

Torbay Council

Town and Country Planning Act 1990

Appeal by Taylor Wimpey (Exeter) Limited

Site at Land adjacent to the A385, Collaton St Mary, Paignton

Council Planning Application Reference P/2013/0572MOA

Planning Inspectorate Reference APP/X1165/A/14/2214154

Statement of Case

1.0 Introduction

1.1 This statement sets out the appeal case of Torbay Council with regard to the proposed development at Land adjacent to the A385 Totnes Road, Collaton St Mary, Paignton, Devon.

1.2 The proposed development, subject to this appeal is described as follows;

Outline application for proposed residential development (up to 175 units) with associated development including provision of open space, landscaping, ponds and other associated development. All matters reserved for further consideration except for access.

1.3 The application was validated by the Council on 31st May 2013. The application was determined by the Development Management Committee on 12th August 2013 and subsequently refused planning permission by notice issued on 21st August 2013.

1.4 The reasons for refusal were;

- 1. The proposal demonstrates a failure to consider the wider rural, high quality landscape setting of the village in the context of the application site, and the long term opportunity in the area to deliver a planned organic and sustainable form of development. The scheme will result in an unsustainable, piecemeal development without either an overall understanding of how it would contribute to delivering a robust and comprehensive growth strategy for the area, or effectively integrate into the historic form of the village. The development also proposes the residential development of an unallocated greenfield site outside of the settlement boundary ahead of the development of deliverable previously developed (brownfield) sites, and as such is contrary to the Council's policy objectives in relation to the promotion of a target for the development of brownfield land. As such, the development is not considered to be sustainable, being contrary to paragraphs 9, 10, 14, 17, 32, 34, 49, 56, 57, 58, 60, 61, 64, 99, 100, 103, 109, 111, 118, 125, and 129 in the NPPF, which seek to make places better for people, and the objectives of policies HS, H2, H9, H10 BES, BE1, BE2, TS, T1 of the Saved Adopted Torbay Local Plan 1995-2011.*
- 2. The site is on the edge of Collaton St Mary and forms part of an attractive rural valley with a high landscape value. It has an important role to play in the transition between the open countryside, the village, and the urban edge of Paignton, and it makes a valuable contribution to local and wider landscape character and views. The proposed development, by reason of its location, piecemeal development and insular approach to development of the site, fails to integrate into the existing historic settlement pattern of Collaton St. Mary, and does not function as an integrated organic extension of the village.*

The site is seen in views approaching the village and the site from the east along the A385, on the approach to the village from the west along the A385, and from the churchyard. The site is also widely visible along the edge of the site along the A385, as well as in longer distance views from either side of the valley. While the exact form of development is yet to be determined, the extent and type of development proposed will not read as part of the wider landscape character, it will instead appear as a standalone suburban development imposed on to the landscape, poorly relating to the wider context. Furthermore the urbanisation of the area, including the traffic management measures required to facilitate the development, will alter the rural character of the area, extending out the perceived entrance/ gateway to Paignton to beyond Collaton St. Mary and to the edges of this site. As such the development would be contrary paragraphs 14, 17, 58, 60, 61, 64, 109, 129 of the NPPF and to the provisions of policies LS, L2 and L4 of the saved adopted Torbay Local Plan (1995-2011).

- 3. The application does not adequately demonstrate that the development will not harm, either directly or indirectly, a protected species (Bats) through light spillage from motor vehicles using the site, causing a detrimental impact upon foraging and commuting habitats of bats. As such the development would fail to meet the objectives of policies, NCS and NC5 of the Saved Adopted Torbay Local Plan 1995-2011, the objectives of paragraphs 118 and 125 of the NPPF and the requirements of Regulation 41 of the Habitats Regulations.*
- 4. Insufficient information has been provided to demonstrate that the drainage and flood alleviation measures proposed would not lead to an increase in flooding of the site and wider area. As such the development is not considered to meet the requirements of paragraphs 99, 100, and 103 of the NPPF.*
- 5. In the absence of a signed legal agreement under Section 106 of the Town and Country Act 1990 (as amended), the applicant has failed to satisfy the sustainability aims of Policies H6 and CF6 and the Council's SPD "Planning Contributions and Affordable Housing: Priorities and Delivery" to secure the delivery of affordable housing and physical, social and community infrastructure necessary to make the development acceptable in planning terms. Furthermore, a lack of a s106 agreement also incurs an absence of ability to secure an enhancement to biodiversity, attenuate for flood risk on site and downstream and secure landscape and ecological management of the site. The Local Planning Authority considers that it would be inappropriate to secure the required obligations and contributions by any method other than a legal agreement and the proposal is therefore contrary to Policies H6, CF6, NCS and NC5 of the Torbay Local Plan 1995-2011 and paragraph 203, 204, 109 of the NPPF.*

6. *The development through the provision of an additional two new highways junctions will impede the free flow of traffic along the A385 Totnes road, contrary to policy T18, of the Saved Adopted Torbay Local Plan 1995-2011 which seeks to ensure that new accesses on to the major Road Network do not reduce road safety or detract from or conflict with the function of the route and the objectives of paragraphs 32 and 34 of the NPPF.*

1.5 The application was treated as a departure from the Development Plan and was advertised as such.

2.0 Statement of Case

2.1 The Council's case will centre on two main issues, namely:

1. Landscape – The site is within an Area of Great Landscape Value, makes a very important contribution to the landscape character of the area and the setting of Collaton St Mary village. Development of the site, as proposed, would have an unacceptable visual impact on the AGLV, on open countryside and the rural character of the area. This would impact on the attractiveness of the area as a whole to visitors and, consequently, on the economic well-being of the area.

2. Unsustainable, piecemeal development – Significant change is proposed for Collaton St Mary, in the emerging Local Plan. That change may double the size of the existing village in a ten year period. The Council and community are sensitively planning, through a clearly defined place making agenda (namely via a new Local Plan, masterplanning and a Neighbourhood Plan) the future of Collaton St Mary. This is in accordance with the NPPF, NPPG and Design Council / CABE requirements for design. Contrary to this planned approach to sustainable growth, the proposed development would not, if allowed, deliver a sustainable future for the village. The proposed development, in the AGLV and open countryside, is not well related to and does not integrate well with the village of Collaton St Mary. There is no need, in relation to para 49 of the NPPF, to over-ride local plan policy and it would be inappropriate for a S78 Inquiry to consider the issue of land supply pending a Local Plan Examination in October / November 2014.

2.2 The Development Plan for the appeal site comprises the saved policies of the Torbay Local Plan (1995-2011). The following policies are relevant to the determination of this appeal; HS, H2, H6, H9, H10, H11, CFS, CF6, LS, L2, L4, L8, L9, L10, NCS, NC2, NC5, EPS, EP1, BES, BE1, BE2, T1, T2, T3, T18, T25, and T26

3.0 Landscape

3.1 The appeal site is a greenfield site that is not allocated for residential use in the Torbay Local Plan 1995-2011. It is subject to landscape policies L2 (Area of Great Landscape Value) and L4 (Countryside Zone). It is designated in part for the provision of a new cemetery (policy CF4.1). The Council accepts that the use of this site for a cemetery is not essential to meet the needs for cemetery provision in Torbay. A small part of the site at the north eastern end is designated for the provision of a new playing field (Policy R3.2).

3.2 The Council will provide evidence to show that the site is readily visible from a number of important publicly accessible locations. The site, and in particular, the higher ground in the central and north western part of the site, makes an important contribution to the wider landscape character of the area. Development of the appeal site would have an adverse affect on the visual appearance and character of the area, which is within an Area of Great Landscape Value and Countryside Zone as defined by the Torbay Local Plan 1995-2011.

3.3 The proposed development would change the character of the site from grassland to a suburban residential character. This would have an inevitable effect on the setting and character of Collaton St Mary as well as the 'gateway' approach to Torbay from the west. The Council will demonstrate that development of this site would not be sympathetic to and enhance the character of Collaton St Mary and will also be harmful to the rural setting of the church. It would not be sensitive to the character and constraints of the site and would result in an isolated suburban form of development that would be at odds with the existing built form of the village and harm the landscape and visual character of the wider area.

3.4 Policies L2 (Areas of Great Landscape Value) and L4 (Countryside Zone) in the Torbay Local Plan 1995-2011 are consistent with the NPPF. It will be explained that the Area of Great Landscape Value is of particular importance to Torbay recognising the rural backdrop and setting that contains the built up area and defines the bay. The policy explanation states that generally they are areas of high land or parts of valley systems which have distinctive local character. Policy L4 only permits developments that are sympathetic to the Countryside and only where they do not lead to the loss of open countryside and creation of urban sprawl. In this case the proposed development would be contrary to Policy L4, as it would have a significant impact on the open countryside and harm the rural character of the area, as well as giving the perception of a modern development that is poorly related to the existing settlement. Furthermore, in line with Policy L4, development adversely affecting Torbay's natural setting has a negative impact on tourism / visitor numbers and, as such, on the economic well-being of the area.

3.5 The character of the area will be explained with reference to the Landscape Character Assessment of Torbay, part 2 Torbay May 2010. The impact on the rural

character of the site will be considered. It will be demonstrated that residential development of the site with 175 houses would have a significant adverse effect on landscape character and views that contribute to the perception and understanding of the character of the area.

3.6 The Council will acknowledge the LCA assessment of the area (1L) states that “the area offers an opportunity to accommodate significant change”. The Council will demonstrate this is the correct assessment for the area taken as a whole (and hence why it is a growth area in the emerging local plan). However, the Council will show that, as with most character areas, some areas are more sensitive than others. Indeed a finer grained assessment shows the lower part (south east) of the site is less sensitive in landscape and visual terms due to being less prominent in local and longer distance views towards/across the site. However, the central and south western part of the site is significantly higher, more exposed and sensitive to change.

3.7 The likely effects on views from the viewpoints identified in the appellants Landscape and Visual Impact assessment, together with views from some other locations will be considered.

3.8 The appellants have been requested to produce photomontages which will provide details about the visibility, extent and height of the development relative to four separate viewpoints. If agreed it is anticipated that these will be included in a Landscape Statement of Common Ground.

4.0 Unsustainable, piecemeal development

4.1 The development of the site will constitute a piecemeal approach to the development of Collaton St Mary. The site area is 7.22 ha, which is a significant size in relation to the scale of the existing settlement. Although Collaton St Mary forms part of the town of Paignton it does have an individual identity and is perceived locally as having the character of a ‘village’. It is often referred to as such by local residents. The heart of Collaton St Mary has a distinctive historic character defined by the church and parish rooms, with the more modern primary school situated nearby. The settlement is further characterised by ribbon development along Totnes Road. The proposed residential development of the site would have a significant and notable impact on the character of Collaton St Mary. The Council will show that development on the scale proposed would harm the distinctive and individual character of Collaton St Mary, by reason of its visual impact, the relationship of the scale of development to the existing settlement, impact on views to and from the church, and a harmful impact on the landscape character of the area.

4.2 The Council considers that the proposed development of the site would be contrary to the opportunity of delivering an appropriate organic form of growth in the

area. Such growth should be sensitive to the form of the settlement and specific constraints of the area, and the established character of Collaton St Mary. The development does not deliver this. The proposed development of the site in its entirety would fail to deliver a sustainable form of development that would meet the objectives identified in paragraph 7 of the NPPF in terms of delivering a strong, vibrant and healthy community and protecting and enhancing the natural, built and historic environment.

4.3 The proposal is contrary to Policies H9, H10, BES and BE1 in the Torbay Local Plan 1995-2011 which seek to ensure that the integrity of local character and distinctiveness is protected, and new development will where possible enhance the defining characteristics of the existing environment. The appeal site constitutes the transition from the village to the open countryside to the north, as well as contributing to the western gateway to Torbay. The scale of the development would inevitably have an urbanising effect on the area, thereby eroding the character of Collaton St Mary within the overall landscape setting.

4.4 Policy HS (4) in the Torbay Local Plan 1995-2011 and paragraph 111 in the NPPF encourage the use of previously developed brownfield land. This proposal would bring forward the development of a greenfield site ahead of utilising previously developed land in the area. The Council is of the opinion that it can demonstrate that it has a five year housing land supply therefore there is no justification for the development of an undesignated greenfield site in advance of brownfield sites in Collaton St Mary.

4.5 The Council's preference for development of brownfield sites in advance of greenfield sites is demonstrated in the draft master plan which proposes a phased programme of development that promotes the development of brownfield sites as the first phase of development.

4.6 A new Local Plan *A landscape for success The Plan for Torbay 2012 to 2032 and beyond* is in the course of preparation. It is currently at the publication stage. The Proposed Submission Local Plan was published for formal representations between 24th February and 7th April. The new Local Plan will be submitted to the Secretary of State by the end of July 2014. In accordance with the Service Level Agreement between the Council and Planning Inspectorate, it is expected that the examination by the Planning Inspectorate will be held during October /November 2014. The following policies are relevant to the determination of this appeal; SS1, SS2, SS3, SS6, SS7, SS8, SS9, SS10, SS11, SS12, SDP1, SDP3, TA1, TA2, TA3, C1, C4, NC1, HE1, HE2, H1, DE1, DE3, SC1, SC2, ER1, ER2, W1, W2 and W5.

4.7 In the emerging new Torbay Local Plan, Collaton St Mary is identified as being a future growth area for housing and related development (Policy SDP3). As set out at 4.11, the relevant policies to the current application are subject to objection,

including by the Paignton Neighbourhood Forum which is the neighbourhood planning body for the area.

4.8 The new Local Plan is yet to be submitted to the Planning Inspectorate, it is anticipated that it will be submitted before the end of July 2014. An area of search for around 800 new homes is identified in the emerging Local Plan for the Collaton St Mary area as a whole. As such, the Council is in the process of preparing a master plan for the future development of Collaton St Mary. This has been through a series of consultation events with both key stakeholders and the public. The purpose of the masterplan is to define the precise locations and nature of growth, to guide development over the next 20 years, to deliver a co-ordinated approach to development that will ensure resources are available for infrastructure improvements and to ensure development reflects and enhances the character of Collaton St Mary. It is anticipated that the master plan will be complete in July 2014.

4.9 The way in which the masterplan responds to the place-making agenda, whilst also respecting the landscape character of the area, are fundamental requirements of the brief for the masterplanners. The Council will show, by reference to existing population, nature and character of the village and scale of change, that masterplanning is critical to securing a more sustainable future for Collaton St Mary. The Council will also demonstrate that the development proposal, given its timing and nature, will prejudice the ability to deliver a sustainable future for the village.

4.10 Development of the site would utilise the limited resources of drainage and highway capacity and has the potential to reduce the capacity for delivery of other sites within the Collaton St Mary growth area, some of which may be more suitable for development than the appeal site. A further implication of considering the application separately to the master plan process is that it would fail to contribute to the delivery of the wider infrastructure requirements for the growth area resulting in the remaining sites in the master plan area having to generate a larger contribution towards infrastructure delivery. There is also a potential 'in combination' effect with regard of the use of the area by the Greater Horseshoe Bat that could prejudice the development of other sites in the growth area.

4.11 The Council will argue that the development proposal pre-empts a major strategic decision about the need for, location and timing of growth in Torbay that can only reasonably be made through the Local Plan Examination. The emerging Plan is at an advance stage of preparation. However the relevant policies, including assessment of objectively assessed need and the deletion of AGLV are the subject of objections. On this basis, no weight should be attributed to the proposed replacement of AGLV designation until the matters raised have been addressed through Local Plan Examination.

4.12 “The Torbay Local Plan- A landscape for success 2012-32 and beyond” is at an advanced stage of preparation. However the relevant policies to the current application are subject to objection, including by the Paignton Neighbourhood Forum which is the neighbourhood planning body for the area. Their objection is based upon (but not limited to):

- Correct assessment of objectively assessed need having regard to the most up to date demographic projections, migration rates and household sizes. The Forum has submitted peer-reviewed evidence about Torbay’s objectively assessed need.
- Strategic concerns about infrastructure (specifically waste water and flooding, highways capacity, employment and ecological matters) in relation to development at the west of Paignton (SDP3) including cumulative impacts.
- Objections to the deletion of Areas of Great Landscape Value

4.13 Proper consideration of these matters must necessarily involve a thorough consideration of the calculation of objectively assessed need, which the Local Planning Authority respectfully submit should be carried out through the Local Plan Examination, when all parties who made representations are able to participate. It would draw the Planning Inspector’s attention to paragraph 26 of the Court of Appeal Ruling in the “Hunston Properties”¹ case on this matter.

4.14 Because the Local Plan Examination is imminent, and the Council is able to demonstrate a five year supply (see below), the Council believes that there are no good reasons to negate proper consideration of these matters at a plan-led level.

4.15 The Paignton Neighbourhood Plan which will include the application site is in the early stages of preparation, and cannot be accorded substantial weight. However, the fact that there is a neighbourhood planning body which has objected to the planning application and Local Plan proposal is a material consideration.

5.0 Five Year Housing Land Supply

5.1 The Council will provide evidence that it has a 5 year housing supply of deliverable sites, as required by paragraph 47 of the National Planning Policy Framework.

5.2 The Council’s case is based on the 2011 based Interim Household Projections, and 2012 based (2014) population projections which are the most up to date official projections. There are good reasons to suggest that the next Household projections will fall due to the declining rates of domestic in-migration, and static

¹ The Court of Appeal(Civil Division) judgement in the case of C+D council of St Albans v Hunston Properties and anr [2013] EWCA Civ 1610

household size to Torbay. The Council will show that falling population trends are not the result of the recession, but a longer term trend.

5.3 As noted above, the Council believes that assessment of Torbay's objectively assessed requirement should properly be determined through a Local plan Examination.

5.4 Notwithstanding the demonstration of 5 year supply, policies upon which the appeal hinges (e.g. L2 and L4 of the saved Adopted Torbay Local Plan) are not for the supply of housing and therefore the weight they may be accorded is not affected by paragraph 49 of the NPPF; instead they carry weight insofar as they are consistent with the NPPF taken as a whole (paragraph 215 refers).

6.0 Reason for Refusal No.3 ; harm to protected species (Bats) through light spillage

6.1 Berry Head Special Area of Conservation (SAC) is a component of the South Hams SAC and it located to the south east of the site, approximately 8.3km from the site at its nearest point. The South Hams SAC is designated for its importance to Greater Horseshoe Bats. The appeal site is not within the SAC. It is however within a Greater Horseshoe bat sustenance zone and partially within a greater horseshoe bat Strategic Flyway, as designated by Natural England. These sustenance zones and flyways comprised key foraging areas and movement corridors for greater horseshoe bats within the South Hams SAC. When determining the application the Council carried out a screening of likely significant effect on this European site under the Habitats Regulations 2010 and concluded that the proposal will not have a likely significant effect (alone or in combination) on the integrity of the South Hams Greater Horseshoe Bat Special Area of Conservation.

6.2 Although the HRA screening assessment concluded there would be no likely significant effect the Council was of the opinion that insufficient information had been submitted to demonstrate that bats would not be disturbed as a result of the proposed scheme, in particular as a result of light spill from vehicles.

6.3 The Council has had discussions with the appellant about addressing this reason for refusal through the imposition of conditions. Three conditions have been discussed with the appellant which relate to (i) submission of a landscape and lighting design strategy, (ii) submission of a Construction Environmental Management Plan (CEMP) and (iii) submission of a Landscape and Ecological Management Plan (LEMP). The Council anticipates that agreement will be reached on these conditions with the appellant prior to the Inquiry.

7.0 Reason for Refusal No.4 ; insufficient information to demonstrate that drainage and flood alleviation measures would not lead to an increase in flooding of the site and wider area.

7.1 There is a history of property flooding in Collaton St Mary and downstream along the Yalberton Stream valley bottom. Advice to the Council from the Environment Agency in their consultation response was “it is critical that surface water runoff from the proposed development does not exacerbate existing problems”. When the application was determined the Council had insufficient information to conclude that the proposal would not result in an increase of flooding on and off site.

7.2 The Council has had discussions with the appellant about the level of information that would be required to overcome this reason for refusal. It is technically possible for the appellant to overcome this reason for refusal either through amendment to the onsite drainage strategy or through the payment of a contributions to offsite sewerage improvements. It is anticipated that the appellant will agree to one of these options prior to the inquiry.

8.0 Reason for Refusal No.5 ; absence of a S106 agreement

8.1 The proposal if allowed would result in requirements for additional social and physical infrastructure to provide facilities and services to occupants and users of the development.

8.2 The costs of the resultant pressures on local social, physical and environmental infrastructure should be borne by the developer and secured through a legal agreement or unilateral undertaking.

8.3 In order to comply with Policy H6 in the Torbay Local Plan 1995-2011 in relation to affordable housing and meet the Council’s housing needs the development would also have to provide for 30% of the homes provided on the site to be affordable housing.

8.4 The Council will provide a full S106 justification to support the request for the range of contributions/obligations sought. The justification will demonstrate compliance with Regulation 122 of the Community Infrastructure Regulations 2010.

9.0 Reason for Refusal No.6 ; provision of two new highways junctions would impede the free flow of traffic along the A385 Totnes Road

9.1 In email dated 14th May 2014 the Council advised PINS that it was decided by the Development Management Committee at their meeting on 12th May 2014 to

remove reason number 6 (highways) from the decision on planning application reference P/2013/0572.

10.0 Summary

10.1 In summary the Council will present a case to demonstrate that the proposals are contrary to the Development Plan and national policy. The scale and location of the housing proposed will be so significant in relation to the wider context of the site that it would cause demonstrable harm to the distinctive and individual character of Collaton St Mary. The site is designated as AGLV and Countryside Zone in the Torbay Local Plan 1995-2011. These Policies seek to protect the attractive scenic rural landscape and to safeguard Torbay from inappropriate development. The site extends to rising ground elevated above the village centre which forms part of the wider distinctive rolling landscape with a strong rural character. The introduction of a large scale modern suburban development in this area would not relate well (in physical or visual terms) to the existing settlement of Collaton St Mary which is predominantly located within the folds of the valley on lower ground, and would result in a significant adverse impact on views across the wider area.

10.2 The Council will also show that, on the other hand, the production of a master plan which accords with national and local policy and guidance, and which is sensitive to the particular characteristics of the area, will secure the delivery of planned growth and a more sustainable future for Collaton St Mary.

11.0 Documents

11.1 The following documents are expected to be referred to by Torbay Council in the appeal;

- Planning Application P/2013/0572MOA
- Planning Application p/2012/1037MPA
- Torbay Local Plan 1995-2011 (adopted April 2004)
- Local Plan *A landscape for success The Plan for Torbay 2012 to 2032 and beyond* Proposed submission plan February 2014
- National Planning Policy Framework
- National Planning Policy Guidance
- Landscape Character Assessment of Torbay Parts 1 and 2 (May 2010)
- Planning Contributions and Affordable Housing SPD (LDD6) April 2008
- Planning Contributions and Affordable Housing SPD: Update 3, Economic Recovery measures April 2011
- South Hams Greater Horseshoe bat guidance (August 2010)
- Green Infrastructure Delivery Plan April 2011

- Guidelines for landscape and visual assessment Third edition IEMA 2013
- Strategic Housing Land Availability Assessment (SHLAA) Peter Brett Associates 2013
- Exeter and Torbay Strategic Housing Market Assessment (SHMA) Torbay Update 2011
- Draft Collaton St Mary Masterplan 2014