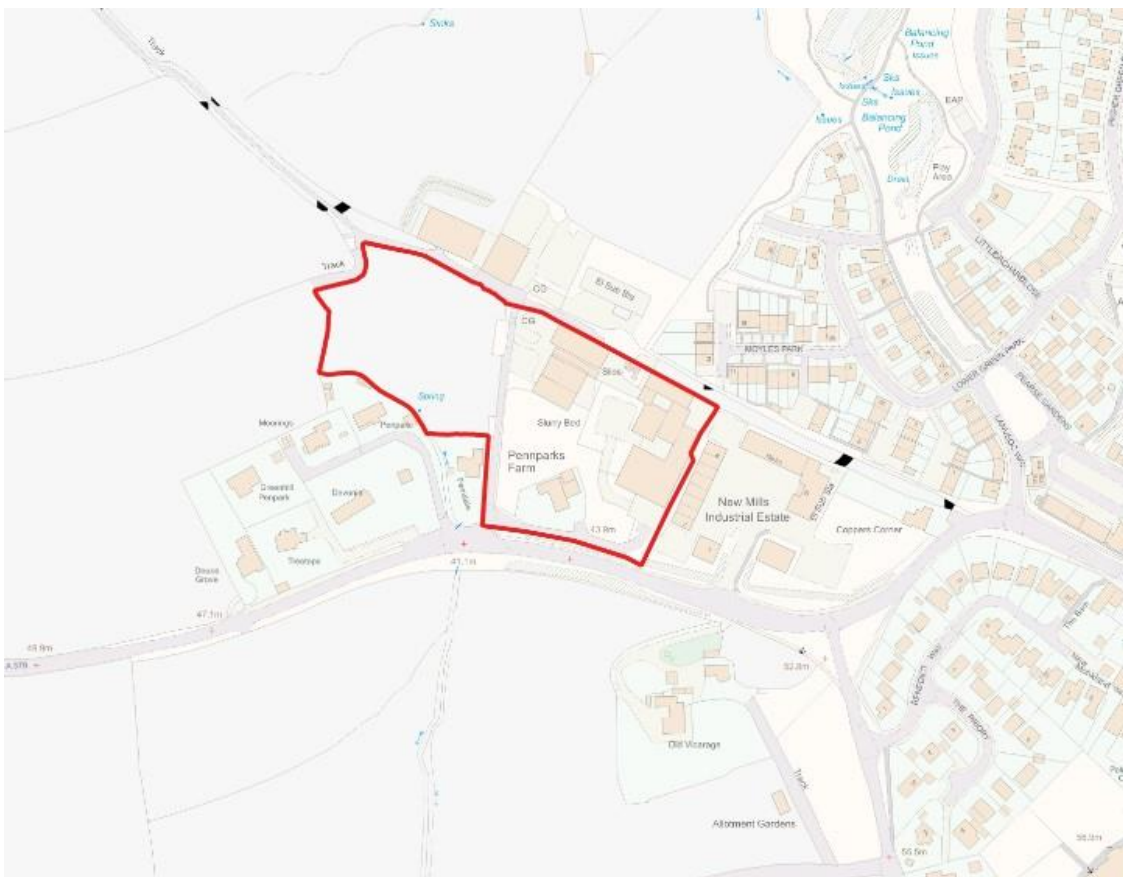


COMMITTEE REPORT

Case Officer:	Bryn Kitching		
Parish:	Modbury	Ward:	Charterlands
Application No:	0384/23/OPA		
Applicant:	Baker Estates Ltd Green Tree House Silverhills Road Decoy Industrial Estate Newton Abbot TQ12 5LZ	Agent:	Miss Jessica Crellen - Collier Planning 2nd Floor Unit 2, Chartfield House Castle Street Taunton TA1 4AS
Site Address:	Land At Sx 652 517, Modbury		
Development:	READVERTISEMENT (viability appraisal submitted with revised affordable housing provision and open market housing mix). Outline Planning Application (with all matters reserved apart from access) for demolition of existing buildings and a residential redevelopment of up to 40 dwellings, including the formation of access and associated works on land at Penn Park, Modbury		



Reason item is before Committee: The Head of Planning considers that the views of members are essential due to the nature of the development proposed and the number of representations received.

Recommendation: Refusal

Reasons for refusal:

- 1 The proposals do not deliver the policy requirement of 30% affordable housing and fails to contribute towards sustainable, inclusive and mixed rural community as set out in the Development Plan. The proposal would not constitute sustainable development and is contrary to Policies SPT2, TTV2 and DEV8 of the Plymouth and South West Devon Joint Local Plan, Policy MNP3 of the Modbury Neighbourhood Plan and the objectives of the National Planning Policy Framework.
- 2 The proposed development is likely to generate an increase in pedestrian traffic on a highway lacking adequate footways with consequent additional danger to all users of the road contrary to paragraphs 114 and 115 of the National Planning Policy Framework and Policies SPT2, TTV2 and DEV29 of the of the Plymouth and South West Devon Joint Local Plan, Policies MNP5 and MN6 of the Modbury Neighbourhood Plan

Key issues for consideration: Principle of Development/Sustainability, Affordable Housing and Housing Mix, Local Infrastructure, Noise and disturbance from adjoining buildings/uses, Contamination and geotechnical, Heritage, Landscape and trees, Ecology, Travel Plan, Vehicle Access, Low Carbon Development, and Drainage

Site Description:

The application site is approximately 1.86 hectare comprising agricultural buildings, associated bungalow and paddock/field. It is known as Penn Park Farm. The site is on the western side of Modbury between a group of 7 detached residential dwellings to the west and New Mills Industrial Estate to the east. Vehicle access to the site is off the A379 with a track running through the centre of the site that provides access to farm buildings, bungalow and an electricity sub station to the north.

The site slopes upwards from the main road, rising about 6m from south to north. The bungalow is in the south eastern part of the site, about 3m above the main road. The application documents state that the bungalow is subject to an agricultural tie. The agricultural buildings are to the north of the bungalow and site approximately 3m higher. The western part of the site comprises agricultural field that rises up to the north west, with the highest point about 8m above the main road level. The site is bordered by native hedgerows.

To the north of the application site is part of a track that runs from the surrounding agricultural fields to the west, to an overgrown track that exits at Coppers Corner on The A379. This track is known as the Drivers Way and is thought to be historically used for driving cattle

linked to the wider agricultural unit. Parts of the Drovers Way are blocked at the north eastern corner of the site and there is currently no through route for pedestrians or agricultural vehicles. It does not form any part of the application site. The northern side of the track contains more agricultural buildings and an electricity sub station that are also outside of the application site and not subject to any of the proposals.

To the south of the A379 is the South Devon National Landscape (formerly known as the South Devon Area of Outstanding Natural Beauty or AONB). Although the application site is outside of the designated area, it should be considered as being within the setting of the South Devon National Landscape. The application site is within the 12.3km buffer zone of influence for the Plymouth Sound and Estuaries Special Area of Conservation (SAC)

Access from the site to facilities in Modbury is via the main road with some of the pedestrian route via Church Lane and Benedict Way as there is no pavement on part of the main road between Church Lane and Lanveoc Way (Palm Cross development site).

The site is allocated for housing under policy TTV24 of the Joint Local Plan with an estimated provision of about 40 homes. Modbury has a settlement boundary defined by the Neighbourhood Plan and the application/allocation site is within that boundary.

The Proposal:

This application is for outline planning consent for residential development of up to 40 dwellings with detailed approval being sought for access. All other matters of detail (appearance, landscaping, layout and scale) are reserved for later determination. The proposed description of development includes the demolition of existing buildings which would include both the agricultural barns and residential bungalow.

The submitted application forms indicated that the development would comprise 28 units of Open Market Housing and 12 units of Social, Affordable or Intermediate Rent Housing. However, during the course of the application the applicant has amended the affordable housing offer to 4 dwellings (10%) with the remainder of the dwellings being for open market. The amended proposal would be for 2 of the dwellings to be 2-bed houses and the other 2 dwellings to be 3-bed houses.

The application seeks to fix the open market mix at outline stage and the original housing mix sought has also been amended alongside the change to affordable housing so that it would provide:

- 36% (13) 2-bed homes
- 39% (14) 3-bd homes
- 25% (9) 4/5-bed homes

The application is accompanied by a parameters plan which defines areas of the site where different scales of housing would be located, hedgebanks and associated bat foraging corridor, surface water attenuation areas, and potential access links for vehicles and pedestrians.

Detailed vehicle access plans and off site highway works are included in the application which show an new vehicle access approximately 10m to the east of the existing access. Off site highway works include the creation of an uncontrolled crossing point (with central island) on the A379, new footways leading to Church Lane and Benedict Way, pedestrian

deterrent surfaces on the existing A379 footway (that terminates further north), relocated bus stops and refreshed road markings.

The following documents were submitted with the application:

- Site location plan
- Parameter plan
- Site Constraints and Opportunities Plan
- Access plans
- Design and Access Statement (including illustrative masterplan);
- Ecological Report;
- Carbon Reduction Statement;
- Flood Risk Assessment & Drainage Strategy;
- Transport Statement, including Travel Plan measures and accessibility;
- Historic Environment Statement;
- Landscape Visual Appraisal (LVA);
- Tree/Hedge survey and Tree/Hedge Protection Plan;
- Open Space, Sport, Recreation Assessment;
- Assessment of Housing Mix; and,
- Preliminary Phase 1 and 2 Ground Investigation.

Following the initial consultation period, the applicants put forward an argument that the development of this allocated site has viability issues and that the policy requirement of 30% Affordable Housing could not be achieved. Following discussion with officers and external viability specialists, the applicants submitted further documents that include:

- Viability Assessments commissioned by the applicants (with an offer of 10% affordable housing)
- Economic & Social Assessment Report

Following the submission of the additional documents and change to the affordable housing provisions, a full reconsultation has been carried out.

Consultations:

The views of Modbury Town Council are reproduced in full and all other consultation responses have been summarised. Full copies of all consultation responses can be found here <https://southhams.planning-register.co.uk/Planning/Display/0384/23/OPA>

- **Modbury Town Council – Object:**

1. The Council accepts that the site was allocated in the JLP and generally agrees with the principle of housing on this site subject to certain conditions. These conditions would ensure the quality of housing as well as the drainage, environment and pedestrian and vehicular access. We are not yet in that position. There are a number of serious problems with the application as proposed.

2. Pedestrian Access. - We generally agree with the objections to the application raised in the letter from the Devon County Highway Engineer dated 22.3.23. Specifically we would make the following points:-

- I). The site is very poorly connected to the Town and particularly the Primary School. The pedestrian route is tortuous (569m) and the natural desire lines for pedestrians and children are unsafe.
- II). Bus stops on both carriageways and on right angle bends will lead to severe vehicular conflict at a point where pedestrians are crossing. This is on a road that carries over 10,000 vehicles per day in summer. This vehicular conflict will further exacerbate the safety of pedestrians. This has not been addressed with the minor amendments proposed.
- III). The footpaths alongside the highways are the minimum widths of 1.15m. Satisfactory safe havens are not provided for pedestrians, wheel chair users, mobility scooters, or buggies. This further exacerbates the safety of highway users and is contrary to JLP Policies DEV1: Protecting health and amenity and DEV29: Provisions relating to transport and to NP Policies MNP3: Future development and MNP6: Safe movement and transport.
- IV). The conclusion of both ourselves and the County council is that an alternative access via Green Lane is essential before the application is approved. This access needs to be well lit, drained and hard surfaced. (Hard surfaces and not 'hoggin' as 'hoggin' will wash out on the slope of the path.)
- V). In short the community safety should not be compromised because the developer 'is finding it difficult' to secure a pedestrian access.

3. Vehicular Access. — As a result of the poor pedestrian access people will be forced to use vehicles to access the Town and school. This will lead to further pedestrian/vehicular conflict as outlined in the County Highways letter dated 22.3.23. This is contrary to the policies contained in the Joint Local plan (JLP) Policies DEV1: Protecting health and amenity and DEV29: Provisions relating to transport. It is also contrary to the Neighbourhood Plan (NP) Policies MNP3: Future Development, MNP6: Safe Movement and Transport and MNP12: Community Facilities and Infrastructure.

We do, however disagree with the comments of the highway engineer that his concerns on vehicular access have been mainly addressed. The combination of the desire lines, vehicular movements, proximity of the school and lack of pedestrian access via Green Lane all combine to make the proposed development unacceptable and unsafe. The Highway Engineer even summarises the situation himself as "far from ideal".

General Points

It is suggested by the applicant and the Highway Engineer that it could prove difficult to condition any of the above points. This should not be used as a reason for not providing satisfactory conditions on developments. Indeed it is essential that the community is protected by both conditions and a legal agreement as the development progresses.

This is the crux of the matter. Despite housing being agreed for the site this application is premature until such time as issues are satisfactorily dealt with. Whilst we recognise that all matters other than transport are reserved at this time, should this application go forward it is essential to ensure that the following issues are protected and are dealt with by conditions:

1. Density of site: Proposed density is up to 45.6 homes. The JLP TT24 site allocation is for 40 homes.
2. Capacity of infrastructure, including drainage.
3. Light pollution
4. Sustainability, including design, construction and energy efficiency.
5. Amenity land, parking, fencing and planting.

Further comments following reconsultation on viability:

Modbury Parish Council objects to this application on the grounds of unsafe pedestrian access from the site to the town. The proposed access necessitating crossing and re crossing the busy A379 does not fulfil the requirement for a safe route, particularly for children and anyone with mobility needs and is contrary to both the Modbury Neighbourhood Plan's central theme of safe pedestrian access and to the Joint Local Plan's emphasis on the same. The Council cannot approve the application on the basis that the green lane known as Drovers Way might be viable in the future. Confirmation of safe access must come before approval of the application.

The proposal to reduce the affordable housing component from the 30% mandatory requirement from SHDC to 10% is unacceptable. We do not believe that there are any exceptional circumstances which should exempt the developer from this obligation. The current proposal does not represent the best interests of our community.

- **County Highways Authority** – Object: Site is poorly connected for pedestrians accessing public amenities in the town and certain users will choose to take the shorter and dangerous route along the A379 which lacks footways at certain places. Sole pedestrian access via new off-site highway works on the A379, Church Lane and Benedict way require crossing the busy A379 in two places which is far from ideal. The application should include pedestrian access via the Drovers Way to the north which is not in the control of the applicant. Do not support the relocation of the 30mph speed limit to the West.
- **Environmental Health** – Comment: The submitted contaminated land recommends further exploration and either removal or covering of an infilled slurry pit. Recommend removal and further details can be secured by planning condition. Noise assessment regarding adjoining commercial/industrial estate would be required at reserved matters stage. Standard CEMP condition required if approved.
- **Affordable Housing** – Object: The application is not policy compliant with DEV8 of the Joint Local Plan. The application is proposing just 10% affordable housing. An Independent Viability Appraisal (IVA) of the applicant's submission has been scrutinised. The IVA, which has been carried out by Lionel Shelley of William Lean, also taking advice from Gates Consultancy, to agree the cost plan figures is attached. This information details where the applicants Viability Appraisal and the IVA conflict and costs have not been agreed. Whilst 30% Affordable Housing may not be achievable, South Hams District Council, based on the IVA believes that 22.5% Affordable Housing should be provided along with a late review clause on an open book basis to capture any lower than expected costs and higher achieved sales values, in addition to profit above what is anticipated.

Initial comments dated 12th April 2023 were ones of support as 30% (12 Affordable Houses) were proposed in the original application.

- **Conservation and Design** – No objection / Comment: The site was fully assessed when it was considered for allocation. The possibility of impact on all heritage assets, including the Church of St George, the Modbury CA, Flete and Edmeston, was considered.

Assuming the dwellings will be standard 2 storey types I consider there to be no adverse impact on the setting of any heritage assets. The physical separation and lack of meaningful inter-visibility means any visual connection is minimal and would not amount to harm. There are no other characteristics to the site that have not been suitably covered in the Heritage Statement supplied with the application.

The highway revisions will not impact on the setting of the grade I church or the approach to the CA. The junction is already a modern highway layout and views of the church spire are partly obscured by late 20th century building.

- **Open Space, Sport and Recreation Specialist** – No objection subject to conditions and Section 106 Agreement to secure open space with appropriate management, on site Local Area for Play (or off-site contribution), sports and allotments contributions.
- **Tree Specialist** – No objection on arboricultural merit in respect of access location only. Agreement is found with the location of access and it is considered that any adverse impact may be addressed by mitigation planting, to be reviewed by the ecologist and landscape specialists. Note T8 and T9 are not afforded proposed protection within the constraints plan and T11 is not depicted as being present. Comments are reserved at this stage on wider constraints posed between the as yet unknown layout and trees and hedges of merit. Any RM application would be expected to address the omissions noted above.
- **Landscape Specialist** – No objection to the outline application, but note that considerable work is needed to secure an appropriate site layout and detailed design of buildings and landscape. This additional design development is considered essential to ensure that development respects scenic quality and maintains the area's distinctive sense of place and reinforces local distinctiveness, in order to accord with adopted policy DEV23, and noting that the site is in the setting of the South Devon National Landscape, so adopted policy DEV25 must also be complied with.
- **South Devon National Landscape** – No comments received:
- **DCC Historic Environment** – Comment: The results of the desk-based assessment and geophysical survey reports do not suggest the presence of heritage assets with archaeological interest of such significance that preclude development here, and any impact upon any archaeological deposits present here may be mitigated by a programme of archaeological work undertaken in advance of development commencing. Recommend that application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets

with archaeological interest. If WSI is not submitted before the determination of the application it should be secured by planning condition.

- **DCC Ecology** – No objection subject to conditions (LEMP, CEMP, compensatory bat roost, lighting design, development carried out in accordance with Ecological Impact Assessment, no hedge clearance during bird nesting season, repeat Hazel dormouse and badger survey) and legal agreement securing mitigation of the additional recreational pressures upon the Plymouth Sound and Estuaries European Marine Site, and to secure Biodiversity Net Gain.
- **DCC Education** – Comment: Nearest primary and secondary schools have capacity for the number of pupils likely to be generated by the proposed development. Require a £24,063 contribution towards school transport costs due the development being 2.25 miles from Ivybridge Community College.
- **Local Lead Flood Authority** – No objection assuming that planning condition is imposed to secure detailed drainage designs (based on the Flood Risk Assessment Rev 4) being secured.
- **DCC Waste** – Comment: This application is not supported by a Waste Audit Statement, although we note that section 7.33 of the planning statement requests a planning condition to be imposed on any grant of outline permission to secure a Waste Audit Plan. It is therefore recommended that a condition is attached to any consent to require the submission of a statement at the reserved matters stage.
- **Environment Agency** – No objection provided that conditions relating to contaminated land are included within any permission granted.
- **Historic England** – No Comment: Historic England provides advice when our engagement can add most value. In this case we are not offering advice. This should not be interpreted as comment on the merits of the application. We suggest that you seek the views of your specialist conservation and archaeological advisers.
- **Natural England** – No objection: subject to appropriate mitigation being secured to ensure no adverse effect on the integrity of South Hams Special Area of Conservation (SAC) and Plymouth Sound and Estuaries SAC & Tamar Estuaries Complex Special Protection Area (SPA)
- **NHS Devon Integrated Care Board** – Comment: The GP surgeries within the catchment area that this application would affect, currently have sufficient infrastructure capacity to absorb the population increase that this potential development would generate.

Representations:

Representations from Residents

16 letters of objection received which raise the following issues:

- If residents want to walk to Modbury to access services they will be required to cross the busy A379 twice. This will be more difficult some people.

- This is likely to force some people to use cars.
- Pedestrian access should be via the 'Drovers Way' to the north of the site as this is much shorter and safer.
- People will walk along the A379 where there is no footpath rather than take the longer route around Benedict way – this will be dangerous due to speeding traffic.
- Distances along the proposed walking route exceed those recommended in the applicants own reference material.
- Children will be driven to school rather than use the proposed walking route and the extra traffic will add to existing problems at start and end of school day.
- Unless future residents pay for upkeep on Palm Cross, they must not have access that way.
- Access should be provided through to Palm Cross.
- The submitted safety audit only relates to the new access and proposed crossing point. It does not consider whether the complete walking route to town is safe.
- Benedict Way (part of the proposed walking route) does not have footways along its entire length.
- The proposed walking route has a number of obstacles, road crossings and necessitates doubling back. The shorter alternatives are dangerous.
- Support the development as long as it provides a good percentage of affordable housing.
- No consideration for encouraging walking or cycling from the site. How does this fit with green policies?
- The eastern end of 'Green Lane' (the Drovers Way) has been cleared over the last few years with pedestrians passing between my bottom hedge and the old call centre at New Mills Industrial Estate.
- Light pollution and disturbance from predicted 50 pedestrians a day passing Coppers Corner.
- Conflict between pedestrians and vehicles exiting Coppers Corner.
- Proper access and supervision should be part of any plan.
- Policy DEV 10 of the Joint Local Plan states development should be integrated with adjacent developments and provide good pedestrian, cycling and public transport connectivity to existing developed areas, open spaces and local facilities.
- The Neighbourhood Plan calls for integrated development. This is not.
- Moving the bus stop could cause more traffic backing up around a blind bend.
- Lack of community consultation prior to submission.
- Health Services already have long waiting lists.
- Do the schools have capacity for extra pupils?
- Water and sewage capacity
- 100 houses at Palm Cross has resulted in minimal extra footfall in the town centre. Have steps are being taken to integrate new estates into the community? Free parking for 30 mins?
- The proposed bus stops do not have any bus bays, resulting in dangerous overtaking.
- Neighbour Plan Policy MNP6 (Safe Movement and Transport) requires good safe pedestrian access and enhance walking, cycling and public transport opportunities.
- Improving safe pedestrian and cycle access to all facilities has been an overwhelming priority for the community.
- Neighbour Plan Policy MNP12 requires new development, where appropriate and the requirement arises directly from the new development, to contribute to improved pedestrian and cycle access to all facilities, improve road safety around the school and to protect and improve public rights of way, footpaths and cycle routes.

Following submission of revisions relating to viability, a further 4 letters have been received from people who had already commented which repeat earlier objections and raise the additions points:

- Four affordable homes instead of the policy requirement of twelve is completely unacceptable.
- Abnormal costs appear to be high.
- Once the viability has been tested by the council, the results should be made public and for review during the consultation period.
- The pedestrian access to the site will default to the Drovers Way.

1 letter of support received which raise the following issues:

- Live at Penn Parks (next to the application site) for 35 years and have never experienced a problem walking children to school.
- Have been kept updated and informed of the proposals by the applicant.

Relevant Planning History

Although there are various historical consents for agricultural buildings and conservatory extension to the bungalow, there is no specific application history that is relevant to this planning application.

The site was allocated for residential development in The Plymouth & South West Devon Joint Local Plan under Policy TTV24. The plan was adopted by South Hams District Council on 21st Marc 2019. Policy TTV24 reads:

Site allocations in the Smaller Towns and Key Villages

The following sites in the smaller towns and key villages are allocated for development:

	Site	Proposal	est. of housing provision / employment floorspace	Policy Consideration / things to be provided for by the development
13	Pennpark, Modbury	Housing	40 homes	<p>a. Sensitive and high quality design which conserves and enhances the heritage assets.</p> <p>b. Layout and design to be guided by landscape assessment.</p>

Note – other allocations/sites removed from above table as not relevant to this application.

TTV24 allocates a total of 911 new homes across the smaller towns and key villages.

ANALYSIS

1 Principle of Development/Sustainability:

1.1 In accordance with Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 planning applications have to be determined in accordance with the development plan unless there are material considerations that indicate otherwise. For the purpose of decision making for this application, the development plan comprises the Plymouth & South West Devon Joint Local Plan 2014 – 2034 (JLP) and Modbury Neighbourhood Plan 2022 - 2034.

1.2 Policy TTV1 – Prioritising growth through a hierarchy of sustainable settlements, sets out the principles to be used to distribute new employment and housing across the Thriving Towns and Villages Policy Area. It identifies four categories of settlement type where development will be distributed as part of that hierarchy.

- The Main Towns
- Smaller Towns and Key Villages
- Sustainable Villages
- Smaller Villages, Hamlets and the Countryside

1.3 Modbury is identified as being in the smaller towns and key village's category where there are allocations for 173 new homes during the plan period.

1.4 JLP Strategic Objective 8 (SO8) – Maintaining the vitality and viability of the smaller Towns and Key Villages, promotes the provision of homes, jobs, services and community infrastructure in settlements such as Modbury as they are characterised by a level of services and amenities that can support the daily needs of the rural population. One of the ways that this will be achieved is through the appropriate level and mix of new homes that responds positively to local housing needs and improves long-term sustainability.

1.5 The JLP identifies Modbury as a small town that has a range of services and amenities typically found in a larger settlement. It benefits from a main road and public transport links to Plymouth to the west, and Kingsbridge to the east.

1.6 Modbury supports many rural communities between the town and coast to the south west. These small villages and hamlets sit firmly within the National Landscape (previously known as AONB), and even moderate growth in these locations would be neither sustainable or appropriate. As such, Modbury is the most appropriate location to provide new homes to ensure that local housing needs are met, and that the level of services and amenities enjoyed by the local and surrounding communities are retained and enhanced where possible. Services and facilities in Modbury include shops, pubs, post office, primary school, churches and meeting places, allotments, open space and sports and play facilities.

1.7 The Modbury Neighbourhood Plan (NP) identifies a settlement boundary that includes the Penn Parks allocation alongside the completed allocations at Palm Cross and West of Barracks Road.

1.8 One of the requirements NP policy MNP3 is that development sites should be well connected to the town centre, especially for pedestrians. The NP states in paragraph 4.31 that “the need to improve safe pedestrian and cycle access to all facilities has been an

overwhelming priority of the community expressed in both formal and informal consultations, to enable community life, social cohesion and healthy lifestyles to be sustained.” Paragraph 4.33 requires new development “to contribute towards improving pedestrian links to the Recreation Ground and Pavilion, road safety around the school and safety and provision for pedestrians and cyclists in general, particularly aimed at supporting the more vulnerable groups, including children, the elderly and those living with disability”. NP Policy MNP12 requires new developments to contribute to safe pedestrian and cycle access to all facilities, improve road safety around the school and protect and improve public rights of way, footpaths and cycle routes.

1.9 SPT2 of the JLP provides for sustainable linked neighbourhoods and sustainable rural communities. This policy states that development should support the overall spatial strategy through the creation of neighbourhoods and communities which have reasonable access to a vibrant mixed use centre which meets daily community needs for local services, have a good balance of housing types and tenures, and are well served by public transport, walking and cycling opportunities. Supporting text identifies sustainable communities as having facilities in walking distance along safe, accessible and convenient routes.

1.10 Figure 3.2 of the JLP identifies the following measures that should be used when implementing SPT2. The measures are aspired and not intended to be applied through an inflexible ‘tick box’ exercise. For example, there will be occasions where distances may exceed those in the table but in the context of the surrounding area are still reasonable to the point that people would be prepared to walk them. Likewise, there may be cases where the distances are met, but the overall route is so inconvenient, awkward or perceived to be dangerous, that people would not choose to walk. Walking distances to following features are set out as follows:

Bus stop	600m
Convenience store	800m
Primary school	800m
Local accessible natural space	300m
Local playable space / LEAP	400m
Neighbourhood/strategic playable space	1,000m

1.11 Measurements taken from the centre of the application site show that bus stops would be about 170m, convenience store 1000m, primary school 700m, LEAP 650m and playing fields 1,300m. Local accessible natural space would be on-site and therefore no measurement for this has been taken. These distances assume that the proposed walking route through Benedict Way and via off-site highway works is being taken. This route involves crossing the A379 twice via an existing and proposed uncontrolled crossing point with central refuge area. New footways are proposed on the Church Lane / A379 junction as part of the off-site highway works. This new footway would join existing footways on Church Lane and Benedict Way where pedestrians would reach the footpath that links Benedict Way with the A379 (near the Barrack Road Junction). This would provide a walking route on footways, other than a short section on Benedict Way where walking on a quiet part of cul-de-sac is required. The route is not a direct as the A379 driving route, but there are pinch points on that road where the creation of new footway is not possible due to the width of the highway. The County Highway Authority object to the application because Manual for Streets 2007 stipulates that pedestrians prefer convenient and direct routes. 40 dwellings are likely to result in 56 two way pedestrian trips per day and the Highway Authority consider that some will chose to walk along the shorter unsafe route

along the A379. The footway is not continuous along this route and pedestrians would need to walk in the busy and narrow carriageway. Due to the narrow width and high number of vehicle movements there is serious risk of strikes or rear end shunt type accidents should pedestrians take this route. While they consider that the proposed works to provide footways and uncontrolled crossing point to direct pedestrians to the safer (but longer) route, they do not deem it sufficient to remove the overall risk to some types of highway user walking the desire line along the A379. They recommend refusal on this point.

1.12 Notwithstanding their objection to the application on the above safety grounds, the Highway Authority welcome the off site highway works which do provided safety improvements for those accessing the Church and nearby residential areas by foot. However, they do not consider that it would eliminate the risks identified above.

1.13 During pre-application discussions, the applicants, planning officer and highway officer explored the possibility of a second walking route using the track between the application site and Copper Corner. This track is currently blocked at one end (by the application site) and is known locally as the Drovers Way. Although overgrown in places, there is evidence of part of the track being used as informal pedestrian access to New Mills Industrial Estate with a clear trodden path in places. The track is not a formal public right of way and not in the control of either the applicant or any public body. It is unregistered land and therefore there is no-one to approach to establish whether it is available for a formalised walking route to be constructed. Suggestions were made that if it were to be designated a Public Right of Way then it may be possible to then require suitable upgrades so that it could be used as a hard surfaced walking and cycling route. However, that has not been pursued and the application does not include any firm proposals to upgrade the track. The parameter plan includes a potential pedestrian link from the application site to the Drovers Way but goes no further than allowing for future connection to the track.

1.14 The second part of the Highway Authority objection relates to this Drovers Way and the potential creation of a Public Right of Way not being pursued. They consider "that it is essential that to understand the outcome of the [Public Right of Way application] process to enable the Highway Authority to make an informed recommendation and also so that the Planning Authority can make an informed decision." However, it is a well established planning principle that when determining planning applications, the decision maker should look at the application in front of them and decide whether the proposals contained in the application, meet the requirements of the planning policies and development plan. In this case, it is necessary to look at the existing pedestrian routes (with the proposed upgrades contained in the application) and decide whether they meet the requirements of policies DEV29, TTV2 and SPT2 of the JLP and Policies MNP3 and MNP6 of the NP.

1.15 Policy DEV29 requires development to provide for high quality, safe and convenient facilities for walking, cycling, public transport and zero emission vehicles. TTV2 contains the specific objective of sustainable transport accessibility appropriate to the specific context of the proposal, which in this case is the pedestrian access. SPT1 contains the broader strategic requirements of sustainable rural communities where development has reasonable access to a vibrant mixed use centre and is well served by walking and cycling opportunities. MNP3 requires development to be well connected to the town centre, especially for pedestrians. MNP6 requires good, safe pedestrian access to new housing development.

1.16 If the comments of the Highway Authority about the suggested walking route through Church Lane and Benedict Way not being used by all, and their belief that people will take the more direct and unsafe route along the A379 are accepted, the application would not meet the requirements of the above policies. This is a judgement call about whether people would choose to walk the more direct but unsafe route along the A379, or whether they would choose the longer and indirect route that involves crossing the main road twice. There is also the third option where they do not choose to walk at all and use motor vehicles to access daily services. It is noted that on a nearby application for a single dwelling linked to a vet practice, it was not accepted that residents would walk the more dangerous route along the A379 and would choose an alternative safer route. However, the circumstances are different between a single property linked to an adjoining business and 40 dwellings that are suitable for family occupation which means that members are not bound by previous decisions. As the professional advice from the Highway Authority is that they consider the development would generate increase in pedestrian traffic on a highway lacking adequate footways with consequential additional danger to all users of the road, the officer recommendation is to follow that advice.

1.17 However officers consider that the highway objection in relation to the application not including an alternative route along the Drovers Way should not be followed as that could be considered unreasonable behaviour due to not determining the proposals that are in front of the Council.

2 Affordable Housing and Housing Mix

2.1 When the application was originally submitted, the application form stated that 12 of the 40 dwellings would be affordable housing. This equated to 30% as set out in Policy DEV8 of the JLP. The application documents also sought to fix the open market mix of housing to be within the following ranges:

- 20%-30% (5-8) 1/2-bed homes
- 28%-37% (8-11) 3-bed homes
- 20%-30% (9-15) 4/5-bed homes

2.2 During the consideration of the application, the applicant claimed that due to the changing local house prices and costs of construction, that a development of 40 houses with 30% affordable housing was no longer viable. They provided a Viability Assessment for discussions with officers and an external consultant (Lionel Shelly of Willam Lean) was appointed to review the documentation. Their originally submitted documentation claimed that the site is not viable at 30% affordable housing and marginal with nil affordable housing. Further submissions were then made that claimed that due to deteriorating market conditions, the site was no longer viable with nil affordable housing but they were willing to recognise that the improvements to the market could allow for 10% affordable housing (4 dwellings out of 40). That is the application that the Council are being asked to determine with regard to affordable housing provision. The applicant's offer is clear that this would be for 4 dwellings and not include any review or clawback mechanism. Alongside the change to the affordable housing, the applicants also proposed to change the open market mix to better reflect the feedback and advice provided by officers on that issue. As open market mix is very much related to development viability, it is no longer being expressed as a range and would be fixed at:

- 36% (13) 2-bed homes
- 39% (14) 3-bed homes

- 25% (9) 4/5-bed homes

2.3 This revised open market mix broadly aligns with officer comments in terms of redressing the imbalance within the existing housing stock in the area, meeting a requirement of part 1 of DEV8.

2.4 In relation to the Affordable Housing offer of 10%, part 3 of Policy DEV8 of the JLP is clear that within the whole policy area a minimum of at least 30% on-site affordable housing will be sought for all schemes of 11 or more dwellings. The Modbury Neighbourhood Plan is also clear in MNP5 that “each new housing development which exceeds 10 units shall provide the proportion of affordable homes consistent with JLP policy”.

2.5 The supporting text to DEV8 states that where viability is identified as a constraint on the delivery of the policies, this will be considered in the context of Policy DEL1. Part 5 of DEL1 requires robust viability evidence to be submitted where a developer contends that planning obligations sought, including for affordable housing, would make a proposal economically unviable. The LPAs will seek an open book approach in these cases. In determining whether or not to grant planning permission, the LPAs will have regard to the overall economic, social and environmental benefits of the development and whether, on balance, some relaxation of planning obligations is justified.

2.6 The professional advice received from the external consultant (Lionel Shelly of Willam Lean) and the Council's Principal Housing Enabler is that although 30% (12 homes) might not be achievable on this site, it is considered that 22.5% (9 homes) could be delivered and that any legal agreement should include a review or clawback mechanism to capture any lower than expected development costs and higher sales values achieved. The differences between the applicants submissions and the external consultant viability conclusions are generally around the 3 main headlines of land value, development costs and sales values. All of the viability submissions from the applicant and the external consultant conclusions are published on the Councils website and in the public domain. They can be found here <https://southhams.planning-register.co.uk/Planning/Display/0384/23/OPA>. This committee report does not intend to provide a further detailed analysis of the areas of dispute but it does recognise that there are serious questions around existing land value and gross development value where (in the applicants submissions) the existing bungalow is attributed an open market value of £620,000 but the sales value of a new build 3-bed bungalow is estimated at £450,000. This is given as an example of undervaluing potential sales and the external consultant viability assessment and Principal Housing Enabler comments (including evidence of property values of the local area and other development sites advertised sales values) is available on the Councils website for further review if necessary.

2.7 Notwithstanding the differences between the viability assessments, the Development Plan policies are quite clear that new housing development should provide for 30% affordable housing. Where viability is an issue, Policy DEL1 is also quite clear that the Local Planning Authority will have regard to the overall economic, social and environmental benefits of the development and whether on balance, some relaxation of planning obligations is justified. It is acknowledged that all new development has some economic and social benefits but the Council declared a Housing Crisis in September 2021 due to the high cost of housing to buy and privately rent. Affordable and low cost market housing are in particular need. Even if it were accepted that 10% (4 homes out of 40) was the only viable way of delivering development on this site, given the other

objections relating to pedestrian accessibility and conflict with the recently adopted Modbury Neighbourhood Plan, it is not accepted that the overall economic, social and environmental benefits are so great that it would warrant a grant of planning permission. The proposals do not accord with policies DEV8, TTV2, SPT2 and SPT3 of the JLP and Policy MNP6 of the NP

3 Local Infrastructure

3.1 Devon County Council are the Local Education Authority and have advised that the proposed increase of 39 dwellings would be likely to generate an additional 9.75 primary pupils and 5.85 secondary pupils which would have a direct impact on Modbury primary school and secondary schools in Ivybridge. Their latest forecasts conclude that the nearest primary and secondary schools have got capacity for the number of pupils likely to be generated by the proposed development and therefore a contribution towards primary or secondary education would not be sought. However, they require a contribution towards secondary school transport costs due the development being 2.25 miles from Ivybridge Community College. The contribution is calculated at £4.33 per day x 5.85 pupils x 190 academic days x 5 years = £24,063. Such a contribution would need to be secured by legal agreement and is considered to meet the statutory tests set out in CIL regulation 122.

3.2 NHS Devon Integrated Care Board have confirmed that the GP surgeries within the catchment area of the application have sufficient capacity to absorb the population increase that the potential development would generate. This is based on a snapshot taken on the date of the response and they then suggest that although there is no need for a Section 106 contribution towards NHS Primary Care, an estimated sum of £580 per dwelling for Primary Care is factored into any viability assessments. Officers consider that when dealing with a planning application that doesn't generate a need for a specific Section 106 contribution, this suggested sum should not be included in any viability assessment as it is not an actual development cost. Such an approach would skew a viability assessment in a way that would suggest a development is less viable than it actually is. Therefore the sums suggested have not been included in the viability assessment for this application.

3.3 Although the application is made in outline with layout reserved, any future development on this site would need to provide accessible natural greenspace with future management. Although the layout and location of open space is a reserved matter, the delivery and management would need to be secured by legal agreement at outline stage. The Joint Local Plan Developer Contributions Evidence base sets out a required provision of 1.91ha/1000 people of accessible natural greenspace. This can be calculated using average household size and based on 2.25 people per dwelling, there would be a requirement of at least 1,719m² of accessible green space. Indicative plans appear to show that the appropriate level of green space could be achieved with two areas of public open space. These would need to be designed to a greater level of detail as part of any reserved matters, including ensuring that they are useable, are sufficiently overlooked and any drainage/attenuation features are safe. It is considered that the application could deliver the required amount of accessible open greenspace and this would need to be secured by Section 106 Agreement.

3.4 Existing play provision is located at Palm Cross Green, Memorial Hall and at the Palm Cross development. The walking distance to these three sites range between 650m

and 830m via the Church Lane/ Benedict Way walking route. As discussed in the above section of this report, the route to these sites involves the crossing of the main road on two occasions and some of the responses received question whether children would be safe taking that route. The indicative plans and application documents suggest that a Local Area for Play (LAP) would be provided on the application site and the Open Space Specialist considers that this may be the best option as the other sites are greater than the suggested 400m walking distance away. Although LAPs tend to small with limited equipment aimed at younger children, it would be the most appropriate way to deliver play provision in this instance. If future pedestrian access were to be provided along the Drivers Way, the walking distance to other nearby facilities would be around 460m and it could be possible to seek a contribution to the on-going maintenance of these facilities in lieu of on-site provision. However, that route does not form part of the application and therefore on-site provision of an equipped LAP of no less than 100m² and a minimum of 3 play experiences would need to be secured by legal agreement.

3.5 Due to the size of the site, no on-site playing pitch or sports provision is proposed and the nearest facilities are at the QEII Recreation Ground on Barracks Road. This is approximately 1,300m walking distance away and includes a multi use games area (MUGA), football pitches, cricket nets, tennis courts and pavilion building with changing facilities. The Open Space Specialist advises that although most of the facilities have undergone recent improvement, a project is being developed to provide lighting to the tennis courts and there are future plans to carry out work on the pavilion to improve storage. As it is highly likely that new residents would use the existing facilities at the QEII recreation ground and would add pressure to the facilities that have been identified as needing improvement, mitigation to make these facilities sustainable is required. Based on the figures in the JLP Developer Contributions Evidence Base this would amount to £379 per person capital and £442.47 per person maintenance, with the number of people based on the average household size set out in the JLP Developer Contributions Evidence Base. This would need to be secured by legal agreement and would be approximately £74,000.

3.6 Allotment contribution of £2,575 would be sought for the provision of/improvements to and maintenance of allotments in Modbury. This sum is calculated using the figures in the Joint Local Plan Developer Contributions Evidence Base.

4 Noise and disturbance from adjoining buildings/uses.

4.1 Immediately to the east of the site is New Mills Industrial Estate which is separated from the proposed development by hedgerow. The indicative layout shows the potential for some properties to be in quite close proximity with the backs of houses and their gardens facing on to the back of some of the industrial buildings. As design and layout are reserved for subsequent consideration, and specific impacts can not be assessed at this stage, it would be necessary to require a noise assessment to be submitted with any reserved matters. This would need to put forward appropriate glazing, ventilation and boundary treatments to ensure that any future occupants would be protected from noise and disturbance and to accord with the provisions of Policies DEV1 and DEV2 of the JLP.

4.2 Similar issues could also arise from the use of the agricultural buildings to the north of the application site. These buildings are also not in the control of the applicant and there is potential for either normal agricultural operations, housing of livestock (or even other uses allowed by permitted development rights) to impact on future residential amenity. The potential for impact would need to be designed out as part of reserved

matters and may require additional reports to demonstrate that the layout, design and landscaping have specifically taken into account the adjoining uses such as noise or odour. It is noted that the existing agricultural unit already operates in quite close proximity to the existing dwellings without evidence of any harm. Subject to appropriate conditions regarding submission of a noise assessment, it is considered that potential impacts could be controlled.

5 Contamination and geotechnical

5.1 As an agricultural unit with buildings, yards and slurry pit, the application site has the potential for contamination that would need to be dealt with. The comments received from the Environmental Health Team identify that the slurry pit has been infilled but it is unlikely that the materials are known or recorded, or whether any compaction took place. The application is accompanied by a Ground Investigation Report which categorises different parts of the site as having potential geotechnical hazards. The report recommends further investigations, some of which would be post demolition of the existing agricultural buildings and bungalow. Although the Environmental Health Team initially requested further information and specific recommendations from the authors of the report, they have agreed that conditions requiring further site investigation and remediation could secure the necessary information. The Environment Agency have also commented on the application and acknowledge that although further investigation is required, this would be on parts of the site that currently have operational buildings on and would need to be carried out post demolition. They have no objection subject the conditions to secure further investigation and mitigation.

5.2 The submitted ground investigations report suggests that pile foundations and suspended floor slabs are likely to be required due to different settlement across the site, the potential that the existing buildings are constructed on made ground, and a requirement to remove any organic matter used to infill the slurry lagoon.

6 Heritage

6.1 In the table that allocates the site for development under policy TTV24 there are specific policy considerations set out that need to be provided for by development. One of the two identified criteria is "sensitive and high quality design which conserves and enhances the heritage assets." The Council's Heritage Specialists have been consulted and they confirm that the site was fully assessed when it was considered for allocation. The possibility of impact on all heritage assets, including the Church of St George, the Modbury Conservation Area, Flete and Edmeston, was considered. They advise that assuming all dwellings would be standard 2-storey types that there would be no adverse impact on the setting of any heritage assets. The physical separation and lack of meaningful inter-visibility means any visual connection is minimal and would not amount to harm. They advise that there are no other characteristics to the site that have not been suitably covered in the submitted Heritage Statement. As the submitted parameter plan suggests 1 and 2 storey development (with potential 2.5 storey development next to the industrial estate), it is agreed that the development on the application site would not adversely impact the setting of any heritage assets.

6.2 Off-site highway works which include the creation of new footways and crossing points have been considered in relation to potential impact on the setting of the Grade 1 church and conservation area to the east. The specialist advice is that these highway works will not impact on their setting. The A379/Church Lane junction is already a modern

highway layout and views of the church spire are partly obscured by late 20th century building.

6.3 The county Historic Environment Record (HER) identifies the wider area of archaeological potential with regard to the site of the Civil War but the precise location is unknown. The results of desk based assessment and geophysical survey do not suggest the presence of heritage assets with archaeological interest of such significance to preclude development. The advice of the Senior Historic Environment Officer is that any impact can be mitigated by a programme of archaeological work in advance of development commencing. The work should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development. A Written Scheme of Investigation should be submitted or secured by planning condition. It is envisaged that investigation would start with evaluative trenches and subject to the results gained from these initial works, further archaeological mitigation can be determined and implemented. It is also advised that post investigation assessments are completed and published, which could also be secured by planning condition.

6.4 Historic England have been consulted on the application however they have responded to say that the Council should seek the views of their own conservation and archaeological advisors.

7 Landscape and trees

7.1 The application is made in outline so detailed aspects of landscaping are reserved for subsequent consideration. The allocation of the site for development has already required some consideration of landscape impact on a wider landscape character level. The existing agricultural buildings on the eastern part of the site are well contained into the landscape and replacement with appropriately designed dwellings is unlikely to cause harm. The western part of the site is more open but the surrounding development (to the north and south west) and existing hedgerows would allow for modest development that would not significantly change local character or views.

7.2 The submitted parameter plan, design and access statement and indicative layout seek to provide confidence that a development of 40 dwellings could be accommodated on the site in an acceptable manner. Retaining, infilling and creation of new hedgerows, combined with 5m wide dark corridor should provide a suitable green edge to the site. The policy requirements for accessible open greenspace would also give opportunity for green links into the central areas of the site to be created. Restriction on buildings heights, particularly in the western part of the site, are required and are shown on the parameter plan. Careful use of materials and colours would be required at subsequent design stages to ensure that the development assimilates into the landscape.

7.3 Although the site is not within the South Devon National Landscape, it is immediately adjacent and considered to be within the setting. Views from the ridge road to the north would see a development that has the National Landscape as a backdrop. Nearby development demonstrates that where darker materials (such as stone or slate hanging) have been used, those dwellings are more successful in assimilating. Appropriate control of lighting would also need to be secured to ensure development conserve and enhances the setting of the protected National Landscape.

7.4 Within the application site are a few trees or hedgerows with most being on a boundary. Some of the trees and hedgerows shown on the tree survey plans are outside

of the application site. A tree survey has been submitted which claims that most are in good or moderate health. No specific works to trees is proposed in any of the submitted documents and given that almost all are either on the boundary or outside of the application site, it is concerning that the submitted viability documents suggest over £31,000 of tree/hedge clearance and management works. Subsequent reserved matters proposals would need to show such works and given that other application documents suggest retention and enhancement, there is some concern that a greater amount of work is assumed than shown in any of the submissions.

8 Ecology

8.1 The site lies within the South Hams SAC Landscape Connectivity Zone for greater horseshoe bats (GHB) and the majority is modified grassland that is unsuitable for GHB. Surveys indicate that the adjacent, but off-site, double hedge to the northeast is being used as a commuting corridor. The Council's Ecologist considers that the proposed development would not lead to loss, damage or disturbance at a landscape scale to a network of GHB commuting routes. Nor will it lead to the loss damage or disturbance to a pinch point or an existing mitigation feature. The Ecologist advises that there is unlikely to be significant effect on the South Hams SAC and Appropriate Assessment is not required.

8.2 The site surveys have identified lesser horseshoe bat night roost and a common pipistrelle maternity roost in the existing bungalow. This bungalow is to be demolished and therefore a European Protected Species (EPS) License would be required from Natural England to avoid an offence being committed. Proposed mitigation measures include no works being carried out on or close to the maternity roost during the bat maternity season and an alternative structure that is suitable for use as a maternity roost would be constructed prior to any demolition. Integrated bat boxes would also be installed at a rate of one box per two dwellings. Government guidance on EPS states that the local planning authority must be satisfied that if a license is needed it's likely to be granted by Natural England or Defra before they give planning permission. This involves the consideration of three derogation tests of the Conservation of Habitats and Species Regulations 2017 (as amended):

- I. The consented operation must be for 'preserving public health or public safety or other imperative reasons for overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment';
- II. There must be 'no satisfactory alternative';
- III. The action authorised 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'

8.3 As the application is not recommended for approval (for other reasons) this report does not carry out a consideration of whether Natural England are likely to grant an EPS license which would permit the proposal to lawfully proceed. If it was determined that planning permission should be granted for the proposed development, then consideration of the above tests would be required. The Council's Ecologist concludes that the 3rd test would be passed based on the mitigation measures but the first two tests are largely 'planning tests' and not for their consideration. If the Committee were minded to approve the proposed development, the first two tests would need to be considered before a decision is made.

8.4 Bat activity surveys indicated commuting and foraging by common pipistrelle bats (most likely linked to the maternity roost). Activity was also recorded along the northern boundary and farm track outside of the application site. As this northern boundary is deemed to be of highest importance to light sensitive species such as GHB, there is potential for them to be negatively impacted due to loss of hedgerow and artificial lighting. In order to mitigate this, a 5m buffer is proposed along the western boundary and this is shown on the parameter plan. The gappy hedgerow along the northern boundary is to be reinforced and new hedgebanks constructed where buildings are to be removed. A lighting strategy is proposed to be submitted alongside any reserved matters which would need to demonstrate no light spill from the site. This lighting strategy could be secured by planning condition and it is considered that suitable mitigation could be put in place. The mitigation would need to guarantee that any boundary hedges are not in the house owners control to ensure that it is maintained in the long term.

8.5 The Habitats Regulations Assessment (HRA) of the Joint Local Plan (JLP) identified that new residential development supported through the JLP would lead to increased levels of recreational pressure on the Plymouth Sound and Estuaries European Marine Site (EMS) that may lead to a significant adverse effect on site integrity. A Mitigation Tariff is currently in place to fund additional management/mitigation measures within the EMS. The proposals include a commitment to making the appropriate contributions set out in the Supplementary Planning Document (SPD) and could be secured by Section 106 Agreement.

8.6 Although no dormice were found by nest tube survey (or any signs of presence during any monitoring site visit) there is a possibility that they may move on to the site in the future. As this is an outline application the Councils Ecologist advises that condition requiring further surveys is necessary. A Construction Environmental Management Plan (CEMP) could be conditioned to ensure appropriate protection for nesting birds, hedgehogs, reptiles and amphibians. Although no evidence of badger activity was recorded the habitat assessed offers moderate value for foraging and commuting badgers. Conditions for a CEMP and resurvey prior to commencement are suggested by the Ecologist.

8.7 Although this application was submitted prior to the mandatory Biodiversity Net Gain (BNG) regulations came into force, there remains a requirement under Policy DEV26 and the Supplementary Planning Document (SPD) for major development to include a 10% increase to BNG. The application was submitted with a completed Biodiversity Metric that shows that the development will result in an onsite net loss of biodiversity units. Off site provision is therefore required and the application identifies an area of modified grassland land approximately 500m to the northwest which is suitable for 0.38ha of broadleaf woodland planting and creation of 221m of native species rich hedgerow. This would provide 1.8 habitat units and 2.59 hedgerow units resulting in a 13.26% increase in habitat units and 10.89% increase in hedgerow units. As this is off site, it would need to be secured by legal agreement to ensure provision and subsequent management for a 30 year period (including provision of 5 yearly monitoring reports).

9 Travel Plan

9.1 The submitted Transport Statement (TS) includes a section on travel planning measures. While some hard measures such as new pedestrian footways, crossing points and revised bus stop locations are proposed (discussed in previous section of this report) there are also soft proposals included in the TS. These include the appointment of a

Travel Plan Co-ordinator, provision of 'welcome packs' and a Travel Plan Budget of £300 per dwelling to fund travel planning measures. This would need to be secured by legal agreement and the applicants have confirmed that this forms part of the proposed Section 106 package of contributions.

10 Vehicle Access off A379

10.1 Although the application is made in outline, detailed consent for the access is sought. Some of the issues relating to the wider accessibility of the site have been discussed in previously and this section of the report looks at the vehicle access off the A379. The existing access to the site is to be closed up and a new access constructed immediately to the east. This would involve the removal of earth bank and hedgerow and would have appropriate visibility in both directions. The access would include a 2m wide footway to tie into to the exiting footway. There would be some cutting back of the vegetation from the existing footway (but no widening) leaving it 1.5m to 1.2m wide next to the busy main road. Part of the Parish Council objection is that this is not wide enough for two people to easily pass, particularly if one had a pushchair or mobility scooter.

10.2 At the proposed point of access, the A379 is subject to the National Speed Limit (60mph for cars) and the 30mph sign is on the eastern edge of the site, close to the New Mills Industrial Estate. The Transport Statement suggests that the applicant fund the cost of a Traffic Regulation Order (TRO) to move the 30mph speed limit to the west of the access, however, the highway authority are not supportive of this measure. The reasons given for this are that the 85th percentile speed is too high and would leave a non-compliance issue for the police to enforce, it would detract from current speed limit policy that there should be 3 house frontages over 100m, and there is no injury accident record providing justification for departure from policy.

10.3 Access would need to be maintained to the electricity substation and agricultural buildings to the north of the site. It is understood that Western Power require HGV and plant access/right of way to the substation and therefore the access and subsequent road design would need to accommodate this. Future vehicle access is shown of the submitted parameter plan.

10.4 Although the Highway Authority object to the application for the reasons discussed in previous sections of this report, they have not raised any objection to the detailed design of the vehicle access and pavement width along the site frontage. The vehicle access is therefore considered to be acceptable.

11 Low Carbon Development

11.1 Joint Local Plan Policy DEV32 includes a Plan Area target to halve 2005 levels of carbon emissions by 2034. It also states: "All major development proposals should incorporate low carbon or renewable energy generation to achieve regulated carbon emissions levels of 20 per cent less than that required to comply with Building Regulations Part L." In November 2022, the Council adopted the Climate Emergency Planning Statement which is an interim policy statement and guidance and therefore must be taken into account when determining a planning application. It is a new material consideration in the development management process.

11.2 The application is accompanied by a Carbon Reduction Statement and Climate Emergency Compliance Form. The Carbon Reduction Statement states that the proposed

development seeks to deliver sustainable development that is in accordance with Policy DEV32, however as the application is made in outline, there is little detail of how this would be achieved. The location of the development is an important factor when considered against the Spatial Strategy parts of the JLP. Modbury is defined as one of the Smaller Towns and Key Villages that have levels of services and amenities which can support the daily needs of a rural population. However, the location on its own can not deliver low carbon development. and there will be a number of specific design requirements secured by a combination of updated building regulations and planning requirements. DEV32 requires major development to incorporate low carbon or renewable energy generation but the level of detail of how it will be achieved is not normally fully set out in an outline application. Although the Carbon Reduction Statement could have included clear commitments to the use of alternatives to gas boilers, battery storage and onsite energy generation, it does not do so. The measures required to achieve compliance with DEV32 are being deferred to the detailed design and reserved matters stage. Therefore it would be necessary to impose a suitable worded planning condition requiring demonstration of how the requirements of DEV32 and Climate Emergency Planning Statement are to be met. Although that approach does not secure specific technologies at this stage, it does give some flexibility of approach to allow for most up to date measures to be integrated into the overall design.

12 Drainage

12.1 The application site is in the Modbury Critical Drainage Area and Flood Zone 1 (low risk of surface water flooding).

12.2 The submitted Flood Risk Assessment (FRA) proposes a surface water drainage strategy that is based on attenuation and discharge into the wider drainage network to the south. Infiltration testing has been carried out and the FRA concludes that soakaways are not viable due to low permeability in the soils. There is an existing culvert to the south of the site which takes flows from a natural spring on the western boundary. It is proposed to connect to this existing culvert and provide on-site attenuation to accommodate all storm events up to the 1 in 100 years plus 50% climate change and 10% urban creep. A greenfield run-off rate of 4.4 litres per second has been calculated for the site area and discharge to the culvert (from the attenuation features) would be limited by hydro brake. On-site attenuation is shown on the submitted parameter and indicative plans. This comprises an above ground basin and a below ground attenuation tank based on an indicative layout of 40 dwellings.

12.3 The FRA also contains statements that where possible on-plot water butts and rain gardens could be incorporated into detailed design but due to these types of features being under private home ownership and not under the control of approved management companies, they are not included in the storage calculations. It should also be possible to include additional swales in any detailed design. As the application is made in outline it would be necessary for a planning condition requiring detailed drainage design at the reserved matters stage. The Local Lead Flood Authority have no objections subject to such a condition. They advise that the exact location of the spring must be confirmed during the detailed design. The application demonstrates that surface water drainage can be adequately dealt with on-site and discharged into the wider drainage network at appropriate quality and rates. It is considered that this part of the application complies with the requirements of policy DEV35 of the JLP.

13 Conclusion

13.1 While many of the issues related to an outline application on this allocated site can be satisfactorily controlled by condition and legal agreement, there are two fundamental issues in relation to sustainable development where the application does not accord with the development plan.

13.2 Policies SPT2, TTV2 and DEV29 of the Joint Local Plan and MNP5 and MNP6 of the Modbury Neighbourhood Plan require new development to be well connected to services by good and safe pedestrian routes. The Highway Authority object on the grounds of highway safety and danger to all road users and consider that the proposed pedestrian route is convoluted to the point that some people would choose not to use it.

13.3 Policies SPT2, TTV2 and DEV8 of the Joint Local Plan and MNP3 of the Modbury Neighbourhood Plan require residential development to create sustainable communities which meet housing need and deliver affordable homes at a minimum of 30% on site. The proposals to deliver 10% affordable housing and submitted viability appraisals have been tested by external consultants and while it has been found that 30% may not be achievable, the development should be able to provide a greater amount of affordable housing to meet that local need and demonstrate sustainable development.

13.4 The proposals are therefore recommended for refusal.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004 and, with Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Planning Policy

Relevant policy framework

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of decision making, as of March 26th 2019, the Plymouth & South West Devon Joint Local Plan 2014 - 2034 is now part of the development plan for Plymouth City Council, South Hams District Council and West Devon Borough Council (other than parts of South Hams and West Devon within Dartmoor National Park).

On 26 March 2019 of the Plymouth & South West Devon Joint Local Plan was adopted by all three of the component authorities. Following adoption, the three authorities jointly notified the Ministry of Housing, Communities and Local Government (MHCLG)* of their choice to monitor the Housing Requirement at the whole plan level. This is for the purposes of the Housing Delivery Test (HDT) and the 5 Year Housing Land Supply assessment. A letter from MHCLG to the Authorities was received on 13 May 2019 confirming the change.

On 19th December 2023 the Department for Levelling Up, Housing and Communities published the HDT 2022 measurement. This confirmed the Plymouth, South Hams and West Devon's joint measurement as 121% and the policy consequences are "None".

Therefore no buffer is required to be applied for the purposes of calculating a 5 year housing land supply at the whole plan level. The combined authorities can demonstrate a 5-year housing land supply of 5.84 years at end of March 2023 (the 2023 Monitoring Point). This is set out in the Plymouth, South Hams & West Devon Local Planning Authorities' Housing Position Statement 2023 (published 26th February 2024).

[*now known as Department for Levelling Up, Housing and Communities]

The relevant development plan policies are set out below:

The Plymouth & South West Devon Joint Local Plan was adopted by South Hams District Council on March 21st 2019 and West Devon Borough Council on March 26th 2019.

SPT1 Delivering sustainable development
SPT2 Sustainable linked neighbourhoods and sustainable rural communities
SPT3 Provision for new homes
SPT10 Balanced transport strategy for growth and healthy and sustainable communities
SPT11 Strategic approach to the Historic environment
SPT12 Strategic approach to the natural environment
SPT13 Strategic infrastructure measures to deliver the spatial strategy
SPT14 European Protected Sites – mitigation of recreational impacts from development
TTV1 Prioritising growth through a hierarchy of sustainable settlements
TTV2 Delivering sustainable development in the Thriving Towns and Villages Policy Area
TTV24 Site allocations in the Smaller Towns and Key Villages
DEV1 Protecting health and amenity
DEV2 Air, water, soil, noise, land and light
DEV3 Sport and recreation
DEV4 Playing pitches
DEV8 Meeting local housing need in the Thriving Towns and Villages Policy Area
DEV9 Meeting local housing need in the Plan Area
DEV10 Delivering high quality housing
DEV19 Provisions for local employment and skills
DEV20 Place shaping and the quality of the built environment
DEV21 Development affecting the historic environment
DEV23 Landscape character
DEV25 Nationally protected landscapes
DEV26 Protecting and enhancing biodiversity and geological conservation
DEV27 Green and play spaces
DEV28 Trees, woodlands and hedgerows
DEV29 Specific provisions relating to transport
DEV30 Meeting the community infrastructure needs of new homes
DEV31 Waste management
DEV32 Delivering low carbon development
DEV35 Managing flood risk and Water Quality Impacts
DEL1 Approach to development delivery and viability, planning obligations and the Community Infrastructure Levy

The Modbury Neighbourhood Plan 2022-2034 - Following a successful referendum, the Modbury Neighbourhood Plan was adopted on 30th March 2023. It now forms part of the Development Plan for South Hams District Council and should be used in deciding planning applications within the Modbury Neighbourhood Area.

MNP1: Location, Scale and Character of Development
MNP2: Design and Construction
MNP3: Future Development in and Around Modbury PED
MNP4: Heritage and Conservation
MNP5: Housing Development AH
MNP6: Safe Movement and Transport PED
MNP9: Broadband and Communications Infrastructure
MNP12: Priorities for Community Facilities and Infrastructure
MNP13: Protecting the Landscape
MNP14: Supporting Biodiversity

Other material considerations include the policies of the National Planning Policy Framework (NPPF) including but not limited to sections 5, 8, 9, 11, 12, 14, 15 and 16 and guidance in Planning Practice Guidance (PPG). Additionally, the following planning documents are also material considerations in the determination of the application:

- **Devon County Council (DCC) Waste Management and Infrastructure Supplementary Planning Document (July 2015)**
- **South Devon Area of Outstanding Natural Beauty Management Plan (2019-2024)**
- **Plymouth and South West Devon Joint Local Plan Supplementary Planning Document (2020)**
- **SPD Developer Contributions Evidence Base (June 2020)**
- **Plymouth and South West Devon Climate Emergency Planning Statement (2022)**

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.