

Application Number

P/2014/0947

Site AddressLand Off Brixham Road -Long Road
Former Nortel Site
Paignton**Case Officer**

Matt Diamond

Ward

Goodrington With Roselands

Description

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.

Executive Summary/Key Outcomes

The application is to redevelop the former Nortel/Bookham site adjacent to Long Road and Brixham Road on the edge of Paignton for a mix of housing, business and retail uses. The application is submitted in outline with all matters reserved except access. The site is currently vacant and largely derelict. It is a brownfield site. The site is allocated for mixed use development in the Submission Local Plan.

An indicative masterplan has been submitted showing that the residential dwellings would be provided to the north and west of the site, with the business and retail uses to the south adjacent to Long Road. The residential development would be accessed via the existing access on Brixham Road. This is acceptable to Highways, subject to S278 funding to provide a right turn waiting lane for vehicles exiting the site and a combined pedestrian/cycle path from this access to the pedestrian crossing at the Long Road/Brixham Road junction. Access to the retail park would be provided off the Long Road/Waddeton Road roundabout and two access points for service/delivery vehicles would be provided further along Long Road for the business and retail uses. Despite concerns raised by South Devon College and the promoters of the White Rock development, Strategic Transport and Highways officers consider that the local highway network has sufficient capacity to accommodate the traffic generated by the development. Therefore, the access proposals are acceptable.

The principle of providing housing and business uses on the site is acceptable and considered to be consistent with the NPPF and emerging policy. However, the proposed retail uses would have an adverse impact on Paignton and Torquay town centres, which could be considered to be significantly adverse due to the poor health of these centres and their vulnerability to relatively small levels of impact. However, the retail uses are necessary to the viability of the scheme as a whole and therefore

the ability to redevelop this brownfield site at the current time. Therefore, officers consider that overall, the retail use of part of the site is acceptable, subject to the imposition of restrictive use conditions, despite the impact on the town centres. The conditions will have to ensure that the retail units are truly 'bulky goods' stores. However, Members could decide to refuse the application on the basis of its impact on the town centres, if they consider this to carry more weight than the positive benefits of regenerating this brownfield site.

The applicant has offered £1.2m towards the provision of on-site affordable housing and contributions, which will effectively deliver the site acceptability contributions and 3.9% affordable housing (10 dwellings), but no sustainable development contributions. The reason for this is the viability of redeveloping this brownfield site. Officers are still negotiating with the applicant in this respect and are not currently satisfied with the robustness of evidence provided for the high external and abnormal costs. Officers' recommendation for approval is only on the basis of the applicant agreeing to a full open book deferred contributions overage mechanism, or alternative, to secure additional affordable housing and sustainable development contributions should the viability of the development improve at implementation and throughout its construction.

Members are recommended not to accept any lower provision of affordable housing than is currently offered. Therefore, the deferred contributions mechanism should account for 'overage' only and not 'underage' should costs increase. The positive benefits and sustainability of the scheme are already in question when weighed against the adverse retail impacts on the town centres and any lower affordable housing provision would make this balance even worse. Again Members could decide to refuse the application on the basis of a lack of satisfactorily robust costs evidence to justify the affordable housing provision offered.

Recommendation

Conditional approval; subject to the applicant providing satisfactory further evidence to demonstrate that the External and Abnormal Costs are robust, and the applicant agreeing in writing to a full open book deferred contributions overage mechanism, or alternative, which is acceptable to the Director of Place to secure additional affordable housing and sustainable development contributions should the viability of the development improve at implementation and throughout the construction phases, or the application be refused prior to the agreed extended time period; and subject to the signing of a s106 legal agreement in terms acceptable to the Director of Place prior to the agreed extended time period, or the application be refused, and no later than 3 months from the date of this committee or the application be reconsidered in full by the committee; final drafting and determination of appropriate planning conditions delegated to the Director of Place, including restrictive 'bulky goods' retail conditions that are satisfactory to the Director of Place in consultation with the Chairman and ward Councillors.

Statutory Determination Period

The application was validated on 10.10.2014. An extension of time to determine the application has been agreed to 27.03.2015.

Site Details

The site comprises the former Nortel/Bookham site known as Devonshire Park to the west of Brixham Road on the outskirts of Paignton. The site area is 9.76ha. The site is a former industrial site that primarily manufactured electronics and closed in 2006. Following demolition of most of the buildings in recent years, the site is largely derelict. It is a brownfield site.

The site is bounded by housing, sports pitches and Western Business Park to the north, Brixham Road (undergoing improvement works) to the east, Long Road to the south and South Devon College to the west. The College owns an industrial building immediately adjoining the site to the west currently occupied and leased to STL, formerly Syntech Technologies. However, the College plans to expand its educational activities onto this site in the future.

The wider area is characterised by new housing development with associated employment and retail under construction to the north (Yannons Farm/Parkbay); suburban housing and Clennon Valley to the east; the Long Road industrial estate and a mixed use housing led development (White Rock) under construction to the south; and open countryside beyond the College and other industrial buildings to the west.

The site is unallocated in the Adopted Torbay Local Plan 1995-2011 ('the Local Plan'), with the exception of part of the north and north eastern corner designated a wildlife corridor. The site forms part of a Future Growth Area to the west of Brixham Road in the emerging Torbay Local Plan - A Landscape for success (2012 to 2032 and beyond) ('the emerging Local Plan'), aimed at delivering sustainable, mixed use development primarily focused on the delivery of housing and employment uses.

The site is located within the greater horseshoe bat sustenance zone associated with the South Hams SAC at Berry Head. The topography of the site rises by about 20 metres from south to north. It is within Flood Zone 1 and a Critical Drainage Area. Parts of the site particularly to the north have become overgrown. There are scattered lines of trees on and around the boundaries of the site. Parts of the site are likely to be contaminated from the historic uses. The parts with most risk are to the south and particularly to the west, with lower risk to the north.

Detailed Proposals

The application has been submitted in outline with all matters reserved except access. The description of development is for a mixed use development comprising up to 255 residential dwellings, up to 5,574 sq m of B1 and/or B8 business and/or warehousing uses, up to 8,501 sq m of A1 'bulky goods' retail uses (including up to 515 sq m garden centre), and up to 139 sq m A3 cafe/restaurant uses, with all

necessary supporting infrastructure, parking, open space and landscape and following demolition of the remaining buildings.

An indicative masterplan has been submitted with the application. This shows the business/warehousing and retail uses sited on the southern part of the site adjacent to Long Road, with the retail uses on the corner of Brixham Road and Long Road. The northern and western parts of the site are shown as being redeveloped for housing.

The only detailed matter at this stage is access. The residential development would be accessed via the existing access on Brixham Road. This is currently used by students of South Devon College as a shortcut to avoid the Brixham Road/Long Road traffic light junction. However, the indicative masterplan shows the existing through route to the car parks behind the College will be closed to vehicles. Three new access points would be created off Long Road, one providing public access to the retail car park off the Long Road/Waddeton Road roundabout and the other two being access points for service/delivery vehicles for the retail and employment uses.

Summary Of Consultation Responses

Natural England: Welcome proposals to provide mitigation for impacts on greater horseshoe bats and integrating with mitigation on neighbouring developments. However, there is little detail as the application is in outline. It is understood this will be developed as part of the reserved matters. Refer to Standing Advice with regard to impacts on other protected species. Biodiversity enhancement measures are encouraged. Green infrastructure, including multi-functional green infrastructure, should be incorporated. Local impacts should be assessed.

Environment Agency: No objections re flood risk - support soakaways in principle. However, contamination issues have not been reviewed in relation to risks to controlled waters. An update on the groundwater quality at the site is required. Any development proposal will need to incorporate appropriate consideration of risks to controlled waters. Only after this has been carried out can a detailed surface water drainage strategy be prepared. Failure to do so could lead to mobilisation of contamination. Conditions to protect controlled waters are recommended accordingly.

Sport England: No comment.

RSPB: Disappointed no mention of birds in mitigation section of Ecology and Landscape Report. Encourage nesting/roosting boxes at one box per dwelling. Nest bricks are recommended. The non-residential buildings could be considered for similar treatment and green walls and living roofs would add an interesting dimension if feasible. A Landscape and Ecological Management Plan (LEMP) should be conditioned.

South West Water: Unlikely the public foul drainage network would have capacity to accommodate this development. Therefore, a pre-commencement condition is

required to identify the necessary infrastructure improvements and implement them prior to occupation of the dwellings.

South Devon AONB Manager: No response.

Police Architectural Liaison Officer - West Devon, Torbay & South Hams: Secured By Design (SBD) principles should be considered for reserved matters. Crime, disorder, antisocial behaviour and conflict are less likely to occur if attributes of Crime Prevention through Environmental Design (CPTED) are also incorporated.

South Hams District Council: No response.

Torbay Coast and Countryside Trust (TCCT): No response.

Torbay Design Review Panel (comments provided at pre-application enquiry stage): The approach to the site should adopt exemplar urban design and landscape principles, which should inform the framework for any masterplan prior to defining land uses and individual buildings. The residential and employment use have potential benefit of linking well with surrounding developments. The retail park appears to be at odds with principles of urban design, possibly the wider strategy of the area, and the quality of its execution is key to the viability of the remaining parts of the site. In terms of the economic viability further exploration of the business case for the development as a whole is urged in order to improve the viability of the proposed residential development in the interests of delivering the best possible scheme. There is potential to create an exciting and dynamic mixed use neighbourhood with strong vitality and positive interactions between commerce, retail, dwelling and education. Encourage the developer to seize the full potential of the site and avoid standard approaches for the form of development.

Housing Services: Comments awaited.

Strategic Transportation: Initial comments identified requirement for further work in the Transport Assessment. Support proposals for Travel Plan Welcome Packs. Further comments confirmed that the access arrangements are acceptable, subject to necessary S278 highway works (later confirmed to be a right turn waiting lane for vehicles exiting the site from the residential access and a combined pedestrian/cycle path from this access to the pedestrian crossing at the Long Road/Brixham Road junction). A sustainable transport contribution is also required to enhance cycle and bus infrastructure in the area. This is to mitigate for the additional traffic generated by the proposal.

Community Safety: The information provided on contamination is limited and there are a number of data gaps. Some of the historical data is old and may need to be updated. However, there is sufficient information to indicate that the contamination can be dealt with and the land remediated to an acceptable standard for the end use. Unable to comment on the costing for the remediation for the land, as not enough

information has been provided. The full contaminated land condition should be attached to any planning permission.

Engineering - Drainage: The proposed drainage strategy is acceptable. However, further site investigation is required to inform the detailed design of the soakaways and drainage systems discharging to the soakaways. This should take into account the risk of solution features on the site. Once the final soakaway locations and invert levels have been decided infiltration testing must be carried out in accordance with BRE 364 at the location and invert level of the soakaway to identify the infiltration rates to be used in the detailed design. This must be carried out for the critical 1 in 100 year storm event plus 30% for climate change. This also applies to the drainage system discharging to the soakaways, which must be designed in order that no flooding to properties is predicted. The above information can be secured by pre-commencement condition.

Arboricultural Officer: A tree survey is required. Detailed landscape proposals must accord with adjacent schemes. The layout and density are considered incompatible with the requirement for additional street tree planting, therefore unable to recommend approval on arboricultural merit until the points have been addressed; however, the central green space and retention of strong bounding tree groups is welcomed.

Natural Environment Services: The proposed green infrastructure provision is limited for a development of this size - a larger central public open space is recommended, which should be overlooked by housing to provide natural surveillance. On-site public open space is preferred to an off-site contribution; NES happy to manage this, subject to suitable commuted sum payment. Green walls and roofs on the commercial buildings would be welcomed to soften visual impact, and provide rainwater attenuation and habitat opportunities. Support ecology recommendations set out in the Ecology and Landscape Report. Full details need to be provided in a LEMP, secured by condition. Some information is missing from the report and should be provided prior to determination. There are some inaccuracies with regard to reptiles. Boundary features requiring ongoing management, such as hedgerows and trees, should not be located within residential gardens. A condition is required to restrict demolition and vegetation clearance to outside the bird breeding season.

Building Control: Comments awaited.

Summary Of Representations

Eight public representations were received, six objections, one neutral and one in support of the proposals. Objectors include South Devon College and the promoters of the White Rock development.

South Devon College is not against the proposals in principle, but have concerns with the increased traffic on local roads and lack of capacity to allow further College development in the future, as well as safety concerns over more commercial traffic

using Long Road. The College has also pointed to the lack of information provided on the phasing of the development and importance of delivering the employment and retail uses before the residential development. The College also has concerns with the potential movement of contaminated soils on the site and risks to College buildings and nearby housing. It has also pointed out the requirement for contributions to improve sustainable transport provision in the area and improve pedestrian safety along Long Road, as well as the need for an education contribution and contribution to enhance sports and open space facilities, some of which could be used to enhance the College's existing facilities.

The promoters of the White Rock development, Deeley Freed Estates and Abacus Project Ltd, have also objected on highways grounds. They have pointed to a lack of detailed information in the Transport Assessment and therefore question its accuracy and validity. They have concerns with the proposed access to the retail car park from the Long Road/Waddeton Road roundabout and the effect this will have on the White Rock development and junctions on Brixham Road. Again they point to a lack of information in the application to show how this new access will work without having an adverse impact on access to White Rock.

The following material considerations were also raised:

Object

- o Question need for more housing in this location
- o Impact of more housing on local infrastructure, including schools and highways
- o Traffic impact from additional shoppers and residents
- o Cumulative traffic impact needs to be considered
- o Economic Impact Assessment required
- o Lack of recreation and community facility provision
- o Safety concerns with service/delivery vehicle access points on Long Road
- o Concerns over height of proposed buildings on amenity of existing housing
- o Visual impact
- o More waste

Neutral

- o Supports garden centre and business development
- o Questions need for more housing
- o Affordability of homes to local people

Support

- o Site as existing is an eyesore
- o DIY store welcomed
- o Extra housing, provided plenty of affordable housing, not ideal but needed
- o Traffic impact concerns

Relevant Planning History

DE/2014/0115: Re-development for a residential led mixed use scheme: File Closed 04.11.2014

ZP/2012/0203: Masterplan advice: File Closed 06.10.2014

P/2011/0769/DM: Demolition of buildings: Approved 12.08.2011

ZP/2008/0579: Change of Use: Split Decision 30.06.2008

ZP/2006/1014: Re - Development: File Closed 05.12.2006

ZP/2005/0707: Development Of The Site: Split Decision 29.08.2005

Numerous minor apps with electronic records going back to 1995.

Key Issues/Material Considerations

The key issues are:

1. The Principle of the Development
2. Indicative Layout
3. Access and Impact on Local Highways
4. Visual Impact
5. Contamination and Proposed Remediation Strategy
6. Drainage
7. Ecology and Landscape
8. Noise
9. Viability and Costs Evidence
10. Phasing and Delivery

1. The Principle of the Development

The relevant Local Plan Policies concerning the principle of development in land use terms are considered to be HS, H2, ES, E5, E6, SS, S6 and EP6. The policies in the NPPF are material considerations with significant weight. Policy SS2 of the emerging Local Plan allocating the site as within a Future Growth Area is a material consideration, but with limited weight at present due to objections to it which have been received. The same applies to emerging policies SS4, SS5, SS11, TC3 and H1.

The principle of redeveloping the site for housing and business uses is considered to be acceptable and in accordance with Policies HS, H2, ES and E5. Policy E6 permits the change of use or redevelopment of existing employment land to non B class uses where the proposed alternative use would achieve a more sustainable balance of uses in the Local Plan area, or the existing use is a cause of significant harm or nuisance to the amenity of the surrounding area and the environmental benefits of its replacement by an alternative use would outweigh the loss of employment

opportunity. A mix of housing and business uses is considered to be a sustainable balance for the site. The principle of accepting housing as part of mixed use developments on employment sites has already been established in the area (e.g. White Rock and Yannons Farm/Parkbay) and accords with emerging policy, as well as paragraph 22 of the NPPF which encourages other uses where there is no reasonable prospect of employment sites being reused for employment. In addition, the site is derelict and an eyesore, and its redevelopment will have an environmental benefit on the amenity of the area. Policy EP6 lends further weight to this argument.

However, the proposed retail use conflicts with the principle behind Policies SS, S6, paragraphs 23 and 24 of the NPPF, and emerging Policy TC3, which seek to protect the vitality and viability of town centres. The site is in an out of centre location. The applicant has submitted a Retail Statement accordingly which assesses the retail element of the proposal with regards to the sequential and impact tests. The Council's retail consultant has reviewed the report and subsequent information, and advised that the proposed retail use could have a significant adverse impact on Paignton and Torquay town centres. This is exacerbated by the poor health of the centres at the present time and their vulnerability to relatively small levels of impact. In accordance with the NPPF and national planning practice guidance, applications likely to have a significant adverse impact on town centres should be refused, whilst those which will have an adverse impact should be determined weighing up the positive and negative effects of the proposal and all other material considerations. The retail consultant has stopped short of stating the proposal will have a significant adverse impact and advised that the Council must come to its own view on this matter.

Whilst there is some uncertainty over whether the adverse impact on Paignton and Torquay town centres will be significant or not, officers consider that the Council should err on the side of caution and refuse the development, due to the poor health of these centres at the present time and their vulnerability to relatively small levels of impact, unless there are material considerations which indicate otherwise and these have significant weight in the overall planning balance to offset the harm to the town centres. Officers asked the independent valuer assessing the viability of the scheme how important the retail uses were to the viability of the scheme as a whole accordingly. The valuer advised that the retail uses make a significant contribution to the viability of the scheme and without them the scheme would not be viable. This would be the case if the retail uses were replaced with additional business uses and no affordable housing and contributions were provided. It also accounts for a reduction in the external and abnormal costs. Therefore, it is clear that the proposed retail uses are key to redeveloping this brownfield site at the current time.

In light of this, despite the adverse impact of the proposal on Paignton and Torquay town centres, which could be significant, officers consider that there is a material consideration of satisfactory significance to allow the scheme to go ahead. This is the necessity of the retail uses in bringing this derelict, brownfield site forward for redevelopment, including delivery of affordable housing. Officers have taken into

account the relevant policies in the NPPF which promote the reuse of brownfield land in reaching this decision. Not to accept the retail uses would effectively mean leaving the site in its current derelict condition until the viability of the other uses significantly improve, which is not guaranteed in the foreseeable future.

The above decision necessarily requires strict controls over the nature of the retail uses. The applicant has proposed the following draft condition:

"The retail floorspace hereby permitted shall not be used for the sale of any goods other than those within the following categories: DIY, home improvement and garden goods, furniture, furnishings, carpets/floor coverings, gas and electrical goods, as well as ancillary products."

The Council's retail consultant has recommended refining and tightening this condition in order to minimise the development's adverse impact on the town centres, for example clarifying the nature of the ancillary goods and floor area they occupy, and including minimum unit sizes at ground floor level of 929 sq m. This restriction is to better comply with the sequential test, so that it is more difficult to provide the units in the town centres. In terms of the sequential test, the retail consultant advises that provided the additional conditions are imposed it becomes more difficult to find suitable alternative sites in the town centres for the retail units. However, the retail consultant also advises that the Council should be satisfied that Crossways in Paignton and the Union Street site in Torquay are unlikely to become available for redevelopment within a reasonable period of time, so that these sites can be dismissed.

Officers consider it is difficult to be certain about timescales for the delivery of these projects. The production and agreement, by the Council, of masterplans will add certainty and momentum to bring forward regeneration projects. Masterplans are almost complete and will be reported to Council in the summer (2015). This will go hand in hand with the establishment of a delivery team, which will include promotion of these sites. There are signs of market improvements and interest in the above sites. It is the view of officers that the redevelopment of Crossways could be commenced within the next 5 years, but that land off Union Street - with its land ownership complexities - could take up to 10 years to deliver.

Therefore, subject to suitably worded restrictive 'bulky goods' retail conditions, the principle of the development in land use terms is considered to be acceptable. However, Members could decide to refuse the application on the basis of its impact on the town centres, if they consider this to carry more weight than the positive benefits of regenerating this brownfield site.

2. Indicative Layout

The indicative layout is acceptable. The proposed land uses integrate with the surrounding land uses. The Torbay Design Review Panel questioned the retail park,

although this has been largely addressed under 1 above. Other comments can be addressed at reserved matters stage. Both South Devon College and the Police Architectural Liaison Officer have concerns with a pedestrian link from the residential development to the private College car parks behind the College. This can be explored further at reserved matters stage in terms of weighing up the benefits of pedestrian permeability against the concerns over crime and safety.

3. Access and Impact on Local Highways

Strategic Transport and Highways officers have reviewed the proposed access points and have no objections subject to securing funding by S278 agreement to provide a waiting lane for vehicles turning right onto Brixham Road from the residential access, and a combined pedestrian/cycle path from this access to the pedestrian crossing at the Long Road/Brixham Road junction. These works are required for safety reasons in accordance with Local Plan Policy T26. Following discussions with the applicant's transport consultant, officers are also satisfied that the local highway network has enough capacity to absorb the traffic generated by the development. Therefore, the proposed development will not have an adverse impact on local highways and is acceptable in accordance with Policy T26. Residential and commercial travel plans should be secured by condition.

4. Visual Impact

The applicant has submitted a report assessing the visual impact of the development in a number of short, medium and long distance views. These focus on Long Road and Brixham Road, with a few long distance views from the south and west in South Hams district. These show that the development will only be visible from Long Road to the south and Brixham Road to the east. It will not be visible from the north, due to the sloping topography, and will be barely visible in long distance views in South Hams. South Hams District Council were consulted on the application, but provided no comments.

However, there is no assessment of views from the suburban areas to the east of Brixham Road and no consideration of visual impact from light pollution, although lighting can be addressed by condition. Notwithstanding these omissions, it is considered that there is scope to enhance the visual appearance of the site, especially through the sensitive integration of trees and soft landscape to soften the appearance of the buildings. A strong landscape scheme should inform the design layout at reserved matters stage accordingly. This should include multi-functional green infrastructure, as endorsed by Natural England, the RSPB and Natural Environment Services, such as SUDS, green walls and 'living' green roofs.

5. Contamination and Proposed Remediation Strategy

Due to the historic uses on the site there is a likelihood of there being contamination. The applicant submitted a Preliminary Risk Assessment - Land Quality, which summarises various investigations of contamination since the early 1990s when the

site was still in use for manufacturing. Much of the information is old, whilst the latest investigations carried out in 2011 found low levels of contamination. However, it concludes that the part of the site with most risk is the proposed residential development to the west. The commercial area to the south has some risk, but not as much as the area to the west. The north part of the site has low risk, as it was historically used for car parking, leisure and office space.

The Preliminary Risk Assessment states that further work is required to understand the contamination risks on the site and to develop a detailed remediation strategy based on an assessment of various remedial options. However, the Planning Statement submitted with the application, which was prepared by different consultants, states that the remediation strategy involves relocating some of the contaminate ground from the north of the site to the south, capping it and building the commercial uses above it. No other details are provided.

Despite the disconnect between the submitted technical report on this issue and the remediation strategy referred to in the Planning Statement, both the Environment Agency and Community Safety officers are satisfied with the level of information that has been provided at this outline stage, and therefore they have no objections to approving the application provided full conditions are attached to carry out the detailed site investigations and risk assessment, and identify the appropriate remediation accordingly, prior to commencement. This must include risks to controlled waters and inform the surface water drainage strategy.

Therefore, subject to the full conditions referred to, the proposal accords with Local Plan Policies EPS, EP3, EP7 and EP9.

6. Drainage

As described under the Summary of Consultation Responses above, Engineering officers accept the proposed drainage strategy of discharging surface water to soakaways on the site, as this is a sustainable method of dealing with surface water drainage to minimise flood risk and adapt to climate change. However, no details have been provided on the design of the soakaways and the surface water drainage system discharging to them. Therefore, a robust condition will be required to ensure these details are satisfactory prior to any development works commencing. The detailed drainage strategy must investigate and take into account the presence of solution features beneath the site. It must also take into account the risks of contamination leaching to controlled waters, as identified above. This includes the demolition, site clearance and construction phases. Therefore, subject to the robust condition referred to, the proposal accords with Policies INS, IN1 and EPS with regards to surface water drainage.

South West Water has commented that the public foul drainage network is unlikely to have capacity to accommodate the development. A pre-commencement condition is required to identify the necessary infrastructure improvements and implement them

prior to occupation of the dwellings accordingly. Therefore, subject to a suitably worded condition in this regard, the proposal accords with Local Plan Policies INS and IN1 with regards to foul drainage.

7. Ecology and Landscape

The site is located within the sustenance zone associated with the South Hams SAC at Berry Head. The SAC is designated for its greater horseshoe bat roost site, and calcareous heath and grassland habitats. Therefore, the proposed development has been screened to assess its likely significant effect on the SAC in accordance with the Habitats Regulations. The conclusion is that the development will not have a likely significant effect (alone or in-combination with other developments) on the SAC. However, this is subject to a condition to secure a detailed lighting strategy for the site based on the measures contained in Section 6 of the submitted Ecology and Landscape Report.

Further conditions should be added to secure: a Construction and Environmental Management Plan (CEMP), a Landscape and Ecological Management Plan (LEMP), the artificial bat roost referred to in the report and bird nesting/roosting boxes, in the interests of conserving and enhancing biodiversity. A further condition should be added to restrict the removal of trees and vegetation during the bird breeding season from March to September inclusive, unless in the presence of a suitably qualified ecologist. A detailed landscaping condition is also required to show that the tree and plant species are appropriate for the area and integrate with the ecological mitigation on surrounding development sites. This (and the landscape strategy in general) should be informed by a tree survey to be secured by pre-commencement condition, as recommended by the Council's Arboricultural Officer. Adequate tree/hedgerow protection measures also need to be secured throughout the site clearance and construction phases.

In terms of the impact of the development on other protected species, the Ecology and Landscape Report identifies the presence of other bat species, mainly common pipistrelles, and reptiles. A full condition ensuring the protection of these species during construction and the delivery of appropriate mitigation measures should be added accordingly.

Therefore, subject to the conditions referred to, the proposal accords with Local Plan Policies H11, LS, L8, L9, L10, NES, NC1, NC4 and NC5.

8. Noise

The applicant has submitted a Noise Impact Assessment, to assess noise levels around the site and its impact on the proposed housing. The dominant noise sources are from traffic using Brixham Road and plant at South Devon College. Two glazing and ventilation specifications have been recommended for habitable rooms in the dwellings facing Brixham Road and the rest of the site to ensure noise impact from

the road is acceptable inside the dwellings. A condition should be added accordingly.

Plant at South Devon College will have a significant effect on the proposed housing to the southwest of the site. An appropriate enclosure or acoustic fence surrounding the plant is recommended in the report. Noise calculations in the report have taken into account the provision of such an enclosure. As this land is not in the applicant's control, provision of the enclosure will have to be secured by s106 agreement not condition. However, a condition should be added restricting the occupancy of the dwellings affected until the enclosure has been provided, or until additional evidence is submitted to demonstrate that the noise impact is acceptable.

The report recommends provision of a close boarded fence along part of the northern boundary in order to mitigate noise impacts from the adjacent industrial estate. This should form part of the detailed landscape strategy for the site and be sited to ensure the protection and ongoing maintenance of the boundary hedgerow. It also recommends submission of a Noise Impact assessment if the STL/Syntech building adjacent to the site changes use or its operations. This would form part of a separate planning application if such a change required planning permission.

The report states that the proposed business and retail uses have potential to affect existing and proposed housing. However noise emission will be limited and typically lower than the historic use of the site. Therefore, noise impact on the nearest existing residential properties will not be significant. To reduce noise impact to the nearest proposed properties, a close boarded fence should be provided along the boundary; this will also mitigate noise impact from a proposed MUGA to the south of the site. As this could potentially have a visual impact, its provision should be taken into account in the detailed landscape strategy for the site and mitigation planting provided accordingly.

Noise limits for plant and machinery at the proposed business and retail uses at different times of the day are recommended and a condition should be added accordingly.

Therefore subject to the conditions referred to, the proposal accords with Local Plan Policies EPS and EP4 with regards to noise impacts.

9. Viability and Costs Evidence

The applicant has submitted a Financial Viability Assessment (FVA) with the application and this has been reviewed by an independent valuer. The independent valuer disagrees with a number of the assumptions in the FVA and negotiations are continuing. The applicant's current s106 offer is to provide £1.2m towards the provision of affordable housing and contributions. This equates to the site acceptability contributions comprising waste management and the necessary highway safety works, and 3.9% affordable housing, but no sustainable development contributions (see S106/CIL section below). The reason for such a low offer is the

viability of the scheme and particularly the additional abnormal costs of developing this brownfield site.

The total external and abnormal costs in the FVA come to £10.8m. The applicant has obtained an independent review of the construction costs used in the FVA from a surveying company in order to justify these costs. The surveying company consider that the external and abnormal costs should be increased to £12.95m. It is understood that this estimate is based on a review of the FVA and follows a site visit. However, the surveying company were not provided with any technical reports.

The independent valuer has recommended that the Council does not accept the external and abnormal costs at £12.95m, without further evidence. In addition the cost of abnormal should come off the land value and not affordable housing/contributions. National planning practice guidance states that assessment of costs should be based on robust evidence which is reflective of market conditions. Officers are currently not satisfied that satisfactorily robust evidence has been submitted to justify the high external and abnormal costs. With regards to remediation, the estimated cost in the FVA is £1.7m, which equates to approximately 17 (6.7%) affordable dwellings. However, as discussed under '5' and '6' above, the proposed remediation strategy has not yet been finalised. Therefore, it follows that this figure cannot be robust at this stage.

In light of the above, officers have requested further evidence from the applicant for the external and abnormal costs in the FVA. This could be costs evidence from other schemes where contamination was an issue, as well as independent quotations to carry out the works. In addition, officers are seeking to agree a suitable deferred contributions overage mechanism in the s106 agreement to secure additional affordable housing and sustainable development contributions should the viability of the scheme improve, e.g. if costs are found not to be as high as originally expected. Members are recommended not to accept any lower provision of affordable housing than is currently offered. Therefore, the mechanism should account for 'overage' only and not 'underage' should costs increase. The positive benefits and sustainability of the scheme are already in question when weighed against the adverse retail impacts on the town centres and any lower affordable housing provision would make this balance even worse. Members could decide to refuse the application on the basis of a lack of satisfactorily robust costs evidence to justify the affordable housing provision offered.

The above provisions have been taken into account in the officer recommendation accordingly.

10. Phasing and Delivery

The phasing and delivery of the different aspects of the development have not been agreed. Should the application be approved, these issues would be discussed with the applicant whilst the s106 agreement was being drafted. However, officers would

expect the business units and affordable housing to be delivered at an early stage of the development to secure their delivery. In addition, officers would seek the prioritisation of the business units for B1 use instead of B8 use, due the higher density/quality of employment they provide. A suitable clause will need to be added to the s106 agreement accordingly.

S106/CIL -

The application is in outline so the precise s106 contributions cannot be calculated at this stage. However, estimates of the contributions due in accordance with the Planning Contributions and Affordable Housing SPD, with a policy compliant level of affordable housing, are provided below:

Residential Development with 30% affordable housing (178 OM dwellings and 77 affordable dwellings - 26 SR / 26 AR / 25 Intermediate - where floor area of each dwelling is 75-94 sq m)

Waste Management (Site Acceptability) =	£12,750 (estimate)
Highway Works (Site Acceptability) =	£200,000 (estimate)
Education (Sustainable Development) =	£158,115 (estimate)
Greenspace and Recreation (Sustainable Development) =	£390,525 (estimate)
Lifelong Learning - Libraries (Sustainable Development) =	£57,150 (estimate)
Stronger Communities (Sustainable Development) =	£32,385 (estimate)
Sustainable Transport (Sustainable Development) =	£447,675 (estimate)

Total = £1,298,600 (estimate)

NB. If no affordable housing is provided, the total contribution would increase to £1,666,250.

B1 and/or B8 Business Units (5,574 sq m)

Sustainable Transport (Sustainable Development) =	£273,404.70 (B1 estimate)
	£124,021.50 (B8 estimate)

NB. Mitigating for B class jobs created would most likely reduce the above estimates to zero.

A1 'Bulky Goods' Retail Units (8,501 sq m)

Sustainable Transport (Sustainable Development) =	£5,385,638.53 (estimate)
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NB. This estimate is based on the estimate of trip generation for out of town centre retail development in Figure 9 of the SPD.

A3 Retail (139 sq m)

Sustainable Transport (Sustainable Development) = £88,060.67 (estimate)

NB. This estimate is based on the estimate of trip generation for out of town centre retail development in Figure 9 of the SPD.

The total contribution above comes to approximately £6.77m (£7.11m with a 5% admin charge), not including an ST contribution for the business units. This is a general estimate of the overall contribution a development of this scale should ordinarily provide. If the developer subsidy per affordable dwelling is taken to be £100k, the cost of delivering the affordable dwellings comes to £7.7m. Therefore, the overall cost to the developer of providing the policy compliant level of affordable housing and contributions is estimated to be approximately £14.47m (14.81m with a 5% admin charge).

The applicant has offered to pay a total financial contribution of £1.2m. If the Council applies the priorities set out in the SPD, site acceptability contributions should be sought first, then affordable housing and then sustainable development contributions. Subtracting the site acceptability contributions above from £1.2m leaves approximately £0.99m to pay for affordable housing. This equates to 10 affordable dwellings (3.9%). (NB. The applicant considers this funding will deliver a higher number of affordable dwellings using a lower developer subsidy, which officers do not agree with.)

Therefore, the offer from the applicant is to effectively pay the site acceptability contributions and provide 3.9% affordable housing, but no sustainable development contributions.

As discussed under Key Issues above, the reason why the level of affordable housing and contributions is so low is due to the viability of the development and particularly the high external and abnormal costs of redeveloping this brownfield site. Due to a lack of satisfactorily robust evidence provided in this regard, officers recommend the above contribution is accepted by Members only on the basis of a full open book deferred contributions overage mechanism, or alternative, which is acceptable to the Director of Place to secure additional affordable housing and sustainable development contributions should the viability of the development improve at implementation and throughout the construction phases. This mechanism will have to be secured in a s106 legal agreement, together with the site acceptability contributions and provision of 10 affordable dwellings. A suitable administration/monitoring contribution will also be required accordingly.

In addition, a clause should be added to any s106 agreement to promote B1 uses over B8 of the business units, due the higher density of employment they provide, which could take the form of marketing the units for B1 use for a set period of time before marketing them for B8 use.

In addition, a clause may need to be added to secure noise attenuation measures to

mitigate noise impact from plant at South Devon College on the proposed dwellings. This may require South Devon College to be signatories to the agreement.

Justifications:

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 Local Plan Policy W7. It will pay the cost of providing waste and recycling bins to the dwellings.

The 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 provision of a waiting lane for vehicles turning right onto Brixham Road from the residential access, and a combined pedestrian/cycle path from this access to the pedestrian crossing at the Long Road/Brixham Road junction.

The justification for the provision of affordable housing is set out in section 3 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6).

The education contribution is justified in paragraphs 4.40-4.46 of Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accords with Local Plan Policy CF7. It will be used towards funding Children's Services Capital Programme, which includes projects at schools in Paignton. 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 greenspace and recreation contribution is justified in paragraphs 4.52-4.58 of Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and 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 lifelong learning contribution is justified in paragraphs 4.47-4.51 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and will be used towards the cost of improving provision at Paignton Library and Information Centre, including IT equipment. The dwellings will place additional demand on the services provided by Paignton Library and information Centre and the contribution will ensure these services are provided with funding to mitigate the proposed development.

The stronger communities contribution is justified in paragraphs 4.31-4.35 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and will be used towards the funding of a street warden (or part of a post) in the area in the interests of safer communities.

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 will be used towards the enhancement of sustainable transport modes in the vicinity of the development. The NPPF and Local Plan Policy T2 promote sustainable transport modes. The proposed development will generate additional trips and should therefore contribute toward sustainable transport in the area.

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:

Negotiations are continuing with the applicant over the viability of the development and the appropriate level of affordable housing and financial contributions it can support. Consequently, heads of terms have not been agreed and instructions have not been sent to Legal Services to start preparation of a s106 agreement. An update will be provided verbally at committee.

Conclusions

In conclusion, the redevelopment of this brownfield site for housing and business uses should be supported. These uses are acceptable and would integrate with surrounding development well. The proposed A1 'bulky goods' and A3 retail uses would have an adverse impact on Paignton and Torquay town centres. This impact could be considered to be significantly adverse, due to the poor health and vulnerable condition of the town centres in terms of their vitality and viability. However, the proposed retail development is necessary to the viability of redeveloping the site. Therefore, this is considered to be a satisfactory material consideration to allow the development, provided strict controls are placed on the retail units to ensure they are truly 'bulky goods' stores. Members could decide to refuse the application on the basis of its impact on the town centres, if they consider this to carry more weight than the positive benefits of regenerating this brownfield site.

The applicant has offered £1.2m towards the provision of on-site affordable housing and contributions. This will effectively provide the site acceptability contributions of waste management and highway safety works, and 3.9% affordable housing (10 dwellings), but no sustainable development contributions. The reason for this is the viability of the scheme and apparently high costs associated with redeveloping this brownfield site. Officers are currently not satisfied with the robustness of evidence provided to justify the costs and have requested further evidence accordingly. In addition, the recommendation of approval is only on the basis of securing an appropriate deferred contributions overage mechanism in the s106 agreement to provide additional affordable housing and sustainable development contributions should the viability of the scheme improve at implementation or during construction of the development. This is likely to need to be a full open book assessment, although

negotiations with the applicant are continuing.

Members are recommended not to accept any lower provision of affordable housing than is currently offered. Therefore, the deferred contributions mechanism should account for 'overage' only and not 'underage' should costs increase. The positive benefits and sustainability of the scheme are already in question when weighed against the adverse retail impacts on the town centres and any lower affordable housing provision would make this balance even worse. Members could decide to refuse the application on the basis of a lack of satisfactorily robust costs evidence to justify the affordable housing provision offered.

Condition(s)/Reason(s)

01. Reserved Matters
02. Restrictive goods condition
03. Stop sub-division of the retail units
04. Define maximum net sales area and maximum area for ancillary cafe
05. No independently operated concessions
06. Hours of delivery
07. Staff Travel Plans
08. Waste Management Plans
09. Full Contaminated Land Condition
10. Controlled Waters Conditions
11. Construction Method Statement
12. Construction and Ecological Management Plan (CEMP)
13. Bird Breeding Season
14. Protected Species Mitigation - Bats and Reptiles
15. Bat Roost
16. Bird Nesting/Roosting Boxes
17. Tree Survey
18. Tree/Hedgerow Protection Measures
19. Detailed Landscaping
20. Landscape and Ecological Management Plan (LEMP)
21. Detailed Lighting Strategy
22. Noise Attenuation Measures
23. Noise Limits for Plant/Machinery
24. Surface Water Drainage Strategy
25. Foul Water Drainage Strategy
26. S278 Agreement
27. Residential Travel Plan
28. Secured By Design
29. Parking
30. Cycle and Bind Storage Details

Relevant Policies

HS - Housing Strategy
H2 - New housing on unidentified sites
H6 - Affordable housing on unidentified sites
H9 - Layout, and design and community aspects
H10 - Housing densities
H11 - Open space requirements for new housing
ES - Employment and local economy strategy
E5 - Employment provision on unidentified sit
E6 - Retention of employment land
E9 - Layout, design and sustainability
SS - Shopping strategy
S6 - Retail development outside identified To
CFS - Sustainable communities strategy
CF2 - Crime prevention
CF6 - Community infrastructure contributions
CF7 - Educational contributions
INS - Infrastructure strategy
IN1 - Water, drainage and sewerage infrastructure
W6 - New development and the minimisation of
W7 - Development and waste recycling facilities
LS - Landscape strategy
L8 - Protection of hedgerows, woodlands and o
L9 - Planting and retention of trees
L10 - Major development and landscaping
NCS - Nature conservation strategy
NC1 - Protected sites - internationally import
NC4 - Wildlife Corridors
NC5 - Protected species
EPS - Environmental protection strategy
EP1 - Energy efficient design
EP3 - Control of pollution
EP4 - Noise
EP5 - Light pollution
EP6 - Derelict and under-used land
EP7 - Contaminated land
EP8 - Land stability
EP9 - Groundwater
BES - Built environment strategy
BE1 - Design of new development
BE2 - Landscaping and design
TS - Land use transportation strategy
T1 - Development accessibility
T2 - Transport hierarchy
T25 - Car parking in new development
T26 - Access from development onto the highway

NPPF - National Planning Policy Framework
SS2 - Future Growth Areas
SS4 - The economy and employment
SS5 - Employment space
SS11 - Housing
TC3 - Retail Development
H1LFS - Applications for new homes