

Application Number

P/2015/0124

Site AddressLand At Brixham Road
Yannons Farm (Areas C And D)
Paignton**Case Officer**

Matt Diamond

Ward

Blatchcombe

Description

Hybrid application. Full planning application for 70 dwellings, related infrastructure, landscaping, play areas and a hill top park. Outline planning permission for up to 70 dwellings with all matters reserved except for access.

Executive Summary/Key Outcomes

The application is a hybrid application, part full/part outline, and relates to the remaining two phases to be approved at the Yannons Farm development site - Phase C and Phase D - to the west of Brixham Road, Paignton. Phase C and Phase D will deliver the remaining two thirds of the housing, originally approved under outline planning permission ref. P/2010/0289/MOA in 2011. The application has been submitted because the deadline for submitting reserved matters applications in connection with the previous outline planning permission expired in October 2014.

Phase C has been submitted in full and Phase D has been submitted in outline, with all matters reserved except access. Phase C will comprise 70 dwellings and Phase D will comprise up to 70 dwellings. This means that the total number of dwellings to be delivered on the Yannons Farm site will be up to 211 dwellings, as 57 dwellings have already been permitted and are under construction on Phase B, and 14 dwellings have been permitted on Phase A as part of the Local Centre.

Phase C will include a mix of dwelling types, including terraced, semi-detached and detached housing, as well as four flats over garages. This phase will also include a hilltop park on the higher ground to the south of the site, which will include a playground and kickabout area.

The RSPB has recommended that compensation be secured for loss of ciril bunting habitat on the site and a financial contribution should be paid accordingly. However, no mechanism has been identified at the current time to ensure the delivery of this compensation. The applicants are in the process of identifying land offsite that can be enhanced for the benefit of ciril buntings to act as suitable compensation. This will need to be agreed with the RSPB and secured in a s106 legal agreement. An update will be provided at committee.

Engineering officers currently object to the application on the basis of inadequate

information on the proposed surface water drainage strategy. Additional information has been submitted by the applicants and further comments are awaited from Engineering. These will either be reported as a late representation or verbally at committee.

The applicants have submitted revised drawings in order to address various design issues that were identified by officers. On balance, these are now acceptable and Highways officers have no objections.

The application was accompanied by a Viability Assessment, commissioned by the applicants, which concluded that neither the planning obligations secured in the s106 agreement that was entered into when planning permission was granted in 2011, i.e. 15% affordable housing and £150k education contribution, nor a scenario of zero affordable housing and contributions, are viable. However, despite this, the applicants have offered to provide the same level of affordable housing that was agreed previously (15%) and the £150k education contribution that was also previously agreed. Furthermore, the applicants have submitted legal advice, which claims that no supplemental s106 agreement is considered necessary and the development subject to this application can be bound by the terms of the previous agreement.

In accordance with the Council's adopted policy procedures, the Torbay Development Agency was commissioned by the Council to carry out an independent review of the submitted Viability Assessment and this was agreed mutually with the applicants. The initial advice from the TDA varied considerably from the results of the applicants' commissioned study and indicated that approximately 26-28% affordable housing is viable. Following discussions, further advice has been received from the TDA, which recommends that the Council does not accept the applicant's offer of 15% affordable housing until further evidence has been provided by the applicants on the actual build costs of earlier phases of the wider scheme. If this evidence is not forthcoming, the TDA recommends that a cost estimate is obtained from an independent quantity surveyor. The applicants have not released this information and the TDA have been commissioned to carry out the independent cost estimate accordingly. The results of this work will not be available until the end of August.

The applicants are unwilling to agree to a further extension of time in order to postpone a decision on the application being taken to allow further discussions on the viability issues to take place. Therefore, the application is being brought to committee for determination in order to avoid it going over time.

At the current time, comments are awaited from the Head of Asset Management and Housing on the proposed level of affordable housing pending the outcome of the viability discussions. Interim comments will be sought and these will either be reported as a late representation or verbally at committee.

Whilst various matters are at present unresolved, officers consider that the principle of the development is acceptable and do not wish to stifle the delivery of new housing. Therefore, officers' recommendation is to approve the application, subject to Engineering officers removing their objection and a s106 agreement securing the following:

- o A minimum of 15% affordable housing in relation to the wider Yannons Farm development, pending further advice from the TDA.
- o Waste Management Contribution
- o Cirl bunting compensation
- o Deferred contributions mechanism as the level of affordable housing falls below the Council's policy of 30% and the development will be delivered in phases
- o Access to the adjoining site (ref. P/2014/0983) and adequate provisions to ensure that this is not obstructed in such a way as would stifle development of the remainder of the Future Growth Area
- o Administration/monitoring charge (amount tbc)

These heads of terms have not been agreed with the applicants at the current time and a verbal update will be provided at committee.

Recommendation

Conditional approval; subject to the applicant submitting further details in relation to surface water drainage which are acceptable to the Assistant Director of Corporate and Business Services, within 3 months of the date of this committee or the application be reconsidered in full by the committee; subject to the signing of a s106 legal agreement in terms acceptable to the Assistant Director of Corporate and Business Services, within 3 months of the date of this committee or the application be reconsidered in full by the committee, unless otherwise agreed by the Assistant Director of Corporate and Business Services in consultation with the Chairman of the Development Management Committee; subject to the applicant agreeing in writing to an extended time period for decision to allow the above matters to be resolved, or the application be refused; and final drafting and determination of appropriate planning conditions to be delegated to the Assistant Director of Corporate and Business Services.

Statutory Determination Period

The application is for a major development and was validated on 05.03.2015. The 13 week determination date was 05.06.2015, but an extension of time has been agreed to 14.08.2015.

Site Details

The site comprises the final two phases, C and D, of the Yannons Farm mixed use development site to the west of Brixham Road, Paignton. Until 4 October 2014 it benefitted from outline planning permission for residential development under the wider Yannons Farm outline planning permission granted in 2011, but

this has now expired. It covers a site area of 5.13ha and consists of sloping, partially vegetated, open ground. It is bounded by the recently completed Torbay Pharmaceutical Manufacturing Unit (PMU) and agricultural fields to the north, residential development under construction in Yannons Farm Phase B to the east, a sports pitch and open land belonging to South Devon College to the south, and agricultural fields to the west. The land adjoining the site to the west and northwest is currently subject to a separate planning application for a major mixed use development comprising housing and business uses (ref. P/2014/0983). Access to this land could potentially be provided, in part, via the application site.

The majority of the site is allocated for employment use (saved Policy E1) in the Adopted Torbay Local Plan 1995-2011 ('the Local Plan'), with a large part also allocated for strategic landscaping for employment areas (saved Policies E1 and L10). The southern part of the site and part of the site to the west is allocated as countryside zone (saved Policy L4) and Area of Great Landscape Value (AGLV) (saved Policy L2). All the site area is located within the Greater Horseshoe Bat sustenance zone associated with the South Hams SAC at Berry Head.

The whole site is allocated as a Future Growth Area for housing and related development (emerging Policies SS1, SS2, SS5 and SS11) in the Torbay Local Plan - A landscape for success (Proposed Submission Plan) ('the emerging Local Plan').

Detailed Proposals

The application has been submitted as a hybrid application: Phase C to the south has been submitted in full and Phase D to the north has been submitted in outline with all matters reserved except access. The application is for up to 140 dwellings, 70 in Phase C and up to 70 in Phase D. Overall there will be a total of up to 211 dwellings on the Yannons Farm site, together with the PMU, Aldi and other non-residential uses in the new Local Centre. If the adjoining housing sites to the east are included, referred to as Parkbay/Triangle Site, there will be a total of 316 dwellings. These adjoining sites are being delivered by a different house builder, but share the same access onto Brixham Road.

Phase C will comprise 11 no. 2-bed dwellings, 29 no. 3-bed dwellings and 30 no. 4-bed dwellings, 16%, 41% and 43% respectively. This will include a mix of dwelling types - terraced, semi-detached and detached houses, as well as four flats situated over garages. The heights of the dwellings will vary from 2 storeys, primarily to the east and west, to two and half and three storeys in the middle of the site and further up the slope.

Phase D will also comprise a mix of house types. The indicative plans show a greater proportion of flats than Phase C, with shared parking courts, as well as 3 and 4 bedroom detached and semi-detached housing. However, these plans are indicative at this stage and the detailed design of this area will be established

through the submission of reserved matters applications(s) and is not a consideration in the current application.

All of the dwellings in Phase C will have two parking spaces and in some cases this will include provision within integral garages. Parking for some of the dwellings will be provided off-plot in allocated spaces a short distance away from the dwellings themselves and will need to be clearly marked to avoid potential conflicts from arising. 17 of the allocated spaces are located outside the application site boundary within Phase B.

The detailed proposals for Phase C include a new 'hilltop park' on the higher ground to the south of the site. This will include a children's play area.

The applicants propose that 15% of the total number of dwellings on the Yannons Farm development site are affordable dwellings; this equates to 32 affordable dwellings (15% of 211).

This is the same level of affordable housing that was agreed within the s106 agreement entered into in connection with the 2011 outline planning permission, signed on 30 September 2011. For information, 30% of the total number of dwellings on the Yannons Farm development site as a whole equates to 63 affordable dwellings, and 30% of the proposed dwellings in Phases C and D, subject to the current planning application, equates to 42 affordable dwellings.

Although the 2011 permission did not deliver 30% affordable housing, the s106 did not require the financial viability of the scheme to be reviewed at any point. Instead, the applicant agreed to ensure that the development was delivered promptly, to an agreed timetable. This timetable has not been adhered to and during discussions the applicants have so far indicated that they do not agree that the financial viability of the current application should be reviewed at a future date to see whether, once the scheme is built, an additional financial contribution towards affordable housing is viable.

The applicants have submitted a letter from a firm of solicitors stating that, in their view, there have been no changed material considerations since this time that would require the obligations in the 2011 agreement to be varied. However, officers consider that the agreement reached in 2011 was made on the basis of economic conditions and planning policies subsisting at that time and that the current application must be considered against the economic conditions and planning policies that are relevant at the current time, as it is a new full/outline application. Therefore, a new s106 agreement is appropriate.

The majority of the affordable housing for the scheme as a whole will be delivered within Phases C and D. Phase B, under construction to the east, will not contain any affordable housing, whereas a proportion of the 14 dwellings in the Local Centre (Phase A) will be affordable.

Summary Of Consultation Responses

SPMT - Transport/Highways: No comments received from Strategy and Project Management Team in regard to strategic transport issues, however Highways officers originally commented that the access has been agreed in principle and any finer details can be agreed at the section 38 agreement stage. They had one concern regarding the temporary turning heads adjoining the site in Phase B becoming permanent, however further discussions with Highways officers confirmed that these are acceptable and similar turning heads can be designed into Phases C and D.

Highways officers have confirmed that the revised plans are acceptable and there are no technical highways issues.

Environment Agency: Objected initially due to a lack of detail in the submission documents, especially as the site, like the majority of Torbay, is located within a critical drainage area. However, withdrew their objection following the submission of a revised Flood Risk Assessment.

Lead Local Flood Authority (Engineering - Drainage): The preliminary drainage strategy in the FRA is acceptable, however further detailed design works are required before it can be approved. No detailed design information has been submitted for the soakaways, deep bore soakaways or surface water drainage system. Trial holes undertaken are not in the location of the proposed soakaways. These details are required before planning permission can be granted. Maintained objection following submission of revised FRA. Further comments awaited following the submission of additional information by the applicants.

Natural England: Object/require further information to rule out significant effects on the South Hams SAC (greater horseshoe bats) under the Habitats Regulations. Refer to published Standing Advice with regard to impacts on other protected species.

Biodiversity enhancements should be sought in the application, such as green/brown roofs, landscaping, bat and bird nesting/roosting sites and sustainable urban drainage systems. The application does not include the swales and grass margins indicated in the outline planning permission. The proposed development is located within an area that can also benefit from enhanced green infrastructure provision and the Council's Green Infrastructure Coordinator should be consulted.

NB. The Habitats Regulations Assessment has been completed by the Council's ecology consultant and has been sent to Natural England. Further comments are awaited.

RSPB: Support NE comments concerning the Habitats Regulations.

The site has been cleared of much of its former habitat and will not provide the same quality or quantity of cirl bunting habitat as was present previously. 2008 surveys recorded cirl buntings using the site and the 2003 RSPB national survey recorded two breeding territories within 250m of the site. Cirl bunting mitigation/compensation is therefore required, which could be an appropriate financial contribution (confirmed as £74,193) to secure and manage offsite cirl bunting habitat as part of proposals for other developments in the area.

Biodiversity enhancements are recommended to include nest sites for birds, such as swifts, house sparrows and starlings at a ratio of one per dwelling. Wildlife friendly plants should be used in landscaping.

Concerned that the amount of green infrastructure has been reduced compared to the outline planning permission.

The potential for increased recreational use of adjoining ecological mitigation land, subject to application ref. P/2014/0983, is recommended to be taken into account when determining both applications.

Police Architectural Liaison Officer: In regard to Phase C, raised concerns with the addition of a pedestrian link to the rear of Plots 26 and 27 into the parking area of Plots 28-30, due to a lack of overlooking. The parking area should also be gated. The development should be constructed to meet full Secured by Design compliance. Rear garden access should be provided within the curtilage of dwellings, but where this is not possible rear access paths should be gated. This also applies to the paths to the rear of Plots 1-13. The car park adjacent to Plot 49 is not overlooked, which could be improved with an upper floor side window in the dwelling. Provided crime prevention guidance with regard to Phase D also.

Arboricultural Officer: Recommends refusal until the loss of the green corridor linking the hilltop park and north end of the site, included in the outline planning permission, has been reviewed for re-inclusion. No comment is provided on Phase D at this stage. Future management of soft landscaping areas should be detailed in a Landscape and Ecological Management Plan (LEMP). Detailed tree advice provided.

Natural Environment Services/Green Infrastructure Coordinator: The level of green infrastructure has reduced from the outline planning permission. This should be reviewed in terms of connectivity for people and wildlife. Welcome pedestrian link to west from hilltop park. A 2m high close boarded fence must be shown on the plans for the dwellings backing onto the existing dark corridor for bats. A LEMP and Habitats Regulations Assessment are required.

Head of Asset Management and Housing: Awaiting comments pending

completion of independent viability review.

Senior Heritage and Design Officer: Verbal discussions pointed out the lack of 'sense of place' in the central cul-de-sac accessed from Wilkins Drive and need for a pedestrian link behind Plots 26 and 27 in order to enhance pedestrian permeability to the hilltop park. The design of unit H18 is also unsatisfactory. No further comments provided on revised plans.

Urban Design Officer (Landscape): Verbal discussions confirmed that the street design cues should be taken from Phase B, which went to the Torbay Design Review Panel, and not be Highways led. Consequently, the pavement in the central cul-de-sac should be removed in favour of a shared mews street design, and the turning heads/parking areas should follow the same informal design as those in Phase B. This is important to achieve design consistency in the scheme as a whole. No further comments provided on revised plans.

Summary Of Representations

No public representations were received.

Relevant Planning History

Below is a full planning history for the Yannons Farm development site, excluding minor application types and discharge of condition applications:

P/2013/1282/MRM: Erection of retail building (Use Class A1), with associated access, parking, service yard and plant; health centre (Use Class D1), with 2 no. complimentary healthcare units (Use Class D1/A1/A2) and associated access and parking; mixed use building comprising 6 no. 2-bed flats and 2 no. commercial units (Use Class B1/A1/A2/A3/D1), with associated access and parking; 4 no. 2-bed dwellings and 4 no. 3-bed dwellings, with associated access and parking; associated roads, parking, play area, amenity space, landscaping and substation to form a Local Centre (reserved matters relating to P/2010/0289/MOA):. Approved 11.04.2014

P/2013/1021/PA: Erection of external chiller units with acoustic screening and associated cooling compound: Approved 21.11.2013

P/2013/0873/PA: Erection of a gas store and substation and recycling enclosure: Approved 21.11.2013

P/2013/0856/RM: Approval of Reserved Matters (scale, appearance and layout) for dwelling Plot 57 (Phase B): Approved 11.12.2013

P/2012/1351/MRM: Approval of reserved matters (scale, appearance, layout, access and landscaping) for 56 dwellings (Phase B): Approved 21.03.2013

P/2012/1104/RM: Landscaping reserved matters for a 6257 sqm Pharmaceutical Manufacturing Unit (Use Class B1): Approved 28.01.2013

P/2012/0815/RM: Phase 2 Road Layout: Approved 09.11.2012

P/2012/0633/MRM: Approval of all reserved matters for a 6257sqm pharmaceutical manufacturing unit (use class B1) with associated external buildings: Approved 12.09.2012

P/2011/1143/PA: Junction improvements and formation of new access, pursuant to permitted scheme P/2007/1421/PA: Approved 05.03.2012

P/2010/0289/MOA: Mixed use development to form approx 220 dwellings, approx 5,600 SQM gross of employment (B1) floorspace, local centre and public open space with roads and car parking (In Outline) THIS IS A DEPARTURE FROM THE TORBAY LOCAL PLAN: Approved 04.10.2011

P/2007/1421/PA: Junction Improvements And Formation Of New Access To Facilitate Access To Land To The West (Resubmission Of P/2006/0678): Approved 14.11.2008

Key Issues/Material Considerations

The key issues are:

1. Principle of Development
2. Amenity Considerations
3. Design
4. Parking
5. Impact on Highways and Access Issues
6. Green Infrastructure and Ecology Issues
7. Drainage
8. Viability and Affordable Housing

1. Principle of Development

Whilst the majority of the land is allocated for employment use in the current adopted Local Plan, the principle of developing the site for residential use was established through the 2011 outline planning permission. This permission granted a mix of employment and residential uses, as well as a new local centre. The employment use has been delivered in the form of the 6,547 sq m PMU building (Use Class B1), an increase in the amount of employment floor space originally envisaged, and the local centre is under construction. This application will deliver the remaining two thirds of the housing permitted by the outline planning permission. The reason it has been submitted as a new full/outline application is because the deadline for submitting reserved matters applications for this part of the Yannon's Farm development under the previous outline permission expired in October 2014.

Part of the site to the south and west is allocated as countryside zone and Area of Great Landscape Value in the Local Plan, where development is normally restricted unless it is for agriculture, forestry or tourism purposes. Again, the principle of developing this land for residential use was established by the previous outline planning permission. Furthermore, the land to the south at the top of the slope will be developed as a park, maintaining its openness and landscape character.

In addition to the supportive planning history, the site is allocated in the emerging Local Plan as a Future Growth Area for housing and related development. Whilst the emerging Local Plan has not been adopted, it is at an advanced stage in its preparation and therefore has significant weight as a material consideration in assessing the principle of developing the site for housing.

Therefore, the principle of the proposed development is considered to be acceptable and accords with Policy SS2 of the emerging Local Plan.

2. Amenity Considerations

As originally submitted, the back-to-back separation distances between the row of dwellings to the south of the site and the row of dwellings in the middle of the site were approximately 21m. Whilst 20m is regarded as the norm for protecting privacy for two storey dwellings at the same level, the dwellings to the south are three storeys to the rear and also sited at a higher level, further up the slope. This relationship is not uncommon in Torbay, with its hilly topography, and it could be argued that privacy is less important for new build dwellings, as residents will be aware of the situation when they purchase their properties. However, as no mitigation was proposed, it was considered that the separation distances should be increased if possible, in order to improve the privacies of the middle row of dwellings (Plots 49-62).

Revised plans have been submitted showing the separation distances increased to circa 22-25 metres, through the removal of the pavement in the central cul-de-sac (see Design below). On balance this is considered to be acceptable taking into account Policy H9 of the adopted Local Plan and Policy DE3 of the emerging Local Plan.

3. Design

Despite a request to do so in accordance with national policy, the applicants chose not to take the draft proposals to the Torbay Design Review Panel. Therefore, officers encouraged the applicants to follow the same design principles as Phase B, which was considered by the DRP, in the design of Phase C.

As originally submitted, the layout of the proposed development and design of

the dwellings in Phase C was considered to be acceptable in general, subject to amendments including: providing a pedestrian link from the central cul-de-sac to the street to the west to facilitate easier access to the hilltop park; revising the street design of Phase C to match that of Phase B to ensure design consistency in the scheme as a whole (including removal of the pavement to create a shared surface); providing upper side windows on dwellings overlooking public areas in accordance with comments received from the Police Architectural Liaison Officer to improve safety and security; and other minor detailing.

The applicants have followed the advice of officers and submitted revised plans that address these issues. Therefore, on balance, the design of Phase C is considered to be acceptable and in accordance with Policies BES and BE1 of the adopted Local Plan and Policy DE1 of the emerging Local Plan. Furthermore, the design of the hilltop park is considered to be acceptable, subject to a Landscape and Ecological Management Plan, which can be secured by condition. Detailed landscaping and materials conditions are also considered to be necessary.

4. Parking

As previously stated, each dwelling in Phase C will have two parking spaces. This accords with the maximum parking standards set in Policy T25 of the adopted Local Plan, which requires two spaces per dwelling. However, the dimensions of the integral garages are smaller than the minimum required to be considered as parking spaces within the parking standards at Appendix G of the emerging Local Plan, i.e. 6m x 3.3m.

As the proposed parking accords with the current adopted parking standards, it is considered to be acceptable despite the small size of the garages.

5. Impact on Highways and Access Issues

Highways officers have raised no objections or concerns with the application. Whilst comments are awaited from strategic planning colleagues, it is expected that the wider road network has sufficient capacity to accommodate the extra traffic generated by the development.

Officers have requested access to be provided through the application site to the adjoining site, subject to current 'live' application ref. P/2014/0983. This will require an access to be created in the hedgerow at the northern end of the indicative access road to Phase D shown on drawing 11112L01.204. Officers have requested that this is used by residential traffic and for any ransom issues not to stifle development coming forward on the adjoining site, which is also located within the Future Growth Area. The applicants have informed officers that residential traffic will be subject to a ransom, although the value of this has not been calculated or included in the submitted Viability Assessment. However, the applicants have indicated that they will agree to employment traffic using their

site to access the adjoining site free of any ransom issues, in accordance with the 2011 s106 agreement.

It would be unacceptable for employment traffic to utilise Phase D to access the adjoining site, due to the impact this would have on the amenity of residential properties, from noise, vibrations and pollution of HGV movements. The design of the overall street hierarchy would also have to change in order to upgrade the design of the junction and access road into Phase D to make them suitable for employment traffic. The applicants have informed officers that employment traffic could use the road to the west of the PMU to do this; however, it is understood that there is third party land between the application site and the adjoining site via this route, potentially leading to further ransom issues.

Negotiations are continuing between officers and the applicants over these issues. Access to the adjoining site through Phase D for residential traffic is sought as part of the s106 negotiations. In addition, a detailed access plan will be required for this new access, which could be made a requirement of the s106.

6. Green Infrastructure and Ecology Issues

A number of consultees have pointed out that the green corridor linking the hilltop park and north end of the site, which was indicated and considered as part of the outline planning permission, has been removed in the current application. The Council's Green Infrastructure Coordinator has recommended that this is reviewed in terms of connectivity for people and wildlife.

Whilst the green corridor provided a green swathe through the site that was undoubtedly beneficial, it is not considered essential for either humans or wildlife. Previously, in the outline proposals, it was shown connecting the hilltop park with the local centre. However, as the local centre has now moved to adjacent to Brixham Road, its purpose in connecting these key spaces no longer applies. The Council's external ecological adviser has concluded that it is also not essential for wildlife.

A Habitats Regulations Assessment has been carried out by the Council's ecological consultant that concludes that the proposed development will not have a likely significant effect on the South Hams SAC and therefore an Appropriate Assessment is not required. A number of conditions are recommended to secure a lighting design strategy, a Landscape and Ecological Management Plan (LEMP) and a greater horseshoe bat monitoring strategy.

The RSPB has highlighted that the site has provided habitat for cirl buntings in the past and therefore mitigation/compensation is required, which can take the form of a financial contribution to secure and manage cirl bunting habitat elsewhere. In response, the applicants' ecologist wrote to officers stating that on the basis of surveys carried out prior to the outline application, which did not

identify cirr buntings on the site, and the fact the site has been largely cleared of vegetation and is subject to noise and vibrations from heavy plant and construction vehicles, they consider it very unlikely that cirr buntings are using the site. However, they subsequently submitted the results of a survey carried out in May 2015, which identified cirr buntings using the hedgerows around the site boundary and the adjoining fields to the north and west, and also flying over parts of the site.

In view of this, and the fact that a large part of the site was still vegetated when officers carried out their site visit, compensation for loss of cirr bunting habitat is considered necessary. The RSPB has stated that this should equate to £74,193 for at least one pair of cirr buntings. At present, neither the applicants nor the RSPB have put forward proposals for how this money will be spent in order to ensure delivery of the compensation. However, the applicants have informed officers that they are in the process of identifying land offsite that can be enhanced for the benefit of cirr buntings to act as suitable compensation. This will need to be agreed with the RSPB and secured in a s106 agreement. An update will be provided at committee.

It is the applicant's responsibility to ensure that the development will not result in any harm to a protected species or its habitat. The Council does not have a compensation programme to offset the impact of development on cirr buntings and therefore would not be in a position to accept a financial payment as there is no certainty of delivery of appropriate compensation. Unless this issue can be resolved, planning consent should not be granted for the proposed development, as it would fail to accord with Policies NCS and NC5 of the adopted Local Plan.

7. Drainage

Torbay Council engineers, acting as Local Lead Flood Authority, and the Environment Agency objected to the proposed development initially, due to a lack of detailed design information regarding the proposed drainage strategy. Following the submission of a revised Flood Risk Assessment, the Environment Agency withdrew its objection. However, Torbay Council engineers maintained their objection and requested further information. This information has now been submitted and further comments are awaited from the engineers. These comments shall either be provided as a late representation or reported verbally at committee. Unless the engineers remove their objection, the application should be refused on this basis, taking into account Policy EPS of the adopted Local Plan and paragraph 103 of the NPPF.

8. Viability and Affordable Housing

The applicants submitted a Viability Assessment with the application, which appraised the viability of the wider Yannons Farm development site, including Phase C and Phase D. This concluded that neither the planning obligations

agreed for the 2011 outline planning permission, i.e. 15% affordable housing and £150k education contribution, or a scenario of no affordable housing and contributions, are now viable. Despite this conclusion, the applicants have offered the same package of obligations that were agreed for the outline planning permission: 15% (32 dwellings) affordable housing and £150k education contribution.

It should be noted that the Viability Assessment submitted by the applicants is not considered to be independent in accordance with the Council's adopted Planning Contributions and Affordable Housing SPD and its Update 3, as it was commissioned by the applicants and not Torbay Council. Therefore, with the agreement of the applicants, officers commissioned the Torbay Development Agency to carry out an independent review of the submitted Viability Assessment.

The initial advice from the TDA varied considerably from the Viability Assessment submitted by the applicants. It concluded that 28.4% (60 dwellings) of the total number of dwellings on the Yannons Farm development site should be affordable housing, assuming 18 months between the start of works and commencement of sales. This drops to 26.1% (55 dwellings) assuming 24 months between the start of works and commencement of sales.

Following discussions between the TDA and the applicant's viability assessor, further advice has been received from the TDA. This recommends that the Council does not accept the applicant's offer of 15% affordable housing until further evidence has been provided by the applicants on the actual build costs of earlier phases of the wider scheme. If this evidence is not forthcoming, the TDA recommends that a cost estimate is obtained from an independent quantity surveyor. The applicants have not released this information and the TDA have been commissioned to carry out the independent cost estimate accordingly. This is not expected to be completed until late August.

NB. The initial advice letter from the TDA states that the appraisal does not allow for any income from any possible ransom strip relating to the adjoining application site (ref. P/2014/0983) and if any such payment is received, it should be included in the Viability Assessment accordingly.

S106/CIL -

As previously stated, a new s106 agreement is considered necessary, as the application is a new full/outline application and material circumstances have changed since permission was originally granted in 2011. As negotiations over the viability of the proposed development are continuing, heads of terms have not been agreed with the applicants at the current time. However, officers consider that the following heads of terms should be secured in a s106 agreement if the application is approved:

- o A minimum of 15% affordable housing in relation to the wider Yannons Farm development, pending further advice from the TDA.
- o Waste Management Contribution at £50/unit in accordance with SPD
- o Cirl bunting compensation (up to £74,193)
- o Deferred contributions mechanism as the level of affordable housing falls below the Council's policy of 30% and the development will be delivered in phases
- o Access to the adjoining site (ref. P/2014/0983) and adequate provisions to ensure that this is not obstructed in such a way as would stifle development of the remainder of the Future Growth Area
- o Administration/monitoring charge (amount tbc).

The waste management contribution and cirl bunting compensation are considered to be site acceptability matters that take the highest priority. Any remaining funding should be used to deliver the maximum level of affordable housing that is viable, as it has higher priority than sustainable development contributions. As the proposed development will be delivered in phases and falls below the Council's policy-compliant provision of 30% affordable housing, a deferred contributions mechanism is required to address the scenario that viability improves over time. The principle of requiring a deferred calculation of financial contributions as part of the s106 agreement is set out in the Planning Contributions and Affordable Housing Supplementary Planning Document - Update 3. It has been included in a number of other s106 agreements on other residential development in Torbay.

The tenure of affordable housing is expected to be split as a third social rent, a third affordable rent and a third intermediate (e.g. shared equity). The mix of affordable housing in terms of unit size is expected to reflect the mix of the scheme as a whole.

Justifications:

The waste management contribution is justified in paragraph 2.18 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accords with Local Plan Policy W7. It will pay the cost of providing waste and recycling bins to the dwellings.

A contribution to mitigate for the loss of cirl bunting habitat is justified in paragraph 118 of the NPPF and Natural England standing advice for wild birds. It will be used toward the creation of replacement cirl bunting habitat and its management.

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

The 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 above heads of terms have not been agreed with the applicants, therefore Legal Services has not been instructed to prepare a s106 agreement for the application. A verbal update will be provided at committee.

The applicants have submitted a letter with the application from a firm of solicitors stating that, in their view, there have been no changed material considerations since the outline planning permission was granted that would require the obligations in the 2011 agreement to be varied, and no supplemental agreement is necessary in respect of the current application.

Even if the terms of the previous agreement were still agreed, it would need to be modified to link it to the current application. However, as the application is for a new full/outline application and nearly four years have passed since the 2011 s106 agreement was negotiated, during which time market conditions have changed and the relevant planning policy context has changed, it is considered appropriate to re-evaluate the viability of the wider development site and prepare a new s106 agreement accordingly that supersedes the previous agreement. Paragraph 205 of the NPPF states that local planning authorities should take account of market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

Conclusions

Despite the outstanding issues discussed in this report, officers consider that refusing the application on this basis would stall the continued development of the site and the delivery of new homes in the Bay. Therefore, as the principle and design of the proposed development are considered to be acceptable, and the applicants have informed officers that they are close to agreeing a compensation strategy for the impact on curlew buntings, officers recommendation is to approve the application, subject to Engineering officers removing their current objection and the completion of a s106 agreement to secure the heads of terms identified in this report.

Relevant Policies

- CF2 - Crime prevention
- CF6 - Community infrastructure contributions
- CF7 - Educational contributions
- W6 - New development and the minimisation of
- W7 - Development and waste recycling facilities
- LS - Landscape strategy
- L2 - Areas of Great Landscape Value

L4 - Countryside Zones
L8 - Protection of hedgerows, woodlands and o
L10 - Major development and landscaping
NCS - Nature conservation strategy
NC1 - Protected sites - internationally import
NC5 - Protected species
EPS - Environmental protection strategy
EP1 - Energy efficient design
EP5 - Light pollution
BES - Built environment strategy
BE1 - Design of new development
BE2 - Landscaping and design
TS - Land use transportation strategy
T1 - Development accessibility
T2 - Transport hierarchy
T25 - Car parking in new development
T26 - Access from development onto the highway
SS1 - Growth Strategy for a prosperous Torbay
SS2 - Future Growth Areas
SS3 - Presumption in favour of sustainable dev
SS7 - Infrastructure, phasing and employment
SS8 - Natural Environment
SS9 - Green Infrastructure
SS10 - Sustainable communities strategy
SS11 - Housing
SS12 - Five year housing land supply
SDP1 - Paignton
SDP3 - Paignton North and Western area
TA1 - Transport and accessibility
TA2 - Development access
TA3 - Parking requirements
C4 - Trees, hedgerows and natural landscape
NC1LFS - Biodiversity and Geodiversity_
H1LFS - Applications for new homes_
H2LFS - Affordable Housing_
DE1 - Design
DE2 - Building for life
DE3 - Development Amenity
DE4 - Building heights
SC1 - Healthy Bay
SC2 - Sport, leisure and recreation
SC3 - Education, skills and local labour
SC4 - Sustainable food production
SC5 - Child poverty
ER1 - Flood Risk
W1LFS - Waste hierarchy_

W2LFS - Waste audit_

HS - Housing Strategy

H2 - New housing on unidentified sites

H6 - Affordable housing on unidentified sites

H9 - Layout, and design and community aspects

H10 - Housing densities

H11 - Open space requirements for new housing

E116C - Yalberton Road, Paignton (New Policy)