

**Application Number**

P/2017/1042

**Site Address**Land At Woodview Road  
Paignton**Case Officer**

Carly Perkins

**Ward**

Blatchcombe

**Description**

Construction of two Use Class B2 industrial manufacturing units, to provide 2255.9m<sup>2</sup> (GIA) of floor space, external lighting, circulation space, car parking and hard standing.

The proposed development does not accord with the provisions of the development plan (Torbay Local Plan 2012-2030) in force in the area in which the land to which the application relates is situated.

**Executive Summary**

The application is for full planning permission for the erection of two industrial buildings, on land that was included in the outline consent for development at White Rock under P/2011/0197. This outline permission has now expired. The application site is split into two separate areas (unit C and E) and relates to the western bowl of the wider White Rock site. The sites are currently used for agricultural purposes. The site is to the south west and west of the existing industrial units on Woodview Road. Two industrial units associated with the original outline consent have been constructed within the wider part of the site that was subject of the outline application.

The first, unit C would be positioned south of the existing western bowl industrial buildings and would have a floor area of 1,114.48sqm. The second, unit E would be positioned west of the existing western bowl industrial buildings would have a floor area of 1141.41sqm. The buildings are to be used as manufacturing units which is a general industrial B2 use. The proposed buildings are single storey and approximately 9m in height. The proposed buildings have been designed to be subdivided into 10 separate individual units. To the west of unit C is an area of hardstanding to provide 33 parking spaces, including 2 disabled spaces and to the north of unit E is an area of hardstanding to provide 24 parking spaces of which 8 are allocated for disabled persons. The application form refers to the provision of 73 parking spaces, but the plans suggest that the spaces above the 57 noted are 'possible future additional car spaces'. 8 cycle parking spaces are proposed to serve unit E and 4 spaces are proposed to serve unit C. Each of the subdivided units is served by a loading bay for large vehicles. Refuse storage is also proposed within the site. It is proposed to retain existing hedges and trees to the boundaries and to provide new tree and hedgerow planting and meadow grassland.

In the Torbay Local Plan 2012-30 the site is designated as Countryside Zone and shown as a potential development site for consideration in the Neighbourhood Development Plan, primarily for employment investment. The Paignton Neighbourhood Plan (submission version) does not allocate any sites for any form of development. This application has been advertised as a departure from the Torbay Local Plan 2012-30.

However, other material considerations are relevant. Whilst the previous permission does not bind the Authority, it was made under a similar policy framework and there is a need to ensure consistency in decision making. The site has been partly built out, and is within the SDP3.5 Strategic Delivery Area. The NPPF and Torbay Economic Strategy place weight on securing employment development, and Torbay has a pressing need to improve the jobs market, which has been identified as a serious problem for adult social mobility in the Bay.

The site is separated from proposed residential units associated with application references P/2011/0197 and P/2013/1229 by the proposed ridge top park as part of the wider plans for the Whiterock site and proposed sports pitches associated with South Devon College approved under reference P/2016/0188. To the south and west of the site is open countryside and the South Devon AONB. To the north west and south west of the site are areas of woodland associated with Shopdown Copse and St Peters Copse (identified as Other Sites of Wildlife Interest and an Unconfirmed Wildlife Site within the Torbay Local Plan 2012-2030). The application site falls within a greater horseshoe bat sustenance zone associated with the Special Area of Conservation (SAC) roost at Berry Head. The site is also situated within a Mineral Safeguarding Area and Flood Zone 1, Critical Drainage Area. There are no trees within the application site but a hedgerow runs along the western boundary of the unit E site and a tree is located to the south of the boundary of the unit C site.

The provision of employment uses within the site has been established by the earlier outline application for the wider Whiterock site. Whilst this application has now expired, it remains a material consideration which, as there have been no significant changes in circumstances, may be afforded significant weight. Additionally, the continued provision of employment uses in this location continues to be supported by current Local Plan policies (notably SPD3.5) and is important for economic recovery and growth in Torbay. Although the proposed development is contrary to the Torbay Local Plan 2012-30, on balance the principle of industrial uses on this site remains acceptable and should be supported.

However there are a number of outstanding matters and consultee responses that are required prior to confirming the acceptability of the scheme in terms of biodiversity, landscape impact and transport and parking matters. Officers believe these issues can be resolved, in compliance with the provisions of the Torbay Local Plan 2012-2030, specifically Policies SS4, SS5, SS8, SS11, DE1, DE3, TA1, TA2, TA3, NC1, C4, ER1, ER2 and appendix F of the Torbay Local Plan 2012-2030.. Should such issues be resolved, the imposition of conditions will be required.

### **Recommendation**

Conditional Approval, subject to the consultation with the AONB unit, HRA consultants and Transport Officers and the successful resolution of any matters raised, further consultation with the Council's Ecological Consultants regarding Cirl Buntings and the implications of the development on their habitat, if it is considered necessary a Section 106 agreement to secure biodiversity mitigation, completion of a HRA screening and expiry of the consultation period (with no new issues raised). Final drafting of conditions to be delegated to the Executive Head for Assets and Business Services.

Recommended conditions:

1. CEMP (to include reference to Ecological Clerk of Works)
2. LEMP (to include reference to Ecological Clerk of Works)
3. External Lighting
4. Tree Protection
5. Materials
6. Ecological Monitoring
7. Landscaping
8. Nesting Features and Bat Boxes
9. Travel and Freight Plan
10. Parking
11. Footways
12. Surface Water Drainage
13. Bird Nesting Season
14. No External Material Storage
15. No Industrial PD
16. Unsuspected Contamination
17. Cycle and Waste Storage
18. Secured by Design
19. Details of Plant

### **Reason for Referral to Development Management Committee**

The application is a major application and is therefore required by the constitution to be determined by DM committee.

### **Statutory Determination Period**

13 weeks, the decision date is the 10th January 2018.

### **Site Details**

The application site is split into two separate areas (unit C and E) and relates to the western bowl of the wider White Rock site. The land is currently in agricultural use. Two industrial units associated with the original outline consent have been constructed under approved reserved matters application P/2013/1009 and part of the wider Whiterock site is under construction under the approved reserved matters

scheme P/2013/1229 P/2014/0071 with a number of dwelling houses complete.

The application site is to the south west and west of the existing industrial units on Woodview Road. The site is separated from proposed residential units associated with application references P/2011/0197 and P/2013/1229 by the proposed ridge top park as part of the wider plans for the Whiterock site and proposed sports pitches associated with South Devon College approved under reference P/2016/0188. To the south and west of the site is open countryside and the South Devon AONB. To the north west and south west of the site are areas of woodland associated with Shopdown Copse and St Peters Copse (identified as Other Sites of Wildlife Interest and an Unconfirmed Wildlife Site within the Torbay Local Plan 2012-2030). The application site falls within a greater horseshoe bat sustenance zone associated with the Special Area of Conservation (SAC) roost at Berry Head. The site is also situated within a Mineral Safeguarding Area and Flood Zone 1, Critical Drainage Area.

There are no trees within the application site but a hedgerow runs along the western boundary of the unit E site and a tree is located to the south of the boundary of the unit C site.

Vehicular access to both sites is off Woodview Road.

### **Detailed Proposals**

The application is for full planning permission.

The proposal is for the erection of two industrial buildings. The first, unit C which is positioned south of the existing western bowl industrial buildings is 1,114.48sqm. The second, unit E which is positioned west of the existing western bowl industrial buildings is 1141.41sqm. The buildings are to be used as a manufacturing units which is a general industrial B2 use. The proposed buildings would be single storey and approximately 9m in height. The proposed buildings have been designed to be sub-divided into 10 separate individual units. To the west of unit C is an area of hardstanding to provide 33 parking spaces, including 2 disabled spaces and to the north of unit E is an area of hardstanding to provide 24 parking spaces of which 8 are allocated for disabled persons. The application form refers to the provision of 73 parking spaces, but the plans suggest that the spaces above the 57 are 'possible future additional car spaces'. 8 cycle parking spaces are proposed to serve unit E and 4 spaces are proposed to serve unit C. Each of the subdivided units is served by a loading bay for large vehicles. Refuse storage is also proposed within the site.

The proposed buildings are to be finished with silver trapezoidal profile cladding with a merlin grey trapezoidal profile clad plinth. The roof is to be trapezoidal profile in goosewing grey. Doors would be dark grey steel.

It is proposed to retain existing hedges and trees to the boundaries and to provide new tree and hedgerow planting and meadow grassland.

Access to the site would be from Woodview Road.

### **Summary Of Consultation Responses**

Drainage Engineer: Providing the surface water drainage is carried out in accordance with the latest surface water drainage drawings and hydraulic design, there are no objections on drainage grounds.

RSPB: RSPB seek clarification on the relationship between development proposed by this application and habitat mitigation provided from P/2011/0197. It is not reasonable if development or mitigation proposed as part of this in loss of mitigation or duplicates or replaces that already provided for P/2011/0197.

A cirl bunting survey on the application site and wider area in 2017 followed current RSPB guidance. This recorded three singing males associated with hedges and scrub, representing three possible breeding territories. Two of these clusters of records were very close to the application site, with one territory adjacent to the south west corner of proposed Unit E, and another south east of proposed Unit C. The nearest singing males were recorded 20m south west of proposed Unit E and 55m south of proposed Unit C.

The application site contains habitat of likely foraging value for cirl buntings. While noting that the application proposes habitat creation to include 1,895m<sup>2</sup> of meadow grassland and 22m of native hedgerow, this proposed development will result in an overall net loss (-0.31 ha) of semi-improved grassland and (singly and in combination with other already consented adjacent similar development) a change in context from former farmland (hedges and adjacent grassland) to urban. The proposed new tree planting on proposed meadow grass to the west of Unit E will not benefit cirl buntings. The result will be a loss of cirl bunting habitat.

Should planning permission be granted, RSPB recommend compensatory provision for the loss of cirl bunting habitat. Given that the application site potentially provides some foraging habitat for two territories, it is recommended that compensation provision for one territory is provided.

In accordance with best practice, the application should not be determined until data from survey in September and October 2017 is provided. In addition to requiring implementation of all mitigation measures proposed for bats, including design and control of external lighting, it is recommended that monitoring of light levels from the site on adjacent retained and created habitat once operation has commenced is required to ensure that the maximum lux levels are not exceeded.

It is recommended that any permission is conditional upon the submission of a CEMP and LEMP providing all necessary measures to avoid harmful impacts on existing biodiversity and retained habitats. Measures for habitat management, creation and enhancement should be detailed within a LEMP secured via an s106 agreement and delivered satisfactorily for the long term, i.e., the lifetime of the

proposed development. Provision of at least 10 integral nest sites for swifts ('swift bricks') (5 per unit) are recommended.

Senior Environmental Health Officer: No objections.

Police Designing Out Crime Officer: It is recommended that the developments be constructed to achieve full Secured by Design Commercial 2015 (SBD) compliance. The layout and design appear to follow a simple design where recesses appear to be minimised, which is a good design feature in enhancing surveillance opportunities and deterring unwanted trespass but it is recommended that access to the rear of buildings is prevented. Care should be taken to not inadvertently design in climbing aids. It is recommended that only approved, tested and certificated products are sourced to prevent and deter unauthorised entry into the premises. Vehicular access to unit C should be capable of being securely gated for when the premises is not in use. Care should be taken with landscaping so as not to create areas of concealment. Bicycle storage should be positioned so it is in view of active areas. Bollard lighting does not work so well from a safety and security perspective as they do not generally omit light at the right height to aid facial recognition.

Natural England: No objection subject to appropriate mitigation being secured. In order to mitigate adverse effects and make the development acceptable, the following mitigation measures are required:

Implementation of mitigation and enhancement measures put forward in the Ecological Assessment (Tyler Grange, 3 October 2017)

Mitigation measures linked to off-site mitigation associated with adjacent development

It is recommended that an appropriate planning condition or obligation is attached to any planning permission to secure these measures.

Arboricultural Officer: The landscaping scheme is unsuitable for approval on arboricultural merit. An updated tree protection plan has been submitted and is now acceptable.

Ecological Consultants: The development lies within the sustenance zone/areas of the Berry Head Special Area of Conservation (SAC) for greater horseshoe bats, as designated by the South Hams SAC.

The addendum survey identifies an ash tree with high bat roost potential adjacent to the construction of Unit C. The tree should be retained and tree protection measures are implemented following BS 5837:2012. No lighting should be installed that would illuminate this tree. This should be included within the LEMP.

The ecological assessment undertaken by Tyler Grange provides a detailed and descriptive account on how to safeguard and enhance the ecology and biodiversity,

on and adjacent to the site in relation to the development. Section 4: Potential Impacts, Mitigation and Enhancement, and Section 5: Conclusions and Mechanism for Delivery of the report, recommend that a Construction Environmental Management Plan (CEMP) and a Landscape and Ecological Management Plan (LEMP) be produced.

It is recommended that an ecologist is appointed as an Ecological Clerk of Works (ECow) to implement the CEMP and LEMP and administer compliance.

Compliance monitoring reports should be undertaken by the ECow for the duration of the construction and completion phases, to ensure that the mitigation and enhancement measures implemented are functional.

The proposal is considered acceptable providing the provisions listed above are implemented.

Economy and Enterprise Team, Torbay Development Agency: The Economy & Enterprise Team support the continued development and construction of the Phase 6 Western Bowl, Torbay Business Park, Whiterock. It supports a key objective in the Torbay Economic Strategy 2017 - 2022 in terms of accelerating the development of employment space geared to business needs. It will provide space for Torbay's existing, growing businesses and also help to attract inward investors.

Senior Strategy and Project Officer (Transport): Comments awaited.

HRA Consultant: Comments awaited.

AONB Unit: Comments awaited.

### **Summary Of Representations**

No representations have been received.

### **Relevant Planning History**

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

P/2013/1009 Reserved matters application for P/2011/0197 including appearance, landscaping, layout and scale of 2 industrial units, enabling work for new road, demolition of unit 31, relocation of 10 parking spaces for unit 33-34 APPROVED 16.10.2013

P/2013/1229 Approval of reserved matters to P/2011/0197. Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development APPROVED

P/2014/0071 Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197 APPROVED

P/2015/0918 Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development (Variation of condition P1 of P/2013/1229 - MMA to units 37, 94 and 237 to allow wheelchair access) APPROVED

P/2015/1061 Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197 PENDING CONSIDERATION subject to the outcome of this application

P/2015/1229 Approval of appearance, landscaping, layout and scale in relation to 217 dwellings and associated development - EIA NOT REQUIRED

P/2015/1126 Approval of appearance, landscaping, layout and scale in relation to 216 dwellings and associated development REFUSED 13.04.2016

P/2016/0094 Erection of 42 dwellings and associated infrastructure REFUSED 24.08.2016

P/2016/0842 EIA Screening in relation to one industrial unit of 6,000 sqm floorspace - EIA NOT REQUIRED

P/2016/0188 Approval of appearance, landscaping, layout and scale in relation to a sports pavilion and associated development including a sports playing pitch, multi-use games area and car park APPROVED

P/2016/0411 Reserved matters for a food retail store including parking and other associated works (relates to P/2011/0197) RESOLVED FOR APPROVAL

P/2016/0842 EIA Screening in relation to one industrial unit of 6,000 sqm floorspace - EIA NOT REQUIRED

P/2016/0880 Erection of Class B2 industrial building of 6,000 sqm floor space to include parking, external lighting, hardstanding and circulation space APPROVED

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

The key issues to consider are the principle of development, appearance, impact on the AONB, landscaping, biodiversity, drainage, access, parking and residential amenity.



### **Principle of the Proposed Development:**

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 and S70 of the T&CPA 1990 require that applications are determined in accordance with the development plan unless material considerations indicate otherwise. The policy context for this application is complex and needs to be considered in the determination of the proposal.

The site is identified within the Torbay Local Plan as Countryside Zone and shown as a potential development site for consideration in the Neighbourhood Development Plan, primarily for employment investment (site CDSP18). The Paignton Neighbourhood Plan Policy PNP21 seeks secure jobs growth in White Rock and the surrounding areas, and refers to planning applications having secured 36,800 sq m of employment floorspace at White Rock. As the site is not allocated for employment development the application has been advertised as a departure from the Torbay Local Plan 2012-30.

The development plan is the Adopted Torbay Local Plan 2012-30. Particularly relevant policies are:

**SS1: Growth Strategy for a prosperous Torbay.** It indicates "Major development proposals, outside the built up area and Future Growth Areas, will need to be the subject of environmental assessment, (which considers the proposed development itself and cumulative development).

However it is also important to note that the Plan set out a growth agenda within environmental limits, and this will be important in assessing this application against the Plan taken as a whole.

**SS2 Future Growth Areas.** The last paragraph indicates: "All major development outside of the established built up area should be within the identified Future Growth Areas, Major development outside of these areas will only be permitted where the site has been identified by the relevant Neighbourhood Plan or a subsequent development plan document, and has first been subject to Habitats regulations Assessment that has concluded that there will be no likely significant effect on the South Hams SAC.

**SS5 Employment Space** identifies that sufficient high quality space will be provided to meeting existing and arising requirements of employers. Specific sites will be identified through Neighbourhood Plans and Masterplans drawing from the range of sites indicated in the Local Plan which includes SDP3.5 White Rock. The Paignton Neighbourhood Plan has been submitted to the LPA for consultation but does not allocate any sites for any form of development.

**SSDP3 Paignton North and Western Area** states that mixed use developments will be brought forward to provide employment, housing recreation and retail facilities, which includes the White Rock area (SDP3.5). It is intended that strategic

mixed use employment/housing development that will provide 8.5ha of employment land, around 1,200 jobs and around 350 dwellings largely over the first half of the Plan period.

**C1 Countryside and the Rural economy:** This indicates that development that results in the loss of open countryside will be resisted (para 1). Major development should focus on Future Growth Areas. Outside settlement boundaries (which this site is) a limited range of developments may be permitted provided that the landscape and rural character, wildlife habitats and historic features are not adversely affected and necessary mitigation measures are carried out to minimise any harm to the environment. Major industrial development proposals would not reasonably meet any of the categories 1-8 listed in the Plan.

Policy C1 goes on to refer to the need to have regard to Landscape Character Assessment and HRA/SAC matters. The Landscape Character Assessment (2010) notes the site as being of Type 1, Rolling Farmland as specified on Figure 1. The Assessment states that much of this land is open to views from the AONB to the west and the south and that there is limited potential to accommodate change without substantial wider impact. It also noted that mitigation of any proposed development changes should be achieved through a combination of careful siting with strong screen planting and the reinforcement of existing field hedgerow boundaries.

In conclusion in respect of the Development Plan, the proposal would conflict with the Adopted Local Plan 2012-30: specifically Policies SS2 and C1. It is not entirely consistent with Policy SS5 as the site has not been identified in the Paignton Neighbourhood Plan. It does accord with Policy SDP3, and is a site which the Neighbourhood Plan was expected to consider, but has been omitted because of Paignton Neighbourhood Forum's refusal to make site allocations.

### **Other material considerations**

#### **Previous approval for a mixed use development including employment**

There was a previous outline consent for mixed use development under application reference P/2011/0197 which has now expired. This area has been partly developed out, so the area is not open countryside in actual fact.

Whilst this proposal is a new full application the previous planning history on this site remains a material consideration which, in the absence of significant changes in circumstances, should be accorded significant weight. Outline consent has been granted for the mixed use development of the site. This application was approved following extensive consultation. It was subject to Habitat Regulation Assessment and was accompanied by a detailed Environmental Statement. The principle of development in this location was established by this application and the general position of the proposal is in accordance with the indicative layout agreed at outline stage being within the Western Bowl which was highlighted for industrial

development. The previous development plan, the Torbay Local Plan 1995- 2011 identified the site location as countryside zone (Policy L4) and Area of Great Landscape Value (Policy L2). This represented a similar or more restrictive planning regime than under the new Local Plan. Although LPAs are not bound by earlier decisions, the courts have held that decision-makers are required to have regard to the importance of consistency in decision-making.

### **The need for Employment Land**

There is a very pressing need to improve the employment offer in Torbay. Torbay's jobs density (ratio of jobs per working age population) is below the regional and national average, with 74 jobs per 100 working age people, whereas in Great Britain there are 83 jobs per 100 working age people and in the South West there are 86. 15.3% of households in Torbay are workless, which is around the Great Britain average (15.1%) but above the South West Average of 13.2%. Average hourly pay for full time workers in Torbay is £12.10 compared to £14 in GB and £13.29 in the South West. It is too early to assess the impact of the South Devon Highway, but NOMIS figures indicate that at 2015 there were 57,000 jobs in Torbay, still below the pre-crash peak of 60,000 jobs (2001 and 2004). The benefits of the South Devon Highway will not be realised by Torbay if sufficient employment land is not made available. The Indices of Deprivation 2015 show much of the urban area of Torbay being within deprived areas, particularly according to income and employment deprivation domains. The site is within the top 20% income deprivation and 30% employment deprivation decile: but much of the inner urban areas are within the 10% most deprived areas of England. The Social Mobility Commission rates Torbay 313 worst out of 326 English local authorities for adult social mobility, due to the weak labour market in the area. Both the Torbay Corporate Plan 2015-19 and Torbay Economic Strategy 2013-18 seek to develop hi tech industries and manufacturing as a way of improving prosperity.

The NPPF places great weight on building a strong, competitive economy and states that planning should place significant weight on the need to support economic growth (paragraphs 19-20)

On this basis, whilst the proposal conflicts with Policy C1 of the Adopted Local Plan, there are other material considerations that are considered to tip the balance in favour of approval. Whilst the previous permission does not bind the Authority, it was made under a similar policy framework and there is a need to ensure consistency in decision making. The site has been partly built out, and is within the SDP3.5 Strategic Delivery Area. In addition, both local economic circumstances and national policy indicate that significant weight should be given to proposals that secure employment.

### **Mineral Safeguarding Area**

The site is within the Mineral Safeguarding Area. This issue was assessed in detail at the outline application stage and as above the previous permissions are material considerations. The Local Plan continues to support the provision of employment

uses in this location. Policy M3 of the Torbay Local Plan states that the Council will seek to safeguard important mineral resources and sites. Information submitted at outline stage which established the development of the site within the Mineral Safeguarding Area concluded that the development of this site would have a minor negative impact upon the opportunity to deliver open limestone extraction within the immediate vicinity of the site. On balance and having considered the environmental impacts of extraction in this location together with previous permissions on this site, the development of this site is not considered to result in a significantly detrimental impact upon mineral extraction in this location.

#### **Character and Appearance of the Proposed Development:**

Paragraph 17 of the National Planning Policy Framework states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design. In addition paragraph 64 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Consistent with these paragraphs, policy DE1 states that proposals will be assessed against their ability to meet design considerations such as whether they adopt high quality architectural detail with a distinctive and sensitive palette of materials, whether they protect local and longer distance views and the impact on the skyline especially from public vantage points, having regard to the location and prominence of the site and whether they positively enhance the built environment.

The design and access statement submitted with outline application reference P/2011/0197 indicated that the levels, positions and building heights are critical in terms of restricting visual impact from the west and south. The maximum height of the buildings are lower than +81m AOD, in line with the mitigation measures described in the outline application. Unit C is located on the highest part of the site and therefore has been cut into the ground so that it sits as low as possible within the landscape. The design of the building is typical of an industrial building and reflects the design of others within the Torbay Industrial Estate. The layout of the site remains inward facing with the service yards to the north of unit E and west of unit C facing away from existing and proposed woodland belts.

The proposed layout may have potential issues in relation to the wider landscape and biodiversity impact due to the use of lighting. It is however anticipated that any issues could be overcome by a sensitive lighting scheme and additional landscaping which would limit and reduce any landscape and biodiversity impact. Comments are awaited from the AONB unit and the Council's HRA advisors and revisions to the scheme may be required should concerns be raised. The Members will be updated at the Committee meeting.

#### **Landscaping and Impact on the AONB and Surrounding Countryside:**

Paragraph 115 of the National Planning Policy Framework states that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty which have the highest status of protection. Policy SS8 states that

where development proposals fall outside of the AONB they will be supported where they conserve or enhance the distinctive landscape character and biodiversity of Torbay or where the impact of development is commensurate with the landscape importance. This policy also refers to the special landscape qualities of the area and reference to the Landscape Character Assessment. Whilst the site lies outside of the South Devon Area of Outstanding Natural Beauty (AONB) it is visible from the AONB and could have an impact on the AONB. The application site is noted in the Torbay Landscape Character Area Assessment as being of Type 1, Rolling Farmland as specified on Figure 1. The Assessment states that much of this land is open to views from the AONB to the west and the south and that there is limited potential to accommodate change without substantial wider impact. It also noted that mitigation of any proposed development changes should be achieved through a combination of careful siting with strong screen planting and the reinforcement of existing field hedgerow boundaries. This type of mitigation was proposed at outline stage with a Landscape and Ecological Management Plan being secured to provide offsite landscaped buffers.

The LVIA submitted at outline stage notes the following mitigation measures in relation to the western bowl:

- a) Proposing a finer grained development of smaller units than in the permitted business park development, to give lower ridge heights, and better opportunities for integration of landscape works within and around the development
- b) The maximum height above OD has been kept to less than +81m
- c) The use of non-reflective and recessive coloured materials for the facades and roofs of buildings on the western bowl to integrate the development into its landscape setting and, where the proposed units mask existing light coloured buildings, result in a reduction in visual intrusion in views from the south and west
- d) In the western bowl development, the units have been reduced in size and are arranged around inward-facing service and parking areas. This is in order to reduce light spillage beyond the site boundaries, and so that the simple rear elevations and recessive colouring of the buildings can form part of the mitigation measures.
- e) Existing woodlands around the western end of the site would be protected and extended to increase screening effect
- f) Existing hedgerows around and within the site have been integrated into the development, to preserve their landscape, visual and wildlife benefits
- g) Around the western bowl, new woodland blocks would contribute to the existing enclosure provided by Shopdown Copse and Peter's Copse
- h) To the south of the site, significant woodland blocks and belts are proposed, to link and extend the screening and habitat value of the existing woods.

The majority of the measures listed above have been incorporated in to the scheme and the proposals would be generally consistent with the general design and

planning principles of the approved outline scheme. The applicant's submitted LVIA indicates that distant views of the application site from the north and south are possible. From the north these are described as glimpse views of the proposed roofs only and from the south these are described as viewpoints from 3-4 kilometres away from the site. Views from this distance will be seen in the context of the existing built form and will be partially screened by the existing woody vegetation. The submitted LVIA also states that the proposal will not result in any loss of existing boundary trees or shrubs and includes some new native and ornamental tree planting. The LVIA refers to the off-site tree planting to the south of the site which was secured by the outline application for Whiterock. It suggests that the proposals will be visually contained and visible only partially from a limited number of locations and concludes that the proposal will not have any significance to the visual amenity of the landscape in areas immediately adjoining the site. It also concludes that there will be a neutral to low adverse effect on users of surrounding road networks and public rights of way and that there will be a neutral visual effect on the setting of the South Devon AONB.

The locations of these two buildings are considered to be less sensitive in landscape terms than the building previously approved to the north west of the site earlier this year. It is understood from the applicant that the area off site planting which was secured by the off-site LEMP for the outline application, reference P/2011/0197 has been implemented and will contribute to restricting views towards the site from the wider countryside. In line with the above, the proposal generally follows the principles established at outline stage and as such it is anticipated that the proposed scheme can be implemented successfully without serious detriment to the wider landscape. The proposal includes landscaping proposals and biodiversity mitigation measures in order to conserve and enhance the landscape character and biodiversity in this location in line with policy SS8. Policy C4 of the Torbay Local Plan refers to the need to mitigate for the loss of any landscape features and the retention and protection of existing features. In this case additional landscape mitigation is put forward and is supported in principle by policy C4. Comments are awaited from consultees as to whether such measures are sufficient or whether further measures are required.

However comments have not yet been received from the AONB unit. These are expected to be received prior to Committee and Members will be updated on these at the meeting. This recommendation is subject to the outcome of these comments.

Should the application be approved conditions relating to the submission of a Construction Ecological Management Plan, Landscape and Ecological Management Plan, materials and external lighting would need to be imposed.

### **Biodiversity:**

The Conservation of Habitats and Species Regulations 2010 imposes on local authorities the duty imposed by the EU Habitats Directive to ensure that plans or projects will not adversely affect European Sites such as SACs. In order to fulfil this duty, the authority must carry out a Habitats Regulation Assessment ('HRA')

process.

Paragraph 118 of the National Planning Policy Framework (NPPF) states that in terms of biodiversity, if significant harm resulting from a development within a SAC cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused. Similar objectives are detailed within policy SS8, Natural Environment and NC1, Nature Conservation in relation to the South Hams SAC. In addition policy NC1 of the Torbay Local Plan seeks to conserve and enhance Torbay's biodiversity and geodiversity, through the protection and improvement of the terrestrial and marine environments and fauna and flora, commensurate to their importance. The policy continues to state that development should not result in the loss or deterioration of irreplaceable habitats or wildlife corridors. Where development in sensitive locations cannot be located elsewhere, the biodiversity and geodiversity of areas will be conserved and enhanced through planning conditions or obligations. It also notes that all developments should positively incorporate and promote biodiversity features.

The submitted ecological assessment states that no bat roosts would be affected by the development but that a mature ash tree with a high potential for bats is located outside of the boundary. The assessment states that no greater horseshoe bats were recorded within the site and very low numbers were recorded within the wider survey area. A number of mitigation measures have been put forward within the assessment relating to external lighting design, the provision of meadow grassland, native hedgerow and tree planting and enhanced roosting opportunities for bats. Comments are awaited from the Council's specialist GHB ecological consultant and Members will be updated at the Committee meeting. Whilst we still require these comments prior to confirming the acceptability of the development, comments from Natural England, RSPB and the Council's Ecological Consultants are noted. Natural England have raised no objection subject to appropriate mitigation being secured which include the implementation of mitigation and enhancement measures put forward in the Ecological Assessment and mitigation measures linked to off-site mitigation associated with the adjacent development. The Council's Ecological Consultants have made similar comments and have suggested that the scheme is acceptable subject to securing the mitigation measures proposed and a number of conditions.

RSPB however have raised concerns regarding the relationship between the development proposed and the habitat mitigation which was sought at outline stage and the impact on curlew buntings. The applicant's Ecologist has provided additional information in response to these comments and has confirmed that the design of the proposed development has taken into account the wider Whiterock development and its associated LEMP. The applicant's Ecological Consultants have provided a plan which overlays the development proposals on to the LEMP plans submitted at outline stage. This shows only a small portion of Unit C is located within the area shown as 'grassland to be managed for the benefit of wildlife'. In a different plan submitted for the offsite LEMP at outline stage, none of the areas identified as 'Western Bowl

Woodland Glade' would be affected. The applicant's Ecologist has argued that, as a worst case scenario, the grassland area affected by the development is small and a vast amount grassland will remain unaffected. In addition, the applicant's Ecologist argues that the proposed development includes areas of meadow grassland around the boundaries of Unit C and Unit E that will be managed for the benefit of wildlife, and this new meadow grassland will be more species diverse than currently exists, creating an enhancement. In conclusion they suggest that grassland will still be managed for the benefit of wildlife and any minor change relating to the total area of this grassland is not considered significant and the principles of the offsite LEMP approved at outline stage are still being met.

RSPB have also raised concerns regarding the impact upon circl buntings, noting that the development will result in an overall net loss of 0.31ha of semi-improved grassland and therefore a loss of circl bunting habitat. They advise that should the application be approved, compensatory provision for the loss of circl bunting habitat should be made and as the site potentially provided some foraging habitat for two territories, it is recommended that compensatory provision for one territory is provided. The applicant's Ecologist have disagreed with point and stated that the existing habitats do not comprise of suitable habitat requirements as detailed in RSPB guidance. They suggest that the proposals provide areas of grassland that will be managed for the benefit of circl buntings and therefore there will be an increase in circl bunting foraging habitat post-development and in light of this that no further mitigation in this regard is considered necessary. These points have been referred to the Council's Ecologists for further advice and Members will be updated at the Committee meeting.

The submitted ecological assessment indicates that no evidence of badgers were identified on the site but that there are records for badger in the local area. The submitted assessment states that precautions will be taken during the construction period to ensure no harm to badgers and that such precautions will be detailed within a Construction Ecological Mitigation Plan to be secured by condition. The assessment also states that there is suitable habitat on the site for reptiles and during the 2017 surveys low numbers of slow worms were recorded within the site and in the wider survey area. Mitigation is recommended around ensuring that no reptiles are harmed during works that could impact habitats around them, other measures are proposed which relate to habitat manipulation during active reptile season and checking of refuge areas. These measures will also be sought as part of the Construction Ecological Management Plan. Measures are also put forward to ensure that regard is had for other protected or notable species that may be present and in particular hedgehogs.

If the proposal is considered acceptable on biodiversity grounds, the submission of a Construction and Ecological Management Plan (CEMP) and Landscape and Ecological Management Plan (LEMP) will be required by condition, along with conditions relating to lighting, nesting birds and nesting features will be required by condition.



**Residential Amenity:**

The proposals are to be sited to the west of the approved residential development (P/2011/0197 and P/2013/1229). The position of the proposals in relation to the residential development generally reflects that shown within the indicative layout shown at outline stage. Paragraph 17 of the National Planning Policy Framework states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy DE3 of the Torbay Local Plan 2012-2030 states that developments should be designed to not unduly impact upon the amenity of neighbouring and surrounding uses, with one of the criteria for assessment being the impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution. The proposed buildings are positioned some distance from proposed residential dwellings and is separated by a proposed ridge-top park and is not considered to result in any serious detriment to residential amenity by reason of loss of light, loss of privacy or by reason of being unduly dominant or overbearing. Due to the distance separating the proposal from neighbouring dwellings, the lighting proposed and any noise as a result of the operation of the building is not considered to result in a nuisance to current or future residential occupiers of Whiterock.

**Access and Parking:**

The submitted Planning Statement states that traffic generation for the additional floor space has been taken into account in the overall development of the Western Bowl element of the wider White Rock scheme. Comments are awaited from the Council's Senior Strategy and Project Officer in relation to transport matters and the Members will be updated at the Committee meeting on any points raised.

In terms of car parking, to the west of unit C is an area of hardstanding to provide 33 parking spaces and to the north of unit E is an area of hardstanding to provide 24 parking spaces of which 8 are allocated for disabled persons. The application form refers to the provision of 73 parking spaces, but the plans suggest that the spaces above the 57 are 'possible future additional car spaces' suggesting their provision is not certain. The design and access statement submitted also refers to an additional 2 spaces being provided to serve unit C but this is not evident on the submitted plans. Policy TA3 and associated appendix F of the Torbay Local Plan sets a parking standard of 1 space per 35 sqm, which would require a greater number of spaces (65 spaces as opposed to the 57 proposed).

In terms of cycle provision, the proposed plans indicate 8 cycle parking spaces are proposed to serve unit E and 4 spaces are proposed to serve unit C. The design of the facility serving unit E is not clear, but in line with Appendix F, this should be secure and covered. This provision would be below the recommended standards as set out in appendix F of the Local Plan which suggests 1 space per 2 employees. The application form indicates that this development will secure employ 40 full time employees and therefor policy guidelines suggest that 20 cycle spaces are required.

As above comments are awaited from the Council's Senior Strategy and Project Officer in relation to parking and cycle storage matters and the Members will be updated at the Committee meeting on any points raised.

**Drainage:**

The application site is within the Critical Drainage Area as designated by the Environment Agency. Policy ER2 requires all development to seek to minimise the generation of increased run-off, having regard to the drainage hierarchy, whereby surface water will firstly discharge to an adequate infiltration system, a main river or watercourse, a surface water sewer or highway drain or as a last resort a combined foul sewer where discharge is controlled to be at a greenfield discharge rate. The submitted drainage strategy is in accordance with the previously approved (under outline reference P/2011/0197) and implemented surface water strategy. The Council's Drainage Engineer has confirmed that providing the surface water drainage is carried out in accordance with the latest surface water drainage drawings and hydraulic design, the scheme is acceptable on drainage grounds.

**Other Issues:**

Policy SC1 of the Torbay Local Plan states that all developments creating over 1,000sqm of floorspace will be required to undertake a screening for a Health Impact Assessment and a full Health Impact Assessment if necessary, proportionate to the development proposed and to demonstrate how they maximise positive impacts on health and healthy living within the development and adjoining areas. A screening has been submitted and a further assessment is not considered necessary.

**Human Rights and Equalities Issues:**

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

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

**Local Finance Considerations:**

The proposal would result in the provision of employment space which would benefit the local economy as a result of providing 48 jobs. The construction phase will also

benefit the local economy.

### **S106/CIL:**

#### **S106:**

The Planning Contribution and Affordable Housing SPD states that developments in Torbay will be assessed to identify where they generate net additional trips and therefore contribute towards sustainable transport. Table 4.3 of the SPD indicates Sustainable Transport contributions will be sought at a rate of £1,300 per 100sqm for B class employment but that mitigation will usually be provided for job creation/regeneration. In this case (without any mitigation) this would amount to £29,327 towards sustainable transport. Paragraph 3.17.5 of the SPD states that the cost of providing jobs is £8,000 per full time equivalent (FTE), as the development would create 40 full time jobs the mitigation would far exceed the sustainable transport contribution. Therefore nil contributions required from this development for sustainable transport. Biodiversity offsetting may be applicable to this development which is also referred to within the SPD. Further advice on this has been sought from the Council's Ecological Consultants. For small developments that involve a loss of local habitat, a contribution of £25 per sqm will be sought. For larger developments, contributions will be determined on a case by case basis. As a guide and based on the contributions required for small developments, the contribution amount would be £77,500 based on 3100sqm of species rich semi improved neutral grassland. As this contribution would mitigate a site specific impact, it is therefore a site deliverability matter which must be secured prior to determination and paid prior to the commencement of the development.

#### **CIL:**

There is no CIL liability in Torbay for this type of development.

#### **EIA:**

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

#### **Proactive Working:**

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

#### **Conclusions:**

The provision of employment uses within the site is contrary to the Torbay Local Plan 2012-30. However the earlier outline application for the wider Whiterock site is a material consideration as is the creation of jobs. Whilst the outline permission has now expired, the continued provision of employment uses at White Rock is supported by current Local Plan policies and is important for economic recovery and

growth in Torbay. Consequently the principle of industrial uses on this site remains acceptable and should be supported.

However there are a number of outstanding matters and consultee responses that are required prior to confirming the acceptability of the scheme in terms of biodiversity, landscape impact and transport and parking matters. Officers believe these issues can be resolved, in compliance with the provisions of the Torbay Local Plan 2012-2030, specifically Policies SS4, SS5, SS8, SS11, DE1, DE3, TA1, TA2, TA3, NC1, C4, ER1, ER2 and appendix F of the Torbay Local Plan 2012-2030. Should such issues be resolved, conditions will be required.

### **Relevant Policies**

SS1 - Growth Strategy for a prosperous Torbay

SS2 - Future Growth Areas

SDP3 - Paignton North and Western area

C1 - Countryside and the rural economy

M3LFS - Preserving local building stone

SS4 - The economy and employment

SS5 - Employment space

SS7 - Infrastructure, phasing and employment

SS8 - Natural Environment

SS11 - Sustainable Communities Strategy

DE1 - Design

DE3 - Development Amenity

TA1 - Transport and accessibility

TA2 - Development access

TA3 - Parking requirements

NC1LFS - Biodiversity and Geodiversity

C4 - Trees, hedgerows and natural landscape

ER1 - Flood Risk

ER2 - Water Management