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23 November 2018

By Special Delivery

By Email: David.Pickhaver@torbay.gov.uk

Dear Sirs

Objection to Planning Application P/2017/1133

We wrote to you previously on 27 April 2018 objecting on behalf of our clients Mr and Mrs Yallop and Mr and Mrs Brownsword to the above application ('the Application') for permission for up to 400 dwellings (C3) and other built development ('the Development') at land to the South of White Rock adjacent to Brixham Road, Inglewood Paignton (the Site).

We are now writing to you again, in order to update our previous letter of objection so as to provide expert evidence in respect of landscape and visual impacts and ecological impacts, address subsequent changes in planning policy and guidance, and address the additional evidence submitted by others that will in due course be presented to the Planning Committee. This letter should be read together with our letter of 27 April.

Nature of Objection

We maintain the same heads of objection outlined previously. Indeed, subsequent development have reinforced the validity of those objections. These are:

- (a) Circumvention of the plan-making process;

This is a wholly inappropriate Planning Application that has no regard for the Local Plan process. The Planning Application follows a failed attempt to allocate the Site for housing in the last review of the Local Plan. In that review the Inspector advised that if the

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Site was to be brought forward, a Local Plan review would be the most appropriate method to consider new evidence.

By submitting a planning application, a strategic approach, taking proper account of the wider impacts across the Council's overall administrative area, is rendered impossible. This has been demonstrated by the consequential and detrimental effects the Planning Application has on Neighbourhood Plans, ecology and habitats and the South Devon AONB. We have considered the implications of the new NPPF published on 24 July and the updated NPPG, including the application of the new "standard method" formula for minimum local housing need. There has been no change in the government's approach that emphasises the importance of the plan-led system being key in setting strategic policies that offer certainty on how much housing will be delivered and where. We also consider this to be classic case of prematurity. In this respect we note that the wording the wording regarding prematurity has been promoted from the NPPG into the Framework, gives it more weight by making it policy instead of guidance.(and see further *Fox Strategic Land & Property Ltd v Secretary of State for Communities and Local Government* [2012] EWHC 444 (Admin); ([2012] EWCA Civ 1198)] and *Wainhomes (South West) Holdings Ltd v Secretary of State for Communities and Local Government* [2012] EWHC 914 (Admin)).

Please refer to pages 5 to 8 for a more detailed explanation.

(b) Conflict with the emerging Neighbourhood Plans for Brixham and Paignton;

The Planning Application conflicts with the Brixham Peninsula Neighbourhood Plan and the Paignton Neighbourhood Plan. If the Planning Application is granted it will prejudice the delivery of key strategic sites in the Brixham Peninsula Neighbourhood Plan area. This has now been examined by Mrs Deborah McCann who reported on 26 July. Subject to some modifications she has recommended that the Brixham Peninsula Neighbourhood Plan proceed to referendum. We understand that this has been approved at a Council meeting on 15 November. As the emerging Neighbourhood Plan has advanced since our earlier letter of 27 April and is now proceeding to a referendum, greater weight should be given to it.

Please refer to pages 8 to 9 of this letter for a more detailed explanation.

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(c) Conflict with the current development plan;

The Planning Application does not conform with the Development Plan and there are no material planning considerations to justify its grant. Section 4 of our earlier letter of 27 April outlines the inconsistency with a number of Local Plan Policies. The Council published a document on 25 June stating that its housing land supply stood at 4.19 years' worth of deliverable sites. The Council excluded sites in the emerging Neighbourhood Plans, which at that stage, had yet to be examined. The examination of all three Neighbourhood Plans has concluded with a Council resolution that they proceed to referendum. The examination recommended only a small number of sites to be removed. There is significant doubt in respect of the Council's view that they cannot demonstrate a five-year supply of deliverable housing sites. Many sites (including those in the Neighbourhood Plans) have been discounted but it is apparent that they have not been properly investigated.

Notwithstanding these discrepancies, the presumption in favour of sustainable development does not apply where, as here, development requires appropriate assessment. (see e.g. *People Over Wind and Sweetman v Coillte Teoranta* (C-323/17))

Please refer to pages 9 to 12.

(d) Impacts on landscape and visual amenity particularly to and from the AONB;

The Site is approximately 600 metres from the South Devon Area of Outstanding Natural Beauty. In a previous application that was called in and refused the Secretary of State attached "substantial weight to the need to preserve the high quality of the Dart Valley AONB as one of the finest riverine landscapes in the Country". The South Devon AONB unit maintains its original objection to the planning application. The Council commissioned Jacobs to provide independent landscape advice and received a report dated 7 June 2018. The Jacobs report identified a number of deficiencies in the applicant's LVIA and concluded that *'Significant adverse visual effects would arise from the extension of the existing urban edge of Paignton westwards into the rural landscape, which forms part of the AONB setting and helps to maintain the tranquillity of the AONB.'*

In response, the applicant commissioned a report from the David Wilson Partnership dated July 2018 which misleadingly suggests that the views concerned 'are already highly compromised in terms of their remoteness and wilderness', that '[t]ranquillity in the setting of

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the AONB is already compromised and there is an existing high degree of light pollution. Notwithstanding the misleading nature of these statements, which are at odds with the assessments carried out by Jacobs and the Michelle Bolger Expert Landscape Consultancy, any existing harm to the AONB only makes it more important to preserve the tranquillity and openness that remains. Furthermore, and without prejudice to the foregoing, where as here there is no consensus of scientific opinion the precautionary principle must apply against the granting of permission for this proposal.

Our clients have also instructed an independent expert landscape consultant, Michelle Bolger Expert Landscape Consultancy to review all landscape evidence. The report is enclosed with this letter and concludes that the presentation of the VVMs submitted with the LVIA unduly limits how noticeable the proposed changes would appear in reality and the development will give rise to a moderate/major adverse impact as defined by the GLVIA3 methodology. Please refer to pages 12 to 20 for more detail.

(e) Impacts on protected habitats and species.

Since our earlier letter the Council has purported to carry out an Appropriate Assessment which concludes that *"In the light of the mitigation measures identified... there is NO Adverse Effect on the Integrity of the South Hams SAC – alone or in combination with other proposals or projects."* The development has not satisfied the requirements of the mitigation hierarchy identified in paragraph 175(a) of the NPPF2 and the NPPG ((Paragraph: 018 Reference ID: 8-018-20140306). Planning permission should therefore be refused.

A review of the Appropriate Assessment carried out by Aspect Ecology concludes that the more substantial offsetting measures proposed relate to off-site habitat creation measures proposed to offset habitat losses that would be caused by the development. These habitat creation measures do not avoid or mitigate harm, they compensate for the loss of existing habitats used by greater horseshoe bats. Discounting the compensatory measures at the Appropriate Assessment stage is required by the Habitats Directive. The Appropriate Assessment must conclude that an effect on the integrity of the SAC cannot be ruled out and therefore planning permission should be refused unless there are imperative reasons of overriding public interest and no less harmful alternative solution. Please refer to pages 21 to 27.

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We set out the legal framework in Section 1 of our previous letter (pages 4-5) and refer the Council to it once more.

(a) Circumvention of the plan-making process

The Applicants have just had the opportunity to promote the Site for inclusion in the Brixham Peninsula Neighbourhood Plan (Brixham NDP), which was allocating sites in this neighbourhood area, but the settlement boundaries proposed by draft Brixham NDP policy E2 have been endorsed by the Examiner (see below). The Examiner approves the allocation of the Site as a 'settlement gap' in the Brixham NDP.

We explained the inappropriateness of pre-empting the Local Plan review in Section 2 of our previous letter.

New NPPF – 24 July 2018

In Section 2, we referred to the impact assessment for the old NPPF. The new NPPF ('NPPF2') was published on 24 July 2018. By way of update, we would draw the Council's attention to the following:

- In its response to the consultation on the draft NPPF2,¹ the government stated in relation to neighbourhood planning that:-

'We have retained the protection for neighbourhood plans that plan positively to meet their housing need as introduced by the Written Ministerial Statement of 12 December 2016. The Government considers that this existing policy continues to strike a suitable balance between enabling development and supporting neighbourhood planning.'

In this respect there has been no change in the government's approach that emphasises the importance of neighbourhoods being able to plan and select housing sites in their area.

The government's consultation response continues: -

¹ Ministry of Housing, Communities & Local Government, 'Government response to the draft revised National Planning Policy Framework consultation', July 2018.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728498/180724_NPPF_Gov_response.pdf

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‘For plan reviews, guidance will clarify the circumstances where an earlier review will be required. This will include making it clear that local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method or has been subject to a cap where the plan has been adopted using the standard method. This is on the basis that the Government **wants to ensure that all housing need is planned for** as quickly as reasonably possible.’ [Our italics].

We emphasise ‘planned for’; the government’s policy remains a plan-led system, with extraneous sites being re-examined when plans are reviewed, rather than being developed on speculative applications.

Updated National Planning Practice Guidance (NPPG)

The updated NPPG² emphasises that ‘The development plan is at the heart of the planning system with a requirement set in law that planning decisions must be taken in line with the development plan unless material considerations indicate otherwise.’ (Paragraph: 026 Reference ID: 61-026-20180913).

We observe that the revised paragraphs of the NPPG dealing with local plan reviews need to be read in light of the policy in paragraph 73 of NPPF2:

- ‘Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old’.

The implications of this are that where, as in Torbay, the strategic policies are less than 5 years old, policy normally expects to test 5 year supply against the planned housing requirement (set out in the Development Plan and referred to in our earlier letter) rather than local housing need.

² <https://www.gov.uk/guidance/plan-making>

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The updated NPPG does, however, contain guidance on local plan reviews. The current guidance notes that plans must be reviewed at least once every 5 years (paras 042 and 043, refs 61-042-20180913 and 61-043-20180913). It now states (para 043):

- 'There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example, where new cross-boundary matters arise. *Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method.* This is to ensure that all housing need is **planned for** as quickly as reasonably possible.' [Italics added].

We again emphasise the words 'planned for'; the intent is quickly to plan for housing need having regard to a strategic assessment of all the reasonable alternatives, rather than having such a process pre-empted by piecemeal applications. NPPG paragraph 016 (12-016-20140306) explains that 'The Sustainability Appraisal plays an important part in demonstrating that the Local Plan reflects sustainability objectives and has considered reasonable alternatives.' Paragraph 045 (61-045-20180913) makes clear that a development plan policy will not be out of date just because of age.

Paragraph 046 (61-046-20180913) provides a set of potentially relevant matters to consider when deciding whether policies require updating, including existence of a 5 year housing land supply and the Housing Delivery Test, as well as consistency with national policy.

Application of New Standard Method Formula

The application of the new 'standard method' formula for minimum local housing need³ yields the following figures:

The latest household projections (Table 406) for Torbay show a rise from 61,000 households in 2018 to 66,000 households in 2028, an increase of 5,000 or 500 per annum. The latest local workplace-based affordability ratio is 7.67 (Table 5C, row for 2017). This yields an affordability adjustment factor of 0.229375. Multiplying 500 by 1.229375 gives a local need for 615 houses per year. The Local

³ <https://www.gov.uk/guidance/housing-and-economic-development-needs-assessments>

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Plan trajectory (Policy SS13) was for '495 dwellings per year for the period 2017/18 - 2021/22' and 555 dwellings per year for the remainder of the Local Plan period to 2030.

Whether or not these numbers are considered 'significantly below' the number generated by the new 'standard method' so as to call for embarking upon the Local Plan Review early is a matter for the Council, but national policy and guidance make clear that it is such a review which would be the appropriate course, rather than approval of greenfield developments on sites like this one, in departure from the recently adopted existing plan.

(b) Conflict with the Brixham Peninsula Neighbourhood Plan and the Paignton Neighbourhood Plan

The Brixham Peninsula Neighbourhood Plan has now been examined by Mrs Deborah McCann, who reported on 26 July 2018. Subject to some modifications, she has recommended that the Brixham NDP proceed to referendum, approved at a Council meeting on 15 November. This increases the degree of weight that should be placed on the emerging policies.

NPPF2 at paragraph 48 reiterates that:

'Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).'

Policies BH2, BH4, E1, E2, E3 and E6, as recommended to be modified by the Examiner, are now at quite an advanced stage, awaiting only the holding of a referendum. The policies, as modified, are consistent with the new Framework and have been found so to be by the Examiner.

The Examiner did not recommend any relevant change to the settlement boundaries provided for in NDP Policy E2. The Site is outside the settlement boundaries and the Examiner significantly did not

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recommend that it be allocated by modifying Policy BH3, notwithstanding her conclusion (p.36) that there was potential for shortfall in delivery from the sites that were allocated in Table 2. There was good reason for not allocating the Site as it is unsuitable on visual, landscape and ecological grounds in particular. Policy E2.3, as proposed to be modified (Examiner's Report p.45) and approved by the Council reads: 'Development outside settlement boundaries will need to meet the criteria in Torbay Local Plan Policy C1.' Draft Policy BH4 (Report p.37), as modified, makes clear that brownfield sites within the settlement boundaries are the preferred locations for residential development, and that extensions of settlements onto adjacent greenfield sites must be considered in the context of Local Plan Policy C1, NDP policy BH9 and exception site policies.

NDP Policy E3 as modified reads:

"E3.1 Settlement gaps have been identified between Paignton, Galmpton, Churston and Brixham. They are shown at Appendix 3 and on the Policy Map (Document 2). Countryside around Brixham is largely AONB (Policy E1 at para E1.3). Settlement Gaps relate to areas outside of the AONB where the countryside which forms the "gap" is Undeveloped Coast (Local Plan Policy C2) or Countryside Area (Local Plan Policy C1).

E3.2 Within the settlement gaps development proposals must meet the criteria set out in Policy C1 of the Torbay Local Plan. No development that visually and or actually closes the gaps between these urban areas will be supported."

We would draw attention to the settlement gap labelled no.1 in Appendix 3 to the Brixham NDP (p.103). The proposed development would clearly conflict with Policy E3.2 insofar as it visually and actually encroaches upon the settlement gap.

There would continue to be conflict with Policy E1 as modified, which would read:

"E1.3 Development within or impacting on the AONB must demonstrate that great weight has been given to conserving and enhancing landscape and scenic beauty and must comply with the requirements of the National Planning Policy Framework and other statutory documents including the AONB Management Plan.

E1.4 Priority will be given to protecting and enhancing the countryside from inappropriate development in accordance with Policy C1 of the Torbay Local Plan." (Examiner's Report p.44).

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Whilst the Examiner does recommend modifying Policy E6 (views and vistas), she has accepted the evidence that the views across the Site are examples of views valued by residents and visitors (see proposed modified text, Report p.51).

(c) Inconsistency with the current adopted development plan and absence of justification for determining the Application contrary to the plan

We refer the Council once again to the detailed assessment of conformity with policies in the Torbay Local Plan which is set out in Section 4 of our previous letter at pages 9 to 18 where we identified inconsistency with Local Plan Policies SS1, SS3, SS7, SS8, SS9, SS12, SS13, M3, C1, SC4 and NC1.

NPPF2 reiterates that the planning system should be genuinely plan-led (paragraph 15) and that it does not purport to detract from the statutory status of the development plan (paragraph 12). Paragraph 11(d) and footnote 7 indicate that 'situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites' may trigger the presumption set out in that paragraph for the purpose of the Framework. The presumption does not apply where, as here, 'development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined' (NPPF2 paragraph 177). The presumption does not apply even when a development requiring an Appropriate Assessment concludes that it would not have an adverse effect on the SPA, see paragraphs 91-99 of Planning Appeal decision (APP/X0360/W/15/3097721) Land at Stanbury House, Basingstoke Road, Spencers Wood RG7 1AJ Decision date: 18th September 2018.

We again refer the Council to the submissions we made on the *St Modwen* judgment and the proper approach to 5 year housing land supply in our previous letter at pages 20-24. In summary, that case established that 5 year supply should include all sites with a realistic prospect of delivery within 5 years, which is not limited to sites more likely than not to deliver housing in that timeframe. The existence of doubt or uncertainty will not render a site ineligible unless delivery of housing units within 5 years is fanciful or unrealistic.

The glossary to NPPF2 (p.66) repeats the previous definition of 'deliverable' but adds additional wording, to read:-

'To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the

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site within five years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.'

The requirement for 'clear evidence' does not dilute the standard of certainty required on the basis of such evidence, which remains 'realistic prospect'. A requirement for evidenced-based five year supply statements presupposes that the local planning authority makes all reasonable enquiries of relevant landowners and developers. An authority which fails to properly investigate its land supply position in light of the definition cannot lawfully discount sites.

On 25 June 2018, the Council published a document stating that its housing land supply stood at '4.19 years' worth of deliverable sites'. This excluded the sites allocated in the emerging Neighbourhood Plans on the basis that there were 'yet to be examined'. However: the Brixham NDP has now been examined and is proceeding to a referendum and only Waterside Quarry (a site for 10 homes) has been recommended for removal from the proposed allocations on deliverability grounds, out of sites considered to accommodate 695 homes. The Paignton NDP has been examined and is proceeding to referendum. It does not 'allocate' sites but it does indicate that sites capable of supporting 1294 dwellings are suitable and anticipated to be deliverable by 2022 (Table 8.1, p.97). Whilst the Examiner considered there to be some uncertainty around delivery on those sites, counting *none* of them as deliverable in the Council's 5 year supply has not been justified.

The Torquay Neighbourhood Plan has now been examined by Mr Nigel McGurk (Report dated July 2018). It allocates land providing for 3979 homes in the period to 2030. Mr McGurk's findings in respect of the allocated sites in draft Policy TH1 (p.27) were as follows (paragraph 106):-

"106 The land allocated by the Neighbourhood Plan (as opposed to that already allocated by the Local Plan) has largely been drawn from sites identified by the Local Plan as being suitable for residential development. Further allocations have emerged through a transparent assessment process. In this regard, I am mindful that Torbay Council has not raised any concerns with the land allocated for residential development and has stated that the allocations support:

"...the growth strategy of the Torbay Local Plan. This is supported and welcomed."

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The only site where objections were raised regarding deliverability was the Kwik-Fit site, which was recommended for deletion, and which would only yield 10 homes (see the table in the submission plan at p.75, Appendix 1). No justification has been advanced as to why none of these sites have been included in the 5 year supply. In that regard, we note that the 5 Year Supply Statement (revised March 2018) stated:

'Those sites which the Council did not include in the five year supply spreadsheet are neighbourhood plan sites on which there are no current applications or knowledge of any interest in developing; some masterplan sites; and 'old' sites with an implemented permission which have seen no recent activity. Officers took the view that these did not pass the NPPF footnote 11 test and there was not a realistic prospect that they would be delivered in five years.'

Where sites have detailed planning permission, or are not 'major' development, they should be presumed to be deliverable absent clear evidence to the contrary. 'No recent activity' is unlikely to constitute such evidence. 'No current applications or knowledge' does not imply that any proactive enquiries have taken place in respect of neighbourhood plan allocations.

We reiterate that even where the most important development plan policies are treated as 'out of date' so as to trigger the 'presumption in favour of sustainable development' for the purpose of NPPF2 (which as explained above should not apply to the instant application), this does not as a matter of law prevent the local planning authority from giving weight to such development plan policies, by way of departure from the Framework. If the presumption were applied, then permission should not be granted if 'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits'. These may include adverse impacts on view, landscape and ecology.

(d) Landscape, visual and AONB impacts

We refer the Council back to the detailed submissions made on these issues in our previous letter at pages 24-29. By way of update, we shall first refer to the policy changes since our previous letter and then to the fresh evidence.

In terms of policy, we would draw attention in particular to the following:

- NPPF2 paragraph 11(d)(i) and Footnote 6 together indicate that the application of policies protecting AONBs may constitute a 'clear reason' for refusing permission even where the 'presumption in favour of sustainable development' applies.

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- NPPF2 paragraph 170 indicates that decisions should contribute to and enhance the local environment by 'recognising the intrinsic character and beauty of the countryside', and 'protecting and enhancing valued landscapes'.
- NPPF2 paragraph 172 makes clear that 'Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas... The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:
 - a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
 - b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
 - c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.'
- This development for up to 400 dwellings is sufficiently large and intrusive to constitute 'major' development for the purpose of paragraph 172. Whilst the Site does not lie within the AONB, it still has an adverse impact on the landscape and scenic beauty as it effects views into and out of the AONB. The NPPG makes clear that the duty under s.85 of the Countryside and Rights of Way Act 2000 'is relevant in considering development proposals that are situated outside National Park or Area of Outstanding Natural Beauty boundaries, but which might have an impact on the setting of, and implementation of, the statutory purposes of these protected areas.' (Paragraph: 003 Reference ID: 8-003-20140306). It also reminds decision-makers that 'The Framework is clear that great weight should be given to conserving landscape and scenic beauty in these designated areas irrespective of whether the policy [on 'major development'] is applicable.' (Paragraph: 005 Reference ID: 8-005-20140306).

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- Paragraph 180 of NPPF2 requires decision-makers to ensure that new development is appropriate to its location, taking into account the sensitivity of the site and wider area to impacts that could arise, 'identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.'

After the e-mail of Roger English from the South Devon AONB Unit (dated 27 March 2018) which cited 'an unacceptable level of residual harm', the AONB Unit provided a fully reasoned objection dated 10 May 2018. This rightly pointed out that the Applicant's LVIA significantly underplayed the landscape scale of effects and harm.

The Council has commissioned and received a report from Jacobs UK Limited (Jacobs, 'Torbay Landscape Advice', 7 June 2018). They were unable to verify the Applicant's montages but conducted a site visit to a number of viewpoints. Jacobs' findings (p.10) were that the Applicants' LVIA:-

- failed to assess against objective transparent criteria for magnitudes of impact,
- misleadingly stated that impacts were 'not significant',
- wrongly described changes as beneficial,
- was based on over-optimistic assumptions about mitigation planting, and
- included 'misleading' montages.

In the tables of notes accompanying their report, Jacobs concluded that there was a substantial and significant adverse impact on the view from VP14; and significant moderate adverse impacts on views from VPs 6a, 7a, 7b, 8c, and 9a. Jacobs also noted (p.16) that they had not assessed the cumulative effects but said the work they had seen 'suggests there would be significant cumulative effects for walkers and road users respectively'. In their conclusions (p.17), Jacobs assessed that:-

'...the landscape and visual impacts...would be greater than...reported in the applicant's LVIA and Addendum. The proposed development would result in significant residual adverse effects on some representative viewpoints within the AONB, including views from PRow's on Fire Beacon Hill and from

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the John Musgrave Heritage Trail, amongst others. Whilst extensive mitigation is proposed, it is not considered that this would overcome the fundamental impacts of the proposed development on the setting of the AONB. Significant adverse visual effects would arise from the extension of the existing urban edge of Paignton westwards into the rural landscape, which forms part of the AONB setting and helps to maintain the tranquillity of the AONB.'

Jacobs noted that the lack of existing natural enclosure of the Site necessitated the Applicant's proposal for 'extensive mitigation in the form of perimeter "native woodland belt" planting'. They note that this '*would be inconsistent with the existing landscape pattern of irregular but angular fields, defined by hedgerows with occasional mature trees and hilltop woodland*'. They note that the affected views are 'iconic wide panoramic views' which are a 'Special Quality' of the AONB recognised as being of 'exceptional value' in the AONB Management Plan, which 'are highly sensitive to the type of change proposed' and represent a diminishing resource with scarcity value. In this regard, we would point out that the Landscape Institute's Guidelines for Landscape and Visual Impact Assessment advise that, as is common sense, the most sensitive visual receptors are those engaging in outdoor recreation to enjoy the scenery, such as walkers on footpaths. They rightly suggest that cumulative impacts with other consented development would be significant, and that the development would be 'inconsistent with the landscape character of the North Galmpton AoLC.'

The Applicant responded with a report from David Wilson Partnership dated July 2018. This asserts that the views concerned 'are already highly compromised in terms of their remoteness and wilderness', that '[t]ranquillity is already heavily compromised in the setting of the AONB', and '[t]here is already a high degree of light pollution from Torbay'. Whilst this is an overstatement of the present reality, it is also an extremely unattractive argument to make. The fact that there has been harmful intrusion in terms of tranquillity and views into and out of a highly protected AONB only makes it more important to preserve the tranquillity and openness that remains.

Paragraph 191 of NPPF2 states in relation to heritage assets that 'Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision.' Indeed, we pause to observe that where the site has become untidy the local planning authority has powers to issue a notice under s.215 of the TCPA 1990 requiring that it be cleaned up by the owner. The definition of 'heritage asset' in the glossary,

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which includes landscape heritage,⁴ is sufficiently broad to include the AONB, but even if it does not, the principle that previous harm should not be exacerbated should be applied by analogy. The David Wilson Partners report also states the truism that the Site does not impinge into the designated area of the AONB. This fails to address the point that it materially and detrimentally harms the views from the AONB. It is again inaccurately claimed that the character of views would not be significantly altered, the Council will be able to form their own judgments.

We also have the benefit of a detailed letter from the Ramblers' Association dated 24th August 2018. This explains by reference to their own photographs how the Applicant's evidence inaccurately minimises the impacts.

Michelle Bolger Expert Landscape Consultancy

Our clients have instructed an independent expert landscape consultant, Michelle Bolger Expert Landscape Consultancy (MBELC), to review all the landscape evidence and reach their own conclusions. The report is enclosed with this letter. MBELC explains (paragraph 2.4.3) why 'The presentation of the VVMs submitted with the LVIA unduly limit how noticeable the proposed changes would appear in reality', and they have prepared their own versions. MBELC has formed reasoned judgments that the landscape effects are of medium/large magnitude, to a site with a high landscape value and medium/high sensitivity to change, giving rise to a moderate/major adverse impact as defined by the transparent GLVIA3 methodology in their Appendix 5.

In the opinion of MBELC (see paragraph 6.4.2 of their report), Jacobs, David Wilson Partnership and the original LVIA all under-estimate the degree of adverse change. In relation to visual impacts, MBELC has prepared 3 additional verified views (enclosed) and demonstrated how the medium magnitude of change at VR3c would not be reduced to 'low' by planting, which would not screen upper levels and roofs of the buildings from these elevated viewpoints. Due to the highly sensitive receptors, the appropriate conclusion is a 'moderate/major adverse' significant effect. Furthermore, the MBELC report explains why views from PRow users within the AONB south of the River Dart cannot fairly be said to experience only a 'low' magnitude of adverse change. At all three locations considered in detail in the MBELC review, the sensitivity of the receptor is high, the magnitude of change would be

⁴ 'A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing).'

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medium, and the overall effect would be recognised as moderate/major adverse applying the most appropriate methodology.

Below, we have included extracts of the key findings of the MBELC report:-

Flawed methodology

"5.1.2 ...the following aspects of the LVIA have contributed to an underestimation of the landscape and visual impacts of the development overall:

- The assessment of Landscape sensitivity criteria fails to explain how it has taken account of the landscape value of the site;*
- Having a very high threshold for determining significant effects;*
- The inclusion of the AONB as a whole as a visual receptor; and*
- Poor presentation of Visually Verified Montages (VVMs)."*

*"5.3.2 A more generalised summary of determining significance is also included in the LVIA, which states: 'Significant effects, in general, would be where there is a major change or irreversible effect, over an extensive area/proportion of views, on elements and/or aesthetic and perceptual aspects that are key to the character/visual amenity of **nationally valued landscapes/views**'⁵. (emphasis added) This explanation, which is repeated in 6.9.1 of the ES, implies that the only significant effects are those where a landscape of national value is subject to a large magnitude of effect. This threshold is too high.*

5.3.3 We do not find the division of the landscape into seven different receptors helpful and we found the overall conclusion that none of the landscape effects were significant⁶ hard to believe and it may be a consequence of the very high threshold. The Jacobs review employs an approach which considers effects of 'moderate' and above to be significant⁷. We agree that this is a reasonable basis, and this threshold is also used in this review.

⁵ 1.11.1, Appendix 1, Landscape and Visual Impact Assessment, October 2017

⁶ 10.1.5 Landscape and Visual Impact Assessment, October 2017 and 9.1.1 of the LVIA Addendum

⁷ Page 11, Torbay Landscape Advice, Jacobs, 7 June 2018

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Detrimental impact on landscape character

"8.2.1 The proposal would replace four of the five fields within the site with a residential development of up to 400 dwellings. The proposed planting would be at odds with the historic framework of hedgerows and hedge banks, and its historic field patterns.

8.2.3 The development would protrude outwards into the open countryside and be poorly related to the existing settlement edge. This edge is currently defined by the A3022. This road is a strong landscape feature and development along its eastern side, opposite the site, is currently well-integrated through a combination of generous setbacks and mature planting.

8.2.5 Although adjacent to the countryside the development would create some narrow strips of countryside, separating the development from the neighbouring urban areas. There would be one field between the site and White Rock and only two fields between development in the site and Galmpton. There would not be a 'wide, rural space' between the site and Galmpton as stated in the DWP review..."⁸

8.2.6 The character of Brixham Road would be dramatically altered. It would no longer serve as the defining edge to Paignton. Its users would no longer experience a rural setting to the settlement. Views west towards the countryside would be replaced with residential development and the historic road alignment would be altered via widening works and a new roundabout. The character of the White Rock development would be extended southwards into a landscape where views westwards are currently unaffected by development. At present, residential development at White Rock is contained 'behind' a ridge to the north of the site (as experienced from the stretch of Brixham Road opposite the site)."

Effects on the AONB

"8.3.3 Development on the site would halve the gap between the AONB boundary and Brixham Road and would bring development to within approximately 500m of the AONB. Not only would it remove a considerable area of buffer between the AONB and Paignton, it would be removing an area of countryside which shares a number of characteristics with the AONB. Many of these characteristics, such as the prevalence of historic field boundaries within the site, are

⁸ Paragraph 34, DWP Review, July 2018

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complimentary to the AONB. The development would remove the continuation of an historic field network, which currently runs from the Dart River to Brixham Road through the site.

8.3.5 *The development is likely to be visible from the AONB boundary the changes made to the application in the revised scheme (i.e. taking development out of Field 3, and lowering building heights), specifically at LVIA RV16 from Waddeton, where at the least changes in the vegetation framework will be seen.*

8.3.6 *Iconic wide, unspoilt and expansive panoramic views are one of the special qualities of the AONB. Such views are available from a range of locations, including the elevated land to the south of Galmpton and Dittisham. At these locations the majority of the development would be visible. The addition of up to 400 dwellings and associated infrastructure over an approximate area of 28 hectares would form a substantial extension to Paignton. It would remove a large area of the rural hinterland, which is significant in the setting of the AONB".*

Greater Impacts than those stated in the LVIA

"9.3.2 ...we have set out below our findings in relation to three key locations within the AONB which we consider would be impacted to a greater degree than stated in the LVIA..."

MBELC also identified three key locations within the AONB which have been impacted to a greater degree than that stated in the LVIA. This relates to:-

"9.3.2...

- Viewpoint A: John Musgrave Heritage Trail near A379, (PRoW #53) (similar location to **LVIA VVM for RV8c**).*
- Viewpoint B: The Dart Valley Trail near Fire Beacon Hill (similar location to **LVIA VVM for RV6a**); and*
- Viewpoint C: Footpath to Dittisham (also part of the Dart Valley Trail, PRoW #3) (similar location to **LVIA VVM for RV7d**)."*

In respect of the John Musgrave Heritage Trail the LVIA finds that there would be a medium reducing to low magnitude of change in relation to the users of the public right of way in the AONB north/east of the Dart River. Following a site visit by MBELC, while they agree that there would be a medium

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magnitude of change, they disagree that it would reduce to low as the proposed planting will not screen the upper levels and roofs of the buildings depicted in Vp A. The upper levels of roofs would be visible along a sustained section of this footpath. Paragraph 9.3.6 of the MBELC reports continues *"...Due to the highly sensitive nature of this receptor (**high** as recognised in the LVIA) which comprises people walking along a promoted route, within an AONB where unspoilt, expansive views are one of the special qualities, we consider that the effect would be **moderate/major adverse** (this accounts for the mitigation planting shown in the LVIA VVMs). This is a significant effect"*.

The MBELC report continues to consider the other two viewpoints, B and C. Paragraph 9.3.7 and 9.3.8 confirms that *"At all three locations the proposals will add a visibly large, permanent extension to Paignton."* MBELC do not agree with the LVIA findings that there will be a low magnitude of change in relation to the public right of users within the AONB south of the River Dart. Based on their site visit they consider that the magnitude of change would be similar to that of viewpoint A i.e. medium. Their report continues:

"9.3.8 ...Although these Vps are located further away from the site, the visible extent of the development would be similar if not greater than at Vp A. In particular, the full width (approximately 90m) of the proposed school building would be visible from the section of Dart Valley Trail represented between Vps B and C. This building would be noticeably larger in scale than any other buildings in the visible vicinity of the site. The massing of the school could be 'broken up' through the modulation of its form and materiality, and intervening planting. However, it would still be visible as a single large building noticeable for its size and its contrast with the predominantly smaller residential forms currently visible around the site."

*9.3.9 The section of the Dart Valley Trail between Fire Beacon Hill and Dittisham allows for an appreciation of the countryside setting to the River Dart Valley. Its users have a **high** sensitivity to changes in their view. The magnitude of change that would result from a large development extending into the Dart Valley would be **medium**, and the overall effect would be **moderate/major adverse** (this accounts for the mitigation planting shown in the LVIA VVMs). This is a significant effect."*

In conclusion, there are significant flaws in the LVIA presented by the Applicant and it has been demonstrated that the proposal will have a detrimental effect on the landscape character of the local area and on the AONB.

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(e) Protected habitats and species

We addressed the relevant law, policy and evidence as it then stood in our previous letter at pages 29-45. NPPF2 para 175(a) distinguishes between mitigation and compensation as part of a 'mitigation hierarchy', and NPPG (Paragraph: 018 Reference ID: 8-018-20140306) further elaborates:

' Avoidance – can significant harm to wildlife species and habitats be avoided for example through locating on an alternative site with less harmful impacts?

Mitigation – where significant harm cannot be wholly or partially avoided, can it be minimised by design or by the use of effective mitigation measures that can be secured by, for example, conditions or planning obligations?

Compensation – where, despite whatever mitigation would be effective, there would still be significant residual harm, as a last resort, can this be properly compensated for by measures to provide for an equivalent value of biodiversity?

Where a development cannot satisfy the requirements of the 'mitigation hierarchy', planning permission should be refused....'

Paragraph 174 of NPPF2 has carried across the expectations of the old NPPF as regards recovery of priority species. The application proposals amount to a breach of these policies. As noted previously, paragraph 177 disapples the 'presumption in favour of sustainable development' in our case as 'appropriate assessment' is required. Footnote 6 makes clear that breach of policies relating to European protected habitats amounts to a reason to refuse permission, even in cases where the presumption applies. Since our previous letter, Jacobs Limited have purported to carry out an 'appropriate assessment' on behalf of the Council (dated 24 May 2018). Our clients instructed the independent consultancy Aspect Ecology to review the evidence. They conclude that the purported assessment is wrong to rule out an adverse effect on the bats of the SAC.

Their first criticism relates to the reliance on offsetting measures. Section 17 of the Jacobs HRA (within the Appropriate Assessment) identifies that, in the absence of what it describes as 'mitigation' measures, *"the loss and fragmentation (of Greater Horseshoe Bat foraging habitat) has the potential to affect the population and distribution of the greater horseshoe bats associated with the Berry Head part of the SAC and subsequently may affect the integrity of the SAC by virtue of affecting the achievement of the Conservation Objective"*. It goes on to state that habitat creation measures

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(hedgerows, woodland, pasture and a bat house) "will reduce any effects associated with the loss of foraging and commuting habitat". The Appropriate Assessment concludes (section 19) "In the light of the mitigation measures identified... there is NO Adverse Effect on the Integrity of the South Hams SAC – alone or in combination with other proposals or projects."

The conclusion presented at section 19 of Jacobs' assessment is incorrect because it takes account of compensatory measures, i.e. habitat creation, as well as the relatively limited mitigation measures. However, the Appropriate Assessment has previously identified (section 17) that, in the absence of habitat creation measures, the proposals may affect the integrity of the SAC.

The range of offsetting measures, listed at section 16 of the Jacobs Appropriate Assessment as 'mitigation' are set out in the table below, with an assessment by Aspect Ecology of whether they are best described as mitigation or compensation.

Measure	Mitigation	Compensation	Comment
Planting new habitats		X	Habitat creation to compensate for lost/damaged habitats
Retention and protection of 2.9km of hedgerows	X		Measures to minimise loss of or damage to habitats
Planting of new hedgerows		X	Habitat creation (in part to improve off-site habitats)
Hedge planting to be species-rich		X	Habitat creation
Reversion of 16ha of arable to grazed cattle pasture		X	Habitat creation "to achieve no net loss"

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Measure	Mitigation	Compensation	Comment
Creation of woodland and other tree planting		X	Habitat creation
Creation of a bat house		X	Habitat creation (roosting habitat) (NB potential impacts on an existing night roost have not been considered)
Contribution to an off-site bat house		X	Habitat creation (roosting habitat)
Funding and other measures to implement habitat creation	-	-	Given that habitat creation measures are already listed, it is doubtful this merits inclusion in its own right as a mitigation measure
Ongoing management of retained and created habitat	X	X	Mitigation where it relates to management of retained habitats; compensation where it relates to created habitats
Funding and other measures to implement habitat management	-	-	Given that habitat management measures are already listed, it is doubtful this merits inclusion in its own right as a mitigation measure
Commitment to monitoring and reporting and adaptive management if		X	Presumed to relate largely to newly created habitats. NB Demonstrates uncertainty

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Measure	Mitigation	Compensation	Comment
measures are failing to achieve their aims			associated with the majority of the above measures
Provision of wildlife information boards	X		Presumably seeking to modify behaviour of new residents to minimise any ongoing 'urbanisation' effects
Sensitive lighting scheme	X		Measure to minimise adverse effects of lighting
A dark areas plan and inclusion of hedge banks at key locations	X		Measures to reduce impacts of lighting
Clarification of relationship of proposals to White Rock mitigation	-	-	Clarification only
Confirming that management proposals can be enforced	-	-	Clarification only
Homeowner information package re bats and impacts of external lighting	X		Measure proposed by Jacobs to mitigate effects of external lighting of new homes
Clause in deeds requiring householders to apply for planning	X		Measure proposed by Jacobs to mitigate effects of external lighting of new homes

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Measure	Mitigation	Compensation	Comment
permission for external lighting			

It is apparent that the majority, and the more substantial, offsetting measures proposed, relate to off-site habitat creation measures, proposed to offset habitat losses (hedgerow and pasture) that would be caused by the proposed Inglewood development. It is also apparent from guidance documents and court rulings (such as *Briels & Others*, *Orleans & Others* and *Commission v Germany* Respectively Cases C-521/12, C-387/15 & C-388/15 and C-142/16, see further below) that these constitute ecological compensation and not mitigation. These habitat creation measures do not avoid or mitigate harm; rather, they compensate for losses of existing habitats that have been shown to be utilised by greater horseshoe bats.

The true mitigation measures listed relate very largely to retention and protection of a proportion of the existing hedgerows and to minimisation of lighting and other urbanisation effects.

Article 6(3) and (4) of the Habitats Directive provide:

'(3) Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

(4) *If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected.* [Italics added].

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A compensatory measure can only be relied upon in circumstances of no alternative solutions, and imperative reasons of overriding public interest (i.e. under article 6(4)), after an appropriate assessment has been carried out for the purpose of article 6(3) which has found that without such compensatory measures the project will cause harm to the protected site. This is clear from the structure of the legislation.

As we explained in our previous letter by reference to case law (cases Case C-142/16, *Commission v Germany* at [36]-[38], 521/12, *T.C. Briels and Others v Minister van Infrastructuur en Milieu* at [29]-[37], C-387/15 and C-388/15, *Orleans and others v Vlaams Gewest* at [49]-[64] cited in our letter at pp.37-39), because of the inherent uncertainty regarding the outcome of habitat creation measures, they cannot be considered at the Appropriate Assessment stage. Accordingly, discounting the compensatory habitat creation at the Appropriate Assessment stage as is required by the Habitats Directive, the Appropriate Assessment must conclude that an effect on the integrity of the SAC cannot be ruled out. Therefore, in line with the precautionary principle, permission should be refused unless there are imperative reasons of over-riding public interest and no less harmful alternative solutions.

The EC publication “*Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC*” states (Box 15, p 39): “*Compensatory measures appropriate to adverse effects on Natura 2000 sites consist of:*

- **restoration** – *restoring the habitat to ensure the maintenance of its conservation value...;*
- **creation** – *creating a new habitat on a new site or through enlargement of the existing site;*
- **enhancement** – *improving the remaining habitat proportional to that which is lost due to the project or plan;*
- **preservation of habitat stock** – *measures to prevent further erosion of the coherence of the Natura 2000 network.*

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Further guidance is provided by the Chartered Institute of Ecology and Environmental Management⁹ on distinguishing between mitigation and compensation in relation to sites designated under the Habitats Directive:

“Mitigation: normally involves measures that reduce and /or minimise impacts ... such as: changes to timing, engineering design...”

Compensation: involves measures, such as new habitat creation, taken beyond the site boundary that offset the residual impacts that have a detrimental impact upon the conservation objectives for a protected site. Compensation is a last resort and should only be considered where there are residual adverse effects on site integrity that the competent authority agrees cannot be mitigated. However, strict tests have to be met before compensation is considered...”

This guidance goes on to state (paragraph 6.14):

“Where projects affect Natura 2000 sites, the terms mitigation and compensation have very specific meanings. In these situations particular care needs to be taken to make sure that mitigation is confined to those operating procedures that minimise impacts. Compensation, meanwhile, should be clearly identified as those measures that would have to be delivered to maintain coherence of the Natura 2000 site, if it was determined that:

- i there would be an adverse effect on site integrity that could not be ruled out;*
- li there were no alternative solutions; and that*
- lii there were imperative reasons of over-riding public interest”*

All the policy, guidance and case law indicate that the approach adopted here is unlawful.

The Aspect Ecology report also criticises the absence of rigorous cumulative assessment, and the efficacy of the offsetting measures. We urge the Council to study their expert report in detail, which we enclose with this letter.

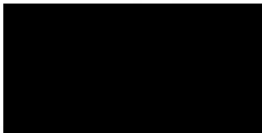
⁹ Guidelines for Ecological Impact Assessment in Britain and Ireland (p 54) IEEM, 2010

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Conclusion

For the reasons set out in this letter (and by cross reference to our earlier objection letter), this Application should be refused planning permission on grounds of inconsistency with the development plan and emerging neighbourhood plan, landscape and visual impacts, and adverse ecological impacts. In due course please notify us of the date of the Planning Committee meeting and of any further documentation including any response to this letter.

Yours faithfully



Enclosures: Report of Michelle Bolger Expert Landscape Consultancy dated November 2018
Report of Aspect Ecology dated November 2018

Technical Briefing Note

Project: Land at Inglewood, Paignton

Inglewood – A Review of Habitats Regulations Assessment of Planning Application P/2017/1133

Date: 16 November 2018

1. Introduction

- 1.1. This document sets out a detailed review of the revised Habitats Regulations Assessment (HRA), dated 24 May 2018, prepared by Jacobs on behalf of Torbay Council, in respect of proposed residential-led development at land south of White Rock adjacent to Brixham Road, Paignton (aka Inglewood).
- 1.2. The development proposals relate in part to land identified for habitat creation to offset (i.e. mitigate or compensate for) effects of a neighbouring development (White Rock) a short distance to the north of Inglewood.
- 1.3. The HRA relates to potential effects of the proposed development on the population of Greater Horseshoe Bat *Rhinolophus ferrumequinum* which is one of the identified interest features of the South Hams Special Area of Conservation (SAC). This SAC comprises five components where maternity and / or hibernation roosts are present. The site of the proposed development lies outside the SAC boundary but falls within a Greater Horseshoe Bat 'Sustenance Zone' as identified by Natural England. The component of the SAC relevant to the development proposals is the Berry Head to Sharkham Point SSSI.
- 1.4. It is of note that the SSSI/SAC boundary does not include sufficient foraging habitat to support the bat population for which the SAC is designated. The HRA states, *inter alia*, that the Berry Head roost is largely isolated from open countryside on a peninsula, which requires bats to travel longer distances to foraging habitats. A proportion of the land close to the roost is covered by urban development, thus reducing availability of foraging habitat close to the roost; and the population of bats at Berry Head cannot be sustained by the numbers (biomass) of insects generated by the habitat within the boundaries of the SAC (Berry Head to Sharkham Point SSSI) alone. The HRA also notes that the limited foraging (lack of grazed land) close to the roost (within 1km) is likely to adversely affect the growth of juvenile bats in the first two months of life once they are flying and hunting for themselves and that there is a lack of night roosts close to the maternity roost within Berry Head. It was in recognition of the above that a number of Greater Horseshoe Bat flyways and the Sustenance Zone have been identified. Not all of the Sustenance Zone is suitable for Greater Horseshoe Bats, but areas within this Zone that are utilised by the species represents land functionally linked to the SAC.
- 1.5. The HRA updates an earlier HRA document prepared by Jacobs, dated 23 March 2018. The March document considered the effects of mitigation and compensation measures within the screening assessment, i.e. to determine whether there was a likely significant effect. This

approach was in line with established practice, following the High Court ruling in *R (Hart District Council) v Secretary of State for Communities and Local Government* [2008]. However, in April 2018 the Court of Justice of the European Union (CJEU Case C-323/17, *People over Wind and Sweetman v Coillte Teoranta*) ruled that measures intended to avoid or reduce the harmful effects of a plan or project, that had been incorporated into the plan or project could not be taken into account at the screening stage and that they could only be considered at the Appropriate Assessment stage. The judgement stated that “*a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the sites concerned must be carried out not at the screening stage, but specifically at the stage of the appropriate assessment*”.

- 1.6. The People over Wind ruling is binding on domestic courts; consequently, to reflect this ruling, the HRA of the Inglewood proposals was revised, with offsetting measures considered within an Appropriate Assessment (albeit the HRA largely appears to be a re-ordering of the information previously presented within the earlier screening HRA, rather than the in-depth consideration of potential effects and their avoidance or mitigation that should be provided by an Appropriate Assessment).
- 1.7. The Appropriate Assessment undertaken by Jacobs on behalf of Torbay Council has been reviewed and a number of serious flaws have been identified relating to a variety of ecological matters. These relate to:
 - the reliance of the Appropriate Assessment on compensatory habitat creation measures;
 - the lack of consideration of cumulative effects are considered in detail below.

2. Functionally Linked Land

- 2.1. The concept of ‘functional linkage’ was recently considered through a Natural England Research Report (“NERR”)¹ which reviewed authoritative decisions relevant to functionally linked land and sea. The cases reviewed frequently considered effects at significant distances from European site boundaries. Key extracts from the NERR are quoted below (our emphasis added through underlined text):

‘the term ‘functional linkage’ refers to the role or ‘function’ that land or sea beyond the boundary of a European site might fulfil in terms of ecologically supporting the populations for which the site was designated or classified. Such land is therefore ‘linked’ to the European site in question because it provides an important role in maintaining or restoring the population of qualifying species at favourable conservation status’. (Refer B1 of report)

‘The issues in the four cases relating to bats examined the potential loss, interruption, or diminution of the ecological value of the routes (flyways) used by the bats from the SAC to reach their foraging grounds, which were spread around the countryside beyond the SAC boundary. Hence the bats would be indirectly affected by way of loss of habitat, or by the interruption or severance of the flyways or by the introduction of deterrent effects in the flyways and/or in the foraging areas. Reduction in ecological value of the foraging areas and/or impediments to the bats reaching their foraging areas could undermine achievement of the conservation objectives of the SACs and therefore affect the conservation status of the bats in the SACs. The failure of the developer in one case to carry out the surveys reasonably required to establish the importance of an area reasonably likely to be part of a critical flyway, led to the refusal of the application and dismissal of the appeal. This was because an appropriate assessment could not be properly completed without it. In all cases the risk to the population of bats, for which the SAC had been designated, arising out of effects which could occur beyond the boundary of the SAC was accepted by the decision maker. (‘Discussions and Conclusions’ section within Summary).

‘In essence, the research shows, amongst other things, that:

- a) The identification of an area as functionally linked land in the terrestrial or coastal environment is generally relatively straightforward and readily recognised, but may sometimes not be apparent and may require some initial survey and analysis or collation of pre-existing data, to establish the link.*
- b) The identification of an area as functionally linked sea is more challenging and has to be approached differently for marine developments; nevertheless an approach in respect of sea birds and marine mammals appears to be developing and although necessarily relying to a greater extent on assumptions, it provides a robust approach which is suitably precautionary without being onerous.*
- c) Once identified as functionally linked land or sea, the evidence required by decision makers in stages 1 and 2 of the Habitats Regulations Assessment*

¹ Chapman, C. & Tyldesley, D. 2015. Functional Linkage: how areas of that are functionally linked to European sites have been considered when they may be affected by projects – a review of authoritative decisions. Natural England Research Report (NECR207).

process are no different to those that might reasonably be expected in relation to direct or on-site effects on the European site. The precautionary principle applies equally to functionally linked land and sea. Where effects might be significant and there is insufficient information to ascertain that there would not be an adverse effect on the integrity of a site, in terms of the population of the species for which the site has been classified or designated, authorisation has been denied; consistently with the provisions of the Regulations. (Refer D.5 of report)

'the relevance of functionally linked land (FLL) to the Habitats Regulations Assessment process is encapsulated in the following quote from paragraph 27 of the High Court judgment in RSPB and others v Secretary of State and London Ashford Airport Ltd [2014 EWHC 1523 Admin]:-

"There is no authority on the significance of the non-statutory status of the FLL. However, the fact that the FLL was not within a protected site does not mean that the effect which a deterioration in its quality or function could have on a protected site is to be ignored. The indirect effect was still protected. Although the question of its legal status was mooted, I am satisfied that while no particular legal status attaches to FLL, the fact that land is functionally linked to protected land means that the indirectly adverse effects on a protected site, produced by effects on FLL, are scrutinised in the same legal framework just as are the direct effects of acts carried out on the protected site itself. That is the only sensible and purposive approach where a species or effect is not confined by a line on a map or boundary fence. This is particularly important where the boundaries of designated sites are drawn tightly as may be the UK practice." (Refer B2)

Turning to the stage 2 integrity test, in light of the accepted definition of integrity quoted in B.2 above, a site's integrity is inextricably linked to the concept of sustaining the population of a species for which the site has been designated, classified or listed. Where functionally linked land is necessary for that population to be so sustained then it must be linked to the site's integrity.' (Refer B.3 of report)

- 2.2. The research report, therefore, provides support for the approach taken in the case of the Inglewood proposals, namely that effects on land outside the South Hams SAC boundary, but which have potential to affect the SAC, should be "*scrutinised in the same legal framework just as are the direct effects of acts carried out on the protected site itself*". The authoritative decision of the High Court in the RSPB judgement (2014 EWHC 1523 Admin), from which the above quote is taken, recognised such an approach as "*the only sensible and purposive approach where a species or effect is not confined by a line on a map or boundary fence*". Therefore, it is entirely proper that impacts of development on land functionally linked to a European designation should be considered through HRA.

3. Review of Appropriate Assessment

Habitat creation

- 3.1. The HRA refers throughout to 'mitigation' measures to offset potential impacts on the SAC. However, the majority of the measures considered are more correctly referred to as 'compensation' measures. EC guidance² distinguishes between:
 - 'mitigation measures' which are *"those measures which aim to minimise, or even cancel, the negative impacts on a site that are likely to arise as a result of the implementation of a plan or project"*; and
 - 'compensatory measures' which *"are independent of the project (including any associated mitigation measures) [and] are intended to offset the negative effects of the plan or project so that the overall coherence of the Natura 2000 Network is maintained."*
- 3.2. In its guidance, the Commission indicates that mitigation measures may cover, for example:
 - the dates and timetable of the implementation of the plan or project, for example, to avoid operations during the breeding season of protected species;
 - the type of tools and operation to be carried out, for example, to avoid affecting a fragile habitat by using a specific dredge at an agreed distance from the shore; and
 - rules determining which areas of the site are strictly inaccessible, for example, the hibernation burrows of a specific species.
- 3.3. The Commission indicates that compensation measures could consist of *"the re-creation of a comparable habitat, the biological improvement of a substandard habitat..."*
- 3.4. Therefore, while mitigation measures seek to prevent or avoid harmful impacts on a designation, compensation measures do not prevent these harmful effects but, rather, they offset those effects elsewhere.
- 3.5. A review of the offsetting measures considered within the Inglewood HRA reveals that the major elements of these consist of habitat creation or enhancement works, much of which would occur outside the development area. Accordingly, it is clear that these measures, which include reversion of arable land to cattle-grazed pasture together with new hedgerow and woodland planting, do not mitigate habitat losses within the development site that would occur irrespective of whether or not the habitat creation works were undertaken.
- 3.6. Concerns with the compensatory measures relate to the inherent uncertainty regarding their success, particularly for habitat creation measures. For example, the judgement in ECJ Case 521/12 (Briels and Others v Minister van Infrastructuur en Milieu) [2014] P.T.S.R. 1120 notes at paragraph 32 *"as a rule, any positive effects of a future creation of a new habitat which is aimed at compensating for the loss of area and quality of that same habitat type on a protected site, even where the new area will be bigger and of higher quality, are highly difficult to forecast with any degree of certainty and, in any event, will be visible only several years into the future"*.
- 3.7. Concerns regarding the Inglewood proposals relate to two factors, namely the timeliness of provision of new habitats in relation to the time needed for the new habitats to mature to an

² European Commission, *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC* (2007), p.10.

ecologically functioning state, and to the quantum of habitat proposed, which in turn relates to the inherent uncertainties of habitat creation and enhancement measures.

- 3.8. **Timing of provision of replacement habitats:** The Farm Management Plan (Stride Treglown, October 2017) supporting the planning application identifies hedgerow planting as being undertaken within the next appropriate planting season following either granting of outline planning permission or signing of a S106 agreement. More usefully, the Phasing Plan (Stride Treglown) relates this to the construction process, specifying that mitigation planting or habitat creation will occur at least one year/growing season in advance of any construction. Even planting with mature stock, a timescale of what may be as little as one year is insufficient to allow the development of a substantial hedgerow likely to be of value to foraging Greater Horseshoe Bats. For hedgerows, a period of at least 5 to 10 years may be required. In the case of the proposed woodland planting, we consider that a period of at least 15 years would be required from planting before trees and woodland would develop any significant value for foraging bats. For reversion of arable land to pasture, there would again be a period of time before it is fully colonised by invertebrate species which form prey items for Greater Horseshoe Bats.
- 3.9. It is considered that there is a very high likelihood, if not certainty, that proposed habitat creation measures would not be ecologically functional for a number of years, during which time there would be likely significant effects on the SAC bat population and a risk to the integrity of the SAC. However, the Appropriate Assessment is silent on this matter.
- 3.10. It may also be noted that the time lag in creation of functioning replacement habitat is exacerbated by the fact that the Inglewood proposals impinge on some of the habitat creation measures that were themselves undertaken to offset impacts of the nearby White Rock development. Therefore, habitat creation measures brought forward with the proposed Inglewood development would effectively be providing compensatory habitat for losses associated with the earlier White Rock development. As such, the period where there is a shortfall of functioning habitat is even further extended.
- 3.11. **Quantum of provision of replacement habitats:** Where planning proposals would result in the loss of habitats of ecological value, a number of Local Authorities offer or require developers to provide biodiversity offsetting. Essentially, this comprises creation of off-site habitats to offset on-site losses, for example planting hedgerows to offset on-site hedgerow losses, or creation of grasslands of wildlife value to offset losses of on-site grassland. Local Authorities engaged in offsetting utilise 'biodiversity calculator' spreadsheets (based on the Defra offsetting pilot scheme) to determine the extent of habitat creation required.
- 3.12. Using the biodiversity calculator to take account of the difficulties associated with habitat creation and the length of time required for a habitat to develop to a suitable condition (i.e. where it is ecologically functional and can be considered equivalent to an established example of the habitat) Local Authorities require a significantly greater area of created habitat than that which is being lost (assuming like for like replacement). An example calculation (see Appendix 1) shows a requirement for creation of over 2ha of grassland to adequately offset loss of 1ha of grassland of moderate interest. This principle is applied even to sites of low ecological value.
- 3.13. Yet in the case of Inglewood, where the integrity of an SAC is at stake, grazing pasture habitat replacement is proposed with no net gain in habitat area, while new hedgerow planting represents only a small increase over the length of existing established hedgerows to be lost to the proposals. It is considered that the quantum of provision of replacement habitats is entirely

inadequate to provide the required level of certainty that effective offsetting of adverse effects will be delivered. Again, the Appropriate Assessment is silent on this matter.

- 3.14. In relation to risks associated with a compensation strategy of habitat creation, the Framework Landscape and Ecological Management Plan (LEMP) (Stride Treglown, October 2017) sets out a commitment to monitoring and reporting, to ascertain if the proposed management is being undertaken and if it is achieving the aims of the mitigation. The LEMP also sets out a commitment to adaptive mitigation if the aims were unlikely to be met.
- 3.15. This commitment to monitoring clearly demonstrates that there is some uncertainty as to whether the habitat creation and management measures would be effective in offsetting adverse effects of the development. Once more, the Appropriate Assessment fails to consider potential failings and how, if at all, they might be addressed.

In-combination effects

- 3.16. Section 18 of the Appropriate Assessment briefly considers the potential for the Inglewood proposals to generate an adverse effect on the integrity of the South Hams SAC in combination with the White Rock development to the north. It notes that the White Rock development also had a LEMP setting out the various mitigation³ measures and that as phases of White Rock development have come forward the relevant parts of the LEMP have been implemented. It does not refer to the findings in the ecological reports accompanying the Inglewood planning application that, in fact, there were shortcomings in the delivery of certain elements of the White Rock LEMP, namely a failure to create 4.2km of species-rich grass margins (Inglewood, Paignton Ecological Addendum [Nicholas Pearson Associates, February 2018])). The section concludes that *“the measures proposed and already implemented on the various “White Rock” developments and those proposed at Inglewood are such that any likely significant effects of these developments are... **reduced sufficiently** (planting and improvement of habitat areas) to avoid a likely significant effect. Therefore, it is considered that there would be no in-combination effect of the Inglewood proposals with those also being taken forward at White Rock on the population and distribution of the greater horseshoe bat feature of the South Hams SAC”* (our emphasis).
- 3.17. Section 18 of the Appropriate Assessment provides the first indication that the effects of the Inglewood proposals are merely being reduced sufficiently to avoid a significant adverse effect and may not be fully off-set. If, as appears to be implied, the same is considered to be true of the White Rock development, these residual effects for both developments (and any other developments that have come forward since the Sustenance Zone was identified) need to be quantified and a proper (i.e. appropriate) assessment made of the in-combination effect. In-combination effects are precisely those that arise from the combination of non-significant effects arising from a number of projects. As it stands, the Jacobs document states there are no in-combination effects, but with no justification provided for this conclusion.
- 3.18. Further, no consideration is given to the effects of cumulative losses of arable land, both that lost directly to built development (both from the current proposals and the White Rock development) and approximately 16ha of off-site arable land lost to reversion to cattle-grazed pasture⁴. Setting aside the cumulative impact of such losses on non-SAC species such as Cirl Bunting, arable land does support a range of invertebrate species, some of which appear in the

³ Where they relate to habitat creation these would in fact be compensation measures.

⁴ Environmental Statement, Inglewood, Brixham Road, Paignton (Section 5.5.6) Stride Treglown 01.11.2017

diet of Greater Horseshoe Bats, e.g. Crane-flies (Tipulidae). For example, a study⁵ at Rothamsted Experimental Station recorded insect populations on arable plots receiving no manure ranging from 673,000 to 1,424,000 insects (for land receiving manure numbers were considerably higher).

- 3.19. Insects are a highly mobile group and potential prey species such as Crane-flies would not, as adults, be confined to arable land. It is accepted that arable land does not provide optimal foraging for Greater Horseshoe Bats. Nonetheless, some consideration should be given within the Appropriate Assessment to the potential for arable land to contribute to the foraging resource available to the bats and to possible effects, alone or in-combination, arising from the loss of considerable areas of arable land and its associated insect fauna.

Lighting

- 3.20. The Appropriate Assessment (section 16) includes additional mitigation identified by Jacobs as being required. This relates to the risk that external lighting on individual houses or within gardens adjacent to the dark areas could result in the light levels exceeding the recommended 0.5 lux and result in Greater Horseshoe Bats (which are highly light-averse) not using the mitigation areas. To mitigate this, it is proposed by Jacobs that Torbay Council should include conditions to ensure that the applicant:
 - 3.20.1. Creates a homeowner information package, in addition to information boards already proposed, to set out the importance of the dark areas and the risks of garden lighting affecting the bats;
 - 3.20.2. Creates a clause within the deeds/covenants of the new properties that require householders to apply for planning permission to install external lighting that may lead to agreed lux levels being exceeded within the dark areas.
- 3.21. The first measure proposed, i.e. the homeowner information pack, could be provided to all purchasers of the proposed new homes, although what impact on behaviour this information would have is uncertain. However, it is highly unlikely that this information would be retained and passed on to subsequent purchasers. Hence, it is considered unlikely to provide effective mitigation over the lifetime of the development.
- 3.22. In relation to the second proposal to require owners of new properties to apply for planning permission prior to installation of external lighting, assuming that this were possible (external lighting to domestic properties does not normally requiring planning permission) it seems likely that a proportion of householders would nonetheless install garden or security lighting without first seeking permission. A household lighting study⁶ identified that 58% of the homes surveyed had some sort of outside lighting. As such, it seems there is a high risk that this mitigation measure would be ineffective in the longer term, potentially leading to adverse effects on the SAC bat population.
- 3.23. Further, the Appropriate Assessment fails to consider effects of lighting from within the house. The study referred to above also identified that approximately one third of households left some lights on consistently overnight for a period of five hours or more. As such, there is considered to be a potential impact arising from internal domestic lighting, particularly since Greater Horseshoe Bats are likely to be particularly active in the first two to three hours after dark, when the majority of homes are likely to have lighting in use.

⁵ The Insect and Other Invertebrate Fauna of Arable Land at Rothamsted. PBRT II (Morris, HM, Annals of Applied Biology; first published 1927)

⁶ Further Analysis of the Household Electricity Survey: Lighting Study (Final report) Terry *et al* 2013

4. Conclusions

- 4.1. The HRA screening assessment undertaken by Jacobs in March 2018⁷ has been revised in light of the People over Wind ruling of the Court of Justice (CJEU Case C-323/17), requiring mitigation measures to be considered at the Appropriate Assessment rather than the screening stage of an HRA.
- 4.2. The overall impression of the Appropriate Assessment is that it is very largely a re-ordering of the previous screening assessment, rather than providing *“complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned”* (Briels ruling, para 27) that should be provided by an Appropriate Assessment in recognition of the different test applicable to Appropriate Assessment compared with the Screening stage (certainty of no effects on integrity vs possible effects) and the higher standards required.
- 4.3. In relation to the details of the proposed off-setting measures considered within the Appropriate Assessment, it is considered that a number of significant concerns have not been adequately addressed, namely:
 - the length of time required for compensatory habitat creation measures to deliver ecologically functioning grassland, hedgerows and woodland;
 - the quantum of mitigation, particularly for grassland, which is considered insufficient to mitigate the risks associated with habitat creation;
 - lack of detailed consideration of cumulative effects; and
 - doubts concerning the efficacy of proposed mitigation for effects of domestic lighting on identified dark areas for bat mitigation.
- 4.4. It is concluded that significant doubts remain concerning the efficacy of off-setting measures considered within the Appropriate Assessment. Also, further assessment is required of cumulative effects. As such, it is considered that the conclusion of the Appropriate Assessment, that there would be no adverse effect on the integrity of the SAC, cannot be substantiated by the assessment undertaken.
- 4.5. To permit the Inglewood proposals, a high level of certainty is required *“where no reasonable scientific doubt remains”* that there will be no effect on integrity of the European designation⁸. The HRA states at section 17 that in the absence of the proposed offsetting measures (referred to as mitigation but largely comprising compensatory habitat creation) there may be an adverse effect on the integrity of the SAC. Given doubts over the timeliness and quantum of the habitat creation proposals, uncertainty over the efficacy of measures to mitigate lighting effects and the lack of analysis within the Appropriate Assessment of cumulative effects, the required level of certainty cannot be provided. Therefore, the correct conclusion that should be drawn from the Appropriate Assessment is that, in view of the designation’s conservation objectives, adverse effects on the integrity of the SAC cannot be ruled out.

⁷ Conservation of Habitats and Species Regulations 2017 Stage 1: Screening of likely significant effect (LSE) on a European site (March 23 2018)

⁸ Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij. Case C-127/02 (Paragraph 61)



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Land to the South of White Rock, Brixham Road, Paignton

Review of
Landscape and Visual Impacts

Prepared for
Farrer & Co

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Glossary and Abbreviations

APPENDICES

Appendix 1	Verified Views prepared by Room60 (with Viewpoint Location Plan)
Appendix 2	Extract from SNH Guidance
Appendix 3	Extracts from The Torbay Landscape Character Assessment
Appendix 4	Approved LEMP for White Rock development
Appendix 5	Methodology

1 Introduction

1.1 Scope of this report

1.1.1 Michelle Bolger Expert Landscape Consultancy (MBELC) have been instructed by Farrer & Co to review the landscape and visual effects of an application for up to 400 dwellings on land to the south of White Rock, adjacent to Brixham Road, Paignton.

1.1.2 The planning application to Torbay Council (a unitary authority) can be summarised as:

(Application reference: P/2017/1133)

‘Outline application for residential led development of up to 400 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation. The proposal includes amendments to Brixham Road, Long Road junction and Windy Corner junction. Details of access to be determined with all other matters reserved. Re-advertisement following additional information received 08.03.2018.’

1.1.3 The application is accompanied by an Environmental Statement (ES). Chapter 6 of the ES is titled Landscape and Visual Impact and is based upon a Landscape and Visual Impact Assessment (LVIA) prepared by Nicholas Pearson Associates (NPA), in October 2017. The LVIA includes several appendices. Appendix II comprises a set of supporting figures and Appendix V provides a set of Visually Verified Montages (VVM) (visual simulations of the proposed development from 12 viewing locations).

1.1.4 Following consultee comments on the application, a revised scheme was prepared and submitted in March 2018 (revised scheme). This was accompanied by a Landscape and Visual Impact Assessment Addendum (LVIA Addendum), which included updated VVM images.

1.2 Review Methodology

1.2.1 This review considers the application as revised in March 2018.

1.2.2 A desktop review of the LVIA together with relevant application documents; planning documents and published landscape character assessments has been undertaken. The local area surrounding the site was visited by the author of this report on 4th September 2018.

1.2.3 This review has been undertaken in accordance with the *Guidelines for Landscape and Visual Impact Assessment*, Third Edition 2013 (GLVIA3) prepared by the Landscape Institute/Institute of Environmental Management and Assessment.

1.2.4 The Verified Views which accompany this review (**Appendix 1**), were prepared by Room60 and in accordance with Landscape Institute (Advice Note 01/11 Photography and Photomontages in Landscape and Visual Impact Assessment) and with guidance taken from the London View Management Framework SPG March 2012.

1.3 Review Structure

1.3.1 This review is structured as follows:

- Section 2 provides an executive summary with conclusions.
- Section 3 provides a review of relevant local planning policy.
- Section 4 provides a review of housing land assessments undertaken as part of the preparation of evidence for the Local Plan and the Brixham Peninsula Neighbourhood Plan (BPNP).
- Section 5 provides a review of the applicant's LVIA.
- Section 6 provides a summary of the key points raised in the various landscape reviews of the application.
- Section 7 describes the landscape character of the site and its surroundings.
- Section 8 describes the key landscape effects of the development.
- Section 9 describes the key visual effects of the development.

2 Executive Summary

2.1 Introduction

2.1.1 This report provides our review of the landscape and visual effects of an application for up to 400 dwellings on land to the south of White Rock, adjacent to Brixham Road, Paignton.

2.2 Local Policy

2.2.1 To satisfy local policy objectives, including those outlined within the AONB Management Plan, the development should:

- not lead to the loss of open countryside;
- not encourage the merging of urban areas to the detriment of their special rural character and setting;
- protect, conserve or enhance the distinctive landscape characteristics and visual qualities of the location, in a manner consistent with published local landscape character assessments;
- not have an unacceptable impact on the special landscape qualities of an adjoining or nearby AONB or other valued landscapes;
- protect the character of skylines and open views into, within and out of the AONB; and
- maintain the quality and character of the deeply rural character of much of the land within the setting of the AONB.

2.3 Housing Land Assessments

2.3.1 The site is not allocated for development within either the Local Plan or the BPNP. The application site was considered as part of a larger potential development site, during the preparation of the evidence base for both Local Plan (Strategic Housing Land Availability Assessment, 2013) and the emerging BPNP (Site Appraisal and SEA by Aecom, and Housing Site Assessment, all 2017). These assessments consistently identify significant landscape constraints associated with large scale residential development on land in and around the application site.

2.4 Review of submitted LVIA

2.4.1 In summary, the LVIA is very long (at nearly 200 pages plus figures), includes a number of errors in referencing, and in places over complicates the LVIA process. The result is that it is hard to follow how judgements, particularly those regarding sensitivity, have been reached and it is unclear if all the factors recommended by GLVIA3 for assessing value and susceptibility have been taken into account.

2.4.2 It is difficult to follow how decisions have been made in the LVIA regarding whether or not an effect is considered to be significant. The threshold employed for significant effects appears to be very high, i.e. only a high magnitude of change to a nationally valued landscape appears to be significant.

2.4.3 The presentation of the VVMs submitted with the LVIA unduly limit how noticeable the proposed changes would appear in reality. This is because:

- A more accurate impression of scale and distance would have been portrayed had the VVMs been printed at a larger size or had contained only a single frame.
- The proposed development would have been more legible had the labelling (e.g. of Nords Wood and Field numbering) been restricted to the existing view only.
- The growth rates used for the mitigation planting appear to be overly generous.

2.4.4 To partly remedy this, we have prepared Verified Views from three key locations (referred to as Viewpoints A, B and C. These have been presented as single frames and shown without mitigation planting as we consider the year 1 planting shown on the VVMs to be unrealistic. These images are attached as **Appendix 1** to this review.

2.5 Other Application Reviews

2.5.1 Three reviews (additional to the LVIA) have been undertaken of the application. Two on behalf of Torbay Council and one on behalf of the applicant carried out by David Wilson Partnership. The Jacobs review (on behalf of Torbay Council) identifies significant adverse effects in relation to views from within the AONB.

2.6 Landscape Context

- 2.6.1** The site is located immediately south-west of Brixham Road (A3022). Development to the north (at White Rock) and south at Galmpton, means that the site is part of the last remaining extensive section of open countryside west of the A3022, west of Paignton. The character of the road changes dramatically between White Rock and the site travelling south. As the road narrows, ascends then descends a minor ridge, an expansive panorama is unveiled to the west, across the rolling countryside of the site and the Dart Valley.
- 2.6.2** There are no discernible differences between the countryside of the site and that of the adjacent AONB valley landscape. It reads as one continuous and attractive rural landscape, with rolling fields defined by hedgerows and scattered trees throughout. Together with land to the south and west, the site forms part of a deeply rural landscape setting to Paignton and the AONB. Overall, the existing residential edge along Brixham Road, alongside the site, is well integrated, being surrounded and frequently screened by mature vegetation. Whilst not an historic settlement boundary, Brixham Road is an historic feature in the landscape which currently provides a strong, definitive boundary to the settlement.
- 2.6.3** The settlement edge is less well integrated at Galmpton, where C20th development has brought the village above the 60m AOD contour, the historic centre of the village being at 40m AOD. Development west of Langdon Lane has sprawled across the mid-slopes of the Dart Valley (sitting above 50m AOD) and as a result is particularly noticeable in views from the southern side of the Dart Valley, and the AONB. The application site sits between 55-73m AOD.
- 2.6.4** Overall, we consider that the site has **high landscape value**. This high value relates to:
- The good condition of the site which has experienced little boundary loss since the C19th.
 - The role of the site within the attractive, deeply rural landscape setting to Paignton and the AONB, with no discernible difference between the countryside of the site and the wider AONB in views from Brixham Road.
 - Its role as part of the last remaining extensive section of open countryside west of the A3022, west of Paignton and one with historic enclosure.
 - Its representativeness of the local landscape character described in the Devon Assessment and the Torbay Assessment.

- Its role in views from key recreational routes, including the promoted routes of the Greenway Walk, John Musgrave Heritage Trail and the Dart Valley Trail.

2.6.5 This area was previously covered by an Area of Great Landscape Value designation. The current Local Plan no longer has this designation.

2.7 Landscape Effects

2.7.1 The proposal would result in a **medium/large** magnitude of change on the local landscape character and the nature of the change would be adverse. This is because:

- It would replace four of the five fields within the site with a residential development of up to 400 dwellings.
- The proposed planting would be at odds with the historic framework of hedgerows and hedge banks, and its historic field patterns.
- A large portion of the *North Galmpton* area of local character (AoLC 10) would be lost and it would become part of the 'Main Cities and Towns' type.
- It would protrude outwards into the open countryside and be poorly related to the existing settlement edge.
- The protruding form of the proposal would result in a development that is surrounded on three sides by countryside, significantly increasing the length of the rural /urban boundary of Paignton.
- Narrow strips of countryside would be created between the development and White Rock to the north and Galmpton to the south.
- The character of the White Rock development would be extended southwards into a landscape where views westwards are currently unaffected by development.
- Brixham Road would no longer serve as the defining edge to Paignton. Its users would no longer experience a rural setting to the settlement.
- The development would impact upon the key characteristics of the Rolling Farmland LCT more widely, including on the rural character of Waddeton Lane.

- The development would harm the rural hinterland setting of the AONB by reducing the amount of countryside between Paignton and the AONB.
- The development would harm views towards the AONB (e.g. from Brixham Road)
- The development would be harm distant panoramic views from the AONB.

2.7.2 Regarding the proposed development, the susceptibility to change of the site is **medium/high** due to the following factors:

- The historic alignment of Brixham Road and the positive contribution the site makes to its character.
- The importance of the site in providing a deeply rural setting to the AONB and Paignton and in maintaining an area of attractive countryside between the two.
- The role of the site in views from within the AONB and the role of the site in views towards the AONB from Brixham Road.

2.7.3 The overall sensitivity of the site and its local landscape context to the development proposed is considered to be **medium/high**. The overall effect on the landscape would be **moderate/major adverse** and would be significant. (See Appendix 5 Methodology)

2.8 Visual Effects

2.8.1 The proposed development would have a significant impact on a number of visual receptors both within the immediate context of the site, such as along Brixham Road and at more distant elevated locations within the AONB. This is due to the high sensitivity of receptors and the magnitude of change, which includes a large, permanent extension to Paignton. This will replace countryside views from Brixham Road and increase the prominence of settlement within the Dart Valley in views from the AONB; including from sustained sections of the PRoW network.

2.8.2 Additional Verified Views have been prepared at three Vp locations (A, B and C). These represent three locations where we consider the LVIA has underestimated the magnitude of change and the level of effect. This concern is shared by the South Devon Ramblers. This review finds that the sensitivity of the receptor represented at each location is **high**.

The magnitude of change would be medium. The overall effect on each of the receptors reviewed would be moderate/major adverse. These are all significant effects.

2.9 Conclusion

2.9.1 Even by the high threshold for determining significance, as is used within the LVIA, the landscape and visual effects of the development would be significant and adverse. The proposal would:

- lead to the loss of open countryside (LP Policy C1);
- not protect, conserve or enhance the distinctive landscape characteristics and visual qualities of the location, in a manner consistent with the Torbay Assessment (LP Policy C1);
- have an unacceptable impact on the special landscape qualities of a nearby AONB and a highly valuable landscape (LP Policy SS8);
- not protect the character of skylines and open views into and out of the AONB (AONB Management Plan Policy Lan/P5); and
- would not maintain the quality and character of the deeply rural character of land within the setting of the AONB (AONB Management Plan Policy Lan/P7).

3 Relevant Policy Context

3.1 Introduction

- 3.1.1 This section considers aspects of local planning policy, and the evidence which underpins them, only in so far as they relate to landscape and visual issues.

3.2 Torbay Local Plan 2012-2030

- 3.2.1 The Local Plan (LP) was adopted in December 2015. The site lies within a ‘Countryside Area’ (Policy C1) on the policies map.¹ This map also shows a ‘Proposed Country Park/Countryside Access or Enhancement Scheme’ (Policy SS9) overlay across the northern part of the site. This overlay reflects the Torbay Green Infrastructure Delivery Plan, 2011, which also identifies a proposed Country Park across part of the site.
- 3.2.2 Policy C1: Countryside and the Rural Economy states that: *‘development will be resisted where this would lead to the **loss of open countryside** or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the **detriment of their special rural character and setting.**’* (emphasis added)
- 3.2.3 Policy C1 requires that: *‘Where new development proposals come forward, the Council will also have regard to the **need to protect, conserve or enhance the distinctive landscape characteristics and visual quality of a particular location, as identified in the Torbay Landscape Character Assessment**’.* (emphasis added)
- 3.2.4 Another relevant policy is SS8: Natural Environment. This states that: *‘Development proposals outside of the AONB will be supported where they conserve or enhance the distinctive landscape character and biodiversity of Torbay or where the impact of development is commensurate with the landscape and ecological importance. However, it will be particularly important to ensure that **development outside the AONB does not have an unacceptable impact on the special landscape qualities of an adjoining or nearby AONB or other valued landscapes such as country parks.** In assessing new development*

¹ Sheets 29 and 30, Policies Map, Torbay Local Plan 2012-2030

outside AONB, the value of natural landscapes will be carefully considered, using the Torbay Landscape Character Assessment and other relevant management plans, to help ensure the objectives for their conservation are met’.

3.3 Brixham Peninsula Neighbourhood Plan (2012-2030)

3.3.1 The Brixham Peninsula Neighbourhood Plan (BPNP) has been examined and a final report prepared by an Independent Examiner. Councillors of Torbay Council have approved the recommendations of the Examiner on 15 November 2018 (subject to minor amendments), which are quoted below where relevant.

3.3.2 Policy E1 (Landscape beauty and protected areas) requires that new development respects the qualities, and where possible enhances the qualities, identified in the Torbay Landscape Character Assessment. It also requires (inter alia) that: *‘Outside of Settlement Boundaries (Policy E2) priority will be given to protecting and enhancing the countryside from inappropriate development’* (E1.4).

3.3.3 The Examiner commented on Policy E1.4 and recommended that it be reworded: *‘Priority will be given to protecting and enhancing the countryside from inappropriate development in accordance with Policy C1 of the Torbay Local Plan’*.² This has been approved by the Council at their meeting on 15 November.

3.3.4 Policy E3 (Settlement gaps) identifies a ‘settlement gap’ across the site. With regards to the identified gaps, this policy states that development should not:

- *‘lead to a reduction in the functional value of the settlement gap by way of a perceived reduction in levels of separation between settlements or a perceived reduction in connectivity to the wider countryside; or*
- *harm the openness or landscape character of the area, including through visual impacts, and/or would otherwise result in harm to settlements in their wider landscape setting; or*

² Page 44, Independent Examiner’s Report of the Brixham Peninsula Neighbourhood Development Plan, July 2018.

- *lead to a loss of environmental or historical assets that individually or collectively contribute to local identity'. (emphasis added)*

3.3.5 The Examiner considers that the descriptions of the settlement gaps are adequate and the relevant gap across the application site is supported by the Examiner. The Examiner recommends that the final policy should read as follows:

'E3.1 Settlement gaps have been identified between Paignton, Galmpton, Churston and Brixham. They are shown at Appendix 3 and on the Policy Maps (Document 2). Countryside around Brixham is largely AONB (Policy E1 at para E1.3). Settlement Gaps relate to areas outside of the AONB where the countryside which forms the "gap" is Undeveloped Coast (Local Plan Policy C2) or Countryside Area (Local Plan Policy C1).

E3.2 Within the settlement gaps development proposals must meet the criteria set out in Policy C1 of the Torbay Local Plan. No development that visually and or actually closes the gaps between these urban areas will be supported'.

3.3.6 This has been approved by the Council at their meeting on 15th November.

3.3.7 In the justification for Policy E3, the examined BPNP states: '**Settlement gaps are highly sensitive to change and must be retained as valued open countryside. They are essential in retaining local character**, preserving the discrete identity of the individual villages in this tourist location'. (Emphasis added)

3.3.8 Policy E6 (Views and vistas) states that: '**Views and vistas, particularly those to and from the sea or the river Dart, including horizons and skylines, must be protected**'.

3.3.9 The Examiner recommended that Policy E6 be reworded as follows: '**Views and vistas, particularly those to and from the sea or the River Dart, public views of the townscape, seascape, landscape and skyline are valued by residents and visitors alike. Examples of such views are given in...landscape character assessment**'.

3.3.10 This has been approved by the Council at their meeting on 15th November.

3.4 The South Devon AONB Management Plan 2014-2019

3.4.1 The site forms part of the setting to the South Devon AONB. The special qualities of the AONB are given in the South Devon AONB Management Plan (the Management Plan) as (emphasis added):

- *‘Fine, undeveloped, wild and rugged coastline.*
- *Ria estuaries (drowned river valleys), steep combes and a network of associated watercourses.*
- *Deeply rural rolling patchwork agricultural landscape.*
- *Deeply incised landscape that is intimate, hidden and secretive away from the plateau tops.*
- *Iconic wide, unspoilt and expansive panoramic views.*
- *A landscape with a rich time depth and a wealth of historic features and cultural associations.*
- *A breadth and depth of significant habitats, species and associated natural events.*
- *An ancient and intricate network of winding lanes, paths and recreational routes.*
- *Areas of high tranquillity, natural nightscapes, distinctive natural soundscapes and visible movement.*
- *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’.*

3.4.2 Appendix 1 of the Management Plan provides more detail on the special qualities. In relation to the final point regarding ‘setting’ listed above, it states: *‘The inland boundary of the AONB is mostly not marked by a distinct change in scenery and the landscape character continues seamlessly into the neighbouring countryside. The hinterland of the AONB - particularly the rural largely undeveloped countryside, farmland and woodland - is particularly significant as a setting for the AONB’.* (emphasis added)

3.4.3 Relevant policies of the Management Plan include (emphasis added):

- *'Lan/P1 Character - The special qualities, distinctive character and key features of the South Devon AONB landscape and seascape will be conserved and enhanced.*
- *Lan/P5 Skylines & visual intrusion - The character of skylines and open views into, within and out of the South Devon AONB will be protected...Priorities include protection against... visually dominating buildings that are inconsistent with landscape character.*
- *Lan/P7 Setting to the AONB - The deeply rural character of much of the land adjoining the AONB boundary forms an essential setting for the AONB and care will be taken to maintain its quality and character'.*

3.5 Conclusions

3.5.1 To satisfy local policy objectives including those outlined within the AONB Management Plan, the development should:

- not lead to the loss of open countryside;
- not encourage the merging of urban areas to the detriment of their special rural character and setting;
- protect, conserve or enhance the distinctive landscape characteristics and visual qualities of the location, in a manner consistent with published local landscape character assessments;
- not have an unacceptable impact on the special landscape qualities of an adjoining or nearby AONB or other valued landscapes;
- protect the character of skylines and open views into, within and out of the AONB; and
- maintain the quality and character of the deeply rural character of much of the land within the setting of the AONB.

4 Housing Land Assessments

4.1 Introduction

4.1.1 The site is not allocated for development within either the Local Plan nor the Brixham Peninsula Neighbourhood Plan (BPNP). It has been considered but rejected at various stages of the preparation of evidence for the Local Plan and the BPNP.

4.2 Strategic Housing Land Availability Assessment (SHLAA) 2013

4.2.1 A SHLAA was undertaken as part of the evidence base for the Local Plan. The entire 28ha application site was considered within the SHLAA as part of a 39.24ha site referred to as T756b.

4.2.2 The site assessment at Appendix J of the SHLAA for site T756b states: *'Any future development will be limited by the landscape impacts of proposals, as the AONB lies to the west'*. In conclusion the assessment found: *'The large area of land will not be appropriate for development as a whole. However, parcels of land to the north may provide an extension to the White Rock area at the end of the plan period'*.³

4.3 Updated Site Appraisal for Submission, Aecom, July 2017

4.3.1 This appraisal was commissioned by the Brixham Peninsula Neighbourhood Forum to inform the development of the BPNP (Aecom study). It included an appraisal of a 45ha site, which includes the entire application site, and is referred to as *White Rock Extension (WRE)*. In relation to the WRE site, the report found that:⁴

- *'Development of the site would significantly increase the footprint of the existing built up area. It would significantly affect the existing settlement pattern of the area and potentially comprise an amalgamation of development with Galmpton.'*

³ Site Assessment T756b, Appendix J, SHLAA Update 2013

⁴ Page 31, Updated Site Appraisal for Submission, Brixham Peninsula Neighbourhood Plan, Aecom, July 2017

- *The site is subject to views in from the A3022 and from properties along the A3022. The development would also have significant impact on wider views and the character of the area's rural landscape. Whilst the site is outside of the South Devon AONB, views from the AONB are likely to be affected. In this context development of the whole site would likely result in impacts on views from key parts of the AONB, including from the River Dart valley'. (emphasis added)*

4.3.2 Despite these key constraints, the report goes on to say: 'However, given the good viability of the site, its good access, and few statutory environmental or heritage constraints this site could be considered as potentially appropriate for consideration through the Neighbourhood Plan, contingent on the scale and nature of the development'.

4.3.3 The report identifies eight sites considered to be most appropriate for further consideration, but WRE is not one of them. The WRE site is identified as a site which is 'potentially suitable' but which has significant constraints. The overall conclusion for the WRE site is: 'Comprising a major encroachment of the built up area into the previously undeveloped landscape development of the whole site would be inappropriate in size. Smaller scale development may have the potential to be appropriate for considering as a potential allocation for the Neighbourhood Plan however'.

4.4 Strategic Environmental Assessment (SEA), Aecom, August 2017

4.4.1 An SEA was prepared by Aecom to accompany the submission version of the BPNP. The SEA assessed the WRE site and found, at Table 3.23 that: 'Development of a site of this scale at this location has the potential to have a significant impact on wider views in the area and the character of the area's rural landscape... views from the AONB are likely to be affected. In this context development of the whole site would likely result in impacts on views from key parts of the AONB, including from the River Dart valley'.

4.5 Housing Site Assessment (Submission Version August 2017)

4.5.1 An additional assessment, to the Aecom study, was undertaken and forms part of the emerging BPNP. This identifies a much larger tract of land (82ha) than the Aecom study, which includes the entire application site, and which is also referred to as WRE. The site

was rejected due to its potential landscape impacts, including on the *'sweeping farmland which flows into the Dart Valley AONB'*.

4.6 Conclusion

- 4.6.1** The application site was considered on several occasions as part of larger sites by housing land assessments for both the Local Plan and the emerging BPNP evidence base. These assessments are consistent in identifying significant landscape constraints associated with large scale residential development on and around the application site.

5 Review of Application LVIA

5.1 Introduction

5.1.1 As a general point, the LVIA is very long (at nearly 200 pages, without figures) and contains a number of errors regarding internal references. As a result, it is difficult to navigate and in places difficult to follow.

5.1.2 LVIA Appendix 1 sets out the methodology used in the LVIA. Although the methodology broadly accords with established best practice principles in GLIVA3, the following aspects of the LVIA have contributed to an underestimation of the landscape and visual impacts of the development overall:

- The assessment of Landscape sensitivity criteria fails to explain how it has taken account of the landscape value of the site
- Having a very high threshold for determining significant effects;
- The inclusion of the AONB as a whole as a visual receptor; and
- Poor presentation of Visually Verified Montages (VVMs).

5.2 Landscape Sensitivity

5.2.1 Landscape sensitivity should be derived from: '*combining judgements about susceptibility [of the landscape] to the type of change or development proposed and the value attached to the landscape*'.⁵ (emphasis added)

5.2.2 Whilst the LVIA provides a narrative within the main body of the report describing the sensitivity of each landscape receptor the assessments with regard to value are unclear. For example the value of Brixham Road is described as follows:

'The value of the road lies in its narrow tree lined character, giving it an enclosed feel as it near Hunters Tor Drive. The landscape character of this road is highly susceptible to road widening. The sensitivity of the landscape

⁵ Guidelines for Landscape and Visual Impact Assessment, 2013, Page 88, Paragraph 5.39

*associated with the Brixham Road to this type of works is therefore judged to be medium*⁶

5.2.3 Without a clear judgement on value it is unclear how the high susceptibility of Brixham Road results in only medium sensitivity. It would have been useful if the LVIA had adopted the guidance of GLVIA3, which at Box 5.1 provides a list of the factors which can determine value. We have assessed the site in relation to these factors in Section 7 below.

5.3 Criteria for Determining Significance

5.3.1 The LVIA employs an effects scale of Substantial⁷, Moderate, Minor, and Negligible. It provides examples of each rating in Tables A and B of LVIA Appendix 1. Criteria which ‘may be used’ for determining if an effect is EIA significant are set out in Tables LC.4 and V.4 in Appendix 1 (these are largely a summary of the examples in Tables A and B). It is not clear if these criteria have been used and the LVIA does not state how ‘significance’ relates to the levels of effect assessed (i.e. the ratings of *Substantial, Moderate, Minor, and Negligible*) as is recommended by GLVIA3, which states that an LVIA should provide ‘*a clear explanation of which categories are considered to be significant and which are not*’.⁸ We can assume that a moderate effect in the LVIA is not considered to be significant, as this is the level of effect identified for receptor LR1a (the highest of any residual landscape effects identified).

5.3.2 A more generalised summary of determining significance is also included in the LVIA, which states: ‘*Significant effects, in general, would be where there is a major change or irreversible effect, over an extensive area/ proportion of views, on elements and/ or aesthetic and perceptual aspects that are key to the character/ visual amenity of nationally valued landscapes/views*’⁹. (emphasis added) This explanation, which is repeated in 6.9.1 of the ES, implies that the only significant effects are those where a

⁶ 7.1.19 Landscape and Visual Impact Assessment, October 2017

⁷ We have used the term Major in our assessment for the highest level of effect.

⁸ 3.34, Guidelines for Landscape and Visual Impact Assessment, Third Edition 2013

⁹ 1.11.1, Appendix 1, Landscape and Visual Impact Assessment, October 2017

landscape of national value is subject to a large magnitude of effect. This threshold is too high.

- 5.3.3** We do not find the division of the landscape into seven different receptors helpful and we found the overall conclusion that none of the landscape effects were significant¹⁰ hard to believe and it may be a consequence of the very high threshold. The Jacobs review employs an approach which considers effects of ‘moderate’ and above to be significant.¹¹ We agree that this is a reasonable basis, and this threshold is also used in this review.

5.4 Visual Receptors

- 5.4.1** The LVIA uses 16 different visual receptor groups (VR), which are grouped under 5 different categories and with 29 different representative views (RV); and 12 VVM images. The LVIA then groups the receptors into ‘*visual receptors in the AONB and on the AONB as a whole*’; ‘*viewers from the Conservation Areas*’; and ‘*viewers outside the AONB*’ when discussing if the effects will be significant.¹² Overall the LVIA’s approach to referencing VR/RV, the high number of viewpoints and the different groupings of receptors is confusing and difficult to follow.
- 5.4.2** VR4 within the LVIA is ‘*The AONB as a whole as a visual receptor*’ and VR5 is ‘the conservation area of Waddeton as a whole as a visual receptor’. Visual receptors are people not places or designations. Grouping the AONB together as a single entity and assessing its susceptibility (e.g. LVIA 8.1.111) and the effects upon it overall is misleading and contrary to GLVIA3.¹³ It is also unnecessary as the LVIA provides separate assessments of key visual receptors (as people) within the AONB (e.g. road users (VR2a and b) and PRoW users (VR3b and c)).
- 5.4.3** As with the landscape receptors above, the LVIA makes an overall judgement as to whether the effects taken as a whole are significant or not. The LVIA includes an overall judgement for the aforementioned three groups of receptors. No significant effects are

¹⁰ 10.1.5 Landscape and Visual Impact Assessment, October 2017 and 9.1.1 of the LVIA Addendum

¹¹ Page 11, Torbay Landscape Advice, Jacobs, 7 June 2018

¹² Page 95, Landscape and Visual Impact Assessment, October 2017

¹³ 6.31, Guidelines for Landscape and Visual Impact Assessment, Third Edition 2013

identified. This is despite the LVIA finding ‘substantial / moderate adverse effects’ in relation to ‘residents on the urban edge of Goodrington’ (VR1a) and road users along Brixham Road (VR2c).

5.5 VVMs: General

5.5.1 LVIA Appendix IV sets out the methodology used in preparing the VVM images. It correctly references the guidance prepared by the Landscape Institute on photography and visualisations: *Landscape Institute (LI) Advice Note 01/11, Photography and photomontage in landscape and visual impact assessment* (Advice Note 01/11). The LI is in the process of revising its guidance and is at a consultation draft stage.

5.5.2 12 viewpoints included within the LVIA have been used to prepare VVMs found in LVIA Addendum Appendix V, Figures A to Z2. The VVMs in the addendum reflect the revised scheme. Images at each viewpoint include a photograph of the existing view; the proposed view upon completion at year 1; the proposed view at year 10; and for three AONB viewpoints, an existing and proposed night time view

5.6 VVMs: Presentation of Images

5.6.1 There is no definitive guidance on how visualisations should be presented except for guidance on visualisations for windfarms in Scotland. Scottish Natural Heritage *Visual Representation of Wind Farms: Version 2.2* (SNH Guidance). Extracts from the SNH Guidance are included in **Appendix 2**. Whilst this guidance is not directly applicable to England or to other forms of development it is helpful in establishing the principles for preparing visualisations that give an accurate sense of scale and distance.

5.6.2 The SNH Guidance stresses that for visualisations to give an accurate sense of scale and distance the way they are presented is as important as the content of the visualisations. Annex B of the SNH Guidance sets out standard requirements for horizontal and vertical field of views (HFOV & VFOV) and printed size of images with which wind farm visualisations should comply.

5.6.3 The requirements for HFOV & VFOV and printed size of images have been developed as it is well known that wide panoramas printed at a small size inevitably under-represent scale

and distance. Images with the correct HFOV & VFOV printed at the correct size better represent scale and distance and can be viewed at a comfortable arm's length.

- 5.6.4** The SNH Guidance requires that where planar panoramas are used they should be presented on A1 sheets and have the following dimensions: *'Image size 260 by 820mm on A1 sheet. HFOV¹⁴ 53.5° and VFOV¹⁵ 18.2°'*¹⁶ The VVMs which accompany the LVIA are presented on an A3 page and measure 126mm by 392mm. They have a stated HFOV of 53.2°. These images are less than half the height recommended by SNH for wind farm visualisations.
- 5.6.5** The SNH Guidance for wind farm visualisations sets out the dimensions for Single Frame images where these are requested. Single Frame images can be presented on A3 pages rather than A1 pages and are therefore easier to use on site. It is recognised that A3 single frame images provide a good impression of scale and distance. *'The image height should be 260mm by 390mm wide. The horizontal field of view should be 27° and the vertical field of view should be 18.2°'*¹⁷ Given that the VVMs submitted with the application have been presented at A3, a single frame image would have been appropriate. This could have been accompanied by a wider panorama to illustrate the context of each view.
- 5.6.6** We note that objections to the application made by the South Devon AONB Unit¹⁸ and South Devon Ramblers group¹⁹ both identify the issue of the relief / ridgelines being 'flattened' as a result of panorama images being used. Particular concern was raised in the Ramblers' objection with regards to LVIA RVs 8a-8d, 19, 6a-6b and 7a-7e.
- 5.6.7** The legibility of the proposed development in the VVMs, particularly those taken from a greater distance, is further hindered by the presence of labelling across all of the proposed views. Labelling should not occur on the proposed views as it distracts from (and in this case obscures) the change being portrayed.

¹⁴ Horizontal field of View

¹⁵ Vertical Field of View

¹⁶ Scottish Natural Heritage (2014) *Visual Representation of Windfarms: Version 2.2* Annex B Standard requirements which all visualisations should comply with.

¹⁷ Scottish Natural Heritage (2014) *Visual Representation of Windfarms: Version 2.2* Page 39.

¹⁸ Page 4, Objection by South Devon AONB Unit, 15th December 2017

¹⁹ Objection by South Devon Ramblers, 24th August 2018.

- 5.6.8** In summary, the VVMs would have given a more accurate impression of scale and distance if they had either been printed at a larger size or had contained only a single frame. The proposed development would have been more legible had the labelling (e.g. of Nords Wood and Field numbering) been restricted to the existing view only. The Verified Views prepared and submitted as part of this review, demonstrate how differences in presentation can affect the legibility of the final images (refer **Appendix 1**).
- 5.7 VVMs: Mitigation Planting**
- 5.7.1** The proposed views in the VVMs show mitigation planting. In all views, including at year 1, this planting is shown at a semi-mature height (e.g. see VVM No's. 11, 14 and 16). We understand the planting is proposed to be undertaken '*5 years before the end of the construction stage*'.²⁰
- 5.7.2** Taking VVM No. 14 as an example, the proposed view at year 1 shows a new line of trees in front of the northern edge of the development. These trees are estimated to be modelled at approximately 5m tall. However, we cannot confirm this as we have been unable to find in the LVIA any growth rates for this vegetation or the heights at which it has been modelled.
- 5.7.3** The Landscape and Ecological Management Plan (LEMP) submitted with the application provides details on the proposed planting. The line of trees shown in VVM No. 14 forms part of a proposed native woodland belt, which is to be between 8-10m wide.²¹ Indicative species include oak, beech, cherry, field maple, holly and hornbeam.
- 5.7.4** With regards to when this planting might occur, the LEMP states '*Planting within the LEMP mitigation land area (Figure 1), at the southern and western boundaries of the proposed built development and woodland and hedgerows adjacent to existing boundaries within the built development would be undertaken at least one growing season in advance of any construction*'. (emphasis added)

²⁰ 5.2.6, LVIA Addendum

²¹ Figure 6, Landscape and Ecological Management Plan, March 2018

5.7.5 Even field maple, which has a reasonably fast growth rate, is unlikely to grow more than around 0.5m per year. Even if planted at a medium / semi-mature height (where problems regarding slower initial growth rates and longer-term establishment can occur vs plants planted at smaller grades) the plants are unlikely to have grown and spread to the degree portrayed in the VVMs. This spread has also been exaggerated in the year 10 VVMs, which depict an impenetrable screen of woodland (even in winter); a point also made in the Jacobs review.²²

5.7.6 The VVMs should also have included a worst-case scenario, with mitigation planting removed or reduced, as a number of views are highly reliant on the success of advanced planting which might not deliver the results indicated in the VVMs. For this reason, we have omitted any mitigation planting from the Verified Views attached to this review.

5.8 Summary

5.8.1 The LVIA is very long (at nearly 200 pages plus figures), includes a number of errors in referencing, and in places over complicates the LVIA process. The result is that it is hard to follow how judgements, particularly those regarding sensitivity, have been reached and it is unclear if all the factors recommended by GLVIA3 for assessing value and susceptibility have been taken into account. It is also difficult to follow how decisions have been made regarding whether or not an effect is considered to be significant, for which the threshold employed in the LVIA appears to be very high (i.e. only a high magnitude of change to a nationally valued landscape).

5.8.2 The presentation of the VVMs unduly limit how noticeable the proposed changes would appear in reality because:

- A more accurate impression of scale and distance would have been portrayed had the VVMs been printed at a larger size or had contained only a single frame.
- The proposed development would have been more legible had the labelling (e.g. of Nords Wood and Field numbering) been restricted to the existing view only.
- The growth rates used for the mitigation planting appear to be overly generous.

²² Page 10, Torbay Landscape Advice, Jacobs, 7 June 2018

6 Other Application Reviews

6.1 Introduction

6.1.1 Three reviews of the landscape and visual effects of the application (additional to the LVIA) have been undertaken. These reviews were prepared by:

- The Landscape Officer from Teignbridge DC on behalf of Torbay Council. An undated review of the initial application and comments concerning the revised scheme (March 2018).
- Jacobs on behalf of Torbay Council (June 2018) (Jacobs review).
- David Wilson Partnership (DWP) on behalf of the applicant (July 2018) (DWP review). The purpose was to ‘*carry out an independent, impartial review of the outstanding issues of concern in relation to the landscape and visual impacts*’ of the proposal.

6.1.2 It is not within the scope of this review to examine all of the points made within the aforementioned reviews. However, a number of specific points are made in summary of their findings below.

6.2 Comments by Teignbridge DC’s Landscape Officer

6.2.1 In general, the comments made by Teignbridge DC’s Landscape Officer are supportive of the application. The main concerns raised in the undated comments relate to specific design and management issues, as opposed to the suitability of the application more generally.

6.2.2 The Officer accepts the conclusions of the LVIA, that ‘*a full understanding of the landscape context, in terms of value and character, has been demonstrated*’ and concludes that the ‘landscape impacts...will not be significant’.²³ With regard to the

²³ Conclusion, Comments by Landscape Officer from Teignbridge DC on behalf of Torbay Council (undated).

revised scheme, comments dated March 2018, the Officer continued to consider the development acceptable.

6.3 Jacobs Review

6.3.1 The Jacobs review is structured around nine viewpoints, which were visited by Jacobs as part of their review. The review finds that the effects would be *'greater than that reported in the applicant's LVIA and Addendum. The proposed development would result in significant residual adverse visual effects on some representative viewpoints within the AONB, including views from PROWs on Fire Beacon Hill and from the John Musgrave Heritage Trail, amongst others. Whilst extensive mitigation is proposed, it is not considered that this would overcome the fundamental impacts of the proposed development on the setting of the AONB'*. (emphasis added)

6.3.2 The Jacobs review goes on to conclude that: *'the proposed development would adversely affect the special qualities of an adjoining AONB, specifically, iconic wide panoramic views, tranquillity and the rural largely undeveloped countryside AONB hinterland'*.²⁴

6.4 DWP Review

6.4.1 The DWP review concludes that *'The development will be a noticeable addition to the setting of the AONB. However, it is unlikely to cause significant harm to landscape character and the special qualities of the designated area'*.²⁵ In reaching this conclusion, the DWP review consistently describes development in views from the AONB as being 'dominant / prominent'. It is our view that the DWP review has over emphasised the influence of the existing development around Torbay on reducing the susceptibility of the AONB to further harm as a result of the proposal. With regard to the AONB special quality of *'iconic wide, unspoilt and expansive views'* it considers that views from the AONB are already 'highly compromised' and concludes that:²⁶

²⁴ Page 18, Page 10, Torbay Landscape Advice, Jacobs, 7 June 2018

²⁵ Paragraph 48, DWP Review, July 2018

²⁶ Paragraph 27, DWP Review, July 2018

- *'The Inglewood development would not greatly affect the balance of developed and undeveloped land in the panoramic views in which it features'; and*
- *'The development would have no effect on vantage points that contain **only natural features**'. (emphasis added)*

6.4.2 Based upon the interpretation of the special qualities, as implied within these two points, it is difficult to image at what scale DWP would consider that a development could harm the special qualities of the AONB.

6.5 Summary

6.5.1 Three reviews (additional to the LVIA) have been undertaken of the application. Two on behalf of Torbay Council and one on behalf of the applicant. The Jacobs review (on behalf of Torbay Council) identifies significant adverse effects. Specifically, in relation to views from within the AONB.

7 Existing Landscape Character

7.1 Landscape Baseline: Published Character Assessments

- 7.1.1** The site and its surroundings are considered in a number of different landscape character assessments. This section considers the key information in those studies and, where included, any strategies or guidance for the management of change within the landscape.
- 7.1.2** The site is located within *National Character Area (NCA) 151: South Devon*. NCAs are important in providing the overall understanding of the context to the landscape in which the site is located. However, the broad scale at which NCAs are described means that they are usually unsuitable for assessing the effects of a single development.
- 7.1.3** Within the Devon Landscape Character Assessment (Devon Assessment) the site is located within *3B Lower Rolling Farmed and Settled Valley Slopes Landscape Character Type (LCT)*.²⁷ This LCT includes land west of Brixham Road (Paignton) down to the River Dart (i.e. the northern slopes of the Dart Valley) and from the western edge of Galmpton towards (and including) Stoke Gabriel. The key characteristics of this LCT are identified in 4.1.11 of the LVIA and are not repeated here.
- 7.1.4** The Devon Assessment also identifies Landscape character areas (LCA) and LCT 3B as it relates to the site's immediate context, includes two LCAs, one within and one outside the AONB. The site falls within the latter, the *Torbay Hinterland* LCA, which covers a large area in an arc around Torbay, from Galmpton to Cockington. The LVIA fails to identify this LCA and in doing so it fails to identify the 'special qualities and features' of the *Torbay Hinterland* LCA, set out in the Devon Assessment. Special qualities and features which are relevant to the site include (inter alia):
- *'Highly distinctive, steeply undulating, folded landform lending panoramic views across Torbay to the coast and over the surrounding valleys and rolling farmland towards Dartmoor.'*

²⁷ <https://new.devon.gov.uk/planning/planning-policies/landscape/devons-landscape-character-assessment>

- *High scenic quality due to intricate landform, patchwork of pasture and arable fields, mature hedgerows and winding lanes.*
- *Sparsely populated rural hinterland and high quality rural setting to the coastal resorts'. (emphasis added)*

7.1.5 The guidelines for the Torbay Hinterland LCA were also omitted from the LVIA. These include a recommendation to: *'Protect the higher levels of tranquillity and rural character of the land to the west through the control and management of development, including highways and recreational development'.*

7.1.6 At a local level the site is included within the Landscape Character Assessment of Torbay, 2010 (Torbay Assessment). The Torbay Assessment is split into two parts:

- Torbay Landscape Character Assessment Part 1, May 2010
- Torbay Landscape Character Assessment Part 2: Sensitivity and Capacity, May 2010

7.1.7 The site is located within a LCT called *Type 1: Rolling Farmland*. This LCT covers the majority of Torbay's countryside and is described in Part 1 of the Torbay Assessment. The characteristics of this LCT are identified in 4.1.17 of the LVIA and are not repeated here.

7.1.8 The Torbay Assessment identifies more detailed and specific areas of local character (AoLC) which are described in Part 2 of the study. The site is located within *AoLC 10: North Galmpton*, which includes land south from White Rock to Galmpton, between Brixham Road and the unitary boundary. Key points from the description of the North Galmpton AoLC include (inter alia) (refer **Appendix 3**):

- *'The land slopes broadly westwards towards the River Dart estuary within South Hams and the South Devon AONB.*
- *Much of the area is relatively open farmland and the northern part is more open and this allows long distance views to the south west to hills beyond the Dart within the AONB.*
- *The existing urban edge at Goodrington, abutting the road on the eastern boundary of this area is quite well integrated by mature trees and hedges along the road and within adjoining detached properties although the traffic is visible and audible'. (emphasis added)*

7.1.9

A sensitivity assessment of the North Galmpton AoLC is also included within Part 2 of the Torbay Assessment, but there is no reference to it in the LVIA (the quote at 4.1.21 does not provide any context to the study). The sensitivity of the landscape was considered in relation to *'land use changes and development, such as new housing, employment development, or renewable energy generation'*. Assessing sensitivity in such a generalised way is no longer considered best practise. Sensitivity, and specifically susceptibility, should be considered in relation to a specific type of change. Nevertheless, the Torbay Assessment (which considers the AoLC to have 'high' sensitivity, the highest category) provides the following summary of the AoLC's 'capacity to accommodate change' which is relevant to this application:

*'Much of this land is open to views from the AONB to the west and south. The existing urban edge is well integrated and any new development would extend the edge into this open landscape. **There is therefore only limited potential to accommodate change without substantial wider impact.** Small scale development within a more discrete area north of Galmpton could potentially be accommodated if sensitively sited, although the relationship to the Conservation Area and AONB would need to be carefully considered'.*

7.1.10

Land within the South Hams District (immediately west of the site) is covered by the Landscape Character Assessment for South Hams and West Devon, 2017. Land immediately to the west of the site is within the *3B: Lower rolling farmed and settled valley slopes* LCT (as per the Devon Assessment, and the AONB landscape character types²⁸). Much of the land on the opposite north facing slopes of the Dart Valley is within *3G: River Valley Slopes and Combes*. The descriptions of the 'Forces for Change' in both LCTs include (summarised from both descriptions): *'Continuing pressure for development particularly due to the LCT's proximity to Paignton. **Development in these areas would affect the rural character of the LCT and sense of tranquillity**'*. (emphasis added)

²⁸ Available here: <http://www.southdevonaonb.org.uk/coast-countryside/land/landscape-unique-to-south-devon-aonb>

7.2 Landscape Baseline: Site Context

- 7.2.1** LVIA Figure A (incorrectly listed as Figure C in the contents) is a map with the fields of the site numbered from 1-5. These numbers are used in this review for ease of reference.
- 7.2.2** The site is located immediately south-west of Brixham Road (A3022). The A3022 is a busy road that travels through Torbay, linking Torquay to Brixham. To the north of the site, development has occurred on the western side of Brixham Road, most recently at White Rock. An outline application for up to 350 dwellings, employment use, a local centre and open space at White Rock was approved in 2013 (ref P/2011/0197). Subsequent reserved matters applications have been approved, and construction for up to 310 dwellings and other local centre buildings is now well underway. As mitigation for the White Rock development, planting was proposed (and is understood to have been undertaken) between the application site and the White Rock development. Enhancement works to the hedgerows within the application site was also agreed as mitigation, as shown in the approved LEMP, attached as **Appendix 4**.
- 7.2.3** When travelling southwards towards White Rock, the road has a busy, arterial character which is the result of the road width; the type of infrastructure used (e.g. lighting) and the visibility of several large-scale developments including multiple supermarkets (western side). In places the road is a dual carriageway and further works are underway to increase the length of dual carriageway (as part of the Western Corridor Project).
- 7.2.4** The character of the road changes dramatically between the southern end of White Rock and the site. Here the road narrows from a dual carriageway to a single lane in either direction. This narrowing occurs as the road rises over a minor ridge and changes direction. The road also becomes flanked by mature trees as it passes over the ridge. This vegetation abuts the carriageway and separates it from the pedestrian footpath (eastern side of the road). The only break in this vegetation is for the driveway to a semi-detached property on the western side of the road. As the road reaches the site (Field 5), the roadside vegetation is lower, and views open out to offer an expansive panorama across the rolling countryside of the site and the Dart Valley.
- 7.2.5** These extensive scenic views are a marked contrast to the urban character of views from further north along the A3022. These changes, the impact of the road narrowing, the change in direction, the ascent then descent over a minor ridge and the dramatic changes

in outlook to the west, mean that road users have a strong sense of entering a different landscape. One which is more closely connected to and influenced by its rural context and the proximity of the AONB, than that further north.

7.2.6

As seen from Brixham Road (LVIA RV14), there are no obvious visible changes to mark the distinction between the countryside of the site and that of the wider AONB valley landscape. It reads as one continuous and attractive rural landscape, with rolling fields defined by hedgerows and scattered trees throughout. Together with land to the south and west, the site forms part of a deeply rural landscape setting to Paignton and the AONB. Indeed, the northern slopes of the Dart Valley, in which the site is located, are all identified as a single LCT in the Devon Assessment, from Brixham Road to the steeper valley sides immediately alongside the Dart River. As acknowledged in the LVIA *'The site blends in well and is part of this agricultural landscape with its blocks of woodland and other trees'*²⁹ and *'to the south west the site blends in with a more remote, tranquil and rural landscape of...the nearby AONB'*.³⁰

7.2.7

To the east of Brixham Road, opposite to the site, is residential development. Properties opposite to the site are generously set back from the carriageway and views towards the majority of dwellings are filtered by mature trees. The enclosure provided by roadside vegetation is at its greatest alongside Field 1. A short (approximately 100m long) section opposite Field 5 is less enclosed and the dwellings on the eastern side of the road are visible. These 6 dwellings are all either bungalows or dormer bungalows and are typically set within a mature framework of amenity planting (e.g. roadside hedges and shrubs). Overall, the existing residential edge along Brixham Road, alongside the site, is well integrated, being surrounded and frequently screened by mature vegetation. A point acknowledged in the description of *AoLC 10: North Galmpton*. The comment made by DWP with regard to Brixham Road, that *'it is a harsh boundary that does not assimilate well into the landscape'*³¹ is simply inaccurate.

²⁹ 4.1.49, Landscape and Visual Impact Assessment, October 2017

³⁰ Figure 6C, Landscape and Visual Impact Assessment, October 2017

³¹ Paragraph 22, DWP Review, July 2018

- 7.2.8** Brixham Road is shown on the 1869 historic OS map, as are the fields of the site. Whilst not an historic settlement boundary, its alignment is an historic feature of the landscape which currently provides a strong, definitive boundary to the settlement. This strength of this boundary is acknowledged in the Jacobs review, which states that the westward extent of Paignton: *'is currently well defined by the strong physical boundary provided by the Brixham Road and associated mature roadside trees'*.³²
- 7.2.9** The settlement edge is less well integrated at Galmpton. Historically, Galmpton was a village set low down (below the 40m Above Ordinance Datum (AOD) contour), around the lower slopes of the Dart Valley, towards Galmpton Creek. A fact reflected in the alignment of the Galmpton Conservation Area boundary. A single row of dwellings was built along either side of Langdon Lane in the mid C20th bringing the village above the 60m contour. This was followed by further development west of Langdon Lane, and to the north towards Galmpton Common, east to the A3022 and south towards the Paignton and Dartmouth Steam Railway (PDSR). It is the development west of Langdon Lane (which sits above 50m AOD) that is particularly noticeable in views from the southern side of the Dart Valley, and the AONB. The differences in how successful development has been integrated to the west of Brixham Road is clearly illustrated in Viewpoint C (Appendix 1). This photography demonstrates a well-integrated edge, east of and 'behind' the site and shows the contrast in prominence with development around Galmpton, which has sprawled across the mid-slopes of the Dart Valley.
- 7.2.10** The site is comprised of 5 undulating fields, with a mixture of arable and pastoral use. Field boundaries are formed of hedgerows and hedge banks with occasional mature trees, and all appear in a good condition. This framework of boundary vegetation is characteristic of the surrounding agricultural landscape, which also features numerous wood lots such as Nord Wood immediately south of Field 2. The application site sits between 55-73m AOD.
- 7.2.11** The County Historic Landscape Characterisation study classifies Fields 1-4 as 'Barton Fields' which are estimated to have been laid out between C15th-C18th. They are

³² Page 17, Torbay Landscape Advice, Jacobs, 7 June 2018

identified as having experienced no historic field boundary loss (*'a representation of the difference in the number of fields that there were in the late 19th Century compared to the present day'*). Field 5 is described as 'post-medieval enclosure' and is estimated to have been laid out in C18th-C19th. It has experienced 33% historic field boundary loss.³³ In the landscape surrounding the site fields immediately south-east of Fields 1 and 2 and west of Field 5 are classified as 'modern enclosure' and fields to the south of Fields 2 and 3 are 'medieval enclosure'.

7.2.12 The site, and in particular Fields 1-4 have historic value. Together with fields to the south, they form a corridor of fields that have experienced little boundary loss between the C19th and today and appear to have retained much of their historic boundary vegetation. This corridor runs from the edge of Brixham Road down towards the conservation area at Waddeton (which includes the grade II listed Waddeton Court and a number of other listed buildings) towards the Dart River. The site forms part of this historic landscape. In contrast, this corridor is enclosed to the east and west by fields characterised by modern enclosure.

7.3 Landscape Value

7.3.1 GLVIA3 recommends that the value of a landscape is identified at the baseline stage. This does not occur in the LVIA, which instead discusses value at the assessment of effects stage. Although the LVIA discusses value it does not in fact make an assessment of the landscape receptors it has identified (the seven sub character areas).

7.3.2 The site was designated as part of an Area of Great Landscape Value (AGLV), under the previous Local Plan. This designation has been dropped in favour of recognising the quality and characteristics of all landscapes, in line with local landscape character assessments.

7.3.3 GLVIA3 on page 84 in Box 5.1 provides a list of factors that can be useful in indicating landscape value in the absence of any formal designation. This list of factors has been considered useful by several Inspectors in their appeal decisions (when considered NPPF1

³³ Data available online:
<http://map.devon.gov.uk/dccviewer/?bm=OSMap&layers=Landscapes;9&activeTab=Landscapes&extent=218764;34011;339017;151751>

valued landscape) and they are considered in turn in the paragraphs that follow. We have given an indicative value for each factor (using a scale of low, medium and high), but the overall value of the landscape is not a simple average of the scores.

7.3.4

The assessment below considers the value of the wider landscape to which the site belongs and the role of the site within that wider area.

- **Landscape Quality (condition):** The site itself and the surrounding landscape is in good condition. The site has experienced little boundary loss since the C19th. Boundary vegetation remains in a good condition. We consider the landscape quality to be **high/medium**.
- **Scenic Quality:** The higher land within the AONB on the southern side of the Dart Valley provides a backdrop to views across the site from Paignton. The site forms an attractive part of the setting to the AONB, with no discernible difference between the countryside of the site and the wider AONB in views from Brixham Road. Although existing development around Torbay is a detractor in many wider views looking the other way (i.e. from the AONB), we consider the scenic quality is **high**.
- **Rarity and Representativeness:** The site is entirely representative of the historic field patterns which are increasingly rare around the setting of Paignton. It forms part of the last remaining extensive section of open countryside west of the A3022, west of Paignton. The site is typical of the *Rolling Farmland LT* and the *AoLC 10: North Galmpton* described in the Torbay Assessment. Rarity and Representativeness value is **high**.
- **Conservation Interests:** The site is part of the setting of the South Devon AONB and a foreground element in the panoramic views from Brixham Road. The site is an important element in the setting of Paignton and the AONB, particularly when viewed from Brixham Road, Waddeton Road, and from elevated locations throughout the AONB. The conservation interest is **high**.
- **Recreation Value:** Although there is no public access to the site it lies within a landscape that has high recreational value. The site is visible from a number of Public Rights of Way (PRoW) which including the promoted routes of the Greenway Walk, John Musgrave Heritage (JMH) Trail and the Dart Valley trail. The recreational value is **high /medium**.

- **Perceptual Aspects:** The wider landscape is valued for its generally intact qualities, and its increasing tranquillity towards the Dart River. Although noise from Brixham Road is a detractor across the north/eastern parts of the site specifically. The perceptual value is **medium**.
- **Associations:** While not directly associated with the site, the wider area has associations with Agatha Christie, who was born in Torquay and holidayed at the nearby (2.5km) Greenway House.

7.3.5

Overall, we consider that the site has **high landscape value**. This relates to both the site specifically, which is in a good condition, and its role in providing an attractive and deeply rural landscape setting for both the AONB and Paignton.

8 Review of the Landscape Effects of the Proposal

8.1 Introduction

8.1.1 Landscape and visual effects are considered separately as the former are considered as effects on the environment and the latter as effects on people. Landscape effects can be effects on the fabric of the landscape or on landscape character. Effects on landscape character often extend beyond the site itself and are a consequence of visual changes which affect the pattern and character of the landscape.

8.1.2 This review focuses on the effects on the site's landscape character and that of its surrounding context. This includes land within the local LCTs described in published landscape assessments, our own appraisal of the site and its context, and the role of the site in the setting of Paignton and the AONB.

8.2 Effects on Landscape Character

8.2.1 The proposal would replace four of the five fields within the site with a residential development of up to 400 dwellings. The proposed planting would be at odds with the historic framework of hedgerows and hedge banks, and its historic field patterns.

8.2.2 The development would take the site out of the Rolling Farmland LCT and AoLC 10, and instead become part of the 'Main Cities and Towns' type, as described in the Torbay Assessment. It is hard to understand how the LVIA finds that such a change would '*not be detrimental to the... transition landscape into the AONB from the urban edge*'.³⁴

8.2.3 The development would protrude outwards into the open countryside and be poorly related to the existing settlement edge. This edge is currently defined by the A3022. This road is a strong landscape feature and development along its eastern side, opposite the site, is currently well-integrated through a combination of generous setbacks and mature planting.

³⁴ 10.1.3, Landscape and Visual Impact Assessment, October 2017

- 8.2.4** The protruding form of the proposal would result in a development that would be adjacent to countryside on three sides. The existing settlement edge alongside the site's eastern boundary (Field's 1 and 5) measures approximately 490m. The development would add approximately 1.8km of new settlement edge to Paignton (i.e. where residential development adjoins the countryside). This is an increase of approximately 1.3km.
- 8.2.5** Although adjacent to the countryside the development would create some narrow strips of countryside, separating the development from the neighbouring urban areas. There would be one field between the site and White Rock and only two fields between development in the site and Galmpton. There would not be a '*wide, rural space*' between the site and Galmpton as stated in the DWP review.³⁵ (also refer to Vp A, Appendix 1) Whilst Galmpton and Paignton have merged north of the A3022, they are still distinctly separate south of the road. This development would erode the visual separation between Galmpton and Paignton, particularly in views from the south.
- 8.2.6** The character of Brixham Road would be dramatically altered. It would no longer serve as the defining edge to Paignton. Its users would no longer experience a rural setting to the settlement. Views west towards the countryside would be replaced with residential development and the historic road alignment would be altered via widening works and a new roundabout. The character of the White Rock development would be extended southwards into a landscape where views westwards are currently unaffected by development. At present, residential development at White Rock is contained 'behind' a ridge to the north of the site (as experienced from the stretch of Brixham Road opposite the site).
- 8.2.7** The development would not only alter the character of the site and its immediate setting, but it would also impact upon the key characteristics of the Rolling Farmland LCT more widely. One such characteristic concerns the '*network of sunken lanes...[which] occasionally allow wider views across this landscape*' as described in the Torbay Assessment. The character of Waddeton Lane would be impacted to a large degree, as is illustrated in VVM 15 in the LVIA. Development would become prominent in views along parts of this lane which currently retain a mostly rural character.

³⁵ Paragraph 34, DWP Review, July 2018

8.3 Effects on AONB

8.3.1 As is stated in the AONB Management Plan: *'The inland boundary of the AONB is mostly not marked by a distinct change in scenery and the landscape character continues seamlessly into the neighbouring countryside. The hinterland of the AONB - particularly the rural largely undeveloped countryside, farmland and woodland - is particularly significant as a setting for the AONB'*. The site forms part of the hinterland to the AONB and comprises a mixture of undeveloped countryside, farmland with mature hedgerows, trees and a pocket of woodland (Nord Wood along its southern boundary).

8.3.2 Development of the site would harm the rural hinterland setting of the AONB by:

- reducing the amount of countryside (distance or gap) between Paignton and the AONB;
- harming views towards the AONB (looking towards the AONB e.g. from Brixham Road); and
- harming distant panoramic views from the AONB.

8.3.3 Development on the site would halve the gap between the AONB boundary and Brixham Road and would bring development to within approximately 500m of the AONB. Not only would it remove a considerable area of buffer between the AONB and Paignton, it would be removing an area of countryside which shares a number of characteristics with the AONB. Many of these characteristics, such as the prevalence of historic field boundaries within the site, are complimentary to the AONB. The development would remove the continuation of an historic field network, which currently runs from the Dart River to Brixham Road through the site.

8.3.4 Open views into the AONB are protected in Policy Lan/P5 of the AONB Management Plan. The development would obscure views of the AONB from Brixham Road. The strong connection between the site and the wider landscape of the Dart River valley beyond would be lost. It would be replaced by housing and in part planting designed to screen this housing.

8.3.5 The development is likely to be visible from the AONB boundary despite the changes made to the application in the revised scheme (i.e. taking development out of Field 3, and

lowering building heights), specifically at LVIA RV16 from Waddeton, where at the least changes in the vegetation framework will be seen.

8.3.6 *Iconic wide, unspoilt and expansive panoramic views* are one of the special qualities of the AONB. Such views are available from a range of locations, including the elevated land to the south of Galmpton and Dittisham. At these locations the majority of the development would be visible. The addition of up to 400 dwellings and associated infrastructure over an approximate area of 28 hectares would form a substantial extension to Paignton. It would remove a large area of the rural hinterland, which is significant in the setting of the AONB.

8.3.7 The development would be located at similar elevations to the aforementioned C20th development in Galmpton - which stands out in e.g. LVIA RV7d (and Vp C of this review) as one of the most prominent developments within the AONB's setting. Although development is already visible from a number of the elevated AONB vantage points, the proposal would noticeably exacerbate the prominence of the Paignton settlement including in an area, where the settlement edge is currently well integrated (Refer Vps B and C, Appendix 1). Overall the development would lessen the balance between open countryside and development within the AONB's setting.

8.4 Susceptibility

8.4.1 The susceptibility to change of a landscape is its ability '*to accommodate proposed development without undue consequences for the maintenance of the baseline situation and/or the achievement of landscape planning policies and strategies*'.³⁶ This assessment can only be made once the consequences of the development are identified as recommended in GLVIA3. Regarding the proposed development, the susceptibility to change of the site is **medium/high** due to the following factors:

- The historic alignment of Brixham Road and the positive contribution the site makes to its character.
- The importance of the site in providing a deeply rural setting to the AONB and Paignton and in maintaining an area of attractive countryside between the two.

³⁶ Guidelines for Landscape and Visual Impact Assessment, Third Edition 2013 Page 88 Paragraph 5.40

- The visibility of the site from within the AONB and the role of the site in views towards the AONB from Brixham Road.

8.5 Conclusion

8.5.1 Considering all the factors identified above, the overall magnitude of change that would result if the site were developed for residential development would be **medium/large** and the nature of the change is **adverse**.

8.5.2 The sensitivity of the site is a combination of the susceptibility of the site (and the surrounding landscape) to the development proposed and the value placed on the site and the surrounding landscape. As identified in the baseline section, the value placed on the site and the immediately surrounding landscape is **high**. The susceptibility is **medium/high**, and the overall sensitivity is considered to be **medium/high**.

8.5.3 The overall effect on the landscape would be **moderate/major adverse** and would therefore be significant.

9 Review of the Visual Amenity Effects of the Proposal

9.1 Introduction

9.1.1 Visual changes that result in changes to the local landscape character have been described in the section above and are not repeated in detail in this section. Only a limited number of viewpoints and issues are considered where it is felt the LVIA most underestimated the impact.

9.1.2 Visual effects are a result of the sensitivity of visual receptors (people who will experience changes to existing views) to the proposed development and the magnitude of those changes.

9.1.3 GLVIA3 provides guidance on the relative sensitivity (based on their likely susceptibility) of different visual receptors (Page 113-114). In summary, the most sensitive receptors are likely to be:

- Residents at home;
- People engaged in outdoor activities whose attention is focused on the landscape and view; and
- Visitors to heritage assets or other attractions where views are an important part to the experience.

9.1.4 The least sensitive receptors are generally:

- People engaged in outdoor sports or activities which do not depend on an appreciation of views; and
- People at their place of work (although this can vary).

9.1.5 The sensitivity of road users varies. People on busy or main routes are typically considered to have medium or low sensitivity, whilst users of rural roads or scenic routes may have medium or even high sensitivity.

9.1.6 Some of the key visual receptors who would be affected by this development are:

- Road users, particularly those using Brixham Road and a number of rural roads such as Waddeton Road and Kennel Lane;
- Users of the wider PRow network, including within the AONB; and

- Local residents, particularly those along the eastern side of Brixham Road (i.e. the six bungalows from The Cottage to West Lea).

9.2 Conclusions Reached in LVIA and Jacobs Review

9.2.1 The LVIA finds that the visual effects are ‘not significant’ overall. The greatest levels of (permanent) visual effects identified in the LVIA are in relation to:

- Residents on the edge of Goodrington (VR1a) and road users along Brixham Road (VR2c) - **substantial / moderate adverse**
- Residents on the edge of Galmpton (VR1b); road users of Greenway Rd (VR2b-2) and Waddeton Lane (VR2d); and PRoW users in the AONB north/east of the Dart River (VR3c) - **moderate, moderate to minor or moderate reducing to minor adverse (and in the case of VR1b to negligible).**

9.2.2 The Jacobs review takes a different approach to the LVIA and assesses the effects in relation to visual receptors at nine specific locations. Jacobs found that the magnitude of change and level of effect would be greater than stated in the LVIA at the majority of locations assessed. Significant effects were identified in relation to receptors using: the road between Cornworthy and East Cornworthy (RV3); the footpaths around Fire Beacon Hill (RV6a, RV7a and 7b); the John Musgrave Heritage Trail (RV8c); Kennel Lane (RV9a); Waddeton Road (RV15); and Brixham Road (RV14).

9.3 Assessment

9.3.1 The LVIA generally provides an accurate assessment of visual receptor sensitivity. However, as found in the Jacobs review, there are several instances where the LVIA’s judgements underestimate the magnitude of change and the overall level of effect. This is particularly the case with regards to views from the PRoW network within the AONB - a concern which is also shared by the South Devon Ramblers.³⁷

³⁷ Objection by South Devon Ramblers, 24th August 2018

9.3.2 By way of example, we have set out below our findings in relation to three key locations within the AONB which we consider would be impacted to a greater degree than stated in the LVIA. Additional Verified Views (Appendix 1) from each location have been prepared for this review (Viewpoints (Vp) A, B and C) (Refer to Appendix 1 for viewpoint locations). They include:

- Vp A: John Musgrave Heritage Trail near A379, (PRoW #53) (similar location to **LVIA VVM for RV8c**).
- Vp B: The Dart Valley Trail near Fire Beacon Hill (similar location to **LVIA VVM for RV6a**); and
- Vp C: Footpath to Dittisham (also part of the Dart Valley Trail, PRoW #3) (similar location to **LVIA VVM for RV7d**).

9.3.3 As aforementioned the Verified Views prepared by Room60 are presented as a single frame images (to be printed at A3) and do not show any proposed mitigation planting.

9.3.4 An appreciation of the development's overall scale would be possible from all three locations. Each offers open, relatively uninterrupted views of the site. Parts, of the development, particularly within Field 2, are screened from Vps B and C due to a combination of intervening topography and vegetation.

9.3.5 Despite all being distant viewpoints (between 2.5-3.7km from the site). The role of mitigation planting in screening development is less effective when the viewpoint is elevated and from the south, as is demonstrated in the VVM images attached to the LVIA. This is due to the topography of the site, which slopes down to the south (i.e. facing towards the location of these viewpoints), and the extent of visibility enabled by the elevation.

9.3.6 The LVIA finds that there would be a 'medium reducing to low' magnitude of change in relation to PRoW users in the AONB north/east of the Dart River (VR3c). Based upon our site visit and Vp A attached to this review, we agree there would be a **medium** magnitude of change but disagree that it would reduce to low. The proposed planting would do little to screen the upper levels and roofs of buildings depicted in Vp A. This part of the development (i.e. the upper levels and roofs) would be visible along a sustained section of this footpath. Due to the highly sensitive nature of this receptor (**high** as recognised in the

LVIA) which comprises people walking along a promoted route, within an AONB where unspoilt, expansive views are one of the special qualities, we consider that the effect would be **moderate/major adverse** (this accounts for the mitigation planting shown in the LVIA VVMs). This is a significant effect.

9.3.7 At Vps B and C, the fields of the site form part of an open area of countryside, and the backdrop to views across the Dart River valley. At all three locations the proposal will add a visibly large, permanent extension to Paignton. Adding more development to the west of the A3022, and higher up Brixham Road than development currently visible around Galmpton. This would alter the composition of the view and increase the prominence of Paignton over the River Dart valley.

9.3.8 The LVIA finds that there would be a low magnitude of change in relation to PRoW users within the AONB south of the River Dart (VR3b). We do not agree with this judgement. Based upon our site visit and the Verified Views for Vps B and C, we consider that the magnitude of change would be similar to that at Vp A (i.e. **medium**). Although these Vps are located further away from the site, the visible extent of the development would be similar if not greater than at Vp A. In particular, the full width (approximately 90m) of the proposed school building would be visible from the section of Dart Valley Trail represented between Vps B and C. This building would be noticeably larger in scale than any other buildings in the visible vicinity of the site. The massing of the school could be 'broken up' through the modulation of its form and materiality, and intervening planting. However, it would still be visible as a single large building noticeable for its size and its contrast with the predominantly smaller residential forms currently visible around the site.

9.3.9 The section of the Dart Valley Trail between Fire Beacon Hill and Dittisham allows for an appreciation of the countryside setting to the River Dart Valley. Its users have a **high** sensitivity to changes in their view. The magnitude of change that would result from a large development extending into the Dart Valley would be **medium**, and the overall effect would be **moderate/major adverse** (this accounts for the mitigation planting shown in the LVIA VVMs). This is a significant effect.

9.4 Conclusion

9.4.1 The proposed development would have a significant impact on a number of visual receptors both within the immediate context of the site, such as along Brixham Road and

at more distant elevated locations, particularly within the AONB. This is due to the high sensitivity of receptors and the magnitude of change resulting from a large, permanent extension to Paignton. This will replace countryside views from Brixham Road and increase the prominence of settlement within the Dart Valley in views from the AONB; including from sustained sections of the PRow network. At all three locations considered in detail in this review (A, B and C) the sensitivity of the receptor is **high**. The magnitude of change would be **medium**, and the overall effect would be **moderate/major adverse**. They are all significant effects.

Appendix 1

Verified Views prepared by Room60 (with Viewpoint Location Plan)

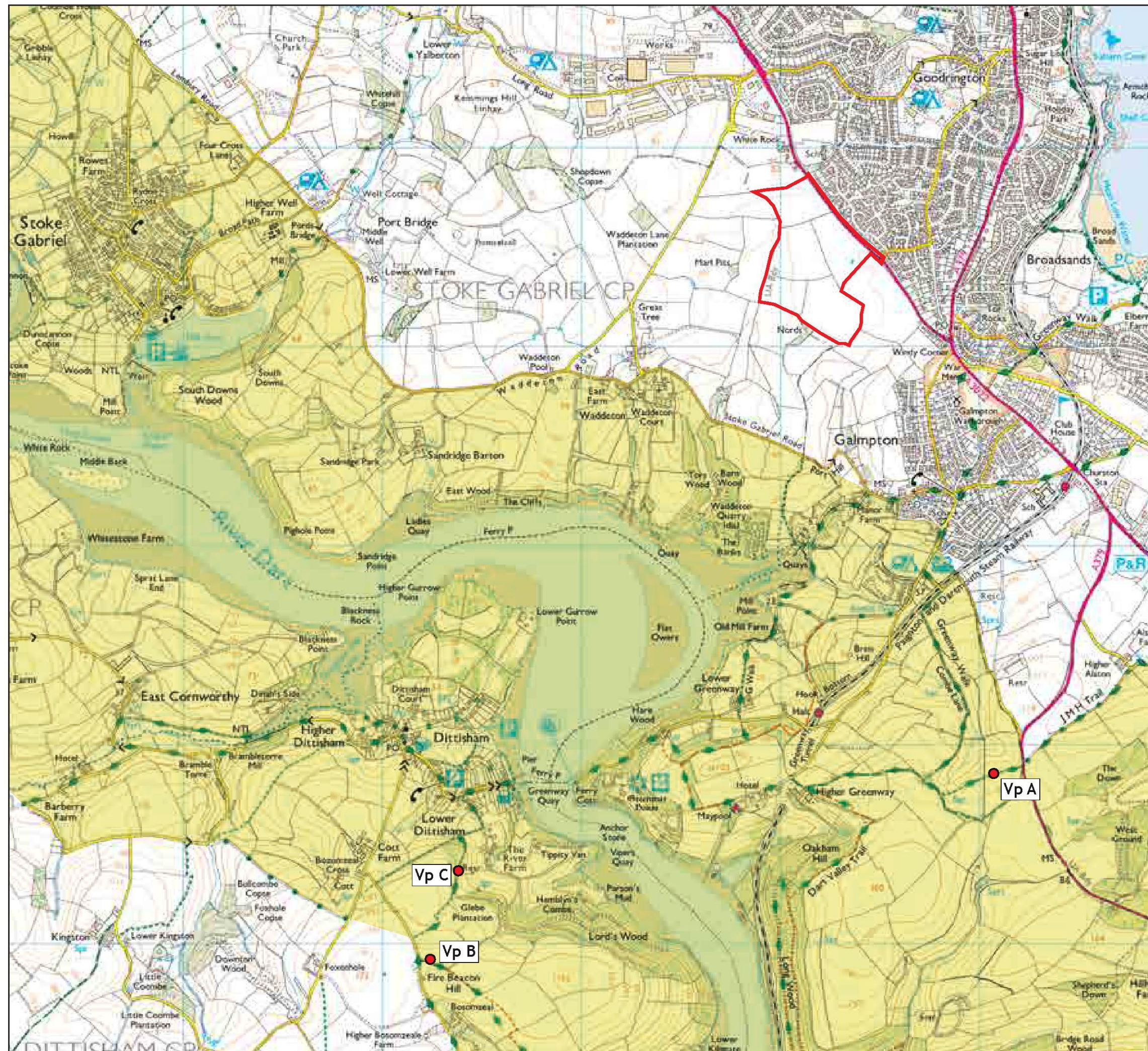


FIGURE 01
Location of Verified Views



PROJECT
1085
Brixham Road

CLIENT
Farrer & Co

DATE
September 2018

Legend

-  Application Site
-  South Devon AONB
-  Viewpoint Location (See Verified Views by Room60)

NOTES

0 250m 500m 1km



Note

These visualisations have been prepared by Room60 using current best practice techniques in both photography and the construction of 3D models and photomontages specified by the Landscape Institute (Advice Note 01/11 Photography and Photomontages in Landscape and Visual Impact Assessment) and with guidance taken from the London View Management Framework SPG March 2012.

The visualisations give an impression of the predicted scale and mass of the proposed development as it would be seen from this location. The image should only be assessed in the field from the same viewpoint location.

It should be noted that in reality neither photographs nor visualisations can convey a view exactly as it would be seen by the human eye.

Viewpoint A



Viewpoint Information
Grid reference: 289066.129 E, 54863.355 N
Camera height: +119.926m AOD

Camera / Photograph Information
Date & Time: 13/09/2018, 15:29pm
Camera: Nikon D750 (full frame sensor)

Focal length and FOV: 50mm (39.6°)
Viewing Distance: Approx 55cm at A3



Viewpoint B



Viewpoint Information
Grid reference: 286229.807 E, 53922.737 N
Camera height: +162.969m AOD

Camera / Photograph Information
Date & Time: 13/09/2018, 13:04pm
Camera: Nikon D750 (full frame sensor)

Focal length and FOV: 50mm (39.6°)
Viewing Distance: Approx 55cm at A3



Viewpoint C



Viewpoint Information
Grid reference: 286385.655 E, 54344.142 N
Camera height: +114.029m AOD

Camera / Photograph Information
Date & Time: 13/09/2018, 13:50pm
Camera: Nikon D750 (full frame sensor)

Focal length and FOV: 50mm (39.6°)
Viewing Distance: Approx 55cm at A3





These views do not account for any mitigation planting





These views do not account for any mitigation planting





Viewpoint Information

Grid reference: 286385.655 E, 54344.142 N
Camera height: +114.029m AOD

Camera / Photograph Information

Date & Time: 13/09/2018, 13.50pm
Camera: Nikon D750 (full frame sensor)

Focal length and FOV: 50mm (39.6°)
Viewing Distance: Approx 55cm at A3

These views do not account for any mitigation planting



OVERVIEW

The process of generating verified views (also referred to as accurate visual representations (AVR)) for the Proposed Development at Inglewood, Paignton was carried out by Room60.

Room60 use a methodology that is compliant with relevant sections of: The Landscape Institute/IEMA Guidelines for landscape and Visual Impact Assessment (3rd edition 2013); The Landscape Institute Advice Note 01/11 Photography and Photomontage in Landscape and Visual Impact Assessment and The Revised SPG London View Management Framework (March 2012).

High quality/resolution photographs were taken from the agreed locations with an adequate number of visible features subsequently surveyed, including the precise location of the camera.

A development model was generated to correct geographical co-ordinates. With a known camera position and orientation, photographic and surveyed existing visible features, the development model was accurately aligned to the photograph.

SITE VISIT

Room60 visited the site on the 13th September 2018, to obtain viewpoint photography. The view positions were documented using photography of the exact positions (marked with a survey pin) with a surveyor present to record the precise co-ordinates.

PHOTOGRAPHY

For the agreed viewpoint location, a high resolution photograph was taken with a digital SLR camera with a 35mm (full frame) sensor. The camera was levelled horizontally and laterally by means of a tripod mounted levelling base and two camera mounted spirit levels.

CAMERA & EQUIPMENT

- Nikon D750 digital SLR camera (35mm)
- Nikon 50mm f/1.8
- Manfrotto 190 tripod
- Tripod indexed pan head
- Levelling base with bubble level
- Digital Level
- Plumb bob

LENS SELECTION

In order to capture the full extent of the proposed development and an appropriate amount of context, a 50mm lens in landscape orientation (effective 40° horizontal field of view) and a rotational index of 15° (allowing an approximate overlap of larger than 50%) was used to capture a series of individual frames that could be stitched to form a panoramic image.

Post Production

Each photoviewpoint photograph was processed using Adobe Photoshop® CC 2017.

To provide context, individual shots were stitched by means of cylindrical projection to form a corrected panoramic image and cropped to a horizontal field of view of approx 180°. Standard (digital) photographic post production techniques (curves and sharpening) were used to create a corrected final .psd file to be used as the basis for the photomontage.

For the purposes of these photomontages, only a single frame shot was taken forward for montage and model overlay.

SURVEY

For the agreed photoviewpoint location an instructional document was released to the survey subcontractor. The surveyor was instructed on site to record a range of contextual reference points.

SURVEY EQUIPMENT

- Leica GPS
- Leica Total station
- Precise level

FIELD SURVEY METHODOLOGY

Camera Locations - To establish the position of a viewpoint, the surveyor must set up a GPS on it and record enough points to ensure a high level of accuracy.

Reference points - To survey the various reference points, the surveyor should set up three temporary stations (TBMs) within view of each reference point and establish their location using the GPS. Once these co-ordinates have been established, the surveyor will set up a Total Station on the TBMs and take 3 reflectorless survey shots to the reference point in view.

Where GPS positioning was not possible near to the required survey point – due to poor signal, for instance – the surveyor will set up his TBMs at the nearest position possible and traverse traditionally to a position where he can survey the point.

DATA PROCESSING & DELIVERY

GPS data is processed through Leica Geo-Office to acquire the OSGB36 co-ordinate system information and then processed to produce co-ordinate information for the surveyed points.

PROPOSED DEVELOPMENT

Room60 created a 3D model of the proposed development working from supplied plans. The model was checked for accuracy and subsequently aligned to the OSGB36 coordinate system.

VERIFICATION PROCESS

The collected survey reference point data and camera location data was imported into the 3D model environment from the delimited text file (relative to the OSGB36 co-ordinate system) by means of a proprietary script.

At each photoviewpoint location a virtual camera was set up in the 3D software using the coordinates provided by the surveyor. The 3D coordinates of the survey reference points were used to create an accurate 'point cloud' model of the contextual surveyed parts of the scene. The scene was verified by matching the contextual surveyed points to the photograph.

To do this, for each photoviewpoint, two renders* were made from the 3D model from the same virtual camera: one render showed only the development (in the chosen method of presentation); the other showed only the survey reference point data.

Using a photo editing package [Adobe Photoshop® CC 2017] the photography, survey reference point render and proposed development render were aligned.

With the rendered* proposals aligned to the photography, masks were applied to the image to hide extents of the proposals occluded by intervening vegetation and built form.

USE OF PHOTOMONTAGES

The photomontages in this document are made up of a single 50mm photograph. For correct perspective viewing, the photomontage pages should be printed unscaled at A3 and must be viewed at an approximate viewing distance of 55cm. The photomontages should only be assessed in the field from the same viewpoint.

**Rendering is the process of generating an image from a model (or models in what collectively could be called the 3D environment), by means of computer programs - specifically, in this case Chaos Group V-Ray for Autodesk 3Ds Max 2017.*

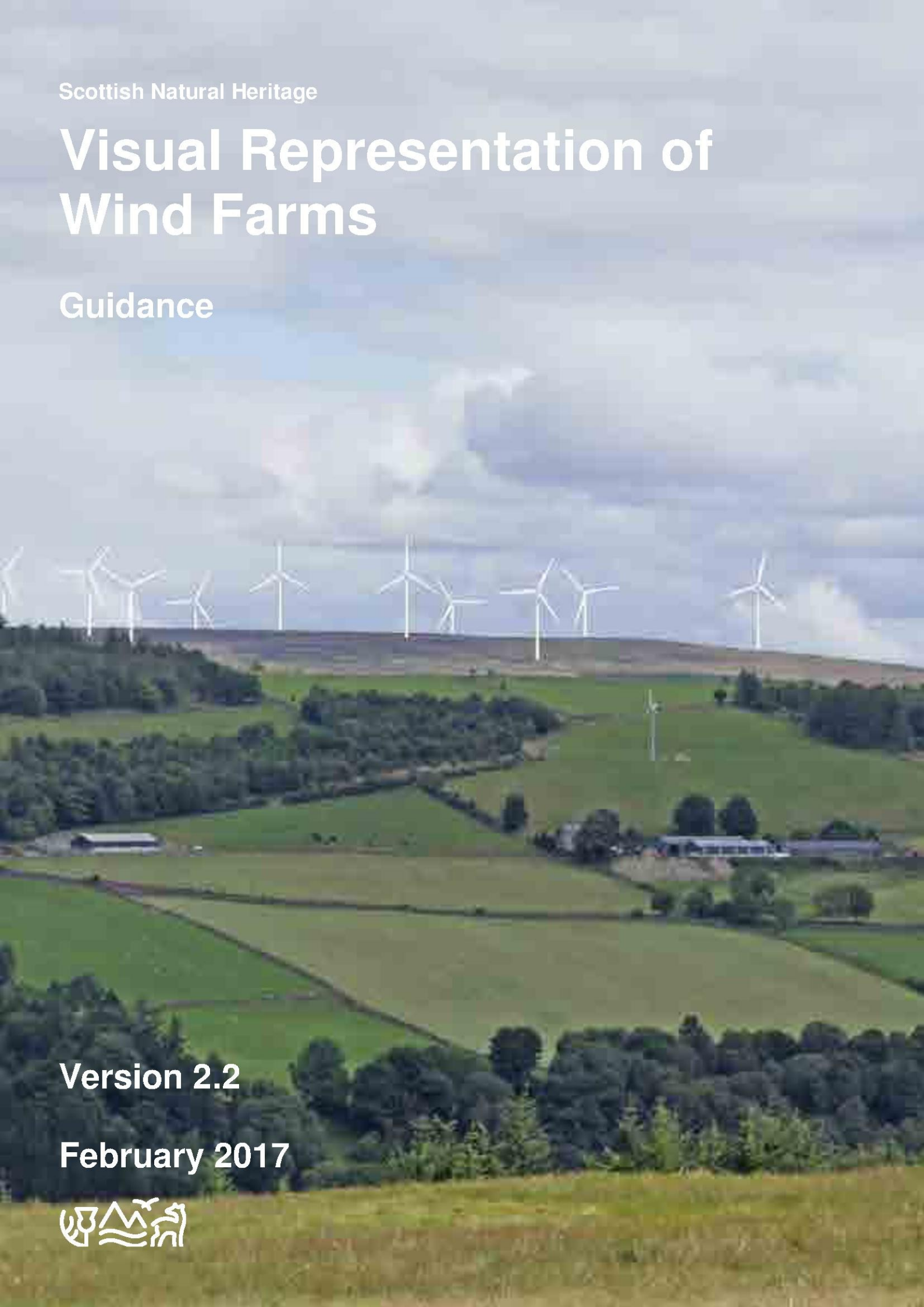
Appendix 2

Extract from SNH Guidance

Scottish Natural Heritage

Visual Representation of Wind Farms

Guidance



Version 2.2

February 2017





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Optional visualisation techniques

Viewpoint pack

- 189 In some cases the planning authority may find the provision of a viewpoint pack helpful. These should be provided on thicker A3 paper for durability and ease of use in the field. Images contained within the pack should be loose leaf and should have a detailed location map printed on the reverse side to make it easier for users to find the exact viewpoint location. A brief description of how to find the viewpoint should also be included.
- 190 The pack should contain images from a set of key viewpoints, to be agreed with the determining authority. It may not be necessary to provide them for every ES viewpoint. SNH do not require viewpoint pack images.
- 191 Each image should be clearly labelled: **“This image is intended only for use at the viewpoint. Further information in the ES should also be referred to.”**

Construction of A3 single frame photomontages in the viewpoint pack

- 192 The images should be prepared from the same baseline photography and using the same process for rendering turbines¹¹. The image height should be 260mm by 390mm wide. The horizontal field of view should be 27° and the vertical field of view should be 18.2°. The image will have a Principal Distance of 812.5mm.

Figure 4: A3 single frame for use in viewpoint pack



Using the viewpoint pack

- 193 The pack holder or title page should be clearly labelled “Images for assessment only at the identified viewpoints” along with the name of the wind farm and supplementary information. It should include a map showing the location of each viewpoint and detailed grid references to help users find the viewpoint location in the field.
- 194 It is important to get as close to the precise viewpoint location as possible. The viewpoint map, grid reference and photograph of the tripod location can all be used to achieve this. The

Annex B Standard requirements which all visualisations should comply with

Checklist

Photography	Camera	Full Frame Sensor Size	
	Lens	50mm fixed focal length	
	Camera height	1.5m (unless alternative height can be justified, in agreement with planning authority)	
	Location	Grid reference, relevant location map, and photograph of tripod location provided	
Photomontage	Image	Clear of foreground objects	
	Conditions	Visibility sufficiently good	
	Baseline panorama and wireline	Cylindrical projection 90, 180, 270 or 360 degrees printed on A1 length sheet(s). Image size for both the baseline panorama and wireline should be 820mm by 130mm	
	Wireline	Planar projection, image size 260 by 820mm on A1 sheet. HFOV 53.5° and VFOV 18.2°	
	Panorama	Planar projection, image size 260 by 820mm on A1 sheet. HFOV 53.5° and VFOV 18.2°	
	Principal Distance	Printed on visualisations	
Maps	Viewpoint map	To include overall viewpoint location map (combined with ZTV). Thumbnail location map provided on each panorama	
Methodology		Statement of methodologies used to produce visualisations including ZTVs and software used	

HFOV = Horizontal field of view

VFOV = Vertical field of view

Appendix 3

Extracts from The Torbay Landscape Character Assessment

Landscape Character Assessment of Torbay

For Torbay Council

Final Report - Part 2
Assessment of Landscape Sensitivity and Capacity

May 2010



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1. INTRODUCTION TO THE SENSITIVITY ANALYSIS

- 1.1 Torbay covers the towns of Torquay, Paignton and Brixham in South East Devon. The area is administered by Torbay Council (a Unitary Authority) and covers a total area of 63 square kilometres, of which 32 square kilometres are built up, leaving 31 square kilometres defined as countryside. Torbay Council is currently preparing a Local Development Framework (LDF), which will supersede the Adopted Torbay Local Plan. As part of the evidence base for the preparation of the LDF the Council has commissioned the preparation of a Landscape Character Assessment (LCA).
- 1.2 Landscape Character Assessment is a structured process of analysing the character of the landscape. It identifies areas of distinctive character and the key characteristics which contribute to local distinctiveness. Planning policies can then be prepared in order to protect, conserve or enhance the key characteristics and help to maintain and enhance those features which contribute to the distinctive character of the local landscape.
- 1.3 Part 1 of the study explains how the Torbay landscape has evolved, and identifies the landscape character types which may be applied to various parts of Torbay, as well as other parts of Devon, following the Landscape Character Type framework established for the County by Devon County Council. These were mapped as overall character types and this mapping is included as Figure 1 of this report.
- 1.4 This second part of the Torbay Landscape Character Assessment addresses the second requirement of the Council's brief for the study which is to determine the sensitivity of the landscape to change and, in particular, land use changes and development, such as new housing, employment development, or renewable energy generation.
- 1.5 The sensitivity analysis work has been undertaken using a systematic analysis of a range of relevant landscape and other environmental issues, broadly following guidance formulated through research undertaken on behalf of the Countryside Agency (now part of Natural England) in 2004.
- 1.6 It is based on more detailed and specific areas which have been defined as Areas of Local Character (AoLC) and Torbay has been subdivided into some sixty AoLC. The AoLC are, in many cases, subdivisions of contiguous areas of the same landscape character type, which have been subdivided along obvious physical boundaries. Each mapped area is identified with a character type number and an area letter (such as 4A). The sensitivity analysis has been undertaken for each AoLC and consequently provides an analysis and guidance for these individual areas.
- 1.7 The AoLC sensitivity analysis has been undertaken using a sensitivity matrix which incorporates five levels of value ranging from Very high (or Major), to Negligible (or Poor). These five levels, notionally representing an equal split in value as per the table below, have been used as a means of assessing the significance of each of a range of criteria across every identified AoLC. This has then been used to inform a judgement on the overall sensitivity rating for each AoLC in relation to change. Whilst it may be argued that such judgements are likely to be subjective (as in much landscape character assessment work), by analysing the landscape in a structured and consistent way, and by involving local people in stakeholder workshops to develop a consensus on the methods used, a high level of consistency may be achieved.
- 1.8 It should be recognised that the analysis is not a rigorous scientific process, but an open structured way for specialists to develop judgements about the nature of individual landscape areas. The definitions and matrices have been tested at workshops with local stakeholders and community representatives.

Major/ Very high	Substantial/ Good High	Moderate/ Medium	Slight/ Low	Negligible/ Poor
100-80%	80-60%	60-40%	40-20%	20-0%

Table 1: Showing how the terms used represent notional banding of scores.

- 1.9 The glossary at the end of this report explains the terminology used for each criterion in the matrix. Where land is subject to any form of landscape, wildlife or heritage designation this has been recorded on the matrix but the landscape sensitivity judgements have been made independently of the designation. This avoids 'scoring' being biased towards designated landscapes and ensures that judgements are made on local landscape characteristics.
- 1.10 Almost all of the rural Torbay area has been designated in the past as an Area of Great Landscape Value (AGLV), which is a county-level landscape designation. Changes in government policy have meant that these designations are not supported by national policy guidance (Planning Policy Statement 7) which favours a landscape character based approach. This approach is also reflected in the Draft Regional Spatial Strategy for the South West.

The Government does not believe that local countryside designations are necessary and considers that the policies set out in this PPS, when incorporated into development plans, should provide sufficient protection for the countryside. In reviewing their development plans, planning authorities should remove any existing designations and instead adopt criteria-based policies in development plans for the location and design of rural development throughout their area (paragraph 25).

Box 1: Extract from PPS 7 regarding local landscape designations

- 1.11 This Landscape Character Assessment takes this advice forward in Torbay and provides the starting point for integrating landscape character into land use planning and decision-making within the area.
- 1.12 A sensitivity matrix has been prepared for each AoLC. These are grouped and numbered according to the landscape character types identified and described in Part 1 of this report.
- 1.13 Each AoLC analysis follows a standard pattern and includes a brief description of the area and its location, with an illustrative photograph, a summary of designations and details of the historic characterisation, the analysis matrix, and a brief comment on potential future mitigation and management strategies. It is envisaged that this part of the character assessment will assist decision-making regarding potential land use change and development, and inform the development of a green infrastructure strategy, as well as future landscape management strategies. It could also be used for decisions regarding the targeting of grants and landscape enhancement programmes.

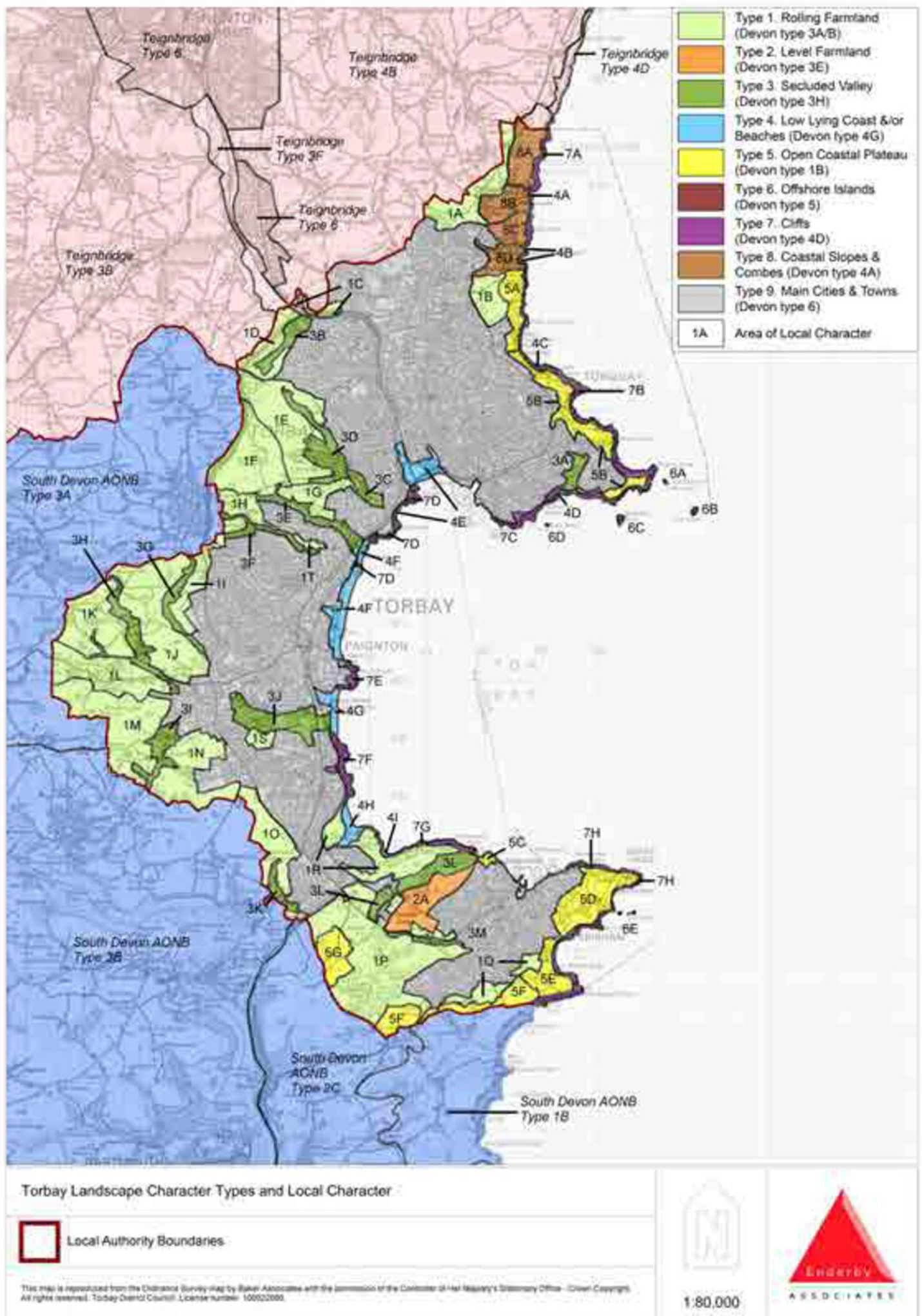


Figure 1: Torbay Landscape Character Types and Areas of Local Character

CHARACTER TYPE: 1 ROLLING FARMLAND**Area of Local Character: 10 North Galmpton****Description**

The land north of Galmpton consists of very gently undulating predominantly pasture farmland, with some arable fields in the northern part extending west from the A380 Brixham Road towards the Torbay boundary west of Goodrington. The land slopes broadly westwards towards the River Dart estuary within South Hams and the South Devon AONB. Much of the area is relatively open farmland and the northern part is more open and this allows long distance views to the south west to hills beyond the Dart within the AONB, whilst the southern part of the area is screened from the west by a combination of a slight ridge and field boundaries; a field north of Galmpton is used for a car boot sale. Field boundaries are low hedges/hedgebanks with occasional hedgerow trees. The existing urban edge at Goodrington, abutting the road on the eastern boundary of this area is quite well integrated by mature trees and hedges along the road and within adjoining detached properties although the traffic is visible and audible. There are no public rights of way across this area.



View west towards South Devon AONB from A3022 Brixham Road

Designations present

	Designations present					Comment
Landscape	AONB	AGLV	ULPA	CPA		S Devon AONB is located close to this area.
Biodiversity	SAC	NNR	SSSI	LNR		
Cultural heritage	SAM	HMR	Reg Park/ garden	Cons Area		Southern tip of area adjoining Galmpton

Historical character

Predominant Historic Character type in DCC HLC study.	Medieval enclosures based on strip fields	Medieval enclosures	Post- medieval enclosures	Barton fields	Modern enclosures adapting medieval fields	Modern enclosures adapting post- medieval fields	Former orchards
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Landscape Sensitivity

10 North Galmpton	Major/ Very high	Substantial/ Good/ High	Moderate/ Medium	Slight/ Low	Negligible/ Poor	Comment
Landscape quality/ condition						
Integrity of landscape character						Low in arable northern part
Condition of landscape elements						Low in arable northern part
Landscape Value (NB Designations are listed above)						
Sense of remoteness						Low due to relationship to urban edge
Scenic beauty/quality						Foreground of attractive views into AONB
Tranquillity						Variable – improves further from road.
Historic features which contribute to sense of place						
Visual sensitivity						
Local inter-visibility within the character area						Largely open views across most of area
Prominence in wider landscape / inter-visibility between CAs						Northern part has seamless visual connection with S Devon AONB
Contribution to wider setting of Torbay and beyond admin boundary						Land provides broad setting of the urban area and provides buffer to AONB
Viewing population and physical accessibility						Access limited to busy Brixham Road
Overall sensitivity						
Broad Rating	Highly sensitive	Moderately sensitive	Less sensitive			Parts of southern area slightly less sensitive due to visual containment

Capacity to accommodate change and mitigation potential

Much of this land is open to views from the AONB to the west and south. The existing urban edge is well integrated and any new development would extend the edge into this open landscape. There is therefore only limited potential to accommodate change without substantial wider impact. Small scale development within a more discrete area north of Galmpton could potentially be accommodated if sensitively sited, although the relationship to the Conservation Area and AONB would need to be carefully considered.

Mitigation of any proposed development changes should be achieved through a combination of careful siting with strong screen planting and the reinforcement of existing field hedgerow boundaries would be necessary.

Management Strategy

Conserve	Enhance	Restore	Renewal
	✓		

The strategy should focus on the enhancement of the existing hedgerow network by planting of new hedgerow trees and copses to help to integrate the urban edge further in views from the AONB to the west. Reinstatement of field boundaries in the northern part should be encouraged and these would supplement planned strategic planting around the proposed extension to the employment site at White Rock.

Appendix 4

Approved LEMP for White Rock development

WHITE ROCK MASTERPLAN

INDICATIVE MASTERPLAN PHASING

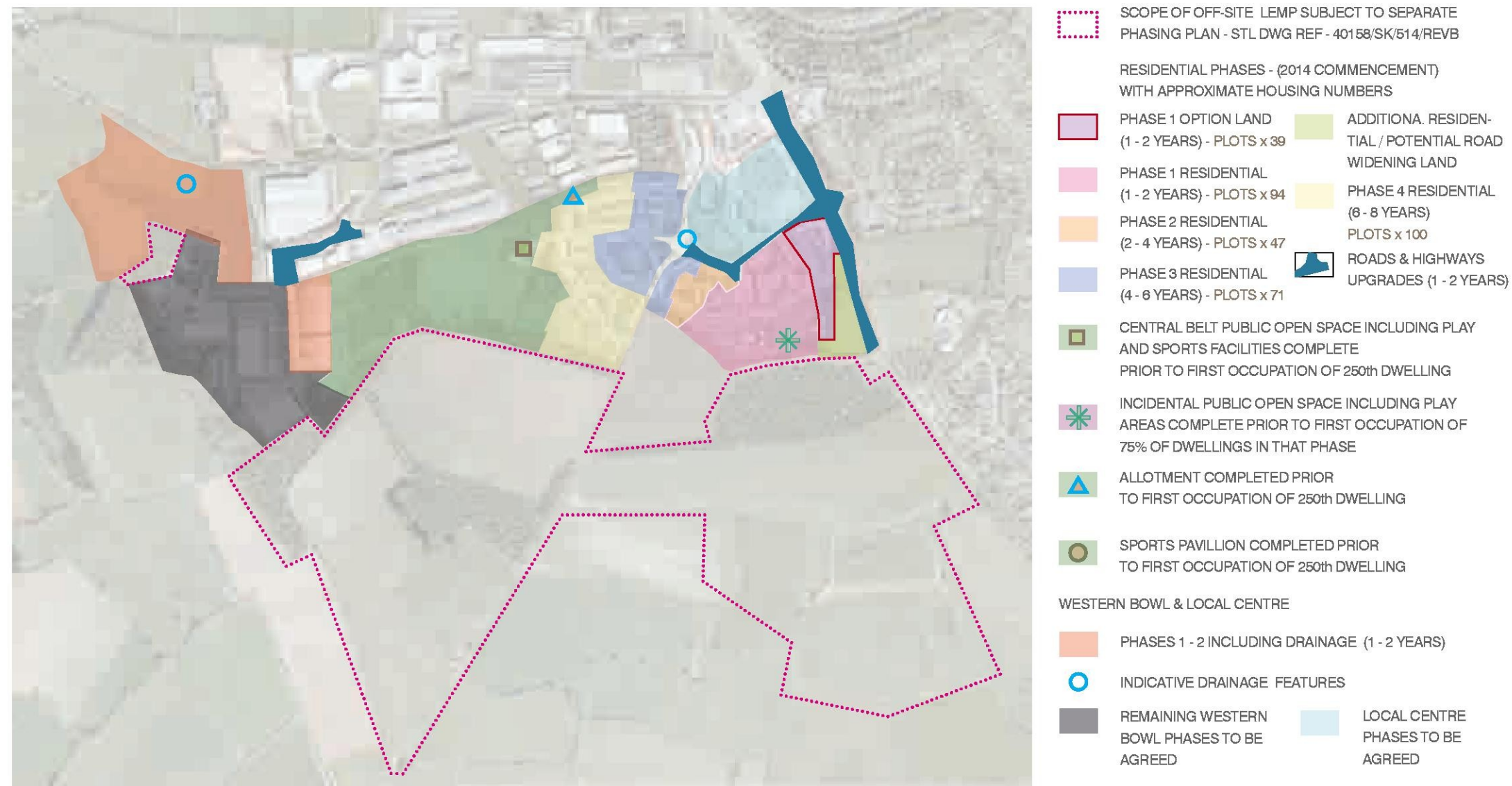


FIGURE 5: DWG REF 40200_LP_STR_004_REV A_MASTERPLAN PHASING

WHITE ROCK

Landscape mitigation & enhancement - off site landscape phasing



ANTICIPATED PHASED DEVELOPMENT

LOCAL CENTRE AND RESIDENTIAL	1-3 YEARS
RESIDENTIAL PHASE 1	1-5 YEARS
RESIDENTIAL PHASE 2	3-4 YEARS
RESIDENTIAL PHASE 3	4-6 YEARS
EMPLOYMENT	1-10 YEARS

OFFSITE PHASED PLANTING AND MANAGEMENT

- Proposed phase 1 offsite planting works to be carried out within first planting season following commencement of the local centre or residential phase 1, whichever is developed sooner
- Proposed phase 2 offsite planting works to be carried out within first planting season following commencement of residential phase 2
- Proposed phase 3 on-site and offsite planting works carried out within the first planting season following completion of the second phase of the 'Western Bowl' employment area (i.e. 36,000 sq ft)
- 'Defunct' offsite hedgebank - Proposed works carried out within first planting season following commencement of the local centre or residential phase 1, whichever is developed sooner
- 'Species poor' offsite hedgerow - Proposed management works carried out following commencement of residential phase 2 development
- Entry Level Stewardship Scheme (ELSI)
- Approximate development boundary
- Approximate land ownership boundary

NOT

A separate 20 year landscape and ecological management period is to run concurrently with the implementation of each development phase

FIGURE 2 - DWG REF - 40158/SK/514/REV0

Appendix 5

Methodology



Methodological Approach for Landscape and Visual Assessment

Introduction

1. The methodology used by Michelle Bolger Expert Landscape Consultancy (MBELC) when preparing evidence on landscape and visual issues is based on *Guidelines for Landscape and Visual Impact Assessment*, Third Edition 2013 (GLVIA3) prepared by the Landscape Institute/Institute of Environmental Management and Assessment. The methodology also identifies where the approach adopted has been informed by the consideration of specific landscape or visual issues by the courts or by inspectors at public inquiry.
2. Landscape/ townscape effects are effects on the fabric and character of the landscape/ townscape. Visual effects are effects on people and are concerned with the impact of the proposals on the amenity of those people who will experience visual changes as a result of the proposals.
3. GLVIA3 sets out the processes that should be followed in the preparation of a Landscape and Visual Impact Assessment (LVIA), required for development that is the subject of an Environmental Impact Assessment (EIA), and for a Landscape and Visual Appraisal (LVA) required for development that is not the subject of an EIA. With regard to the differences between a LVIA and a LVA, GLVIA3 states that '*the overall principles and the core steps in the process are the same*'¹ and sets out the differences in defined procedures as follow:

'As a 'standalone' appraisal the process is informal and there is more flexibility, but the essence of the approach - specifying the nature of the proposed change or development; describing the existing landscape and the views and visual amenity in the area that may be affected; predicting the effects, although not their likely significance; and considering how those effects might be mitigated - still applies'.²

¹ Guidelines for Landscape and Visual Impact Assessment, 2013 Page 26 Paragraph 3.2

² Guidelines for Landscape and Visual Impact Assessment, 2013 Page 26 Paragraph 3.2

Baseline Assessment

4. GLVIA3 sets out the factors that should be considered in establishing a study area and determining the baseline conditions. (GLVIA3 Page 32 Paragraphs 3.15-3.17) *'For the landscape baseline the aim is to provide an understanding of the landscape in the area that may be affected - its constituent elements, its character and the way this varies spatially, its geographic extent, its history (which may require its own specialist study), its condition, the way the landscape is experienced, and the value attached to it.'*³
5. The **value** of a landscape is: *'the relative value that is attached to different landscapes by society, bearing in mind that a landscape may be valued by different stakeholders for a variety of reasons...A review of existing landscape designations is usually the starting point in understanding landscape value but the value attached to undesignated landscapes also needs to be carefully considered'*.⁴
6. The NPPF in paragraph 170 states that:
'Planning policies and decisions should contribute to and enhance the natural and local environment by: (inter alia)
a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
7. Valued landscapes include nationally and internationally designated landscapes. The statutory status of nationally designated landscapes is set out in the National Parks and Access to the Countryside Act 1949 and the CROW Act 2000. This status is reflected in NPPF Paragraph 172 and local planning policies.
8. NPPF 170 Valued Landscapes are not restricted to designated landscapes. GLVIA3 on page 84 in Box 5.1 provides a list of factors that are useful in indicating landscape value *'in cases where there is not existing evidence to indicate landscape value'*. This list of factors has been considered useful by Inspectors in their appeal decisions.
9. Judgements about whether a particular landscape is considered to be a NPPF paragraph 170 'Valued Landscape' are recorded on a verbal scale of high, medium and low with an overall conclusion that if the landscape in which a site is located has 'high' value this equates to a 'valued landscape'.

³ Guidelines for Landscape and Visual Impact Assessment, Third Edition, 2013, Page 32, Paragraph 3.15

⁴ Guidelines for Landscape and Visual Impact Assessment, Third Edition, 2013, Page 80, Paragraph 5.19

Landscape Effects

10. Landscape effects can be effects on the fabric of the landscape or on landscape character. Effects on landscape character often extend beyond the site itself and are a consequence of visual changes which affect the pattern and character of the landscape.
11. The assessment of the **sensitivity** of the landscape is directly related to the type of development proposed. Landscape Sensitivity is derived from: *‘combining judgements of their [the landscape receptors] susceptibility to the type of change or development proposed and the value attached to the landscape’*⁵. As identified above, the value of the landscape is assessed as part of the baseline, whereas the assessment of the susceptibility to change of a landscape must be tailored to individual projects and *‘should not be recorded as part of the landscape baseline but should be considered as part of the assessment of effects’*.⁶
12. The **susceptibility to change** of a landscape is: *‘the ability of the landscape receptor (whether it be the overall character or quality/condition of a particular landscape type or areas, or an individual element and/or feature, or a particular aesthetic and perceptual aspect) to accommodate the proposed development without undue consequences for the maintenance of the baseline situation and/or the achievement of landscape planning policies and strategies’*.⁷ Judgements about the **susceptibility** of the landscape are recorded on a verbal scale of high, medium and low and the basis for the judgements is made clear and linked back to evidence from the baseline study as required by GLVIA Para 5.43.
13. Judgements about **sensitivity** of the landscape are a result of combining judgments regarding value and susceptibility. This is recorded on a verbal scale of high, medium and low and the basis for the judgements is made clear.
14. Judgements about the **magnitude of change** for landscape effects are recorded on a verbal scale of high, medium, low and negligible, based on the principles set out in GLVIA3 paragraphs 5.48-5.52 which includes a consideration of scale, geographical extent and the duration and reversibility of the landscape effects.

⁵ Guidelines for Landscape and Visual Impact Assessment, 2013 Page 88 Paragraph 5.39

⁶ Guidelines for Landscape and Visual Impact Assessment, 2013 Page 89 Paragraph 5.42

⁷ Guidelines for Landscape and Visual Impact Assessment, 2013 Page 88 Paragraph 5.40

15. Judgements about the overall significance/ importance of landscape effects, are recorded on a verbal scale of major, moderate and minor, based on the principles set out in GLVIA3 paragraphs 5.53-5.57.⁸
16. The underlying principles are summarised in GLVIA Figure 5.10 (Page 92) which has been adapted below.

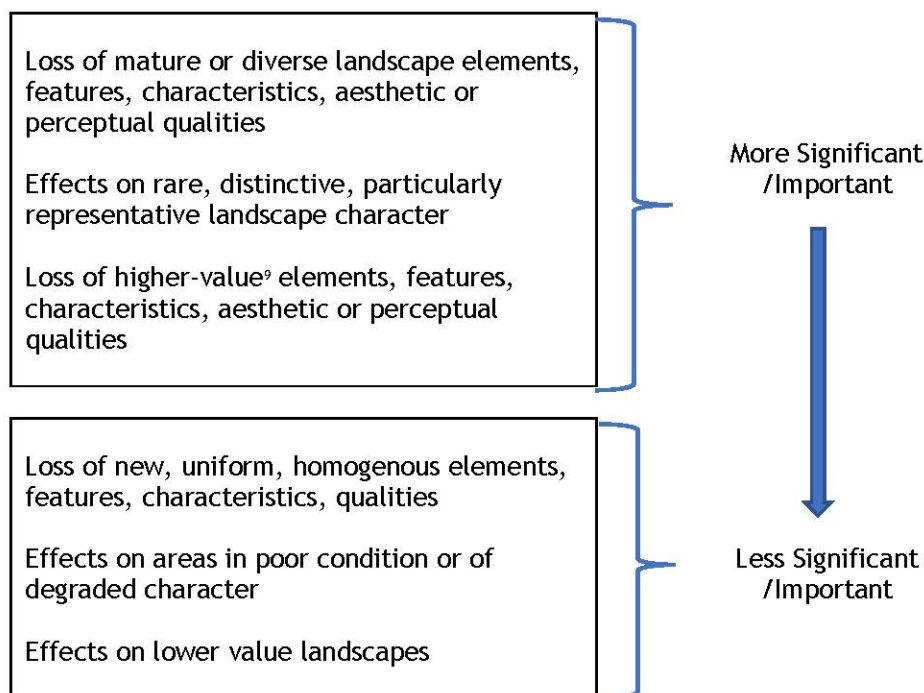


Figure 1 - Scale of Significance/Importance
(Derived from GLVIA3 Figure 5.10 Page 92 Scale of Significance)

⁸ Significance of effect is the term used when undertaking an LVIA as part of an EIA.

⁹ The Figure on Page 92 says 'loss of lower-value elements', but this is an error in the text identified in GLVIA3 Statement of Clarification 2/13 8-07-13. It should read 'Loss of higher-value elements'.

17. The reasons for reaching the final judgments on landscape effects are always made clear in the text. However, the following diagram in Figure 2 can assist in understanding the way in which the judgments regarding landscape sensitivity and magnitude of change are combined to reach a final judgment on the significance/importance of the landscape effects.

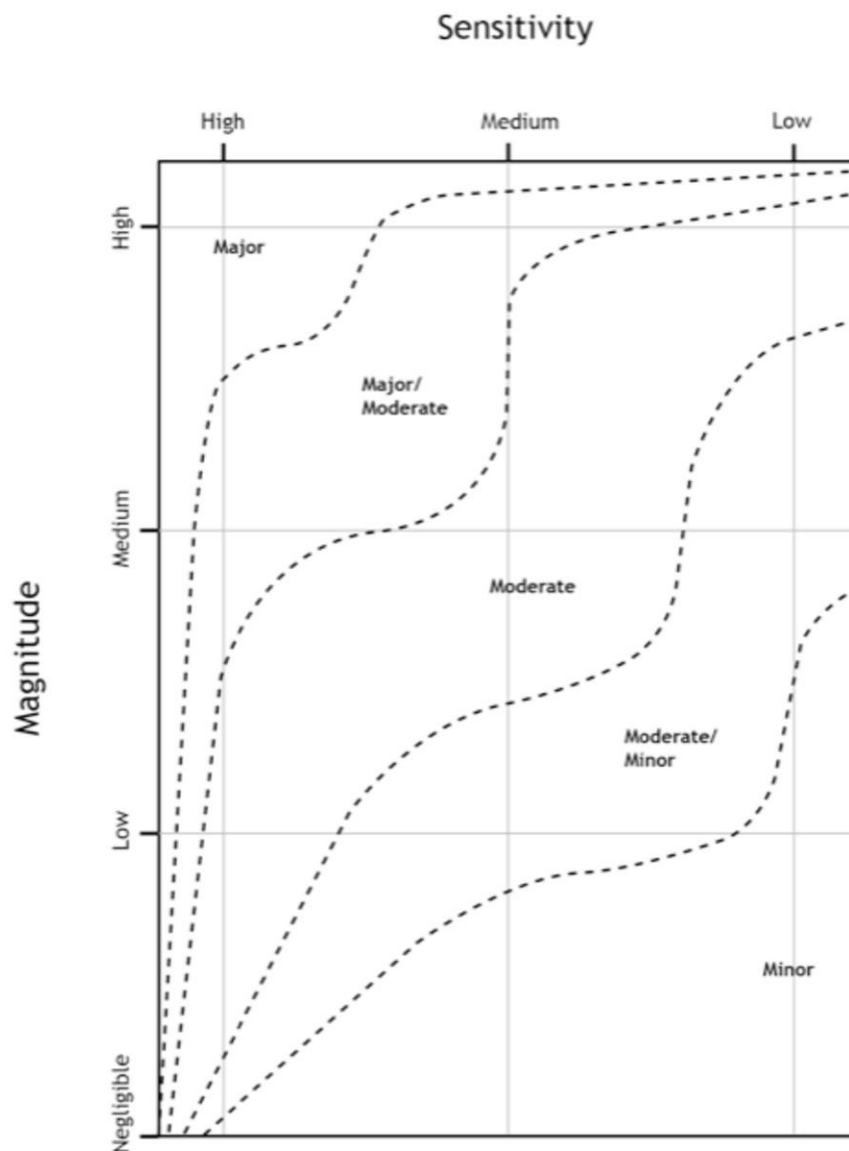


Figure 2 (MBELC) - Significance / Importance of Effects

Visual Effects

18. Judgments about visual effects are derived from a consideration of the sensitivity of visual receptors to the proposed development, and the magnitude of change to their existing visual amenity. Changes in landscape character may also be a result of visual changes but these are considered under landscape effects.
19. GLVIA3 provides guidance on the relative sensitivity of different visual receptors (GLVIA3 paragraphs 6.31-6.37). In summary, the most sensitive receptors are:
 - Residents at home;
 - People engaged in outdoor activities whose attention is focused on the landscape and view; and
 - Visitors to locations where views are an important part of the experience.
20. The least sensitive receptors are:
 - People engaged in outdoor sports or activities which do not depend on an appreciation of views; and
 - People at their place of work (although this can vary).
21. The sensitivity of road users varies. People on busy or main routes are considered to have medium or low sensitivity, whilst users of rural roads or scenic routes will have medium or even high sensitivity.
22. Judgments are recorded on a verbal scale of high, medium and low. Visual receptors who would be affected by the development are identified in groups and their sensitivity assessed combining issues relating to their susceptibility and the value attached to the views affected.
23. Judgments about the **magnitude of change** for visual effects are recorded on a verbal scale of high, medium, low and negligible based on the principles set out in GLVIA3 paragraphs 6.38-6.41 which includes a consideration of scale, geographical extent and the duration and reversibility of the visual effects.

24. *‘Significance of visual effects is not absolute and can only be defined in relation to each development and its specific location’¹⁰. Judgments about the overall importance of visual effects are recorded on a verbal scale of major, moderate and minor, based on the principles set out in GLVIA3 paragraphs 6.42-6.45. The underlying principles are summarised in Paragraph 6.44:*

‘There are no hard and fast rules about what makes a significant effect, and there cannot be a standard approach since circumstances varied the location and context and with the type of proposal. In making a judgement about significance of visual effects the following points should be noted:

- Effects on people who are particularly sensitive to changes in views and visual amenity are more likely to be significant.*
- Effects on people at recognised and important viewpoints or from recognised scenic routes are more likely to be significant.*
- Large-scale changes which introduce new, non-characteristic or discordant or intrusive elements into the view are more likely to be significant than small changes or changes involving features already present within the view.’¹¹*

25. The reasons for reaching the final judgments on visual effects are always made clear in the text. However, Figure 2 above can assist in understanding the way in which the judgments regarding visual receptor sensitivity and magnitude of change are combined to reach a final judgment on the significance / importance of the visual effects.

Final Note

26. Intermediate judgements such as medium/high or minor/moderate are also used in the assessments where the judgment falls between two levels. Where such a judgement is reached there is no intended difference to be derived from which judgment comes first - so medium/high is the same as high/medium and moderate/major the same as major /moderate.

Last Updated September 2018

¹⁰ Guidelines for Landscape and Visual Impact Assessment, 2013 Page 115 Paragraph 6.42

¹¹ Guidelines for Landscape and Visual Impact Assessment, 2013 Page 116 Paragraph 6.44

GLOSSARY AND ABBREVIATIONS

AONB	Area of Outstanding Natural Beauty
Cumulative effects	Cumulative effects are additional or in combination effects that result from changes caused by a development in conjunction with other past, present, or reasonably foreseeable actions.
EIA	Environmental Impact Assessment
ES	Environmental Statement
GLVIA	Guidelines for Landscape and Visual Impact Assessment, Third Edition, published jointly by the Landscape Institute and Institute of Environmental Management and Assessment, 2013.
HLC*	Historic characterisation is the identification and interpretation of the historic dimension of the present-day landscape or townscape within a given area. HLC is the term used in England and Wales, HLA is the term used in Scotland.
Indirect effects*	Effects that result indirectly from the proposed project as a consequence of the direct effects, often occurring away from the site, or as a result of a sequence of interrelationships or a complex pathway. They may be separated by distance or in time from the source of the effects.
Key Landscape* Characteristics	Those combinations of elements which are particularly important to the current character of the landscape and help to give an area its particularly distinctive sense of place.
Landscape character*	A distinct and recognisable pattern of elements that occurs consistently in a particular type of landscape and how this is perceived by people. It reflects particular combinations of geology, landform, soils, vegetation, landuse and human settlement. It creates the particular sense of place of different areas of the landscape.
Landscape designations	Areas protected by law or through planning policies for reason of their landscape qualities e.g. National Parks, AONB and Local Landscape Designations.
Landscape effects	Effects on the landscape as a resource in its own right. Change in the elements, characteristics, character, and qualities of the landscape as a result of development.
Landscape elements	A component part of the landscape, such as trees, hedges, buildings and ponds.
Landscape features	Prominent eye-catching elements, e.g. tree clumps, wooded hill tops, and church towers/spires.
Landscape quality (or condition)*	Based on judgements about the physical state of the landscape, and about its intactness, from visual, functional, and ecological perspectives. It also reflects the state of repair of individual features and elements which make up the character in any one place.
Landscape qualities	Term used to describe the aesthetic or perceptual and intangible characteristics of the landscape such as scenic quality, tranquillity, sense of wildness or remoteness. Cultural and artistic references may also be described here.
Landscape resource	The combination of elements that contribute to landscape context, character, and value.
Landscape value*	The relative value that is attached to different landscapes by society. A landscape may be valued by different stakeholders for a wide variety of reasons.
LCA	Landscape Character Area – single unique areas that are the discrete geographical areas of a particular landscape type.
LCT	Landscape Character Type – distinct types of landscape that are relatively homogeneous in character. They are generic in nature may occur in different areas in different parts of the country.
LVIA	Landscape and Visual Impact Assessment.

Magnitude*	A term that combines judgements about the size and scale of the effect. The extent of the area over which it occurs, whether it is reversible or irreversible and whether it is short or long term in duration.
Mitigation	Measures including any process, activity, or design to avoid, reduce, remedy or compensate for adverse environmental impact or effects of a development.
NCA	National Character Areas. Landscape character areas as defined for the whole of England.
Photomontage*	A visualisation which superimposes an image of a proposed development upon a photograph or series of photographs.
Receptor	Physical or perceptual landscape resource, special interest, viewer group or individuals that may be affected by a proposal.
Residual effects	Potential environmental effects, remaining after mitigation.
Residential Visual Amenity*	A collective term describing the views and general amenity of a residential property, relating to the garden area and main drive, views to and from the house and the relationship of the outdoor garden space to the house.
Scale Indicators*	Landscape elements and features of a known or recognisable scale such as houses, trees and vehicles that may be compared to other objects where the scale of height is less familiar, to indicate their true scale.
Sense of Place (genius loci)*	The essential character and spirit of an area: genius loci literally means 'spirit of the place'.
Sensitivity*	A term applied to specific receptors, combining judgements of the susceptibility of the receptor to the specific type of change or development proposed and the value related to that receptor.
Temporary or permanent effects	Effects may be considered as temporary (limited duration and reversible) or permanent (irreversible). Some development may also be reversible.
Tranquillity*	A state of calm and quietude associated with peace, considered to be a significant asset of landscape.
Type or Nature of Effect	Whether an effect is direct or indirect, temporary or permanent, positive (beneficial), neutral or negative (adverse) or cumulative.
Visual amenity*	The overall pleasantness of the views people enjoy of their surroundings which provide an attractive visual setting or backdrop for the enjoyment of activities of the people living, working and recreating, visiting or travelling through an area.
Visual effect*	Effects on specific views and on the general visual amenity experienced by people.
Visualisation*	A computer stimulation, photomontage, or other technique illustrating the predicted appearance of a development.
ZTV –*	Zone of Theoretical Visibility. A map, usually digitally produced, showing areas of land within which a development is theoretically visible.

Note: Descriptions marked with an asterisk are identical to those provided in the Third Edition Guidelines for Landscape and Visual Impact Assessment glossary or text.



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