



# Appeal Statement of Case

## Inglewood, Torbay

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## 1.0 Introduction

- 1.1 The application reference P/2017/1133 was submitted to the Council on 3 November 2017 by Stride Treglown, acting as agent for the applicants Abacus Projects Limited and Deeley Freed Estates Limited (the 'appellant'). The application was confirmed as valid on 17 November 2017.
- 1.2 The description of development 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 reserved.”*
- 1.3 During the consideration of the application, extensive negotiations have occurred between the appellant, Council officers and statutory consultees. In response to comments received during the consideration of the application and these negotiations, the proposal was amended and a series of changes were made to the application, including the submission of amended plans on 8 March 2018.
- 1.4 The determination period was extended to 31 July 2019 and expired on that date.
- 1.5 The application has not been determined and an appeal has been lodged against non-determination.
- 1.6 Heads of terms for a section 106 agreement are well advanced. It is expected that the section 106 agreement will be agreed before the Public Inquiry.

## 2.0 The Appeal Site and its Surroundings

- 2.1 The appeal site is located wholly within the Torbay Council administrative area. It is located south of an area locally known as White Rock and is bounded on its eastern edge by the A3022/Brixham Road, a tree/hedge lined route serving the Brixham Peninsula. The wider context includes Torquay situated to the north-east, Brixham Peninsula to the south-east, and the South Devon Area of Outstanding Natural Beauty (AONB) to the south and west that surrounds the River Dart.
- 2.2 The western boundary is formed of field margin/hedgerows and follows the administrative boundary between the Torbay and South Hams District Council areas.
- 2.3 The eastern edge of Brixham Road, broadly referred to as Goodrington, is predominantly residential in nature with development typical of 1970-1990 style.
- 2.4 The village of Galmpton is situated beyond the southern boundary of the site, separated by fields.
- 2.5 The hamlet of Waddeton is located to the south west, accessed from the White Rock area by Waddeton Road and from Galmpton by Stoke Road.

- 2.6 The majority of building uses surrounding the site are residential properties located to the east of Brixham Road, within the White Rock development to the north, and at nearby Galmpton and Waddeton. Educational building uses include White Rock Primary School located directly to the north-east and South Devon College located to the north-west of the site.
- 2.7 Hookhills Community Centre is located within the predominantly residential district of Goodrington to the east of the site. Commercial/business building uses are also located within the White Rock area to the north of the site
- 2.8 The Nords, a clump of tall, mature trees are situated on the southern boundary. South Devon College and commercial properties are located to the north-west. The White Rock development currently under construction and associated mitigation planting exists directly to the north of the site and White Rock Primary School with associated open grounds is located to the north-east with Paignton beyond.
- 2.9 The land at White Rock was granted outline planning permission in April 2013 (P/2011/0197) for a mixed use development comprising 350 dwellings, employment space, a local centre, formal and informal public open space together with strategic landscaping. It has subsequently been the subject of a number of reserved matters submissions and the commencement of the first two phases of residential development. The evidence will consider the basis on which this application was determined and implications for the appeal site.
- 2.10 The two sites are separated by an area of woodland planting, forming part of the strategic landscaping and secured as mitigation as part of the Section 106 Agreement in relation to the White Rock planning application.
- 2.11 In addition to the appeal site, the appellant owns further land immediately to the west and beyond Waddeton Road.
- 2.12 The land (appeal site and offsite) is currently used solely for agricultural purposes. The site topography is relatively undulating with high points at the north and south-east site boundaries. The site generally falls away to the south and south-west towards the Galmpton Watercourse. The contour lines at levels 64m and 65m AOD thread through the majority of the site and there is opportunity for relatively level vehicular circulation throughout the site to be established at this common level.
- 2.13 The existing fields are bounded on all sides by established hedgerows. Cirl Bunting habitats and flight corridors for Greater Horseshoe Bats exist within and close to the site.
- 2.14 A pond exists near to the south-east site boundary and a small 'sheep wash' depression within the ground exists adjacent to the central hedgerow.
- 2.15 An existing 11kV overhead cable cuts through the south-west corner of the site and is retained as part of the proposals.

## 3.0 Appeal Proposals

3.1 The description of development is controlled via the Urban Design Regulatory Plan (scale parameter plan) that is submitted for approval in order to guide the preparation and approval of reserved matters. This plan and an associated Illustrative Masterplan provided the basis upon which the ES was prepared. The Illustrative Masterplan demonstrates how the development could be delivered under the terms of the scale parameters depicted on the Urban Design Regulatory Plan. The Illustrative Masterplan makes provision for:

- Up to 373 homes at varying density and height, 30% of which will be affordable homes secured through the S106 Agreement.
- A 2 Form Entry Primary School (incorporating nursery) together with associated outside space (including sports pitch) and car parking (staff/drop-off).
- A public house with associated car parking and outdoor seating.
- Public open space, including:
  - 1 Neighbourhood Equipped Area of Play;
  - 2 Locally Equipped Areas of Play;
  - Incidental open space (c. 25,000 sq m) with the ability to accommodate Local Areas of Play and/or trim trails and to include a community orchard; and
  - Allotments (5,700 sq m).
- Tree planting within and on site edges.
- Highways access and improvement works (not all shown on the Masterplan), including:
  - Provision of site access from Brixham Road via a new 4 arm roundabout;
  - Provision of 2 new crossing points on Brixham Road, one close to the junction of Hunters Tor Drive and one to the north of the proposed site access; and
  - Localised road widening on the bend north of the site, in the vicinity of White Rock.
  - Wider improvement works at Windy Corner (South) and the junction of Brixham Road/Long Road (North)

3.2 The proposals make provision for a significant proportion of the site (c.7ha plus 25ha offsite land under control of the appellant) to be retained for mitigation purposes, principally in relation to ecology and potential landscape and visual impacts.

- 3.3 Beyond the form/quantum of development, and in addition to the proposed mitigation land within the site boundary, the concept masterplan provides for:
- the retention where possible of hedgerows and trees within the site;
  - strengthened hedgerows offsite, secured via changes to farm management practices, details of which are provided elsewhere in the application;
  - the provision of public open space, both formal and informal;
  - the means of providing active travel linkages to and from the site, via new crossing points on Brixham Road and via woodland to the north of the site connecting to White Rock;
  - the provision of a countryside access route;
  - land for community food production, including orchards and allotments; and,
  - c.3.5km of new hedgerows, both on site and off site, representing a net gain of 3km.
- 3.4 In addition to the Environmental Statement and technical reports, the application is accompanied by a suite of documents which establish the parameters for successful delivery of the site, should the appeal be allowed.
- 3.5 These documents seek to establish the necessary controls and protections which will be committed to by the appellant, in order to secure the long term land management in perpetuity. A S106 Agreement will secure the provision of items for the purposes of mitigating the impacts of development.

## 4.0 Witnesses and Request for Public Inquiry

- 4.1 As this appeal is lodged on the grounds of non-determination, the appellant does not have the benefit of knowing the issues which the Council will seek to challenge through the appeal process. Recent correspondence from the Case Officer provides a helpful assessment of the issues affecting the appeal site at the point at which it was written on 28 August 2019 (**Appendix 1**). The extent to which the appellant agrees with the content of the letter is set out in the draft Statement of Common Ground. The majority of the content of the letter is acknowledged to represent a fair reflection of the current position and is the correct interpretation of the policy context. Whilst it is accepted that the letter represents the views of the Officer and not those of the Council, it has formed the basis on which the appellant considers the following witnesses to be required.
- 4.2 At this stage the appellant considers it likely to present evidence with witnesses on the following issues:
- Planning policy, housing land supply and applying the planning balance;
  - Impact on the special landscape qualities of the AONB;

- Landscape impact and conflict with Policy C1 of the Torbay Local Plan and Policy E3 of the Brixham Peninsular Neighbourhood Plan 'Settlement Gap' Policy.

- 4.3 Since the appellant anticipates that landscape matters could prove a central component of the case, a separate Statement of Case dealing with AONB and landscape impact is provided at **Appendix 2**.
- 4.4 The extent to which further evidence will be required is dependent on the extent to which the Council is able to agree matters set out in the draft Statement of Common Ground and the nature of any third party objections that emerge; in the event that matters cannot be agreed or third parties seek to raise such matters then the Appellant reserves the right to present evidence accordingly.
- 4.5 The Appellant has a clear preference for the appeal to be dealt with via a public inquiry. There is significant public interest in the appeal proposals and the principal matters that the Appellant expects to be in issue, including landscape and housing land supply (which the appellant anticipates third parties are likely to want to test), are best considered through the means of cross-examination. It is envisaged that the public interest may extend to requests for Rule 6 status and an Inquiry is the most appropriate forum for enabling all matters to be properly heard, including any consideration of the five year supply position. There is a significant body of work relating to these matters and it is important that it can be fully and properly examined in evidence. An inquiry process is advocated given the critical shortfall in housing supply that exists in Torbay and the ability of the appeal proposals to make a vital contribution to boosting the supply of housing following a timely decision.

## 5.0 Consultation Responses

- 5.1 The evidence will:
- a. Review and summarise third party consultation responses received by the Local Planning Authority in respect of the planning application since its submission; and
  - b. Review third party consultation responses received by the Planning Inspectorate in respect of the planning appeal.
- 5.2 The evidence will respond to the main issues arising from the consultation responses. The evidence will conclude that the majority of the currently unresolved issues raised fall within the scope of the issues referenced above and can be effectively addressed through conditions and the preparation of an agreed S106 Agreement with the Local Planning Authority.
- 5.3 The evidence will also show how the issues raised by third parties can be effectively addressed and mitigated. It will confirm that these issues would not be of sufficient merit to justify withholding planning permission.

## 6.0 Planning Policy

- 6.1 In accordance with Paragraph 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal is to be determined in accordance with the development plan unless other material considerations indicate otherwise.
- 6.2 The adopted Development Plan for the appeal site comprises the Torbay Local Plan and Brixham Peninsular Neighbourhood Plan (BPNP).
- 6.3 Relevant material considerations include Government policy guidance contained within the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG).

### **National Planning Policy Framework**

- 6.4 The NPPF was published in its revised form in February 2019 and continues to set out a presumption in favour of sustainable development. Of particular relevance to this appeal, Paragraph 8 of the NPPF describes the economic, social and environmental roles of the planning system to deliver sustainable development.
- 6.5 The social role is to support strong and vibrant communities by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces.
- 6.6 To boost the supply of housing, paragraph 73 states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing against their housing requirement to include the necessary buffer (moved forward from later in the plan period).
- 6.7 Paragraph 11 sets out the presumption in favour of sustainable development. Paragraph 11(d) provides for decision taking in circumstances including when the policies which are most important for determining the application are out of date. Footnote 7 of 11(d) recognises that 'out-of-date' policies include situations where the LPA cannot demonstrate a five year supply of deliverable sites. In its Five Year Housing Supply 2019: Draft Statement for Consultation (July 2019, CD 6.12), the Council accepts that it cannot demonstrate a five year supply against its housing requirement.
- 6.8 The appeal site falls within the boundaries of the recently made Brixham Peninsular Neighbourhood Plan. Paragraph 14 of the NPPF is therefore relevant. It identifies circumstances when the paragraph does not apply. In the circumstances of this appeal paragraph 14c provides that the presumption in 11d will continue to apply if a local planning authority is unable to demonstrate at least a three year supply of deliverable housing sites (against its 5 year housing land supply requirement, including the appropriate buffer (para 73)).



- 6.9 The letter of 28 August 2019 (**Appendix 1**) confirms the Officer's position that the Council cannot demonstrate a three year supply of housing. Whilst the July 2019 Consultation Paper proposed that a supply of 3.28 years exists, the subsequent letter is written in the context of having reviewed representations submitted to that consultation paper. The Council's revised draft Five Year Housing Supply document dated October 2019, also written following consideration of the consultation responses, (**Appendix 3**) states an assessed housing supply of around 2.5 years. The appellant's representations on the consultation are provided at **Appendix 4** and contends that a supply of 1.25 years exists when properly assessed against latest guidance and appeal/SoS decisions.
- 6.10 In those circumstances both the presumption and the tilted balance in paragraph 11d of the NPPF applies.
- 6.11 Paragraph 33 of the NPPF requires reviews to be completed no later than five years from the adoption of a plan. The Local Plan was adopted in December 2015; work on the evidence base for the Local Plan review was proposed to begin in the third quarter of 2019<sup>1</sup>. A Housing and Economic Land Availability Assessment (HEELA) is underway and a 'call for sites' consultation is running to 7 February 2020. Given the need to consider the implications of the standard methodology (a broad continuation of the adopted annual housing requirement) and a plan period that will need to extend well beyond 2030, it is unlikely that a Local Plan review will be in place by 2021.
- 6.12 Paragraph 38 provides guidance on how the Government expects planning decisions to be taken in respect of sustainable development; paragraphs 48 and 49 continue the theme by stating prematurity is unlikely to justify refusal of permission.
- 6.13 The evidence will seek to demonstrate that the site accords with the principles of sustainable development and that there is no case for dismissing the appeal based on grounds of prematurity. The evidence will demonstrate that there are no adverse impacts that would significantly outweigh the many benefits of the appeal proposals.
- 6.14 The Landscape Statement of Case (**Appendix 2**) details relevant sections of national and local policy relevant to landscape matters. Paragraph 173 requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty. The appeal site lies outside of the South Devon AONB, however, it is acknowledged that it is visible from a small number of public vantage points from within the AONB. The Landscape Statement of Case establishes that there is no significant impact on or from the AONB.

### **The Torbay Local Plan**

- 6.15 The Torbay Local Plan "A Landscape for Success - The Plan for Torbay 2012 to 2030", was adopted in December 2015.

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<sup>1</sup> Paragraph 7.3 Torbay five year housing supply 2019: Draft Statement for Consultation. July 2019

- 6.16 Although, as identified below, the appeal site is referred to in the LDS, the appeal site is not identified in the Local Plan because it had not yet been demonstrated to Natural England's satisfaction at the time of examination and adoption of the Local Plan that development of the site would comply with the requirements of Regulation 61 (regarding appropriate assessment) of the Conservation of Habitats and Species Regulations 2010 (as then was) due to it being situated within the 'sustenance zone' of a Special Area of Conservation (SAC) designated for its bat species. The Site is not situated within the SAC itself.
- 6.17 The Site was considered in the main modifications to the Local Plan and was considered in the SHLAA. The Inspector's Report following examination of the Local Plan was supportive in principle of the Site, concluding at paragraph 62 that, *"...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 [Local] Plan as soon as it has the necessary evidence"*.
- 6.18 Ecology surveys to inform the proposals were undertaken in 2016. The results of these and discussions with Torbay, Natural England and the RSPB were integral to the design of the proposals. Through continued dialogue post submission and submission of further information (notably the Ecological Addendum (NPA, March 2018, CD 2.20)) both Natural England (April 2018, CD 4.11) and the RSPB (March 2018, CD 4.16) stated they had no objection to the proposals. Torbay Council, as the local authority, undertook a Habitat Regulations Assessment (March 2018) which concluded there would be no likely significant effect alone or in combination on a European Site (i.e. the South Hams SAC or the Lyme Bay and Torbay SCI).
- 6.19 Torbay Council also produced a memorandum (11th April 2018) which concluded "they were satisfied that the key ecological issues raised through consultation have been resolved by the applicant.... and that there are currently no ecological grounds for objection to the application". Subsequent to the People over Wind<sup>2</sup> case, CD 8.4, Torbay updated the HRA (May 2018) to accord with the findings of that case, but came to the same conclusions as the original HRA.
- 6.20 It is therefore anticipated that the Statement of Common Ground with the Council will confirm that they are satisfied there would be no adverse effect on the integrity of the South Hams SAC (for which Greater Horseshoe Bats are a primary reason for its selection) alone or in combination with other proposals or projects. We also anticipate that they will confirm that there would be no significant impacts on other ecological receptors (including Cirl Buntings).
- 6.21 The evidence will consider the references to the appeal site in the Local Development Scheme (LDS). The latest LDS (March 2017) states at Section 3.5 - Site Allocations Development Plan Document (provisional) *'where there appears to be a lack of deliverable housing sites to provide for the 5 year requirement, the Council will seek to bring forward additional housing sites through a number of mechanisms, including:*

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<sup>2</sup> *People Over Wind and Sweetman v Coillte Teoranta*; European Court of Justice Case C-323/17

- *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.*

*If these measures do not result in at least a 5 year supply of housing land, or if the Neighbourhood Forums are unable to allocate sufficient housing land, the Council will produce a Site Allocations DPD allocating additional sites (in the context of Policies SS1 - Appendix C, SS12 and SS13).'*

- 6.22 Whilst no LDO or Site Allocations DPD has been progressed, the statement establishes that the Council considers the appeal site to be an appropriate and sustainable location for growth, and reflects the fact that the only reason the site does not feature in the Local Plan is by virtue of the HRA issues at the time of the Local Plan examination referred to above.
- 6.23 The adopted Local Plan sets out strategic policy detail for the Torbay area, including the Council's ambitions to deliver a tandem jobs and housing growth strategy. Chapter four of the Local Plan references a balanced and sustainable approach to growth. For the reasons set out above there is already a context that establishes an appreciation that the appeal site lies in an inherently sustainable location.
- 6.24 Of particular relevance is *Policy SS1 Growth Strategy for a prosperous Torbay* which confirms that the Plan seeks to support the creation of 5,000 – 5,500 net additional jobs and the delivery of approximately 17ha of employment land. On housing, SS1 identifies a housing target of “*about 8,900 over the Plan period of 2012 – 2030*”. The Policy confirms how this will be provided over the three main periods of the Plan, namely: existing commitments in the first 5 years (to 2016/17); the completion of committed sites and those identified in the three Neighbourhood Plans (to 2021/22); and, in Strategic Delivery Areas/Future Growth Areas in the latter stage of the Plan period.
- 6.25 *Policy SS3 Presumption in favour of sustainable development* reiterates the presumption that is set out as a key principle in the NPPF. It notes that the Council “*will work proactively...to find sustainable solutions, enabling development proposals to be approved where they will evidently provide a balanced approach to improving economic, social and environmental conditions.*”
- 6.26 Aspiration 1 of the Plan provides policy for securing the economic recovery and success across the Bay area. *Policy SS4 The economy and employment* and *Policy SS5 Employment space* provide further articulation of the jobs growth target set out in Policy SS1. Paragraph 4.2.20 in support of the former policy provides for flexibility in delivery, noting that where onsite provision “*is not practicable...the Council will seek a financial contribution towards employment creation or employment initiatives locally*”.
- 6.27 Aspiration 2 seeks to achieve a better connected, accessible Torbay together with the provision of essential infrastructure. *Policy SS6 Strategic transport improvements* provides for “*on-line improvements*” on the Western Corridor (2(ii)) together with improvements to the Walking and Cycling Network and Bus/Public Transport.

- 6.28 The appeal proposals seek to extend bus services that currently terminate at the nearby South Devon College to terminate instead at the site. The operator, Stagecoach, has written to confirm its willingness to make this change and to express its support for the application (see Transport Assessment Appendix I). Two bus stops are included on the highway layout immediately to the west of the proposed site access roundabout for use by the extended bus service (see drawing 0734-057). Two stops are included to allow space for two buses to be present at one time, allowing terminating services to lay over. A Bus Service Agreement is being drafted to enable the applicant to secure the delivery of the extension of the bus service.
- 6.29 The proposals advance a network of new footway/cycleway links connecting to neighbouring areas. These include a new signal-controlled Toucan crossing on A3022 Brixham Road, a new pedestrian/cycle route to the north and improvements to the pedestrian route to the south.
- 6.30 *Policy SS7 Infrastructure, phasing and delivery of development* highlights that “in order to be permitted, development must be supported by provision of the critical infrastructure required for the development to proceed.” It also notes the importance of “physical, social and green infrastructure...to help Torbay grow in a sustainable, healthy and prosperous way”.
- 6.31 The environment of the Bay areas is protected through Aspiration 3 (Protect and enhance a superb environment). *Policy SS8 Natural environment* places significant importance on ensuring that those sites which are protected under European legislation are safeguarded, conserved and enhanced. Matters addressed within the policy include: protection of protected sites, species and habitats; where sites are outside of the AONB, ensuring that they conserve or enhance the distinctive features, and; seek management practices which ensure the long term protection of greenspace (including amenity space), provision/protection of dark corridors and improving public access to the countryside.
- 6.32 *Policy SS9 Green infrastructure* picks up this last point in more detail, highlighting the importance of the provision of a green infrastructure led approach to the design of new development which incorporates multifunctional spaces providing public access. In addition, green infrastructure is highlighted as having an important role in mitigating for impacts on the sustenance zone and flyways used by Greater Horseshoe Bats.
- 6.33 Aspiration 4 seeks to create more sustainable communities and better places and is the second key tenet of the Plan’s growth strategy.
- 6.34 *Policy SS12 Housing* provides an overarching policy on the housing target of 8,900 homes over the plan period. Table 3 associated within the Policy provides for a spatial distribution across the three Strategic Delivery areas of Torquay, Paignton and Brixham.
- 6.35 *Policy SS13 Five year housing land supply* sets out the commitment to maintaining a 5 year housing land supply against the housing requirement together with the housing delivery trajectory. The policy outlines the important role of Neighbourhood Plans in supporting delivery during the middle phase of the plan period. It notes, in response to concerns raised in the report on the soundness of the Local Plan, that mechanisms to boost supply if it begins to falter include the preparation of a Site Allocations Development Plan Document

and to “consider favourably applications for new housing, consistent with Policy SS2, H1 and other Policies of this Plan”. The policy also notes that the 5 year supply figure is a target and not a ceiling and that this can be exceeded where “the proposal would bring social, regeneration or employment benefits, including through the provision or funding of infrastructure”.

- 6.36 As noted in respect of Policy SS1, the Plan secures the principle of Neighbourhood Plans providing for the medium term (in Plan period terms) delivery of housing. A series of Strategic Delivery Areas (SDA) are established which correspond with the Neighbourhood Plan Forum areas of Torquay (SDT1), Paignton (SDP1) and Brixham (SDB1). Each of these policies is accompanied by tables establishing the expected delivery of employment and housing development. For each SDA there are a number of sub-policies which propose more specific local level distribution of development.
- 6.37 The latter part of the Plan provides a number of policies to steer the delivery of change and management of development in the Bay area. Policy C1 is referenced below in relation to the Neighbourhood Plan.
- 6.38 Transport matters are addressed in policies *TA1 Transport and accessibility*, *TA2 Development access* and *TA3 Parking requirements*. This suite of policies aim to ensure that transport opportunities are as sustainable and active as possible along with seeking to ensure that access to new development is safe and efficient. Finally, parking standards are established in order to ensure that adequate provision is made; further details are provided in Appendix F.
- 6.39 The scope of the traffic capacity analysis was agreed with Torbay Council Highways Department (TCHD). The Transport Assessment (TA) included capacity assessments at four junctions along the A3022 Brixham Road corridor, these being at Long Road/Goodrington Road and Kingsway Avenue/White Rock Way to the north, at the site access roundabout and at the junction with A379 Dartmouth Road to the south, a junction known as Windy Corner. The capacity assessments identified that Inglewood development traffic impacts required mitigation at two junctions on the A3022 Brixham Road:
- at the Brixham Road/Long Road/Goodrington Road junction, 850m to the north of the proposed site access; and
  - at Windy Corner, 850m to the south.
- 6.40 At the Long Road/Goodrington Road junction, modest improvements located on highway land and land controlled by the appellant were shown to be sufficient to mitigate the impact of development traffic (see drawing 0734-040 Rev A). These proposed improvements have been agreed with TCHD.
- 6.41 The situation at Windy Corner was more complex and dialogue has been ongoing on scheme design throughout the consultation period. Recent dialogue brought to light a TCHD desire to improve pedestrian amenities at the Windy Corner junction by providing priority to pedestrians at the crossing movements, none of which are given pedestrian priority within the current layout. Therefore, it was agreed that the appellant will investigate options to include demand respondent, signal-controlled crossings for pedestrians on all existing crossings within the junction, for further consideration by TCHD. It was recognised that this

may have an impact on the capacity of the junction for vehicular traffic but would be policy compliant in prioritising pedestrian movements.

- 6.42 In light of all the above, the appellant considers that all highway improvements proposed as part of the appeal remain safe and sufficient to mitigate the impact of the development traffic and that any residual impacts will not be severe.
- 6.43 The appellant is not aware that TCHD have any highway or transport grounds to object to the appeal. Transport matters are rehearsed in detail in the Statement of Common Ground.

#### **The Brixham Peninsular Neighbourhood Plan (BPNP)**

- 6.44 The Brixham Peninsula Neighbourhood Forum, as a sub-committee of Brixham Town Council, applied to designate the area of Brixham Peninsula in 2012 and applied for renewal in 2017. Following the positive outcome of the Referendum held on 2 May 2019 and the decision by the Council to make the Plan on 19 June 2019, the BPNP now forms part of the Development Plan for Torbay.
- 6.45 The Proposals Map identifies a “settlement gap” policy designation that affects the appeal site. Policy E3 states *inter alia* that,

*“Settlement Gaps relate to areas outside of the AONB where the countryside which forms the “gap” is Undeveloped Coast (Local Plan Policy C2) or Countryside Area (Local Plan Policy C1).*

*Within the settlement gaps development proposals must meet the criteria set out in Policy C1 of the Torbay Local Plan. No development that visually and or actually closes the gaps between these urban areas will be supported.”*

Policy C1 of the Local Plan seeks to resist development where it “*would lead to a loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas to the detriment of their special rural character and setting.*”

- 6.46 The Settlement Gap policy does not add further criteria to that already established by LP Policy C1. The evidence will demonstrate that whilst the tilted balance applies, the appeal proposals will also maintain an appropriate gap between White Rock and Galmpton and that the integrity of these communities and sense of a visual gap will be protected.
- 6.47 In the context of paragraph 11d of the NPPF it is important to establish the ‘policies which are most important for determining the application that are out-of-date’. The policies are out of date by virtue of the fact that Torbay Council cannot demonstrate a deliverable three year supply of land when assessed against the five year requirement. The following policies relate to the supply of housing and restriction of development on non-allocated sites:

- Policy SS1: Growth Strategy for a prosperous Torbay
- Policy SS2: Future Growth Areas

- Policy SS11: Sustainable communities
- Policy SS12: Housing
- Policy SS13: Five year housing land supply
- Policy C1: Countryside and the rural economy (insofar as it relates to the supply of housing, the strategy of focusing development only at future growth areas and restrictions over development beyond settlement boundaries)
- Policy H1: Applications for new homes
- SDB1: Brixham Peninsular

6.48 In respect of the Brixham Peninsular Neighbourhood Plan the following policies, insofar as they relate to the supply of housing are considered out of date:

- Policy BH3: Delivery of new homes
- Policy BH4: Housing Development - brownfield and greenfield sites
- Policy E2: Settlement boundaries
- Policy E3: Settlement gaps (insofar as it refers to Policy C1 of the Local Plan)

## 7.0 Applying the Planning Balance

- 7.1 Torbay Council has fallen short of meeting its housing land requirements since the start of the Local Plan period. This has resulted in a shortfall of housing against the Local Plan requirement. More relevant is the chronic lack of supply; failure to act now and release available land for development will present social consequences in the near future and with very little prospect of being able to 'catch up' during the remainder of the Plan period to 2030. There is therefore a very pressing need for new open market and affordable housing and as such, both of these elements should be given very significant weight in the consideration of the appeal proposals. The representations at **Appendix 4** establish that as at August 2019 the Council can only demonstrate 1.25 years of supply; the position will be updated via the submission of evidence in advance of the Inquiry.
- 7.2 The evidence will set out a trajectory for delivery that demonstrates how, through the grant of planning permission, the appeal proposals will make a significant contribution to the five year supply.
- 7.3 The evidence will establish that the development constitutes sustainable development, for which there is a presumption in favour through the NPPF. There are no technical issues outstanding that cannot be addressed through appropriately worded conditions.
- 7.4 Flooding is not considered to be a critical issue in this location but in any event the surface water drainage strategy provides an appropriate solution which will avoid any risk of surface water flooding. Foul drainage capacity can be delivered via connections (and if necessary, upgrades) to the existing foul drainage network.
- 7.5 The loss of agricultural land is not considered to be significant in the wider context and is in part mitigated for through the proposed revised farming practices on the adjacent farmland.
- 7.6 The loss of a relatively small area of land identified for minerals extraction is not considered significant; Devon County Council confirmed that 'this area of limestone resource is unlikely to be commercially or environmentally viable to extract'. The letter of 29 March 2018, CD 4.8, confirms the County Council withdraws the objection previously made.
- 7.7 The proposed development has been informed by an assessment of the site characteristics and context which provide the Local Planning Authority with the ability and assurance that the design can be controlled through Reserved Matters to ensure that it provides a suitable, appropriate development that responds to the site's characteristics and integrates with surrounding development.
- 7.8 There are very significant benefits that will be delivered by the proposal, including:
- The application proposes up to 373 dwellings across a range of unit sizes, 30% of which will be affordable. This is a policy compliant scheme and does not seek to introduce a viability case to reduce the quantum of affordable housing. The provision of 112 affordable homes will make a very significant contribution to meeting housing need in Torbay. Both the Local Plan and Neighbourhood Plan make



great play of the need for more affordable housing in the Brixham Peninsular. Whilst the Neighbourhood Plan seeks to identify land for 685 homes in line with Local Plan requirements, the vast majority of sites comprise small scale windfall development that will deliver very few affordable homes, or in terms of allocations are on (small scale) previously developed sites that do not trigger the affordable housing threshold in Policy H2. It is hard to envisage how the sites identified will deliver any meaningful quantum of affordable housing over the plan period.

- Local education delivery is supported through the provision of land for a 2 form entry primary school to meet the needs of new households arising from the appeal proposals and wider unmet need and demand for primary school places in the wider community.
- Provision of community facilities through the inclusion of a site for a new public house/restaurant;
- Provision of significant areas of public open space in excess of policy requirements and community food growing land with their long term management secured in perpetuity via a not-for-profit management company (secured via Section 106 Agreement); and
- Provision of countryside access for existing and future residents, providing links to the wider network.

7.9 These very significant benefits outweigh any identified adverse impacts arising from the development. Mitigation is provided in the form of:

- Solutions are proposed to mitigate for any potential impacts on the South Hams SAC by providing enhanced habitat and feeding areas for Greater Horseshoe Bats and Cirl Buntings. In total over 3.5km of hedgerow would be provided (a net increase when accounting for the 450m lost in relation to White Rock mitigation) together with 22ha of cattle grazed pasture. The strategy for providing and maintaining the mitigation land is secured via a Landscape and Ecological Management Plan and Farm Management Practices Plan secured via the Section 106 Agreement which will tie the land into being managed in accordance with the agreed management practices. Currently the land can be farmed without safeguarding the habitat for Cirl Bunting and Greater Horseshoe Bats.
- Landscape and Visual Impacts are mitigated via embedded design solutions evolved during the course of the pre-application and post-applications stages, in response to concerns raised. This has had the effect of minimising a potential impact and includes structural and internal planting.
- Necessary and appropriate CIL contributions, offsite highway works and New Homes Bonus receipts.

7.10 In accordance with paragraph 11d of the NPP, the appeal proposals should be allowed. Allowing this appeal is necessary to secure the Council's housing land supply, on a site which has previously been recognised as a sustainable solution, thus strengthening the ability for the Council to resist proposals in locations which are less preferable. The site is suitable for release and is now considered essential if the Council has any prospect of maintaining a credible supply of housing land and meeting its requirement to 2030.

## 8.0 Planning Conditions and S106 Agreement

- 8.1 An agreed S106 Agreement covering matters that are necessary to mitigate the impacts of development will be submitted to the Inquiry.
- 8.2 The evidence will identify those issues for which the appellant considers it would be appropriate to attach planning conditions to an outline planning permission. These will be offered for agreement with the Local Planning Authority in advance of the conclusion of the Inquiry. A draft set of conditions is included in the draft Statement of Common Ground.

## Appendix 1: Letter from LPA of 28 August 2019

## Appendix 2: Statement of Case: AONB and Landscape Matters

## Appendix 3: Revised draft Five Year Housing Supply, October 2019

## Appendix 4: Representations submitted on the July 2019 five year land supply consultation