

# PAIGNTON NEIGHBOURHOOD FORUM

- Blatchcombe
- Clifton with Maidenway
- Goodrington, Roselands & Hookhills
- Paignton Town
- Preston



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5 December 2017

By email to:

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Spatial Planning (FOA Carly Perkins)

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Dear Ms Perkins

## **Planning Application P/2017/1133: Proposed development of up to 400 houses etc on Land South of White Rock, Adjacent to Brixham Road (aka Inglewood), Paignton**

I refer to the Council Notice in the Herald Express on 15 November 2017 calling for comments on the above application to be submitted by no later than 6 December 2017.

This is a short period for such a complex application. However, the Forum was invited to pre-submission meetings with the developer and has examined the application as subsequently submitted.

The conclusion reached is that the proposal

- conflicts significantly and demonstrably with the approved Development Plan and
- harm would result that outweighs any other material planning consideration.

The proposal overall will not secure sustainable development as required by the National Planning Policy Framework (NPPF) and adopted Torbay Local Plan.

The proposal also conflicts with the submitted Neighbourhood Plans for Brixham and Paignton. It is not possible to determine the weight to be given to these Plans until the Regulation 16 consultation period has been completed on 18 December 2017, following which further views may need to be submitted.

However, the extent of conflict with the requirements of the NPPF and adopted Torbay Local Plan are sufficient on their own to show that refusal of the application is justified.

The principal reasons for this conclusion are summarised below:

### **Prior consultation**

The Forum attended the pre-submission consultation exhibitions in May 2017. It is not considered this provided satisfactory answers to fundamental questions raised about conflict with the previous Appeal decision by the Secretary of State, impact on protected

habitat of international importance, drainage infrastructure, highway network impact, and lack of sufficient job provision.

Representatives of the Brixham and Paignton Neighbourhood Forums were also invited to attend a joint meeting with the applicants on 5 May and 23 June 2017. The understanding from these meetings was that an application would not be made until details were available which answered all of the key issues. It is noted this has not been achieved e.g. a sufficiency of foul drainage information has not been provided. It was noted at both meetings that the applicants had difficulty in agreeing the proposal constitutes a Departure from the approved Development Plan.

The decision by the Council to advertise the application as a formal Departure is therefore supported by the Forum as being correct.

### **Conflict with the adopted Development Plan**

In considering the proposal, the Forum has followed the requirement that a decision on a planning application must by law (and NPPF11 and 196), be made in accordance with the approved Development Plan unless material considerations indicate otherwise.

The Development Plan in this instance is the Torbay Local Plan adopted by the Council on 10 December 2015.

- Being only 2 years old, it is an up to date Development Plan and cannot be considered by NPPF14 to be *“absent, silent or relevant policies are out-of date”*.
- Nor has evidence been presented with the application that shows a lack of a 5 year housing supply. Nor has the Council found it necessary to bring forward a site allocation Development Plan Document as would be required by Local Plan Policy SS1 in such an eventuality.
- As there is no evidence presented of a 5 year shortage, the *“tilted balance”* approach (in favour of approval) identified by the Supreme Court is *“not engaged”* ([2017] UKSC 37 Judgement 10 May 2017.).
- Even if there were to be less than a 5 year supply the NPPF14 *“presumption in favour of sustainable development”* does not apply in this instance as the site involves *“Likely Significant Effect”* on protected species habitat and *“Appropriate Assessment”* consideration which NPPF119 makes clear rules out any NPPF14 presumption in favour.

The proposal therefore is required to be assessed in relation to the Development Plan (Torbay Local Plan) as adopted on 10 December 2015.

The proposal conflicts directly with the adopted Development Plan *“Policies Map”* (sheets 29/30) which show the site designated for the following purposes:

- Countryside Area – to which **Policy C1** applies. The policy states that development of the nature and location proposed will be resisted. None of the exceptions apply which are listed in the policy.
- Proposed 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 proposals for the site, and the site’s *“mitigation”* role for the adjacent White Rock development still under construction.

- 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.

### Other material planning considerations

The application seeks to imply the site would have been included in the Local Plan had it been possible to show the problems raised at the time were capable of being resolved. The fact remains they were of such scale and importance it was found the site could not be included, even as a “*Future Growth Area*”. No weight can be given to this part of the application.

Nor are there other material planning considerations that show there are benefits which “*significantly and demonstrably*” outweigh the adverse effects that will arise.

- There has been no demonstrable housing land shortage presented that justifies setting aside the conflict with Policy **C1**, **SS9** and **M3** referred to above.
- The school will not be well located in relation to the population it would serve
- Jobs in the school and the public house will not meet employment needs of the extra population and will add to the current imbalance within the Bay, leading to further reliance on outward commuting to find work.

In contrast, the proposal will result in “*significant and demonstrable*” harm to material planning considerations that have great weight:

- Loss of countryside and impact on the Dart Valley Area of Outstanding Natural Beauty (AONB) remains as important today as it did when the Secretary of State refused development in the vicinity for this reason in 1997. The difference in site area currently presented does not overcome the Secretary of State’s reason. The importance to the tourist economy of the area has increased still further since then. NPPF115 requires great weight to be given to conserving AONB landscape.
- Impact on internationally important biodiversity will result, as acknowledged by the application. Seeking to provide “*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 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.
- 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.
- Transport impact resulting from the proposal will have two harmful effects. First, it is understood that a traffic flow survey was undertaken but of short duration and failed to cover the main tourist periods when holiday makers traditionally use this road to travel to Brixham and Dartmouth. The flow of traffic along Brixham Road 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.

- Surface water and Foul water impacts from the proposal are stated to rely on part of the surface water run-off going into the existing combined foul/surface sewer network that is known to be overloaded. Additionally it states, 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.

### **Request for further consultation**

Given the scale, location and complexity of the proposal, It is reasonable to believe that further detail may be requested by the Council before it is possible to come to a fully considered decision.

Should this be the case, the Forum requests the opportunity to be consulted further on any changes made to those matters raised in this representation.

Yours sincerely

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c.c. Mike Parkes, Forum Secretary