

[Type text]



c/o Brixham Town Council
Town Council Office,
Brixham Town Hall,
New Road,
Brixham, TQ5 8TA

Torbay Council Planning Department
Town Hall
Castle Circus
Torquay
TQ1 3DR

11 April 2018

Dear Sir / Madam,,

Whiterock II (P/2017/1133)

We write somewhat obliquely given the first objection letter sent by the Forum to the officer who the forum understood the case officer to be as at 11 April 2018 bounced back, indicating that the officer no-longer works for the Council. This came as a complete surprise.

The joint representation by Brixham Town Council and Brixham Peninsula Neighbourhood Forum dated 4th December 2017 **OBJECTED** to the development for reasons of **Conflict with the adopted Local Plan** and **Prejudice to the Emerging Neighbourhood Plan**.

Further information submitted by the developers and intervening events have strengthened these reasons for refusal.

Traffic capacity and the Windy Corner junction

This development is within the Brixham Peninsula Neighbourhood Plan area.

As recognised by the name of the plan area, the local geography is extremely unusual. Brixham and the surrounding villages are served by only one main road and all traffic flows through one key junction, "Windy Corner". Scope to expand capacity at that junction is severely limited due to the junction being surrounded by Common Land.

The developer's own traffic information shows the junction will operate beyond capacity after the development. This is despite some information apparently containing various errors all of which serve to downplay the magnitude of the traffic impact. Clarification has been sought in relation to this (**Appendix 1**) but to date no reply has been forthcoming and the contacted officer has apparently now left the Council.

The severe lack of traffic capacity and/or scope to create additional capacity means that by definition if this development proceeds, other developments cannot proceed.

[Type text]

Prejudice to the Emerging Neighbourhood Plan

The other developments which cannot proceed include the employment sites identified and the housing sites allocated in the submitted Brixham Peninsula Neighbourhood Plan, now being examined by Deborah McCann since 14 March 2018). This and the other policy reasons why the Neighbourhood Plan is prejudiced is set out in more detail below:

Policy J1

Policy J1 is an employment site provision policy which identifies 2,920 sq m of employment floor space (compared to the Local Plan expectation of 2,700 sq m). The majority of this floor space relates to extensive proposals to regenerate Brixham's marine industry through investment in a "fishing village" in Oxen Cove and Freshwater with the expansion of the commercial port and the introduction of fish processing capacity at the harbour side.

For the reasons set out there is not the traffic capacity at "Windy Corner" for these planned for employment developments to proceed if this planning application is approved.

Policy BH3

Policy BH3 is a housing site provision policy which allocates 695 housing sites (compared to the Local Plan expectation of 660). These sites are the local community's preferred choice for housing.

Again, for the reasons set out there is not the traffic capacity at "Windy Corner" for these planned for housing sites to proceed if this planning application is approved. Moreover the planned housing sites would simply not be needed.

Policy BH4

Policy BH4 is a development location policy which seeks to avoid development on greenfield sites in preference to brownfield sites.

This planning application for a greenfield site and is against the policy. For the reasons set out there is not the traffic capacity at "Windy Corner" for (even the planned for) brownfield sites to proceed if this planning application is approved

Policy BH9

Policy BH9 is a development location policy which seeks to allow certain greenfield sites only under very special circumstances to properly recognise the importance of the greenfield land resource.

This site does not meet the tests to qualify to forward under the policy, however if it did it would be required to deliver 100% affordable, older persons or disabled persons housing in perpetuity. Site promoters have been in liaison with the Forum to bring forward sites within the Neighbourhood Area site under this policy.

For the reasons set out there is not the traffic capacity at "Windy Corner" for exception sites under policy BH9 delivering 100% affordable, older persons or disabled persons housing to proceed if this planning application is approved. This would serve to reduce the percentage of such housing delivered in the area.

Policy E1

Policy E1 is a landscape policy which seeks to protect important landscapes. It requires at paragraph E1.3 that development within or impacting on the AONB must demonstrate that great weight has been give to conserving landscape and scenic beauty.

[Type text]

The Neighbourhood Plan considered this site, as site H3-R7 White Rock Extensions, in the Housing Site Assessment. Drawing on the 1997 secretary of State Decision, it was rejected based amongst other things on the impact on the Dart Valley and the South Devon AONB.

Approving this development contrary to Policy E1 would provide a legal precedent which nullifies the policy throughout the entire plan period.

Policy E2

Policy E2 is a landscape policy which seeks to bring forward development within planned settlement boundaries. This development is outside all settlement boundaries.

Approving this development contrary to Policy E2 would provide a legal precedent which nullifies the policy throughout the entire plan period.

Policy E3

Policy E3 is a landscape policy which seeks to avoid development within planned “settlement gaps”. This development is (almost entirely) within the View Point 1 settlement gap.

Approving this development contrary to Policy E3 would provide a legal precedent which nullifies the policy throughout the entire plan period.

Policy E6

Policy E6 is a landscape policy which seeks to protect important public views of vistas and specifically mentions views of the river dart. This development would block completely the views into the Dart from the main Brixham Road.

Approving this development contrary to Policy E6 would provide a legal precedent which nullifies the policy throughout the entire plan period.

Policy E8

Policy E6 is an ecology policy which seeks to protect internationally and nationally important sites and species, including in particular the Greater Horseshoe Bat and the Cirl Bunting. Paragraph E8.3 requires that major developments undertake an in-combination assessment assessing the development in combination with all other developments. No in combination assessment has been provided in support of this planning application.

Approving this development contrary to Policy E8 would provide a legal precedent which nullifies the policy throughout the entire plan period.

Policy T1

Policy T1 is a transport policy which seeks, amongst other things, to minimise the carbon footprint from travel and commuting distances. Referencing the Secretary of States previous 1997 decision this site is a “*peripheral location... on the far side of the built-up area ... [that] would result in a growth rather than a containment in car travel*”.

Approving this development contrary to Policy T1 would provide a legal precedent which nullifies the policy throughout the entire plan period.

[Type text]

Reasons for refusal

For the reasons set out this development is prejudicial to the content on the Neighbourhood Plan and will continue to be should it be determined at any point before the plan is adopted.

Accordingly, the application should be determined now as would be the case with any other application. Failure to do so will at best create the public perception that Council is giving special treatment to this one applicant to the detriment of all other applicants.

That determination can only be **refusal**.

To assist, the suggested reasons for refusal are given in **Appendix 2**. The reasons for refusal are those first suggested by the Paignton Neighbourhood Forum letter of today's date but updated at Part 4 to provide more information relating to the prejudice of the Brixham Peninsula Neighbourhood Plan.

Should these reasons for refusal not be relied on, the Planning Department will need to give reasons in each case in accordance with the Openness of Local Government Bodies Regulations 2014.

HRA

Whilst attempting to find additional contact details given the first attempt to submit this letter bounced back the Forum has discovered a HRA on the Planning website dated 23 March 2018 but only uploaded today 11 April 2018.

It is submitted that HRA needs to be treated with great caution given the extent of the new detail included none of which has thus far been consulted on in accordance with the Aarhus convention to ensure proper participation in environmental decision taking.

The HRA appears to make a series of unjustified assertions. For example only it is proposed a Torbay Council officer signs the statement "*there is NOT likely to be a Significant Effect - alone or in combination with other proposals or projects.*" To date there has been no publishing of any in combination assessment and so this statement cannot be made.

Again for example do any Councillors even know it is proposed in the HRA that Torbay Council themselves are to act as the "farmers" of the proposed mitigation area?

Yours sincerely

Adam Billings
Vice Chairman
Brixham Peninsula Neighbourhood Forum

[Type text]

Appendix 1

From: Adam Billings

Sent: 04 April 2018 23:39

To: Williams, Angharad

Cc: Bond, Anne-Marie; Mowat, Kevin; Luscombe, Adam; Mills, Derek; Stockman, Jackie; David Watts

Subject: Inglewood - Traffic Clarification questions for my Community Partnership public meeting.

Dear Angharad,

P/2017/1133 - White Rock 2 / Inglewood

To enable me to fulfil my role as Community Partnership Chairman at the forthcoming public meeting where Inglewood and Windy Corner both feature as agenda items I would like to clarify certain aspects of the proposals please. I could of course defer these questions to Cllr Mills in his capacity as Executive Lead and Ward Councillor but I fear like me, he too, may need some help.

Robustness of the proposed Windy Corner junction modelling:

1. Brixham Peninsula Traffic assumed in 2024.

My understanding is that the modelling assumption for the 2024 traffic flows adds traffic from 4 committed developments within the Paignton Neighbourhood Plan area (White Rock, Yannon's Farm, Devonshire Park and Yalberton Road developments *source: Transport Assessment, para 6.77*) to observed traffic levels from 9th May 2017 (*source: Transport Assessment para 6.13*). On this basis, I understand, the developer found the Windy Corner junction post development and all junction improvements operates 5% beyond capacity in pm peak (*source: Transport Assessment para 6.120*).

1.1 Please can you tell me how many of the 203 committed Brixham Neighbourhood Plan area sites counted by the Council in its 5 year supply (*source: Draft Torbay Five Year Land Supply Statement 2017/2018*) have been accounted for in the traffic modelling assumption for 2024?

1.2 Please can you tell me how many of the 695 houses and 2920 sqm of employment floor space allocated in the Brixham Peninsula Neighbourhood Plan currently being examined (*source: Brixham Peninsula Neighbourhood Plan policy document*) have been accounted for in the traffic modelling assumption for 2024?

1.3 Please can you tell me what adjustment has been made to the HGV percentages to provide for the extensive proposals related to regeneration of Brixham marine industry through investment in a "fishing village" in Oxen Cove and Freshwater to expand the commercial port and introduce fish processing capacity (*source: Brixham Peninsula Neighbourhood Plan Brixham Town Centre Master Plan*)?

2. Rat run traffic

Please can you tell me where can I find evidence to justify the Officer recommendation that only 20% of traffic from Inglewood travelling towards Waterside and Goodrington would use Windy Corner and that 40%, i.e., twice as much, would "rat run" through the residential streets of Hunters Tor Drive and the Cherrybrook estate (*source: Transport Assessment Addendum 1, para 3.50 and 3.51*)?

3. Primary School trips.

Please can you tell me whether I can find evidence to justify the assumption that assumes 100% primary school children living in the development are proposed to use the school and hence no provision has been allowed for parents sending their children to, for example, the very well regarded Galmpton primary (*source: Transport Assessment para 6.34*)?

[Type text]

Consistency of Windy Corner junction redesign and past consultation outcomes:

For the next questions I refer to the attached "*Windy Corner - Land Exchange*" drawings which show what was promised by Officers to my community when the Council sought consent from the Secretary of State for the Loss of Common Land. I also refer to the attached "*New Proposals*" drawings which I have extracted from *Appendix TAA1-J* of the *Transport Assessment Addendum 1*.

4. Windy Corner Pedestrian Crossing.

Are the previously promised traffic lights for crossing the Dartmouth Road at Windy Corner retained as part of the proposals? If so on which drawing can they be seen?

5. Windy Corner Cycle lanes.

Are the previously promised north bound and southbound cycleways retained as part of the proposals? If so on which drawing can they be seen?

6. Deliverability of proposed Windy Corner junction redesign:

Officers previously stated that the larger central island at Windy Corner needed to be retained because there was variously BT equipment and / or a shaft located under the island which made junction redesign not feasible and / or expensive. Referencing the "*New proposals*" drawing it appears the area where the BT equipment and/or the shaft is located is to be required for part of the main highway. What evidence please has been provided as part of the application to demonstrate is there that this junction redesign is actually deliverable?

Safety and sustainability of the traffic proposals.

7. Windy Corner Junction safety.

In the submitted transport documents where can I find please the Road Safety Assessment of the proposed Windy Corner junction redesign. From my reading I have been able to identify that only the existing Torbay scheme was assessed and even then the findings appear to be contained in a cover letter (171005/722/L01) which does not form part of the application (*source: Transport Assessment Addendum 1, Stage 1 Road Safety Audit, para 1.14*). Is this correct please?

8. Primary School Drop off spaces.

Where I can find please evidence to justify the Officer recommendation that only 4 drop off car spaces are appropriate for the primary school as opposed to the 19 proposed (*source: Transport Assessment Addendum 1, Stage 1 Road Safety Audit – Designers Response, problem reference 2.9*)?

I appreciate your assistance.

kind regards,
Adam.

Adam Billings
Chairman,
Churston, Galmpton and Broadsands Community Partnership
Vice Chairman,
Brixham Peninsula Neighbourhood Plan Forum

[Type text]

Appendix 2

Reasons for refusal

- 1) The Secretary of State determined that built development and landscaping in the location proposed would have a significant adverse and wholly unacceptable visual impact on the high quality of the Dart Valley AONB which he expressly decided needs to be preserved as one of the finest riverine landscapes in the country. There has been no change in material circumstances that justify departing from this decision and the need to protect important landscapes accords fully with paragraphs 109 and 115 of the National Planning Policy Framework.

- 2) The development proposed departs from the policies of the adopted Torbay Local Plan which is the Development Plan for the area and designates the site:
 - a) as 'Countryside Area' to which Policy C1 applies. The policy states that development of the nature proposed will be resisted. None of the exceptions apply that are listed in the policy;
 - b) for a 'Country Park / Countryside Access or Enhancement Scheme' to which Policy SS9 applies. The policy states the objective is to protect the high quality green space. This in turn links with the Council's approved Green Infrastructure delivery plan for the site and the site's "*mitigation*" role for the adjacent White Rock development still under construction. The form and scale of open space in the development proposed would not meet the extent of enhancement required;
 - c) a 'Minerals Safeguarding Area' (MSA) to which Policy M3 applies. The policy resists any proposal that would result in the sterilisation of the finite mineral resource of the site, as would apply in this case.

The Development Plan is up to date and there are no other material planning considerations that show there are benefits which significantly and demonstrably outweigh the adverse effects that will arise:

- i) there is no demonstrable housing land shortage that justifies setting aside the conflict with Policy C1, SS9 and M3 of the adopted Development Plan;
- ii) the school will not be well located in relation to the population it would serve
- iii) jobs proposed in the development will not meet employment needs of the extra population and will add to the significant and unsustainable jobs/homes imbalance of 3,000 net additional jobs that exists within Torbay. This will lead to further reliance on outward commuting to find work, contrary to the policies of the adopted Development Plan (Torbay Local Plan) and would not be sustainable development required by the National Planning Policy Framework.

[Type text]

- 3) Further significant and demonstrable harm to material planning considerations would arise that have great weight
 - a) Impact on internationally important biodiversity will result. The provision of “*mitigation*” space is insufficient. The site is already the “*mitigation*” area for dealing with the impact of the adjacent White Rock development not yet completed. The “*in-combination*” impact on Cirl Buntings and further loss of Greater Horseshoe Bat sustenance zone from the South Hams Special Area of Conservation in particular will lead to unnecessary “*Likely Significant Effect*” and conflicts significantly with the intent of NPPF118-120, Local Plan Policy NC1 and final version of the Habitat Regulation Assessment approved with the Local Plan on 10 December 2015. Enforceability of the mitigation proposals on the land outside the jurisdiction of Torbay have not been shown to be deliverable.
 - b) Loss of agricultural land of high grade will result from building on the soil involved (Grade 1, 2 and upper 3). This is irreplaceable and its unjustified and unnecessary loss fails to meet the requirement of NPPF112.
 - c) Transport impact resulting from the proposal will have two harmful effects. The flow of traffic along Brixham Road, especially during the tourist season, will be interrupted to a significant degree where the residual cumulative impact of the development will be “*severe*” in the terms of NPPF32. Second, the location and limited balance of land uses proposed on site will result in occupants having to rely on increased journey lengths for employment, shopping, leisure and other activities elsewhere, contrary to the land use balance sought by NPPF37.
 - d) Surface water and foul water impacts from the proposal rely on a significant part of the surface water run-off going into the existing combined foul/surface sewer network within a designated “*Critical Drainage Area*” with no evidence shown which demonstrates that flooding will be avoided. The foul water solution requires a pumping station to reach an off site point of connection downstream where network restrictions exist that it is being assumed in the application will be resolved by making “*a contribution*” to South West Water. The Supreme Court in 2009 ([2009] UKSC 13 Judgement 9 December 2009) made it clear that where constrictions of this type are involved, it needs to be the local planning authority that ensures the drainage solution is satisfactory before granting any consent. Sufficient detail to satisfy this requirement has not been provided with the application and it is not appropriate to deal with it by condition given that it has such a fundamental relationship to the drainage problems of the area and potential impact on constraining other sites in appropriate locations.
- 4) Having regard to paragraph 50 and 51 of the Draft Revised National Planning Policy Framework published for consultation by the Secretary of State for Housing, Communities and Local Government, the development proposed would be prejudicial to the consideration of the Neighbourhood Plans for Brixham Peninsular and

[Type text]

Paignton currently at Independent Examination stage and the Joint Local Plan for Plymouth and South West Devon currently at Examination in Public stage. The Development is contrary to Brixham Peninsula Neighbourhood Plan policies BH4, BH9, E1, E2, E3, E6, E8, and T1 and the site was specifically rejected in the Housing Site Assessment. Further, because of finite traffic capacity the development prejudices site allocation policies J1 and BH3. The Paignton Neighbourhood Plan contains a policy (Annex 3 to Policy PNP11) for satisfactory drainage information to be provided at initial application stage, not via conditions. The off-site 'mitigation' proposals of the application are within the adjoining South Hams part of the Joint Plymouth and South West Local Plan where South Hams Districted Council has objected to the application and the importance of the landscape and ecology in this part of the Joint Plan area are currently being considered by two Inspectors appointed by the Secretary of State.