

**Application Number**

P/2014/0983

**Site Address**

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

**Case Officer**

Mrs Helen Addison

**Ward****Description**

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

**Update Report December 2017**

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

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

1. A new Circl Bunting survey report has been submitted by the applicant following further surveys that were carried out between April and August 2017. The original surveys carried out in 2014 and 2015 recorded the presence of 8-9 singing males and 4 singing males respectively. The current survey indicates that 4 territories of circl bunting are present on the site. In the light of this the developer is now proposing to provide a contribution for off site mitigation for 2 or 3 pairs of circl buntings. When the application was originally considered it was agreed by the developer that mitigation would be provided for 8 pairs of circl buntings.
2. Since the resolution to grant conditional planning permission an updated version of the SPD 'Planning contributions and affordable housing' has

- been adopted by the Council. The S106 contributions should be revised to accord with the up to date SPD.
3. The applicant has requested that the area of employment land adjacent to the PMU is excluded from the Section 106 agreement in order that it can be disposed of separately from the main part of the site.
  4. The applicant is of the opinion that if the Council has let the contract to carry out the works to the Yalberton Road junction, a contribution towards these works would not meet the CIL Regulations Test of Lawfulness (set out in Regulation 122 of the CIL Regulations 2010 and NPPF paragraph 204) because the Council has already committed to meet the cost of the works.

Each of these points will be explained further below;

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

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

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

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

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

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

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

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

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

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

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

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

When the application was originally considered in December 2015 the applicant agreed with the Council that compensation for 8 pairs of ciril buntings would be provided. This was based on evidence that he submitted with the planning

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

## **2. S106 contributions**

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

The following will be included in the S106 agreement:

### Site Acceptability

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

In accordance with the adopted SPD 'Planning contributions and affordable housing' February 2017 the following contributions towards sustainable development infrastructure are sought:

### Affordable Housing

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

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

schedule to calculate the precise contributions when the floor areas are known following submission of reserved matters.

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

Sustainable Transport £tbc

Education £tbc

Public open space, sports and recreation £tbc

Lifelong learning £tbc

TOTAL £tbc

Mitigation:

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

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

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

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

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

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

The proposed development would be accessed from Yalberton Road. In order for the junction to have sufficient capacity to cater for the additional traffic generated by the development it is necessary for the junction to be improved. When the

application was considered by DM Committee it was the Council's intention to carry out this work but there was a shortfall in the budget of £360k to move a gas main. The applicant agreed to pay this shortfall in order that the works could go ahead.

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

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

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

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

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

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

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

### **Update Report June 2016**

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

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

*- The applicant has agreed to provide a policy compliant level of affordable housing at 30%. It was originally proposed that this should include up to 5% self build plots. The provision of affordable self build plots has not proved possible to deliver due to a lack of certainty from housing associations and therefore it is proposed to delete this requirement. The affordable housing requirement to remain at 30%.*

*-Development of the site must allow for pedestrian, cycle and public transport links to the Western Power Distribution site as well as the neighbouring site at the former Yannons Farm*

*-Provision of an off-site bat barn in accordance with the Ecological Design Strategy submitted in support of the application*

*-Inclusion of provisions to ensure that no less than 2.09ha of the site is available for employment purposes and to ensure that the employment land is actively marketed*

*-£5,000 to make and implement a Traffic Order to extend the 30mph speed limit on Yalberton Road*

### **Original Report to DMC 14.12.15**

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

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

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

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

*The principle of the proposed development for a mix of housing and employment is considered to be acceptable by officers and in accordance with the provisions of the current and new Local Plans, taking material considerations into account. It will deliver up to 192 dwellings, helping to maintain a 5 year housing land supply and a significant amount of employment development generating a large number of jobs; it will also contribute to upgrading the Brixham Road/Yalberton Road junction. However, a condition is necessary to ensure that the layout of housing at reserved matters stage will not prejudice the future reuse of the allocated waste site at Yalberton Tor Quarry as a waste management facility, which Strategic Planning officers have confirmed must be retained in accordance with Policy W3 (current and new Local Plans).*

*At the time of writing this report the final comments of the Local Highway Authority are awaited to confirm that the proposed access arrangements are safe and deliverable, and will not have a severe impact on the local highway network, including the capacity of the Brixham Road/Yalberton Road junction. Initial indications are that the principle of the access arrangements along Yalberton Road is acceptable, subject to the proposed highway improvement works being carried out, but the proposed fallback option proposed is unacceptable, due to safety*



concerns with the proposed pedestrian crossing on Yalberton Road adjacent to the Sainsburys petrol filling station. An update will be provided by officers at committee. A shortfall in funding to deliver the highway improvement works, to the junction of Brixham and Yalberton Roads, will need to be paid for by the developers and secured in the s106, together with other s278 funding for highway works along Yalberton Road outside the site boundary.

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

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

The applicants propose to deliver the policy compliant level of affordable housing (30%), but have requested flexibility on tenure mix. This will need to be agreed by the Head of Asset Management and Housing, while the s106 is drafted. Together with the site acceptability matters discussed above, the s106 will need to secure sustainable development contributions towards local infrastructure, including schools and Paignton Library. Precise figures cannot be calculated at this stage, as the application is in outline, but the total contribution is estimated to be approximately £800k.

Officers recommend approval of the revised application, subject to the successful resolution of the technical issues above. The principle of developing the site for housing and employment use accords with the Future Growth Area in the new Local Plan and will go a long way in helping to meet local housing needs and economic growth. Whilst officers will provide Members with a full update at

committee, should any technical matters remain outstanding, officers will seek Members' approval to delegate these to officers to resolve with the applicants within three months of the committee, or the application will be brought back to committee for full reconsideration. The only exception to this is if a Habitats Regulations Assessment has not been carried out, or an Appropriate Assessment is required, in which case officers will recommend deferral. In effect, Members will be asked to approve the application in principle; however, Members could also decide to defer the application or refuse it if they consider it does not fulfill the policy objectives of the new Local Plan.

### **Recommendation**

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

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

### **Statutory Determination Period**

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

### **Site Details**

The site comprises two parcels of land adjacent to the Yannons Farm development site to the west of Brixham Road on the outskirts of Paignton. The larger parcel of land to the west is 10.16ha in area, while the smaller parcel of land to the east is 1.31ha. The total site area is therefore 11.47ha. The majority of the site is located within the Future Growth Area of the new Local Plan, except for the south part of the main site to the west.

Both parcels of land comprise agricultural fields bounded by hedgerows. The west site includes an important group of remnant elm trees and a derelict stone barn. In addition, overhead power lines cross the west site to the north. Both sites have sloping topographies. The west site has a north facing slope that rises by about 50 metres to a high point near the top of the hill to the southeast. However, the west site excludes a large part of the field near the top of the hill, which is proposed as a 'high meadow for ecological mitigation and biodiversity'. A footpath is proposed

*around the meadow and the high point is within this strip of land. The bulk of the west site rises by about 35 metres to a point further down the slope. The topography is steeper to the west, with a gradient of about 1:7. In comparison, the east site has a consistent slope of 1:12, rising 13.5 metres north to south.*

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

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

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

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

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

### **Detailed Proposals**

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

*The application has been amended during the course of the application. This has*

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

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

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

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

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

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

### **Summary Of Consultation Responses**

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

*Strategy and Project Delivery Team/Highways ('Local Highway Authority'): Comments awaited on latest consultation. Previously objected, as unable to conclude that the applicants can demonstrate the development will have a safe and suitable access for all. Nor can the development currently demonstrate connectivity to the adjacent residential development in a way which would enable sustainable transport modes to be maximised. There is also a lack of information to demonstrate that the junction (Yalberton Road and Brixham Road) has capacity to serve the proposed development, without causing severe impacts.*

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

*Previously advised that Yalberton Tor Quarry could conceivably become an*

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

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

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

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

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

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

*cirl buntings.*

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

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

*No development shall commence until:*

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

*b) the Owner has submitted an application to the relevant Sewerage Undertaker for a public foul sewer requisition under s98 of the Water Industry Act 1991 (which shall include the provision of public sewerage improvement works identified as necessary).*

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

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

*Torbay Development Agency: No response.*

*Arboricultural Officer: The access proposals are suitable for approval on arboricultural merit. Mitigation tree planting should be sought in the realigned Devon hedgebank. The indicative access road south of the proposed roundabout abuts an important group of remnant elm trees, which should be retained and regarded as significant constraints in the future layout. The road, including footways and associated service runs, should be aligned to avoid disturbance to*

*the root protection areas of these trees. A Landscape and Ecological Management Plan (LEMP) must be secured following agreed landscape design of street trees, groups, shrub masses, etc. The detailed landscaping scheme should address the requirements of the rural location against the need to provide sustainable trees of seasonal interest. Trees should be positioned at arrival points and planted in hedgerows. The proposed orchard requires detailing out at an early stage. The detailed landscaping plan should integrate use of storm water runoff to water tree pits.*

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

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

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

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

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



of £394 per person, as 'equipped facilities for young people' and 'greenspace' are indicated to be provided onsite. A Landscape and Ecological Management Plan (LEMP) must be secured.

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

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

*Strategy and Project Delivery Team:* The proposed amount of employment is acceptable and within the requirements of Policies SS5 and SDP3 (as modified) of the new Local Plan. The Development Areas Plan (3445/203/L) shows around 2.34 ha identified for employment use, which is within the range sought. The employment noise buffer adjoining Yalberton Road is welcomed. Whether the buffer indicated is sufficient to safeguard the Quarry's future use as a waste site is a matter for Community Protection officers to advise on. However the application is in outline and the detailed boundary between employment and residential development can be resolved as a reserved matter. It is appropriate to impose a condition requiring the detailed layout to show housing at a sufficient distance from the quarry to avoid its use as a waste site being prejudiced (in accordance with Policy W3 of the new Local Plan). Subject to this condition, there is no objection to the application as revised from a strategic planning position.

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

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

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

### **Summary Of Representations**

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

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

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

- *Concerns re potential impact on adjoining horse grazing field*
- *Is more development needed and why do greenfield sites need to be used?*
- *Impact on wildlife*
- *Access arrangements do not comply with best planning of the area - the access built on Brixham Road to serve Yannons Farm was designed to accommodate the whole employment allocation*
- *Transport Assessment is inadequate and does not test all scenarios - it has not demonstrated there will not be a severe traffic impact in accordance with the NPPF*
- *S106 agreement required*
- *Toucan crossing on Yalberton Road adjacent to petrol filling station would cause serious safety issues*
- *No details of forward visibility provided*
- *HGV swept path analysis required for Alders Way*
- *Road Safety Audit should be provided of access proposals*
- *Loss of employment land - at least 50% of west site should be employment to accord with new Local Plan (NB. This figure has since been revised down to 25%)*
- *Loss of Countryside Zone and AGLV land*
- *Insufficient information on foul drainage*
- *Lack of Habitats Regulations Assessment*
- *Insufficient regard to traffic impacts on Yalberton Road to the west of the*

site

- Access and mix proposals will result in adverse impacts to residential and conflicts with business uses
- Strategic landscaping belt required to west
- Foul and surface water drainage proposals required before decision made
- Access to employment on west site should be from north and access to residential should be from south
- Overhead power lines should be undergrounded
- Allotments should be provided and proposed green infrastructure secured
- Green lane link should be provided
- Impacts on Stoke Gabriel, including drainage and traffic on Yalberton Road
- Proposed 5.5 metre road width along Yalberton Road to Alders Way is not wide enough for existing and proposed traffic, including HGVs - should be 7.2 metres wide
- Access proposals along Yalberton Road lack detail and clarity - current proposals will create dangerous bottleneck
- Impacts on drainage and road infrastructure - cycling will be more hazardous.

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

- *Already traffic problems in Parish of Stoke Gabriel - further traffic will impact the local economy, including holiday business*
- *Revised proposals have not addressed previous concerns regarding access along Yalberton Road and the Transport Assessment*
- *No draft s106 agreement available to ensure necessary infrastructure contributions shall be secured*
- *Replacement of toucan crossing on Yalberton Road with uncontrolled pedestrian crossing adjacent to petrol filling station that is referred to in TA Addendum is still shown on the drawings resulting in lack of clarity - the downgraded pedestrian crossing is unsafe*
- *Scenarios still untested in the TA, including one where there is a through route between Brixham Road and Yalberton Road via the Yannons Farm development*
- *Number of detailed concerns with the veracity of the TA Addendum*
- *30 mph speed limit will need to be extended west to the proposed mini-roundabout in order for the mini-roundabout to comply with mandatory standards*
- *Mini-roundabout is wholly inappropriate and does not comply with mandatory standards - it is also considered unsafe and susceptible to accidents*
- *No information has been provided on the capacity of the proposed roundabout*
- *Lack of information on visibility at the roundabout*
- *No provision of pedestrian facilities to cross Yalberton Road to access*

#### *Alders Way*

- *No Road Safety Audit for the mini-roundabout*
- *No details of forward visibility provided*
- *Access proposals should be based on full topographical survey of Yalberton Road*
- *HGV swept path analysis required for Alders Way*
- *Concerns with safety of access proposals on a number of counts, therefore application should be refused in accordance with NPPF*
- *Disappointed amended proposals have not taken into account suggestions of PNF - previous concerns remain, particularly loss of employment land to residential, lack of information on foul drainage, inappropriate access, and how habitat impacts will be mitigated*
- *Piecemeal approach to access, separate from other issues, is not satisfactory*
- *Previous concerns regarding impacts on Stoke Gabriel, including drainage and traffic on Yalberton Road remain - the proposed access is unacceptable*
- *Increase in traffic/HGV movements along Yalberton Road will result in noise and fume pollution out of keeping with proposed residential*
- *Proximity of proposed roundabout to existing Aggregate Recycling Plant - no information on HGV movements to/from this plant*
- *Impact of increased HGVs on residential quality of life along Totnes Road and King's Ash Hill*
- *Visual impact of overhead power cables on proposed development*
- *Previous concerns regarding impacts on drainage and road infrastructure remain - proposal is unsustainable in NPPF terms; reduction in employment does not accord with new Local Plan; noise impacts of adjacent industrial estates/landfill site; impacts on protected species; impacts on historic assets; traffic and access issues raised by Cavanna Homes are salient*
- *Greenfields and open aspects of the site should remain - proposed development not in keeping with area*
- *Further development should provide 100% affordable housing*
- *Lack of local facilities for future residents*
- *Insufficient measures to reduce air and light pollution*
- *Adequate network of cycle paths should be provided*
- *Geological survey required*
- *Sustainable drainage and rainwater harvesting must be promoted*
- *Majority of Long Road not part of National Cycle Network (NCN), contrary to information in Revised Design and Access Statement - creating a cycle route along Litson Lane/Whitehill Lane would bypass some dangerous stretches along western end of Long Road.*

#### **Relevant Planning History**

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

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

*The key issues are:*

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

1. *The Principle of the Development*

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

*The principle of the development is considered by officers to be acceptable. Whilst the majority of the site is allocated for employment development in the current Local Plan, the principle of allowing mixed residential and employment development within the employment allocation has already been established on the adjoining sites known as Yannons Farm and Parkbay. Furthermore, with the exception of the field to the south of the main site, the land is allocated as a Future Growth Area for housing and related development in the new Local Plan (Policy SS2). Whilst the illustrative masterplan indicates some housing development to the southwest of the main site extending into the Countryside Zone where development will be resisted (Policy C1), layout is a reserved matter so this aspect of the proposals is currently not under consideration. In addition, Policy C1 allows some forms of development in the Countryside Zone where there will be no harm to the environment or landscape character, including self build affordable housing.*

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

*development to be delivered by a trigger point to be agreed relating to the delivery of the new housing.*

## **2. Noise and Amenity Issues**

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

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

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

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

## **3. Landscape Impact**

*A Landscape and Visual Impact Assessment (LVIA) has been submitted with the application, which accords with best practice. Officers' only criticism is that by restricting the zone of theoretical visibility to a 2.5km radius, some long distance views from Barton Pines, Beacon Hill and Windmill Hill have not been considered. However, the site is a very small component of a much wider landscape in these views and will be seen against the backdrop of Paignton's existing urban edge. Therefore, officers agree with the findings of the LVIA and do not consider that the proposed development will have a landscape impact. This includes the part of the*

site extending into the Countryside Zone. The green infrastructure indicated on the illustrative masterplan should be secured in order to soften and integrate the development into the rural landscape setting. These matters will need to be taken into account at reserved matters stage.

#### **4. Access and Impact on Highways**

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

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

External transport consultants have been appointed to review the access options and the impact of the proposals on the local highway network, including the capacity of the Brixham Road/Yalberton Road junction to accommodate the proposed development. They have identified errors in the latest Transport Assessment Addendum, which have been provided to the applicants' transport advisers. Therefore, further information is currently awaited from the applicants and at the current time, officers cannot conclude with certainty that the proposals will not have a severe traffic impact. However, the Council's transport consultants consider that there is likely to be a workable solution. An update will be provided by officers at committee.

The application should not be permitted until details of safe access arrangements that will not have a severe impact on the local highway network have been provided. If this information has not been provided to the satisfaction of the Local

*Highway Authority by the time of the committee, officers will seek Members' approval for this matter to be delegated to officers to resolve with the applicants within three months of the committee, or the application will be brought back to committee to be reconsidered in full.*

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

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

## **5. Ecology Impacts**

*The site is located within the greater horseshoe bat sustenance zone associated with the South Hams Special Area of Conservation (SAC) at Berry Head and the northwest corner of the main site is just within a strategic flyway. The Council's external ecological adviser with respect to the South Hams SAC has advised that insufficient information has been submitted to enable the authority to carry out a Habitats Regulations Screening Assessment. The applicants are currently in the process of revising their Ecological Impact Assessment (EclA) accordingly, however at the time of writing this report it has not been submitted. When an adequate EclA has been submitted, if the screening assessment concludes that an Appropriate Assessment is required this will need to be prepared by the LPA and Natural England consulted.*

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



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

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

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

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

## **6. Impacts on Trees**

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

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

*Therefore, the proposals are considered to accord with Policy L9 of the current*

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

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

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

#### **8. Affordable Housing**

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

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

#### **9. Archaeology**

*The Senior Historic Environment Officer has identified the potential for previously*

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

#### **S106/CIL -**

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

#### *Site Acceptability*

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

#### *Affordable Housing*

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

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

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

TOTAL = £803,234

#### *Administration/Monitoring of S106*

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

### *Mitigation:*

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

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

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

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

### *Justifications:*

*The Brixham Road highway works contribution is justified in paragraphs 2.1-2.4 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6). There is a shortfall in funding to reroute a gas main as part of the planned improvement works at the Brixham Road/Yalberton Road junction. The improvement works are necessary to increase the capacity of the junction to accommodate the proposed development. The applicants have agreed to pay the shortfall in order to provide adequate access arrangements for the proposed development.*

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

*A civil engineering mitigation/compensation strategy must be prepared before granting*

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

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

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

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

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

*The lifelong learning contribution is justified in paragraphs 4.47-4.51 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and SS10. It will be used towards the cost of improving provision at Paignton Library, including IT equipment. The dwellings will place additional demand on the services provided by Paignton Library and the contribution will ensure these services are provided with funding to mitigate the proposed development.*

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

*on these facilities and the contribution will ensure these facilities are provided with funding to mitigate the proposed development.*

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

*Status:*

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

### **Conclusions**

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

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

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

*A detailed cirl bunting mitigation/compensation strategy is required before the application is permitted. The RSPB currently objects to the application, due to inadequate information in this regard. The applicants are in the process of producing this strategy. If a satisfactory cirl bunting mitigation/compensation*

*strategy has not been submitted by the time of the committee, officers will seek delegated authority to resolve this matter with the applicants within three months of committee, or the application will be brought back to committee for full reconsideration.*

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

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

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

01. *Reserved Matters*
02. *Layout must not Prejudice Use of Allocated Waste Site*
03. *Future Proof Access to Western Power Site in Layout*
04. *Design Code*
05. *Archaeology - Written Scheme of Investigation*
06. *No Development during Bird Breeding Season (March-Sept)*
07. *Construction and Environmental Management Plan (CEMP)*
08. *Lighting Design Strategy - Dark Areas*
09. *Temporary Barn Owl Habitat Provision during Construction*
10. *Pre-development Survey for Barn Owls*
11. *Permanent Barn Owl Nesting Place*
12. *Secure Biodiversity Enhancements (NPPF)*

13. *Arboricultural Method Statement and Tree Protection Plan*
14. *Construction Method Statement*
15. *Waste Audit and 5 Year Waste Management Plan*
16. *S278 Agreement*
17. *Detailed Landscaping Scheme incl. Plant Species and Planting Methodologies*
18. *Landscape and Ecological Management Plan (LEMP)*
19. *Detailed Lighting Design Scheme*
20. *Foul Drainage (SWW)*
21. *Surface Water Drainage Details - Detailed Design and Maintenance*
22. *Prevent Occupation/Use until Brixham Road Highway Improvement Works Delivered*
23. *Prevent Occupation/Use until Car Parking Provided*
24. *Prevent Occupation until Details of Cycle Parking Provided/Implemented*
25. *Limit Delivery Times to Employment Uses*

**Relevant Policies**

SS2 - *Future Growth Areas*  
SS3 - *Presumption in favour of sustainable dev*  
SS4 - *The economy and employment*  
SS5 - *Employment space*  
SS6 - *Strategic transport improvements*  
SS7 - *Infrastructure, phasing and employment*  
SS8 - *Natural Environment*  
SS9 - *Green Infrastructure*  
SS10 - *Conservation and Historic Environment*  
SS11 - *Sustainable Communities Strategy*  
SS12 - *Housing*  
SS13 - *Five Year Housing Land Supply*  
SS14 - *Low Carbon and Climate Change*  
SDP1 - *Paignton*  
SDP3 - *Paignton North and Western area*  
TA1 - *Transport and accessibility*



TA2 - Development access  
C1 - Countryside and the rural economy  
C4 - Trees, hedgerows and natural landscape  
NC1LFS - Biodiversity and Geodiversity  
H1LFS - Applications for new homes  
H2LFS - Affordable Housing  
H3LFS - Self build affordable housing  
DE3 - Development Amenity  
SC1 - Healthy Bay  
SC2 - Sport, leisure and recreation  
SC3 - Education, skills and local labour  
SC4 - Sustainable food production  
SC5 - Child poverty  
ES1 - Energy  
ER1 - Flood Risk  
ER2 - Water Management  
W1LFS - Waste hierarchy  
W2LFS - Waste audit  
W3LFS - Existing waste management facilities  
M3LFS - Preserving local building stone