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By email to:

[Neighbourhood plan program officer](#)

Torbay Council

for the attention of the Examiner, Ms Deborah McCann

Monday, 18 June 2018

Dear Ms McCann,

Re: Brixham Peninsular Neighbourhood Plan ('BPNP')

Further to your clarification questions raised by letter dated the 1 June 2018, replies by the Forum working group are enclosed.

We hope this assists.

Yours sincerely

Cllr Jackie Stockman

Chairman,

Brixham Peninsula Neighbourhood Plan Forum

I seek clarification on the following policies/supporting information:

1. Allocated Sites - H3-10: Waterside Quarry (10)

I have received numerous representations, including an objection from Torbay Council in connection with the above allocation. I would like clarification on the following points:

- *Size of site and its boundary.*
- *Whether or not the site is part of an Urban Landscape Protection Area.*
- *Is access to the site achievable and deliverable?*
- *Ecology. The BPNP is supported by a Habitats Regulations Assessment (HRA) which indicated that there would be no likely significant effect on the South Hams Special Area of Conservation (SAC) as a result of the housing allocation at the Waterside Quarry site. This was on the premise that the Waterside Quarry site was not used by greater horseshoe bats (*Rhinolophus ferrumequinum*). Torbay Council contest this view:*

“We would contest that the conclusion of no potential effect on GHB reached by Aecom for Waterside Quarry is not based on all of the available information, as the Green Ecology records do not appear to have been considered. We would recommend that this site allocation is assessed again, with a presumption that the site is used by GHB and recognising the presence of a GHB roost immediately adjacent, before determining whether or not a significant effect on GHB (and subsequently the South Hams SAC) is likely for Waterside Quarry”.

Please clarify the BPNP’s position on this conflicting information.

1. In view of the continuing concern that appears to exist in the comments given to you by the Council, the Forum welcomes this opportunity to clarify the position.

Size of site and its boundary

2. The size of the proposed site is 0.79 ha as stated in the BPNP Housing Site Assessment (page 55).
3. For further clarity, the Forum confirms that although the AECOM Housing Site Assessment states the site area to be 0.9 ha,¹ the 0.79 ha figure in the BPNP is

¹ AECOM Housing Site Assessment, p9, Table 3.3

correct. Accordingly, the Forum adjusted downward the AECOM figure on a pro-rata basis when making development capacity comparisons.²

4. The site boundary is as shown in the BPNP Housing Site Assessment (page 58).
5. For further clarity, the Forum confirms that a parcel of land to the north, adjacent to Waterside Road, is expressly omitted from the allocated site area. That parcel of land was approved in application P/2014/0045 for 3 dwellings and advice received from Torbay Council was those dwellings were already counted within the windfall figure and should not be double-counted.

Whether or not the site is part of an Urban Landscape Protection Area

6. The Forum confirms the site is part of an Urban Landscape Protection Area (ULPA c5.48). This does not preclude development proposals within such designated areas. For further clarity, the Forum wishes to explain how the ULPA designation operates and has informed the allocation of the site in the Neighbourhood Plan.
7. The Forum fully considered the Local Plan, where Policy C5 deals with ULPAs. The contents page of the Local Plan shows this policy is part of '*Section 6: Policies for managing change and development in Torbay*' rather than '*Section 4: Spatial Strategy and Policies for managing strategic direction*'. Within Section 6, Policy C5 is further sub-classified as one of a group of policies dealing with '*Aspiration 3: Protect and enhance a superb environment*'.
8. From this positioning within the plan, the Forum identified Policy C5 is not a strategic location policy. It is a development management policy which prescribes the types of development which would be appropriate and the criteria against which such appropriateness would be judged. Consideration of the specific wording of Policy C5 confirms this interpretation to be correct.
9. Policy C5 says '*development... will only be permitted where... it does not undermine the value of the ULPA as an open or landscaped feature within the urban area... and... it makes a positive contribution to the urban environment and enhances the landscape character of the ULPA*'. The Forum recognised that an element of judgement was required here and considered ways to ensure general conformity and consistency with decisions on other proposals already taken by the Council.

² BPNP Housing Site Assessment, p12, Table 1

10. The Forum also considered the conclusions of the AECOM SEA Environmental Report. It says '*The site is within an ULPA but, as with adjacent completed and committed development, a development of this site offers the potential for landscape enhancements*'.³ This indicated the principle of the allocation for housing was acceptable as capable of being in general conformity with the intent of the ULPA Policy C5.
11. The Forum additionally considered whether, given the site is part of an ULPA covering a larger area, if planning decisions on other parts of the ULPA could assist in confirming, or not, if this was the correct interpretation of the policy. The Forum was able to identify 3 planning applications within this ULPA. Immediately to the south adjacent to the site application P/2008/1350 was consented for 3 houses. Immediately to the north adjacent to the site application P/2014/0045 was consented for 3 houses and further along application P/2016/0824 was consented for a further house.
12. Within those examples, the Forum noted the Officer report for P/2014/0045 helpful in identifying the forms of development which do '*not undermine... open or landscaped feature[s]*' and '*enhance... the landscape character*'. That officer report identified '*suitably designed and scaled properties ... would result in the dwellings having an acceptable impact on ULPA with the potential for the landscaping mitigating to improve the landscape character of the area*' and there was '*opportunity to provide biodiversity and landscape enhancements through additional landscaping which would improve the appearance of the natural environment*'.⁴
13. The Forum also considered the community's expressed preferences on good design in the Broadsands Village Design Statement. The photograph at Figure 24 shows part of completed development P/2008/1350. In this photograph, particularly given the property is in fact 2-storey in the elevation shown, it is landscaping which is considered to be the dominant feature. This was therefore consistent with the reasoning and application of the policy in the Officer report above.
14. Having established that some forms of development were permissible, the key issue for the Forum turned to ensuring the focus of development was the delivery of landscape enhancements, and the creation of openness, as opposed to built form, to ensure compliance with the intent of the management policy. The Forum concluded a primary issue it needed to consider at the 'plan making' stage was density. The Forum considered this issue carefully. The Forum did not consider the 39 dph in the 2008 SHLAA appropriate.⁵ Specific advice was sought from the

³ AECOM, Strategic Environmental Assessment (August 2017), p33, Historic Environment and Landscape

⁴ BPNP Housing Site Assessment, p56

⁵ BPNP Housing Site Assessment, p55

lead consultant acting for the Princes Foundation, Jeremy Caulton, and the Former Head of Planning for South Hams District Council, Lee Bray.⁶

15. Based on their advice, having taken account of the wider evidence, the Forum concluded that, while it was appropriate to allocate the site, it was also appropriate to restrict the allocation to 10 units. This provided a modest density of 12.6 dph so that landscape enhancements and the creation of openness would be the principal characteristics of any later planning application and thereby be fully in general accordance with the Local Plan.
16. The Forum considers the AECOM Housing Site Assessment, where they say 30 dph but caution '*fewer would be more appropriate*',⁷ provides independent support for the approach taken and the conclusions reached.

Is access to the site achievable and deliverable?

17. The Forum considers access is achievable and deliverable for the following reasons.
18. It is of note the question had not come up before from the Council, who now ask '*how the site at the rear would be accessed particularly by vehicles*'.⁸ Accordingly, the Forum's following clarification addresses both the general issue of access and the specific issue now raised by Torbay Council.
19. In terms of access in general, the Forum considered the local geography. As shown on the plan in the BPNP Housing Site Assessment at page 58, the allocated site fronts both the main Dartmouth Road and Waterside Road.
20. The Forum then considered the conclusions of the AECOM SEA Environmental Report. It says '*The site is accessible from Waterside Road and Dartmouth Road. The site has excellent links with the rest of Torbay by road, public transport and walking and cycling*'.⁹

⁶ BPNP Housing Site Assessment, p9, paragraph 4.0.5

⁷ AECOM Housing Site Assessment, p258

⁸ Torbay Council, Regulation 16 officer comments, p17

⁹ AECOM, SEA (August 2017), p33, heading 'Transportation'

21. The Forum also considered the Torbay Council 2008 SHLAA. It says '*access could possibly be gained from the existing settlement edge, but the site also has access from the main road... the site is well located for local services and facilities*'.¹⁰
22. Having considered this information, and not received any comments to the contrary in any of the previous consultation stages, the BPNP Housing Site Assessment concluded '*The site is in an accessible location near to local amenities and a main bus route, and has access off both Dartmouth Road and Waterside Road*'.¹¹
23. In terms of the specific issue now raised by Torbay Council, the Forum interprets this to be a reference to the excavated part of the quarry to the south west of the allocated site. This area is owned by Mr and Mrs Billings and is '*at the rear*' of the land owned by Coyde Construction Ltd as viewed from Waterside Road.
24. Both AECOM and the SHLAA produced by the Council's consultants state access is available from Dartmouth Road. The language used in the SHLAA also suggests for the site as a whole they considered access would primarily come from the Dartmouth Road. This would indicate the '*site at the rear*' has access from Dartmouth Road and the Forum agrees. On this, the Forum draws parallels to the committed Broadsands House (H3-C10) housing site which obtained planning permission using an access onto the Dartmouth Road in a similar way (application P/2015/0192).
25. The Forum notes the Regulation 16 comments you have received from Mr and Mrs Billings in their Appendix 1 also contain a site plan which shows this land '*at the rear*' having, what they refer to as a '*right of way*' across the land owned by Coyde Construction. That representation does not appear to have been challenged.
26. Taking this all into account, the Forum considers that an access to the site is achievable and deliverable, with the exact means of access being left for further consideration at the project stage.

¹⁰ Torbay Council, SHLAA (September 2008), p331, heading 'Suitability Summary'

¹¹ BPNP Housing Site Assessment, p56, heading 'Conclusion'

Ecology

27. Before providing the detailed clarification requested, the Forum feels it relevant to help clarify why there appears to be a continuing concern on this aspect as we note your comment that you have received '*numerous representations*'.
28. We confirm the Forum also received '*numerous representations*' from a small but vociferous group of local residents during the plan preparation and consultation stages, regarding this particular site. This included hearing stated spokespersons for the group make representations in person, in an extremely strong manner. These representations were taken very seriously by the Forum.
29. Action had already been taken to ensure that there could be no concern about probity regarding land owners involved who quite properly declared their interest to the Forum formally and in public and took no part in the assessments by the Forum relating to their landholding. This is set out in more detail below.
30. As a result of the concerns raised, the Forum has also taken very particular care in its assessment of this site. This includes the breadth and depth of its instructions to external experts, the number of independent expert views sought, and the evaluation of their evidence.
31. Unknown to the Forum until recent comments to you as the Examiner, Torbay Council appears to have maintained separate dialogue with these local residents. The Forum considers this separate dialogue has contributed to both the number of representations received and the views expressed.
32. In that separate dialogue, Torbay Council appears to have provided information related to protected species which had already been challenged as factually inaccurate by the Forum.¹² This seems never to have been made known to the recipients of that information. There must, the Forum submits, have been some issue with the information as it was never provided to you, as the Examiner, by Torbay Council. It is, however, contained within representations to you from the local residents.
33. The Forum has raised a complaint with both the elected Executive Lead for Planning and the employed Executive Head for Planning regarding this. The complaint covered the general issue of Torbay Council's conduct, the

¹² For example Mr & Mrs Hill's representation includes information provided to Mr Cope by Torbay Council in email 14 June 2017. The accuracy of that information, specifically parts of the Mike Oxford report, had been challenged by the Forum in email 30 May 2017. In email reply 2 June 2017, Torbay Council acknowledged '*confusion*' and '*inaccuracies*' and was '*keen to resolve these and avoid further problems*'.

disproportionate issues raised and public resources expended. This matter is ongoing. The Forum has nothing to gain from ignoring the objections received and is concerned that little regard has been given to the very particular care which has been devoted to the assessment of this site.

34. The Forum is fully aware of the potential for the perception of a conflict-of-interest regarding Waterside Quarry. This is the reason the Forum and landowner have taken great pains to ensure probity, openness and transparency. This is also the reason the Forum elected to raise the issue in the Basic Conditions Statement to ensure openness and transparency.¹³
35. The Forum and the landowner removed the potential for conflict by separating the person from the topic. Although the land was first allocated in the BPNP whilst owned by Torbay Council some years before its sale, for the avoidance of any doubt, the Forum wishes to make it clear that from the point his family bought the land at public auction, the Vice Chairman, Mr Adam Billings, has expressly not participated regarding this site in any way. In all public meetings the Vice Chairman declared an interest; if the topic arose he did not speak; and if there was a public vote he abstained. In all smaller working group meetings if the topic arose he left the room. He did not instruct AECOM or other experts on the site. Indeed, AECOM gave specific advice to the Forum on the conflict.
36. To illustrate the extra precaution taken, the Forum contrasts its engagement with the developers of Wall Park Holiday Camp (H3-C1), a scheme of 173 homes. The developers were welcomed to, and along with their advisors attended, every Forum meeting prior to bringing that site forward. They participated by right as full Forum members. From time to time this meant they spoke on their site. In one Forum meeting they gave a specific presentation on their site, advocating its development. This was welcomed, and has never been suggested as inappropriate at any point.
37. In response to the specific clarification sought on ecology, the details are as follows:
38. The Forum's position is that that the Green Ecology records were considered.
39. In their report, Greena Ecological Consultancy make reference in the text to the Green Ecology records.¹⁴ The Green Ecology records are also identified by name in the list of References.¹⁵

¹³ Basic Conditions Statement, page 22, heading 'Housing Sites'.

¹⁴ Greena Ecological Consultancy, Addendum Ecological Survey Report (July 2017), p16

¹⁵ Greena Ecological Consultancy, Addendum Ecological Survey Report (July 2017), p18, References

40. The Forum's independent evidence corroborates this. We confirm that to address the comments received from Torbay Council, Forum volunteers downloaded the Green Ecology records from the Torbay Council planning website, sent them to Greena Ecological Consultancy, and asked they consider them.
41. Earlier Torbay Council comments acknowledge the Green Ecology records were considered. They say '*The 2017 report by Greena Ecology included reference to the GHB records on the adjacent site (presumed to be the Green Ecology work), therefore it is considered that this information was available*'.
42. Therefore, the Forum considers the '*conflicting information*' is not whether the Green Ecology records were considered per se, but rather whether having been considered the conclusions reached by AECOM and Greena Ecological Consultancy are appropriate. To address that question, the Forum looked for independent evidence beyond the justification already provided by AECOM and Greena Ecological Consultancy in the HRA.
43. The **first** of the four independent pieces of evidence the Forum considered was the view of Natural England.
44. AECOM advised the Forum that the High Court had determined that '*Since [Natural England] is the "appropriate nature conservation body", as defined by Regulation 4 of the [Habitat] Regulations*' its views carried '*great weight*' and '*not to give considerable weight to the views of [Natural England]*' '*required some cogent explanation in the decision letter*'.¹⁶
45. AECOM also advised the Forum that the Supreme Court had determined that '*Natural England rather than the planning authority... were the people with the expertise to assess the meaning of the Updated Bat Survey and whether it did indeed meet the requirements of the Directive*'.¹⁷
46. Although they raised comments on other sites, at no stage did Natural England raise concern with the Waterside Quarry site.
47. This was considered an important point. Torbay Council had undertaken separate dialogue with Natural England,¹⁸ writing to them on 18 May 2017 and later meeting with them on 8 June 2017.¹⁹ The Forum considered that through these 2 engagements Natural England must have scrutinised the site and that if they had

¹⁶ Mr Justice Sullivan in R(Hart DC) v Secretary of State (2008) at paragraph 49

¹⁷ Lady Hale in R(Morge) v Hampshire CC (2011) at paragraph 45

¹⁸ Basic Conditions Statement, page 20, para 5.0.24

¹⁹ FOI request 17181516 by Brixham Peninsula Neighbourhood Forum to Torbay Council

concerns they would have raised them. Accordingly, the Forum concluded Natural England's absence of raising concern was evidence they were satisfied.

48. Later information, as set out below, has specifically confirmed Natural England were indeed satisfied.
49. The **second** of the four independent pieces of evidence the Forum considered was how the Green Ecology records informed other planning applications.
50. The Green Ecology records relate to ecology work at a site adjacent to both the allocated site and Waterside Road, i.e., the area omitted from the allocated site as described above. At that site, application P/2014/0045 was approved in outline for 3 dwellings with applications P/2016/0822 and P/2016/0824 later approved in full. Hence, after consideration of the Green Ecology records, 3 separate planning consents were granted for housing.
51. Natural England's comments on P/2016/0822 and P/2016/0824 are considered helpful. Natural England say '*the site is located in a sub-optimal location due to the urban context and disturbance that this entails to greater horseshoe bat activity. In addition, the site is relatively small, and it is speculative to suggest that the site is part of a network of 'stepping stones' within an urban context. Indeed, the concept of 'stepping stones' for greater horseshoe bats is somewhat at odds with our knowledge that greater horseshoe bats tend to be associated with a network of semi-natural linear features that are not subject to detrimental impacts such as lighting, severance, etc. The Appropriate Assessment does not properly acknowledge the habitat limitations associated with an urban environment upon greater horseshoe bat activity, or the limited number of greater horseshoe bats...*'.²⁰
52. The Forum considers that as the Green Ecology records did not prevent development on the adjacent site which they related to, there is no reason to conclude they should prevent development on the allocated site.
53. The **third** of the four independent pieces of evidence the Forum considered was the level of bat survey information obtained for other nearby sites.
54. Having considered several applications on sites where Greater Horseshoe bats were found, the Forum considers the application on land approximately 400m to the west at Beverley Park representative. On that site full application P/2016/0964 was supported by survey evidence across a 3 month period (May to July 2016). Both

²⁰ Email from Julien Sclater, Natural England to Torbay Council 12 Jan 2018 re P/2016/0822.

Lesser and Greater Horseshoe bats were found. That development was supported by Natural England and approved by Torbay Council.

55. Again, Natural England's comments on P/2016/0964 are considered helpful. Natural England say '*Natural England reiterates that the proposed development will not have likely significant effects on the South Hams Special Area of Conservation and has no objection... Urban context - The site is surrounded to the north and east by urban habitat (residential homes and gardens) and south and west by the Beverley Park caravan site (EAD Ltd). This urban context (offering very limited links to the open countryside that is typically associated with optimal greater horseshoe bat habitats) provides limited opportunities for bats to commute and forage, and is subject to relatively high levels of disturbance from lighting and the road network. The South Hams SAC – greater horseshoe bat consultation zone planning guidance (NE 2010) clearly states "Most urban areas within the sustenance zone are not likely to provide suitable conditions or opportunities for foraging greater horseshoe bats." (Page 7)... Low bat activity – the Ecological Impact Assessment (EAD, August 2016) concludes that since only two greater horseshoe calls were registered during the 23 nights of recording, the site was not considered to be a significant foraging or commuting area for the species. The bat survey approach was based upon the likelihood of risk from the proposals upon greater horseshoe bat activity associated with the Berry Head SAC roost. The Habitats Regulations Assessment appears to attach a disproportionate significance to the low level of greater horseshoe bat activity... We do not concur with this assessment as it is based upon speculative reasoning and not supported by empirical evidence. The assessment makes a number of speculative assertions... Irrespective of the quality of habitats associated with the proposed development site, the assessment appears to suggest that any perceived impact carries a significant risk. This approach is open to challenge, and is not based upon clear risk to the Berry Head SAC roost*'.²¹
56. For the allocated site at Waterside Quarry there are week long surveys once per month for each of the 7 months of the active 2017 bat season plus one further week long surveys for one month of the active 2015 bat season. It appears to the Forum that whilst potentially different, the level of survey work undertaken at 'plan level' for this site where no Greater Horseshoe bats have been found on site, is at least equal to the work undertaken at 'project level' for other nearby sites where Greater Horseshoe bats were found on site and planning consent was granted.
57. The **fourth** of the four pieces of independent evidence the Forum considered was the answers provided by Torbay Council when the Forum asked for explanation of

²¹ Letter from Julien Sclater, Natural England, ref 210282, to Torbay Council 20 Mar 2017 re P/2016/0964.

the reason Torbay Council departed from the views of Natural England. The Forum does not consider it has received any satisfactory explanation.

58. On this basis, the Forum considers the process used and the conclusions reached in the AECOM HRA are appropriate.
59. More recently, a **fifth** piece of independent evidence has been considered by the Forum which adds weight to that conclusion. Landowners at Waterside Quarry, Mr and Mrs Billings, supplied the Forum with a 'project' level HRA by Professor John Altringham dated March 2018 and an advice from Natural England on that HRA dated April 2018.
60. The 'project level' HRA says '*In 30 [manual] transect surveys over 10 months, covering the whole of the active bat season no greater horseshoe bats were recorded*'.²² The Forum notes this compares to 10 manual surveys specified at 'project level' in the South Hams SAC Guidance.²³
61. The HRA also reports on a lighting survey undertaken at every street-light and every intermediate distance between street lights along Dartmouth Road and Waterside Road and says '*in only two isolated locations were light levels below 0.5 lux, the recommended level for horseshoe bats. Lights levels were typically >20X higher under street lights and 2-10X greater between lights*'.²⁴
62. The HRA concludes '*the site is of little or no importance to greater horseshoe bats. This is consistent with the small size of the site, the poor habitat, its urban location and the street lighting that very effectively surrounds the site and will have a significant impact on access by light-sensitive bats... In my view... an effect on the greater horseshoe bats of the Berry Head SAC is highly unlikely*'.²⁵
63. The Natural England advice says '*The HRA screening report conclusions (Prof John Altringham, March 2018) are reasonable and provide a fair assessment of potential risk. The survey effort and assessment appears proportionate within the context of the sub-optimal location of the site*'.²⁶ This specific confirmation from Natural England that they were satisfied confirmed the Forum's earlier understanding of Natural England's position, as set out above.
64. This fifth piece of information added weight to the Forum's previous conclusion.

²² Professor John Altringham, HRA Screening Report on Waterside Quarry, March 2018, p14.

²³ Natural England, South Hams SAC Greater horseshoe bat guidance, p13, Survey Specification (ii)

²⁴ Professor John Altringham, HRA Screening Report on Waterside Quarry, March 2018, p14.

²⁵ Professor John Altringham, HRA Screening Report on Waterside Quarry, March 2018, p17 and 18.

²⁶ Letter from Julien Sclater, Natural England, ref 242693, to Mr Billings 16 April 2018.

I seek clarification on the following policies/supporting information:

1. Allocated Sites - H3-12: St Mary's /Old Dairy (25)

I have received representation that the allocation has been reduced in size from the one identified in the previous Torbay Local Plan but that the site yield has not been reduced proportionally. Please clarify why?

65. The Forum did not change the yield for St Mary's /Old Dairy (H3-12) when reducing the size of the allocated site from that identified in the Local Plan as the Forum considered the density could rise to offset the change. Furthermore, the Forum considered a higher density was likely to enhance viability.
66. The Torbay Council 2008 SHLAA says *'25 dwellings proposed in local plan... Although the area has a relatively low density detached residential character, the site itself is located out of view from many of these properties and further down the road the Sharkham village development is developing at a much higher density... local services nearby which could suggest the area could accommodate a higher number of dwellings'*.²⁷
67. In the later Torbay Council 2013 SHLAA, density is not discussed but viability is. It says *'The site is... currently in employment use, and it is unclear whether residential development is going to come forward... This is an established small site with an established use value; however, it is likely that in the future the market will improve so that this site will be viable for residential development'*.²⁸
68. On this basis the Forum considered that density was low compared to recent nearby developments and that it was positive if viability could be enhanced. On this basis the Forum concluded that a higher density, which retained the same overall site yield, was appropriate.
69. To evidence it is reasonable, the Forum compares the final density of 50 dph to:
- (i.) 30 dph stated in the Local Plan to be a minimum;²⁹
 - (ii.) 80 dph advised by Torbay Council for Brixham Police Station (H3-17) ;³⁰ and
 - (iii.) 84 dph advised in the 2008 SHLAA for Shoalstone Overflow Car Park, a site in Brixham which the Forum considers comparable to St Mary's /Old Dairy.³¹

²⁷ Torbay Council, SHLAA (September 2008), p107

²⁸ Torbay Council, SHLAA (July 2013), p54

²⁹ BPNP Housing Site Assessment, page 10, para 4.0.11

³⁰ Torbay Council Regulation 16 comments, page 17

I seek clarification on the following policies/supporting information:

1. Allocated Sites - H3- 13: St. Kilda (12)

I have received representation regarding the Flood Risk relating to this site. How has this been taken into consideration when assessing the deliverability and yield of the site?

Please clarify the differing yields identified in the AECOM report -7 and the BNP 12.

70. Regards flooding, the AECOM SEA Environmental Report says *'the majority of the site is located within Flood Zone 1; though the site has a watercourse on its north-western boundary, with Zone 3 around this; however it is not possible to confirm if this is within the boundary. The site's north-western boundary is at risk of surface water flooding, in the area closest to the watercourse. Development on the site would need to ensure this risk is managed.'* On this basis the Forum concluded the extent of the constraint presented by flood risk was limited.
71. At the same time, the Forum identified the large built form and massing of the existing buildings provided substantial accommodation, containing a purpose built 36 bed care home, beneath a pitched roof.
72. Balancing this, the Forum concluded there was scope for a development commensurate in volume to the current structure. This was thought capable of accommodating 12 dwellings, likely in the form of assisted living apartments, where habitable floor levels were raised above any potential flood risk. In terms of the access to such a building given potential flood risk, the Forum identified the site slopes down from Drew Street. The Forum concluded this provided opportunity for a safe access.
73. Regards yield, the differing yields for St. Kilda between AECOM and the BPNP are attributable to different density assumptions and calculation methodologies. As set out in the BPNP Housing Site Assessment at paragraph 4.0.11 and 4.0.12 (pages 10 to 11), AECOM use a standardised 30 dph density assumption whereas the BPNP assigns individual densities to individual sites using local knowledge.
74. The Forum recognises the BPNP densities are subjective. However, after taking advice from 3 different planning consultants and 2 different local estate agents (BPNP Housing Site Assessment, pages 9 to 10, para 4.0.5 to 4.0.8) the Forum is satisfied the judgements are appropriate.

³¹ Torbay Council, SHLAA (September 2008), p233

I seek clarification on the following policies/supporting information:

1. Allocated Sites - H3-1B: Northcliffe Hotel (15)

Please clarify whether or not this site is subject to a Tree Preservation Order and if so the impact this has on the yield.

75. The Forum wishes to confirm that there are no Tree Preservation Orders at the Northcliffe Hotel (H3-18) and the site is not in a Conservation Area.
76. The Forum identified this information itself from the Torbay Council website and has additionally confirmed the information directly with officers of Torbay Council.

I seek clarification on the following policies/supporting information:

1. Allocated Sites - H3-15: Torbay Trading Estate

Can the site achieve both 200sqm of employment and 15 dwellings?

77. The Forum wishes to confirm that it concluded Torbay Trading Estate (H3-15) could accommodate both 200sqm of employment and 15 dwellings.

78. Although it was not the form of development anticipated, for illustrative purposes the Forum considers it helpful to consider whether 200sqm of employment and 15 dwellings could physically fit on the site by visualising the site divided into two equal parcels. Based on an overall site area of 0.32 ha³² this would give an employment site with overall area of 0.16 ha or 1,600sqm. The Forum considers after allowing for car parking, access, etc such a site could well accommodate 200sqm of employment space. That would leave a remaining site of 0.16 ha for housing. For a yield of 15 dwellings a density of 94 dph would be required. Whilst high, the Forum did not feel this density was atypical for the type of smaller, starter, lower cost housing which it considered would suit the site.

79. In practice, the Forum envisaged 'live-work starter units' might be suited to this site so that the housing element could 'enable' the associated employment element. For example, a smaller sized space on the ground floor might provide office space for a small accounting business or a workspace jewellery manufacture with associated residential accommodation on the first floor. The Forum considered this could assist viability for the employment space and provide greater latitude given the less-than-ideal access and general surrounding amenity for the residential accommodation.

80. We do acknowledge that use of the phrase 'live-work starter units' could have made the text clearer and this was an omission on our part.

³² BPNP Housing Site Assessment, page 39

I seek clarification on the following policies/supporting information:

1. Allocated Sites - H3-18: Former Jewson Site (20)

Please clarify why this site has been included when it was not included in the Housing Site Assessment.

Torbay Council object to the loss of employment land which would result from this allocation. How does the NPF address this objection?

How has the fact that part of the site lies within a flood risk area been taken into consideration when looking at the yield of 20 units from the site?

81. Former Jewson (H3-18) is included in BPNP Housing Site Assessment on page 49.
82. In case it prompted the question, the Forum wishes to explain there are 2 Housing Site Assessment documents. It is the BPNP document which forms part of the Neighbourhood Plan whilst the AECOM document informs, and provides independent support for, the conclusions reached.³³
83. After publication of the first drafts of all documents, the Former Jewson site came forward at Regulation 14 stage when Jewson vacated the site and the Forum received a representation from an experienced local affordable housing developer expressing their interest in developing the site for 20 dwellings. AECOM determined that a physical visit was necessary for all sites included in their housing site assessment. As they could not undertake a visit within the timescales requested by the Forum the site was not included. The site was however assessed by AECOM in their updated SEA, as AECOM determined that document could, for this site, rely on desktop study only. The Forum would like to record they are enormously grateful for the assistance provided by all members of the AECOM team.
84. Regards loss of employment space, the Forum is very keen to assist the wider objective of job creation (and job retention) by seeking to protect important employment space. This was the very reason for Policy J1 as covered in the Forum's comments to you, as the Examiner, on the representations of other parties dated 28 May 2018.
85. It is acknowledged however that much of the employment space in the Town of Brixham, in particular, is 'low-quality'.³⁴ This conclusion is evidenced by Table 1 in the Employment Site Assessment (pages 10 - 12) which makes an assessment of

³³ BPNP Housing Site Assessment, p10, paragraph 4.0.9 to 4.0.10

³⁴ BPNP Employment Site Assessment, p9, paragraph 3.0.1

existing space. It appeared to the Forum that older spaces are not as efficient as newer spaces in supporting jobs.

86. For example, the site to which Jewson moved on the Northfields Industrial Estate was calculated by the Forum to be 0.04 ha. That represents only 40% of the size of the former site. However, it supports the same number of jobs because facilities (e.g., HGVs access etc) are shared with other adjacent employment spaces and the space is more efficient in general lay out (e.g., all areas are accessible with fork lift trucks not just some of them etc).
87. None of the opportunities identified by the Forum for the enhancement of existing employment space have been counted towards the total employment space provided in the BPNP. For example, the Northfields Industrial Estate was not identified for employment as advocated by Torbay Council (comments on page 6). In part this was because the Forum did not consider it possible to determine on a robust basis the extent of additional capacity opportunities and because providing for a potential 'excess of capacity' by not counting these acknowledged additional opportunities was consistent with the wider objective of job creation.
88. In the case of the Former Jewson site, the Forum balanced the need to retain employment space against the need to deliver affordable housing. Taking all this into consideration the Forum concluded it was appropriate in the plan to allocate the Former Jewson site for housing. In order to ensure the form of housing was affordable housing the Forum included the footnote 17 in the Table 2 for Policy BH3. The employment space lost, being offset several times over by all the other employment space not counted elsewhere.
89. Regards flood risk, the AECOM SEA Environmental Report says '*The site is not in an area at risk of surface water flooding*'.³⁵ On this basis, the Forum concluded the extent of the constraint imposed by flooding was very small.
90. Subsequently, in view of the Torbay Council comments that the '*SEA does not refer to the Flood Risk area (ER1) on part of site*' (page 58) and the question raised by you, as the Examiner, the Forum has inspected the Environment Agency maps. The Forum confirmed the majority of the site is not considered likely to flood as it is flood zone 1 with only the boundary of the site adjacent New Road in flood zone 3.
91. Given the topography of the site which slopes upwards away from New Road the Forum considered there is scope to raise habitable floor levels above any potential flood risk with lower spaces occupied by parking, bin storage, cycle storage etc.

³⁵ AECOM, SEA (August 2017), p35

I seek clarification on the following policies/supporting information:

2. Local Green Spaces

Please confirm whether or not the owners of the proposed Local Green Spaces have been consulted and whether or not any objections have been received other than TDA objections.

92. The Forum did consult owners of the proposed Local Green Spaces.
93. At early stages of plan preparation Forum members met with representatives of Brixham Rugby Club (E4-2), Brixham Cricket Ground (E4-6), Stoney Park Allotments (E4-12) and Churston Golf Course (E4-13).
94. At regulation 14 stage the Forum sought the assistance of a local solicitor and the Town Clerk of Brixham Town Council wrote to all bar one of the identified landowners. That one exception is the landowner of Ash Hole Woods (E4-1) who was not specifically identified and so the Forum left a generic copy of the Town Clerk letter to landowners at a prominent place at the entrance to the site.
95. The Forum also deliberately held 3 of their 13 public engagement events at LGS sites. This included an event on 31 January 2017 at Brixham Rugby Club, an event on 27 February 2017 at Churston Golf Course and an event on 9 March 2017 at the Guardhouse Cafe at Berry Head.³⁶
96. On this basis, having acted in good faith, and in view of the very extensive regulation 14 consultation efforts generally, the Forum considers that owners of the proposed Local Green Spaces have been consulted.
97. Other than the TDA and Torbay Council objections, only 2 objections were received. These objections came from WPG for Landscope Holiday Park in relation to E4-4 Berry Head and Tetlow King for Churston Golf Club and Bloor Homes in relation to E4-13 Churston Golf Club.
98. Regards the TDA, the Forum does not accept they are the owners of the sites they have objected to or that satisfactory evidence has been provided to otherwise demonstrate their capacity. The '*Council of the Borough of Torbay*' appears as the registered proprietor with the Land Registry. Recognising that officers from various functional areas had commented in the name of Torbay Council, the Forum asked a question at the Full Council meeting of 20 February 2018 addressed to all Elected Members. We asked for the Full Council's views on the submitted BPNP. In reply, the Full Council declined to provide a view, deferring all decisions to the Examiner.

³⁶ Consultation Statement (second version), p31

I seek clarification on the following policies/supporting information:

2. Local green Spaces - Berry Head

Please clarify why part of the Landscope Holiday Park has been included in the proposed designation.

99. Regards the Berry Head Local Green Space (LGS), the Forum considers it can best answer why part of the land owned by Landscope Holiday Park has been designated LGS by explaining the procedure adopted.
100. The Regulation 14 consultation draft included the whole of the Landscope Holiday Park within the LGS. Following comments at regulation 14 stage which objected to the policy designation covering the Landscope Holiday Park, the Forum removed from the designated area the land '*believed to be the Landscope Holiday Camp Site*'.³⁷
101. Recognising the plan is a land use plan not a land ownership plan, when defining the boundary of the proposed LGS the Forum paid primary regard to how the land was used and the areas believed to constitute the Landscope Holiday Camp flowed from that.
102. Following the further comments and the question from you, as the Examiner, the Forum has annotated an aerial photo image from Google Map Pro with the proposed LGS boundary and the ownership boundary as per the further comments (**Figure 1**). This image shows there are no buildings and no obvious development within the contested area. Rather, the area appears to be indistinguishable from other parts of the wider Berry Head LGS site. It is also already designated AONB and, in the Local Plan, Undeveloped Coast (Policy C2) and, in part, Coastal Change Management Area (Policy C3).
103. Were this contested land not to form part of the LGS proposal, the Forum believes the BPNP would wrongly communicate the importance of the contested area.
104. No reason, other than ownership, for not designating the area has been advanced. The Forum does not consider this sufficient reason not to designate the area.
105. On this basis, and having reviewed the position again for the purpose of answering your question, the Forum is satisfied the proposed LGS boundaries, which include an undeveloped portion of the Landscope Holiday Camp site, are appropriate.

³⁷ Consultation Statement (second version), p156 - 157

Figure 1

Aerial photo image extracted from Google Map Pro in the vicinity of Landscope Holiday Park



Source: Google Map Pro

Berry Head LGS Boundary (E4-4) transposed onto the image in green outline.

The ownership of the Landscope Holiday Park shown in dashed red outline.

I seek clarification on the following policies/supporting information:

2. Local green Spaces - Churston Golf Course

Please clarify how Churston Golf Course meets the NPPF tests for designation as a Local Green Space.

106. The Forum wishes to confirm that it concluded Churston Golf Course meets all NPPF tests for designation as a Local Green Space (LGS).
107. In preparing this response Forum representatives again met with Churston Golf Club representatives (the Club Chairman, the Club Manager and the Vice Captain) discussed designation as a LGS. The meeting went extremely well; afterwards, Forum representatives were invited to become Churston Golf Club social members.
108. The Forum and the Golf Club identified a distinct common objective to preserve the golf course for generations to come so that it could continue to serve golfers and the wider community. It was also identified this brought with it wider benefits in terms of tourism, both from golf and non-golf tourists, who bring income into Torbay to into the Golf Club to allow further continued investment in the course.
109. The Club did identify that a previous contract with Bloor Homes, expiring in 2020, and entered into by representatives no longer in office, governed further detail on their position.

'should... be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services'³⁸

110. The Forum interpreted this test to relate primarily to whether the Neighbourhood Plan has provided for sufficient homes and employment space.
111. The Neighbourhood Plan has provided for 695 homes and 2,920 sqm of employment space. This compares to an 'expectation'³⁹ in the Local Plan of 660 homes and 2,700 sqm of employment space.
112. The Forum submits the very reason the local community responded positively and expressed their preference to provide more homes and jobs than expected is

³⁸ NPPF, paragraph 76

³⁹ Torbay Local Plan, p94, paragraph 4.5.49

because they understood in return they had the opportunity to identify for special protection green areas, like Churston Golf Course, which are important to them.

113. The Forum also considered it was possible to interpret this test as relate to planning consents from development management and land allocations in plans from strategic planning.
114. There are no valid planning consents relating to any part of Churston Golf Course inconsistent with LGS designation. Although planning consents on part of the course were granted in outline for housing in 1983 and later in 2012, on both occasions the consent proved not to be deliverable and has since expired.
115. There are no designations in either the Local Plan or the Neighbourhood Plan inconsistent with LGS designation. Although part of the site is included in the Local Plan as a potential housing site for assessment in the Neighbourhood Plan, having been assessed, the site has been rejected.
116. Expanding on this, during preparation of the Local Plan, Torbay Council removed part of the golf club from the list of potential housing sites, concluding it '*appears to be undeliverable*'. Inspector Holland later recommended part of the golf club be added back as a '*potential housing site... to enable the question of its suitability for housing to be assessed as part of the neighbourhood planning process. Given... the difficulty of finding suitable land for housing in the area*'.⁴⁰ Having assessed the site's suitability found it unsuitable, and found other land elsewhere, the Neighbourhood Plan rejected the site for housing.⁴¹
117. It is noted that in comments to you, as the Examiner, Tetlow King still suggest part of the golf course is suitable for housing. In the meeting with Churston Golf Club representatives, the Forum was informed that all proposals previously put forward by developers were rejected by the Club over a year ago as unsuitable and that since then no further discussions have taking place with Churston Golf Club.
118. On this basis, the Forum concluded the designation of the site as a LGS was consistent with the local planning of sustainable development and complemented investment in sufficient homes, jobs and other essential services.

⁴⁰ Inspector Holland, Report on Torbay Local Plan - PINS/X1165/429/5 (October 2015), para 67

⁴¹ Torbay Council comments, p32

'should... be designated when a plan is prepared or reviewed'⁴²

119. The proposed designation is made as part of submitted BPNP.

'should... be capable of enduring beyond the end of the plan period'⁴³

120. The golf course in its current layout was set out by the acclaimed course designer Harry Colt shortly after World War I.⁴⁴ Having lasted for approximately 100 years already, the Forum believes there is every reason to conclude the course should last for many more years to come.

121. On this basis, the Forum concluded the designation of the site as a LGS was capable of enduring beyond the end of the plan period.

'should... be... reasonably close proximity to the community it serves'⁴⁵

122. In applying this test, after considering the guidance,⁴⁶ the Forum identified that the golf course serves more than one 'community'. Proximity is therefore explained in relation to the communities identified.

123. One community served are golfers. This applies both to members of Churston Golf Club Ltd and to visiting golfers as the club allows anyone to play the course on a pay-and-play basis.

124. Proximity for golfers was considered at the Churston Golf Course inquiry.⁴⁷ The golf course expert Mark Smith of Smith Leisure gave evidence. He explained the Inspector at a previous planning inquiry had found the golf industry use a 20 minute drive time to assess proximity and that the standard is one course to 20-25,000 head of population.⁴⁸

⁴² NPPF, paragraph 76

⁴³ NPPF, paragraph 76

⁴⁴ Churston Village Design Statement, p17, paragraph 4.1.2

⁴⁵ NPPF, paragraph 77

⁴⁶ Paragraph: 014, Reference ID: 37-014-20140306

⁴⁷ Inspector Dignan, Report on Churston Golf Club - APP/X1165/A/13/2205208 (February 2015).

⁴⁸ Inspector Cookson, Report on Ingol Golf Club - APP/N2345/A/11/2145837 (August 2011), para 322 - 324

125. In relation to Churston Golf Course, Mr Smith's evidence was *'the ratio is one course per 116,600 people (and the population increases further in the summer with holiday visitors). In my opinion, this statistic is simply outstandingly good. If the ratio was one course per 40,000, I would have described it as very good. I have never seen a supply/demand ratio as good as Churston's. If golf supply/demand equilibrium exists at one course per 25,000 resident people then Churston is over 4 times better off than this... Churston Golf Club is in fact the only 18 hole course within the 20 minute drive time. In 22 years of dealing with UK golf courses I have never come across this before'*.⁴⁹
126. Another community served are visitors, such as walkers and tourists, who are served by the quality of the space the golf course provides and the contribution it makes to the character of the local area. The golf course is physically crossed by, or adjacent to, a number of recognised walking routes such as the South West Coast Path National Trail; the Greenaway Walk; the John Musgrave Heritage Trail; the Agatha Christie ABC Murders Walk; the Dart Link Walk; and the Fishcombe Point Walk. Less formally, the golf course also crossed by the footpath which runs between the Churston Manor Inn and Elberry Cove / Broadsands beach where a recommended weekend activity is going for a walk on the beach before enjoying refreshments in the pub!
127. The Golf Course materially enhances the amenity for these visitors because of the demonstrable contribution it makes to the character of the local area in terms of the views into the Golf Course, both from land and sea, and from views across the Golf Course. This contribution is made at a very sensitive location, being right at the centre of 3 miles of unspoilt undeveloped coastline.⁵⁰
128. A further community served are local residents. As set out in the design statement, the close physical relationship between the village of Churston and Churston Golf Course means the village 'wraps-round' the Golf Course. By construction therefore, the golf course is in close proximity to the community of Churston. Indeed Churston Golf Course is the only LGS identified in Churston, a village of approximately 1,500 households. This compares to the 15 LGS sites for 1,100 households in the Tattenhall Neighbourhood Pan, is held out as an exemplar frontrunner
129. On this basis, the Forum concluded that the site was in reasonably close proximity to all of the communities served.

⁴⁹ Mark Smith (Smith Leisure), Proof of Evidence Re Churston Golf Club (March 2014), para 4.29 – 4.32

⁵⁰ Churston Village Design Statement, p6, Section 2.1 Undeveloped Coastline

'should... be... demonstrably special to a local community'⁵¹

130. Churston Golf Course previously attracted a 4,000 signature petition for protection.⁵² That petition, which drew support from across the Churston, wider Brixham Peninsula, and indeed Torbay area from golfers, visitors and local residents is considered unequivocal evidence the golf course is '*demonstrably special*'.
131. Although some comments you have received suggest the Golf Course is not demonstrably special '*as it is private land*', the guidance makes it clear that protected spaces do not have to be public.⁵³ The Forum was persuaded the evidence shows the Golf Course is demonstrably special. In arriving at that conclusion, leaving aside the unequivocal evidence of the petition, the Forum identified the reasons given for the course being demonstrably special were not affected by ownership.
132. The conclusion Churston Golf Course is demonstrably special to golfers, visitors and local residents, is supported by the statements of Churston Golf Club on its website. The Club say '*we doubt you will find a golf course in the South West in a more idyllic location or in better condition than Churston. It sits proudly overlooking Torbay running east to west from Churston to Brixham... Churston endeavours to uphold the best traditions of golf yet still meet the needs of members and discerning visitors... Churston Golf Club's biggest asset is the course itself... Mother Nature has ensured the sub strata of shillet and shale are perfect for golf course drainage. This excellent drainage allows play 365 days a year*'.⁵⁴ They also quote their president, retired champion snooker player, Ray Reardon MBE as saying '*I have travelled the world 12 times and I have played golf in many wonderful locations. However I am yet to find a place like Churston, a beautiful crafted piece of land, set into the Torbay coastline...*'
133. On this basis, the Forum concluded the site was demonstrably special to all local communities identified.

⁵¹ NPPF, paragraph 77

⁵² Consultation Statement (second version), p14 , paragraph 4.7.3

⁵³ Paragraph: 019, Reference ID: 37-019-20140306

⁵⁴ www.churstongolf.com

'holds particular local significance... because of its beauty'⁵⁵

134. A substantial part of Churston Golf Course is already designated AONB because of its outstanding natural beauty. Within the local AONB landscape the Golf Course makes an important contribution, sited at the very centre of 3 miles of unspoilt undeveloped coastline.⁵⁶
135. The Churston Village Design Statement also cites comments attributable to the original designer of the course that '*from a great portion of the ground are obtained magnificent views over Torbay, and the situation and surroundings are admirable*'.⁵⁷
136. The Design Statement also includes a photograph of public view across the golf course towards the sea and across the bay which it submits is '*iconic*'.⁵⁸ That same view is described in the booklet for the John Musgrave Heritage Trail walking route which says '*As the northern most vista of the Bay is unveiled Torquay's unmistakable promontory is apparent, tipped by the islets of Thatcher Rock and the Orestone*'. Noteworthy is that this part of the golf course is outside the designated AONB area but clearly still of significance because of its beauty.
137. On this basis, the Forum concluded the golf course did hold particular local significance because of its beauty.

'holds particular local significance... because of... historic significance'⁵⁹

138. The golf course features in two historical Agatha Christie novels set in Churston.⁶⁰ In *The ABC Murders*, Hercule Poirot alights at Churston Station, and walks – presumably along Bridge Road – and refers to a '*view of the sea*', which could only have been across the golf course. In *Murder on the Links* the golf course is described as a '*wide stretch of open downs*' and the setting for the murder is a villa with a '*view of the sea*' separated from the golf course by '*a neat line of small bushes*'.
139. In respect of this, the book by Bret Hawthorne, *Agatha Christie's Devon*, says '*The persistent plaintiff 'kiew-kiew' suddenly reveals itself from the right when a (not-so-*

⁵⁵ NPPF, paragraph 77

⁵⁶ Churston Village Design Statement, p6, Section 2.1 Undeveloped Coastline

⁵⁷ Churston Village Design Statement, p17, paragraph 4.1.3

⁵⁸ Churston Village Design Statement, p19, Figure 9

⁵⁹ NPPF, paragraph 77

⁶⁰ Churston Village Design Statement, p17, paragraph 4.2.2

little) little owl... swoops low...only to disappear just as quickly into towering trees further along the golf course... Little has changed on the path since the 1930s'.

140. The golf course which exists today survives in the same form as described by Agatha Christie. The original designer of the course, Henry Shapland ('Harry') Colt, also has historical significance, being a most pre-eminent golf course designer who is '*widely regarded as the father of modern golf course architecture*'.⁶¹ Other courses designed by 'Harry' Colt include for example, Pine Valley Golf Club - ranked the #1 Golf Course in the United States, St George's Hill, Sunningdale (new course), both the east and west courses at Wentworth, and Stoke Park.
141. More widely the golf course predates much of the built development in Churston which developed later around the course. The historical significance of the course is important. The status of the land as golf course has prevented incremental loss of land. This means the defining character of the area in terms of the open public views along the fairways as enjoyed from the public footpaths crossing the course and the coastal views across the course to the sea from the country setting of the village of Churston are as apparent now as when the course was first constructed.
142. On this basis, the Forum concluded the golf course did hold particular local significance because of its historic significance.

'holds particular local significance... because of its... recreational value'⁶²

143. After considered guidance, the Forum identified that green areas can '*include land where sports pavilions... are located*'.⁶³ We therefore explain our conclusions in relation to both the golf course and the clubhouse.
144. Reference the earlier evidence of the golf course consultant Mark Smith, the Forum concluded this golf course had an important recreational value for golfers given the scarcity of golf courses in the local catchment area.
145. Recent steps have also been taken to broaden the recreational value of the golf course, with the golf course exploring its potential as a gliding venue.⁶⁴

⁶¹ www.bathgolfclub.org.uk/the-club/harry-colt-course-architect/

⁶² NPPF, paragraph 77

⁶³ Paragraph: 013, Reference ID: 37-013-20140306

⁶⁴ Churston Golf Club Ltd, published Board Meeting minutes (12 December 2016)

146. There are also as set out elsewhere a number of formal recognised walking routes along public footpaths which physically cross the golf course. In respect of this characteristic, the Forum sought further advice from golf course expert Mark Smith of Smith Leisure, who advised '*having three separate footpaths actually crossing fairways is very unusual*'.⁶⁵
147. In terms of the clubhouse the bar and restaurant are both open to non members and provide a valuable community facility. For example, the evening dinner for the *Fat Stock Show*, where local farmers showcase their best animals, is held at the Golf Course Clubhouse.
148. On this basis, the Forum concluded the site did hold a particular local significance because of its recreational value.

'holds particular local significance... because of its... tranquillity'⁶⁶

149. The Forum considered the meaning of the word 'tranquillity'. We found a joint publication from CPRE and the Countryside Agency which developed earlier work by Simon Rendel of ASH Consulting for the Department of Transport helpful.⁶⁷
150. That publication advocated measuring tranquillity by considering area characteristics. Positive area characteristics were identified as openness, perceived naturalness, rivers, low noise, and visibility of the sea. Negative area characteristics were also identified as presence of other people, visibility of roads, urban development, urban area noise, light pollution, aircraft noise, and military training noise.
151. Considering these characteristics the Forum concluded the golf course is a tranquil area as it exhibiting all but one of the positive characteristics (rivers) and, other than in limited areas, none of the negative characteristics.
152. On this basis, the Forum concluded the site did hold a particular local significance because of its tranquillity.

⁶⁵ Email from Mark Smith (15 June 2018)

⁶⁶ NPPF, paragraph 77

⁶⁷ CPRE and Countryside Agency, Mapping Tranquillity: Defining and Assessing a Valuable Resource (Mar' 06).

'holds particular local significance... because of its... richness of its wildlife'⁶⁸

153. The report on the Golf Course inquiry considered the issue of the richness of wildlife after Inspector Dignan identified '*environmental effects, including effects on protected species and habitats*' as a '*main issue*'.⁶⁹ The Inspector found '*significant harm... in terms of... the integrity of the South Hams SAC and protected species*', concluding, '*The harm to the SAC alone indicates that planning permission should not be granted.*'⁷⁰
154. That finding was in relation to Greater Horseshoe bats. The Inspector also found Cirl buntings '*already using territories that straddle fairways*'.⁷¹
155. That richness of the wildlife found, is consistent with work by Torbay Council, Natural England and Torbay Coast and Countryside Trust. They identified the good land management practices of Churston Golf Club Ltd meant that the Golf Course formed at various points either a '*Key Natural Area*', a '*Rural Wildlife Corridor*' or an '*Urban Wildlife Corridor*'.⁷²
156. On this basis, the Forum concluded the site did hold a particular local significance because of its richness of its wildlife.

'should... be... local in character'⁷³

157. Churston Golf Course is inextricably linked to the local character of Churston.
158. As set out in the Churston Village Design Statement, the Yarde-Buller family dominate the recorded history of Churston from the 15th century.⁷⁴ That family developed part of *their* land for agriculture with a 'model farm'. They also developed part of *their* land for housing, along what we now call Churston Road, to accommodate agricultural workers.⁷⁵ Later, that family developed part of *their* land as Churston Golf Course,⁷⁶ because the then Baron Lord Churston liked golf.

⁶⁸ NPPF, paragraph 77

⁶⁹ Inspector Dignan, Report on Churston Golf Club - APP/X1165/A/13/2205208 (February 2015), paragraph 7

⁷⁰ Inspector Dignan, Report on Churston Golf Club - APP/X1165/A/13/2205208 (February 2015), paragraph 64

⁷¹ Inspector Dignan, Report on Churston Golf Club - APP/X1165/A/13/2205208 (February 2015), paragraph 54

⁷² Green Infrastructure Delivery Plan (April 2011).

⁷³ NPPF, paragraph 77

⁷⁴ Churston Village Design Statement, p9, paragraph 2.4.5

⁷⁵ Churston Village Design Statement, p11, Section 3.1 Old Churston and Alston

⁷⁶ Churston Village Design Statement, p17, paragraph 4.1.5

Subsequently further Yarde-Buller family land was released for housing around the perimeter of the golf course.

159. Given this history it would, it is submitted, be impossible for the Churston Golf Course not to be local in character. It was commissioned by, and built with the money of, the same family who are responsible for the significant majority of the historical content of the village and its current layout. This is also why the village of Churston 'wraps-round' the Golf Course and in turn the Golf Course plays such a key part in defining the character of Churston.⁷⁷
160. Features of the golf course and the local character are clearly described in two separate Agatha Christie novels set in Churston.⁷⁸
161. More recently the golf course and local character was formally considered by the Torbay Council Design Review Panel. At their 9 November 2012 meeting they concluded the '*corridor currently created by the dual fairways [of the golf course]... forms an important part of the landscape character... in this part of Churston*'.⁷⁹
162. On this basis, the Forum concluded Churston Golf Course was local in character.

'should... be... not an extensive tract of land'⁸⁰

163. Across all the comments to you, as the Examiner, no party has advanced that the golf course should be considered an extensive tract of land. The Forum considers the clear reason for this is that the golf course cannot reasonably be considered an extensive tract of land.
164. Having considered the guidance, the Forum concluded the golf course was not simply '*blanket... open countryside adjacent to [the] settlement*'.⁸¹ Rather, the Forum is clear the golf course formed a discrete and recognisable area which forms a cohesive whole which complements, but is distinct from, other local countryside.
165. Torbay Council do not have guidance on LGSs so the Forum considered guidance by other Councils. We identified the North Somerset Council guidance considers golf courses and says '*Golf courses... may be designated where they are ...*

⁷⁷ Churston Village Design Statement, paragraph 4.0.1

⁷⁸ Churston Village Design Statement, paragraph 4.2.2

⁷⁹ Alastair Wilson, Stride Treglown for Torbay Council, Design Proof of Evidence

⁸⁰ NPPF, paragraph 77

⁸¹ Paragraph: 015, Reference ID: 37-015-20140306

particularly strong characteristics appropriate for LGS.⁸² The Forum also identified that, for example, Reading Borough Council determined the similarly sized 18 hole Reading Golf Course was not an extensive tract of land.⁸³

166. On this basis, the Forum concluded the Golf Course was not an extensive tract of land.

167. Having considered all of the above, the Forum concluded there was compelling evidence to demonstrate that national policy requirements were met in full and that it was appropriate to designate the Golf Course as LGS.

⁸² North Somerset Council, Site Allocations Plan - Local Green Space (October 2016), p27

⁸³ Reading Borough Council, Local Plan Local Green Space Background Paper (March 2018), p34

I seek clarification on the following policies/supporting information:

3. Strategic Environmental Assessment (SEA)

Please clarify why the update of the AECOM report for the Regulation 16 submission did not cover all the issues raised in the Torbay Council response to the Regulation 14 SEA report.

168. The AECOM SEA Environmental Report ('SEA') was updated. This took place after Regulation 14 stage both in response to comments received and changes made to the Neighbourhood Plan.

169. At that update stage, AECOM also worked with the Forum to consider whether the SEA needed to be updated more generally, to consider issues beyond just the comments received or plan changes made.

170. The update process involved AECOM preparing a detailed schedule which listed each comment, their response to each comment, and their justification for the response. AECOM discussed this schedule with the Forum prior to finalisation of the updated SEA.

171. Accordingly, all comments received from Torbay Council were considered in detail. Torbay Council appeared satisfied by how the updated AECOM SEA dealt with their '*general comments*'.

172. With regard to Torbay Council's '*specific comments*' on site assessment findings, although updates were made where considered appropriate, on a number of occasions it was viewed that the comments received did not cause reason for changes to be made.

173. Where changes were not made, the main reasons were:

- there was some uncertainty as to the data proposed;
- there was a need to ensure consistency between the approaches undertaken for the assessments of the different sites; and/or
- there was a need to ensure that an independent and objective approach to the site assessments is undertaken.

174. In preparing this response the Forum again reverted to AECOM and asked in light of your question whether they remain satisfied that some comments received did not cause reason to change assessment findings. In response, AECOM confirmed they consider their updated SEA appropriate. The Forum supports this.

I seek clarification on the following policies/supporting information:

4. Habitat Regulation Assessment (HRA)

Please clarify why the update of the AECOM report for the Regulation 16 submission did not cover all the issues raised in the Torbay Council response to the Regulation 14 HRA report.

175. As with the SEA update referred to in question 3 above, the AECOM HRA Screening Assessment ('HRA') was updated. This took place after Regulation 14 stage both in response to comments received and changes made to the Neighbourhood Plan.
176. At that update stage, AECOM also worked with the Forum to consider whether the HRA needed to be updated more generally, to consider issues beyond just the comments received or plan changes made.
177. The update process involved AECOM preparing a detailed schedule which listed each comment, their response to each comment, and their justification for the response. AECOM discussed this schedule with Greena Ecological Consultancy and, later, the Forum prior to finalisation of the updated HRA.
178. Accordingly, all comments received from Torbay Council were considered in detail. In total, Torbay Council made 8 separate comments. For 6 of these, the updates were made in accordance with the comments received. For a further 2 comments, having considered carefully the issues raised, AECOM considered it appropriate to make updates in ways other than those specifically suggested. These 2 comments relate to housing allocations at Knapman's Yard and Waterside Quarry.
179. At **Knapman's Yard**, survey data from Greena Ecological Consultancy identified '*Majority of buildings at Knapman's yard are too light to support day-time bat roosting. No evidence of bat presence current or past was found within the buildings*'.⁸⁴
180. Based on this, the original AECOM HRA concluded '*Structures considered suitable for roosting, however no evidence of bats found. The potential proposed development will result in negligible individual or in-combination impact on greater horseshoe bats*'.⁸⁵
181. In response, Torbay Council commented '*The HRA should recommend strategic mitigation for the in-combination impact on Greater horseshoe bats*'.

⁸⁴ Greena Ecological Consultancy, Ecological Survey Report (November 2016), p27

⁸⁵ AECOM, HRA Screening Appraisal (December 2016), p24

182. Having considered the comments, AECOM concluded that since the '*in-combination effect*' had been determined to be '*negligible*', it was not appropriate to provide '*strategic mitigation*'. AECOM considered strategic mitigation reserved for in-combination effects from a range of projects which all needed to make their small individual contribution to mitigation. However, in this case as no in-combination impact was identified, AECOM did not consider strategic mitigation was appropriate.
183. To address the comments, the HRA was updated to reinforce the certainty and conclusion that there were no in-combination effects by providing for mitigation at the individual site level. It now says '*There are mature areas of trees and vegetation around the site that would need to be preserved*'.⁸⁶
184. At **Waterside Quarry**, survey data from Greena Ecological Consultancy identified '*no buildings... habitat was subject to a week-long monitoring in 2015. No Greater Horseshoe bats were found. Following an extensive clearance this site was no longer considered suitable*⁸⁷... as a Greater Horseshoe foraging habitat and due to the lack of connectivity with the surrounding landscape'.⁸⁸
185. Based on this, the original AECOM HRA correctly concluded and presented '*No buildings. Habitat subject to week-long monitoring in 2015 where no greater horseshoe bats were recorded. The site has been cleared and is no longer suitable for greater horseshoe bats*'.⁸⁹
186. In response, Torbay Council commented '*The survey method used does not cover the full period from April to October as required for sites within the South Hams SAC GHB Sustenance Zone as set out in Natural England's 2010 SAC Planning Guidance for South Hams*'.
187. In addition, comments were received after the regulation 14 period which restated that the survey method was not in accordance with the South Hams SAC guidance and stated that bat surveys on adjacent land undertaken by Green Ecology needed to be considered.

⁸⁶ AECOM, HRA Screening Appraisal (August 2017), p29

⁸⁷ Greena Ecological Consultancy, Ecological Survey Report (November 2016), p3

⁸⁸ Greena Ecological Consultancy, Ecological Survey Report (November 2016), p25

⁸⁹ AECOM, HRA Screening Appraisal (December 2016), p24

188. Having considered these comments, AECOM further identified:

- the South Hams SAC guidance states that it '*should serve as an evidence base and provide guidance on the planning implications for development control and 'the preparation of land use plans' is 'beyond the scope'*',⁹⁰ and
- the policy precedent set by the Torbay Local Plan defers detailed bat surveys to individual planning applications.

189. To address the Torbay Council comments, Greena Ecological Consultancy were instructed to specifically consider the Green Ecology records and undertake further survey work. They reported their '*study of previous records from the area revealed confirmed presence of Greater and Lesser horseshoe bats on the adjacent land (not part of this proposal)*'.⁹¹ However, following additional week long monitoring in April, May and June 2017, '*No Annex II bat species were recorded on site*'. On this basis, whilst anticipating '*Further surveys will continue between July and September inclusive... to provide the full picture of bat activity... throughout the bat active season*',⁹² they concluded '*Four months' worth of data showing absence of Greater horseshoe bats on site is a good indicator of the results to be expected after the full season*'⁹³ so '*the site is suitable for the inclusion as an allocated site*'.⁹⁴

190. The updated AECOM HRA, taking account of the Torbay Council comments and the further evidence from Greena Ecology Consultancy, concluded '*No buildings. Habitat subject to week-long monitoring in 2015 where no greater horseshoe bats were recorded. It is recognised that this does not meet the survey standards set out for South Hams SAC for a project application, but is included purely for information. The site has since been cleared (according to the Greena Ecological Consultancy report from November 2016) and is thus no longer suitable for greater horseshoe bats. The site was however resurveyed over a 3 month period from April – June 2017 and no horseshoe bats were recorded on site*'.⁹⁵

191. Subsequently, at regulation 16 stage the Forum was able to provide the results from the further 4 month's survey evidence. In aggregate a full season of survey evidence (7 months - April to October 2017) plus one further month (October 2015) was provided. These surveys identified common species of bat but no greater horseshoe bats.

⁹⁰ Natural England, South Hams SAC Greater horseshoe bat guidance, p2, Introduction, para 5

⁹¹ Greena Ecological Consultancy, Addendum Ecological Survey Report (July 2017), p16

⁹² p17

⁹³ p14

⁹⁴ p17

⁹⁵ AECOM, HRA Screening Appraisal (August 2017), p29

192. As with the SEA, in preparing this response the Forum again reverted to AECOM and asked in light of your question whether they remain satisfied that some comments received did not cause reason to change assessment findings. AECOM confirmed they consider their updated HRA appropriate. They also highlight later survey data supports their earlier conclusions. The Forum supports this.

I seek clarification on the following policies/supporting information:

5. The Garden House, Berry Head, Brixham, TQ5 9UH

I have received representations that on page 6 of the Policy Plans document the Plan of Berry Head has a boundary line that divides land, within a single ownership, into two parts. Please clarify the reason for this.

193. The plan has been prepared as a land use plan. The primary consideration for the Forum has therefore been the *use* of land not the *ownership* of land.
194. This distinction is apparent in Policy E2: Settlement boundaries. Around the town of Brixham and the villages of Churston and Galmpton the settlement boundary line tracks identified land *uses* not land *ownerships*.
195. Were the policy to alternatively track *ownerships* this would create situations where very large gardens extending into open countryside could come forward for development under the policy simply because there was a dwelling in one corner. This is not the intention.
196. Identification of land *uses* took the form of a group exercise with the Forum's consultant Liz Beth advising. The group used Google Map Pro for aerial photo imagery, Ordnance Survey maps for contour information, and local knowledge.
197. There are approximately 25 different points where the Forum is conscious the settlement boundary line departs from ownership boundaries. This occurs in situations where gardens are large in size relative to their surrounds, for example, they appear to be more akin to a 'paddock'; where the extent of the domestication of land differs from the other land nearer to a dwelling; where land takes the form more akin to the countryside which it borders rather than the urban settlement; where land is at a different level etc.
198. The Forum accepts that establishing land *uses* is subjective. However, the Forum notes that on the whole there appears to be support for the planning judgments made.
199. In relation to *The Garden House*, reviewing notes from the aforementioned group exercise the Forum highlights the land outside the settlement boundary:
- (i.) when viewed using Google Map Pro aerial photo imagery appears more like adjacent countryside than adjacent domestic garden area (**Figure 2**);

- (ii.) when viewed using Ordnance Survey map contour information is at a lower level and is more proximate in level to adjacent countryside than adjacent domestic garden area;
- (iii.) is within the AONB and has close proximity to rejected housing site H3-R2 Berry Head Road (see composite map at the back of the Policy Maps) where a later withdrawn planning application received comments from South Devon AONB which raised landscape concerns.⁹⁶ The Forum was hence keen to avoid encroachment of the settlement into the AONB; and
- (iv.) the previous owners of the property, had made representations at public Forum meetings about the fragility of the AONB in the area.

⁹⁶ BPNP Housing Site Assessment, p65

Figure 2

Aerial photo image extracted from Google Map Pro in the vicinity of The Garden House.



Source: Google Map Pro

Settlement Boundary (Policy E2) transposed onto the image in red outline.

The modification advocated in comments received shown in dashed red outline.