

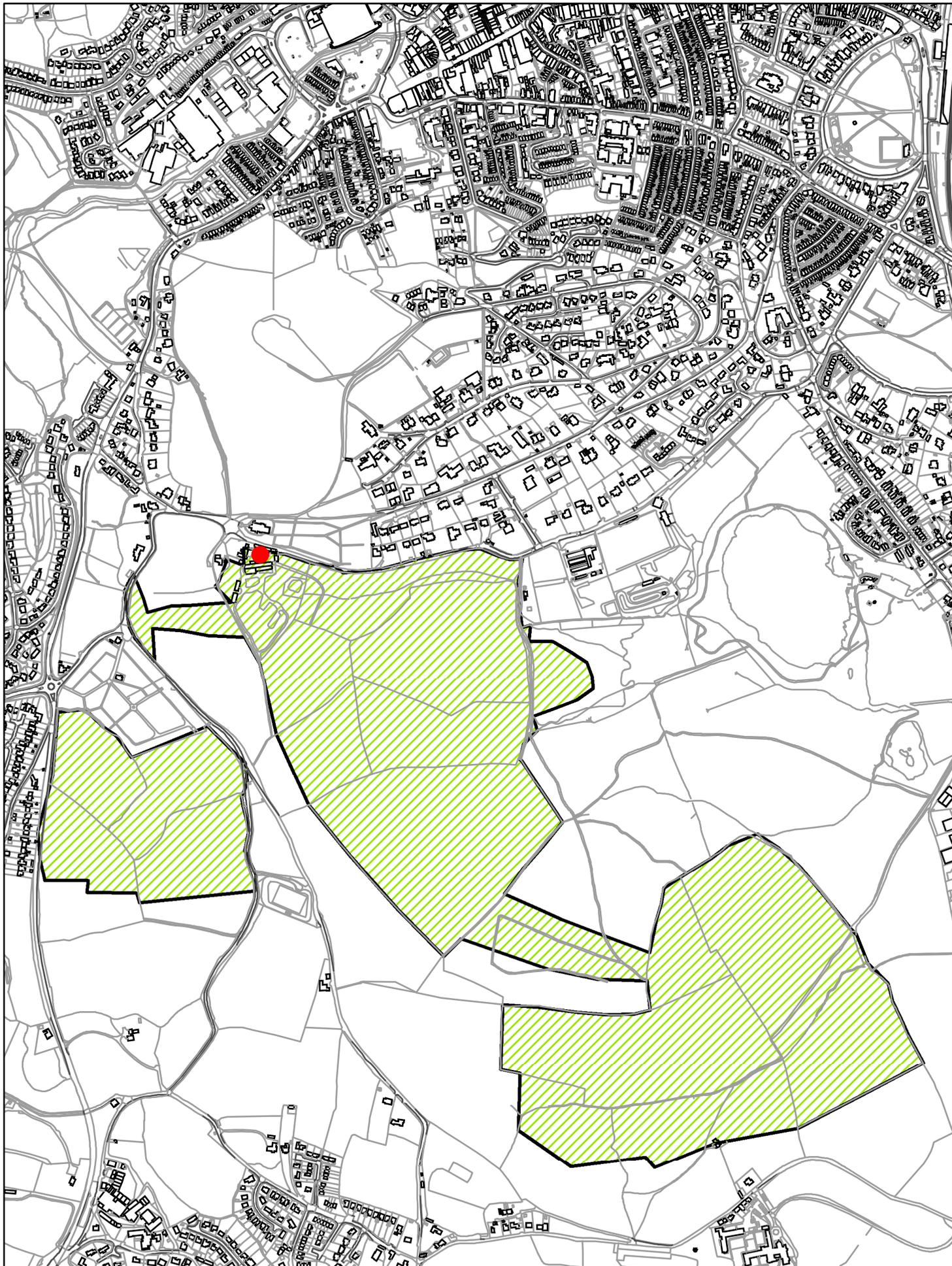
PLANNING COMMITTEE REPORT

29 October 2019

CHAIRMAN: Cllr Mike Haines



<p>APPLICATION FOR CONSIDERATION:</p>	<p>NEWTON ABBOT - 18/01276/MAJ - Land At Wolborough Barton, Coach Road - Mixed use (hybrid application) proposal involving: (1) Outline Mixed use development comprising circa 1,210 dwellings (C3), a primary school (D1), up to 12,650 sq. m of employment floorspace (B1), care homes (C2) providing up to 5,500 sq. m of floorspace, up to 1,250 sq.m of community facilities (D1), a local centre (A1/A3/A4/A5) providing up to 1,250 sq. m of floorspace, open space (including play areas, allotments, MUGA), and associated infrastructure. (Means of Access to be determined only)</p> <p>(2) Full</p> <p>Change of use of existing agricultural buildings to hotel (C1), restaurant (A3) and bar/drinking establishment (A4) uses, involving erection of new build structures, construction of an access road and parking, plus other associated conversion and minor works.</p>	
<p>APPLICANT:</p>	<p>Messrs & Ms Rew</p>	
<p>CASE OFFICER</p>	<p>Ian Perry</p>	
<p>WARD MEMBERS:</p>	<p>Councillor Bradford Councillor Mullone</p>	<p>College (02/05/2019)</p>
<p>VIEW PLANNING FILE:</p>	<p>https://www.teignbridge.gov.uk/planning/forms/planning-application-details/?Type=Application&Refval=18/01276/MAJ&MN</p>	



1. REASON FOR REPORT

The subject Application was refused following Committee consideration in February 2019.

This decision has now been Appealed and the Inquiry date set for January 2020.

In light of the positions reached and agreements made during the course of the first Inquiry, officers wish to update and explain the position reached to Members. Being mindful of the risks/consequences of introducing new matters into consideration at this stage we are requesting Members' input into the way forward now that a second Inquiry date has been set.

2. RECOMMENDATION

Planning Committee to resolve that:

1. Reasons for refusal relating to the Link Road (Reason 2) and Wolborough Fen (Reason 4) should not be defended at the Inquiry, provided that agree Conditions / obligations remain proposed.
2. Evidence relating to the detailed acceptability of the S106 Obligations should be presented to the Inspector (Reason 3).
3. Delegated Authority be granted to the Business Manager to determine, in consultation with appointed Legal Advisers and our expert ecological specialists, the best course of action in relation to the compliance of the proposals with the Conservation of Habitats and Species Regulations 2017 (Reason 1), following final receipt of up to date Bat Survey information.

3. DESCRIPTION

Introduction & Background

1. The subject site forms part of the NA3 allocation within the Teignbridge Local Plan which is an allocation of land to the south of Newton Abbot for the development of approximately 120 hectares of land for a mix of uses, including employment, housing, community facilities, a road vehicular connection between the A380 South Devon Highway and the A381 Totnes Road, and large areas of green infrastructure. This area of land is referred to in the Local Plan as NA3 Wolborough. It stretches from the A381 Totnes Road, eastwards to the Kingskerswell Road. The allocation is bounded in part by Coach Road to the north, and Priory Road to the south.
2. The subject application was submitted as a hybrid, which sought outline planning permission (with all matters except for means of access to the site reserved for future consideration) in respect of most of the site; as well as full planning permission for the redevelopment of the existing farmyard.
3. The details of layout, external appearance, scale and landscaping of most of the site would be determined at a later date via submission of reserved matters applications.
4. As noted above, the subject application was refused for four reasons. These were:

South Hams SAC (Reason 1)

There is insufficient information available at present to conclude beyond reasonable scientific doubt that the proposals will not have an adverse effect on the integrity of the South Hams Special Area of Conservation as required under the 2017 Conservation of Habitats and Species Regulations. The proposals are therefore contrary to Policies NA3 (Wolborough), EN9 (Important Habitats and Features) and EN10 (European Wildlife Sites) of the Teignbridge Local Plan 2013-2033, the NPPF and the NPPG.

Link Road Delivery (Reason 2)

The proposals, as submitted, do not provide for delivery of a road that connects the site from east to west at a point in time that allows for a sustainable community to be established. The provision of this link at an early stage in the development of the allocation is considered to be vital for mitigating the impact of traffic across the wider local area, managing air quality, place-making and access to public transport, community facilities and services. The proposals are therefore contrary to Policies NA3 (Wolborough) and S5 (Infrastructure) of the Teignbridge Local Plan 2013-2033, the NPPF and the NPPG.

Lack of a satisfactory S106 Agreement (Reason 3)

No adequate mechanism for securing necessary Section 106 Obligations has been made, contrary to Policies NA3 (Wolborough) and S5 (Infrastructure) of the Teignbridge Local Plan 2013-2033 the NPPF and the NPPG.

Wolborough Fen SSSI (Reason 4)

Insufficient detail relating to the monitoring of impacts on the Wolborough Fen SSSI has been provided to ensure that unacceptable harm would not occur the proposals are therefore contrary to Policies NA3 (Wolborough) and EN9 (Important habitats and Features) of the Teignbridge Local Plan 2013-2033, the NPPF and the NPPG.

5. The Reasons for Refusal were utilised as the basis for the LPA's case at the Public Inquiry into the identical proposals that was held in March and June of this year (the First Inquiry). A claim for full costs was submitted by the Appellant team to the Inquiry against the LPA. The Inspector's Report for that Inquiry is not expected to be complete until late November 2019 with, as a Recovered Appeal, the decision to be subsequently issued by the Secretary of State in due course.
6. Earlier this year it was agreed that a Development Plan Document to guide the future development of the whole allocation would be prepared. The timetable for this was agreed at Executive recently and at present it carries no weight in the decision making process. The prevailing Development Plan for the area therefore remains the Teignbridge Local Plan 2013-2033 with which the proposal was and remains in general / overall conformity.
7. As noted in Section 1 above, an appeal against the decision on the second application has now been submitted and, notwithstanding requests from the LPA and the Appellant, the Planning Inspectorate (PINS) has determined that the Appeal should not be held in abeyance. PINS has suggested that the second Inquiry should sit for 6 days starting from 28 January 2020.

8. The Local Authority needs to submit its Statement of Case by 11 November 2019 and hence the approach to the Appeal needs to be determined as a matter of some urgency.

The LPA's position at the Close of the Inquiry

9. As the Inquiry progressed and discussions / negotiations with third parties continued, the Local Planning Authority's and our partners' position in relation to the reasons for refusal evolved.
10. Drawing on discussions at the Inquiry and Closing Submissions, the position in relation to each reason for refusal is set out below:

South Hams SAC (Reason 1)

11. In order to support the development of the DPD, extensive Greater Horseshoe Bat survey work has been undertaken this summer. This work is nearing its conclusion and whilst we cannot be certain of its outcomes until this point is reached, early feedback is suggesting that the level and nature of usage of the site by Greater Horseshoe bats can be accommodated within the mitigation proposed by the applicant / appellant.
12. As the Planning Inspector / Secretary of State becomes the "Competent Authority" (i.e. the person responsible for ensuring proposals satisfy the requirements of the Conservation of Habitats and Species Regulations 2017) for Appeals, it is our intention to make this information available to all parties at the earliest opportunity in the interests of robust decision making.
13. It is though our view that with this completed survey data there may be sufficient information available to conclude that subject to securing appropriate mitigation through planning conditions, the proposals will not have an adverse effect on the integrity of the South Hams Special Area of Conservation.
14. We cannot however be definitive about this until we have the relevant information. In light of the timing constraints in this regard, the recommendation requests delegated authority to agree the approach to this issue with our legal and ecological advisers in advance of submitting our Statement of Case by 11 November 2019.

Link Road Delivery

15. As The Local Highway Authority, Devon County Council appeared alongside Teignbridge DC as out witness at the first Inquiry.
16. At the end of the first Inquiry, DCC issued a position statement setting out their stance in relation to the timing of the delivery of the link road and bus contributions.
17. This confirmed that:

"It is only possible to require the Appellant to provide the link road up to the eastern boundary of the site. DCC has made the assumption that delivery of the section of the link road outside the Appellant's control would be concurrent with the section delivered

by the Appellant, resulting in completion of the through route from A380 to A381 at that same point in time.

DCC considers that the S106 should secure the commencement of the bus contribution at 500 dwellings in addition to the condition requiring the spine road also at 500 dwellings. DCC is content for a S106 agreement to state that in the event that the bus service becomes commercially viable, no further payments towards the bus service will be required.

Overall, subject to the following points, DCC are content that there is no highways reason for refusal of the proposals.

- There is no need for a second bus contribution option. This should just be for commencement of the contribution at 500 dwellings and no further payments if the bus service becomes commercially viable within the three year period.
- The pedestrian and cycle contribution should be paid in three instalments, at 50% of each of the three phases.
- The pedestrian and cycle contribution should also secure the land required for route upgrades within the applicant's ownership.

Outline Conditions:

Drawing 4035 003 Rev B shows Ogwell roundabout improvements but fully not how these improvements tie into the existing network or other proposed improvements. The plan which precedes this was 4091-001 A which showed Ogwell Roundabout and the proposed Coach Road roundabout with proposed improvements on Old Totnes Road in between. This needs to be included on the drawing being conditioned."

18. The Local Planning Authority was concerned to ensure that the connection through the site, so far as this was in the appellant's control, was delivered at the right stage. DCC are now clear, following information and evidence presented and discussed at the first Inquiry, that the appropriate time for the link would be at occupation / completion of 500 units of the development and not 300 as had previously been stated – balancing highway capacity, air quality concerns and the connectivity / place making benefits of delivering connected places.
19. At the close of the Inquiry the LPA considered that subject to Conditions / S106 obligations the proposals would be acceptable and this reason for refusal was overcome.
20. Provided that these conditions / obligations continue to be proposed, Officers do not consider this reason for refusal should be sustained. It is Officers' view that to do so would significantly increase the risk of costs being awarded against the LPA.

Lack of a S106 Agreement

21. Two Unilateral S106 Obligations were submitted to the first Inquiry. These provided for:
 - Policy compliant Affordable Housing Delivery (20% overall, 70% affordable rent: 30% Intermediate with accessible / adaptable provisions);
 - Policy compliant Self / Custom Build plots;

- Open space provision and management – Allotments, Children’s and Young people’s space, Formal and Informal green spaces, a MUGA and Natural and Open spaces plus a playing pitch contribution;
- Employment Land marketing provisions;
- Care Home Land marketing provisions;
- Neighbourhood Hub and Community Building marketing / land provisions;
- NHS contribution;
- Primary School land provision;
- Travel Plan contributions;
- Bus service contributions; and,
- Off-site pedestrian and cycle contributions.

22. These provisions were in line with the February 2019 committee report, as updated through further representations / Inquiry evidence – including from 3rd parties. The proposed planning conditions for the site operate in conjunction with many of these provisions. Comments on the conditions and obligations were submitted to the Inquiry by the LPA.

23. On the whole these related to minor drafting matters that can be overcome through negotiation to enable an agreed position in relation to these matters to be reached for the second Inquiry.

24. Whilst this reason remains, given the extent of the remaining concerns as expressed through our submitted statement, these matters - along with any matters that may have arisen as a result of changes in the Community Infrastructure Levy Regulations introduced recently - should be capable of being addressed in advance of the Inquiry itself.

Wolborough Fen SSSI

25. Following the decision on the subject application, agreement was reached with Natural England and the applicant team on wording of an appropriate planning condition to ensure impacts on the Wolborough Fen are avoided.

26. This states:

“No development shall take place within the Wolborough Fen SSSI hydrological catchment unless and until a Scheme (based upon an evidence base agreed with the LPA in consultation with Natural England) has been submitted to and approved by the LPA in consultation with Natural England which sets out detailed measures to ensure that the development does not have an adverse impact on the integrity of the Wolborough Fen SSSI during the construction or operation of the development. The development shall thereafter proceed in accordance with the approved details.”

27. Subject to the application of this condition, this reason for refusal is no longer relevant.

28. Provided that this condition continues to be proposed, Officers do not consider this reason for refusal should be sustained. It is Officers’ view that to do so would significantly increase the risk of costs being awarded against the LPA.

Other considerations

29. If the Local Planning Authority introduced any additional reason for refusal at this stage it is highly likely that this would be considered unreasonable behaviour by the Planning Inspectorate and there would therefore be a high likelihood of costs being awarded against the LPA.
30. The LPA will need to prepare a Statement of Common Ground with the Appellant as well as a Statement of Case. We would expect the Statement of common Ground to address planning conditions and S106 Obligations.
31. The documentation submitted to the first Inquiry will provide the starting point for this discussion and Officers will, with Legal advice, reflect recent decisions of the Council in this.

Summary and conclusions

32. Having gone through the Inquiry process in relation to the first appeal and taking into account the evidence presented by all parties when considered against the Local Plan and the National Planning Policy Framework, Officers consider that neither the link road nor the Fen reasons for refusal stand.
33. Furthermore, the concerns regarding the absence of a S106 Obligation have largely been overcome and the detailed differences between our position and the applicant's stance can be explained in our Statement of Case.
34. In relation to the potential of the proposal to impact on the integrity of the South Hams SAC, in the absence of the complete information from our recent survey work, we cannot be definitive about this reason for refusal however as we are now in the position of defending an appeal rather than determining the application ourselves, it is our recommendation that the appropriate route in relation to the technical / legal compliance or otherwise with the Habitat Regulations should be discussed with our advisors and progressed accordingly. Our Case needs to be confirmed by 11 November 2019 and should it be the case that our advisors suggest we should not defend the South Hams SAC reason for Refusal, we will update Members on this at the earliest opportunity.

Background Documents:

1. Application Committee Report February 2019
2. Council Report re DPD preparation
3. Executive Report re DPD timetable
4. Appeal documentation

Business Manager – Strategic Place