dealt with in this document. The previous application was accompanied by a statement from Savills that addressed the need for a sequential test and tried to justify a limited search area. No such document accompanies this application however. Nonetheless, the following paragraphs give some consideration to some matters that would appear relevant in this case.

It is relevant to consider past planning decisions in the town (in the same flood zone) where (against officer advice) permission was granted for 6 dwellings at Trebere on East Walk (reference 16/2795/FUL). The minutes for this meeting confirm that this was done as Members considered the combined regeneration and economic benefits to the seafront justified a smaller Sequential Test area focussed on the seafront and as a result the Committee considered the Test was passed. The NPPG does state that local factors can be considered when deciding the area of search to draw up. However the difference between Trebere and the application site is that the latter is not on the seafront, which was cited specifically. Therefore officers do not consider that the Trebere decision should determine the area of search in this case.

Any supposed benefits of regeneration are considered to be overstated in this case because the site has not been marketed to see if another occupier could use it for employment generating uses and it is still occupied in part. Therefore the benefits of 'regeneration' would be somewhat questionable, especially where it could lead to an unjustified loss of employment land to the local community. The site is not in a designated area for regeneration (the Seaton Town Design Statement 2009 defined the 'zone 1' regeneration area as the land lying north of Harbour Road).

In terms of the area of search for the Sequential Test, it is considered that there is no need to limit the area of search to the immediate locality and the development could quite capably be accommodated elsewhere in the District where the risk of flooding is much less.

It is considered that the Sequential Test is failed.

Exception Test

This test is not applicable where the Sequential Test is failed. However, in the event that Members consider it passed analysis of the Exceptions Test follows below.

To pass the Exceptions Test it must be demonstrated that:

- The development would provide wider sustainability benefits to the community that outweigh the flood risk; and
- The development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and where possible, will reduce flood risk overall.

Both criteria must be satisfied to pass the test.

The EA has maintained its objection to the proposals through various revisions. In terms of wider sustainability benefits these could be summarised as the provision of 7 residential units and a revised design of class E unit and the possible temporary benefits into the local economy during construction. However, these units would all be located in a high flood risk area where they would be vulnerable to flood events that could risk not only the occupants' safety but that of the emergency services in dealing with a flood event. The development has not been demonstrated to be safe for its lifetime according to the EA's advice.

To conclude, the development is not considered to have passed the Sequential or the Exceptions Test, contrary to policy EN21 which weighs against the proposal.

In terms of surface water drainage, the site is presently completely covered in buildings or hard surfacing. The application proposes to dispose of surface water via the main sewer, to which no objection has been received from South West Water. The proposal includes a garden area of approximately 441m<sup>2</sup> which will offer more infiltration than presently exists which is an improvement. In this respect the proposal is considered to meet policy EN22.

### Highways

It is proposed to close one of the existing accesses and retain only the western access which would serve the rear parking external parking area. The proposal has generated no objections from DCC in terms of safety.

The proposal would provide 7 residential units. This would generate a need for 18 vehicular parking spaces and 7 cycle parking spaces. 20 vehicular parking spaces are provided and the site lies reasonably close to the town centre and nearby supermarket. The Design and Access Statement suggests 4 EV chargers can be provided with wiring for the remainder so they can be fitted when required, which aligns with policy TC9. The plans indicate some cycle parking provision external to the building on the southern boundary although it is not clear how much or in what form. This could be conditioned to clarify if necessary.

Overall there are no highway concerns as the proposal complies with policies TC2, TC7 and TC9.

## Design

The Council's Urban Designer was involved in reviewing the scheme which was refused previously. Although no such comments are provided in respect of this scheme, much of the design interest which was achieved via revisions to plans in the previous scheme has been retained and overall. The building does not set out to replicate those around but instead is designed to be unique and to elevate the quality of the design in the town. Through use of materials and finishes that reference the local vernacular, in terms of both domestic and more utilitarian architecture, the design could be described as being locally distinctive yet modern. Finishes include red brick with cream band details (traditional examples found on Marine Place). Zinc cladding is used elsewhere with vertical seams which compliment the vertical emphasis of the windows, doors and metal gates. The modern approach to design is welcome and avoids replicating some of the more tired looking architecture in this area.

The building provides good access and security for bin and bike storage area. Parking is discreetly provided within the undercroft and to the rear of the building adjacent to a landscaped garden area. Solar panels are proposed on the roof to provide renewable energy to the building

The scale of the building is in keeping with those adjacent on Harbour Road. The roof level of the building to the east is 12.3m AOD, the terrace to the west 14.7m AOD while the proposed building tops out at 13.9m AOD.

It is considered that it would be an enhancement to the quality of the architecture in the street which is beneficial, accords with policy D1 and weighs in favour of the proposal.

## Amenity & Privacy

Some neighbouring residents and a business have raised some concerns over the effect of the development on their amenity both during and after construction.

The plans show that there is no overlooking from the ground floor as there is no accommodation on this level.

On the upper floors there would be various windows serving both utility/bathrooms but also habitable rooms that could afford some overlooking of neighbouring sites. The distance from these proposed building to the southern boundary is around 13m – 19m depending on the unit concerned. The rear of the Mariners Court Hotel and the adjoining flats (1-6 Homestead) is around 11m. So overall the separation is approximately from 24 to 29m. The rear outside areas of the hotel and flats appear to be parking and service areas and so perhaps not likely to suffer effects from overlooking. There may be some window to window views available but this would not be uncommon in this area which has a predominance of flats and other buildings in close proximity.

In response to the concerns raised during the last application a new brick wall is proposed along the southern boundary to the height of the eaves of the existing adjacent car garage.

Overall, the scheme allows a reasonable balance of amenity for the proposed development while keeping a reasonable level of amenity for existing neighbours.

#### Nationally Described Space Standards

Flat	GIA (m2)	Bedroom/Person Nos	NDSS size (m2)	NDSS Compliance?
1	98	2b4p	79	Y
2	114	3b5p	93	Y
3	210	3b6p	102	Y
4	141.9	3b5p	86	Y
5	105	3b5p	86	Y
6	134	3b5p	86	Y
7	95	3b6p	95	Y

All of the units meet the NDSS requirements. An outdoor amenity space is provided and the units are in walking distance of a number of green spaces and of course the seafront. The units have sufficient windows and some have terraces or balconies which give sufficient amenity to the occupiers.

Taking account of all of the above the proposal meets policy D1 of the Local Plan.

#### Planning Balance

The site is presently in use for employment purposes. There is insufficient evidence presented to show that the town has an over-supply of employment land. This is underscored by the inadequate level of marketing of the site for employment uses which may well reveal that there is demand for such sites in the town. In this context, its loss would reduce employment opportunities for residents in the town, leading to the need to travel further afield for employment which is not sustainable and runs against Strategies 3 (Sustainable Development) and 4 (Balanced Communities) and Strategy 25 (Development at Seaton).

S25 specifically states under second criteria 'Jobs' which states that 'Existing and allocated employment sites will be protected from change of use...'. This is of course subject to S32 but it has been found that these have not been met. Section 13.1 of the EDLP identifies that '34% of the population in Seaton were in employment, with most working outside the town, mainly travelling by car'. Releasing the site for alternative uses without justification would compound this problem and would not represent sustainable development.

The site lies in Flood Zone 3 and insufficient evidence has been presented as to why a small housing development could not be sited in an alternative location in the District which is at lesser risk of flooding. Furthermore, the development has not

demonstrated that it would be safe. The development fails both the Sequential Test and Exceptions Test in this respect and is contrary to policy EN21.

While the design would represent an enhancement of the site in terms of architecture, and also provide some additional market housing, it is not considered that this is sufficient to outweigh the harms identified above and refusal is recommended.

## **RECOMMENDATION**

### Refuse

1. The development would harm business and employment opportunities in the area and result in the loss of existing employment land, without it first being rigorously demonstrated through an appropriate marketing exercise that there is no interest in re-using the site for employment generating uses. Furthermore it has not been demonstrated that there is a surplus of land or provision of employment sites in the locality. The development would therefore not ensure that the local community remains vibrant and viable by reducing employment opportunities in favour of additional housing, which would not represent sustainable development and is therefore contrary to Strategies 3, 4, 25 and 32 of the East Devon Local Plan 2013 - 2031 and to the policies in the National Planning Policy Framework (paragraphs 7 - 10).
2. The proposal for housing is a 'more vulnerable' use that would be situated within Flood Zone 3, an area of high flood risk, and policy EN21 of the East Devon Local Plan 2013 - 2031 and the National Planning Policy Framework (NPPF) require, amongst other matters, for development of this kind within Flood Zone 3 to pass a Sequential Test. It has not been demonstrated why the area of search for this test should be less than the whole of the East Devon District area. Furthermore, it has not been demonstrated that there are a lack of alternative sites available for the proposed development that are at less risk of flooding and therefore the development does not pass the Sequential Test and unnecessarily puts a 'more vulnerable' development type, at risk of flooding. Furthermore the development has not been demonstrated to be safe for the lifetime of the development, therefore also failing the Exception Test, contrary to Policy EN21 of the East Devon Local Plan 2013 - 2031 and Guidance in the NPPF and the National Planning Practice Guidance.

### Plans relating to this application:

1287.201 Rev A	Location Plan	08.07.22
1287.218 E : West	Proposed Elevation	18.12.23

1287.214 F : Ground floor	Proposed Floor Plans	18.12.23
1287.215 F : First floor	Proposed Floor Plans	18.12.23
1287.216 F : Third floor	Proposed Floor Plans	18.12.23
1287.217F : North	Proposed Elevation	18.12.23
1287.219 E : South	Proposed Elevation	18.12.23
1287.220 E : East	Proposed Elevation	18.12.23
1287.221 E : Site section/street elevation	Proposed Combined Plans	18.12.23
1287.222 E : Roof/site	Proposed Combined Plans	18.12.23
1287.225 F : Second floor	Proposed Floor Plans	18.12.23

## **Statement on Human Rights and Equality Issues**

### Human Rights Act:

The development has been assessed against the provisions of the Human Rights Act 1998, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

### Equality Act:

In arriving at this recommendation, due regard has been given to the provisions of the Equality 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.

## List of Background Papers

Application file, consultations and policy documents referred to in the report.

Appendix – Economic Development and EA consultation responses

### Economic Development Officer

#### ECONOMIC DEVELOPMENT TEAM RESPONSE - FOLLOW UP

Reference: 22/1478/FUL

Description: Demolition of existing STC store and Bus Garage on site to be replaced by 9 residential units with landscaped gardens and private parking

Location: Axe Valley Mini Travel, Seaton

Date: 27 March 2023

Recommendation: Reject

#### Follow Up Comments

We have reviewed the additional documents provided by the applicant on 9 March 2023, including the Marketing Report.

The Marketing Report provided does not satisfy the requirements as set out in Strategy 32, nor does it factor in the published Marketing Guidance provided by the Council to assist applicants in navigating the requirements set out in Strategy 32. We have reached this conclusion by considering the following points from the Marketing Report:

- The document titled 'marketing report' is not a report in the conventional sense, but simply a letter to the applicant provided by an agent.
- The letter does not specify if the site is being marketed as a leasehold, freehold, or both.
- The letter does not include any material evidence that the site has been actively marketed for 12 months.
- The letter mentions a number of initial enquiries (which cannot be verified), but does not confirm if this represents all of the enquiries received.
- The agent has not detailed the "similar" site in Rousdon, preventing a comparability between the two sites.
- The agent has not detailed the "several developments progressing" in Seaton, nor how this relates to the application.
- The agent's observation that "large commercial premises are receiving very limited interest in our area" is not consistent with the observations of the Council's Economic Development team, who continue to receive a considerable number of enquiries for B2 and B8 employment space within the



district. The majority of these enquiries we are unable to satisfy given the highly constrained supply of available B use employment sites across East Devon.

- The following points have also been considered:
  - An "appropriate marketing strategy" has not been agreed with the Council prior to marketing the property, as advised within the published Marketing Guidance provided by the Council.
  - The "methodology used by the surveyor in arriving at a valuation", if indeed the site is being marketed as a freehold, has not been supplied to the Council, as advised in the Marketing Guidance provided by the Council.
  - A "copy of the letter of instruction to the agent" has not been supplied to the Council, as advised in the Marketing Guidance provided by the Council.
  - A "verifiable record of all enquiries" has not been supplied to the Council, as advised in the Marketing Guidance provided by the Council.
  - Copies of "sales particulars and adverts" marketing the site has not been supplied to the Council, as advised in the Marketing Guidance provided by the Council.

In order to ascertain whether the marketing exercise has been effectively carried out, we request the applicant provides information and evidence relating to the valuation methodology, the letter of instruction, the record of enquires and marketing evidence, as detailed within the published Marketing Guidance.

## Conclusion

Strategy 32 requires the applicant to evidence that all options for retention of the site for its current or similar employment use have been fully explored without success for at least 12 months and that there is a clear demonstration of surplus supply of land or provision in the local area.

The additional documents provided by the applicant have not satisfied this requirement. As this application does not appear to be compliant with the East Devon Local Plan, we thereby maintain our recommendation is that this application is rejected.

We will reconsider this recommendation if the applicant is able to provide the requested information and evidence as set out above to the standard set in the published Marketing Guidance.

Economic Development Officer

ECONOMIC DEVELOPMENT TEAM RESPONSE

Reference: 22/1478/FUL

Description: Demolition of existing STC store and Bus Garage on site to be replaced by 9 residential units with landscaped gardens and private parking

Location: Axe Valley Mini Travel, Seaton

Date: 9 November 2022

Recommendation: Reject

### Introductory Comments

The application proposes the loss of existing employment space, totalling at 212sqm of E (shops) use and 198sqm B2 (general industrial) use floorspace. The proposed development would re-establish 116sqm of E use floorspace, leading to a net loss of 96smq E use floorspace. The Design and Access Statement submitted by the agent has confirmed that both the B2 and E use employment spaces are currently in use, although the current occupiers "are at the end of tenancies and relocating to other sites". It has not been specified if the sites the current occupiers are relocating to are existing or new commercial premises.

In terms of employment, this site currently hosts 3 full time jobs, although it has not been specified if these jobs are hosted within the B2 use floorspace, the E use floorspace or a combination of the two. The Application Form submitted by the agent outlines how 3 jobs in the retail sector will be created as a result of the proposed development, resulting in neither a net loss nor a net gain in current levels of employment at the site.

### Employment Need

The need to retain existing permitted employment space across East Devon is becoming increasingly clear. Since the beginning of the current Local Plan period in 2013, East Devon has commendably met 97% of its housing target of 950 homes per year. If the Local Plan Strategy 31 target (of 1 hectare of employment land for each 250 homes proposed) is applied to all homes built and all employment land delivered in East Devon, only 63% of this employment space target is currently being met. We have fallen significantly behind (37%) in the delivery of new employment space compared to new homes across our district.

More recently, we have witnessed a growing reduction in the supply of available commercial units, particularly in the E(g), B2 and B8 classes. Most local and national commercial real estate search engines yield few if any results within Seaton and the wider district. We are also witnessing an increasing number of East Devon businesses who are having to leave the district in order to find available premises to grow, having a negative and lasting impact on local employment and local supply chains.

The need to protect our existing supply of employment space is therefore essential, given the worsening imbalance between the delivery of employment space lagging so far behind that of residential development throughout the current Local Plan period. If unchecked, this trend will inevitably result in East Devon residents having to travel further and further for employment opportunities, increasing outward commuting and carbon emissions whilst impeding efforts to encourage settlement self-containment and to tackle our worsening old age dependency ratio.

When examining population growth in Seaton between 2011-2020 (see Figure A:1 below), we see that whereas the number of residents of 65+ years of age has increased by almost 18%, the number of economically active residents of between

16-64 years of age has decreased by more than 3% over the same period. This is clear evidence that we need to act on protecting local employment opportunities for working age residents in Seaton.

Approval of the proposed development would serve to worsen this stark change in Seaton's demographic, further eroding the area's already comparatively poor levels of economic activity.

#### Strategy 32

Strategy 32 specifies that permission will not be granted for the change of use of current or allocated employment land where it would harm business and employment opportunities in the area. As the proposed development would result in the total loss of B2 floorspace, this will demonstrably harm business opportunities in the local area. Where the current permitted use enables the occupancy of two types of employment use, the proposed development would only enable the occupation of one.

It has not been specified whether the regeneration of this site for continued employment use, of much higher density, is financially viable. Although the site currently only hosts 3 jobs, which are due to be relocated, it should be understood that this valuable employment site could host a much higher number of jobs under new owners/tenants if the existing permitted employment uses are retained. The agent has confirmed this by suggesting that the current number of jobs hosted at the site could be retained even with a net loss of all B2 use space and a net loss of 96smq E use floorspace. The Employment Density Guide 2010 suggests that the existing permitted employment space at the site (212sqm of E class and 198sqm of B2 class) would typically yield between 16-19 jobs. It is therefore apparent that the proposed development would harm both business and employment opportunities in the area.

Strategy 32 also outlines how applications resulting in harm to business and employment opportunities are allowable under particular circumstances. The application and site does not relate to a listed building or the provision or restoration of retail facilities in a settlement otherwise bereft of shops. The applicant has not claimed that continued use would significantly harm the quality of a locality whether through traffic, amenity, environmental or other associated problems. The applicant is therefore required to evidence that all options for retention of the site for its current or similar employment use have been fully explored without success for at least 12 months and that there is a clear demonstration of surplus supply of land or provision in the local area.

From our analysis of the application and supplementary documents provided, we have concluded that no such evidence has been provided demonstrating that this site is unable to accommodate viable employment uses which would utilise the existing permitted B2 and E class floorspace. Furthermore, the applicant has not met the additional requirement of Strategy 32 to evidence that there is a surplus supply of alternative employment sites within the locality to mitigate the lasting adverse economic and employment impacts of the proposed development.

#### Conclusion

As this application is not compliant with the East Devon Local Plan, our recommendation is that this application is rejected.

Environment Agency

**Comment Date: Fri 12 Jan 2024**

Thank you for re-consulting us on this application.

Environment Agency position:

We acknowledge the revised plans submitted which provide clarity on the internal arrangement of the proposal, notably showing the car parking on the ground floor. We also note the "Agent response to Environment Agency comments" document dated 3rd January 2024 from Johnathan Rhind Architects to your authority. We have duly noted its content and take this opportunity to state that our position remains unchanged from that in our formal consultation response of the 21 Nov 2023.

We take this opportunity to highlight paragraph 020 Reference ID: 7-020-2022082 Revision date: 25 08 2022 of the current Planning Practice Guidance of the National Planning Policy Framework which clearly states: 'A site-specific flood risk assessment is carried out by (or on behalf of) a developer to assess the flood risk to and from a development site and should accompany a planning application where prescribed in footnote 55 of the National Planning Policy Framework. The assessment should demonstrate to the decision-maker how flood risk will be managed now and over the development's lifetime, taking climate change into account, and with regard to the vulnerability of its users (see National Planning Policy Framework Annex 3 - Flood Risk Vulnerability).'

We provide a copy of our previous comments below for ease:

We have significant concerns regarding the proposal in the context of flood risks. If your authority is minded to approve the application, it is essential that the applicant submit a Flood Warning and Evacuation plan prior to a determination. The plan must be informed with details of the hazards associated with the 1 percent and 0.5% design flood events as shown in Appendix D of the FRA but also, importantly, the progression of flooding from all sources. This plan must have been reviewed and approved by your authority's emergency planners.

Reason - Flood Risk

We have reviewed the revised risk assessment (FRA) ref.: 04393E revision F dated October 2023, by structureHaus. In light of evidence of flooding gathered during Storm Ciaran, we advise that the hazards associated with all the modes of flooding which pose risks to the site, its environs and the access/egress routes has not been satisfactorily demonstrated. This includes the progression of flooding i.e., where flood waters can emanate from, and danger posed as it reaches Harbour Road. For example, during Storm Ciaran, sea water overtopped the frontage and flowed down Trevelyan Road, and therefore possibly Beach Road (which we note is shown in the above-mentioned report as being a proposed access/egress route for Emergency Services). This mode of flooding certainly demonstrates the conditions of chaos that can and do occur during a flood event. We acknowledge that hazard mapping associated with a 1 percent fluvial flood with climate change, and 0.5 percent tidal

flood scenarios (with climate change) are included within Appendix D of the FRA and that these show the areas that would be inundated. They do not however adequately show the hazards associated with the progression of flood waters.

Any granting of permission should be subject to your authority's approval of a Flood Warning and Evacuation Plan (FWEP) prior to determination. The applicant has submitted a blank template for a FWEP but we advise that is not suitable to condition the production of a site-specific FWEP at a later date as it may come to light that measures proposed within it are not acceptable to the authority's Emergency Planner. This is especially needed in light of the complex numerous and, arguably chaotic modes of flooding that in reality pose a risk in this instance. It should also be taken into consideration the fact that people may choose to negotiate a combination of depths and velocities of water should they choose to access or egress the units during the progression of flooding. We also note, and concur with, the statement in Appendix J of the FRA regarding duration of flooding i.e. 'flood duration will depend on several factors and could occur within minutes or over a longer period and may even last days, weeks or longer.' Given the numerous sources of flooding which the site and its environs are at risk from, it should be assumed that persons may receive little or no warning in some circumstances and may be stranded for days within the residential units sought.

#### Way forward

In light of the above we advise that your authority seeks production of a Flood Warning and Evacuation Plan, that is informed by the hazards associated with the progression of flooding from all sources, prior to determination, or that permission is withheld.

Before the application progresses, it is important that clarity is provided on the proposed ground floor usage (and subsequently what uses are proposed in the upper floors also).

#### Advice - Contaminated Land

As outlined in our previous letter, we have also reviewed the amended Contamination Report Preliminary Risk Assessment Phase 1- Desk Study & Site Inspection Report. Job No. 2458 dated, December 2020. We advise that the Preliminary Conceptual Site Model in chapter 7 does not give us comfort that the site does not have the potential to contaminate controlled waters.

With that in mind, we advise that the comments set out in our letter dated 25 October 2022 still apply. Should you be minded to approve the application, we would recommend the inclusion of contaminated land conditions to secure the necessary additional work required.

#### Environment Agency

#### **Comment Date: Thu 23 Nov 2023**

Thank you for re-consulting us on this application and we apologise for the delay in providing our consultation response.

Environment Agency position:

We wish to start by highlighting that whilst a revised Flood Risk Assessment (FRA) has been submitted (ref.: 04393E revision F dated October 2023, by structureHaus) which indicates that the proposed ground floor would be parking, bin and bike storage and plant room(s), the proposed plans which show online (dated 9th March 2023) do not reflect this. The plans online currently show commercial on the ground floor with residential above. The applicant needs to clarify this matter.

Notwithstanding this matter which requires clarification, we advise that our position regarding the ground floor level of development remains unaltered from that detailed in our formal consultation response dated 27 Mar 2023. We have quite significant concerns regarding the proposal in the context of flood risks. If your authority is minded to approve the application, it is essential that the applicant submit a Flood Warning and Evacuation plan prior to a determination. The plan must be informed with details of the hazards associated with the 1 percent and 0.5% design flood events as shown in Appendix D of the FRA but also, importantly, the progression of flooding from all sources. This plan must have been reviewed and approved by your authority's emergency planners.

Reason - Flood Risk:

We have reviewed the revised risk assessment (FRA) ref.: 04393E revision F dated October 2023, by structureHaus. In light of evidence of flooding gathered during Storm Ciaran, we advise that the hazards associated with all the modes of flooding which pose risks to the site, its environs and the access/egress routes has not been satisfactorily demonstrated. This includes the progression of flooding i.e., where flood waters can emanate from, and danger posed as it reaches Harbour Road. For example, during Storm Ciaran, sea water overtopped the frontage and flowed down Trevelyan Road, and therefore possibly Beach Road (which we note is shown in the above-mentioned report as being a proposed access/egress route for Emergency Services). This mode of flooding certainly demonstrates the conditions of chaos that can and do occur during a flood event. We acknowledge that hazard mapping associated with a 1 percent fluvial flood with climate change, and 0.5 percent tidal flood scenarios (with climate change) are included within Appendix D of the FRA and that these show the areas that would be inundated. They do not however adequately show the hazards associated with the progression of flood waters.

Any granting of permission should be subject to your authority's approval of a Flood Warning and Evacuation Plan (FWEP) prior to determination. The applicant has submitted a blank template for a FWEP but we advise that is not suitable to condition the production of a site-specific FWEP at a later date as it may come to light that measures proposed within it are not acceptable to the authority's Emergency Planner. This is especially needed in light of the complex numerous and, arguably chaotic modes of flooding that in reality pose a risk in this instance. It should also be taken into consideration the fact that people may choose to negotiate a combination of depths and velocities of water should they choose to access or egress the units during the progression of flooding. We also note, and concur with, the statement in Appendix J of the FRA regarding duration of flooding i.e. 'flood duration will depend on several factors and could occur within minutes or over a longer period and may even last days, weeks or longer.' Given the numerous sources of flooding which the site and its environs are at risk from, it should be assumed that persons may receive

little or no warning in some circumstances and may be stranded for days within the residential units sought.

Way forward:

In light of the above we advise that your authority seeks production of a Flood Warning and Evacuation Plan, that is informed by the hazards associated with the progression of flooding from all sources, prior to determination, or that permission is withheld.

Before the application progresses, it is important that clarity is provided on the proposed ground floor usage (and subsequently what uses are proposed in the upper floors also).

Advice - Contaminated Land:

As outlined in our previous letter, we have also reviewed the amended Contamination Report Preliminary Risk Assessment Phase 1- Desk Study & Site Inspection Report. Job No. 2458 dated, December 2020. We advise that the Preliminary Conceptual Site Model in chapter 7 does not give us comfort that the site does not have the potential to contaminate controlled waters.

With that in mind, we advise that the comments set out in our letter dated 25 October 2022 still apply. Should you be minded to approve the application, we would recommend the inclusion of contaminated land conditions to secure the necessary additional work required.

Environment Agency

**Comment Date: Mon 27 Mar 2023**

Thank you for re-consulting us on the above planning application.

Environment Agency position:

We maintain our objection to this proposal on grounds that insufficient information has been submitted to demonstrate that the proposed development will be safe from flooding over its lifetime. It is therefore contrary to the National Planning Policy Framework (NPPF). We recommend that the application is not determined until a satisfactory Flood Risk Assessment (FRA) has been submitted.

Before determining the application your Authority will need to be content that the flood risk Sequential Test has been satisfied in accordance with the NPPF if you have not done so already. As you will be aware, failure of the Sequential Test or either part of the Exception test is sufficient justification to refuse a planning application.

The reason for this position and advice on flood risk and contaminated land is set out below. Further advice on flood risk, access and egress and contaminated land is contained within our previous letter dated 25 October 2022.

Reasons - Flood Risk:

We have reviewed the updated FRA and amended plans submitted to support this proposal. We consider that the additional information has not demonstrated whether

the users/occupants would be safe over their lifetime from the sources of flooding that pose a risk to the site. As the current plans stand, there will be significant internal flood depths, from numerous sources, during the design event which will cause damage to property and safety risk to users/occupants. This risk will increase over time due to the effects of climate change.

We reiterate our previous stance that all finished floor levels for both the commercial and residential must be raised to above the 1 in 200 plus climate change flood level and take a freeboard of 300mm into account. As advised previously, the 1 in 200 plus climate change tidal flood level is 4.68mAOD (not including freeboard) and should be considered as the design level in the absence of reliable detailed model outputs. The design to date, irrespective of the usage sought, does not reflect this consistent message.

We note that the FRA states that those in the commercial areas "can seek refuge on the first floor of the communal staircase of the flats until the flood waters reside". We inform your authority that members of the public/users could be trapped in this staircase for many hours and evacuation from emergency services would also not be possible because the flood hazard is identified as Extreme and a 'danger to all' which includes emergency services. The applicants FRA has not to date adequately addressed these issues and therefore your Authority is not in an informed position to determine whether or not the development as now proposed would be safe over its lifetime. This is a key policy aim of the NPPF.

Overcoming our objection:

The applicant can overcome our objection by undertaking an FRA and producing plans which demonstrate that the proposed development will be safe from flooding over its lifetime without increasing risk elsewhere and where possible reduces flood risk overall. If this cannot be achieved we are likely to maintain our objection to the application. Production of an FRA will not in itself result in the removal of an objection.

The amended FRA will need to adequately demonstrate the, as yet, unanswered issue regarding the period of time people within the building would be stranded, given the building is at risk of being completely surrounded by water.

In addition, there remains a requirement for the applicant to demonstrate the potential routes and depth/hazard rating, that emergency services personnel would have to negotiate to enact a rescue, including at the end of the lifetime of the proposed development. This is necessary to demonstrate to the LPA the risks associated with the proposal.

Advice - Flood Risk:

We strongly consider that raising the ground floor level of the proposed building above that currently proposed would represent a positive measure and certainly better reflect the policy aims of the NPPF and PPG. The level of the ground floor currently proposed pays little regard to the risk flooding posed to the plot. In fact, it appears lower than those of existing buildings adjacent to the plot which were clearly built to take flood risk into account. It is evident that the ground floor would be at risk of frequent flooding which would pose a safety risk and cause of avoidable flood



damage. Failure to address the ground flood level issue risks the principle of development not being acceptable, adversely affecting the value of the development, insurability, and any potential future aspirations for changes of use.

Any technical or planning reasons why the finished floor levels cannot be raised above the design flood level should be clearly explained in the FRA. This will give your Authority the information required to make an informed decision on whether you consider that these matters are sufficient to outweigh the frequent flooding that would occur, and the potential risks to users of the site.

We note that Rev C of the FRA states 'Consideration should be given to flood proofing the ground floor of the proposed building to reduce the residual damages if an extreme flood was to occur.' Failure to achieve this, risks the proposal not being as sustainable it could be and thus also adversely affecting its value and potentially insurability.

The applicant may wish to refer to Defra/Environment Agency R&D report 'Flood Risk Assessment Guidance for New Development' document Technical Report FD2320/TR2.

Advice - Contaminated Land:

We have also reviewed the amended Contamination Report Preliminary Risk Assessment Phase 1- Desk Study & Site Inspection Report. Job No. 2458 dated, December 2020. We advise that the Preliminary Conceptual Site Model in chapter 7 does not give us comfort that the site does not have the potential to contaminate controlled waters.

With that in mind, we advise that the comments set out in our letter dated 25 October 2022 still apply. Should you be minded to approve the application, we would recommend the inclusion of contaminated land conditions to secure the necessary additional work required.

Advice to the LPA:

We will maintain our objection until the applicant has supplied information to demonstrate that the flood risks posed by the development can be satisfactorily addressed. We would like to be re-consulted on any information submitted to address our concerns and we will provide you with bespoke comments within 21 days of receiving formal re-consultation.

If you are minded to approve the application at this stage contrary to this advice, we request that you contact us to allow further discussion and/or representations from us.

Environment Agency

**Comment Date: Tue 25 Oct 2022**

Thank you for re-consulting us on the above planning application.

Environment Agency position

We maintain our objection to this proposal on grounds that insufficient information

has been submitted to demonstrate that the proposed development will be safe from flooding over its lifetime. It is therefore contrary to the National Planning Policy Framework (NPPF). We recommend that the application is not determined until a satisfactory Flood Risk Assessment (FRA) has been submitted.

Before determining the application your Authority will need to be content that the flood risk Sequential Test has been satisfied in accordance with the NPPF if you have not done so already. As you will be aware, failure of the Sequential Test or either part of the Exception test is sufficient justification to refuse a planning application.

The reason for this position is set out in our previous letter dated 4 August 2022 and reiterated below, together with advice on access/egress and the potential for contaminated land from the previous use of the site.

#### Reasons - Flood Risk

We have reviewed the further information submitted but advise that all our previous comments still stand. We need to ensure that proposed development is designed in accordance with the NPPF, which requires all residential and commercial development proposals to be safe from flooding over their lifetime in order to satisfy the Exception Test. As the current plans stand this is not the case, because there will be significant internal flood depths during the design event with will cause damage to property and safety risk to occupants.

We reiterate that all finished floor levels for both the commercial and residential must be raised to above the 1 in 200 plus climate change flood level and take a freeboard of 300mm into account. As advised previously, the 1 in 200 plus climate change tidal flood level is 4.68mAOD (not including freeboard).

We note that historically finished floor levels of 4.11mAOD were acceptable. However, this level is no longer in line with the current guidance on what would be acceptable for this location. The updating of the climate change allowances mean that higher levels are now required than previously agreed. We can therefore no longer support finished floor levels of 4.11mAOD, because this does not take account of current climate change allowances. Unless the current climate change allowances are applied, it cannot be demonstrated that the proposed development will be safe from flooding over its lifetime, which is an important requirement of the Exception Test.

In addition, details of flood resilience measures should be given because depths of water will pond against the front of the building which could cause structural pressures and damp problems as well as flood ingress routes through valves and airbricks.

#### Overcoming our objection

The applicant can overcome our objection by undertaking an FRA and producing plans which demonstrate that the proposed development will be safe from flooding over its lifetime without increasing risk elsewhere and where possible reduces flood risk overall. If this cannot be achieved we are likely to maintain our objection to the application. Production of an FRA will not in itself result in the removal of an

objection.

If the applicant would like to discuss the FRA with us prior to formal resubmission to the LPA, we can provide advice via our chargeable planning advice service. The fee for this service is £100 per hour plus VAT. Please contact us at [SPDC@environment-agency.gov.uk](mailto:SPDC@environment-agency.gov.uk) to request more information and a quote.

#### Advice to LPA - Access/Egress

The Environment Agency does not normally comment on or approve the adequacy of flood emergency response procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement with this development during an emergency will be limited to delivering flood warnings to occupants/users covered by our flood warning network.

The Planning Practice Guidance to the National Planning Policy Framework states that those proposing developments should take advice from the emergency services when producing an evacuation plan for the development as part of the flood risk assessment.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions. As such, we recommend you consult with your Emergency Planners and the Emergency Services to determine whether the proposals are safe in accordance with the guiding principles of the Planning Practice Guidance (PPG).

Further guidance has been produced by us and ADEPT to support local authority planners in understanding what information they need to ask applicants to provide with their planning applications. This can be viewed at: <https://www.adeptnet.org.uk/floodriskemergencyplan>

We remind you to consult with your Emergency Planners and the Emergency Services to confirm the adequacy of the evacuation proposals. The advice on access and egress in our previous letter dated 4 August 2022, will assist them in their decision making on whether this is acceptable, taking account of the likely duration of flooding and hazards should emergency evacuation be necessary.

#### Advice - Contaminated Land

We have reviewed the submitted Contamination Report Preliminary Risk Assessment Phase 1- Desk Study & Site Inspection Report. Job No. 2458 dated, December 2020. We note that as a result the site's current use as a bus and coach station that includes workshops for minor body works and repairs, refuelling, etc, that various sources of contamination currently exist on the site.

The report states that "The Conceptual Site Model indicates that there are no significant pollutant linkages and the site is considered to pose a 'Negligible' level of risk to existing and future receptors and no further action is required". However, it is possible that cracks and joints on the hardstanding overtime may have provided a pathway for the movement of some contaminants to soil and groundwater receptors. We would therefore like to request a detailed site investigation in order to confirm the

presence or absence of any impact to underlying soil or groundwater.

With this in mind, should you be minded to approve the application, we would recommend the inclusion of contaminated land conditions to secure this additional work.

Advice to the LPA

We will maintain our objection until the applicant has supplied information to demonstrate that the flood risks posed by the development can be satisfactorily addressed. We would like to be re-consulted on any information submitted to address our concerns and we will provide you with bespoke comments within 21 days of receiving formal re-consultation.

If you are minded to approve the application at this stage contrary to this advice, we request that you contact us to allow further discussion and/or representations from us.

Environment Agency

**Comment Date: Thu 04 Aug 2022**

Thank you for consulting us on this application.

Response:

We object to this application based on flood risk and recommend refusal.

Reason:

When a similar application for this land was submitted in 2021 (ref: 21/0649/FUL, our response dated 24 August 2021 ref: DC/2021/122019/02-L01) the following comments were made by the Environment Agency "The design flood level for the development is between 4.32mAOD and 4.69mAOD, when considering the 200yr tidal scenario with climate change over the lifetime of the development. With a proposed ground floor FFL of 3.48mAOD, flooding to a depth in excess of 1.0m can be expected for the ground floor. It is the Environment Agency's view that this is not considered 'safe', which questions whether the Exceptions Test can be passed."

These comments are still relevant as the proposal is not considered safe and therefore fails the exception test.

Finished Floor Levels:

The 1 in 200 climate change tidal flood level is 4.68mAOD (not including freeboard). Proposed ground floor levels for residential are 4.11mAOD. As the FFLs are lower than the design flood level internal flooding of 0.58m is therefore possible. The commercial finished floor levels are just 2.68mAOD which is considerably lower than the design flood level and would result in 1.12m deep flood water in the commercial area during a flood event. FFL of 4.98m.

Internal flooding is not acceptable. All finished floor levels for both the commercial and residential must be raised to above the 1 in 200 climate change flood level and take a freeboard of 300mm into account.

Although there is a flood wall with a height of 6.96mAOD the development must be

designed to take breach scenarios into account which is why a finished floor level higher than the flood level is important to ensure the development is safe. This is in line with NPPF guidance.

We understand that historically finished floor levels of 4.11mAOD were acceptable, however, following updates to sea level rise allowances, this is no longer a level that we can support.

Flood resilience measures:

Flood resilience measures have been briefly mentioned in the FRA but no details have been provided. Details of resilience should be given which is required as depths of water will pond against the front of the building which could cause structural pressures and damp problems as well as flood ingress routes through valves and airbricks.

Notes to LPA:

Access and Egress:

- o There will be no safe access or egress during a fluvial or tidal flood event. The FRA has not detailed how long flood waters will be present for and ponded in Harbour Road and the Esplanade. Residents and those in the commercial area will be trapped for the duration of flooding.

- o The FRA states that those in the commercial areas "can seek refuge on the first floor of the communal staircase of the flats until the flood waters recede". Members of the public could be trapped in this staircase for many hours and evacuation from emergency services would also not be possible as the flood hazard is identified as Extreme and a 'danger to all' which includes emergency services.

- o We recommend a flood warning and evacuation plan be produced for both the residential and commercial areas.

Sequential and Exemption tests

- o Both must be passed