

Ecology and Nature Conservation Proof of Evidence: David Harvey BEng MSc MCIEEM

**Appeal by Deeley Freed Estates against non-determination of
planning application:**

**Land to the South of White Rock, Brixham Road, Paignton
Appeal Reference: APP/X1165/W/20/3245011**

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- 1:** Charles Dixon, Savills: Report on the Implementation of the Farm Management Scheme

1.0 Personal Introduction and Endorsement/Declaration

- 1.1.1 My name is David Harvey and I am a senior ecologist at Nicholas Pearson Associates (NPA). I hold an MSc in Ecological Impact Assessment (EcIA) from Bath Spa University and I am a full member of the Chartered Institute of Ecological and Environmental Management (CIEEM). I have worked as an ecological consultant for over 10 years. I am also a guest lecturer at Bath Spa University where for the last 5 years I have taught bat ecology, survey methods and sound analysis.
- 1.1.2 In my role at NPA I have gained extensive experience in undertaking EcIA for a wide range of schemes including preparing information to inform a Habitat Regulations Assessment of a nuclear power station, Environmental Statement ecology chapters for large scale residential led developments and Natural England mitigation licences for university campus redevelopment. The NPA office is based in Bath and as such many of the schemes I work on relate to potential impacts of the Bath and Bradford-on-Avon Bat Special Area of Conservation (SAC) for which Greater Horseshoe Bats (GHS) are a primary reason for the selection of the SAC. Furthermore, I also have worked on projects which considered potential impacts to the South Hams SAC.
- 1.1.3 My evidence at this inquiry has been prepared to assist the decision-maker (the Inquiry Inspector) in respect of ecology and nature conservation matters, relating to the residential led outline planning application for Land to the South of White Rock, Brixham Road, Paignton (the Site) aka Inglewood.
- 1.1.4 I have been the project ecologist for the Inglewood project since March 2016 and have undertaken numerous surveys of the Site and prepared the ecology information (ecology chapter of the Environmental Statement (ES) (CD 1.17), Ecology Addendum (CD 2.20), Proposed Farming Practices Plan February 2018 (which is provided in the Framework Landscape and Ecological Management Plan (FLEMP) (CD 2.21) and

Ecology Briefing Note (CD 2.34)) that has supported the planning application. I also provided input into the Illustrative Masterplan (CD 2.13), Green Infrastructure Plan (CD 2.12), Proposed Phasing Plan (CD 2.17), Farm Management Plan (FMP) (CD 1.19) and FLEMP (CD 2.21).

1.1.5 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and professional opinions on the matters to which they refer.

2.0 Matters Agreed and Current Position

2.1 Overview

2.1.1 The planning application is supported by a body of ecology information and assessments as set out in the Core Document list and summarised below. They are also the documents which inform the Appropriate Assessment to be undertaken by the Inspector as part of the inquiry, with paragraphs 5.5.8-12 and 5.5.15-22 of the ecology chapter assessing potential impacts on the South Hams SAC.

2.1.2 These were prepared in accordance with best practice and with the aid of extensive dialogue with Torbay Council, Jacobs (acting on behalf of Torbay Council), Natural England (NE) and the RSPB.

2.1.3 The baseline ecology conditions, potential impacts and proposed mitigation measures were set out in the ecology chapter of the ES (CD 1.17).

2.1.4 The assessment within the ecology chapter was based on the proposals shown on the Green Infrastructure Parameter Plan, Framework LEMP (which included the Proposed Farming Practices Plan and Proposed Phasing Plan) and External Lighting Report (CD2.25), as well as measures set out within the chapter itself.

- 2.1.5 The 28ha within the redline planning boundary Site consists of approximately 22ha of potential cattle grazed pasture (*n.b.* some fields are manged in arable/winter fodder crop in rotation with grassland leys), 5ha of arable fields, two small ponds and 3.3km of hedgerows.
- 2.1.6 The White Rock off-site LEMP proposed crop free margins within the Inglewood land. Whilst no evidence of such margins was recorded, if the measures were undertaken in accordance with the LEMP over its 20 year period, it might be possible for approximately 0.4ha of grassland, approximating unimproved neutral grassland, to establish.
- 2.1.7 The proposed habitat losses are set out in paragraph 5.5.3 of the ES and shown in Figures 5.3a and 5.3b, with proposed habitat creation/mitigation measures set out in paragraph 5.5.6 and 5.5.7 of the ES.
- 2.1.8 The FMP was prepared to provide clarity (on a field by field basis) as what mitigation would be provided on the farmland.
- 2.1.9 An Ecology Addendum was prepared to provide clarification to queries raised during the planning application, reflect the amended proposals around the south-western edge of the proposed built development (which resulted in proposed increased hedgerow retention and woodland creation) and set out monitoring commitments.
- 2.1.10 The Addendum included an updated Proposed Phasing Plan and a Dark Areas Plan, with an updated Farming Practices Plan being included in an updated FLEMP. The updated Phasing Plan made it clearer which habitats would be delivered 1 year/growing season in advance of construction.
- 2.1.11 In December 2019 an Ecology Briefing Note was prepared to provide clarification to the case officer on matters that continued to be raised by third-party objectors.

2.1.12 Based on this information Torbay Council, NE and the RSPB concluded they have no ecology objection subject to appropriate mitigation being secured through S106 obligations or condition.

2.1.13 Given the age of the surveys that initially informed the application, which were predominantly undertaken in 2016, those that could reasonably give rise to different results and/or affect the assessment of the proposals were updated in 2018/19. These constituted surveys (and reporting) for breeding birds (CD 2.44), winter and breeding Cirl Bunting (CD 2.41), GHS (CD 2.42), other bats (CD 2.43) and habitat (CD 2.40). The results of these surveys were submitted to Torbay in January 2020 and circulated to Natural England and the RSPB. Torbay, NE and RSPB confirmed their position that that they have no ecology objection subject to appropriate mitigation being secured through S106 obligations or condition.

2.1.14 However, Brixham Town Council (BTC), who have been afforded Rule 6 Party status, have raised objections to the proposals throughout the application. Their objections are most recently set out within their position statement on ecology (CD 7.23).

2.1.15 Sections 2.2-2.5 below set out a more detailed summary of the position of the various parties.

2.2 Local Authority Position

2.2.1 Torbay Council took the application to planning committee to provide an indication of what its decision would have been if it formally determined the application prior to the appeal being lodged. The committee recommended that the application would have been refused on several grounds one of which (Reason 4 extracted below) related to ecology and nature conservation. I have reproduced Reason 4 below and have underlined sections that relate to ecology and nature conservation.

Reason 4 – In the absence of a completed S106 agreement there is no effective delivery mechanism required to ensure measures to mitigate the impact on the South Hams SAC, and the Landscape Ecological Mitigation Plan (LEMP) for both White Rock and the current proposal, highway network, critical drainage area. Nor could the provision of social infrastructure such as a school site, employment, affordable housing or public open space be ensured. This would be contrary to Policies SS1, SS5, SS8, NC1, SDB1, SS6, TA1, TA2, ER1, SC1, SC2, SC3, SC4 and H2 of the Torbay Local Plan 2012-30 and policies J4, E8, T1 and BH2 Brixham Peninsula Neighbourhood Plan.

2.2.2 One of the informatives of that decision states:

iii) Reason 4 relates to matters that appear on the basis of information currently before the LPA to be capable of alleviation via S106 Agreement (notwithstanding the outstanding objections on other matters).

2.2.3 The drafting of the S106 obligation is well advanced and continues to be progressed. This is not a matter discussed in detail as part of this proof but is dealt with in Mr Fitton's proof.

2.2.4 The Draft SoCG confirms that the Council are satisfied, subject to the proposed mitigation measures being secured, that there would be no adverse effect on the integrity of the South Hams SAC, either alone or in combination with other proposals or projects, and no significant impacts on other ecological receptors (including Cirl Buntings), and that there are no ecology issues that could not be overcome through legal agreement.

2.2.5 There is one matter of disagreement, in that the appellants do not agree with the Berry Head calcareous habitat aspect of the Council's most recent revised HRA (CD 2.48). The appellants consider that the proposal will not have a significant impact on it (based on the reasons I set out in section 4.4 below). The HRA identifies a Likely

Significant Effect upon calcareous grassland, which has led Torbay Council to request a contribution from the appellants in accordance with Local Plan policy NC1. Whilst the appellant disagrees with this element of the HRA, the S106 allows for the payment to be made should the Inspector deem this appropriate (including for reasons of policy compliance).

2.3 Consultee Positions

2.3.1 Natural England (CD 4.11) have no objection subject to appropriate mitigation being secured through a S106 obligation or condition. In their latest e-mail of 30th January 2020 (CD 4.29) to Torbay Council, in response to receiving updated ecology survey information (CDs 2.40-44), NE confirmed that the advice in their letter (CD 4.11) and e-mail (CD 3.3) still holds. They also stated it would be useful to put forward a comparative analysis between the 2016 and 2019 bat survey data sets (including a survey methodology comparison). This comparison (CD 2.42a) was submitted to Natural England who stated it was for Torbay to be satisfied with the comparative analysis. Torbay confirmed they were satisfied with the update ecology reporting within the planning officer's report to committee (paras 5.6.23 & 5.6.24 of CD 10.1) and the Decision Notice (CD 10.3). For completeness Torbay were also issued with the more detailed comparative in November 2020.

2.3.2 RSPB (CD 4.16) responded that if they have confirmation that Natural England is satisfied that the amended proposals are adequate in relation to GHS and that the funding and security mechanisms are acceptable to Torbay Council and South Hams then they will withdraw their objection. In their January 2020 response (CD 4.30) they noted that Natural England were satisfied with the mitigation measures for bats, and as such the RSPB withdrew that element of their objection. In their latest response (CD 4.31) they stated that, it having been confirmed to them that Torbay Council is satisfied that in perpetuity management of the farmland detailed in the Proposed

Farming Practices Plan will be adequately funded and secured via relevant planning/legal agreements, and that South Hams District Council does not need to have any involvement to ensure that mitigation habitat delivery, then the RSPB withdraws its remaining objection.

2.4 Rule 6 Party Position

2.4.1 Within the Wildlife Impact section of their SoC (CD 7.19), BTC requested that the inquiry carefully consider whether the applicants have established with the necessary degree of certainty required that the implementation of mitigation and compensation measures is assured and is enforceable. In particular, the following factors were cited as being of concern:

- Whether measures constitute mitigation or compensation;
- Lack of sufficient detail on implementation; and
- Uncertainty resulting from the reliance on legal agreements over work which is due to take place many years in the future and for which no precedent has been identified.

2.4.2 Within the Landscape and Public Amenity Impact section of their SoC BTC also raised concerns on ecology matters related to the grassland and dry heaths at Berry Head.

2.4.3 Within their Position Statement on Ecology (CD 7.23), BTC expand on the points raised within their SoC and set out that their concerns relating to lack of sufficient detail on implementation relate to doubt over the enhanced carrying capacity of the substitute land and whether the surveys covered a sufficiently wide area. They also confirm that they have concerns relating to ecological matters related to the grassland and dry heaths at Berry Head.

3.0 Statement of the Scope of Evidence

3.1.1 Section 4 of my proof seeks to address the points raised by BTC in their position statement on ecology. As these points were raised during the application period, several points were sought to be addressed in the Ecology Briefing Note (CD 2.34). Extracts of that briefing note are provided in sections of this proof to provide useful context, along with additional information where considered relevant, but the details are not repeated.

4.0 Matters Raised by Rule 6 Party

4.1 Mitigation / Compensation

4.1.1 Section 4.3.2 of the South Hams SAC HRA Guidance (CD 6.13) states, *“where it is not possible to avoid all impacts the applicant should put forward measures to reduce impacts (mitigation) and ensure no adverse effect on the integrity of the SAC. Required measures may include:..... creating or enhancing new Foraging Habitat in suitable locations within the same Sustenance Zone”*.

4.1.2 The Inglewood proposals would create new and improved foraging habitat adjacent to the built development proposals and as such would meet the definition of mitigation under the SAC HRA Guidance.

4.1.3 NE in their consultation responses also consider the measures mitigation rather than compensation. This is consistent with their recent article in The Habitats Regulations Assessment Journal (CD 7.6) in which they set out their guidance as what can be considered mitigation measures under The Habitat Regulations. Within that article they state:

“The use of habitat creation/conversion outside of a site’s boundary to avoid a loss of “functionally-linked land” that lies outside of a site’s designated boundary is still a legitimate mitigation measure.”

4.1.4 This is on the proviso that:

“the indirectly adverse effects on a protected site are recognised and adequately catered for and there is sufficient certainty and timeliness about the success of habitat creation, so that the designated site continues to function in the same way, habitat creation in this circumstance can be used as mitigation to avoid an adverse effect on the integrity of a designated European Site.”

4.1.5 In relation to the above proviso:

- i. The potential impacts in relation to the South Hams SAC were assessed within paragraphs 5.5.8-12 and 5.5.15-22 of the ecology chapter of the Environmental Statement and within Torbay’s Habitat Regulation Assessments (CD 2.28, 2.30 and 2.48);
- ii. The habitats proposed to be created are not difficult to create e.g. cattle grazed pasture, over-wintered spring barley and hedgerows are regularly created by famers across the country with a high degree of certainty. With the existing tenant famer regularly re-creating cattle grazed pasture as part of their field rotation; and
- iii. the vast majority of the habitat will be created at least one year/growing season in advance of any construction. Additionally, construction will not commence unless planting has met agreed establishment criteria.

4.1.6 In relation to the point raised in paragraph 2.5 of BTC’s Position Statement on Ecology, it would all depend on the circumstances of the case in question. If a qualifying habitat of a Natura 2000 Site was to be lost from within the boundaries of the designated site, then their replacement elsewhere in terms of the Habitat Regulations would constitute compensation and the proposals would have to meet the three derogation tests under article 6(4) of the Habitats Directive. Even if the proposed development were outside

a Nature 2000 site, no amount of mitigation might be accepted if the land was of particularly high ecological value, the habitat was difficult to recreate elsewhere and/or there were other reasonable alternatives.

- 4.1.7 In a similar scenario to Inglewood, at land at Churston Golf Club the inspector (appeal decision – APP/1165/A/13/2205208) was satisfied that the approach was mitigation. Two further cases where habitat creation outside Natura 2000 sites have been proposed (and accepted) as mitigation are *Lee Valley Regional Park Authority v Epping Forest District Council [2015] EWHC 1471 (Admin)* (CD 8.6) and *Hargreaves v Secretary of State for Communities and Local Government [2011] EWHC 1999 (Admin)* (CD 8.5). I would in particular draw your attention to paragraphs 57 to 58 and 79 to 81 inclusive of the Lee Valley judgment and paragraphs 46 to 48 inclusive of the Hargreaves judgment.
- 4.1.8 The case law referenced by the Rule 6 Party relates to instances where designated habitat within Natura 2000 sites are being lost. It misses the point that the Site here is not within the SAC and what we are doing through the measures that are proposed is ensuring that there will be no impact on the SAC.
- 4.1.9 This is why NE, Jacobs (acting on behalf of Torbay) and the South Hams SAC HRA Guidance correctly, in my judgement, consider the proposals in terms of the Habitat Regulations Assessment as mitigation and not compensation.

4.2 Lack of sufficient detail on implementation

Doubt over the enhanced carrying capacity

- 4.2.1 The proposals rely largely on recreating existing habitats *i.e.* the species would still have broadly the same extent and composition of habitats currently available to them.

4.2.2 Furthermore, and in part to mitigate for the net loss of arable land, a diverse range of additional habitats (*e.g.* wood pasture, orchards, winter stubbles) of known value to the species present (including GHS and Cirl Bunting) are proposed.

4.2.3 The habitat/mitigation proposals were guided by:

- i. an extensive evidence base within guidance and scientific studies;
- ii. consultation with Torbay, NE and the RSPB; and
- iii. the mitigation principles set out within the scoping opinion.

4.2.4 The evidence base used to help determine the mitigation measures proposed for Cirl Buntings included the Cirl Bunting Wildlife and development guidance produced by Devon County Council, Teignbridge District Council, Torbay Council, and the RSPB (CD 7.9), in particular Table 1 which sets out the requirements for replacement habitats. This guidance draws on years of experience and scientific studies of where such habitats have been used before. Such mitigation measures have been advocated by the RSPB's Cirl Bunting Project, which during the past 25 years, through the provision of RSPB advice, support from agri-environment funding and the enthusiastic response from farmers, the Cirl Bunting population has increased 9 fold (CD 7.14). By way of example, a Countryside Stewardship (CSS) special project from 1992 to 2003 delivered key winter foraging habitat for Cirl Buntings (weedy overwinter stubbles *i.e.* what is being proposed here) and increased territory density by 146% on CSS land as compared to 58% on non-CSS land (see CD 7.10).

4.2.5 The evidence base used to help determine the mitigation measures proposed for bats, including Greater Horseshoe Bats (GHS), utilised habitat prescriptions within Natural England's The Management of Feeding Areas for Greater Horseshoe Bats (CD 7.11) and prescriptions (hedgerow creation/restoration and grassland creation) promoted

by the Greater Horseshoe Bat Project 1998-2003 (CD 7.12) which recorded a 58% increase at four GHS maternity roosts in Devon between 1995 and 2003.

4.2.6 Such measures provided sufficient certainty to conclude no significant effects within the ecology chapter and for Torbay, NE and RSPB to concur.

4.2.7 Paragraph 3.2 of the BTC Ecology Position Statement also references roosting. There have been no roosts identified on Site, including no roosts of GHS, so no loss of roosting opportunities would occur if the proposals were permitted. In fact the proposals include a commitment to enhance roosting opportunities through the creation of a bat house designed specifically for GHS.

Wider Survey Areas

4.2.8 In response to para 3.4 of the BTC ecology statement the bat survey plan (see Figure 2 of the Ecology Baseline Report CD 1.16) shows that bat activity surveys were undertaken outside of the proposed built development footprint and the red line planning boundary, this included land the south, west and north of the proposed built development footprint.

4.2.9 The extensive manual and automated surveys undertaken allowed features used early and /or late to be identified and help build up a picture of how bats were accessing the Site from the wider landscape e.g. they identified early GHS records along hedge to the north of Site which was being used by small numbers of GHS roosting in derelict farmland buildings to the north. The automated and manual bat surveys recorded limited GHS activity along Brixham Road, so the route cutting inland from Broadsands suggested in para 3.5 of the BTC position statement is unlikely/not evidenced.

4.2.10 A desk study exercise was also undertaken to help place the Site in an ecological context. This identified that the Site was not near any previously identified strategic

GHS flyway or any of routes GHS had been radio-tracked (including those identified in English Nature Report 344 CD 7.13).

4.3 Uncertainty resulting from the reliance on legal agreements over work which is due to take place many years in the future and for which no precedent has been identified

4.3.1 The mechanisms by which the mitigation will be implemented are set out within the Farm Management Plan (CD 1.19), Ecology Addendum (CD 2.20), draft S106 Agreement and Mr. Dixon's Report on the Implementation of the Farm Management Scheme which I attach as an Appendix to this proof. Broadly, it would involve the appellant creating habitat, with it then being farmed by a tenant. Mr Dixon's report provides further detail on the availability of tenant farmers in the locality.

4.3.2 In ecological terms the habitats proposed to be created are not difficult to create e.g. cattle grazed pasture, over-wintered spring barley and hedgerows are regularly created by famers across the country with a high degree of certainty.

4.3.3 The Framework LEMP, Proposed Phasing Plan and draft S106 provides that the vast majority of the habitat will be created at least one year/growing season in advance of any construction. It should be noted that the only elements of the ecology mitigation that wouldn't be delivered in advance would be those that can't be (*e.g.* habitat boxes within the curtilage of new dwellings, street trees, habitat that would be created within construction working areas). Additionally, construction will not commence unless planting has met agreed establishment criteria. This provides certainty that the mitigation will have to be in place prior to the impacts on the development Site itself occurring. This is in contrast to the existing position where there is no certainty that the land will continue to be grazed by cattle. What the appellants are offering will provide certainty where there is currently very little. The existing constraints relate to an Environmental Stewardship agreement (which is due end August 2021) and off-

site mitigation measures for the White rock development to the north. These measures only relate to the management of hedgerows and associated banks and margins (see figures 5.3a and 5.3b of the Ecology Addendum), as well as “reduced-depth, non-inversion cultivation” to protect archaeological features within the field to south of Waddeton Lane Plantation. As such there is no certainty at present that the fields will continue to be managed as cattle pasture. This is a positive feature of the proposed development with its ecological mitigation package providing certainty.

Precedents where enhancement proposed has been used before

Evidence to demonstrate how actual enhanced carrying capacities achieved elsewhere, and documented in post implementation monitoring, support those projected here

4.3.4 Paragraphs 4.2.4 and 4.2.5 of this proof provide examples of where the mitigation of the sort proposed at Inglewood has been used before. These examples have been evidenced through monitoring as having achieved successful outcomes for both GHS and Cirl Bunting. Such evidence was used to inform the assessment of ecological impacts within the ecology chapter of the ES.

Evidence to demonstrate that Torbay Council holds on file, and keeps under periodic review, the results of any post implementation monitoring, of any consented development, anywhere within its administrative area, relating to any protected species.

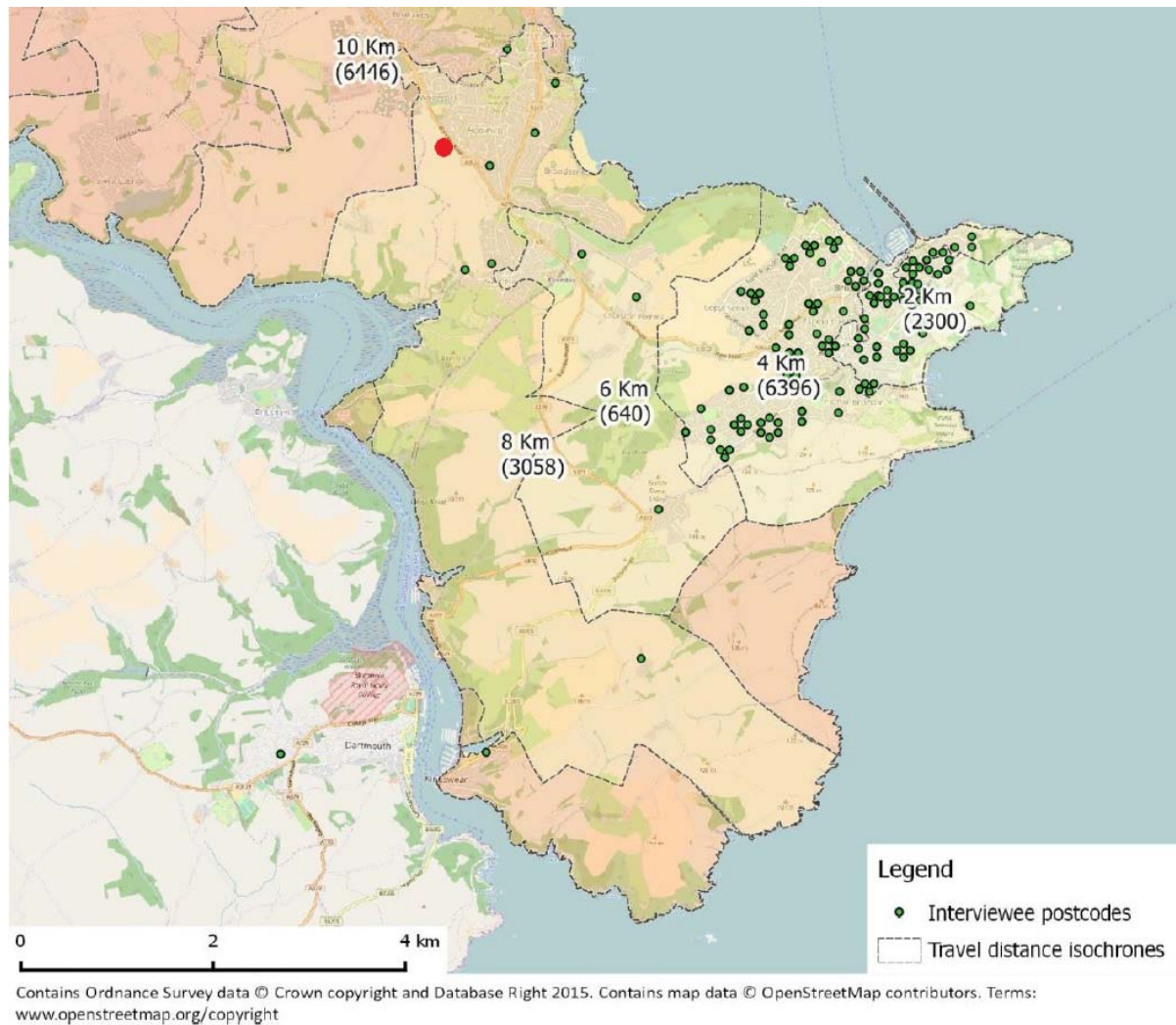
4.3.5 The appellants have proposed a robust package to ensure mitigation measures are undertaken and reviewed. This includes the measures set out the S106 obligation (which includes offering Torbay an administration charge towards the Council’s cost of reviewing monitoring returns), helping Torbay draft a monitoring condition in relation to monitoring and committing (within section 10 of the Ecology Addendum) to send monitoring returns to NE & RSPB and offer them, as well as Torbay, the opportunity to meet annually to review the monitoring results.

Evidence to demonstrate that Torbay Council has successfully managed schemes relating to protected species, e.g., that it has successfully used Section 106 monies to create new areas of wildlife habitat. Alternatively, has the funding for such schemes simply accrued in reserves awaiting deployment.

4.3.6 The proposition advanced by BTC is simply misplaced. Approval of the Inglewood appeal together with the obligation and subject to conditions would not require Torbay Council to manage a scheme relating to protected species, nor would they be provided with monies to create areas of wildlife habitat (it would be the applicant/developer who would be funding all habitat creation).

4.4 Recreational Pressure

4.4.1 On behalf of Torbay Council, Footprint Ecology undertook assessments in 2014 (CD 7.7) and 2016 (CD 7.8) of the recreational pressure on the Berry Head to Sharkham Point component of the South Hams SAC. These reports identified that the impact of recreation on Berry Head was considered to be putting some of the qualifying features at risk (through trampling and nutrification by dog fouling), specifically the calcareous grassland. It concluded that the Zone of Influence (ZoI) was 5km driving distance from Berry Head *i.e.* developments outside 5km would not have a likely significant effect. It can be seen in the Figure 5 of the 2016 report (extract below, where I have added a red dot to identify Inglewood) that the proposed Inglewood development would be 6-8km driving distance *i.e.* well beyond the 5km driving distance ZoI.



4.4.2 Based on this work, the ecology chapter for the Inglewood Environmental Statement determined there would not be any likely significant effect to the designated habitats within the Berry Head to Sharkham component of the South Hams SAC. This conclusion was confirmed by Torbay Council during the preparation of the application (see e-mail from the Council’s Green Infrastructure Coordinator 31st January 2017 at CD 3.9).

4.4.3 Jacobs (working on behalf of Torbay Council) also concluded in their two HRAs dated March and May 2018 (CD 2.2.8 and CD 2.30) that the proposals would not have any

likely significant effects on the calcareous grassland. These HRAs were supported by NE.

4.4.4 In my view this confirms that there is no ecology rationale to justify the changes made within the latest HRA (CD 2.48) or requiring a contribution towards Berry Head Grasslands in the s.106 Agreement.

5.0 Overall Conclusions

5.1.1 The proposals are based on extensive surveys and dialogue with Torbay, NE and RSPB.

5.1.2 Torbay, NE and RSPB have no ecology objections to the proposals subject to the mitigation measures being secured.

5.1.3 The S106 obligation does, and the planning conditions would, as appropriate, provide such certainty.

5.1.4 Ecology matters raised by the Rule 6 Party have been raised throughout the application, and have been seen/reviewed by Torbay, NE and RSPB, with all those parties being satisfied there are no grounds to object to the proposal by reference to any impact upon ecology.

5.1.5 In my opinion, based on the above and reasons set out within this proof, it can be concluded there are no justifiable reasons to object to the proposals on the grounds of ecology.

Appendix 1:
Charles Dixon, Savills
Report on the Implementation of the Farm Management Scheme

APPEAL BY ABACUS PROJECTS LTD

REPORT ON THE IMPLEMENTATION OF THE FARM MANAGEMENT SCHEME

LAND TO THE SOUTH OF WHITEROCK
ADJACENT TO BRIXHAM ROAD
Aka INGLEWOOD, PAIGNTON

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Appendices

Appendix 1	Proposed Farming Practices February 2018
Appendix 2	Map of Farmland to be managed by tenant farmer

1. Report Summary

1.1 The proposed package of mitigation measures associated with the Inglewood planning application includes a scheme for the management of farmland adjacent to the development and owned by the applicants, Abacus Projects Ltd. The details of those mitigation measures are set out in the following documents:

- Farm Management Plan (October 2017);
- the Proposed Farming Practices Plan (February 2018) that is annexed to the Framework Landscape and Ecological Management Plan (LEMP) dated March 2018 (and which supersedes the Proposed Farming Practices Plan annexed to the Farm Management Plan); and
- the Ecological Addendum (March 2018).

Each of these documents forms part of the application documentation and I do not propose to replicate them here. Collectively I shall refer to the package of measures relevant to the farmland as the "Farm Management Scheme or "FMS".

- 1.2 The FMS is designed in particular to provide support for protected species Greater Horseshoe Bats and Cirl Buntings on the mitigation land.
- 1.3 As is explained in section 7 of the Ecological Addendum, the grant of planning permission will trigger the end of existing tenancies over the mitigation land and the grant of a new tenancy up to 28th September 2035 to one of the existing tenants.
- 1.4 The tenants under the new tenancy have agreed through a binding option agreement to deliver the FMS in return for a rent discounted to approximately 50% of market value.
- 1.5 In addition, Abacus Projects Ltd will contribute £40,000.00 towards buildings on the tenant's land to provide winter accommodation for the cattle to be grazed on the mitigation land.
- 1.6 The area of farmland it is proposed will be managed by the tenant farmer covers 32.18 hectares.
- 1.7 The freeholder of the farmland which constitutes the mitigation land will have the benefit of the rental receipts for the land. These are agreed under the new tenancy at £4,822.08 per annum.
- 1.8 In my opinion there will be plenty of alternative farm businesses in the vicinity who will be willing to continue to farm the land in accordance with the FMS if the new tenants should cease to farm it.
- 1.9 Long term arrangements for the delivery of the FMS will be provided by the management entity which will own the freehold of the mitigation farmland.
- 1.10 These comprehensive arrangements will be secured through the Section 106 Agreement and will ensure the delivery of the FMS.

2. Introduction

2.1 My full name is Charles Edward Dixon. I am a Fellow of the Royal Institution of Chartered Surveyors in the Rural Faculty. I am a Fellow of the Central Association of Agricultural Valuers. I am a Registered Valuer by the Royal Institution of Chartered Surveyors. I have been in rural practice as a Surveyor in the South West of England since 1983 and have been based in Exeter since 1997. The scope of my work involves all aspects of advice on rural and agricultural property including its management, valuation, and landlord and tenant advice. I have knowledge of agricultural land and property throughout Devon and in particular in the South Hams District of South Devon. I have managed property in this area for 29 years. I am a Director of the national firm of surveyors Savills (UK) Ltd and work from their office at Sterling Court, 17 Dix's Field, Exeter, Devon, EX1 1QA. I have been a Director of Savills since 2015 having previously been a Partner and Director in the firms of Stratton & Holborow and Smiths Gore which were merged into Savills in 2015.

3. Instructions

- 3.1 I am instructed by Deeley Freed Estates Ltd of 7 Whiteladies Road, Clifton, Bristol, BS8 1NN on behalf of Abacus Projects Ltd to prepare a Report in relation to the matters set out below which are relevant to the appeal by Abacus Projects Ltd in relation to the land known as Inglewood. I have acted for Abacus Projects Ltd and the landowner who owned the land before Abacus Projects Ltd in connection with the day to day management of the land since 2003. I have given advice to Abacus Projects Ltd in connection with various aspects of the implementation of the Landscape and Ecological Management Plan relating to the Whiterock development north of the Inglewood site, and continue to act as landlord's agent for Abacus Projects Ltd in relation to their land holdings at Whiterock and Inglewood.
- 3.2 I am instructed to report on the delivery of the Farm Management Scheme prepared by Dave Harvey of Nicholas Pearson Associates which forms part of the mitigation package offered by the appellant for the proposed Inglewood development.

4. Farm Management Scheme

- 4.1 The mitigation package includes a scheme for the management of the farmland adjacent to the Inglewood development and owned by the applicants, Abacus Projects Ltd. The scheme pulls together the mitigation measures that are proposed for the Farmland, and which are set out in the following documents:
- i) Farm Management Plan dated October 2017 **(CD 1.19)**,
 - ii) Ecological Addendum dated February 2018 **(CD 2.20)**; and
 - iii) Proposed Farming Practices Plan (February 2018) which is appended to the Framework LEMP (March 2018) **(CD 2.21)** and which supersedes the Proposed Farming Practices document annexed to the Farm Management Plan dated October 2017 **(CD 1.19)**.

Each of these documents forms part of the application documentation and I do not propose to replicate them here. Collectively I shall refer to the package of measures relevant to the farmland as the "Farm Management Scheme or "FMS".

The FMS includes detailed proposals for support of certain protected species being Greater Horseshoe Bats and Cirl Buntings. The document prepared by Nicholas Pearson Associates entitled Proposed Farming Practices (PFP) sets out the detailed prescriptions and proposals for each part of the Farmland to be included in the FMS. The PFP was developed in consultation with the Local Planning Authority and Natural England and follows many of the standards and practices adopted by Natural England in its current Stewardship Schemes for the designated protected species. The version of the PFP included in the original planning application and Farm Management Plan was dated September 2017. The document was further developed with The Local Planning Authority and Natural England for inclusion in a proposed Framework Landscape and Ecological Management Plan (LEMP) (March 2018). Where in this report I refer to the PFP document, I mean that version dated February 2018 which for ease of reference I have included at **Appendix 1**.

- 4.2 The FMS provides a system of farming based around pasture and wood-pasture¹ for cattle grazing and a smaller area of arable land rotated for the growing of spring barley together with various environmental and ecological works. The farmland within the FMS all lies within land owned by Abacus Projects Ltd and falls partly within the application site and partly outside the application site. That part which is proposed to be managed by the tenant farmer (as opposed to those elements which will be managed by the Farmland Management Entity), extends to 32.18 hectares and is shown coloured pink on the map attached at **Appendix 2**.

5. Existing Farm Tenancies

- 5.1 The application site and the land within the Farm Management Plan, all of which is owned by Abacus Projects Ltd, is currently subject to two Farm Business Tenancies, both dated 5th November 2010. Both of these Farm Business Tenancies end on 28th September 2035. It should be noted that prior to the above two Farm Business Tenancies the same tenants farmed in partnership under a tenancy subject to the Agricultural Holdings Act 1986 including the area within the above two Farm Business Tenancies and additional areas including parts of the Whiterock LEMP area. As part of the negotiations for the Whiterock development and following the ending of their farm partnership separate similar Farm Business Tenancies were granted to each of the two tenants.
- 5.2 Under the terms of the existing Farm Business Tenancies, Abacus Projects Ltd have the power to terminate the agreements by serving 12 months' notice at any time:
- a) for any purpose which is not agricultural and for which planning permission has been granted; or
 - b) for any purpose required in connection with the development of all or part of the property or land adjacent to it.

¹ 'Wood-pasture and parkland are mosaic habitats valued for their trees, especially veteran and ancient trees, and the plants and animals that they support. Grazing animals are fundamental to the existence of this habitat. Specialised and varied habitats within wood-pasture and parkland provide a home for a wide range of species, many of which occur only in these habitats, particularly insects, lichens and fungi which depend on dead and decaying wood. Individual trees, some of which may be of great size and age, are key elements of the habitat and many sites are also important historic landscapes.' (Source: Joint Nature Conservation Committee Wood-Pasture and Parkland – update: December 2011).

5.3 Accordingly, once planning permission is granted, including on Appeal, both of the existing tenancies can be terminated in accordance with the tenancy terms.

6. Option Agreement for The Grant of a Farm Business Tenancy

6.1 Although the above tenancies can be brought to an end on 12 months' notice following a grant of planning permission, in order to accelerate the implementation of the FMS and to provide greater certainty, agreement has been reached with one of the tenants which provides that as soon as planning permission is granted the tenants will surrender their existing Farm Business Tenancy and immediately take a short term Farm Business Tenancy over 10.46 hectares of the Farmland area which includes the four most easterly fields (2510, 9927, 9837 and 9055) in the FMS. The short term Farm Business Tenancy will last as long as is necessary to secure possession of the remainder of the Farmland area subject to a 12 month Notice to Quit being served on the second tenant. When the Notice to Quit operates on the second tenant the land will then be combined with the remainder of the Farmland area into a new single Farm Business Tenancy granted until 28th September 2035 in accordance with the Option Agreement.

7. New Farm Business Tenancy

7.1 The new Farm Business Tenancy to be granted following the grant of planning permission and the ending of the existing tenancies will extend over all of the agricultural land in the FMS. Under the terms of the Option agreement the tenants have agreed to implement the FMS and in particular the programme of Proposed Farming Practices and any subsequent alteration or amendment agreed with the Local Planning Authority. The tenancy will be granted to 28th September 2035 but will be subject to the tenant's right to serve 12 months' notice to end the tenancy on the 3rd, 6th, 9th, 12th and 15th anniversaries of the commencement date.

7.2 The tenants have agreed to pay a rent from commencement of the new Farm Business Tenancy of £60.68 per acre which rent will be subject to review on an open market basis in accordance with the Agricultural Tenancies Act 1995. This rent review basis reflects the tenant's agreement to implement and deliver the Proposed Farming Practices on the Farmland. At current levels this equates to a rent of £4,822.08 per annum for the land in the tenancy and provides a 50% reduction on the market rent, to take account of the requirements of the PFP.

8. Delivery of the Farm Management Scheme

8.1 The tenants are established farmers whose family have been farming at Waddeton for many years. They own and rent land elsewhere in the locality and have a farmstead of modern agricultural buildings and facilities which is situated approximately a quarter of a mile away from the appeal site. The tenants are currently beef farmers as well as arable farmers and have the knowledge and experience to deliver their part of the FMS. Under the terms of the agreement Abacus Projects Ltd will make a one off payment of £40,000.00 plus VAT to enable the tenants to provide additional modern farm building accommodation at their farmstead and in particular to provide covered accommodation for the additional beef cattle and other agricultural facilities that they will require when renting the farmland and delivering their part of the FMS. Should the tenants decide to exercise their right to end the Farm

Business Tenancy earlier than 2035 at any of the three yearly break dates during the first 12 years of the new Farm Business Tenancy then they will be required to refund a proportionate part of the farm buildings contribution to Abacus Projects Ltd or its successors in title to enable that money to be utilised for the provision of alternative facilities for live and dead stock to serve the FMS land.

- 8.2 Once planning permission is granted the developer will undertake at its expense the initial infrastructure measures set out in the FMS. This will include the provision of new hedge banks appropriately fenced against livestock, together with the fencing of tussocky grassland margins and hay meadow margins, the fencing of new woodland and parkland tree planting, the provision of a network of gateways and the installation of a new field water supply system connected to the public mains which will provide water for livestock in all enclosures. Details for these new works are set out in the Proposed Farming Practices document attached to this report at **Appendix 1**.
- 8.3 Under the terms of the agreement with the tenants, once these works have been carried out to the land, the annual management repair and maintenance will be provided by the tenants in return for the discounted rent in the Farm Business Tenancy.

9. Long Term Management Arrangements

- 9.1 I have been asked to report on the options and possibilities for longer term arrangements for the FMS area if the tenants should decide to bring the Farm Business Tenancy to an end at any time, whether prior to or at the end of the tenancy in September 2035.

9.2 Ownership

- 9.2.1 In considering these options I am working on the basis that the freehold ownership of the land within the FMS will be owned freehold by a management entity that is likely to be the management company associated with the Inglewood development (as currently envisaged by the draft s.106 Agreement). Alternatively it might be held by one of a number of bodies that hold land in similar circumstances such as a nearby local authority, a wildlife or conservation trust or a private land and estate owner willing to be bound by the requirements of the FMS. In my opinion it would not be difficult to find such a freehold owner because even if the freehold owner was not an active land or farm manager, the management can be delivered either through finding a tenant or licensee, or through a professional manager to ensure the delivery of the FMS. The Proposed Farming Practices are not unusual in current Natural England Stewardship Schemes and will already be familiar to many farmers. In my opinion the land will be easily let at the rent agreed in the Option Agreement.

9.3 Occupation of the Land

- 9.3.1 The tenants have agreed to take a tenancy of the land within the FMS and on the basis that they will be obliged to deliver the farming practices set out in the Proposed Farming Practices document (**Appendix 1**) in return for a discounted rent which has been agreed at about half full open market rent and a contribution towards the cost of livestock buildings. In my opinion if the tenants were at any time not willing to continue with the tenancy then there are many other farmers in the South Hams area who would be able to access and utilise the land and would be willing to rent the land on terms similar to the Farm Business

Tenancy that has been agreed with the tenants, and deliver the FMS. Nor do I consider that the lack of a contribution towards livestock buildings for other tenant farmers would affect the lettability of the farmland on those terms. The land is situated within a wider area which is in an established farming district where the predominant enterprises are grazing livestock and cereal growing which are the two principal enterprises required to be delivered under the FMS. The land has good road access to the north and west and there are plenty of other established farm businesses who can easily access the land and who in my opinion would be very interested in using the land if it became available.

9.3.2 Whilst UK agricultural policy is generally at a watershed following the decision to leave the European Union, in my opinion extensive livestock grazing as provided in the FMS will continue to be one of the main agricultural enterprises in South Devon.

9.3.3 However, in the very unlikely situation that an alternative tenant could not be found, alternative arrangements to a Farm Business Tenancy, which could be easily implemented, would be either:

- 1) The granting of an annual Grazing Licence to a cattle farmer to provide the cattle grazing together with the growing of spring cereals by use of farm contractors and the delivery of other aspects of the FMS practices through local farm contractors and supervised by a firm of rural practice surveyors or farm management advisers such as my own firm. I am of the opinion that there would be plenty of interest and competition locally from established farmers to take an annual Grazing Licence; or
- 2) If the freehold owner became a wildlife or conservation body they might have their own livestock and farming capability so that they could deliver the required farming practices themselves without the use of a tenant or grazier;

9.4 Management Supervision

9.4.1 Under the agreed Farm Business Tenancy and whatever follows that tenancy after 2035 within the range of possibilities set out above, the freehold owner may require external management supervision to ensure the delivery of the FMS. The elements that the management supervision will need to provide will include:

- 1) Landlord and tenant advice in managing the Farm Business Tenancy;
- 2) A rural surveyor or land manager to negotiate and draw up annual Grazing Licences and to appoint and manage agricultural contractors to grow and harvest the spring corn;
- 3) A rural surveyor or land manager to appoint and manage agricultural contractors for the delivery of repair and maintenance to fencing, gates and water supplies and annual hedge trimming and other annual land management work set out in the FMS;
- 4) Ecological advice to ensure delivery of the FMS objectives and periodic review, as provided in the FMS.

9.4.2 These skills are readily available and many land management and conservation bodies will have most if not all of these skills in house. If not however they can be easily engaged through firms of rural chartered surveyors, farm management advisors and ecological consultants of which there are many established firms operating in the South West of England. My own firm Savills (UK) Ltd is one of the largest rural land managers in the United Kingdom and already manages extensive areas of farms and estates throughout the South Hams area of Devon and would be able to provide all of the above disciplines apart from the ecological advice which would be subcontracted to an established ecological consultant such as Nicholas Pearson Associates. I am of the opinion that there would be no difficulty in finding appropriate knowledge and experience to deliver the necessary management to ensure delivery of the FMS and the cost of those services would be covered by the rental income from the farmland.

10. Conclusions

10.1 In the short term immediately after planning consent is granted there is in my opinion certainty that the FMS can be delivered. This certainty is provided by:

- 1) Abacus Projects Ltd own all of the land within the FMS and proposed Farm Business Tenancy;
- 2) The existing tenancies can be brought to an end once planning permission is granted and then the terms of the new agreement reached with the tenants can be implemented;
- 3) The tenants have agreed to deliver the FMS within the terms of a Farm Business Tenancy that will run to 28th September 2035 subject to their right to give notice every three years.

10.2 The position in the long term either after 2035 or if the tenants give up their Farm Business Tenancy early will depend upon decisions taken by the freehold owner of the land and the farming economy at that time. I am confident that the plan can be delivered through a combination of either a new Farm Business Tenancy to an alternative established farmer in the area or a new Farm Business Tenancy of an independent holding of the FMS land alone, or a combination of annual graziers, farm contractors and professional land or farm managers and ecological consultants to supervise and manage the delivery of the FMS.

Signed:



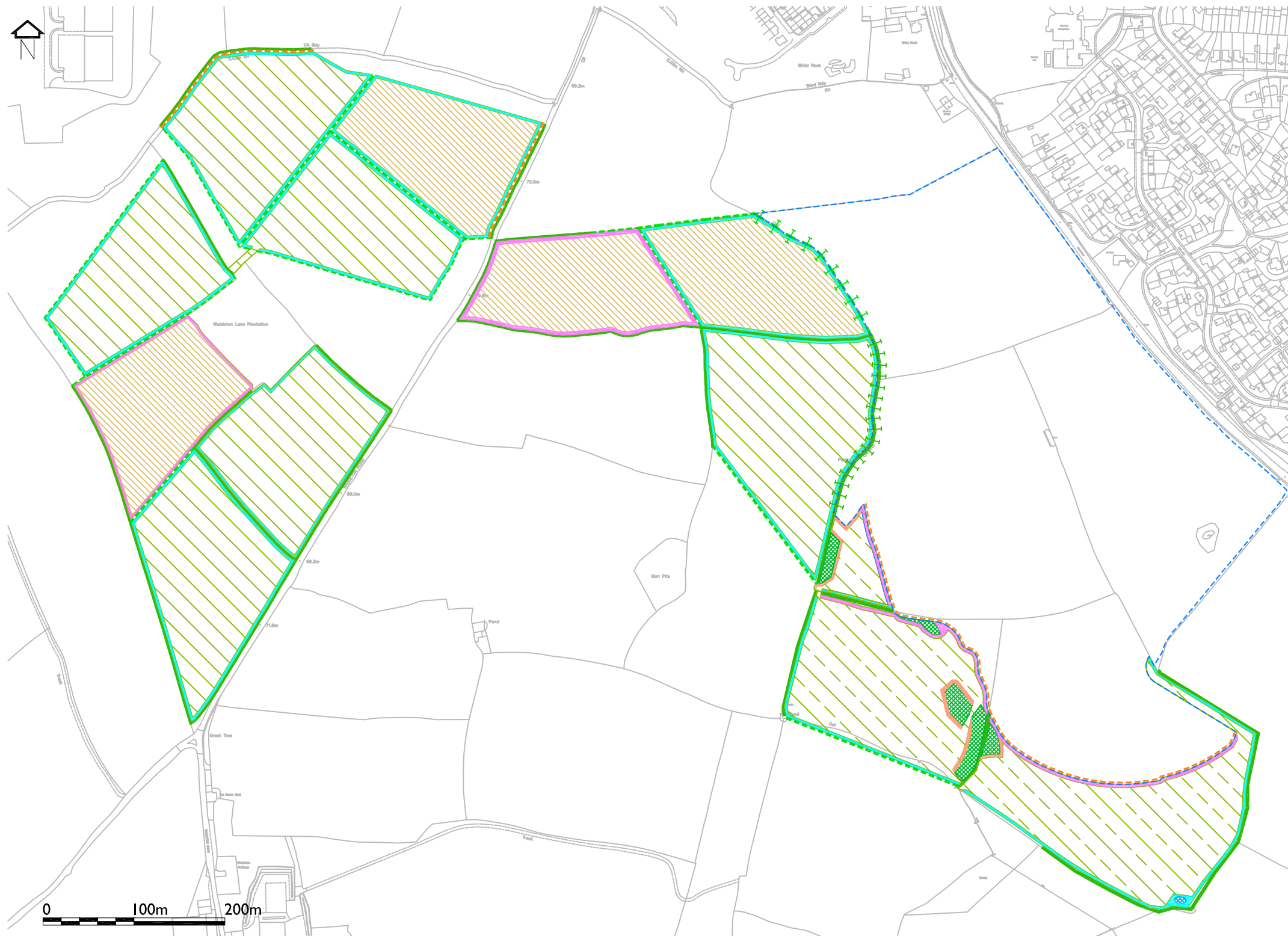
Dated: 27th November 2020

C E Dixon BSc FRICS FAAV
Director
Savills (UK) Ltd
Sterling Court
17 Dix's Field
Exeter
Devon
EX1 1QA

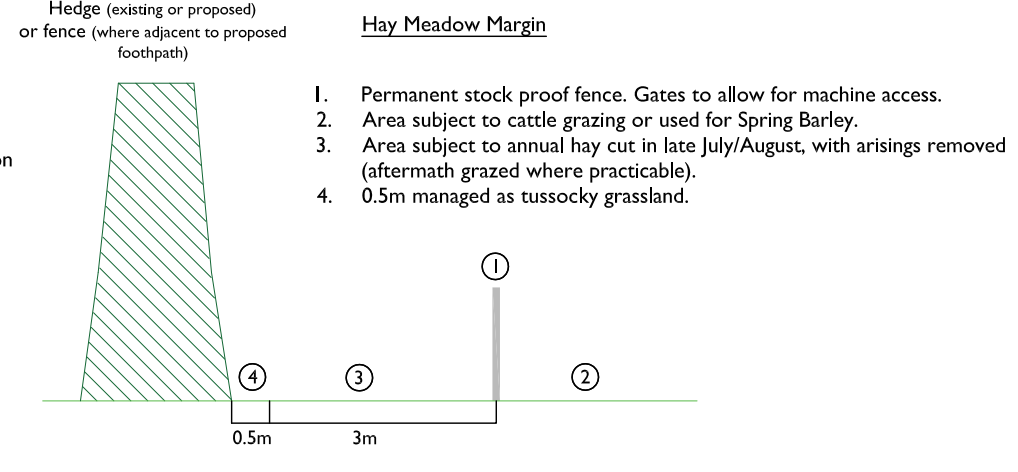
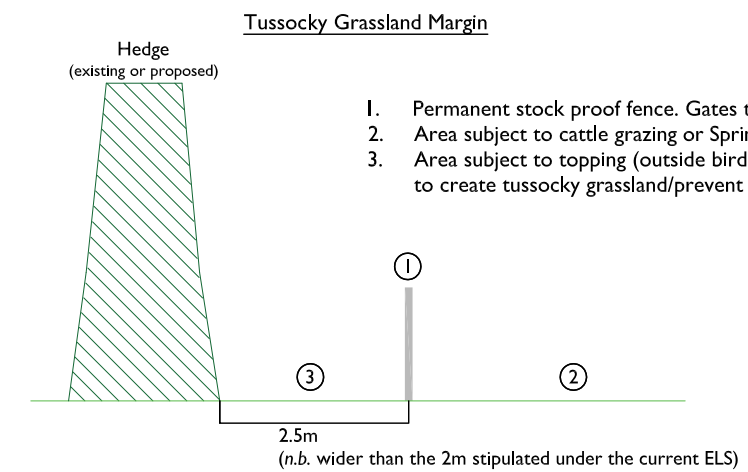
APPEAL REFERENCE: APP/X1165/W/20/3245011

APPEAL BY ABACUS PROJECTS LTD

APPENDIX 1: PROPOSED FARMING PRACTICES FEBRUARY 2018



- Extent of built development** (see proposed masterplan for context)
- Proposed and existing hedge bank**
 - Cut in Jan or Feb;
 - Cut no more often than one year in three;
 - Cuts should be rotated to avoid cutting all hedges in the same year;
 - To be maintained as tall bushy structures at an overall height of between 3-4m;
 - allow branches of standard hedgerow trees to overhang the adjacent areas as these features are favoured by Greater Horseshoe Bats.
- Proposed and existing hedge bank - shared management**
 - Managed by management company on development side
 - Managed by tenant farmer on farm side
- Proposed cattle grazing**
 - grazed lightly to create a varied sward height, rich in invertebrates, but also accessible for Cirl Buntings;
 - grazed during the growing season only;
 - do not top at any time, except in patches to control injurious weeds or invasive non-native species;
 - if necessary, injurious weeds or invasive non-native species can also be controlled by spraying small discrete areas with herbicides;
 - cattle present for as much as the growing season as practicable;
 - maintain a sward with an average height of 7-13cm;
 - with at least 20% shorter than 7cm;
 - and at least 20% longer than 10cm tall;
 - The use of wormers should be avoided/limited. Only to be used on cattle that have a parasite burden. If required use best practice techniques to minimise impact on Dung Beetles, including using the least toxic treatment available and not moving cattle onto clean pasture immediately after treatment;
 - No insecticides permitted;
 - If required, a well rotted farm yard manure can be applied at the maximum rate of 12.5 tonnes/ha/yr. Alternatively, inorganic nitrogen fertiliser may be applied at max rate of 25kg-N, 12.5 Kg-phosphate and 12.5kg-potash /ha/yr. Not to be applied to hay meadow style margins.
- Proposed wood pasture (~5% tree cover)**
 - cattle grazed as above.
 - trees to be managed by management company.
- Proposed Spring Barley - Pasture Rotation**
 - To be managed in rotation in accordance with best horticultural practice;
 - Each field is approx. 2ha. At any one time, one each side of Waddeton Road would be used for Spring Barley (and over-wintering stubble), with the other two used as cattle pasture (and managed in accordance with the cattle pasture prescriptions above).
 - stubble left to over-winter until end of March;
 - "stubble sward" to contain (but not specifically undersown with) a variety of broad-leaved plants and Annual Meadow Grass;
 - Should vegetation growth over winter become too dense or tall, strips will be mown through the stubble to allow Cirl Bunting to access seeds;
 - Do not apply any pesticides, fertilisers, manures or lime to the stubble;
 - Do not apply insecticides between sowing and the following harvest;
 - if necessary, injurious weeds or invasive non-native species can be controlled by spraying small discrete areas with herbicides;
- Proposed hay meadow and tussock margins**
 - see inset below for details
- Proposed woodland**
 - Managed by a management company
- Proposed scrub**
 - To be topped on rotation every 3-5 years to prevent succession to woodland
- Proposed pond**
 - fenced off from cattle;
 - managed by a management company.
- Proposed footpath (within or adjacent to FMP area)**
 - dog proof fencing where adjacent to farmland;
 - managed by a management company.



NICHOLAS PEARSON ASSOCIATES
 ENVIRONMENTAL PLANNERS • LANDSCAPE ARCHITECTS • ECOLOGISTS

Deeley Freed Estates

Inglewood, Paington

Proposed Farming Practices

February 2018

APPEAL REFERENCE: APP/X1165/W/20/3245011

APPEAL BY ABACUS PROJECTS LTD

APPENDIX 2: MAP OF FARMLAND TO BE MANAGED BY TENANT FARMER



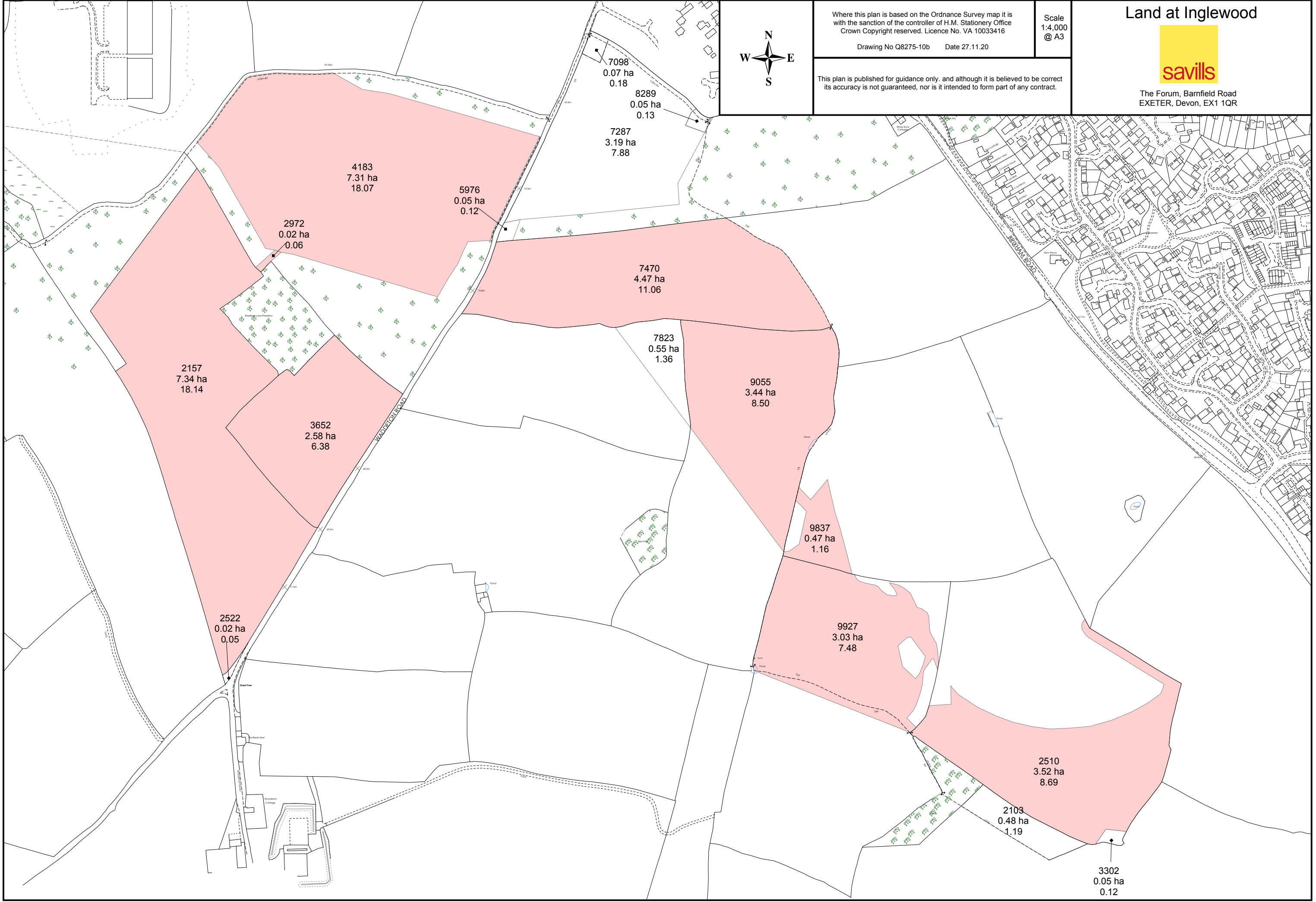
Where this plan is based on the Ordnance Survey map it is with the sanction of the controller of H.M. Stationery Office Crown Copyright reserved. Licence No. VA 10033416
Drawing No Q8275-10b Date 27.11.20

Scale
1:4,000
@ A3

Land at Inglewood



The Forum, Barnfield Road
EXETER, Devon, EX1 1QR



NICHOLAS PEARSON ASSOCIATES

ENVIRONMENTAL ASSESSMENT | LANDSCAPE ARCHITECTURE | ECOLOGY | VISUALISATION

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