



## Appeal Decision

Inquiry held on 5 – 6 December 2023 & 31 January – 1 February 2024

Site visit made on 1 February 2024

**by H Nicholls FdA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7<sup>th</sup> May 2024**

### **Appeal Ref: APP/K1128/W/23/3326235**

### **Former Dairy Crest Site, Totnes, TQ9 5JR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Fastglobe (Mastics) Ltd against the decision of South Hams District Council.
- The application Ref 1271/23/OPA, dated 11 April 2023, was refused by notice dated 17 July 2023.
- The development proposed is: Hybrid planning application for mixed use development comprising: outline application with some matters reserved for mixed use re-development site comprising circa 80 Residential Units, circa 1100sqm commercial space, demolition of existing structures excluding Brunel Building & chimney, provision of open space & surface water attenuation, parking & associated infrastructure. Full permission for the change of use of the Brunel Building to community uses (use classes F1/F2).

### **Decision**

1. The appeal is allowed and planning permission is granted for hybrid planning application for mixed use development comprising: outline application with some matters reserved for mixed use re-development site comprising circa 80 residential units, circa 1100sqm commercial space, demolition of existing structures excluding Brunel Building & chimney, provision of open space & surface water attenuation, parking & associated infrastructure. Full permission for the change of use of the Brunel Building to community uses (use classes F1/F2) at the Former Dairy Crest Site, Totnes, TQ9 5JR, in accordance with the terms of the application, Ref 1271/23/OPA, subject to the schedule of conditions in Annex 3 below.

### **Applications for costs**

2. Applications for costs were made in writing before the close of the inquiry by the Appellant against Totnes Community Development Society (TCDS) as the Rule 6 party, and separately by TCDS against the Appellant. These applications are the subject of separate Decisions.

### **Preliminary Matters**

3. The description of development was discussed during the inquiry. The planning application form and accompanying documents detail that the community uses proposed are those under Use Classes F1 and F2 under the Use Classes Order<sup>1</sup> although this was not clear from the description in the Council's decision notice. In the interests of comprehensiveness, I have expanded the description to refer

<sup>1</sup> The Town and Country Planning (Use Classes) Order 1987, as amended

- to the respective use class subcategories with agreement from the main parties.
4. As part of the appeal proposal is in outline with all matters save for access reserved, I have treated the layout and parameter plans as indicative.
  5. Case management conferences were held on 13 and 30 October and also on 4 November 2023 with representatives of the Appellant, the Council and TCDS. At those conferences, procedural matters including the main issues and the format of the inquiry were discussed and clarified, but the merits of the proposal were not discussed.
  6. The appeal was originally linked with a scheme for an alternative mixed use proposal on the same site (Appeal A). Following the submission of additional information on noise and ecology, after submissions of the Proofs of Evidence but in advance of the inquiry, a supplementary Statement of Common Ground<sup>2</sup> (SoCG), dated 29 November 2023, was agreed between the Appellant and Council. This sets out that, subject to conditions and certain obligations, particularly in relation to the provision of affordable housing without application of the vacant buildings credit (VBC) and open space, the development proposed by the current appeal (Appeal B) was considered to accord with the development plan. In the same Supplementary SoCG, the Appellant also confirmed its withdrawal of Appeal A. TCDS were not a party to the supplementary SoCG and maintained that its case was largely separate to that of the Council in any event. My consideration has therefore been limited to the current appeal, Appeal B.
  7. The Totnes Neighbourhood Development Plan (TNDP) passed a referendum vote on 16 November 2023 and became a made plan on 30 November 2023. It therefore forms part of the development plan to consider in determining the appeal.
  8. A draft planning obligation (S106) and separate unilateral undertaking (UU), both made under section 106 of the Town and Country Planning Act 1990 were provided before the inquiry. Completed versions of the same, respectively dated 18 January and 6 February 2024, were submitted. The bilateral S106 made between the Appellant and the Council includes provisions relating to affordable housing; VBC; the Brunel Building; public open spaces or contributions in lieu thereof; and, financial contributions towards healthcare, education and highways. The UU made in favour of Devon County Council as the highways authority includes travel plan provisions. I return to these below.
  9. The Brunel Building which is explicitly referenced in the description of development is a Grade II listed building. For the avoidance of doubt, save for the demolition works already approved separately<sup>3</sup>, the physical works to convert the Brunel Building require listed building consent under the Listed Building and Conservation Areas Act 1990, as amended (LBCAA). My duties under s66(1) of the LBCAA to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest are considered further below.

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<sup>2</sup>CD58

<sup>3</sup> Under Certificate of Lawfulness Ref 3718/22/CLB dated 18 November 2022

## Main Issues

10. The main issues are:

- the implications of the appeal site's planning history;
- whether the economic viability of the scheme is a relevant material consideration, and if so, the implications for the appeal scheme;
- whether the vacant buildings credit (VBC) could apply, and if so, whether its application would render the scheme in conflict with the development plan; and
- whether the allotments, sports pitches and play space should be on site, or if contributions should be paid in lieu of the same.

## Context

11. The site extends to around 2.8 hectares and was previously used as a dairy production plant. The former business was a significant employer when it was operating, but finally closed in 2007.
12. The site occupies a position entirely within the urban area, adjacent to Totnes Railway Station and is bound by the River Dart to the north, woodland and open spaces to the west and the residential area of *Weirfields* to the south. The site is also broadly divided into two parts: the southern, more linear, parcel and the northern parcel. The latter is accessed across *Mill Leat* which divides the two parts of the site. The site is dominated by the significant collection of dilapidated industrial buildings, associated areas of hardstanding and substantial boundary fencing. In terms of designations and constraints, other than the listed Brunel building, the site is partly within flood zones 2 and 3, largely in the northern parcel, due to its proximity to the River Dart. Due to its previous industrial use, the site is also understood to be contaminated, with the additional complication of asbestos elements within some of the buildings.
13. The hybrid proposal before me seeks to demolish all structures on the site save for the Brunel Building and chimney. Some poor quality modern additions to the Brunel Building would be demolished and it would be converted to community uses and act as a central hub for the range of commercial buildings which are also proposed. Also, within the southern portion of the site, it is envisaged that a small number of dwellings would be positioned in a linear arrangement fronting the existing highway. On the northern part of the site, accessed over the bridge, would be the focus for the residential element of the scheme, public open space and associated flood alleviation works.

## Planning history

14. The site was previously allocated as part of the *Totnes Site Allocations Development Plan Document* (adopted 2011) under *Proposal T4*. Proposal T4 sought the delivery of a mixed use regeneration scheme by 2016 in line with an approved masterplan. The T4 allocation expected the provision of a number of jobs at least equivalent to the site's previous use through employment development, around 60 dwellings in total, split across northern and southern parcels of the site, subject to access and overcoming the flood risk constraints. These works were envisaged together with environmental and accessibility improvements.

15. From the evidence<sup>4</sup>, the community group, *Atmos Totnes*, was established in 2008 to campaign to save and support an application to formally designate the Brunel Building. In 2012, the *Totnes Community Development Society (TCDS)* came into being, and in 2013 it had agreed heads of terms with Dairy Crest Group Plc to allow for the creation of the masterplan and eventual acquisition of the site.
16. In 2014, another party signed with the owners and TCDS to acquire part of the site to enable the development of an age-restricted housing component of the scheme (over 55s). In 2015, TCDS took on the lease of the site to enable continuing site investigations and site safety work to continue in parallel with a design process which were the subject of extensive ongoing public consultation.
17. In 2016 a draft Community Right to Build Order (CRtBO) was prepared by TCDS and it was found to be policy compliant by the Council. Following a successful referendum, the CRtBO was formally made in February 2017<sup>5</sup>. The CRtBO provided for the '*Atmos Scheme*', comprising 62 affordable houses; 37 houses for those aged over 55; 7,051sqm of workspace; a 58-bed hotel; an energy centre; a community venue; youth provision and health facilities.
18. Between the making of the CRtBO and autumn 2019, discussions were being held on the acquisition of the site by TCDS in line with the original agreement or on an alternative basis subject to the position of the third party concerning the 55s housing element.
19. In March 2019, the Plymouth and South West Devon Joint Local Plan (JLP), was adopted. Policy TTV22 of the JLP allocates the appeal site (referred to as ATMOS, former Dairy Crest site) for a mixed use scheme including new homes and a range of business, commercial and community uses. The allocation indicates an estimation of around 62 homes. The other '*policy considerations*' are listed as:
  - "a) *Delivery in accordance with the provisions of the Community Right to Build Order (CRtBO), including appropriate flood risk mitigation measures, including improvements to the leat to protect existing development downstream), remediation of contaminated land and habitat enhancement.*
  - b) *Sensitive and high quality design which integrates with the existing area and the setting of nearby heritage assets*".
20. In April 2019, Dairy Crest Group Plc was bought by Saputo Dairy Ltd. In June 2019, a market comparison valuation undertaken on behalf of TCDS indicated that the site was considered to be worth around £460,000<sup>6</sup>.
21. In June 2019, listed building consent and associated funding was secured for the conversion of the Brunel Building to a music, arts and community venue.
22. The same evidence<sup>7</sup> also details that in September 2019, Saputo Dairy Ltd indicated that it would sell the site to TCDS for £460,000 with an overage payment. The overage payment was expected to follow, based on the area set aside for the over 55's housing, with terms to be agreed.

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<sup>4</sup> CD50

<sup>5</sup> CRtBO Ref 0440/16/CRB

<sup>6</sup> Based on the JLL Report, CD29

<sup>7</sup> CD50

23. In December 2019, the National Heritage Lottery Fund award of over £2.5 million was confirmed to TCDS for the Brunel Building refurbishment and conversion works.
24. In January 2020, despite TCDS's confirmation about its readiness to exchange contracts, an agent acting for Saputo Dairy Ltd confirmed that contracts had been exchanged with another party. The evidence points to communication between the site owners and TCDS having ceased at around this point in time.
25. In February 2020, reserved matters consent was granted under the terms of the CRtBO for the bat house, for which the European Protected Species (EPS) licence had been granted in December 2019<sup>8</sup>.
26. On the 1 March 2020, the CRtBO lapsed.
27. In a letter from the Council from July 2021<sup>9</sup>, it was confirmed that the CRtBO had lapsed and that the development could not be undertaken without a further grant of planning permission. The same letter confirms that as a result of this, the provisions of the JLP that directly relate to the CRtBO are out of date, though the policy expectation for a mixed use redevelopment are confirmed as extant. A court order dated 14 October 2021<sup>10</sup> also confirms that the CRtBO has lapsed.
28. In June 2022, a revised application for the bat house was approved.
29. The Appellants submitted Appeal A in September 2022, having acquired the site in January 2020. The outline application for the current scheme, Appeal B, was submitted in April 2023.
30. In November 2023, the TNDP was made. The supporting text of the TNDP<sup>11</sup> notes the allocation in Policy TTV22 of the JLP and highlights the strategic importance of the site to Totnes and the community's aspirations for the site to deliver maximum benefit to the local community, promote low carbon transport and create an exemplar of sustainable development in Totnes. The TNDP also notes that the CRtBO has lapsed, and that whilst the placemaking principles on which it was founded remain relevant, they are carried forward in the JLP with the recognition that what may now be achievable on the site may differ from the CRtBO's specific detail as a result of policy, site and viability constraints.
31. A reference to the site constraint changes in the TNDP also refers to the Environment Agency's climate change allowances which materially reduced the available developable area previously allocated under Policy T4.
32. What is clear from the abundance of submitted evidence, is that there is a very extensive planning history to the site which the summary above barely does justice. My summary lacks detail about the significant amount of effort and financial outlay expended by parties in good faith, particularly TCDS, to bring the site forward for redevelopment, or capture the optimism of the community of Totnes that got involved with and behind the plans for a community-led and owned regeneration scheme. The involvement of TCDS and the community as part of the appeal process is also testament to the ongoing desire to realise at least some of the ambitions that were captured within the CRtBO.

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<sup>8</sup> Ref 0245/20/ARM dated 29 February 2020

<sup>9</sup> CD30

<sup>10</sup> CD31

<sup>11</sup> Paragraphs 5.2.6 – 5.2.8

33. The ambitions of TCDS are also evident from the pre-application submission made to the Council as recently as 2023<sup>12</sup> and ultimately places TCDS as a competitor<sup>13</sup> to the Appellant in its pursuit of permission for a scheme on the site. In this regard, I am urged to consider the Atmos Scheme as an alternative that would come forward if the appeal were to fail.
34. Drawing together all of the above, the site's planning history is a relevant consideration and contextualises the strength of opposition to a scheme promoted by the Appellant as distinct to one proposed by TCDS on behalf of the community. It also elucidates the many challenges involved in bringing forward a scheme for the site. However, the issues arising from the examination of the planning history do not indicate that the current scheme is in conflict with the development plan by reason of its scale, location or mix of uses. I return to this matter in the planning balance below.

### *Economic Viability*

35. The Appellant has confirmed that it seeks no derogation from policy<sup>14</sup>, thus, does not seek to demonstrate any economic viability challenges. In such circumstances, the Framework<sup>15</sup> and Planning Practice Guidance (PPG), indicate that such schemes should be assumed to be viable.
36. Much appears to have been made about the economically unviable TCDS scheme as a reason behind the site having been sold on a commercial basis, ultimately to the Appellant<sup>16</sup>. The JLL Report detailing the valuation of the TCDS scheme undertaken on a residual method basis resulted in a deficit of c. - £55 million, but the market comparison site valuation in the same report indicates a positive site value of £460,000 which was the basis on which negotiations took place between TCDS and Saputo Dairy Ltd during the period between 2013 and 2020.
37. However, the position of TCDS is that its own scheme was not dependant on commercial viability and would draw from other funding sources to realise a longer-term investment, making the negative £55 million residual development valuation largely irrelevant. The Council takes no position in respect of the economic viability, save for the degree to which it relates to the separate VBC issue.
38. The economic appraisal exercises undertaken by TCDS and the Appellant are clearly different and it is difficult to meaningfully compare them. Both methods clearly serve useful purposes, one can be used to cross reference the other, and provided it is based on sound inputs, the use of the residual valuation method can be beneficial at the outline stage. The approach used by TCDS of utilising the background specialist reports to inform the costs quote is logical, but the Appellant's reticence to use costs information that has not specifically been commissioned on its behalf and which may be out of date is also understood. Nonetheless, it is evident that the Council and TCDS have both alleged that the other's schemes are unviable in the traditional commercial sense. If taken at face value, evidence exists to support both assertions.

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<sup>12</sup> CD49

<sup>13</sup> As acknowledged in ID23

<sup>14</sup> CD39

<sup>15</sup> Paragraph 58

<sup>16</sup> CD50, Appx H

Despite this, evidence also exists to the effect that, both parties were willing to pay a positive land value in an attempt to deliver a scheme.

39. In drawing the above points together, I return to the fact that the high level viability testing undertaken for the JLP indicates that a scheme on the site was considered to be economically viable to allow for the normal policy position to apply. It was not forecast to be unviable in the extreme. The Appellant believes that the appeal scheme is economically viable and, despite the conflicting evidence presented by TCDS, has not conceded otherwise.
40. Consequently, my conclusion is that whilst the economic viability of the scheme is a relevant material consideration, based on the Appellant's position, there can be no assumed implications for the scheme, other than that delivery should be assumed to be achievable within the lifetime of any permission granted.

#### *Vacant Buildings Credit*

41. The Policy requirement for 30% affordable housing is set out in Policy DEV8 of the JLP, with Policy C4 of the TDNP echoing the need to provide affordable homes in line with adopted targets and for them to remain affordable in perpetuity. The evidence base for the Policies indicates that there is an unmet need for affordable housing in Totnes and the wider JLP area<sup>17</sup>, and this was not a contested point. Neither Policy C4 or DEV8 provide any detail on the application of VBC.
42. The Framework and the PPG introduce the concept of VBC as an incentive for brownfield development on sites containing vacant buildings except for where they have been abandoned. In respect of abandonment, the PPG explains that each case is a matter for the collecting authority to judge. Explanation is provided about the courts<sup>18</sup> findings, particularly in Hughes, that in deciding whether a use has been abandoned, account should be taken of the condition of the property; the period of non-use; whether there has been an intervening use; and any evidence regarding the owner's intention.
43. Whilst the SoCG confirms that the Appellant is not proposing to introduce evidence to seek to reduce affordable housing from 30% or any other contributions on the basis of viability, it is seeking to introduce a contingent position that the VBC could apply. It seeks to deter the matter to the reserved matters stage when the total floorspace of the proposed development is known and for the exercise to be undertaken on a building by building basis.
44. The mechanism introduced within the submitted S106 provides for a baseline provision of a minimum of 4 social rented affordable dwellings if any applicable amount of VBC exceeds the proposed floorspace. This at least rules out the potential that the development would comprise only open market housing. There are also provisions in the S106 for the full requirement of affordable housing in the event that I conclude VBC is not applicable. If I decline to determine the VBC matter, under the S106, a process would be triggered through the submission of reserved matters with a Vacant Building Credit Statement and could involve the appointment of an 'expert' if there is disagreement.

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<sup>17</sup> CD49

<sup>18</sup> In Hughes, SSE v Hughes 80 P&CR 397

45. The intention of national policy to which I am required to have regard is to incentivise brownfield redevelopment. In response to my question following examination, Mr Kitchenier indicated that he did not regard the VBC incentive would be the difference between the scheme being economically viable or not. The Appellant clearly does not rely on such an incentive or envisage any viability challenges that suggest the VBC incentive is warranted in this case.
46. In terms of the eligibility of the buildings for VBC and whether they have been abandoned, I have visited the site and viewed the interior of almost all of the buildings, save for the small outbuildings (Numbered 1, 2 and 3) on the Existing Site Plan<sup>19</sup>.
47. In terms of the relevant factors from the Hughes case and PPG, the condition of the buildings is acknowledged consistently throughout the evidence as being derelict. My view is that a reuse of the buildings would be unlikely and impractical.
48. In terms of (b), the period of non-use of all of the buildings, all have largely been unused since the closure of the site in 2007. The consideration under (c), of the buildings on site, only Building 8 had a short-term intervening use as a temporary doctor's surgery (which ceased in 2011) and then an unlawful use as a nursery<sup>20</sup>. The nursery use ceased over 8 years ago. Neither the doctor's surgery use nor nursery use have any link with the former uses of the building as part of the Dairy Crest operation.
49. In respect of (d), it is clear that the owner's intention has always been to redevelop the site in its entirety and to demolish all but the Brunel Building (setting aside the chimney). There is no suggestion that a former use would or could be resumed by the current owner or a tenant as an alternative to the pursuit of a redevelopment scheme. Whilst the buildings were not originally made vacant for the sole purpose of redevelopment, and nor has any permission been granted for their redevelopment as yet, the Appellant's acquisition of the buildings and wider site in 2021 has specifically been with a view to wholesale redevelopment, as anticipated by the allocation in the development plan.
50. I am of the view that there is enough evidence to point towards a finding of abandonment. I accept that this view has been reached without the benefit of the Vacant Building Credit Statement that the Appellant envisages would be submitted under the S106, however, the Appellant has chosen not to provide such with the current appeal.
51. There are, therefore, two reasons that the VBC should not apply through the trigger of the relevant S106 clauses. Firstly, it is my view that an appropriate planning balance can only be undertaken in light of the understanding of the compliance, or otherwise, with the development plan. The application of national policy and the degree to which it may outweigh any conflict with the development plan should properly form part of an overall conclusion on this appeal. The application of national policy which seeks to incentivise brownfield redevelopment would seem unfounded when the Appellant's evidence suggests that such an incentive would be unnecessary. And, secondly, in the absence of

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<sup>19</sup> Plan Ref: 20.161/SK20

<sup>20</sup> ID9

robust evidence to the contrary, my view is that all factors taken together point towards a finding of abandonment of the buildings.

52. I have considered the Manor Farm appeal decision<sup>21</sup> and associated costs decision<sup>22</sup> submitted by the Appellant. Whilst I see that they touch upon the issue of VBC, little detail is provided that the scheme is confirmed to be eligible, i.e., that the buildings have not been abandoned, though this can be inferred from the description of the site. The way in which the costs decision suggests that a condition will address the issue of VBC is noted, though no such condition appears in the schedule. The circumstances in that case appear to differ materially from those before me as part of this appeal.
53. For the above reasons, I conclude that there are limited prospects of demonstrating an entitlement to the VBC and that the scheme should be treated as fully compliant with the affordable housing policies of the development plan.

#### *S106 Obligations – Public Open Space*

54. The Appellant does not dispute that the scheme should provide the typologies of public open space (POS) as required by Policies DEV4 and DEV27 of the JLP and Policy C2 of the TDNP, such as: allotments, play space, playing pitches and natural greenspace.
55. The submitted S106 provides for natural greenspace on site and the main parties agree on this aspect. On the other hand, the S106 provides for two options in respect of each other type of POS, with the confirmation to be provided with the reserved matters applications as to whether such POS will be provided on site, or a contribution paid in lieu thereof.
56. The Council would prefer a contribution because the site constraints may otherwise dictate that these spaces are provided in the north-eastern part of the site, i.e., the lowered plateau that will serve as the part of the flood attenuation scheme. A consultation response from the Environment Agency<sup>23</sup> (EA) refers to the likelihood of such an area being liable to flood once or twice a year (increasingly with climate change) and that formal sports pitches will not be suitable, although informal activities and biodiversity habitat would be. Similarly, the issue of flooding of allotment gardens is regarded as problematic in the evidence submitted by the Council<sup>24</sup>.
57. The Council have highlighted other local allotments: Castle Meadow and Copland Field, and other local sports pitches, namely at Borough Park, to which contributions would be better directed rather than through the provision of isolated and substandard facilities on site. Whilst these locations are not specifically named in the S106, the contributions in lieu are defined such that any provision of such POS should be for use by residents of the development.
58. I understand the logic of the Council's reasoning. There would appear to be limited prospects of locating allotments or formal sports pitches on site around the commercial units and dwellings, particularly with regard to the likelihood of flooding in what will inevitably form the more naturalised area of the site. I am

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<sup>21</sup> ID16

<sup>22</sup> ID18

<sup>23</sup> Referenced in ID24

<sup>24</sup> CD63

less persuaded that a play space would be unsuitable on the site, with the EA noting that space for informal activities would be more appropriate, even if liable to occasional flooding. However, confirming that there is only one solution for the site layout is tantamount to treating the submitted plans as forming a detailed application. I have treated them as they are intended to be treated, as indicative in nature. Should an alternative scheme be devised that would overcome the incompatibility of flooding of pitches and allotments, then the relevant provisions of the S106 should still apply and such decisions would be left for the Council to determine at a future date.

59. For the above reasons, my view is that it is appropriate to finally determine at reserved matters stage as to whether the relevant types of POS should be provided within the site or as a financial contribution in lieu of the same. The S106 provisions are necessary in this regard to make the development acceptable in planning terms and cover the eventualities such that either way, the scheme would avoid conflict with Policies DEV4 and DEV27 of the JLP, in addition to Policy C2 of the TDNP.

## **Other Matters**

### *Listed building considerations*

60. The Brunel Building is a grade II listed building, known as 'The Pumping Station' (List Entry Number: 1392516). Its significance is derived, in part, from its historic value as a rare survival of a small number of buildings associated with Isambard Kingdom Brunel's internationally renowned atmospheric railway system. The building also has some aesthetic value for its coursed squared limestone construction in an Italianate style, with red sandstone dressings and pitched slate roof, albeit with poorly constructed additions from its intervening use as part of the dairy processing plant. The building shares some group value with the other survivals of Brunel's South Devon atmospheric railway in outlying locations at Starcross and Torquay.
61. The setting of the LB includes the train station and associated infrastructure, the Signal Box and surrounding residential area of Weirfields. The setting also includes all of the deteriorating appeal buildings. Whilst the train station, associated infrastructure and residential surroundings are neutral aspects within the setting of the building, the appeal site, its respective buildings (excluding the Chimney) and hardstandings detract from the setting, and thus significance of the listed building.
62. The detailed element of the proposal would remove the poor quality, modern and utilitarian additions to the building, largely paring it back to its historic built form and revealing more of the intact historic fabric. It would also secure a community use of the building which has previously been found acceptable in principle, with details of physical works to be secured by way of a separate listed building consent application. The outline component of the scheme would see the removal of the other C20 buildings, with the exception of the chimney, and would better reveal the special interest of the listed building and enhance its setting. Whilst the final detail of the scheme would be the subject of a reserved matters application, a coherent redevelopment scheme would also be likely to positively contribute to the building's setting and, thus, enhance its significance.

63. Separately, there is a grade II listed signal box adjacent to the site, Totnes Signal Box, (List Entry Number 1413738), now in use as a café. This listed building, built around 1923, derives its special interest from its historic fabric and architectural interest, which whilst being a more common type of signal box, has special jaunty projecting windows and interesting features. It also derives some significance from its association with the Great Western Railway and the number and type of signal box buildings that were constructed around that period.
64. The setting of this asset includes the train station and associated infrastructure, surrounding residential areas and the appeal site, with its deteriorating buildings. Whilst most aspects of the building's setting are neutral, the appeal site (excluding the Brunel Building and separate chimney) detracts from the setting of the listed building and therefore, detracts from its significance.
65. The development would not affect the historic fabric of the Signal Box. The detailed element of the proposal would see a positive restoration of the historic form of the Brunel Building. The outline element would result in the removal of all detracting buildings and site features with which the Signal Box is seen in context and, subject to a reserved matters application, see their replacement with a coherent redevelopment scheme. For reasons similar to those described above, both outline and detailed elements of the scheme would result in an enhancement of the setting and thus significance of this separately designated heritage asset.
66. These heritage benefits constitute public benefits of the scheme and ensure compliance with, in particular, Policy DEV21 of the JLP.

#### *Habitats Regulations*

67. The South Hams Special Area of Conservation (SAC)<sup>25</sup> (which was designated on 01/04/2005) is based upon 5 component SSSIs. The qualifying species hosted by the listed habitats is the Greater Horseshoe Bat (GHB). As GHBs prefer linear features such as wood edges and hedges the actual flight distance between the site and the SAC components would be substantially greater; in all cases well beyond the normal foraging range of a GHB (circa 4km).
68. The application site is not located in close proximity to the SAC (or any related sustenance zones as identified by the Natural England (NE) planning guidance<sup>26</sup>. However, it is within the Landscape Connectivity Zone identified for the SAC, and previous studies between 2014 and 2023 have identified the railway corridor south of the site and River Dart to the north-east as commuting routes for GHB. Small numbers of GHB roost in two of the buildings on site.
69. The proposal is not directly connected with, or necessary to site management for, nature conservation. The development would involve demolition of buildings that have been known to be used by GHBs.
70. Therefore, the possible impacts on the integrity of the SAC would arise through any effects on the ability of the GHBs to commute through the site or any loss of known roosting opportunities. Significant effects are therefore considered likely and an Appropriate Assessment is required under Regulation 63 of the

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<sup>25</sup> Site Code: UK0012650

<sup>26</sup> NE planning guidance dated June 2010

Conservation of Species and Habitats Regulations (2017) as amended (the Habitats Regulations).

71. Firstly, the observed commuting routes along the River Dart and the railway line are unaffected by the appeal proposals as they are outside the red line boundary. Secondly the illustrative layout shows a large attenuation basin and area of green space that will buffer the existing commuting route along the River Dart with additional planting to reinforce and enhance the commuting corridor. It also shows planting alongside the railway line to improve connectivity along that route.
72. Thirdly, an alternative 'bat house', comprising roost spaces suitable for all types of bats, including GHBs, is offered and has been previously granted under the outline Community Right to Build Order (CRtBO) and a related reserved matters consent, and subsequently, part of the European Protected Species licence granted by NE as the licencing body.
73. As the CRtBO lapsed, permission for the bat house was sought separately and granted<sup>27</sup>, with minor amendments to that previously approved. The permission for the bat house as a means of mitigation is therefore extant, having been granted on 28th June 2022, and will remain so until 28 June 2025. The bat house would provide a suitable space for a maternity roost in a well-connected part of the site that therefore has potential to enhance the site for GHB.
74. A condition as part of this planning appeal would be required to ensure that no demolition or other commencement of development could take place until the bat house were complete. The same condition would require the retention of said bat house for as long as the development remains in existence. 5 bat boxes on mature trees would also be provided as additional enhancement measures.
75. Furthermore, the proposed illustrative layout has been calculated to provide an enhancement in BNG habitats of over 100%. As the site is almost entirely hard standing and buildings, the net gain is made up of habitats that will provide habitat suitable for GHB within the site that does not yet exist.
76. I have considered whether likely significant effects will be caused by the further proposed development in the Plymouth and South West Devon Local Plan area, in the context of what permissions have already been granted. Having regard to the agreed mitigation in relation to those approved proposals, scale and characteristics of this particular proposal, and the policy requirements of the development plan in relation to sites that have and have not yet been consented, I can conclude that there is no potential for 'in combination' effects that would result in a detrimental impact upon the integrity of the South Hams SAC either alone or 'in combination' with other development proposals.
77. I therefore conclude that, having regard to the evidence available and the mitigation measures that would be secured by way of planning conditions, the proposed development will not produce a detrimental effect upon the integrity of the South Hams SAC either alone, or in combination with other development proposals.

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<sup>27</sup> Ref: 1078/22/FUL

### *Bat House*

78. The Habitats Regulations are also relevant insofar as the proposal will involve the demolition of other buildings from the site that are used, or have been used, by bat species, including horseshoe bats. Bats, including horseshoe species, are listed in Annex 2 of the Conservation of Habitats and Species Regulations 2017, as amended. Whilst not a matter disputed by the main parties, I have considered the three derogation tests.
79. The first test requires that a valid basis is demonstrated for the purpose of the licence. To this end, it is clear that there are imperative reasons of overriding public interest, including those of a social or economic nature to warrant granting planning permission. The site is a significant redevelopment opportunity in the urban area of Totnes. The site currently hosts a multitude of redundant, decaying former commercial buildings which are frequently subject of antisocial behaviour. The site is allocated for a mixed use redevelopment, including housing, and this cannot occur without demolition of the existing buildings on site to remove the hazards and promote a comprehensive scheme to deal with the site as a whole, including the significant flood risk attenuation measures.
80. The second test requires a demonstration that there are no reasonable options with lower impacts. The buildings containing the roosts are integral to the site and are in a derelict condition beyond economic repair. They cannot be retained and reused. It is necessary to secure a comprehensive redevelopment scheme for the site which means that there are no reasonable options with lower impacts than the proposal which would offset the roost losses through replacement provision and provide for alternative roosts and BNG enhancement measures.
81. The third test is to show that granting the licence will not cause long-term impacts on the species concerned.
82. The alternative roosts and protection of commuting roosts, along with additional enhancement measures will ensure the avoidance of long-term impacts on all bat species. These measures can be secured by way of planning conditions. A planning condition would require the minimum provision of 10% increase in BNG and for subsequent maintenance of areas of landscaping and public open green space. Furthermore, the proposal would be submitted with a lighting strategy, broadly in accord with the submitted Illustrative Lighting Parameters Plan<sup>28</sup> which would maintain the necessary dark corridors throughout the site.
83. During the construction phase, appropriate control measures would need to be in place to avoid any harms arising from such activities, such as a Construction Environmental Management Plan. This is also capable of being secured by way of planning condition.
84. As the competent authority for the purposes of Regulations 9(1) and 9(3) of the Habitats Regulations, I have considered the three tests in the context of the proposed bat house and other related mitigation measures required by that separate consent and have no reason to doubt that a mitigation license would not be issued as was the case previously.

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<sup>28</sup> Figure 4 of the Shadow Habitat Regulations Assessment, CD40

### *Interested party representations*

85. The proposal has attracted considerable public interest, with around 500 objections having been received to the scheme between the application and appeal. This considerable strength of feeling amongst the community was evident from the participation in the inquiry and involvement of TCDS as a main party. There were also distinct concerns in relation to Appeal A that attracted a similar level of opposition, albeit that these have fallen away with the withdrawal of that Appeal.
86. The key concerns of the community are principally captured under the main issues but also relate to the fact that the scheme is developer-led and on a traditional commercial basis, incapable of delivering the longer-term socio-economic benefits that the Atmos Scheme was intended to deliver. I have great empathy for the community and TCDS.
87. Another recurring theme raised in contributions from interested parties to the inquiry concerns the lack of public consultation on the current scheme. I also acknowledge these concerns.
88. The other residual concerns can otherwise be captured as a fear that the scheme will not be delivered at all, or will be further delayed, or undertaken in a piecemeal fashion with the Brunel Building, flood infrastructure or commercial elements left until last; a lack of affordable housing; lack of jobs; poor quality of design; impact on infrastructure (doctors, schools, etc.) and technical considerations around flooding, ecology, construction phase and traffic. Whilst these are valid planning considerations, where not already addressed above, these are all aspects that are capable of being addressed by way of planning conditions and S106, or are matters which do not otherwise affect the scheme's accordance with the mixed use allocation in the development plan.
89. The potential for a form of Atmos Scheme to progress as an alternative is also an aspect that TCDS urge me to consider. A planning application has not been submitted at the time of writing despite the recent pre-application process. I have also note for an Atmos Scheme to progress, the site would need to be acquired. The evidence suggests that TCDS would seek to use the Council as a body to secure a compulsory purchase order (CPO) to achieve such an outcome if not by agreement. I return to this below.

### **Conditions and planning obligations**

#### *Planning conditions*

90. I have considered the planning conditions suggested by the parties in light of the requirements in the Framework and PPG. I have made minor changes to ensure clarity and precision. The imposition of pre-commencement conditions has been minimised to only those which are strictly necessary. Additionally, conditions need to be added separately to both the outline planning permission and the detailed element.
91. The standard outline conditions requiring the submission of reserved matters within the 3 year timeframe are necessary, as is a condition specifying the date by which the development shall have been approved. Similarly, in the interests of certainty, a condition is necessary specifying the approved plans and trigger for the provision of the detailed site access.

92. To ensure the scheme's compliance with the Habitats Regulations, a condition is necessary to ensure the completion of the bat house prior to any works of development, including demolition. For similar ecological reasons, conditions are also necessary to secure the implementation of the ecological report measures, construction phase ecological management plan, provision of a lighting scheme and the delivery of a minimum of 10% BNG. Such measures are to be secured by way of a Landscape and Ecological Management Plan via condition.
93. In order to secure the necessary energy, environmental and social sustainability measures to comply with Policies DEV19, DEV32 and SPT9 of the JLP and Policy EC2 of the TDNP, conditions are required in connection with an energy statement, skills plan and electric vehicle, electric cycle and necessary charging infrastructure.
94. To ensure the timely implementation of works to the chimney, a condition is required to secure such, with separate obligations of a similar nature for the Brunel Building contained within the S106. In my view, provisions relating to the Brunel Building are satisfactory and need not refer to its custodianship by a Community Interest Company or other such entity as suggested by TCDS.
95. Conditions are necessary in connection with the recording of historic building and archaeological features. Also dealing with the ground conditions, it is necessary to condition the implementation of a comprehensive remediation scheme. A number of conditions are necessary to ensure the delivery of the flood alleviation and compensatory works, works to the leat and implementation of final surface water drainage scheme.
96. In the interests of environmental quality and the protection of residents, conditions are necessary to seek construction phase controls, such as a site waste management and construction management plan, and longer term, for an environmental management plan to be submitted to apply to the commercial and community buildings. In order to protect the amenities of residents, conditions are necessary in relation to acoustic measures, restrictions on the noise outputs on plant, controls on works outside of the commercial premises close to existing dwelling at Weirfields and use of the northern access road for commercial deliveries.
97. To ensure highway safety, conditions are necessary to secure keep clear markings near the access and for details of the highway design standards to be submitted and approved. In the interests of the safe operation of the railway network, a condition is necessary to ensure that the development is implemented in accordance with the minimum distances from any railway infrastructure.
98. To maximise the pedestrian connectivity of the site, a condition is necessary requiring a footpath link from the development to the adjoining footpath.
99. To secure an appropriate form of development to accord with Policies DEV8 and DEV9 of the JLP, conditions are necessary to secure details of the mix and type of market housing and for a minimum amount of accessible dwellings relative to the Building Regulation requirements. Finally, a condition is necessary to limit the specific use of the commercial units.

100. In terms of the conditions on the detailed element, it is necessary to condition its implementation within the statutory time limit of three years, and for the approved plans to be specified to provide certainty.
101. In the interests of highway safety, the keep clear markings at the access are also required by way of condition, should this be the first element of the scheme to come forward. As the community use building is also likely to have deliveries on the northern access road that could affect neighbouring residents, a condition is necessary to limit such movements.
102. Finally, a condition is necessary to limit the permissible use classes for the use of the Brunel Building, as described.

#### *S106 Obligation and UU*

103. The Framework, in paragraph 55, directs that consideration should be given as to whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations must only be sought where they meet the tests set out in the Framework, also contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010, as amended (the 'CIL Regulations'). A CIL Compliance Statement has been submitted by the Council .
104. The S106 also makes provision in respect of affordable housing, including the VBC which I have ruled out, open spaces, landscaping and environmental management, NHS surgery contributions and the Brunel Building. The NHS Surgery contributions were the subject of representations at the inquiry and are distinct from any contributions towards general NHS funding gaps that may be believed to be created by net inward migration to new housing developments; the request for which was retracted by the ICB during the appeal process. In terms of the Brunel Building, it requires that no more than 50% of the dwellings can be occupied until works to it are complete which brings this element in at an appropriate stage in the development. The S106 sets out various details and arrangements relating to the foregoing, the method of calculation of contributions, where relevant, the practical administration of the obligations and monitoring.
105. Save for the VBC elements and POS provision addressed separately above, there is no dispute between the main parties over the justification for any other elements of the S106. I have considered the concerns of TCDS in relation to the absence of explicit wording to the affordable dwellings remaining affordable in perpetuity, but consider that the shared ownership dwellings and social rented dwellings, the latter of which would be transferred to a registered provider, would not be at risk of becoming open market dwellings unless where deliberately intended, i.e. in the case of shared ownership where occupiers have the ability to 'staircase' out.
106. I have also considered the monitoring fees sought by the Council within the S106 for which there is no method of calculation. As I have no countervailing evidence before me to indicate that these fees are disproportionate, I consider that the fees sought are reasonable to allow and resource the monitoring of the obligation.

107. Accordingly, the obligations contained within the S106 are necessary to make the development proposed acceptable and in accordance with the provisions of Framework paragraph 55 and CIL Regulation 122
108. The separate UU commits the developer to producing a travel plan to be approved by Devon County Council and the payment of a financial contribution of £300 per dwelling to secure implementation of the relevant measures identified therein. I am satisfied that the contribution amount has been calculated and negotiated on a fair basis to achieve compliance with JLP Policy DEV29 and that the obligation is fairly and reasonably related in scale and kind to the development so as to meet the tests set out in the CIL Regulations.

### **Planning Balance and Conclusion**

109. Having resolved the matters in dispute between the Council and Appellant in respect of VBC and S106 provisions to the extent necessary, I am able to conclude that the scheme complies with the development plan when taken as a whole.
110. Taking account of the legal approach to material considerations as set out in the caselaw advanced by TCDS<sup>29</sup>, I find that the planning history and the economic viability of the scheme are relevant material considerations.
111. However, even if I believed that a future Atmos Scheme were able to go beyond the requirements of the development plan and deliver even greater economic, social and environmental benefits, it does not mean that it should prevent permission being granted for an otherwise acceptable scheme in any event. These principles are established in the caselaw advanced by the Appellant<sup>30</sup>. Ultimately, permission can be granted for this scheme and any better scheme that may come along. On the other hand, withholding permission for a scheme that complies with the development plan could harm public confidence in the planning system and would further stymie the regeneration of the site.
112. Therefore, my view is that, even taken together, the planning history, economic viability and potential alternative Atmos Scheme are material considerations that fall short of outweighing the compliance of the scheme with the development plan. Neither they, nor any other material considerations advanced indicate that a decision should be taken other than in accordance therewith.
113. For the foregoing reasons, the appeal is allowed.

*H Nicholls*

INSPECTOR

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<sup>29</sup> St Modwen Developments Ltd v SSCLG [2018] EWCA Civ 1643; R Samuel Smith Old Brewery (Tadcaster) V North Yorkshire CC [2020] USSC 3; Sovmots Investments Ltd v SSE [1977] QB 411 & R (Wright) v Resilient Energy Severndale Ltd [2019] UKSC53; [2019] 1 WLR 6562

<sup>30</sup> R (Save Stonehenge World Heritage Site Ltd, R (on the application of) v Secretary of State for Transport [2021] EWHC 2161 (Admin) (2021); Trusthouse Forte Hotels Ltd v SSE (1986) 53 P & CR; SoS & Anor v Sainsburys Supermarkets Ltd [2007] EWCA Civ 1083 (2007)

## **ANNEX 1 – APPEARANCES**

### **FOR THE APPELLANT:**

Mr Charles Banner KC  
Instructed by Mr David Seaton of PCL Planning

He called:

|                     |                                 |
|---------------------|---------------------------------|
| Mr Andrew Kitchener | Kitchener Land and Planning Ltd |
| Mr Duncan Moors     | Ashfords                        |

### **FOR THE COUNCIL:**

Mr Richard Ground KC  
Instructed by Mr Steven Stroud, South Hams District Council

He called:

|                   |                             |
|-------------------|-----------------------------|
| Mr Phil Baker     | South Hams District Council |
| Ms Alexis Huggins | South Hams District Council |

### **RULE 6 PARTY:**

Ms Celia Colquhoun - Counsel for Totnes Community Development Society  
Instructed by Mr Andrew Kirby of Andrew Kirby Architects

She called:

|                     |                                                  |
|---------------------|--------------------------------------------------|
| Ms Frances Northrop | Director of Totnes Community Development Society |
| Mr Nicholas Walker  | Savills                                          |
| Mr James Bird       | Macegreen Consulting Limited                     |

### **THIRD/INTERESTED PARTIES:**

|                           |                                       |
|---------------------------|---------------------------------------|
| Ms Inez Aponte            | Local resident                        |
| Dr Sarah Wollaston        | Local resident                        |
| Ms Ruth Ben-Tovin         | Local resident                        |
| Dr Jim Carfrae            | Local resident                        |
| Ms Mary Coughlan-Clarke   | Local resident                        |
| Mr David Cutting          | Local resident                        |
| Mayor Emily Price         | Local resident                        |
| Ms Laurel Ellis           | Local resident                        |
| Councillor Jacqui Hodgson | Local resident and elected councillor |
| Mr Malcom Dicken          | Devon NHS Integrated Care Board       |
| Mr George Grute           | Devon NHS Integrated Care Board       |
| Mr Musa Garba             | Local resident                        |
| Mr Ben Yeger              | Local resident                        |

## APPENDIX 2 - DOCUMENTS

### DOCUMENTS SUBMITTED DURING THE INQUIRY:

|      |                                                                                                                                                    |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| ID1  | Appellant's opening statement                                                                                                                      |
| ID2  | Council's opening statement                                                                                                                        |
| ID3  | TCDS opening statement                                                                                                                             |
| ID4  | List of suggested planning conditions                                                                                                              |
| ID5  | Draft S106 planning obligation (V11)                                                                                                               |
| ID6  | Hughes v SSETR [2000] EWCA Civ 506                                                                                                                 |
| ID7  | Unilateral Undertaking made in favour of DCC Highways                                                                                              |
| ID8  | Appeal decision APP/D3505/W/17/3187371 dated 21 May 2018                                                                                           |
| ID9  | Planning decision Ref 56/1070/10/CU dated 1 August 2010                                                                                            |
| ID10 | Sovmots Investments Ltd. v SSE [1977]                                                                                                              |
| ID11 | Nottinghamshire County Council v Secretary of State for the Environment, Transport and the Regions [2011] EWHC 293 (Admin); [2002] 1 P. & C.R. 389 |
| ID12 | Letter from Councillor Birch dated 1 January 2024                                                                                                  |
| ID13 | Completed S106 Agreement dated 18 January 2024                                                                                                     |
| ID14 | Completed unilateral undertaking dated 3 January 2024                                                                                              |
| ID15 | Appeal decision Ref APP/Z3635/W/23/3319062                                                                                                         |
| ID16 | Unilateral undertaking in re to APP/Z3635/W/23/3319062                                                                                             |
| ID17 | Plymouth & South West Devon JLP Viability Study Final Report, 2017                                                                                 |
| ID18 | Costs decision in relation to APP/Z3635/W/23/3319062                                                                                               |
| ID19 | Council statement in connection with APP/Z3635/W/23/3319062                                                                                        |
| ID20 | Compulsory purchase process and the Crichel Down Rules, 2019                                                                                       |
| ID21 | Submission on conditions 5, 7 and 34                                                                                                               |
| ID22 | Email relating to affordable housing 'in perpetuity' clauses                                                                                       |
| ID23 | Closing submissions of Totnes Community Development Society                                                                                        |
| ID24 | Closing submissions of South Hams District Council                                                                                                 |
| ID25 | Closing submissions on behalf of the Appellant                                                                                                     |
| ID26 | Amended highway condition                                                                                                                          |

### DOCUMENTS SUBMITTED AFTER THE INQUIRY:

|      |                                                      |
|------|------------------------------------------------------|
| ID27 | Amended unilateral undertaking dated 6 February 2024 |
|------|------------------------------------------------------|

### CORE DOCUMENTS:

|      |                                                              |
|------|--------------------------------------------------------------|
| CD1  | Officer Report                                               |
| CD2  | 3136_22_OPA Decision Notice                                  |
| CD3  | Officer Report                                               |
| CD4  | Decision notice                                              |
| CD5  | LPA SoC - 3326134 and 3326235                                |
| CD5  | LPA SoC Appendix A - Appeal A                                |
| CD5  | LPA SoC Appendix B - Appeal B                                |
| CD6  | Appellant SoC (inc holiday use) Final 3136_22_OPA            |
| CD7  | Appellant SoC - 2023 (exc. Holiday use) application          |
| CD8  | Final SoCG (inc holiday use) application - Appeal A Original |
| CD9  | Final SOCG(EXC holiday use) application - Appeal B original  |
| CD10 | LLFA Correspondence re. SoCG                                 |
| CD11 | DRAFT Conditions Table                                       |
| CD12 | SoCG Highways V2 (003)                                       |

|      |                                                        |
|------|--------------------------------------------------------|
| CD13 | SoCG EA v2                                             |
| CD14 | DRAFT SoCG Ecology and BNG Report Appendices           |
| CD15 | SoCG Noise (SIGNED)                                    |
| CD16 | Joint Local Plan 2014 - 2034                           |
| CD17 | Inspector Report Appendix                              |
| CD17 | Inspector Report                                       |
| CD18 | Tesco vs. Dundee Judgment                              |
| CD19 | Court of Justice Leicester NHS v Harborough DC         |
| CD20 | Totnes Site Allocations DPD                            |
| CD21 | 20230717-Referendum-Version-Totnes-Neighbourhood-Plan  |
| CD22 | Totnes Neighbourhood Plan examiners report             |
| CD23 | Joint Local Plan Supplementary Planning Document       |
| CD24 | Developer Contributions Evidence Base.pdf              |
| CD25 | 2022 5YHLS                                             |
| CD26 | Community Right to Build Order Decision Statement      |
| CD27 | Community Right to Build Order Examiners Report        |
| CD28 | Community Right to Build Order with Main Modifications |
| CD29 | JLL Valuation                                          |
| CD30 | 07-26-21 Fairbairn Letter                              |
| CD31 | 211015 Order by Master - Consent Order                 |
| CD32 | SHDC Statement re CPO 17-06-2021                       |
| CD33 | 3718_22_CLB DN and Location Plan                       |
| CD34 | 1078_22_FUL DN and Location Plan                       |
| CD35 | TCDS Returns - 2019 - 2023                             |
| CD36 | Visit Totnes Brochure                                  |
| CD37 | TCDS Statement of Case 10 October 2023                 |

#### PROOFS OF EVIDENCE AND REBUTTALS:

|      |                                                            |
|------|------------------------------------------------------------|
| CD38 | David Seaton Housing Proof of Evidence                     |
| CD39 | David Seaton Proof of Evidence                             |
| CD40 | Dairy Crest Ecology Proof of Evidence REV01                |
| CD41 | Summary Proof of Evidence Ecology                          |
| CD42 | Andrew Kitchener Viability Proof of Evidence 19.12.23      |
| CD43 | Slade - LPA Ecology                                        |
| CD44 | Baker - LPA Housing                                        |
| CD45 | Urmson - LPA Landscape                                     |
| CD46 | Wallace - LPA Noise                                        |
| CD47 | Stroud Proof - Planning                                    |
| CD48 | Stroud Rebuttal Proof - Planning                           |
| CD49 | AK Architects DC Site Proof of Evidence 10 Nov 23          |
| CD50 | Frances Northrop Proof of evidence and appendices          |
| CD51 | Nick Walker, Savills - Proof of Evidence                   |
| CD52 | TCDS Fastglobe appeals - Macegreen Proof of Evidence       |
| CD53 | David Seaton Rebuttal 15-01-2024                           |
| CD54 | Andrew Kitchener Rebuttal                                  |
| CD55 | Nick Walker, Savills - Rebuttal Statement                  |
| CD56 | Former Dairy Crest Totnes - Viability Assessment 127123OPA |
| CD57 | Former Dairy Crest Totnes - Viability Assessment 313622OPA |

#### STATEMENTS OF COMMON GROUND:

|      |                                                   |
|------|---------------------------------------------------|
| CD58 | Final Statement of Common Ground 29 November 2023 |
|------|---------------------------------------------------|

|      |                                                              |
|------|--------------------------------------------------------------|
| CD59 | Final SOCG (EXC holiday use) application - Appeal B original |
| CD60 | Final SoCG Ecology 28-11-23 signed                           |
| CD61 | Dairy Crest CMC2 counsels note 26Oct23 final agreed          |

OTHER DOCUMENTS:

|      |                                                     |
|------|-----------------------------------------------------|
| CD62 | Appeal form                                         |
| CD63 | CIL Compliance Statement - Dairy Crest Appeal B.pdf |
| CD64 | CIL Compliance Statement Historic expert consultees |
| CD65 | CIL Compliance Statement Attachment VBC Note        |
| CD66 | Plan B - Existing Building GIA Totnes               |
| CD67 | Proposed Conditions 5-7-34                          |

### **APPENDIX 3 - SCHEDULE OF CONDITIONS**

#### **OUTLINE PERMISSION CONDITIONS**

1. The first application for approval of reserved matters shall be made to the Local Planning Authority no later than 3 years from the date of this permission.
2. Development shall be begun before the expiry of 2 years from the date of approval of the final reserved matters.
3. The proposal shall be carried out in accordance with the approved Location plan (Ref 220103 L 001, dated August 2022) and approved access plan (ref. 220103 L 005, dated August 2022).

The access shall be installed prior to the first occupancy of any dwelling or commercial unit hereby permitted and shall thereafter be retained for as long as the development remains in existence.

4. Details of the layout, scale, appearance and landscaping, including boundary treatments (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
5. Prior to commencement of any development (including demolition), the bat house approved by permission (ref. 1078/22/FUL) must be completed and thereafter retained for as long as the development remains in existence.
6. Concurrent with the first reserved matters an energy statement shall be submitted to the Local Planning Authority for approval.

The energy statement shall include:

- Details of how carbon emission levels 20% less than that required to comply with Building Regulations Part L has been achieved (if possible)
  - How the proposal has reduced the energy load of the development
  - The on site provisions of renewable energy generation
7. Concurrent with the first reserved matters, a scheme to maintain the Chimney must be submitted and approved in writing by the Local Planning Authority.

This scheme must make suitable provisions to ensure the retention of the Chimney for the lifetime of the development and shall be carried out prior to the commencement of any works to the Brunel Building.

8. No development shall take place until the developer has secured the implementation of a programme of (i) historic building recording and (ii) archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme as agreed in writing by the Local Planning Authority.
9. The development shall not be occupied or brought into its intended use until (i) the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation and (ii) that the provision made for analysis, publication and dissemination of results, and archive deposition, has been confirmed in writing to, and approved by, the Local Planning Authority.
10. Prior to the commencement of the development, a site waste management plan shall be submitted to and approved in writing by the Local Planning Authority. The updated plan shall include, but not be limited to, the following:
  - a) The predicted annual amount of waste (in tonnes) that will be generated once the development is occupied;
  - b) The main types of waste generated when development is occupied;
  - c) The methods for limiting the generation of waste; and
  - d) The methods for securing the maximum diversion of waste from disposal.

Development shall be carried out in accordance with the approved site waste management plan.

11. Prior to commencement of development, a skills plan shall be submitted to the Local Planning Authority and approved in writing.

This statement should include:

- Work experience placement
- Job creations
- Training Plans

12. Concurrent with the first application for the approval of reserved matters, details of the mix of type and size of the market dwellings to be provided shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
13. Prior to commencement of development a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, shall be submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:
  1. A preliminary risk assessment which has identified:
    - a. all previous uses.

- b. potential contaminants associated with those uses.
  - c. a conceptual model of the site indicating sources, pathways, and receptors.
  - d. potentially unacceptable risks arising from contamination at the site.
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how and they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority.

14. If, during development, contamination not previously identified is found to be present at the site then no further development in that area shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.
15. Prior to commencement of any work on any part of the site, the Planning Authority shall have received and approved in writing a Construction Management Plan (CMP) including:
- (a) the timetable of the works;
  - (b) daily hours of construction;
  - (c) any road closure;
  - (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the planning Authority in advance;
  - (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
  - (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
  - (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;

- (h) hours during which no construction traffic will be present at the site;
- (i) the means of enclosure of the site during construction works; and
- (j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site
- (k) details of wheel washing facilities and obligations
- (l) The proposed route of all construction traffic exceeding 7.5 tonnes.
- (m) Details of the amount and location of construction worker parking.
- (n) Photographic evidence of the condition of adjacent public highway prior to commencement of any work;

The development shall be carried out in accordance with the approved CMP.

16. No development shall commence until a Construction Ecological Management Plan (CECoMP) has been submitted to and approved in writing by the Local Planning Authority. The CECoMP shall include but not be limited to:

- a) Risk assessment of potentially damaging construction-type activities
- b) Identification of "biodiversity protection zones" and areas where invasive species have been identified.
- c) Inclusion of or reference to details for implementation of method statements required to achieve specific biodiversity outcomes, and particularly mitigation measures
- d) Identification of practical measures, both physical measures and sensitive working practices to avoid impacts during development, for protecting biodiversity through the control or regulation of construction-type activities
- e) The location and timing of sensitive works to avoid harm to biodiversity features.
- f) The times during construction or development implementation when particular specialists need to be present on site to oversee works
- g) Responsible persons and lines of communication
- h) Defining and communicating the role and responsibilities on site of an ecological clerk of works (ECoW), or appointed ecologist(s) responsible for managing biodiversity issues on site, and times and activities during construction or development implementation when they need to be present to oversee works
- i) Use of exclusion fences, protective barriers and warning signs.
- h) Restrictions on the hours when lighting may be used during construction e.g. no night time working;

The development shall be carried out in accordance with the approved CECoMP.

17. Prior to or as part of the Reserved Matters, the following information shall be submitted to and approved in writing by the Local Planning Authority:

- (a) A detailed drainage design based upon the Flood Risk Assessment (ref. FOY-JBAU-XX-XX-RP-Z-0001\_A1\_C01-FRADairy-Crest) & Addendum (ref. 1685W001).
- (b) Detailed proposals for the management of surface water and silt run-off from the site during construction of the development hereby permitted.

(c) Proposals for the adoption and maintenance of the permanent surface water drainage system including ecological management plan.

(d) A plan indicating how exceedance flows will be safely managed at the site.

No building hereby permitted shall be occupied until the works have been approved and implemented in accordance with the details under (a) – (d) above.

18. Before any works start on site, the sites proposed land and finished floor levels are approved by the LPA in writing. These levels will be based upon the latest flood risk guidance/information (informed by an up-to-date flood risk assessment), and will create:

- A safe development plateau above the design flood level.
- Compensatory flood storage area, linked into the surrounded functional floodplains.
- New buildings with FFL above the design flood level with safe access and egress routes.
- Appropriately safe carparking areas with necessary mitigation measures.
- A control throttle, flood bunds and raised land levels on the leat to ensure completion of Totnes flood defence scheme.
- Landscaped levels which facilitates safe movement of flood waters during flood events. The leat and River Dart Riverbank will be landscaped in an appropriate manner to assist the movement of flood waters and install any necessary erosion measures.

The works approved shall be carried out in accordance with the approved details.

19. No development approved by this planning permission shall commence until such time as a scheme to ensure the development is flood resilient has been submitted to, and approved in writing by, the local planning authority. The scheme shall be fully implemented prior to occupation and subsequently maintained over the lifetime of the development.

20. No development approved by this planning permission shall commence until such time as a detailed flood compensation scheme has been submitted to, and approved in writing by, the local planning authority. The scheme shall incorporate environmental enhancements, including wetland habitat, native tree and shrub planting and seeding with wildflowers. The flood compensation scheme shall be fully implemented prior to occupation and subsequently maintained over the lifetime of the development.

21. No development approved by this planning permission shall commence until such time as a detailed scheme for work to the leat has been submitted to, and approved in writing by, the local planning authority. The scheme shall incorporate a throttle control structure and bund. The works to the leat shall be fully implemented prior to occupation and subsequently maintained over the lifetime of the development.

22. No development should take place until an Acoustic Design Statement has been submitted and approved demonstrating that the detailed design of the residential accommodation is sufficient to ensure that the internal noise

criteria set out in BS8233, namely 35 dB LAeq in living rooms by day and 30 dB LAeq in bedrooms by night can be achieved. The development shall be implemented in accordance with the approved details.

23. Prior to commencement of the development a 'Keep Clear' marking in accordance with diagram 1026 of the Traffic Signs Regulations and General Directions shall be agreed by design and provided at the entrance to the site on the A385 road.

24. As part of the Reserved Matters, a lighting scheme shall be provided for internal and external lighting associated with the development which complies with the requirements of the current Institution of Lighting Professionals 'Bats and Artificial Lighting in the UK' Guidance Note on the avoidance of light pollution. The purpose of the lighting scheme is to ensure that the identified bat commuting routes, both within and outside the site, are unaffected by light spill from the development i.e. are demonstrated to not exceed 0.5 lux.

The layout of development and associated lighting should be in accordance with the Illustrative Lighting Parameters Plan in Figure 4 of the Shadow Habitat Regulations Assessment (dated November 2023), attached at Appendix B of the SoCG (Ecology) (dated November 2023) between DCC (Ecology) and Fastglobe (Mastics) Ltd.

25. Prior to the commencement of the non-residential elements of the development the applicant must provide an Environmental Management Plan in writing to the satisfaction of the Local Planning Authority detailing the way in which environmental impacts will be addressed and incorporated into the design, layout and management of the site. The Plan shall consider the impacts of commercial and community use buildings:

- noise (including low frequency noise),
- traffic,
- odour,
- smoke,
- air pollution and light on the local environment and air quality,
- and the way in which these impacts will be mitigated.

The Plan shall also include details of the foul and surface water drainage systems, and arrangements for the prevention of pollution of any nearby watercourse.

The development shall be carried out in accordance with the approved document.

26. Prior to occupation of the development, a Landscape and Ecological Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The LEMP shall include but not be limited to:

- (a) Description and evaluation of features to be managed.
- (b) Ecological trends and constraints on site that could influence management.
- (c) Aims and objectives of management.
- (d) Appropriate management options for achieving aims and objectives.
- (e) Prescriptions for management actions.

(f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).

(g) Body or organization personnel responsible for implementation of the plan.

(h) Monitoring and remedial measures, to include compliance with the agreed lighting scheme.

(i) Funding resources and mechanisms to ensure sustainable long-term delivery of the proposed management.

The Development shall be carried out and occupied in accordance with the LEMP as approved.

27. Details of layout shall include a footpath link between the means of access hereby approved (ref. 220103 L 005) and the Public Right of Way (Totnes Footpath 17) to the north of the site, broadly in accordance with the route shown on the illustrative masterplan (ref. 20.161/02 rev J). This link shall be provided prior to the first occupation of any residential units.

The footpath shall thereafter be maintained for as long as the development remains in existence.

28. Prior to the occupation of 50% of the residential units hereby permitted 5 rentable electric bikes and associated charging hubs and 1 rentable electric car and associated charging hub will be provided near the site entrance in accordance with details to be submitted and approved by the LPA in writing, and thereafter retained for as long as the development remains in existence.

29. Any plant (including ventilation, refrigeration and air conditioning units) or ducting system to be used in pursuance of this permission shall be so installed prior to the first use of the premises and be so retained and operated that the noise generated at the boundary of the nearest neighbouring property shall not exceed Noise Rating Curve 25, as defined in BS8233:2014 Sound Insulation and Noise Reduction for Buildings Code of Practice and the Chartered Institute of Building Service Engineers Environmental Design Guide.

30. The proposed estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be constructed in accordance with details to be approved by the Local Planning Authority in writing. For this purpose, plans, sections and details indicating, as appropriate, the design, layout, levels, gradients, materials, method of construction and long term maintenance shall be submitted to the Local Planning Authority prior to the commencement of development on the site. Once provided the road network shall be maintained as such for as long as the development remains in existence.

31. No work activities or storage shall be carried out outside the buildings, with the openings on the north façade, facing the existing houses on Weirfields. Openings on the northern façade facing towards Weirfields shall be limited to fire escape doors only.

- 32.No deliveries to be made via the northern access road, no deliveries to be accepted or despatched except between the hours of 8am and 6pm Monday to Friday, or 8am and 1pm on Saturdays, and not at all on Sundays or Bank Holidays, unless by prior agreement with the Local Authority.
- 33.The development shall be undertaken in accordance with the recommendations included in the Ecology Report (ref. SWE245 rev 1 Ecology Assessment dated 26th August 2022 and SWE245 rev 1 Preliminary Roost Appraisal dated 1st February 2021).
- 34.A Biodiversity Gain Plan, to include Metric calculations, pre and post-development plans and a habitat management and monitoring plan must be submitted to and approved in writing by the Council with the Reserved Matters. A biodiversity net gain in excess of 10% (as measured by the DEFRA biodiversity net gain metric) shall be delivered on site and maintained for a period of at least 30 years following completion in accordance with the approved Biodiversity Gain Plan.
- 35.Soakaways / attenuation ponds / septic tanks etc, as a means of storm/surface water disposal must not be constructed near/within 5 metres of Network Rail's boundary or at any point which could adversely affect the stability of Network Rail's property/infrastructure. Storm/surface water must not be discharged onto Network Rail's property or into Network Rail's culverts or drains. Network Rail's drainage system(s) are not to be compromised by any work(s). Suitable drainage or other works must be provided and maintained by the Developer to prevent surface water flows or run-off onto Network Rail's property / infrastructure. Ground levels – if altered, to be such that water flows away from the railway. Drainage does not show up on Buried service checks.
- 36.The existing fence adjacent to Network Rail's boundary shall be maintained for the length of time the development remains in existence.
- 37.The Commercial Buildings shall be restricted to Class E uses (with no more than 240sqm in use as Class E(a)) and for no other purpose of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification without prior permission from the Local Planning Authority through submission of a planning application.
- 38.At least 20% of dwellings will meet Category M4(2) Building regulations standards. Any dwellings that meet Category M4(3) standards will count towards the 20%.
- At least 2% of dwellings will meet Category M4(3) Building regulations standards.

#### FULL PLANNING PERMISSION CONDITIONS

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans/details:
  - Site Location Plan, Ref 220103 L 001, dated August 2022
  - Brunel Building LBC – Demolition Plan (No Ref)
  - Proposed refurbishment and alterations to existing GradeII listed Brunel Building (Proposed Drawing 01) ref. 20.161/15 Rev A
  - Proposed refurbishment and alterations to existing GradeII listed Brunel Building (Proposed Drawing 02) ref. 20.161/16 Rev A
  - Proposed refurbishment and alterations to existing GradeII listed Brunel Building (Proposed Drawing 03) ref. 20.161/17 Rev A
- 3) Prior to commencement of the development a 'Keep Clear' marking in accordance with diagram 1026 of the Traffic Signs Regulations and General Directions shall be submitted to and approved in writing by the Local Planning Authority and provided at the entrance to the site on the A385 road.
- 4) No deliveries to be made via the northern access road, no deliveries to be accepted or despatched, and the premises are not to be open to the public except between the hours of:
  - 8am and 8pm Monday to Friday,
  - 8am and 11pm on Saturdays
  - 8am to 8pm on Sundays or Bank Holidays.
- 5) The premises, being the 'Brunel Building' identifiable on the approved drawings' shall be used for Class F1/F2 uses and for no other purpose of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order.

----- END OF SCHEDULE -----