



West Devon
Borough
Council

Review of the process followed in connection with Planning Application 3614/18/OPA - Land at SX482725 Plymouth Road Tavistock



October 2020

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Review of 3614/18/OPA - Land at SX 482 725, Plymouth Road, Tavistock

1.0 Introduction

- 1.1 On 18 June 2020 outline planning permission was granted by the Council's Head of Planning for the development of land at Plymouth Road Tavistock for 250 dwellings and 2.0 hectares of B1 commercial use (Planning Ref: 3614/18/OPA). The decision to grant outline planning permission was taken under the Head of Planning's delegated powers.
- 1.2 The outline planning permission was subject to a condition requiring the subsequent completion of an agreement under section 106 of the Town and Country Planning Act 1990, a draft of which was attached to the outline planning permission. Arising from that Mr Graham Parker, a former Borough Councillor and a current Town Councillor, with the support of a number of Ward Members for Tavistock, raised further concerns about the draft Section 106 Agreement and whether the agreement of section 106 agreements with developers in general was within the Head of Planning's delegated powers or a matter for the Development Management and Licensing Committee.
- 1.3 On 16 July 2020 the Council's Chief Executive, Andy Bates, agreed with the Council Leader, Cllr Neil Jory that a review would be carried out by David Fairbairn, one of the Council's Senior Legal Specialists. This report sets out the findings and conclusions of the Review.
- 1.4 In terms of the process followed, reliance has been placed upon e-mails, committee reports and minutes and other forms of documentary record as being a sound basis for providing contemporary records of past events. I have also spoken with Mr Parker, Cllr Ewings and Bridgewater, the Head of Planning and the Planning Officer. In addition, I have obtained the professional views of officers in the Joint Local Plan, Assets and Legal Teams as and when required as well as seeking external advice on layouts.
- 1.5 Copies of the initial draft report were provided to those materially referred to in that draft to comment on the accuracy of the facts and for views on confidentiality. I am grateful to all those who supplied comments and appreciate the time that they have taken. Mr Parker in particular commented fully on the draft report and the subsequent iterations, which has been helpful to my understanding of the background.

2.0 Terms of Reference

- 2.1 The agreed terms of reference are as follows:
 - 2.1.1 What does the Constitution say about the delegation of planning decisions to officers?
 - 2.1.2 Did we follow that scheme with respect to the grant of outline planning permission at Plymouth Road Tavistock?

- 2.1.3 How do we engage with town and parish councils about planning obligations?
- 2.1.4 Did we do that in this case?
- 2.1.5 Is there any validity in the assertions that under the scheme of delegation planning obligations are matters for the DM&L Committee?
- 2.2 To be considered within paragraph 2.1.5, is whether there is scope for the draft Section 106 Agreement to be considered by the Development Management and Licensing Committee.
- 2.3 The terms of reference are expressly concerned with the procedural aspects of the Application and not the merits of the Application or the decision itself. Any analysis of the Planning Officer's report, Joint Local Plan Policies and representations as they related to the Application is to aid understanding of the procedures followed.

3.0 Context and discussion

- 3.1 **The Site.** "The application site is on the edge of Tavistock Town adjacent to the A386. It comprises the majority of the TTV17 allocation from the adopted Joint Local Plan and is currently pasture. It slopes steeply up from the road to the west and contains a number of hedgerows and mature and veteran trees, the majority of which are protected by a TPO. The site is within a critical drainage area and in close proximity to (but not within) the Tamar Valley AONB. The upper areas of the site are also visible from and to Dartmoor National park (DNP). There is a public footpath crossing the site from west-east. The site lies outside the World Heritage Site and is not immediately adjacent to any listed buildings."¹
- 3.2 The Site is within the Tavistock South West and Dartmoor Wards of the Council.
- 3.3 **The Joint Local Plan.** The Plymouth and South West Devon Local Plan 2014-2034 was adopted in March 2019 and is the development plan for the West Devon area for the purposes of section 38 of the Planning and Compulsory Purchase Act 2004.
- 3.4 The strategy of the Local Plan is to maintain the integrity of the rural and urban landscapes by prioritising growth through a hierarchy of settlements. Under that hierarchy the Main Towns, which for West Devon, means Tavistock and Okehampton, are prioritised for growth and where across the whole of the Thriving Towns and Villages Policy area as a whole, 80% of new housing is to be allocated².
- 3.5 The Joint Local Plan allocates the whole of the land at Plymouth Road for "in the order of 300 new homes and 18,600 m² employment (Use Class B1)³. The explanatory text says that the land to the north of the lane that bisects the allocation is suitable principally for new employment uses and that the land to the south being most suitable for housing⁴. Fig. 1 below illustrates geographically Policy TTV17. Appendix B shows the Site overlaid onto the TTV17 allocation.

¹Planning Officer's Report – Appendix A

² Policies SO6 and TTV1

³ Policy TTV17

⁴ Para 5.91

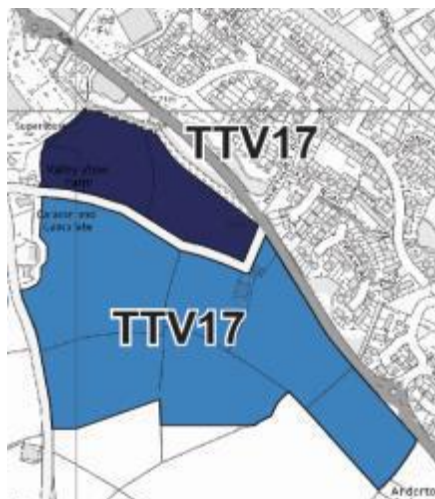


Fig.1: Extract from the Joint Local Plan Policies Map

- 3.6 Use Class B1 refers to uses which can be carried out in a residential area without detriment to its amenity due to noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. This class is formed of three parts:
- 3.6.1 B1(a) Offices - Other than a use within Class A2 (Financial and professional services);
- 3.6.2 B1(b) Research and development of products or processes; and
- 3.6.3 B1(c) Industrial processes.⁵
- 3.7 **The Application.** The application is described as “Outline application with some matters reserved for development of 250 dwellings and 2.0 hectares of B1 commercial use” and was submitted by Linden Homes South West Limited (“Linden Homes”) in December 2018. The only reserved matter for consideration was that of access. Appearance, landscape, layout and scale were reserved for future approval.
- 3.8 The Application was accompanied initially by an illustrative masterplan; an access and circulation plan; a design and access statement and engineering drawings. The Council requested additional information concerning land contamination before validating and registering the Application.
- 3.9 An application for outline planning permission allows for a decision on the general principles of how a site can be developed and to establish whether the scale and nature of a proposed development would be acceptable to the local planning authority, before a fully detailed proposal is put forward.⁶
- 3.10 Outline planning permission is granted subject to conditions requiring the subsequent approval of one or more ‘reserved matters’.⁷ Accordingly, an outline planning application requires fewer details to be submitted to the local planning

⁵ Town and Country Planning (Use Classes) Order 1987 Schedule 2 Class B

⁶ https://www.planningportal.co.uk/info/200126/applications/60/consent_types/4

⁷ Planning Practice Guidance Paragraph: 005 Reference ID: 14-005-20140306

authority than a full planning application. Any outstanding details will be agreed later in a subsequent reserved matters application. However, before considering an outline planning application, a local planning authority is not obliged to accept the outline application as it stands, and may instead require the submission of further details before determining it.

- 3.11 Where details have been submitted as part of an outline application for approval, they must be treated by the local planning authority as forming part of the development for which the application is being made. Conditions cannot be used to reserve these details for subsequent approval. The exception is where the applicant has made it clear that the details have been submitted for illustration purposes only⁸. Although such illustrative material is not usually incorporated into the decision, (although some of it is here), Inspectors and the courts have regularly accepted that it can be a material consideration especially where it is submitted to demonstrate that something is possible (as in the current case, that it is possible to build in the region of 18,600m² of floorspace on the land identified).
- 3.12 An outline of the material facts leading up to and following the submission of the Application and is set out in Appendix C.
- 3.13 **The Scheme of Delegation.** Subject to the provisions of the Local Government Act 1972 and any Act passed after the 1972 Act, a local authority may arrange for the discharge of any of its functions by a committee, a sub-committee or an officer of the authority; or by any other local authority⁹. Accordingly, the work of an authority may be discharged through a variety of internal arrangements (through committees, sub-committees and officers) and by a variety of external arrangements (through other authorities). The courts have recognised that it is important that there is public participation in planning decisions, but that there is also a strong public interest in the efficient and timely administration of planning control. Accordingly, Parliament, by section 101 of the 1972 Act, has left to local planning authorities how they may discharge their decision-making role in planning matters¹⁰.
- 3.14 The Court of Appeal has held that it is for local planning authorities to determine the policy or basis of their schemes of delegation, not for courts to gloss them by imposing fetters on them according to the courts' perception of how the decision-making should be allocated between the council committee and the officer, e.g. according to whether there is an issue as to policy or fact, simplicity/complexity, seriousness or sensitivity or general public importance.¹¹
- 3.15 Every local authority is required to prepare and keep up-to-date a constitution containing:
- 3.15.1 A copy of its standing orders.
- 3.15.2 A copy of its code of conduct.

⁸ Planning Practice Guidance Paragraph: 005 Reference ID: 21a-005-20190723

⁹ see Section 101 of the Local Government Act 1972

¹⁰ see R. (on the application of Springhall) v Richmond upon Thames London Borough Council [2006] EWCA Civ 19

¹¹ See previous reference

- 3.15.3 Any information directed by the Secretary of State.
- 3.15.4 Any other information considered appropriate by the local authority.
- 3.15.5 In the case of a local authority operating the committee system the constitution must also contain a statement as to whether it has an overview and scrutiny committee.¹²
- 3.16 The Secretary of State has directed that a constitution should contain, amongst other things, a description of the roles of committees, their functions and the functions exercisable by officers of the local authority.¹³
- 3.17 The delegation to officers and to committees is to be found in Part 3(a) and 3(b) of the Council's Constitution. In respect of the development management function, the Director of Customer Service and Delivery (Deputy Chief Executive) has responsibility for and management of the service area and function¹⁴. Decisions in respect of planning applications, which are defined as meaning full, outline and reserved matters, and section 106 agreements are exercised concurrently between the Development and Licensing Committee and the Head of Planning – Lead¹⁵.
- 3.18 The delegation scheme operates so that all planning applications (subject to limited exceptions in respect of applications on Council-owned land, or by officers/members) are capable of being determined by the Head of Planning. With those few exceptions there is no distinction made in the scheme between how applications for major development¹⁶ and any other development are to be determined. This is the case under the current scheme and was the case the previous scheme adopted in 2016.
- 3.19 All Members can refer a planning application to the Development Management and Licensing Committee provided that they notify the Head of Planning within the period for public consultation and have material planning reasons for wanting the application referred. Non-Ward Members however can only refer an application after consultation with Ward Member(s). In addition, Ward Members may "request" the referral of a planning application to the Development Management and Licensing Committee where:
- 3.19.1 the Head of Planning has made a recommendation;

¹² Local Government Act 2000 Section 9P

¹³ Local Government Act 2000 (Constitutions) (England) Direction 2000

¹⁴ See Constitution Part 3(a)

¹⁵ See Constitution Part 3(b).

¹⁶ "major development" means development involving any one or more of the following—

(a) the winning and working of minerals or the use of land for mineral-working deposits;

(b) waste development;

(c) the provision of dwellinghouses where—

(i) the number of dwellinghouses to be provided is 10 or more; or

(ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);

(d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or

(e) development carried out on a site having an area of 1 hectare or more – See Town and Country Planning (Development Management Procedure) (England) Order 2015 Art. 2.

- 3.19.2 written representations have been made on the planning application;
 - 3.19.3 the written representations are considered to raise “material and relevant planning issues”;
 - 3.19.4 the recommendation is contrary to any such written representations;
 - 3.19.5 notice has been given to the Ward Members; and
 - 3.19.6 a Ward Member gives notice to the Head of Planning within 3 working days requesting that the application be referred, such notice to be “supported by material planning reasons”.
- 3.20 The Head of Planning retains a discretion to refer planning applications to the Development Management and Licensing Committee where he is of the opinion that such applications:
- “1. are of sub-regional or district-wide significance
 - 2. ought to be determined by the DM Committee”
- 3.21 With regard to section 106 agreements, although the function is concurrent with the Development Management and Licensing Committee, the Head of Planning may authorise the execution of a section 106 agreement where required in advance of the grant of planning permission. In addition, the Head of Planning may vary the terms of a section 106 agreement (or take such other action as necessary) to secure the objectives of the Committee which agreed the 106 agreement in consultation with the Ward Member(s). A detailed commentary of the Head of Planning’s delegated powers is set out at Appendix D.
- 3.22 It should be noted too that the Strategic Director of Place and Enterprise is described as having “overarching responsibility and management for the following services and functions:...Bio Diversity/S106/Community”. It is not entirely clear what this means in practice. Given the way in which the authority is set out, the inference is that it relates to the way in which contributions are to be spent rather than negotiating and agreeing the terms of section 106 agreements (**see Recommendation 5.10**).
- 3.23 Irrespective of whether the Application was to be determined by the Development Management and Licensing Committee or by the Head of Planning, in determining the Application, the decision-maker had to:
- 3.23.1 have regard to the statutory development plan¹⁷;
 - 3.23.2 have regard to material considerations¹⁸;
 - 3.23.3 determine the proposal in accordance with the development plan unless material considerations indicate otherwise¹⁹;

¹⁷ Town and Country Planning Act 1990 Section 70(2).

¹⁸ Town and Country Planning Act 1990 Section 70(2)

¹⁹ Planning and Compulsory Purchase Act 2004 Section 38(6)

- 3.23.4 apply national policy unless reasons are given for not doing so²⁰;
- 3.23.5 consider the nature and extent of any conflict with the development plan²¹; and
- 3.23.6 consider whether the development accorded with the development plan, looked at it as a whole. There may be some points in the plan which support the proposal, but there may be some considerations pointing in the opposite direction. It must assess all of these and then decide whether in the light of the whole plan the proposal does or does not accord with it.²²
- 3.24 The decision-maker is also required to take into account representations made in response to: the site notice; the service of a notice on the owner of the land and adjoining owners; or an infrastructure manager; or any notice published in a newspaper or on a website²³.
- 3.25 “To be material a consideration must be rationally related to land use issues and capable of carrying some weight in the decision-making process, although plainly it need not be determinative”²⁴. Accordingly, “a consideration is 'material',..., if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision-maker's scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision-making process.”²⁵
- 3.26 The starting point for the Planning Officer’s report reflects the statutory framework. The Planning Officer wrote: “...the main issue for consideration is to what degree the proposal, including the proposed heads of terms, accord with the Joint Local Plan policy and its requirements.” Furthermore, it would be expected that because the Council had only recently adopted the Joint Local Plan, the Joint Local Plan policies would carry significant weight.
- 3.27 The Planning Officer’s report then set out Policy TTV17 and the supporting text. It is to be noted that the report template requires all relevant policies to be listed at the end of the report. This means that they are not at the forefront of the report writer’s or indeed reader’s mind and appear as an after-thought (see **Recommendation 5.11.2**). The report then set out the results of the consultation and representations received, including 79 letters of objection. It did not expressly refer to the representations from Cllr Parker and Cllr Jess Evans²⁶ nor did these appear on the website (see **Recommendation 5.16**).

²⁰ Horsham District Council v Secretary of State for the Environment and Margram Plc [1993] 1 PLR 81 E. C. Grandsden & Co. Ltd. v. Secretary of State for the Environment [1987] 54 P & CR 86; and Cala Homes (South) Ltd v Secretary of State for Communities & Local Government [2011] EWHC 97 (Admin).

²¹ Tesco Stores Ltd v Dundee City Council [2012] UKSC 13;

²² City of Edinburgh Council v. the Secretary of State for Scotland [1997] UKHL 38; and R(Milne) v Rochdale MBC (No 2) [2000] EWHC 650 (Admin).

²³ Art. 33 of the Town and Country Planning (Development Management Procedure)(England) Order 2015

²⁴ Stringer v Minister of Housing and Local Government [1971] 1 All E.R. 65

²⁵ R. (Kides) v South Cambridgeshire District Council [2002] EWCA Civ 1370

²⁶ See Appendix E.

- 3.28 There were no objections from the statutory consultees including Devon County Council (as Lead Local Flood, Rights of Way, Highways, Waste and Education Authority); the Environment Agency; or Natural England. Insofar as primary education and secondary education matters which are Devon County Council functions, the Planning Officer records the County Council's consultation replies as:

"New Primary School, Tavistock – primary school infrastructure

A development of 250 2+ bed family homes is expected to generate 62.5 primary pupil places. The Local Authority has some forecast capacity across Tavistock, so is requesting for 21 primary pupil places at the new primary build rate of £16,019.00 per pupil. We are therefore requesting £336,399.00. If a percentage of dwellings are single bedroom properties, the contribution will be adjusted accordingly.

No contribution towards land for the new primary school is being sought as the land has been secured through a section 106 Agreement.

Secondary School infrastructure – Tavistock College

There is sufficient capacity forecasted at Tavistock College to mitigate the impact of this development and therefore we are making no request for secondary education infrastructure."

- 3.29 It should be noted that there was a significant difference between the County Council's responses at the Pre-Application stage in 2017 and the Application stage in 2019 that was not in proportion to slight reduction in dwelling numbers. Furthermore, there was a clear challenge by Cllr Parker and Cllr Jess Evans' representations to the number of primary pupil vacancies in Tavistock that the County Council had relied upon as the basis for its response to the Application. The report does not address either aspect.

- 3.30 Tavistock Town Council objected for a number of reasons. The Planning Officer's report set these out as being:

"• The general lack of additional infrastructure planned, especially with regard highways and schools (we are aware there is a lack of additional capacity at Whitchurch Primary School, which is the proposed Primary School for the development);

- The proximity of the high density housing to the main A386, and the lack of green space in that area. The green space appears to be allocated at the top end of the development where houses are more widely spaced and have bigger gardens;

- The lack of obvious waste/recycling facilities;

- There appears to be no footpath planned to allow residents to walk safely to nearby shops;

- There appears to be no provision for electric charging points for cars, which would encourage future residents to buy such vehicles;

- There appears to be no plan on how to re-route the existing public footpath either during the construction phase or on completion of the site;
- The probability that a large number of residents will work in Plymouth, which will require a right-turn onto a very busy, fast road. Could the installation of traffic light be considered?"

3.31 Under the heading "Principle of Development/Sustainability", having confirmed that the site was allocated for development under Policy TTV17 the Planning Officer said:

"The proposal site is for around two thirds of the overall site allocation, with a remaining parcel of land to north.

The allocation policy makes provision across the wider site of up to 300 new homes and for 18,600sqm of employment floorspace. This application proposed the delivery of 250 homes and in the region of 18,600sqm of employment floorspace. Notwithstanding detail that will need to be considered as part of any reserved matters application, the outline proposal is considered to broadly meet the specific requirements of policy TTV17. It also makes a proportionate contribution to meeting the relevant requirements of SP5 – Spatial Priorities for Tavistock, SPT3 – Provision for new homes, and SPT4 – provision for employment floorspace."

3.32 It is to be noted that the last part of that paragraph reflects the consultation response from the Joint Local Plan Policy Team Specialist.

3.33 As for the deliverability of the employment land, the Planning Officer's report dealt with it in this way:

"This application proposes 2ha and 18,600 sqm of B1 floorspace. One of the 2 proposed access points is shown to service the indicative employment area. It is considered this location and access is acceptable. If at reserved matters stage the employment area is proposed in this southerly area it is important to note that the LPA expects a high quality of design and place making in this employment area, over and above the norm, due to its prominent location and its potential as the gateway edge to Tavistock. However this would be addressed further at reserved matters stage.

At present the future delivery of the employment space is under discussion. WDBC may look to deliver this space itself should the serviced land be made available to it, however it may be that the applicant would rather go to the open market for this provision. As such, given discussions are underway, to ensure that the land is either offered up to the Local Authority OR has suitable triggers for delivery imposed upon it, in order to ensure employment provision is delivered concurrent with the housing, an either/or scenario is currently proposed in the S106 heads of terms, see above, to secure this. Planning and Assets are both happy with this clause."

3.34 Under the heading of "Design", having noted that design was essentially a consideration at reserved matters stage, the Planning Officer returned to the subject of the employment land when she said this:

“To secure both 2ha and 18,600 sqm would essentially begin to dictate the form of the employment use buildings and this is not something which should be done at this stage nor is it desirable to applicant or LPA. As such the permission will secure 2ha of employment land and in the region of 18,600 sqm of employment B1 floorspace. This will ensure policy compliant delivery whilst allowing the necessary flexibility re design.”

3.35 In other passages in the report, the Planning Officer advised that:

3.35.1 the position of the access points was considered to be acceptable in design terms;

3.35.2 as the Application was in outline only, exact details, location design etc of public open space and green infrastructure etc on site were not set despite indicative plans being submitted.

3.35.3 the calculations as to the required amounts for contributions and any off site calculations for monies for public open space or sport and recreation could be identified and would be secured through conditions and the Section 106 agreement with the reserved matters scheme then being required to reflect those figures, accorded with Joint Local Plan Policy DEV27 and the National Planning Policy Framework;

3.35.4 the imposition of a condition requiring a constraints plan to accord with NPPF paragraph 175c and the Natural England and Forestry Commission Standing Advice and other conditions, would make the proposal acceptable in arboricultural terms and accord with Joint Local Plan Policy DEV28 and the National Planning Policy Framework;

3.35.5 the Application was supported by a Landscape and Visual Appraisal (LVIA) (Tyler Grange; dated October 2018), which had been reviewed and overall the LVIA was sound in its approach to identifying the baseline position and recognising impacts and harm which can be avoided or reduced and mitigated through detailing;

3.35.6 there was objection to the proposed access points and, with the imposition of conditions and Section 106 requirements securing monies towards the reinstatement of the railway and right hand turn lanes off the A386, Devon Highways considered proposal acceptable; and

3.35.7 that a number of representations received were either to the principle of development or the detail of the indicative layout, numbers etc proposed, which were not relevant to the consideration of the Application as the principle had been established through the local plan process and the details were largely a matter for the reserved matters stage.

3.36 The Planning Officer concludes her analysis by saying:

“This site is allocated for precisely those uses being sought by this application and the 2 access points proposed are considered acceptable by DCC Highways. The accompanying information submitted with this scheme combined with its scrutiny

by specialist officers has highlighted that Overall then, with the conditions and S106 heads of terms as set out above, this proposal is considered to accord with the NPPF guidance and the JLP, in particular TTV17 'Plymouth Road, Tavistock' but also policies such as those relating to development quality, climate change, biodiversity, archaeology, highways, land scape and trees."

- 3.37 It is not surprising that having reached that conclusion, the Planning Officer's recommendation was to approve subject to conditions and the completion of a section 106 agreement. Neither was it surprising that in light of that conclusion, as will be seen²⁷, Ward members would agree to the Application being determined under delegated powers.
- 3.38 Although the Site is only part of the land covered by Policy TTV17 it is appropriate to deal with the principle of achieving the amount of employment floorspace suggested in the Application at this point. This is because the idea was being promoted that the whole employment allocation could be accommodated on the Site and as such was fundamental to the determination of the Application. It is a key plank of the concerns that have been raised.
- 3.39 It will be for the Applicant to demonstrate at the reserved matters stage how the Applicant will deliver the employment floorspace in a way that is policy compliant while providing sufficient landscaping to reflect the position of the Site as important gateway to the Town. However, it is now clear that it cannot be delivered in the form shown in the illustrative masterplan which went largely unchallenged.
- 3.40 Illustrative sketches prepared for the Council by external advisors as part of the review, suggest that only 12,111m² (light industrial) would be achievable. While this reflects the proportion of the Site to the total allocation, roughly two-thirds, it is short of the 18,600m² applied for or being in the region of that amount. However, if the landscaping strategy set out in the Application is applied²⁸, the amount of employment floorspace capable of being delivered reduces to something in the region of 8,500m². Delivery of the policy will therefore require an applicant seeking to develop the remainder of the allocated site, to demonstrate how any shortfall could be made up through its application.
- 3.41 The court does not expect to find a flawless discussion of every planning issue and frowns upon an overly legalistic approach being adopted.²⁹ The purpose of an officer report is not to decide the issue, but to inform the members of the relevant considerations relating to the application. In the case of reports to committee it is not addressed to the world at large but to council members who, by virtue of that membership, may be expected to have substantial local and background knowledge. Part of a planning officer's expert function in reporting to the committee must be to make an assessment of how much information needs to be included in his or her report in order to avoid burdening a busy committee with excessive and

²⁷ see Paragraph 3.45.

²⁸ Condition 3 requires the development to be carried out in accordance with detailed drawings received by the Council including "Constraints & Opportunities Plan 0661-1009 insofar as it identifies Landscape Buffer Area to remain undeveloped."

²⁹ see *Mansell v Tonbridge and Malling BC* [2019] PTSR 1452

unnecessary detail.³⁰ The report however still needs to perform the basic function of assessing an application against the key policies of the development plan.

- 3.42 Where an officer is writing a report for a planning application that may be determined under delegated powers, needs to perform that same task. It is informing members and ultimately it is a record of the decision-making process. In this case, the report should have been more robust when dealing with the amount of employment floorspace and questioned the reality of the Applicant's proposal. There were other discrepancies that ought to have been challenged, particularly as to how education contributions had been calculated (**See Recommendation 5.11**).
- 3.43 As explained above, the Planning Officer concluded that the Application was policy compliant, so should be recommended for approval. Under the Scheme of Delegation the Head of Planning had the option of referring the Application to the Development Management and Licensing Committee on the basis that in his opinion "ought to be determined by the DM Committee"; or of exercising his delegated powers.
- 3.44 Although a number of representations were not material and therefore to be given no weight, there were some representations that were and were also objecting to the Application so contrary to the Head of Planning's recommendation. If the Head of Planning was to exercise his delegated powers to approve the Application, then the Scheme of Delegation required him or in reality the Planning Officer to seek the written agreement of the appropriate Ward Members. Following the May 2019 elections the relevant Ward Members were Cllrs Mandy Ewings and Adam Bridgewater (Tavistock South West) and Cllr Mark Renders (Dartmoor). Due to the error caused on registration of the Application only Cllrs Ewings and Bridgewater were asked for their approval on 7 July 2019.
- 3.45 Neither Councillor responded, although Cllr Ewings, spoke subsequently with the Planning Officer and agreed verbally to the exercise of delegated powers to approve of the Application. Accordingly, it appeared (erroneously due to the failure to consult with Cllr Renders) that the Head of Planning was then in a position to approve the Application under his delegated powers.
- 3.46 However, just because a decision could be taken under delegated powers does not mean that it should or has to be. With hindsight, it is clear that had the Application been referred to the Development Management and Licensing Committee then it is likely that due to the public interest and the concerns raised there would have been a greater challenge of some of the assumptions and the contributions requested by Devon County Council. Furthermore, that challenge would have undertaken in an open and transparent forum. In such circumstances, the Application was one that was capable of being referred by the Head of Planning.
- 3.47 **Interaction with Tavistock Town Council.** Except in the case of an urgent application for development by the Crown, town and parish councils are not statutory consultees on planning applications.³¹ There are however circumstances where local planning authorities must notify a parish council of a planning

³⁰ see R v Mendip District Council ex parte Fabre [2017] P.T.S.R. 1112

³¹ Town and Country Planning (Development Management Procedure) (England) Order 2015 Schedule 4 paragraph (d)

application. These are where a parish council has requested to be notified, or there is a neighbourhood plan and the parish council are authorised to act in that regard.³² Where a parish council is notified of an application, it must make its representations within 21 days of being notified.

- 3.48 Where an application has been amended it is up to the local planning authority to decide whether further publicity and consultation is necessary in the interests of fairness. In deciding what further steps may be required local planning authorities are advised that they should consider whether, without re-consultation, any of those who were entitled to be consulted on the application would be deprived of the opportunity to make any representations that they may have wanted to make on the application as amended.³³
- 3.49 Currently, the Council notifies all town and parish councils by e-mail as soon as an application is registered. This applies whether or not the town or parish council has formally notified the Council that it wishes to be. The Council has agreed that as the 21 day period for town and parish councils to respond excludes public holidays, it will allow 28 days as standard, but where decision-making permits, extensions are allowed.
- 3.50 At the time that the Application was submitted, it was the standard practice of the Council to send hard copies of planning applications to town and parish councils. In the case of the Application, instructions were given to the Council's Digital Mail Room to send the Application to Tavistock Town Council and Plasterdown Parish Council late on 19 December 2018 and it would seem likely that the copies were posted the following day. As Christmas and New Year fell within the period for responding to the consultation, the period for responding was extended to 24 January 2019.
- 3.51 The Tavistock Town Council Development Management and Licensing Committee met on 15 January 2019. The formal business of the meeting was prefaced by a presentation by Cllr Parker and Richard Grant on the progress of the Joint Local Plan. The presentation included a plan which detailed both the allocated development sites within Tavistock which were included in the Joint Local Plan, together with sites which were considered to be speculative.
- 3.52 Having considered the Application, the Committee recommended that the Town Council adopted a neutral view, but raised a number of concerns. A holding response was received from the Town Council on 17 January 2019.
- 3.53 The recommendation was considered by the full Town Council at its meeting on 22 January 2019. The Town Council decided rather than take the neutral view that had been recommended, it would object to the Application. The objection was lodged with the Borough Council on 24 January 2019. The terms of the objection, which included the concerns raised by the Town Council's Development and Licensing Committee, were set out in the Planning Officer's report³⁴. While the objection included a number of comments on the illustrative masterplan, importantly it

³² Town and Country Planning Act 1990 Schedule 1 paragraph 8 and Town and Country Planning (Development Management Procedure) (England) Order 2015 Article 25

³³ Planning Practice Guidance Paragraph: 026 Reference ID: 15-026-20190722

³⁴ See paragraph 3.28 above.

questioned the capacity of the local schools to accept children from the proposed development.

3.54 It becomes easier for town and parish councils to have a greater influence in development management decisions, where they have prepared a neighbourhood plan. A neighbourhood plan is part of the statutory development plan. This recognition means that town and parish councils can affect the extent and character of development in their area by putting in place planning policies that will help deliver their vision or grant planning permission for the development they want to see. Neighbourhood plans may also contain policies on the contributions expected from development, but these and any other requirements placed on development should accord with relevant strategic policies and not undermine the deliverability of the neighbourhood plan, local plan or spatial development strategy³⁵. The absence of a neighbourhood plan, which is understood to be the case with the Town Council, means that those opportunities are being missed. Broad based representations, without an evidence base that has been tested, such as those made about the Application, are unlikely to carry significant weight. Having a neighbourhood plan-based representation, raises the representation to a new level.

3.55 It would also assist in assessing local priorities for spending contributions secured through section 106 agreements. Absent a neighbourhood plan, the Council does not, and did not in the case of the Application, seek views on spending priorities for contributions.

3.56 **The Planning Permission.** The Outline Planning Permission is dated 18 June 2020.³⁶ It is subject to a number of conditions including conditions requiring the remaining reserved matters approvals to be made once outline planning permission is granted; a reserved matters application must be made within three years following the date of grant of the outline planning permission and development begun within two years of that approval or the last such approval; development to be carried out strictly in accordance with specified plans; limiting use to Class B1(Light industry) and a condition in the following terms:

37. No development other than works to mark out the site access points shall commence until all those with a legal interest in the land, which benefits from the permission, have entered into a s106 agreement to bind the land substantially in the form appended to this permission.

Reason: The obligations contained within the Section 106 are necessary to ensure that the development is compliant with Development Plan policy.

3.57 Such a condition is an exception to the norm where planning permissions are granted subject to completion of a section 106 agreement and planning permission only being issued when the agreement has been completed. Indeed, but for an unusual set of circumstances that is what would have happened here and there would not have been the need for the condition. The Planning Practice Guidance does however recognise that “a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of

³⁵ Planning Practice Guidance Paragraph: 005 Reference ID: 41-005-20190509

³⁶ Appendix F

3.62

Set in

the context of the Site being a site that had been identified as suitable for development for many years before being eventually allocated in the Joint Local Plan; had been identified as being a large part of an allocation suitable for providing 300 houses and in the region of 18,600m² of employment and would therefore deliver a key policy in the Joint Local Plan, as well as contributing to the achievement of strategic objectives and priorities, the risk could reasonably be assessed as being one to be taken seriously.

- 3.63 It was in this context that one of the Council's Senior Legal Specialists wrote to Cllrs Ewings and Bridgewater on 17 June 2020³⁸. Attached to the e-mail were copies of the Planning Officer's report and the agreed draft Section 106 Agreement. The Senior Legal Specialist explained the changed circumstances and the uncertainties that had arisen, which as a consequence meant dealing with the draft Section 106 Agreement by way of a condition as time was of the essence. The Senior Legal Specialist said that she and/or the Head of Planning would try to speak to the two Councillors so that they could answer any questions that the two Councillors might have.
- 3.64 The Senior Legal Specialist spoke to both Councillors on 18 June 2020. As neither Councillor had read the e-mail sent the previous day, the Senior Legal Specialist went through the issues with them.
- 3.65 **The draft Section 106 Agreement.** The overriding purpose of planning obligations in a section 106 agreement are to mitigate the impact of development. This is usually done by conferring benefits on local communities and/or supporting infrastructure provision. Accordingly, a section 106 agreement may include planning obligations that:
- 3.65.1 Restrict the development or use of land in some way, either for a specified period or indefinitely.
 - 3.65.2 Require operations or activities to be carried out in, on, under or over land.
 - 3.65.3 Require land to be used in a particular way.
 - 3.65.4 Require payment of financial sums to be made to a local planning authority whether of fixed capital sum, a sum calculated by reference to a formula or for a fixed period or indefinitely.³⁹

³⁸ See Appendix G

³⁹ Town and Country Planning Act 1990 Section 106(1) and (2)

- 3.66 A planning obligation and therefore a section 106 agreement, can only be a reason for granting planning permission if, the planning obligations it includes are:
- 3.66.1 Necessary to make the development acceptable in planning terms;
 - 3.66.2 Directly related to the proposed development; and
 - 3.66.3 Fairly and reasonably related in scale and kind to the proposed development⁴⁰.
- 3.67 It follows from this that a planning obligation which has nothing to do with a proposed development apart from the fact that it has been offered by a developer or which has only a trivial connection with the proposed development, is clearly not a material consideration.⁴¹
- 3.68 Getting the heads of terms of a section 106 agreement right is fundamental as that is what defines what may or may be included in the section 106 agreement. Ideally, they will be documented with sufficient detail so that there is enough information so that the decision-maker can take them into account, but still leave some leeway to enable the detail to be finalised during the drafting phase. Too tightly drafted and the result may be that the authority to approve the application has to be re-visited (possibly more than once).
- 3.69 The heads of terms for the draft Section 106 Agreement were set out in the Planning Officer's report in July 2019.⁴² They are not set out in full and could be clearer (**see Recommendation 5.14**).
- 3.70 The draft Section 106 Agreement referred to in Condition 37 of the Planning Permission is set out in Appendix H. In one significant aspect the draft Section 106 Agreement does not in fact reflect accurately the heads of terms set out in the report. The heads of terms refer to education contributions being "as per consultation response." In respect of the Primary School Contribution, the response⁴³ said:
- "A development of 250 2+ bed family homes is expected to generate 62.5 primary pupil places. The Local Authority has some forecast capacity across Tavistock, so is requesting for 21 primary pupil places at the new primary build rate of £16,019.00 per pupil. We are therefore requesting £336,399.00. If a percentage of dwellings are single bedroom properties, the contribution will be adjusted accordingly.
- No contribution towards land for the new primary school is being sought as the land has been secured through a section 106 Agreement."

⁴⁰ Community Infrastructure Regulations 2010 Regulation 122 and National Planning Policy Framework paragraph 56

⁴¹ *Newbury DC v Secretary of State for the Environment* [1981] A.C. 578; *R(Welcome Break Group Limited) v Stroud District Council* [2012] EWHC 140 (Admin); *Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Co Limited* [2017] UKSC 66 following *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 W.L.R. 759.

⁴² See Appendix A

⁴³ See Appendix I

- 3.71 In the draft Section 106 Agreement, at the request of the County Council, the lump was converted to a contribution per dwelling. So, “Primary School Contribution” is defined as meaning “financial contribution calculated on the basis of £4,004.75 per Dwelling Index Linked to be paid to County Council BUT FOR THE AVOIDANCE OF DOUBT shall not be payable in relation to the first 166 Dwellings towards the provision of a new primary school in Tavistock required as a result of the Development and to be paid by the Owners to the County Council in accordance with the terms of this Deed.”
- 3.72 Although the final contribution would be the same if all the dwellings are built, the change in the basis of the calculation opens up the potential for less to be paid if fewer houses are built and indeed for no contribution to be payable if no more than 166 dwellings are built. Furthermore, it also results in some confusion when applied to paragraph 23 of Schedule 1 to the draft Section 106 Agreement which links occupation of dwellings to the payment of a percentage of the Primary School Contribution (**see Recommendation 5.3.1**).
- 3.73 While in theory the amount requested by the County Council should be achieved, the County Council amended its developer contribution policy in February 2020 with the consequence that a larger sum ought to have been included in the draft Section 106 Agreement in any event. Despite the County Council being a party to the draft Section 106 Agreement no amendment was made or increased contribution requested by the County Council.
- 3.74 Equally, no challenge was made to the County Council about the policy change, although the County Council has since confirmed that it would not have requested the increased contribution.⁴⁴ This is surprising bearing in mind that the contribution was already considerably less than that requested during pre-application discussions.⁴⁵ However, it is well-established that the decision-maker should apply the policy that exists at the time that the decision is made. Had the Application gone to appeal then the Planning Inspector would have applied the updated policy requirement.
- 3.75 With regard to the Transport Contribution, the amount of the contribution specified in the draft Section 106 Agreement reflects the heads of terms set out in the Planning Officer’s report. However, paragraph 2.6 of Schedule 2, allows the County Council subject to considering the views of the Council and the landowner, to spend the Transport Contribution on providing transport improvements for pedestrians and/or vehicles between Tavistock and Plymouth. This is in contrast to the section 106 agreement for Callington Road,⁴⁶ where the ability of the County Council to use the contribution for an alternative scheme was constrained by the need for a minuted decision by the County Council that it was abandoning the railway line; or funding not having been secured or a contract let within five years of the final instalment of the contribution being paid. Furthermore, the alternative provision was caveated so that highway improvements to relieve traffic congestion between Tavistock and Plymouth were “... limited to the estimated congestion that would have been relieved by the railway line or the traffic generated by the development” (**see Recommendation 5.3.1**).

⁴⁴ E-mail dated 11 August 2020

⁴⁵ See Appendix C

⁴⁶ see Appendix J

- 3.76 The provisions of the draft Section 106 Agreement relating to the employment land are to be found in paragraph 28 of Schedule 1. They seek to ensure the provision of an area of land not less than 2ha is available for Class B1 use and “in the order of” 18,600 sq m” employment floorspace is provided. As mentioned above,⁴⁷ the evidence would suggest that only some 8,500m² can in reality be delivered on 2 ha based on the landscaping strategy submitted with the Application. Furthermore, although in referring to Class B1 the draft Section 106 Agreement is consistent with the heads of terms, it is not consistent with the Planning Permission.
- 3.77 Should the Applicant not look to deliver the employment floorspace, as would seem likely given the conclusions in the previous paragraph, then provided that the Applicant has carried out the works specified in Paragraphs 28.1 to 28.3 of the draft Section 106 Agreement, the Council (and there are sufficient triggers to ensure that the Applicant does do those works) the Council is able to acquire a fully serviced development site for £1.
- 3.78 It is not entirely without precedent for local authorities to acquire land through the planning process. Nevertheless care has to be taken to ensure that the respective roles of the authority are not being conflated and that matters are dealt with in an open and transparent way. While the decision to acquire the land would be subject to a formal decision of the Council, which would need to be satisfied through a proper business case or by other means that the acquisition furthered its aims and objectives, greater openness and transparency are required in the planning process should similar circumstances arise in the future (**see Recommendation 5.10.2**).
- 3.79 So much for the concerns about what is in the draft Section 106 Agreement, but equally, concerns have been raised about what is not in the draft Section 106 Agreement. With regard to contributions to local bus services and especially the No. 89, Mr Parker’s concerns echo those of Cllr Moody on behalf of other Tavistock Ward Councillors; disappointment that the County Council was not supporting further investment in the No.89 bus route in Tavistock,. The County Council points to the No. 1 bus service passing the site, but those raising the concerns point to the No. 89 is a service that connects the town centre, Kilworthy Park, the supermarkets and Tavistock Hospital. Furthermore, it is a service that has received contributions from all of the major housing schemes in recent years (**see Recommendation 5.3.1**).
- 3.80 The concerns that have been raised about the draft Section 106 Agreement have in turn manifested into questions about who has authority to authorise or agree such agreements.
- 3.81 What is meant by “agreeing”? Does it refer to agreeing the heads of terms or does it refer to the wording of the agreement itself? There is a level of continuing disagreement on this. Currently, the Development Management and Licensing Committee agrees the heads of terms of any section 106 agreement relating to any planning application it approves because they are material considerations and the obligation on the Committee is to have regard to all material considerations.⁴⁸ In doing so, it is agreeing that those heads of terms reflect community priorities having regard to what the Council can lawfully seek by way of planning obligations. In the

⁴⁷ see paragraph 3.40

⁴⁸ See paragraph 3.23

event that the terms agreed by the Committee change following the scheme of delegation provides that the Head of Planning

“in consultation with the Ward Member(s), [may] vary the terms of a section 106 agreement (or take such other action as necessary) to secure the objectives of the Committee which agreed the 106 agreement.”

- 3.82 Where the Head of Planning seeks agreement from Ward Members to exercise his delegated powers, the Planning Officer’s report that is sent to the Ward Member will, likewise set out the heads of terms for any section 106 agreement. The report and what it says is, or should be the basis on which Ward Members agree to the exercise of delegated powers. In other words whether it is appreciated or not, they are accepting the Planning Officer’s conclusions. If they don’t accept those conclusions and have material planning reasons for not doing so, they have grounds to refer an application to the Development Management and Licensing Committee. The Ward Member will therefore be aware of the terms when agreeing to the exercise of delegated powers. Although there is no requirement in the scheme of delegation to do so, as is evidenced in the consideration of the Application, if those terms change, Ward Members are informed and their further agreement sought.
- 3.83 So, it is clearly the case that Members agree the heads of terms of a section 106 agreement in all those cases where they either determine the application or are consulted prior to the exercise of delegated powers. While there is no requirement in law for applications to be referred back to the Committee when circumstances change between the date of the resolution to grant and the issue of a decision notice under delegated powers, it is considered prudent to do so where the officer becomes aware of new material considerations.⁴⁹
- 3.84 However, if “agreeing” section 106 agreements means a copy of the final negotiated section 106 agreement is made available to the Development Management and Licensing Committee so that it can be “scrutinised” before being approved then that does not happen, nor is it required to happen under the current scheme of delegation. Care needs to be taken to avoid the respective roles of officers and members becoming confused.
- 3.85 The Local Government Association’s Councillor’s Workbook on Planning⁵⁰ explains the roles of councillors and officers in the planning process in the following way:

Councillors

Councillors have a key role in planning by:

- making sure that local people are involved in planning, by acting as a liaison between communities and the council and raising local issues, and helping residents to understand what the council is doing
- by helping to set the direction of planning policy

⁴⁹ R. (Kides) v South Cambridgeshire District Council [2002] EWCA Civ 1370

⁵⁰ https://www.local.gov.uk/sites/default/files/documents/11.63%20-%20Cllr%20Planning%20workbook_02.pdf

- by being a decision maker on the planning committee; committees generally deal with around 5-10 per cent of the applications determined, usually the most strategic and complex proposals
- helping to set the vision and culture within the planning service, and working with officers.

Officers

Local authority officers support councillors and deliver the service to applicants and residents. The efficiency and effectiveness of officers is really important in how people perceive the planning service (along with councillors and the committee). Most decisions on planning applications are delegated to officers to deal with, in accordance with the terms set out in the authority's constitution.

At planning committees, officers advise, councillors decide.”

- 3.86 This is consistent with the Council's own protocol.⁵¹
- 3.87 If a section 106 agreement reflects the heads of terms agreed by the Committee or in the case of a delegated decision, those agreed with the Ward Members then scrutiny by Committee can only be as to the technical drafting. If so, then it conflates the roles of Members and Officers and it is unclear about what purpose doing so would serve. There are also practical issues in that the timing of agreement being reached with the developer on the terms of planning agreement and the date of a committee meeting don't often coincide.
- 3.88 Where the final terms of a section 106 agreement differ from the heads of terms agreed by the Development Management and Licensing Committee, then the scheme of delegation provides for the revised terms to be agreed by ward members. It may be that on the basis of the Kides principle⁵² the Head of Planning might take the view that the change is such that the application ought to be re-considered by the Committee and refer it back himself.

4.0 Conclusions

- 4.1 When the Council exercises its statutory functions, it has the capacity to affect the lives of individuals, groups of citizens and industry. To avoid that power being exercised in an arbitrary way, both the common law and statute set down the parameters within which such decisions should be made. Any procedures that are prescribed are usually drafted with the purpose not only of guaranteeing that the decision-maker takes into account all relevant considerations, but also to ensure procedural fairness for those affected by the decision it is required to make.
- 4.2 With regard to determining planning applications, the Town and Country Planning Act 1990 sets out the statutory framework within which decisions are to be made and while the Council's Scheme of Delegation under the Local Government Act 1972 sets out who is to make the decision and any internal procedures to be followed.

⁵¹ <https://www.westdevon.gov.uk/article/3691/Our-Constitution>

⁵² See footnote 49

- 4.3 The Council, like many other local planning authorities operates a scheme of delegation with regards to planning applications where the responsibility is concurrent between members and officers, but with the expectation that members, in the form of the Development and Licensing Committee, will consider those applications that are exceptions to the norm or that are the subject of some sort of referral or call-in procedure.
- 4.4 The scheme of delegation anticipates that the majority of decisions will therefore be taken by officers, but with the prior involvement of the relevant ward members. It is based on officer reports providing a technically accurate and legally compliant analysis of an application which are then read and understood by members (**see Recommendation 5.11**).
- 4.5 In the case of the Application, the Planning Officer's report could have been more robust in the analysis of the Application. It is now evident, and perhaps it should have been so earlier given Cllr Parker's representations, that the delivery of in the region of 18,600m² of employment floorspace on the Site not possible. Although the illustrative masterplan showed 18,600m² on the employment land, this was in the form of offices. There was no impact assessment as required by Policy DEV16 and the provision of offices was inconsistent with the traffic impact assessment which was based on light industrial uses.
- 4.6 Nevertheless, it is not surprising that Cllrs Ewings and Bridgewater, faced with an application to develop a site with which they were very familiar for development that appeared to accord with the Joint Local Plan; which was either largely unobjectionable to those statutory bodies consulted or acceptable subject to conditions or the imposition of mitigation measures under the draft Section 106 Agreement, did not refer the Application to the Development Management and Licensing Committee. In that regard both Councillors acted reasonably.
- 4.7 However, the failure to seek Cllr Renders' approval in July 2019 was a procedural irregularity and meant that there was no delegated authority to issue the Outline Planning Permission. Although the development management software, APP, which sits beneath the Council's processing software W360, correctly identified that two Wards and two Parishes were affected, the lack of sophistication of the W360 software to accommodate the possibility that a planning application that crossed Ward boundaries was the cause of that irregularity. As a result, the datasheet consulted by case managers and specialists and standard templates for reports showed only Tavistock South West. Even though the Planning Officer saw that there were responses from two local councils, Tavistock Town Council and Plasterdown Parish Council, it was not unreasonable to assume that the latter was being consulted as an affected parish council rather than as an indicator of the development also being another Ward. Given the fundamental failings of the software, which only came to light as a result of this review, no fault can be attributed to the Planning Officer or any other officer concerned with the Application. (**see Recommendation 5.17**)
- 4.8 But for the failure to consult all of the necessary Ward Members, the decision to grant planning permission was one that could be taken by the Head of Planning under his delegated powers. However given the public interest and the representations made by the Town Council in the Application strongly suggest that it

could reasonably have been referred to the Development Management and Licensing Committee.

- 4.9 As the Outline Planning Permission has been issued, it is unaffected by the irregularity and remains a valid permission. The Permission is ambiguous however, in the way that it defines the reserved matters. There is no standard condition defining appearance, landscaping, layout and scale as being reserved matters. Condition 2 purports to identify the reserved matters, but also refers to several other matters (including access which has already been approved) that are not reserved (**see Recommendation 5.5**)
- 4.10 While I am satisfied that potential for the Council to acquire a 2ha serviced parcel of land for £1, was not a factor in the decision to grant the Planning Permission, there was the potential for this to be perceived as the Council being so influenced. Such perceived conflicts are not unusual given the diverse functions that local authorities exercise. Generally it is a matter of appearances. The more openly and transparently such conflicts are dealt with, the less likely of a Court finding that a local planning authority was adversely influenced and there is better accountability in the eyes of the public (**see Recommendation 5.10.2**).
- 4.11 The delegation of powers relating to responsibility for section 106 agreements has generated much discussion during the preparation of this report, such that some disagreements remain. The fact that the scheme can be interpreted in more than one way and each one is reasonable suggests that greater clarity is required (**see Recommendation 5.10**). It is agreed that the role of the Strategic Director of Place and Enterprise with regards to section 106 agreements is opaque. It is also agreed that the Head of Planning has delegated powers to agree the terms of section 106 agreements and that this is a power that he shares with the Development Management and Licensing Committee. What is not agreed is how this works in practice. There is no precedent as has been alleged, for any section 106 agreements to be drafted or amended by the Committee. In my view this is because in both cases, the extent of the power is limited to agreeing the heads of terms for what is to be included in any section 106 agreement; agreeing the priorities rather than their technical transposition into the agreement. For Members to become involved in the latter has the potential to confuse the roles of Members and Officers.
- 4.12 Whether an application is decided by the Development Management and Licensing Committee or not, Members do have oversight of all heads of terms. The Development Management and Licensing Committee is provided with the heads of terms as part of the officer report for an application considered by the Committee, while Ward Members see the heads of terms in relation to applications that officers propose to approve under delegated powers. It is therefore misleading to suggest that Members do not have a say in what is included in a section 106 agreement. Heads of terms could however be drafted with more clarity (**see Recommendation 5.13 and 5.14**).
- 4.13 In the case of the Application, the draft Section 106 Agreement largely reflects the heads of terms set out in the Planning Officer's report. The drafting of the draft section 106 Agreement does however give rise to some the concerns. While there may be scope to amend the draft Section 106 Agreement, how much scope is a matter for negotiation (**see Recommendation 5.3**).

4.14 The Council followed its normal practice when consulting Tavistock Town Council and Plasterdown Parish Council. However, further improvements can be made so that there is greater understanding of the issues raised by town and parish councils. This enables those issues to be anticipated and addressed. Also by working proactively with town and parish councils the Council can secure better and timelier responses so avoiding risks and bottlenecks to decisions (**see Recommendation 19**).

4.15 So in terms of the questions that were asked as part of the terms of reference for the review:

4.15.1 What does the Constitution say about the delegation of planning decisions to officers? The delegation scheme set out in the Constitution is framed in such a way as to enable all planning applications (subject to limited exceptions in respect of applications on Council-owned land, or by officers/members) to be determined by the Head of Planning.

All Members can refer a planning application to the Development Management and Licensing Committee provided that they notify the Head of Planning within the period for public consultation and have material planning reasons for wanting the application referred. Non-Ward Members can only refer an application after consultation with Ward Member(s).

In addition, Ward Members may “request” the referral of a planning application to the Development Management and Licensing Committee where:

- (a) the Head of Planning has made a recommendation;
- (b) written representations have been made on the planning application;
- (c) the written representations are considered to raise “material and relevant planning issues”;
- (d) the recommendation is contrary to any such written representations;
- (e) notice has been given to the Ward Members; and
- (f) a Ward Member gives notice to the Head of Planning within 3 working days requesting that the application be referred, such notice to be “supported by material planning reasons”.

4.15.2 Did we follow that scheme with respect to the grant of outline planning permission at Plymouth Road Tavistock? No.

4.15.3 How do we engage with town and parish councils about planning obligations? At the time of registration of the Application the Council’s practice was to send hard copies to the relevant town and parish councils. Representations would be requested within 28 days although the Council would be flexible in agreeing extensions of time where these were requested. The request for representations does not specifically seek views

on priorities for planning obligations and we do not formally do so at any other time.

4.15.4 Did we do that in this case? Instructions were given to the Council's Digital Mail Room to send the Application to Tavistock Town Council and Plasterdown Parish Council late on 19 December 2018 and it would seem likely that the copies were posted the following day. As Christmas and New Year fell within the period for responding to the consultation, the period for responding was extended to 24 January 2019. The Tavistock Town Council Development Management and Licensing Committee met on 15 January 2019 and a holding response was received on 17 January. The full Town Council met on 22 January 2019 and an objection was lodged with the Borough Council on 24 January 2019. Plasterdown Parish Council also objected on the same day.

Cllr Parker and Council officers also give a presentation before the 15 January meeting which dealt with the pressure that housing development was going to bring on Tavistock's infrastructure.

4.15.5 Is there any validity in the assertions that under the scheme of delegation planning obligations are matters for the Development Management and Licensing Committee? As with the determination of planning applications, the agreement of the heads of terms for a section 106 agreement is a function that can be performed by the Committee and the Head of Planning. Members have oversight of the heads of terms for any section 106 agreement either because they are set out in the officer's report to the Committee or the officer's report when seeking the agreement of ward members to the exercise of delegated powers. Once the heads of terms have been agreed by members, then it becomes the role of officers to transpose those into the legal agreement. The split reflects the roles of members and officers.

5.0 Recommendations - The Way Ahead

- 5.1 The Application. It should be noted that all members will have the opportunity to call-in the reserved matters application or applications in respect of the Site.
- 5.2 In terms of planning applications generally:
- 5.2.1 Applications should be accompanied by plans that show the land that is the subject of the application clearly outlined in red.
- 5.2.2 Planning Officers need to be less accepting and more challenging of the information being provided by applicants and consultees. Where for example, there was a clear disagreement between consultees' views on the capacity of schools in Tavistock as occurred here, the disagreement should have been referred to the County Council and if the disagreement remained, this should have been explained in the report.
- 5.3 The draft Section 106 Agreement. While the Council is limited by the requirement that that the draft Section 106 Agreement is to be substantially in the form of that

attached to the Permission, there is scope for negotiations to be had with the other parties about amendments to:

- 5.3.1 the provisions relating to the Primary School Contribution; and those relating to the schemes on which the Transport Contribution may be spent if not spent on the provision of the railway (to include the potential for some of the Transport Contribution to be used to fund the No. 89 bus), and the formalities for doing so;
 - 5.3.2 require a minimum of 8,500m² of employment floorspace to be provided. This will provide greater clarity as to what employment floorspace must be provided elsewhere within the Policy TTV17 allocation.
 - 5.3.3 align the description of the use described in the draft Section 106 Agreement with that authorised by the Permission (Class B1(Light Industry)).
- 5.4 Planning Permissions. Details of an application are usually incorporated into a planning permission as doing so helps in interpreting the planning permission. It is noted that the only reference to an application in the template decision notice is the application reference number. The template should therefore be amended to make incorporation of the application to which it relates clearer.
- 5.5 Given the need for outline planning permissions to clearly identify those matters that are reserved for subsequent approval, insofar as the Council does not have a standard condition, a condition in the following terms (suitably amended to reflect any reserved matters approved at outline planning permission stage) should be considered:
- “Approval of the details of the siting, design and external appearance of the building(s), the means of access to them and the landscaping of the site (“the Reserved Matters”) shall be obtained from the Local Planning Authority in writing before any development is commenced.
- Plans and particulars of the Reserved Matters shall be submitted in writing to the Local Planning Authority for approval and shall be carried out as approved.”
- “Reason: To comply with Section 91 (1) of the Town and Country Planning Act 1990.”
- 5.6 Information to members. The determination of planning applications is a joint enterprise involving both officers and members; both of whom have their respective roles and responsibilities. So that members can perform their part, it is important that they have sufficient and correct information. It has already been agreed by the Deputy Chief Executive in consultation with the Informal Hub Committee that:
- 5.6.1 Members of the Development Management and Licensing Committee will be provided with an informal update by the Head of Planning at the conclusion of each Development Management and Licensing Committee. The update will be limited to those applications that are “significant”. Significant in this context refers to applications that are:

- 5.6.1.1 for Major Development⁵³ and likely to generate public interest;
- 5.6.1.2 likely to be controversial eg 5G masts; or
- 5.6.1.3 likely to be of benefit to the Borough eg job creation.
- 5.6.2 Further training is to be provided to members of the Development Management and Licensing Committee.
- 5.6.3 Officers will be given political awareness training.
- 5.7 In addition, it is suggested that the informal update given by the Head of Planning includes details of the progress of section 106 agreements.
- 5.8 All Ward Members should be notified of amendments to planning applications in their Ward.
- 5.9 Induction. It would be helpful for newly elected members to be provided with information on all current applications within their Wards and the identity of the planning officer dealing with the application as part of the “welcome pack”. The induction should also draw new members’ attention to their responsibilities in connection with the determination of planning applications, including monitoring the weekly list of planning applications for applications in their Ward.
- 5.10 Revisions to the scheme of delegation. Revisions should be made to:
 - 5.10.1 clarify the circumstances when the Head of Planning may refer an application to the Development Management and Licensing Committee, for example “Or which in the reasonable opinion of the HoP Lead: (a). are of sub-regional or district-wide significance; or (b) due to all of the circumstances of an application including the scale and nature of the development proposed; the degree of compliance with the Joint Local Plan or national planning policy; any technical issues raised; or the number of representations received etc it is appropriate for the application to be determined by the Development Management and Licensing Committee”. This would allow an application to be referred due to a conflict of interest; significant levels of public interest etc.
 - 5.10.2 provide for a further exemption from the Head of Planning’s delegated powers to ensure that all applications where it is proposed that the Council

⁵³ “major development” is defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 Art. 2 as meaning “development involving any one or more of the following—

- (a) the winning and working of minerals or the use of land for mineral-working deposits;
- (b) waste development;
- (c) the provision of dwellinghouses where—
 - (i) the number of dwellinghouses to be provided is 10 or more; or
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) development carried out on a site having an area of 1 hectare or more.

will have the right to acquire an interest in or over all or any part of the land proposed to be developed.

- 5.10.3 ensure consistency of terminology and to clarify the role of the Development Management and Licensing Committee in agreeing section 106 agreements and clarity as to the role of the Strategic Director of Place and Enterprise with respect to section 106 agreements.
- 5.10.4 extend the period in which Ward Members are given to say whether they agree to the decision being dealt with by the Head of Planning under delegated powers
- 5.10.5 require the Head of Planning to re-consult Ward Members where:
 - 5.10.5.1 there is a difference in the heads of terms agreed as part of a delegated decision and the terms of the final section 106. It would be expected that Members would only depart from their previous position where the change was material and of sufficient weight so as to be capable of tipping the planning balance.
 - 5.10.5.2 it has not been possible to complete the final section 106 agreement within three months of the date on which Ward Members agreed to the decision being dealt with under delegated powers or in the event that Ward Members did not reply to the request to agree to the exercise delegated powers by the head of Planning, the date by which Ward Members were asked to reply. It would be expected that Members would only depart from their previous position where the applicant has not engaged fully and as a result there is no realistic prospect of agreement being reached in the near future. Where that is the case the application will be referred to the Development Management and Licensing Committee for decision.
- 5.11 Reports. A clearer framework is required to ensure that reports provide a crisp technically accurate legally compliant analysis of an application. It should be clear from the report what has been taken into account and what has not. The officer report template should therefore:
 - 5.11.1 be reviewed and revised so that it encourages more analysis and questioning and rather less copying of representations into the report body. A summary of such representations will suffice in most cases. If the full consultation response is required, links to the website can be incorporated into the report.
 - 5.11.2 identify relevant provisions of the development plan at the beginning and the subsequent analysis should lead to a logical and balanced conclusion
 - 5.11.3 show version/date of clearance by officer and in the case of significant or complex applications, clearance by the Head of Planning or another Senior

Planning Specialist. This will aid understanding by members of the public when more than one version of the officer report is published on the Council's planning application pages.

- 5.12 A process should be put in place to ensure that reports for significant or complex applications are reviewed and signed-off either by the Head of Planning or by a Senior Planning Specialist, who is not the report author, before such applications are determined. In this context significant or complex means significant or complex due one or more of the following factors:
- 5.12.1 scale;
 - 5.12.2 nature;
 - 5.12.3 degree of compliance with the Joint Local Plan or national planning policy;
 - 5.12.4 any technical issues they raise;
 - 5.12.5 environmental impact assessment required;
 - 5.12.6 the level of public interest; or
 - 5.12.7 any financial or other interest in the development of the Council.
- 5.13 Authors of reports are reminded that they should avoid or at least keep the use of acronyms to a minimum and where used the report should provide a full title when used for the first time. A similar recommendation was made as part of the Planning Advisory Service Review in 2018.
- 5.14 Heads of terms. The importance of getting the heads of terms right has been highlighted and more formal drafting of heads of terms in reports in respect of applications referred to Development Management and Licensing Committee is recommended to aid member understanding of what is proposed.
- 5.15 Post-completion. On completion of all section 106 agreements, Legal Services e-mail a copy of the completed agreement together with a summary of what the agreement provides for to various sections of the Council. It is suggested that Ward Members are copied into the completion e-mail prepared by Legal Services following completion of a section 106 agreement. Members will then be aware of the details of planning obligations to be delivered by development in their Wards. This in turn may assist enforcement further on in time.
- 5.16 Website. Steps should be taken to ensure the timely uploading of documents, plans and representations to the Council's planning applications pages to ensure that the public have up-to-date information on which to base any representations on a planning application.
- 5.17 Software. As part of the acceptance testing of the new process management software the Council should ensure that it is sophisticated enough to recognise when an application crosses ward boundaries and is able to populate templates with the identities of all the wards that are concerned.
- 5.18 Relationship with the County Council. Arrangements should be put in place so that planning officers determining planning applications are made aware either through regular briefings with County Council officers or other regular communication about changes made by the County Council in any of its policy affecting planning applications.

- 5.19 Relationships with town and parish councils. A memorandum of understanding should be developed and agreed between the Council and town/parish councils. The purpose of the memorandum would be to provide a framework for the process of consulting town and parish councils on planning applications. In doing so it will set out the responsibilities and reasonable expectations of the signatories so that each works proactively and engages constructively with the other. The memorandum may therefore include:
- 5.19.1 a description of the respective roles of the Council and the town and parish councils;
 - 5.19.2 the circumstances in which the Council will have pre-application discussions with the town and parish councils or seek their views about draft proposals;
 - 5.19.3 details of what information to be provided to town and parish councils by the Council when application is registered and how the information will be provided;
 - 5.19.4 guidance as to what should be included in consultation responses so that they are relevant to the application;
 - 5.19.5 timescale for town and parish councils to respond and the circumstances in which these may be varied;
 - 5.19.6 how town and parish councils will be consulted about amended plans;
 - 5.19.7 speaking at Development Management and Licensing Committee;
 - 5.19.8 the provision of training for town and parish councils on planning law and policy;
 - 5.19.9 the role of Ward Members in liaising with town and parish councils.
- 5.20 In accordance with the recommendations with the 2016 Peer Challenge, report authors should be reminded that in addition to clearly summarising any town or parish council comment they should also clearly explain the reasons for any differences of opinion in their report.