

The Plymouth Road proposals

1 INTRODUCTION

1.1 This note covers things:

1. The Linden Homes Planning Application
2. The S106 Agreement that accompanies the Linden application and its relationship with other S106 Agreements in Tavistock
3. The Baker Estates Proposal

2 THE BASIS FOR PLANNING DECISIONS

2.1 Planning applications

2.1.1 Section 38(6) of the 2004 Planning and Compulsory Purchase Act requires Planning Authorities to take their decisions in accordance with the Development Plan “unless material considerations indicate otherwise”.

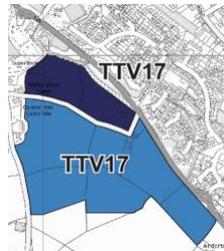
2.1.2 The Development Plan in West Devon is the Joint Local Plan, adopted in April 2019.

2.1.3 West Devon has also approved a Supplementary Planning Document which explains in more detail what the Joint Local Plan means. It is not a statutory document, but it is a ‘material consideration’ for the purposes of Section 38(6) of the Act.

2.1.4 The key policy of the Joint Local Plan that covers the Linden and Baker Estates proposals is TTV17. The main part of this policy is

“Land at Plymouth Road is allocated for a mixed-use development. Provision is made for in the order of 300 new homes and 18,600 sq.m. of employment (Use Class B1).”

2.1.5 The Local Plan map identifies two areas of land opposite Bishopsmead. The light blue land is identified for the housing development and the dark blue is identified for employment.



2.2 Section 106 Agreements

2.2.1 A Section 106 Agreement is a contract between anyone with an interest in land and the planning authority. It is often (but not always) associated with a planning permission but it is separate from that permission. It is enforceable by the courts under civil law whereas the planning permission is enforceable under planning law.

2.2.2 A S106 agreement can do four things:

- (a) It can restrict the development or use of the land in any specified way. For example, it can restrict housing to certain groups of people or protect a landscape buffer.
- (b) It can require specified operations or activities to be carried out. For example, it can require a school, or roads, or drainage to be built.
- (c) It can require land to be used in any specified way. For example, it can require an area to be reserved for use by a local organisation - a school or a church etc.
- (d) It can require sums to be paid to the authority. This is the provision that most people are used to and is usually used for school, public transport etc provision.

3 THE LINDEN HOMES APPLICATION

3.1 The Application

3.1.1 Linden was in discussion with WDBC for many months before submitting an application.

3.1.2 They made an outline application for 250 houses and 2 hectares of employment land on December 12th, 2018. All matters except access were reserved for later decision. The housing element was as had been discussed with officers, but the inclusion of the employment came as a surprise.

3.2 Objections

3.2.1 In February 2018, WDBC asked the public for their views. Over 80 objections were made, by members of the public, the Town Council, Plasterdown Parish Council and CPRE. I have summarised these so that members can see how wide ranging they are:

Highways and road safety

- The A386 – already busy, high speed – junctions proposed inadequate, potential for accidents – traffic lights? New roundabout at Bishopsmead?
- Lack of footpath to allow residents to walk safely to nearby shops
- Lack of bus stop
- Impact on Brook Lane
- Not enough parking per house provided,
- Minimum consideration for pedestrian and cycle access

Infrastructure

- Lack of provision for schools, public transport, roads, rail link, cycles
- Impact on health services, emergency services
- No community building included, but badly needed

Sustainability

- No support for public transport
- No provision for electric charging points for cars.
- Renewable energy sources should be included
- Potential for Air pollution created by residents travelling to work outside of the town
- Impact on ecology & biodiversity

Design

- The green space is at the top end of the development where houses already have bigger gardens;
- Insufficient provision for tree screening/green buffer
- Houses with small gardens are not suitable for family homes, plots should be larger
- Three storey houses inappropriate
- Three storey industrial buildings inappropriate

Flooding and drainage

- No details regarding drainage and surface water
- Brook Lane floods during bad weather, development should not exacerbate this

Employment

- Employment units should be built before housing
- Tavistock has several empty industrial units, no more are needed
- Industrial units will be three-storey- visual impact

3.2.2 Officers have not dealt with the vast majority of these, arguing that they are dealt with in the Local Plan and that they can be resolved at Reserved Matters stage.

- 3.2.3 In February 2019, Local WDBC Councillors Evans and Parker also objected on a variety of grounds – many of which are covered in the list above. In addition, they expressed deep concern that the Employment site is not big enough to accommodate the 18,600 sq.m. of Employment floorspace required by the Joint Local Plan.¹
- 3.2.4 Inexplicably, the Councillors' objection seems to have been 'misaid' by West Devon officers and it has not been referred to since. As a result, no officer ever seems to have investigated whether the Employment site is large enough to accommodate 18,600 sq.m. of floorspace.

3.3 Decision-making process

3.3.1 The normal way in which a major application is decided by WDBC is:

- A report is drafted by officers
- Officers decide, along with local ward members, whether the application should go to committee or not.
- If the Committee decides to approve it, they agree that, after a S106 Agreement has been signed, a decision notice can be issued granting permission

3.3.2 In this case, a very different process happened:

- Officers drafted the report as long ago as July 2019.
- Ward members were asked if the decision could be taken and, effectively, they agreed.
- Nothing then happened for a year.
- On June 17th 2020, Ward members were informed of complications on the landowners' side. They were asked if they would agree to officers issuing the notice of decision *before* a S106 Agreement was agreed. (i.e. the opposite way around to normal). Members were told that, if they did not agree to this, development of the site could be held up for 25 years and the Local Plan Strategy could be compromised. They were told that it is in the Borough Council's interests for them to agree to delegate the decision immediately, so that it could be issued in the next day or two.²
- Not surprisingly, Ward members agreed.
- The decision notice was issued by officers, the following day - on June 18th 2020

3.3.3 The decision is subject to 37 conditions. Most of them are 'normal' conditions specifying the details that will be required as part of the Reserved Matters submission. However, two conditions are of especial interest in the current circumstances:

- Condition 8 limits the Employment use to Use Class B1 (light industrial)
- Condition 37 prevents any real development from commencing before a S106 Agreement has been signed:

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

3.3.4 The S106 Agreement has not yet been signed.

4 THE DRAFT SECTION 106 AGREEMENT

4.1 Introduction

4.1.1 The following is a summary of a note that I sent to West Devon Council on June 18th. I can provide the full note for members if required.

4.1.2 The draft S106 Agreement raises a number of questions that, members might conclude, need to be answered before the Agreement can be finalised.

¹ For members' information, the local plan shows that the 18,600 sq.m. is to be provided on the dark blue land on page 1 of this note. That land measures 6 hectares. The Linden application claims to be able to accommodate this on 2 hectares of land.

² Although this is an extremely unusual situation and I have never known it used in all my time in the profession, it is legal for the Council to take a decision in this way.

4.2 Alternative Transport scheme

4.2.1 £146,000 is to be given to the Tavistock to Bere Alston Railway scheme.

4.2.2 Unusually, in this case the County Council reserves the right to decide to spend the money on an Alternative scheme to improve vehicle/pedestrian links between Tavistock and Plymouth. Members may wish to raise two issues with the County Council about this provision:

- There is no provision for consultation with WDBC or Tavistock Town Council in the event of the County Council changing to the Alternative Scheme.
- There is no guarantee that the money will be spent in West Devon at all – under the terms of the draft Agreement, it could be spent on projects in South Hams, Dartmoor National Park or Plymouth.

4.2.3 There appear to be no other transport benefits negotiated for Tavistock, including cycling, walking or other sustainable modes.

4.3 Bus contribution

4.3.1 The draft Agreement proposes no contribution for local bus services - mainly the 89 bus. This contrasts with:

- Callington Road (398 dwellings) - £500,000 to be paid in 5 annual sums of £100,000.
- Butcher Park Hill (110 dwellings) - £195,000 – Agreement ratified by Planning Inspector
- New Launceston Road (148 dwellings) - £135,000.

4.3.2 Members will recall that, recently, Tavistock Town Council challenged the absence of a contribution to local bus services. A response has been received from Devon County Council - a response that not only refuses to consider a contribution from the Linden development but implies that even the Callington Road £500,000 and the New Launceston Road £195,000 will not be applied to the 89 bus!!:

4.3.3 Cllr Parker responded to the County Councillor that, in terms of planning law, there is no reason at all why the Plymouth Road Development should not make a contribution to the 89 bus. If a contribution was to be made on the same basis as the other major developments in Tavistock, then *pro rata*, it would be as follows:

- Pro rata with Callington Road - £312,500
- Pro rata with Butcher Park Hill - £443,000
- Pro rata with New Launceston Road - £228,000

4.3.4 Since the Butcher Park Hill contribution was ratified by an Inspector at appeal, Members may feel that a contribution of £443,000 could be justified.

4.3.5 Members might also wish to explore with the County Council how previous S106 contributions have been used to support public transport in Tavistock and how it is planned to use contributions that have been secured but not yet paid.

4.4 Primary schools

4.4.1 The draft S106 contains a provision for a contribution of £357,336 toward the construction of a new primary school in SW Tavistock.

4.4.2 On the basis of the County Council's information, there are just enough vacancies in Tavistock Primary Schools to accommodate the children of the other three major developments in Tavistock. Further analysis by local members indicates that there may already be a *shortage* of over 130 Infant and Primary places.

4.4.3 It is clear, therefore, that the Town Council is correct to have asserted recently that there is a crisis in primary education in Tavistock and that there is an urgent need for a new school.

4.4.4 Against this background, members may wish to express concern that, in the draft S106 Agreement for the Linden development, the first 166 houses are to be 'exempted' from making any contribution to Primary Education provision. If all 250 of the houses were to

contribute at the levels calculated by the County Council, then the contribution would be approximately £1,000,000 rather than £357,336.

- 4.4.5 This crisis may be even more urgent since it appears that the three existing major developments in Tavistock are contracted to pay in the order of £1,000,000 toward the cost of the new school.³ Together with the Plymouth Road proposal, therefore, it is likely that only one third (or even less) of the cost of building the new school is covered by S106 Agreements – and there are no more major developments due to be built in Tavistock to enable this shortfall to be made up.
- 4.4.6 In the light of the above, members might conclude that there is a compelling case for the Primary School contribution to be set at £1,000,000 for the Plymouth Road development.
- 4.4.7 Members should also note that the S106 Agreements for all four of the developments include a provision that, if the money is not spent on a new Primary School within 10 years, (5 years in the case of Butcher Park Hill) it is to be returned to the developers with interest!
- 4.4.8 Against that background, members may be surprised to find that there is no obligation in any of the three existing S106 Agreements requiring *any* party to build this school. Not surprisingly, therefore, there is also no programme for the provision of this school - there is only a timetable for contributions to be made.
- 4.4.9 It may be appropriate therefore to seek to have included in the S106 an obligation on the County Council to construct the school on a programme that enables all of the agreed contributions to be used.

4.5 Secondary school

- 4.5.1 The Joint Local Plan sets a series of priorities for Tavistock. One of them is:
“Delivering improvements to secondary school facilities in Tavistock”
- 4.5.2 All of the partners in the Joint Local Plan signed up to this, including DCC.
- 4.5.3 Members might wish to debate with the County Council why no contribution has ever been sought for Secondary School improvements in a Tavistock S106 Agreement – including this one for the Linden development.
- 4.5.4 Furthermore, members will undoubtedly wish to know how, in the absence of S106 contributions, the improvements to Secondary School facilities in Tavistock are to be achieved.

4.6 Employment floorspace

- 4.6.1 The S106 Agreement contains provisions that the 18,600 sq.m. of Employment floorspace will be completed and made available for letting before 80% of the Housing is occupied.
- 4.6.2 Once the internal roads and services have been completed on the employment land, Linden can offer to sell the land to West Devon Council for £1. The Council will then be responsible for completing the development and the provisions referred to in 4.6.1 above will not apply to the applicant.
- 4.6.3 Even in the S106 Agreement, there is no plan demonstrating that the Employment Land can actually accommodate 18,600 sq.m. of Employment Floorspace.

4.7 Other Provisions of the draft S106 Agreement

- 4.7.1 The Draft Agreement contains provisions for 75 Affordable dwellings. 70% of these are to be Social Rented and 30% Intermediate Housing.
- 4.7.2 Also there is to be a contribution to the Plymouth Sound and Estuaries EMS Recreation Mitigation and Management Scheme (the amount is currently uncertain)

³ Under the terms of their S106 Agreement, 333 of the Bovis Houses at Callington Road are also ‘exempt’ from making a contribution.

- 4.7.3 A Playing Pitches contribution of £344,560 is to be made as a contribution towards off-site sports provision
- 4.7.4 Linden is also committed to building a Local Equipped Area for Play and a Neighbourhood Equipped Area for Play in the development for public use.

5 THE BAKER ESTATES PROPOSAL

5.1 Background

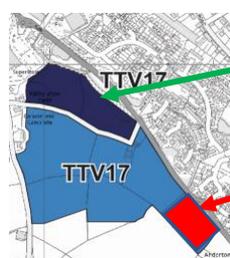
- 5.1.1 Baker Estates is bringing forward a proposal for a 6 hectare site immediately to the north of the Linden Homes site on Plymouth Road, Tavistock. This is the dark blue land on the left-hand plan below.
- 5.1.2 The Baker proposal is for a development of bungalows and an extra care facility
- 5.1.3 As set out in para 2.1.1 above, the local planning authority's duty is to take decisions in accordance with the Joint Local Plan 'unless material considerations indicate otherwise.'
- 5.1.4 In this case, the Joint Local Plan allocates the land for 18,600 sq.m. of employment (Use Class B1). This is one of the keys to the Plan's strategy of Sustainable Settlements - to create local jobs with the objective of helping Tavistock to become more self-contained and sustainable and to reduce the need for increased commuting into Plymouth.
- 5.1.5 Thus, a proposal for housing and a care home on the dark blue land should be refused unless there are material considerations that indicate otherwise
- 5.1.6 In their pre-application publicity, Baker Estates is bringing forward two 'material considerations'.

5.2 The Extra Care facility

- 5.2.1 First, they say that the Joint Local Plan identifies an extra care facility as a specific need in Tavistock.
- 5.2.2 That is true. The question is whether this is the only (or even the best) location for such a facility.
- 5.2.3 Furthermore, since there are no details of the Extra Care facility in the proposal, it is impossible to judge what the benefits will be. The proposal is to transfer the land to West Devon Borough Council, who will be responsible for building it.

5.3 No need for the employment land

- 5.3.1 The second consideration is that, as Baker Estates state in their literature, permission has been granted for the 18,600 sq.m. of employment floorspace on 2 hectares of the Linden site, to the south of the Baker site.



Area being promoted by Baker Estates

Area granted permission for employment use

Linden's sketch layout for employment



- 5.3.2 If it is possible to develop 18,600 sq.m of B1 light industrial floorspace on the 2 hectares of Linden land, then this would be a powerful material consideration in favour of allowing the allocated (dark blue) land to be released for other uses.
- 5.3.3 Thus, the very first question that needs to be asked is "Can the Linden 2-hectare site reasonably be developed for c18,600 sq.m. of B1 Employment use?"

- 5.3.4 In February 2019, the WDBC Ward Councillors raised this very issue and asked WDBC and Plymouth City Council officers⁴ to confirm Linden's assertion that the site that has now been granted planning permission is actually large enough to accommodate 18,600 sq.m. of employment floorspace.
- 5.3.5 It appears that, notwithstanding the concerns of local councillors, officers did no work to confirm or disprove this assertion prior to granting permission.
- 5.3.6 Members are advised that:
- 2 hectares of land is 20,000 sq.m. A single storey development of 18,600 sq m would take up over 90% of that land.
 - The buildings illustrated in the Linden planning application are 3 storeys high. (see the right-hand plan at para 5.3.1 above)
 - 3 storey light industrial units are extremely rare.⁵
 - The proposal will need to accommodate the following, which are not shown on the Linden sketch layout:
 - car parking - the recently-adopted SDP requires up to 620 spaces, which alone will require over 2 hectares of land
 - cycle parking,
 - servicing areas,
 - vehicle and pedestrian circulation
 - Sufficient landscaping to reflect that this is a 'gateway' into a World Heritage town.
- 5.3.7 Typically, the buildings in a B1 light industrial development would cover 30% of the site – hence, the Joint Local Plan allocated 6 hectares for 18,600 sq.m of floorspace.
- 5.3.8 So far, no-one has been able to show that the Linden site can accommodate the Joint Local Plan requirement.
- 5.3.9 Until this is clearly demonstrated, members may feel that there is no case for 'switching' the 6 hectare Joint Local Plan allocation to a 2 hectare site on the Linden land.

Graham Parker July 27th 2020

⁴ Plymouth City Council officers were involved because they led the Joint Local Plan Team

⁵ The planning permission restricts the use to light industrial use. This accords with the use used as the basis for Linden's Transport Assessment (para 6.5 of the TA).