



## Appeal Decision

Inquiry Held on 12 to 15 and 19 to 21 January 2021

Site visit made on 25 January 2021

**by Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 26<sup>th</sup> April 2021**

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### **Appeal Ref: APP/X1165/W/20/3245011**

#### **Land to the south of White Rock, adjacent to Brixham Road**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Abacus Projects Limited/Deeley Freed Limited against Torbay Council.
  - The application Ref P/2017/1133, is dated 3 November 2017.
  - The development proposed is outline application for residential led development of up to 400 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation. Details of access to be determined with all other matters reserved.
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#### **Decision**

1. The appeal is allowed and outline planning permission is granted for residential led development of up to 373 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation; details of access to be determined with all other matters reserved at Land to the south of White Rock, adjacent to Brixham Road, in accordance with the terms of the application, Ref P/2017/1133, dated 3 November 2017, subject to the conditions in the attached Annex.

#### **Procedural Matters**

2. The address of the site shown in the above header is taken from the original planning application form. For clarity and in addition to that in the header, the site is otherwise known as Inglewood, Paignton which is included in the address on the Planning Appeal Form.
3. The description of development in the fourth bullet point of the above header is also taken from the original planning application form. However, as referred to in the appeal submissions, including the Planning Appeal Form and Statement of Common Ground, this was changed during the course of the Council's consideration of the application to relate to up to 373 dwellings. I have determined the appeal on that basis and included that amended description in the above decision.

4. The appeal relates to an outline planning application with all matters reserved for future consideration other than access. The matters of appearance, landscaping, layout and scale would therefore be for future consideration were the appeal allowed. I have determined the appeal on that basis. However, the appellant has submitted an Urban Design Regulatory Plan and an illustrative Proposed Masterplan (Rev A), together with an Urban Design Framework (Rev A), Green Infrastructure Plan (Rev A), Townscape Analysis Plan (Rev A), Street Hierarchy Plan (Rev A), and Indicative Proposed Site Sections which I have taken into consideration.
5. I have had regard to another appeal decision submitted<sup>1</sup> at the Inquiry for a proposed housing development in Gotherington, the site for which is, amongst other things located within the setting of an Area of Outstanding Natural Beauty. However, I do not have the full details of that case to enable a proper comparison. In any case it relates to a completely different location within the country, a different Local Planning Authority, and therefore different development plan policies, and I have determined this appeal on its own merits.

### **Main Issues**

6. The main issues are:
  - i) whether the site is suitable in principle for locating the proposed development outside of the established built up area or Future Growth Area and on land not identified for such development in the Brixham Peninsular Neighbourhood Plan (the BPNP), having regard to development plan policies; and
  - ii) the effect of the proposed development on the landscape character and appearance of the surrounding area, with particular regard to the South Devon Area of Outstanding Natural Beauty (the AONB) and the settlement gap.

### **Reasons**

*Suitability of location in principle outside of the established built up area or Future Growth Area and on land not identified in the BPNP, having regard to development plan policies*

7. Policy SS2 of the Torbay Local Plan (the Local Plan) relates to Future Growth Areas (FGAs) which are located within Strategic Delivery Areas. The policy stipulates that all major development outside of the established built-up area should be within the identified FGAs and that any such development outside of these areas will only be permitted where the site has, amongst other things, been identified by the relevant Neighbourhood Plan or a subsequent development plan document. The site is not located within a FGA.
8. Policy C1 of the Local Plan relates to resisting development in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting. Policy C1 also sets out, amongst other

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<sup>1</sup> Appeal decision Ref APP/G1630/W/20/3256319

things, that major new development should focus on Future Growth Areas in the Strategic Delivery Areas. The proposed development, in again not relating to a FGA, in encroaching into the countryside adjacent to the existing urban area, and not comprising one of the various forms of development referred to that may be permitted outside of settlement boundaries, would therefore not accord with that policy in those respects.

9. In respect of the BPNP, policy BH3 sets out allocated sites for residential development in the BPNP area of which the appeal site is not one; policy BH4 requires amongst other things that development that extends settlements on to adjoining greenfield sites will be considered in the context of Local Plan policy C1 which I have addressed above in respect of this main issue; policy E2 relates to defined settlement boundaries and cross-refers to Local Plan policy C1 in respect of development outside of settlement boundaries, again which I have addressed above; policy E3 concerns settlement gaps which relate to areas outside of the AONB where the countryside which forms the gap is, in this case, Countryside Area relating to policy C1 of the Local Plan, one of which includes the site in question, and amongst other things, again cross-refers to policy C1 in terms of meeting the criteria concerned. It goes on to state that no development that visually and or actually closes the gaps between the urban areas concerned, will be supported, highlighting in the supporting text that such gaps are highly sensitive to change and must be retained as valued open countryside. The proposal would fill in a significant part of the gap between the existing development of Galmpton to the south-east and White Rock to the north-west, albeit not completely closing it. It would in any case be contrary to this policy in terms of the cross-reference to Local Plan policy C1 referred to above.
10. For the above reasons, I conclude on this issue that the proposed development would conflict with those development plan policies referred to above which resist the principle of development of the nature proposed in this location. I will consider this further below in terms of the more specific issues relating the effect of the proposed development on the landscape character and appearance of the surrounding area and, along with any other material considerations, including housing land supply, in the planning balance.

#### *Landscape character and appearance*

11. Section 85(1) of The Countryside and Rights of Way Act 2000 sets out that a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty. Paragraph 172 of the National Planning Policy Framework (the Framework) sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in, amongst other areas, Areas of Outstanding Natural Beauty. The site is seen to varying degrees within the setting of the AONB, albeit not within it.
12. Policy SS8 of the Local Plan sets out amongst other things that development proposals outside of the AONB will be supported where they conserve or enhance the distinctive landscape character and biodiversity of Torbay or where the impact of development is commensurate with the landscape and ecological importance. However, it goes on to say that it will be particularly important to ensure that development outside the AONB does not have an unacceptable impact on the special landscape qualities of an adjoining or

- nearby AONB. In respect of this issue, Local Plan policy SDB1 goes on to state, amongst other things, that development will only be acceptable if it can be accommodated without prejudicing the integrity of the AONB.
13. Policy C1 of the Local Plan, following on from that referred to above goes on to state that where new development proposals come forward, regard will be had to the need to protect, conserve or enhance the distinctive landscape characteristics and visual quality of a particular location, as identified in the Torbay Landscape Character Assessment (the LCA), the suitability of development and the capacity of the countryside to accommodate change.
  14. In respect of the BPNP, policy E1 requires the preservation and enhancement of the natural beauty, landscape character, tranquillity and biodiversity of the Brixham Peninsula; the protection of the AONB, ensuring that great weight has been given to conserving and enhancing its landscape and scenic beauty; cross reference to Local Plan policy C1 in terms of protecting and enhancing the countryside; and that development should not harm protected landscape characteristics including dark night skies and tranquillity. Policies E2 and E3, concerning settlement boundaries and settlement gaps respectively, again cross refer to policy C1 of the Local Plan in respect of the criteria for development outside settlement boundaries and within settlement gaps as well as, in the latter, to not supporting closure of the gaps. Policy E6 relates to safeguarding views and vistas valued by residents and visitors alike.
  15. I have also taken account of the relevant AONB Management Plan policies. Policy Lan/P1 relates to the special qualities, distinctive character and key features of the AONB that will be conserved and enhanced. Policy Lan/P4 relates to tranquillity, natural nightscapes and dark skies of the AONB being enhanced and maintained. Policy Lan/P5 concerns the protection of skylines and views into, within and out of the AONB. Lan/P7 states that the deeply rural character of much of the land adjoining the AONB boundary forms an essential setting for the AONB and that care will be taken to maintain its quality and character. Policy Plan/P2 relates to great weight being given to the purpose of conserving and enhancing the natural beauty of the AONB.
  16. The site forms part of the landscape character type described in the Torbay Landscape Character Assessment (the LCA) as Rolling Farmland which overlaps with the wider Devon character type relating to Rolling Farmland. That wider Devon character type, which includes the AONB and land in between it and the site and the site itself, represents the archetypal Devon landscape which amongst other things comprises rolling hills incorporating hedge banks and narrow secluded lanes. The topography of that landscape is further described in that document as characterised by amongst other things, the lack of pattern to the series of relatively flat topped hills and irregular concave/convex valley sides and floor, and with a land cover comprising a mixture of arable and ley grass land with some permanent pasture.
  17. Within that wider LCA characteristic, the site is contained within, and occupies a significant proportion of, what is identified in more detail as Area of Local Character (ALC) Type 10 North Galmpton. The ALC is broadly rated as being a highly sensitive landscape, albeit with parts of the southern area slightly less sensitive due to visual containment. It consists of very gently undulating predominantly pasture farmland, with some arable fields in the northern part. The land slopes broadly westwards towards the River Dart and the AONB

although not to the boundary of the AONB. Much of the area is relatively open farmland and the northern part, including the site, is more open, allowing long distance views to the south-west to the hills beyond the Dart within the AONB. Field boundaries are low hedges/hedgebanks with occasional hedgerow trees. The area is separated from the existing urban edge, at Goodrington to the east, by Brixham Road and varying extents of roadside hedges and trees.

18. In considering the visual effects of the proposal, I have taken account of the submitted viewpoints, including photomontages representing the proposed development as it would appear, within the Appellant's Landscape and Visual Impact Assessment (LVIA). Those viewpoints, which I have visited, are not disputed by the Council as being the key representative viewpoints.
19. In terms of localised effects, the proposed development would encroach into and inevitably change the nature and appearance of the part of the countryside concerned, including the ALC and settlement gap defined in BPNP policy E3. This would be to the detriment of its intrinsic value in currently providing a pleasant open and rural edge to the existing settlement that provides visual connection to and interaction with the wider countryside. From the Brixham Road in particular, including the associated stretch of footway opposite the site, and vantage points at the edge of Goodrington, softened to varying degrees by existing intervening vegetation, the open countryside would be seen as being noticeably encroached upon. Nevertheless, it would not completely fill the area of countryside between Galampton and White Rock, which relates to the settlement gap, with a distinctive and noticeable degree of separation provided by retained countryside to the south seen from Brixham Road and vantage points within Galampton. Furthermore, the nearest part of the development to Galampton would comprise a relatively narrow spur at the southern end of the site, set well away from Brixham Road. The separate identity of Galampton would therefore remain and the albeit much narrower countryside gap would retain some degree of visual connection with the wider countryside to the south-west.
20. To the north of the site there would be a green buffer that would provide an albeit relatively limited degree of visual connection with the countryside to the west as well as contributing, along with the intervening higher ground, to the separation of the proposed development from White Rock. Furthermore, the submissions indicate that the proposed allotments to north of the site would extend alongside part of the Brixham Road frontage, thereby softening the development's impact to some degree on that side of the settlement gap as seen from the road, associated footway, and edge of Goodrington.
21. In respect of the AONB, the closest part to the site, comprising the steep valley side and river Dart is not clearly visible, if at all, from the Brixham Road and the edge of Goodrington. As such, the proposed development would not be seen from those vantage points in the context of the more immediate part of the AONB. However, the site provides a pleasant open foreground setting to attractive views across to the hills of the AONB on the opposite side of the valley, from Brixham Road, including a short stretch of associated footway, and from public vantage points on the edge of Goodrington albeit often interrupted by intervening trees. The experience of that existing nature of the site is enhanced by the stark transition travelling southwards along Brixham Road from urban form on both sides, including the White Rock development, to open rural fields beyond an intervening spur of higher ground on the western side

- seen with the backdrop of hills referred to above. Brixham Road is also a key route for tourists travelling south, from where, upon cresting the spur referred above, uninterrupted views across to the hills of the AONB are first experienced from that direction.
22. The proposed development would therefore intrude into that current uninterrupted open countryside visual connection with the slopes of the AONB on the opposite side of the valley as seen to varying extents from Brixham Road, its associated footway, and the edge of Goodrington, in the vicinity of the site. This would include the likelihood of the proposed buildings partially obscuring views across to the hillslopes on the opposite side of the valley. However, it is likely that the upper parts of those slopes would still be clearly visible over the roof tops of the proposed development to varying degrees. That foreground intervention of built form would also be softened over time by the intervening intended tree planting. Such planting may further reduce clear views of the distant AONB slopes to some extent. However, it is likely, even then, that such views would be retained over the treetops or filtered through the trees to varying degrees. The extent of retention of those views would also be greater from any higher vantage points within the urban fringe of Goodrington.
23. Notwithstanding those interrupted views of the wider countryside and AONB referred to above, the proposals would make provision for a countryside access route around edge of the northern, western and southern parts of the development. This would therefore provide a different but significant opportunity for pedestrians to experience albeit closer views of the surrounding countryside and the AONB.
24. The proposed development would also be visible to varying degrees from other localised vantage points on the surrounding countryside lanes to the south, south-west and west of the site. Of those, it would be most visible from the lane to the west including viewpoint 15 in the LVIA, albeit with clearer sight generally restricted to field accesses due to otherwise intervening roadside hedgerows. However, from there, whilst the proposed development would be clearly seen as being more to the fore than existing development seen on the edge of Goodrington, it would nevertheless be observed in the context of being on the edge of the settlement, with open fields remaining in between it and the lane concerned. Those views, as well as from Galmpton to a large degree, would also generally be of a more localised nature and not so much seen within the wider context of the AONB to the south, south-west and west.
25. Proposals for new tree and hedge planting within and on the periphery of the site would also provide some degree of softening of the development and contextual referencing. I acknowledge the potential risk of introducing uncharacteristic tree planting and that this was a concern raised by my colleague in relation to a previous appeal and the associated report to the Secretary of State dated July 1997<sup>2</sup> for proposed development in this location, that was dismissed. Whilst significant additional tree planting would inevitably contribute to the changed nature of the site, the form of development would not be the same as for that 1997 proposal which related to provision of a business park, and it remains the case that trees are currently part of the landscape. Furthermore, the detailed design and form of new planting could be

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<sup>2</sup> Secretary of State decision Ref. SW/P/5183/220/4

controlled by a planning condition to ensure an appropriate balance between softening functions and existing context.

26. Relating to one of the AONB's special qualities, that of tranquillity, as experienced from locations in close proximity to the site, including from Brixham Road and the lanes surrounding the site to the south and west, there would clearly be a substantial increase in activity on the site itself compared with its existing agricultural use. This would therefore inevitably decrease the relative level of tranquillity experienced. However, it would be experienced in the close context of significant levels of existing urban activity associated with the Brixham Road and this urban edge location, likely therefore to prevent such effects from causing significant harm in this respect. Likewise, in terms of the introduction of external lighting associated with the proposals, in that localised context, whilst clearly changing the existing situation on the site it would be seen in the close context of lighting relating to the existing urban area. Furthermore, measures to minimise the visual impact of external lighting on the site could be secured by condition.
27. One of the special qualities of the AONB relates to iconic wide, unspoilt and panoramic views and part of its natural beauty derives from such views. Another special quality is that of the variety in setting to the AONB. I have also taken account of those panoramic views being an integral feature of that ancient and intricate network of winding lanes, paths and recreational routes in and adjacent to the AONB from which such views are seen.
28. In terms of those more distant key views from the AONB to the south-west and south, notably those identified in the LVIA, the fine riverine landscape of the Dart Valley and the river Dart itself, including its largely undeveloped steep sided wooded valley and the more gently sloping setting beyond to the north-west of Galmpton, is clearly visible and also provides a sense of tranquillity. The proposed development would be seen in those views, and although it would be at a lower level than White Rock buildings, that would not have a significant bearing on the relative prominence of the two developments as seen from the south and south-west. The proposed development would be more prominent given the aspect of the site and its openness on the opposite side of the high ground separating it from White Rock.
29. The site, with its open fields, hedgerows and undulating topography clearly relates to AONB special qualities comprising the rolling patchwork of agricultural landscape within the AONB's setting and the historic agricultural land use. It therefore complements the AONB and its setting in these respects, being most clearly seen all together in those more distant views referred to above.
30. Importantly, whilst the proposed development would result in the partial erosion of that setting, a significant countryside buffer would remain between the site and AONB, despite the narrowness of the AONB at this part of it. That would be clearly observed from the more distant viewpoints concerned. Furthermore, that buffer, and retained countryside between the proposed development and Galmpton includes landscape of a similar nature to that of the existing site as seen from those viewpoints, in terms of maintaining features that would continue to be seen as contributing to the variety in the AONB's setting and the rolling patchwork of historical agricultural landscape.

31. Whilst the presence of existing development in the views of the proposed development would not be a reason in itself to consider further development acceptable, the existing context remains important. In those expansive views, including in particular from the key viewpoints on the road from Cornworthy to Dittisham, the footpath east of the road from Capton to Dittisham, Fire Beacon Hill, the Recreational Trail from near Fire Beacon Hill to Dittisham, and from slightly closer on Greenway Road to the south at the junction of the permissive path (viewpoints relating to those numbered 3, 5d, 6a&b, 7a-d and 19 respectively in the LVIA), the proposed development would be seen extending the depth of the urban fringe at that point. However, it would not be an alien feature in the context of the existing presence of development relating to Goodrington spilling over the ridgeline that runs broadly north-west to south-east to the east of Brixham Road, albeit confined to the eastern side of that road and softened to varying degrees by existing roadside trees.
32. Furthermore, given the distances of the above views and resultant relatively shallow angles of sight at which the proposed development would be seen, the full extent of the protrusion beyond the existing urban fringe would not be readily perceptible, appearing more linear, much like the edge of Goodrington does. There would also be the clear presence of Galmpton in some of those same views, albeit not necessarily central, seen extending down to the edge of the AONB and therefore much closer to it than the proposed development. Elements of the White Rock development would also be seen in that context, albeit largely screened by intervening topography. The proposed development would also be seen in the context of and against the backdrop of the albeit much more distant urban development on the opposite side of Torbay, including Torquay, although in greater detail and with less of a haze effect. These factors would together further ensure that it would not appear as an alien feature in that wider AONB setting observed from those particular key locations.
33. In the expansive views from key vantage points on higher ground to the south of Galmpton (notably LVIA viewpoints 8a-d and 9a) the extent of the proposed development's protrusion from Brixham Road would be more apparent and it would be prominent. However, it would not appear as unusual in the context of the westward urban projections and varying degree of dominance of Galmpton in the relative foreground, where visible, and to a lesser extent the visible element of White Rock beyond the site to the north. Importantly, the remaining gaps of undeveloped land between the proposed development and those respective existing developments would be clearly noticeable, albeit much reduced from that existing gap. In this respect, the proposed development would therefore not appear as an alien feature in the context of those existing spurs of development extending the urban area to the west of the Brixham Road. Furthermore, the significant degree of separation between the site and AONB, with the intervening remaining rolling farmland, would also be clearly apparent in those views.
34. Another special quality of the AONB relates to ria estuaries and a network of associated watercourses. In this respect, the site includes the head of a tributary which directly connects it to the Dart Valley. Built development would therefore be in fairly close proximity to that tributary head. However, from those key distant viewpoints, that tributary is not a distinctive feature in the wider landscape, seen contributing to the undulating but generally gently sloping land leading down to the AONB.

35. Proposed mitigation planting would further soften the proposed development over time as seen from those distant vantage points to the south and south-west. Such tree planting, whilst introducing additional trees into the landscape, would be unlikely to appear significantly out of place in the context of those more distant views from where belts of existing trees are visible in the intervening land between the site and AONB. As referred to previously, detailed control of the design and form of new planting could also be controlled by a planning condition to ensure its appropriateness in terms of both the softening effect and existing landscape context. The use of an appropriate palette of materials for the proposed buildings would further help the development to integrate into the landscape without appearing stark as seen from those distant vantage points.
36. In terms of the level of tranquillity experienced in relation to the AONB from those more distant viewpoints, any additional noise generated from traffic activity on the site would be unlikely to be clearly perceptible, given the distance involved and that the proposal would be close to the existing urban activity associated with the Brixham Road and settlement areas nearby. Furthermore, the sense of tranquillity relating to the experience of the AONB and its setting from those more distant viewpoints during daylight hours would be significantly preserved by the buffer referred to previously between the AONB and the site, together with the context of other existing development in the vicinity outside of the AONB, including Galmpton in particular.
37. From the key night-time vantage points identified in the LVIA relating to those more distant viewpoints, the absence of significant amounts of lighting visible within the AONB and to varying extents its valley side setting, contributes to a sense of tranquillity. The additional lighting generated by the proposed development would therefore not enhance and maintain those existing nightscapes. However, the degree of remaining buffer from the AONB; the context of significant amounts of existing lighting already visible to varying extents from those viewpoints, including in relation to Galmpton, the existing edge of Goodrington, White Rock and, when operational, floodlighting at the the South Devon College Sports Centre further to the north of White Rock; and that there would remain unlit gaps to the north and south of the site, would mitigate this to a significant degree. Furthermore, measures to minimise and control the extent of external lighting visible from those vantage points could be secured and controlled by condition.
38. My colleague, in reporting to the Secretary of State on the previously mentioned 1997 appeal, referred to the site, which related to much of the current site, prior to any proposed development as providing amongst other things uninterrupted views across to the other side of the valley after cresting the ridge at White Rock; to the prominence and visual sensitivity of the site; and to that proposal breaching the visual watershed provided by the ridge line at White Rock. He also goes on to say that although existing development on the other side of Brixham Road has already breached the ridge line, this is no reason to extend development further beyond it into an area which has previously been protected from development and that that further extension would be all the more damaging given the prominent and visually sensitive nature of much of the application site.
39. My colleague's comments in so far as describing the nature of the site without any proposed development remain true. Nevertheless, the current proposals

are for a different form of development to that previously proposed, which comprised a business park likely to have involved more substantial site level changes and bulkier buildings, despite intended mitigation planting, and I have determined this proposal on its own merits.

40. For the above reasons, I conclude on this issue that the proposed development would cause some harm to the landscape character and appearance of the surrounding area, with particular regard to the South Devon Area of Outstanding Natural Beauty (AONB) and the settlement gap. As such, in respect of this issue, it would conflict with policies SS8, SDB1 and C1 of the Local Plan, policies E1, E2, E3 and E6 of the BPNP, and policies Lan/P1, Lan/P4, Lan/P5 and Lan/P7 of the AONB Management Plan. However, for the reasons set out above, that harm would be limited. I will consider this further in the planning balance.

*Appropriate Assessment under the Habitats Regulations*

41. South Hams Special Area of Conservation (SAC) includes five Sites of Special Scientific Interest (SSSIs), that relevant to the proposed development being the Berry Head to Sharkham Point SSSI. The site is not within the SAC but does lie within a Natural England designated Sustenance Zone for Greater Horseshoe Bats (GHBs) associated with it.
42. The proposed development has been supported by appropriate bat survey data, resulting from bat activity transect and static surveys; and tree roost assessments and surveys of the farm buildings to the north of the site. Several of those farm buildings had evidence of GHB night roosts and a number of trees were identified as having potential for roosting. GHB activity was found to be associated with the hedge lines with relatively lower activity along the boundaries adjoining Brixham Road which is lit. There was very little activity recorded within 30 minutes of sunset suggesting that there were not any roosts nearby, the exception being those night roosts in the farm buildings referred to above. A GHB hibernation roost is known to be located approximately 1.7 kilometres to the north and the nearest known maternity site is at Berry Head to the south-east.
43. The proposals would involve the loss of approximately 400m of hedgerow, albeit with approximately 2.9 km retained, and 15.5 hectares (ha) of pasture land; and the provision of street and pedestrian area lighting. There would therefore be the potential loss or fragmentation of foraging and commuting habitats. As such the proposed development, without any mitigation, would be likely to have a significant effect on GHBs relating to the SAC.
44. The Appellant has put forward a number of measures to mitigate the effects on GHBs which could be secured, managed, monitored and controlled through appropriate conditions and planning obligations referred to in the *conditions and planning obligations* section below. The conditions would include a Landscape and Ecological Management Plan; a detailed scheme of planting and land management; wildlife information boards; a GHB monitoring strategy; a lighting scheme to maintain dark areas on the site; and a Construction and Environmental Management Plan.
45. In terms of the existing retained farmland and its management this would involve the creation of a series of small fields, through approximately 2.5km of suitable hedge planting; no net loss of cattle pasture through reversion of

- approximately 16ha of arable land to cattle pasture; cattle pasture to be lightly grazed to increase availability of a wide range of invertebrate prey; creation of approximately 4ha of spring sown barley crops to be left as over-wintering stubble; creation of a wide range of other habitats, including approximately 0.3ha of broad-leaved native woodland, wood pasture, tussock grassland field margins and wildlife pond to increase habitat diversity and prey availability; and the creation of a bespoke bat house to increase roosting opportunities. Measures to ensure the appropriate management of the farmland in accordance with a Farmland Management Scheme would be secured through appropriate planning obligations.
46. On the site the measures would comprise approximately 600 metres of suitable hedge planting; the creation of 0.7ha of broad-leaved native woodland; and 0.4ha of orchard habitat.
  47. Operationally, there would be measures put in place to protect identified dark areas with light levels less than 0.5lux relating to internal and external light sources, including through a condition to secure the submission and implementation of a lighting scheme. A condition to secure the submission and implementation of wildlife information boards would also contribute to highlighting the biodiversity interests of the site and surrounding area.
  48. There would also be appropriate restrictions as to when construction would commence on the site following the completion of habitat mitigation works. This would enable the suitable establishment of such mitigation so that it would be functional in supporting GHB activity, and would be controlled through a planning obligation.
  49. Natural England (NE) has advised that it is satisfied that the proposals would not have any adverse effects on the integrity of the SAC in relation to GHBs subject to the proposed range of mitigation measures secured by conditions and planning obligations. NE has also confirmed that it considers that such measures would comprise mitigation rather than compensation and I have no substantive basis to consider otherwise. Although the mitigation proposals would coincide with those relating to the adjacent White Rock development, NE is satisfied that the measures proposed would be sufficiently robust to address any concerns about this in terms of in combination effects. Again, I have no substantive basis to consider otherwise.
  50. The submitted Environmental Statement and Ecological Addendum state that provision would also be made for a financial contribution towards an off-site bat house in the form of a bespoke GHB maternity roost close to the designated Berry Head roost. NE welcomed this, stating that it would contribute towards a strategic approach and provide confidence that the measures put forward offer a robust basis for the corresponding Habitats Regulations Assessment (HRA). The Council also welcomed this in the HRA it undertook but stated that its delivery could not be relied upon as part of the mitigation package for GHBs within that HRA. Nevertheless, it concluded in that HRA that, with the identified mitigation measures, there would not be an adverse effect on the integrity of the SAC alone or in combination with other proposals or projects. NE subsequently confirmed that it concurred with the Council's HRA conclusions. The proposals do not include provision for a contribution towards an off-site bat house close to Berry Head, and I have no substantive basis to consider that this would be necessary in order to avoid adverse effect on the SAC.

51. In conclusion, in respect of GHBs, the proposed ecological mitigation measures, secured through conditions and planning obligations, would address concerns relating to the loss and fragmentation of foraging and commuting habitat for GHBs. They would result in the avoidance of the likely significant effects that would otherwise be caused by the proposed development in this respect. As such, the proposed development would not have an adverse effect on the integrity of the SAC in this respect.
52. I have also considered the potential effects of the proposed development on the characteristic calcareous grassland, including some outstanding and rare flora and some rare grassland, and European dry heaths within the SAC. The submitted Recreational Impacts on Berry Head Report: Additional HRA Work for the Torbay Local Plan (2014) by Footprint Ecology assessed, amongst other things, the impact of existing and new development on those features which form a primary reason for selection of the site. The Report identified trampling and eutrophication by dog fouling as two key factors that damage or erode the vegetation.
53. Local Plan policy NC1 states that developer contributions will be sought from development within the Brixham Peninsula (policy SDB1) towards measures needed to manage increased recreational pressure on the SAC resulting from increased housing numbers or visitor pressure. The mitigation would consist of habitat management and increased visitor engagement work. The supporting text to that policy refers to a zone of influence of approximately 5 kilometres (km) driving distance noting that this is roughly equal to the policy SDB1 Brixham Peninsula area.
54. Local Plan policy SDB1 relates to various matters concerning the Brixham Peninsula and so the boundary of that area does not represent the zone of influence, albeit that it states that mitigation measures for the wider SDB1 strategic delivery area include, amongst other things, reduction of the impact of additional recreational pressure on the SAC. However, the evidence base relates to the above 2014 Footprint Ecology report and a further 2016 Berry Head visitor survey report by the same authors. The former infers from the data gathered then that development within 5km drive distance of the SAC is likely to have a disproportionate impact on recreational use of Berry Head. Although, the proposed development would only be slightly over a straight-line distance of 5km from the SAC, the drive distance, based on the Footprint reports, would be comfortably within the 6-8km band. Even taking account of the 5km zone being an approximation, this would therefore be well outside of that.
55. The above 2016 report highlights that its findings are interpreted in the context of the 5km zone of influence. It cross refers to the 2014 report in relation to the zone of influence within which increased housing could result in increased recreational pressure on the SAC, although noting that the 5km is an estimated zone and very approximate, given the paucity of the data. The 2016 report relates to a more robust dataset and found that approximately 75% of interviewee visitors coming from home were found to be within a 5km driving distance and as such the 5km zone of influence was found to still be valid. I have no substantive evidence to consider otherwise.

56. Furthermore, the proposed development would make provision for open space and walking routes within it to minimise the need for travel further afield for regular recreation and dog walking.
57. The Council has indicated that the cost of mitigation work within the SAC would spread to development beyond the zone of influence on a reduced basis. However, in this respect the Council refers to an emerging Planning Contributions Supplementary Planning Document which it acknowledges has no policy weight and will need to be reviewed and re-consulted upon. Due to the emerging status of that document and the need for review and re-consultation I have afforded no weight to that document in respect of this issue. I have received no substantive justification for even a reduced level of contribution for development beyond the 5km zone in terms of this being necessary to mitigate any likely significant effect to the SAC.
58. It is likely that prospective residents of the proposed development would visit the SAC and therefore have some impact on it. However, for the above reasons, the extent of those visits would be unlikely to amount to a level likely to cause such harm as to represent a significant additional effect on the SAC in terms of recreational pressure. A financial contribution towards measures to manage increased visitor pressure, would therefore not be justified in respect of the proposed development.
59. Another European Site is the Lyme Bay and Torbay Site of Conservation Importance (SCI) (marine). Discharges of pollution and sewage from the land could potentially impact on interest features in the site. However, the nature of the proposed development would mean it would be unlikely to cause any direct or indirect impacts on the SCI habitats comprising reefs and partially submerged sea caves. I also note that NE has not raised any issues in this respect. As such, the proposals would not be likely to have any significant effect on the features of the SCI concerned either alone or in combination with other proposals or projects.

*Other matters*

60. There are two Conservation Areas (CAs) within the wider vicinity of the site, those of Waddeton, which also includes some Grade II listed buildings (LBs), and Galampton, to the south-west and south of the site respectively. There are twelve Grade II LBs located within 1 kilometre of the site, eight being in or close to Waddeton. Another of those LBs, Turnpike Cottage at Windy Corner, is located within 500 metres of the site to the south-east but is significantly separated from it with restricted intervisibility.
61. The site is noticeably separated from the CAs but in terms of their settings I have had special regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA, along with preserving the setting of the LBs.
62. Waddeton CA comprises a small village with a pleasant open character, including a variety of dwellings and farm buildings, including some Grade II 19<sup>th</sup> century LBs within it and close by. The LBs include the large 19<sup>th</sup> century listed building of Waddeton Court. The CA also includes a fairly narrow band of the surrounding countryside.

63. Galmpton CA comprises a variety of building types and designs forming the south-west corner of that settlement, together with some open countryside which extends northwards towards the site and continues beyond the CA boundary, contributing to the CA's pleasant open setting.
64. From those CAs, particularly public vantage points, the proposed development would be largely screened from view by intervening topography and vegetation, and so intervisibility would be limited. Furthermore, there would be a significant degree of separation between the CAs and the site, with intervening open countryside maintaining the characteristic rural setting. This would be apparent both from within the CAs and also from more distant vantage points to the south and south-west where the CAs and the site would be seen within the same views. The proposed development would be likely to be seen to varying extents from non-public land including some of the LBs. However, again the degree of separation and extent of intervening countryside would minimise any impact on their setting. For these reasons, the proposed development would preserve the settings of the CAs and LBs.
65. In relation to ecology issues other than those addressed under the Appropriate Assessment, the proposals would include mitigation for proposed loss of curlew nesting and foraging habitat relating to hedgerows and cattle pasture. This would include: hedge planting to provide more than 0.9ha of additional nesting habitat; cattle pasture to be lightly grazed to provide abundant source of invertebrate prey; creation of 4ha of Spring Barley to be overwintered as stubble to provide optimal winter foraging habitat; curlew monitoring; and installation of bird boxes.
66. Appropriate and sufficiently up to date habitat surveys have been carried out by the Appellant relating to badgers, bats, breeding birds, curlews, dormice, great crested newts, invertebrates and reptiles. As referred to previously NE has raised no objections in relation to GHBs, nor in respect of any other fauna or flora subject to appropriate mitigation measures being implemented, as is the RSPB's position relating to birds, which could be secured by conditions. I have no substantive basis to take a different view.
67. Furthermore, in relation to soil quality the proposed development relates to approximately 31 Ha of agricultural land which is also classified as 'best and most versatile', albeit that some of it would remain undeveloped. In this respect the Framework, in paragraph 170(b), also sets out that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the economic and other benefits of the best and most versatile agricultural land.
68. NE comment that in order to retain the long term potential of this land and to safeguard soil resources as part of the overall sustainability of the whole development, it would be important that the soil is able to retain as many of its many important functions and services as possible through careful soil management. NE therefore advises that if development goes ahead that an appropriately experienced soil specialist is used to advise on, and supervise, soil handling, including identifying when soils are dry enough to be handled and how to make the best use of the different soils on site. I have no substantive basis to consider differently and a condition could be imposed to ensure that such soil would be appropriately reused.

69. I have had regard to concerns about additional traffic arising from the proposed development and risks to highway and pedestrian safety, including at the road crossing points. However, the proposals would include various mitigation works. These would include provision for appropriately designed pedestrian crossings including a Toucan crossing on Brixham Road to provide a safe traffic signal-controlled pedestrian and cycle priority crossing linking to Goodrington, necessary particularly in relation to parents taking children to school; and improvements to the crossing of Brixham Road serving the pedestrian route to the south of the site. Road widening to improve visibility in the vicinity of the proposed site access would also be carried out along with changes to road junctions along the Brixham Road to the north and south of the site.
70. The analysis submitted in the Transport Assessment and associated Addendum, Technical Notes and updated analysis relating to Windy Corner, and the additional transport note submitted at the Inquiry, demonstrates that the proposed development would be acceptable in terms of highway capacity and safety, with the inclusion of the proposed highways works in the vicinity along Brixham Road and at Windy Corner. In relation to Windy Corner, this is recognising that to some extent the works, whilst not likely to necessarily improve any existing problems, would not make them worse with the additional traffic generated by the proposed development.
71. The Council as Highway Authority is satisfied that the proposed development, with the proposed junction improvements and sustainable transport provision would not have a severe residual cumulative effect on the road network. It is common ground between the Council and Appellant that all highway works proposed would be safe and sufficient to mitigate the significant impacts of the development traffic; and that appropriate measures are proposed in respect of walking, cycling and public transport; subject to the imposition of appropriate conditions and, in relation to bus service provision, a planning obligation. I have no substantive basis to consider differently.
72. In respect of flood risk and drainage, the submissions include documents setting out an outline drainage strategy which the Council's drainage officer has found to be acceptable. I have no substantive reason to consider differently, whereby the strategy forms an appropriate basis for more detailed drainage details that could be secured by condition.
73. In relation to concerns about there being a lack of jobs in the local area and claims relating to an existing high level of vacant homes, I have received no substantive evidence to indicate that these are factors indicating that the proposed additional new dwellings, including affordable housing, are not needed. This is particularly in light of the Council's housing land supply being at less than 3 years as I will consider further in the planning balance. Furthermore, planning obligations relating to employment provision and mitigation for additional potential pressure on local services and facilities are included in the submissions which I also consider below.
74. In terms of air quality, the proposals would inevitably generate additional fumes from motorised vehicles in particular. However, I have received no substantive evidence to indicate that this would amount to a significant deterioration in local air quality compared with the existing situation relating to the location adjacent to the urban area and the Brixham Road. It is common ground between the Council and Appellant that the proposed development

would raise no issues regarding air quality, and I have no substantive basis to consider otherwise.

*Conditions and planning obligations*

75. The Council has submitted 41 suggested conditions were I minded to allow the appeal. These are generally agreed by the Appellant. I have considered these in the light of advice in the National Planning Practice Guidance and have, in the interests of clarity and precision, amended some of the wording and omitted two. I have referred to the condition numbers, cross referenced to the attached annex, in brackets for clarity purposes.
76. For certainty, a condition requiring the development to be carried out in accordance with the approved plans would be necessary (1). The standard conditions (2 and 3) would be necessary to ensure the submission of details relating to the reserved matters, in general accord with the Urban Design Framework (Stride Treglown, March 2018 - Rev A) and appropriate timescales for the submission of reserved matters and the subsequent commencement of development. In respect of condition 2, the inclusion of provision for the details of the external appearance and finish of the buildings to include a palette of materials incorporating a recessive element comprising stone faced buildings in general accord with that demonstrated indicatively in the Landscape and Visual Impact Assessment Appendix V Addendum Part 2 would be necessary in the interests of the character and appearance of the surrounding area, including the setting of the AONB.
77. In the interests of environmental sustainability, a condition would be necessary to ensure that the reserved matters applications include details and provision for sustainable construction (4). In the interests of sustainable waste management, a condition would also be required to secure the submission and implementation of a Waste Audit and Waste Management Plan (39).
78. To enable the detailed control of the development, particularly in the interests of ensuring that it is in accordance with the Urban Design Framework (Rev A), conditions would be necessary to secure a phasing plan (5); and provision for that plan to include locations of proposed play areas and green infrastructure and what they shall comprise (6), and the minimum standards of provision for the play areas (7), also in the interests of providing adequate play, recreation, and open space. Also relating to providing adequate recreation provision, a further condition would be necessary to secure the provision of the proposed countryside access route within the site (34).
79. In the ecological and biodiversity interests of the site and surrounding area, conditions would be necessary to secure the submission and implementation of: a Landscape and Ecological Management Plan (8), also in the interests of the character and appearance of the site and surrounding area, including the setting of the AONB; mitigation measures relating to impacts of the proposed development on GHBs and Cirl Buntings (13 & 14); a GHB and Cirl Bunting Monitoring Strategy (15); a lighting scheme (16), relating to impacts on GHBs, the character and appearance of the surrounding area, including the setting of the AONB, highway and pedestrian safety, crime prevention and amenity; and a Construction and Environmental Management Plan (17). To protect nesting birds, a condition would also be necessary to control when any tree works or felling, cutting or removal of hedgerows or other vegetation clearance works are carried out on the site (12). Furthermore, a condition to ensure that the

- best and most versatile soil on the site is appropriately reused would be necessary in the interests of soil conservation/reuse (38).
80. In the interests of the character and appearance of the site and surrounding area, including the setting of the AONB, and of ecology and biodiversity, conditions would be necessary to secure details and implementation of hard and soft landscaping, including in relation to retention of existing trees and hedges and tree protection (9, 10 & 11).
  81. To ensure that the construction phase of the development is carried out in a safe and acceptable manner that minimises effects upon the amenities of neighbouring uses and living conditions of neighbouring residents, and in the interests of the safety and convenience of highway users, a condition to secure the submission and implementation of a Construction Method Statement (18) would be necessary.
  82. For archaeological heritage reasons, conditions would be necessary to secure the submission and implementation of an archaeological Written Scheme of Investigation (WSI) and any necessary further WSI and mitigation (19); and an archaeological evaluation and monitoring details concerning the proposed Windy Corner junction works (20).
  83. In the interests of highway and pedestrian safety, and encouraging sustainable modes of transport, conditions would be necessary to secure the following: implementation of the proposed site access junction works and bus stop infrastructure, Brixham Road widening and Toucan crossing (21); details and implementation of the bus stop infrastructure (22); details and implementation of the adoptable highway network within the development (23 & 24); implementation of the proposed shared footway/cycleway to the north of the site (25); a safe pedestrian route connecting the proposed residential areas to the school (26); implementation of the proposed off-site highway junction works (27); and provision for car parking (31).
  84. Also in the interests of encouraging sustainable modes of transport, conditions to secure provision for electric vehicle charging (28 & 29); Travel Plans (30); and cycle parking (32) - that condition would also secure necessary provision for bin storage/waste recycling facilities in the interests of making adequate provision for waste.
  85. To ensure the provision for the satisfactory layout of the proposed school, a condition would be necessary to secure the submission for written approval of a plan showing the area of land to be offered for such purposes, prior to the commencement of development other than the principal site access (33).
  86. In order to manage water and flood risk a condition would be necessary to secure the submission and implementation of a surface water drainage scheme (35). To ensure that the public foul sewerage network has capacity to accommodate the development, a condition would also be necessary to secure a survey and evaluation of the existing network to identify any needed improvements and their implementation (36).
  87. A condition would be necessary to ensure the retention of the proposed public house/restaurant in that use given its likely value as a local amenity asset (37).

88. The Council has suggested a condition that would highlight the need for reserved matters applications to demonstrate consistency with the standards set out in Secured by Design as far as is reasonably practicable, in the interests of crime prevention. However, that is a matter that the Council would reasonably be able to deal with at the detailed reserved matters stage regardless of whether or not it is highlighted in a condition at the outline stage. That condition is therefore unnecessary.
89. I have had regard to the Council's suggested condition to remove permitted development rights, notwithstanding the provisions under Schedule 2, Part 1, Classes B, C, F and AA and Part 2, Classes A and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), relating to enlargement or extension to roofs, hardstandings forward of the main elevations, gates, fences or walls and external lighting of greater than 0.5 lux. However, the restrictions on external lighting would be covered by condition 16. Furthermore, it would be unreasonable and unnecessary to impose a blanket restriction on those other elements of development referred to in the suggested condition in advance of detailed reserved matters, at which stage there would be an opportunity to control the detailed nature of proposed and any potential future development where necessary. The condition would therefore not be necessary at this outline stage.
90. A Planning Obligation has been submitted making provision for the following:
- Ongoing ownership and responsibility for management and maintenance relating to the Open Space (Neighbourhood Equipped Area for Play, two Local Equipped Areas for Play, allotments, incidental green space including community orchard), the Northern Access Route, Farmland identified on a plan within the obligation (save where the Farmland is transferred to an alternative body with the Council's written approval), Countryside Access Route and sustainable drainage system; and implementation of a management and maintenance scheme for all of those elements. This would be in accordance with policies SC2, SC4, SC5, ER2, W5, TA1, TA2, D1, SS8 of the Local Plan, and paragraph 7.7.16 of the Planning Contributions and Affordable Housing Supplementary Planning Document (the SPD). This relates to ensuring appropriate provision for recreation and healthy living, sustainable transport choices, ecological mitigation and drainage.
  - A bus service, including a Bus Service Operational Plan and contractual Agreement with a bus service operator for the provision of the service in accordance with the Plan; and if the latter cannot be entered into then provision for the payment of an appropriate Supplementary Sustainable Transport Contribution to the Council to be spent on a bus service or alternative sustainable transport measures to service the development. This would be in accordance with policies SS6, TA1 and TA2 of the Local Plan and policy T1 of the BPNP and relates to promoting the use of sustainable modes of travel.
  - Appropriate ecological mitigation works, for the purposes of providing and protecting suitable habitat and flyways for Cirl Buntings and GHBs in particular, due to the proposed development resulting in the loss of existing agricultural land and hedgerows and some of the White Rock

Phase 1 land intended for landscape and ecological mitigation. The mitigation would relate to both the Farmland and planting within the site, including appropriate restrictions on when construction can commence following the completion of those mitigation works to enable suitable establishment; provision for a Bat House on the Farmland; and management of the Farmland in accordance with a Farmland Management Scheme; in accordance with policies SS8, SS9, SDB1 and NC1 of the Local Plan and policy E8 of the BPNP.

- 30% affordable housing, at least 5% of which would be adaptable for accessibility purposes, in accordance with policies H2 and H6(1) of the Local Plan, policies BH1 and BH2 of the BPNP and the SPD.
- Provision for the transfer to the Council or nominee of the Council of the land relating to the proposed primary school/nursery, if required by the Council, to enable that development, also including sports pitches, to be implemented. With the exception of provision of the sports pitches, payment of an appropriate financial contribution to local primary school provision would be secured instead, in the event of the use of the land concerned not having commenced within 5 years of transfer or the Council no longer requiring the transfer or failing to serve notice on this matter before an appropriate stage in the development of the proposed dwellings. There would be provision for the delivery and ongoing management of the sports pitches in any of these scenarios. This relates to the capacity of local schools, taking account of the likely number of additional children generated as a result of the proposed development, in accordance with policies SC3, SC5 of the Local Plan and section 4.5 of the SPD; and making appropriate provision for recreation and healthy living in respect of the sports pitches in accordance with policies SC1 and SC2 of the Local Plan.
- Appropriate financial contributions towards provision of additional consulting and clinic rooms at the local medical centre to enable residents of the proposed development to be served; and a new health and wellbeing centre to mitigate for the additional demands upon local health service provision. I have had regard to evidence provided by the Torbay and South Devon NHS Foundation Trust which sets out that it is operating at full capacity in the provision of acute and community healthcare and that it cannot plan for unanticipated additional growth in the short to medium term. It states that the contract is agreed annually based on the previous year's activity plus any pre-agreed additional activity for clinical service development and predicted population growth, which does not include ad-hoc housing developments and does not take into consideration the Council's housing need or housing projections. It goes on to state that the following year's contract does not pay for the previous year's increased activity and that it is not possible for the Trust to predict when planning applications are made and delivered and therefore cannot plan for additional occupants of such a development. Its strategy takes account the trend for the increased delivery of healthcare in the community, but the commissioning operates based on previous year's performance and does not take into account potential increase in population caused by a prospective development. It does not take into account housing land supply, housing need or housing projections. An appropriate financial contribution would therefore be

necessary to maintain service delivery during the first year of occupation of each dwelling. As such, without the contribution concerned, the proposed development would be likely to have a detrimental impact on the safe delivery and quality of the service. Provision for it would accord with policies SS7, SS11 and SC1 of the Local Plan.

- An appropriate financial contribution towards the delivery of Claylands Industrial Park, Paignton and/or the creation of employment jobs in the Borough. This relates to the need for additional employment land and would mitigate for the shortfall of such on the site, having regard to Local Plan policy SS5 for a proportion of major mixed use developments to provide an appropriate level of employment use, and would also be in accordance with policies SS11(8) and H1(3) of the Local Plan.
  - An appropriate financial contribution towards the provision of lifelong learning services comprising adult community learning centres or museums or libraries in the vicinity of the site in accordance with policies SC3 and SC5 of the Local Plan and section 4.8 of the SPD. This relates to the need in the Borough to ensure equality of access to high quality education for all and that no such provision is proposed on the site.
  - An appropriate financial contribution towards sport and recreation facilities additional to those provided on the site, to mitigate for the additional demand generated by prospective residents of the proposed development in accordance with policies SS11, SC1 and SC2 of the Local Plan. This relates to the promotion of healthy living for all in the Borough.
  - An appropriate financial contribution towards the provision of walking and cycling routes between the site and Paignton town centre in accordance with policies SS6, TA1, TA2, SC1 and SC2 of the Local Plan, T1 of the BPNP and paragraph 108 of the Framework. It relates to the need to promote sustainable transport choices and healthy living.
  - An appropriate financial contribution to facilitate waste and recycling services in accordance with policy W1 of the Local Plan and section 4.11 of the SPD. This relates to the necessary provision of waste collection/recycling bins for each dwelling in the interests of sustainable waste management.
91. I have also had regard to the obligation relating to the Berry Head Grassland contribution intended for habitat management and increased visitor engagement work. As referred to in the Appropriate Assessment, this would be intended to mitigate the effects of the recreational use of Berry Head by occupants of the development on the calcareous grassland. However, I have found that a financial contribution towards such measures would not be justified in respect of the proposed development. It fails to meet the tests set out in Reg 122(2) of the CIL Regulations, particularly in terms of not being necessary to make the development acceptable in planning terms and not being directly related to the development. I have therefore not taken that planning obligation into consideration and have afforded it no weight in determining the appeal.
92. The Council has submitted a statement of compliance of the planning obligations with Regulation 122 of the Community Infrastructure Regulations

2010 (as amended) (CIL Regulations). Based on that evidence, and relevant development plan policies and the SPD, I am satisfied that the provisions, other than in relation to the Berry Head Grassland contribution, would meet the tests set out in paragraph 56 of the Framework and Regulation 122(2) of the CIL Regulations. Furthermore, in respect of the proposed provision for affordable housing, this would represent a benefit of the development that would weigh in its favour.

### *Planning balance*

93. I have found that the proposed development would conflict with development plan policies which resist the principle of development of the nature proposed in this location, which would also include the partial closure of the existing settlement gap to the north and north-west of Galmpton. I have also found that there would be some limited harm to the landscape character and appearance of the surrounding area, with particular regard to the South Devon Area of Outstanding Natural Beauty (AONB) and the settlement gap. Specifically in relation to the AONB, my findings have been made in the context of giving great weight to the need to conserve and enhance landscape and scenic beauty in the AONB.
94. The Council is not able to demonstrate a 5 year supply of deliverable housing sites (5 year HLS). As such, and notwithstanding the BPNP housing requirements being exceeded, in relation to paragraph 11(d) of the Framework those policies which are most important for determining the application are out-of-date. Furthermore, having regard to paragraph 11(d)(i) of the Framework, the limited harm that I have found would be caused to the integrity of the AONB, relating to its setting, would not be significant enough to provide a clear reason for refusing the development proposed. The tilted balance in paragraph 11(d)(ii) of the Framework is therefore engaged. Furthermore, as the Council is also not able to demonstrate a 3 year HLS, paragraph 14 of the Framework concerning the tilted balance is not engaged.
95. The proposed development would have the benefit of contributing up to 373 dwellings towards the supply of housing in the Borough. Of those dwellings, the proposed 30% contribution to the local supply of affordable housing would be an added benefit, particularly due to the numbers involved and the clear under-provision and need for such housing in the Borough. Such benefits, albeit that only a proportion of the dwellings would be likely to be built within the 5 year period, attracts significant weight for the market housing, increasing to very significant weight in relation to the affordable housing element. This is particularly in light of the Council not being able to demonstrate a 5 year HLS, nor even a 3 year supply, and despite BPNP housing requirements being exceeded.
96. The proposed provision of a primary school on the site would, fundamentally, be necessary to mitigate for the additional pressure for school places that would be likely to be generated by the proposed development. However, it would also address existing unmet demand for primary school places in the wider community, which would otherwise need to be provided elsewhere at potentially greater cost to the Council. Whilst the Council has identified a preferred site for such a school, that proposed on the site would have a resource benefit to the Council to which I afford moderate weight.

97. The proposed new public house/restaurant would add to the choice of such facilities for the wider community. However, given that there are already other such facilities locally, I afford only moderate weight to the proposed on-site provision in this respect.
98. There would be likely significant employment benefits resulting from the construction phase of the proposed development and then in relation to on-site provision for the new public house/restaurant, to which I afford significant weight. The large number of prospective occupiers of the proposed dwellings would be likely to provide substantial additional support to local businesses and facilities through their spending and patronage to which I again afford significant weight. In respect of additional income to the Council from Council Tax and the New Homes Bonus, I have received insufficient evidence to indicate the extent to which this would represent a benefit as opposed to mitigation and so afford this little weight.
99. The proposed development would include significant areas of public open space, including provision for a countryside access route, and community food growing land. Whilst this would, fundamentally, be making appropriate provision for prospective residents, the wider community would also have the benefit of using these spaces, thereby providing more choice and increased opportunities for outdoor recreation. I have therefore afforded moderate weight to such a benefit.
100. In respect of the intended delivery of biodiversity net gain, as this would largely represent mitigation for the effects of the proposed development, I have only afforded this moderate weight.
101. In applying paragraph 11(d)(ii) of the Framework, and taking account of my findings concerning the Appropriate Assessment under the Habitats Regulations and on other matters, the adverse impacts of granting planning permission relating to the main issues would not significantly and demonstrably outweigh the above benefits of the proposed development, when assessed against the policies in the Framework taken as a whole.

### **Conclusion**

102. For the above reasons, I conclude that the appeal should be allowed.

*Andrew Dawe*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Nina Pindham of Counsel

Instructed by Ailsa Delaney, Solicitor,  
Legal Services, Torbay Council

She called:

Roger English BSc (Hons)

Manager, South Devon AONB  
Partnership and Staff Unit

Stephen Knott BA Dip LD CMLI

Senior Associate Director of  
Landscape Architecture, Jacobs

David Pickhaver BA (Hons) MA, MRTPI

Senior Planner, Torbay Council

### FOR THE APPELLANT:

Peter Goatley QC

Instructed by the Appellant

He called:

Peter Leaver BA (Hons) Dip LD CMLI

Director, David Wilson Partnership

Simon Fitton BA (Hons) Dip Town Planning  
MRTPI

Head of Planning and a Partner, Alder  
King

### INTERESTED PERSONS:

Jackie Stockman

Chair of the Brixham Peninsula  
Neighbourhood Forum and Cabinet  
Member for Public Health and Adult  
Services on Torbay Council

Brian Payne

Local resident and Chairman of both  
the Churston Galmpton and  
Broadsands Community Partnership,  
and the Brixham Community  
Partnership

Councillor Karen Kennedy

Represents the Churston with  
Galmpton Ward on Torbay Council

Adam Billings

Vice-Chairman of the Brixham  
Peninsula Neighbourhood Forum

Councillor Judith Mills

On behalf of the Churston Calmpton  
Ward and the Headteacher of  
Churston Grammar School.

Roger Richards

Local resident and on behalf of the  
Community Partnership

Tony Box

Local resident and on behalf of the  
Community Partnership

Anthony Mangnall MP	Member of Parliament for Totnes
Jennifer Walter	Local resident
Dr Rodney Horder	Representing Torquay Neighbourhood Forum
Susan Aykin	Local resident
Catherine Fritz	Chair of the Paignton Neighbourhood Forum
Pieter Dijkshoorn MSc.	Local resident and member of Galmpton Residents Association Committee
Dr Helen Boyles	Local resident and a contributor to the Brixham Peninsula and Paignton Neighbourhood Plans, and writer of the Galmpton Village Design Statement
Siv White	Local resident
Anne-Marie Curror	Local resident and member of the Paignton Neighbourhood Forum
Leenamari Aantaa-Collier	Representing Torbay and South Devon NHS foundation Trust and the NHS Devon Clinical Commissioning Group
Mike Parkes	

**INQUIRY DOCUMENTS:**

1. Opening statement by Peter Goatley QC on behalf of the Appellant.
2. Appearances and opening submissions by Nina Pindham on behalf of the Council.
3. Copy of notes of verbal presentations by interested parties, made on 12/01/21 unless indicated otherwise, as follows:
  - 3.1. Jackie Stockman
  - 3.2. Brian Payne
  - 3.3. Councillor Karen Kennedy
  - 3.4. Adam Billings
  - 3.5. Councillor Judith Mills
  - 3.6. Roger Richards (who also read out intended presentation of Diane Swindells previously Diane Stubley – a local resident who was unable to attend in person)

- 3.7. Tony Box
- 3.8. Anthony Mangnall MP
- 3.9. Jennifer Walter
- 3.10. Dr Rodney Horder
- 3.11. Catherine Fritz
- 3.12. Pieter Dijkshoorn MSc.
- 3.13. Dr Helen Boyles
- 3.14. Anne-Marie Curror on 15/01/2021.
4. Copy of Torbay Business Park documents: Amended Application Explanatory Statement (April 1996) and Illustrative Plan (October 1995) - Proposed Business Park at White Rock, Paignton.
5. Copy of decision for Appeal Ref: APP/G1630/W/20/3256319, Land off Ashmead Drive, Gotherington; together with Aerial View photograph and visual appraisal drawing showing red line site boundary.
6. Annex 7 of the South Devon Area of Outstanding Natural Beauty Management Plan 2019-2024: Strategic context and background to AONBs.
7. Note of Roger Key's Response to Third Party Oral Submissions on Highway and Transport Matters Presented on Day 1 (12 January 2021) of Inglewood Inquiry – dated 18 January 2021.
8. Suggested conditions by the Council in the event that the appeal is allowed (amended to include options for reference to palette of materials).
9. Section 106 Agreement.
10. Judgement: Howell v Secretary of State for Communities and Local Government and Others [2015] EWCA Civ 1189, (Transcript; WordWave International Limited Trading as DTI).
11. Suggested unaccompanied Site Visit itinerary.
12. Closing submissions by Nina Pindham on behalf of Torbay Council.
13. Closing statement by Peter Goatley QC on behalf of the Appellant.

**ANNEX - CONDITIONS**

1. The development hereby permitted shall be carried out in accordance with the following approved drawings, and in accordance with the phasing plan required pursuant to condition 5 below:

Application Red Line Boundary	15230_P_001_ Rev D	8 November 2017
Inglewood, Paignton – Urban Design Regulatory Plan		8 March 2018
<b>Detailed Highways Plans</b>		
On-line Road Widening on A3022 Brixham Road to 7.3m with 70m Forward Visibility	0734-018 Rev A	3 November 2017
Investigation of On-Line Widening of A3022 Brixham Road to 7.3m Long Section Along 70m Forward Visibility Splay	0734-020 Rev A	3 November 2017
Potential Northern Crossing Toucan Crossing	0734-023 Rev B	3 November 2017
Potential Southern Crossing Option 3 – Uncontrolled Crossing	0734-029 Rev A	3 November 2017
Proposed Long Road Junction Improvements	0734-040 Rev A	24 January 2018
Summary of Onsite and Offsite Highway Works	0734-045 Rev B	3 November 2017
Shared Footway/ Cycleway to the North	0734-055	3 November 2017
Proposed Site Access Junction and Proposed Bus Stop Infrastructure	0734-057	3 November 2017
Windy Corner Highway Improvements Tying in to Torbay Council 2019 Improved Layout – With Signalised and Uncontrolled Pedestrian Crossing Facilities (Option 3A)	0734-064 Rev A	15 December 2020

2. Details of the reserved matters set out below (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority in accordance with the time limits in condition 3:

- (i) layout;
- (ii) scale;
- (iii) appearance; and
- (iv) landscaping

Approval of all reserved matters in any phase shall be obtained from the Local Planning Authority in writing before that phase of development is commenced. The reserved matters shall be carried out as approved. The details of the reserved matters shall be in general accord with the Urban Design Framework (Stride Treglown, March 2018 - Rev A), and which, in respect of the external appearance and finish of the buildings, shall include a palette of materials incorporating a recessive element in general accord with that demonstrated indicatively in the Landscape and Visual Impact Assessment Appendix V Addendum Part 2 (original scheme with the inclusion of 25% stone faced buildings) (NPA, January 2020).

The development shall be carried out in accordance with these details.

3. Applications for approval of the reserved matters shall be made to the Local Planning Authority for the whole development, or if the development is to be phased, for the first phase of the development, not later than three years from the date of this permission.

For phased development, applications for approval of the reserved matters for subsequent phases of the development shall be made to the Local Planning Authority no later than two years from the date of approval of the last reserved matters application to be approved for the preceding phase of the development.

The development hereby permitted shall be begun either not later than five years from the date of this permission, or not later than two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

4. All reserved matters applications shall include details of sustainable construction in accordance with Local Plan policies SS14 and ES1. This shall indicate how development orientation, design and layout, sustainable construction, adaptive technologies, eco-innovation and other measures to minimise energy use and combat climate change have been incorporated into the development.
5. A phasing plan shall be submitted to and approved in writing by the Local Planning Authority no later than the first application for reserved matters approval. The plan shall set out how the development will be implemented in relation to an agreed timetable of works, and shall include the provision of on-site and off-site planting and ecological mitigation prior to commencement of development on site consistent with the principles established in the Urban Design Regulatory Plan (Stride Treglown, March 2018), and Urban Design Framework (Stride Treglown, March 2018 - Rev A), Environmental Statement (Stride Treglown, 2017), Farm Management Plan (Stride Treglown, October 2017) (save for the appended proposed farming practices plan which is superseded by the version in the Framework Landscape and Ecological Management Plan), Ecological Addendum (Nicholas Pearson Associates, February 2018), and Proposed Farming Practices Plan Rev A (February 2018). The development shall be carried out in accordance with the approved phasing plan.

6. The phasing plan shall also include locations of play areas and green infrastructure consistent with the principles established in the Urban Design Regulatory Plan (Stride Treglown, March 2018) and Urban Design Framework (Stride Treglown, March 2018 - Rev A), to include a minimum of:
- (i) 1 Neighbourhood Equipped Area of Play;
  - (ii) 2 Locally Equipped Areas of Play;
  - (iii) Incidental open space (of circa 25,000 sq m) with the ability to accommodate trim trails and to include a community orchard; and
  - (iv) Allotments (of at least 5,700 sq m) with an informal amenity footpath around the perimeter, countryside access route, highway works and other ancillary infrastructure.

Applications for reserved matters approval shall be submitted in accordance with the approved phasing plan.

The phasing plan or reserved matters shall include a fully detailed specification of the play areas and public open space and allotments, and a timescale for their provision. This shall include at least one play area in the first phase of development. No more than 50 dwellings shall be occupied in any phase which includes a play area until such play area has been completed and made available for use by the general public, unless otherwise agreed by the Local Planning Authority in the phasing plan.

7. Play areas shall be provided to at least the following standard:

Neighbourhood Equipped Area for Play (NEAP) shall be designed so as to be aimed at 8-14 year olds and shall include a grassed kickabout area, a hard surfaced area for ball games or wheeled activities, 8 types of play equipment appropriate to children in this age group and seating, including a youth shelter. It shall have an activity zone of at least 1000 sq m.

Local Equipped Areas for Play (LEAP) shall be designed so as to be aimed at children of early school age (mainly 4-8 year olds). The activity zone shall have a minimum area of 400 sq m, with grass playing space and at least five types of play equipment with appropriate safety surfacing. There shall also be seating for accompanying adults.

Play areas shall incorporate buffer zones of at least 30 metres for the NEAP and 20 metres for the LEAPs from the edge of the "activity zone" to the boundary of the nearest dwelling.

Play areas shall be provided to at least European Standard EN1776 (play area) and EN1777 (hard surfaces) and maintained for at least 25 years.

8. All reserved matters applications shall include a Landscape and Ecological Management Plan (LEMP) for the phase to which they relate. The LEMP shall be consistent with the principles established in the Framework Landscape and Ecological Management Plan (Stride Treglown, March 2018). The LEMP shall include an implementation strategy and timetable for implementation. The development shall be implemented in accordance with the approved LEMP and with the approved timetable for the duration of the agreed management plan period.

9. Prior to the commencement of any phase of the development, except for the principal access onto Brixham Road as shown on approved drawing 0734-057, a detailed Landscaping Scheme for strategic offsite and boundary planting, onsite planting, and hard landscaping for that phase shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- (i) Details of hard and soft landscaping, including all boundary treatments
  - (ii) Tree and plant species and methods of planting; and
  - (iii) Retention and management of existing strategic hedgerows and creation of new hedgerows within the site.

The first such Landscaping Scheme submitted for approval shall also include details for the retention of the area of Nord's Plantation that is within the Appellant's control (as shown by blue line on Dwg 15230\_P\_001\_Rev D).

The development shall be implemented in accordance with the approved Landscaping Scheme for each phase.

10. Planting relating to condition 9 for each phase shall be carried out no later than the first planting season following the occupation of the dwellings or completion of the residential development of that phase, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the residential development as a whole die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
11. No development (including ground works) or vegetation clearance works shall take place for any phase of the development until a Tree Protection Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. This information shall be prepared in accordance with BS 5837:2012 (or any superseding British Standard) and include details of tree protection fencing, which must be erected prior to the commencement of the development and retained until the completion of the development in the phase of the development that they relate to. No vehicles, plant or materials shall be driven or placed within the areas enclosed by the fences. The approved Tree Protection Plans shall be adhered to throughout the construction of the development.
12. No tree works or felling, cutting or removal of hedgerows or other vegetation clearance works shall be carried out on the site during the bird breeding season from March to September, inclusive. If this period cannot be avoided, these works shall not be undertaken until a statement of the reasons for non-avoidance has been submitted to and approved in writing by the Local Planning Authority. The works shall not be undertaken except in the presence of a suitably qualified ecologist. If breeding birds are found or suspected to be present on the part of the site the subject of such works, the works will not be permitted until the ecologist is satisfied that such breeding is complete.
13. No development (including ground works) or vegetation clearance works, except for the principal access onto Brixham Road as shown on approved drawing 0734-057 shall take place for any phase of the development until a

detailed scheme of onsite and off-site planting and land management, to mitigate impacts of the development on Greater Horseshoe Bats and Cirl Buntings, has been submitted to and approved in writing by the Local Planning Authority. These details shall be in general accord with the Framework Landscape and Ecological Management Plan (Stride Treglown, March 2018) (the Framework LEMP) and Figures, Ecological Addendum (Nicholas Pearson Associates, February 2018) and Farm Management Plan (Stride Treglown, October 2017) (save for the appended proposed farming practices plan which is superseded by the version in the Framework LEMP). These works shall be implemented in accordance with the approved scheme.

14. No development (including ground works) or vegetation clearance works shall take place for any phase of the development, except for the principal access onto Brixham Road as shown on approved drawing 0734-057, until details setting out:

- (i) the broad details of the numbers and types of habitat boxes (including general bird boxes) integral to new development, and
- (ii) details of wildlife information boards to highlight the biodiversity interests of the site and surrounding area,

have been submitted to and approved in writing by the Local Planning Authority. The features relevant to any phase shall be put in place in accordance with the approved details.

15. Prior to the first occupation or use of the development hereby permitted, a Greater Horseshoe Bat (GHB) and Cirl Bunting Monitoring Strategy shall be submitted to and approved in writing by the Local Planning Authority in order to provide early warning of any change in site conditions (such as those brought about by loss of suitable habitat features or adverse light spill) that are likely to impair or disturb GHBs using the bat mitigation measures on the site (including the dark bat corridors and foraging area in the public open space); and to put in place remedial measures to avoid harm to these species. The Monitoring Strategy shall include the following:

- (i) Aims and objectives of monitoring to match the stated purpose.
- (ii) Identification of adequate baseline conditions prior to the start of development.
- (iii) Success criteria, thresholds, triggers and targets against which the continued effectiveness of the bat mitigation measures can be judged.
- (iv) Methods for data gathering and analysis.
- (v) Location of monitoring/sampling points.
- (vi) Timing and duration of monitoring.
- (vii) Responsible persons and lines of communication.
- (viii) Review, reporting, intervals of reporting and where appropriate, publication of results and outcomes-

The Monitoring Strategy shall be implemented as approved. A report describing the results of monitoring shall be submitted to the Local Planning Authority at intervals as identified in the Monitoring Strategy. The report shall set out where the results from monitoring show that site conditions are changing and what remedial action is required to ensure the mitigation

measures remain effective. The remedial action shall be agreed with the Local Planning Authority and implemented in full.

16. Prior to development in any phase continuing above slab level a Lighting Scheme to maintain "dark areas" on the site shall have been submitted to and approved in writing by the Local Planning Authority demonstrating compliance with the principles established in the Ingle Wood External Lighting Report Ref. ING-HYD-00-XX-RP-ME-0001 Revision P06 dated 6 March 2018, and Dark Areas Plan as contained within the Ecological Addendum Report, Nicholas Pearson Associates, February 2018. The Scheme shall include the location and specification of all external lighting. The Lighting Scheme shall be implemented as approved prior to the occupation of the dwellings or use of other development and thereafter maintained as approved. Should any of the external lighting become damaged or defective and need replacement it shall be replaced with external lighting of no brighter specification. No additional outdoor lighting shall be installed on the site without the prior written approval of the Local Planning Authority.

The Lighting Scheme shall include:

- (i) An evidence based assessment of light levels of the proposed development, including buildings, vehicle headlamps and street lighting, comprising a written report and accompanying drawings of the site with the levels of predicted illuminance and light spill in and adjacent to the "dark areas" shown by appropriate isolines.
  - (ii) Evidence to demonstrate that a light spill no higher than 0.5 lux will be achieved within the "dark areas".
  - (iii) Where ii) is achieved either fully or in part through landscaping, details of the landscaping and its management to ensure it will maintain the "dark areas" for the lifetime of the development. These details shall be incorporated into the Detailed Landscaping Schemes and Landscape and Ecological Management Plans where applicable.
17. No development (including ground works) or vegetation clearance works shall take place for any phase of the development until a Construction and Environmental Management Plan (CEMP) for that phase has been submitted to and approved in writing by the Local Planning Authority. Each CEMP shall be prepared in accordance with specifications in clause 10.2 of BS 42020:2013 (or any superseding British Standard) and shall include the following:
    - (i) Risk assessment of potentially damaging construction activities.
    - (ii) Identification of "biodiversity protection zones".
    - (iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce environmental impacts during construction.
    - (iv) The location and timing of sensitive works to avoid harm to biodiversity features. This includes the use of protective fences, exclusion barriers and warning signs.
    - (v) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP, and the actions that will be undertaken.
    - (vi) Responsible persons and lines of communication.

- (vii) The role and responsibilities on site of an ecological clerk of works or similarly competent person.
- (viii) Details of how lighting will be controlled during the construction phase of development.

Each approved CEMP shall be adhered to and implemented throughout the construction period of the phase of the development that it relates to, strictly in accordance with the approved details.

18. No development (including ground works) or vegetation clearance works shall take place of any phase of the development until a Construction Method Statement for that phase has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:
- (i) The parking of vehicles of site operatives and visitors.
  - (ii) Loading and unloading of plant and materials.
  - (iii) Storage of plant and materials used in constructing the development.
  - (iv) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
  - (v) Wheel washing facilities.
  - (vi) Measures to control the emission of dust and dirt during construction.
  - (vii) A scheme for recycling/disposing of waste resulting from construction works, with priority given to reuse of building materials on site wherever practicable.
  - (viii) Measures to minimise noise nuisance to neighbours from plant and machinery. Construction working hours, for the principal access onto Brixham Road and first phase of residential development shall be from 07:30 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority. Construction hours for later phases shall be agreed as part of reserved matters.
  - (ix) The approved Statements shall be adhered to throughout the construction period of the phase of the development that they relate to.
19. No development on any phase shall take place until a Written Scheme of Investigation (WSI), comprising an archaeological field evaluation with trial trenching for land within that phase, has been submitted to and approved in writing by the Local Planning Authority. Within 3 months of the completion of the archaeological field evaluation a Further WSI (FWSI) for a programme of archaeological mitigation in respect of any areas of significant buried archaeological remains identified by the initial WSI shall be submitted to the Local Planning Authority for its written approval, and the FWSI shall include the programme (including timetable) for post-investigation assessment and subsequent analysis, publication, dissemination and deposition of the resulting material. Any agreed works shall be undertaken by a competent person(s) or organisation. No development shall take place on land within the area relating to a FWSI other than in accordance with that FWSI.
20. Before the junction works hereby approved to Windy Corner are commenced an archaeological evaluation, and details of monitoring construction works for artefacts, shall be submitted to and approved in writing by the Local Planning Authority. This shall include a programme for post-investigation assessment

and subsequent analysis, publication, dissemination and deposition of any resulting finds. The junction works concerned shall be carried out in accordance with the approved details.

21. No part of the development shall be occupied or brought into use prior to the proposed site access junction works and bus stop infrastructure, Brixham Road widening, and Toucan crossing as shown on drawings 0734-018 Rev A, 0734-020 Rev A, 0734-023 Rev B and 0734-057 listed in Condition 1 above, being implemented in accordance with the necessary s278/s38 highways agreement as entered into with the Local Highway Authority to secure necessary works to the public highway.
22. Details of the bus stop infrastructure, including detailed layout and access for buses and pedestrians as well as waiting areas for pedestrians, shall be submitted within the first reserved matters application. That infrastructure shall be provided in accordance with the approved plans and details before the occupation of the 50<sup>th</sup> dwelling.
23. A plan showing the proposed adoptable highway network within the development shall be submitted with all reserved matters applications for layout. If more than one reserved matters application is submitted for the site the plan is only required to cover the extent of the area included within the application at the time but will need to demonstrate where connections will be made to other areas within and beyond the site. Development shall take place in accordance with the approved details.
24. No buildings hereby approved shall be occupied until the roads serving them have been constructed to adoptable standards as defined in the Council's Highways Design Guide for New Developments, or are the subject of an agreement with the Council made pursuant to S38 of the Highways Act 1980.
25. Prior to the proposed school or public house/restaurant being brought into use, or the first dwelling being occupied, whichever is the sooner, the shared footway/cycleway to the north shown on drawing 0734-055 shall be constructed, made available for use, and connected to a safe route, which shall have been previously agreed in writing with the Local Planning Authority, within the development site. The shared footway/cycleway shall thereafter be maintained as such at all times.
26. Prior to the proposed school being brought into use, a safe pedestrian route connecting the school to residential areas of the development hereby approved shall be provided in accordance with details which shall firstly have been submitted to and approved in writing by the Local Planning Authority. That pedestrian route shall thereafter be maintained as such for the lifetime of the development.
27. Prior to first occupation of any dwelling, the highway works at the junction of Brixham Road and Dartmouth Road ('Windy Corner') and at the junction of Brixham Road and Long Road, as shown respectively on drawings 0734-064 Revision A and 0734-040 Revision A, shall be the subject of a s278 agreement with the Council as Highway Authority, implemented in full and made available for use.

28. No dwelling shall be occupied until electric vehicle charging to serve that dwelling has been installed and made fully available in accordance with details which shall firstly have been submitted to the Local Planning Authority with, and approved under, the reserved matters application for layout and/or appearance for the associated phase of development.
29. Neither the school nor the public house/restaurant shall be brought into use until electric vehicle charging to serve those respective developments has been installed and made fully available in accordance with details which shall firstly have been submitted to the Local Planning Authority with, and approved under, any reserved matters application for layout and/or appearance which includes the school and/or public house/restaurant. The electric charging points shall thereafter be maintained and retained as such for the lifetime of the development.
30. Prior to the marketing of any dwelling within the site or recruitment of staff for the school or public house/restaurant, a full but proportionate Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. Any such Travel Plan shall be implemented from occupation of 80% of the first phase of development and thereafter shall be updated annually for a period of 5 years post completion of the development.
31. No dwelling shall be occupied until its allocated car parking space(s) and access thereto, as shown in the associated approved details of reserved matters, has been provided and made available for use. All other car parking spaces and access thereto, including any visitors parking, as shown in the associated approved details of reserved matters, shall be provided and made available for use prior to the occupation of the development that they serve. The parking space(s) and access thereto shall be kept permanently available for parking and access purposes thereafter.
32. The details of reserved matters for each phase shall include details of cycle parking and bin storage/waste recycling facilities for the dwellings, public house/restaurant and school hereby permitted. The cycle parking shall be in accordance with Policy TA3 and Appendix F of the Torbay Local Plan 2012-30 and shall be secure, covered and located where it is well overlooked, wherever practicable, to reduce opportunities for crime. The relevant cycle parking and bin storage/waste recycling facilities shall be provided as approved prior to the first occupation or first use of the dwelling or development to which it relates and thereafter retained as such.
33. No development other than the principal access onto Brixham Road as shown on approved drawing 0734-057 shall commence until the area of land that is to be offered as the School Land and playing fields has been identified on a plan which has been approved in writing by the Local Planning Authority.
34. No more than 50 dwellings shall be occupied until a scheme for the provision of the Countryside Access route identified on the Urban Design Regulatory Plan (Stride Treglown, March 2018), including details of specification and timing of delivery, has been submitted to and approved in writing by the Local Planning Authority. The Countryside Access route shall thereafter be delivered in accordance with the approved scheme and retained and maintained for public access in perpetuity.

35. No phase of the development (including ground works) shall take place until a detailed surface water drainage scheme for that phase has been submitted to and approved in writing by the Local Planning Authority. The detailed drainage design shall be in general accord with the principles established in the Addendum to the FRA/DS Report (WB03590/FR01 V5), Technical Note WB03590 TN01(v4) Appendix F Updated Drainage Strategy Drawing.

The drainage scheme shall:

- (i) give priority to the use of sustainable urban drainage systems, with soakaways designed in accordance with Building Research Establishment Digest 365 (or subsequent version thereof) and include details of how they have been designed to cater for the 1 in 100 year critical rainfall event plus an allowance for climate change.
- (ii) provide evidence that trial holes and infiltration tests have been carried out in accordance with Building Research Establishment Digest 365 in the same location as any soakaways or sustainable drainage features must be provided.
- (iii) demonstrate that there will be no increased risk of flooding to surrounding buildings, roads and land.
- (iv) identify those parts of the surface water drainage infrastructure which will be adopted by the relevant statutory undertaker.

No phase of the development shall be occupied or brought into use until the approved surface water drainage scheme for that phase has been completed as approved and it shall be continually maintained as such thereafter.

36. Prior to the construction of any building foundations:

- (i) a detailed survey and evaluation of the public foul sewerage network shall be carried out (at the Owner's expense) to identify improvements necessary to accommodate the discharge of foul sewage from the development; and
- (ii) the Owner shall submit an application to the relevant Sewerage Undertaker for a public foul sewer requisition under s98 of the Water Industry Act 1991 which shall include the provision and completion of public sewerage improvement works identified as necessary. Connection to the foul sewer in agreement with the Sewerage Undertaker as necessary to accommodate the discharge of foul sewage from the development shall be made before the occupation of any part of the development.

37. Notwithstanding the provisions of the Town and County Planning Use Classes Order 1987 (as amended) and the Town and Country Planning General Permitted Development Order (England) 2015, as amended, without the prior written consent of the Local Planning Authority the pub/restaurant use hereby approved shall only be used as a pub/restaurant and for no other use including any other use included within Class A3/A4 of the Use Classes Order, 1987, as amended.

38. No development (including ground works) or vegetation clearance works shall take place for any phase of the development until an assessment of soil quality by a suitably qualified expert has been submitted to and approved in writing by the Local Planning Authority. This assessment shall identify the best and most versatile soil on site and set out a programme for reuse of soils for the proposed green infrastructure uses (such as the allotments or community orchard), or agricultural use in the nearby vicinity of the development, where practicable to do so. The development shall be carried out in accordance with this programme.
39. No development (including ground works) or vegetation clearance works shall take place for any phase of the development until a Waste Audit and 5 year Waste Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. The Waste Audits and 5 year Waste Management Plans shall include measures to:
- (i) Prevent and minimise, re-use and recycle waste (including composting where appropriate).
  - (ii) Minimise the use of raw materials.
  - (iii) Minimise the pollution potential of unavoidable waste.
  - (iv) Seek alternative modes of transport (to the use of roads) to move waste (wherever possible).
  - (v) Make provision for the storage and collection of waste.
  - (vi) Dispose of unavoidable waste in an environmentally acceptable manner.

The Waste Audits and 5 year Waste Management Plans shall be implemented as approved.