

# TORBAY COUNCIL

Application Site Address	Access Track South of Limekiln Close Paignton. Torbay
Proposal	Change of use of land for the establishment of a public footway/cycleway link to include improvement works to existing track.
Application Number	P/2023/0143
Applicant	Abacus Projects Limited and Deeley Freed Estates Limited
Agent	Cushman & Wakefield
Date Application Valid	15.03.2023
Decision Due date	10.05.2023
Extension of Time Date	01.05.2026
Recommendation	<p>1. Amendment of the Committee resolution part 1. Of Minute 26 of the Planning Committee dated 18 September 2023 to remove the 6-month time limit for completion of the s106 in order to enable a decision to be issued for this application.</p> <p>And</p> <p>2. Note the post-committee amendment to wording of conditions 2 (Materials) and 5 (Lighting).</p> <p>And</p> <p>3. Approval subject to:</p> <p>i. The completion of a S106 Legal Agreement to secure the heads of terms as outlined, in accordance with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, on terms acceptable to Officers.</p> <p>ii. The planning conditions in the original report at Appendix 1 and subject to the changes identified in this report with the final drafting of planning conditions delegated to the Divisional Director of Place Strategy.</p> <p>iii. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Place Strategy, including the addition of any necessary further planning conditions or obligations.</p>

Reason for Referral to Planning Committee	Amendment to the Committee resolution
Planning Case Officer	June Pagdin

### **Purpose of Update Report**

To seek to remove the 6-month time limit on the period for completion of a Section 106 Legal Agreement. The legal agreement secures important public access rights along a proposed alternative route for the northern section of the Northern Access Route (NAR) relating to the Inglewood housing development.

### **Introduction**

The application P/2023/0143 seeks full planning permission for “the change of use of land for the establishment of a public footway/cycleway link to include improvement works to existing track”. This is to provide an alternative route for the Inglewood NAR.

The application was considered at Planning Committee on 18th September 2023 and committee resolved the following:

Approved subject to

1. The completion of Section 106 Legal Agreement within 6 months of the Committee date to secure the heads of terms as outlined at the meeting;
2. The planning conditions outlined in the submitted report, with the final drafting of planning conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency; and
3. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

Regarding Item 1 of the resolution, the 6-month period expired on 18<sup>th</sup> March 2024. However, the S106 legal agreement was completed after that date; on 5<sup>th</sup> February 2026. Amendment of the resolution by removing the 6-month time limit is required to enable a planning decision to be issued for this application and the related application for up to 25 dwellings at Land east of Limekiln Close.

### **Background**

The application site comprises a narrow, curving strip of land running from a point on the approved route of the (NAR) in the White Rock woodland walk, along a private section of Limekiln Close and on to the public highway in Limekiln Close and White Rock Way. The surfaces along the route are various and the ownership is split. There is a gate across the route at the southern end of Limekiln Close.

The NAR is part of the Inglewood housing development (P/2017/113 MOA as varied by P/2023/0377 and RM P/2022/1119) and will provide a pedestrian and cycle link between that development and the White Rock centre.

In the original Inglewood proposal, the route ran through a triangular piece of land now known as Land to the East of Limekiln Close. That piece of land is now the subject of a separate planning application (P/2022/1173) for up to 25 dwellings. Planning Committee resolved to approve that application (subject to conditions and a s106 legal agreement) on 18<sup>th</sup> September 2023. However, development of those dwellings necessitates this alternative route for the northern end of the NAR. It is conditional on the planning permission for Land East of Limekiln Close that the development shall not commence until the alternative NAR route, the subject of this application (P/2023/0143), is constructed and available for public use.

The proposed housing development at Land East of Limekiln Close is included in the Council's Housing Land Supply as part of the Regulation 18 Local Plan Review documents but cannot be implemented until the NAR alternative route is constructed. The NAR is, therefore, a key piece of enabling infrastructure for the development of 25 dwellings as well as a key piece of infrastructure for the 373 dwellings currently under construction (and part occupied) at Inglewood.

The developers of Inglewood have engaged positively in negotiations with the Council to upgrade the NAR to adoptable standard and the details have been agreed in a s38 Agreement. They wish to progress construction of the NAR as soon as possible and intend to regularise the amendments to the Inglewood permissions as necessary.

### **Reason for Exceeding 6-month Time Limit**

A S106 Legal Agreement requires signature by all owners of the relevant land. The alternative NAR route runs through land owned by the applicant, Deeley Freed, and Persimmon, the developer of Inglewood. It also runs along a short section of Limekiln Close that is under ownership of the White Rock Estate and is not due to be adopted as public highway. This section was also under ownership of the housebuilder for that part of White Rock.

A time limit of 6 months had been recommended as an incentive to achieve swift completion of the agreement. However, in practice the complex land ownership pattern meant that the deadline was not met. Other factors included negotiations over the s106 Agreement for the Land East of Limekiln Close (P/2022/1173), which was being prepared in parallel but was not subject to the same time limit.

S106 agreements for both applications were completed on 5<sup>th</sup> February 2026.

### **Post Committee Amendments to Conditions**

The recommended conditions on application P/2023/0143 (Nos 2 and 5) have been amended post-Committee determination subsequent to the developers of Inglewood engaging with the Council to upgrade the route to adoptable standard, with details agreed through the s38 procedure. The amendments to the conditions are summarised below.

Condition 2: Materials method and timing. The original submission was for a permeable surface. However, a bituminous surface is required for adoptable routes (to ensure inclusive access in all weathers, durability and ease of maintenance). The condition has been reworded to omit reference to permeable surfaces and to state “Notwithstanding the approved drawings, the path shall be constructed to adoptable standard or be the subject of an agreement with the Council made pursuant to s38 of the Highways Act 1980.”

The surface and method of construction have been approved for the remainder of the NAR at Inglewood (CN/2023/0108 as part of P/2022/1119RM).

Condition 5: Lighting. The original scheme proposed no lighting. To achieve adoptable standard some lighting is required. The route runs through a bat commuting and foraging area. A lighting scheme has been negotiated as part of the Inglewood development and achieves a sensitive scheme that is acceptable to the County Ecologist. (See CN/2024/0091 as part of P/2023/0377MOA). The wording of this condition has been amended to:

“No external lighting shall be installed at any time at the application site unless otherwise approved in writing by the Local Planning Authority. All approved lighting shall be implemented in accordance with the approved details and retained in that condition thereafter.”

### **Local Finance Considerations**

S106:

See body of report. Not financial.

CIL:

The CIL liability for this development is Nil.

### **Conclusions and Recommendations**

The application is for an alternative route for the Inglewood NAR with a s106 agreement to secure public access rights along it. The NAR is a key piece of infrastructure for the 373 dwellings currently under construction (and part occupied) at Inglewood. It is also a key piece of enabling infrastructure for the development of 25 dwellings at Land East of Limekiln Close.

Removal of the 6-month time limit from the previous Planning Committee resolution will enable a planning decision to be issued for the application.

### **Recommendations**

1. Amendment of the Committee resolution part 1. Of Minute 26 of the Planning Committee dated 18 September 2023 to remove the 6-month time limit for completion of the s106 in order to enable a decision to be issued for this application.

And

2. Note the post-committee amendment to wording of conditions 2 (Materials) and 5 (Lighting).

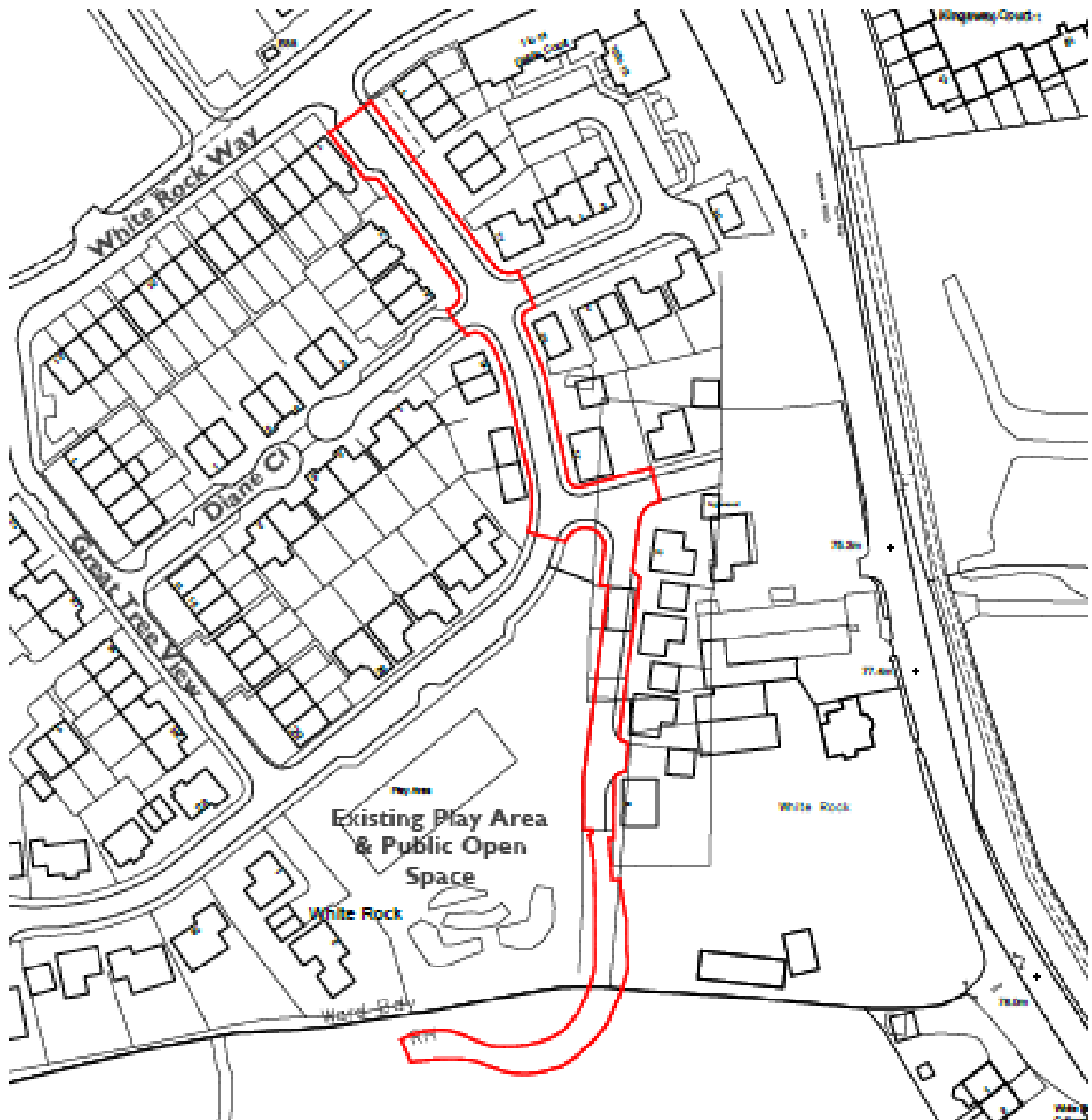
And

3. Approval of application P/2023/0143 subject to:
  1. The completion of a S106 Legal Agreement to secure the heads of terms as outlined, in accordance with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, on terms acceptable to Officers.
  
  2. The planning conditions outlined in the original report at Appendix 1 and subject to the changes identified in this report with the final drafting of planning conditions delegated to the Divisional Director of Place Strategy.
  
  3. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Place Strategy, including the addition of any necessary further planning conditions or obligations

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Recommendation	<p>Approval subject to:</p> <ol style="list-style-type: none"> <li>1. The completion of a S106 Legal Agreement to secure the heads of terms as outlined, in accordance with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, on terms acceptable to Officers.</li> <li>2. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.</li> <li>3. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</li> </ol>
Reason for Referral to Planning Committee	The application is associated with application P/2022/1173.
Planning Case Officer	June Pagdin

### Location Plan



### **Site Details**

The application site comprises a thin parcel of land south of Limekiln Close, most of Limekiln Close and a section of White Rock Way at White Rock, Paignton.

The southern part of the site is located at the south end of Limekiln Close from which it is currently gated off and stretches south into the woodland area south of White Rock. This part is just beyond the south east corner of the public open space at White Rock.

The remainder of the site provides a means of access from this area to the adopted public highway on white Rock Road to the north. This part includes the roadway and

footways of Limekiln Close and White Rock Way which connect to the public highway in White Rock Road. The road outside numbers 4 to 8 Limekiln Close is private. The roadway from outside No 2 Limekiln Close to White Rock Way is to be adopted as public highway under a Section 38 agreement for the White Rock development (P/2011/0197MOA and P/2014/0071 MRM). The application does not propose any physical works to these existing roads.

To the south of the surfaced roadway of Limekiln Close, the ground is unsurfaced and rises slightly before sloping down to the south towards the Inglewood development area. The land is fenced off from the White Rock open space and gated from Limekiln Close. However, it is used informally as a pedestrian access to the recently planted woodland area to the south of the White Rock development.

The woodland contains some unmarked paths and a “woodland walk” which has a compacted loose-gravel surface. This latter is a leisure route (secured through Section 106 agreement to the White Rock development) that leads westwards to further footpaths in the surrounding countryside.

### **Background**

A Northern Access Route (NAR) was approved as part of the Inglewood development (P/2017/113 as varied by P/2022/0112). The approved NAR enters the woodland from the south, crosses the Woodland Walk, then runs through the triangle of land to the north east (Land East of Limekiln Close) to connect with a spur off the northern end of Limekiln Close. The NAR is subject to condition 25 of the outline permission and planning obligations in the s106 of the related agreement. The condition and Section 106 agreement, in summary, require:

- A shared footway and cycleway (drawing 0734-055)
- To be constructed and made available and connected to a safe route (c25)
- Provide prior to first dwelling being occupied (c25)
- Maintained as such at all times (Section 106 Sch1,art4)
- The route shall be transferred to a Management Entity (ME) for the Inglewood site (Section 106 Sch1,art 4)
- The ME shall manage and maintain the route (Section 106 Sch1,art 4)
- Owner/ME to keep route open as a permissive path freely available for use by public in perpetuity (Section 106 Sch1, art I7)

The northern part of the current application site is within the White Rock Future Growth Area of Paignton and is part of a designated development site (CDSP.18) in the Torbay Local Plan (TLP) (Appendix C), the White Rock Site as designated in Policy SDP3.5 of the TLP and in the Paignton Neighbourhood Plan (Policy PNP21).

The southern part of the application site extends into the Brixham Peninsula Neighbourhood Plan area and is within an area designated as a Country Park in the Torbay Local Plan 2012-2030. This part of the site is a known bat commuting and foraging route and has been planted with trees (related to the White Rock development LEMP (P/2011/0197). It connects into the Northern Access Route (NAR) for the Inglewood development.

### **Description of Development**

The application seeks full planning permission for construction of a cycle and footway. The proposed route is intended to provide an alternative northern section to the approved Northern Access Route (NAR) that was approved in the outline permission for Inglewood.

The current application proposes to:

- Provide an alternative route for the northern part of the NAR between the woodland (that lies between White Rock and Inglewood) and the public highway on Limekiln Close,
- Construct a 3m wide, approximately 80m long stretch of surfaced pathway,
- Create a shared foot and cycle surface connecting to the south end of Limekiln Close,
- Install a removable vehicle barrier at the south end of Limekiln Close (details to be determined with Highway Authority),
- Connect into route of the NAR in the woodland between Inglewood and White Rock,
- Provide a permissive route in perpetuity (see submitted Cover Letter),
- Accompanying access easement over Limekiln Close to connect with public highway,
- Surface materials to be determined (resin-bound surface removed from proposal),
- lighting to be determined and controlled by condition.

The NAR is required by condition 25 on the outline Inglewood permission, to be provided before the first occupation of the Inglewood development and retained in perpetuity. The Inglewood Section 106 sets out certain design criteria for the route (as set out in the Highways and Access section of this report) and secures maintenance of the route. It is considered that, in order to provide a suitable alternative, any other route would also need to comply with these stipulations.

Through the course of the application amended plans were submitted to provide a route that would achieve adoptable standards with regards to gradients, radii and permeability for the shared foot and cycle way.

### **Pre-Application Enquiry**

Informal advice sought prior to submission of application.

### **Relevant Planning Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Paignton Neighbourhood Plan ("The Neighbourhood Plan")
- The Brixham Peninsula Neighbourhood Plan ("The Neighbourhood Plan")

#### Material Considerations

- National Planning Policy Framework (NPPF 2021)
- Planning Practice Guidance (PPG)
- Published Standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

#### **Relevant Planning History**

**P/2011/0197 (White Rock):** Mixed Use Development of 39 Hectares of land at White Rock, Paignton to construct up to 350 dwellings, approximately 36,800m<sup>2</sup> gross employment floorspace, a local centre including food retail (up to 1652m<sup>2</sup> gross) with additional 392m<sup>2</sup> A1/A3 use and student accommodation, approximately 15 hectares of open space, a sports pavilion and associated infrastructure and engineering works to provide access, drainage and landscaping (Outline Application). Approved 29.04.2013.

**P/2014/0071 (Limekiln Close):** Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197. Approved 16.05.2014.

**P/2017/1133 (Inglewood as varied by P/2022/0112):** Outline application for residential led development of up to 373 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation. The proposal includes amendments to Brixham Road, Long Road junction and Windy Corner junction. Details of access to be determined with all other matters reserved. Allowed on Appeal 26.04.2021.

**P/2022/1119 (Inglewood Reserved Matters):** Major Reserved Matters application relating to outline consent P/2022/0112 for approval of (i) layout, (ii) scale, (iii) appearance, (iv) landscaping for the construction of 373 dwellings (Use Class C3), provision of serviced land for primary school and nursery school, internal access roads including vehicular and pedestrian/cycle access, the provision of public open space (formal and informal) and strategic mitigation. Approved 04.04.2023.

**P/2023/1173 (Land East of Limekiln Close):** Outline application for residential development of up to 25 dwellings and associated works. Details of access to be determined with all other matters reserved. Under consideration.

#### **Summary of Representations**

Neighbour letters were sent out on 20th March 2023. A site notice was displayed on 22nd March 2023.

Following receipt of the revised site boundary plan re-consultation letters were sent and a site notice displayed for 21 days from 31.07.2023 and 02.08.2023 respectively.

One response was received. The comments can be summarised as:

- Increase in traffic and noise along Limekiln Close where traffic and access are issues,
- Route should link into existing path further west adjacent to White Rock Court,
- Existing path links with the play area,
- The proposal would destroy trees,
- Better to combine with the route of the Woodland Walk,
- Prefer original plan to use land to east of Limekiln Close - traffic free and safer.

### **Summary of Consultation Responses**

**Broadsands, Churston and Galampton Neighbourhood Forum:** No response received.

**Community Safety:** no objections

**Devon and Cornwall Police:** Comments that the proposed route would be more direct. Also comments on maintenance and lighting from security and personal safety perspectives.

**Arboricultural Team: 12.04.23 and 14.08.23:** no significant arboricultural concerns to the proposal owing to the historic land use and existing compaction of the area adjacent to the large tree group to the east of the proposed route. However, to prevent any potential impact within the RPA of the trees we would like to see the submission of a tree protection plan that will detail the level of protection that needs to be afforded to the trees during construction.

**DCC Ecology:** No concerns over impacts on foraging habitat within sustenance zone of Greater Horseshoe Bats. However, artificial lighting could have potential negative impacts. No objection subject to a condition over no external lighting being installed without LPA permission.

### **Highways:**

**08.06.2023:** The applicant will be required to ensure that the development proposals complement the strategic pedestrian/cycle route outlined in Planning Applications P/2017/1133 and P/2022/1119 (aka Inglewood Outline and Reserved) to the South of site. The proposed route should link into adopted public highway. The Nar route should be adopted and have appropriate surface (usually metalled with fixed edge). Resin-bound surfaces would not be acceptable.

Clarification is required of site boundary outside 8 Limekiln Close.

The NAR should have sufficient lighting in the interests of safety, subject to ecological sensitivities. Planting should be low-level to allow visibility of route.

Design guidance in LTN1/20 Cycle Infrastructure Design (DoT, July 2020) is advised – a minimum width of 3m is required for shared surfaces.

Requires applicant to enter into a s38 agreement for adoption of land to connect the route to the public highway. A connection path to the play area is also advised.

**12.07.2023:** No objection upon receipt of documentary evidence of legal consent from the land owner for the new route to the top of Limekiln Close. Following discussions, it is understood that the NAR is a committed component of the Inglewood permission to be delivered under legal obligation and conditions as a permissive (non-adopted) route. The applicant has stated that they have the legal consent from the land owner for the new route to the top of Limekiln Close. On receipt of documentary evidence this is considered acceptable. The requirement to enter into a s38 agreement is therefore no longer necessary. Materials and lighting do not need to be to full adoptable standard. However, it is understood that the applicant is willing to work with TC to ensure it is built to an adoptable standard. The route is to be 3m wide in line with LTN 1/20.

#### **Drainage: 19.05.23 and 15.08.23**

Providing the footway/cycleway is constructed using permeable surface I have no objections on drainage grounds to planning permission being granted.

**Legal:** consulted 16.05.2023 and 08.06.2023

Requirements for public use and maintenance would normally be placed on the landowner and would be directly enforceable. There will always be difficulties with a positive obligation to maintain– it would always be at risk of ownership changes. However, a covenant that the route is kept open would be readily enforceable against the landowner. Recommend a s106 obligation to secure this.

In conclusion, an agreement with Inglewood developer, and the landowners is required, which should at the very least secure the long-term public rights. The responsibility to maintain would need to remain with Persimmon. However, you would hope that once done, not much maintenance would be needed.

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

1. Principle of development
2. Impact on Visual Amenity
3. Impact on Residential Amenity
4. Impact on Highway Safety
5. Ecology & Biodiversity
6. Flood Risk and Drainage
7. Low Carbon and Sustainability

#### **Planning Officer Assessment**

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

The proposal seeks permission for construction of an alternative route for the cycle and footway approved under planning permission P/2017/1133 (as varied by P/2022/0112).

The principle of the Northern Access Route (NAR) linking the residential development at Inglewood to the service and transport facilities at White Rock has been agreed.

The current application seeks to provide an alternative route and falls to be considered against other Policies of the Plan notably those relating to transport access, active travel, residential amenity, ecology, green infrastructure and drainage. These matters are considered below and other relevant material considerations, which will be discussed in further detail below.

In principle, and subject to the recommended condition, the proposal is, therefore, considered to be consistent with previously approved scheme (Appeal permission P/2017/1133 as varied by P/2022/0112) for a pedestrian and cycle connection between the Inglewood development and facilities at White Rock and vice versa.

The timing for construction of this section of the NAR is recommended to be before commencement of construction of the development for 25 houses on Land East of Limekiln Close. This is recommended to be secured through a condition on planning permission P/2022/1173. The provision of the proposed alternative route is a prerequisite of that development proceeding. If that development does not proceed the original NAR route could be implemented. The Inglewood planning permission requires provision of the full NAR prior to the first occupation of that development.

These measures are considered sufficient to ensure that the route is provided if needed as an alternative to the approved NAR.

The proposed alternative route would require to be compliant with the relevant conditions and Section 106 obligations of the outline planning permission. These are discussed further in the Highways section.

## **2. Impact on Visual Amenity**

Paragraph 126 of the National Planning Policy Framework (NPPF) states that 'good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities'. In addition, paragraph 134 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space.

Policy PNP1(c) of the Paignton Neighbourhood Plan states that development proposals should where possible and appropriate to the scale and size of the property, to be in keeping with the surroundings respecting scale, design, height, density, landscaping, use and colour of local materials.

The proposal is to install a shared foot/cycle way surface on the ground. The visual impact would be minimal subject to the selection of a surface material to reflect the

country-park/semi-rural setting and the landscape colours in the vicinity. Details of colour and texture can be secured by condition.

A removable bollard is proposed at the northern end of the new surface at the juncture with the existing metalled surface of Limekiln Close will also need to be in a style and materials suited to the setting and of a design to prevent entry by motorised vehicles. Details can be secured by condition.

Subject to the recommended conditions and given the siting, scale, and design of the proposal it is considered that the proposal would not result in unacceptable harm to the character or visual amenities of the locality.

The proposal is considered to be in accordance with Policy DE1 of the Local Plan, Policy PNP1(c) of the Paignton Neighbourhood Plan, BH of the Brixton Peninsula Neighbourhood Plan and the guidance contained in the NPPF.

### **3. Impact on Residential Amenity**

Policy DE3 of the Local Plan states that development should provide a good level of amenity for future residents and should not unduly impact upon the amenity of neighbouring properties and surrounding uses.

The NAR is intended to provide an active travel link connecting into the surrounding areas for the benefit of existing residents and future residents of Inglewood. However, its provision is tied into the Inglewood development commencing.

Residents of White Rock currently use the application stie as an informal route between Limekiln Close and the woodland. This link is unsurfaced (bare earth) and the surface quality deteriorates in wet weather. It provides a route for able bodied active people but is not a surface that can be used easily by wheelchair or pram users. The provision of a surfaced path would improve the accessibility for those groups. The approved path would provide such a surface for pedestrians and cyclists.

The proposed alternative route to the approved indicative one is direct and would run along the route of the existing roadway in Limekiln Close to connect to the adopted highway.

Objections have been received on grounds of increased traffic on Limekiln Close causing noise and disturbance to residents of Limekiln Close. Existing residents have expressed that the existing gravel path linking the western side of the open space to the Woodland Walk is a preferred route.

The proposed design links directly into the southern end of Limekiln Close, which is a private road at this point. The proposed route would run for approximately 60m along the private section to link with adopted public highway further north. This footway is already used by people walking from White Rock up to the woodland area (e.g. dog walkers).

Any increase in traffic use of Limekiln Close resulting from the proposed shared surface route would be in pedestrian and cycle traffic.

The shared surface would connect to the pedestrian footway in Limekiln Close via a dog-leg configuration, which would act as a restraint on the speed at which people (pedestrians) would enter the southern end of Limekiln Close. The dog-leg would also deter cyclists from using the footway. Cyclists would use the carriageway of Limekiln Close, separated from the houses by the kerbed footway.

The existing metalled footway passes in front of the four houses on Limekiln Close. The houses face onto the public open space and play area and the frontages are open to public view. Each house is set back behind front gardens varying in depth from 2m to 6m. The existing ground floor front windows of these houses are fitted with blinds. Therefore, a level of privacy is established between the houses and the roadway outside.

An increase in the flow of pedestrians along the footway is likely to arise as a result of the proposed foot/cycleway. In practice some pedestrians would be likely to use the existing gravel link on the western side of the open space, which leads directly to the play area gate and connects into White Rock Road

However, this is not considered likely to be of such a level to cause a significant loss of privacy to the houses on Limekiln Close over and above the current situation.

With regards to noise and disturbance, as the proposed pathway would be within and adjacent to the dark skies area of the woodland. Any lighting would be required to be low-level. As such, it would not encourage use at unsocial hours. Compared to the approved route, which would run behind the houses in Limekiln Close, the current proposal would create fewer unsurveilled spaces and would be more naturally surveilled.

Given the design of the proposal, it is considered that the proposal would not result in any significant unacceptable harm to the amenities of neighbours.

The proposal is considered to be in accordance with Policy DE3 of the Local Plan.

#### **4. Impact on Highway Safety, Access and Parking**

Policy TA1 of the Local Plan requires developments to ensuring that the most sustainable and environmentally acceptable modes of transport are promoted as an integral part of developments and sets (i) walking and (ii) cycling as the highest priorities. Policy TA2 of the Local Plan states that all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy PNP22 of the Paignton Neighbourhood Plan endorses low-carbon and active travel facilities in the Western Corridor area, within which this site falls.

The approved route is subject to condition 25 on Planning permission P2017/1133 (as varied by P2022/01120) and the related Section 106. These require the following to be complied with:

- Shared footway and cycleway (drawing 0734-055),
- Constructed and made available and connected to a safe route ,
- Provide prior to first dwelling being occupied,
- Maintained as such at all times,
- The route shall be transferred to a Management Entity for the Inglewood site,
- The Management Entity shall manage and maintain the route,
- The route shall be kept open as a permissive path freely available for use by public in perpetuity.

The proposed alternative route will need to meet the same condition and obligations.

#### Design of route

The approved NAR would provide a utility link between the White Rock and Inglewood areas and the services that each provides e.g. the school and pub/restaurant community facility in Inglewood and the retail, employment and college facilities at White Rock. The NAR provides a link in Torbay Council's LCWIP Western Corridor Active Travel Improvements (LTP figure 6).

The current application would provide an alternative route at the northern end of the NAR. The proposed alternative would provide a shorter (by 80m), more visually direct link from the woodland area to the northern end of Limekiln Close.

The path links into the NAR in the woodland area from where it leads into the Inglewood site.

#### Design and Gradients

The submitted plan shows a 3m wide path with a shared cycle and footway. Proposed groundworks would adjust the gradients of the path to comply with access the requirements of Sustrans' publication "Path Design for Cycles, Walkers and Wheelers" and LTN1/20 guidance for traffic-free routes (e.g. with regards to gradients and suitable radii of corners/bends).

#### Surface Material

A hard-wearing surface is required, especially where the gradients are steeper. The quality and durability of the surface needs to be balanced with requirements for permeability/drainage and low maintenance.

The surface would need to accommodate people with mobility needs in providing a firm surface for year-round use, suitable for people using mobility aids with small wheels e.g. wheelchair front wheels, prams and children's scooters/bicycles. Therefore, a surface with similar durability to a metalled surface is sought. The

Highways Department has informally advised that a compacted subbase with a surface dressing can achieve a suitably durable surface and is more easily maintained than the submitted suggestion of resin-bound permeable surface. The applicants have responded that they are prepared to accept a condition requiring details of the surface to be submitted for approval.

Discussions are taking place with the Developer for Inglewood over the potential for the Council to adopt the NAR (full route) under a Section 38 agreement. This is currently under negotiation. There are certain requirements to be met for adoption, hence, the recommendation that the final surface treatment for this northern section be agreed through condition.

#### Connection point into Limekiln Close

The connection point into Limekiln Close for the cycle path will be required to link into the carriageway at level with suitable kerbing and physical means to prevent unauthorised motorised vehicles from entering the path.

Similarly, the connection point between the footpath surface and the footway on Limekiln Close will need to be level and adequately treated.

It is recommended that these details are submitted for approval and that this be secured through a condition.

#### Right of access and maintenance

The Inglewood Section 106 agreement requires the route of the NAR and right of access over it to be retained in perpetuity. It also requires that the route be maintained and kept open for public use (except for repairs and then for the minimum time necessary).

The applicants have agreed to prepare an agreement to secure positive obligations between the relevant parties (landowner of the private road, the applicants and the Inglewood developer) to provide access and maintenance.

The Council's Solicitor has commented that requirements for public use and maintenance would normally be placed on the landowner and would be directly enforceable. They highlight that the positive obligations to maintain would be at risk of ownership changes. However, a covenant that the route is kept open would be readily enforceable against the landowner.

In conclusion, an agreement with the Inglewood developer and the two landowners is required, which should secure the long-term public rights. The responsibility to maintain the path would need to remain with Persimmon/the Inglewood Management Entity. However, once implemented, it is considered that maintenance would be low.

As a result, it is recommended that the right of access for the public to pass freely over the route is secured through a Section 106 agreement with the applicant and land owners.

Maintenance of this route would also need to be secured. The obligation to maintain is with Inglewood's owner or Management Entity (in the Inglewood Section 106 agreement) and it would be consistent and reasonable for this to be the case for the alternative route. This will also need to be secured through a Section 106 obligation.

### Parking

Policy TA3 and Appendix F of the Local Plan states the minimum dimensions for parking spaces, including garages.

The proposal retains the vehicular access and off-street parking for properties in Limekiln Close.

Subject to the recommended conditions and Section 106 obligations, the proposal is considered acceptable with regards to Policies TA2, TA3 and Appendix F of the Local Plan and Policy TH9 of the Torquay Neighbourhood Plan.

## **5. Landscape and Trees**

Policy C4 of the Local Plan states that development will not be permitted where it would seriously harm (amongst other things) protected trees or other natural features of significant landscape, historic or nature conservation value, and that, where the loss of trees or landscape features is considered acceptable as part of development, that replacement trees or other mitigation measures will be required through a planning condition or legal agreement.

A stand of large mature trees sits along the southern boundary of the public open space at White Rock. The proposed path would run on the east and south of this stand of trees.

The Arboricultural Team have commented that the roots of these trees should be protected and requested a condition securing a Tree Protection Scheme during the construction of the proposed pathway. This is recommended.

Subject to this condition, the proposal is considered acceptable with regards to Policy C4 of the Local Plan.

## **6. Ecology & Biodiversity**

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy PNP1c).2 of the Paignton Neighbourhood Plan seeks protection and enhancement of the biodiversity value on development sites and connections with related sites.

The site passes through the dark skies areas identified in the Ecological Addendum to the Environment Statement (April 2011) for White Rock development (P/2011/0197). The DCC Ecologist has commented that the proposed foot/cycle route should not be lit in order to preserve the dark skies foraging area for protected bat species, particularly the Greater Horseshoe Bats. Any lighting in this area is required to be below a certain lux level and to have restricted spill.

This is considered against the comments of the Devon and Cornwall Constabulary and Highways Department. The concerns over personal and transport safety for people using the path are recognised. However, the protection of the Greater Horseshoe Bat foraging area is a due a significant weight in legislation and policy terms. The defined Dark Skies Area is not extensive but is targeted to where it is most needed.

Given the specifics of this location, it is considered that greater weight should be given to the ecological interests in this application.

Subject to the recommended condition restricting the lighting the proposal is considered to comply with Policy NC1 of the Local Plan and Policy PNP1c).2 of the Paignton Neighbourhood Plan.

## **7. Flood Risk and Drainage**

Policy ER1 of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere.

The site is located within the Critical Drainage Area in an area designated as Flood Zone 1 by the Environment Agency.

The Drainage Team has commented that provided a permeable surface is used the scheme is acceptable.

It is recommended that the surface materials are submitted for approval further to a condition on planning permission pending discussions over the adoption of the NAR and the consequent design requirements. It should be noted that in certain circumstances high quality surface-dressed finishes (non-bituminous) can be acceptable in rural settings and these can be permeable. The adoption process would require adequate drainage to be provided in discussion with the Highway Department.

Given the nature of the proposal, it is recommended that a condition be imposed requiring full details of drainage to be submitted and agreed prior to installation of the initial and any subsequent surface. Subject to an appropriate drainage condition, the proposal is considered to be in accordance with Policy ER1 of the Local Plan.

## **8. Sustainability and Low Carbon**

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. Policy ES1 seeks to ensure that carbon emissions associated with energy use from new developments are limited. Paignton Neighbourhood Plan Policy PNP1(f) states that new development should aim to achieve, where appropriate and subject to viability, connecting cycleways and footpaths (where development involves new road infrastructure).

The provision of an active travel route for strategic connection in this location supports low-carbon means of transport. As such, it supports the principles of Policies SS3 and ES1 of the Torbay Local Plan.

### **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.

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**

#### **CIL**

Not liable for CIL

#### **S106**

The following are draft heads of terms for a legal agreement, which should be completed prior to a planning consent being listed. Triggers and instalments in relation to the proposed financial contributions are to be agreed as part of the detailed negotiation of the legal agreement. It is recommended that authority to progress and complete the legal agreement be delegated to officers.

- Right of access for the public to pass freely over the entire route.
- Maintenance of this route by Inglewood's owner or Management Entity.

### **Planning Balance**

The proposal would provide an alternative route for the northern section of the Northern Access Route between Inglewood and White Rock. In principle the proposal is consistent with previously approved scheme (Appeal permission P/2017/1133) for a pedestrian and cycle connection.

The proposal has been assessed with regards to visual impact, residential amenity, highways and access, landscape, ecology, flood risk and sustainability.

The timing for construction of this section of the NAR is required to be before commencement of construction of the development for 25 houses on Land East of Limekiln Close (P/2023/0143). If that development does not proceed the original NAR route could be implemented. The Inglewood planning permission requires provision

of a route prior to the first occupation of that development. Consequently, further conditions over timing of provision of the route are not considered necessary.

Subject to the recommended Section 106 obligations and conditions, the proposal would not result in a significant impact on highway safety and amenity. Any potential negative impacts of the proposal would not be significant and would be outweighed by the social benefits of the proposal.

### **Conclusions and Reasons for Decision**

The proposed development is considered acceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood Plan, and all other material considerations.

### **Officer Recommendation**

Approval subject to:

1. The completion of a Section 106 Legal Agreement within 6 months of the Committee date to secure the heads of terms as outlined, in accordance with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, on terms acceptable to Officers.
2. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.
3. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

### **Conditions**

#### **1. Flood Risk Assessment**

In the event that the proposed surface materials for the path hereby permitted are not water permeable, prior to the commencement of development details of the means of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The details of the means of surface water drainage shall include evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. As Torbay is a Critical Drainage Area the submitted means of surface water drainage shall ensure that all off-site surface water discharges from the development must be limited to the "Greenfield" run off rate for the 1 in 10-year rainfall event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100-year storm event plus a 50% allowance for climate change. The approved surface water drainage system has been completed as approved prior to the first use of the path and shall be continually retained and maintained thereafter.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Adopted Torbay Local Plan 2012-2030, Policy PNP1(i) of the Paignton Neighbourhood Plan and the guidance contained in the NPPF. This needs to be a pre-commencement condition to ensure

that the impacts of construction on flood risk and drainage are mitigated from the outset of development.

## **2. Materials, construction method and timing**

Prior to the commencement of the development hereby permitted, details of the means of construction and colour, type and texture of all surface and wall materials to be used in the construction of the proposed development shall be submitted to and approved by the Local Planning Authority. The path shall be designed to be permeable and to adoptable standards as defined in the Council's Highways Design Guide for New Developments, save with respect to lighting. The details shall include a schedule for implementation. The development shall be implemented in accordance with the approved details and maintained in that condition thereafter.

The path shall not be used until it has been constructed to adoptable standards or is the subject of an agreement with the Council made pursuant to s38 of the Highways Act 1980.

Reason: To ensure a satisfactory form of development in accordance with Policies DE1, TA1 and TA2 of the Torbay Local Plan 2012, Policy PNP22 of the Paignton Neighbourhood Plan and the National Planning Policy Framework. This needs to be a pre-commencement condition to ensure that the path is constructed in an acceptable manner with regards to amenity, highway safety and convenience of users from the outset of development.

## **3. Removable bollards and kerbs at connection point to Limekiln Close**

Prior to the commencement of the development hereby permitted, details of the proposed removable bollards to prevent vehicle access and kerbs to be used in the construction of the path at the point of connection to Limekiln Close shall be submitted to and approved by the Local Planning Authority. The materials shall be designed to adoptable standards as defined in the Council's Highways Design Guide for New Developments. The details shall include a schedule for implementation. The development shall be implemented in accordance with the approved details prior to its first use and shall be maintained in that condition thereafter.

Reason: To ensure a satisfactory form of development in accordance with Policies TA1 and TA2 of the Torbay Local Plan 2012-2030, Policy PNP22 of the Paignton Neighbourhood Plan 2019 and the National Planning Policy Framework. This needs to be a pre-commencement condition to ensure that the path is constructed in an acceptable manner with regards to highway safety and convenience of users from the outset of development.

## **4. Root Protection – Trees on adjacent land**

(i) Works to trees and hedges to be retained. Any work carried out to trees and hedges to be retained on site or close to the boundary of the site shall be with the written approval of the Local Planning Authority. Such work will be to British BS 3998: 1989 as a minimum standard.

(ii) The development hereby approved shall not commence, and no materials shall be brought onto site, until the trees and hedges on adjoining sites are protected by fencing as per BS 5837: 2005. This will either be chestnut pale fencing or a scaffold structure 2.4 metres high supported durable man-made sheeting (either plywood or OSB of an exterior grade). Chestnut pale fencing will be to BS 1722: Part 4: 1989, as a minimum standard. This will consist of 1.200 mm pales, wired together as per standard, supported on three line wires, secured to fencing posts to a minimum standard of: 1800 mm long, 7 mm (3") top, driven 500 mm into the ground. In addition, straining posts, 1800 mm long by 100 mm (4") top, strutted where a change of direction occurs, will be installed at all ends and corners, at changes of direction, or acute changes of level, and at intervals no exceeding 50 m in straight lengths of fence. The fence will be installed upright, with all posts firmly bedded in the ground and line wires tensioned, and shall be maintained in such a condition throughout the duration of the development.

(iii) The fence shall be installed no closer to the trunk of the retained tree/hedge than the edge of the canopy or a distance equivalent to half the height of the tree/hedge, whichever is the greater.

(iv) The area beneath the tree/hedge and between the trunk of the tree/hedge and the fence will be kept clear and undisturbed at all times. No materials shall be stored within the fenced area; the levels of the land within the fenced area shall not be altered, and no seepage of oils, fuels or chemicals (including cement and cement washings) which may be harmful to trees and hedges shall be allowed onto the fenced area.

(v) No trenches for service runs, or any other excavations shall take place within the fenced area.

(vi) No soil or other surface material shall be removed from the fenced area except by written permission of the Local Authority. Where such a permission is granted, materials shall be removed manually, without powered equipment, taking adequate precautions to prevent damage to tree or hedge roots.

Reason: To ensure that all existing trees and hedges on the adjoining sites are adequately protected while development is in progress, in accordance with Policy NC1 of the Torbay Local Plan 2012 and the National Planning Policy Framework. This needs to be a pre-commencement condition to ensure that the vegetation in this locality is adequately protected during the construction phase.

## **5. Lighting Restrictions**

No external lighting shall be installed at any time at the application site without the written permission of the Local Planning Authority. All approved lighting shall be implemented in accordance with the approved details and retained in that condition thereafter.

Reason: In the interests of biodiversity and residential amenity, in accordance with Policies SS8, NC1 and DE3 of the Torbay local Plan 2012-2030, the Paignton Neighbourhood Plan and the NPPF.

## **6. CMP**

No development (including ground works) or vegetation clearance works shall take place until a Construction Method Statement for the development has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:

- (i) The parking of vehicles of site operatives and visitors.
- (ii) Loading and unloading of plant and materials.
- (iii) Storage of plant and materials used in constructing the development.
- (iv) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- (v) Wheel washing facilities.
- (vi) Measures to control the emission of dust and dirt during construction.
- (viii) Measures to minimise noise nuisance to neighbours from plant and machinery.
- ix) Construction working hours and delivery and removal of materials, plant and waste shall be from 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturdays and at no time on Sundays or Public Holidays, unless otherwise agreed in writing by the Local Planning Authority
- x) Details of how lighting will be controlled during the construction phase of development.

The approved Statements shall be adhered to throughout the construction period of the development.

Reason: In the interests of highway safety and the amenities of surrounding occupiers during the construction of the development further to Policies TA2 and DE3 of the Torbay Local Plan 2012-2030. This needs to be a pre-commencement condition to ensure that the impacts of construction on neighbour amenity and highway safety and convenience are mitigated from the outset of development.

### **Informatives**

1. 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**

The proposed development has been tested against the following policies of the Development Plan and other relevant material considerations and in the opinion of the Local Planning Authority the proposed development is not in conflict with these policies:

### Torbay Local Plan

- SS2 - Future Growth Areas
- SS3 - Presumption in favour of sustainable development
- SS8 - Natural Environment
- SS9 - Green Infrastructure
- SS14 - Low carbon development and climate change
- SDP3 - Paignton North and Western Area
- TA1 - Transport and accessibility
- TA2 - Development access
- TA3 – Parking requirements
- C4 - Trees, hedgerows and natural landscape
- DE1 - Design
- DE3 - Development Amenity
- NC1 - Biodiversity and geodiversity
- ER1 - Flood Risk
- ES1 - Energy

### Paignton Neighbourhood Plan

- PNP1 – Area wide
- PNP1(c) – Design Principles
- PNP1 (f) – Towards a Sustainable Low-Carbon, Energy-Efficient Economy
- PNP1(g) – Designing out Crime
- PNP1(h) – Sustainable Transport
- PNP1(i) - Surface Water
- PNP21 – White Rock and nearby areas
- PNP22 – Western Corridor