

Meeting: Policy Development and Decision Group (Joint Operations Team)

Date: 6 November 2017

Wards Affected: All Wards

Report Title: Neighbourhood Forum Status

Is the decision a key decision? Yes

When does the decision need to be implemented? By December 2017

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1. Proposal and Introduction

- 1.1 Neighbourhood forums' primary function is to prepare neighbourhood plans. In addition to preparing neighbourhood plans, forums must also be notified of planning applications in their area. Torbay's Forums have made representations on strategic planning applications and other matters of community interest.
- 1.2 Applications have been received to approve the status of the three existing Neighbourhood Forums in Torbay as "qualifying bodies". The current designations expire on 7th December 2017. Torbay Council, as Local Planning Authority (LPA), must consult on the applications for (re)designation and make a decision within 13 weeks of publicising the application. This consultation commenced on 6th October 2017 and runs until 20th November 2017. The issue of Forum renewal is due for consideration by Council on 7th December 2017, and a decision must be issued by 5th January 2018.
- 1.3 The designation process is separate to, albeit related to, the Neighbourhood Plans which the Forums are preparing. All three Forums have now submitted plans to the Council for publication and examination.
- 1.4 This report sets out the background and pros and cons of designating or refusing to (re)designate Forums.

2. Background

- 2.1 Neighbourhood Forums were created by the then Coalition Government under the Localism Act 2011. They were intended to "provide a powerful set of tools for local people to ensure that they get the right types of development for their community.

The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic priorities of the Local Plan” (NPPF 184).

- 2.2 Torbay is very unusual in that it opted in 2011-12 to have district wide Neighbourhood Plan coverage, comprising three Forums, and to rely on Neighbourhood Plans to deliver a significant part of the Bay’s housing and development requirements. This was in line with the “localism agenda” then being championed by the Coalition Government as a way of increasing housing supply.
- 2.3 Neighbourhood Forums were approved by Council for Torquay, Paignton and Brixham Peninsula on 6th December 2012. The Forums were approved conditionally as set out in Appendix 1. It will be noted that condition (iii) required Councillors to take a lead in ensuring Forums meet their legislative and local plan requirements. However, in the light of subsequent legal advice, it appears that the latitude to impose conditions on the Forums at designation is more limited than thought in 2012.
- 2.4 Forum designation lasts for five years and therefore they are due to expire in December 2017. Applications for designation have been received from all three Forums. There is no formal process for re-designation or extension of an existing designation, instead the Forums must apply for designation as they did in 2012. The Council has to consult on the applications for Forum designation “as soon as possible” after receipt. The consultation must be for a minimum of six weeks. The Council must make a decision on whether to designate a forum within 13 weeks of publication (i.e. no longer than 7 weeks after the end of a 6 week consultation). In order to meet this statutory timetable it will be necessary to report the matter to the following meetings:
- Publication in Forward Plan (1st September 2017)
 - *Consultation into Forum designation commences 6th October 2017*
 - PDDG 6th November 2017
 - *Consultation closes 20th November 2017*
 - Council 7th December 2017.
- 2.5 The Town & Country Planning Act (‘the Act’) was amended by the Localism Act 2011¹, and specifies where a LPA may designate a “qualifying body” (i.e. a Forum). It should be for the express purpose of **‘promoting or improving the social, economic and environmental well being’** (s.61F(5)(a)). The Planning Practice Guidance advises that in designating areas: *“a local planning authority should avoid pre-judging what a qualifying body may subsequently decide to put in its draft neighbourhood plan or Order. It should not make assumptions about the neighbourhood plan or Order that will emerge...”*²
- 2.6 In the five years since their designation in 2012, the relationship between the LPA and the Forums has not been entirely harmonious. In particular Paignton and Brixham Forums objected to the emerging Torbay Local Plan at Examination, and

¹ Section 61F(5) of the Town and Country Planning Act 1990 as amended by Schedule 9 of the Localism Act 2011. <http://www.legislation.gov.uk/ukpga/2011/20/schedule/9>

² PPG 41-035-20161116. This is guidance and not law. It relates to creating forums rather than renewing them. <https://www.gov.uk/guidance/neighbourhood-planning--2>

these objections are discussed in the Local Plan Inspector's Report³. The Inspector noted that Torquay and Brixham had undertaken to submit plans which are in general conformity with the Local Plan, but that Paignton had not given this commitment. He noted that *"if the Neighbourhood Plans are not in place soon the council is likely to find itself in a position where it no longer has a five year supply of housing land. The disadvantages of not having a five year supply should not be under estimated... (it would) seriously prejudice the way in which the Council is able to direct and control housing development in the public interest"*.

- 2.7 All three Neighbourhood Plans have now been submitted to the Council. The council must publicise the submitted Plans for a minimum of 6 weeks and appoint an independent examiner to assess the Plan. The Council and Forums have not, as yet, been able to agree the process of appointing an independent examiner.
- 2.8 Determining the neighbourhood plans is a separate matter from designating the Forums as a qualifying body. Torbay Council as LPA has previously objected that the Paignton Neighbourhood Plan is not in general conformity with the Local Plan and is likely to maintain this objection at Examination. The Council has also expressed some concerns with both Brixham Peninsula and Torquay Neighbourhood Plan's. The Torbay Development Agency has made separate representations on behalf of Torbay Council as landowner, particularly in relation to Local Greenspaces⁴.

3. The Case against (re) designating Forums

- 3.1 As the above has set out there is a significant conflict between the Neighbourhood Forums and Council. It is a reasonable statement that all three Forums, but Paignton in particular, are promoting a lower growth agenda than Torbay Council. Brixham and Torquay's submitted plans do however contain site allocations that meet the requirement of policy in the Local Plan. Paignton has not made site allocations. The Forums (and Paignton in particular) have also objected to other Council/TDA proposals, such as Community Infrastructure Levy, Parkfield School and extinguishing public highway on Paignton Esplanade.
- 3.2 As set out below, Localism legislation is still in place. However, the Government has recently placed great emphasis on increasing the supply of housing. The Housing White Paper (2017) and daughter document "Planning for the right homes in the right places" (September 2017) place emphasis on increasing housing supply through both local and neighbourhood plans. The Government is consulting on setting a standardised methodology for calculating objectively assessed need (OAN); which in Torbay is assessed as being 588 dwellings per year (i.e. an increase from the Local Plan level of 495 dwellings per year). A failure to allocate sufficient sites for housing development may result in a finding in the relatively near future that the Council does not have a 5 year housing land supply.
- 3.3 The Council, as local planning authority has discretion as to whether to designate a body as a neighbourhood forum (s.61F(5) & (6)). The Neighbourhood Planning Regulations 2012 set out procedural requirements. In summary, in order to be eligible for designation as a Forum, a group must:

³ Report on the Examination into Torbay Local Plan, Keith Holland, October 2015. Paragraphs 48- 57. <http://www.torbay.gov.uk/media/7598/ph24.pdf>

⁴ Which any assessor is obliged to consider against the criteria in NPPF paragraph 77.

- Include the town or parish council where they exist in an area (i.e. Brixham)
- Be the only Forum in a particular area, and boundaries cannot overlap.
- Be established for the express purpose of promoting or improving the social, economic and environmental well-being of an area that consists of or includes the neighbourhood area concerned.
- Be open to individuals who live or work in the area or are elected to it.
- Have at least 21 members who live in, work in or are elected to an area. Membership should be from different places in the area and from different sections of the community. The purpose should reflect (in general terms) the character of the area.
- Have a written constitution
- Meet other conditions as prescribed (by Government)

3.4 The Council could refuse to designate in the present circumstances, for instance, if it considered the forums were not “*established for the express purposes of promoting or improving the social economic and environmental well being of the area*” (s.61F(5)(a)) or that a particular Forum’s purpose does not reflect (in general terms) “the character of that area” (s.61F(7)(a)(iii)).

3.5 An alternative approach may be to argue that re-designation is not necessary because the Plans, which enshrine the Forums’ aspirations have now been submitted to the Council. In the light of legal advice, it would not be possible to designate the Forums with a “sunset clause” that they cease to exist when the Plans are made, unless the Forums volunteered this.

3.6 Any refusal to approve a request for Forum status must be ‘reasonable’ (in the ‘*Wednesbury*’ sense) in that it must not be perverse or irrational. A decision not to re-designate the Forums, could be open to legal challenge unless the reasons for the decision demonstrate that it was a reasonable and rational decision to make.

4. The Case for (re) designating Forums

4.1 All three Forums have submitted plans. The plans submitted by Torquay and Brixham Peninsula Neighbourhood Forums meet the Local Plan requirement for allocation of housing and employment. The Forums have objected to many of the Council’s corporate goals, as can be the right through consultation processes. The Council’s objections to the Neighbourhood Plans will be considered by an Independent Examiner, so this channel to arbitrate between the Council (both as LPA and landowner) exists outside of the Forum designation process.

4.2 A move to refuse to re-designate some or all of the Forums could be seen as an extreme measure. There would be outstanding financial issues in terms of funding awarded to each of the Neighbourhood Forums.

4.3 The three Plans which have been submitted to the LPA, will still have to go through the examination process, and (former) forum members are likely to still promote their Plans. In the absence of designated forums, it would fall to the Council as Local Planning Authority to take forward any recommendations of an Independent Examiner. These recommendations could be:

- That one or more of the Plans are not capable of being “made” (i.e. adopted). The LPA would then need to bring forward an early review of the Local Plan or site allocations development plan documents as a priority, and

will be unlikely to have a five year housing supply until it has done so (approximately 18 months to 2 years).

- That the Plans are capable of being made in their current form. The LPA is able to decline to put a plan to referendum, under Regulation 18 of the Neighbourhood Planning Regulations.
- That one or more of the Plans are capable of being made with modifications. It would then fall to the LPA to put these modifications in place. However achieving support at subsequent referendum may be problematic.

5 Recommendation(s)/ Proposed Decision

- 5.1 That the Policy Development and Decision Group (Joint Operations Team) note the options in respect of the status of the Neighbourhood Planning Forums, and note that it would be premature to make a final recommendation of the matter before the expiry of the consultation period on 20 November 2017. All Councillors are encouraged to respond to the public consultation so as to help inform the final recommendation to Council.

Background Documents

- Localism Act 2011 especially Schedule 9 Section 61(F)
- The Neighbourhood Planning (General) Regulations 2012 as amended. Particularly Regs 5-6a
- National Planning Policy Framework (NPPF)
- (National) Planning Practice Guidance (PPG) Chapter 41
- Submitted Paignton and Brixham Neighbourhood Plans.
- Torquay Neighbourhood Plan (Consultation draft)
- Torbay Local Plan 2012-30 A landscape for success.
<http://www.torbay.gov.uk/newlocalplan>
- Housing White Paper: Fixing our broken housing market (February 2017) and Planning for the right homes in the right places: consultation proposals (September 2017).

Appendix 1: Minute of Council, 6th December 2012.

“It was proposed by Councillor Thomas (D) and seconded by Councillor Morey:

(i) that the Neighbourhood Plan areas and forums of Torquay, Paignton and Brixham, and their constitutions, be approved subject to the Executive Head for Spatial Planning (in consultation with the Group Leaders and Executive Lead for Strategic Planning, Housing and Energy) being able to withdraw this approval with immediate effect in respect of any Forum in the event of any of the following applying to that Forum;

(a) the Forum is not able to demonstrate that they have at least 21 members who live or work in the area, or are elected councillors;

(b) the Forum is not acting in accordance with its constitution; and

(c) the Forum has failed to comply with a reasonable direction of the Executive Head, Spatial Planning within a reasonable period from such direction being made;

(ii) that all Neighbourhood Forums be instructed that the Council may choose not to advertise a submitted plan or put it forward for examination, if the matters referred to in paragraph 3.9 of the submitted report and (i) above are not addressed to the satisfaction of the Executive Head for Spatial Planning in consultation with the Group Leaders and Executive Lead for Strategic Planning Housing and Energy; and

(iii) that Local Councillors should take a lead role in ensuring each Neighbourhood Forum meets the terms of its constitution, the requirements of the Localism Act and National Planning Policy Framework and meets or exceeds the requirements of the new Local Plan.

On being put to the vote, the motion was declared carried (unanimous).”