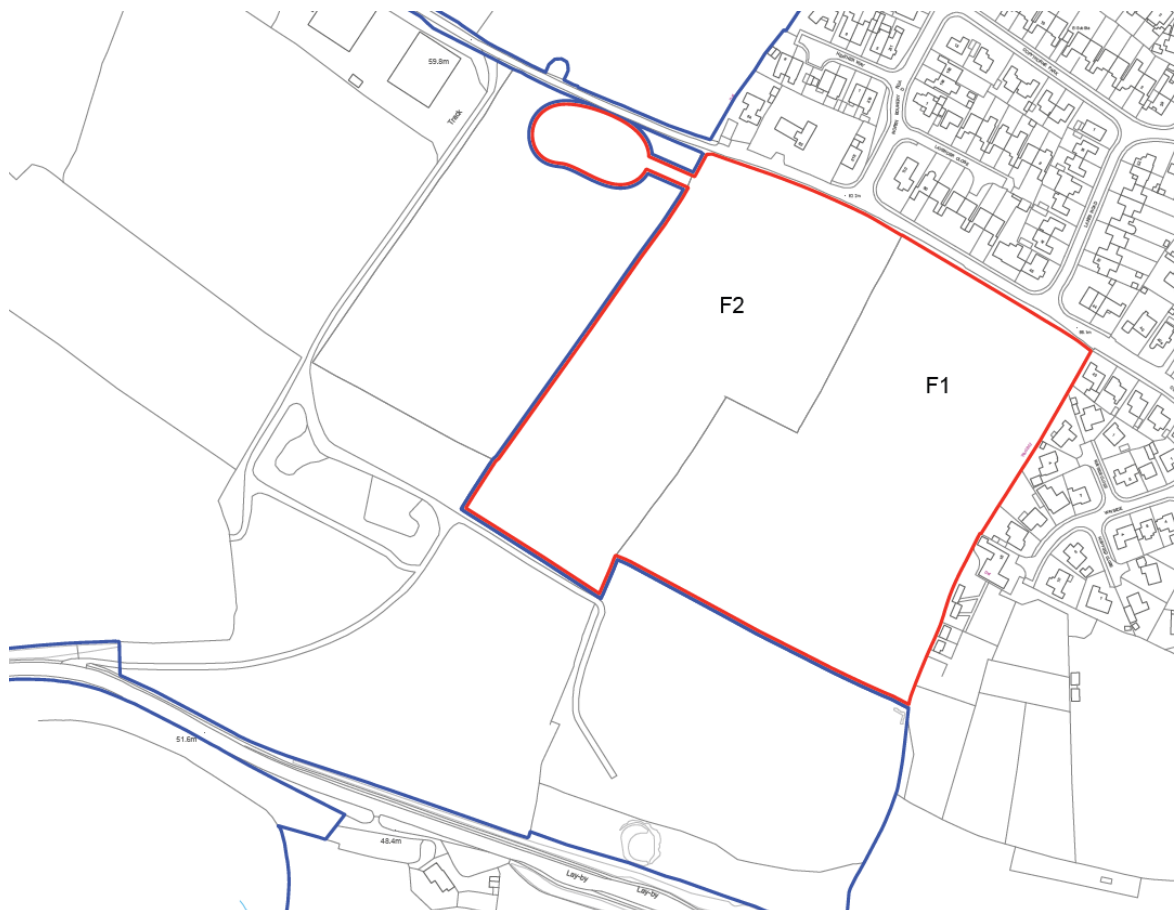


Application Site Address	Land to the Southwest of Copythorne Road, Brixham.
Proposal	Outline planning application for the erection of up to 77 dwellings, including affordable housing (35%), areas of open space (including public park), landscaping, biodiversity net gain and site infrastructure, with all matters reserved apart from access. This application is accompanied by an Environmental Statement. This application is a departure from the Development Plan.
Application Number	P/2023/0480
Applicant	Peloton Land Limited
Agent	AR Land & Planning Limited
Date Application Valid	02.06.2023
Decision Due date	22.09.2023
Extension of Time Date	18.12.2023
Recommendation	Refusal: Reasons being; <ul style="list-style-type: none"> <li>1. Overriding conflict with the Development Plan.</li> <li>2. Impact on the South Devon National Landscape.</li> <li>3. Lack of S106 legal agreement to secure obligations as identified.</li> </ul>
Reason for Referral to Planning Committee	Major Development.
Planning Case Officer	Scott Jones



## **Site Details**

The application site measures approximately 6.35 hectares of agricultural land located to the south of Copythorne Road, at the northwestern edge of the built-up area of Brixham.

The site comprises of two fields which are separated by an existing hedgerow which runs from the northern hedge boundary with Copythorne Road to southern hedge boundary, and a small part of the third field to the west adjacent to Copythorne Road. The topography of the site gradually falls from a high point in the southeastern corner to the northwestern corner of the site, where it drops approximately 11m from corner to corner.

The site sits adjacent to residential development to the east (Wayside and Wayside Close) and to the north across Copythorne Road, where the form of the adjacent development is low-rise mid-20<sup>th</sup> century suburban development. The overriding form and character is one of detached dwellings, mostly single-storey with some two-storey properties. To the south of the site are fields which drop down towards the A3022 (New Road), the main road into and out of Brixham, before the land rises again to higher hilltops further south. To the west is further agricultural land with fields present until Churston Ferris, approximately 650m away, which presents pockets of residential buildings around Churston Road and Bascombe Road. In terms of distance to central Brixham the central harbour area is approximately 1500m to the northeast.

In terms of context the site sits within the South Devon National Landscape (formerly called the South Devon Area of Outstanding Natural Beauty) and is within the Sustenance Zone and Landscape Connectivity Zone associated with the South Hams Special Area of Conservation (designation related to the Greater Horseshow Bat colony at Berry Head). In terms of the local Development Plan the site is within the Open Countryside and is within the Torbay-wide Critical Drainage Area. The small element of the site within the westernmost field (Field 3) also lies within the Undeveloped Coast as designated within the Torbay Local Plan. There are no further site-specific designations however the site is identified within the Brixham Peninsula Neighbourhood Plan as a rejected housing site for information.

Note: For the purposes of this report the term National Landscape and Area of Outstanding Natural Beauty (AONB) are both used and should be considered interchangeable. This reflects policies as written, retained wording towards AONBs within the NPPF (2023), and comments made prior to the renaming of AONBs as National Landscapes that occurred during the period of this application.

### **Description of Development**

The application seeks outline planning permission for up to 77 dwellings including affordable housing (35%) and areas of open space (including a public park), with all matters reserved apart from access. Matters of layout, scale, appearance and landscaping are therefore reserved for future consideration with only indicative detail on these matters submitted as part of the current outline application.

The proposed access is for a single vehicular junction onto Copythorne Road opposite the existing junction of Lakes Road with Copythorne Road. The proposed junction's carriageway width is 5.5m wide with 2m wide footways to either side. Associated highway works proposed include the provision of an east-west footpath along the southern side of Copythorne Road running adjacent to the site's frontage, which will connect to the existing footway to the east and terminate towards the end of the site to the west. Highway works will include two dropped kerb crossing points across Copythorne Road and within the site the detail includes a dropped crossing across the proposed junction into the site.

In accordance with the description of development 65% of dwellings would be open market housing and 35% of dwellings would be affordable housing. This is consequently a fixed matter that would, for 77 dwellings, present 50 open market dwellings and 27 affordable dwellings.

In terms of the broader outline proposals the submitted indicative masterplan presents a potential layout that seeks to demonstrate the amount of development could be achieved, and further detail is outlined within a Design and Access Statement. Outline detail presented includes the following key parameters:

- The focus of housing is for it to be contained within the northern part of the site, shown to be offered through a mix of detached, semi-detached and short terraces.

- The illustrative detail offers a variety of residential house types and sizes, providing dwellings from 1-bedroom apartments through to 5-bedroom detached houses.
- The scale of the development is suggested as a mix of one and two storeys, with one storey expected on the higher ground.
- The layout of the development is to be presented off a main spine road with shorter spur roads and private drives.
- Parking is to be largely on-plot with driveways and garages the predominant provision, and with electric charging facilities throughout.
- The architectural language is suggested as possibly presenting a simple and contemporary aesthetic that responds to the built form and landscape setting.
- Surface water drainage is to be managed on site through SUDS, including swales and an infiltration basin within the third field.
- Trees and hedgerows are maintained where possible and ecological mitigation is proposed for both bats and cirr buntings, together with a wider net gain for biodiversity.
- The southern part of the site is considered a non-developable area and is proposed to provide both ecological mitigation (1.88 hectares) and public open space (1.34 hectares), including a Locally Equipped Area of Play (LEAP) and a community orchard.

### **Relevant Planning Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### **Development Plan**

- The Adopted Torbay Local Plan 2012-2030 (TLP)
- The Adopted Brixham Peninsula Neighbourhood Plan (BPNP)

#### **Material Considerations**

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Published Standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:
- South Devon AONB Management Plan 2109-2024
- Countryside and Wildlife Act (Section 85): A relevant authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

### **Relevant Planning History**

None.

### **Pre-Application History**

The proposal has not been subject to the pre-application enquiry and has not been through a formal independent design panel process.

### **Summary of Representations**

183 submissions objecting together with an addition 200 'standard letters' received citing objections on grounds of AONB impact and highway impact. 1 submission of support received.

Note: Full responses are available to view on the public access system (<https://publicaccess.torbay.gov.uk/view/>).

#### **Key issues as follows:**

- Contrary to the Local Plan and Neighbourhood Plan
- Contrary to the NPPF
- Impact on the AONB and public views
- Highway and road safety impacts
- Safety of junction opposite Lakes Road
- Impact on Copythorne Road
- Impact on Bascombe Road
- Impact on 'Windy Corner'
- Impact of more traffic on the smaller roads/lanes in the area
- Impact on health care services
- Impact on education services
- Impact on foul water treatment capacity
- Loss of public views to the countryside
- Ecology impacts
- Impact on Greater Horseshoe Bats
- Should be building on brownfield sites
- Overdevelopment
- More pressure on the water system
- Impacting the AONB impacts tourism
- Not enough affordable housing
- No exceptional circumstances
- No in the public interest

### **Summary of Consultation Responses**

Note: Full responses are available to view on the Council's public access system (<https://publicaccess.torbay.gov.uk/view/>).

**Broadsands, Churston and Galmpton Neighbourhood Forum:** No comments.

**Brixham Town Council:** Objection.

This proposal for major development would have a significant detrimental impact on the landscape character and scenic beauty of this part of the South Devon AONB that is not mitigated by exceptional circumstances in the public interest. The proposal

is contrary to Policies SS8, C1, SDB1, SDB3, and DE1 of the Torbay Local Plan and Policies E1 & E2 of the Brixham Peninsula Neighbourhood Plan and the NPPF Paragraphs 176 and 177.

The site contains distinctive landscape features and characteristics, some of which would be permanently lost or degraded, and the adverse landscape effects are considered to be significant and irreversible. The proposal is contrary to C1, SS8 of the Torbay Local Plan and Policies E1, E6 & E7 of the Brixham Peninsular Neighbourhood Plan and Paragraph 174 of the NPPF.

The lack of safe pedestrian access to local facilities and services is likely to result in a development that is over-reliant on the private car. The layout does not enable vehicles safe or acceptable access and egress to the site. The proposal is contrary to Policies BH8 and T1 of the Brixham Peninsular Neighbourhood Plan.

The proposed development is within a greater horseshoe bat Sustenance Zone and Landscape Connectivity Zone associated with the South Hams Special Area of Conservation (SAC), and the development will have a significant impact on the South Hams SAC and will be detrimental to the greater horseshoe bat and ciril buntings. This is contrary to Policy E8 of the Brixham Peninsular Neighbourhood Plan.

**South Devon AONB Unit: Objection.**

Opinion is that the proposal constitutes major development due to its nature, scale and location within the South Devon AONB together with the scheme's significant adverse impact on AONB special qualities. The proposal represents an unacceptable loss of agricultural land to built development in a strategically important location for maintaining the open and rural character of the AONB. The proposal fails the principal policy tests as set out in the development plan and NPPF, in particular that there are no exceptional circumstances that have been demonstrated to be in the public interest and permission must therefore be refused. In this instance public interest means the nation's interest as the decision affects a nationally protected landscape.

Any lack of five-year housing supply does not remove the requirement for Torbay Council as the Local Planning Authority to correctly apply Paragraph 11d(i) together with footnote 7 of the NPPF. As the development proposal is located within the South Devon AONB, Paragraph 177 of the NPPF provides a clear reason for refusing the development. As such, public interest and exceptional circumstances tests must be applied. NPPF Paragraph 176 additionally requires great weight to be given to conserving and enhancing the landscape and scenic beauty of the South Devon AONB. Due to the cumulative impacts of a series of damaging developments since designation in 1960, land use change and management in this part of the South Devon AONB, further loss of landscape and scenic beauty cannot be accepted.

(Officer Note: The NPPF paragraph references above are made in respect to the NPPF(2021), the version current at the time of submission).

**Council for the Protection of Rural England: Objection.**

In terms of principle as Major Development in the AONB the applicant needs to demonstrate that “exceptional circumstances” justify the proposals and that they are in the public interest, having regard to the considerations set out in NPPF.

It is acknowledged that the proposal will provide 77 homes (27 affordable) and there is a 5-year housing land supply issue. The Socio-Economic Statement suggests that the scheme will generate 238 jobs, but there is no reference as to how a local workforce will be secured. Question whether the submitted evidence is sufficient to justify the proposal in line with the NPPF. In terms of the NPPF guidance (the cost of and scope for developing elsewhere) has sufficient evidence been presented to demonstrate that there are no other suitable or deliverable sites outside the AONB to address the identified housing need in a timely fashion. It is also not satisfactory to pre-empt the emerging plan process, which will deal with the current housing need. In terms of NPPF guidance on detrimental effect on the environment, development of this site would be significantly harmful to the AONB and the landscape setting of Brixham and would conflict with AONB Management Plan policies Plan/P1 Plan-making, Lan/P1 Character and Lan/P5 Skylines & visual intrusion.

In terms of design the NPPF states that local authorities should ensure that they have access to, and make appropriate use of, and that they should give weight to the recommendations of design review panels. If the Council considers this proposal acceptable in principle, the scheme should be reviewed, to ensure high quality in this highly sensitive location.

In terms of sustainability, the Design and Access Statement demonstrates little ambition in this area e.g. the scheme fails to consider solar orientation and opportunities for passive solar gain in the layout of buildings, as well as the need to avoid overheating. The consideration of the building’s end-of-life (recycling of materials) as well as upfront and in use stages should be considered.

The proposal is not demonstrated to be high quality sustainable development, which would enhance this important landscape.

**The Council’s Landscape Consultant (WSP):**

A desk-based landscape and visual impact peer review has been undertaken aimed at identifying:

- Potential gaps in the baseline analysis data presented;
- Issues in relation to the methodology used and technical guidance followed (eg. Viewpoint Selection, AVR representation); and
- The appropriateness of the findings and conclusions (including recommending additional assessment in relation to potential effects upon the South Devon Area of Outstanding Natural Beauty (AONB) if deemed necessary).

Conclusions are that whilst the review has arrived at a small number of decisions that differ from the ARLP Assessment in relation to sensitivity, none of these materially affect the outcome of the Assessment in terms of findings of significance.

The only significant effects occur during the construction phase, but these are temporary in nature, restricted to the construction period only.

WSP agree with the findings of the Assessment by ARLP, that the proposed development would result in no permanent significant adverse landscape and visual effects.

In terms of the South Devon AONB agree with the conclusion that the special qualities have a low to medium sensitivity to change, and that during construction agree with the ARLP Assessment findings that the overall effect would be 'slight adverse', whilst during operation agree with the findings that the overall effect would be 'minimal adverse'. In terms of the immediate host landscape of the site itself the effects would be 'moderate adverse' during both phases.

Summary of design:

The Proposed Development appears to be a well-considered scheme, responding to local context, as well as considering the potential impacts of the design across the wider study area. Key planning policy and environmental constraints have been identified and have clearly informed the design decision-making process. Existing vegetation is retained where possible and screening vegetation to the south and west of the site is of a suitable specification and density to deliver screening of views once established.

**Devon County Council Ecologist:** No objection.

In terms of general ecology all previous concerns have been adequately addressed through further information.

In terms of potential impact on European Sites the mitigation proposed would ensure no likely significant effect upon the South Hams SAC, as concluded within the Habitat Regulations Assessment Appropriate Assessment, agreed in consultation with Natural England.

**Natural England:** No objection.

The Appropriate Assessment undertaken by Torbay Council concludes that the proposal will not result in adverse effects on the integrity of the South Hams Special Area of Conservation (SAC). Having considered the revised assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures specified in the Appropriate Assessment are appropriately secured by conditions in any planning permission given.

**RSPB:** No Objection.

Should this outline application be granted then (as stated in section 4.4, p16 of the Ecological Appraisal (Devon Wildlife Consultancy, March 2024) all new and retained on and off-site habitat mitigation measures need to be secured and managed in perpetuity (eg, via a s106 agreement).

We recommend that no hedge or scrub vegetation is removed between the months of March to mid-September inclusive.



For the on and off-site mitigation habitat proposed, to be judged successful in mitigating adverse impacts on curlew buntings, it is reasonable that the same number of breeding territories are still present on/within 250m of the proposed on and off-site mitigation habitats after development.

**Torbay Council Strategic Planning Team: Objection.**

The proposal presents a clear conflict with the development plan and therefore there is a policy objection purely in terms of conflict with the Local and Neighbourhood Plan.

Recent national policy developments including the December 2023 National Planning Policy Framework (NPPF), Written Ministerial Statement, and change to the status of AONBs are relevant, notably in terms that;

- The December 2023 NPPF provides additional protection to the Brixham Peninsula Neighbourhood Plan.
- The NPPF rolls forward the former Framework's policy on AONBs with National Landscapes enjoy the "highest status" of protection (Paragraph 182) and indicating that major development in the AONB should be refused other than in exceptional circumstances (and subject to tests of need, alternative ways to meet need and consideration of detrimental impacts (Paragraph 183)).
- The Levelling Up and Regeneration Act LURA has amended Section 85 of the Countryside and Wildlife Act and replaces a "duty of regard" with a stipulation that authorities "must seek to further the purpose of conserving and enhancing the natural beauty" of the AONB.

However, the presumption in favour of sustainable development should be applied to housing applications (but subject to Paragraph 14 protections for the BPNP). Brixham has a pressing need for housing. Torbay's wider housing shortfall means that the weight that must be given to boosting housing supply should not be underestimated.

In terms of housing need in the context of the site it is offered that the most important housing need issue relates to the extent of Brixham's housing need, rather than the Bay-wide figure. Brixham Peninsula has to date met its housing requirement as set out in Policy SDB1 of the Local Plan and the major development at Inglewood will provide an ongoing supply in the peninsula, albeit at the north end of the area, furthest from Brixham town, and functionally more closely related to White Rock.

In terms of context several different AONB sites have been promoted by prospective developers to the Local Plan Housing Site Options Consultation (October 2022). Development further away from the town could be located outside of the AONB but will also have landscape impacts and will be less well located in relation to the town's facilities. Such growth options would ideally take place as part of a plan making process, along with a more detailed assessment of local growth needs. Paragraphs 49-50 of the NPPF set out a high bar for resisting proposals on prematurity grounds, particularly when plans are at an early stage of preparation. Therefore, I do not consider that "prematurity" reasons for refusal would find support in the Framework. However, the requirement in NPPF 183(b) to consider "the cost and scope for

developing outside of the designated area, or meeting the need in some other way” is a relevant issue.

In terms of housing supply there is concern in terms of meeting the needs arising from outside the AONB by developing inside the AONB. The AONB Partnership has expressed a clear preference for major development to be located outside of the AONB and objected to the current proposal.

In terms of guidance there has been involvement by the Courts in issues relating to major development in the AONB, and the application of the presumption in favour of sustainable development and other AONB tests. Although not the only ruling on the matter, Mr Justice Holgate in *Monkhill Limited and S of S MHCLG and Waverley Borough Council* [2019] EWHC 1993 (Admin) set out a “practical summary” to assist practitioners in paragraph 45 of his Judgement.

### S106 and Other matters

The site is in CIL Charging Zone 3, so infrastructure needs would be sought through S106 obligations, as set out in the Planning Contributions and Affordable Housing SPD (December 2022). These include site delivery matters, sustainable transport, open space, waste, education, and lifelong learning. I have not considered highways or sustainable transport issues in this note. If approved, traffic calming measures to reduce “rat running” through Bascombe Road would need to be secured.

The proposal will impact on recreational opportunities in the South Hams Special Area of Conservation (SAC), which would trigger the need for S106 contributions to mitigate the impact on calcareous grassland.

Most of the flat farmland in Torbay is in the Churston area. Policy SC4 of the Local Plan and paragraph 181 and expanded footnote 62 of the NPPF seek to push development to the lowest grade of agricultural land. In the light of global events protecting best and most versatile agricultural land is likely to increase in significance. On that basis, it would be useful to understand more about the impact on the loss of agricultural land.

The application, if approved, would see housing development in a location not anticipated by the development plan. The December 2022 version of the Planning contributions and Affordable Housing SPD supports healthcare contributions towards primary care, and secondary care facilities where a particular need has been identified. There is a bay wide shortfall in Primary Care facilities (GP surgeries). I would note that a shortfall in healthcare infrastructure also relates to staff shortages and the need for affordable key worker accommodation, which could be an exceptional circumstance to support a development if it was primarily aimed at meeting local needs affordable or key worker housing for Brixham.

Since a key justification for the proposal, if approved, would be to meet very localised needs, I would suggest that a primary occupancy or key worker requirement should be sought on all dwellings. I appreciate that this is likely to require additional negotiation with the applicant.

Development of the site will result in loss of large areas of Grade 2 and small parts of Grade 3a BMV agricultural land. An agricultural land assessment will be required to mitigate impact. A Habitat Regulations Assessment would be required to assess and mitigate impact in line with the South Hams SAC Guidance. The site has Archaeological potential. A programme of archaeological mitigation will be required.

**The Highway Authority (SWISCo/WSP):** No objection.

The additional information provided by the Applicant has resolved all queries / concerns previously raised by the Local Highway Authority and are now in a position to recommend approval from a Highways perspective (comments dated 14.11.2023).

Retained comments:

The main vehicular access to the site will be achieved via a simple priority junction with Copythorne Road to the north-east of the site, which will form a crossroads with Lakes Road. The junction will provide direct pedestrian connectivity from the site to Lakes Road. Visibility splays of 2.4m x 46.7m can be achieved to the northwest with splays of 2.4m x 45.3m to the east. These splays are in accordance with Manual for Streets guidance for 85th percentile speeds of 32.6mph and 33.0mph respectively. This is considered acceptable.

The submitted Travel Plan is considered acceptable. Monitoring fee of £1,500 will be required as a contribution for the five-year Travel Plan monitoring period.

Sustainable Transport contribution: For a major proposal likely to result in increased trips, Sustainable Transport contributions sought in accordance with the Planning Contributions SPD. For the development proposals of 50 Open Market Housing this would equate to £61,598.

**Drainage Engineer:** No objection.

Following the receipt of additional drainage information no objection to planning permission being granted subject to a condition requiring the developer to submit their final drainage design for approval, aligning with the design expectation of demonstrating that there is no risk of flooding to properties on the site or adjacent for the critical 1 in 100-year storm event plus 50% for climate change and 10% for urban creep.

**South West Water:** No objection.

Comment that no development will be permitted within 3.5 metres of the water main, and ground cover should not be substantially altered, unless agreed with SWW. No comments on surface water as this is proposed to be discharged via infiltration and not back to a South West Water asset. In terms of foul water connecting to the public network the applicant should contact SWW to discuss arrangements for this.

**Environment Agency:** No comments returned.

**Affordable Housing Officer:** No objection.

The applicant is proposing the provision of 35% affordable housing, which complies with Policy H2 and indeed exceeds its requirement. The applicant has proposed 9 social rent dwellings, 9 affordable rent dwellings and 9 shared ownership dwellings.

Hence the tenure split is compliant with Policy H2 and the relevant SPD. I am happy with the house types and layout of the affordable dwellings. I have no objection to the scheme from a H2, H6 policy perspective. The section 106 agreement will need to include the following provisions which the applicant has agreed to.

- 1) Provision for Adapted Housing (Policy H6) at 5% of the total dwellings.
- 2) An Affordable Housing Scheme to be submitted for the agreement of the Council either prior to or as part of the reserved matters application

**Tree Officer (SWISCo):** No objection.

Following a review of the updated information support the that the length of proposed hedge removal (H3) has been reduced. This is a notable improvement. The loss of T4 & T5 is inevitable with the highway improvement works and footway creation. The proposed mitigation planting is broadly acceptable and should be secured by a planning condition. The additional planting on the roadside frontage is also beneficial. No objections to the proposal in light of the amendments and additional information, subject to conditions being applied to secure tree protection and the soft landscape scheme.

**Green Infrastructure Officer:** No objection.

Section 4.6 Open Space, Sports and Recreation of the Planning Contributions SPD (2022) identifies the framework for s106 requests. In particular is the cost of open space per dwelling. The proposed development is to provide 77 residential units. It is understood that 35% are affordable housing but should be included within the calculation as there is likely to be increased pressure on existing resources irrespective of housing allocation. All elements are shown in the SPD and further detailed discussion may be required to disaggregate the contributions between the relevant sub – categories of open space and recreation etc. This should be proportionately reduced to take account of any on-site provision in negotiation with the Green Infrastructure Team. All off site contributions are to be in accordance with the stated SPD. Without prejudice SWISCo would be seeking to take on the management of the open space provision for a period of 25 years.

**Waste and Recycling Team (SWISCo):** No objection.

I note the document providing details of the proposed waste and recycling collection arrangements and that finer details will be provided at a later stage.

The collection point for each property will be at the public highway and residents will be expected to bring waste to this location for collection. I support the proposal for a hardstanding area where there are private roads / drives, to facilitate this. I also note that the roads will be built to adoptable standards, if they are not to be adopted SWISCo would require a formal indemnity against damage to the road, to be in place before collections could begin.

The swept path analysis is inadequate as our Romaquip collection vehicles are wider than the vehicle used for the analysis.

Request waste management contributions for this development.

**Education Officer:** No objection.

Over the last 4 years we have experienced a fall in the local birth rate and local primary schools are reporting surplus places; this surplus is projected to continue until the rate recovers. As there is little pupil movement into the area at primary level, the LA and schools would welcome any primary growth from new housing. In contrast, both the secondary sector and specialist provision in the area are oversubscribed and forecasts show that they are likely to be for some time. The LAs current forecasts do not include any adjustments or increases for population growth from new housing. This intended development is expected to generate more demand and the LA, therefore, would be wanting to see recompense from the developers to cover costs with increasing existing capacity.

**Police Designing out Crime Officer:** No objection.

General advice and recommendations offered to the applicant as the security element of the building regulations, namely Approved Document Q (ADQ), sits outside the decision-making process for the planning authority.

In terms of Secured by Design crime, fear of crime, ASB and conflict are less likely to occur if the following attributes of Crime Prevention through Environmental Design (CPTED) are also considered in the design and layout of the proposed scheme:-

Access and movement (Permeability): Places with well-defined routes, spaces and entrances that provide for convenient movement without compromising security.

Structure – (Design & Layout): Places that are structured so that different uses do not cause conflict.

Surveillance (Natural, Formal & Informal): Places where all publicly accessible spaces are overlooked.

Ownership: Places that promote a sense of ownership, respect, territorial responsibility and community.

Physical protection: Places that include necessary, well-designed security features

Activity: Places where the level of human activity is appropriate to the location and creates a reduced risk of crime and a sense of safety at all times.

Management and maintenance: Places that are designed with management and maintenance in mind, to discourage crime in the present and the future.

Parking: It is welcomed that where garages are being proposed they are going to be wide enough for wheelie bins and bicycles to pass. The amount of tandem parking is a concern as it is likely from a practical and convenient point of view only one of the spaces will be used which will encourage unplanned parking elsewhere.

**Active Travel England:** Standing advice note applies.

### **Planning Officer Assessment**

#### **Key Issues/Material Considerations**

1. Principle of Development
2. Visual Impact (including the impact upon the National Landscape), Layout and Design
3. Residential Amenity
4. Highways, Movement and Parking
5. Ecology, Biodiversity and Trees

6. Flood Risk and Drainage
7. Low Carbon Development and Climate Change
8. Other Material Considerations

## **1. Principle of Development**

The land is a greenfield site, adjacent to the built-up area of Brixham, which is presently agricultural land located in the open countryside, as designated within the Torbay Local Plan under Policy C1. It is also within the designated South Devon National Landscape. The land is not allocated for housing or employment within the local Development Plan and is identified as a rejected housing site within the Brixham Peninsula Neighbourhood Plan.

In terms of the Torbay Local Plan Policy C1 principally seeks to resist development that would result in the loss of open countryside or creation of urban sprawl, and guard against the merging of urban areas and settlements where it would be to the detriment of any special rural character and setting. The policy outlines forms of development that may be acceptable within the open countryside and does not cite general housing as a compatible form of development, albeit it does offer support for homes which have a proven agricultural need or self-build housing, where shown to be meeting local needs as a rural exception. The principle of the general housing proposed on this site is hence not supported through Policy C1.

In terms of wider policy guidance on the principle of development within the Torbay Local Plan Policy SS2 and SS8 are relevant. SS2 frames the growth agenda for Torbay in terms of stating that all major development outside of the established built-up area should be within the identified Future Growth Areas and furthers 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. The development is contrary to SS2 as a major housing proposal outside the built-up area, not within a Future Growth Area, on land that is not allocated through the Neighbourhood Plan or other development plan document. In terms of Policy SS8 it states that for development within the AONB the conservation of the landscape and scenic beauty, biodiversity and geodiversity will be given great weight and afforded the highest status of protection. The policy furthers that development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest and goes on to advise that planning applications should include an assessment of need for the development, economic impacts, alternative means and locations of provision, the impacts of the proposal on the environment, landscape and recreation, and the extent to which impacts could be moderated. The application is supported by reports covering housing needs, economic benefits, ecology and landscape and recreation. However, it has not been demonstrated that there is no alternative means and locations that could deliver 77 units to support the proposal. The proposal is considered contrary to Policy SS8 when drawing broader conclusions as detailed within the report, including a lack of exceptional circumstance and the development not being in the public interest.

In terms of the Brixham Peninsula Neighbourhood Plan Policy E1 states that the natural beauty, landscape character, tranquillity and biodiversity of the Brixham Peninsula will be preserved and enhanced, and new development will need to

respect these qualities and wherever possible enhance them. Para E1.4 follows that priority will be given to protecting and enhancing the countryside from inappropriate development in accordance with Policy C1 of the Torbay Local Plan. As detailed the form of development is considered contrary to Policy C1 and hence the development holds conflict with Policy E1.

Policy E2 of the Neighbourhood Plan also provides central advice for development within the open countryside, which offers policy guidance that outside settlement boundaries, as is the case, certain forms of development may be permitted, provided that the rural and landscape character, wildlife habitats, green corridors and historic features are not adversely affected, and necessary mitigation measures are carried out to minimise any harm to the environment. General market and affordable housing are not one of the 8 forms of development that may be supported in principle through Policy C1 and hence the development is considered contrary to Policy E2 of the Neighbourhood Plan.

Policy BH9 of the Neighbourhood Plan outlines guidance for rural exception sites, which is aimed at helping deliver small scale specialist housing. As a major and predominantly market-led housing scheme with an affordable housing element the development is not considered a rural exception housing scheme, however the policy is relevant in terms of it stating the intent to resist major development within the AONB.

Turning to national guidance contained within the NPPF there is clear guidance regarding valued landscapes (which includes AONBs). Paragraph 180 includes guidance that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Paragraph 182 guides that great weight should be given to conserving and enhancing landscape and scenic beauty in such areas and furthers that the scale and extent of development within all these designated areas should be limited. Paragraph 183 concludes the specific advice on such landscapes and states that when considering applications for development within Areas of Outstanding Natural Beauty (and National Parks and the Broads) permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. The guidance cites that consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

For the reasons stated the principle of the development is considered contrary to the Development Plan and is deemed contrary to the NPPFs guidance in terms of the sites AONB context, as the Framework principally seeks to steer major development away from such designated areas and seeks development that protects and enhances the scenic beauty of AONBs. As detailed with Paragraph 183 guidance this should also be subject to considerations of any exceptional circumstances and

public interest, and the application of the presumption in favour of sustainable development, which are explored below.

### Exceptional Circumstances

As discussed as the site is within the designated South Devon National Landscape the NPPF (Paragraph 183) guides that, when considering applications for development, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. The guidance cites that consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

The application presents the case that the development of this site is a logical and sustainable extension to the existing settlement and will enable the delivery of acutely needed dwellings (in particular affordable homes) that will add to the housing supply in a positive manner, meeting the tests of the NPPF, where the acute housing need presents an exceptional circumstance, resulting in a high-quality landscape and ecology led scheme, with no significant landscape or visual effects. The central question is hence does the supply of housing, in the context of the current housing land supply and delivery shortfall, present an exceptional circumstance in this particular case.

It is not disputed that Torbay has a pressing housing shortage and urgent need for affordable homes. However, the Council's Strategic Planning Officer has advised that the Brixham Peninsula has to date met its housing requirement as set out in Policy SDB1 of the Local Plan, and noted that the major development at Inglewood, which has been recently commenced, will provide up to 373 dwellings (Planning Reference P/2017/1133 etc.) as an ongoing supply within the Peninsula. In the context of what appears a relatively strong housing supply within the Brixham Peninsula, certainly compared to the wider Torbay context, the Strategic Planning Officer has raised concerns in terms of the case for meeting the needs arising from outside the AONB by developing within the AONB, citing relevant guidance within the Planning Practice Guidance (Paragraph: 041 Reference ID: 8-041-20190721). In terms of the PGG guidance it relates to how development within AONBs should be approached and cites the following:

*“The National Planning Policy Framework makes clear that the scale and extent of development in these areas should be limited, in view of the importance of conserving and enhancing their landscapes and scenic beauty. Its policies for protecting these areas may mean that it is not possible to meet objectively assessed needs for development in full through the plan-making process, and they are unlikely to be suitable areas for accommodating unmet needs from adjoining (non-designated) areas...”*



In the context that the Brixham Peninsula appears to be meeting the housing needs for the area that are identified within the Local Plan and has an ongoing supply forecast from the build-out of the consented development for 373 dwellings at Inglewood, together with some allocated sites within the built up area, the housing supply context is not considered to present an exceptional circumstance to justify the development in this particular context. As such, without an exceptional circumstance, Paragraph 183 guides that permission should be refused for major development.

#### Presumption in Favour of Sustainable Development.

Torbay's wider housing shortfall means that the NPPF's presumption in favour of sustainable development must be applied to housing applications.

Applying the Presumption in Favour of Sustainable Development, as outlined within Paragraph 11(d) of the NPPF, means granting permission unless:

(i) the application of policies in the NPPF that protect areas or assets of particular importance (this includes the policies relating to an Area of Outstanding Natural Beauty) provides a clear reason for refusing the development proposed; or

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

In accordance with Footnote 8 and Paragraph 11(d) of the NPPF the policies within the Local Plan which are most important for determining the proposal are out-of-date, however the Neighbourhood Plan policies are not, having been afforded protection until June 2024 through the NPPF(2023). The presumption in favour of sustainable development indicates that planning permission should be granted unless one of two circumstances apply. Limb (i) of Paragraph 11(d) which refers to a situation where the application of policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. As detailed in this instance this is relevant in terms to the AONB context for the site.

The policy guidance in Paragraph 180 of the NPPF seeks to protect and enhance AONBs and Paragraph 182 states that great weight should be given to conserving and enhancing scenic beauty within AONBs. Paragraph 183 further states that permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. As detailed within this report the development will present harm to the of AONB's landscape and scenic beauty, and the application of these policies which protects the AONB, is considered to provide a clear reason for refusing the development proposed and hence the presumption in favour of sustainable development does not apply.

Notwithstanding that the 'tilted balance' is not engaged (although having been considered) the supply of housing should still be considered within the balancing exercise as a public benefit, which will be addressed within this report.

In addition to the above matters regarding Paragraph 11 the NPPF also outlines within Paragraph 12 that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making, and that where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

In regard to Paragraph 12 the overriding policy intent in the Local Plan and the Neighbourhood Plan is to deliver major housing growth within Future Growth Areas and the built-up area, and to protect the integrity of the AONB and the open countryside. The proposal is, as concluded above, counter to these policy ambitions. The Neighbourhood Plan, under the NPPF (2023) is afforded additional protection until June 2024 and Paragraph 14 of the NPPF states that in situations where the presumption applies the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits.

#### Conclusion on the principle of development:

The development is considered contrary to the Development Plan and national guidance contained within the NPPF and, as major development within the AONB, without exceptional circumstances, the development is considered unacceptable in principle.

This position is however subject to wider policy considerations that are relevant to the development proposal and consideration of relevant material considerations, the forthcoming sections of the report will discuss these matters.

## **2. Visual Impact (Including Impact on the National Landscape), Layout and Design**

Whilst the proposal only seeks detailed consent for the proposed access, being in outline with all other matters reserved for future consideration, the submitted information does include an indicative proposed site layout and indicative detail on the likely character and appearance of the development proposed in outline. In terms of the consideration of this application it is necessary to determine on the likely visual impact and impact upon the South Devon National Landscape, and to determine whether the submitted detail provides sufficient comfort that the amount of development (up to 77 dwellings) could be appropriately achieved in terms of its layout, design, and character.

#### Visual Impact (Including Impact on the National Landscape),

Policy SS8 of the Torbay Local Plan states that within the AONB the conservation of the landscape and scenic beauty, biodiversity and geodiversity will be given great weight and afforded the highest status of protection. Policy SDB3 furthers that the Area of Outstanding Natural Beauty around Brixham, including Berry Head National

Nature Reserve, St. Mary's Bay and the wider Brixham urban coastal fringe, will be conserved and enhanced to protect its intrinsic landscape and biodiversity value, and for recreational and tourism purposes. Policy C1 states that in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, development will be resisted where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting. Policy E1 of the Brixham Peninsula Neighbourhood Plan offers a similar policy landscape, as does national guidance contained within the NPPF.

The application is accompanied by an Environmental Statement which includes a Landscape Visual Impact Assessment (LVIA). A desk-based study of the LVIA has been undertaken by the Councils Landscape consultant to consider its findings (WSP) and the South Devon AONB Unit have also provided comments.

In terms of the applicant's submission the LVIA concludes that the landscape effects are considered to be not significant. It is suggested that the greatest level of change would be at the very local level, with direct effects on the site and the immediately surrounding area, and furthers that wider effects are limited to areas of higher ground at some distance from the site. The submission concludes that overall, the effects would not result in widespread or substantial degradation of the landscape as a resource and that there would be no loss of integrity of the designated AONB. In terms of impacts on visual receptors it is reported that there would be moderate effects on the quality of views from houses overlooking the site, and that overall, whilst adverse visual effects are predicted, they will not lead to widespread or present a substantial visual impact.

The Councils' landscape consultant for this application (WSP) has undertaken a desk-based peer review of the LVIA. The peer review being aimed at concluding on the soundness of the report, including in relation to potential effects upon the South Devon AONB. WSP as consultant landscape advisers conclude that whilst there are a small number of slightly differing conclusions none of these materially affect the outcome of the LVIA in terms of findings of significance. The advice offers that the only significant effects are deemed to occur during the construction phase, but these are temporary in nature and restricted to the construction period only. In terms of the central questions around the AONB, WSP agree with the conclusion that the special qualities have a low to medium sensitivity to change, and that construction impacts would be 'slight adverse' and operational impacts would be 'minimal adverse'.

In terms of the South Devon AONB units' comments the response offers a significantly different position on the developments impact upon the AONB, stating that the scheme would have a significant adverse impact on the AONBs special qualities. The comments cite an unacceptable loss of agricultural land to built development in what is stated as being a strategically important location for maintaining the open and rural character of the AONB. The suggested position is that the proposal fails the principal policy tests as set out in the development plan and NPPF, and that there are no exceptional circumstances that have been demonstrated to be in the public interest and permission must therefore be refused.

In terms of concluding on the likely impacts it seems clear that the development would fundamentally and permanently alter the character of the site itself, resulting in a loss agricultural land with a rural character and subsequently presenting a somewhat suburban built form and character on the land. The extent of built form would demonstrably impact the site and the existing field pattern and it is clear that open countryside within the AONB would be lost. It is noted that rolling farmland is one of the special qualities of the South Devon AONB as detailed within the South Devon AONB Management Plan. The proposals include the removal of the existing field hedge along the boundary of the site with Copythorne Road to deliver the detailed access and present access to dwellings for the amount of development shown within the indicative layout. The removal of this prominent natural feature to deliver a suburban frontage will present demonstrable harm to the landscape and scenic beauty.

In terms of material considerations there is reference within the application to the sites position immediately adjacent to detracting housing development. The presence of residential development adjacent to the site does influence the setting but not the sites character within the AONB. The site itself remains undeveloped and is deemed to be a visually pleasant field system that is a positive element to the AONB, and one that is publicly evident when kinetically experiencing the area.

Drawing matters together it is concluded that the proposed development is likely to have some adverse impacts on the AONB in terms of an impact upon the special qualities that define its scenic beauty. It would not conserve or enhance the beauty of the AONB and would therefore conflict with Policies SS8, SDB3 and E1 of the Development Plan, and advice contained within the NPPF, notably Paragraphs 180, 182 and 183. Consideration has been given to the adverse effects of the development being seen within the context of the existing housing development, but this factor would not demonstrably diminish the overall impact of the development within the AONB.

### Layout and Design

It is important to note that achieving good design is a central thread within national guidance and Part 12 of the NPPF “Achieving well-designed and beautiful places” offers key guidance on this. Guidance within Part 12 broadly offers that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, that good design is a key aspect of sustainable development, and it being integral that developments function well and add to the overall quality of an area, are visually attractive, are sympathetic to local character, establish or maintain a strong sense of place, and create safe, inclusive and accessible environments. The NPPF also guides that development that is not well-designed should be refused.

Similar design expectations are engrained within the Development Plan through Policies SS11, DE1 and DE4 of the Torbay Local Plan and BH5 of the Brixham Peninsula Neighbourhood Plan.

The submitted information on the layout and general design characteristics are indicative only and seek to demonstrate that the amount of development can be

provided satisfactorily. This is the key consideration at this stage.

The indicative layout presents a relatively loose density of development with housing on the lower areas of the site with open space on the higher parts, which appears a reasonable concept. Commentary supporting the application details a hierarchy of roads with a primary route feeding secondary routes and private drives, with properties generally fronting the road. The concept of a street hierarchy is supported, as is a 'perimeter' form of development with principal active elevations fronting the public realm. A mix of building types is suggested, and this is supported in terms of delivering detached, semi-detached, and terraced properties. In terms of scale the proposal suggests a mix of single and two storey dwellings, which also appears a suitable response to the context. In terms of appearance the indicative concept seeks to reflect the variety in the townscape and to have simple and contemporary aesthetic that references the local vernacular. Materials suggested include brick, render and tiled roofs. The appearance and materials should seek to respond positively to the rural context and duly reflect the National Landscape context within which it sits. It is uncertain that sufficient reference is currently offered on delivering high-quality contextual buildings. In terms of landscaping the proposal is for a landscape-led approach, which is a supported concept. The extent of public open space is supported, as is the retention of features, such as trees and hedges, where possible. National guidance support street trees and the indicative layout does to a degree offer trees within the public realm and plot frontages. There is a central spine of retained green infrastructure which is welcomed, although there is a question whether the layout makes best use of this green infrastructure as an integrated element of the development.

The proposals, as an outline package, are considered to provide sufficient comfort that the amount of development could be achieved on the site, in terms of delivering a good residential standard in terms of buildings, parking, open space etc.

However, notwithstanding the above it is noted that the proposals have not been subject to or engaged with the design review process, which is supported within national guidance, and it would appear beneficial that any future reserved matters are evolved and informed by such a key design planning tool, certainly when considering the sites context within a National Landscape, in order to aid delivery of an adequately positive development, should outline consent be granted.

To conclude in terms of layout and design it is considered that the proposed detailed access arrangement and indicative layout, sufficiently demonstrates that the proposed development is likely to be achievable within an acceptable layout and design through an appropriate design process. The proposal is therefore on balance considered to be in accordance with Policies SS11, H1 and DE1 of the Torbay Local Plan, Policy BH5 of the Brixham Peninsula Neighbourhood Plan, and the NPPF.

### **3. Access, Movement and Highway Safety**

In terms of national guidance the NPPF (Paragraph 114) guides that when assessing developments it should be ensured that (a) appropriate opportunities to promote sustainable transport modes can be (or have been) taken up, given the type of development and its location; (b) safe and suitable access to the site can be achieved

for all users; (c), the design of streets, parking areas, other transport elements reflects current national guidance, and (d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree. Paragraph 115 furthers that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Policy TA2 of the Local Plan states that all development should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. For major developments this means that a good standard of access for walking, cycling, public and private transport should be provided.

The Brixham Peninsula Neighbourhood Plan offers some guidance in regard to access to new developments should comply with the relevant adopted standards (Policy BH8), and that all new development should include safe walking and cycling access and seek to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists (Policy T1).

In terms of access the application seeks detailed approval for a new vehicular junction off Copythorne Road, which is to be located opposite the existing Lakes Road junction. The junction presents a 5.5m carriageway into the site with 2m wide footways to both sides. The proposals also include highway works to provide a 2m wide footway along the frontage of the site along Copythorne Road and include proposal for dropped kerbs across Copythorne Road near to Norther Boundary Road and near to Lakes Road, and across the proposed carriageway into the site.

The proposed junction and connected highways works are considered acceptable and are considered to provide a suitable and safe access for the amount of development proposed, having the support of the local highway authority.

In terms of the broader strategic capacity of the road network and potential impacts further information submitted, responding to highway authority questions regarding growth factor and other committed development, has satisfied the local highway authority that the development would not unduly impact the wider network, citing only a negligible impact on strategic junctions and no notable cumulative impacts on the network. The highway authority is also satisfied that the conclusions made would remain sound should Copythorne Road become a location of a potential traffic free cycle route, as detailed within the Torbay Council Local Cycling and Walking Infrastructure Plan (LCWIP), adopted by the Council in April 2021.

In terms of broad movement patterns and opportunities the site sits at the edge of the existing Brixham settlement boundary and any development would directly connect to the adopted highway network serving the existing suburbs and wider town. The development would hence benefit from safe walking and cycling routes utilising the public network to local services, and the wider town centre, which is roughly a 5-minute cycle or 15–20-minute walk. In terms of other non-car modes options, the site would be close to local bus routes with an hourly local service being available immediately adjacent to the site and the Number 12 Brixham-Newton Abbot route

being available a few hundred metres away along New Road (A3022). The site is hence relatively sustainable in terms of travel and movement options.

In terms of the development itself as the application seeks to reserve all matters other than access the internal network of roads and walking and cycling permeability will ultimately be determined through a future reserved matters application should planning permission be granted. This would include, via a planning condition, for all roads and footpaths to be built to an adoptable standard and for maintenance and management regimes to be agreed should the road not be put up for adoption by any future developer. In additional swept path detail would be necessary to understand that waste and emergency vehicles could adequately access the site. These matters are required to ensure that road safety and occupier amenity through the life of the development are not compromised.

Considering the points above and having regard to guidance contained within the NPPF, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (Paragraph 115), the proposal is considered acceptable on highway and movements grounds, and in accordance with the Policies TA1 and TA2 of the Local Plan, and in broad accordance with the Brixham Peninsula Neighbourhood Plan and the NPPF.

#### **4. Drainage and Flood Risk**

National guidance contained within the NPPF cites that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere (Paragraph 173). It also guides that Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate (Paragraph 175).

Policy ER1 of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere. Policy ER2 of the Local Plan includes reference that development proposals should seek to minimise the generation of increased run-off, having regard to the drainage hierarchy, whereby surface water will discharge following the hierarchy of i) an adequate infiltration system (for example swales, soakaways, infiltration basins, filter drains, rain gardens), or where that is not reasonably practicable; ii) a main river or water course, or where that is not reasonably practicable; iii) a surface water sewer or highway drain, or in the last resort where none of the above are reasonably practicable; iv) to a combined (foul and surface water) sewer, where discharge is controlled to be at greenfield discharge rates.

The site is within Flood Zone 1, which is the lowest level of flood risk, however it does sit within the Torbay-wide Critical Drainage Area, as designated by the Environment Agency. Guidance relating to the Critical Drainage Area states that all new development should play its part in reducing current rainfall runoff rates, and that surface water runoff from future development must be managed to ensure that an overall reduction in flood risk is achieved.

The application is supported by drainage information that seeks to demonstrate that the amount of development proposed could be managed without increasing the risk of flooding within the site, or to land or buildings adjacent. Ultimately as the application is made in outline the layout and exact extent of buildings and hardstand is not known or fixed at this stage, it is acceptable to seek a demonstration that the likely form of development can be adequately managed. If granted planning permission a planning condition would be necessary to secure that any future reserved matters to include a detailed drainage solution.

The drainage system supporting the application details an infiltration surface water drainage strategy to manage the surface water runoff from the site. The system includes an infiltration basin sited to the northwest corner of the site, which will be supplemented with a series of swales that will form linear features within the public open space. It is proposed that wider soakaway options will be considered at a more detailed stage of design. Detailed information can be found within the Flood Risk Assessment and Drainage Strategy, and an addendum that responded to initial comments from the Council's drainage engineer.

The submitted detail, following the receipt of further information, has successfully shown that the proposed drainage strategy for the submitted indicative layout would adequately manage surface water and present no risk of flooding from the critical 1 in 100-year storm event plus 50% for climate change and 10% for urban creep.

Based on the above there is no objection to outline planning permission being granted for the development on drainage and flood risk grounds. Any grant of permission should however be subject to a condition requiring the developer to submit a final drainage design for approval once the reserved matters sets the detailed design parameters. The proposal is, for the reasons above, considered to be in accordance with Policies ER1, ER2, SS2 and SS7 of the Local Plan, and guidance contained within the NPPF.

## **5. Ecology and Biodiversity**

Policy SS8 of the Local Plan states that all development should have regard to its environmental setting and should positively contribute to the conservation and enhancement of the natural assets and setting of the Bay. Policy NC1 of the Local Plan seeks for development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development. National guidance in the NPPF seeks similar outcomes in terms of minimising impacts on biodiversity through avoidance, mitigation or compensation and guides that where there is significant harm planning permission should be refused (Paragraph 186).

In terms of the ecology the site comprises of three fields within a wider agricultural landscape that spreads south and west. The fields are bound by hedgerows with occasional semi-mature and mature trees present. The use is a mix of pasture and intensive agriculture. In terms of ecological context, the site sits within the Sustenance Zone associated with the Greater Horseshoe Bat Roost at Berry Head that forms part of the South Hams Special Area of Conservation (SAC) and is within the Zone of Influence for recreational pressures upon the associated Calcareous Grasslands at Berry Head.



The application package includes an Environmental Statement and an ecology appraisal, which seek to identify ecological constraints and propose suitable management and mitigation to make the development acceptable on ecology grounds. The chief constraints identified within the submission package are the impact upon the Greater Horseshoe Bats (associated with the South Devon SAC) and associated recreational pressures at Berry Head, and potential impacts upon Cirl Bunting breeding territory and broader foraging and commuting bat species.

The application has been reviewed by Devon County Council ecologist acting on behalf of the Local Authority and consultation comments have been received from Natural England and the RSPB.

In regard to the potential impact upon GHBs associated with the South Hams SAC the County Ecologist has undertaken a Habitat Regulations Assessment / Appropriate Assessment (HRA/AA). The conclusions of the AA are that subject to mitigation the development would not have a likely significant effect on the South Hams SAC or the associated calcareous grassland in terms of mitigating additional recreational pressures. The conclusions of the Council's AA are supported by Natural England.

In terms of impact upon cirl buntings, habitat enhancement is detailed, and the County Ecologist is content to recommend a planning condition for future reserved matters to include repeat surveys together with associated mitigation. The RSPB advises that should outline consent be granted all habitat mitigation should be secured and managed in perpetuity.

In terms of foraging and commuting bats and other protected species and important habitats the County Ecologist is content that adequate management and mitigation can be secured by planning conditions to frame the construction and operational phases of the development.

In-line with advice from Natural England and the Council's ecology advisors the proposal is considered acceptable on ecological and biodiversity grounds for the reasons stated above, in-line with the aspirations of Policies SS8, NC1 and C4 of the Local Plan, The Paignton Neighbourhood Plan, and advice contained within the NPPF.

## **6. Residential Amenity**

The NPPF guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience (Paragraph 135). The Torbay Local Plan contains policy guidance aligned with the aspirations of the NPPF, principally through policies SS11, H1 and DE3, towards ensuring that residential development produces high-quality living environments that present a good level of amenity for future users and neighbouring occupiers. Policy DE3 also identifies size standards for self-contained units, which reflect national space standards.

The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through restricting hours of construction and agreeing processes to limit delivery and construction movement and parking impacts using a planning condition/s if planning permission were granted. Such management would similarly protect the amenity of future occupiers that may move into the development during the construction phase.

In terms of the development itself the residential use aligns with the residential uses nearby and the additional dwellings would not result in undue noise or general disturbance for existing occupiers in the area.

In terms of location although the site sits outside of the settlement boundary for Brixham the fringe location, which is adjacent to established residential areas, will present a largely sustainable location for future occupiers. The development will abut and link to the existing suburban network of adopted roads and public footpaths, offering permeable routes to the wider urban area, and to the associated facilities and services found within Brixham. There is a bus stop opposite the site offering access to a local service and the site is relatively close to New Road, where the bay-wide Number 12 route is available. Local shops are also present within walking distance at Pillar Avenue, a designated Local Centre within the Torbay Local Plan. In terms of location of future occupier amenity alone the site would present a suitable, sustainable, location.

In terms of wider matters as the layout, scale, appearance and landscaping of the proposed development are reserved for future consideration at reserved matters stage considerations of amenity fixed solely on whether the indicative detail presents sufficient comfort that the amount of development could be delivered within an acceptable form without undue impact upon adjacent amenity or the amenity of future occupiers within the development. Hence should planning permission be granted impacts will be scrutinised at reserved matters stage when there is a detailed form of development presented.

In terms of the level of amenity afforded future occupiers of the development itself the indicative proposals are limited to layout plans, with no indicative housing types or internal layouts submitted. Information to scrutinise is therefore limited. In terms of general outlooks and natural levels of light the layout presents a relatively open and well-spaced development that is likely to offer good levels of both. Privacy levels are also likely to be adequate considering the likely relationships and distances between properties. Internal size standards cannot be scrutinised in any great detail, but the footprints appear to present dwellings that would achieve or exceed national space standards. It cannot be scrutinised whether bedroom standards would be met but if outline consent is granted the reserved matters stage would provide the opportunity to scrutinise the internal living environments. Gardens are largely generous within the indicative layout however plots 23 and 24 appear substandard to the local plan policy expectation of no less than 55sqm. Plots 26-29 would present similar concerns unless these plots are apartments with shared gardens. In terms of ancillary elements garages are prevalent through the indicative layout however the sizes do not meet the standard outlined within the Torbay Local Plan. the narrow width of these elements is likely to present conflict of use for parking and diminish their use for such purposes. Although parking standards are met with 2 spaces per

dwelling aside to these elements the expected internal sizes would be to the detriment of occupier amenity for future resident's wishing to park vehicles within them, and as a linked matter would likely present additional visible parking as an influencer to any likely visual character outcomes. In terms of other expected ancillary features cycle parking facilities should be delivered in terms of 2 spaces for dwellings and 1 for any apartments. This level of detail is not indicated on the indicative plans.

In terms of ancillary elements that influence residential quality parking, cycle parking and waste storage are key domestic elements to consider. The indicative plans show 2 parking spaces per dwelling, which is the policy expectation within the Development Plan. These are indicatively shown as being largely delivered on each plot, however there is a central shared rear courtyard for a few properties. Electric parking facilities should be delivered for every dwelling, and this is suggested to be clarified by a planning condition for future reserved matters to include. Cycle parking facilities are not shown and would need to be evolved within a future reserved matters application, to deliver 2 cycle spaces per dwelling. This is suggested to be secured by planning condition, similar to the final parking provision. Considering the likely form of dwellings cycle parking could readily be delivered within ancillary structures on-plot and hence the lack of indicative planning is not considered unacceptable in terms of consideration of this outline application. In terms of waste storage, like cycle parking, there appears to be the opportunity to deliver storage facilities within gardens. Where plots do not have natural collection areas to the frontage it would be expected that future reserved matters detail did include collection day point detail within the layout where needed. Within the indicative layout this may apply to a number of plots. Such detail would seek to ensure suitable 'drag' distances and collection areas that would minimise potential obstruction to footpaths or unsuitable use of landscaped areas.

In terms of existing adjacent occupiers considering the indicative detail presented it is expected that the amenity of occupiers across Copythorne Road would not be unduly impacted due to the likely front-to-front distances across the public highway. The indicative relationships across the eastern border towards properties within Wayside and Wayside Close do not appear unreasonable from an amenity perspective considering the likely scale and subsequent relationships. Fields sit to the south and west and hence there would be no impact from development in these directions. On the information available the indicative layout presents dwellings that are unlikely to cause undue loss of light, outlook, or privacy for adjacent occupiers. As the proposals are currently indicative any grant of consent would not fix the final form of development and the future reserved matters would present the point in time to scrutinise the relationship and likely impacts in detail, when the final layout and form, and hence distances to neighbours, levels etc will be proposed.

It is noted that the proposals have not been subject to or engaged with the design review process, which is supported within national guidance, and it would appear beneficial that any future reserved matters took advantage of such a key design planning tool, certainly when considering the sites context within a National Landscape, in order to aid delivery of an adequately positive development, should outline consent be granted.

In summary the proposal appears to demonstrate the potential to provide a satisfactory form of development in terms of protecting the amenities of adjacent occupiers, but greater scrutiny on this will be undertaken at reserved matters stage. On the information available the development is also considered to evidence scope to deliver the amount of development proposed in a form that could accord with Policies SS11, DE1 and DE3 of the Torbay Local Plan, and guidance contained within the NPPF.

## **7. Low Carbon Development and Climate Change**

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources. Policy ES1 seeks to ensure that carbon emissions associated with existing buildings (heating, cooling, lighting and energy consumption) are limited.

National guidance in the NPPF contains similar goals and is clear that the planning system should support a transition to a low carbon future (Paragraph 157), and that new developments should be planned to reduce greenhouse gas emissions (Paragraph 159), and take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption (Paragraph 162).

The application is supported by an Energy Statement that details how site wide energy saving elements coupled with new building regulations are to ensure the development is a "step change" in terms of energy usage compared to the majority of the housing stock in Torbay. The Statement outlines the following energy saving elements;

- Scheme designed so that the orientation of the homes will benefit from solar gain.
- Charging points for electric cars.
- Provision of cycle storage.
- Encourage connectivity by foot and bicycle.
- Drainage strategy to adopt a SUDS approach.
- Provision of water butts to recycle rainwater for use on the gardens.
- Provision of ultra-fast broadband to allow/encourage home working.
- Travel Plan to provide information on pedestrian, cycle and bus routes/public transport services.
- An aspiration to recycle up to 90% of the building waste from the site whilst keeping the waste levels low in the first place.
- Wastewater Heat Recovery units to showers.
- Decentralised Mechanical Extract running extract fans.
- Double glazed windows with Planitherm 1 glass and Argon filled units.
- Smart time and temperature controls to heating zones.
- Measured thermal junctions.
- Low energy LED lighting to provide 80 lumen per circuit watt.

The Statement also details changes to Building Regulations that the homes will benefit from the new Building Regulation Part L changes, detailed as a significant

step forward towards the Government's zero carbon objectives. Key Changes to Approved Document L are to deliver a 31% reduction in CO2 emissions beyond the 2013 Part L and new dwellings will now be assessed on the following three criteria;

1. CO2 emissions
2. Fabric Energy Efficiency (FEES)
3. Primary Energy

The Statement offers that in practice Part L will mean that instead of gas boilers the primary energy will be from Air Source Heat Pumps, Photovoltaic cells on the roofs and on larger homes an electric battery which will help store the solar energy.

The principle of the sustainability approach proposed is acceptable however details would need to be conditioned and /or submitted at the reserved matters stage to ensure the development is in accordance with Policy SS14 and ES1 of the Torbay Local Plan and advice contained within the NPPF.

## **8. Other matters**

### Housing Supply (including affordable housing)

The Government published the most recent Housing Delivery Test in December 23, with Torbay's figure being 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required). This means that Torbay must apply the presumption in favour of sustainable development in Paragraph 11 of the NPPF. In terms of additional relevant information Torbay's most recent housing land supply (April 2023) is that there is 2.17 years supply, which is a significant shortfall.

In terms of the proposal being considered the development will deliver 77 dwellings, 50 of which would be open market units and 27 of which would be affordable units, which would present a significant benefit for the area.

However, notwithstanding the above despite the significant shortfall within Torbay it is apparent that Brixham (Peninsular) has to date met its housing requirement as set out in Policy SDB1 of the Local Plan, and the recently commenced major development of 373 houses at Inglewood (planning permission P/2017/1133) is set to provide an ongoing supply within the peninsula. In this context it is reasonable to balance the above referenced benefit of housing supply to address Torbay's wider housing supply shortfall, with the understanding that the more localised Brixham Peninsula housing needs being met. Consideration therefore should be given to the issues of meeting housing needs arising from outside the National Landscape by developing inside its borders, which is counter to Planning Practice Guidance ("How should development within National Parks, the Broads and Areas of Outstanding Natural Beauty be approached": Paragraph: 041 Reference ID: 8-041-20190721).

In the context of Brixham's local performance in terms of housing delivery the significant benefit of 77 open market and affordable units is deemed, on balance, to be reduced, when having regard to the sensitivity of the national Landscape designation within which the site sits. It is still however a significant benefit, but one of a lesser scale when factoring in localised needs.

In addition although the presumption in favour of sustainable development must be considered, as detailed within this report it does not apply in this case due to policies in the NPPF that protect areas or assets of particular importance providing a clear reason for refusing the development proposed (in accordance with paragraph 11(d) limb i. notwithstanding this the provision of housing still holds substantial weight in terms of a public benefit. In this particular context Policy BH4 of the Brixham Peninsular Neighbourhood Plan still holds full weight (albeit until June 2024), and the provision of housing within his site is clearly contrary to the policy when considered in conjunction with Policy C1 of the Local Plan.

### Loss of agricultural land

Policy SC4 and Paragraph 180(b) of the NPPF recognises the natural capital associated with the Best and Most Versatile Agricultural Land (BMV)

It is acknowledged within the application that the land has value as it is currently used for sheep grazing/arable, but suggests it is a small parcel of land in agricultural terms. It does sit however as part of a wider field system and is not small and isolated. Supporting information furthers that sites of higher grade land close to sustainable settlements are preferential for meeting housing needs to lower grade sites being isolated from other development. It is presented that whilst the land is considered to have economic value attributed to agricultural production, the benefits in terms of the appropriate location for development (particularly given the deficit in a 5- or 3-year housing land supply), the social benefits should be balanced against the loss of a small area of agricultural land in terms of justification.

It is suggested that a condition be imposed to ensure appropriate re-use of soil in line with Natural England advice.

Strategic Planning Team has commented that the community orchard is welcomed as it will conserve and make best use of the BMV in the suggested orchard area. However away from this the top and sub soil on Field F1 and F2 should be removed in accordance with site-specific Soil Resource Plan (SRP), and applicable guidance (e.g., Defra Construction Code (2009)) to avoid/reduce impacts.

The constraint in terms of Best and Most Valuable agricultural land is considered to weigh against the development however, it does itself, not present a reason to refuse the application where design and planning conditions could partly mitigate and limit any impact.

### Minerals Safeguarding Area

The application site is within a wider Minerals Safeguarding Area (MSA) for limestone, designated as a known location of this specific mineral resources and to ensure these resources are not needlessly sterilised by non-mineral development.

It is presented within the application that MSAs carry no presumption that the resource will be worked and offers that the landowner has no intention of quarrying the site. It is also presented that a commercial extraction may itself present some

conflict with the landscape sensitivity of the National Landscape. This assumption appears reasonable in terms of potential impact upon a nationally valued landscape.

When considering the designation and the sites context within the National Landscape the benefits of housing are likely to outweigh the harm in terms of mineral safeguarding, and is not considered a matter in itself that would outweigh the benefits of housing supply were the development be considered suitable for planning approval more widely.

## **Sustainability**

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. The NPPF definition of sustainability has three aspects which are economic, social and environmental. Each of which shall be discussed in turn:

### **The Economic Role**

Housing development is recognised as an important driver of economic growth and there would be economic benefits to the construction industry from the proposed development.

The submitted Economic Benefits Statement suggests that the construction phase would likely deliver 238 direct and indirect jobs based on an industry standard methodology. In addition, once the dwellings are occupied there would be an increase in the level of disposable income from the occupants some which would likely to be spent in the local area and an increase in the demand for local goods and services. Council tax revenue is also a cited benefit as are the S106 obligations, although it should be noted that such obligations are to mitigate the impact of development upon certain services or infrastructure. The Statement also cites the generation of new homes bonus to the Authority.

Aside the above matters contained within the Statement as detailed within this report there is deemed to be harm to the South Devon National Landscape and the landscape beauty of the area is a positive USP for the tourism industry. It is hence reasonable that the development may present some harm to the tourism industry as an economic impact. In addition, the loss of farmland and the potential food/crop production is considered to weigh negatively against the scheme as an economic impact.

On balance the economic element of sustainable development the balance is still considered to be slightly positive.

### **The Social Role**

The principle social benefit of the proposed development would be the provision of additional housing including affordable housing. Given the NPPF priority to significantly boost the supply of housing the additional dwellings to be provided must carry significant weight in this balance.

The edge of settlement location presents access the services and facilities within the built-up area of Brixham, which is a positive element for future occupiers.

Public greenspace including play space and an orchard is to be provided, which is considered a social benefit of the scheme to the wider public.

The loss of farmland and potential food/crop production is considered to weigh negatively against the scheme as a social impact.

On balance, the social impacts of the development weigh in favour of the development.

### **The Environmental role**

With respect to the environmental role of sustainable development, the development of the site within the South Devon National Landscape would result in the permanent loss of an area designated for its landscape quality and tranquillity and impact on the overall landscape quality and scenic beauty of National Landscape. Great weight should be given to harmful impact on the National Landscape.

The development would result in biodiversity net gain which is a positive impact. Drainage management is considered to present a neutral impact where the current site is farmland.

It is concluded that the adverse environmental impacts of the development weigh heavily against the development due to the impact upon landscape of national importance.

### **Sustainability Conclusion**

Having regard to the above assessment the proposed development is not considered to represent sustainable development principally due to its significant impact upon a landscape of national importance.

### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Act, and in particular Article 1 of the First Protocol and Article 8 of the Act. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity,



race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

## **Local Finance Considerations**

### **S106 Legal Agreement**

The following are to be included in Heads of Terms for a legal agreement, which should be completed prior to any planning consent being issued. Triggers and instalments in relation to the proposed financial contributions would be agreed as part of the detailed negotiation of the legal agreement. If Members consider that the application is acceptable it is recommended that authority to progress and complete the legal agreement is delegated to officers.

### **Ecology**

Recreational impacts financial obligation to mitigate additional pressures upon the South Hams SAC in accordance with Policy SDB1 of the Torbay Local Plan and as identified as a necessary mitigation within the completed HRA/AA.

£135 per new dwelling in the Brixham Peninsula towards management/reduction of impacts on the Berry Head grassland, in accordance with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022). For 77 dwellings this would equate to an obligation of £10,395.00.

### **Affordable Housing**

For the proposal, which is a greenfield site and for over 30 dwellings, Policy H2 of the Torbay Local Plan identifies that 30% affordable housing should be provided on site. For a scheme of 77 dwellings this equates to an affordable housing provision of 23 units to provide a policy compliant development. Policy BH1 of the Brixham Peninsula Neighbourhood Plan re-states this ratio.

The proposal is to deliver 35% affordable housing on site, 5% above the policy expectation, which equates to 27 units. The proposal details that the design information regarding affordable housing provision, mix of unit types and sizes, is to be submitted for consideration at the Reserved Matters Stage to address local need.

Should the development be approved the proposed level of affordable housing (35%) should be secured within an accompanying legal agreement to include;

- 1) An affordable housing tenure split set out in accordance with Policy H2.
- 2) Provision for Adapted Housing (Policy H6) at 5% of the total dwellings.
- 3) An Affordable Housing Scheme to be submitted for the agreement of the Council as part of the reserved matters application.
- 4) Occupancy to accord with Policy BH2 of the Brixham Peninsula Neighbourhood Plan.

### **Sustainable Transport**

In accordance with Torbay Local Plan Policy SS7 and the Planning Contributions and Affordable Housing SPD (to open marking housing only) Sustainable Transport obligations should be secured.

For the development proposals of 50 Open Market Housing this would equate to £61,598.

Travel Plan Monitoring fee: £1,500 (contribution for the five-year Travel Plan monitoring period).

### **Public Open Space, Sport and Recreation**

In accordance with the Council's adopted Planning Contributions and Affordable Housing SPD residential developments are expected to provide public open space as part of their layouts to match the types of open space likely to be needed by residents, and enable a good level of access to sport, leisure and recreation facilities.

The breadth of facilities to support development are identified as:

- Playing Pitches
- Other Sport and Recreation Facilities
- Equipped play facilities for young people
- Greenspace/Open space
- Allotments/sustainable food production

The indicative layout includes a LEAP (locally Equipped Area of Play), general open space, and an orchard facility.

A development of the scale presented should include a LAP (Local Area of Play) for younger children as well as a LEAP and there appears opportunity to address this within a future reserved matters considering the indicative layout.

Were a LEAP, LAP, general open space, and an orchard secured through the grant of planning permission off site mitigation payment for playing pitches, other sports facilities, and allotments should be secured in accordance with the Councils Planning Contributions and Affordable Housing SPD for the open market dwellings. The level of obligation would be dependent on the detail contained within any future reserved matters application, based on property sizes.

### **Education**

Obligations in-line with the adopted SPD should be sought to secure increased school capacity within Brixham, based on the provision of open market housing, the detail of which will come forward at reserved matters stage, with the level of obligations informed by property sizes.

### **Lifelong Learning Obligations**

Obligations in-line with the adopted SPD should be sought to secure library improvements within the area, based on the provision of open market housing, the detail of which will come forward at reserved matters stage.

### **Waste and Recycling**

Obligations in-line with the SPD should be secured to provide waste and recycling facilities for properties that will be served by the Local Authority waste collection provider.

## **NHS Devon**

The site is not allocated in the Development Plan and as such development in this area would be additional to what the NHS is expecting.

Increase the physical capacity of GP surgeries to mitigate additional demand: £52,882.00.

## **CIL**

The application is for residential development in Zone 3 where the Community Infrastructure Levy (CIL) is not liable.

## **EIA/HRA**

EIA: The application is supported by an Environmental Assessment and is hence considered 'EIA' development in regard to the Environmental Impact Assessment Regulations 2017. The applicant's reasoning being that although the proposal is below the thresholds for EIA development the site is within a designated 'sensitive' area being within the South Devon AONB (now National Landscape), informed by a previous screening decision for 98 dwellings by the National Casework Unit. The submitted Environmental statement covers potential impacts on landscape/visual impact and ecology.

HRA: Due to the scale, nature and location the development has been subject to a HRA/AA under the Habitat Regulations to consider likely significant effect on European Sites. Please refer to the ecology section of the officer assessment.

## **Planning Balance**

The relevant legislation requires that the application be determined in accordance with the statutory development plan unless material considerations indicate otherwise.

As the application is for major development within the South Devon National Landscape and open countryside, which impacts the National Landscape, the development is in clear conflict with the Development Plan.

In terms of material considerations, the provision of 77 dwellings, including the provision of 27 affordable units is a significant public benefit in favour of the development where national guidance seeks to significantly boost the supply of homes. The weight afforded housing supply is not insignificant where the most recent Housing Delivery Test (December 2023) for Torbay was published as 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required), and Torbay's most recent housing land supply (April 2023) is that there is 2.17 years, which is a significant shortfall.

In terms of other matters that weigh in the developments favour there will be economic benefits through construction phase in terms of created jobs, and post

construction in terms of local household spend within the local economy. The stated biodiversity net gain also weighs positively within the planning balance, as would be the provision of public greenspace including play space and orchard within the scheme.

Weighing negatively within the planning balance, as detailed within the report, the site sits entirely within the South Devon National Landscape and the proposal is for major development that will have adverse impacts on the special qualities that define its scenic beauty.

In terms of other matters that weigh negatively within the planning balance is the loss of agricultural land and, as a material consideration, there is an overriding position of objection within the submitted public representations.

In terms of the central policy considerations the development is for major development within the National Landscape and the NPPF guides that planning permission should be refused other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest (Paragraph 183). Guidance includes that considerations should include; the assessment of the need for the development, including national considerations and impact of approving or refusing it on the local economy; the cost and scope for developing outside the designated area, or meeting the need for it in some other way, and; any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

As set out within this report although there is a pressing housing need within Torbay the Brixham Peninsula area is delivering its required housing need and this is expected to continue within the coming years. In the context housing supply is not considered an exceptional circumstance where the very local supply is in accordance with the Development Plan and where the development would detrimentally affect a nationally valued landscape. In terms of other relevant considerations the economic benefits, largely around job creation through the construction phase, are not uncommon for housing development and are not exceptional. It has also not been demonstrated that the (housing) need could not be met outside of the National Landscape, or in some other way, and there would be severe and permanent harm to the National Landscape.

When considering the planning balance, it must also be noted that the NPPF guides that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues (Paragraph 182).

It is also relevant that The Levelling Up and Regeneration Act has amended Section 85 of the Countryside and Wildlife Act and replaces a “duty of regard” with a stipulation that authorities “must seek to further the purpose of conserving and enhancing the natural beauty” of the AONB. This offers a clearer duty towards conserving and enhancing.

As a final point, as concluded within this report, it is also relevant within the planning balance to consider that on the application of the Presumption in Favour of

Sustainable Development it is considered that the application of the policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusing the development proposed (in accordance with paragraph 11(d) limb i. as such the 'tilted balance' is not engaged in this case.

### **Conclusions and Reason for Decision**

As major development within the South Devon National Landscape and open countryside, which presents harm to the National Landscape, the development is considered to be in overriding conflict with the Development Plan and national planning guidance. As it is concluded that there are no exception circumstances, and it is not deemed in the public interest, the recommendation is one of refusal.

### **Officer Recommendation**

Refusal, for reasons of;

#### **1. Conflict with the Development Plan**

The site lies within the South Devon National Landscape, is outside of the settlement boundary of Brixham and in the open countryside, is not within an identified Future Growth Area, and is not allocated for housing within the Torbay Local Plan or Brixham Peninsula Neighbourhood Plan. In the context of the site the development, which is a major housing scheme, is considered to be in significant and overriding conflict with the Development Plan and guidance contained within the NPPF regarding Valued Landscapes. In the absence of exceptional circumstances and a demonstration that the development is in the public interest, and in the absence of other material considerations that indicate that the development plan should not be followed, the development is considered contrary to Policies SS2, SS3, SS8, SDB1, SDB3, C1 and H1 of the Torbay Local Plan, Policies BH4, BH9, E1 and E2 of the Brixham Peninsula Neighbourhood Plan, and guidance contained within the NPPF, notably Paragraphs 11, 12, 14, 180, 182 and 183.

#### **2. Impact on the South Devon National Landscape**

The development, by reason of its major scale and expected form as a housing scheme, and its location within the South Devon National Landscape, would have a significant detrimental impact on the landscape character and scenic beauty of this part of the South Devon National Landscape, where the impact is not mitigated by exceptional circumstances and demonstrated it would be in the public interest. The proposal is therefore contrary to Policies SS2, SS3, SS8, SS11, SDB1, SDB3, DE1, C1, C4 and H1 of the Torbay Local Plan, Policies BH4, BH9, E1 and E2 of the Brixham Peninsula Neighbourhood Plan, and guidance contained within the NPPF, notably Paragraphs 11, 12, 14, 180, 182 and 183.

#### **3. Lack of a Signed Legal Agreement**

The proposal, in the absence of a signed S106 Legal Agreement, fails to secure the necessary mechanism to deliver site acceptability mitigation regarding ecology, acceptable levels of affordable housing, and sustainable development obligations regarding Public Open Space, Sport and Recreation, Sustainable Transport, Education, Lifelong Learning, Waste and Recycling, and Health contributions, together with the provisions for the maintenance of the public open space, play areas,

public access routes, and transport plan monitoring obligations, contrary to Policies SS7, SS8, SS9, H2 of the Torbay Local Plan 2012-2030 and the adopted Planning Contribution and Affordable Housing SPD.

### **Informative(s)**

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that, where possible, relevant planning concerns have been appropriately resolved. In this instance the Council has concluded that this application is not acceptable for planning approval for the reasons stated.

### **Relevant Policies**

#### **Development Plan Relevant Policies**

SS1 - Growth Strategy for a prosperous Torbay  
SS2 – Future Growth Areas  
SS3 - Presumption in favour of sustainable dev  
SS8 - Natural Environment  
SS9 - Green Infrastructure  
SS11 - Sustainable Communities Strategy  
SS12 - Housing  
SS13 - Five Year Housing Land Supply  
SS14 – Low carbon development and adaption to climate change  
SC1 – Healthy Bay  
SDB1 – Brixham Peninsula  
SDB3 - Brixham Urban Fringe and Area of Outstanding Natural Beauty  
TA1 - Transport and accessibility  
TA2 - Development access  
TA3 - Parking requirements  
C1 – Countryside and the rural economy  
C2 – The coastal landscape  
C4 - Trees, hedgerows and natural landscape  
H1 - Applications for new homes  
HE1 - Listed buildings  
DE1 - Design  
DE3 - Development Amenity  
DE4 – Building heights  
ER1 - Flood Risk  
ER2 - Water Management  
ER3 – Contamination  
ES1 – Energy  
W1 - Waste management facilities  
W2 – Waste Audit for major and significant waste generating development  
NC1 - Biodiversity and geodiversity

SDB1 - Brixham strategic policy area  
SDB3 - Brixham Urban Fringe and Area of Outstanding Natural Beauty

Bh2 - Occupation of new affordable homes

BH3 - Delivery of New Homes

BH8 - Access to New Dwellings

BH9 – Exception sites

E1 - Landscape beauty and protected areas

E2 - Settlement Boundaries

E7 - Protecting semi-natural and other landscape features

E8 - Internationally and nationally important ecological sites and species