

**Town and Country Planning Act 1990 Appeal by Abacus Projects Limited/Deeley Freed Limited Planning Inspectorate Ref: APP/X1165/W/20/3245011: Land To The South of White Rock, Adjacent To Brixham Road (Aka Inglewood) Paignton, TQ4 7BQ**

**Statement of Compliance of S106 Obligations with Reg 122 of the Community Infrastructure Regulations 2010 (As Amended).**

**Introduction**

This CIL Compliance statement provides the LPA's Justification for the S106 Obligations sought at Inglewood. Reg. 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 56 of the NPPF indicates that obligations must be

- Necessary to make development acceptable in planning terms
- Directly related to the development
- Fairly and reasonably related in scale and kind to the development

**S106 Policy Framework**

The Adopted Torbay Local Plan 2012-30 (The Local Plan) sets out several broad policies governing on-site lay out and provision of infrastructure. These include: Policy SS7 "Infrastructure, Phasing and Delivery of Development", SS11 "Sustainable Communities" and DE1 "Design". Policy SS7 Local Plan sets the overarching framework for Torbay Council's s106 obligations.

The Planning Contributions and Affordable Housing Supplementary Planning Document ("The SPD") was adopted in February 2017. The SPD provides more detail on S106 requirements and in particular sets out methodologies for assessing the cost of infrastructure (etc.) generated by development. The SPD also deals with S106 viability matters.

The Made Brixham Peninsula Neighbourhood Plan (BPNP) is part of the development plan and is also relevant to some obligations, such as affordable housing.

**Community Infrastructure Levy**

Torbay Council commenced charging CIL on 1 June 2017. The appeal site falls within Residential Charging Zone 3. Developments of 15+ dwellings are zero rated in this charging zone. Torbay Council has opted to use S106 Obligations to seek infrastructure provision and contributions in accordance with the development plan framework above. This approach was taken because the LPA considered that S106 contributions were a more effective way of securing infrastructure and other mitigation funding to serve larger developments.

The site is within Commercial Charging Zone 2 (outside designated town centres) and Food and Drink (former use class A3, A4, A5) are subject to CIL at £120 per sq. m. The pub/restaurant is CIL liable and the LPA has taken this into account as a Local Finance Consideration. Other uses proposed including the primary school and changing facilities are zero rated for CIL.

Obligation	Justification
<b>First Schedule (and financial contributions required by 3.1 of the First Schedule and identified in 1. Definitions of the main Deed). )</b>	
Section 3 Financial Contributions.	
Administration charge	This contributes to the cost of administration of the S106 Agreement, and monitoring the Ecological Mitigation in accordance with Section 5.8 of the SPD.
Employment Contribution	<p>The LPA is satisfied that an employment contribution is justified because the Local Plan focuses on jobs-led growth.</p> <p>There is an overall target of +5,500 net new jobs between 2012-30 and 1375 between 2012-18 (Local Plan Policies SS4 and SS1) which equates to about 17 hectares of employment land.</p> <p>The number of jobs in Torbay has fallen since 2012 although the number of Torbay residents with jobs has increased. Most job growth has been in the Greater Exeter area, so it's important that major developments also provide employment opportunities.</p> <p>Local Plan Policy SS5 (second paragraph) seeks major mixed use developments to provide 25% of the site as employment. Policies SS11.8 and H1.3 of the Local Plan also promote mixed use developments providing employment opportunities.</p> <p>As part of pre-application discussions initial schemes proposed around 25% on site employment provision. However, officers considered that employment "sheds" at Inglewood is likely to have a greater visual impact than housing, and there is a risk that in this location there will be pressure for quasi-retail use rather than traditional (former Class B1) use. There is need to enable Claylands to get up and running as this would achieve its delivery as employment space.</p> <p>£500k is a calculation of the difference between the economic value of on-site provision of 25% employment (taking into account the employment value generated by the school and pub) as calculated by the TDA (See appendix 1)</p> <p>The LPA considers that the contribution is lawful because it is a proxy for the economic value of onsite provision that Local Plan Policy SS5 seeks to achieve mixed development and the joint provision of homes and jobs.</p>
Lifelong Learning	This is sought pursuant to Section 4.8 of the SPD and SC3 and SC5 of the Local Plan.
Sports Contribution	This helps meet the needs for sport and recreation facilities generated by the development additional to those met by the on-site provision. It is in support of Policies SS11, SC1 and SC2 of the Local Plan.
"Supplementary Sustainable	This is the a financial contribution payable in lieu of the Provision of a bus service agreement as outlined in part 8 of the First Schedule of the agreement. It (or the bus service). Whilst the

<b>Obligation</b>	<b>Justification</b>
Transport Contribution"	proposal seeks to reduce the proposal's reliance on private cars by provision of a bus service, this clause provides a fall back arrangement if the direct provision in part 8 does not come forward. It is necessary to mitigate the impact of additional traffic from the development in accordance with Paragraph 108 of the NPPF and Policies SS6, TA1 and TA2 of the Local Plan, and T1 of the BPNP.
Sustainable transport Contribution	It is necessary to mitigate the impact of additional traffic from the development in accordance with Paragraph 108 of the NPPF and Policies SS6, TA1 and TA2 of the Local Plan, and T1 of the BPNP.  In addition Policies SC1 and SC2 of the Local Plan promote the health benefits of walking and cycling.
Waste Management contribution.	Sought by Section 4.11 of the SPD to facilitate waste and recycling services in accordance with Policy W1 of the Local Plan.
Berry Head Recreational Impact	<p>The contribution is considered necessary to ensure no in-combination significant effects on the grassland which is part of the SAC at Berry Head. The amount has been mitigated to take into account the site's distance from Berry Head, and the provision of on-site recreation and countryside access.</p> <p>Local Plan Policies SDP1 and SDB3 (and Explanations at 5.4.1.3 and 5.4.3.4) and Policy NC1 (and explanation at 6.3.2.3 and 4) deal with recreational impact on grassland at Berry Head, Brixham which is an element of the SAC. The extent of the recreational pressure and cost of mitigation is assessed in a Footprint Ecology Report at being £95 per dwelling in a 5KM drive distance of Berry head, which the Local Plan interprets for simplicity as the Brixham Peninsula (SDB1) area. A reduced impact is assessed outside of the 5KM drive distance.</p> <p>Inglewood is just outside the 5km drive distance and is closer to Paignton and the visitor trips generated to Berry Head is likely to be comparable to Paignton. Footprint Ecology (p.13) assess that 42% of visitors are non-tourists, and 23% of visitors are from Paignton. 42% of 23% = 9.67% of visits to Berry Head are from Paignton residents. Using the SPD figures 9.67% of the total £404,350 cost of grassland mitigation divided by 790 proposed dwellings in the BPNP area = £49.50per dwelling. Or £18,464 for 373 dwellings.</p> <p>The grassland mitigation is also an item identified on the LPA's (then) 123 List for CIL. However the CIL Regulations have been changed to allow s106 obligations to be used on such matters. Residential development Inglewood is zero rated for CIL and as a departure from the development plan its impact on the grassland was identified in the council's updated HRA AA.</p>
<b>Schedule 1 Section 4 Open Space and its management etc.</b>	
Open Space Play areas LEAPs/LAP	Open space/ play areas are required by Policies SC2 and SC5 of the Local Plan. Guideline thresholds and standards of provision

Obligation	Justification
	are set out in Table 4.9 (p.47) of the SPD. These have been used to guide the open space/play area provision.
Management Entity for Open Space	<p>The council's preferred method of delivery is for open space etc. to be dedicated to the Council with a financial provision for maintenance. However provision exists in the SPD for maintenance to be transferred to a management company, subject to provision being made to long term maintenance and dispute resolution (see paragraph 7.7.16, p.48 of the SPD).</p> <p>In the case of Inglewood the complexity of the public open space, SUDS, on- and off-site farm management means that the provision of a management company is likely to be the most effective means of managing the various green infrastructure.</p>
SuDS, forward fund and management entity	<p>See above. In addition a scheme of sustainable drainage is required to minimise run-off into local watercourses or combined sewer; which could affect the Critical Drainage Area or Marine SAC. See Local Plan Policies ER2 and W5.</p> <p>Some of the SUDS will be managed by the Management Company, but other drainage infrastructure, such as the pumping station will be adopted by South West Water.</p>
Northern Access Route	This is required as part of the recreation network serving the development, and also to increase the off-road linkage between Inglewood and the development at White Rock to the north, which includes a local centre and employment. Policies TA1, TA2 and D1 of the Local Plan seek permeability in developments and links to employment, education, etc. facilities to minimise the need to travel by car.
Bus Service	The s106 Agreement refers to a contractual agreement between the developer/management entity and a bus service provider to deliver bus services as specified in a Bus Service Operational Plan. This is promote sustainable modes of travel pursuant to Policies SS6, TA1 and TA2 of the Local Plan and Policy T1 of the BPNP.
Ecological Mitigation- Farmland Management Entity	<p>This provides for the ongoing management and maintenance of both the Farmland in accordance with the Farmland Management Scheme (and Framework LEMP/Ecological Addendum (2018) and the Open Space for the purposes of providing and protecting suitable habitat and fly paths for cirl buntings and greater horseshoe bats.</p> <p>The proposal results in the loss of agricultural land and hedgerows and development of some landscape and ecological mitigation plan land for White Rock Phase 1. The Appropriate Assessment and supporting information such as the Farm Management Plan and Ecological Addendum all indicate the need for long term management of farmland, hedgerows etc. for the benefit of Greater Horseshoe Bats, cirl buntings and other species, as required by legislation and by Policies SS8, SS9, SDB1, and NC1 of the Local Plan; and Policy E8 of the BPNP.</p> <p>Part of the managed farm land falls within South Hams District Council, and that Authority is not prepared to enter into a s106</p>

Obligation	Justification
	Agreement to secure the mitigation. The appellant has submitted Counsel advice which states that Torbay would be able to enforce the s106 Agreement in respect of covenants that apply to land in South Hams pursuant to the powers contained in section 111 of the 1972 Act and section 33 of the 1982 Act. On that basis a separate UU to South Hams DC is not necessary.
Community Orchard, allotments	Required by Policies SS8 and SC4 of the Local Plan. Guideline standards of provision are included in Table 4.9 of the SPD.
<b>Second Schedule</b>	
Affordable Housing 30% of which 5% shall be adaptable	The proposal provides for 30% affordable housing in accordance with the requirements of Policy H2 of the Local Plan and the SPD. An additional occupancy requirement is required in accordance with Policies BH1 and BH2 of the BPNP. Local Plan Policy H6.1 requires 5% of new dwellings to be adaptable to Buildings Regulations M4(2) accessible and adaptable homes standard. The proposal meets the requirements of the SPD in relation to tenure mix, likely layout etc. of affordable homes.
Tenure of dwellings	The tenure of dwellings is specified by Policy H2 of the Local Plan and Section 3.3 of the SPD.
Local Connection Criteria	Required by Policy BH2 of the BPNP.
<b>Third Schedule</b>	
School Land	<p>PPG Reference 23b-007-20190315 and the DFE publication "Securing Developer Contributions for education" (November 2019) indicate that S106 obligations should be used to secure education provision from new residential development.</p> <p>New development on the west of Paignton is likely to generate a need for an additional 2 form entry schools by the mid-2020s and part funding has been secured through the Free School programme. (This would be in addition to the re-purposing of the Tower House school in central Paignton as a primary school).</p> <p>Education contributions are sought on the basis of Policies SC3 and SC5 of the Local Plan and Section 4.5 of the SPD. The S106 undertakes to provide 18,300 sq. m of land in lieu of a financial contribution, which would be used for the construction of a 2FE primary school, nursery, playing field, sports courts and changing facilities.</p>
Contingency if school land not delivered/ required	<p>The TDA (acting for the LEA) will indicate whether the school site is required by 1 April 2021. In the event that the Inglewood site is not required for school purposes (for example if an alternative site such as at Yalberton is delivered), Section 8 of the S106 makes provision for financial contributions towards the need for school places generated by the development.</p> <p>The level of contributions are based on Tables 4.4. and 4.5 of the SPD which calculate the capital cost of providing school places in Torbay.</p>

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	<p>The S106 agreement also specifies that in the event of the school site not being needed, the sports pitches revert to being managed and maintained by the Management Entity as part of the open space provision of the development.</p>
<p>Provision of, and management of sports</p>	<p>The sports pitches and playing field are required to meet the space guidelines in Table 4.7 of the SPD and Policies SC1 and SC2 of the Local Plan. In the event that that school is built, they would be incorporated into the school and managed by the Academy Trust, with a requirement that they should be dual use facility shared with the wider community.</p>
<p><b>Fourth Schedule and Fifth Schedules</b></p>	
<p>Health Contributions</p>	<p>This was not initially identified as required by the LPA in the Committee Report of 10<sup>th</sup> February 2020, as the South Devon NHS Trust was at that time seeking general funding. The subsequent representation to the Appeal by the NHS Healthcare Trust dated 15 December 2020 identifies specific shortfalls in healthcare provision in the vicinity of the development (e.g. Galmpton Surgery).</p> <p>Whilst the overall number of dwellings provided within the Inglewood development is likely to be within the overall Local Plan requirement of 8,900 dwellings between 2012-30; it would be a sizeable addition to the Brixham Peninsula's anticipated level of development (a range between 660-790 dwellings) over the same Plan period).</p> <p>Accordingly, the LPA is satisfied that should the Inspector wish to add a healthcare contribution, this would be lawful under Reg. 122, as well as supporting Policies SS7, SS11 and SC1 of the Local Plan.</p>
<p><b>Sixth Schedule</b></p>	
<p>Linked index payments</p>	<p>Index linking is standard practice in Torbay's S106 to maintain the value of contributions sought.</p>



**Please reply to:**

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**Date:** 23<sup>rd</sup> March 2018

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**To request a copy in another format or language phone 01803 208973**

Dear Carly,

**Re: Consultation response – P/2017/1133: Outline application for residential led development of up to 400 dwellings (C3)**

I am writing to formally respond to planning application P/2017/1133: land to the South of White Rock adjacent to Brixham Road Aka Inglewood Paignton. Outline application for residential led development of up to 400 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.

Average Gross Value Added (GVA) per head of population in Torbay in 2016 was £15,690 compared to £26,584 in the UK and £ 23,548 in the South West. GVA per head in Torbay is the lowest across the South West, and only 59.6% of the UK average, ranking it the 6<sup>th</sup> lowest area in the UK, emphasising the need for new high quality jobs, and new space to accommodate them.

Economic growth and prosperity are core themes of Torbay Council's Corporate and Local Plan which, along with the recently adopted Economic Strategy 2017 – 2022 forms the corporate policy framework. While the application site is not specifically identified within the Local Plan as a site for bringing forwards new housing, it is situated within Paignton North and Western Area which is designated as a Strategic Delivery Area (SDA) for Future Growth, as shown in Figure 4: Key Diagram. Policies SS1, SS4 and SS5 of the Local Plan place a high emphasis on economic growth.

Policy SS1: Growth Strategy for a Prosperous Torbay – The Local Plan clearly emphasises and promotes throughout the Plan, the need for a step change in Torbay’s economic performance. It supports urban regeneration that creates sustainable living, working and leisure environments, supported by high quality infrastructure.

The Plan supports the creation of 5,000-5,500 net additional jobs (equating to an average of around 275-300 jobs per annum) and delivery of at least 17 hectares of employment land over the Plan period, with an emphasis on bringing employment space forward as early as possible in the Plan period. Strategic Delivery Areas (SDAs) are the focii for delivery of growth and change in the Bay over the Plan period. They provide strategic and sustainable locations for new employment space, homes and infrastructure. Future Growth Areas are located within these SDAs. There will be some initial delivery of development in Future Growth Areas, within the first 10 years, if required to meet demand for new employment space and homes.

Policy SS4: The economy and employment - The Local Plan supports the regeneration of Torbay and improvement in its economic performance, with the aim of achieving a step-change in economic prosperity as set out in Torbay’s Economic Strategy. The Local Plan supports existing businesses and education facilities, it encourages new businesses and investment in order to create new jobs, and it enables expansion and diversification of the economy of the Bay. The Local Plan supports the creation of at least 5000-5,500 net additional jobs by 2030 with an emphasis on delivering around 1375 net new jobs in the first 5 years of the Plan period.

To help achieve this objective, at least 65,000 square metres of employment space, comprising 28,000 square metres of Use Class B1- B2 space and 38,000 square metres of other employment uses are proposed on the sites in Policy SS5, as part of mixed use developments where appropriate.

Policy SS5 and the Strategic Development (SD) policies of the Local Plan seek to achieve a mix of employment uses on major developments and identify a number of sites for mixed use development. These also set out indicative targets for employment, and indicate that the delivery of employment should be achieved through land equalisation, direct provision of serviced sites and or/developer contributions.

There is an evidenced challenge around bringing forward serviced employment space to accommodate new employment opportunities. Currently there are live and active enquiries for over 275,500ft<sup>2</sup> of employment space within Torbay. Therefore the recently adopted Torbay Economic Strategy highlights two of its key aims to:

- Continue to create an environment in which businesses and jobs can grow
- Accelerate the development of employment space geared to business needs

Where sites are identified for mixed use development in the Local Plan, the early provision of employment space will be given a high priority in determining obligations sought on site, as indicated in Policy SS2(ii) of the Local Plan. Where on-site provision is not practical, the Council may agree developer contributions to help enable the provision of employment elsewhere.



As set out in the applicants supporting information, within the S106 Agreement – Draft Heads of Terms for Inglewood Residential led Masterplan, Brixham Road, a contribution would in sought to mitigate against the lack of provision of suitable employment space proposed within the development at a rate of £8,000 per job in line with Torbay Council’s Planning Contributions and Affordable Housing Supplementary Planning Document.

Initial site masterplans which were presented at the public consultation on 11<sup>th</sup> May 2017 proposed circa 2,500M<sup>2</sup> of small business employment space across 12 units. Using the Homes & Communities Agency Employment Density Guide (3<sup>rd</sup> edition) 2015 Small Business Workspace densities of around 20M<sup>2</sup> GIA per employee, the proposed employment space would have assumed accommodation for 125 jobs.

<b>Amount of Employment space initially proposed</b>	<b>Employment Density</b>	<b>Jobs FTE</b>
2,500M <sup>2</sup>	20M <sup>2</sup> per job	125

A 2 form of entry school with Nursery proposed in the submitted planning application is projected to create around 41 FTE jobs, along with a new public house. Assuming a bar/ restaurant style akin to a Beefeater, Harvester, Table Table, or Brewers Fayre, then it projected to create between 18 and 25 FTE jobs. Using a median figure of 21.5 FTE jobs, the submitted application is projected to create a total of around 62.5 FTE jobs from the proposed development.

This does however create a net deficit between the numbers of jobs which would have been created in the initial masterplans which were presented in May 2017, compared to those in the revised Masterplan which has been submitted.

Based on the difference between the initial proposal and the current proposal it is projected that around 62.5 FTE jobs will be ‘lost’. Based on Torbay Council’s Planning Contributions and Affordable Housing Supplementary Planning Document a contribution of £8,000 per FTE job is being sought, totalling a contribution of £500,000.

<b>Projected jobs created from development FTE</b>	<b>Projected Jobs created from initial proposal FTE</b>	<b>Net deficit in projected jobs created FTE</b>	<b>Contribution per job</b>	<b>Employment contributions sought</b>
62.5	125	62.5	£8,000	£500,000

It is recommended that the contributions from the S106 for the loss of employment space go towards the development of new employment space on land owned by

Torbay Council, known as Claylands Business Park. The monies will contribute towards the remediation of land and provision of new infrastructure.

Yours sincerely,

Daniel Newman  
Senior Economic Development Officer