October 2023

Newsletter

Words from The Chair

Thanks to Cllr John Birch, who following the May local elections is now the Council's Executive Lead with responsibility for Economic Development, Commercial Strategy and Governance, we finally have a straightforward explanation as to why the boundary of the Plymouth and South Devon Freeport is where it is. It is to be found on page 16.

However we have yet to discover whether the Freeport costs being incurred by the Council, and therefore South Hams residents, remain as originally projected. We explain why we doubt it.

One decision that has cost residents between £200,000 and £300,000 is the 'great K5 giveaway', as revealed on this page. A certain member of the previous administration allegedly decided to gift Baker Estates the K5 employment land, supposedly to ensure 'affordable' housing would still be delivered on the site, but without reference it appears to other elected members.

Permitted development is another topic that features prominently. As well as offering a number of examples to demonstrate its exploitation, we have also attached the Society's submission to the government consultation that has just closed. You can find it after page 20, and we make it clear just how damaging we believe the government's proposals will be, not only to the South Devon AONB but to all other protected landscapes.

Elsewhere, on page 10, our Environment Lead Martin Fodder offers a detailed analysis of the recent court finding that the Government's Storm Overflows Discharge Reduction Plan fails to comply with the requirements contained in the Urban Waste Water Treatment (England and Wales) Regulations 1994. As a result the Environment Agency may have allowed water companies to discharge more untreated sewage in to our waterways than the law intended without risk of sanction.

Fortunately lighter relief is provided by the Society's Secretary and Archivist Nicola Fox and her rediscovery of an audio-visual presentation first shown at the Society's AGM in March 2004. 'It couldn't happen here' warned 'about the damage that could be caused to the South Hams by unrestricted development'.

A number of more recent examples of bad development can be found on pages 19 and 20. And we hope members can provide us with other such 'Sore Thumbs'. We intend to create a library of such instances as part of the Society's submission to the creation of the next Joint Local Plan, work on which begins in the Spring.

A further key issue that the next JLP needs to address is the need for genuinely affordable housing. So we are delighted to welcome Nikki Turton and her colleagues from the Salcombe Community Land Trust to the Crabshell Inn on October 5 for the first of this autumn's series of *Crabshell Conversations*. Details of that and our other *Conversations* are to be found on page 6.

Separately, on October 20, the Society is hosting former government food czar Henry Dimbleby, MP Anthony Mangnall and Caroline Voaden to discuss Food Security, Food Safety and the Implications for Agriculture. You can find our more on page 4.

Other matters to feature in this issue include the discovery that a Planning Performance Agreement has already been signed with the developer looking to build on a greenfield site in East Allington, even though the application itself has yet to be determined. Is it possible that planning officers have taken it upon themselves to decide that consent will be given for a development which, on page 3, we suggest is 'Unnecessary, Unsustainable, Unwanted'?

And as we explain on page 5, we are also concerned that the Loddiswell pre-application advice given to Devon County Council is lacking in authority, a failing that could cause future problems.

Finally, on page 2, we wonder how many site visits two of our planning officers are able to make, both of whom live over 300 miles away? Unfortunately the Council were unable to tell us. •

Great K5 giveaway revealed

THIS DEED OF VARIATION is dated 7TH SEPTEMBER 2022

BETWEEN:-

(1) **BAKER ESTATES LIMITED (Co. Regn. No. 09801842)** whose registered office is at Green Tree House, Silverhills Road, Decoy Industrial Estate, Newton Abbot TQ12 5LZ **("the Owner")**

(2) **SOUTH HAMS DISTRICT COUNCIL** of Follaton House, Plymouth Road, Totnes, Devon TQ9 5NE **("Council")**

(3) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, Devon, EX2 4QD **("County Council")**

(4) **HSBC UK BANK PLC** (Co. Regn. No. 09928412) of 1 Centenary Square, Birmingham B1 1HQ **("HSBC")**

The Deed of Variation

On 26 July, during the discussion of application 1108/23/FUL, Cllr Simon Rake asked Graham Hutton, the Operations Director of Baker Estates, a question concerning the ownership of the proposed employment buildings on the K5 development in Kingsbridge.

> 'What's going to happen to the tenure of these?' enquired Cllr Rake. 'Are you planning to sell the whole lot to a single operator or sell them one by one?'

In response Hutton said:

> 'It's a great question, and I am certainly not going to dodge the issue, but to be honest the answer is, I don't know yet.
>
> 'I have had some enquiries that are looking for individual units, one enquiry looking for all of it and that would shape our decision to whether we retain the ownership ourselves or whether we sold it'.

But that was not the question that should have been asked. What really required an answer was both how and why that decision was now to be taken by Baker Estates.

According to the 23 July 2015 S106 Agreement with the then owners of the site, the Employment Land (24.):

> 'Prior to the first Occupation of the 20th Open Market Dwelling the Owner (at that time Michael and Nicola Manisty) shall offer in writing to transfer the freehold of the Employment Land Fully Serviced to the boundaries of the Employment Land in accordance with paragraph 24 above (I think they meant paragraph 23) to the Council (or to a party nominated by the Council, such nominated party to be approved in writing by the Council, hereinafter referred to as the "Nominated Party") for the consideration of £1 (one pound) and as part of the freehold transfer of the Employment Land shall grant such rights over the remainder of the Land to the Council (or its Nominated Party) that are reasonably required by the Council (or Nominated Party) for the design and construction on, and the operation and use of, the Employment Land PROVIDED that the Council shall not use the Employment Land for the provision of any other use.'

The K5 Site, of which the Employment Land in question is part, was subsequently acquired by Baker Estates, and with it the obligations under the S106 Agreement.

Then, on 7 September last year (2022) in a Deed of Variation the Council agreed '5.8 Paragraphs 23 to 27 inclusive of Schedule 1 shall be deleted and replaced by the following:', in doing so leaving the ownership of the Employment Land with Baker Estates.

With the Council appearing to have received no financial or other benefit from this act of generosity, and given the Employment Land could have provided a source of income for the Council, the question that should have been asked is why was it given away, and by whom?

So, on 5 August, the Society wrote to the new Leader of South Hams District Council in the hope of receiving an answer.

Two days later Julian Brazil replied.

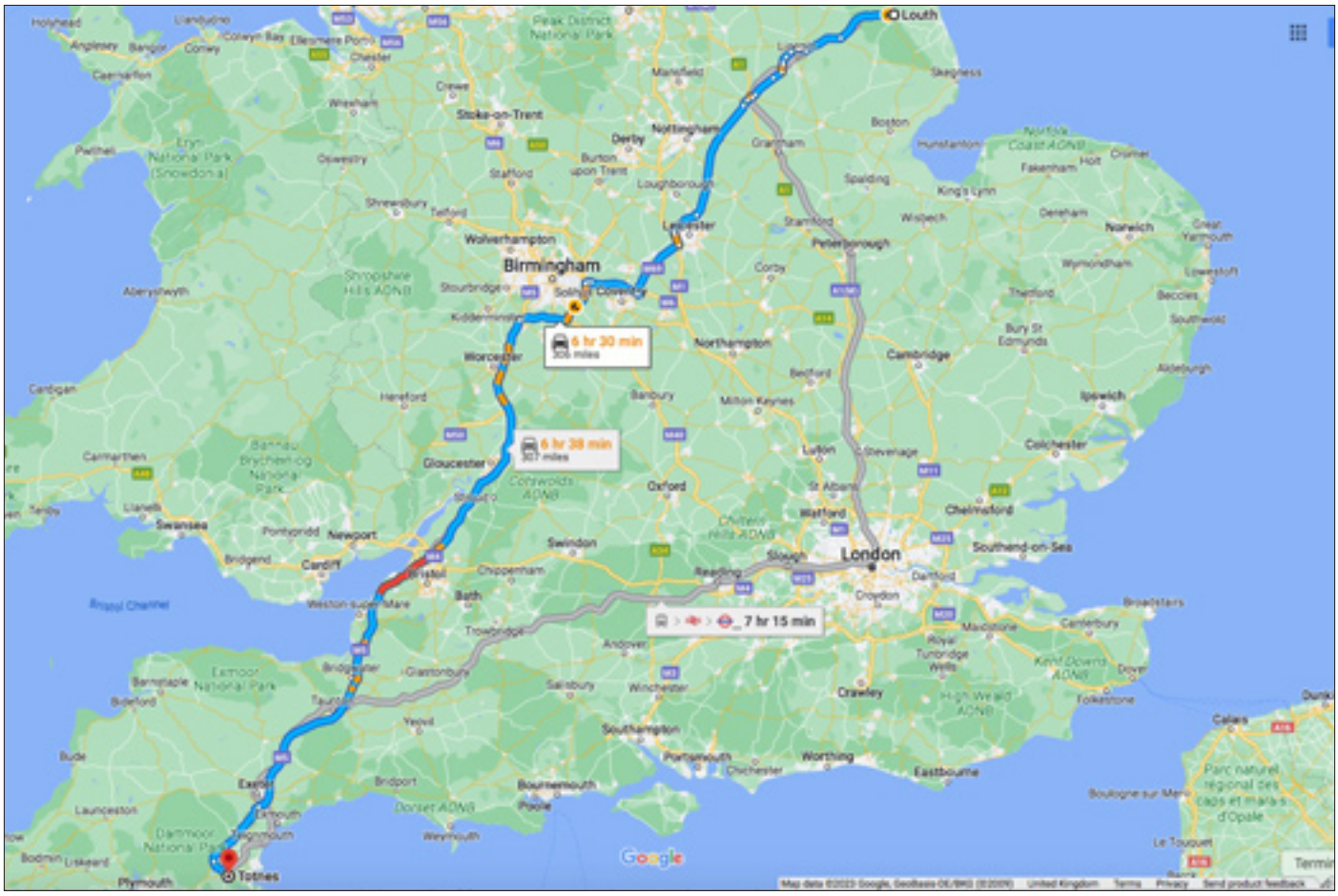
'Very interesting,' he wrote. 'I am making enquiries.'

Since then it turns out the land, worth perhaps between

...Continued page 4

Newsletter / 2

Planning by remote control



The distance one South Hams planning officer has to travel to undertake a site visit when working from home

Earlier this year the Society was informed, erroneously as it transpired, that one of the planning officers employed by South Hams District Council lived in Kent.

How feasible was it, we wondered, to expect an officer living that far from the area to undertake a site visit? And how much of their time would that officer spend working from home rather than with their colleagues in Follaton House? Clearly were they never to be here, their knowledge of the area could only ever be second-hand. Not ideal, we thought, given the decisions that have to be made.

Consequently we submitted a Freedom of Information request. How many planning officers had been employed by the Council between April 2022 and March 2023, we asked. How many were resident in the South Hams and where did the remainder reside? Were those officers senior or junior? The number of days each officer resident in the South Hams had worked from home between April 2022 and March 2023, the number of days each worked in Follaton House, the number of applications each dealt with and the number of site visits each had undertaken? That same information was also asked for those officers living outside the area.

In response we were told 25 officers had been employed, although 26 were actually listed, 10 of whom were junior, 16 senior. Six of the senior officers had left during the period, as had one junior. Four actually lived in the South Hams – perhaps not surprising given house prices here, while a further 19 do at least live in Devon – five in Plymouth, four in Newton Abbot, three in both Okehampton and Torquay, two in Paignton, and one in each of both Tavistock and Barnstaple. Another, a senior planner, lives in Bristol.

More surprising though was the discovery that one of our junior planners is actually a resident of Harrogate, some 320 miles and more than 5.5 hours driving time from Totnes, or around six hours by train if you prefer. A second, this time a senior planner, lives in Louth, a town in Lincolnshire some 15 miles south of Grimsby, 306 miles from Totnes and on a good day around 5.25 hours by car, but around eight hours by train. Between them, those two officers were responsible for no fewer than 366 applications, or more than one in every six of the total of 2,280 that came before the Council during the year.

So, as you might suspect, we were intrigued to know how often officers had actually been in the office and, perhaps more pertinently, how many site visits each had made.

Regular readers of this Newsletter will no doubt remember reading of applications receiving consent on the strength of incorrect information provided by agents, the inaccuracy which would have been obvious were a site visit to have been undertaken.

Unfortunately, we were informed, the Council only retains records of officers being in the office, and the number of days they work at home, for 30 days, 'and therefore we do not hold this information for the period requested'.

Similarly the data as to site visits, we were told, is not held 'in a readily available format - it would involve Planning Officers going through their calendars manually to individually obtain this information and would take longer than the 18 hours limit to answer this FOI.'

Some may find the fact that the Council do not keep a record of this data surprising. It is surely important that staff are in the office for at least some of the week to talk to and question their colleagues and managers, exchange information and watch, listen and learn from each other. Working in isolation can only encourage silo thinking.

Again, unless department management consider site visits to be unimportant, despite time spent in reconnaissance being seldom wasted, knowing which of the team is getting out and about and how that is impacting on overall performance surely has a value?

It might also help answer the question as to whether it really is possible to do the job from 300 or more miles away. Unless of course the officers in question are constantly commuting down to Devon to join their colleagues in the office.

We should be told. •

Newsletter / 3

Unnecessary, Unsustainable, Unwanted

To quote the agent for the applicant in a letter to the LPA's principal planning officer:

> This planning application is brought forward under Policy TTV25 of the Joint Local Plan which requires provision of around 30 dwellings at East Allington as a Sustainable Village.

However TTV25 merely states:

> Provision in the order of 550 homes will be sought from the sustainable villages as part of the overall housing supply for the TTV Policy Area.

That is not the same as a 'requirement', while:

> Within sustainable villages without neighbourhood plans the LPAs will still support development that meets the identified local needs of local communities

and the Joint Local Plan (5.13) makes clear:

> A 'Sustainable Villages' allowance for these sites has been included in the housing land supply for the whole plan period, taking account of the sustainability of each village and the availability of sites in the SHLAA. It should be noted that whilst this allowance counts against the 5 year land supply for the Thriving Towns and Villages, and forms part of the housing trajectory for the policy area, the trajectory assumes that this source contributes to supply only in the later stages of the plan period, unless and until monitoring identifies actual commitments and completions.

The plan period runs from 2014 until 2034, we are yet to enter 'the later stages' and Annex 2 of the JLP refers to two monitoring targets for South Hams LPA over the plan period 2014-34: namely '5,800 net additional dwellings in the South Hams part of the PPA, annualised to 290 dwellings per annum and 4,500 net additional dwellings in the South Hams part of the TTV annualised to 225 dwellings per annum'.

And, by the end of March 2022, no fewer than 4,469 of those new dwellings in the South Hams part of the TTV had already been delivered. The Authorities Monitoring Report stresses that number 'represents 1,389 more homes than would be expected if applying an annualised housing target for the area'.

Access to the site is barely 4 metres wide in places. Access to the main road is via a single track

In addition, a Freedom of Information Request submitted by the Society revealed that by the same date, the end of March 2022, planning consent for a further 4,500 homes in the South Hams part of the TTV had already been given that had then yet to be built.

In other words, against a requirement of 4,500 homes, no fewer than 8,969 have either been consented or built – virtually double the Plan target, and considerably more than the 3,924 that the Plan's objectively assessed housing need originally said were necessary.

Were that not sufficient, according to the Five Year Housing Land Supply Position Statement 2022:

> There is sufficient flexibility in the supply identified which represents a headroom of 25%. No action is therefore required at this point to address supply in the South Hams LPA.

Consequently the question arises, is this application necessary, sustainable, and does it meet the identified local need of the local community? For example, only 30% of the promised dwellings will be affordable and, of those, how many will be genuinely affordable? And does East Allington need more open-market housing, almost certainly unaffordable to the majority of those already living and working in the South Hams?

To again quote the Authorities Monitoring Report, at the end of 2022 'homes in South Hams were 12.56 times the average wage in the area in comparison to 5.74 times the average wage in the year 2000.'

To make matters worse, new residents will almost certainly have to commute to work by car. The Sustainable Villages Assessment notes there is no local employment area and no access to employment centres by public transport. Similarly there is no Village Shop, no Post Office, no cash point, no chemist and no health centre. So even if those occupying the new dwellings are already retired, they will clearly be car dependant. Road Transport already accounts for 43% of overall South Hams carbon emissions, and we face a climate emergency.

The Parish Council have objected to the application, so it is safe to assume this development is one which fails to respond to local needs. There is also much concern as to whether the local highways infrastructure is able to accommodate any increase in vehicle movements. It is not surprising East Allington has never been included in the new recycling scheme that the District Council has tried to implement. The mile long road from the village to the A381 is a single lane interspersed with passing places, many of them small, while access to the proposed development site is barely four metres wide in places, making getting construction materials there challenging.

Conversely, although South West Water offered 'no objection subject to the foul and surface water being managed in accordance with the submitted drainage strategy' and there is also supposedly spare capacity at East Allington Wastewater Treatment Works, it is noticeable that in 2022 sewage was dumped in to the waters of Small Brook, eventually entering the Kingsbridge estuary via Bowcombe Creek, on no fewer than 39 occasions for a cumulative duration of just under 306 hours. The previous year there were 37 incidents, lasting a total of 370.18 hours.

And in their May 2023 Drainage and Wastewater Management Plan South West Water acknowledged the overflow at East Allington was 'substandard', admitting the 'catchment requires additional investment to make it resilient for the future'.

Given TTV housing targets have now been achieved, any development in East Allington will only add to car usage, there appears to be no genuine local need for the development, we have yet to enter the later stages of the plan period, and the sewage works is already unable to cope, this is one application the Council really should refuse.

But worryingly, the Council have already signed a Planning Performance Agreement with the applicant. Inevitably some will wonder whether either party would have done so if the outcome of the application was still open to question. •

Try getting a 7ft wide Range Rover down a 6ft wide lane

The meeting of housing needs

'The main issue', concluded the planning inspector, 'is whether the proposed development would provide a suitable housing mix to meet identified needs'.

And, in determining the appeal against the decision by Development Management Committee members to refuse consent for the construction of six new residential dwellings at Dennings, on Wallingford Road in Kingsbridge, the inspector examined the evidence put before him, and decided it did.

As he pointed out, table 4.9 of the April 2021 Kingsbridge, West Alvington and Churchstow Housing Needs Assessment claimed that approximately 57% of all new homes needed by 2034 should have three or four beds.

So far to date, of the 180 homes being built on sites at Applegate Park, Locks Hill and K5, no fewer than 99, or 55%, have three or four bedrooms.

In other words, it is not as if Kingsbridge is in serious danger of missing its target.

According to the Joint Local Plan (5.61) Kingsbridge will have to provide a total of 267 new homes by 2034. Of those 152, or 57%, will need to have three or four bedrooms if the objective set out in table 4.9 is to be achieved.

But in their response to the appeal, the Council significantly failed to offer any suggestion as to how the existing shortfall might be met.

Consequently it is somewhat surprising that no mention was made of Trebble Park, an allocated site for 111 homes at the north-west of the town, identified in the JLP as Policy TTV12. Were 53 of those, or 48%, to be three or four bed, a noticeably lower percentage than the average obtained across the other three sites identified earlier, then the table 4.9 requirement will have been delivered, without any need for the Dennings dwellings!

Of course what the Dennings dwellings will fail to do, and which the inspector acknowledged, is anything to rectify the finding by the Housing Needs Assessment (5) that 'home ownership through the mainstream market is not an option for a majority of local people and there is little chance of new market housing in any form widening access to home ownership to people who do not own already.'

To buy a detached home in the area according to the Housing Needs Assessment (90), let alone one with four bedrooms, and to obtain a mortgage, the purchaser would need to be earning somewhere in the region of £86,000.

Yet despite the adopted Kingsbridge, West Alvington and Churchstow Neighbourhood Plan making it clear that (1.9.3) 'the most pressing priorities are provision of genuinely affordable housing for purchase and for rent by local people, and smaller properties for older residents wanting to downsize', and the concern that (3.4.4) 'the town is also becoming attractive to second homeowners and those buying houses as holiday lets, so there is also an increasing transient population', no primary residence requirement is to be placed on any of the Dennings properties.

Unfortunately the failure to address the numbers in table 4.9 perhaps made the outcome of the appeal inevitable. Sadly it has meant nothing has really been done to meet the town's identified housing needs. •

Table 4-9: Suggested dwelling size mix to 2034

Number of bedrooms	Current (2011) distribution	Target (2034) distribution	Balance of new housing to reach target mix
1	14.2%	9.1%	0.0%
2	28.5%	26.9%	16.5%
3	39.4%	38.9%	31.1%
4	13.4%	18.5%	37.1%
5+	4.3%	6.6%	15.3%

. . . K5 giveaway

land, worth perhaps between £200,000 to £300,000, was given to Baker Estates to ensure the promised 16 affordable homes would still be delivered. However it is not yet known how or whether that decision was economically justified.

The decision itself was taken by a single councillor, a member of the previous administration, without reference to, or the knowledge of, any of our other elected representatives.

That this could happen is arguably unacceptable, and is obviously potentially open to abuse.

Consequently the Society has been reassured that in future any non-material amendments to S106 agreements will need to be signed-off by the relevant ward councillor, while all material amendments will require approval by both the ward councillor and the Chair of the Development Management Committee.

This change will in itself noticeably improve both transparency and accountability and is clearly to be welcomed.

Should we learn more we will of course keep you informed. •

Friday, October 20, 7:00pm

Main Hall, Kingsbridge Community College, Balkwill Road, TQ7 1PL

Henry Dimbleby, **Anthony Mangnall MP,** **Caroline Voaden**

Food Security, Food Safety and The Implications for Agriculture

Entrepreneur, restauranteur, food writer, former government food czar and author of the widely acclaimed National Food Strategy **Henry Dimbleby** is joined by **Caroline Voaden**, who as the last leader of the Lib Dem group in the European Parliament was also a member of the Committee on the Environment, Public Health and Food Safety, and **Anthony Mangnall**, MP for Totnes and South Devon, a Member of the International Trade Committee and a regular commentator and legislator on agricultural and fisheries matters, to examine the many challenges we face.

Topics such as the war in Ukraine, climate change, biodiversity loss, Brexit, population growth and political uncertainty are all likely to feature, and we will be happy to ask our speakers to address your specific concerns.

If you have a question which you would like answered, please email it to southhamssociety@gmail.com.

And, if you would like to attend, please email membership@southhamssociety.org to reserve your place. Admission is free and all are welcome but, if oversubscribed, priority will be given to Society members.

Newsletter / 5

Loddiswell pre-app lacking in authority

As readers of our July Newsletter will recall, the Society was forced to submit a Freedom of Information request before South Hams District Council would release the pre-application planning advice given to Devon County Council, owners of the Old School Playing Field in Loddiswell.

And, having read that advice, which stated:

> Overall and taken in the round, having regard to the most important policies for the assessment of the in-principle acceptability of the development proposed (SPT1, SPT2, TTV1, and DEV8), it is likely that a proposal would be considered to accord with the development plan and the proposal is acceptable subject to further assessment of the key issues considered below.

we wrote to the Council's Head of Development Management to say:

> We continue to believe there are a number of material considerations that will need to be satisfied, in addition to those detailed above, before officers can expect support for this application to proceed unchallenged.

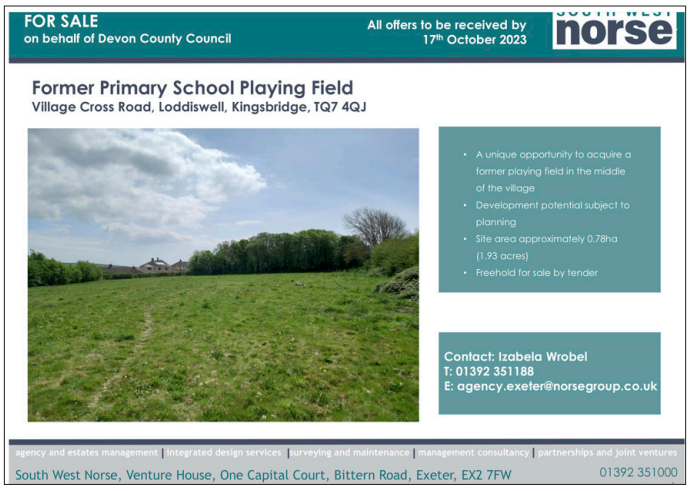
Those 'key issues considered below' included the provision of a tree survey, confirmation that garden areas would be of a sufficient size, that consideration would need to be given to controlling the phasing of the site and the likely design parameters of the self-build plots, that safe highway access would be available and that parking provision was compliant.

But, and as we pointed out, what the pre-app advice noticeably failed to mention was the relevance of JLP Policies DEV25 and DEV27 to any forthcoming application.

DEV25 is applicable as Loddiswell is located in the South Devon AONB, while DEV27 relates to green and play spaces, consideration of which had been excluded from the pre-app because the case officer had been told residents were able make use of the new primary school's facilities instead.

That claim, as we explained, was incorrect. The Old School Field was also allocated in the JLP as being for 'open space, sport & recreation use & accessible natural space'. It had never been allocated for development.

Yet despite the Head of Development Management acknowledging both DEV25 and DEV27 were indeed material considerations, he declined our suggestion to amend the advice, this despite our concern 'that were the existing Pre-App Advice allowed to stand, and were Devon County Council to sell the land to a buyer who thought it would be acceptable for the site to be developed based on what the Society believes to be incorrect information, problems might arise.



Allocated for open space, sport and recreation but now for sale

'If you agree this could be a possibility,' we added, 'might it not be advisable to now amend the advice?'.

However no amendment would appear to have been made, and the site is now up for sale. Noticeably the agent's particulars state 'Interested parties should make planning enquiries regarding development potential to the Local Planning Authority, South Hams District Council on 01803 861234. A pre-app response dated 16 October 2022 for 10 dwellings is attached, with an indicative layout'.

The site is being sold by tender, with offers to be received by Tuesday 17 October.

Before prospective purchasers submit any offers it is to be hoped that contact will indeed be made with the LPA, and they will be alerted to the fact that the pre-app advice is incomplete.

Even though government guidance does not consider pre-application advice to be legally binding it does expect it to be 'authoritative', and although the advice provided to Devon County Council was clear that it was 'offered on a without prejudice basis', those words are not necessarily sufficient to protect the Council from having to pay compensation, were either DEV 25 or DEV27 to cause an application to fail, with the applicant unaware that both were material considerations.

For example the Local Government Ombudsman upheld a complaint against Dorset Council (Case 19 006 027) even though the pre-application advice was caveated as being "given in good faith, without prejudice and cannot guarantee the outcome of any subsequent application". The Council had made a mistake in its advice, which the LGO considered amounted to a fault, and the Council was ordered to reimburse the applicant's architect's fees.

That said, obtaining redress through the LGO in such circumstances is unusual, not least because the LGO will often not intervene whilst the applicant has a right to appeal a planning decision to the Planning Inspectorate. Should permission be refused, or be granted subject to conditions unacceptable to the applicant, there may be a right of appeal to the Planning Inspectorate. Were the pre-application advice to have indicated that permission was likely to be granted only for it then to be refused, the Inspector can deal with the issue of the incorrect advice and make an appropriate order – such as requiring the planning authority to pay the applicant compensation for expenses unnecessarily incurred.

The 2019 Costs Decision against Central Bedfordshire Council in relation to Appeal Ref: APP/P0240/W/18/3210480 Former Shefford Lower School, land off Wynchwood Lane, Shefford, is a case in point. The site was sold by the Council to the appellant on the basis that it was suitable for residential development, including in relation to highways matters. Their pre-application advice had confirmed the site was suitable for residential development, and that its access arrangements were acceptable. Despite this, once a planning application was made, the Council refused it on highways grounds.

Concluding that nothing material had changed between the pre-application advice and the refusal, the inspector noted the Council's sudden change of position was without any reasonable justification and constituted unreasonable behaviour. A full costs award was made against the Council.

In addition the requirement to consider all relevant policies in a Local Plan has been long-established as a matter of law. To quote section 38(6) of the Planning and Compensation Purchase Act 2004: "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Here the words of Lord Clyde in the House of Lords decision in City of Edinburgh Council v. Secretary of State for Scotland and Others [1997] UKHL 38 will be worth noting:

> "... it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan."

The Council doing nothing, in the full knowledge that their pre-application advice fails to take into account all relevant policies, with the result that it is far from 'authoritative', not only helps nobody but leaves it falling a long way short of government expectation. •

More Crabshell Conversations this autumn.
Details page 8

Newsletter / 6

Profiting from permitted development

Conditional approval was given for this barn outside Moreleigh now used to house horses on the basis of agricultural need

On 24 July the government announced an open consultation on permitted development. Included amongst the proposals was a desire to remove barn conversions in protected landscapes from the planning process.

The government want to encourage more homes to be built but, as others have made clear, 'this isn't going to deliver more housing for local people, which is what's needed, it will just deliver more holiday homes and destroy our finest landscapes at the same time.'

Nor is this the first time the government has attempted to prevent local communities and planning authorities from ensuring such developments are both genuinely necessary, sustainable and appropriate. Back in March 2014 the then coalition government previously had to backtrack under pressure and exempt sensitive landscape areas from a relaxation in the planning rules for agricultural buildings.

More pertinently, before making matters worse the government might like to consider the existing problem we have with agricultural buildings and permitted development here in the South Hams.

In submitting our objection to an application to construct a general purpose agricultural building on land at Sx 800 396, Kellaton at the start of August, we pointed out there have already been 20 such applications so far this year.

Some have certainly been more questionable than others. But too often too many obtain consent because planning officers do not always have either the time or resources to thoroughly check the claims being made by applicants and their agents.

To quote again the example of an application for the provision of an agricultural storage building on land at Island Farm Barns, Moreleigh, conditional approval for which was given in February 2021. The applicant, officers were told, owned 50 acres grazed by both cattle and sheep and that the building was necessary to 'provide essential undercover storage space to prolong the longevity of the agricultural machinery and keep it secure' – a justification that the same agent has used on more than the one occasion, and one which the Society has previously questioned.

The brochure for the land at Barberry Farm

In giving approval the case officer made it clear that 'the building is only accepted in this location on the basis of it being required for agricultural purposes... and removed if no longer required for these purposes unless an alternative use is first approved by the Local Planning Authority to retain control over the use of the building in this location.'

Two years later, and after the Society had alerted the LPA to the fact that the building had not been constructed in accordance with the approved plans, the applicant submitted revised plans to regularise the breach. Those plans showed extensive equestrian facilities within the layout, in breach of condition 3 of the decision notice for the previously approved application, which had made it clear the building should only be used for agricultural purposes, as defined in Section 336(1) of the Town and Country Planning Act 1990. The Act does not consider the keeping of horses an agricultural activity.

Even so, officers approved the change of use from agricultural to equestrian, despite the fact that consent would almost certainly not have been given for that purpose in the first place.

Similarly, On 25 July 2022 the LPA gave approval to an application to erect a general purpose agricultural building on an 8.34 acre site at Barberry Farm, Dittisham. According to the applicant's agent, the applicant had owned the land 'for one year after moving to the area and also grazes an additional 30 acres of neighbouring land which is rented'.

The applicant, said the agent, was the owner of 25 breeding ewes and 30 pygmy goats and the building was required to 'store machinery and fodder, as well as to house ewes during lambing. The building would provide a dry place for the ewes to lamb and also a safe space to store the fodder and machinery and keep it from becoming weather damaged, as replacing any of this would be costly for the applicant.'

In recommending approval the case officer made it clear:

> It is considered necessary to restrict the use of the building to agricultural uses only and that it is removed if no longer required in this way, as the development is considered acceptable for the use proposed in a countryside location, and is permitted on the basis of an agricultural need without which permission would not have been granted.It is considered necessary to restrict the use of the building to agricultural uses only and that it is removed if no longer required in this way, as the development is considered acceptable for the use proposed in a countryside location, and is permitted on the basis of an agricultural need without which permission would not have been granted.

Now, little more than 12 months later, the land is on the market through Luscombe Maye with a guide price of £195,000 and being sold as 'A unique opportunity to acquire approximately 8.34 acres of permanent pasture and woodland with planning consent for a general-purpose agricultural building situated in a secluded location near to the desirable village of Dittisham'.

Yet, because the consent goes with the land and not with the applicant, any new owner will

...Continued page 7

Newsletter / 7

Nutrient Neutrality

It was widely reported in the Guardian and elsewhere that the Government's proposal to amend provisions in the Habitats Regulations – the means by which the EU Habitats Directive and Wild Birds Directive have been incorporated into domestic law, was rejected by the House of Lords.

Like the Urban Waste Water Directive referred to on page 10 the Habitats Regulations remain enforceable and to be interpreted according to (pre Brexit) EU case law. Those sites which are protected under the Habitats Regulations may be Special Areas of Conservation ("SAC"), Special Protection Areas ("SPA") and also Ramsar sites.

Regulation 63 of the Habitats Regulations requires competent authorities (and in this context we are concerned with Planning Authorities) to follow prescribed steps when making development control decisions that could impact a Habitats Site. They must first establish whether the development which is the subject fo the application is likely to have a significant effect on such a Site, either alone or in combination with other plans or projects, in view of that Site's conservation objectives.

Where the proposal is likely to have such an effect then they must make an "appropriate assessment" of its implications in view of the Site's conservation objectives. The authority must

...Continued page 8

Skatepark redesign saves some trees

The redesigned and repositioned skatepark now means fewer trees will be lost

Even though the construction of the new Kingsbridge Skatepark has now commenced it remains the case, as the Society has previously pointed out (Newsletter July 2023), that it is not permitted development.

The legislation is quite clear. Article 3(4) of The Town and Country Planning (General Permitted Development) (England) Order 2015 categorically states:

> Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.

Consequently when on 28 June the Development Management Committee agreed to grant a Lawful Development Certificate to permit the development to proceed, it ensured conditions 2 and 4 of planning permission 28/0803/09/ F would be breached.

Those conditions required the skatepark to only be used between the hours of 10.00am and 8.00pm and that two sound barriers needed to be constructed 'in accordance with the details hereby approved prior to the commencement of use of the skate park and shall thereafter be retained in situ in perpetuity' in order to mitigate any noise nuisance.

By omitting to continue to control the hours of usage and ensure any other noise mitigation measures were put in place the Council failed to comply with Article 3(4) of the 2015 Order.

Fortunately changes made to the proposed design and positioning of the skatepark itself have meant it is no longer necessary to divert Public Footpath No. 1, and of the nine trees first suggested for removal, four will now be kept – three elms and an oak. In addition South Hams District Council have 'promised the five trees being removed will be replaced with at least 22 large trees'. These will be planted this winter close to, and including on, the bank above the skatepark.

Suffice to say, the Society has never been against providing Kingsbridge with a skatepark. Our argument has always been that, because the permitted development route should not have been available, a full planning application was consequently required. We have also questioned whether the Quay was the best location, rather than returning the skatepark to its original site in Coronation Park.

However we are where we are and, provided any problems with noise can be overcome, we genuinely hope the skatepark will prove a notable success. •

. . . profiting from

be able to construct 'a general purpose agricultural building' without having to demonstrate their own clear agricultural need. Nor will they even be required to inform the LPA that they have now acquired the property. And if the government's proposals to relax planning regulations in protected landscapes come in to force they will eventually be able to convert that building in to a domestic dwelling, noticeably increasing the value of their property still further.

Consequently we can only hope, regardless of whether the government succeed in relaxing planning regulations, that planning officers take note of the words of the planning inspector when he refused an appeal to construct an agricultural building at Galmpton:

> I saw on my visit that the land is being used to keep sheep and I understand that the proposed building would be used by a tenant farmer to store animal feed and machinery in connection with this activity. However, although I am informed that there can be up to 45 sheep on the site in spring, very little additional evidence has been provided to explain why there is an agricultural need for the proposed building. For example, it is not made clear why machinery needs to be kept on the site and exactly what it would be used for. Nor is it clear what the current arrangements are for managing the site or how business operations may be compromised without the proposed building. In the absence of more detailed information on these matters, I am unable to determine that there is an essential need for the development.

The inspector makes it clear that it is beholden on the applicant to provide demonstrable and detailed evidence of agricultural need rather than such general purpose statements as:

> 'The applicants would like to erect a general purpose agricultural building to use to store machinery and folder, as well as to house ewes during lambing. The building would provide a dry place for the ewes to lamb and also a safe space to store the fodder and machinery and keep it from becoming weather damaged, as replacing any of this would be costly for the applicant.'

It should be noted that in determining the Galmpton application the case officer had originally also concluded 'Insufficient evidence has been submitted to demonstrate the building responds to proven agricultural need contrary to policies TTV26 Part 2 (iv) and DEV24 of the Joint Local Plan 2019.' And, were officers always to be so diligent and demand the evidence both officer and the inspector had found lacking, then fewer attempts might be made to exploit permitted development legislation in sensitive landscapes such as the South Hams.

Suffice to say, we have raised our concerns with the Council's Head of Development Management, submitted our response to the government's consultation – included as an appendix to this Newsletter, and written to MP Anthony Mangnall to argue that, in the case of agricultural buildings in the countryside, consent should go with the applicant and not with the land.

And meanwhile, on 14 August, officers agreed with the Society's submission and the Kellaton applicant was told a full planning application would be required. •

… Nutrient Neutrality

then consult the appropriate nature conservation body and have regard to any representations made by that body. The authority must only agree to the proposal after having ascertained that it will not adversely affect the integrity of the Site.

The focus has been on developments which would increase the quantity of "nutrients", namely nitrates/nitrites and phosphates, in water bodies. A housing development will almost inevitably have that result with the result that LPAs can only give it the go ahead if mitigation steps are put in place. The Government sought to remove this obstacle.

Environmentalists have, understandably, applauded the vote in the House of Lords.

But because South Devon does not have any sites which attract nutrient neutrality protection under the relevant provisions South Hams District Council was not sent the letter from Natural England that advised relevant planning authorities – ie those whose areas included or affected a relevant SAC, SPA or Ramsar. •

Crabshell Conversations

A series of four talks this autumn, taking place in the upstairs restaurant at the Crabshell Inn, Embankment Road, Kingsbridge, TQ7 1JZ. Starting at noon, and each lasting about 30mins with questions to follow. Admission is free and all are welcome, members and non-members alike.

October 05 – 12:00pm

Salcombe Community Land Trust

Endeavouring to address the need for affordable housing

Nobody doubts the need for genuinely affordable accommodation throughout the South Hams. Nikki Turton and colleagues Caroline Bricknell and Nicki Barclay explain how they are working to deliver a solution, the challenges they face and the very real progress already made.

October 19 – 12:00pm

How to Campaign, from nimby to beyond

A preparation for wind turbines and building!

Campaigner, hedge fund manager and former chair of the South Hams CPRE Justin Haque on the challenges we face. And how we can best oppose them.

November 02 – 12:00pm

Going Green

The challenges faced, the upsides and the downsides to eco living, and why and how we did it

In 2015 David Johns and his partner Karen Wells-West bought 12 acres of sloping land overlooking Golant village and the Fowey Estuary. There they have created The Sanctuary, their award winning offgrid eco lodge where visitors can experience first hand a comfortable low carbon lifestyle and engage with the natural environment.

November 16 – 12:00pm

Neighbourhood Plans

The need, the process and the benefits

Architect and community engagement consultant Peter Sandover helped the Design Council produce their original guidance to communities and has since worked with many rural and urban communities, including those in both Salcombe and Dartmouth, to produce their own.

If you would like to attend any or all of the talks, please email membership@southhamssociety.org to let us know you might be coming and also whether you think you will be able to join us for lunch.

Indoors again this autumn

Events Lead Cathy Koo signs up new members at the Totnes Show

With favourable weather for at least some of the time it was good to get out and about again this summer to meet with members, both old and new.

But matters did not start well. Saturday morning on the Town Square in Kingsbridge for Kingsbridge Fair Week was a complete wash-out and we, along with all the other stall-holders, got to go home early.

Fortunately by the time we erected the gazebo at the Yealmpton Show towards the end of July the weather was noticeably better, with sunshine interrupting the rain for at least some of the day. Similar conditions greeted us four days later for the Totnes Show and by the time we arrived to Celebrate Start Bay a fortnight later the sun hardly ever put its hat on, while Hope Cove Weekend on Bank Holiday Monday was close to being absolute scorcher.

Finally we concluded our travels at the start of September on the Borough Show Ground for the Kingsbridge Show where, thanks very much to the persuasive efforts of our treasurer, we succeeded in finally surpassing last summer's total of new members. A very good end to our travels.

And now, for all our further entertainment and enjoyment, we begin our autumn series of Crabshell Conversations on October 5, when we hope you will join us at noon in the upstairs restaurant of the Crabshell Inn in Kingsbridge to hear Nikki Turton and her colleagues Caroline Bricknell and Nicki Barclay explain how the Salcombe Community Land Trust is endeavouring to address the very real need for genuinely affordable housing in the town.

For around half an hour they intend to discuss how they are working to deliver a solution, the challenges they face and the very real progress they have already made. Their approach could also offer an answer for the many other communities throughout the South Hams facing similar problems and they will be happy to take your questions.

Details of this meeting and the three to follow on October 19, November 2 and November 16 can be found on this page. There would have also been a meeting on November 30 but unfortunately the Crabshell restaurant is to be closed for refurbishment, so that will now have to wait until we resume our Conversations again in the Spring.

There is no charge for admission to any of our Conversations, and we sincerely hope that you can come along and get to know as many of your fellow members as possible. The Crabshell management are providing the venue to us free of charge so please do support us by staying for a drink and a bite to eat after the talks, although sadly we all have to pay for that ourselves – only speakers get a free lunches!

But before the New Year we also have another meeting, this time on the evening of Friday October 20 in the Main Hall at Kingsbridge Community College. There we will be joined by former government food czar Henry Dimbleby, MP Anthony Mangnall and Caroline Voaden to address the issue of Food Safety, Food Security and the Future of Agriculture.

Full details can again be found on page 4, and once more admission is free. If you can attend please let Kate, our membership secretary know as soon as possible, as all events are also open to non-members, and there is a chance we could be over-subscribed. •

‘It couldn’t happen here …’ – or could it?

As a prelude to the new autumn series of our ‘Crabshell Conversations’, we have had to rediscover the SHS laptop and projector. They have gone from place to place for storage and haven’t been in use for some years. After a certain amount of trial and error and Googling older computer programs they both appear to be working, and should be complementing the Salcombe Community Land Trust’s talk on 5th October.

The contents of the laptop hadn’t seen the light for some years either, and included some interesting items – notably an audio-visual presentation entitled ‘It couldn’t happen here’. This was put together by the then committee in 2004 and there were public showings to parish councils and other bodies to raise awareness both about the Society and about the damage that could be caused to the South Hams by unrestricted development.

Bill Blanch, a long-time Society member with previous experience in PR, was the moving force in putting the presentation together to a very professional standard. A variety of local people and businesses were persuaded to contribute photographs including aerial views of the Salcombe-Kingbridge estuary. Two local actors recorded the script for the voice-over, and a well-known local musician created the incidental music. Another Society committee member, Alan Stapleton, helped with the technical details and arranging the purchase of a suitable projector and computer.

The opening scenes show the beautiful South Hams and detail its protected status. Moving on there are instances of opposition to unwise planning schemes, and examples of good and bad development, and some mock-ups of potential development affecting the estuary, as well as mentioning the perpetual problem of the lack of affordable housing. To quote part of the conclusion -

> ‘It would be tragic if the South Hams were allowed to become another Torbay, or some sort of museum for holidaymakers … This is a fabulous part of the country with a fabulous heritage, but it could be ruined forever if we don’t look after it’.

The completed presentation was first shown at the Society’s AGM in March 2004, and showings continued at about two a month during 2004 and 2005 to parish councils, societies and schools. Information about it was sent to all town and parish councils in the South Hams area, and there were numerous requests to see it. These included Kingsbridge Rotary, the Aune Valley Association, Hope Cove Probus, Kingsbridge Town Council and other parish councils, the local National Trust, the Dartmouth & Kingswear Society, Salcombe Yacht Club and more. There were events at Aveton Gifford school, Stokenham, and Frogmore among others, and a copy was sent to our local MP. It was updated with new information in late 2005.

Could it be time to think about a new version? It may have dated a little, the technology has certainly changed as have some of the photographed examples – not always for the better.

The questions of inappropriate development, local communities waking up to development plans too late, the future of the South Hams and what is being handed on to the next generation are certainly still in existence and statutory landscape protections continue to be bent and stretched. •

These images are two sets of ‘before and after’ pictures from the presentation.

The ‘before’ view of Kingsbridge (top) already shows the (now demolished) Crabshell Motor Inn and the Moorings development, but the ‘after’ view demonstrates the effect of further development along the estuary shoreline.

Possible development in these prominent fields at Batson (the ‘before’ view is once again at the top) was already on the radar in 2004, and has been under discussion a number of times since then.

Despite Wildfish, Storm Overflows Plan remains lawful

Was the Environment Agency too generous to South West Water in setting the discharge permit for Totnes Sewage Treatment Works?

WildFish campaigns to reverse the decline in wild fish populations and their habitats and in particular against pollution from agriculture and sewage. Mr Justice Holgate has dismissed an application for judicial review brought by WildFish which challenged the lawfulness of the Government's Storm Overflows Discharge Reduction Plan ("the Plan") published in August 2022. The Plan sets three targets:

> (1) As of 2050 Water & Sewage companies will only be allowed to discharge from a storm overflow where there would be no resulting local adverse ecological effect from doing so Bur for overflows discharging into or close to certain sensitive areas that target has to be met by 2035, or 2045 at the very latest;
>
> (2) Water and Sewage companies have to "significantly reduce" harmful pathogens from overflows either by carrying out disinfection or by reducing the frequency of discharges to meet EA standards by 2035.
>
> (3) There is an additional backstop target: by 2050 storm overflows will not be permitted to discharge above an average of 10 heavy rainfall events a year.

For many commentators the time periods laid down by the Plan are much too long, But Wildfish argued that the policy choices that they represent were not merely wrong headed but actually unlawful and should be quashed – and therefore re-written.

Mr Justice Holgate's judgment runs to 55 pages. It contains a penetrating and very useful analysis of the rather tortuous legal provisions which regulate the sewerage industry and, in particular, the use of so called "storm overflows" or "CSO"s. Indeed Wildfish, with some justification, hail this clarification as a victory in itself.

As I have previously written in this newsletter and nearly everyone in the UK must know by now most of our sewers carry a combination of surface water – ie rainfall – and sewage. Such combined sewers are common throughout Europe. When a tap or valve contained in a sewer – a combined storm overflow – "CSO"– is opened the water containing sewage being carried by the sewer goes straight into a river, stream or sea instead of being treated first. The frequency and temporal extent of these discharges has become a subject of very considerable public attention. I wrote at some length about that in this newsletter last year.

WildFish argued that in setting the targets in the Plan to reduce the use of CSOs the Secretary of State had misinterpreted the relevant regulatory requirements for sewage systems. Those requirements are contained in Urban Waste Water Treatment (England and Wales) Regulations 1994 which are the national implementation of an EU Directive. The Regulations supplement and build on the basic duty of a sewage undertaker contained in s94 of the Water Industry Act. The EU Directive laid down fairly elaborate and exacting rules as to the introduction of effective sewage treatment across the EU and those rules were duly embodied into the 1994 Regulations but it also contained this qualifying provision:

> "Given that it is not possible in practice to construct collecting systems and treatment plants in a way such that all waste water can be treated ***during situations such as unusually heavy rainfall***, Member States shall decide on measures to limit pollution from storm water overflows. Such measures could be based on dilution rates or capacity in relation to dry weather flow, or could specify a certain acceptable number of overflows per year

Emphasis added.

The 1994 regulations gave expression to this qualification and in particular stated as follows:

> "2. The design, construction and maintenance of collecting systems shall be undertaken in accordance with the best technical knowledge not entailing excessive costs, notably regarding–
>
> (a) volume and characteristics of urban waste water;
>
> (b) prevention of leaks;
>
> limitation of pollution of receiving waters due to storm water overflows."

The cost benefit expression "best technical knowledge not entailing excessive costs" is referred to as "BTKNEEC." As we shall see it is of vital importance.

The Environment Agency issues permits to sewerage companies to operate waste water treatment works and CSOs within those works. Permit conditions are to be set so as to achieve compliance with the 1994 Regulations, both when a permit is granted and thereafter. This control is not limited to operational or management or maintenance failures. It also includes – or it might be added at least should include – the adequacy of the designed capacity of the infrastructure relative to the demand arising over time from the area served by the collecting system. A typical permit condition permits the discharge of sewage via a CSO only when the flow of waste waster passed forward for treatment exceeds a setting determined by the EA. This is referred to as the "flow to full treatment" or "FFT". So, and

...Continued page 11

. . . Despite Wildfish

by way of a local example, South West Water can only operate the CSO which discharges untreated sewage into the Dart at Totnes if the FFT in the Totnes treatment works is more than 95 litres per second and this is "due to rainfall or snow melt" and SWW's storage tank (which is required to hold 3250 cubic metres) is already full up.

Wildfish argued that in setting the first and third targets in the Plan as to the use of CSOs the Secretary of State had failed to understand that reg.4 of the 1994 Regulations already required sewerage companies to remedy insufficiency of physical capacity to store and process waste water. Wildfish relied on the judgment of the European Court of Justice ("CJEU") in a case called European Commission UK (Re Storm Water Overflows) ("the UK case") decided in 2004 of which more below. Wildfish also argued that the Plan is unlawful because it had the effect of actually directing sewerage companies to breach reg.4 of the 1994 Regulations, and/or that the Plan would frustrate the purposes of those Regulations. It further argued that the Secretary of State had failed to take into account obviously material considerations, including the enforcement of reg.4 of the 1994 Regulations and addressing any "gap" between the requirements of environmental permits issued to sewerage companies and the 1994 Regulations.

The background was that, according to data which was available to the SoS at the time when the Plan was finally approved in 2022, 52% of storm overflows spilled more than 10 times; 39% more than 20 times; 20% more than 40 times and 11% more than 60 times. The average duration of each spill was 5.8 hours but a spill might last a full day. Overall, there had been 301,091 spills in 2022. That represented a decrease from the previous year because of drier weather in that year. The EA's data shows that of the 1,355 outflows they had assessed so far, the reason for the spill was lack of hydraulic capacity in 60% of cases, a maintenance issue for further 16% and "exceptional rainfall" for 0%. The reason for the spills in the other cases was still being investigated. But inadequate capacity was the overwhelming cause of the spills from the storm overflows with the highest number of spills, that is those with more than 60 spills a year.

Sewage in Bowcombe Creek by New Bridge September 2019

The view of the Government and regulators (ie the Environment Agency and OfWat- whose respective roles are explained in my earlier article) was that sewage overflows have been used "far too often". The pressure on combined sewer systems had increased because of (1) increases in population, (2) increases in impermeable surfaces resulting in more rainwater run-off, and (3) more frequent and heavier storms through climate change.

As I have previously written in November 2021 the EA and Ofwat announced a major investigation of over 2,000 sewage treatment works. Moreover the Office for Environmental Protection has launched its own investigations into whether the Secretary of State, Ofwat and the EA were failing to comply with their statutory duties in relation to the regulation of the use of storm overflows by water and sewage companies. It is noteworthy that the Office of Environmental Protection has very recently (press release on 12th September 2023) stated that as result of their investigations so far:

> "...we think there may have been misinterpretations of some key points of law. The core of the issue is that where we interpret the law to mean that untreated sewage discharges should generally be allowed only in exceptional circumstances, such as during unusually heavy rainfall, it appears that the public authorities may have interpreted the law differently, permitting such discharges to occur more often.

The OEP explained that this had consequences for the regulatory activity because the guidance provided by Government to regulators, and the permitting regime the regulators put in place for the water companies,

> "...possibly allowed untreated sewage discharges to occur more regularly than intended by the law without risk of sanction."

In other words in issuing permits like the one issued to SSW in relation to Totnes the EA might have been more generous than it should have been when it came to the framework and circumstances in which the CSO could be used, it should have required the company to increase hydraulic capacity (including by way of temporary storage of excess waste water).

Sewage being discharged in to the drain on Mill Street in Kingsbridge before ending up in the Estuary

Going back to the judgment of Mr Justice Holgate in Wildfish the Judge noted that the 1994 regulations imposed a duty to ensure that sewage treatment plants were "designed (account being taken of seasonal variations of the load), constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions".

In the UK case the CJEU had interpreted the provisions of the Directive and how the relevant parts of the Directive interacted. A failure to treat urban waste water can only be tolerated where the circumstances are "out of the ordinary" . The Court also said that the concept of "unusually heavy rainfall" applied to collecting systems and treatment plants. It was not possible in practice to construct collecting systems and treatment plants so that all waste water will be capable of being treated. Such situations could be tolerated in "situations such as unusually heavy rainfall" which the Court characterised as "exceptional situations" and in such situations the state had to decide on "measures to limit pollution from storm water overflows". The general requirement was that sewage collection and treatment including any discharge of untreated waste from treatment plants had to be in accordance with BTKNEEC. That involved weighing the best technology and its estimated costs against the benefits (or avoidance of harm) that a more effective water collection/treatment system may provide. It is necessary to take into account the effects of discharges of untreated waste on

...Continued page 12

. . . Despite Wildfish

the environment to see whether the costs that must be incurred or the works necessary to treat all waste water, would be proportionate to the environmental benefit that would result. The CJEU decided that the relevant provisions of the Directive (and therefore the 1994 Regulations) actually involve two tests:

> First, is the discharge from a collecting system or a treatment plant due to circumstances of an exceptional nature? If the answer is yes, there is no breach of either reg.4(2) read with para.2 of sched.2, or reg.4(4)(a) read with reg.5, of the 1994 Regulations.
>
> If the answer is no (the circumstances are not exceptional), the second question is whether discharge can nevertheless be justified by cost-benefit analysis so as to satisfy the BTKNEEC test. If the answer is yes, then there is no breach of reg.4(2) or reg.4(4), but if the answer is no, then there is a breach.

So the mere fact that a storm overflow discharges to a waterway in non exceptional circumstances does not necessarily involve a breach of the 1994 Regulations. If there is no remedy for that occurrence which would meet the BTKNEEC test, then the discharge is lawful under the 1994 Regulations. In the Wildfish case it was agreed between the parties – and accepted by Mr Justice Holgate, that the prohibition upon discharging untreated waste water applied to all discharges through storm overflows however caused, (subject only to the exclusion of spills caused by exceptional circumstances or the BTKNEEC exception). A breach could occur because of inadequate physical capacity as well as operational and maintenance failures.

The EA requires that a sewerage system must be designed, built and maintained to BTKNEEC. Where an overflow becomes unsatisfactory, the EA can review the environmental permit conditions to satisfy the relevant standard. A substandard overflow may include a facility which does not have sufficient hydraulic capacity compared to minimum design standards, or which risks becoming unsatisfactory because "discharges have increased beyond the original design due to infiltration, growth and urban creep." The EA will then require that the undertaker upgrades a

Foul sewage lifting the lid to the Embankment Road pipe line to the pumping station that pumps sewage to Gerston Sewage Works, Kingsbridge winter 2012/2013

substandard overflow to meet modern standards. As Mr Justice Holgate put it there is a duty on the EA to enforce ongoing compliance with the 1994 Regulations.

But the Plan had a "significantly higher ambition" than just securing compliance with the 1994 regulations because the policy targets would require improvements going beyond those which could satisfy a cost-benefit test and therefore be required under regs.4 and 5 of those Regulations. The new statutory plan that the Secretary of State had to produce was seen as a means to set specific, time-bound objectives which would drive widespread change on storm overflows across the country.

The evidence that was before Holgate J and which was referred to in his judgment contains a glimpse into what has been discovered so far by the EA in its investigationv. The EA's initial assessments suspected that *up to 30% of all treatment works could be affected by the investigation, which was far more widespread than had previously been thought, and the position could be even worse.* But the conclusion of the first stage of the investigation would not be until "around late 2024 or early 2025." Reasons for non-compliance might range from "poor management of growth" through to deliberate manipulation of flows (e.g. using overflows below the full treatment setting specified in a permit condition).

Having considered the communications from the Government to the sewage companies Holgate J was satisfied that the Minister was aware of the existing regulatory requirements but was looking to raise standards further than they required. It was:

> … plain that the [Secretary of State] was considering adopting a strategy for dealing with overflows which went substantially beyond existing legislation, in particular the 1994 Regulations… There is nothing in the plan or in the material leading up to the plan… to indicate that the secretary of state or Defra have proceeded on the basis that the 1994 Regulations do not require the physical capacity of a collecting system or treatment work to be remedied,… [there was] no merit in Wildfish's contention that the third target in the plan purports to give effect to regs.4 and 5 of the 1994 Regulations and so involves a 'downgrading' of the force of those statutory requirements.

Holgate J said that as the demands placed upon a particular sewerage system increase over time through population growth, development and climate change, cost benefit analysis may require an upgrade to the physical capacity of that system but that is not the position for all storm overflows throughout the country. Regulations 4 and 5 of the 1994 Regulations require a site-by-site analysis. This has been pointed out in the UK Case where the Advocate General stated that there must be a comprehensive assessment of the circumstances of each case. Holgate J said that the assessment of discharge data and the performance of overflows and the treatment work against the 1994 Regulations was work in progress and under investigation by the EA. The Court was not in a position to assess the overall proportion of overflows discharging in non-exceptional circumstances which fail to satisfy the BTKNEEC test.

The judgment does highlight whether a FFT condition for a particular overflow will remain compliant with regs.4 and 5 of the 1994 Regulations years after it was originally set if there are development changes, increases in local population and climate change. A problem with a control based on dry weather flow is that that standard becomes weaker over time as a result of increases in demand on the system and climate change. A "future-proofed mechanism" may need to take account of what is required to keep the number of spills low without the EA having to make fresh assessments of flow settings and to revise permit conditions as weather or demographics change. But, and although this was "an important issue", it is not a matter to be determined by Holgate because there was no claim against the EA, (or indeed Ofwat). Holgate J added that there may be other issues meriting consideration, such as whether cost benefit analysis and the values attributed to harm to human health, amenity and ecological interest are sufficiently robust.

Wildfish argue that the case has achieved their underlying purpose, clarification of the 1994 Regulations. They say (and are clearly correct in saying) that the judgment case confirmed that sewage treatment infrastructure needed to comply with the 1994 law and that is excluded from the scope the Plan. What is perhaps less clear is whether Wildfish are correct in saying that works to comply with the 1994 Regulations are to be funded by the water companies and not by customers through their water bills.

In a sense the Plan, whilst no doubt fufilling a political objective of attempting to show that the Government is doing something (although not for a long time) about CSOs, is rather beside the point. The more pressing question, which will itself take a depressingly long period to answer, is whether the standards that are already in place under the 1994 Regulations are being complied with. One might have hoped that we would already know that was or was not the case. •

Say NO to more 'Sore Thumbs' – see page 19

October 2023

Newsletter / 13

Pre-emptive Tree Action required

Too often, when land or property changes hands, trees disappear. Residents wake up one morning to the sound of chainsaws. And, by then, it is too late.

Notable trees and hedgerows, many with considerable amenity value, are removed, destroying biodiversity and degrading the setting. Not long after, a planning application is likely to follow.

Doing nothing makes it easy for the offenders. But were the trees to have been afforded the protection of a Tree Preservation Order (TPO) prospective offenders might well stop to think twice. Breaching such an order could result in a fine of between £2,500 and £20,000.

Consequently, if you learn of land being acquired on which you think there are trees or hedgerows you consider worth saving, you need do no more than give the location (What3words?), take some photographs and send them to the coordinator of the South Hams Tree Wardens. The trees/hedgerows have to be visible from a public space and the trees have to be in a visibly healthy state. With the information you send it will hopefully be possible to start the process to provide protection for these trees.

Details of our Tree Wardens can be found here.

Act in time and you really will be making a difference! •

Brixham threat to AONB

The South Devon AONB and the two field corridor

Normally the Society only comments on applications in the South Hams. But were approval to be given for the erection of up to 77 dwellings, just over a third of which would be 'affordable', on greenfield land to the southwest of Copythorne Road, Brixham, it is clear the South Devon Area of Outstanding Natural Beauty would suffer yet another unacceptable loss.

Already the area to the northwest of Brixham has lost 34.59 Ha of AONB land to urban development. This proposal would increase that total to 41 Ha and leave a just a narrow strip of countryside, a mere two fields wide, connecting through to Broadsands Beach. And one of those fields contains two agricultural barns.

Quite simply, if permitted, the development would damage the integrity of the South Devon AONB by effectively severing the Broadsands area from the rest of the AONB to the west. For this, if no other reason, the application should be refused.

To make matters worse, because Torquay Borough is unable to satisfy the requirement for a five year housing supply, the applicant is as a consequence able to argue that it would now be acceptable to remove another section of the AONB on the basis a presumption in favour of sustainable development now exists.

The applicant's planning statement (1.8) also puts forward further justification, much of which we consider to be an incorrect analysis of planning policy.

In addition, in our view, Paragraph 11 d) i) of the National Planning Policy Framework should apply, revoking the presumption in favour of development.

To date 165 comments have been received, all but one objecting to the application. As well as the Society, the South Devon AONB Unit and Devon CPRE have also objected. But, as yet, no decision has been reached. •

Kellaton refused

Barn too big to be permitted

As we said in our objection, we continue to be concerned at the increasing number of large agricultural buildings being built under the umbrella of permitted development legislation in sensitive landscapes. To date this year, we added, no fewer than 20 such applications have been submitted in the South Hams.

In our view the proposal being presented, to determine if prior approval is required for a proposed extension for a general purpose agricultural building, failed to comply with the description of permitted development as set out by Schedule 2, Part 6, Class A of the GPDO, and that therefore this application should not be permitted development.

The relevant part of the Schedule states that 'development is not permitted' if 'any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations; or any building erected or extended or altered by virtue of Class A, would exceed 1,000 square metres, calculated as described in paragraph D.1(2)(a) of this Part'.

The ground being covered by the development clearly exceeded the 1,000m2 threshold by a considerable margin.

In her report the case officer both commented upon and agreed with the our conclusions. The application was refused. •

GPDO threat to historic building

As we made clear in our objection to this application for a Certificate of Lawfulness for a proposed rear extension, window alterations, rooflights and outbuilding, the Society is particularly concerned at the increasing use of permitted development rights to propose development that exploits the GPDO rules to the limit, allowing consent to be given by government dictat without any consideration to the impact on the protected landscapes of the Heritage Coast, the historic environment and the South Devon AONB.

The nearby historic building and lime kiln we believe to be visually important, not only from the SW Coast Path, but also public viewing points on the Bantham Ham and from the water, and what is being proposed would be highly detrimental.

One of the earliest buildings on the estuary bank, predating Dog Watches by at least 100 years and shown on the 1873-1888 SW England OS Map, it has survived intact, but is now under threat from the GPDO regime on a tick box exercise. •

Rickham barn application exceeds limit

Yet another application to determine if prior approval is required for an agricultural storage building for storing grain, seed and fertilisers. And yet another application to which the Society has objected.

Having measured the area from the site plan we considered the total area of the development would be in excess of 1,800m2. The limit for it to be permitted development, as set out by Schedule 2, Part 6, Class A of the GPDO, is 1,000m2.

We were also concerned that the proposed location is at the highest point on the peninsula east of the Salcombe to Kingsbridge estuary at 134 metres. The class 'C' road network in this area to the south of the A379 is unsuitable for the intended vehicles, and such vehicles are degrading the hedgerows lining the narrow lanes of the South Devon Area of Outstanding Natural Beauty.

Although the case officer acknowledged our objection he still concluded the development was permitted, without offering any evidence to the contrary. •

Newsletter / 14

An alien intrusion

Cross Park is immediately behind the garage

According to the applicant's agent 'the proposals are for a contemporary three bedroom home to replace the existing 1930's dwelling and out buildings present on the site.

'The proposals,' the agent goes on to claim, 'are sympathetic to the Ringmore conservation area'

But, as we pointed out in our objection, the immediate location is home to eight of the village's 19 listed buildings. The Nook, also adjacent to the site, is listed by Devon County Council as a local Heritage listing.

For these reasons Cross Park occupies an extremely sensitive location in the village of Ringmore and the setting of its listed buildings, while the replacement building being proposed would gave a substantially larger 23 metre frontage than the existing dwelling, its footprint would be noticeably larger, and the planned change of orientation would emphasise the increase in roof size from the approaching road.

In addition, we went on to explain, the materials being employed and the large glass fronted modern elements of the proposed dwelling would be alien to the location.

Consequently the development would have a noticeably negative impact on the listed heritage assets as a result of the development's increase in size, coupled with the excessive use of a mixture of glass, slate, timber, standing seamed zinc, aluminium panels and other (modern) uncharacteristic materials, together with the addition of a long flat roof.

The application has since been withdrawn. •

Lacking in harmony

The development site is to the left of and below the arrow

Two previous attempts had been made to develop this site on land next to Stonehanger Court in Salcombe. The first was withdrawn, while the second rightly refused by the local planning authority and dismissed by the Planning Inspectorate at appeal.

The Society objected to both.

This third application sought to construct a two storey house which would, we said, remove a significant area of green space to the detriment of the low density development character of the area and the wider view of the town, including from and across the estuary.

As with the previous applications, the proposal would clearly neither conserve the location's special qualities or distinctive natural beauty, so failing the key test for development within the AONB.

Objections were also received from Salcombe Town Council, the Council's Landscape and Tree Officers, the AONB Unit, and the County Highways Authority.

The case officer agreed with our assessment, noting 'The proposed scheme in terms of its scale, form, design, massing, fenestration pattern and features is such that the development lacks harmony and fails to integrate with the local built surroundings and respect the site context. This would have a transformative effect on the verdant character of the site, spaciousness of the area, and density of development. This fails to conserve or enhance the special qualities and distinctive characteristics the South Devon Area of Outstanding Natural Beauty (AONB) and setting of the Salcombe Conservation Area.'

The application was refused on 08 August. •

Proposed extension an incongruous addition

Wesley House (centre) occupies a prominent position in the centre of Harberton

The village of Harberton has so far managed, to a greater extent, to retain its charm thanks to most of the village being given conservation area protection.

Wesley House is recorded at the DCC Heritage Gateway and is one of a group of local heritage records in the immediate location, the others being St Andrews Cottage's, St Clements Terrace's and Town Farm, while on the opposite side of the road is the Grade II Listed Building Preston Farmhouse.

The proposed erection of a first floor extension over the existing sun room and garage would, we felt, be alien to the local character of the neighbouring local heritage buildings and that of the village, and therefore would not not meet the requirements of DEV21. The proposal also failed to conform to the requirements for extensions in the JLP Supplementary Planning Guidance.

In refusing the application the case officer agreed: 'The proposed extension would be an incongruous addition resulting in a built form which would have a poor relationship with the existing property, and also diminish the primacy of the host dwelling. The scale of the extension proposed is overbearing and not subservient to the host dwelling. In addition to this, the levels of glazing and proposed materials are visually impactful on the dwelling and also the streetscene.

'Overall, the proposal fails to have proper regard to the wider development context and surroundings in terms of scale, massing, local distinctiveness and relationship with the main dwelling and is therefore contrary to policy DEV20 of the JLP and paragraphs 13.35-13.36 of the SPD.' •

Newsletter / 15

AONB not in Retreat

At the end of June the Society wrote to the Local planning Authority.We were concerned that the decision to grant a certificate of lawfulness for the proposed siting of 52 static caravans, in accordance with planning permission reference: 33/2535/10/F, including conditions 2 to 5, at Salcombe Retreat, Malborough, might be be unsound.

We were not persuaded, we said, that a Lawful Development Certificate can change an existing Lawful Development Certificate planning condition.

The Salcombe Retreat site is divided in to two parts, one as a site for touring caravans and the other as a site for static caravans (lodges). Consent for the use of the site for touring caravans, motor homes and tents was obtained not through a planning application, but by the issuance of lawful development certificate 33/0771/04/CLE in 2004. This permitted the land to be used for this purpose for 'the seasonal period between the week before Easter and 30 September in any calendar year' with 'such motor homes and caravans being sited for a continuous period of no more than three weeks at a time'.

Then in 2007 consent was given to planning application 33/0422/07/F, permitting the siting of 34 lodge type caravans, in the process reducing but not removing the area given over to touring caravans and reducing the number permitted from 95 to 50. Condition 3 stated 'The units shall not be occupied between the 15 January and 15 March in any one year.'

Subsequently, in 2013, application 33/2896/13/F was submitted to extend the period of 'time in which touring caravans/motor homes can be sited at holiday park'. That application was refused.

We were therefore uncertain, we explained, whether in granting 1516/22/CLP officers had considered the extension to the time that touring caravans/motor homes would now be permitted to remain on site against the length of time that part of the site would now be occupied by static caravans (lodges), and how conditions 2 to 5 of application 33/0422/07/F could be other than in conflict with the condition restricting occupancy imposed by

...Continued page 18

Tree Farm application withdrawn

Proposed changes would breach existing planning conditions

According to applicant the purpose of their proposed roof extension was for residential and office use. However two previous planning permissions for the property, granted shortly after 14th September 1989, made it clear that:

> 'The dwelling so permitted shall be occupied only by persons employed or last employed full time, locally in Agricultural or Forestry Work and The development shall take the form of a single storey dwelling and for the avoidance of doubt, a chalet type bungalow is unacceptable.

Those conditions remain in force. Consequently the application as submitted would, we said, lead to a breach of planning conditions if approved. The appropriate route for the applicant would be to remove the planning conditions with a section 73 application, not to ignore them.

We were also concerned to see the new track from the entrance of the bungalow to the rear of the adjacent barn. No planning permission exists for the track.

The Society objected to this application due to the intended breach of planning conditions and a failure to follow the local development plan guidance.

The application has since been withdrawn. •

Non-compliance with conditions

Work on the Salcombe site begn before pre-commencment conditions were complied with

Last year, on 30 November, conditional approval was given to an application to build 21 residential dwellings, only seven of which were to be 'affordable', on land at West End Garage, Main Road, Salcombe.

Both the AONB Unit and the Town Council had objected.

The approval imposed a number of pre-commencement conditions and, just before the end of July, it was clear that there was non-compliance with conditions 4, 10, 12, 13, 14, 21 and 25 of the consent.

Consequently on July 27 we wrote to officers to detail our concerns. We also highlighted the parallels with Lock's Hill in Kingsbridge, where it was accepted the development was unlawfully implemented, and that therefore the West End Garage development might also be unlawful.

Just over a week later we received a response from the head of development management, who informed us:

> 'I am sure that you will appreciate that some of the matters raised in your letter cannot be addressed without officers visiting the site. A site visit will be carried out shortly and your letter will be responded to once the visit has taken place.'

That was eight weeks ago. No more has since been heard. We can only hope officers have since visited and inaction is not permitting the breaches to continue. •

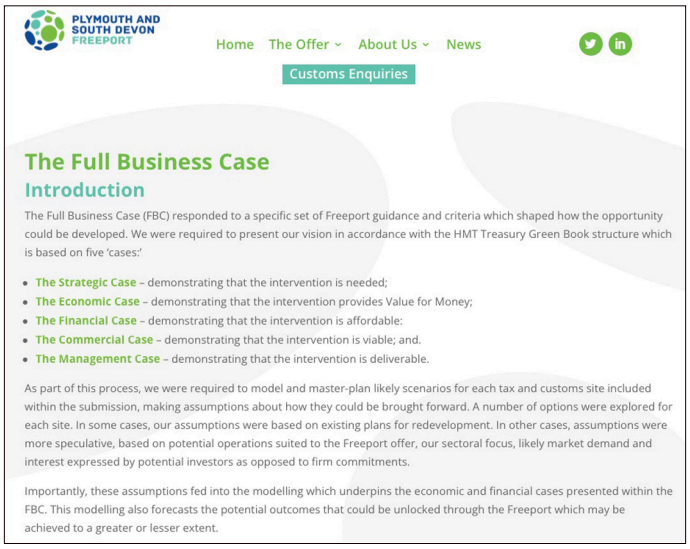
Freeport Answers finally forthcoming!

On 31 May the Society wrote to congratulate Totnes Councillor John Birch on his appointment to the South Hams District Council Executive with responsibility for Economic Development, Commercial Strategy and Governance.

Within that portfolio, we noted, falls the Plymouth and South Devon Freeport.

We were wondering, we said:

> whether you would now be prepared to publish the Business Case for the Freeport so residents will be able to discover why the previous administration thought it appropriate to include much of both Dartmoor National Park and the Tamar Valley AONB, as well as almost the entire South Devon AONB, within its boundaries.
>
> As I am sure you will recall the government's bidding prospectus (3.1.7) made it clear 'Bidders will need to provide clear economic rationale for why the Freeport Outer Boundary is defined as it is. Bids judged to be designed simply to maximise the area contained within the Outer Boundary without clear economic rationale will fail the bidding process at the pass/fail stage.'
>
> I fully accept that some of the Business Case will contain commercially sensitive information, but this can be redacted. However I can see no reason why residents should not be allowed to know exactly what was the clear economic rationale for the Freeport Outer Boundary being defined as it is.
>
> You will recall that in its bidding prospectus (3.6.1) the government stated 'bidders will be able to take advantage of the planning reforms set out in the Consultation Response related to permitted development rights and simpler, area-based planning – in particular Local Development Orders (LDOs)', before going on (3.6.13d) to encourage bidders to 'show how the existing local planning environment can respond or propose an approach to mitigating any adverse impacts (for example, by revising the relevant Local Plan).'
>
> And for those of us concerned about the possibility of inappropriate development within the AONB those statements were far from comforting.
>
> As you know South Hams residents were given no choice as to whether or not they wished to be part of the Freeport, yet councillors still voted to guarantee £4.625 million of council tax payers' money to help finance its development. Since then the economic outlook has significantly deteriorated and interest rates have noticeably increased. Consequently it would also be good to know whether the original cost projections still hold true, or by how much any financial commitment by SHDC may have increased.'



The Full Freeport Business Case is now publicly available

The next day we received a response in which Cllr Birch explained that over the next few weeks 'I will be meeting with key personnel involved in the Freeport organisation including the Freeport company chair and chief executive as well as studying the numerous documents that have been generated.'

> **'Freeport outer boundary was therefore drawn to reflect the geographic boundary of the Joint Local Plan, giving it a coherent economic rationale.'**
>
> *Richard May,* chief executive officer

He hoped to be in a position to get back to us within a few weeks and, on 30 July, he did just that. The Full Business Case was now on the Freeport website. But, and as we wrote back to him the next day:

> Having spent the morning reading through the 'Full Business Case' to which the link took me I was unable to find any reference to or explanation of that 'clear economic rationale'. Given my eyesight is no longer what it was I may of course have missed it, in which case my apologies, and I would very much appreciate your directing me to the appropriate page.
>
> Alternatively it's possible that the 'clear economic rationale' for the outer boundary having been defined as it is has been removed from this 'publicly facing version of the full business case with all commercially sensitive information removed' (page v). Frustratingly I'm at a loss to comprehend why that clear economic rationale for including much of both Dartmoor National Park and the Tamar Valley AONB, as well as almost the entire South Devon AONB within the Freeport's outer boundary, might be considered commercially sensitive.
>
> Certainly the statement on page 20 of the 'Full Business Case' that I've read this morning: 'It should be noted that other opportunities will also be explored to develop additional customs sites within the Freeport outer boundary over time as dictated by business demand' could be taken to suggest that further industrial estates could eventually be developed on sites within those protected landscapes.
>
> Consequently I note that Section 5 on page 74 of the 'Full Business Case' claims that the governance and management arrangements of the Freeport 'are underpinned by the Nolan Principles of public office ensuring that selflessness, integrity, objectivity, accountability, openness, honesty and leadership are embedded in our processes'.
>
> If that claim is other than a platitude, perhaps the Freeport management might like to practice a little openness and provide a proper explanation as to why they have omitted that 'clear economic rationale' for having defined the outer boundary as they have from the public version of their 'Full Business Case'.

Cllr Birch responded by return, explaining he was about to go on holiday, but that in his absence an explanation would be forthcoming. A week later the chief executive officer of the Freeport wrote:

> The Freeport bidding prospectus required an outer boundary to be defined with a clear economic rationale and, as you correctly point out, this had a pass/fail criteria.
>
> The Plymouth and South Devon (PASD) Freeport outer boundary was set out in the original bid to government which was submitted in February 2021. Having passed the bid stage, we were then invited to submit an outline business case and ultimately a full business case. We were not required to revisit the outer boundary as part of the business case process because it had already been judged to pass the government criteria. I can confirm that the detail has not been removed or redacted from the published FBC.
>
> I will explain the rationale that was set out in our original bid. Government required Freeports to be developed at pace and encouraged bidders to consider the use of Local Development Orders (LDOs) which, as you will be aware, can fast track planning decisions if applications are made that align with parameters of the LDO. The three Local Authority members (Plymouth City Council, South Hams District Council and Devon County Council) did not wish to pursue this option for the PASD Freeport because the Joint Local Plan is already in place which had previously been consulted on extensively and had been signed off through the democratic processes of each Local Authority. Freeport policy allowed for the creation of three tax sites and the chosen sites all aligned with provisions that had already been set out within the Joint Local Plan. The Plymouth and South Devon Freeport outer boundary was therefore drawn to reflect the geographic boundary of the Joint Local Plan, giving it a coherent economic rationale. I should also add that because the LA members chose to reject the use of an LDO, all PASD Freeport developments will still be subject to the usual planning permissions.

...Continued page 17

. . . Freeport Answers

You will be aware that our three tax sites have already been designated and cannot now be expanded, nor can additional tax sites be added (three is the maximum as set by government). Additional customs sites could still be designated within the outer boundary, but this would only be the case if there was a clear business need to do so and such a development would typically (though not exclusively) come forward on the business's own existing footprint. In any event, this would require the business to submit a planning application in the usual manner which would have no preferential treatment because of Freeport status.

Such a straightforward explanation makes it difficult to comprehend why, when the Society and many others asked the same question last year, no credible response had been forthcoming. The confirmation that use would not be made of Local Development Orders, that the existing tax sites could not be expanded and that any additional customs sites would have to come forward through the normal planning process, with Freeport status providing no preferential status, was also reassuring.

However we had yet to establish whether the Freeport remained within its original budgets, that target dates and objectives were being met, and that residents would face no additional costs to those that were first agreed. Consequently, on 16 August, the Society wrote again to Cllr Birch, to explain:.

'The concerns the Society has previously raised concerning the financial implications of the Freeport for the residents of the South Hams remain.

For example, back in March 2022 Councillors were told that the Council would be able to secure the £5 million needed to help fund the Freeport from the Public Works Loan Board on an annuity basis over a 25 year period at an annual interest rate of 2.5%. As the Society stated last autumn, unless that loan had already been secured, with borrowing costs on the rise, the annual cost to the Council could then easily have been double the figure of £267,000 originally projected.

Noticeably, a year later, on 30 March 2023, (77/22) 'The Council considered an Exempt report which sought approval for the acquisition of Freeport land and a change to the approved borrowing terms.'

I would therefore be grateful if you can inform me as to whether:

a) the Council was able to borrow the required £5 million at an annual interest rate of 2.5% over a 25 year period?

b) if the rate being charged the Council is other than 2.5%, what interest rate is being charged, over what period, and what is now the annual cost to the Council?

The Business Case for the Freeport also assumed annual construction cost inflation would average 4.3%. In the past 15 months it has been more than twice that and, although cost pressures are now easing, it is obvious that original assumption was also incorrect.

In addition the assumptions used by the Council within the financial model for the income from business rates were predicated on there being 16% occupancy of the light industrial business park by 2024/25 and 90% occupancy of the warehouse, with the hydrogen plant complete by 2025/26. Other industrial sites were to achieve between 11% and 90% occupancy by 2024/25. Does that still remain the case or have those projections since changed as, at the time the Council admitted that were the aforementioned occupancy levels to be 41% lower than forecast, income might not be sufficient to meet costs?

The Council also assumed in March 2022 that of the £314 million to be invested in the Freeport some £250 million would be forthcoming from the private sector. In a report dated 13 April of that year the Council's Head of Service for Economy Enterprise and Skills and the Director of Finance suggested that some £97.5 million would collectively be coming from various Babcock companies, Princess Yachts and Associated British Ports, however that still left in the region of £150 million of private sector financing unaccounted for. Has that private sector financing now been found?

Other than the change to the approved borrowing terms noted in the minutes of the meeting on 30 March this year I can find no other evidence of any discussion of the financial costs of the Freeport to residents by Councillors on any occasion since March 2022. This is despite the fact that at a meeting of the Executive on 27 January 2022 (E83/21):

The importance of all Members being fully informed of the key issues related to the scheme before any investment decisions were to be made was recognised and a commitment was made for Member Briefings to be scheduled into the Member Meeting Calendar.

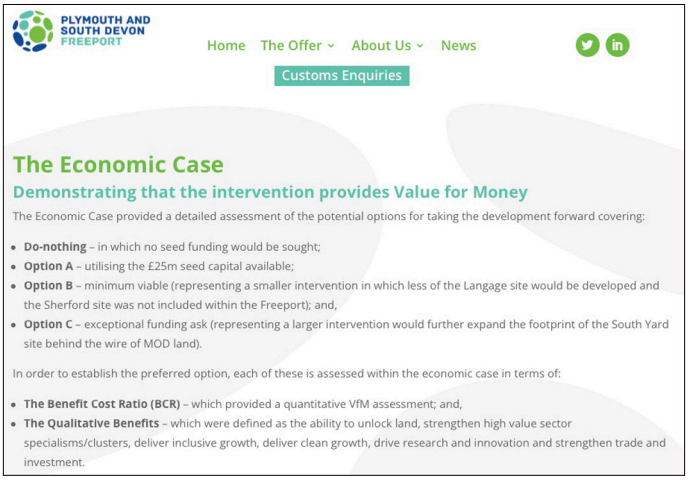
There appears to be no evidence of any such briefings having taken place.

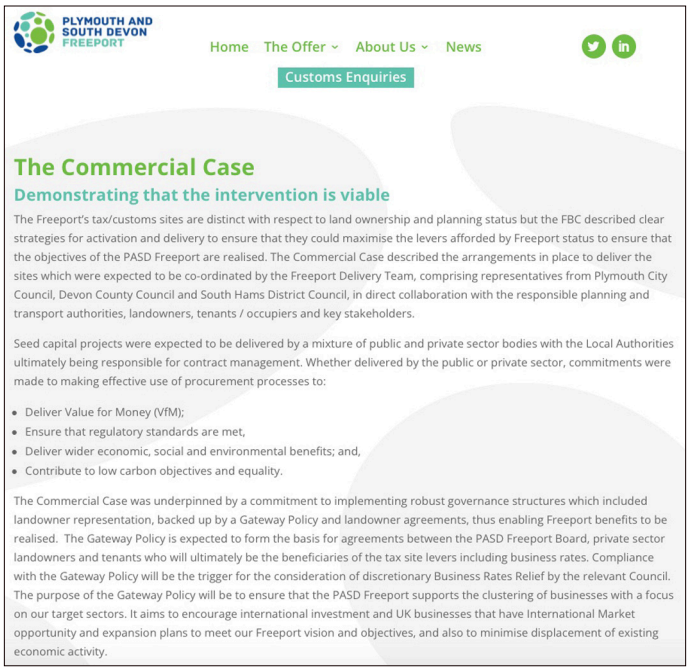
I am sure you will agree that the potential costs to residents of financing the Freeport are far from insignificant and that the Council should be fully transparent as to those costs. Consequently an update would be very much appreciated.

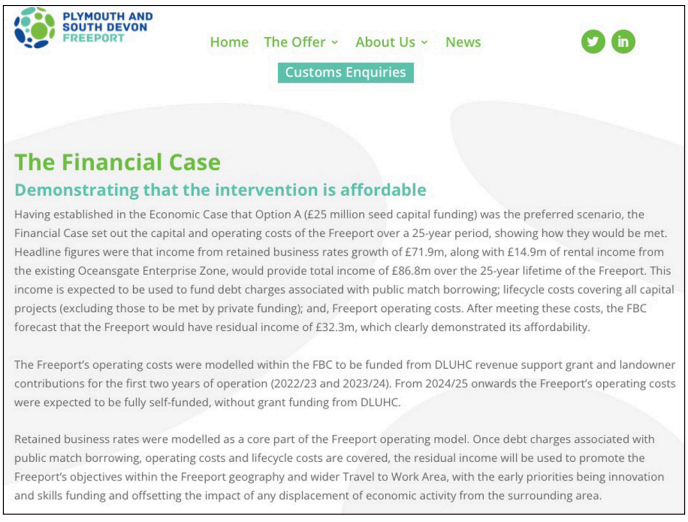
Finally I note that at a meeting last year on 22 September (37/22 (e)) that:

Once developed, Members were informed that the site would produce Green Hydrogen which

...Continued page 18







was an environmentally friendly solution for powering those larger vehicles not currently suitable to be Electric Vehicles due to restrictions on battery size. The direct linkages to the Council's Climate Change and Biodiversity Emergency were recognised and welcomed by Members;

I would appreciate your reassurance that it remains the case that the site is to produce Green Hydrogen and that our countryside is going to be concreted over in a good cause.

His response read as follows:

I respond to the questions you posed below:

The Council has not drawn down any borrowing for the Freeport to date. The borrowing rate will be fixed when the money is drawn down, which is likely to be higher than the 2.5% set out in the original business case.

The Freeport has a ring-fenced business rates pool from the businesses within the tax sites at Langage and Sherford. All future businesses (there are none currently) within those tax sites will have a rateable value from which business rates will be calculated and collected. The Government will pay to the Council this amount where business rate relief is granted to the businesses. That income to the Council is ring fenced for Freeport aligned spending, and the first priority for it is to pay back the costs of borrowing incurred by the Council.

The future cost of the borrowing has not yet been crystallised, but it has been modelled in numerous scenarios. In all cases the term of the borrowing (the length of the borrowing) will be aligned to the end of the Freeport programme which has approximately 23 years left to run. The current projections are that the amount to be borrowed will be lower at £5.125m and the cost of the borrowing, were the Council to take it all out at an interest rate of around 4.5% over 23 years, would be about £366k per year for example. This cost would be funded by the business rates income generated by the Freeport, so it would be self-financing.

As to keeping the public in the picture I am seeking to bring about a reverse in the position in which there has been little in the way of communication . At last week's Freeport board meeting I proposed that the Freeport communication team work with the three local authorities so as to ensure that the public are kept in the picture as to the Freeport's activities. Further I have requested the Council's communication team to include within our website a section providing news on the Freeport as well as a "Frequently Asked Questions with Answers" section. In addition, I supported the move that resulted in the Freeport's Full Business Case being published on the Freeport's website.

As to Green Hydrogen I will obtain further information and get back to you.

. . . Freeport Answers

Thanking Cllr Birch, we expressed our gratitude for the steps he was taking:

to ensure the public is to be kept in the picture in the future. And I genuinely appreciate the answers you have provided. However those answers in turn raise other questions, and I'm still none the wiser as to some of the other issues.

For example, and as we wrote:

In addition the assumptions used by the Council within the financial model for the income from business rates were predicated on there being 16% occupancy of the light industrial business park by 2024/25 and 90% occupancy of the warehouse, with the hydrogen plant complete by 2025/26. Other industrial sites were to achieve between 11% and 90% occupancy by 2024/25.

to which the Society then posed the question:

Does that still remain the case or have those projections since changed as, at the time the Council admitted that were the aforementioned occupancy levels to be 41% lower than forecast, income might not be sufficient to meet costs?

In other words:

1. Is it still assumed that each of those occupancy levels will be met by the originally projected dates?

and, if not:

2. What shortfall in income is now anticipated and what impact might that have on the overall cost to SHDC?

It was originally assumed annual construction cost inflation would average 4.3%. In the past 15 months it has been more than twice that:

3. Has construction cost inflation caused costs to SHDC to increase over and above the original budget?

In March 2022 Councillors were told that of the £314 million to be invested in the Freeport some £250 million would be forthcoming from the private sector. In a report dated 13 April of that year the Council's Head of Service for Economy Enterprise and Skills and the Director of Finance suggested that some £97.5 million would collectively be coming from various Babcock companies, Princess Yachts and Associated British Ports, however that still left in the region of £150 million of private sector financing unaccounted for.

4. Will that total of £97.5 million still be forthcoming from the various Babcock companies, Princess Yachts and Associated British Ports?

5. Has the additional £150 million of private sector financing now been found?

6. I would also grateful if you could advise me as to whether there has any been discussion of the financial costs of the Freeport to SHDC residents by our Councillors on any occasion since March 2022 and, if so, when?

Finally I look forward to hearing from you further as to whether Green Hydrogen is still to be produced at Langage.

'Finally I look forward to hearing from you further as to whether Green Hydrogen is still to be produced at Langage.'

Again by return Cllr Birch replied, promising to ask both the Council's Director of Place and Enterprise and the Director of Strategic Finance to respond to the queries raised.

That was on 13 September and, at the time of going to press, nothing more has been heard. Consequently we would hope to have the answers in time for our January Newsletter. •

. . . AONB not in Retreat, and the damage to the landscape will be done

33/0771/04/CLE.

Referring officers to a legal precedent we asked whether the first schedule condition of the Certificate of Lawfulness issued in September 2004 was still enforceable, or had the LPA changed the Certificate of Lawfulness by issuing the new Certificate of Lawfulness'?

Less than a fortnight later a response was received. Officers were aware of the legal precedent, we were told, but believed that 'whilst it is instructive in the general area, do not consider it to be relevant to the determination made on the certificate; due to the different circumstances of the case.' The circumstances differed because in the case of the precedent the change to the permitted would allow the use of any and all caravans on the site to provide permanent residential use, with no holiday use at all, and that was not the case here.

Conversely, officers explained:

'In the case of Salcombe Retreat, the certificate proposed to site an additional 18 static caravans on the site, but still complying with the limitations of the 2010 permission (i.e. no change to holiday occupancy or limitation in period they can be occupied). The certificate is simply for an increase in the number of static caravans, with the use of the land as a caravan site remaining, but with a slightly increased density (52 caravans instead of 34). This was not considered to result in a material change to the definable character of the lawful use, as explained in the Officers Report.'

Consequently it's worth noting that just over three years ago, on 26 June 2020, Planning Inspector David Wyborn dismissed an appeal by the applicants against the refusal of their application 4015/18/FUL to add a further 23 static caravans to the 34 already on the site.

The only apparent difference between that application and what has now been permitted is that the number of additional caravans has been reduced to 18. In all other material respects, the applications would appear identical.

In making his decision Wyborn said of the additional caravans:

'Their regimented form and appearance, notwithstanding any comprehensive landscaping scheme, would not assimilate into the landscape but increase the discordant appearance of the caravans to the area. In this way, the scheme would cause landscape harm.

Sadly that remains the case. And the damage will soon be seen to be done. •

Newsletter / 19

Sore Thumbs!

Some things are just completely out of place.

Take for example Applegate Park, a development familiar to many readers of this Newsletter. Not only has it irreversibly and detrimentally changed the view when approaching Kingsbridge from the west on the A379, but it has singularly failed to satisfy the requirement of Joint Local Plan Policy TTV11, namely that it should provide 'High quality design which reflects the quality and character in the context of the setting of the AONB'.

Similarly the new housing estates on greenfield land at Cotton, where provision was made in the JLP for around 450 new homes and 10,800m2 of employment floorspace, now visible from many viewpoints in the AONB and completely changing the primary approach in to Dartmouth.

In both examples the impact is made worse by the bland design of the buildings, perhaps best described as 'architecture from anywhere' (*see next page*), boasting little obvious connection with the local vernacular.

But it's not just the large scale developments that stick out. Individual buildings can also adversely impact on their setting. This house, built on the site of a former kennels near North Huish, sits prominently on a hillside, dwarfing its neighbour. It is hard to believe planning officers were happy to accept something of such a size, or that they were not concerned with the colour of the render.

Sadly there are many more 'sore thumbs', sticking out throughout the South Hams. And, with a new Joint Local Plan to be prepared next year, the Society hopes to put together an album of evidence that we can put forward.

Consequently we're asking all members to email us photographs of any buildings or other developments clearly out of place within their surroundings, whether in town or countryside.

Please send all eyesores to southhamssociety@gmail.com, together with details of the location. We look forward to hearing from you. •

Applegate Park from the A379 (above), before and after, and overlooking Kingsbridge (below)

Compare and contrast the size and appearance of the more recently built North Huish house (centre) with its neighbour (left)

Newsletter / 20

More Sore Thumbs!

The development on the land at Cotton at the entrance to Dartmouth (above), and the 'architecture from anywhere' (below)

Membership Matters

Society membership runs annually from 1st January to 31st December and most of our members already pay by Standing Order at the beginning of each year. This helps make our membership subscription process more efficient and easier to manage. It also means we (we're all volunteers) can use our time more proactively to benefit the Society.

But there are still members who don't use this payment method yet and we would like to encourage all members to take the time to quickly set up a Standing Order to help us.

To set up a standing order, all you need do is log into your online banking account and then follow the steps to create a new payment. If you have more than the one account you will need to select the account from which you wish to set up the standing order, then choose who you want to pay **(South Hams Society**; Sort Code: **53-61-37**; Account No: **08607397**), include the amount (Annual single Membership: **£10**/Family: **£15**); reference (**SHS Membership**), when the payment should be made and its frequency (**January 1st**; **annually**), and confirm the details. Alternatively, you can visit a branch or call your bank's customer service team who will be able to help.

If you have any questions or need any additional information, please contact: membership@southhamssociety.org.