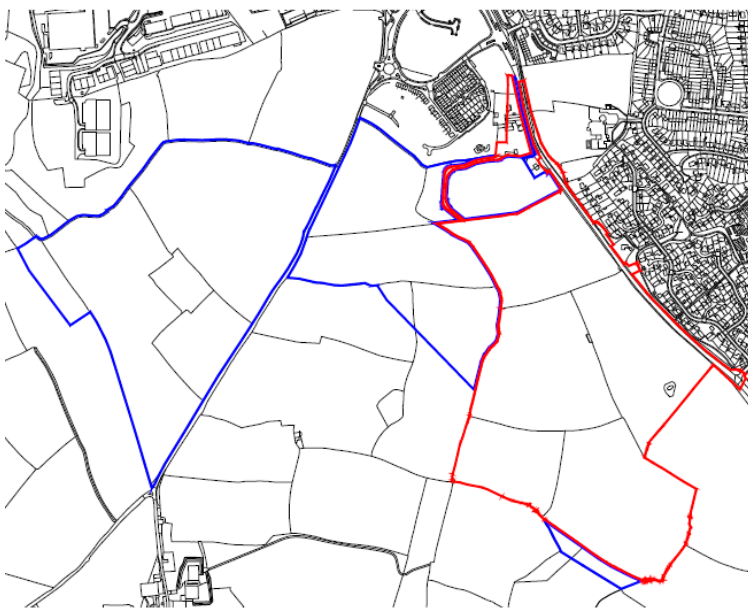


Application Site Address	Land To The South Of White Rock Adjacent To Brixham Road Aka Inglewood, Paignton
Proposal	Outline application for residential led development of up to 373 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation. The proposal includes amendments to Brixham Road, Long Road junction and Windy Corner junction. Details of access to be determined with all other matters reserved.
Application Number	P/2017/1133
Applicant	Abacus Projects /Deeley Freed Limited
Agent	Stride Treglown
Date Application Valid	13.11.2017
Decision Due date	13 Weeks
Extension of Time Date	31/07/2019
Recommendation	Following receipt notification of the applicants intention appeal to the Secretary of State against non-determination within statutory timeframe, the Local Planning Authority is required to provide the Secretary of State with an indication of what its decision would have been if it had formally determined the application prior the appeal being lodged: Refusal
Reason for Referral to Planning Committee	Major application with high level of public interest.
Planning Case Officer	Mr. David Pickhaver

**Location Plan:**



## 1.0 Executive Summary

- 1.1 Non-Determination Procedure:** This report sets out officers' assessment of the outline "Inglewood" application following receipt notification of the applicants intention appeal to the Secretary of State against non-determination within statutory timeframe. In such instances, the Local Planning Authority is required to provide the Secretary of State with an indication of what its decision would have been if it had formally determined the application.
- 1.2 Benefits & Resolved Matters:** The proposal would provide significant housing (open market and affordable) together with other community (education and recreation) and economic benefits. Transport, ecology and drainage issues appear to be largely capable of satisfactory resolution by condition and via S106 agreement.
- 1.3 Negatives & Matters of Dispute:** The application is in an area of open countryside and contrary to the adopted Torbay Local Plan. It conflicts significantly and demonstrably with the "made" in the Brixham Peninsula Neighbourhood Plan: In particular it falls within a settlement gap in Policy E3 and conflicts with Policies E1, E2, E6 and E7. The Neighbourhood Plan meets the Brixham Peninsula's housing requirement (Policy BH3) and points development towards brownfield sites and existing settlements (Policies BH4 and E2). The Neighbourhood Plan Forum (which is a sub-group of Brixham Town Council) considered the Inglewood site but rejected it. The Neighbourhood Plan passed independent examination and was strongly endorsed at referendum in May 2019, prior to being adopted unanimously by Torbay Council in June 2019.
- 1.3 Designation:** The site falls within approximately 500 metres of the boundary of the South Devon Area of Outstanding Natural Beauty (AONB) but lies outside this area designation. The site, and thus the proposed development, would be prominently visible from several key public vantage points within the AONB and would affect the visual character of the setting of the AONB landscape. The AONB is accorded a similar level of landscape protection to National Parks by law, as well as by the development plan and NPPF.
- 1.4 Planning Balance:** Officer advice is that the application falls to be determined on the basis of the presumption in favour of sustainable development in paragraph 11 of the National Planning Policy Framework (2019). However, there is significant and demonstrable conflict with the development plan. Any application for housing development of this scale would be more appropriately considered through the strategic plan-making process as part of a wider assessment of need and other suitable sites.

## 2.0 Site Details

- 1.6** The "Inglewood" site is located in open countryside on the south west side of the Brixham Road, directly to the south west of Hookhills, a late C20th residential area; and to the south of White Rock, a mixed use residential and commercial development currently under construction. The South Devon AONB lies approximately 500m to the west (although the site is more visible from vantage points located further away in the AONB). The site is within the sustenance zone of greater horseshoe bats, but is not itself a Special Area of Conservation (SAC).
- 1.7** The application is in outline for up to 373 dwellings (373 are shown on the indicative layout), public house, and primary school with nursery, public open space and strategic

mitigation. All matters of detail are reserved for future consideration under a separate application except for access, which is proposed to be via a new roundabout on Brixham Road, with two pedestrian crossings: a traffic light controlled crossing to the north and an uncontrolled crossing to the south. The application also proposes upgrading of the Brixham Road/Long Road/ Dartmouth Road junction to the north of the site, and additional improvements to Windy Corner to the south. The Windy Corner improvements are additional to works carried out by the Torbay Council in 2018/19.

- 1.8 A full range of the relevant issues and material planning considerations is discussed in the main body of the following report which provides a more detailed assessment and recommendation. It is noted that a number of matters such as Windy Corner junction improvements, draft S106 Agreement and consultee's updated responses are still being considered by officers. This report therefore necessarily sets out officers' views at a given point in time.
- 1.9 The proposal has generated objections from nearly 550 objectors<sup>1</sup> as well as consultees. The Neighbourhood Forums for Paignton and Brixham Peninsula (Brixham Town Council), adjoining Parish and District Councils, and a range of other organisations have also lodged their objections.
- 1.9 Objections have been made on, (in no particular order):
  - a. overdevelopment of the area,
  - b. lack of jobs in the area, high level of vacant homes, the (lack of) need for development,
  - c. conflict with the development plan (both the Local Plan and Neighbourhood Plan),
  - d. pre-judging the Local Plan review,
  - e. undermining the principle of localism,
  - f. argument that there are significant site allocations which remain undeveloped,
  - g. development should focus on regeneration of brownfield sites
  - h. landscape including AONB impact,
  - i. biodiversity including Habitats Regulations species,
  - j. highways congestion,
  - k. air quality,
  - l. drainage,
  - m. loss of agricultural land,
  - n. lack of local services, and
  - o. weight of the previous Secretary of State's refusal.
- 1.11 The proposal would represent a major departure from the Adopted Torbay Local Plan 2012-30 ('Local Plan') and the "made" Brixham Peninsula Neighbourhood Plan ('Neighbourhood Plan'). These two documents form the current Development Plan for the area against which the proposal should initially be assessed.
- 1.12 The proposal would represent a major departure from several key policies in the Local Plan, such as Policies SS2 Future Growth Areas, SS9.3 Green Infrastructure and C1 Countryside Area. However other policies as SS13 which seek to boost housing supply.
- 1.13 The conflict with the Neighbourhood Plan is clear cut and demonstrable. In particular it is within a "settlement gap" designated under Policy E3 and affects views and vistas

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<sup>1</sup> At January 2020 there were 547 individual contributors recorded, the overwhelming majority of whom objected to the proposal. A higher number of objections have been received due to repeat representations from the same individuals (e.g. following re-consultation on amendments to the proposal in March 2018, and re-advertisement in November 2019).

identified in Policy E6 of the Neighbourhood Plan. The Neighbourhood Plan allocates sufficient housing sites to fully meet its housing requirement. The Neighbourhood Forum (a sub-committee of Brixham Town Council) considered the current application site as a potential allocation for inclusion in the Neighbourhood Plan during the process of its preparation, but rejected it in favour of other sites. The Neighbourhood Plan passed Independent Examination in 2018, and was strongly endorsed by Referendum in May 2019 and 'made' part of the Development Plan by unanimous vote of full Council in June 2019.

- 1.14 There are conflicting expert assessments of landscape and visual impact (as described in the main report). The site is not visible from the River Dart, but would be clearly visible from several key public rights of way within the AONB, and would change the character of open countryside within the setting of the AONB. The applicant's own landscape evidence (NPA, 2017, 2018 and 2020) accepts that there is an impact on the AONB, although it argues that this will decrease with time and is not judged by them to be significant. Rival landscape assessments have identified a significant impact. The AONB Partnership, Brixham Town Council (and Neighbourhood Plan Forum sub-group), South Hams District Council, the surrounding parish councils and numerous other bodies have objected on landscape (and other) grounds.
- 1.15 Against this, the proposal has significant benefits, which must be given considerable weight. The development would provide a substantial boost to Torbay's housing supply including the provision of 30% (around 112) affordable homes. It would provide a site for a 2 Form Entry Primary School, playing field, sports courts and changing facilities, and would help deliver improved countryside access. It would provide jobs directly on-site (in the school and pub/restaurant) as well as making a contribution to provision of jobs off-site. These are very significant benefits that will need to be weighed against the proposal's impacts and the conflict with the development plan.
- 1.16 Officer advice is that Torbay is unable to demonstrate a five year supply of deliverable sites, measured against the requirement in the Adopted Torbay Local Plan 2012-30. It is noted that there is current disagreement about whether the Council can demonstrate three years' worth of deliverable housing, with the applicants arguing that there is a significant shortfall below three years. This would mean that the Neighbourhood Plan could not be given full weight. However the Neighbourhood Forums argue that a supply of more than 3 years can be demonstrated, which would mean that the Neighbourhood Plan carries full force.
- 1.17 Officers consider that in drafting this report a cautious assessment of the five/ three year supply should be taken and that less than three years' supply can currently be demonstrated<sup>2</sup>. Accordingly that the proposal should be considered on the basis of the "tilted balance" required by Paragraph 11 of the (2019) NPPF. This means that planning permission should be granted unless there are specific policies that protect areas or assets of particular importance that give a clear reason for refusal, or the harm caused by the granting of planning permission would significantly and demonstrably outweigh the benefits.
- 1.18 The proposal mitigates traffic impacts through improvements to White Rock phase 1 junctions and further improvements to Windy Corner. Whilst capacity issues remain at Windy Corner in the PM peak, the Transport Assessment identifies these as being less severe with the Inglewood proposal and additional junction improvements, than they would be without the development and concomitant junction works. The application

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<sup>2</sup> Based on 2018/19 housing land monitoring. It is noted that this will need to be updated when the housing land monitoring has been carried out in April 2020, and the 5 year supply situation may change.

provides for increased bus services along Brixham Road, as well as providing crossings over Brixham Road and increasing countryside access.

- 1.19 The application is subject to an Environmental Impact assessment (EIA), which was carried out under the auspices of the Town and Country (Environmental Impact Assessment) Regulations 2017. However, the project was scoped under the previous 2011 regulations and therefore transitional arrangements have been applied. The Environmental Statement, Non-Technical Summary, Ecological Addendum and subsequent information from the applicant has been used in drawing up this report.
- 1.20 The applicants have gone to significant efforts to minimise the biodiversity, landscape, highways and other impact of the proposal and have revised the scheme in dialogue with the LPA, AONB Partnership and other consultees. Extensive mitigation of potential impacts on the greater horseshoe bat sustenance zone, cirl buntings and other species, through managed agriculture and provision of darkened flight paths is proposed. Landscaping and indicative layout seek to minimise the impact on the South Devon AONB and creating a good quality living environment. The proposal has been reduced from 400 dwellings to 373, in line with revised indicative layout plans submitted in March 2018.
- 1.21 The application has also been subject to Screening for likely significant effects (LSEs) on European Sites under the Conservation of Habitats and Species Regulations 2017 (i.e. Habitats Regulations/HRA). This is mainly due to the greater horseshoe bat sustenance zone, but also due to semi-natural grassland at Berry Head and the Marine SAC. It has been assessed that incorporated mitigation measures and additional mitigation measures mean that there is not likely to be a significant effect, alone or in combination with other proposals or projects. However, the reliance on mitigation measures has been ruled by the European Court to trigger the need for Appropriate Assessment. HRA matters (and the consequences of an AA being required) have been taken into account in the drafting of this report. The application also potentially affects other species such as cirl buntings, which appear capable of mitigation through on-site and off-site farm management measures included in the application.
- 1.22 The application is not within a conservation area, although there are conservation areas and listed buildings at Waddeton and Galampton. The site may be visible from non-public heritage assets, but the harm to them is very minor and certainly less than substantial. On-site archaeology is capable of being addressed through conditions. Legislation requires special regard to the conservation and enhancement of heritage assets and they have accordingly been considered in the drafting of this report.
- 1.23 Notwithstanding the scheme's benefits, Officers consider that the conflict with the Neighbourhood Plan and impact on the AONB represent clear and demonstrable reasons why the application cannot be approved. This assessment is from a standpoint of a housing land supply of less than three years. If, as the Neighbourhood Forums assert, more than three years supply can be demonstrated, then the BPNP enjoys additional protection afforded by paragraph 14 of the NPPF.
- 1.24 In addition the proposal entails the development of open countryside, reliance on extensive HRA offsite works and loss of best and most versatile agricultural land. This raises issues that need to be considered in the context of the overall need for development in Torbay, and whether this quantum of development can be achieved on less sensitive sites, including through town centre regeneration. The most appropriate forum for this assessment is via the Local Plan Review.
- 1.25 Statutory determination period: 13 weeks

## **2. Recommendation**

2.1 In the event that the Local Planning Authority determined the application, the recommendation would have been:

### **Refusal**

- 1) The proposal is significantly and demonstrably contrary to Policies BH3, BH4, BH9, E1, E2, E3 and E6 of the Brixham Peninsula Neighbourhood Plan and the strategic framework for the Neighbourhood Plan set by Policy SDB1 of the Torbay Local Plan 2012-30. The extent of this conflict, including development of an area identified as a settlement gap identified in Policy E3 of the Neighbourhood Plan, would seriously undermine the Development Plan as a whole.
- 2) The proposal constitutes major development outside of the established built up area or Future Growth Area and not identified in a neighbourhood plan, contrary to policies SS2, SS8.3, SDB1, SDB3 and C1 of Torbay Local Plan 2012-30.
- 3) The development would represent a substantial and harmful intrusion into open countryside which forms part of the backdrop and setting of the South Devon AONB, which would be clearly visible from public vantage points and recreational networks (within the AONB) and from outside the AONB (looking towards AONB), contrary to Paragraphs 170 and 172 of the NPPF, Policies SS2, SS8.3 and C1 of the Torbay Local Plan 2012-30, and Policies E1 and E6 of the Brixham Peninsula Neighbourhood Plan, and the South Devon AONB Management Plan (2019-2024).
- 4) In the absence of a completed S106 Agreement, there is no effective delivery mechanism required to ensure measures to mitigate the impact on the South Hams SAC, and the Landscape Ecological Mitigation Plan (LEMP) for both White Rock and the current proposal, highway network, critical drainage area. Nor could the provision of social infrastructure such as a school site, employment, affordable housing, or public open space be ensured. This would be contrary to Policies SS1, SS5, SS8, NC1, SDB1, SS6, TA1, TA2, ER1, SC1, SC2, SC3, SC4 and H2 of the Torbay Local Plan 2012-2030 and Policies J4, E8, T1, and BH2 Brixham Peninsula Neighbourhood Plan.

### **Informatives.**

- i) The LPA has had regard to the benefits of the scheme including provision of housing, school site, employment and other benefits. The LPA has considered the application in the context of the Presumption in Favour of Sustainable Development in paragraph 11 of the NPPF. However, the proposal's benefits are not considered to override the impact on the setting of the AONB, the degree of conflict with the recently made neighbourhood plan, or the principle of localism.
- ii) In the Local Planning Authority's view, a proposal of this scale and nature should be considered against all potential alternatives, through an update of the Local Plan. This would allow proper consideration of potential alternative sites and options for meeting development needs.

- iii) Reason 4 relates to matters that appear on the basis of information currently before the LPA to be capable of alleviation via a S106 Agreement (notwithstanding the outstanding objections on other matters).

### **3. Description**

#### Application site

- 3.1 The site is a greenfield area of approximately 31ha on the west side of Paignton, but within the Brixham Peninsula Neighbourhood Plan area.
- 3.2 The site currently consists of open, undulating agricultural land to the West of Brixham Road that includes six fields. Such fields are largely bounded by existing hedgerow. The immediate context comprises Brixham Road adjacent to the East site boundary, beyond which is the predominately residential area of Hookhills. The White Rock housing and commercial development approved under application P/2011/0197 and currently under construction, sits to the north of the site. A group of derelict buildings, formerly kennels and other agricultural buildings lie to the North of the site, within the path of the northern access pedestrian route. (These were the former "Inglewood" farm house from which the current proposal gets its name). Two semi-detached cottages, known as White Rock Cottages also sit to the north of the application site.
- 3.3 The north of the Inglewood site is within the Landscape and Ecology Management Plan for White Rock, which is proposed to be relocated.
- 3.4 Open fields surround the site to the south and west. The Nords, a clump of tall, mature trees are situated on the southern boundary. The South Devon AONB lies around 500m to the west and south of the site, where the River Dart Valley meets the rolling plateau. Galampton and Waddeton Conservation Areas also lie to the south and west of the site.
- 3.5 The site lies wholly within the Torbay Unitary Authority boundary, with the western boundary of the site running along the Torbay-South Hams boundary. Land in the applicant's ownership proposed as Landscape and Ecology Management (LEMP) lies within South Hams.
- 3.6 The site falls outside the settlement boundary within an area of open countryside, characterised as rolling farmland and valley slopes in the Torbay Landscape Character Assessment (Enderby 2010 (Character area 10, pp34-5), and is covered by Policy C1 of the Adopted Local Plan. Policy SS9 of the Local Plan proposes that a countryside and access scheme be provided at White Rock, but does not identify a mechanism for delivering this. The site also falls partially within a Minerals Safeguarding Area.
- 3.7 The site falls within the Brixham Peninsula Neighbourhood Plan area, and is part of a settlement gap identified in Policy E3.

#### The proposal

- 3.8 The application is made in outline, with all matters reserved except for access. As such, it is only the principle of the development that is being considered, with detailed matters reserved for future consideration. However detailed indicative layout, phasing, landscaping and drainage plans have been included in the application.
- 3.9 The indicative proposals are a direct result of extensive pre-application discussions that were undertaken with the applicant at an early stage. The Council's Design Review Panel have also been heavily involved and as direct consequence, the proposed scheme has evolved significantly since the initial pre-application



discussions were undertaken, and are considered to have improved. The scheme has been further revised post submission, in March 2018, to reduce the extent of development on the south west corner of the site.

- 3.10 The proposals include development of up to 373 homes, a new primary school with a nursery, playing field, sports court and public house. As part of the development, a significant amount of public space would be delivered in the form of three play areas, trim trails, informal spaces, a community orchard and allotments. Links to a woodland walk are also proposed to the north of the site, helping to connect the Inglewood to the White Rock development.
- 3.11 In addition to this, and given the important ecological considerations of the site, land will be set aside specifically for pasture. Whilst the proposal entails a net gain of 1 KM of hedgerow, the bulk of this is off-site within the South Hams. The indicative masterplan and supporting evidence indicate that development seeks to respect and strengthen field boundaries, retain trees as far as possible, and includes replacement tree planting. Nevertheless the proposal does entail the loss of trees on-site primarily along Brixham Road in order to gain access and visibility, and a loss of around 400m of hedgerow onsite.
- 3.12 The proposals suggest that the site be divided up into character areas, which seek to respect landscaping features. The submitted Urban Design Framework picks up on each of these character areas, and provides significant detail on how it is envisaged that such areas will come forward, with defined perimeter blocks. However, this is indicative at this stage.
- 3.13 Supporting information suggests there will be a phased approach to the development, with the site proposed to be divided into several key phases. 207 residential dwellings are proposed under Phase A. Development would not commence until planting for ecological mitigation and landscaping has taken place.
- 3.14 The application includes detailed junction and access arrangements. A new 4 armed roundabout is proposed on Brixham Road with pedestrian crossings provided at various points adjacent to the site. The plans show a north and southbound bus loop within the site.
- 3.15 A toucan shared cycle/pedestrian crossing to the north of the roundabout on Brixham Road links the development to the path network serving the Hookhills residential area. An uncontrolled crossing with refuge is proposed to the south of the site, close to Hunters Tor Drive. A shared cycle/footpath is proposed to link the development to the White Rock development. Widening of Brixham Road to 7.3m is also proposed to the north of the roundabout. An S278 Agreement will be required to reduce the speed limit from 40MPH to 30MPH.
- 3.16 Additional improvements to the White Rock Phase 1 (Brixham Road/Long Road/Goodrington Road) junction are proposed to increase capacity on the northbound turning lanes and Goodrington Road turning. Further improvements to Windy Corner (additional to the works carried out to the junction by the council in 2019) are also proposed. These relocate the existing island, create two south bound lanes and realign kerbs to increase turning radii. The Windy Corner junction arrangements do not entail the loss of common land, but do take some additional land in council ownership.
- 3.17 The application is supported by the submission of an Environmental Statement which sets out the assessment of the application against a number of significant matters

including ecology, landscape and visual impact. The application has required an Appropriate Assessment.

## 4 Background

### Planning History

- 4.1 The site has a long planning history, being the subject of a refused Called In application in 1996/7, and more recently being promoted through the Local Plan examination. The current application is a result of the relatively favourable response from the Local Plan Inspector and issues identified at the Local Plan Examination with housing supply post 2017.
- 4.2 A detailed summary of the relevant history is included at Appendix 1. The most salient history is as follows:
- 4.3 **1995/1304/MOA. SW/P/5183/220/4 Business Park Development Comprising B1, B2 Uses, Together With Associated Highway And Landscaping Works And The Creation Of A Balancing Pond (In Outline).** Refused by Secretary of State 29 October 1997 following Call In Public Inquiry. The SOS (and his inspector) considered landscape impact to be ‘the most compelling’ reason for refusal, given the impact of the proposed development on the AONB. The SOS applied substantial weight to this matter stating there was a “need to preserve the high quality of the Dart Valley AONB as one of the finest riverine landscapes in the country”. It was stated that “the development itself and the very extensive areas of woodland planting envisaged would have a significantly adverse and wholly unacceptable visual impact on the AONB, the AGLV and the surrounding countryside...” (Para 12 of the decision and 12.22 to 12.49 of the Inspector’s conclusions).
- 4.4 More details are set out in Appendix 1. It is important to note that this was for an industrial-led development rather than a residential-led scheme.
- 4.5 **P/2011/0197: Mixed use development of 39 ha at White Rock Paignton, to construct 350 dwellings, approximately 36,800 sq. m gross employment floorspace, local centre including food retail (up to 1652 sq. m gross) with additional 392 sq. m A1/A3 use and student accommodation, approximately 15 ha of open space, sports pavilion and associated infrastructure and engineering works to provide access, drainage and landscape (outline application).** Permission with s106 Agreement granted 29 April 2013. A subsequent s106 Agreement relating to phasing and the Landscape and Ecology Mitigation Plan (LEMP) was signed on 17<sup>th</sup> April 2014. The northern field of the current Inglewood proposal develops about 5ha of land identified in the s106 Agreement of 26<sup>th</sup> April 2013 as entry level stewardship. It also requires ecological management of hedgerows on the southern portion of the site.
- 4.6 Since this time a number of reserved matters applications have been submitted and approved and the White Rock area is currently being built out.
- 4.7 **Local Plan 2012-30 Examination.** The Inglewood Site was considered for Inclusion in the Torbay Local Plan as a Main Modification at the Public Examination in 2014/15, but was not proceeded with. The Inspector’s comments are summarised in Appendix 1.
- 4.8 **P/2016/1381 | Request for EIA Scoping Opinion in accordance with Regulation 13 for a maximum 450 dwelling houses, approximately 2,500sqm of employment space, access via Brixham Road, strategic landscaping and public open space** Land South Of White Rock Brixham Road Paignton Devon. Letter dated 16 February 2017 from the LPA confirms the need for and Environmental Statement and sets out the scope of an ES.

## Summary of the consultation responses

4.9 The following summarises the main issues raised by consultees. Because of the number and length of responses received, a fuller summary is set out in Appendix 2.

**Natural England:** Original concerns overcome. Further response 12 April 2018 states that Natural England have no objection subject to appropriate mitigation being secured. Without appropriate mitigation the application would have an adverse effect on the integrity of South Hams Special Area of Conservation and a range of mitigation measures is set out that need to be secured through S106 Obligation or condition.

It is noted that the enhancement measures affect the landscape and ecology mitigation measures for White Rock Phase 1 and Natural England's agreement to this is exceptional due to the enhancement measures being proposed are sufficiently robust to address concerns with this type of approach.

**Landscape.** Natural England advise that the LPA uses national and local policies and consult with the AONB Partnership to assess the impact on the nearby AONB. The legal duty to have regard to the conservation or enhancement of AONBs is noted.

**Soil and Land Quality.** Attention is drawn to land quality and soil considerations. It appears that the proposed development comprises approximately 31 ha of agricultural land which would be irreversibly lost, most of which is Grade 2-3a. Paragraph 112 (now paragraph 170 b) and footnote 53) of the NPPF states that:  
'Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.'

Advise that if the development proceeds, the developer uses an appropriately experienced soil specialist to advise on, and supervise, soil handling, including identifying when soils are dry enough to be handled and how to make the best use of the different soils on site.

**16 December 2019:** Confirm that the advice in the letter of 12 April 2018 still holds. Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given. As part of securing the mitigation measures, you will also need to ensure that the identified "dark areas" (less than 0.5lux) are not subject to detrimental light spillage from all sources of light (including internal and external sources). A detailed lighting assessment will be required at Reserved Matters.

### **Further comments 30 January 2020**

#### **Updated bat survey**

The advice that we provided in our letter (dated 12 April 2018) and email (dated 16 December 2019) still holds. To facilitate independent interpretation of the bat survey, it would be useful to put forward a comparative analysis between the two bat survey data sets (including survey methodology comparison). We support comments put forward by

the RSPB (email dated 27 January 2020), advising that the in-perpetuity management of ecological areas is underpinned by a sufficiently robust funding mechanism.

### **Soils and land quality**

We re-iterate much of our advice regarding soils in our letter dated 12 April 2018, with some further updated advice in response to the Agricultural Land Classification report (ClarkeBond).

Having considered the proposals as a consultation under the Development Management Procedure Order (as amended), and in the context of Government's policy for the protection of the 'best and most versatile' (BMV) agricultural land as set out in paragraph 112 of the National Planning Policy Framework, Natural England draws your Authority's attention to the following land quality and soil considerations:

- Based on the information provided with the planning application, it appears that the proposed development comprises approximately 31 ha of agricultural land classified as 'best and most versatile' (Grades 1, 2 and 3a land in the Agricultural Land Classification (ALC) system).

There is an existing post 1988 MAFF ALC survey for the development site carried out for the LPA in connection with the Torbay Local Plan which indicates the site is Grade 2 and 3a.

The maps and report are available via Natural England's publications at: <http://publications.naturalengland.org.uk/publication/5644275038552064>

This MAFF ALC information remains current and can be used to appraise the agricultural quality of this site. Should the development proceed, the accompanying soil data can also feed into a soil resources survey as set out in the Defra Construction Code of Practice for the Sustainable Use of Soil on Construction Sites. Use of the Defra Code may be conditioned as set out in PPG for the Natural Environment.

- The ALC survey submitted (ref: WB03590/R3 Issue 5) appears to be based on a geotechnical survey rather than a soil survey and has not been carried in line with normal practice as set out in the Gov.uk guidance (e.g. soil sampling on a regular grid with a sample density of 1 ha) or provided the type of detail about the soil and climatic characteristics required to apply the ALC grading criteria as set out in MAFF, 1988 (*Agricultural Land Classification of England and Wales. Revised guidelines and criteria for grading the quality of agricultural land*). It should not be relied upon to determine the agricultural quality of this land.

Comments go on to reiterate 170 and 172 of the NPPF we advise that if the development proceeds, the developer uses an appropriately experienced soil specialist to advise on, and supervise, soil handling, including identifying when soils are dry enough to be handled and how to make the best use of the different soils on site.

**South Devon AONB Unit:** Object to the development. Initial comments received 15<sup>th</sup> December 2017. The Proposal is considered to have unacceptable impact on the special landscape qualities of the nearby South Devon AONB, contrary to the principal material protected landscape policies and fails to conserve and enhance rural setting. It is too reliant on mitigation measures.

The AONB Unit considers that the countryside contributes to the rural setting of the AONB, providing a buffer and transition zone between the urban areas of Torbay to the north and the Dart Estuary within the AONB to the south and helps maintain tranquillity of AONB and the views. The greatest impact considered to be on viewpoint 16 (East of the Dart on Stoke Gabriel Road)

Noted that the application site is allocated in the adopted plan as a Country Park and the application constitutes a substantive departure from policy. This is reinforced in the Brixham Neighbourhood Plan.

The site's agricultural land merits protection as part of the best and most versatile land resource in the context of Torbay.

**Restated Objection: 10<sup>th</sup> May 2018:** The applicants have sought to address the AONB Units concerns by Landscape and Visual Impacts, ecology, external lighting, green infrastructure, Framework Landscape and Ecology Management Plan and proposed masterplan. However, the proposal does not conserve or enhance the natural beauty of the AONB.

The Unit consider that the positive effects from these amendments will be localised and will not materially alter the more substantive impacts of the scheme taken as a whole. Whilst the Unit appreciates that the applicant has developed a range of mitigation measures in an attempt to reduce the substantive impacts upon the sensitive landscape of the South Devon AONB, the residual impacts continue to result in an unacceptable level of harm to the South Devon AONB.

**South Hams District Council: Object to the application (4 December 2017).**

Object to the proposal on grounds of:

**Ecology** - ask that Torbay seek specialist ecological advice in discharging its HRA duties.

**Landscape** – Object that the proposal would result in residual harm to the AONB and concur with AONB Unit's objections.

**Minerals** – recommend that DCC's views are sought about the impact on the Minerals Safeguarding Area.

**Devon County Council** Initial concerns about Minerals Safeguarding have been overcome and initial objection withdrawn 29<sup>th</sup> March 2018.

**Brixham Town Council: Object (4 December 2017) to the application on grounds of:**

The proposal conflicts with Policies C1; SS9 and M3 of the Local Plan: There are further objections on: Lo

ss of countryside and impact on AONB, impact on important biodiversity,

Loss of high quality agricultural land, transport impacts, surface and foul water impacts.

Conflict with the Neighbourhood Plan. The proposal is so substantial that granting permission would prejudice the Brixham Peninsula Neighbourhood Plan

Further objection received (3 April 2018) on conflict with the development plan, adverse effect on the AONB and Dart Valley, loss of high grade agricultural land, lack of information on likely urban design and reliance on character areas will not safeguard good quality development.

The negative impacts of the development are so great that housing land supply considerations should not prevail over the negative impacts of the proposal.

**Further objections 2<sup>nd</sup> and 9<sup>th</sup> December 2019:** Confirm that Brixham Town Council remains “phenomenally opposed to the application and objects in the strongest terms”: conflict with the Local and Neighbourhood Plan, landscape, transport, affordable housing, ecology, recreational pressure on Berry Head, and drainage reasons.

**Brixham Peninsula Neighbourhood Forum (a sub-group of Brixham Town Council).**  
**Object** on the same grounds as Brixham Parish Council (4<sup>th</sup> December 2017). Also object due to highway capacity reasons at Windy Corner. Development in is contrary to the Neighbourhood Plan and would prejudice the delivery of allocated development sites in the BPNP (conflict with Policies BH1 and J1).  
The proposal is against the BPNP’s settlement and landscape policies (BH4, BH9, E1, E2, E3, and E6) and is located in a settlement gap.

Object that no in-combination assessment of impact on greater horseshoe bats has been carried out, contrary to Policy E8. Contrary to transport policy T1.

Approving the application would create public perception that the Council is giving special treatment to this applicant at the expense of other applicants.

**Brixham, Churston Galmpton and Broadsands Community Partnerships Object** profound conflict with the development plan, landscape harm, ecology, lack of jobs, unsustainable location. Concur with the Neighbourhood Plan group’s views.

**Paignton Neighbourhood Forum: Object** to the application on grounds of:  
- Significant conflicts with the Local Plan,  
- Landscape, biodiversity, loss of high grade agricultural land, transport, foul and surface water drainage.  
- Harm would result that outweighs any other material planning consideration.

Further objection (11<sup>th</sup> April 2018) reiterates objections on procedural grounds, housing need and five year supply. PNF note that there has been a fall in employment of 2,000 jobs since 2012 and actual job numbers are far below the Local Plan target. Objections

are also maintained on the lack of sewerage and highway infrastructure and AONB impact.

**Cornworthy Parish Council: Object** on grounds of landscape and visual impact on AONB, traffic and lack of infrastructure, loss of agricultural land and food security, light pollution and loss of dark skies, creation of unsustainable dormitory area due to lack of employment opportunities, foul and waste drainage, and harm to tourism after despoilment of a stunningly beautiful area.

**Stoke Gabriel Parish Council Object** to the application on grounds of: Drainage into the Dart, loss of agricultural land, Impact on the AONB, and highway Impact.

Objection reiterated 4<sup>th</sup> December 2019: Circumvents the Plan making process, conflict with the Neighbourhood plan, “catastrophic” effect on the Dart Valley and AONB. Harm to Millpond at Stoke Gabriel.

**Kingswear Parish Council: Object** on grounds of adverse visual impact on Dart Valley, overdevelopment, harm to tourism, additional traffic, pressure on local services, health, schools, social services, sewage and waste.

Reiterate objection 10 December 2019: inadequate infrastructure, visual impact, harm to AsONB, wildlife and tourism.

**Maldon Parish Council Object** on grounds of lack of infrastructure, loss of greenfield land, conflict with the development plan.

**Dartmouth Town Council (2 January 2018)** Request details of the design.

**Dartmouth and Kingswear Society Object.** Impact on the setting of the AONB, loss of agricultural and precedent for future urbanisation on the AONB boundary.

**Dittisham Town Council: Object** strongly to the proposal. Objection reiterated 9<sup>th</sup> December 2019 – intrusion into open countryside, urbanisation of unspoilt estuary, harm to AONB. The landscape and visual impact assessment and other information submitted with the proposal underplays the effect on the Dart Valley and AONB, biodiversity and traffic impacts.

**Churston Ferrers Grammar School: Object.** The proposal is a departure from the Torbay Local Plan and Brixham Peninsula Neighbourhood Plan. Additional impact will create additional delays to coaches travelling into the school from outside Torbay. Impact on air quality and harm to the Geopark and biodiversity (greater horseshoe bats).

**Paul Bryan, Teignbridge District Council: (Acting as Landscape Adviser to Torbay Council).**

Broadly agrees with findings of the applicant’s LVIA (and implications of ES) that impact on landscape is not significant. The changes to the layout in March 2018 remove development from field 3 and change units along the southern boundary to single storey. These changes will eliminate the short term adverse effects on Waddeton and the South Devon AONB that were likely to have arisen from the initial application. These changes are therefore welcomed and make the proposals even more acceptable in landscape terms.

Whilst there are matters not addressed in terms of reducing density on the southern boundary and details of the character areas; these are compensated for by the removal of development from field 3. More information on key characteristics would be of benefit.

Suggests a number of amendments to planting and highways to minimise landscape impact, (see appendix 3)

**Lighting** The revisions to lighting strategy would appear to include smaller columns in some areas and for the areas closet to the AONB low level lighting. This approach is welcomed and should help to reinforce and give distinction to the separate character areas. The likely spread of light is relatively well contained.



Despite some outstanding issues relating to landscaping and management, the Council's landscape adviser was broadly in agreement with the applicant's LVIA that the proposal would not when landscaping has matured, pose a significant adverse effect on the AONB.

**Jacobs: Acting as Landscape advisers to Torbay Council. Landscape assessment June 2018 advises that the development would adversely affect the special qualities of the adjoining AONB.**

The Site forms part of the setting of the AONB north-east of the River Dart valley, being clearly visible from a number of representative viewpoints from publicly accessible locations within the AONB, that would be experienced by a variety of users including vehicle travellers, cyclists and walkers. Whilst extensive mitigation is proposed, it is not considered that this would overcome the fundamental impacts of the proposed development on the setting of the AONB.

Significant adverse visual effects would arise from the extension of the existing urban edge of Paignton westwards into the rural landscape, which forms part of the AONB setting and helps maintain the tranquillity of the AONB. Detailed conclusions are set out in Appendix 3.

**CPRE: Object.** The development is not sustainable as defined by the NPPF, the need for housing (and the development in general) is not demonstrated, loss of best and most versatile agricultural land, impact on the AONB and valued landscape, not in accordance with the Local and Neighbourhood Plans, development would prejudice a review of the development plan, cumulative traffic impact, harm to bats, light pollution, harm to tourism, drainage and sewerage problems.

**Torbay Coast and Countryside Trust: Object/ Further information required:**

Departure from the Local Plan, concerned that ecological mitigation may not be achievable. Poor track record of mitigation at White Rock 1 and impact of changing agricultural practices/climate change issues may make the Farm Management Plan unachievable.

**RSPB: Initial Objection largely overcome subject to safeguards**

Initial concerns about the impact on cirl buntings are largely addressed by Ecological Addendum, Farming Practices Plan, Proposed Phasing Plan and Framework Landscape and Ecological Management Plan (LEMP)

Welcome the commitment to:

- Provide habitat to support a min of 10 breeding cirl bunting pairs
- Provide 4ha of spring barley/winter stubble annually on the compensation land.
- Provide mitigation planting and habitat creation in relation to Inglewood as set out on updated phasing plan
- Monitoring to include cirl bunting surveys annually during construction and until then annual for up to at least 10 years post construction.

In conclusion – if the RSPB has confirmation that Natural England is satisfied that the amended proposals are adequate in relation to greater horseshoe bats and that the funding and security mechanisms are acceptable to Torbay Council and South Hams then they will withdraw the objection.

**Ramblers Association: Object** due to impact on the proposal on the setting of the AONB, particularly from key public vantage points, including the John Musgrave Heritage trail. An alternative assessment of the visual impact from key vantage points is provided.

**South Devon NHS: Object to the development without a healthcare contribution.** Torbay and South Devon NHS Foundation Trust) is currently operating at full capacity in the provision of acute and planned healthcare. Seek a contribution of £353,857 (based on 400 dwellings) to cover shortfalls in hospital services.

**Mark Pearson (Design Advice to Torbay Council).** Broadly supports the indicative layout and design. The Masterplan layout is good. Open space assists with legibility and wayfinding. Basic local retail amenities are not within walking distance of the site. Inclusion of primary school and pub/restaurant and bus service on site are therefore welcomed.

**Future Planning: (Retail Impact matters): No objection to the pub/restaurant subject to conditions.** On the basis that it is part of a wider community, it is recommended that the pub/restaurant development is acceptable in terms of retail impact, provided that a phasing condition is associated with any grant of planning permission (to ensure that it is delivered after residential development has commenced).

The use should also be restricted to a pub/restaurant use (Class A3/A4) with bookable functions facilities is secured by condition and no hot takeaway be permitted.

**Sport England:** Have raised concerns about the proposed level of playing field/sports provision. Occupiers of the development will generate demand for sporting provision. New development should therefore contribute. The level and nature of any provision should be informed by a robust evidence base such as an up to date Sports Facility Strategy, Playing Pitch Strategy or other relevant needs assessment.

Cycle and walking networks should be extended to linking the existing town with the new development and access to the surrounding environment. There should be clear signage for cyclists into and out of the development site.

Sport England will withdraw the objection if the sporting needs can be addressed either through on site provision, and/or off site contributions for outdoor/indoor sport recreation, and the principles of Active Design can be demonstrated.

**TDA (Dave Stewart): Drainage. No objection subject to further infiltration testing/conditions.** Following receipt of additional surface water information, confirmed on 9<sup>th</sup> April 2018 that the outline drainage strategy complies with the requirements of the Torbay Critical Drainage Area. The developer must supply the additional infiltration testing and surface water drainage design showing that there is no risk of flooding to properties on the site or increased risk of flooding to properties adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. The detailed drainage design must be submitted and approved prior to any construction works commencing on the site.

Confirmed (November 2019) that these comments remain valid.

**South West Water** No objection.

**TDA Education: Support** the application. The primary school is likely to be needed to meet the needs of the development as well as new housing yet to be delivered in the area.

**Trees (Lee Marshall).** A number of issues around tree management are outstanding. Noted that there is reliance on off site features for screening. Mature hedge rows may be subject to varied management as per countryside management schemes. There is no detailed description of the composition, health, disease reliance or structure of Nords

Wood that would allow greater understanding and confidence of suitability to screen the development.

**Jacobs – Ecology Detailed ecological assessment dated 11 April 2018.** Concludes that they are satisfied that the key ecological issues raised through consultation have been resolved by the applicant through provision of further information, particularly the Ecology Addendum, and that there are currently no ecological grounds for objection to the application.

**Habitats Regulations Appropriate Assessment** prepared May 2018 (because the proposal relies on mitigation to avoid likely significant effects on greater horseshoe bats/South Hams SAC). Concludes that in light of the mitigation measures identified and consideration of the implications for the sites Conservation Objectives. There is NO Adverse Effect on the Integrity of the South Hams SAC - alone or in combination with other proposals or projects.

Advise 6 June 2018 that the off-site works may be considered to be mitigation.

Noted that the Appropriate Assessment has been updated in December 2019.

**Jacobs/ Future Planning, Highways. No objection in principle.** Following submission of the additional information, and assuming that the highway improvements go ahead (Long Road junction, Brixham Road alignment and junction to the site and Windy Corner) that pedestrian and cycle access routes are implemented (through to White Rock remote from the highway network, and across Brixham Road via the crossing to the North, via the crossings at the roundabout junction, and via the crossing to the South); and that the bus service and related infrastructure are provided, the development is not considered to have a severe impact on the local network.

Note that capacity issues at Windy Corner cannot be fully overcome, but the shortfall is accepted as being less severe than would be the case with neither the Inglewood Development nor further improvements to Windy Corner. A pedestrian crossing is being sought at Windy Corner which will reduce the junction's capacity but the benefit to pedestrian safety is considered to outweigh this.

**Stagecoach: Support the application.** Has worked with applicant to ensure a regular bus service which will improve access to public transport in the vicinity, including South Devon College and help mitigate traffic impacts. The site is deliverable and sustainable and the need to boost housing supply must be taken into account.

**Wales and West Utilities -general comments:** No specific record of major service infrastructure, but care needs to be taken to ensure there are no gas pipes present.

**Police Architectural Liaison Officer:** General guidance regards secured by design to prevent crime. The level of parking should be increased.

**Coast Academies: Support.** The proposals fit in well and help address any capacity issues. Considers the school can make use of orchards, countryside access and farming area and will operate as a "woodland school". Funding has been secured for opening of a school at Inglewood and is contingent on planning permission being granted.

**TDA (Affordable Housing) Support** The proposal meets the Local Plan Requirements for 30% affordable housing. Wheelchair adopted properties should be provided. . Mix of bedroom numbers should be proportionate to the mix overall. Include in s.106.

**TDA: (Economic Development) No objection subject to employment contribution.**  
Advise that a contribution is required in regards to employment. Employment contribution of £500,000 is sought in lieu of onsite provision of circa 2,500 sq. m of onsite employment units shown in pre-submission drawings. To go towards the development of new employment space such as Claylands Business Park.

**Conservation Officer /Archaeology (Hal Bishop)**  
Possible archaeological features should be assessed through excavation trenches prior to commencement. Can be addressed as a condition, so long as it precedes determination of other reserved matters.

**County Archaeologist:** No objection subject to assessment of archaeological features through excavation trenches, to be secured through condition.  
Archaeological investigations of Windy Corner should take place as part of further junction works, due to historic evidence of a gallows in the area pre-1900.

**Environmental Health.** Concerns regarding noise of the road on the eastern fringe of the development. Recommends that houses affected be provided with alternative means of rapid ventilation (or located further from Brixham Road). Given the layout may well only affect four or five houses.

**Head of Parks and Open Spaces:** Would prefer public open space to be transferred to the Council.

9 December 2019: The model presented by GreenSquare does need further consideration, however there is still some concern over the use of a management company and potential dispute resolution.

**Historic England** – No comment (March 2018). Suggest seeking the views of specialist conservation and archaeological advisors.

### Planning Policy

- 4.10 A detailed assessment of the development plan and supplementary planning framework for the areas is set out in Appendix 3. Planning law indicates that planning applications should be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 4.11 The development plan for the area is the Adopted Torbay Local Plan 2012-30 (Adopted December 2015) and the Brixham Peninsula Neighbourhood Plan (Made by Council June 2019 following referendum in May 2019).
- 4.12 The National Planning Policy Framework (NPPF), planning policy guidance (PPG), AONB and SAC Management Plans are also material considerations.
- 4.13 The development plan must be read as a whole and other policies are likely to be relevant. However, the following are particularly relevant. A more detailed summary is set out at appendix 3.

## **Adopted Torbay Local Plan 2012-30 (ATLP)**

- 4.14 **Policy SS1 Growth Strategy for a prosperous Torbay** This Policy sets a strategic context for Torbay. Inglewood is shown as part of SDP3.5 Paignton North and Western Area strategic delivery area. However it is recognised that the Key Diagram (P45) is indicative and Inglewood is **not** shown as part of the (more precisely defined) Future Growth Area. The application site is within the Brixham Peninsula Neighbourhood Plan area. Policy SS1 states that communities will have a greater influence in determining how development in their area will look and feel, specifically through the new framework of neighbourhood plans.
- 4.16 **Policy SS2 Future Growth Areas.** Future Growth Areas are broad locations to deliver the Local Plan's growth strategy. Inglewood is located to the south and outside of SDP 3.5 White Rock. 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.
- 4.17 **Policy SS5 Employment Space.** require that mixed use development, especially in the first 5 years of the Plan, must include early provision of serviced employment space.
- 4.18 **Policy SS8 Natural environment.** This policy applies to Inglewood which is outside the AONB but may have an impact on it.
- 4.19 **Policy SS9 Green Infrastructure.** SS9.3 proposes countryside access on the Inglewood site.
- 4.20 **Policy SS12 Housing.** Sets out Neighbourhood Plan area housing requirements. The Brixham Peninsula has a lower requirement (790 or 660 dwellings) than Paignton or Torquay Neighbourhood Plan areas, in recognition of the constraints facing this area.
- 4.21 **Policy SS13 Five year housing land supply.** This policy states that the Council will maintain a rolling 5 year supply of specific deliverable sites sufficient to meet a housing trajectory of 8,900 dwellings over the Plan period 2012-30, and identifies measures to increase housing supply in the event of a shortfall.
- 4.22 **Policy SDB1 Brixham Peninsula.** Brixham will accommodate appropriate but limited new growth to meet local housing and employment needs and support Brixham's regeneration and prosperity. A requirement of 660 dwellings between 2012-30 is set out<sup>3</sup>.
- 4.23 **Policy SDB3 Brixham Urban Fringe and Area of Outstanding Natural Beauty** Inglewood falls outside of this area (as indicated schematically on the Key Diagram), but the policy is relevant insofar as there are potential effects on the AONB, or greater horseshoe bats flightpaths or foraging areas.

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<sup>3</sup> Table 3 (90) and Table 18 (P129) of the Local Plan indicate 790 dwellings. Policy SDB1 indicates 660. Because the 660 dwelling figure is upper case policy, this number is taken as the requirement figure. The two different figures derive from the potential inclusion of Churston Golf Club site, although this has not been taken forward. Policy BH3 of the Neighbourhood Plan allocates 685 dwellings and was found by the Independent Examiner and Council to meet the "Basic Conditions" governing neighbourhood plans.

- 4.24 **Policy C1 Countryside and the rural economy.** Inglewood is within the Countryside Area in the Local Plan.
- 4.25 **Policy C4 Trees, hedgerows and natural landscape features**
- 4.26 **Policy NC1 Biodiversity and geodiversity**
- 4.27 **Policy H1 Applications for new homes.** Sets out a criteria based policy for considering proposals for new homes.
- 4.28 **Policy H2 Affordable housing.** Seeks affordable housing on a sliding scale, up to 30% of dwellings.
- 4.29 **Policy DE1 Design.**
- 4.30 **Policy SC3 Education, skills and local labour.**
- 4.31 **Policy SC5 Child poverty.**
- 4.32 **Policy M3 Preserving and safeguarding of limestone resources and key local building stone.** Inglewood is shown as a Mineral safeguarding Area where proposals should demonstrate that they will not cause unnecessary sterilisation or prejudice the future extraction of important minerals/ building stone.

**Brixham Peninsula Neighbourhood Plan (BPNP) “Made” (adopted) June 2019 following referendum in May 2019.**

- 4.33 **Policy BH13 Delivery of new homes.** This includes the BPNP’s site allocations to meet (slightly exceed) the Local Plan requirement of 660 dwellings The Policy does not does not include Inglewood.
- 4.34 **Policy BH4 Brownfield and greenfield sites.** This policy prioritises brownfield sites within development boundaries
- 4.35 **Policy BH9 Exception sites.** This policy lists criteria for the consideration of small exceptions sites.
- 4.36 **Policy E1 Landscape beauty and protected areas.** This policy requires new development to respect and where possible enhance the natural qualities of the Peninsula’s natural beauty, landscape character, tranquillity and natural beauty.
- 4.37 **Policy E2 Settlement Boundaries.** This policy sets out settlement boundaries for Brixham, Galmpton, Churston and Broadsands. The Inglewood site is not located within a settlement boundary.
- 4.38 **Policy E3 Settlement gaps.** This policy set out settlement gaps which are shown on the Policies Map and Appendix 3 of the Plan. Within these gaps no development that visually or actually closes the gaps between urban areas will be permitted. A significant part of the Inglewood application is within Settlement Gap 1.
- 4.39 **Policy E6 Views and Vistas.** Views and vistas, particularly to and from the sea and River Dart, including horizons and skylines must be protected.
- 4.40 **Policy E7 Protecting semi-natural and other landscape features.**

4.41 **Policy E8 Internationally and nationally important ecological sites and species.** Development will not be permitted where it would adversely affect the ecologies of designated areas including the South Hams SAC

4.42 **Policy T1 Linking of new developments to travel improvements.**

**Non-development plan documents**

4.43 The following are not part of the development plan, but set out guidance to help implementation of the development plan or other matters.

4.44 **Planning Contributions and Affordable Housing SPD (Adopted 2017)** This provides advice on the scope of S106 Planning Obligations including the priority given to planning obligations.

4.45 **South Devon AONB Management Plan 2019-2024.** This document is the Statutory Management Plan for the South Devon Area of Outstanding Natural Beauty. Inglewood is outside the AONB but within its setting. Policy Lan/P7 is applicable: *“The deeply rural character of much of the land adjoining the AONB boundary forms an essential setting for the AONB and care will be taken to maintain its quality and character”*.

4.46 **South Devon AONB Planning Guidance (2017)** This is an annex of the AONB Management Plan which provides detailed guidance on how development can conserve and enhance the natural beauty of the South Devon AONB. Section 8.10 relates to development in the setting of the AONB.

4.47 **Greater Horseshoe Bat Special Area of Conservation Guidance (2019)** Non-statutory guidance which sets out measures and considerations to assist in meeting the statutory duties towards the SAC. Inglewood is located outside of the SAC but within the sustenance zone of greater horseshoe bats.

## **5 Key issues – Detailed discussion**

- 5.1 The Inglewood application raised significant policy issues. The key issues in the application are considered to be:
- i) The degree of conflict with the Adopted Torbay Local Plan 2012-30 (ATLP), the need for housing, including affordable housing and five year supply.
  - ii) The conflict with the “Made” (adopted) Brixham Peninsula Neighbourhood Plan, and the ability of the NPPF (and housing supply) to unseat a recently made plan.
  - iii) The need for a school site.
  - iv) Economic benefits arising from the public house and well as wider employment/ economic benefits, including consideration of the acceptability of a public house (a main town centre use).
  - v) Impact of the proposal upon the nearby South Hams Area of Outstanding Natural Beauty and local valued landscapes, including from development and light.
  - vi) Effect on biodiversity, particularly the South Hams SAC, curlew buntings and other species, trees and hedgerows. As noted above the site requires an Appropriate Assessment under the Habitat Regulations.
  - vii) Conserving best and most versatile agricultural land, including loss of farm land and restrictions on the use of offsite agricultural land as part of the LEMP/Farm Management Plan.
  - viii) Countryside access and other green infrastructure including management.
  - ix) Sports provision
  - x) Impact of the proposal on the highways network, and scope to promote sustainable modes of transport.
  - xi) Drainage issues, including impact on the Critical Drainage Area.
  - xii) Waste management.
  - xiii) Weight given to the Minerals Safeguarding Area.
  - xiv) Healthcare provision and wider community facilities.
  - xv) Impacts on heritage assets in the vicinity, particularly listed buildings.
  - xvi) Amenity and Noise considerations.
  - xvii) “The Planning Balance”



**(i) The degree of conflict with the Adopted Torbay Local Plan 2012-30 (ATLP), the need for housing, including affordable housing and five year supply.**

- 5.2.1 The proposal is a departure from the ATLP and planning law requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 5.2.2 As outlined above, the application site falls outside of the settlement boundary within an area of countryside, which is open to the west (i.e. towards the South Hams AONB) and south west (towards Galmpton). Although within the indicative SDP3.5 strategic policy area for Paignton North and Western Area” on the Local Plan key diagram (p45), it is clearly shown as being within the countryside area (Policy C1) and outside any Future Growth Area on the Policies Map.
- 5.2.3 Local Plan Policy C1 states that within open countryside away from existing settlements and rural areas surrounding the three towns, development will be resisted where this could lead to the loss of open countryside or creation of urban sprawl or encouraging the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting. Consequently, major new development should focus on Future Growth Areas. Policy SS2 confines major developments to Future Growth Areas unless they are identified in Neighbourhood Plans. Policies SS8 and NC1 seek to protect and enhance the environment, including the setting of AONBs (SS8.3). Policy SS9.3 proposes a Countryside Access and Enhancement Scheme on the site. Policy DE1 has regard to a wide range of design matters, including protection of views and longer distance skylines, particularly from public vantage points having regard to the location and prominence of sites.
- 5.2.4 The impact of the proposal on the AONB and biodiversity and access are discussed in more detail in following sections. But there is significant conflict between the Inglewood proposal and these policies.
- 5.2.5 However, the Local Plan does set out a wider growth strategy within environmental limits (Policy SS1 and elsewhere). It seeks to deliver 8,900 homes and 5,000- 5,500 new jobs over the period 2012-30 (equal to 275-300 jobs and 495 dwellings per annum). Policy SS3 largely restates the NPPF’s presumption in favour of sustainable development. Policy SS13 of the Local Plan sets out the Local Plan’s housing trajectory and indicates remedies where there is a shortfall against five year supply, including: “3: (to) Consider favourably applications for new housing, consistent with Policy SS2, H1 and other Policies of this Plan”. Policy H1 of the Local Plan indicates that meeting housing need, providing a range of homes including affordable housing and maintaining a five year supply of housing are factors in favour of granting permission for new housing developments.
- 5.2.6 It is noted that some objectors have argued that the level of need for housing is exaggerated because jobs have not kept pace with new homes. It is also noted that Torbay’s population growth is driven by inwards migration and that there is significant outward commuting through a busy road network. Torbay has the highest level of vacant properties in Devon, which is argued by objectors to point to a lack of demand for housing.
- 5.2.7 The assessment of housing need is a matter that needs to be assessed at plan making rather than decision taking stage. Housing need, and wider economic factors affecting the housing market are considered in the **Council’s Housing Delivery Test**

**Action Plan.** <https://www.torbay.gov.uk/council/policies/planning-policies/evidence-base-and-monitoring/>. This does point to evidence that the housing market in Torbay is less buoyant than elsewhere in Devon or the national picture.

- 5.2.8 However, Government policy seeks to boost housing supply. A number of policy tests such as five year supply, the Housing Delivery Test and Presumption in Favour of Sustainable Development have the express purpose of increasing national housing supply. If the Local Plan's housing target is found to be out of date, then the default position would be the Standard Methodology Local Housing Need Figure (specified in NPPF paragraph 60 and elsewhere). This approach takes the 2014 based household projection and adds an additional number to take into account the gap between house prices and local incomes, and is intended to set a minimum housing need figure for an area. This formula currently indicates a minimum annual need in Torbay of around 613 dwellings.
- 5.2.9 As pointed out above, Torbay's housing market is more nuanced than the standard methodology indicates. The gap between earnings and house prices are a result of low wages rather than abnormally high prices, and the high level of empty housing is prima facie evidence of sluggish effective demand for housing. These are all factors that really should be interrogated through the Local Plan Examination process, rather than as a departure from the statutory development plan.
- 5.2.10 Notwithstanding the above, the need for housing and economic development must be given significant weight. The LPA is unable to demonstrate 5 years' supply of housing. Local Plan Policies SS3, SS13 and H1 seek to consider favourably applications for new housing (consistent with other Plan policies) in order to maintain a five year supply of sites. The provision of 30% affordable housing (around 112 units) is also a significant benefit of the proposal, which as required by BPNP Policy BH2 would meet local housing needs.
- 5.2.11 The NPPF indicates that the shortfall in five year supply means that applications for housing should be considered on the basis of the presumption in favour of sustainable development i.e. a "tilted balance" applied in favour of granting planning permission. Because the application has been subject to an Appropriate Assessment which has not identified adverse effects on the integrity of the SAC (see below), paragraph 177 of the 2019 iteration of the NPPF indicates that the Presumption continues to apply.
- 5.2.12 On this basis, whilst the proposal conflicts with some Local Plan Policies (e.g. SS2 and C1); there are countervailing policies in the Local Plan that seek to approve housing applications (e.g. SS3 and SS13), and the shortfall against five year supply must increase the weight given to these policies. Therefore, taken as a whole, the degree of conflict with the Local Plan is not absolute and there would be a case to argue for approval if all other matters were deemed acceptable.
- 5.2.13 However, there are outstanding Neighbourhood Plan and AONB objections which are considered below.

### **Pre-Emptying the Review of the Local Plan**

- 5.2.14 Some objectors have argued, and I agree, that proposals of this scale are best considered at a Plan Making stage. This would allow a proper consideration of the level of need and potential options for meeting development needs.

- 5.2.15 The site was included in the previous SHLAA (2013) and put forward as a Main Modification to the Local Plan (but subsequently removed). It is reasonable to assume that the LPA will need to consider the site as part of the Housing and Employment Land Availability Assessment work (which is currently underway). Indeed the 2017 Local Development Scheme alludes to this at paragraph 3.5.2 (although it must be emphasised that the LDS is not a part of the development plan, and this cannot be taken as a material consideration in favour of the proposal). Including the site would represent a significant change for the policy of relative restraint in the Brixham Peninsula set out in Local Plan Policy SDB1. A strategic shift of this scale should be addressed at the plan making rather than decision making phase of the planning process.
- 5.2.16 An update of the Local Plan Review is still at a very early stage and there is no case to argue that the proposal, even though substantial, could be considered to be premature when assessed against the tests in Paragraph 49 of the NPPF.
- 5.2.17 On this basis, whilst officers would prefer the matter to be considered at a Plan making stage, the case to resist the proposal on pre-emption/prematurity grounds alone is probably outweighed by the housing shortfall and the Government's objective of significantly boosting housing supply.

**(ii) The conflict with the “Made” Brixham Peninsula Neighbourhood Plan, and the ability of the NPPF (and housing supply) to unseat a recently made plan.**

- 5.3.1 The proposal is contrary to the Brixham Peninsula Neighbourhood Plan (BPNP) which was made (adopted) unanimously by full Council in June 2019 following and 88.2% “yes” vote at referendum in May 2019.
- 5.3.2 There is very significant and clear conflict with the BPNP. Firstly, it would be a major addition to the Local Plan housing requirement of 660 dwellings (set out in Policy SDB1 of the Local Plan<sup>4</sup>), accounting for about 60% of Brixham's entire requirement between 2012-2030. Although the Local Plan target is not intended to set a maximum figure, the Inglewood proposal would be a major deviation from the strategy in the BPNP. The proposal is in conflict with the Neighbourhood Plan's focus on brownfield sites and those within settlements (see Policies BH3, BH4 and BH9).
- 5.3.3 Land south of White Rock (slightly larger than the current application site) was considered in the BPNP Housing Site Assessment (H3-R7 pp82-3) but rejected because *“(it would be a) major urban encroachment into an area of sweeping farmland which flows into the Dart Valley AONB. There is likely to be a significant ecological impact through development on the scale of this site”*.
- 5.3.4 Policy E3 of the Neighbourhood Plan designates a Settlement Gap across a substantial part of the Inglewood site, where “No development that visually or actually closes the gap between...urban areas will be supported. E3.1 View point 1 (p103). shows a vista across what appears to be the application site towards the South Devon AONB. Policy E6 of the BPNP seeks to safeguard views and vistas, including those to the River Dart. The proposal does not meet the tests for “exceptions sites” in Policy BH9.

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<sup>4</sup> See footnote 3 above.

- 5.3.5 Policy PNP21 of the Made Paignton Neighbourhood Plan resists expansion south of the existing White Rock site. This may be taken as general support for the BPNP's policies, but cannot be given weight beyond this, since the Inglewood site falls outside of the PNP's boundaries.
- 5.3.6 The Town Council, the Brixham Peninsula Neighbourhood Forum (subgroup of the Town Council) and Paignton Neighbourhood Forum, as well as the neighbouring parish councils are all objectors to the scheme, and the objection that the proposal would undermine the Neighbourhood Plan and principle of localism is echoed by many other objections.
- 5.3.7 Paragraph 14 of the NPPF provides additional protection to recently made neighbourhood plans from housing proposals. It states that where the Presumption in favour of Sustainable Development (NPPF11) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided that all of the following apply:
- a) The Neighbourhood Plan became part of the development plan two years or less before the date in which the decision is made. (i.e. in the case of the BPNP before June 2021)
  - b) The neighbourhood plan contains policies and allocations to meet its identified housing requirement (Policy BH3 contains policies and allocations to provide 685 dwellings, against a requirement of 660).
  - c) The LPA has at least a three year supply of deliverable housing sites (against its five year housing supply requirement –see below); and
  - d) The LPA's housing delivery was at least 45% of that required over the last three years (assessed against the Housing Delivery Test). (The 2018 Housing Delivery Test figure is 90% for Torbay).
- 5.3.8 Although most parties agree that Torbay cannot currently demonstrate a five year supply of deliverable housing land, this issue of whether there is more than three years' supply is hotly contested. A separate consultation has taken place on the matter of five year supply. The applicants and other developers have argued that the land supply is less than 3 years; whereas the Neighbourhood Forums argue that it is more than three years. The latter argue, amongst other things, that council owned sites where there is government funding to deliver new housing in the next five years must be judged as having a realistic prospect of being deliverable, even where they do not fall neatly into the categories of deliverable sites noted on page 66 of the NPPF.
- 5.3.9 Officers' advice is that the 2019 NPPF's definition of "deliverable" sets a high test for major sites with less than full planning permission to be counted as deliverable unless clear evidence can be shown that there is a realistic prospect that completions will take place within five years. Legal advice has been sought on the five year supply position. Whilst the full scope of this goes beyond this report, the advice largely supports the officer assessment that less than 3 years' supply is likely to be demonstrable, as at the April 2019 monitoring position. The advice did note that the situation could change if "clear evidence" becomes available. Consideration of housing land supply issues is discussed at length at <https://www.torbay.gov.uk/council/policies/planning-policies/evidence-base-and-monitoring/>

- 5.3.10 The Council will need to update its five year supply position when the results of the 2019/20 Housing Land Monitor are known. In the meantime, it is recommended that Members consider the current application on the basis of supply being less than 3 years.
- 5.3.11 In this instance the additional protection given to Neighbourhood Plans in NPPF14 cannot be treated as being activated, and the supply of housing as a material consideration has increased weight.
- 5.3.12 Irrespective of the above, there are significant sites within Torbay which are allocated for development, or which the Council is seeking to bring forward, but (may be) unable to be treated as “deliverable” due to the high bar set by the 2019 NPPF definition. Whilst the legal advice cautioned against the value of individual Neighbourhood Plan level five year supply targets, it did consider that a Neighbourhood Plan area’s progress towards meeting the Plan requirement could be a relevant consideration. In this context it is noted that between 2012-19 there were 331 dwellings completed in the Brixham Peninsula, which is 128% of the requirement set by Policy SDB1 of the Local Plan.
- 5.3.13 The NPPF does not change the statutory status of the development plan as the starting point for decision making. The NPPF does not, nor could it, direct LPAs to disregard Neighbourhood Plans even if NPPF paragraph 14 cannot be applied. Localism has been enshrined in law through the Localism Act and the Neighbourhood Plan has a legal status that the NPPF does not.
- 5.3.14 The policy of Localism was promoted by the Government as being more than tokenism. It was described by the former Secretary of State (Eric Pickles) as being “Red in Tooth and Claw, about passing real power to local communities”. Speaking at Collaton St Mary in December 2019, Robert Jenrick, Secretary of State for Housing, Communities and Local Government reaffirmed the government’s commitment to Localism. Mr Jenrick stated that: *“...I want to see (Torbay’s) Neighbourhood Plans properly respected by the local authority, homes built on the sites that were allocated as part of the process and that local people’s views are listened to.... (We want to) build more homes but...ones that work for the local community and respect their wishes as outlined in the neighbourhood plan that was voted on in May in a referendum and should be the document that a local council really listens to”*.
- 5.3.15 The provision of a major developable housing site and other benefits are important material considerations; but the degree of conflict with the Neighbourhood Plan is significant and demonstrable. The Neighbourhood Plan has considered but rejected the Inglewood site and contains allocations to meet its housing requirement elsewhere. At 2019 it was exceeding the Local Plan requirement for the Neighbourhood Plan area. As such it is recommended by Officers that the Neighbourhood Plan should be given very great weight in this instance.

### **iii) Education – the need for a school site.**

- 5.3.16 The application includes the proposal for a two form entry school (420 pupil places) plus a single entry nursery of 26 places. It is proposed to locate the school within the centre of the site in order to enable easy access for children attending.
- 5.3.17 The application is in outline, and therefore the design of the building would be a matter for reserved matters. However, much consideration has gone into the design

of the building and assessing it alongside the LVIA to minimise its visual impact. The supporting information submitted with the application suggests that the building will be single storey with a low pitch roof to minimise building height. The external materials would be mixture of brickwork and render to complement the surrounding housing development, with an aluminium colour coated roof. Car parking would be provided as necessary for staff and drop off. The proposed playing field and sports courts are also attached to the school.

- 5.3.18 The NPPF indicates that the government gives great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities and that LPAs should take a proactive, positive and collaborative approach to meeting this requirement and should give “great weight” to the need to create, expand or alter schools (paragraph 94). In terms of delivery, the applicant would provide the land, but will not be responsible for the construction of the school.
- 5.3.19 Policy SC3 of the Local Plan seeks to support the improvement of existing and the provision of new educational facilities to meet the identified needs in Torbay, including the construction of new schools to address longer-term requirements associated with the delivery of new homes. Policy L2 of the Neighbourhood Plan supports the provision of new early years and primary school facilities close to the communities they serve, subject to other policies in the Plan.
- 5.3.20 There has been a significant increase in the number of school aged children in Paignton, in part from new family homes being built on the Western Corridor. It is understood from the TDA acting for Children’s Services/ the Local Education Authority that there is a need to create three forms of entry additional primary school capacity in Paignton, which is likely to take the form of a one form entry school and one two-form entry school. Various sites have been considered and rejected, although the former Tower House School in Paignton has become available which alleviates the most urgent need.
- 5.3.21 Nevertheless, indications from TDA/Children’s Services are that there is likely to be additional need arising on the West of Paignton including Collaton St Mary, Yalberton, and Inglewood (if approved). The availability of funding for the school is a material consideration (a “Local Finance Consideration”) in favour of the proposal.
- 5.3.22 It is noted that some objections have been made to the location of the school in terms of proximity to White Rock School and the community it would serve. However, a number of sites have been considered by the Education Funding Agency and TDA and have similar problems. The proposal is close to proposed and recent housing growth, and is supported by the LEA and a Multi Academy Trust who would operate it. The Education Funding Agency has identified the site as their preferred location.
- 5.3.23 As noted above, the current indication is that the former Tower House school site will open in September 2020 and meet the most urgent need. This suggests that longer term needs and sites could be brought forward through the Local Plan. However the situation can change rapidly and securing a long term school site is an important benefit of the scheme. Since the need is largely from houses yet to be build (and potentially children yet to be born), a S106 would need to allow flexibility to allow a reasonably long timescale for the school to be built.

**iv) Economic benefits arising from the public house and well as wider employment/ economic benefits, including consideration of the acceptability of a public house (a main town centre use).**

- 5.4.1 The Local Plan proposes to bring forward both homes and jobs, with an emphasis on early delivery of jobs (see Policies SS1, SS4, SS5 and H1.3). Policies SS1 (text on Strategic Delivery Areas), and SS2 (ii) both indicate that major developments should deliver employment opportunities. Policy SS5 indicates that around a quarter of sites will be sought as Class B employment space. Future Growth Areas in the Local Plan have largely been pursued as mixed use developments incorporating a mix of residential, employment and commercial uses.
- 5.4.2 Accordingly, the Inglewood proposal has been developed as a residential led mixed use proposal that provides for a range of employment opportunities, both on-site and off-site. A Socio Economic Benefits Statement, by Hatch Regenis was submitted in support of the application in November 2019.
- 5.4.3 The need for a school site is discussed above. A two form entry primary school is assessed by the TDA to employ about 41 full time equivalent (FTE) staff, a high proportion of which would be high quality professional jobs. The pub/restaurant is assessed to provide between 18-25 FTE jobs.
- 5.4.4 During the pre-application discussions, it was proposed to provide around 2,500 sq. m of employment buildings on the north of the site. Council officers expressed concern that such uses could become quasi retail “trade counter” type uses with relatively limited economic benefit, and that there was a potential visual impact from industrial buildings. It was considered more desirable to seek a S106 contribution towards unlocking employment sites elsewhere in the Bay, most likely at Claylands. The TDA has advised (in their consultation response of 23 March 2018) that a contribution of £500,000 would be roughly equivalent to the financial benefit of on-site employment provision, using the methodology in the Planning Contributions and Affordable Housing SPD.
- 5.4.4 The TDA’s assessment is that the proposal would generate an equivalent of about 125 jobs from the school, pub/restaurant and effect of the off-site contribution. This does not include construction or indirect (multiplier) effects.
- 5.4.5 The Social Economic Benefits Statement assesses that the proposal would generate £68 million and 140 workers per annum for 8 years in construction, of which around 25% is anticipated to be local. It further assesses that residents would generate about £8.6 million spending, of which 15-20% (£1.3-£1.7 million) would be retained in the local economy.
- 5.4.5 On this basis, the proposal makes a significant positive contribution towards jointly providing jobs and homes in accordance with the Local Plan, and is a significant benefit in favour of the proposal.

**Pub/restaurant: Town Centre Impact**

- 5.4.6 A pub/restaurant is proposed to provide a community type use. It is proposed to be around 800 sq. m which is about the same size as the Beefeater Restaurant at White Rock (783 sq. m). More detailed consideration of siting and design would be addressed through reserved matters. However, the indicative layout shows the pub/restaurant located on the North East of the site close to the main access with frontage onto Brixham Road (to capture passing trade) and have parking for 85 vehicles.

- 5.4.7 Policy TC3 of the Adopted Local Plan and paragraphs 86-90 of the NPPF set out broadly similar sequential and impact tests for considering main town centre uses such as pub/restaurants. At 800 sq m the proposal is above the threshold in the Local Plan where an impact test is required.
- 5.4.8 The application is supported by a retail impact assessment from Cushman and Wakefield dated November 2017. Strategic Planning (the current author) advised on 2 Feb 2018 that the retail assessment was proportionate in terms of the sequential and impact test on the basis that the pub/restaurant would be a community facility serving the proposed development at Inglewood, and a “sustainable community” element in the potential development. The supporting assessment indicates a very minor impact on town or local centres. A more detailed assessment would be required for a standalone use, and accordingly conditions/S106 Obligation should phase the opening of the pub/restaurant to after the residential development is well underway. To minimise potential impact on nearby local centres, the sale of hot takeaway food should be restricted.
- 5.4.9 The Pub/Restaurant is out-of-centre and therefore CIL liable (800 sq. m at £120 per sq. m = £96,000), which would be calculated at reserved matters stage. This is an additional benefit (a local finance consideration) arising from the scheme.

**v). Impact of the proposal upon the nearby South Hams Area of Outstanding Natural Beauty (AONB) and local landscapes, including from development and light.**

- 5.5.1 The proposal is not within the AONB. Whilst the nearest part of the South Devon AONB is slightly over 500m from the proposed development, the main impact is from more distant elevated vantage points. The visibility from key public rights of way in the AONB, as well the impact of views into the AONB are critical factors in considering the application. As well as visibility, the impact on “tranquillity” and sense of wildness are also relevant.
- 5.5.2 The policy and legal framework seek to conserve landscape and scenic beauty in AONBs. The Countryside and Rights of Way Act 2000 requires public bodies in exercising their functions to have regard to the purpose of conserving and enhancing the natural beauty of AONBs. The NPPF (paragraphs 170 and 172<sup>5</sup>), Local Plan (Policies SS8, C1, and SDB3) and Neighbourhood Plan (Policies E1 and E6), all place significant weight on the protection of the AONB as a nationally important landscape. This is reinforced by the South Devon AONB Management Plan (Policies Lan/P1 - Character, P4 - Tranquillity, P5 – Skylines and View and P7 - Setting) and Planning Guidance. The Torbay Landscape Character Assessment (Enderby Assocs 2010) assesses the site as being within local character 10 Rolling Farmland, which is highly sensitive, with open views of the AONB noted to the west and south. The recommended management strategy is for enhancement.

**Case Officer Assessment of the Site’s Visibility**

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<sup>5</sup> Paragraph 170 (a) of the NPPF seeks to protect and enhance “valued landscapes”, which is applicable to the site. Paragraph 172 of the NPPF indicates that “great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the high highest status of protection in relation to these issues. Officers consider that this is applicable to developments outside of the AONB but affecting its setting. Paragraph 172 of the NPPF goes on to limit the scale and extent of development within AONBs and sets out three tests for major developments (need for development, scope to develop outside the area and detrimental effect). Because the proposed development is outside of the AONB, these tests do not need to be applied. They do however set out sensible planning considerations.



- 5.5.3 The site is not visible from the River Dart. Whilst glimpses from heritage assets around Galmpton or Waddeton cannot be ruled out, any impact on their setting is very minor. The revisions to the scheme have also reduced likely impact from Stoke Road (Viewpoints 16 and 17).
- 5.5.4 There is some visibility from public viewpoints in the AONB to the South of Galmpton (Viewpoints 8 (a)-(d) and 9 (a)-(b) looking over Galmpton from the edge of the AONB. There also appears to be some limited visibility from Hook Bottom, on the trail from the Greenway Halt to Greenway.
- 5.5.5 There is limited visibility of the site from lower down the banks of the Dart Valley, and as noted it cannot be seen from the river. However, the site is more visible from elevated areas the west of the River Dart, in particular from Fire Beacon Hill to the South West of Dittisham. The site is visible from a number of vantage points on public rights of way e.g. (Points 6(a) and (b), 7(a) and (b) on the elevated land around Dittisham, and to a lesser extent from vantage points close to Cornworthy. It is noted that the Inglewood Site is over 3km from these vantage points across the Dart Valley, and is seen as part of a wider vista which takes in other settlements, most notably Torbay.
- 5.5.6 The site can be seen from the west beyond the AONB boundary (e.g. viewpoints 5(a-b) and 4(a-c). However these relatively distant views are from outside the AONB, and the weight they can be given is reduced.
- 5.5.7 A significant body of landscape evidence has been submitted with the application, prepared for the Local Planning Authority and objectors. Many representations refer to landscape matters. These come to different conclusions about the significance of the landscape impact. The main reports are:
- Landscape and Visual Impact Assessment, prepared by Nicolas Pearson Associates (NPA) for the applicants (November 2017, revised March 2018 and January 2020).
  - AONB Unit and other objectors including but not limited to the neighbouring town/parish councils, CPRE, Ramblers' Association etc.
  - Teignbridge District Council Landscape Officer advice to Torbay Council
  - Torbay Landscape Advice (Jacobs for Torbay Council, June 2018).
  - David Wilson Partnership (July 2018): Landscape and Visual Review on behalf of the applicants.
  - Michelle Bolger Expert Landscape Consultancy (MBELC for Farrer and Co. on behalf of objectors).
- 5.5.8 **Nicolas Pearson Associates.** The application is supported by a Landscape and Visual Impact Assessment, prepared by Nicolas Pearson Associates (NPA). This sought to investigate the potential impacts on the site and its locality of the proposed development. The assessment was prepared in accordance with the GLVIA guidelines and assesses the site in terms of its local context and the landscape features of the site.
- 5.5.9 As outlined within the LVIA, the site and the surroundings lie on a landscape which undulates in all directions with an overall fall to the south/southwest down to the River Dart. The undulation means visibility varies, with the overall fall to the south and southwest giving visibility from higher ground in the south and west side of the River Dart, within the AONB.

5.5.10 The LVIA concludes that:

- During construction or immediately following construction and the early stages of operation, any temporary disruption to views afforded to landscape and visual receptors in the wider study area would not outweigh long-term mitigation of such views;
- During operation, there will be some landscape and visual effects that cannot be fully mitigated. However they are assessed as being only local to the site;
- On the whole, after the establishment of the scheme's green infrastructure, it is assessed that there would be some residual adverse landscape and visual effects, but they are not judged to be significant and would decrease in time.

5.5.11 The application has been revised a number of times before and after submission. A revised LVIA, Masterplan, Landscape Addendum, GI Plan, LEMP and Additional Lighting Report were submitted in March 2018 proposed the removal of development from field 3 (on the SW side of the development) and reduction in the height of development along the southern boundary to single storey. These changes seek to reduce the short term impact on the South Devon AONB and Waddeton Conservation Area.

5.5.12 The revised LVIA (March 2018) assesses that these changes will be beneficial in landscape and visual terms. It assessed that long term mitigation of the impact on views will outweigh any temporary disruption during and immediately after construction. There will, according to the revised LVIA be some residual adverse landscape and minor visual effects from the proposed development that cannot be fully mitigated. However, after the establishment of the scheme green infrastructure, the residual adverse landscape and visual effects would decrease over time and are judged by NPA to be not significant.

5.5.13 NPA submitted a further LVIA Addendum in January 2020. This incorporates recent developments at White Rock into the assessment of Inglewood's visual impact from various visual receptors (i.e. viewpoints). The main day time feature is the Epic Innovation Centre (P/2017/0685), but this is viewed against the backdrop of the adjacent urban area. White Rock sports facilities (P/2016/0188 are a prominent new element in the night scene, and its floodlighting is more prominent than residential development at White Rock (and on the montages more prominent than proposed development at Inglewood). The cumulative effects of new developments are judged not to have altered the assessments of the 2017 and 2018 LVIA's. It is considered that the scale of additional recent developments is not sufficient to alter the level of effect for cumulative landscape or visual effects within the LVIA.

5.5.14 The additional LVIA also considered the effect of 25% stone faced buildings in the proposal, but does not in NPA's assessment alter the visual effects of the development from key locations in the AONB.

5.5.15 The updated LVIA work is accompanied by additional visual montages and LVIA methodology explanation. However, the overall arguments that NPA's previous assessment remains that the residual adverse effects from the proposed development would decrease over time and would not be significant.

## **AONB Unit and other objections**

- 5.5.16 A large number of objections have raised landscape impact both across the open countryside into the AONB and the effect of the proposal on the setting of the South Devon AONB. These have persisted after the above noted revisions.
- 5.5.17 The AONB Unit has maintained its objection to the proposal (received 27 March and 10<sup>th</sup> May 2018). It recognises that amendments have ameliorated the impact somewhat, but nevertheless objects that the proposal does not conserve and enhance the natural beauty of the South Devon AONB or its setting, would result in unacceptable harm to the natural beauty and special landscape qualities of the nearby South Devon AONB.
- 5.5.18 The AONB Unit argues that the Inglewood area contributes to the rural setting of the South Devon AONB and provides both a buffer and transition zone between the urban areas of Torbay to the north and the Dart Estuary within the AONB to the south. This helps maintain the tranquillity of the AONB and forms a countryside backdrop to many iconic views across the Dart Estuary. In such views, the quality of the rural landscape does not abruptly change at the AONB boundary. It is noted that at its closest point, the application site lies over 500m to the north of the AONB boundary, and that the site is visible in more distant elevated views from parts of the AONB including regional recreation routes.
- 5.5.19 The AONB Unit continue that the proposal would result in the built form of Paignton being perceived as spilling down from the current defined urban edge, substantially narrowing the farmland band that separates exceptionally high quality AONB landscape from urban fringe. From a range of viewpoints within the AONB as assessed within the Landscape and Visual Impact Assessment work, the proposal will be noticeable in the view as dense urban sprawl and affects the relative tranquillity experienced within the AONB and its setting.
- 5.5.20 The applicant's LVIA has been challenged by other objectors, including the Ramblers Association, CPRE, Neighbourhood Planning bodies and parish councils. The Ramblers association has submitted its own assessment showing greater impact on the John Musgrave Heritage Trail than indicated by the applicant's LVIA.
- 5.5.21 **Teignbridge DC Landscape officer (for Torbay Council).** At the time of submission, specialist landscape advice was being provided to Torbay Council by colleagues in Teignbridge District Council. This assessment is broadly agreed with the applicant's LVIA that the landscape impact would not be significant. He recommended a number of changes in terms of layout and reduction in the level of lighting. These influenced the 2018 revisions to the scheme. These were considered by the Landscape Officer to "make the proposal even more acceptable in landscape terms" and he assessed that lighting from the site could be relatively well contained.
- 5.5.22 **Jacobs Landscape and Visual Impact Assessment** (June 2018). Jacobs were commissioned by the Council to provide additional advice in the face of conflicting assessments noted above. Jacobs concluded that despite mitigation, the proposal would result in significant residual adverse effects on the setting of the AONB. Their assessment considered the main impacts to be from the westwards extension of Paignton's boundary and views west towards the AONB. There would be impact on a relatively limited number but iconic panoramic public views from clusters of AONB vantage points south of Galmpton and south of Dittisham. It concluded that the landscape impact would be greater than suggested by the LVIA montages.

- 5.5.23 However Jacobs did not consider that the night time effects upon the AONB nightscape would be significant, given the mitigation proposed.
- 5.5.24 **David Wilson Partnership** (for the applicants). The applicant commissioned David Wilson Partnership to review the outstanding landscape issues. It concluded that although the proposal would be a noticeable addition to the setting of the AONB, it is “unlikely to cause significant harm to the landscape qualities of the designated area”. The panoramic views affected contain both rural and urban features and the development would not alter the balance of natural and urban features to a significant degree. The report indicated that there may be an opportunity to redefine the urban edge of Paignton, and that development at Inglewood is compatible with such an approach; although “the development proposed may be better considered in the context of a wider strategic review”.
- 5.5.25 **MBELC** (for objectors). A review of the LVIA was prepared by Michelle Bolger Expert Landscape Consultancy for Farrer and Co. on behalf of objectors. This reviewed the NPA, Jacobs and David Wilson Partnership assessments. MBELC considers that the Landscape value of the site is high for its own sake, and its role in providing an attractive and deeply rural landscape setting for both the AONB and Paignton. It assessed that the overall effect on the landscape would be “moderate/major adverse” and would therefore have a significant effect particularly viewed from sustained sections of the public rights of way network. MBELC also considered that the applicant’s LVIA underestimated the impact on the AONB.

### **Conclusion on Landscape/AONB**

- 5.5.26 There is disagreement amongst expert advisers about the degree of landscape impact: Whether the site obtrudes into the open countryside which forms part of the rural backdrop to the Dart Valley; or whether it will be seen as part of the urbanised area of Torbay. There are similarly differing views about the impact of lighting.
- 5.5.27 It is recognised that the applicants have sought to reduce the impact of the proposal on the AONB through a range of mitigation measures including planting and minimising in the most prominent locations (specifically field 3 on the south west side of the proposed development and reducing indicative heights on the south of the development). These are likely to reduce the impact of the proposal primarily on closer vantage points on Stoke Road and Waddeton.
- 5.5.28 However, there are outstanding objections from the AONB Unit as well as South Hams District Council and many others, that the proposal has an unacceptable residual impact on the special landscape policies of the nearby South Devon AONB and fails to conserve or enhance the rural setting to the AONB.
- 5.5.29 The principal areas of concern is the visibility from the Dart Valley, particularly recreational routes around Fire Beacon Hill, Dittisham. These are about 3.8 KM from the site, but due to the topography are clearly visible even with the proposed extensive landscape screening. There is also concern about visibility from public rights of way at Kennels Lane, John Musgrove Heritage Trail Galmpton and other viewpoints. The Inglewood development would also affect views into the AONB from Brixham Road, and points around Hookhills. Although not within the AONB, the site is itself a valued landscape that forms part of the rural gap between Paignton and Galmpton.
- 5.5.30 The visual impact could potentially be further reduced by the use of recessive colours and potentially by softer highways features (although this could run counter to

Highway's advice). The LVIA shows the landscape impact diminishing over time. However, due to the topography of the site, it will not be possible to fully screen it from key vantage points in the AONB. Although the view from these vantage points is not of a totally undeveloped panorama, the development will change the character of currently open fields that form the backdrop to the AONB. This appears to be more significant in the daytime as it is harder to discern specific locations in the night time and other lights are clearly visible from the said vantage points.

- 5.5.31 The AONB impact needs to be weighed against the housing/economic benefits of the proposal. However footnote 6 and paragraph 11.d) i) of the NPPF indicates that policies relating to an AONB can provide a clear reason for refusal of a proposal even if the development plan is out of date. The Neighbourhood Plan policies quoted above take account of the Inglewood site's openness and role in the setting of the AONB. Moreover, it is not possible at an application stage to consider in detail whether there are less sensitive sites (other than current development plan allocations) that could meet future need.

**vi) Effect on biodiversity, particularly the South Hams SAC, ciril buntings and local species. As noted above the site requires an Appropriate Assessment under the Habitat Regulations (primarily as part of the sustenance zone for Greater Horseshoe Bats).**

- 5.6.1 The application site is approximately 5.5km North West of the South Hams Special Area of Conservation. It is within the greater horseshoe bat "sustenance zone" as designated by Natural England in 2010, and 2019 guidance on the SAC. The presence of other species such as ciril buntings and the ability to mitigate impacts is a vital consideration in the application.
- 5.6.2 There is a very strong legal and policy framework to protect biodiversity, particularly greater horseshoe bats, which are a priority species under the Habitats Regulations. The application is subject to an Environmental Statement and HRA Appropriate Assessment. There is an additional legal duty on public bodies to conserve biodiversity. A number of ecological surveys have been surveys of the site been carried out, most recently in 2019.
- 5.6.3 The Adopted Torbay Local Plan has a number of policies that safeguard, conserve and enhance the valued qualities, features and attributes of sites protected under European Legislation including biodiversity and promote long term management to maintain and restore habitats, including dark corridors (See Policies SS8, SS9, SDB1 SDB3, and NC1). Policy E8 of the Brixham Peninsula Neighbourhood Plan also resists development that would adversely affect areas of ecological importance.
- 5.6.4 The application is supported by a number of ecological surveys including a chapter within the Environmental Statement which sets out clearly the scope of work undertaken. Survey work which largely took place in 2016 is set out in an Ecological Baseline Report (NPA, May 2017). This covered Greater Horseshoe and other bat species, birds, including ciril buntings, as well as badgers, dormice, Great Crested Newts, Invertebrates and reptiles. Updated bat and bird surveys, badger and ecological assessments were carried out in 2019.

#### **Bats (Greater Horseshoe and other species)**

- 5.6.5 Bat surveys were undertaken (2016 and 2019) with an intended purpose of identifying any bat roosts on or immediately adjacent to the site, estimating the

number of bat species using the site, and identifying the key habitats for commuting and foraging bats.

- 5.6.6 The activity surveys did not record any roosts on site. It did however record bats in the derelict farm buildings approximately 200m to the north of the site. However, this was not assessed to be a maternity roost. A single storey barn was found to support a greater horseshoe night roost and a day roost for the Common Pipistrelle, with two other buildings considered to have potential for supporting night roosts for both species. The derelict farmhouse was also investigated as part of the surveys, and it was concluded that it had potential to support a greater horseshoe roost.
- 5.6.7 It was found that bat activity was fairly well distributed across the site, with most activity recorded along the hedgerows and woodland edge. Activity was also recorded along and close to Brixham Road.
- 5.6.8 In addition to the Environmental Statement and Appendix, and External Lighting report, further information has been provided following Natural England's initial response. This includes an Ecological Addendum (NPA, February 2018), Proposed Phasing Plan and Framework Landscape Ecological Management Plan (both Stride Treglown), Farm Management Plan (Stride Treglown October 2017) and Tree protection Plan (Evolve Tree Consultancy) which have been submitted to set out mitigation measures.
- 5.6.9 The Ecological Addendum and Farm Management Plan propose extensive planting of species rich hedge bank, foraging and commuting habitat, although this would not all be on-site but in part on nearby farmland owned by the applicant. A net gain of 1KM of hedgerow, 0.2ha of species-rich grassland margins and 1ha of tussock margins is set out in the Ecological Addendum. Approximately 22ha of potential grazed pasture (with the cattle currently not being treated with an avermectin based wormer) which is of known value for GHB feeding due to the associated dung beetle prey will be managed for its ecological value for bats and cirl buntings. .
- 5.6.10 The proposal is reliant on enhancement measures to address impacts, including revision to the mitigation measures on the site associated with White Rock Phase 1 (the LEMP for this being partly on the Inglewood site). The current proposal does not include additional land to that included in the former White Rock S106 Agreements; but undertakes to manage it more comprehensively to maximise its ecological value.
- 5.6.11 Natural England note that whilst this is not an approach that they tend to favour, exceptionally in this instance the enhancement measures are sufficiently robust to address their concerns. Accordingly, Natural England state (in their response of 12 April 2018) that they do not object to the proposal subject to appropriate mitigation being secured that is sufficiently robust to protect greater horseshoe bat habitats. In order to mitigate adverse effects on the SAC and comprehensive package of measures will be required as part of the s106 Agreement. This includes
- Comprehensive mitigation, avoidance and enhancement plan, which is sufficiently resourced and underpinned by systematic and period monitoring. This includes extensive planting of hedgerows and unlit corridors.
  - Light controls to 0.5 lux to prevent light spillage
  - A detailed Landscape and Ecology Mitigation Plan being provided at reserved matters stage, to include suitable native woodland ground flora, planting and management in perpetuity

- Phasing of habitat works to be delivered in advance of construction, to allow ecological habitats to become established and support greater horseshoe bat activity.
- Farm Management Plan.
- A bat house located within cattle grazed pasture and a bespoke greater horseshoe bat maternity roost close to Berry Head
- Information boards and other measures to raise public awareness
- Management of existing trees, and remedial works where found to be necessary.

5.6.12 Jacobs, acting as the Council's ecological advisor have advised that mitigation works can avoid likely significant effects on greater horseshoe bats (set out in the environmental statement and summarised in Section 13 of Jacobs Screening Opinion dated 23 March 2018). These include:

- Planting habitats ahead of the first main construction phase.
- Retention and provision of 2.9km of hedgerows (out of 3.3 km existing) and additional planting to achieve a net gain of 2.5km of total hedgerows including a net gain of approximately 1km of "undisturbed" hedgerows.
- Planting of diverse/species rich plants with standard trees every 30m
- Reversion of approximately 16ha of arable land off-site to cattle grazed pasture to achieve no net loss of potential cattle grazed pasture which is an important habitat for greater horseshoe bats).
- Planting of more than 0.5ha broad leaved native woodland and 0.4 ha orchard, and groups of trees within the pasture to the south of the main development as well as a wildlife pond.
- A bat house located within cattle grazed pasture and contribution to an offsite greater horseshoe bat maternity roost close to Berry Head
- Management Company provided with funds to implement habitat creation and farm tenancy arrangements to ensure delivery of ecological management.
- Management of the Framework Landscape and ecology management Plan (LEMP) and Farm Management Plan.
- Commitment to monitoring and reporting of the LEMP
- Provision of wildlife information boards.
- Avoiding lighting where it would adversely affect greater horseshoe bats through a coherent network of bat commuting habitats of unlit/below 0.5 lux. This includes the majority of locations where the internal roads would breach the existing hedge banks.

5.6.13 The Ecology Addendum (Nicholas Pearson Associates February 2018) provides the following additional measures:

- A Dark Areas Plan indicating where light would be below 0.5 lux and additional embankments to reduce potential light spill from headlights.
- Clarification of the Framework LEMP and measures required for White Rock 1.
- Additional information about the Farm Management Plan, including in-perpetuity management. Details of maintenance and management of on-site public open space and green infrastructure, woodland and trees within the wood pasture. This would be secured through an S106 and a likely commuted sum to Torbay Council to manage delivery.

- 5.6.14 Additional mitigation measures have been identified through the course of undertaking the HRA. These include homeowner information packs, information boards to reduce the risk of garden lighting. Creation of clauses in the deeds to require householders to apply for planning permission to install external lighting.
- 5.6.15 There is still a further work to be done to ensure that identified “dark areas” (less than 0.5lux) are not subject to detrimental light spillage from all sources of light (including internal and external sources). Natural England’s comments of 16 December 2019, confirm that their previous comments remain valid, but indicate the need for a condition at Reserved Matters to address the following:
- Typically, detrimental light spillage upon greater horseshoe bat habitats (adjoining hedgerows/ watercourses/linear features/foraging habitats) is thought to be associated with Lux levels of 0.5 and above. The assessment should also include reference to wavelength, and light colour.
  - An assessment of light impact is best informed by identifying all potential sources of light and combining this information as part of a Lux analysis. This should include light spillage from the proposed buildings and transient lighting from vehicle headlights, all sources of external and internal light.
  - Assessment of potential light impacts at both construction and operational phases is often best informed by a suitably qualified lighting designer and ecologist.
  - To assess light impacts upon greater horseshoe bat habitat from the proposed development, it will assist to provide contour mapping (0.1lux intervals or less) that represents the lux modelling results (including vertical plane, and sample intervals of 200mm) on a scaled OS map backdrop, and that can be used in conjunction with greater horseshoe bat habitat maps. A baseline assessment will be required to evaluate current light spillage associated with the site.
  - To ensure that there is no detrimental light spillage from all sources, it will be necessary to ensure that appropriate mitigation measures are put forward.
- 5.6.16 Covenants/conditions to restrict lighting from residential dwellings will need to be placed on the development. However, the proposed masterplan indicates key strategic planting as largely outside the curtilage of gardens, and the applicants have undertaken to impose the necessary restrictive covenants on residents to minimise external lighting (such as security floodlights).

### **Appropriate Assessment**

- 5.6.17 Because of the European Court ruling in *People over Wind/Sweetman*<sup>6</sup> that mitigation works could not be taken into account at screening stage, the Inglewood Proposal underwent an Appropriate Assessment, carried out by Jacobs in May 2018. This concluded that, with the detailed schedule of mitigation works, (detailed above, and set out in Part C of the AA), there would be no adverse effect on the integrity of the South Hams SAC- alone or in combination with other projects and proposals.
- 5.6.18 The HRA AA has been reviewed by the Council’s specialist officer in December 2019, who has made further amendments to the Assessment to address the need for

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<sup>6</sup> *People Over Wind and Sweetman v Coillte Teoranta (C-323/17)*



lighting conditions (as above) and updated the section on Berry Head grassland (see below).

- 5.6.19 This assessment is upon a satisfactory S106 agreement, and management plan which sets out and secures funding of the green infrastructure and habitats outlined in the application and Appropriate Assessment. This includes reversion of 16 ha of arable land to cattle grazing, and creation of alternative landscape and ecological management areas, outlined in the LEMP and Farm Management Plan. As a significant area of this is within South Hams, it would entail a unilateral undertaking to South Hams District Council. However, the works outside of Torbay's boundaries are not development and therefore do not require planning permission. It would also require covenants on residents to restrict external lighting.
- 5.6.20 There are outstanding objections on HRA grounds. In particular the Appropriate Assessment has been critiqued by Aspect Ecology on behalf of objectors. This has argued that the matters indicated as mitigation, including offsite reversion of land to cattle grazing and new hedgerow and woodland planting are in fact compensation; and that the effects of loss of insect habitat from arable land has been inadequately considered. It is also argued that insufficient land has been proved to secure a more favourable status for bats. Concerns have also been raised about the effectiveness of measures to restrict domestic lighting, and the impact on ecology should the proposed planting fail. It has also been argued that the mitigation works double-count measures in White Rock stage 1 and do not achieve a net gain in biodiversity.
- 5.6.21 In response to these objections, the applicants submitted a further Briefing Note in November 2019 to clarify that the Ecological Addendum/Farm Management Plan measures do not double-count mitigation measures from White Rock Phase 1 (although the area of farm land is the same, the Inglewood Farm Management Plan introduces more effective greater horseshoe bat and cirl bunting habitat management practices).
- 5.6.22 These matters have been carefully considered by officers, Jacobs and Natural England. Jacobs and Natural England have considered the works outside the SAC to constitute mitigation (rather than compensation) and this is consistent with Natural England's most recent advice<sup>7</sup>. This confirms that the use of habitat creation/conversion in functionally linked land outside a designated site is a legitimate mitigation measure.
- 5.6.23 Further ecological surveys were submitted in January 2020 based on 2019 surveys of bats and birds. The 2019 survey suggests no higher GHB activity in 2019 than recorded in 2016, with the highest activity on the west and south west edges of the site in locations away from proposed buildings in the indicative site features plan. At least 11 other bat species were also recorded, distributed about the site but with most activity on the western boundary of the site. The conclusion of all of the habitat, bird and bat surveys is that the proposed mitigation measures remain robust and sufficient to avoid residual negative impacts during construction and would result in a significant positive impact in the long term.
- 5.6.24 The impact of the proposal on the sustenance zone for greater horseshoe bats is of great importance. However, based on the advice from Jacobs and Natural England, it

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<sup>7</sup> Contained in Habitats Regulations Assessment Journal (December 2019). It notes that the legal situation may change.

is concluded that the proposal would not have likely significant effects on the integrity of the SAC so long as the required mitigation measures are put in place.

### **Birds**

- 5.6.25 The site provides breeding and foraging habitats for bird species associated with farmland, hedgerow and woodland. Of the species recorded on site in 2016, five are of high conservation status, seven considered to be medium conservation status. One species (Cirl Bunting) is listed under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended) was recorded as breeding on site. The 2019 survey results were similar to the earlier surveys but identified song thrushes on site, bringing the number of high conservation species to six.
- 5.6.26 The 2016 Cirl Bunting surveys conducted on site, recorded a minimum of at least four pairs (eight individuals) occupying the site, with a further three pairs (six individuals) located off-site in adjacent farmland but using the habitats within the site boundary to forage. The 2018/19 surveys recorded a maximum of 4 cirl buntings in the winter and 2 breeding pairs. As with the bat surveys, the cirl bunting and other bird surveys concluded that the proposed mitigation measures avoid a residual negative impact during construction and would result in a significant positive impact in the long term.
- 5.6.27 The RSPB originally objected to the application. However they submitted revised comments in March 2018 based on mitigation measures outlined in the Ecology Addendum (NPA, February 2018), the Proposed Farming Practices plan (NPA February 2018), the Proposed Phasing Plan and the revised Framework Landscape and Ecological Management Plan LEMP-Stride Treglown, March 2018,). RSPB welcomed the provision of habitat to support 10 cirl buntings and other mitigation measures, including 4 ha of spring barley/winter stubble and indicated that subject to Natural England being satisfied that the amended proposals are adequate in relation to greater horseshoe bats and that funding and security mechanisms could be put in place, then they would withdraw their objection to the proposal.
- 5.6.28 Accordingly, subject to a satisfactory S106 Agreement securing the measures identified in the Ecology Addendum, Farm Management Plan and other documents, the proposal is assessed to be acceptable in terms of impact on cirl buntings and other bird species.

### **Other Species**

- 5.6.29 **Badgers.** The 2016 survey identified one potential badger sett in the south east field (field 2) but this appeared to be inactive. No active setts were recorded on site in 2019. At November 2019 there were 7 active sett entrances recorded on the SW edge of Waddeton Planation which is outside the proposed development area and located in the South Hams.
- 5.6.30 No evidence was recorded of dormouse during the 2016 survey, which indicated that the habitat was not optimal for the species. No Great Crested Newts were identified in the 2016 survey and the habitat was identified as being sub-optimal for the species. A low population of slowworms was recorded in 2016 (2 specimens of which one outside the proposed area to be built on). A range of invertebrates were identified on the site.
- 5.6.31 The Update Habitat assessment (November 2019) did not record any significant changes to habitats to those previously assessed. It also concludes that the mitigation measures proposed for Greater Horseshoe bats and Cirl Buntings are

likely to achieve net biodiversity gains on the site. It also sets out a reasons why updated surveys of Great Crested Newts, Dormouse and slowworms is not needed.

#### **Calcareous Grassland at Berry Head.**

- 5.6.32 Policies NC1 and SDB3 of the Local Plan identifies pressure on the grassland at Berry Head arising from recreation pressure and dog waste. This is based upon a Recreational Impacts on Berry Head Report study (Footprint Ecology 2014). Inglewood lies at the edge of the identified 5KM sphere of influence to the proposal, but still within the Brixham Peninsula area.
- 5.6.33 Although Jacobs' initial Appropriate Assessment has screened out development from having likely significant effects due to its distance, the Council's SA Specialist has advised in the amended Appropriate Assessment that because of its scale, new residential development at Inglewood could increase recreational pressure on the grassland at Berry Head. The issue has also been raised by Brixham Town Council.
- 5.6.34 The Berry Head Grassland was previously a CIL item, but changes to the CIL Regulations allow S106 contributions to also be sought as well as CIL. Accordingly, a S106 Contribution of £18,464 (equal to £49.50 per dwelling) is sought towards management and public education in relation to the Berry Head grasslands. This is around 50% of the full contribution sought from development in Brixham, in recognition of the distance from the grassland and on-site recreation facilities provided at Inglewood. It is noted that the pub/restaurant element of the application (although not the residential element) is CIL liable, so no S106 contribution towards the grasslands would be sought from the pub/restaurant.

#### **Impact on trees and hedgerows.**

- 5.6.35 Policy C4 of the Local Plan seeks to protect trees and hedgerows, and Policy E7 of the BPNP seeks the retention of features such as hedges. There are no tree protection orders (TPOs) on Inglewood and it is not a conservation area; nevertheless the field boundaries form an important part of the wider landscape setting.
- 5.6.36 The application is supported by a tree survey and arboricultural method statement from Evolve Tree Consultancy. The application requires the loss of several trees on the Brixham Road to construct the access (one clump of native species and a second of sycamores). The proposal also entails the loss of 400m of hedgerows, and reduces the ecological value of a further 1,160m (out of 3.3KM on site). This represents the loss or diminution of just under half the hedgerows on the site. However the Ecological Addendum indicates hedgerow planting and enhancement of 3.5m of hedgerow, of which 2.5m are off-site as part of the Farm Management Area, representing a minor onsite gain in quantitative terms and overall net gain in biodiversity value.
- 5.6.37 As discussed above, the biodiversity impacts of the proposal appear capable of being made acceptable subject to a satisfactory S106 Agreement. There are some outstanding arboriculture issues such as the need to survey Nords plantation and arrange for replacement trees in the event of existing trees dying. However these matters are considered to be capable of resolution through conditions/legal agreement.

**(vii) Conserving best and most versatile agricultural land, including loss of farm land and offsite restrictions on the use of the land.**

- 5.7.1 The application involves the loss of 31ha of agricultural land, although the southern parts (6-7ha) of the site will be cattle grazed wood pasture.
- 5.7.2 An assessment of the six fields forming the application, by ClarkeBond (2017) indicated three fields being Grade 2 “very good quality” (around 13.5 ha) and two being Grade 3A “good quality” (around 11ha). The northern most field (3.2ha) has been planted with shrubs, so was not classified. A revised assessment by ClarkeBond dated 10 January 2020 classifies two fields (11.2ha) as being within grade 3a (“good”) and three fields (16.9ha) as grade 3b (“moderate”). Agricultural Land Classification Maps published by Natural England (2018) show the land as being within Grade 2. Maps held by the Council from 1998 (based on a MAFF post 1988 Agricultural Land Classification Survey) show the area as a mixture of grade 2 and 3A. Natural England’s comments received 30 April 2020 suggest that the ClarkeBond assessment is based on a geotechnical survey rather than a soil survey, and that the MAFF ALC information remain current and can be used to appraise the agricultural quality of the land. Accordingly, it is recommended that the land is treated as being Grade 2 and 3A.
- 5.7.3 Paragraph 170(b) and footnote 53 of the NPPF direct development away from the Best and Most Versatile agricultural land; but does not list agricultural land in the shortlist of policies in footnote 6 that overrides the operation of the presumption in favour of sustainable development. Policy SC4 of the Local Plan states that development involving the loss to the best and most versatile agricultural land (Grades 1, 2 and 3A) will only be permitted where there is an overriding need for the development and it is demonstrated that it cannot be provided on lower grade land.
- 5.7.4 The LEMP and Farm Management Plan shows a network of 10 fields (each of around 2 ha off-site and within South Hams being used for cattle grazing, rotating with spring barley and managed to maximise their ecological value. The Farm Management Plan proposes measures to compensate the tenant farmer for restrictions on its operation (e.g. from reversion of arable land to cattle grazing, restrictions of chemicals and retention of hedgerows and margins). The proposal also incorporates local food production including allotments and a community orchard, as sought by Local Plan Policy SC4. The details of these will need to be secured through s106 Agreement, including contingency plans should the current farmer no longer wish to farm the site.
- 5.7.5 It is noted that there are outstanding objections to the loss of best and most versatile agricultural land and that soil quality could be degraded. However, Natural England recommend (based on the earlier and higher classification) that if the development proceeds, an experienced soil specialist should be employed to make best use of existing soils. This advice is restated in their comments received January 2020. This is a matter that can be secured through condition or S106 Agreement.
- 5.7.6 In addition, concerns have been expressed relating to changing agricultural practices (less demand for beef and dairy), food security in the face of climate change and political uncertainty. However, government policy has put significant weight on boosting the supply of housing and the scheme provides for management of the remaining farmland, consistent with safeguarding the SAC. The draft S106 Agreement seeks to secure the long term future of the farm’s ecological management. There is possibly some conflict with Policy SC4 of the Local Plan in relation to avoiding development of the agricultural land, which would be better

resolved through a full assessment of all alternative sites. However, given the force of the schemes' benefits, this is unlikely to constitute a reason for refusal.

**viii) Countryside Access and other Green Infrastructure, including management measures.**

- 5.8.1 The current proposal includes a countryside access walk around the perimeter of the developed area and a pedestrian/cycle link to White Rock Phase 1. The footpath crosses green features such as the community orchard, allotments, wildlife pond and provides linkages to offsite country walks within the South Hams. Three play areas (2 local and 1 neighbourhood equipped play areas) are also proposed. Approximately 7 hectares (22.5%) of total site area is proposed for open space in the site features plan. These are additional to features required for the White Rock development to the north. The S106 Agreement for White Rock (dated 26 April 2013 for Application P/2011/0197) indicates an offsite woodland walk route to the north of the current application site into the South Hams, but does not provide for access into the land currently proposed for development.
- 5.8.2 Policy SS9.3 of the Local Plan seeks to deliver a Countryside and Access Scheme on the site of the Inglewood scheme. However, the land is private and the Local Plan does not identify mechanisms to bring forward the scheme (nor is it required by the 2014 White Rock S106 Agreement, which includes a countryside access walk north of the Inglewood site). There is an argument that the proposal makes generous provision of green infrastructure and extends public access into the countryside, in line with the aspirations of Policies SS9 and SC4. However most objectors are likely to regard the level of development proposed to be a very heavy price to pay for the additional countryside access and green infrastructure features provided.

**Management of Open space**

- 5.8.3 There have been ongoing discussions around management of the public open space, play areas and the Sustainable urban Drainage scheme (SuDS). The applicants propose to vest long term management of the site with a management company (GreenSquare, which is a registered provider). The applicants appear to have gone to considerable lengths to ensure the effective long term management of the development. The Planning Contributions and Affordable Housing SPD (2017) does allow this as an option. However, the Head of Parks and Open Spaces has expressed a preference for transfer of management to the Council with a maintenance bond, and has stated concern about the community support for, and management and dispute resolution problems associated with such arrangements. However, calculating the cost of a bond for long term management would be difficult given the complexity of the on-site maintenance requirements, and need to take in potential management of the farmland as well as the open space and SUDS features onsite.
- 5.8.4 There have been recent concerns about the fairness of Rentcharge Agreements which can place a burden and liability on purchasers. However the applicants have agreed to include clear identification of the Rentcharge in the sales of dwellings as well as incorporating a disputes resolution mechanism in the S106 Agreement. The involvement of GreenSquare, a Registered Provider should also help ensure responsible site management, although it is not possible in planning terms to require a specific service provider. Whilst the Head of Parks and Open spaces has ongoing concerns about private management arrangements, in the absence of a planning policy preventing their use, it is not possible to use this as a reason for refusal.

## **ix) Playing Field and Sports provision.**

- 5.9.1 The proposal includes a sports pitch and three hard standing sports courts totalling 4,694 sq. m along with changing facilities, and drainage. The sports facilities should be dual use with the school and community. The most practical way of achieving this appears to be by transferring ownership to the school, with a requirement to allow community use outside of school hours. Accordingly it is currently proposed that the playing field/sports courts be transferred to the school, with the provision for transfer to the private management company in the event that the school does not proceed. The provision of this is tied into the s106 Agreement, so its delivery can be ensured.
- 5.9.2 In addition, an offsite contribution of £73,590 is proposed towards sports facilities elsewhere in the area, which is likely to be Clennon Valley. An additional contribution of would be required if the playing field is not provided on site, but this is likely to be a less desirable situation from the point of view of creating a sustainable development that encourages active lifestyles.
- 5.9.3 Sport England has expressed concern about the level of sports provision. However the level of provision appears to meet the requirements of Policy SC2 “Sport Leisure and Recreation” as well as the requirements in the Adopted Planning Contributions and Affordable Housing Supplementary Planning Document (2017). Therefore, this is unlikely to constitute a reason for refusal (subject to a satisfactory legal agreement).

## **x) Highways and Transport**

- 5.10.1 There are significant objections in terms of impact on the highway network, congestion at Windy Corner the Brixham Road/Western Corridor, and highway safety. Objectors have also objected that the commuting pattern flows strongly out of Torbay onto the wider road network, which cannot easily be improved.
- 5.10.2 The proposal provides additional upgrading of Windy Corner and Long Road/ Goodrington Road junctions. The proposed roundabout and crossings have been worked up in liaison with the Local Highway Authority and its technical consultants.
- 5.10.3 More extensive bypassing of the Brixham Road has been considered at the pre-application stage, but this would create significantly greater landscape and biodiversity impacts. Reducing the speed limit from 40 to 30 MPH on the stretch of Brixham Road is an acceptable way of reducing the need for more intrusive highways works. An additional traffic light controlled junction to the north of the site is important to providing safe access for school, recreational and other users and increases the permeability of the scheme. There is a pedestrian/cycle link northwards to White Rock Phase 1.
- 5.10.4 The proposal has been supported by Stage Coach and includes provision for improving bus services to this part of the Western Corridor (extending service 23 at a minimum of 30 minute frequency). In addition a travel plan will be required through condition to seek to encourage modal shift away from single occupancy car use for all users of the development.
- 5.10.5 The application was supported by a Transportation Assessment by Key Transport Consultants (KTC), which is augmented by technical notes received in January 2020. Jacobs, on behalf of the council raised a number of technical queries with this assessment including assumptions made and the level of bus and cycle provision. A revised assessment was accordingly submitted in January 2018, which revises the

assessment of junction capacity, confirms agreement with Stage Coach to extend bus services and confirms cycle access arrangements.

- 5.10.6 Survey work was carried out in May 2017 and updated in September 2019. The September 2019 traffic surveys are generally lower than the earlier survey work, with the exception of the A3022 Brixham Road/Goodrington Road/Long Road junction where there has been a 7% increase at the AM peak. This is not considered to change the robustness of the 2017 data or change the overall conclusions of the transport assessment (See KTC Technical Note 6, October 2019).
- 5.10.6 The Transport Assessment indicates that capacity issues exist at Goodrington Road/Long Road and Windy Corner (A379 Dartmouth Road/A3022 Brixham Road) by 2024. However, it argues that the additional impact from Inglewood would not be severe on either junction. Nevertheless, the proposal includes provision of additional turning capacity at Long Road and Goodrington Road, which KTC assess will cater for the traffic generated by Inglewood as well as other consented development in the vicinity. The applicant's modelling shows no capacity shortfall at 2024 at the A3022 Brixham Road/ Goodrington Road/Long Road junction.
- 5.10.7 Improvements to Windy Corner, within the existing highway land, are also proposed to increase the number of southbound lanes from the signals to Bascombe Road, and provide additional turning and pull-forward space. These are additional, to but compatible with, the recent works recently carried out by Torbay Council. The transport assessment identifies that with the Inglewood development and Windy Corner improvements, there will still be a small capacity shortfall by 2024 on Windy Corner, where the junction would operate at 5.1% over capacity in the PM peak. However, the extent of this capacity shortfall is less severe than the situation would be if neither Inglewood nor the additional improvements to Windy Corner proposed by the developer took place. Under this "do nothing" scenario an 11.1% PM peak capacity shortfall is identified at 2024 (see KTC Technical Note 5). During the application discussions, other junction proposals were considered at Windy Corner which were assessed to reduce the shortfall to 1.5% over capacity in the PM Peak. However, the Council as Highway Authority sought additional safety measures such as separation islands and a zebra crossing, which reduce capacity slightly.
- 5.10.8 The proposed additional works to Windy Corner widen the northern (south bound) carriageway on non-highway council owned land, but do not encroach onto common land. The Count Archaeologist has requested archaeological investigations of the additional junction works, as Windy Corner appears to have been used as a gallows pre-1900. This can be secured through planning condition.
- 5.10.9 The traffic modelling argues that the roundabout access to the development, and other junctions in the vicinity of the development will operate satisfactorily.
- 5.10.10 The advice from the Service Manager- Strategy and Project Delivery Team (Planning and Transport) is that assuming that the highway improvements go ahead (Long Road junction, Brixham Road alignment and junction to site, and Windy Corner); and that pedestrian and cycle access routes are implemented (through to White Rock remote from the highway network, and across Brixham Road via the crossing to the North, via the crossings at the roundabout junction, and via the crossing to the South); and that the bus service and related infrastructure are provided; the development is not considered to have a severe impact on the local network.

- 5.10.11 Ongoing discussions have taken place between the Highway Authority and KTC to optimise junction arrangements. The Highway's advice remains that the proposal does not pose a severe impact on the local network.
- 5.10.12 The NPPF indicates that development should only be prevented where the residual cumulative impacts of development are severe (Paragraph 109). The proposal is considered to consistent with the requirements of Policy TA2 of the Local Plan and T1 of the BPNP, subject to conditions/s106 Agreement requiring the provision of the bus provision, highways improvement works, sustainable transport and travel plan.
- 5.10.13 Because these measures are needed to support the proposed development, they cannot be seen as a significant wider benefit. However, the improved bus service will provide some additional public benefit.
- 5.10.14 Detailed road layout, parking arrangements etc. will need to be finalised through reserved matters. However, the submitted plans and TA shows internal roads looping around the residential areas, with bus stops located on a dedicated stop-off loop off the main roundabout. The TA undertakes to provide parking to the Local Plan requirement of 2 spaces per house and 1.5 per apartment as well as two cycle parking spaces per dwelling and electric charging point per 2 houses and 20% of flats. This is consistent with Policy TA 3 of the Local Plan.
- 5.10.15 A planning condition will be required for a travel Plan to be approved prior to the occupation of dwellings, to meet the requirements of Local Plan Policy TA2 and Neighbourhood Plan Policy T1.

#### **Impact on the wider Road Network**

- 5.10.16 As discussed above, the proposal is assessed not to have severe residual impacts on the local road network. Wider impacts e.g. on Tweenaway Cross and Kings Ash Hill and beyond were considered in the Transport Assessment, but assessed as being minor in relation to the overall volume of traffic on the network. Objections remain that a very high levels of development have taken place on the Western Corridor, and that there is no realistic prospect of more extensive accessibility improvements beyond the online improvements carried out (as per Policy SS6.2 of the Local Plan). Conversely, it is argued that Torquay is a more accessible location and has easy access to the recently completed South Devon Highway. It is also argued that town centre regeneration would generate more sustainable travel patterns (particularly in the context of Neighbourhood Plan Policy T1).
- 5.10.17 These are really arguments about the most appropriate spatial strategy for Torbay, and go to the heart of the soundness of any update of the Local Plan. The detailed SATURN<sup>8</sup> modelling that informed the Torbay Local Plan 2012-30 dates from 2010 and is currently being updated. Because of the shortfall against five year supply, and because no severe residual impacts on the highway network have been identified, it would be difficult to justify a refusal based on highways grounds. However the point reinforces the view that a proposal of the scale of Inglewood should be considered at the Plan making stage, where reasonable alternatives and wider infrastructure implications can be considered.

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<sup>8</sup> Simulation and Assignment of Traffic to Urban Road Networks. The 2010 Modelling considered 10,000 and 15,000 dwelling growth scenarios. The level of development at "White Rock" exceeds that shown on the 10,000 dwelling scenario. Although the 15,000 dwelling scenario does include a level of development at White Rock/Inglewood comparable with the current application, the 2010 modelling indicates that capacity problems will occur on the network even with online improvements.



## **xi) Drainage including impact on the Critical Drainage Area, and foul drainage.**

- 5.11.1 Torbay is a Critical Drainage Area and policies ER1 and ER2 of the Local Plan seek to minimise the downstream effects of surface water and foul drainage, particularly through the use of sustainable urban drainage (SuDS) measures which minimise surface water run-off going into shared sewers.
- 5.11.2 The Appropriate Assessment considers the likely impact of the development upon the Lyme Bay and Tor Bay Site of Conservation Importance (Marine) and assesses that the development is unlikely to generate impacts on the Marine SCI (sea caves or reefs). Natural England has indicated that Sustainable Urban Drainage methods should be put in place to minimise water run-off and incorporate pollution control.
- 5.11.3 The application is supported by a drainage strategy set out in the Flood Risk Assessment, submitted by ClarkeBond. The FRA indicated that the site is at low risk of flooding (zone 1) and is suitable for sustainable drainage measures (SuDS). It identifies measures to ensure that surface and foul water flood risk downstream is not increased, in particular from run off into the Galmpton watercourse which is a tributary of the River Dart.
- 5.11.4 The drainage strategy was amended in March 2018 following initial comments from the TDA's drainage engineer, and resultant additional infiltration testing. The drainage strategy proposes the following measures to deal with surface water:
- To on plot individual soakaways in areas of good percolation;
  - To communal on plot soakaways in areas of good percolation but where plot densities prevent soakaways being sited more than 5m adjacent buildings;
  - To a communal soakaway structure (underground) where the plots are not located in areas of good percolation with separate structures for the residential development and the adopted highways to allow adoption of the highway drainage; and
  - By attenuation to the existing surface water drainage system in areas where there is inadequate percolation and topography prevents drainage to a soakaway basin in a more favourable location
- 5.11.6 The revised drainage details, including are shown on drawings WB03590/C/600-604(E). The ownership and maintenance of surface water soakaways and SuDS features is proposed to be via a management company (Green Square), which is also proposed to manage the public open space. Highways surface water drains would be managed by the Highway Authority upon adoption of highways.
- 5.11.7 The TDA's drainage engineer has confirmed that the outline drainage strategy complies with the Critical Drainage Area requirements. However the developer must supply the additional infiltration testing and surface water drainage design showing that there is no risk of flooding to properties on the site or increased risk of flooding to properties adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. The detailed drainage design must be submitted and approved prior to any construction works commencing on the site.
- 5.11.8 Given that the application is in outline, it is recommended that these detailed drainage drawings can be required as a condition of development (when the layout of development is finalised). However the submitted details suggest that a SuDS

scheme is capable of operating satisfactorily and avoiding downstream flooding or pollution.

### **Foul drainage**

- 5.11.9 The development would discharge foul water into the public foul sewer located to the south of the site, with a pumping station located in the south west of the site. This is designed to be adopted by South West Water. Policy W5 of the Local Plan sets out issues relating to foul drainage.
- 5.11.10 South West Water have not objected to the Proposal (and neither has Natural England or the Environment Agency). Although SWW initially indicated that downstream foul drainage improvements would be required, SWW's comments on 15<sup>th</sup> November 2019 indicated that the applicant would no longer need to fund these.
- 5.11.11 It is noted that concerns have been raised by objectors in relation to the capacity of shared sewers in the Paignton area, and compliance with Local Plan Policy W5. However, in the absence of objections from South West Water who own this infrastructure, it is not considered that an objection can be raised on foul drainage. However, given that the proposal goes significantly beyond the Local Plan Policy SPD1 and BPNP proposals for the area, the capacity of the wider sewer system would be better assessed strategically through the Local Plan review.

### **xii) Waste management.**

- 5.12.1 Tor2 Has not raised an objection on waste management grounds. Provision of recycling stores etc. can be secured through reserved matters. The street layout and design can be ensured at reserved matters stage to allow for access and turning of refuse and recycling vehicles.
- 5.12.2 The draft S106 Agreement makes a contribution of £85 per dwelling towards the provision of waste collection/recycling bins, which is in accordance with the Planning Contributions and Affordable Housing Supplementary Planning Document.

### **xiii) Minerals safeguarding Area.**

- 5.13.1 The proposal would affect a Minerals Safeguarding Area and Devon County Council initially objected. Policy M3 of the Torbay Local Plan requires development to demonstrate that it would not unnecessarily sterilise or prejudice future mineral extraction. However the site is on the edge of the safeguarding area, and DCC acknowledge that the policy framework allows other considerations to be balanced against the MSA.
- 5.13.2 The applicants have submitted a Minerals safeguarding Assessment and Rebuttal (WYG, February 2018) which argues that Inglewood would not be viable for minerals workings because of required buffer zones relating to biodiversity around Nords Wood, and housing to the east and west. In addition the AONB is an important consideration and minerals extraction would be likely to impact very significantly more on the landscape than the current proposal. No development is proposed in the south west of the site and it is argued that the nearby Devon MSA would not be sterilised.
- 5.13.3 The applicants also argue that the need for housing outweighs the importance of minerals in this area given that there is a land bank of 38.5 years of limestone (in excess of the 10 years required by NPPF paragraph 207).

5.13.4 In practice the ecological, landscape and highway constraints are likely to render minerals extraction unacceptable on the site. Devon County Council has withdrawn its original objection. The need for housing is likely to outweigh the limited potential impact on minerals safeguarding, given the thrust of government policy. On this basis it is considered that the benefits of the development would outweigh the any potential, but academic, conflict with Policy M3 of the Local Plan.

#### **xiv) Healthcare Provision and other community facilities.**

5.14.1 Policy SC1 Healthy Bay indicates that development should contribute to improving the health and well-being of the community. Local Plan Policies SS11 Sustainable Communities and SC5 Child poverty are also relevant. A Health Impact Assessment has been submitted in support of the application which stresses the open space, sustainable food production and affordable housing benefits of the proposal.

5.15.2 There have been objections to the proposal on the grounds of a lack of health facilities including GPs and dentists. The closure of Paignton hospital and reduction in services at Brixham have been noted.

5.15.3 The proposal contains a range of green infrastructure and community related uses (see above). However the South Devon NHS Trust have objected that the NHS is operating at full capacity and cannot plan for unanticipated additional population growth in the short to medium term (until government funding for population growth catches up with the population increase). A contribution of £353,857 is requested by the NHS Trust to bridge this shortfall (Roughly £329,971 pro-rata for 373 dwellings, or £884.64 per dwelling).

5.15.3 Policy H6 of the Local Plan seeks s106 contributions to meet likely healthcare and social services needs from care facilities and sheltered accommodation. But it does not seek contributions from general needs housing development. Moreover, the shortfall identified by the NHS is one of revenue costs for running hospitals, rather than an identified need for additional buildings or services specifically needed by the development.

5.15.4 Seeking to help fund the NHS through developer contributions would be a significant policy decision that would need to be developed in the context of the Local Plan Review/Update and considered alongside other demands for developer contributions as well as the CIL Regulations Test of Lawfulness. Without this framework in place it is difficult to seek a general s106 contribution for the NHS.

5.15.4 The NHS Trust manages local hospitals rather than surgeries, dentists etc. No hard evidence from providers has been submitted of shortages in these areas, although the level of public concern is noted and such matters would generally be assessed at a plan making stage. However it could not be taken as a standalone reason for opposing the application in the absence of any specifically identified shortfall.

#### **xv) Impacts on nearby heritage assets, particularly conservation areas, listed buildings and archaeology.**

5.16.1 The application site is not identified as a designated heritage asset. Historic England has not objected to the proposal.

5.16.2 The proposal is supported by a Cultural Heritage assessment by Archaedia, and by a geophysical survey carried out by Substrata. This identified Neolithic and bronze age

activity on the site, with evidence of later quarrying. There would also be some loss of historic hedge boundaries (as noted above). It is recommended that hedge boundaries should be retained as far as possible and that trench evaluation of former parish boundary banks and other potential sites of archaeological artefacts be undertaken prior to construction. This approach has been agreed by the Council's (former) Conservation Officer and the County Archaeologist. A scheme of archaeological assessment, recording, and if necessary preservation or curation, can be secured through planning condition. In addition, the County Archaeologist has requested archaeological investigations of the additional works at Windy Corner, due to evidence of an historic gallows in the area.

- 5.16.3 There are 12 grade 2 listed buildings within 1km of the site, 8 being in Waddeton hamlet, which is also a conservation area. There is only one listed building within 500m of the site, which is Turnpike Cottage, Windy Corner. Limited glimpses of the site from Turnpike Cottage are identified.
- 5.16.3 The Inglewood site does not appear to be significantly visible from public land within Waddeton Conservation Area. However the Cultural Heritage assessment considers that there is a likelihood that the site is visible from non-public land, including listed buildings and their gardens in the area. The Heritage Assessment indicates a minor impact on their significance, and this is consistent with the case officer's observations.
- 5.16.4 The proposal has been amended to remove dwellings from the south west corner of the development, which is likely to further diminish any impact on heritage assets in Waddeton.
- 5.16.5 Greenway registered park and garden is located about 2km from the site, and Lupton Park slightly further away. The site is not thought to be visible from these assets, although glimpses of the site on the paths ("Hook Bottom") to Greenway have been identified by objectors, and are considered in relation to the impact on the AONB's setting).
- 5.16.6 Galampton Conservation Area is located approximately 700m to the south of the site, but any inter-visibility appears to be extremely limited.
- 5.16.7 There is one scheduled ancient monument approximately 950m from the site (a chambered ancient tomb at Elbury Goodrington, which is not affected).
- 5.16.8 Policy SS10 and HE2 of the local Plan protect the setting of heritage assets. Paragraph 196 of the NPPF indicates that where there is less than significant harm to a heritage asset, the harm should be weighed up against the public benefits of the proposal. Any impacts upon heritage assets are considered to be to be very small in comparison to the public benefits of the scheme.

**xvi) Amenity, Noise, design and related considerations.**

- 5.17.1 As part of any planning application, it is important to assess whether the application proposal will have an impact on existing or future residents, as required by Local Plan Policy DE3. This includes overlooking, overbearing, amenity space, impacts of noise, dust etc. It is difficult at outline stage to reach a conclusion on the residential amenity of future residents.
- 5.17.2 However, the indicative masterplan shows that the applicants have gone to significant effort to design a well landscaped residential masterplan which has access

to local recreation route, a school, and pub/restaurant and has distinct local character areas.

- 5.17.3 Environmental Health has identified the need to provide a small number of dwellings closest to Brixham Road with alternative ventilation measures. This can be addressed through siting of dwellings or provision of fans etc. at reserved matters stage.
- 5.17.4 There will be some limited effect on nearby residents of Stead Close, Hookhills, although this area is screened and set back from Brixham Road. There are houses on Brixham Road, particularly White Rock Cottages and houses on the NE side of Brixham Road (from “The Cottage” to “Westlea”). However, the masterplan shows these houses looking onto allotments or the buffer between White Rock and Inglewood, rather than onto residential development. The most significant effect is likely to be on the dwellings opposite the public house (particularly Dew Wood). However these are set back from the road with landscaping between them and the proposed development.
- 5.17.5 Brixham Road is already a busy road and there is no particular reason to consider that living conditions or amenity will be significantly harmed by additional noise above that already generated by existing traffic.
- 5.17.6 The Brixham Road/Hookhills houses’ outlook onto open fields will be affected and the character of the area will change from rural to residential. Private views are not a planning consideration; but collective outlook and public vistas are matters that are likely to have influenced the Brixham Neighbourhood Forum steering group in the designation of a settlement gap, and therefore this issue is rolled up in the landscape and Neighbourhood Plan discussions above.
- 5.17.7 Conditions relating to the siting and design of development, construction hours and good neighbourliness, pub hours of operation etc. can be imposed at reserved matters stage.
- 5.17.8 The site is greenfield and there is no reason to consider that it is subject to contamination or instability. However the developer will need to carry out the necessary site investigations at reserved matters stage and to inform building regulations.

#### **xvii) The Planning Balance**

- 5.18.1 The application provides significant benefits, but has also generated an exceptional level of public objection. Officers have advised that the presumption in favour of sustainable development is engaged because of the lack of five year supply. It is noted that the five year supply situation has been contested by different parties. Furthermore it will need to be reassessed after April 2020.
- 5.18.2 In any event the provision of housing, policy compliant affordable housing, school, employment and countryside access are very significant benefits in favour of the proposal. Whilst it is in outline, the application has gone to significant lengths to minimise and mitigate its environmental impacts, and create a well-designed masterplan layout. These would need to be strictly controlled through an s106 Obligation and conditions.
- 5.18.3 The application is a departure from the Adopted Local Plan (specifically policies SS2, SS9, and C1). However, it may be seen as being consistent with the measures

identified in the Plan to boost housing supply and meet the overall housing requirement (Policy SS13 refers). The proposal is counter to the policy of restrained growth in the Brixham Peninsula (Policies SS12 and SDB1 and SDB3) which reflects the environmental sensitivity of the south of Torbay.

- 5.18.4 The conflict with the Neighbourhood Plan is significant and demonstrable, specifically Policies E1.3, E2 and E3. The BPNP makes site allocations to fully meet its housing requirement, and to-date has exceeded that requirement. The Neighbourhood Forum (subgroup of the Town Council) considered but rejected the Inglewood site as part of the Neighbourhood Plan making process. Policies BH3 and BH4 seek to direct housing to brownfield sites and regeneration opportunities in the built up area. The Neighbourhood Plan was subject to independent examination, and the Secretary of State has recently highlighted the importance of the Local Planning Authorities respecting Torbay's Neighbourhood Plans. Approving the scheme would fundamentally undermined the principal of localism and the strong support given to the BPNP at referendum.
- 5.18.5 If the Joint Neighbourhood Forums' view is accepted that more than three years' supply can be demonstrated, then the reasons for refusal are strengthened. But the conflict with the Statutory Plan is considered to be significant and demonstrable even if the extra protection of paragraph 14 of the NPPF cannot be engaged.
- 5.18.6 There are differences of opinion about the significance of the landscape impact. It is noted that the scheme is in outline, but the masterplan has been revised to reduce development on the south west boundary. Landscaping is also likely to reduce the impact over time. Notwithstanding this, there appears to be an adverse effect on the setting of the AONB from public vantage points, which cannot be fully mitigated. The main impacts are upon views from recreational routes around Kennels Lane/John Musgrave heritage trail and around Fire Beacon Hill, Dittisham. Views into the AONB from the Brixham Road and its environs would be affected and the currently rolling farmland setting to the AONB beyond would be changed to residential. Even though the "gap" between Paignton and Galampton would not be totally built on, it would be significantly diminished.
- 5.18.7 Given the national importance of the Dart Valley as one of the finest riverine landscapes in the country, the need for development is not considered to outweigh the landscape impact.
- 5.18.7 It is recognised that there are a large number off detailed objections on a wide range of matters. However, proposal appears to be acceptable in terms of biodiversity impact, flooding, drainage, loss of agricultural land, and minerals. Although there are capacity issues at Windy Corner, the development does not have a severe residual impact on the highways network. Whilst a shortfall in healthcare services has been identified, this appears to be a generalised NHS revenue issue, rather than a site-specific objection.
- 5.18.8 Officers consider that the gamut of infrastructure issues, the need for housing and whether the Inglewood site is the most suitable site for development, are better considered in the context of the Local Plan update. However, because of its early stage of preparation, an objection on prematurity grounds alone is unlikely to warrant the application's refusal.
- 5.18.9 None of the scheme's benefits are considered on balance to overcome the harm to the development plan, particularly the Neighbourhood Plan or impact on the AONB.

Appendix 1: Planning History

## Appendix 1 Planning History

A1 The most significant history relating to Inglewood is as follows:

### 1990s Called In Business Park Proposal

- A2 **95/0998/OA and 96/1288/OA:** Planning applications covering part of the subject site were submitted in 1995/6 for housing and associated open space, including the realignment of Brixham Road. **95/0998/OA** related to land directly north of Galmpton and was refused planning permission on 25<sup>th</sup> October 1995 on grounds that there was a lack of housing need and the potential for adverse landscape and highways impacts. The second application was made in 1996 was withdrawn in June 1998.
- A3 **1995/1304/MOA. SW/P/5183/220/4 Business Park Development Comprising B1, B2 Uses, Together With Associated Highway And Landscaping Works And The Creation Of A Balancing Pond (In Outline).** The application proposed the erection of units for employment purposes within Class B1, B2 and B8 (although B8 uses were subsequently withdrawn). It was refused by Secretary of State (John Prescott) on 29 October 1997 following a Call In Public Inquiry. The application was Called In by the Secretary of State following a resolution in June 1996 by Torbay Council to approve the development, and Torbay Borough Council (as then was) supported the application at Inquiry. The application boundary differed from the current site. In particular application 1995/1304 encompassed land to the north (now developed as White Rock), together with the current application site.
- A4 The Secretary of State's refusal reasons largely accorded with his inspector's recommendations. They principally related to impact on the AONB, but also highways, loss of agricultural land, prematurity of the emerging Local Plan and the likely demand for a business park. It is important to remember that the refusal was for a business park, which the Inspector considered could revert to general industry, rather than a residential led proposal.
- A5 The SOS (and his inspector) considered landscape impact to be 'the most compelling' reason for refusal, given the impact of the proposed development on the AONB. The SOS applied substantial weight to this matter stating there was a "need to preserve the high quality of the Dart Valley AONB as one of the finest riverine landscapes in the country". It was stated that "the development itself and the very extensive areas of woodland planting envisaged would have a significantly adverse and wholly unacceptable visual impact on the AONB, the AGLV and the surrounding countryside..." (Para 12 of the decision and 12.22 to 12.49 of the Inspector's conclusions).
- A6 The Inspector considered, but did not raise objections on, ecological grounds (12.68-69) or drainage grounds (12.66-67) and these do not feature in the SOS's decision.
- A7 On the Loss of Agricultural land, the Inspector recommended that there was an objection to this matter "without an overriding case on the grounds of exceptional need" (12.76). The SOS stated that the agricultural land objection should only carry weight if the case on grounds of need is not made out (Para 15).
- A8 The Inspector considered a wide range of other issues, such as highways, development need, the likely industrial form of development, prematurity and the (then) emerging planning framework. However, the conclusions on these matters



have been rendered less relevant by the passage of time and the different nature of the current proposal.

### **White Rock (Phase 1)**

- A9 The 1996/7 Call In Inspector suggested that land to the north of the site was slightly less sensitive than the southern areas, and following consideration at the Torbay Local Plan 1995-2011 Public Inquiry, this land was included as a business park proposal in the (former) Local Plan, which was adopted in 2004 (Proposal E1.19). This northern area is now being developed as “White Rock”
- A10 A number of planning applications have been submitted to develop the land of White Rock to the north of the application site, including a business park P/2004/1621. This was approved (04/08/2005) but has not been implemented.
- A11 **P/2011/0197: Mixed use development of 39 ha at White Rock Paignton, to construct 350 dwellings, approximately 36,800 sq. m gross employment floorspace, local centre including food retail (up to 1652 sq. m gross) with additional 392 sq. m A1/A3 use and student accommodation, approximately 15 ha of open space, sports pavilion and associated infrastructure and engineering works to provide access, drainage and landscape (outline application).** The masterplan for this development, now referred to as White Rock, was submitted as part of an outline planning application. Permission with s106 Agreement granted 29 April 2013. A subsequent s106 Agreement relating to phasing and the Landscape and Ecology Mitigation Plan (LEMP) was signed on 17<sup>th</sup> April 2014.
- A12 Although White Rock is a separate entity from the current proposal, matters such as the required Landscape and Ecology Mitigation Plan (LEMP) and maintaining pedestrian links between the two areas are still relevant considerations.
- A13 The northern field of the current Inglewood proposal develops about 5ha of land identified in the s106 Agreement of 26<sup>th</sup> April 2013 as entry level stewardship. It also requires ecological management of hedgerows on the southern portion of the site.
- A14 Since this time a number of reserved matters applications have been submitted and approved and the White Rock area is currently being built out. These include:
- **P/2013/1229: Approval of reserved matters to P/2011/0197.** Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development. | Land West Of Brixham Road, Paignton Approved 17/04/2014. There have been several applications amending these reserved matters.
  - **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 unit 31, relocation of 10 parking space for units 33-34 | Land Adjacent To Torbay Business Park White Rock Long Road Paignton Approved 16/10/13
  - **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 (proposal/ description amended 5 April 2016). Land West Of Brixham Road, Paignton. Approved 3/04/17. This application is particularly relevant as it involved a weighing up of

impact on the AONB (and objection from the AONB Unit) with the benefits of the development. The Officer Report stated: *“Having considered social benefits of the scheme to the residents of Torbay in terms of health and well-being and the harm to the setting of the special qualities of the South Devon AONB, a balanced view must be taken. On balance and whilst acknowledging that the view of the South Devon AONB Manager cannot be fully resolved, it is considered that the benefits of the scheme when viewed together with the level of mitigation proposed would outweigh the time limited impacts on the special qualities of the South Devon AONB specifically the natural nightscapes”*.

- **P/2017/0412 EIA Screening in relation to a sports pavilion and associated development** Land West Of White Rock Brixham Road Paignton. EIA not required 10/04/2017
- **P/2017/1019 | Formation of supermarket including associated works** Land at White Rock Way Paignton TQ4 7RZ. Approved 24/04/18

A15 **P/2016/1381 | Request for EIA Scoping Opinion in accordance with Regulation 13 for a maximum 450 dwelling houses, approximately 2,500sqm of employment space, access via Brixham Road, strategic landscaping and public open space** Land South Of White Rock Brixham Road Paignton Devon. Letter dated 16 February 2017 from the LPA confirms the need for and Environmental Statement and sets out the scope of an ES.

#### **The SHLAA and the Local Plan Examination**

- A16 The Inglewood site (previously called White Rock Phase 2) was promoted through the Strategic Housing Land Availability Assessments SHLAAs) in both 2008 and 2013. The SHLAA is not a policy document but does represent an independent consultant’s assessment of site suitability. In the 2008 SHLAA (Baker Associates), the application site was not recommended as a broad location for development, but noted “more limited opportunities for development that might provide up to 500 dwellings...subject (to) further detailed analysis” (Para 13.9.4, P44 of Volume 2).
- A17 The 2013 SHLAA (Peter Brett Associates) assessed the site in more detail, referring to the site as “Land on the edge of Goodrington”. The 2013 SHLAA notes that landscape, agricultural land and greater horseshoe bat issues that would need to be assessed and mitigated. However it considered that parts of the land to the north may provide an extension to White Rock at the end of the Plan period, and identified the area of the current Inglewood site as capable of providing 250 dwellings (Appendix J, site T756b).
- A18 The site was not included in the Draft (2012) or Submission (2013) versions of the emerging Local Plan 2012-30, as it was considered that less sensitive options were available. However, the Local Plan Inspector advised that the submitted plan did not meet its full objectively assessed need (as assessed in the 2013 Housing Requirements Report). Accordingly, council officers carried out an assessment of the rejected sites in late 2014 as part of the Local plan Examination.
- A19 The “trawl” for additional sites was supported by an “HRA Site Appraisal Report of proposed Additional Sites” with potential for development to be included as proposed Main Modifications to the submission Local Plan” (M J Oxford of Kestrel Wildlife Ltd, February). This included an assessment of land south of White Rock which was

slightly larger than the current Inglewood site, having a potential yield of between 250-460 dwellings.

- A20 The assessment does not rule out development in principle but notes that the supporting ecological report available at 2014, did not cover the necessary survey period or sufficient survey points (3.1.10). Greater horseshoe bat activity on the site was also identified and stated that: "It will only be possible to avoid a full Appropriate Assessment if detailed mitigation measures are incorporated into development proposals to demonstrate (when examined against the Likely Significant Effect (LSE) test) that there will be no likely significant adverse effect.
- A21 The Council's officer level assessment of the site noted that "The site is fairly accessible and of a sufficient size to provide a critical mass of community benefits, particularly affordable housing, employment and green infrastructure. It could beneficially link into to the first phase of White Rock to the north".
- A21 Whilst the site was included as a Main Modification to the Plan (2014/15), it had to be removed because of the insufficient survey evidence in terms of in combination effects under the Habitats Regulations, as well as lack of detailed evidence on the landscape and agricultural land impacts. 11 objections to the inclusion of the site as a Modification were received from organisations including Natural England and 91 objections from individuals.
- A22 Notwithstanding this, the council officers' assessment of the site noted that if the "reasons for the 1997 refusal could be overcome, and the significant sensitivities of the site can be overcome" it was considered the site could "offer the best opportunity for delivery of sustainable development of sites not included in the submission Local Plan".
- A23 The Inspector's Final Report was received on 12 October 2015. It found that Torbay's objectively assessed need was for 12,300 dwellings between 2012-32, or 11,000-11,500 between 2012-30 (para 34). Given Torbay's constraints the Inspector recommended a ("policy on") housing requirement of 8,900 dwellings between 2012-30 (paragraph 41. His reasons for recommending a growth rate below full objectively assessed need are set out in the preceding paragraphs). The Inspector identified uncertainty in the Local Plan's reliance on Neighbourhood Plans to bring forward housing development in the medium term (paragraphs 48-57) and considered the potential role that additional broad locations or sites could play. The report stated that:

*58. The land south of White Rock is particularly important in this regard. At the MM stage the Council identified this land as a possible Future Growth Area with potential, subject to environmental considerations, for 450 dwellings. There were many objections to this proposal, notably from local residents. The Council's response was to record that further evidence about this site was needed in relation to ecology, landscape impact and agriculture. The Council noted that the ecology evidence would not be available until October 2015. In order to avoid further delaying the Plan, two options were suggested by the Council. First, to exclude the site at this stage but to reconsider it when the Plan is due to be reviewed in five years by which time the necessary further evidence would be available. The second was to identify a smaller Future Growth Area corresponding to land being promoted by a developer.*

*59. Unsurprisingly the second option (described as White Rock 2) is favoured by the developer in question. The developer argues that suitable environmental*

*safeguards can be put in place through a master plan approach and that in any event it owns land in the immediate vicinity of White Rock 2 that could be made available if required to provide off site mitigation. The developer also points to its successful track record involving an adjoining development site (White Rock 1). Obtaining development on that site involved public consultation, stakeholder engagement and effective cooperation with the Council and Natural England.*

*60. The strong local opposition to development on White Rock 2 is understood. However in the context of the need to find additional housing land as a consequence of the Initial Findings, subject to environmental safeguards this land was regarded at the MM stage by the Council as one of the best alternative green field locations for sustainable growth in Torbay. There are very limited options for strategic housing growth sites in Torbay and having regard to its relationship to existing development and the White Rock 1 site, it is considered that the Council has good reasons to regard the site as potentially offering an opportunity for strategic development.*

*61. The Council has chosen to follow the first option and says that development of the site should be considered in 5 years when the Plan is scheduled to be reviewed. There are several disadvantages to this approach. First, Government policy clearly looks to local authorities in their local plans to identify sites or broad locations for housing growth for at least 10 years and preferably for 15 years (NPPF paragraph 47). Second, there is an immediate need to provide as much strategic certainty as possible, not least to allow effective NP to be produced. Third, although it is a matter for the Neighbourhood Plan Forums working with the Council, to finally resolve how much housing is allocated to the three different neighbourhood plan areas, it is clear that there could be a problem with identifying sufficient medium and long term housing land. Finally a comprehensive review of the Plan will itself take some time. To wait until the Plan has been completely reviewed would run a high risk of the site not being available for development, if environmentally acceptable, when it or some alternative might be needed.*

*62. The difficulty is that the necessary "in combination" AA under Regulation 61 of the Habitats and Species Regulations (2010) cannot be done at this point in time to the satisfaction of Natural England. Furthermore the Council says that the necessary work on outstanding issues relating to the impact on greater horseshoe bats and the adjoining AONB cannot be completed for at least 12 months. In these circumstances it is agreed that the Council is right to exclude the land as a Future Growth Area at present. However if the necessary work is undertaken and shows that from an environmental point of view the site is developable, there is nothing to stop the Council from carrying out a partial review of the Plan as soon as it has the necessary evidence. This course of action would enable sensible medium term planning to be undertaken in a timely fashion not least because in 12 months the Council should be much better informed about the likely medium and long term housing supply position as a consequence of the neighbourhood planning process.*

- A23 Whilst the Inspector did not offer a final view of the Inglewood Site, a reasonable interpretation of his report is that he considered that an early review of the Plan had a fair chance of being found sound with the site included. It should be noted that the (Local Plan) Inspectors report was written with knowledge of the previous Call in Decision, since this was identified in the SHLAA and Modifications consultation. However for the reasons set out above, the Local Plan was adopted by the Council in December 2015, without the Inglewood being identified as a development site.

A24. The Council has not been able to bring forward an early review of the Local Plan prior to the scheduled first review in 2020. A review of the Local Plan has commenced and a call for sites for the Housing and Employment Land Availability Assessment runs between December 2019 and February 2020.

A25 As set out in the main report, the site was considered for inclusion but rejected from the emerging Brixham Peninsula Neighbourhood Plan (Submission document 3, site H3-R7 page 82-3).