



Appeal Decision

Hearing held on 7 & 8 May 2025

Site visit made on 8 May 2025

by **H Nicholls MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 June 2025

Appeal Ref: APP/X1165/W/24/3354507

Copythorne Road, Brixham

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Peloton Land Limited against the decision of Torbay Council.
 - The application Ref is P/2023/0480.
 - The development proposed is outline planning application for the erection of up to 77 dwellings, including affordable housing (35%), areas of open space (including public park), landscaping, biodiversity net gain and site infrastructure, with all matters reserved apart from access.
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Decision

1. The appeal is allowed and planning permission is granted for outline planning application for the erection of up to 77 dwellings, including affordable housing (35%), areas of open space (including public park), landscaping, biodiversity net gain and site infrastructure, with all matters reserved apart from access at Copythorne Road, Brixham, in accordance with the terms of the application, Ref P/2023/0480, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application was made in outline form with all matters save for access reserved for future consideration. The access detailed at this stage is a single main junction onto Copythorne Road (Plan Ref 215975/AT/A01 A) with any other driveway accesses or internal roads reserved for future consideration. The Framework Plan (Ref 1653 / PL102 Rev D) has been taken into consideration as a guide as to how any development could come forward on the site, but more detailed layout plans have been treated as indicative in nature.
4. The appeal proposal is accompanied by an Environmental Statement (ES) prepared in accordance with the *Town and Country Planning (Environmental Impact Assessment) Regulations 2017* (EIA Regulations), including technical appendices and a non-technical summary. Additional information was submitted as part of the ES and was consulted upon until 23 May 2025. I am satisfied that the totality of the information provided is sufficient to meet the requirements of Schedule 4 of the EIA Regulations and this information has been taken into account in reaching a decision.

5. A final draft legal agreement securing planning obligations pursuant to S106 of the Town and Country Planning Act 1990 was submitted prior to the opening of the hearing and an executed version was received after the hearing in accordance with an agreed timeframe. This agreement has been taken into account.
6. The main parties agreed that the Council is only able to demonstrate a 1.72 year supply of housing against the minimum requirement of five years' worth with 20% buffer as set out in the *National Planning Policy Framework* (the Framework). The base date was agreed as being 1 April 2025 with an annual requirement of 1,128 houses per annum (pa), up from 720 pa. The numerical expression of the shortfall was also agreed as being 3,702 houses. I return to this further below.
7. The *South Devon National Landscape* (NL) was formerly called the *South Devon Area of Outstanding Natural Beauty* (AONB). Where referring to the specific title or wording of relevant policies or documents, AONB is used in place of NL.

Main Issues

8. The main issues are:
 - (a) whether the location, scale and nature of the development accords with the spatial strategy of the development plan;
 - (b) the effects of the proposal on the character and appearance of the area and whether it would conserve and enhance the landscape and scenic beauty of the NL;
 - (c) whether the proposal constitutes major development within the NL, and if so, whether there are exceptional circumstances and whether it would be in the public interest; and
 - (d) whether the development would prejudice strategic decisions for the plan making process.

Reasons

Context

9. The site extends to around 6.35 hectares of land on the south side of Copythorne Road, with existing housing development on the northern side and also extending along the eastern boundary. It is situated on the western edge of Brixham which is a large settlement of around 17,000 residents within the area referred to as the Brixham Peninsula, owing to its geographical situation and accessibility constraints. Whilst Brixham is a large settlement within the unitary authority area of Torbay, the authority's main urban centres are Torquay and Paignton.
10. The site and some surrounding areas lie within the NL, which cover around 700 hectares surrounding Brixham and to the south of Paignton. Larger areas of the NL are within neighbouring authority areas.
11. The use of the site is predominantly for arable purposes and it falls within the classification of Best and Most Versatile agricultural land (BMV). Farmland also adjoins the site to the south, west and connects to the swathe of land to the further north of Copythorne Road.
12. The appeal proposal would deliver up to 77 dwellings, accessed via Copythorne Road, along with estate roads and associated infrastructure. A new public park,

play areas and community orchard would also be provided, in addition to a comprehensive landscaping scheme within the site, and drainage infiltration pond on adjoining farmland to the west.

Location and nature of development

13. The adopted *Torbay Local Plan 2012-2030* (adopted 2015) (Local Plan) sets out the broad objectives for development and growth over the plan period, setting the spatial context and the need to consider the natural and built environments. The target for around 495 homes pa is noted in Policy SS1 (8,900 over the plan period), as too are the Identified Sites, Strategic Delivery Areas (SDAs) and related Future Growth Areas, with neighbourhood plans indicated as being a key tool to identify said developable 'Identified Sites'. Policy SS1 also identifies that Policy SS12 will be used to bring forward additional sites where the Council identifies a shortfall in the 5 year deliverable supply.
14. Policy SS2 identifies the Future Growth Areas around Paignton and Torquay. The Policy also indicates that all major development outside of these areas will only be permitted where the site has been identified by the relevant Neighbourhood Plan or a subsequent development plan document.
15. Policy SS3 of the Local Plan reiterates the presumption in favour of sustainable development set out in the Framework. However, its bespoke wording differs more from that in the Framework most recently published in December 2024.
16. Policy SS12 provides detail on the distribution of the Plan's target for 8,900 homes over the plan period, with Torquay and Paignton each to receive in the region of 4,000 dwellings and the Brixham Peninsula to receive a total of 790 dwellings, including 260 dwellings of those within the 'Brixham Urban Fringe and AONB'. Policy SS12 also indicates that appropriate locations will be identified through cross-boundary review of strategic housing land availability where there is evidence that there is a need to bring forward additional housing beyond the Local Plan housing target.
17. Policy SS13 sets out the means of maintaining a five year rolling supply of deliverable housing sites and sets the requirement to review the Plan every five years from the point of adoption if necessary to meet objectively assessed needs (OAN). The Policy SS13 aim to review the Plan every five years since the date of its adoption has not been achieved; a point to which I return later.
18. Policy C1 of the Local Plan emphasises the role of the boundaries of built up areas of the three towns and other villages and the need to resist the loss of countryside, avoiding urban sprawl and the merging of settlements. There are a number of exceptions, such as in relation to agricultural workers dwellings, self-build affordable housing or tourist facilities appropriate to the rural area.
19. Policy SDB1 indicates that Brixham will accommodate around 660 homes over the plan period, proportionate to its role as a fishing port and resort, whilst maintaining its historic character, biodiversity value and outstanding natural setting. The Policy specifically says that such development will only be acceptable if it can be accommodated without prejudicing the integrity of the AONB.
20. The 660 dwelling Local Plan target was adopted 10 years ago. Nonetheless, the monitoring results indicate that performance against the target expressed in Policy

SDB1 has been met or is set to be exceeded. The 660 dwelling target equates to around 37 dwellings pa over the plan period. By April 2024, there had been 442 completions, marginally in excess of the cumulative requirement for the period.

21. Policy SDB3 relates to the Brixham Urban Fringe and AONB and indicates that the AONB will be conserved and enhanced to protect its intrinsic landscape and biodiversity value, and for recreational and tourism purposes. The Policy also seeks for development to enhance existing green infrastructure assets, create new assets and refers to the Brixham Urban Fringe Study (2011).
22. Policy H1 of the Local Plan offers support to development within the SDAs and within the built-up area, subject to consistency with other Policies, but also offers criteria for assessment of proposals for new homes on unallocated sites and indicates its desire to maximise the reuse of brownfield land.
23. The *Brixham Peninsula Neighbourhood Plan* (adopted June 2019) (BPNP) sets out in Policy BH3 the range of committed and allocated sites, both within the town and in the wider Churston, Galampton and Broadsands area to fulfil at least the requirement to deliver 660 homes as per Local Plan Policy SDB1 and which is informed by a Housing Site Assessment that rejected the appeal site.
24. Policy BH4 of the BPNP sets a preference for development of brownfield sites over greenfield sites. Policy BH9 provides for exception sites subject to relevant criteria, including whether the site is considered to be small and where it does not constitute major development within an AONB. The preamble to the Policy explains that around 20 homes would not be considered small.
25. Policy E2 provides the context for the BPNP's settlement boundaries and offers support for development within them, and, outside of them, where permissible as exceptions under Local Plan Policy C1.
26. The aforementioned policies provide the framework for assessing whether the principle of development is acceptable in terms of its location, scale and nature under the adopted development plan. In this case, the greenfield appeal site is outside of the settlement boundaries for Brixham under both the Local Plan and BPNP. The site is not allocated for development or related to any Future Growth Areas, nor is it small scale or promoted on an exceptions basis. As such, the location of the site and nature and scale of the development conflict with the development plan.

Character, appearance and effects on NL

27. The appeal proposal was supported by a *Landscape Character and Visual Impact Assessment* (LVIA), Addendum¹ to the same and a *National Landscape Statement of Case* by the appellant. A review of the appellant's LVIA was undertaken by WSP on behalf of the Council which has also been provided (the WSP Peer Review). The Environmental Statement and related Addendum also detail landscape and related environmental aspects. As evidence to the contrary, the Council has produced a Landscape Statement of Case to support its professional judgement on the proposal's effects on the character, appearance and wider NL. The scheme was also subject of an objection from the South Devon National Landscape Team that also submitted a separate Statement of Case.

¹ Dated February 2024

Landscape character

28. Under the *Devon Landscape Character Assessment*, the site is categorised as falling within the *Lowland Plains* landscape character type (Ref 3E), but more specifically within the *Froward Point to Berry Head Coastal Plateau Landscape Character Area* (LCA). The characteristics and qualities of this LCA relative to the appeal site include its sparse woodland cover on the plateau, with grown-out wind-sculpted hedgerow trees; mixture of regular modern and parliamentary fields of medium to large scale; narrow historic lanes connecting farms; strong overarching perceptions of tranquillity and remoteness in many areas; and mixed farming systems supporting important arable plants and cirl bunting.
29. Under the *Torbay Landscape Character Assessment* (Torbay LCA) (2010), the site is within the 'Brixham/Churston Farmland Area of Landscape Character' (AoLC 2A) which is noted as an area of relatively flat open land that contributes to the separation of Brixham and the southern edge of Goodrington, and Churston. It is also noted as having a predominantly arable land cover with low density of hedgerows and copses that give the western edge of Brixham a stark edge, which extends into the NL. Nonetheless, under Part 2 of the Torbay LCA, the overall sensitivity of the Brixham/Churston Farmland AoLC is noted as being 'less sensitive'. This sensitivity rating applies to only 7 of the AoLCs within the Torbay LCA, whereas there are 15 moderately sensitive and 33 highly sensitive AoLCs.
30. Rather contradictorily, the *Brixham Urban Fringe Study* of 2011 finds the appeal site and parcel of land in between Brixham and Churston Ferrers (Landscape Compartment 19) to be of high landscape vulnerability to change, highly visible as part of the land separating Brixham from Churston, with highly visible housing fronting Copythorne Road. There are a small number of landscape compartments of moderate vulnerability and even fewer of low vulnerability, as a great majority of landscape compartments were found to be highly vulnerable to change.
31. The two gently sloping arable fields are relatively large, are separated and bound by some Devon hedgebanks, are connected by a historic lane, albeit altered, but still maintain some degree of remoteness and meaningful connection to the wider countryside. However, the site is also influenced, to a degree, by the visible and close relationship of houses along Copythorne Road and Wayside. Whilst the close proximity of Churston is largely obscured from within the site, the modest degree of separation is appreciable when travelling between the two settlements. The views over the site from Copythorne Road, Lakes Road and North Boundary Road towards the wooded ridgetop of Lupton Park beyond are enjoyed by many.
32. The site clearly has some of the characteristics that contribute to the wider LCA/AoLCs under the respective Devon Landscape Character Assessment, Torbay LCA and Brixham Urban Fringe Study. My view is that the condition and designation of the site contribute towards it being towards the higher end of the spectrum of sensitivity.
33. The proposal would introduce new permanent built development onto the site, along with areas of public open space and landscaping. Unlike the bungalows that predominate the surrounding area, the indicative details suggest that most of the new dwellings would be two storeys in height other than on the most elevated points of the site, where they would step back down to a single storey. The indicative details also suggest that the development would be designed to front

onto and interact with Copythorne Road, such as existing development does on the opposite side. Whilst this frontage hedgerow does not appear to be an established Devonbank, the presence of buildings, cars and domestic paraphernalia in between an even more fragmented boundary would be a noticeable adverse change. The improved buffer and meaningful landscaping alongside the north-west boundary would, however, go some way to reducing the starkness and visibility of the built edge. Taken together, the proposal would have an urbanising influence on the landscape character of the area, and thus, the effects of such a scale and nature of development would result in a highly adverse change.

Visual effects

34. The range of viewpoints from where the site and development would be visible have been identified as being concentrated on Copythorne Road from the old railway bridge near Churston, until the site's eastern boundary, from adjoining residential roads (Lakes Road, North Boundary Road). More distant views from around Coniston Close and from areas along the footpaths at South Downs Cross are also available. The area's varied topography, hedgerows and trees and the presence of other built development limits the public visibility beyond these areas.
35. Given the intervening distance and orientation of views, in addition to the relationship of the site to existing development, the impacts of the development on the visual amenities of receptors at Coniston Close and on the footpaths near South Downs Cross would be of a low magnitude of adverse effect. However, the magnitude and nature of effects from viewpoints along and surrounding Copythorne Road, despite being in the context of surrounding development, would be high and adverse, with the exception of views from the old railway bridge which, due to distance, angle and intervening vegetation, would be of a low adverse magnitude of effect overall. The visual connection with the countryside would be altered in these views and the visual sequential experience of travelling through countryside between Churston and Brixham would also be altered, with a reduced sense of openness to the south. Considered in the round, the effects would be highly adverse, but of a relatively localised nature.

Effects on NL Special Qualities

36. The main parties agree that the special qualities of the NL as detailed in the *South Devon AONB Management Plan 2019 – 2024* (AONB Management Plan) relevant to the appeal site are as follows:
 - Deeply incised landscape that quickly turns intimate, hidden and secretive away from the plateau tops;
 - Deeply rural, rolling patchwork agricultural landscape;
 - Iconic wide, unspoilt and expansive panoramas;
 - An ancient and intricate network of winding lanes, paths and recreational routes;
 - A variety in the setting to the AONB formed by the marine environment, Plymouth City, market and coastal towns, rural South Hams and southern Dartmoor; and
 - A breadth and depth of significant habitats, species and associated natural events.

37. There are four other special qualities that are represented in other areas of the NL but less so within and around the appeal site.
38. The deeply incised landscape is a special quality less relevant to the appeal site though it is a more open plateau top and would be affected through a large urban form of development. None of the secretive or hidden parts of the valley landscapes in the surrounding area would be affected by the proposal.
39. In terms of the deeply rural rolling patchwork agricultural landscape, the appeal site is situated on elevated land with a pleasing rolling topography, with at least on two sides, mature Devon hedges which make a valuable contribution to character. It offers views to the rolling landscape and woodland cover beyond its own site boundaries and is also part of the patchwork landscape of mixed farming. Though the proposal would not fundamentally alter the topography of the site, the mixed farming use would be replaced by permanent residential development but the understanding of much of its wider landscape context would remain.
40. The iconic wide, unspoilt and expansive panoramas is a special quality that has less bearing on the appeal site than some others. Views towards the Lupton Park wooded ridge are pleasant as a contrast to the semi-urban context from which such views are experienced by users of Copythorne Road. Views along Copythorne Road from Churston are framed rural views which are pleasant and which would be foreshortened by the introduction of development on the currently open side of the road. Whilst the establishment of trees and landscaping would soften the effects as far as possible, the residual effects of glimpsed buildings and development would be urbanising. The more iconic, extensive panoramas of the bay and wider NL are obtainable away from the site, and in such views, the appeal proposal would be a small addition to an existing mosaic of housing development and areas of countryside.
41. The NL's network of ancient and intricate winding lanes, paths and recreational routes form a special quality which relates to the site insofar as it is accessed from Copythorne Road. Whilst a relatively highly trafficked route, it is a part of the network of sunken lanes and high hedgebanks and remains so in a westerly direction beyond the appeal site. However, in the vicinity of the appeal site, it is wider, has a footway and driveway openings on the northern side and the patchy site frontage hedgerow. Nevertheless, the appeal proposal would further erode the rural qualities that remain of this part of the road network.
42. In terms of the varied setting to the NL, the area surrounding the appeal site is an inland boundary which does not demonstrate a dramatic change of scenery between the NL and its setting. Some of the adjoining 20th century residential areas are in fact, for legacy reasons, entirely within the NL boundary and exert an influence over the adjoining rural context. In this sense, there is already a blurred distinction between town and countryside, NL and setting, to which the appeal proposal would add, with more modern development bleeding into the rural area and NL boundary. However, the scheme would have some design features that would minimise its harm and urban influences on the adjoining areas of NL, such as the improved hedgerow management and additional tree planting.
43. The appeal site contributes to the NL's habitat and foraging features and they would be protected and enhanced, with a net overall benefit of Biodiversity Net

Gain of 12% area habitat units and 33% hedgerow units. This is an aspect that would therefore conserve and enhance one of the NL's special qualities.

Landscape, visual effects and NL conclusion

44. Taking the above together, it is clear that the proposal would not at least conserve all of the relevant special qualities, landscape or scenic beauty of the NL. Instances where conservation and enhancement would be achieved would be very limited in number. Therefore, owing to the scale of the development and the range and extent of effects on features that contribute to the NL's special qualities, I consider that the effects would be moderately adverse.
45. To the extent that there would be highly adverse, albeit localised landscape and visual effects, they also weigh against the development and attract great weight in the planning balance.
46. For the foregoing reasons, I find conflict with, in particular, Local Plan Policies SS8, SDB1 and SDB3 and Policy E1 of the BPNP. Amongst other things, these Policies seek to conserve the landscape and scenic beauty of the NL by affording great weight and the highest status of protection to the matter. For similar reasons, the proposal fails to adhere to the AONB Management Plan, Policy P2, and paragraph 187 and 189 of the Framework.

Whether major development

47. For the purposes of the Framework, whether a scheme constitutes major development in the NL in the context of paragraph 190 is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated. Irrespective of the extent to which the development could be considered to have a significant adverse impact, in light of the nature, scale and setting of the development, my view is that it would amount to major development within the NL. Whilst my attention has been drawn to an example of a development which was not found to be major in a National Park², the site context and nature of development were far different from that before me in this case, and thus it does not alter my finding.
48. As a major development in the NL, the Framework sets out that permission should be refused unless there are exceptional circumstances and where it can be demonstrated that the development is in the public interest with regard to the need for the development and the impact of permitting it upon the local economy; the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated. I return to these considerations further below.

Whether prejudicial to plan making?

49. Whilst the fourth reason for refusal refers to potentially prejudicial effects on strategic decision-making, the advice on how to assess such proposals, or those considered to be 'premature' in relation to an emerging development plan is outlined in paragraphs 50 and 51 of the Framework. A refusal of permission can be justified in the context of paragraph 50 where the development proposed is so

² Appeal ref: APP/Y9507/W/22/3308885

substantial, or its cumulative effect would be so significant, that granting permission would undermine the plan-making process by predetermining central decisions about the scale, location or phasing of new development, and where the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area. Under paragraph 51 of the Framework, refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination; or – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan.

50. The assessment of sites and plan-making processes are and have been ongoing in Torbay and the Brixham neighbourhood plan area for many years. The appeal site has been considered as a potential for development as part of the *Strategic Housing Land Availability Assessment* (SHLAA) 2013, under the BPNP, the *Housing & Economic Land Availability Assessment* (HELAA) 'Call for Sites' in late 2019 and May 2021, and the recent *Local Plan Review Regulation 18 consultations* in January 2022 and October 2022.
51. In light of the requirements of the new Framework in December 2024, the Council produced an updated Local Development Scheme (LDS) in February 2025. The new LDS outlines the Council's intention to publish a full consultation version Local Plan in October 2025 (a Regulation 18 stage emerging plan) which it would progress to a Regulation 19 stage by May 2026. The ability to prepare a sound plan to meet as much as possible of the local housing need involves assessing development site options, which the Council is in the process of doing.
52. The Council highlight that the Framework and Planning Practice Guidance acknowledge that highly constrained areas may not be able to meet their own identified needs. The Council indicates that it has advised neighbouring authorities that it is unlikely to be able to meet all of its own housing needs. Be that as it may, it is evident that the Council are far from clear on the precise scale and location of new development that will be encapsulated in its new development plan. The plan is far from being at an advanced stage in the context of paragraph 50 of the Framework. A new Neighbourhood Plan, whilst also in the process of being considered, is similarly some way off.
53. In the context of the settlement of Brixham, a proposal of up to 77 dwellings is large and broadly in the region of two years' worth of its now outdated annual requirement under the current Local Plan (Policies SS12 and SDB1). However, relative to the new Torbay-wide standard method figure of 1,128 dwellings pa, for which any new plan should proactively plan for as far as possible, the figure of up to 77 dwellings is not so substantial in the context of the settlement of Brixham or wider district that it could be held to materially prejudice the plan-making process. Whilst there are largescale commitments for the district and wider area of Brixham on which the Council rely for its current housing land supply, there would not be any significant cumulative effects from their combination with the appeal proposal that would undermine the plan-making process either.
54. Whilst the emerging development plan will grapple with questions about how and where to locate development and at what scale such as to conserve, enhance and further the purposes of the NL, the scale, location and nature of the appeal proposal, even though considered to be major in the context of the NL, would not materially prejudice that process. As such, the proposal would not prejudice the

strategic decisions for the plan making processes such that it conflicts with Framework paragraphs 50 or 51.

Other Matters

55. The appeal site benefits from being within around 1.5km from the town centre, a doctor's surgery and pre and primary schools. Other local amenities, such as convenience stores and a post office, are within around 700m, and direct access is achievable from the existing footways, advisory cycle routes and/or regular bus services available from the stops close to the appeal site. Notwithstanding the absence of mainline railway links from Brixham town, the main parties do not fundamentally disagree on the sustainability of the location of the site and I do not find a reason to reach an alternative conclusion.
56. The grade II* Registered Park and Garden of Lupton Park is a late 18th century designed landscape with a late 18th century mansion and mid-19th century formal gardens. Views of the Parkland woodland can be seen over and from the appeal site, but not specifically appreciated as part of a designed parkland landscape. The appeal site does not contribute to the heritage significance of Lupton Park and though some parts of the appeal proposal would be visible from the northern part of Lupton Park along permissible paths, it would be seen as a small part of the existing built form of Brixham which is extensively visible from the same views. The appeal proposal would therefore leave the heritage significance of Lupton Park and its associated historic buildings unharmed.

Affordable Housing

57. At 35% affordable housing, the proposal exceeds the requirement of Local Plan Policy H2 of 30% and would deliver around a third as affordable rented units, a third as shared ownership and a third as social rented tenures. The requirements for such are also detailed in the *Planning Contributions and Affordable Housing Supplementary Planning Document (SPD)* (2022).
58. The *Housing and Economic Needs Assessment* of 2022 (the HENA) indicates that 721 affordable dwellings are required per annum in order to meet needs. Since the start of the 2022 HENA period, 57 affordable dwellings have been built in Torbay, or equivalent to around 3% of the total requirement for the same period. Applying the prevailing rate of delivery to the deliverable supply of housing would achieve a maximum of 116 dwellings pa, falling far short of the HENA requirement.
59. The main parties agree that there are 1,651 households on the Devon Home Choice waiting list for affordable homes to rent, of which 140 entries are specifically seeking a home in Brixham. It was noted at the hearing that around 140 affordable dwellings were likely to be delivered by committed developments in the near future with occupancy requirements linked to the Brixham Peninsula, albeit around 23 of these would be age-restricted and with many others to flow from the Inglewood development, more functionally linked to Paignton/White Rock owing to its location.
60. The Affordable Housing SoCG also outlines that there were 177 households housed in temporary accommodation by Torbay Council as at February 2025; 439 households that were assisted with homelessness prevention duty and 612 in need of relief duty between April 2023 and March 2024. The Affordable Housing SoCG also details the affordability indicators that show that house prices in Torbay are beyond the reach of many.

61. Drawing together the above points, the main parties agree that there is an ongoing and acute need for affordable housing across Torbay, generally reflective of the national situation. I find no reason to reach an alternative conclusion in this regard.

Economic Impacts

62. The appeal was submitted with an Economic Assessment³ which details the key economic outputs from the construction phase, i.e. 79 construction jobs, 89 supply chain jobs, an overall £46 million addition of both direct and indirect construction phase expenditure over around 2 and a half years, although not all could be guaranteed to be spent locally and could not all be held to be entirely unique to the proposal.
63. The Economic Assessment also details that the new residents could generate total gross expenditure of £1.96 million pa, of which a large proportion would relate to new residents of Torbay and that would also help to generate and sustain 8 full-time equivalent retail and leisure-related jobs. Revenue streams to the Council in the form of S106 contributions and council tax receipts would offset the impact of new development on local infrastructure and would not amount to benefits of the scheme.

Protected Sites

64. The *Berry Head to Sharkham Point Site of Specific Scientific Interest (SSSI)* is 3.5kms away and is one of the five component sites that makes up the *South Hams Special Area of Conservation (SAC)* designated under the *Conservation of Habitats and Species Regulations 2017*, as amended (Habitats Regulations). The site is within the Sustainment Zone identified for the SAC with respect to Greater Horseshoe Bats (GHBs) associated with the Berry Head Roost. The site also falls within the Brixham Peninsula area for which development contributions are required towards mitigating recreational impacts on the SSSI.
65. The interest features for which the SAC is designated include its *European dry heaths* (Annex I habitat reference 4030), *semi-natural dry grassland and scrubland facies* (reference 6210) and GHBs as an Annex II species (reference 1304). The conservation objectives for the SAC include the need to maintain and restore the extent and distribution, structure and function of the qualifying natural habitats and habitats of qualifying species, the populations and distributions of qualifying species within the site.
66. The appeal application was submitted with a comprehensive survey effort which indicates that GHBs use the north-western, central and southern boundary features. This underlines the importance of boundary hedgerow and broadleaved woodland edge habitat in providing a commuting and foraging resource for GHBs to the grassland habitat and wider countryside to the south and west of the site.
67. The potential effects from the development could arise from an increase in recreational pressures that affect the habitats, i.e. from trampling or generating increased pollutants, or affect the species through effects from construction activities, removal of hedgerows, disturbance, increased lighting and additional activity more generally. Even on its own, the proposal would be likely to have a

³ Economic Assessment of Proposed Development, Lichfields 2024

significant effect on the SAC, thus, it is necessary to undertake an appropriate assessment under the Habitats Regulations.

68. The proposal seeks to pay the recreational mitigation contributions towards mitigating the effects on the recreational impacts on the Berry Head SSSI. On site, it is also intended that GHB corridor habitat and new hedgerows would be created and rough grassland buffers would be situated alongside hedgerows both on and offsite. In addition to features and landscaping measures, the scheme would also be required to adhere to a sensitive lighting strategy for the lifetime of the development to ensure that dark corridors are managed to under 0.5 lux and appropriate lighting levels elsewhere within the development. All landscape and ecological related mitigation measures would be managed in accordance with a Landscape and Ecological Management Plan.
69. The construction phase mitigation measures would include adherence to a Construction Environmental Management Plan and controlled light zones, with restricted timings for working hours relative to sunlight and sunset times.
70. On the basis of securing the comprehensive mitigation measures by way of S106 legal agreement and agreed planning conditions, as the competent authority, I conclude that there will not be an adverse effect on the integrity of the South Hams SAC alone or in-combination with other proposals or projects. Though Natural England had previously commented, its updated advice has also been sought and taken into account.

Interested Party Representations

71. A number of local residents have submitted representations in respect of the appeal proposal, largely in objection thereto. I have considered these representations that cover a range of topics beyond those addressed elsewhere within this decision.
72. A number of highway concerns have been raised, including the safety of the proposed junction and the increased traffic on Copythorne Road, Windy Corner and other smaller roads and lanes in the area. Whilst I do not doubt that increased traffic will present an inconvenience to some road users at certain times, the Local Highways Authority does not object to the proposal on highway capacity or safety grounds. There is no cogent evidence before me to reach alternative conclusions in respect of the suitability of the local road network or proposed highway measures to accommodate the development.
73. Though I note that concerns have been expressed in relation to the impacts on local health care services, the proposal would contribute financially to the increase in capacity to offset the impacts of the development. The same would apply for education infrastructure, with financial contributions to be secured via S106 legal agreement.
74. Though the capacity of the foul water treatment facility and pressure on the water system more generally have been raised, these are not matters on which any statutory undertakers or consultees have raised issues in relation to the proposal.
75. The broader ecological impacts of the scheme have been considered, in addition to the potential for harms to arise on the GHB population linked to the SAC. The proposal, subject to a S106 agreement detailing specific conservation plan

objectives, and related conditions, would have an overall net benefit on species, habitats and biodiversity value overall.

76. Though the concern has been expressed that the site would be overdeveloped, the quantum of development relative to the overall site area would actually lead to a low density of development, balanced against the need to use land as efficiently as possible.
77. The available evidence indicates that the development would not give rise to any other harms, technical or otherwise, and no other consultee has outstanding concerns in respect of the scheme, subject to the imposition of planning conditions where applicable.

Planning Obligations

78. The completed S106 legal agreement, dated 9 May 2025, secures the following measures and contributions:
- 35% affordable housing of specified tenures, with eligibility and management clauses in relation to the same;
 - All of the affordable dwellings to be built to M4(2) compliant standard, with an additional 5% of those built to category M4(3) compliant standard;
 - Recreational mitigation contributions towards the Berry Head SSSI of £135 per dwelling;
 - The provision of a Sustainable Urban Drainage (SUDS) management entity;
 - Provision and maintenance of the public park, community orchard and other areas of on site open space;
 - Ecological mitigation strategy, including the Landscape and Ecological Management Plan, details of on and off-site works and long-term management responsibilities in order to secure the mitigation to offset effects on the SAC;
 - Education contributions for capacity enhancements per dwelling towards secondary education (up to £4,327), post-16 age education (up to £1,694) and Special Educational Needs education (up to £4,717);
 - Health contributions of £687 per dwelling towards increasing the physical capacity of GP surgeries to accommodate new residents;
 - Lifelong learning contributions of up to £337 per dwelling towards the provision of libraries in the vicinity of the development;
 - Sports and recreation contributions payable per dwelling in accordance with an agreed calculation formula towards the provision of sports and recreational opportunities, taking account of the areas and types of public open space to be provided on site;
 - Sustainable transport contributions of up to £1,398 per dwelling towards the provision of walking and cycling routes between the site and Brixham town centre, linked with the objectives of the agreed Travel Plan with related monitoring fee; and
 - Waste management contribution of £162 per dwelling towards the provision of waste/recycling collection.

79. Regulation 122 of the *Community Infrastructure Levy Regulations* (2010) (CIL), as amended, and the Framework (paragraph 58) set out that planning obligations must only be sought where they meet the relevant tests, including where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the same. The Council has submitted a CIL Compliance Statement outlining the necessity for the various components of the S106 and the methods of calculation for the various financial contributions and the related links to policies of the development plan. Whilst the affordable housing provision exceeds that outlined in the related policy, it is an aspect which would be attributed weight and as such, is necessary as part of the S106.
80. I am satisfied based on the agreement between the main parties and the wording of the S106 that all of the obligations are necessary, directly related, and fairly and reasonably related in scale and kind to the development and can be taken into consideration as part of the development.

Exceptional Circumstances

81. Whether there are exceptional circumstances to justify the development in the National Landscape and whether the development is in the public interest under paragraph 190 of the Framework requires consideration of a range of factors.
82. Firstly, I consider the factors evidencing the need for the development, and the impact of permitting it, or refusing it, upon the local economy.
83. The Council does not dispute that it has consistently failed to demonstrate a minimum five year supply of housing since 2016, despite the policies of the development plan that promote reviews and proactivity in the quest to ensure that such can be consistently demonstrated. This, coupled with the past record of recent under performance against the Housing Delivery Targets, suggests that Torbay is an area that, despite the Council's efforts, has not granted enough permissions or facilitated the building of houses to meet needs. There is also an agreement that there is an ongoing and acute need for affordable housing across Torbay, generally reflective of the national situation.
84. The new standard method housing target represents a step change in the number of houses the Council is being asked to plan for. For a third time, the Council is now preparing for a Regulation 18 Plan which seeks to accommodate a number of houses far higher than previous attempts and the engagement of the duty to co-operate with neighbouring authorities is yet to prove that any shortfall can be met elsewhere.
85. Overall, and in light of the above, the market and affordable homes to be provided as part of the appeal proposal are very clearly needed and should be afforded very substantial weight. An above policy-compliant number of the affordable homes would be built to Category M2(4) and M4(3) Building Regulation specifications which would maximise their accessibility for a range of users.
86. The impact of permitting the development on the local economy would be positive overall, as detailed in the scheme-specific Economic Assessment. Whilst it would be at the expense of the economic benefit of using the BMV land for arable purposes, there would be clearer benefits from allowing Brixham to increase its

resident population to help sustain its local facilities and businesses in the context of a population which has not materially increased in numerical terms in decades.

87. I have given consideration to the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way. The Council's Housing and Economic Land Availability Assessment of 2021 acknowledges that options for meeting the then relevant housing needs were difficult. The need for housing at the levels now required give relatively limited scope for innovative ideas that have not already been considered in this relatively constrained district.
88. The appellant has not compiled the evidence of the Council spanning over numerous years into a single concise alternative site assessment, but the reoccurring theme through the evidence submitted, much of which has been produced by the Council, is that the options are relatively limited for the district as a whole, but also more specifically in Brixham. From some of the LVIA viewpoints that I visited⁴, and having travelled around the area, there are numerous constraints and challenges as to how to proportionately expand Brixham which are very apparent on the ground. Though the constraints and challenges persist, many of the options previously considered may need to be revisited.
89. At the hearing, the Council raised its ambition to implement a 'Hotels to Homes' initiative which will see much of the older hotel stock within the district turned into homes. Despite not having the detail as to the yield, distribution and timeframe for delivery of such, this is a supportable initiative. However, the regeneration of existing brownfield sites alone is unlikely to deliver the quantum of houses or range of house types necessary to meet the area's housing needs.
90. Another point made in the evidence is that the site has been found to appear, at least on plan, to form a logical extension to Brixham⁵. Notwithstanding its landscape designation, on plan it does form a completion to the settlement edge and on the ground, is as similarly sustainably located for facilities and services as the existing developments to which it would adjoin. These are locational advantages weighing in the site's favour.
91. The comparable costs for developing outside of the designated area is not an aspect covered in much detail in the evidence, though the options to do so as a means to expand Brixham are relatively limited in any event. The Council indicated at the hearing that a plan-wide viability assessment had not been prepared, but given how much time will inevitably pass before such is prepared as part of an emerging plan evidence base, the broader social and economic costs of further delayed housing delivery will be felt by many. The generalities of developing on higher value greenfield land compared to the costs of developing on brownfield sites are well rehearsed and were touched upon in the hearing. In this case, at least some of the higher value to be attained by developing on a greenfield site in such a setting would be captured as benefits through the increased provision of affordable housing (35% instead of 30%), in addition to the large extents of public open space which the indicative details suggest would be deliberately planned in size and location to moderate the extent of impact on the designated landscape as far as possible.

⁴ Which were agreed as part of an agreed itinerary and on an accompanied site visit

⁵ Housing Sites Assessment supporting the BPNP, page 107

92. I have also considered the detrimental effects on the environment, the landscape and recreational opportunities, and the extent to which they could be moderated. The detrimental effects that would result from the proposal would be to the landscape character, visual amenities and special qualities of the NL. The effects on the special qualities on the NL would be of a moderate adverse nature and the highly adverse landscape character and visual effects would be relatively localised. The parameters for the indicative design of the scheme, as detailed in the Framework Plan, have sought to moderate the effects of the proposal through the placement of buildings, the generous extent and location of open space and the ways in which landscaping could be used to minimise the effects of the proposal. There is a role for any future decision maker to ensure that these principles carry through to any schemes at reserved matters stage, but on the basis that these are the means by which effects can be moderated, it is necessary to condition accordance with the Framework Plan.
93. In terms of recreational opportunities, the proposal would provide a public park and orchard area, in addition to equipped play spaces that do not currently exist. The site would be sustainably located for Brixham's facilities and services which would help to minimise environmental harms through reducing the need to travel by private vehicle. There would be no other unmitigated environmental harms arising from the proposal, though numerous biodiversity benefits, including an uplift in BNG area and hedgerow units, would be captured through landscaping and specific measures both on and off site via conditions and S106 agreement.
94. Taking careful account of the requirements of paragraph 190 of the Framework, I consider that there would be exceptional circumstances to justify the development and the proposal would be in the public interest. In coming to this view, I have given great weight to furthering the purpose of conserving and enhancing the natural beauty of the NL as required by the Framework and the *Countryside and Rights of Way Act 2000*, as amended⁶.

Planning Balance

95. Given the location, scale and nature of the development, it would conflict with the spatial strategy of the development plan. As the development would also fail to conserve and enhance the NL, further conflict with the development plan would also arise. For the combination of these reasons, the proposal would conflict with the development plan when taken as a whole.
96. Though both the Local Plan and BPNP are more than five years old, the reasons for the engagement of paragraph 11 d) of the Framework are in relation to the undersupply of housing land and the under delivery of houses against the Housing Delivery Tests⁷.
97. The spatial strategy of the plan must be considered in light of the engagement of paragraph 11 d). Given the scale, nature and location of the development adjoining the built up area of Brixham, the conflict with the spatial strategy policies of the development plan attracts limited weight.
98. The conflict with the policies that seek to further the purposes of the NL do not attract reduced weight. However, having considered the proposal in light of

⁶ As amended by the Levelling-up and Regeneration Act 2023

⁷ Average of 66% in the 2023 Housing Delivery Test Results, against the Framework requirements, thus triggering a 20% buffer

paragraph 190 of the Framework, I consider that there would be exceptional circumstances to justify it and that it would be in the public interest. As such, Footnote 7 of the Framework and the protection it affords to the NL as an area of particular importance does not disengage paragraph 11 d). Similarly, as I find that the integrity of the SAC would not be harmed by the proposal, this does not provide a strong reason for refusal of the development either.

99. There would be harm resulting from the development, most notably in relation to the NL. Harm to the landscape and scenic beauty of the NL attracts great weight. The benefits of the scheme have been outlined in the Exceptional Circumstances subsection above and need not be repeated here.
100. Accordingly, having regard to the Framework, including key policies that direct development to sustainable locations, promote an effective use of land, seek to secure well-designed places and provide affordable homes, the adverse impacts would not significantly and demonstrably outweigh the benefits.

Planning Conditions

101. I have considered the suggested planning conditions in the context of the Framework and Planning Practice Guidance in relation to the use of such. Where necessary I have made minor changes to ensure the enforceability of the conditions.
102. In the interests of certainty, conditions are required to specify the reserved matters and time limit for implementation of the development. A condition is needed to specify the approved plans and the requirement for any reserved matters to generally accord with the approved Framework Plan.
103. Similarly, a condition is needed to require the provision of the access in accordance with an approved plan given that this is a detailed matter of the scheme, with exclusion of details of any other accesses onto Copythorne Road.
104. In the interests of environmental protection and to avoid the increased risk of flooding elsewhere, conditions are needed to secure the implementation of a Sustainable Urban Drainage System. Similarly, energy efficiency measures shall be required by way of condition to secure measures as part of the built fabric of the dwellings.
105. In order to accord with the relevant development plan policy, local equipped areas of play shall be provided in accordance with details that shall first have been approved by way of planning condition.
106. In the interests of highway safety, conditions are required to ensure all dwellings are provided with the necessary turning and parking areas prior to occupation. To promote the use of more sustainable modes of travel, conditions are necessary to secure cycle storage and electric vehicle charging points. Such measures and others shall also be incorporated within a Travel Plan which shall be required by condition to promote a mode shift towards sustainable modes of travel.
107. Two specific conditions are needed in respect of highway works, one to secure works by agreement with the Local Highway Authority (LHA) to connect the site to the public highway, the other to secure the approval of the LHA to the new estate roads and footways. These measures will ensure the safety of existing and future highways for all users.

108. A condition is needed in respect of waste and recycling storage facilities for all dwellings to ensure that these aspects are an integral and well considered part of the future scheme. For similar reasons in relation to the quality of development, a condition is needed to ensure the evolution of the detailed design in accordance with Secured by Design standards. Additionally, in the interests of the character and appearance of the area, a condition is needed to secure details of boundary treatments and means of enclosure.
109. To ensure that the construction phase takes place in an environmentally considerate manner, a condition is required to secure a Construction Environmental Management Plan. For similar reasons more specific to highway considerations, a condition is also necessary to secure approval and adherence to a construction method statement.
110. In the interests of biodiversity protection, conditions are required to secure a Lighting Strategy, repeat pre-construction surveys, implementation of the approved ecological mitigation and enhancement measures and to secure a Biodiversity Net Gain scheme with updated metric. Many of these measures are also linked with obligations in the S106 agreement. Similarly, a condition is needed to secure the submission, approval and adherence to a Landscape and Ecological Management Plan in relation to the management of landscaping and ecological enhancement areas. Related to this, a separate condition is necessary to specify the timing of works in relation to the approved schemes of landscaping.
111. To preserve any potentially surviving archaeological features, a condition is needed to secure the implementation of an investigation and recording scheme during the construction phase.

Overall Conclusion

112. For the foregoing reasons, the proposal would represent sustainable development in the terms of the Framework, which is a material consideration that, in the particular circumstances of the case, outweighs the conflict with the development plan as a whole.
113. As such, the appeal is allowed.

H Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Lord Charles Banner KC

Andrew Rowe MRTPI

Peter Leaver CMLI

James Stacey MRTPI

Guy Langworthy

James Greig NCHARB TechArbor.A

AR Land & Planning

David Wilson Partnership)

Tetlow King Planning

Appellant

Aspect Tree Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Richard Ground KC

Scott Jones MA

David Pickhaver MRTPI

Rob Griffiths CMLI

Principal Planning Officer

Principal Policy and Project Planner

ADAS – Landscape

INTERESTED PARTIES:

Roger English

Cllr Adam Billings

Marcia Bridge

South Devon National Landscape Unit

Churston with Galmpton Ward

Local resident

HEARING DOCUMENTS:

Document 1

SLR Consulting Highways Technical Note

Document 2

Local Highway Authority response
06/05

Document 3

Agreed site visit itinerary and
accompanying viewpoint map

Document 4

Appellant's costs application

Document 5

Council's response to costs application

DOCUMENTS RECEIVED AFTER THE HEARING

Document 6

Appellant's final costs response

Document 7

S106 agreement, dated 9 May 2025

Document 8

Email concerning additional landscape
condition

SCHEDULE OF CONDITIONS

1. In the case of any reserved matter, application for approval must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.
2. The development to which this permission relates must be begun not later than two years from the date of the final approval of the reserved matters, or in the case of approval on different dates, the final approval of the last such matter to be approved.
3. The development hereby permitted shall be carried out in complete accordance with the following plans:
 - Site Location Plan: 1653 / PL100 Rev A (Dated 07.02.2023)
 - Proposed Access Arrangement: 215975/AT/A01 A (Dated 19.07.2022)
4. An application for the following reserved matters shall be submitted to the Local Planning Authority for its approval in writing:
 - (i) layout, (ii) scale, (iii) appearance; and (iv) landscaping.
5. The Reserved Matters shall be in general accordance with the following plan:
 - Framework Plan: 1653 / PL102 Rev D (Dated 16.10.2023)
6. As part of any reserved matters application for layout a scheme for the treatment of surface water that demonstrates that the risk of flooding would not be increased, which is in-line with the design parameters submitted for the 1 in 100 year storm event plus 50% for climate change and 10% for urban creep, shall be submitted. The approved surface water management scheme shall be completed in full prior to the first occupation of the development and shall remain in operation to serve the development at all times thereafter.
7. As part of any application for reserved matters relating to the proposal's layout, scale and appearance, details of energy efficiency measures shall be submitted for the approval in writing by the Local Planning Authority. The measures shall accord with the submitted Energy Statement. The approved details shall be implemented in full for each dwelling prior to its first occupation.
8. The reserved matters for layout and landscaping shall include details of local equipped play area aligned with the details within the adopted Planning Contributions and Affordable Housing SPD that details the type and provision of play for a variety of ages of children, and a phasing plan for its delivery. The detail shall include appropriate provision of impact absorbing surface treatments, means of enclosures and litter and seating facilities. The approved play facilities shall be completed in full in accordance with the approved detail and phasing and shall be retained as public play space for the life of the development.
9. The reserved matters for layout shall include details for the parking of 2 vehicles for all dwellings and one parking space for all apartments. The approved parking facilities shall be provided in full for each dwelling and apartment prior to its first occupation and shall be maintained for the purposes of parking at all times thereafter.

10. The reserved matters for layout shall include details for the provision of no less than one electric car charging point to serve each dwelling and electric charging points for no less than 20% of all apartments. The approved facilities for each dwelling shall be implemented in full prior to the first occupation of the dwelling or apartment and maintained thereafter.
11. The reserved matters for layout and appearance shall include details of safe and secure cycle storage facilities for no less than 2 cycles per dwelling and no less than one per apartment. The approved facilities for each dwelling or apartment shall be implemented in full prior to the first occupation of the dwelling or apartment and maintained for such purposes for the life of the development.
12. The reserved matters for layout appearance shall include details for the provision of waste storage facilities for each dwelling or apartment and, as appropriate, collection day points adjacent to the public highway (including materials and any form of enclosure or demarcation). The approved facilities for each dwelling or apartment shall be implemented in full prior to the first occupation of the dwelling and maintained thereafter for such purposes.
13. The reserved matters for layout, appearance and landscaping shall include the detailed design of all boundary treatments and means of enclosure plan, which shall include all retaining structures. The approved detail shall be implemented in full prior to the first use of the associated dwelling or the first public use of the land to which it relates where not directly associated with a dwelling.
14. Prior to the first occupation of the development a Travel Plan, which seeks to secure a modal shift of 30% of potential users to sustainable modes of travel and include SMART targets and include an annual review mechanism where the development is failing to secure a modal shift of 30%, including measures to discuss with the Local Planning Authority additional measures to achieve the desired target, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved travel plan.
15. Prior to the first use of the development evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the design of the development meets Secured by Design standards as far as practicable.
16. Prior to the commencement of development, a Construction Method Statement shall have been submitted to, and approved in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period.
17. All reserved matters applications for layout shall include a Construction Environmental Management Plan (CEMP: Biodiversity), which shall have been prepared in accordance with specifications in BS42020; clause 10.2. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

Details shall include a 'controlled light zone' will be implemented on retained commuting and foraging habitat during construction activities. This zone will be kept dark during peak bat activity periods (0.5 hours before sunset and 0.5 hours

after sunrise during bat activity period of March to October) and spillage (where lighting is necessary) will not exceed 0.5lux.

18. All reserved matters applications for layout and/or landscaping shall include a Landscape and Ecological Management Plan (LEMP), prepared in accordance with the specifications in BS42020; clause 11.1. The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery. All post-construction site management shall be undertaken in accordance with the LEMP.
19. Prior to commencement of development a S278 Agreement shall be entered into with the Highway Authority to secure the access works and ancillary works to the highway. The agreed works shall be delivered in accordance with the Agreement.
20. No development relating to the creation of the roads approved pursuant to reserved matters of layout shall be commenced until either the roads are subject to a completed agreement under section 38 Highways Act 1980 or full engineering, drainage, street lighting and constructional details of the streets proposed for adoption have been submitted to and approved in writing by the Local Planning Authority. Unless the roads are subject to a completed agreement under section 38 Highways Act 1980 the development shall, thereafter, be constructed in accordance with the approved details.
21. Unless roads approved pursuant to reserved matters of layout are subject to a completed agreement under section 38 Highways Act 1980 no works shall be carried out for the formation or construction of any road unless the Local Planning Authority has approved a Road Maintenance Plan for that road including the arrangements for either adoption by the highway authority or the implementation of a Private Road Management Scheme to secure the effective management and maintenance of the road and refuse collection throughout the lifetime of the development.

Where it is proposed that the estate roads shall be privately maintained no works shall be carried out above ground level until a Private Road Management Scheme has been submitted to and approved in writing by the Local Planning Authority and which shall provide for;

- (a) Setting up a company or other entity to be responsible for the on-going management and maintenance of the road and refuse collection (the "Management Body").
- (b) How the company and the future management and maintenance of the road and refuse collection is to be financed including initial capital investment with subsequent funding.
- (c) The rights for and obligations on the Management Company to manage and maintain the road and collect refuse
- (d) Arrangements for the management and collection of refuse and waste from the dwellings.
- (e) A road management and maintenance and refuse collection schedule.

(f) How refuse and waste will be managed on site including the location of individual and communal refuse and waste collection facilities and the locations where refuse and waste is to be transferred off-site.

(g) Confirmation from the relevant waste collection company that they have agreed to collect the refuse and waste from the development in accordance with the approved details.

The development shall be carried out in accordance with the Road Maintenance Plan and the Private Road Access Scheme which shall thereafter be fully complied with and implemented.

No dwelling shall be occupied unless it connects directly to a road (including a footway and carriageway) which is:

(a) Adopted by the highway authority as a highway maintainable at the public expense or

(b) Subject to an agreement with the highway authority under section 38 of the Highways Act 1980 for the adoption of the road; or

(c) Subject to a Private Road Management Scheme where the Management Body has been established and is responsible for the management and maintenance of the road and the collection of waste and refuse from the date of occupation of the dwelling.

Any roads (including carriageways and footways) which do not form part of the highway maintainable at the public expense that are subject to the Road Maintenance Plan or Private Road Access Scheme shall be permanently maintained to an adoptable standard and retained and made available for public use or the lifetime of the development.

22. All planting, seeding or turfing comprised in the approved details of landscaping reserved matters shall be carried out in the first planting and seeding season following the first occupation of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.
23. The details for reserved matters will include the submission of a detailed Lighting Strategy for agreement with the Local Planning Authority. The strategy will minimise indirect impacts from lighting associated with the pre-construction, during construction and operational activities, and demonstrate how the best practice (BCT/ILP, 2018) guidance has been implemented. This will include details such as the following: artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence. The development shall proceed in accordance with the approved strategy and no additional external lighting shall be installed at any time at the application site without the written permission of the Local Planning Authority.
24. Prior to the commencement of any vegetation clearance or site works, a repeat ground based bat roost assessment of all trees to be impacted by the proposals, with associated mitigation/compensation measures in phasing of delivery, shall

be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved detail.

25. Development shall be carried out in accordance with the actions set out in the Ecological Appraisal (DWC Report No. 21/3741.01 Rev02) and the Ecological Appraisal Addendum (DWC: 18th March 2025).
26. The details for reserved matters will include the submission of a repeat hazel dormouse survey, along with associated mitigation/compensation measures, and this shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved detail.
27. The details for reserved matters will include the submission of a repeat curlew bunting survey, along with associated mitigation/compensation measures, and this shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved detail.
28. No vegetation clearance shall take place during the bird nesting season (01 March to 31 August, inclusive) unless the developer has been advised by a suitably qualified ecologist that the clearance will not disturb nesting birds and a record of this kept.
29. Prior to the commencement of any site works, a repeat survey for the presence of badgers on the site and surrounding suitable habitat, with associated mitigation/compensation measures, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved detail.
30. The details for reserved matters for layout and landscaping shall include the submission of an updated and completed Biodiversity Metric Calculation, evidencing net gain in biodiversity across the site commensurate with the submitted details. The development shall proceed in accordance with the approved detail.
31. Details of reserved matters for layout and landscaping shall accord with the ecology mitigation and enhancement measure set out on the Conservation Action Plan Statement.
32. No development on any phase shall take place until a Written Scheme of Investigation (WSI), comprising an archaeological field evaluation, has been submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved detail.
33. Notwithstanding the details shown on Indicative Layout plan PL103 Rev K no vehicular access other than that shown on Proposed Access Arrangement plan 215975/AT/AO1 Rev A shall be created onto Copythorne Road, unless those details have been submitted to the Council and approved as part of the application/s for reserved matters approval.

---- ENDS ----



Costs Decision

Hearing held on 7 & 8 May 2025

Site visit made on 8 May 2025

by H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2025

Costs application in relation to Appeal Ref: APP/X1165/W/24/3354507

Copythorne Road, Brixham

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Peloton Land Limited for a partial award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission for the erection of up to 77 dwellings, including affordable housing (35%), areas of open space (including public park), landscaping, biodiversity net gain and site infrastructure, with all matters reserved apart from access.
-

Decision

1. The application for partial costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant seeks a partial award of costs for two reasons. The first is that the reason for refusal about the prematurity of the scheme is unreasonable. The second is that the landscape and heritage rebuttals were necessitated by the Council introducing or advancing new points by a newly appointed specialist in relation to landscape and heritage matters, particularly in respect of Lupton Park Grade II* Registered Park and Garden (Lupton Park).
4. The applicant alleges that the Council have been substantively unreasonable by adding an unarguable reason for refusal on prematurity. The considerations around prematurity are set out in paragraphs 50 and 51 of the National Planning Policy Framework (the Framework). At the time of refusal of the appeal proposal, the Regulation 18 Local Plan had not been submitted for examination, which means that it could not have been considered at an advanced stage. A further material change in circumstances has affected the related timetable again, so its progression has slipped back rather than moved forward.
5. The scale and effect of the proposal and any potential to undermine the plan-making process are matters of planning judgement. At the time of the decision, the scale of the proposal represented a greater proportion of the housing growth that the then emerging Local Plan was planning for. The significance of the scale of the development has been affected by the implications of the Framework which is a matter beyond the control of the Council. The decision as to whether to allow major

development/s in the National Landscape is also one of the more difficult decisions that the emerging Local Plan will need to address.

6. Paragraph 51 of the Framework states that refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination and adds that where developments are refused on prematurity grounds, Council's need to indicate clearly how granting permission would prejudice the outcome of the plan-making process. The essence of the Council's response is that even if 'unlikely' or 'seldom' justifiable, that does not equate to 'never' justifiable. The Council sought to clearly indicate how granting permission would prejudice the outcome of the plan-making process. In this instance I have not agreed with the Council but it does not mean that the reason was entirely without merit. As such, I do not consider that the Council has been unreasonable for adding the reason for refusal on prematurity grounds and seeking to justify it in the way that it did.
7. On the second point about the landscape and heritage evidence, I do not consider it unusual that the professional view of the officer, endorsed by the Planning Committee was ultimately explained through the preparation of landscape evidence by an appropriately qualified and chartered landscape architect. This is a relatively typical process in the response to the submission of a planning appeal and I find nothing in the way that the evidence deviates from the WSP Peer Review findings or challenges the methodology and findings of the appellant's landscape and visual impact assessment (LVIA) that amounts to unreasonable behaviour of a procedural nature.
8. The introduction of Lupton Park within the Council's landscape evidence as a notable feature should not have come as a surprise as it had already been identified in the appellant's evidence, including the originally submitted LVIA. The Council's landscape evidence noted the position of Lupton Park and its relationship with the site in a similar way to the appellant's own LVIA and landscape evidence. It did not allege that setting effects would give rise to heritage harm. It does not appear that any clarification was sought through agreement with the Council before the appellant elected to ward off any potential suggestion of such through the submission of a report outside of the timetable which I did not decline to accept. As such, I do not consider that behavioural unreasonableness has occurred in respect of this matter.

Conclusion

9. For the above reasons, I have found that unreasonable behaviour has not been demonstrated either substantively or procedurally in respect of the appeal case. Consequently, the application for partial costs is refused.

H Nicholls

INSPECTOR