

In the matter of an appeal under section 78 of the Town and Country Planning Act 1990 by Abacus Projects Limited/Deeley Freed Limited, relating to:

**LAND TO THE SOUTH OF WHITE ROCK ADJACENT TO BRIXHAM ROAD  
AKA INGLEWOOD PAIGNTON, TQ4 7BQ**

---

**STATEMENT OF CASE ON BEHALF OF  
BRIXHAM TOWN COUNCIL [RULE 6 PARTY]**

---

**1 Background**

- 1.1 This planning appeal relates to the non-determination by Torbay Council of an application for full planning permission for the development of a new 'village' to the west of the Brixham Road.
- 1.2 The application was validated on 13 November 2017 and the amended description of the site as provided by the applicants is:
- “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. Details of access to be determined with all other matters”
- 1.3 Brixham Town Council’s Neighbourhood Plan was made in June 2019 following much hard work by community volunteers after “front-runner” status was granted in June 2011. The application site lies within the neighbourhood area of the plan.
- 1.4 Unlike many site promoters the applicants chose not to engage with Brixham Town Council or any of our neighbourhood plan working groups during the plan preparation. However, the application site was given very detailed consideration.
- 1.5 Following this very detailed consideration the application site was explicitly rejected for housing development in the Neighbourhood Plan. Furthermore, its development

would run contrary to the strategic intent of the plan and directly conflict with key policies of the Neighbourhood Plan.

- 1.6 Brixham Town Council have resolved to appear as a Rule 6 Party at the inquiry so that you, as the Inspector determining this appeal, can hear evidence directly from our representatives as to why and how the Neighbourhood Plan developed in the way that it did – in particular how policies were shaped by a matrix of significant complexities and the desire of the community for a visionary and aspirational approach, and how those policies were honed and refined with substantial external professional input into something greatly more substantial than a parish plan.

## **2 Outline of Objections**

- 2.1 Brixham Town Council will demonstrate that the proposed development would be unacceptable for the following reasons taken individually and cumulatively:

- Conflict with the Neighbourhood Plan.
- Landscape and Public Amenity Impact.
- Highways and Traffic; and
- Wildlife Impact.

## **3 Conflict with the Neighbourhood Plan**

- 3.1 It will be submitted that key policies relevant to this appeal were both developed and refined, with considerable expert input, to accommodate the complex matrix of technical and planning considerations including:

- AONB areas;
- Mixed and discrete countryside, village, town, coastal and tourism related areas;
- A significant component of a Special Area of Conservation;
- Habitat Regulations requirements; and
- Marine Conservation Zone areas;

and were significantly influenced by the community's wish to produce a neighbourhood plan capturing its vision and aspirations to maintain and enhance the

unique landscape character, and environmental and wildlife aspects of the neighbourhood area.

3.2 It will be submitted that the proposed development conflicts with Brixham Peninsula Neighbourhood Plan policies:

- BH4 Brownfield & Greenfield sites;
- BH9 Exception Sites;
- E1 Landscape beauty and protected areas;
- E2 Settlement boundaries;
- E3 Settlement gaps;
- E6 Views and Vistas;
- E8 Internationally and nationally important ecological sites; and
- T1 Linking of new developments to travel improvements.

3.3 It will be submitted that the large physical size of the development and the development's direct conflict with key policies of the Neighbourhood Plan undermines the strategic intent of the plan.

3.4 It will be submitted that given the scale to which this development undermines the Neighbourhood Plan, were the appeal to be allowed, both the Neighbourhood Plan and the neighbourhood plan community engagement process in Torbay would be annulled at a stroke.

3.5 It will be submitted that land supply position across Torbay is not reason to annul the Neighbourhood Plan, particularly the when supply calculations referred to by other participants fail to give sufficient weight to "deliverable" sites.

#### **4 Landscape and Public Amenity Impact**

4.1 It will be submitted the proposed development would represent a substantial and harmful intrusion into open countryside at a public vantage point for important views into and out of the Dart valley and the South Devon AONB. It will be submitted this impact will detract from the special character of the Brixham Peninsula area and undermine the characteristics which make the area "special".

4.2 It will be submitted the proposed development in combination with other development planned in the Neighbourhood Plan will put an undue pressure on

public amenity facilities, including but not limited to the grassland and dry heaths at Berry Head.

## **5 Highways and Traffic**

- 5.1 It will be submitted that, while traffic matters generally lie outside the scope of neighbourhood planning, the problems caused to the community by restricted and congested access to the Peninsula specifically referred to at paragraphs 1.7, 1.12, 1.13 and 2.4 of the Neighbourhood Plan were raised as a serious concern in the majority of consultation exercises, and that objections raised in respect of traffic and the Windy Corner junction should be given substantial weight based on the depth of local knowledge and experience.

## **6 Wildlife Impact**

- 6.1 It will be submitted that, in the context of the conflict with Neighbourhood Plan Policy E8, and in the light of detailed legal representations made at the Torbay Council Planning Committee meeting on 10 February 2020 by Gregory Jones QC, as set out also in a letter of objection by instructing solicitors Farrer & Co of 7 February 2020, the development is alleged to fail to meet the necessary legal standard set by the legislative framework which protects important species and habitats; specifically the Greater Horseshoe bat. It will be explained that this is a matter of great concern to the community.
- 6.2 Liaison between the Brixham Peninsula Neighbourhood Forum and Torbay Council subsequent to the 10 February 2020 Planning Committee meeting referred to at 6.1 above, has confirmed that notwithstanding what appear to be compelling legal arguments for Torbay Council to add a fifth HRA based objection, officers will omit any such objection from their Statement of Case because they consider the applicants have satisfactorily addressed the issues. We disagree strongly with this position based on what was explained to the Planning Committee meeting by legal counsel. It will thus be submitted that in the absence of this party's expertise to examine or challenge these arguments, and given the demurral of any challenge by Torbay Council, the inquiry itself should carefully consider whether the applicants have established with the necessary degree of certainty required that the implementation of mitigation and compensation measures is assured and is enforceable. In particular, the following factors are of concern:

- whether the measures constitute mitigation or compensation;

- lack of sufficient detail on implementation; and
- uncertainty resulting from the reliance on legal agreements over work which is due to take place many years in the future and for which no precedent has been identified.

## **7 Summary**

7.1 In conclusion, Brixham Town Council will call evidence to demonstrate that the proposed development would be unacceptable for the following reasons:

- Conflict with the Neighbourhood Plan;
- Landscape and Public Amenity Impact;
- Highways and Traffic; and
- Wildlife Impact.

7.2 The Inspector will be respectfully invited to dismiss the appeal.

**In the matter of an appeal under section 78 of the Town and Country Planning Act 1990 by  
Abacus Projects Limited/Deeley Freed Limited, relating to:**

**LAND TO THE SOUTH OF WHITE ROCK ADJACENT TO BRIXHAM ROAD  
AKA INGLEWOOD PAIGNTON, TQ4 7BQ**

---

**LIST OF DOCUMENTS ON BEHALF OF  
BRIXHAM TOWN COUNCIL [RULE 6 PARTY]**

---

In addition to the documents specifically referred to above, the Rule 6 Parties intend to rely upon the following documents of which they are aware:

- Brixham Peninsula Neighbourhood Plan (made documents):
  1. Policy Document
  2. Policy Maps
  3. Housing Site Assessment
  4. Employment Site Assessment
  5. Green Space Site Assessment
  6. Broadsands Village Design Statement
  7. Churston Village Design Statement
  8. Galampton Village Design Statement
  9. Brixham Town Design Statement
  10. Brixham Town Centre Master Plan

- Brixham Peninsula Neighbourhood Plan (plan preparation evidence):
  11. Consultation Statement (2nd version) for regulation 16 stage
  12. Stride Treglown representation dated 15 December 2017
  13. Stride Trelown (DAC Beachcroft / NPA) representation dated 31 May 2018
  14. Stride Trelown accompanying e-mails dated 31 May 2018
  15. Stride Treglown representation dated 21 June 2018
  
- AECOM (consultants reports funded under a Locality technical assistance grant):
  16. Habitat Regulations Assessment Screening dated November 2018
  17. Strategic Environmental Assessment dated August 2017
  18. Updated Site Appraisal for Submission dated July 2017
  
- Others documents related to wildlife impact:
  19. Letter by Farrer & Co dated 7 February 2020
  20. Speaking note by Gregory Jones QC dated 10 February 2020
  21. South Hams Special Area of Conservation (SAC) Greater Horseshoe Bats  
Habitats Regulations Assessment Guidance dated October 2019