

APP/X1165/W/20/3245011: Land to the South of White Rock Adjacent To Brixham Road Aka Inglewood Paignton, TQ4 7BQ (LPA Reference P/2017/1133).

TORBAY COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

Appeal by Abacus Projects Limited and Deeley Freed Estates Limited

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. Details of access to be determined with all other matters reserved.”*

Site at Land to the South of White Rock Adjacent To Brixham Road Aka Inglewood Paignton, TQ4 7BQ

Planning Inspectorate ref.: APP/X1165/W/20/3245011

Local Planning Authority ref.: P/2017/1133

PROOF OF EVIDENCE

David Pickhaver BA(Hons), MA, MRTPI

1.0 Preamble

1.1 I am David Pickhaver, a Senior Planning Officer working within the Strategic Planning Team in the Strategic Planning and Implementation Group of Torbay Council. I have a BA (Hons) in Development Economics and an MA (Prize) in Town and Country Planning and have been a Member of the Royal Town Planning Institute since 1995. I have 33 years' experience in planning in both development management and planning policy.

- 1.2 I have a longstanding knowledge of the appeal site. I was programme officer for the 1997 Call in Public Inquiry. I was subsequently involved with the Torbay Local Plans 1995-2011 and 2012-30, both of which considered the site and its environs. I became the third case officer for the Inglewood application in mid-2018 following staff departures in the Spatial Planning Department, and a considerable hiatus in the management level of spatial planning.
- 1.3 My professional view has always been that an application of this scale, nature and impact should be brought forward through the plan making and not the decision taking stage. This would have allowed a full consideration of all relevant factors and alternative options and sites. It would have also allowed a wider strategic review of land formerly designated as AGLV. However, I respect that the appellants have gone to considerable expense and are entitled to seek a resolution of their application through appeal. Whilst acknowledging the benefits of the proposal, I have concluded that the harmful impacts of the proposal significantly and demonstrably outweigh the benefits. These arise from the degree of conflict with the development plan, particularly the Brixham Peninsula Neighbourhood Plan; and the landscape impact of the proposal in the setting of the South Devon AONB, which would thereby have an adverse impact on the AONB. In my assessment, the landscape impacts of the proposal mean that it fails irrespective of whether the tilted balance at paragraph 11 (d)ii of the NPPF is considered to have been activated. The landscape harm is also a negative economic impact of the development, since Torbay is a tourist resort. The Brixham Peninsula in particular has close ties with the rural hinterland and the South Hams AONB; which is part of its tourist appeal. Mr English's evidence has set out that this area has more in common with the South Hams than the highly urbanised Torbay landscape.
- 1.4 The Report and Presentation prepared for Planning Committee on 10th February 2020 (CD10.1) sets out my assessment of the proposal as of that date. This and the Appeal Statement of Case summarises the site description and proposal. The Committee Report recognises that the scheme has substantial benefits, and that the appellants have worked constructively to resolve technical problems and have proposed a comprehensive package of habitats and landscape mitigation as well as a policy compliant draft Section 106 package. The report also acknowledges the site's history, including its consideration in the emerging Local Plan.

- 1.5 As an appeal against non-determination, it must be clear that the decision is not an easy one. However, the appellants were not able to overcome the landscape harm to the nearby AONB. Moreover the Brixham Peninsula Neighbourhood Plan (BPNP), which came into force in June 2019, added a significant development plan obstacle to the proposed development on the site. In particular the BPNP protects the vista across the site towards the AONB, and designates the site as a settlement gap. This is a rational and defensible policy position.
- 1.6 The appeal proposal is highly controversial and has attracted objections from over 500 individuals as well as a range of organisations including South Hams District Council, Brixham Town Council/Neighbourhood Plan Group and the adjoining Parish Councils located within the Dart Valley (Stoke Gabriel, Dittisham and Cornworthy).
- 1.7 Torbay Council's Planning Committee considered the application on 10th February 2020 and unanimously resolved that if the application were to be determined by the LPA it would have been refused as per the officer recommendation. The Officer Report notes that there are many sincerely held objections to the proposal which do not feature in the recommended reasons for refusal; and that different people have come to different conclusions from myself on these matters. Other Inquiry participants are likely to set out objections on other matters.

2. Issues Identified in the original Case Management Conference

- 2.1 The original Inspector's Case Conference Management note, dated 10 March 2020 identified three main issues:
- 1) The effect of the proposal on the landscape character and appearance of the surrounding area, with particular regard to the South Devon Area of Outstanding Natural Beauty (AONB) and the settlement gap;
 - 2) The effect on protected species, with particular regard to the Greater Horseshoe Bat and the South Hams Special Area of Conservation; and
 - 3) Whether the site is suitable for development in light of the policies in the development plan, including the Brixham Peninsular Neighbourhood Plan, and other material considerations, including the 5 year housing land supply.
- 2.2 The previous Inspector appointed to determine the appeal also noted that the Inquiry will also look at any benefits to be weighed in the planning balance, and the wider

concerns raised in responses by the (then) Rule 6 party and other interested parties, including highway safety.

- 2.3 **Issue 1: Impact on the AONB and Settlement Gap.** This issue relates to landscape impact both in terms of the effect on the AONB through development within its setting; and the effect on the rolling farmland, which is designated as countryside (Local Plan Policy C1 and BPNP Policy E2) and Settlement Gap (BPNP Policy E3). Separate proofs will be prepared by Mr Steve Knott CMLI, Senior Associate Director of Landscape Architecture at Jacobs and Roger English, AONB Partnership Manager, who will be the Council's expert witnesses on this matter.
- 2.4 In preparing the Committee Report, I needed to consider and collate the various landscape evidence in the report. Similarly, this proof relies on the evidence given in Mr Knott's and Mr English's assessments.
- 2.5 The development of rolling farmland within the setting of the AONB would harm the character of the AONB seen from several important vantage points. These are principally when seen from raised public vantage points within the AONB above Dittisham across the River Dart, and from public rights of way to the south of Galampton. Policy relating to AONBs is a matter covered under footnote 6 of the NPPF and so consideration of impact on the AONB falls to be made under paragraph 11(d)i of the NPPF; i.e. the "tilted balance" may not be engaged in determining this aspect of the application. Whilst the proposal is outside of the AONB, and therefore the tests in the second part of paragraph 172 of the NPPF are not engaged; the courts have ruled that the first part of paragraph 172 can constitute a clear reason for refusal¹ and that policies relating to conserving and enhancing the beauty in an AONB are engaged when harm is caused to views looking out of it.²
- 2.6 Whilst the harm to the Brixham Peninsula Neighbourhood Plan's settlement gap (Policy E3) and vista towards the AONB (Policy E6) are more local considerations (and the latter "reverse view" into the AONB does not engage paragraph 172 of the NPPF), the landscape harm would be significant and demonstrable. The sense of openness that opens up when travelling south past White Rock and over White Rock Knoll represents a significant change in the landscape character to open rolling farmland, with clear vistas towards the Dart Valley. This is experienced by many thousands of

¹ (2019) EWHC 1993 (Admin) Monkhill Ltd.

² Stroud District Council v Secretary of State for Communities and Local Government v Gladman Developments Limited

people every day, both residents and tourists, who visit the area for its scenic beauty. The open rolling landscape with vistas towards the Dart Valley is of significant value to residents and visitors, that in accordance with paragraph 170 a) and b) is rightly protected by the BPNP as well as Policy C1 of the Local Plan.

2.7 **Issue 2: HRA Matters.** The LPA's assessment of the ecological impact is considered in the Officer Report, Statement of Common Ground and Appropriate Assessment. The LPA is no longer the competent authority, but considers that mitigation measures set out in the draft S106 Agreement are capable of avoiding likely significant effects on the South Hams SAC.

3. **Issue 3: The suitability of the site for development**

3.1 My evidence will focus upon this issue, whilst noting that it is intrinsically tied up with issue 1 landscape, above. The next sections cover the following matters:

- An update of development plan considerations since the Committee Report was presented on 10 February 2020.
- A brief recap of the site's history setting out that the Council has supported development up to the White Rock development currently being built out; but why developing further southwards over the ridge of higher ground would cross an important Rubicon in terms of landscape impact.
- An assessment of the conflict with the Brixham Peninsula Neighbourhood Plan
- An assessment of the conflict with the adopted Torbay Local Plan.
- A justification that the proposal fails to satisfy both "arms" of the presumption in favour of sustainable development at paragraph 11(d)i and ii of the NPPF.

4 **Changes in circumstances since February 2020.**

4.1 **Local Plan Review.** As set out in the Council's Statement of Case, the development Plan is the Adopted Torbay Local Plan 2012-30 and the Brixham Peninsula Neighbourhood Plan 2012-30. The policies likely to be most important to the determination of the application are summarised in the Statement of Case, and Statement of Common Ground.

4.2 The Local Plan reached its fifth anniversary on 10 December 2020 and has accordingly been reviewed by the Council. Cabinet considered an officer review and working party recommendation of the Local Plan on 17 November 2020 and voted to: *"assess whether the local plan's housing figure should be updated in line with the most recent standard methodology housing figure. This will require an update to Local Plan Policies*

SS1, SS12 and SS13. There may be a consequential impact on other policies dealing with housing supply, particularly Policy SS2 and neighbourhood area policies (SDT1, SDP1 and SDB1)”. However, in other respects the Local Plan was assessed to be consistent with the 2019 NPPF and other material considerations.

- 4.3 The council at 17 November 2020 published a tentative timeline for updating the Local Plan’s housing policies. It is noted that there are objections to the use of a standard methodology to calculate housing need, because of concern about jobs not keeping pace with housing, the number of vacant homes and sluggish housing market performance. Net population and household growth in Torbay is entirely driven by domestic inwards migration, and long term migration trends show considerably lower household growth than the 2 year trends used in the latest (2018 based) sub-national projections. These are matters that need to be considered as part of the update to housing policies. The Local Plan update is at an early stage, and the LPA accepts that the Inspector will inevitably have to assess the housing requirement against the standard methodology figure (currently 586 dwellings per year), as required by paragraph 73 of the NPPF.
- 4.4 **Housing Land Supply.** A Position Statement (“Scott Statement”) has been prepared in conjunction with the appellants and (former) Rule 6 party on Housing Land Supply. There is broad agreement between the LPA and Appellant about the general methodology, but disagreement about whether some major sites with less than full planning permission meet the definition of deliverability in the glossary to the NPPF. Nevertheless, the LPA accepts that, whilst not the case at present, when the Housing Delivery Test for 2020 is published (and it is understood that publication is imminent) it will, inevitably, be required to add a 20% buffer, as prescribed by footnote 39 of the NPPF. On the basis of the sites presented as deliverable in the July 2020 five year housing land supply schedule (CD6.37-9), this results in less than 3 years’ supply being demonstrable.
- 4.5 The Committee Report (February 2020) and Statement of Case were written at a time when the LPA could not demonstrate three years’ housing land supply, based on the 2019 position. Accordingly, the LPA gave substantial weight to the supply of housing; but nevertheless found that the proposal was unacceptable in planning terms due to its impact on the landscape, AONB, and the significant and demonstrable conflict with the Brixham Peninsula Neighbourhood Plan.
- 4.6 This remains my view. Ultimately the decision hinges upon an assessment of the proposal’s benefits against the local and national landscape harm. With some

sympathy for the appellant, the scales fall firmly on the side of refusal even with the presumption on favour of sustainable development applied.

- 4.7 I consider that the BPNP should still be affording significant weight, even if the protection of paragraph 14 of the NPPF is not applied. The impact of the proposal in undermining the Brixham Peninsula Neighbourhood Plan and developing the settlement gap/views across open countryside towards the AONB would fundamentally undermine the BPNP. It would, furthermore, punish Peninsula residents for shortfalls elsewhere in the Bay.

5. The Site's History.

- 5.1 A more detailed history of the site is set out in Appendix 1 to the Committee Report. However, I would like to draw out some key milestones. Torbay Borough Council (as it then was) rejected a housing proposal for the site in the early 1990s (95/0998/OA and 96/1288/OA), but supported application 1995/1304/MOA for a business park and associated works. The application was Called In by the Secretary of State following a resolution in June 1996 by Torbay Council to approve the development. It was refused by the Secretary of State in October 1997. (CD7.3b; Reference SW/P/5183/220/4).
- 5.2 The application boundary differed from the current site. In particular application 1995/1304 encompassed land to the north (now being developed as White Rock), together with the current application site. Although the southern application site boundaries are similar in the two applications, the current appeal masterplan indicates development southwards of that proposed in the 1995 business park proposal (taking a line due west from Hunters Tor Drive junction is a useful way of seeing this).
- 5.3 The Secretary of State's refusal reasons largely accorded with his Inspector's recommendations (CD7.3a). They principally related to impact on the AONB, although it is acknowledged that the proposal was for industrial and not residential development. The SofS (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 SofS 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..."* (paragraph 12 of the decision and 12.22 to 12.49 of the Inspector's conclusions).

- 5.4 This is an important issue. The Inspector considered, and the Secretary of State agreed, that the landscaping itself would be visually intrusive and out of keeping in this largely open landscape (paragraph 12.44).

White Rock (Phase 1)

- 5.5 The 1996/7 Call In Inspector indicated that land to the north of the site was contained by the high ground between White Rock and Waddeton, whilst the southern area (largely comprising the current appeal) has an open character sloping gently down with a southerly aspect facing towards the Dart Valley AONB (paragraph 12.34).
- 5.6 Following consideration at the Torbay Local Plan 1995-2011 Public Inquiry, the northern part of the site was included as a business park proposal in the (former) Local Plan 1995-2011 which was adopted in 2004 (Proposal E1.19). White Rock was one of the most controversial issues at the previous Local Plan Inquiry, which took place in 2002-3. The Inspector's Report (CD 7.17) describes the site's landscape sensitivity and notes that the proposal on the north of the site would not breach White Rock Knoll, thereby not adversely affecting views across the open countryside (paragraph 4.19.3.29). He noted that it would be "*wholly unacceptable and unnecessary to breach this ridgeline*". (4.19.3.38). The Inspector was clearly concerned about the visibility of the site from key vantage points in the AONB. His decision to recommend that even the less sensitive northern part of the 1997 appeal site could proceed was clearly an on-balance decision and subject to "*sufficient safeguards to minimise the visual impact of development. I consider that these safeguards must be rigorously observed, in order to achieve an acceptable development*" (4.19.3.37).
- 5.7 This northern area is now being developed as "White Rock". A number of planning applications were submitted to develop the land at White Rock, including a business park P/2004/1621. This was approved but not implemented. Instead, application P/2011/0197 for the mixed use development of 39 ha at White Rock Paignton, including 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), was approved with a s106 Agreement on 29 April 2013. A subsequent s106 Agreement relating to phasing and the Landscape and Ecology Mitigation Plan (LEMP) was signed on 17 April 2014. The

LEMP for White Rock covers part of the current appeal site, and was consequently proposed for a “new Countryside Access and Enhancement Scheme” by Policy SS9.3 of the Local Plan. .

- 5.8 The White Rock area is currently in its latter stages of being built out.

The Local Plan 2012-30

- 5.9 The land to the south of White Rock – now referred to as “Inglewood” - was considered in the Local Plan 2012-30. The site was assessed as part of the Landscape Character Assessment, carried out by Enderby Associates in 2010 (CD 6.1 and 6.2). This defined the land as 1O Rolling Farmland, within the North Galmpton Area of Local Character, which was overall “highly sensitive”. It recommended a management strategy of enhancement. There has been no significant change in the landscape character or policy context that would render this assessment as being out of date.

- 5.10 Although the decision was made to remove the Area of Great Landscape Value (AGLV) designation in the Torbay Local Plan 2012-30, this was a Bay-wide policy change following government guidance which frowned on local landscape designations. It had nothing to do with the site’s intrinsic qualities. Indeed Policy C1 of the Local Plan makes reference to the Landscape Character Assessment as a tool for considering proposals for development outside of settlement boundaries.

- 5.11 The Strategic Housing Land Availability Assessment (Peter Brett Associates 2013 site 756d (CD 6.43)) considered the site. The SHLAA noted the site’s constraints including “*that any future development will be limited by the landscape impacts of the proposals, as the AONB lies to the West*” but concluded that “*a limited development may be applicable*” with an indicative assessment of 250 dwellings post 2023. I project managed this SHLAA, although I did not influence the judgements made by PBA’s planners as it was intended to be an independent assessment, and did not represent Council policy. To the best of my knowledge PBA’s team did not assess the site from the AONB vantage points. Nor would such a detailed project-level site assessment, from relatively distant vantage points, have been expected as part of an authority-wide SHLAA.

- 5.12 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, Mr Keith Holland, 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. A slightly larger site than the current appeal site was included as a Main Modification to the Plan (2014/15) for between 250-460 dwellings, based on a proposed plan submitted by Abacus/Deeley Freed. However the site had to be removed primarily 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 there were 91 objections from individuals.

- 5.13 The Inspector's Final Report was received on 12 October 2015. (CD7.3c). His consideration of land south of White Rock is contained in paragraphs 58-62 of the Report:

58. 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.

- 5.14 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. To the best of my knowledge, the Inspector's site visits did not inspect the site from the high vantage points around Dittisham, given their remoteness.
- 5.15 Had the Modification to include White Rock 2 been persisted with, it would have certainly required greater scrutiny of landscape impacts through a detailed LVIA, a second formal Hearing session and site inspections. The landscape impacts of

development would have become more apparent at that stage; but in the event they were somewhat overshadowed by the HRA issues concerning greater horseshoe bats.

- 5.16 For the reasons set out above, the Local Plan was adopted by the Council in December 2015, without Inglewood being identified as a development site. The Council did not, however, discourage the appellants from working up and submitting a detailed scheme, which resulted in application (P/2017/1133 being submitted in late 2017). Indeed, paragraph 3.5.2 of the Local Development Scheme (LDS) (2017) states that *“Promotion of outline planning applications, or a Local Development Order, for the land south of White Rock, as per Policy SS1 (Growth strategy for a prosperous Torbay), paragraph 4.1.41 and the Local Plan Inspector’s Report”* may be one of a number of measures to bring forward additional housing sites in the event of a shortfall.
- 5.17 The LDS is not a development plan document, nor can it be seen as binding the LPA to a particular site, particularly when all of the ramifications of development are fully understood. It is one of a number of options to be investigated. Paragraph 4.1.41 refers to a need for comprehensive supporting evidence to be submitted demonstrating no unacceptable harm in respect of biodiversity or landscape. I had no part in the writing of this section of the LDS, which with respect to my employer, goes significantly further than the text in Policy SS13 of the Local Plan upon which it is based. My view at the time was that a proposal of the scale and impact of Inglewood should be promoted through a development plan. At that time the focus of the LPA’s attention had shifted to the Neighbourhood Plans.
- 5.18 The 2017 LDS places great emphasis on Neighbourhood Plans, which were at that time under preparation. I return to Neighbourhood Planning in Torbay, the diametrical conflict between the proposal and the BPNP, and why the principle of localism should be respected, in the next section.

6 Conflict with the Brixham Peninsula Neighbourhood Plan (BPBP and SDB1 of the Torbay Local Plan (Reason 1)

- 6.1 The Council’s first putative reason for refusal relates to the conflict with the BPNP.

“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”.

Neighbourhood Planning In Torbay

- 6.2 Torbay Council embraced the Coalition Government’s Localism agenda fully, with the creation of three large Neighbourhood Plan areas in 2011 giving Bay-wide neighbourhood forum coverage. The Neighbourhood Forums were asked to allocate non-strategic sites to complement the Local Plan’s strategic allocations in Future Growth Areas (see Local Plan Policies SS1, SS2 and SS12). Brixham Neighbourhood Forum was set up as a working group of Brixham Town Council³. It is the smallest of the three neighbourhood plan areas, covering the most environmentally constrained area of Torbay. In consequence the housing requirement, set out in Policy SDB1 and SS12 of the Local Plan, is the lowest of the three Neighbourhood Plan areas, at 660 dwellings for the Plan period.
- 6.3 On this basis, Torbay has delegated significant responsibility to the Neighbourhood Forums to plan for the individual areas, within a broad strategic context set by the Local Plan. It gives the Forums significant latitude to develop local growth strategies to meet the requirement handed down by the Local Plan.
- 6.4 Although this approach was chosen before the revised (2019) NPPF, it accords closely with the approach set out in Chapter 3 of the (2019) Framework; and was recently summarised very lucidly by Mr Jenrick in relation to Torbay on a visit to Torbay in December 2019 (CD7.4).
- 6.5 Many volunteers, across the Forums, worked tirelessly over many years to prepare the Neighbourhood Plans, often making very significant personal sacrifices. The BPNP was supported by an 88.2% “yes” vote at referendum in May 2019 and was unanimously endorsed by Full Council in June 2019.
- 6.6 The Inglewood proposal conflicts with both the overall strategy of the Neighbourhood Plan as well as its specific landscape and settlement boundary and gap policies.

Conflict with the strategic thrust of the Plan

- 6.7 The Brixham Peninsula Neighbourhood Plan Group did assess sites for their suitability. Land south of White Rock (slightly larger than the current application site) was

³ Although the Brixham Peninsula Neighbourhood Plan Group is strictly speaking not a “Neighbourhood Forum” but a working group of Brixham Town Council, it is often loosely referred to as a Forum and I use that term here for simplicity. The appeal site falls within the Brixham Peninsula Neighbourhood Plan area, but is not within the Parished area of Brixham Town Council.

considered in the BPNP Housing Site Assessment (CD6.6: 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”*.

- 6.8 Representations from Abacus Deeley Freed for the inclusion of the Inglewood site were considered by the Independent Examiner, whose report considered that the BPNP met the “basic conditions” without its inclusion.
- 6.9 The Inglewood proposal significantly exceeds the level of growth anticipated in the development plan for the Brixham Peninsula, accounting for nearly 60% of its entire requirement between 2012-2030. This would represent a major addition to the BPNP’s housing requirement of 660 dwellings.
- 6.10 The proposal for a greenfield development outside of any defined settlement is a major deviation from the Neighbourhood Plan’s strategy of focussing growth of brownfield sites, largely within the town of Brixham rather than the more rural hinterland. This approach is set out with admirable clarity in Policies BH3 and BH4 and BH9 and supporting text paragraphs 2.3 and 4.10.
- 6.11 It was arguably open for Brixham Town Council as the qualifying body to avoid difficult decisions within the town by allocating the most of its growth needs on the Inglewood site. As set out above, the 2017 LDS could be seen as a nod in this direction. But they chose not to do so in favour of a regeneration focussed approach aimed at revitalising the town centre whilst safeguarding the rural hinterland.
- 6.12 Brixham Town Council, the Neighbourhood Plan subgroup, Paignton Neighbourhood Forum, as well as the neighbouring parish councils are all objectors to the scheme, as is South Hams District Council. The objection that the proposal would undermine the Neighbourhood Plan and principle of localism is echoed by many other objections.

Conflict with the BPNP’s Landscape and settlement Gap Policies

- 6.13 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 the application site towards the South Devon AONB. Policy E6

seeks to safeguard views and vistas, including those to the River Dart. Paragraph 5.23 of the BPNP defines the purpose of settlement gaps, which include (protecting) *“an open characteristic to the area which draws in views of distant landscapes, separation which prevents coalescence and the merging of settlements...”* Paragraph 2.4 sets the BPNP’s rationale in designating settlement gaps.

- 6.14 The fields to the south of the Inglewood site have similar landscape characteristics to Inglewood. Development of either part of this area would substantially erode the gap between White Rock and Galmpton. It would breach the principle that the area serves a role as an important rural gap between the development of White Rock to the north and smaller settlement of Galmpton to the south. Once the principle of development, south of the ridge of higher ground including White Rock Knoll is breached, the case for further erosion of this part of the rural landscape would be much reduced.
- 6.15 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 (apart from the northern access route and junction improvements).

Why the Neighbourhood Plan should be given very significant weight despite a Bay-Wide Housing Shortfall.

- 6.16 The Council’s Planning Committee considered the application having applied the tilted balance in NPPF paragraph 11 in relation to the development plan, and still considered that the proposal’s conflict with the neighbourhood plan was of sufficient weight to warrant refusal. As set out above, this may have been a “belt and braces” exercise on the basis that harm to the AONB can provide a clear reason for refusal under paragraph 11d)i.
- 6.17 Paragraph 14 of the NPPF provides additional protection to made neighbourhood plans from housing proposals. It states that, 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 four criteria apply.
- 6.18 The BPNP became part of the development plan in June 2019. As set out above, it contains policies and allocations (Policy BH3 (etc.)) to meet fully its identified housing requirement. Torbay’s most recent housing delivery test figure is well above 45%. Between 2012-2020 there were 370 dwellings completed in the Brixham Peninsula,

which is 117.5% of its cumulative requirement of 315 dwellings. If the Housing Delivery Test were applied at a neighbourhood plan level, there have been 205 completions in the last 3 years, which is 152% of the three year requirement (at 45 per year).

- 6.19 Therefore, criteria a), b), and d) of paragraph 14 of the NPPF are fully engaged and attention naturally falls onto whether more than three years' housing supply can be demonstrated (criteria c). This is discussed above and in the Housing Position Statement. However, any shortfall emphatically cannot be blamed upon underperformance in the BPNP area, and it is unfair to deprive the BPNP of the protection of paragraph 14 for reasons outside of its control.
- 6.20 Paragraph 14 of the NPPF usually appears to be applied as a binary switch that is either engaged or disengaged. However, there is nothing in the NPPF to say that criteria a) to d) must be disregarded altogether if any of the tests fail. They remain sensible material considerations, and in the current case three of the four are clearly met, whilst the question over c) is not of the Brixham Peninsula's making.
- 6.21 In addition to the above matters, there is a wider implication for the localism agenda, and particularly the use of non-statutory documents to overwhelm statutory ones.

7 Localism Red in Tooth and Claw

- 7.1 Localism has been enshrined in law through the Localism Act 2011 and the Neighbourhood Planning Act 2017. The Neighbourhood Plan has a legal status, and has been through independent examination and referendum and has passed all of the legally prescribed tests. Much has been made of the government wishing to resile from localism in favour of boosting housing numbers. If the government wishes to build, from the ground up, a whole new planning system, it must do so through primary legislation; not rely on non-statutory edicts.
- 7.2 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, and the importance of neighbourhood plans and referendum results being respected.

- 7.3 The NPPF does not purport to be law, and it should not be treated as if it were. As a statement of government policy it is a material consideration that is likely to be given significant weight. Paragraph 11 of the NPPF needs to be read in conjunction with paragraph 12. This confirms what the courts have repeatedly said, that the NPPF is a material consideration but does not change the statutory status of the development plan as the starting point for decision taking. The NPPF does not, nor could it, direct LPAs to disregard Neighbourhood Plans even if NPPF paragraph 14 cannot be applied.
- 7.4 The 2019 NPPF's definition of "deliverable" is much stricter than the 2012 definition. 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.
- 7.5 Even if a plan or policy is deemed to be "out of date" due to a housing supply shortfall, it is still capable of carrying weight. The courts have made the distinction between a plan being deemed out of date by a lack of housing supply, and being assessed as out of date by other factual and policy changes. The weight to be applied to "out of date" policies is a matter for the decision maker. Factors such as consistency with national policy, factual and policy changes and the reasons for a housing shortfall may all be material in considering how far a plan is assessed as being out of date, and accordingly how much weight it is reasonable to give it. "Out of date" polies may still command substantial weight⁴.
- 7.6 In the case of the BPNP there is no change in circumstances that would cause it to be assessed as being out of date. The landscape protection and
- 7.7 For the above reasons, the Neighbourhood Plan should carry very great weight in this instance. If the Neighbourhood Forums' contention that there is more than three years' supply can be demonstrated, then the aegis of paragraph 14 of the NPPF is brought to bear, although the LPA does not consider that this is a necessary condition for the BPNP to be given substantial weight.

8 Conflict with the Adopted Torbay Local Plan (Reason 2)

- 8.1 The Council stated conflict with the Local Plan as a second putative reason for refusal.

⁴ Holgate J in Gladman v S of S MHCLG, Corby BC and Uttlesfield DC [2020] EWHC 518 (Admin).

Reason 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.

8.2 The proposal conflicts with a number of policies in the adopted Torbay Local Plan. In particular Policy SS2 directs growth to the built up area or allocated “Future Growth Areas”. It set out that:

“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...”

8.3 Policy C1 designates the area as countryside. This directs development to Future Growth Areas, and only permits a relatively limited list of developments in the countryside. In the context of Policy C1 it is worth noting that the Key Diagram on page 45 of the Local Plan includes much of the Inglewood site as within the indicative SDP3.5 Paignton North and Western “strategic delivery area”. Nevertheless it is outside of the more precisely mapped “Future Growth Area”. The Policies Map also shows the site as being within the Countryside Area (Policy C1). Policy C1 requires that development should have regard to the Landscape Character Assessment (CD6.1 and 6.2).

8.4 Local Plan Policy SS8.3 seeks to protect the setting of the AONB in order to prevent harm to the natural beauty of the AONB or other valued landscapes.

8.5 Policies SS12, SDB1 and SDB3 set out a broad spatial strategy for Brixham with a housing requirement of 660 dwellings between 2012-30. This is the lowest of the three Neighbourhood Plan areas, in recognition of the SAC, AONB, and the peripherality of the Peninsula. 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. The Local Plan also seeks to focus on regeneration of brownfield sites (Policies SS12 and H1).

8.6 Policy SS9.3 of the Local Plan proposes a Countryside Access and Enhancement Scheme on the northern part of the appeal site. This has not been cited as a putative reason for refusal, because of the green infrastructure measures incorporated into the proposed development. However, it does demonstrate that the LPA has agreed development up to the ridge of high ground at White Rock, but that the Local Plan (and

negotiations on Whiter Rock phase 1) envisaged the appeal site to be for countryside management and access.

- 8.7 It is recognised that there are countervailing policies in the Local Plan intended to boost housing supply, particularly Policies SS3, SS12, SS13, H1 and H2. The LPA has accepted that it cannot demonstrate five years of deliverable housing land; and that accordingly increased weight must be given to policies that seek to boost housing supply. Other benefits of the scheme, including employment and education also draw support from Local Plan Policies (e.g. SS4, SS5 and SC3).
- 8.8 Taken as a whole the conflict with the Local Plan is not absolute. In the context of the scheme's benefits, there would be a case for approval under the Local Plan, if all other matters were resolved. But as set out elsewhere, they are not. The conflict with the Neighbourhood Plan is very clearly defined and existential to the BPNP's integrity; whilst the landscape harm cannot be overcome.

9 Summary and Conclusion

- 9.1 A full assessment of the proposed development is contained in the Committee Report, including an assessment of the planning balance. I have attempted to set out the proposal fairly and to acknowledge that the LPA has previously considered the site for development.
- 9.2 It has always been my view that a proposal of this scale and nature should come through the development plan process, when a detailed assessment of need and all options to meet this could be assessed. However, the LPA has not sought to use prematurity as a putative reason for refusal.
- 9.3 Notwithstanding the scheme's benefits and housing supply considerations, there are two main factors that meant that I was unable to recommend approval of the scheme: Conflict with the BPNP and Landscape impact.
- 9.4 Firstly there is very significant conflict with the BPNP, both in terms of its spatial strategy of promoting brownfield sites, and because the settlement gap/vista towards the AONB that is protected by Policies E3 and E6. Torbay Council has placed great weight on Neighbourhood Planning and the BPNP (as well as the other Neighbourhood Plans) was prepared by volunteers making great sacrifices in time and effort. It follows a process of localism that has a statutory basis and has passed examination and referendum, with overwhelming support. The BPNP has exceeded its housing

requirement and there is no reason to assess it as being out of date. The settlement gap and its spatial development policies remain soundly based.

- 9.5 Secondly, the proposal's landscape impact would cause permanent harm which would significantly and demonstrably outweigh the benefits of the proposal. The rolling farmland of the site represents a significant transition from the urban character experienced on the A3022 Western Corridor, to one of rolling farmland with views towards the South Devon AONB. As well as a landscape beauty value, this vista has an economic value to the wider tourism industry.
- 9.6 The Impact on the AONB cannot be satisfactorily mitigated. The AONB Partnership has consistently objected to the proposal on the grounds of its harm to the AONB. Although seen from a limited number of vantage points around Dittisham and south of Galmpton, the harm to the character of the AONB from these public vantage points from the development within its setting would be significant. It would breach the clearly defined urban edge which is set by the extent of White Rock 1 to the north and Brixham Road to the east of the site. This represents a clear reason to refuse the development proposed both in terms of paragraph 11 d)i and 172 of the NPPF, as well as the development plan.
- 9.7 Approving the development would remove the logical barriers to development currently set by the ridge of higher ground around White Rock to the north and Brixham Road to the east of the site, and make the further outwards expansion of Torbay into the Dart Valley much harder to resist..
- 9.8 For the above reasons the Inspector is respectfully requested to refuse the appeal.