



Wednesday, 28 March 2018

## **DEVELOPMENT MANAGEMENT COMMITTEE**

A meeting of **Development Management Committee** will be held on

**Monday, 9 April 2018**

commencing at **2.00 pm**

The meeting will be held in the Riviera International Conference Centre,  
Chestnut Avenue, Torquay, TQ2 5LZ

### **Members of the Committee**

Councillor Kingscote (Chairman)

Councillor Barnby

Councillor Morey

Councillor Doggett

Councillor Pentney

Councillor Hill

Councillor Tolchard

Councillor King

Councillor Winfield

---

**A prosperous and healthy Torbay**

---

For information relating to this meeting or to request a copy in another format or language please contact:

**Amanda Coote, Town Hall, Castle Circus, Torquay, TQ1 3DR  
01803 207087**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk)

[www.torbay.gov.uk](http://www.torbay.gov.uk)

# DEVELOPMENT MANAGEMENT COMMITTEE AGENDA

1. **Apologies for absence**

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

2. **Minutes**

To confirm as a correct record the Minutes of the meeting of this Committee held on 12 March 2018.

(To Follow)

3. **Declarations of Interests**

(a) To receive declarations of non pecuniary interests in respect of items on this agenda

**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

**For reference:** Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

**(Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)

4. **Urgent Items**

To consider any other items that the Chairman decides are urgent.

5. **Land South Of Yalberton Road, (Yannon's Farm), Paignton P/2014/0983**

(Pages 4 - 37)

Outline mixed use proposal for phased residential development (Use Class C3) of up to 192 dwellings and employment development (Use Classes B1 and B8) of between 7,400 sq m and 9,200 sq m floor area, together with the provision of ecological mitigation measures, public open space and other associated infrastructure. (Means of access to be determined only) (Revised Scheme) (THIS IS A DEPARTURE FROM THE ADOPTED TORBAY LOCAL PLAN 1995-2011)

6. **Land Off Brixham Road (Former Nortel Site), Long Road, Blatchcombe, Paignton P/2018/0053** (Pages 38 - 53)  
Reserved matters application re: P/2017/1041 Variation of condition on application P/2014/0947 (as amended by S73 applications P/2016/1372, P/2017/0123 and P/2017/0571): (Devonshire Park Housing/Commercial Project). Variation of condition 33 - Maximum retail floor space. Amendment sought: Increase total gross floor area of class A3 floorspace from 139sqm to 167sqm.
7. **42 Whidborne Avenue, Torquay, TQ1 2PQ P/2017/1182** (Pages 54 - 63)  
New dwelling with accommodation over 3 floors, associated parking, double garage (revised plans received 16 February 2018).
8. **Limestone Court, St James Road, Torquay P/2018/0100** (Pages 64 - 75)  
2 New Dwellings, parking area and associated engineering operations to cliff face.
9. **Public speaking**  
If you wish to speak on any applications shown on this agenda, please contact Governance Support on 207087 or email [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) before 11 am on the day of the meeting.
10. **Site visits**  
If Members consider that site visits are required on any of the applications they are requested to let Governance Support know by 5.00 p.m. on Wednesday, 4 April 2018. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

**Application Number**

P/2014/0983

**Site Address**

Land South Of Yalberton Road  
(Yannon's Farm)  
Paignton  
Torbay

**Case Officer**

Mrs Helen Addison

**Ward**

**Description**

Outline mixed use proposal for phased residential development (Use Class C3) of up to 192 dwellings and employment development (Use Classes B1 and B8) of between 7,400 sq m and 9,200 sq m floor area, together with the provision of ecological mitigation measures, public open space and other associated infrastructure. (Means of access to be determined only) (Revised Scheme) (THIS IS A DEPARTURE FROM THE ADOPTED TORBAY LOCAL PLAN 1995-2011)

**Update Report April 2018**

The applicant has asked Members to reconsider their decision from December 2017 about the level of mitigation for cirl buntings that should be provided to offset the impact of the development. In support of this request legal advice has been submitted by the applicant and a further ecological report supporting the opinion that mitigation for 4 pairs of cirl buntings should be provided through provision for one pair on site and three pairs off site.

A revised cirl bunting report was submitted in November 2017 that reported further surveys had been carried out during 2017 which recorded 4 territories on the site compared with 8-9 singing males and 4 singing males when the site was originally surveyed in 2014 and 2015.

The applicant's legal advice to support their opinion that a reduced level of mitigation should be provided can be summarised as;

- National and local policy clearly and consistently states that the most recent survey data should be used when assessing the impact of development on a species. There is no justification to depart from this approach.
- The most recent survey data demonstrates that there are 4 cirl bunting territories on the site. Therefore, pursuant to Policy NC1 of the Local Plan, mitigation for 4 territories should be provided.
- Seeking mitigation for more than 4 territories would offend against R122 of the CIL Regulations and would result in the unlawful grant of planning permission.

Advice has been received from the RSPB that they will withdraw their objection to the application providing compensation is provided for 6 cirl bunting territories. This would be provided through provision for one territory on site and the remaining 5 off site. This level of compensation is the mean of the 2014 and 2017 survey counts. Whilst normally RSPB advice is that the highest recent cirl bunting count should be taken as the benchmark for compensation they recognise that in this case as the original survey data is 3 to 4 years old there are particular circumstances pertaining that allow it to be moderated in this case.

The applicant has agreed to accept the advice from the RSPB and the proposal is for cirl bunting mitigation on the basis of suitable habitat for 1 pair on site and a commuted sum for habitat provision for 5 pairs off site at the rate £87,500 per pair (as per Torbay Planning Contributions and Affordable Housing February 2017 SPD). The offsite provision to be through agreement with Torbay Coast and Countryside Trust.

The consultation response from the Council's ecological advisor is awaited. Subject to this response agreeing to the provision of mitigation for 6 pairs of cirl buntings (1 on site and 5 off site) this level of mitigation which is derived from the average between the two survey periods is considered to be a proportionate and realistic response, given that no decision has been issued since the application was originally considered.

#### **Recommendation on the issue raised**

Subject to no objections being raised by the Council's ecological advisor

1. Cirl bunting mitigation is required for 6 pairs where on site mitigation can be provided for one pair and off site compensation is required for 5 pairs.
2. All other s.106 obligations are to remain as set out in the original and updated report below.

#### **Update Report December 2017**

*This application was approved at the Development Management Committee meeting on 14.12.15 subject to successful resolution of technical issues, ecology, completion of a S106 agreement and conditions. An update was subsequently agreed by the DM committee at their meeting in June 2016. It has proved to be complex to agree the contents of the S106 agreement and the applicant has spent considerable time working on how to deliver mitigation for the impact of the development on cirl buntings and greater horseshoe bats. A further delay has arisen because of uncertainty in the Council's programme to carry out works to the Brixham Road and Yalberton Road junction. Consequently the decision has not yet been issued.*

*The application is returned to the Development Management committee for further consideration of the following points;*

1. *A new Cirl Bunting survey report has been submitted by the applicant following further surveys that were carried out between April and August 2017. The original surveys carried out in 2014 and 2015 recorded the presence of 8-9 singing males and 4 singing males respectively. The current survey indicates that 4 territories of cirl bunting are present on the site. In the light of this the developer is now proposing to provide a contribution for off site mitigation for 2 or 3 pairs of cirl buntings. When the application was originally considered it was agreed by the developer that mitigation would be provided for 8 pairs of cirl buntings.*
2. *Since the resolution to grant conditional planning permission an updated version of the SPD 'Planning contributions and affordable housing' has been adopted by the Council. The S106 contributions should be revised to accord with the up to date SPD.*
3. *The applicant has requested that the area of employment land adjacent to the PMU is excluded from the Section 106 agreement in order that it can be disposed of separately from the main part of the site.*
4. *The applicant is of the opinion that if the Council has let the contract to carry out the works to the Yalberton Road junction, a contribution towards these works would not meet the CIL Regulations Test of Lawfulness (set out in Regulation 122 of the CIL Regulations 2010 and NPPF paragraph 204) because the Council has already committed to meet the cost of the works.*

*Each of these points will be explained further below;*

#### **1. Revised Cirl Bunting survey**

*When the application was considered by the Development Management Committee in December 2015 it was agreed that on site mitigation could be provided for one pair of cirl buntings and off site mitigation would be provided for 7 pairs. Since this time the applicant has been unable to provide officers with sufficient certainty that the off site mitigation can be delivered to protect cirl buntings.*

*The applicant proposed a mitigation strategy relating to off site mitigation on an area of 19.28 ha that would be favourably managed in the long term for the species by modifying the existing land management regime. The shortcoming of this proposal was that it failed to provide sufficient certainty that the management of the land would be carried out in perpetuity as there would be no realistic recourse available to the Local Planning Authority if the land was not managed in accordance with the agreed strategy.*

*The applicant has submitted a new survey of the site carried out between April 2017 and August 2017. He refers to guidance from Natural England that ecological surveys should be updated every two years and that the latest survey data should be the basis of decision making.*

*The Council's ecological consultant has commented on the applicant's submission of an updated ciril bunting strategy that they consider 8 pairs of ciril buntings (territories) should be compensated for in relation to the development and not the suggested 4 pairs. The reduction in numbers (4 pairs, territories in 2017, from 8-9 pairs, territories recorded in 2013 and 2014) is in response to changes in agricultural practices, i.e. the arable element was removed post 2014 and from 2015 onwards used as grassland for silage. Therefore, altering the ecological baseline conditions with sub-optimal ciril bunting habitat. Changes in agricultural practises, such as crop rotation for reasons of pest control and/or disease are often undertaken on a cyclic basis and the result may not favour highly specialised species, such as ciril bunting. By re-instating arable crop production, such as cereals, this would re-address the future lack in numbers within those areas.*

*A similar comment has been received from the RSPB who are of the opinion that compensation should be provided for at least 8 pairs. They also note that the surveys carried out in 2017 do not accord with the RSPB guidance. The guidance recommends that a survey does not take place between 11.00 and 15.00 but two visits to the application site took place wholly or partly in this period. Also there were two periods of survey time on the application site of insufficient duration being only 15 minutes.*

*The ciril bunting is a nationally rare and threatened 'priority species' which receives legal protection as a Wildlife and Countryside Act 1981 'Schedule 1 bird'. It is a priority species of principal importance under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006. The S41 list is used to guide decision makers in implementing their duty under section 40 of the NERC Act to have regard to the conservation of biodiversity.*

*The species were identified as requiring action under the UK Biodiversity Action Plan. Once a widespread farmland bird, Britain's ciril bunting population is now confined to South Devon with Torbay supporting about 7% of the country's birds.*

*The Government's policy on biodiversity in the NPPF includes;*

- *Minimising impacts on biodiversity and providing net gains where possible (paragraph 109)*
- *Planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure (paragraph 114)*
- *Promoting the protection and recovery of priority species populations and the preservation, restoration and re-creation of ecological networks and priority habitats (paragraph 117); and*
- *Conserving and enhancing biodiversity by adherence to the mitigation hierarchy. This approach is set out in the first bullet point in paragraph 118 of the NPPF; which states:*

*If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.*

*Policy NC1 in the Torbay Local Plan 2012-30 states “where there is an identified residual impact on biodiversity, proposals will be expected to deliver a net gain in biodiversity.” It continues “development that risks harm to Cirl Bunting habitats and territories will only be permitted where ... the impacts can be mitigated in full”.*

*When the application was originally considered in December 2015 the applicant agreed with the Council that compensation for 8 pairs of cirl buntings would be provided. This was based on evidence that he submitted with the planning application. It is entirely probable that changing the method of farming the land would reduce the number of cirl buntings on the site. The current offer from the applicant is to provide on site mitigation for one pair and off site compensation for 2 to 3 pairs. In considering whether to agree to a reduced level of compensation Government advice in the NPPF and Local Plan policy is relevant. In this case it is clear that when planning permission was applied for the site supported 8 territories. This should be the baseline against which the development is assessed. It is known that the site supported 8 territories at the time of the application and this is the level of compensation/mitigation that should be provided. Policy NC1 requires the impacts of development to be mitigated in full and in order to achieve this position compensation/mitigation for 8 pairs should be provided as advised by the Council’s ecological consultant and the RSPB.*

## **2. S106 contributions**

*Since the application was previously considered the Council has adopted the SPD ‘Planning contributions and affordable housing’ February 2017. Since the decision on the application has not been issued it is appropriate for the decision to accord with the current SPD.*

*The following will be included in the S106 agreement;*

### *Site Acceptability*

- o Re-route gas main as part of Brixham Road Highway Improvement Works = £360k*
- o Works to Yalberton Road = £155k*
- o Cirl bunting mitigation/compensation strategy – yet to be agreed*
- o Monitoring contribution to confirm ecological mitigation/compensation is effective – to be agreed*
- o Waste Management = £16,320 @ £85 / unit*
- o Conversion and long term management and maintenance for off site bat barn.*

*In accordance with the adopted SPD ‘Planning contributions and affordable*



housing' February 2017 the following contributions towards sustainable development infrastructure are sought;

*Affordable Housing*

- *Up to 58 affordable dwellings (30%) to include a third social rent, a third affordable rent and a third intermediate.*

*The following sustainable development contributions have been estimated, as the application is in outline meaning the precise floor areas of the dwellings are unknown at this stage - a dwelling size average of 80-108 sq m has been used below for the upper limit of 192 dwellings; the s106 agreement shall include a schedule to calculate the precise contributions when the floor areas are known following submission of reserved matters.*

*Sustainable Development (based on 134 open market dwellings, 16 social rent, 16 affordable rent, 16 intermediate all units 80-108 sq m)*

*Sustainable Transport £tbc*

*Education £tbc*

*Public open space, sports and recreation £tbc*

*Lifelong learning £tbc*

*TOTAL £tbc*

*Mitigation:*

*Mitigation has been applied to the contributions calculated above as follows:*

- o *Social rent & affordable rent dwellings - 100% discount to SD contributions, not waste and other site acceptability matters.*
- o *Intermediate dwellings - 50% discount to SD contributions, not waste and other site acceptability matters.*
- o *Sustainable Transport contribution for employment uses - 100% discount due to 'Mitigation for Economic Prosperity (jobs created)'*
- o *Greenspace & Recreation cost per person £371; it does not include 'Equipped facilities for young people' and 'Greenspace', as these are indicated to be provided onsite. Effective cost per dwelling 80 to 108 sqm £964 per dwelling)*

**3. Exclusion of part of the employment land from the S106 agreement**

*The application site comprises two parcels of land. The main site to the west adjoining Yalberton Road is 10.16ha in area, while the smaller site to the east between Torbay Pharmaceuticals and Yannons Farm local centre is 1.31ha. The total site area is 11.47ha. The applicant has advised that he would like to be able to dispose of the smaller part of the employment land (1.115ha) without being bound by the requirement that the land is used for B1 or B8 purposes and it is actively marketed as employment land.*

*There is no objection to this request as the majority of land identified for employment purposes (1.187ha) will be subject to the S106 agreement. All of this remaining employment land will be subject of a condition linking it delivery to delivery of houses on the site.*

**4. That the contribution for works to the Yalberton Road and Brixham Road junction and the Yalberton Road works are unlawful**

*The proposed development would be accessed from Yalberton Road. In order for the junction to have sufficient capacity to cater for the additional traffic generated by the development it is necessary for the junction to be improved. When the application was considered by DM Committee it was the Council's intention to carry out this work but there was a shortfall in the budget of £360k to move a gas main. The applicant agreed to pay this shortfall in order that the works could go ahead.*

*The applicant is of the opinion that as the Council is committed to carrying out the junction improvement works it is unlawful to request the contribution of £360k as it is no longer necessary to make the development acceptable.*

*At the current time the Council has not signed the contract for the works to be carried out as there remains a shortfall in the budget to cover the cost of the alterations to the gas main and therefore the Council is not committed to carrying out this work. The position has not changed since the application was originally considered in that a contribution from the applicant is still required in order for the highway improvement works to be carried out.*

**Torbay Local 2012-30 and Paignton Neighbourhood Plan**

*Since the previous consideration of this application the Torbay Local Plan 2012-30 has been adopted. In the plan the application site is predominantly located within a future growth area. Policy SS2 supports delivery of high quality residential and employment development within the area. Policy SDP3 promotes mixed use development on the site. Although part of the site is within the Countryside Zone and the proposed development would not comply with Policy C1 it is material to consider that Members have previously granted consent for development on the site, and that the delivery of housing and employment land are further material considerations. Any adverse impact to the character of this part of the site would be outweighed by the benefits of the development in delivering mixed use development as promoted by the Torbay Local Plan 2012-30.*

*The Paignton Neighbourhood Plan has been submitted to the Council for consultation which is currently being carried out. Due to its early stage it should be given little weight in the decision making process. The application site has no designation in the plan. General Policy PNP 1 area wide policy is applicable which 'gives priority to jobs lead growth' and Annex 2 to Policy PNP 1 (Design Guidelines) which seeks to achieve good design through points 1 to 38.*

### **Recommendation on four issues raised**

1. *Circl bunting mitigation is required for 8 pairs where on site mitigation can be provided for one pair and off site compensation is required for 7 pairs. If the applicant does not agree this position within one month of the committee date the application should be refused.*
2. *S106 contributions to be revised in accordance with the current SPD*
3. *Exclusion of the 1.115ha parcel of employment land from the S106 agreement is acceptable*
4. *The £360k contribution for improvement works to the junction of Yalberton Road and Brixham Road is required.*
5. *All other s.106 obligations are to remain as set out in the original report.*

### **Update Report June 2016**

*This application was approved at the Development Management committee meeting on 14.12.15 subject to successful resolution of technical issues, ecology, completion of a S106 agreement and conditions within six months of the date of the meeting. During this time work has continued on resolving the outstanding matters, but it has not been possible to resolve all issues within the six month deadline, as a number are complex. Therefore a further extension of time is requested until 31st August 2016. The applicant is agreeable to this.*

*It has been necessary to make minor revisions to the content of the S106 agreement and Members agreement that these are acceptable is requested. These revisions are;*

- *The applicant has agreed to provide a policy compliant level of affordable housing at 30%. It was originally proposed that this should include up to 5% self build plots. The provision of affordable self build plots has not proved possible to deliver due to a lack of certainty from housing associations and therefore it is proposed to delete this requirement. The affordable housing requirement to remain at 30%.*
- *Development of the site must allow for pedestrian, cycle and public transport links to the Western Power Distribution site as well as the neighbouring site at the former Yannons Farm*
- *Provision of an off-site bat barn in accordance with the Ecological Design Strategy submitted in support of the application*
- *Inclusion of provisions to ensure that no less than 2.09ha of the site is available for employment purposes and to ensure that the employment land is actively marketed*
- *£5,000 to make and implement a Traffic Order to extend the 30mph speed limit on Yalberton Road*

## **Original Report to DMC 14.12.15**

### **Executive Summary/Key Outcomes**

*The application has been submitted in outline with all matters reserved except access. It proposes the development of the remainder of the employment allocation (Policy E1.16(c)) in the Adopted Torbay Local Plan 1995-2011 ('the current Local Plan'), including land allocated for strategic landscaping and part of the Countryside Zone/Area of Great Landscape Value (AGLV) to the west. This land is allocated as a Future Growth Area in the emerging Torbay Local Plan - A landscape for success 2012-2030 ('the new Local Plan'), except for a field to the south of the site which is allocated as Countryside Zone.*

*The application site comprises two parcels of land. The main site to the west adjoining Yalberton Road is 10.16ha in area, while the smaller site to the east between Torbay Pharmaceuticals and Yannons Farm local centre is 1.31ha. The total site area is 11.47ha. The proposals are to develop up to 192 dwellings and employment development (Use Classes B1 and B8) of between 7,400 sq m and 9,200 sq m floor area, together with ecological mitigation, public open space and other associated infrastructure. The site excludes part of the field within the Countryside Zone, which is proposed as a 'high meadow' for ecological mitigation - this will be used to partly compensate the loss of cirl bunting habitat on the site. The Council issued an EIA screening opinion in December 2014 concluding the proposal is not EIA development.*

*The revised illustrative masterplan submitted with the application indicates that the smaller site shall be used wholly for employment development, while the main site to the west shall comprise employment development to the north adjoining Yalberton Road with residential development to the south. Access to the main site will be provided via a new roundabout on Yalberton Road at the junction with Alders Way, while access to the east site will be provided via a new access road on Wilkins Drive. Yalberton Road will be widened to provide a 6.5 metre carriageway along the frontage of the Western Power station site and a shared footpath/cycleway to the proposed Brixham Road Western Corridor highway improvement works at the Brixham Road/Yalberton Road junction, which are scheduled for autumn 2016. In addition, a secondary emergency access shall be provided to the main site further along Yalberton Road to the west. A link to the adjoining Yannons Farm development site shall be secured in the s106 agreement, which will need to provide access for public transport, pedestrians and cyclists.*

*The principle of the proposed development for a mix of housing and employment is considered to be acceptable by officers and in accordance with the provisions of the current and new Local Plans, taking material considerations into account. It will deliver up to 192 dwellings, helping to maintain a 5 year housing land supply and a significant amount of employment development generating a large number of jobs; it will also contribute to upgrading the Brixham Road/Yalberton Road junction. However, a condition is necessary to ensure that the layout of housing at*

*reserved matters stage will not prejudice the future reuse of the allocated waste site at Yalberton Tor Quarry as a waste management facility, which Strategic Planning officers have confirmed must be retained in accordance with Policy W3 (current and new Local Plans).*

*At the time of writing this report the final comments of the Local Highway Authority are awaited to confirm that the proposed access arrangements are safe and deliverable, and will not have a severe impact on the local highway network, including the capacity of the Brixham Road/Yalberton Road junction. Initial indications are that the principle of the access arrangements along Yalberton Road is acceptable, subject to the proposed highway improvement works being carried out, but the proposed fallback option proposed is unacceptable, due to safety concerns with the proposed pedestrian crossing on Yalberton Road adjacent to the Sainsburys petrol filling station. An update will be provided by officers at committee. A shortfall in funding to deliver the highway improvement works, to the junction of Brixham and Yalberton Roads, will need to be paid for by the developers and secured in the s106, together with other s278 funding for highway works along Yalberton Road outside the site boundary.*

*Insufficient information has been submitted to enable the Council to carry out a Habitats Regulations Screening Assessment of the proposed development, however further information is being prepared and is expected to be submitted by the applicants shortly. The Council's external ecological adviser on the South Hams SAC has been working with the applicants' ecologists to ensure that this information is satisfactory. If a Habitats Regulations Assessment has not been carried out by the time of the committee, or if an Appropriate Assessment is required, officers will recommend the application be deferred to provide more time to resolve these matters. A detailed curlew bunting mitigation/compensation strategy is also required before planning permission is granted. The RSPB currently object to the application, due to inadequate information in this regard. It is understood that a strategy is being prepared by the applicants' ecologists to provide compensation on the field to the south of the site and other offsite land at Cockington and off Long Road. An update will be provided by officers at committee.*

*Despite concerns raised by local residents, the drainage proposals (foul and surface water) are considered to be acceptable for approval at this stage, subject to conditions. This has been agreed by South West Water and the Engineering department - on behalf of the Council as Lead Local Flood Authority. However, Engineering officers have requested details of an offsite surface water drainage connection in case it is not possible to infiltrate all of the surface water run-off from the site, prior to determination. This information will be sought from the applicants prior to committee.*

*The applicants propose to deliver the policy compliant level of affordable housing (30%), but have requested flexibility on tenure mix. This will need to be agreed by*

*the Head of Asset Management and Housing, while the s106 is drafted. Together with the site acceptability matters discussed above, the s106 will need to secure sustainable development contributions towards local infrastructure, including schools and Paignton Library. Precise figures cannot be calculated at this stage, as the application is in outline, but the total contribution is estimated to be approximately £800k.*

*Officers recommend approval of the revised application, subject to the successful resolution of the technical issues above. The principle of developing the site for housing and employment use accords with the Future Growth Area in the new Local Plan and will go a long way in helping to meet local housing needs and economic growth. Whilst officers will provide Members with a full update at committee, should any technical matters remain outstanding, officers will seek Members' approval to delegate these to officers to resolve with the applicants within three months of the committee, or the application will be brought back to committee for full reconsideration. The only exception to this is if a Habitats Regulations Assessment has not been carried out, or an Appropriate Assessment is required, in which case officers will recommend deferral. In effect, Members will be asked to approve the application in principle; however, Members could also decide to defer the application or refuse it if they consider it does not fulfill the policy objectives of the new Local Plan.*

### **Recommendation**

*Conditional approval; subject to the successful resolution of technical issues relating to access arrangements, ecology mitigation/compensation and s106 legal agreement relating to timing of provision of employment development, timing of highway improvement works and occupation, secure 30% affordable housing, including up to 5% self build plots, and necessary contributions within 3 months of the date of this committee or the application be reconsidered in full by the committee; conditions listed at the end of this report, however final drafting and determination of appropriate planning conditions to be delegated to the Executive Director of Operations and Finance.*

*NB. If a Habitats Regulations Screening Assessment has not been carried out by the time of the committee, or if an Appropriate Assessment is required, officers' recommendation will change to deferral to provide more time for these matters to be resolved.*

### **Statutory Determination Period**

*The application was validated on 03.12.2014. The statutory determination date was 05.03.2015 (13 weeks), but an extension of time is currently agreed to 15.12.2015.*

### **Site Details**

*The site comprises two parcels of land adjacent to the Yannons Farm development site to the west of Brixham Road on the outskirts of Paignton. The larger parcel of*

land to the west is 10.16ha in area, while the smaller parcel of land to the east is 1.31ha. The total site area is therefore 11.47ha. The majority of the site is located within the Future Growth Area of the new Local Plan, except for the south part of the main site to the west.

Both parcels of land comprise agricultural fields bounded by hedgerows. The west site includes an important group of remnant elm trees and a derelict stone barn. In addition, overhead power lines cross the west site to the north. Both sites have sloping topographies. The west site has a north facing slope that rises by about 50 metres to a high point near the top of the hill to the southeast. However, the west site excludes a large part of the field near the top of the hill, which is proposed as a 'high meadow for ecological mitigation and biodiversity'. A footpath is proposed around the meadow and the high point is within this strip of land. The bulk of the west site rises by about 35 metres to a point further down the slope. The topography is steeper to the west, with a gradient of about 1:7. In comparison, the east site has a consistent slope of 1:12, rising 13.5 metres north to south.

The main site to the west is bounded by Yalberton Road to the north, the Western Power electricity station and Yannons Farm development site to the east, agricultural fields to the south (beyond which is South Devon College), and open countryside to the west. To the north of Yalberton Road is Yalberton Tor Quarry, which is allocated as a waste site in the new Local Plan, and the Rodgers/Yalberton industrial estates.

The smaller site to the east is bounded by Sainsburys car park to the north, Yannons Local Centre and residential properties to the east, Wilkins Drive (with newly constructed housing beyond) to the south, and Torbay Pharmaceuticals to the west. This site has an existing access to the north via a right of way to the rear of Sainsburys, which leads to Yalberton Road.

The east site and a large area of the west site are allocated for employment development in the current Adopted Local Plan. The land to the south and west of the main site is designated as Countryside Zone and Area of Great Landscape Value (AGLV). The edge of the employment allocation and a strip running through the east site is also allocated for strategic landscaping.

The east site and majority of the west site are located within the Future Growth Area for housing and related development in the new Local Plan. The exception is the field to the south of the west site near the top of the hill, which is designated as Countryside Zone (NB. AGLV designations have been removed from the new Local Plan). As stated above, a large part of this field is excluded from the site to the south, except for a strip around the edge which is proposed as a footpath.

The whole site is located within the greater horseshoe bat sustenance zone associated with the South Hams Special Area of Conservation (SAC) at Berry Head; the northwest corner of the main site is also within a strategic flyway. The

whole site is located with the Critical Drainage Area (CDA).

### **Detailed Proposals**

*The application has been submitted in outline with all matters reserved except access. The current description is for a mixed use, phased residential development of up to 192 dwellings and employment development (Use Classes B1 and B8) of between 7,400 sq m and 9,200 sq m floor area, together with ecological mitigation, public open space and other associated infrastructure. The Council issued an EIA screening opinion in December 2014 concluding the proposal is not EIA development.*

*The application has been amended during the course of the application. This has mainly been to the level of employment provision. The original proposals included approximately 8,500 sq m employment floor area (Use Class B1), but this was revised down to 6,605 sq m (B1 and B8) in the first amendment (June 2015); the proposed community use of the derelict barn was also removed from the proposals. The amount of housing has remained the same.*

*During the course of the application, officers have secured, through negotiation, a number of improvements to the proposal, including:*

- *increased employment floorspace;*
- *revised site layout (illustrative) to ensure noise issues are overcome and reuse of the allocated waste site at Yalberton Tor Quarry is not prejudiced;*
- *improved connections between the site and Yannons Farm development;*
- *biodiversity enhancements and ecological off-setting; and*
- *delivery of junction improvements on Brixham Road.*

*The detailed access proposals include a new roundabout on Yalberton Road at the junction with Alders Way and widening of Yalberton Road to the south in order to provide a shared footpath/cycleway. The existing hedgerow to the south of Yalberton Road will be removed and a new 2 metre wide Devon hedgebank laid adjoining the shared footpath/cycleway. The new carriageway will be 6.5 metres wide and the footpath/cycleway will be 2.5 metres wide. The site boundary extends eastwards along Yalberton Road and includes the front of the Western Power site to accommodate the road widening. Beyond the site boundary, it is proposed to continue the shared footpath/cycleway along the south side of the road, to the front of Sainsburys, to link up with the proposed Brixham Road Western Corridor highway improvement works scheduled for autumn 2016. These works include a footpath to the front of McDonalds and a pedestrian crossing on Brixham Road to the south of the junction. The applicants will pay for these works, including the upgrading of the pedestrian crossing so that it is signalised, via s278 funding. It is expected the scheme will be delivered by July 2017. If the scheme is not delivered, the applicants have proposed a fallback option incorporating a toucan crossing on Yalberton Road adjacent to the Sainsburys petrol station and the continuation of the shared footpath/cycleway along the north side of Yalberton Road, to a*



*pedestrian crossing on Brixham Road, north of the junction.*

*Therefore, access to the main site will be provided via a spur road on the new roundabout, with the continuation of the shared footpath/cycleway into the site. A 3 metre wide emergency access will also be provided further along Yalberton Road to the west. A link is also proposed to the Yannons Farm development site to the south, although this will be secured in the s106 agreement and details will be provided at reserved matters stage, as this part of the Yannons Farm development site is currently subject to an outline planning application and the detailed layout of this land has not been finalised. The smaller parcel of land to the east shall be accessed via a 5.5 metre wide access road off Wilkins Drive to the south, with the continuation of footpaths either side of the road into the site.*

*Details of layout, scale, appearance and landscaping are reserved matters. However, the applicants have provided an illustrative masterplan indicating the broad layout of the proposed development. The smaller east site is indicated as employment development in its entirety. The main site to the west is split into a number of development parcels. The land adjoining Yalberton Road is indicated as employment development, while the land to the south further up the slope is indicated as residential development. A linear open space, including a play area is indicated to the north of the site and a community orchard is indicated to the south adjacent to the existing derelict barn. The barn is indicated as being retained for ecological habitat. An existing overgrown agricultural track leading up to the barn will be retained and enhanced as a dark bat corridor. A circular access route is indicated, which cuts through the bat corridor in two places. This is also shown traversing the steep part of the site to the west. A pond is indicated in the northwest corner to provide sustainable drainage. As previously explained, a large part of the field to the south of the site is not included in the application site boundary. It is proposed as a high meadow for ecological mitigation and biodiversity, with an area set aside for mixed native woodland. A recreational footpath is proposed around this area, with a footpath link to the adjoining Hilltop Park in the Yannons Farm development.*

### **Summary Of Consultation Responses**

*Consultees were reconsulted on 11 November 2015 following amendments to the application description of development and submission of further information, including a revised illustrative masterplan. Consultees have 21 days to respond. At the time of writing this report, 3 days remain of this consultation period and some responses are still outstanding. These shall be provided as late representations.*

*Strategy and Project Delivery Team/Highways ('Local Highway Authority'): Comments awaited on latest consultation. Previously objected, as unable to conclude that the applicants can demonstrate the development will have a safe and suitable access for all. Nor can the development currently demonstrate connectivity to the adjacent residential development in a way which would enable sustainable transport modes to be maximised. There is also a lack of information*

*to demonstrate that the junction (Yalberton Road and Brixham Road) has capacity to serve the proposed development, without causing severe impacts.*

*Environment Agency: No objection to latest drainage proposals, although acknowledge since April 2015 they are no longer the statutory consultee in relation to drainage matters. Advise that the application should not be determined until such time that clarity regarding a critical aspect of one of the surface water drainage options proposed is given by the developer to the satisfaction of the LPA, i.e. confirmation that a defined point of discharge is deliverable if infiltration is unviable.*

*Previously advised that Yalberton Tor Quarry could conceivably become an operational waste disposal and/or treatment site again. The introduction of new residential receptors immediately adjacent to the site would not be a desirable outcome, and would likely introduce significant challenges for achieving acceptable emission control, particularly for noise and other amenity issues, depending on the precise waste management activity taking place.*

*Historic England: Comments awaited on latest consultation. Recommended previously the application should be determined in accordance with national and local policy guidance and on the basis of the Council's specialist conservation advice.*

*Natural England: Comments awaited on latest consultation pending submission of a revised Ecological Impact Assessment (EclA) and completion of a Habitats Regulations Assessment by the LPA. Previously advised that the application has the scope to adversely affect the favourable conservation status of the Berry Head greater horseshoe bat maternity colony, which is a designated SAC. Therefore, the local authority must carry out a Habitat Regulations Assessment in accordance with the Habitats Regulations. However, advise that there is currently not enough information to determine whether the likelihood of significant effects can be ruled out. Therefore, further information is required from the applicants.*

*Standing advice applies to other protected species. Advise that the authority should consider securing measures to enhance the biodiversity of the site if it is minded to grant permission. These should be set out in a comprehensive EclA. Note the RSPB have concerns regarding impacts on curlew buntings and advise that these are resolved before determining the application. The authority should assess the impacts on local designated sites, species and landscape character, which are also material considerations.*

*Engineering (on behalf of Torbay Council as Lead Local Flood Authority): The preliminary design of the proposed infiltration basin (pond) is satisfactory for the site. The developer should confirm where the Greenfield run off rate from the site will be connected if - following the detailed infiltration testing - it is not possible to infiltrate all of the surface water run-off from the site. No objection, subject to this*

*being confirmed and pre-commencement conditions regarding detailed drainage design.*

*RSPB: Comments awaited on latest consultation pending submission of a revised Ecological Impact Assessment (EclA) and cirl bunting mitigation strategy. Previously objected because onsite mitigation and offsite compensation proposals with respect to cirl bunting impacts are not yet adequate. This should be based on 1 pair onsite and 7 pairs offsite. It is unlikely skylarks would use proposals for skylark plots on the site and cirl bunting management is the priority for habitat creation. It is possible that there will be human disturbance to the barn that may deter owls from using it. Cirl bunting mitigation/compensation will need to be provided and managed to provide adequately for both greater horseshoe bats and cirl buntings.*

*Barn Owl Trust: Makes recommendations for mitigation/enhancement based on the Barn Owl evidence in the derelict barn on the site. This includes providing a temporary roosting/nesting box during construction works until permanent provision is made. A pre-development survey must be carried out to ensure no birds are nesting within three days of works commencing. A permanent nesting place for Barn Owls must be provided within one or more of the developed buildings and maintained thereafter. Welcomes recommendations for the creation of rough grassland habitat.*

*South West Water: Not satisfied that the public foul drainage network has capacity to support the development without causing downstream property flooding. Therefore, if the application is approved, the following condition needs to be imposed:*

*No development shall commence until:*

*a) a detailed survey and evaluation of the public foul sewerage network has taken place (at the Owner's expense) to identify improvements necessary to be funded in advance and executed to accommodate the discharge of foul sewage from the Development; and*

*b) the Owner has submitted 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 of public sewerage improvement works identified as necessary).*

*No dwelling hereby approved shall be occupied or brought into use and there shall be no discharge to the public foul sewerage network, unless approved in writing by the Local Planning Authority (as in accordance with the scheme of improvement works identified by the Sewerage Undertaker as necessary to accommodate the discharge of foul sewage from the Development).*

*Police Architectural Liaison Officer: Consideration should be given that the development is constructed to meet full Secured by Design (SBD) compliance. Happy to advise further at reserved matters stage.*

*Torbay Development Agency: No response.*

*Arboricultural Officer: The access proposals are suitable for approval on arboricultural merit. Mitigation tree planting should be sought in the realigned Devon hedgebank. The indicative access road south of the proposed roundabout abuts an important group of remnant elm trees, which should be retained and regarded as significant constraints in the future layout. The road, including footways and associated service runs, should be aligned to avoid disturbance to the root protection areas of these trees. A Landscape and Ecological Management Plan (LEMP) must be secured following agreed landscape design of street trees, groups, shrub masses, etc. The detailed landscaping scheme should address the requirements of the rural location against the need to provide sustainable trees of seasonal interest. Trees should be positioned at arrival points and planted in hedgerows. The proposed orchard requires detailing out at an early stage. The detailed landscaping plan should integrate use of storm water runoff to water tree pits.*

*The siting of the emergency access is acceptable, subject to a method statement to prevent damage to rooting zones of the lime tree. Additionally any widening should be achieved by works to the pillar away from the stem.*

*Building Control: Comments awaited on latest consultation, but previously advised that the Building Regulations do not apply.*

*Community Protection: Objected previously, due to residential uses indicated adjacent to Yalberton Road, close to Yalberton Tor Quarry, and the potential for adverse noise impacts from the waste site and associated HGV movements. However, in response to the latest consultation, following the submission of a revised illustrative masterplan, stated that their previous concerns regarding noise from the allocated waste site are now greatly reduced, due to the proposed introduction of employment uses adjacent to Yalberton Road to provide a buffer to the proposed residential uses. Recommend conditions to limit the hours of use of the employment uses and deliveries.*

*Head of Asset Management & Housing: It is to be commended that the scheme will be providing the policy requirement of 30% Affordable Housing, which on a scheme of 192 dwellings will generate 58 affordable homes. These will be a variety of affordable housing tenures including 1/3 social rent, 1/3 affordable rent, 1/3 shared/home ownership including up to 5% self/custom build which will assist in meeting the variety of housing need. The mix of house types and sizes will be proportionate to the development as a whole and subject to the completion of a satisfactory S106 agreement which will set out the details around specification,*

*location etc. then Housing Services are in support of the application.*

*Natural Environment Services: Comments awaited on latest consultation pending submission of a revised Ecological Impact Assessment (EclA) and cirl bunting mitigation strategy. Previously advised that the proposed amounts of green infrastructure, open space and play should be secured via s106 agreement. Further details of these areas, including on-going management in perpetuity, will need to be secured by condition. Given the results of the ecological surveys, the detailed design and on-going management of these areas must be developed in consultation with Natural England and the RSPB. In addition, a contribution towards off-site sports facilities should be secured in accordance with the Planning Contributions and Affordable Housing SPD. This should be calculated on the basis of £394 per person, as 'equipped facilities for young people' and 'greenspace' are indicated to be provided onsite. A Landscape and Ecological Management Plan (LEMP) must be secured.*

*Senior Historic Environment Officer: Previous proposals for this area have included Archaeology and Cultural Heritage Assessments that have indicated the presence of Romano-British finds and the potential for previously unrecorded archaeological deposits. The red line for this area additionally includes an area to the north where the HER records the potential for an ancient earthwork (MTO21379) at SX 286930 59080. Therefore, the archaeological condition recently approved by Historic England should be attached to any outline planning permission.*

*Urban Design Officer (Landscape): The submitted Landscape and Visual Impact Assessment (LVIA) is in accordance with best practice. Only criticism is that by restricting the zone of theoretical visibility to a 2.5 km radius some long views from Barton Pines, Beacon Hill and Windmill Hill, have not been considered. However in these distant views the site is a very small component of a much wider landscape and will be seen against the backdrop of Paignton's existing urban edge. The proposed development site extends beyond the boundary of the Future Growth Area to the southwest, but does not consider that this small extension will increase the visual impact of the wider development. The LVIA is considered accurate and its summary and conclusion are agreed - on that basis, recommends approval from a landscape impact perspective.*

*Strategy and Project Delivery Team: The proposed amount of employment is acceptable and within the requirements of Policies SS5 and SDP3 (as modified) of the new Local Plan. The Development Areas Plan (3445/203/L) shows around 2.34 ha identified for employment use, which is within the range sought. The employment noise buffer adjoining Yalberton Road is welcomed. Whether the buffer indicated is sufficient to safeguard the Quarry's future use as a waste site is a matter for Community Protection officers to advise on. However the application is in outline and the detailed boundary between employment and residential development can be resolved as a reserved matter. It is appropriate to impose a condition requiring the detailed layout to show housing at a sufficient distance from*

*the quarry to avoid its use as a waste site being prejudiced (in accordance with Policy W3 of the new Local Plan). Subject to this condition, there is no objection to the application as revised from a strategic planning position.*

*Waste Client Manager: Previously stated, 'No issues regarding waste'. No comments submitted for the amended proposals.*

*South Hams District Council: Comments awaited on latest consultation. Previously raised concerns over the potential for the development to have an impact within the South Hams, particularly on the A385 corridor, the local road network on Totnes and on the village of Stoke Gabriel (from traffic generation).*

*Local Access Forum: Comments awaited on latest consultation. However, provided no comments to previous consultations.*

### **Summary Of Representations**

*The application has been publicised three times relating to the original and amended proposals. The latest publicity period is still running and ends on 9 December 2015. Any further representations received will be provided as late representations or reported verbally by officers at committee.*

*Seven objections were received in relation to the original proposals; these included objections from Paignton Neighbourhood Forum, Stoke Gabriel Parish Plan Group, the owners of Rodgers Industrial Estate and Cavanna Homes, who are the developers of the neighbouring site. A neutral comment was also received querying the boundary line over the ownership of the hedge to Little Preston. A further eight objections were received in relation to the proposals as first amended; four of these were from previous objectors, including Paignton Neighbourhood Forum, Stoke Gabriel Parish Plan Group and Cavanna Homes. Objections were also received from Stoke Gabriel Parish Council and the Stoke Gabriel low-e community group. At the time of writing this report, no representations have been received in relation to the latest publicity period, which is still running.*

*The following issues were raised in the first publicity period (Dec 2014 - Jan 2015) in response to the original proposals:*

- *Concerns re potential impact on adjoining horse grazing field*
- *Is more development needed and why do greenfield sites need to be used?*
- *Impact on wildlife*
- *Access arrangements do not comply with best planning of the area - the access built on Brixham Road to serve Yannons Farm was designed to accommodate the whole employment allocation*
- *Transport Assessment is inadequate and does not test all scenarios - it has not demonstrated there will not be a severe traffic impact in accordance with the NPPF*
- *S106 agreement required*

- *Toucan crossing on Yalberton Road adjacent to petrol filling station would cause serious safety issues*
- *No details of forward visibility provided*
- *HGV swept path analysis required for Alders Way*
- *Road Safety Audit should be provided of access proposals*
- *Loss of employment land - at least 50% of west site should be employment to accord with new Local Plan (NB. This figure has since been revised down to 25%)*
- *Loss of Countryside Zone and AGLV land*
- *Insufficient information on foul drainage*
- *Lack of Habitats Regulations Assessment*
- *Insufficient regard to traffic impacts on Yalberton Road to the west of the site*
- *Access and mix proposals will result in adverse impacts to residential and conflicts with business uses*
- *Strategic landscaping belt required to west*
- *Foul and surface water drainage proposals required before decision made*
- *Access to employment on west site should be from north and access to residential should be from south*
- *Overhead power lines should be undergrounded*
- *Allotments should be provided and proposed green infrastructure secured*
- *Green lane link should be provided*
- *Impacts on Stoke Gabriel, including drainage and traffic on Yalberton Road*
- *Proposed 5.5 metre road width along Yalberton Road to Alders Way is not wide enough for existing and proposed traffic, including HGVs - should be 7.2 metres wide*
- *Access proposals along Yalberton Road lack detail and clarity - current proposals will create dangerous bottleneck*
- *Impacts on drainage and road infrastructure - cycling will be more hazardous*

*The following issues were raised in the second publicity period (June 2015 - July 2015) in response to the proposals as first amended:*

- *Already traffic problems in Parish of Stoke Gabriel - further traffic will impact the local economy, including holiday business*
- *Revised proposals have not addressed previous concerns regarding access along Yalberton Road and the Transport Assessment*
- *No draft s106 agreement available to ensure necessary infrastructure contributions shall be secured*
- *Replacement of toucan crossing on Yalberton Road with uncontrolled pedestrian crossing adjacent to petrol filling station that is referred to in TA Addendum is still shown on the drawings resulting in lack of clarity - the downgraded pedestrian crossing is unsafe*
- *Scenarios still untested in the TA, including one where there is a through route between Brixham Road and Yalberton Road via the Yannons Farm*

*development*

- *Number of detailed concerns with the veracity of the TA Addendum*
- *30 mph speed limit will need to be extended west to the proposed mini-roundabout in order for the mini-roundabout to comply with mandatory standards*
- *Mini-roundabout is wholly inappropriate and does not comply with mandatory standards - it is also considered unsafe and susceptible to accidents*
- *No information has been provided on the capacity of the proposed roundabout*
- *Lack of information on visibility at the roundabout*
- *No provision of pedestrian facilities to cross Yalberton Road to access Alders Way*
- *No Road Safety Audit for the mini-roundabout*
- *No details of forward visibility provided*
- *Access proposals should be based on full topographical survey of Yalberton Road*
- *HGV swept path analysis required for Alders Way*
- *Concerns with safety of access proposals on a number of counts, therefore application should be refused in accordance with NPPF*
- *Disappointed amended proposals have not taken into account suggestions of PNF - previous concerns remain, particularly loss of employment land to residential, lack of information on foul drainage, inappropriate access, and how habitat impacts will be mitigated*
- *Piecemeal approach to access, separate from other issues, is not satisfactory*
- *Previous concerns regarding impacts on Stoke Gabriel, including drainage and traffic on Yalberton Road remain - the proposed access is unacceptable*
- *Increase in traffic/HGV movements along Yalberton Road will result in noise and fume pollution out of keeping with proposed residential*
- *Proximity of proposed roundabout to existing Aggregate Recycling Plant - no information on HGV movements to/from this plant*
- *Impact of increased HGVs on residential quality of life along Totnes Road and King's Ash Hill*
- *Visual impact of overhead power cables on proposed development*
- *Previous concerns regarding impacts on drainage and road infrastructure remain - proposal is unsustainable in NPPF terms; reduction in employment does not accord with new Local Plan; noise impacts of adjacent industrial estates/landfill site; impacts on protected species; impacts on historic assets; traffic and access issues raised by Cavanna Homes are salient*
- *Greenfields and open aspects of the site should remain - proposed development not in keeping with area*
- *Further development should provide 100% affordable housing*
- *Lack of local facilities for future residents*
- *Insufficient measures to reduce air and light pollution*
- *Adequate network of cycle paths should be provided*



- Geological survey required
- Sustainable drainage and rainwater harvesting must be promoted
- Majority of Long Road not part of National Cycle Network (NCN), contrary to information in Revised Design and Access Statement - creating a cycle route along Litson Lane/Whitehill Lane would bypass some dangerous stretches along western end of Long Road

### **Relevant Planning History**

*There are no records of any previous planning applications having been submitted for the site.*

### **Key Issues/Material Considerations**

*The key issues are:*

1. *The Principle of the Development*
2. *Noise and Amenity Issues*
3. *Landscape Impact*
4. *Access and Impact on Highways*
5. *Ecology Impacts*
6. *Impact on Trees*
7. *Drainage and Flood Risk*
8. *Affordable Housing*
9. *Archaeology*

1. *The Principle of the Development*

*At the time of writing this report the development plan comprises the Adopted Torbay Local Plan 1995-2011. The emerging Torbay Local Plan - A landscape for success 2012-2030 is a material consideration with significant weight, as the Inspector has found it sound subject to main modifications. The Council will receive a report in December 2015 recommending adoption of the new Local Plan, subject to the main and additional minor modifications. The Council will make a decision whether to adopt the new Local Plan at the Council meeting on 10 December. If it is adopted, it will become the development plan for Torbay and the current Local Plan will no longer apply.*

*The principle of the development is considered by officers to be acceptable. Whilst the majority of the site is allocated for employment development in the current Local Plan, the principle of allowing mixed residential and employment development within the employment allocation has already been established on the adjoining sites known as Yannons Farm and Parkbay. Furthermore, with the exception of the field to the south of the main site, the land is allocated as a Future Growth Area for housing and related development in the new Local Plan (Policy SS2). Whilst the illustrative masterplan indicates some housing development to the southwest of the main site extending into the Countryside Zone where development will be resisted (Policy C1), layout is a reserved matter so this aspect*

*of the proposals is currently not under consideration. In addition, Policy C1 allows some forms of development in the Countryside Zone where there will be no harm to the environment or landscape character, including self build affordable housing.*

*Therefore, the principle of developing the site for residential and employment uses, together with ecological mitigation, public open space and other associated infrastructure is considered to be acceptable. Officers previously objected to the amount of employment in the application, however this has been amended in the latest proposals and now accords with new Local Plan Policies SS5 and SDP3 (as modified), where 25% of the site is required for employment (net development area). A clause will be required in the s106 agreement requiring the employment development to be delivered by a trigger point to be agreed relating to the delivery of the new housing.*

## *2. Noise and Amenity Issues*

*Strategic Planning and Community Protection officers objected previously, due to the close proximity of the proposed residential uses on the main site to the allocated waste site (Policy W3) at Yalberton Tor Quarry. Not only would the waste site and associated HGV traffic movements along Yalberton Road have potential to have an adverse impact on the amenities of the new residential properties from noise and fumes, this would also prejudice the use of the waste site as it could not operate under its current consents. Allocated waste sites are protected by Policy W3 of the current Local Plan and Policy W3 of the new Local Plan. Strategic officers have confirmed with Devon County Council that the site is needed and there is no alternative provision in Torbay or nearby. Therefore, its protection is necessary.*

*Following the submission of a revised illustrative masterplan showing employment uses sited adjacent to Yalberton Road to provide a buffer between the proposed housing and the waste site, officers have withdrawn their previous objections. However, a condition will be required to ensure the layout of the housing will not prejudice the use of the allocated waste site as a waste management facility and there will be no adverse impacts from its reuse. This will require a noise assessment.*

*The overhead power lines crossing the main site will affect the visual amenity of the uses beneath them and nearby. This should be taken into account in the layout of the development at reserved matters stage (current Local Plan Policy IN2 and new Local Plan Policy DE3). If they are to be undergrounded, an easement will be required for maintenance purposes.*

*Subject to a condition to ensure the layout of the development will not prejudice the use of the allocated waste site at Yalberton Tor Quarry, the proposals are considered to be acceptable with regards to noise and amenity issues. These issues will need to be taken into account at reserved matters stage.*

### 3. Landscape Impact

*A Landscape and Visual Impact Assessment (LVIA) has been submitted with the application, which accords with best practice. Officers' only criticism is that by restricting the zone of theoretical visibility to a 2.5km radius, some long distance views from Barton Pines, Beacon Hill and Windmill Hill have not been considered. However, the site is a very small component of a much wider landscape in these views and will be seen against the backdrop of Paignton's existing urban edge. Therefore, officers agree with the findings of the LVIA and do not consider that the proposed development will have a landscape impact. This includes the part of the site extending into the Countryside Zone. The green infrastructure indicated on the illustrative masterplan should be secured in order to soften and integrate the development into the rural landscape setting. These matters will need to be taken into account at reserved matters stage.*

### 4. Access and Impact on Highways

*At the time of writing this report, comments are awaited from Strategic Planning colleagues on behalf of the Local Highway Authority on the latest access proposals. However, their initial views are that the proposed access option of widening Yalberton Road and providing a shared footpath/cycleway along the south side of the road, linking up with the proposed Brixham Road Western Corridor highway improvement works is acceptable in principle. There is a shortfall in funding to deliver the works, due to a gas main, and the applicants will need to pay this shortfall in order to ensure there is access to the site. The works are estimated to be delivered in July 2017 and a condition will be necessary preventing occupation of the development until the works have been completed to the satisfaction of the Local Highway Authority.*

*The fallback option of providing a pedestrian crossing on Yalberton Road adjacent to the Sainsburys petrol filling station and continuing the shared footpath/cycleway on the north side of the road to a new toucan crossing on Brixham Road to the north of the junction is considered unacceptable by officers, due to safety concerns with the proposed pedestrian crossing on Yalberton Road. Furthermore, the deliverability of the toucan crossing to the north of the Brixham Road/Yalberton Road junction is questioned by officers, due to topography and other constraints; officers also consider that it would be a waste of resources to construct a toucan crossing to the north of the junction, only to have to relocate it south of the junction as part of the highway improvement works a short time later. Therefore, the access proposals that link up with the proposed highway improvement works are considered to be the only viable option.*

*External transport consultants have been appointed to review the access options and the impact of the proposals on the local highway network, including the capacity of the Brixham Road/Yalberton Road junction to accommodate the*

*proposed development. They have identified errors in the latest Transport Assessment Addendum, which have been provided to the applicants' transport advisers. Therefore, further information is currently awaited from the applicants and at the current time, officers cannot conclude with certainty that the proposals will not have a severe traffic impact. However, the Council's transport consultants consider that there is likely to be a workable solution. An update will be provided by officers at committee.*

*The application should not be permitted until details of safe access arrangements that will not have a severe impact on the local highway network have been provided. If this information has not been provided to the satisfaction of the Local Highway Authority by the time of the committee, officers will seek Members' approval for this matter to be delegated to officers to resolve with the applicants within three months of the committee, or the application will be brought back to committee to be reconsidered in full.*

*Comments are also awaited from the Local Highway Authority to confirm that the proposed access points to the development comply with highway standards in terms of their geometry and visibility. A link to the Yannons Farm development is proposed, but details have not been provided because the layout of this part of the Yannons Farm site has not been approved. This will need to provide access for pedestrians and cyclists - if it includes a vehicular link the modelling in the Transport Assessment Addendum will need to be re-assessed. A public transport connection for buses is also required between the sites. The preferred route in the long term is to the east of the main site via the Western Power site to connect with the principal distributor road that currently stops adjacent to Torbay Pharmaceuticals. The layout will need to be 'future proofed' to allow for this at reserved matters stage. A condition/obligation in the s106 should be secured accordingly. The access route to the west of the main site traversing the steep part of the site is unlikely to meet highways adoption standards in terms of its gradient, however officers accept this can be resolved as part of the layout at reserved matters stage.*

*Therefore, at the time of writing this report, the access proposals are not suitable for approval. Further information is being prepared and an update will be provided by officers at committee.*

## **5. Ecology Impacts**

*The site is located within the greater horseshoe bat sustenance zone associated with the South Hams Special Area of Conservation (SAC) at Berry Head and the northwest corner of the main site is just within a strategic flyway. The Council's external ecological adviser with respect to the South Hams SAC has advised that insufficient information has been submitted to enable the authority to carry out a Habitats Regulations Screening Assessment. The applicants are currently in the process of revising their Ecological Impact Assessment (EclA) accordingly,*

*however at the time of writing this report it has not been submitted. When an adequate EclA has been submitted, if the screening assessment concludes that an Appropriate Assessment is required this will need to be prepared by the LPA and Natural England consulted.*

*An update on the above matters will be provided by officers at committee. If a Habitats Regulations Screening Assessment has still not been carried out by the time of the committee, or if an Appropriate Assessment is required, officers' recommendation will change to deferral to provide more time for these matters to be resolved.*

*The site has been identified as a habitat for a nationally important population of ciril buntings, which is a protected species. This habitat will be lost when the site is developed. Therefore, mitigation and/or compensation is required in accordance with local policies (current Local Plan Policy NC5 and new Local Plan Policy NC1) and national guidance. It has been agreed that the application will need to mitigate/compensate for 8 pairs. The RSPB recommend 2.5ha of land is needed to provide suitable new habitat to mitigate/compensate one breeding pair. The applicants have not provided an adequate mitigation/compensation strategy to address this impact at the time of writing this report, and the RSPB object to the application on this basis. However, it is understood that they intend to use the high meadow to the south of the site to compensate one pair, TCCT land at Cockington to compensate 5 pairs (a management strategy for this land has already been prepared by TCCT and agreed with RSPB), and other offsite land near the site to compensate 2 pairs. Officers have requested this information as part of the revised EclA and informed the applicants that planning permission cannot be granted until it is received. It will need to include details of land ownership, how the land will be managed, who it will be managed by and how long for. Once agreed, it will need to be secured in the s106 agreement. The offsite management must not degrade habitat for greater horseshoe bats within the sustenance zone.*

*If a satisfactory ciril bunting mitigation/compensation strategy has not been submitted by the time of the committee, officers will seek Members' approval for this matter to be delegated to officers to resolve with the applicants within three months of the committee, or the application will be brought back to committee to be reconsidered in full.*

*The derelict barn on the site has been identified as a barn owl habitat. It is to be retained accordingly. The Barn Owl Trust has recommended conditions to ensure the retention of this habitat during and post construction. These should be added to the planning permission if the application is approved.*

*The revised EclA should also include general measures to enhance biodiversity on the site in accordance with the NPPF. These should be secured by condition.*

## 6. Impacts on Trees

*The Council's Arboricultural Officer has no objections to the proposals, despite the removal of the existing hedgebank along Yalberton Road east of the proposed roundabout. The existing hedgebank contains a number of poor quality trees and replacement tree planting should be provided in the new hedgebank.*

*The main site includes an important group of remnant elm trees, which should be retained and incorporated into the detailed proposals at reserved matters stage. They will also need to be protected during the construction phase.*

*Therefore, the proposals are considered to accord with Policy L9 of the current Local Plan and Policy C4 of the new Local Plan, subject to conditions to secure: a Tree Protection Plan and Arboricultural Method Statement to protect existing trees during construction, detailed landscaping proposals and a Landscape and Ecological Management Plan (LEMP). An informative should be added to the permission if the application is approved, recommending early engagement with the Council's Arboricultural Officer when landscaping proposals are drawn up for reserved matters.*

## 7. Drainage and Flood Risk

*Despite being a concern of local residents, including those in Stoke Gabriel, the proposed drainage of the site is considered to be acceptable, subject to conditions. With respect to foul drainage, South West Water is not satisfied that the public foul drainage network has capacity to support the development without causing downstream property flooding. However, they have recommended a condition to deal with this issue, which will need to be added to the planning permission if the application is approved. In terms of surface water drainage, sufficient information has been submitted to demonstrate that surface water can be drained sustainably on the site via an infiltration pond in the northwest corner of the main site adjacent to Yalberton Road; however, details of an offsite connection are required in case it is not possible to infiltrate all of the surface water run-off from the site. Pending submission of these details, the application accords with current Local Plan Policy EPS and new Local Plan Policy ER1, subject to conditions to secure details of the detailed drainage design prior to commencement and how the sustainable drainage features will be maintained.*

## 8. Affordable Housing

*The applicants have not submitted a viability assessment and have agreed to provide the policy compliant level of affordable housing for the development. If the maximum number of dwellings is provided, this will mean that 58 affordable units will be delivered (30%), including up to 10 self-build plots (5%) in accordance with Policies H2 and H3 of the new Local Plan. The Head of Asset Management and Housing has commended this and stated that the policy compliant mix of a third*

*social rent, a third affordable rent and a third shared ownership, including up to 5% self build, will assist in meeting the variety of housing need. In addition, the mix of house types and sizes must be proportionate to the development as a whole.*

*The applicants have requested some flexibility over the tenure mix of the affordable housing, following recent announcements by the Government affecting registered social landlords. This will be discussed further with the applicants and Head of Asset Management and Housing while the s106 agreement is drafted.*

## **9. Archaeology**

*The Senior Historic Environment Officer has identified the potential for previously unrecorded archaeological deposits on the site from earlier studies. In addition, the site includes an area to the north where there is potential for an ancient earthwork. Therefore, the standard archaeological condition should be attached to the planning permission if it is approved.*

### **S106/CIL -**

*The affordable housing and contributions for the application are set out below, in accordance with Adopted Local Plan Policies H6 and CF6, new Local Plan Policies SS7, H2 and H3, and the adopted Planning Contributions and Affordable Housing SPD and its Update 3. The sustainable development contributions have been estimated, as the application is in outline meaning the precise floor areas of the dwellings are unknown at this stage - a dwelling size average of 95-119 sq m has been used below for the upper limit of 192 dwellings; the s106 agreement shall include a schedule to calculate the precise contributions when the floor areas are known following submission of reserved matters. Site acceptability access infrastructure is included.*

#### *Site Acceptability*

- o Re-route gas main as part of Brixham Road Highway Improvement Works = £360k (tbc)*
- o S278 works to Yalberton Road = £130k-£155k (tbc)*
- o Cirl bunting mitigation/compensation strategy for 8 pairs (1 onsite, 7 offsite), with 5 pairs to be compensated by habitat enhancement at Cockington via a contribution of £436,565 to TCCT*
- o Waste Management = £9,600 @ £50 / unit*

#### *Affordable Housing*

- o Up to 58 affordable dwellings (30%) to include a third social rent, a third affordable rent and a third intermediate, with up to 5% self build plots*

*Sustainable Development (based on 134 open market dwellings, 16 social rent, 16 affordable rent, 16 intermediate and 10 self build plots - all units 95-119 sq m)*

- o Sustainable Transport = £393,690
- o Education = £176,950
- o Lifelong Learning = £58,840
- o Greenspace and Recreation = £173,754

TOTAL = £803,234

*Administration/Monitoring of S106*

*Administration charge tbc (calculated on a time basis at £60 standard hourly rate).*

*Mitigation:*

*Mitigation has been applied to the contributions calculated above as follows:*

- o *Social rent & affordable rent dwellings - 100% discount to SD contributions, not waste and other site acceptability matters.*
- o *Intermediate & self build dwellings - 50% discount to SD contributions, not waste and other site acceptability matters.*
- o *Sustainable Transport contribution for employment uses - 100% discount due to 'Mitigation for Economic Prosperity (jobs created)'*
- o *Greenspace & Recreation includes 'Playing Pitches' (£144 per person) and 'Multi use games area' (£250 per person) only; it does not include 'Equipped facilities for young people' and 'Greenspace', as these are indicated to be provided onsite. Provided the onsite provision is secured as an obligation in the s106, the cost per dwelling is reduced as follows:*
  - o *2 bed = 1.9 persons x £394 = £749 per dwelling*
  - o *3 bed = 2.6 persons x £394 = £1,024 per dwelling*
  - o *4 / 4+ bed = 3 persons x £394 = £1,182 per dwelling*

*NB. The SD contributions will increase if the amount of affordable housing provision is decreased.*

*In addition to the above, a clause will be required in the s106 requiring phasing details. This will need to include the delivery of the employment development at a trigger point to be agreed with the applicants, linked to the delivery of the new housing.*

*Justifications:*

*The Brixham Road highway works contribution is justified in paragraphs 2.1-2.4 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6). There is a shortfall in funding to reroute a gas main as part of the planned improvement works at the Brixham Road/Yalberton Road junction. The*



*improvement works are necessary to increase the capacity of the junction to accommodate the proposed development. The applicants have agreed to pay the shortfall in order to provide adequate access arrangements for the proposed development.*

*The Yalberton Road highway works contribution is justified in paragraphs 2.1-2.4 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6). It will pay for the continuation of the shared footpath/cycleway along Yalberton Road and upgraded toucan crossing on Brixham Road in order to provide safe pedestrian/cycle access to the proposed development.*

*A curlew bunting mitigation/compensation strategy must be prepared before granting planning permission and secured in the s106 to ensure the impacts on this protected species are adequately mitigated/compensated to make the development acceptable in planning terms. It is a site acceptability matter justified in paragraphs 2.1-2.4 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6). The contribution to compensate 5 pairs at Cockington has been calculated by TCCT, who have agreed a curlew bunting management strategy for this land with RSPB. The site setup and management costs have been divided by the total number of pairs the enhancement works will support to arrive at the cost per pair.*

*The waste management contribution is justified in paragraph 2.18 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policy W1. It will pay the costs of providing waste and recycling bins to the dwellings.*

*The affordable housing provision is justified in Section 3.0 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies H2 and H3.*

*The sustainable transport contribution is justified in paragraphs 4.12-4.24 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and TA2. It will be used to pay for sustainable transport network enhancements in the local area for use by future occupiers/visitors of the proposed development.*

*The education contribution is justified in paragraphs 4.40-4.46 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and SS10. It will be used towards funding projects at schools in Paignton as part of Children's Services Capital Programme. The dwellings will place additional demand on local schools and the contribution will ensure local schools are provided with funding to mitigate the proposed development.*

*The lifelong learning contribution is justified in paragraphs 4.47-4.51 of the*

*Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and SS10. It will be used towards the cost of improving provision at Paignton Library, including IT equipment. The dwellings will place additional demand on the services provided by Paignton Library and the contribution will ensure these services are provided with funding to mitigate the proposed development.*

*The greenspace and recreation contribution is justified in paragraphs 4.52-4.58 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and SS9. It will be used towards improving maintenance, management and equipment at existing facilities within easy walking distance of the site. The dwellings will place additional demand on these facilities and the contribution will ensure these facilities are provided with funding to mitigate the proposed development.*

*The administration/monitoring contribution is justified in paragraphs 5.6-5.8 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and will be used to administer/monitor the s106 agreement.*

*Status:*

*The applicants have agreed to provide 30% affordable housing, but have not agreed to the site acceptability matters or sustainable development contributions at the time of writing this report. They are waiting for further details of what the sustainable development contributions will be spent on. A verbal update will be provided by officers at committee. The affordable housing and other obligations will need to be secured in a s106 agreement; however, final Heads of Terms have not been agreed and therefore Legal Services has not been instructed to prepare an agreement at the current time. An update will be provided at committee.*

### **Conclusions**

*The principle of developing the site for a mix of housing and employment uses is considered to be acceptable and in accordance with the provision of the current Adopted Local Plan, taking material considerations of recent developments into account, and the new Local Plan. The majority of the land in the site is within the Future Growth Area for housing and related development. A condition is required to ensure the layout of the development will not prejudice the future use of the allocated waste site at Yalberton Tor Quarry in terms of noise impacts.*

*Details are currently awaited to confirm that the proposed access arrangements to the site are safe and deliverable, and will not cause a severe impact to the local highway network. If this information is not received before the committee, officers will seek delegated authority to resolve these matters with the applicants within three months of committee, or the application will be brought back to committee for full reconsideration.*

*Insufficient information has been submitted to enable the authority to carry out a Habitats Regulations Screening Assessment in accordance with the Habitats Regulations. A revised Ecological Impact assessment is anticipated to be submitted shortly. If a Habitats Regulations Screening Assessment has not been carried out by the time of the committee, or if an Appropriate Assessment is required, officers' recommendation will change to deferral to provide more time for these matters to be resolved.*

*A detailed cirl bunting mitigation/compensation strategy is required before the application is permitted. The RSPB currently objects to the application, due to inadequate information in this regard. The applicants are in the process of producing this strategy. If a satisfactory cirl bunting mitigation/compensation strategy has not been submitted by the time of the committee, officers will seek delegated authority to resolve this matter with the applicants within three months of committee, or the application will be brought back to committee for full reconsideration.*

*The drainage proposals (foul and surface water) are considered to be acceptable for approval at this stage, subject to conditions and details, prior to determination, of an offsite surface water drainage connection in case it is not possible to infiltrate all of the surface water run-off from the site.*

*The applicants propose to deliver the policy compliant level of affordable housing (30%), although have requested flexibility on tenure mix. This provision will need to be secured in a s106 agreement, together with site acceptability matters relating to access and ecology issues, and sustainable development contributions to mitigate the impacts of the development on local infrastructure. A clause will also be required to ensure the delivery of the employment development by a trigger point relating to the delivery of the new housing to be agreed. At the time of writing this report, the final Heads of Terms have not been agreed with the applicants and an update will be provided at committee.*

**Condition(s)/Reason(s)**

01. *Reserved Matters*
02. *Layout must not Prejudice Use of Allocated Waste Site*
03. *Future Proof Access to Western Power Site in Layout*
04. *Design Code*
05. *Archaeology - Written Scheme of Investigation*
06. *No Development during Bird Breeding Season (March-Sept)*

07. *Construction and Environmental Management Plan (CEMP)*
08. *Lighting Design Strategy - Dark Areas*
09. *Temporary Barn Owl Habitat Provision during Construction*
10. *Pre-development Survey for Barn Owls*
11. *Permanent Barn Owl Nesting Place*
12. *Secure Biodiversity Enhancements (NPPF)*
13. *Arboricultural Method Statement and Tree Protection Plan*
14. *Construction Method Statement*
15. *Waste Audit and 5 Year Waste Management Plan*
16. *S278 Agreement*
17. *Detailed Landscaping Scheme incl. Plant Species and Planting Methodologies*
18. *Landscape and Ecological Management Plan (LEMP)*
19. *Detailed Lighting Design Scheme*
20. *Foul Drainage (SWW)*
21. *Surface Water Drainage Details - Detailed Design and Maintenance*
22. *Prevent Occupation/Use until Brixham Road Highway Improvement Works Delivered*
23. *Prevent Occupation/Use until Car Parking Provided*
24. *Prevent Occupation until Details of Cycle Parking Provided/Implemented*
25. *Limit Delivery Times to Employment Uses*

**Relevant Policies**

- SS2 - Future Growth Areas*
- SS3 - Presumption in favour of sustainable dev*
- SS4 - The economy and employment*
- SS5 - Employment space*
- SS6 - Strategic transport improvements*

*SS7 - Infrastructure, phasing and employment*  
*SS8 - Natural Environment*  
*SS9 - Green Infrastructure*  
*SS10 - Conservation and Historic Environment*  
*SS11 - Sustainable Communities Strategy*  
*SS12 - Housing*  
*SS13 - Five Year Housing Land Supply*  
*SS14 - Low Carbon and Climate Change*  
*SDP1 - Paignton*  
*SDP3 - Paignton North and Western area*  
*TA1 - Transport and accessibility*  
*TA2 - Development access*  
*C1 - Countryside and the rural economy*  
*C4 - Trees, hedgerows and natural landscape*  
*NC1LFS - Biodiversity and Geodiversity\_*  
*H1LFS - Applications for new homes\_*  
*H2LFS - Affordable Housing\_*  
*H3LFS - Self build affordable housing\_*  
*DE3 - Development Amenity*  
*SC1 - Healthy Bay*  
*SC2 - Sport, leisure and recreation*  
*SC3 - Education, skills and local labour*  
*SC4 - Sustainable food production*  
*SC5 - Child poverty*  
*ES1 - Energy*  
*ER1 - Flood Risk*  
*ER2 - Water Management*  
*W1LFS - Waste hierarchy\_*  
*W2LFS - Waste audit\_*  
*W3LFS - Existing waste management facilities\_*  
*M3LFS - Preserving local building stone\_*

# Agenda Item 6

## Application Number

P/2018/0053

## Site Address

Land Off Brixham Road (Former Nortel Site)  
Long Road  
Blatchcombe  
Paignton  
TQ4 7BL

## Case Officer

Mr Scott Jones

## Ward

## Description

Reserved matters application re: P/2017/1041 Variation of condition on application P/2014/0947 (as amended by S73 applications P/2016/1372, P/2017/0123 and P/2017/0571): (Devonshire Park Housing/Commercial Project). Variation of condition 33 - Maximum retail floor space. Amendment sought: Increase total gross floor area of class A3 floorspace from 139sqm to 167sqm.

## Executive Summary/Key Outcomes

The application is for reserved matters relating to layout, scale, appearance and landscaping for up to 8,501sqm of A1 (Bulky Goods) retail, up to 515sqm of garden centre and up to 167sqm of A3 Café/restaurant granted consent at the site of Devonshire Park (formerly Nortel) in West Paignton under application P/2014/0947 (as amended by variations P/2016/1372, P/20170123 and P/2017/1041).

The proposed layout is considered acceptable. It accords with the indicative plans submitted at outline stage where it showed the 'retail park' provided in the southern part of the wider Devonshire Park site. In addition the internal layout, which proposes a linear run of retail uses fronting a car park with a stand-alone café/restaurant in the south east corner, is also considered acceptable and in accordance with the guiding principles established at outline stage, provides adequate parking and pedestrian movement.

The scale of buildings is considered acceptable and in accordance with the principles of the outline consent. The retail units will be set some distance from the public highway and the scale will sit comfortably in the context, where there are a number of large commercial and educational buildings evident locally.

The appearance is considered acceptable. The broad design principles accord with the indicative plans submitted at outline stage and the detailed design presents an acceptable form of building for a large and prominent 'retail park'. The

main façade is broken down by prominent elements of glazing together with 'woodland' vinyl, which present an uncomplicated rhythm to this linear development. The prominent side (eastern) elevation fronting Brixham Road was initially submitted with a simple stone and green 'living' wall detail adjacent to a glazed corner element. This was a positive response to this prominent end however revised plans recently submitted are less satisfactory. It is recommended that Officers are provided the opportunity to resolve this detail through delegated authority.

The principles of the landscape proposals are acceptable. The car park is softened by intermittent tree planting, planters soften the public walkway and piazza area, and the two external borders that front Long Road and Brixham Road present a satisfactory landscaped edge with a mixture of tree, hedge and shrub planting. The trees within the scheme are varied to provide a mixture of feature and more ornamental specimens. A revised landscaping scheme is currently being considered by Officers and Members will be updated on this matter verbally.

In summary the reserved matters, subject to resolving some minor detail, is considered to be in accordance with the indicative plans that supported the outline application. Subject to resolving the east elevation of the retail unit, including confirmation that the boundary wall to the rear will be stone faced rather than brick (as conflicting information is detailed on separate plans) and a satisfactory landscape scheme, Officers consider the proposals to be acceptable, subject to necessary planning conditions, as the development provides an acceptable form of development in line with relevant policies in the Torbay Local Plan 2012-2030 and the emerging Paignton Neighbourhood Plan.

### **Recommendation**

The Reserved Matters relating to scale, location, appearance and landscaping are recommended for approval, subject to;

1. Receipt of revised plans showing detail of the eastern elevation of the retail building that fronts Brixham Road and the adjacent boundary wall above the service yard being faced in natural local stone, that is acceptable to Officers, delegated to the Executive Head of Assets and Business Services,
2. Resolution of the landscape detail, delegated to the Executive Head of Assets and Business Services, and
3. Conditions delegated to the Executive Head of Assets and Business Services, to include those detailed in draft within this report.

### **Statutory Determination Period**

This is a 13 week application for which the decision due date is 18th April 2018.

## **Site Details**

The application relates to the former Nortel/Bookham site that is now known as Devonshire Park, which sits to the west of Brixham Road and to the north of Long Road on the outskirts of Paignton.

Although the wider Nortel site area is over 9 hectares the application relates to the southern part of the site, which is about a third of the entire site area.

In terms of context Devonshire Park is bounded by housing, sports pitches and the Western Business Park to the north, Brixham Road to the east, Long Road to the south and South Devon College to the west.

The element of the wider site that this application relates to is largely flat and sits at a similar level to Long Road to the south.

In terms of policy context it is within Flood Zone 1 and a Critical Drainage Area and the site is part a Future Growth Area as designated within the Torbay Local Plan.

There are no protected trees within the area relating to this application however a Tree Preservation Order is placed over a number of trees within the northern part of Devonshire Park.

The site is located within the greater horseshoe bat sustenance zone associated with the South Hams SAC at Berry Head.

## **Detailed Proposals**

This is a reserved matters application that is seeking approval for the layout, scale, appearance and landscaping for the 'retail park' element of a consented mixed use scheme that was granted in outline under the application referenced P/2014/0947 (as amended). The outline application consented up to 8,501sqm Class A1 (bulky goods) retail and up to 515sqm garden centre, and up to 167sqm (amended from 139sqm) of A3 cafe /restaurant uses (along with related site access, access roads and paths, parking, servicing, open space and landscaping).

The reserved matters are summarised as follows, as revised by plans received 14.03.2018.

The reserved matters cover only the southern part of the wider Devonshire Park site with external borders to Long Road to the south and Brixham Road to the east. The application site is approximately 220m wide (east-west) by 113m (north-south) and is relatively flat. The location within the wider site is reflective of the indicative proposals submitted at outline stage.



In terms of layout the proposal includes a 340 space customer car park, which includes 20 disabled spaces, which is set to the southern part of the site adjacent to Long Road. The car park is approximately 200m wide by 48m deep. To the north of the proposed car park sits a single linear run of retail units within a building 178m wide by 45m deep, behind which is a service road/area. Within the south-eastern corner of the site there is a proposed small café/restaurant building that fronts on to a piazza area.

In terms of access the proposal includes three pedestrian access points. These are located in the northeast corner of the site that connects with the existing footway along Brixham Road, the southeast corner of the site adjacent to the main traffic-light controlled road junction, and midway along the southern border off Long Road. The vehicular access points were approved in detail at outline stage and therefore they are not being considered in this application.

In terms of scale the retail units are approximately 8m high at the front elevation and 11m to the top of roof. This scale provides high vaulted ceilings with capacity for mezzanine floorspace. The A3 café/restaurant building is to a lesser scale with an elevation height of around 3.5m with a sail roof that rises to a height of 8m.

In terms of appearance the retail building is relatively modern in its design with large elements of glazing and panelling on its principal elevation, together with a section of woodland vinyl. The prominent side elevation that fronts Brixham Road has been amended from stone, glass and a green 'living' wall to include an addition of a section of panelling, which results in less stone being apparent within the elevation. To the north of this side elevation revised plans show conflicting detail in terms of the boundary wall adjacent to the service yard, with stone facing and brick facing being annotated within the revised plans. The standalone A3 café restaurant is a curved stone and glass building that sits under a 'sail' roof. There is also elements of panelling within this building.

In terms of landscape the public realm adjacent to the retail buildings is inter-dispersed with a series of planters. Within the car park there is regular tree planting, and around the public borders there is a mixture of shrub, hedge and tree planting. The landscape strategy suggests a mixture of tree types including occasional feature trees within certain locations along with more ornamental trees. Revised plans have introduced a border hedge along Long Road in support of the shrub and tree planting.

### **Summary Of Consultation Responses**

*Urban Design Advisor:* The revised plans that introduce seating and planting now show some positive use for the piazza area north of the A3 unit. Further discussions are recommended, or detail resolved by condition for this area to make best use of this space.

- The A3 unit has taken a positive step forward from pre-app stage. It is important that the higher windows are active and serve an internal vaulted ceiling for interest. The materials and finishes will require careful scrutiny, and the bin store / service area needs some further improvement.
- The main retail block is generally well resolved. Further thought on some detailed elements is suggested, including the return fascia to Brixham Road along with treatment of the vinyl and the accompanying landscaping. The revised plans haven't addressed this.
- In regard to the wider layout the disabled spaces could be better resolved in terms of proximity to the units, the re-introduction of the pedestrian access to Long Road is welcomed, as is the strengthening of the border landscaping to Long Road, which previously lacked the necessary enclosure to soften the large car park within the streetscene.
- The revised east elevation fronting Brixham Road is less satisfactory than the original detail and requires further thought. A return to the original detail

*Strategic Transport / Highways:* Highways: The submitted tracking shows adequate manoeuvring for HGVs to the rear of the retail units. Strategic Transport: Comments pending . Members will be verbally updated.

*Arboricultural Officer:* A number of concerns raised in regard to the initial submission in term of species and planting detail. Comments pending on the revised landscaping proposal . Members will be verbally updated.

*AONB Unit:* It is considered that the application exhibits overall compliance with the South Devon AONB policies as outlined in our Management Plan and Planning Guidance document and therefore there is no objection or further comment necessary.

*Police Designing Out Crime Officer:* No objection. Request consideration is given to the development being construction to achieve Secured by Design Commercial 2015 compliance.

*South West Water:* No objection.

*Community Protection Officer:* The proposed acoustic fence should be retained together with the condition on the parent application limiting hours of delivery to the premises in order to protect amenity of future occupiers of residential properties to the north.

### **Summary of Representations**

None.

### **Relevant Planning History**

- P/2014/0947* Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping. Approved 22.03.2016
- P/2016/1372:* Variation of condition P1, 34 and 35 of P/2014/0947 (Outline Application with all matters reserved except access) - to vary Condition (P1) - Approved Plans to omit reference to the Masterplan, Condition (34) to vary the minimum unit size restriction for 1 unit and Condition (35) to clarify the restriction of concessions. Approved 18.10.2017.
- P/2017/0123:* Variation of condition on planning application P/2014/0947 (Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping) - Variation of Condition P1 (approved plans) to amend the access off Long Road. Approved 18.10.2017.
- P/2017/0493:* Demolition of the remaining structures, grubbing out of the trees, foundations and floor slabs/ basements, remediating contamination and earth works to re-profile the site (Option 1). Approved 22.09.2017.
- P/2017/0494:* Demolition of the remaining structures, grubbing out of the trees, foundations and floor slabs/ basements, remediating contamination and earth works to re-profile the site (Option 2). Approved 22.09.2017.
- P/2017/1041:* Variation of condition on application P/2014/0947 (as amended by S73 applications P/2016/1372, P/2017/0123 and P/2017/0571): (Devonshire Park Housing/Commercial Project). Variation of condition 33 - Maximum retail floor space. Amendment sought: Increase total gross floor area of class A3 floorspace from 139sqm to 167sqm. Approved 15.12.2017.

## **Key Issues/Material Considerations**

The key issues to consider are:

1. The principle of development,
2. Design/appearance,
3. Access/movement
4. Parking,
5. Residential amenity,
6. Landscaping,
7. Ecology
8. Retail issues

### **1. The Principle of development:**

Outline consent has been granted which included up to 8,501sqm of retail floor space, up to 515sqm of garden centre and up to 167sqm of café/restaurant on this site under application P/2014/0947 (as amended by S73 Variation of condition applications P/2016/1372, P/2017/0123 and P/2017/1041). The principle of development is therefore already established by the outline application, which was considered to accord with Local Plan Policy.

The merit of the submitted Reserved Matters shall be considered below.

### **2. Design/appearance:**

This application represents the 'retail park' element of the mixed use outline consent.

The general layout accords with the established principles laid out within the indicative plans previously submitted, which showed the a large linear retail building set behind a large car park sitting towards the Long Road boundary, together with a small standalone café/restaurant building in the southeast corner. The general layout is considered an acceptable solution to deliver the development consented and one that accords with the principles previously presented to the Local Planning Authority at outline stage.

The form and scale of buildings proposed follows the design 'blueprint' established within the outline consent, which was supported by an indicative masterplan and contextual images. The scale of the retail building, which has the height to accommodate vaulted ceilings and mezzanine space, is considered acceptable in light of the guiding principles presented in the outline submission and also in light of the scale of commercial buildings in the area of Long Road. In regard to detailed design the form of the retail units is somewhat typical of modern 'retail park' design and it is also reflective of the indicative proposals presented at outline stage. The length of the principal elevation is satisfactorily broken down through the use of

rhythmic glazing and, towards the west, through the use of woodland effect vinyl where glazing is absent. The low-lying roof form is a pragmatic solution to limit the bulk of the building and the over-sail to the front provides visual interest whilst providing shelter for the public walkway. The prominent side elevation to Brixham Road was considered to be well-detailed with a large expanse of stone and a green 'living' wall used to limit its prominence and set it against the landscape border, with a stone faced boundary wall above the adjacent service yard. Amended plans present a less satisfactory elevation detail and officers feel that further discussion is necessary to resolve a suitable solution, as the building is large and it will sit in close proximity to the public realm and a main arterial road. The revised plans also present conflicting detail in regard to the adjacent boundary wall that sits above the service yard, with stone facing and brick facing detailed within the submitted plans. To support the landscaped border it is considered that brick is not a suitable finish and clarification should be sought that natural stone will be used to face this prominent boundary wall. Securing a high-quality and somewhat understated end is considered important due to the overall prominence and close proximity to the main arterial road.

The standalone café/restaurant the building provides a satisfactory statement building in the corner of the development. The use of stone and glazing as the main elements of the elevation is considered acceptable and the 'sail' roof is considered satisfactory to provide the necessary presence within the wider built environment. The indicative plans at outline stage showed a more circular tented building as a 'statement' building however the proposed is considered a satisfactory alternative solution.

The buildings and the associated car park are to be softened by border and internal landscaping that includes trees (feature and ornamental), hedges and shrubs throughout the site. A revised detailed landscaping scheme is currently being considered by the Council's Arboricultural Officer and subject to outstanding comments in terms of detailed planting the principles provide the parameters for an acceptable softening of the built form. Hedging has been introduced along the car park border with Long Road, as requested by Officers, which presents a stronger sense of enclosure and softens the impact of the car park within the streetscene, which has been welcomed.

The general design and appearance of the development is considered acceptable. Subject to the satisfactory resolution of the east elevation and detailed comments from the Council's Arboricultural Officer the landscaping proposals are considered acceptable, and would be consistent with Policy DE1 of the Torbay Local Plan 2012-2030.

### **3. Access/movement:**

The vehicular access points were approved in detail at outline stage and therefore the matters for consideration relate solely to pedestrian access and permeability.

Three pedestrian access points are proposed. There is a stepped access in the northeast corner past the side elevation of the end retail unit. Steps are required as there is a distinct drop in levels between the public footway and the ground floor level of the development. There is a stepped access in the south-east corner of the site adjacent to the café/restaurant building, close to the light controlled traffic junction. The third access is off Long Road at a mid-point within the proposed car park, which was introduced in to the scheme through revised plans submitted 14.03.2018.

The three access points identified above are considered to provide adequate pedestrian access and permeability into the site from various directions. In the context they are considered to make the best use of the public borders in terms of the provision of access. The recent introduction of a designated pedestrian access point off Long Road is much welcomed.

It is accepted that stepped access points to the east are necessary due to the change in levels and it would appear challenging to provide ramps for disabled access within the constraints of the site layout and level changes. It is noted that the existing public footpath provides access from the east to the southern edge of the site where level access can be gained.

Within the site there is a wide covered pedestrian walkway to the front of the retail units with strategic crossing points that link to the disabled parking and pedestrian access off Long Road. To the rear of the retail units there is a designated walkway for staff access.

The layout and access is considered to provide suitable permeability through the site for pedestrians, in accordance with Policies DE, TA1 and TA2 of the Torbay Local Plan 2012-2030.

#### **4. Parking:**

The proposal includes a 340 space car park which includes 20 disabled spaces.

The car park is similar in location and scale to that shown at outline stage. The number of spaces is greater than that shown at outline stage (which showed a circa 300 space car park). An increase in parking provision is not opposed in this location when considering that the development is a 'destination' retail park.

In regard to detail, the layout of the customer parking is acceptable with 6m manoeuvring distance behind all spaces. In addition the spaces accord with the size standards identified within the Torbay Local Plan.

To the rear there is a service access that shows adequate manoeuvrability for HGVs and identified HGV parking aside the various units.

In terms of cycle parking there is provision to the front of the retail units towards the edge of the pedestrian walkway. The cycle parking will not conflict with the pedestrian walkway and will provide prominent parking with good natural surveillance.

The proposals are considered to provide adequate car and cycle parking in accordance with Policy TA3 of the Torbay Local Plan 2012-2030.

#### **5. Residential amenity:**

The outline consent was granted with a condition that required the details of reserved matters to include noise mitigation measures (in accordance with the Noise Impact Assessment (24 Acoustics, September 2014)). The condition was to ensure that the future residential environment of properties to the north of the proposed retail (and business) area would be acceptable, in line with Policy DE3 (Development Amenity) of the Torbay Local Plan.

The reserved matters show a curved acoustic fence barrier to the north of the retail service area and the submission is supported by a noise assessment. The Council's Community Protection Officer has considered the submission and is satisfied that the mitigation measures are adequate to protect future amenity of occupiers to the north.

In terms of broader amenity considerations the proposal will not impact existing occupiers to the east or the south due to the distances to the nearest properties and due to the fact that they sit at some distance across busy roads.

The scale of the development will not result in loss of light or outlook to existing or proposed occupiers. It is noted that the land levels to the north rise which will limit the perceived height and impact of the building on future occupiers of the residential phase of development. As an indication the height of the retail building will be similar to the height of the two-storey dwellings expected on land adjacent to the north.

There will be no overlooking issues due to the form of development and distances to adjacent land and buildings.

Members are advised that the outline consent restricts hours of delivery to the retail floorspace to be only between the hours of 08:00 and 18:00 Monday to Friday and between 08:00 and 13:00 on Saturdays, with no deliveries on Sundays and bank holidays. This should adequately protect the amenity of future occupiers to the north of the service yard. It is not considered necessary to restrict hours of opening beyond separate trading legislation due to the location of the development.

All matters considered subject to the provision of the barrier fencing to the north the proposal is considered to present no unacceptable amenity impacts, and thus

accords with Policy DE3 of the Torbay Local Plan 2012-2030.

## **6. Landscaping:**

In regard to the proposed landscape the vision presented at outline stage showed landscape softening around the public borders and within the car parking element of the 'retail park'. The Reserved Matters reflects the aspiration presented at outline stage, the detail of which is explored below.

The public borders of the site are detailed with a mixture of shrub, hedge and tree planting. To the east adjacent to Brixham Road there is a feature tree marking the pedestrian entrance. Towards the north near to the service yard tree screening is proposed. Towards the south there is further tree planting together with hedging towards the corner with Long Road. Along the other public border to the south along Long Road there are further feature and ornamental trees. Revised plans have also introduced a linear hedge in support of the shrub planting along this edge. The addition of the hedge is welcomed as it will provide a soft enclosure and partial screen to the car park and improve the public realm.

Within the site the car park is inter-dispersed with further tree planting and hedges line the two access points into the site off Long Road. Planters provide some softening of the public realm adjacent to the pedestrian walkway in front of the main retail building.

In design terms the proposed landscape scheme is considered to provide an acceptable concept to adequately soften the built form and present a positive introduction into the local built environment.

The landscape detail is currently being considered by the Council's Arboricultural Officer and Members will be updated verbally on the merit of the revised detailed landscaping.

Subject to the comments of the Council's Arboricultural Officer the proposed landscaping is considered acceptable and in-line with Policies DE1 and C4 of the Torbay Local Plan 2012-2030.

## **7. Ecology:**

The ecological context was duly considered when consent was granted in outline for the mixed use development across the site.

The mitigation and enhancement measures detailed at outline stage included the provision of a bat roost within a dwelling or ancillary building towards the western border of the site close to the open countryside. Broader landscape management to support bats also focused on the western and northern fringes towards the open countryside. The reserved matters currently under consideration relate to the south-eastern part of the wider Devonshire Park site, away from the open



countryside and previously where existing vegetation was sparse.

Notwithstanding the above the proposal includes the provision of 6 bird boxes and 2 bat boxes, which is welcomed. These enhancement nesting and roosting opportunities, together with the landscaping scheme that will provide enhanced tree coverage and a network of shrub and hedges, is considered to adequately respond to Policy NC1 of the Torbay Local Plan 2012-2030 where enhancement of biodiversity is sought through development proposals. The provision should be a condition of any grant of approval.

More widely as appropriate planning conditions were imposed at outline stage to respond to the ecological sensitivity of the site in general it is not expected that any further conditions in this regard are necessary.

### **8. Retail issues:**

The principle of the retail, café restaurant and garden centre floorspace was established at outline stage, as outlined within Section 1.

The outline stage also established the parameters for the retail floorspace with consent granted with a number of conditions to ensure an appropriate form of development.

Condition 32 of the outline consent (as amended) restricts the sale of goods to a number of "bulky" goods and the sale of food within one unit up to 1486sqm in order to limit the trading overlap and retail impact upon Town Centres.

Condition 33 restricts the maximum retail floor area for the development in order to limit the provision of retail and resultant impact upon Town Centres.

Condition 34 restricts the minimum retail unit size in order to limit the retail impact on Town Centres (where smaller units are more common).

Condition 35 restricts concessions within the units, again to limit the trading diversity within the development and impact upon Town Centres.

Finally Condition 36 restricts the hours of delivery to the retail floorspace between the hours of 08:00-1800 Monday-Friday and between 08:00-13:00 on Saturdays, with no deliveries on Sundays or bank holidays. This is intended to protect the amenity of future occupiers to the north of the retail and retail service area, where it is expected that residential uses will be in close proximity to the development.

The outline consent and the attached conditions are considered to provide acceptable parameters for the retail floorspace and it is considered that no additional conditions on how the retail elements operates are necessary.

## **s106 / CIL**

A S106 agreement for this site was agreed under the outline application reference P/2014/0947 (as amended). No further legal agreement is required for this Reserved Matters application.

The Reserved Matters application is not CIL liable development.

### **Statement of Pro-active Working**

The Council has sought to work positively and proactively with the applicant through pre-application discussions and through open dialogue throughout the application process including requests for further information.

### **Paignton Neighbourhood Plan**

The Paignton Neighbourhood Plan completed its Regulation 16 Publicity Period consultation on 18th December 2017. It is expected that the Neighbourhood Plan will be subject to Independent Examination in Spring 2018. As such it is at an advanced stage of preparation. National Planning Policy Framework paragraph 216 (in Annex 1) states that from the date of publication, decision takers may give weight to relevant policies in emerging plans (unless material considerations indicate otherwise) according to their stage of preparation, extent to which there are unresolved objections and degree of consistency with national planning policies. Relevant policies in the Paignton Neighbourhood Plan now carry some weight as they have now completed two rounds of public consultation and reflect the wishes of the Neighbourhood Forums. The weight afforded to emerging Neighbourhood Plan policies is a matter for the decision-taker in accordance with the NPPF 216 criteria. Relevant policies include:

*PNP1:* The proposal is considered to be aligned with Policy PNP1 (Area Wide), in that it will support the provision of job led growth whilst also securing development that will protect local identity, where it reinforces the character of Long Road.

*PNP21:* The proposal is also aligned with Policy PNP21 (White Rock and nearby areas), which seeks to secure job-led growth and encourage major employer organisations. The landscaping is considered compliant with the identified development issue of securing green roadside verges.

### **Human Rights and Equalities Issues**

Rights Act: The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of

the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests/the Development Plan and Central Government Guidance Equalities Act: In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Local Finance Considerations**

The proposal would support local construction and trade industries and future operators would provide employment add to the local economy in terms of household spend.

### **EIA/HRA**

#### *EIA:*

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

#### *HRA:*

The retail area of the site not adjacent to strategic flyway routes within the sustenance zone associated with the South Hams SAC. The proposed development is unlikely to have a significant effect on the South Hams SAC. Drainage was considered at outline stage to secure an adequate drainage solution that is unlikely to have a significant effect on the Lyme Bay and Torbay SAC.

### **Proactive Working**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council works in a positive and pro-active way with Applicants and looks for solutions to enable the grant of planning permission. However in this case the proposal has been unable to satisfy the policy tests for the reasons stated in this report.

### **Conclusions**

The proposed development accords with the outline consent and the layout, scale, appearance and landscaping is considered acceptable subject to the resolution of some minor elevational detail and confirmation from the Council's Arboricultural Officer regarding the landscape detail in terms of species and planting.

Subject to satisfactory resolution of the minor points identified above the Reserved Matters detail is considered suitable for planning approval, as it would be aligned with the outline detail previously considered by the Authority and present a satisfactory form of development in accordance with relevant Local Plan policy guidance, notably Policies DE1, DE4, NC1, C4, TA1, TA2 and TA3 of the Torbay Local Plan 2012-2030 and Policies PNP1 and PNP21 of the Submitted Paignton Neighbourhood Plan.

Limited conditions are necessary where they relate directly to the reserved matters. The drafting of necessary conditions required (in support of those imposed at outline stage) is requested to be delegated to the Head of Assets and Business Services, to include those outlined below.

*Conditions to include (draft wording):*

- Notwithstanding the submitted detail prior to the commencement of development above Damp Proof Course level a materials schedule, to include samples (either physical or digital) of all building and hard surfacing shall be submitted and approved.
- All parking shall be provided and made available for customers prior to the first use and maintained in full at all times thereafter.
- The pedestrian accesses and public realm areas, including the piazza, shall be completed prior to the first use of the retail or café/restaurant floorspace.
- Detailed design of the fascia and roof of the café/restaurant building shall be submitted and approved.
- All walls and other means of enclosure, including the acoustic fencing to the north of the retail service yard, shall be implemented in full prior to the first use of the retail units and maintained at all times thereafter.
- The soft landscaping shall be planted in the first planting season following the occupation of the retail unit(s) or completion of the retail unit(s), whichever is the sooner, or in earlier planting seasons wherever practicable, and any trees or plants which within a period of 5 years from the completion of the retail unit(s) die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- Notwithstanding the submitted detail the piazza seating details shall be submitted and approved .

- The position of the 2 bat boxes and 6 bird boxes to be agreed and installed as such prior to the first use of the retail units and maintained thereafter.

**Relevant Policies**

-

**Application Number**

P/2017/1182

**Site Address**

42 Whidborne Avenue  
Torquay  
TQ1 2PQ

**Case Officer**

Mr Robert Pierce

**Ward**

Wellswood

**Description**

New dwelling with accommodation over 3 floors, associated parking, double garage (revised plans received 16 February 2018)

**Executive Summary/Key Outcomes**

This is an application for approval of reserved matters following the granting of outline planning permission for a single dwelling on the western part of the larger plot of 42 Whidborne Avenue (Access Approved under P/2017/0490/OA). Outline planning permission also exists for a single dwelling on the eastern part of the garden. The principle of erecting two dwellings on the whole plot has therefore been established and is not part of the consideration of this application which relates only to reserved matters details.

Prior to the approval of the Outline planning permission to which this reserved matters relates (the western side of the plot), an application for full planning permission for was refused by Members of the Development Management Committee at their Meeting in May 2017 for the following reason:

The proposed development by reason of its scale, bulk and design would constitute overdevelopment of the site and would result in a form of development that would be out of keeping with the established character of the area. The proposal would therefore be contrary to Policies DE1 and DE3 of the Torbay Local Plan 2012-2030 and Paragraphs 58, 60, 63 and 64 of the National Planning Policy Framework.

A subsequent Appeal against this decision was dismissed in September 2017 and this application now seeks to address the adverse effects that the Planning Inspector considered that, that scheme had on the character and appearance of the area.

The proposed dwelling presents a pitched roof to the road frontage with a flat roofed, zinc clad dormer and two rooflights set within it. It would have an integral

double garage with a 'feature' contemporary rectangular box projecting out above it on the front elevation. The result is a more traditional appearance to the front which would be in contrast to a modern 3 storey flat roofed rear elevation which incorporates a recessed First Floor 'box' projection and roof terrace.

The design of this latest scheme while more modern is considered to have addressed the Planning Inspector's concerns and it would be acceptable in this location and would not have any material detriment to the residential amenity of neighbouring occupiers or the character or appearance of the locality. As such the proposal is consistent with Policies DE1 (Design), DE3 (Development Amenity) and DE4 (Building Heights) of the Torbay Local Plan 2012-30.

The application has been referred to the Development Management Committee due to the number of objections that have been received. These refer to a number of issues including impact on amenity of the area, overlooking, the design and density of the proposed development.

### **Recommendation**

Conditional approval of all Reserved Matters (layout, appearance, landscaping and scale) with final details of the conditions delegated to the Executive Head of Assets and Business Services.

### **Statutory Determination Period**

12th January 2018 (Due to the re-advertisement of the revised plans an Extension of time has been agreed by the applicant until 20th April 2018).

### **Site Details**

The site is currently occupied by a vacant bungalow style of dwelling which has a limited amount of accommodation included at first floor within its roof form, that has a distinctive 'eye - brow' dormer to the front. A public footpath (which follows the steep slope down to Bishops Rise) and a wedge of vegetation runs alongside the western boundary of the site, with the vegetation providing effective screening to the property next door (44 Whidborne Avenue). The site has a broad street frontage with two existing vehicular driveways. The appearance of dwellings in the vicinity of the application site is not uniform, however the characteristic form of buildings along this suburban street is for them to be wide-fronted with their main roof pitches orientated parallel to the highway and smaller secondary gabled features presenting perpendicularly to the street. The curtilage of the plot is defined by an existing stone wall situated to the front of the plot and an existing rear and west side 2.0 metre high stepped boundary rendered wall.

Whidborne Avenue is sloping at the application site, and No 42 occupies a position that is slightly before a small summit in the street is reached (which occurs further to the west). The plots along this side of Whidborne Avenue have far reaching views to the rear and their roof line is clearly visible from certain locations on the other side of Ilsham Valley, in particular from Kent's Cavern and the lower end of Higher Warberry Road. More distant views are also present from Walls Hill above Ansteys Cove. A recently constructed 2 metre high wall runs alongside the footpath and defines the side (west) and rear (north) boundaries of the site.

The side and frontage of the site are open when approaching from the west although some existing planting does filter views of the existing property to a certain extent.

The application site backs onto land identified in the Local Plan as an Urban Landscape Protection Area (Ilsham Valley/Lincombe Slopes)

### **Detailed Proposals**

This application is for approval of reserved matters comprising layout, appearance, landscaping, scale following the granting of outline planning permission for a single dwelling on the western part of the larger plot of 42 Whidborne Avenue. Access was approved at outline stage.

Outline planning permission also exists for a single dwelling on the eastern part of the garden. The principle of erecting two dwellings on the whole plot has therefore been established.

The original plans submitted with this application were revised (and re-advertised) as the result of negotiations with the Case Officer and the Urban Design Consultant. The plans indicate that the proposed dwelling would be sited within the western half of the sub-divided site (plot 42) and would not project any further forward than the furthest front edge of the existing property. It would be split level with the site being excavated to allow the new dwelling to be partly set down. With the introduction of a pitched roof, the building would appear as two storeys from the front elevation and three storeys from the rear. The ridge height of the pitched roof would be slightly higher than the existing property.

The resulting accommodation would be arranged on three levels as follows: Lower Ground Floor - Integral double garage, utility room and two en suite bedrooms leading out onto a rear garden terrace, Ground Floor - entrance porch leading to a hall / reception area and open dining, kitchen and living areas with the latter leading out onto a balcony with steps leading down to the garden. First floor - en suite facilities, dressing room and a master bedroom set within a recessed box leading out onto a roof terrace

The external finishes would be white render, front dormer finished in grey zinc,



natural slate roof, black grey crittall windows and medium coloured oak entrance and garage doors.

It is also proposed to plant a mature tree on the site between the two approved building plots that would eventually grow above the ridge line.

### **Summary Of Consultation Responses**

*Highways Engineer:* No objections.

*South West Water:* No objections.

*Drainage Engineer:* As per previous scheme - Providing the surface water drainage system and soakaway is constructed in accordance with the revised hydraulic design, no objections on drainage grounds to planning permission being granted.

*Urban Design Consultant:* Content with the revised scheme (including larger dormer) and reasonably addresses the Inspector's points. Supports the scheme.

### **Summary Of Representations**

A letter in support

Numerous representations objecting

Main issues raised:

- Impact on local area
- Rear is overpowering
- Impact on open aspect
- Tree will take too long to grow
- Alarming height of 3 floors
- Size and random design
- When other house built will look like a block of flats
- Will alter the skyline
- Out of character with the area
- Impact on immediate neighbour (No 40) -loss of light and view
- The style is out of keeping.
- Breach of covenants (Not a planning issue).
- Out of character with neighbouring and other houses
- Size and mass
- Increase in bulk
- Inspector's comments not addressed
- Same monolithic projecting box remains
- Overlooking from balcony

### **Relevant Planning History**

P/2016/0932	Demolition of dwelling and proposed replacement dwelling Refused - 30/11/2016
P/2016/0933	Demolition of dwelling and proposed replacement dwelling shown as 42A (in outline) Refused - 01/12/2016
P/2017/0259	Resubmission of application P/2016/0932/PA- Demolition of dwelling and proposed replacement dwelling with associated works (Appeal Dismissed 12.09.2017.) APP/X1165/W/17/3177247Refused - 25/05/2017
P/2017/0260	Demolition of dwelling and proposed replacement dwelling shown as 42A (in outline). Approved- 11/05/2017
P/2017/0490	Demolition of dwelling and proposed replacement dwelling (in outline) Approved - 20/07/2017

### **Key Issues/Material Considerations**

The key issues to this planning application (P/2017/1182/RM) are as follows:

#### **General Principle and Planning Policy -**

The plot has an established residential use and sits within a wider residential estate. The majority of the dwellings are detached and set back from the road with parking areas and front gardens. There is a mixture of both bungalows (some with dormers) and two storey houses. The subdivision of the larger plot is already established by virtue of the outline planning approvals for two individual houses. The proposed dwelling would result in an additional house to help meet the need for housing with the associated social and economic benefits. The development would therefore accord with parts of Policy DE1 of the Torbay Local Plan 2012 to 2030.

#### **Visual Impact -**

The design of the proposed dwelling seeks to address the Inspector's points from the refusal of application P/2017/0259, the original submitted plans with this application were revised as the result of negotiations between the Agent, the Case Officer and the Council's Urban Design Consultant.

The design of the dwelling which was dismissed at appeal took on the appearance of a modern flat roofed 'cubist' design. In his Appeal Decision Letter, the Inspector was concerned that this flat roof design would have meant that its full height would project significantly further forward than the existing ridge line. In his opinion this would have resulted in a significant built form at first floor level which would have been above the ridge line of the neighbouring properties to either side. When

approaching the site from either direction the dwelling would have appeared uncharacteristically dominant and erode the sense of space at roof level. Due to the prominence of the site, and the open views from the west, he considered that these factors would have accentuated the uncharacteristic form of the dwelling. It would have appeared monolithic and discordant with the locally distinctive character of the immediate area.

The revised plans now indicate the roof has been re-designed and now presents a steeply sloping roof finished in natural slate. The accommodation within the roof space would lit by a rectangular box dormer finished with a zinc exterior set within one side of the roof slope and two velux windows on the other side. To compliment the more traditional design of roof, a contemporary rectangular box projection is retained as an architectural feature.

In contrast to the more traditional appearance of the front elevation the dwelling the design to the rear has retained the 'cubist' influence with accommodation on three levels with the upper master bedroom leading out onto a roof top terrace. The redesigned roof to the front half of the proposed dwelling now introduces a more traditional sloping ridgeline. It is considered that this updated design approach has addressed the issues of concern raised by the Planning Inspector in that the 'cubist' concept has been replaced by a traditional roof to the front elevation. It now reflects the steeply sloping roof of the existing property, it will no longer be monolithic and discordant with the locally distinctive character of the immediate area. It will less visually prominent in the street scene especially when viewed from the west. Inevitably the east elevation will be visible from the other end of Whidborne Avenue, however this will not be the case once the other half of the site is redeveloped and none the less is considered acceptable as part of the street scene .

The rear of the properties along Whidborne Avenue are visible from distant views from across Ilsham Valley, it is not considered that the three storeys to the rear will be unduly prominent within this row of houses.

The agent has confirmed that in order to reduce bulk, the revised scheme in relation to the refused/dismissed scheme has a reduction of the useable floor space by 25 square metres and a reduction in total volume by 178 square metres.

The National Policy Framework (NPPF) generally discourages local policy and decision making that is based on stylistic preference except where Conservation Areas exist or perhaps where an adopted Neighbourhood Plan has a specific policy based on some careful analysis providing evidence of a locally distinctive approach. NPPF para 60 states that: Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.

The proposal has reduced the extent of the built form at first floor level to the front half of the dwelling is therefore considered to provide residential development that is appropriately scaled and formed, would sit comfortably within its surroundings and thus preserve the character and appearance of the street scene.

It is also proposed to plant a significant tree to the front of the middle of the plot next to the road frontage. The idea is to select a specimen which once fully matured will grow to a height above the two proposed dwellings. Its foliage would then be visible from across Ilisham Valley and add a verdant backdrop to the rooflines. It would also result in making a positive contribution to the public domain by introducing a mature specimen (as opposed to ornamental planting) within the street scene and would contribute to the creation of a high quality landscape. The landscaping scheme is therefore considered to be acceptable.

Given the considerations set out above it is now considered that the proposal would accord with Policies DE1, DE3 and DE4 of the Torbay Local Plan 2012-30.

#### **Residential Layout -**

The proposed detached dwelling has adequate separate parking and outdoor amenity space, offered through balconies, terraces and gardens. The internal space is considered spacious and features rooms of an acceptable scale with adequate natural lighting and outlooks in order to offer a good residential environment. The proposal is considered to offer an acceptable residential environment for future occupants. As such the proposal would accord with Policy DE3 of the Torbay Local Plan 2012-30.

#### **Neighbour Amenity -**

In terms of immediate neighbours, No 44 Whidborne Avenue is well separated from the west boundary of No 42 by a public footpath and an adjoining strip of woodland. This level of separation between the two plots is considered to be enough to avoid any overbearing impact or overlooking from the proposed balcony and roof terrace to the rear of the property. It is not considered that the proposed dwelling will have any negative impact on the residential amenity enjoyed by the occupiers of No 40 Whidborne Avenue because the gap between the two properties and ultimately it will be separated by the approved 'outline' dwelling on the other half of the plot. Consequently the proposed dwelling will be consistent with the objectives of Policy DE3 (Development amenity) in the Torbay Local Plan 2012-30.

#### **Highway, Parking and Access -**

The proposed dwelling would utilise the existing vehicular and pedestrian access. It would have a large integral double garage which would be set down below the

level of the road frontage following excavation of part of the site. The Highway engineer has raised no concern in regard to utilising this established access arrangement and the level of parking is considered in line with policy guidance.

Consequently the proposed development would be consistent with Policies TA1 (Transport and accessibility), TA2 (Development Access and TA3 (Parking requirements) in the Torbay Local Plan 2012-2030.

#### **Ecology -**

A Preliminary Ecological Assessment has been carried out and this has confirmed that no evidence of bat use or nesting bird activity was found in association with the roof or eaves of the property and therefore the proposed demolition of the existing bungalow will not impact on bats or nesting birds. The design of the retrospective garden walls on the north and west boundaries incorporate bird nesting boxes and frog and hedgehog highways and accords with Policy NC1.

#### **Flood Risk –**

A Surface Water Drainage Design Report has been submitted which has been assessed by the Council's Drainage Engineer who is satisfied that this is acceptable and therefore the proposal accords with Policy ER1.

#### **Statement on Human Rights and Equalities Issues-**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights.

In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

#### **Equality Act –**

No issue.

#### **Statement on proactive working -**

The Officers have worked closely with the agent and applicant from the pre - application advice stage through to discussions on the current scheme.

#### **Torquay Neighbourhood Plan-**

The Torquay Neighbourhood Plan completed its Regulation 16 Publicity Period consultation on 18th December 2017. The Neighbourhood Plan will be subject to Independent Examination in Spring 2018. As such it is at an advanced stage of preparation. National Planning Policy Framework paragraph 216 (in Annex 1) states that from the date of publication, decision takers may give weight to relevant policies in emerging plans (unless material considerations indicate otherwise)

according to their stage of preparation, extent to which there are unresolved objections and degree of consistency with national planning policies. Relevant policies in the Torquay Neighbourhood Plan now carry some weight as they have now completed two rounds of public consultation and reflect the wishes of the Neighbourhood Forums. The weight afforded to emerging Neighbourhood Plan policies is a matter for the decision-taker in accordance with the NPPF 216 criteria. Relevant policies include:

Policy H13 which requires development to be in character, scale, bulk and design sympathetic to the established surrounding architecture and must not significantly increase the density of properties in the immediate area. It is considered that the proposal meets the criteria of Policy H13.

**Local finance considerations-**

Not applicable.

**Statement on CIL Liability-**

The development is CIL liable. The site is within charging zone 3 where the CIL charge is £70 per sq.m.

**Conclusions-**

The revised plans now indicate a more traditional style of dwelling to the front elevation albeit with a reduced architectural cube feature. This in part retains the local distinctiveness but with a more modern finish, the tall mono-pitched roof climbs from what is approximately the existing eaves height up to a level very slightly higher than the existing ridge height. This roof disguises the three storey 'cubist' element to the rear which is considered to provide an acceptable design within the wider context of the street scene.

It respects the roofline of properties along Whidborne Avenue and will not be visually prominent along the ridgeline from distant views across the valley to the rear.

The design and orientation of the proposed dwelling has addressed any issues of overlooking and loss of privacy to the immediate neighbours and is considered acceptable.

Highway safety for all users is protected by utilising the existing vehicular access with onsite parking at a level that would mitigate any additional pressure for on-street parking (which is however low in this area).

In conclusion all matters considered the scheme is considered to sit comfortably with the provisions of the development plan and national guidance for the presumption in favour of sustainable development and therefore the reserved matters : (i) layout; (ii) appearance (including schedule of external materials to

include hard-surfaced areas) ; (iii) landscaping (to include soft landscaping, boundary treatments and all means of enclosure); (iv) scale and considered suitable for planning conditional planning approval.

**Relevant Policies**

-

**Application Number**

P/2018/0100

**Site Address**

Limestone Court  
St James Road  
Torquay  
TQ1 4FT

**Case Officer**

Verity Clark

**Ward**

Tormohun

**Description**

2 New Dwellings, parking area and associated engineering operations to cliff face.

**Executive Summary/Key Outcomes**

The application site is accessed via the south car park associated with Limestone Court and is an area to the South East of the site to the rear of the children's community centre building on St James Road and bounded by the quarry face.

The proposal seeks to form two semi-detached residential dwellings with an associated parking area. To facilitate the proposal the excavation of a section of the cliff is proposed.

The principle of new residential development is accepted and the proposal is considered to be of a suitable size, scale, massing and visual appearance for the plot within the context of the site and the surrounding streetscene. The proposal will provide adequate internal and external amenity space however there is a potential concern with the level of light afforded to the proposed dwellings due to the proximity to the cliff face and the proximity of Limestone Court. Sun shadow surveys have been submitted however analysis of the surveys has not been submitted therefore it has not yet been established whether the proposed dwellings would be served by adequate light levels. The agent has advised that this information will be submitted in support of the application. Members will be verbally updated on this issue at Committee.

The proposal is not considered to impact on neighbour amenity as the proposal does not include windows on the South West side elevation and is sited to sit behind the single storey children's community centre building on St James Road. As the built form is due north of the terraced properties of 1-9 St James Road and does not sit directly behind the gardens of these terraced properties the proposal is not considered to result in a significant detriment to the amenity of these properties by way of overbearing impact, loss of light or reduced privacy. The proposal is also considered to have an acceptable relationship with Limestone Court due to the separation distances.



The proposal is considered to be acceptable in terms of highways impact and ecology whilst issues surrounding drainage and contamination can be agreed by way of a planning condition.

The proposal includes a geotechnical statement which provided details of the works required to the cliff. A consultation was requested from the Council's engineering department to confirm if the proposed works are considered to be reasonable. At the time of writing the report no response had been received. Members will be verbally updated on this issue at Committee.

A revised OS plan has been requested as the original did not include the works to the cliff within the red line or an access to the highway in blue. Once this is received a further 14 day consultation period will take place. Members will be verbally updated if additional responses are received.

The application is recommended for conditional approval.

The application has been referred to Development Management Committee due to the number of objections that have been received.

### **Recommendation**

Conditional approval subject to no representations being received during the re-consultation period that raise new issues and the receipt of further information confirming that the proposed new dwellings will have adequate levels of light and that the contents of the geotechnical statement regarding removal of approximately 1m of cliff face is agreed. Final drafting of conditions to be delegated to the Executive Head of Assets and Business Services.

### **Statutory Determination Period**

8 weeks. The determination date is the 28th March 2018.

### **Site Details**

The site, Limestone Court, St James Road, Torquay, was previously operated as Jewsons Builders Merchants from the quarry site. Approval was granted under P/2014/1231 to demolish the existing storage sheds and replace with a block of flats fronting the street and, as a second element, the construction of a new office space located towards the rear of the site.

The site subject to this application is accessed via the south car park associated

with Limestone Court and is an area to the South East of the site to the rear of the children's community centre building on St James Road and bounded by the quarry face.

### **Detailed Proposals**

The proposal seeks permission for the construction of 2 semi-detached dwelling houses with an associated parking area.

To facilitate the proposal, engineering operations to the cliff face are proposed. A 4m section of the cliff face will be extended back by 1m to allow for the proposed development.

### **Summary Of Consultation Responses**

*Community Safety Contamination:* The information that has been provided is fairly limited for the proposed location. I am aware of the sites previous use as a quarry and timber warehouse and saw mill. There is also an historical lime kiln at the rear of the development site. From the information provided it appears that the site consists of made ground from the previous development. I believe it is also their intention to have private gardens at the rear of the houses. No information has been provided as to how these gardens will be constructed, for example will they be importing soil. I have concerns that this area has not been sampled and has the potential to be contaminated. I do not object to the development however I do not feel that sufficient information has been provided, to either assure me that the area is not contaminated or to how they will deal with any potential contamination to prevent harm to any future occupants of the dwellings. Due to the proposed rear gardens further sampling of the proposed site is needed to ascertain the extent of any contamination and whether remediation is required to break any potential pathway. I would therefore like to suggest a condition relating to contaminated land be attached to the permission, if you are minded to grant the application.

*Community Safety Amenity:* No objection.

*Natural Environment Services:* No response.

*Wales and West Utilities:* Wales & West Utilities has pipes in the area. Our apparatus may be affected and at risk during construction works. Should the planning application be approved then we require the promoter of these works to contact us directly to discuss our requirements in detail before any works commence on site. Should diversion works be required these will be fully chargeable.

*Engineering:* No response.

*Highways:* No objection.

*Drainage:* Within the submitted flood risk assessment the developer has identified that surface water drainage from this development will discharge via soakaways. However as previously identified the ground conditions at this location are unsuitable for infiltration drainage. As a result the submitted drainage design is for the surface water to discharge at a controlled rate to the combined sewer system. The controlled discharge rate used in the submitted hydraulic design is 1.5l/sec which complies with the requirements of the Torbay Critical Drainage Area. The site layout used within the hydraulic calculations is not the latest layout and therefore the impermeable area used in the design of the attenuation tank is incorrect. The impermeable area used in the design only assumes two parking bays at the front of the new properties with lawns to the side whereas the latest layout drawing (Number 457-02C) identifies four parking bays and hard paving to the front of the properties. The hydraulic design must be undertaken using the latest layout for the development in order that the impermeable area used in the design is correct. The applicant must demonstrate that his surface water drainage design will not result in any increased risk of flooding to properties or land adjacent to his development for the critical 1 in 100 year storm event plus 30% for climate change.

### **Summary Of Representations**

Publication type: Neighbour notification letters/Site notice

11 representations have been received. 1 neutral representation and 10 objections. Issues raised:

- Parking
- Highways safety
- Privacy and overlooking
- Impact on wildlife
- Contamination
- Health implications
- Previous development
- Overdevelopment
- Outlook
- Property values
- Aspect
- Size and scale
- Topography
- Unnecessary impact on environment
- Height
- Overshadowing and impacts on light
- No community engagement

- S106 agreement on previous application not complied with
- Access
- Civil issues of damage to neighbouring properties
- Impact on lime Kiln
- Design
- Geotechnical concerns
- Impact on badgers

A further 14 day consultation period for the application will be undertaken. Any representations received before the date of the Development Management Committee meeting will be reported verbally at that meeting and the recommendation will be subject to no additional issues being raised by any comments received.

### **Relevant Planning History**

Extensive site history, most relevant:

P/2017/0973	2no. New Dwellings. Refused 14/11/17
P/2017/0559	2no. New Dwellings. Withdrawn.
P/2016/1102	Details of remedial works to stabilise quarry face comprising anchor installations and mesh coverage further to July 2014 Geotechnical Report approved pursuant to P/2014/1231. Approved 01/12/16
P/2015/1225	Conversion of loft space and part enclosure of roof terrace to form 4no. additional apartments, two with access to open roof terrace. Alterations to external elevations. Increase in car parking provision from 20 to 22 spaces. Permission with legal agreement 01/09/16
P/2014/1231	Redevelopment of former builders' store to form 24 flats with 20 car parking spaces, and construction of office building: Amended scheme including increasing height of flat building by 1m, deletion of roof garden, adjustment of landscape proposals, reduction in size of, and position of office building with increased car parking levels to serve the office building. Permission with legal agreement 30/06/16

### **Key Issues/Material Considerations**

The key issues to consider in relation to this application are:

1. Principle of development
2. Impact on the character and appearance of the streetscene
3. Impact upon the amenity of neighbouring properties
4. Quality of residential accommodation
5. Drainage
6. Transport Issues
7. Ecology
8. Cliff stability
9. Contamination

### **1. Principle of development -**

In respect of the principle of the construction of two dwellings in the plot, the principle of residential development in this location is considered to be acceptable. The site is located within an established residential area and would be considered a sustainable location for such development being in relatively close proximity to services and public transport routes.

### **2. Impact on the character and appearance of the streetscene -**

The site is tightly constrained by its shape, size and location in relation other neighbouring buildings and the cliff face. There is a distinct local character and pattern of development in the area of terraced residential properties whilst the redevelopment of the former Jewson site into Limestone Court formed a development of similar proportions to the existing building on the site.

The proposal seeks to form two semi-detached 2 bedroom properties set over 2 floors. The design includes traditional rendered walls with pitched roofs. Rear garden areas are provided and two car parking space per dwelling would be created in front of the properties.

The proposed dwellings will utilise the majority of the width of the plot with a footprint of 8.6m x 10.8m and a total height of 8.05m. The previous application for the proposal, under reference P/2017/0973 was refused with concerns raised about the size and scale of the proposal which was considered to result in an overdeveloped appearance. The height of the proposed dwellings has been reduced with a new ridge height datum level of 61.650. This is in comparison to the ridge height datum levels of the terraced properties on St James Road of 61.670. With the reduction in height to assimilate with the existing terrace properties and the removal of the use of a third floor within the roof space, the proposal is considered to fit comfortably within the streetscene, reflecting the existing character and appearance and not appearing overly dominant. Although the proposal utilises the majority of the width of the plot, as the plots location is set back from the streetscene, the massing is considered to be appropriate with the changes made to the height and the use of a simple roof form. The size, scale and design of the two dwellings is therefore considered to be acceptable for the location

of the plot within the context of the streetscene and the neighbouring properties.

As such, the proposal would comply with Policy DE1 of the Torbay Local Plan 2012-2030.

### **3. Quality of residential accommodation -**

Policy DE3 of the Torbay Local Plan 2012 - 2030 which relates to development amenity requires that new residential units provide adequate floor space in order to achieve a pleasant and healthy environment. Provision of useable amenity space, including gardens and outdoor amenity area should be provided with a guidance of 55m<sup>2</sup> for new houses. The proposal includes outside amenity spaces above the required standard which is facilitated by the removal of a section of the cliff.

Internal floor standards are set out from the DCLG technical housing standards document. This states the minimum internal floor space which should be provided and gives guidance on the minimum floor area. The minimum internal floor spaces set out by this guidance and reflected in Policy DE3 shows that a minimum floor space of 70m<sup>2</sup> is required for a 2 bedroom 2 storey dwelling. The proposed floor areas of both proposed dwellings exceed this minimum standard and are therefore acceptable in terms of size.

There is however a concern with the light levels which will be achieved within the windows on the North West and South East elevations of the proposed properties due to the proximity to the cliff face and the proximity of Limestone Court. Sun shadow surveys have been submitted however analysis of the surveys has not been submitted thereby not confirming if the proposed dwellings would be served by adequate light levels. The agent has advised that further sun shadow surveys of the autumn and spring will be submitted alongside a statement in support of the application. Members will be verbally updated on this issue at Committee.

As such, the proposal would comply with Policy DE3 of the Torbay Local Plan 2012-2030 providing the light levels are considered to be sufficient.

### **4. Amenity impact -**

In terms of impact on the neighbouring properties, the proposal does not include windows on the South West side elevation and is sited to sit behind the single-storey children's community centre building on St James Road. As the built form is due north of the terraced properties of 1-9 St James Road and does not sit directly behind the gardens of these terraced properties the proposal is not considered to result in a significant detriment to the amenity of these properties by way of overbearing impact, loss of light or reduced privacy. The proposal is also considered to have an acceptable relationship with Limestone Court. The proposal will result in a separation distance of approximately 18.3m between the existing windows on Limestone Court and the first floor windows on the proposed dwellings. In this context of a built up urban area with somewhat high densities the

separation distance is considered to be acceptable and without detriment to neighbour amenity.

As such, the proposal would comply with Policy DE3 of the Torbay Local Plan 2012-2030.

### **5. Drainage -**

The applicant has indicated that surface water from this development would be discharged to a soakaway, however as previously identified the ground conditions at this location are unsuitable for infiltration drainage.

The Council's Drainage Engineer has confirmed that the submitted drainage design is for the surface water to discharge at a controlled rate to the combined sewer system. The site layout used within the hydraulic calculations is not the latest layout and therefore the impermeable area used in the design of the attenuation tank is incorrect. The impermeable area used in the design only assumes two parking bays at the front of the new properties with lawns to the side whereas the latest layout drawing identifies four parking bays and hard paving to the front of the properties. The hydraulic design must be undertaken using the latest layout for the development in order that the impermeable area used in the design is correct. The applicant must demonstrate that his surface water drainage design will not result in any increased risk of flooding to properties or land adjacent to his development for the critical 1 in 100 year storm event plus 30% for climate change.

The applicant must demonstrate that the surface water drainage design will not result in a risk of flooding to properties on the site or an increased risk of flooding to properties and land adjacent to the site for the critical 1 in 100 year storm event plus 30% for climate change. A condition is therefore recommended requiring details of how surface water will be dealt with. With the addition of a condition the proposal is considered to accord with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030.

### **6. Transport issues -**

Policy TA3 of the Torbay Local Plan states that new dwellings should be served by two car parking spaces. In this instance, as there is significant pressure on off-road parking in the area, primarily as there are no parking restrictions on the road, the area consists of high density terraced housing and a local school, two parking spaces per dwelling must be provided. The proposed new dwellings are served by two off street parking provision. The East most space is located within the current cliff face, which will be facilitated by excavation works to the cliff face.

The car parking spaces sit in front of the properties which will be accessed through the Limestone Court parking area which will be within the blue line on the OS. The proposed parking areas will not impact on the existing parking arrangements serving Limestone Court. The properties can be accessed by a central path when

cars are parked thereby creating a suitable arrangement.

A condition will be recommended to ensure the parking spaces serve the proposed dwellings and are retained for parking purposes.

The proposal is therefore considered to accord with Policy TA3 of the Torbay Local Plan 2012-2030.

## **7. Ecology -**

The application has been accompanied by a preliminary ecological assessment. The written assessment concluded that:

- 1) The site is not considered suitable for roosting bats and no further surveys are required.
- 2) House sparrows, blackbirds and a family of great tits were seen and heard in the ivy and scrub at the southern end of the site. The vegetation on and adjacent to the lime kiln is suitable nesting habitat for all of these bird species.
- 3) The footprint of the development is unfavourable for any other protected species.
- 4). Consideration needs to be given to the time works to ensure they are outside of bird nesting season.
- 5) Pro-active provision of nest boxes for species such as swifts and house martins should be provided.

Consultation from the Council's ecological consultant for the previous application; P/2017/0973 noted that suitable opportunities during the construction process should be taken in relation to biodiversity. These should include the provision of integrated habitat by design for swifts (*Apus apus*), in the form of four nesting bricks built within the outer wall brickwork. Post development opportunities should also be undertaken in relation to the installation of four house martin boxes and additional nesting provision should be made available for house sparrow (*Passer domesticus*) terraces, and pied wagtail (*Motacilla alba*) boxes. Post-development opportunities should be taken with any landscaping to further enhance the biodiversity relative to that currently presented on site. Incorporating native tree and shrub species into the landscape design will benefit biodiversity. There are concerns from residents that badgers may be using the site. It would seem unlikely that a badger sett is located directly within the curtilage of the site (see ecological assessment report undertaken by George Bemment Associates, 2017). However, a badger sett may be located within the vicinity of the development. Therefore, we also recommend that a badger survey is undertaken.

An updated report which covers issues of badgers has been submitted in support



of this application. In terms of its impact on bats, nesting birds and badgers, the proposal is considered to be acceptable. A condition is recommended to ensure clearance works take place between August to the end of February in line with the recommendations and that nest boxes for swifts and house martins is provided.

#### **8. Cliff stability -**

The proposal includes a geotechnical statement which provided details of the works required to the cliff. The statement notes that the existing exposed 4m> rock face could be extended back north from its present east west alignment by 1m without causing any instability factors within either the recently repaired cliff areas above within the rock 'knoll' sections or, the adjacent anchored and meshed rock faces. It may be a requirement that any newly excavated rock faces could contain zones that may require some limited stabilisation works to be completed prior to any ground construction works being commenced. All extraction works by 'rock hammer pecking' processes must be supervised on a daily basis to check on geological stability thresholds and any discovered anomalies. Following the completion of these proposed excavations, the newly cut cliff face will also be subject to primary HSE checks, to establish that the sections will not pose any form of danger from rock detachments to future domestic occupancy situations.

A consultation was requested from the Council's engineering department to confirm if the proposed works are considered to be reasonable. At the time of writing the report no response had been received. Members will be verbally updated on this issue at Committee.

#### **9. Contamination -**

A geotechnical and contamination assessment report has been submitted in support of the application. This document concluded that neither the adjacent quarry faces or contamination factors constitute any risk scenarios to the proposed development.

The Council's Senior Environmental Protection Officer has confirmed that from the information provided it appears that the site consists of made ground from the previous development. It is understood that it is intention to have private gardens at the rear of the houses. No information has been provided as to how these gardens will be constructed. There are concerns that this area has not been sampled and has the potential to be contaminated. There is no objection to the development however there is not sufficient information to confirm that the area is not contaminated or to how they will deal with any potential contamination to prevent harm to any future occupants of the dwellings. Due to the proposed rear gardens, further sampling of the proposed site is needed to ascertain the extent of any contamination and whether remediation is required to break any potential pathway. A pre-commencement condition relating to contaminated land is therefore recommended.

With the addition of a pre-commencement condition the proposal is considered to

accord with Policy ER4 of the Torbay Local Plan 2012-2030.

### **Human Rights and Equalities Issues -**

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

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **CIL and Affordable Housing -**

Affordable Housing:

Affordable housing provision/contribution is not required from this development in accordance with Policy H2 of the Torbay Local Plan 2012-2030.

### **CIL:**

The application is for residential development in zone 1 where the Community Infrastructure Levy (CIL) is £0 per square metre of additional gross internal floor area created for development of 1-3 dwellings. The proposal is therefore not CIL liable.

### **EIA/HRA**

#### **EIA:**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

Date: 22/03/18

### **Conclusions**

The principle of new residential development is accepted and the proposal is considered to be of a suitable size, scale, massing and visual appearance for the plot within the context of the site and the surrounding streetscene. The proposal will provide adequate internal and external amenity space however there is a potential concern with the level of light afforded to the proposed dwellings due to

the proximity to the cliff face and the proximity of Limestone Court. Further information will be submitted in support of this issue. The proposal is not considered to impact on neighbour amenity. The proposal is considered to be acceptable in terms of highways impact and ecology whilst issues surrounding drainage and contamination can be agreed by way of a planning condition. The proposal includes a geotechnical statement which provided details of the works required to the cliff. A consultation is awaited in respect of this issue. The two proposed dwellings are therefore considered to be appropriate for planning approval.

### **Condition(s)/Reason(s)**

01. Construction management plan
02. Materials
03. Drainage
04. No Permitted development
05. Ecology - provision of nest boxes and timing of vegetation clearance
06. Finished floor levels
07. Geology/ cliff stability
08. Parking provision prior to occupation
09. Contamination
10. Bin and cycle storage details
11. Landscape plan to include boundary treatment

### **Informative(s)**

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

### **Relevant Policies**

- DE1 - Design
- DE3 - Development Amenity
- ER1 - Flood Risk
- ER2 - Water Management
- ER3 - Contamination
- ER4 - Ground Stability 1
- NC1LFS - Biodiversity and Geodiversity
- TA2 - Development access
- TA3 - Parking requirements