

neighbourhood plans

From: Chris Cox [REDACTED]
Sent: 15 December 2017 11:51
To: neighbourhood plans
Cc: Jonathan Rainey
Subject: Torquay Neighbourhood Plan
Attachments: brs6531 Torqyay Neighbourhood Plan reps 15.12.17.pdf; Opinion re NP submission.pdf

Dear Sir or Madam

Please find the attached representations to the Submission version Torquay Neighbourhood Plan, submitted on behalf of ECVP.

Please confirm receipt of this email and the 2 attachments.

Kind regards

Chris Cox

Principal Planner

Pegasus Group

PLANNING | DESIGN | ENVIRONMENT | ECONOMICS

First Floor | South Wing | Equinox North | Great Park Road | Almondsbury | Bristol | BS32 4QL

T [REDACTED] | M [REDACTED] | DD [REDACTED] | E [REDACTED]

Birmingham | Bracknell | Bristol | Cambridge | Cirencester | East Midlands | Leeds | Liverpool | London |
Manchester

Please consider the environment before printing this email message.

www.pegasusgroup.co.uk



Pegasus Group is the trading name of Pegasus Planning Group Limited (07277000) registered in England and Wales.

This email and any associated files, is intended for the exclusive use of the addressee only. If you are not the intended recipient you should not use the contents nor disclose them to any other person. If you have received this message in error please notify us immediately.



Cert no. FS 577092

CC/JR/BRS.6531

Spatial Planning
Torbay District Council
Electric House
Castle Circus
Torquay
TQ1 3DR

BY EMAIL

15 December 2017

Dear Sir or Madam

Torquay Neighbourhood Plan
Representations on Behalf of ECVP Ltd
Sladnor Park, Maidencombe

Pegasus Group is writing on behalf of ECVP Ltd, who have an interest in land at Sladnor Park, Sladnor Park Road to set out our representations to the Torquay Neighbourhood Plan (Submission Version) (hereinafter referred to simply as "NP").

We welcome the opportunity to comment on the NP and acknowledge the work of the community in preparing the NP consultation document. We are however concerned that, without significant modification the NP should not, and cannot progress further.

The comments below are therefore made in order to identify what we consider to be flaws of the NP. These comments also refer to the Basic Conditions that must be met in order for the plan to proceed to referendum, as set out in paragraph 8 (2) of Schedule 4B to the Town & County Planning Act 1990.

General Comments

We find the Neighbourhood Plan to be confusing as a result of the inclusion of the Community Partnership Statements, provided towards the end of the plan. The role and status of these Statements is unclear. They are set out as 'community aspirations' and we therefore understand that they are not policies of the NP. However, they read as policy. Indeed page 46 states:

"The statements also provide additional Planning Policies for the purposes of managing development specifically in those areas".

The structure and role of the Statements is therefore confusing. The NP must clarify that the Community Partnership Statements do not form policies of the NP. We also recommend that the wording of many of the aspirations should be revised so that they read as aspirations and not policy.

We are aware that the Healthcheck Report undertaken for an earlier draft version of the NP produced by 'NPIERS' made similar recommendations on this issue, which we agree with. Many of the recommendations made by that report do not appear to have been incorporated into the Submission version of the NP.

PLANNING | DESIGN | ENVIRONMENT | ECONOMICS

First Floor, South Wing, Equinox North, Great Park Road, Almondsbury, Bristol, BS32 4QL

T 01454 625945 F 01454 618074 www.pegasuspg.co.uk

Birmingham | Bracknell | Bristol | Cambridge | Cirencester | East Midlands | Leeds | Liverpool | London | Manchester

Page 46 of the NP confirms that each Community Partnership has produced its own statement. It is not clear how and to what extent people from across the NP area have been able to influence the Statements and to what extent the Statements have influenced the NP policies.

One solution (in addition to the suggested text changes) may be to include the Community Partnership Statements as an Appendix to the plan. This would make it clearer that they do not form NP policies.

Comments on Specific Policies

Page	Policy	Comments
7	Definition of 'Independent'	<p>We object to this definition, which is unclear and imprecise. The definition would appear to exclude many interests as 'independent' and this has implications for some other NP policies. These implications are explained below.</p> <p>We suggest that the definition is not necessary and can be deleted.</p>
7	Affordable housing definition	<p>The definition is not in accordance with the NPPF. For example, it does not refer to intermediate housing. It therefore fails to meet Basic Condition A.</p> <p>We assume that this is a drafting oversight and that the NP is not intentionally seeking to prevent the delivery of intermediate housing? Clarification of this would be welcomed.</p> <p>We suggest that the definition is not necessary and can be deleted, or reference be made to the NPPF definition instead.</p>
7	Community Hub definition	<p>We object to the definition. It is not clear why a doctors surgery/pharmacy, food shop and post office constitute a community hub? We are not aware that any specific work has been carried out to consider what services should define a 'community hub'. We note that the NP has aspirations for housing to be close to a school, but schools are not referred to as defining a community hub.</p> <p>We are also not aware whether the NP has carried out evidence based research to identify the location of community hubs and certainly none are identified in the NP. Some of the Community Partnership statements refer to community hubs, but this only serves to add further confusion.</p> <p>It is also not clear if a community hub is defined in order to clarify the type of facilities that contribute to a community, or to indicate matters of sustainability and possible locations of future development?</p> <p>The Community Partnership Statements have been prepared by individual Partnerships and in general their role within the NP is not clear. Further, some of the Partnership Statements refer to community hubs as 'aspirations' but yet require community hubs to be created or developed. This creates uncertainty.</p>

		<p>Some of the community hubs mentioned talk about providing community support services, but this is contrary to the NP definition of a community hub, which does not include such uses.</p> <p>Some of the community hubs loosely referred to in the Partnership Statements are 'aspirational', and this could suggest that further/alternative uses are required in order for these to be considered community hubs. This again is neither clear nor precise, and will create uncertainty for developers which is likely to restrict housing growth.</p> <p>We suggest that the following wording be used:</p> <p><i>"Community hub facilities- community services and facilities such as a school, pub, shop or health facility".</i></p>
9	S1	<p>We welcome the clarity that the NP recognises that planning applications that do not accord with NP policies can be acceptable where material considerations outweigh any conflict with the Local Plan.</p>
10	S2	<p>We object to the definitions of greenfield and brownfield land. These definitions do not reflect the NPPF and as such the policy does not meet Basic Condition A.</p> <p>The supporting text states that the definitions expand upon the NPPF to give clarity, but the opposite is the result. Those using the planning system must be able to rely on the consistent application and use of national guidance and indeed, this is a legislative requirement.</p> <p>Policy S2 must be deleted in order for the NP to be in conformity with the NPPF.</p>
11	S3	<p>Fundamentally, the NP cannot restrict the ability for the Council to accept or determine a planning application which does not comply with a Master Plan SPD. SPD's are guidance only and the weight to be applied to this guidance will be taken into account when determining planning applications.</p> <p>In addition, the policy conflicts with policy S1, which acknowledges that planning applications contrary to the NP can potentially be acceptable.</p> <p>The policy does not meet Basic Conditions A, D or E and should be deleted.</p>
11	S4	<p>It is our understanding that the NP cannot require the Council to determine planning applications in general compliance with the comments of a Community Partnership. Section 38(6) of the Act sets out the correct basis upon which planning applications must be assessed.</p>

		<p>This policy therefore fails to reflect the Council’s statutory role as Local Planning Authority and the legislative context in which planning decisions must be made.</p> <p>The policy does not meet Basic Condition A and should therefore be deleted.</p>
12	Supporting text	<p>The NP text refers to ‘little demand for housing’. This statement is subjective and does not reflect the housing supply position in Torbay.</p> <p>This comment could lead to questions as to whether the NP is seeking to constrain housing growth, so we suggest it should be deleted.</p>
13	Table 1	<p>The table sets out how the NP will deliver 3,979 homes. Of these, 1040 are to be provided from windfalls. This equates to 26% of all the homes required.</p> <p>If this amount of windfall development is to be relied upon, it is important that the NP offers a suitably supportive policy context and is flexible enough to allow these dwellings to come forward.</p> <p>We note that the total number of windfall dwellings is derived from the adopted Local Plan but we consider that a number of the NP policies will individually, or cumulatively, restrict residential development in many instances, and will likely result in housing growth from windfalls being restricted. We discuss these restrictive policies below.</p> <p>No evidence is presented in the NP to demonstrate that existing windfall rates would be maintained in spite of the NP’s new restrictive policies, and that windfalls will provide the number of homes required.</p> <p>The NP is also not sufficiently flexible to respond if windfall development does not deliver homes at the expected rate.</p>
13	H1	<p>It is unacceptable and beyond the remit of the NP to bind the Council to only revise housing numbers ‘subject only to the community agreeing to undertake this work’.</p> <p>The policy fails to recognise the role and obligations of the Local Planning Authority. For example, the NPPF requires the Authority to meet the full housing need. This policy therefore fails Basic Conditions A,D and E.</p> <p>The second half of the policy needs to be deleted in order for the policy to meet the Basic Conditions.</p>
14	H3	<p>We cannot support this policy and suggest it is deleted. The policy is contrary to Local Plan policies H2 and SS7, which make it clear that development viability is a matter that can be considered, as necessary.</p> <p>Policy H2 is a strategic policy as it relates to the delivery of affordable housing across Torbay. In this regard, NP policy H3 does not meet</p>

		Basic Condition E. Conditions are only considered necessary or reasonable to make a development acceptable. There is no evidence to demonstrate why this proposed policy wording is necessary. Therefore, the proposed policy fails to meet Basic Condition A.
14	H4	<p>We note that the mix of affordable housing proposed is different to that sought by Local Plan Policy H2.</p> <p>No explanation has been provided to justify why a different approach is being taken and it does not appear that any evidence has been presented to test the viability impacts of the proposed policy.</p> <p>In the absence of any such evidence, we would recommend that the policy be deleted, given that any revised wording would only replicate what the local plan says.</p>
15	H5	<p>The NP cannot dictate the conditions that the Council seeks to apply to a planning permission.</p> <p>Furthermore, we are concerned that there is no evidence or explanation provided for the proposed occupancy restriction to Torbay residents only.</p>
15	Supporting text	<p>We acknowledge the recognition that downsizing homes for the ageing population is welcomed and that this can help free up family homes.</p> <p>However, we are concerned that the text on page 15 (which reads like policy) caveats that new development should not be a burden on existing services. This raises a number of issues:</p> <ul style="list-style-type: none"> -Why is development to meet the needs of an ageing population any more of a burden than other types of development? For example, general housing creates demands on doctors and schools. -What constitutes a burden and at what scale does a burden occur? -Is this meant in terms of a financial or social burden? -It is not appropriate to assume that development that seeks to provide accommodation for older people will be a 'burden'. -It is not for the NP to plan for health or social care and it is ultimately for the appropriate bodies to perform their statutory responsibilities to people in need of care. <p>Given these problems, we suggest that the reference to 'only supporting later life development where it will not create a burden' should be deleted.</p>
15	H6	<p>We object to policy H6, which is too restrictive, negatively worded and impedes upon the Council's ability and duty to determine planning applications as the determining authority.</p> <p>The policy requires '<u>any</u>' (<u>our emphasis</u>) scheme to be refused unless specific criteria are met. This policy wording does not allow for material considerations to be weighed against any harm and is</p>

		<p>therefore in conflict with the NPPF and NP Policy S1 (Basic Condition A, D and E).</p> <p>In terms of the criteria, the policy requires that sites be within an; <i>'easy walk of community hub facilities and a stop on a sustainable public transport route...'</i>.</p> <p>As already mentioned above, we disagree with the NP's rigid definition of community hub facilities.</p> <p>The definition of 'easy walk' (see Glossary of Definitions) is also not clear or precise. We object to an easy walk being considered 'substantially less' than 400m in certain cases as a distance less than this is not reasonable. We do not consider this measure in itself to be particularly useful or helpful overall for determining whether a site is suitable for later living homes as other operational measures can be put in place to ensure residents have access to transport and facilities. There is no justification for the proposed definition.</p>
16	H7	<p>We question the need for policy H7. No evidence or justification is provided as to why a separate policy supporting change of use from tourism to later living is required, and why this policy only applies to the Babbacombe area?</p> <p>The supporting text on page 15 says that later living in St Marychurch is supported but the supportive stance of policy H7 does not extend to apply in this area. This suggests confusion and inconsistent policies in the different Community Partnership areas. This policy is unnecessary and unjustified.</p>
17	H8	<p>Policy H8 is not appropriate and we note that serious concerns have been voiced by both the Health Check report (January 2016) and the Council's feedback response to previous versions of the NP.</p> <p>The policy seeks to prevent development coming forward at Edginswell Future Growth area before 2025, unless homes on other allocated sites have been granted permission and the jobs growth trend is met.</p> <p>This policy effectively holds the Local Plan and developers to ransom as development sites should not be dependent upon the delivery of other sites.</p> <p>The policy is a restrictive policy that the NP should not, and cannot introduce, and one that fails to meet the Basic Conditions and is contrary to the NPPF and NPPG. It has real potential to significantly delay the delivery of housing. It therefore fails Basic Conditions A, D, E.</p>
17	H9	<p>We object to Policy H9 and note that both the Health Check report (January 2016) and the Council's feedback response raised serious concern also.</p>

		<p>The intention to restrict second homes, is, as we understand, not supported by any evidence of second home ownership, the impact on the housing market or robust analysis as to how such a policy would affect affordability.</p> <p>Given the lack of evidence or justification, the policy fails to accord with the Local Plan and national planning guidance and fails to meet Basic Conditions A, D and E.</p> <p>As previously discussed by the Council, this policy needs to be deleted.</p>
18	H10	<p>Policy H10 places further constraints on development that could, in our opinion, be taken to restrict housing supply.</p> <p>As explained elsewhere in these representations, it is not appropriate for the NP to state the circumstances in which the Council will refuse planning permission. Policies which actively seek to restrict the supply of housing have the potential to undermine the strategic policies in the plan.</p>
18	Supporting text	<p>We hold concerns regarding the statement that '<i>a substantial number of the proposed windfall sites will arise from former Tourism accommodation, both serviced and un-serviced</i>'.</p> <p>This appears to be unsubstantiated.</p> <p>We have noted the relatively large reliance on windfall sites and related spatial policies, which in our opinion, could restrict development. We are concerned that former tourism uses will not yield the required number of windfall dwellings that the NP predicts.</p>
18	H11	<p>The policy is not required due to the existence of the national space standards.</p>
18	H12	<p>We question why, and on what basis policy H12 requires accommodation for a resident manager to live on site in order for a proposals for a HMO to be acceptable.</p>
18	H13	<p>We object to policy H13. The policy is inflexible and restrictive and is negatively worded. Contrary to the NPPF and NP policy S1, the policy states that development '<u>must not</u> have an adverse impact' and does not allow for material considerations to be weighed against any harm.</p> <p>Additionally, the policy is too simplistic. It requires, for example, that scale be sympathetic to the established surrounding architecture. For example, there may be opportunities for development, such as taller buildings in the town centre, where it may be deemed appropriate for scale to not closely match existing built form. The policy should be flexible enough to allow for the individual circumstances of sites and proposals.</p> <p>Similarly, the policy states that the density of properties <u>must not</u> (our emphasis) significantly increase in the immediate area. The</p>

		<p>'immediate area' is not defined. Again, this does not reflect the individual circumstances of each site and proposal to be considered. The policy is not flexible enough to account for the wide range of sites and character areas within the Neighbourhood Plan Area.</p> <p>Again, we note that the Neighbourhood Plan is seeking to restrict greenfield development in favour of supporting brownfield development, as well as the high reliance upon windfall development to deliver the housing requirement. We are therefore concerned that policy H13 will restrict the ability to make best use of brownfield land in some cases, contrary to the NPPF, and also limit the ability of the Development Plan to deliver the required housing growth.</p> <p>We suggest that the policy be amended to read:</p> <p><i>"Development should normally be of an appropriate character, scale, density, bulk and design; that takes into account factors including the characteristics, architecture and visual amenity of the surrounding area".</i></p>
19	H16	<p>We object to policy H16. Statutory legislation and national planning guidance sets out the presumption to conserve or enhance listed buildings and thus policy H16 is not required.</p> <p>Further, the policy is too specific and fails to reflect the balancing exercise described in NPPF paragraph 134, whereby the public benefits of a development proposal must be weighed against any harm to a designated heritage asset.</p> <p>The policy inappropriately directs the Council to consider external appearance as a priority in any financial viability negotiations.</p> <p>Heritage assets benefit from strong protection by virtue of national planning policy and the Local Plan and we consider the policy can be deleted.</p>
19	H17	<p>We object to policy H17. The policy states that any residential or commercial development within a rural village buffer zone will be refused unless it is allocated as a housing site within the NP. This raises a number of potential problems:</p> <ul style="list-style-type: none"> • The NP cannot require the Council to refuse planning permission, • The policy is not flexible and does not allow for material considerations to be taken into account, contrary to NP Policy S1 and the NPPG, • It is not relevant or clear how and why the policy restricts commercial development on a site that is allocated for housing? • It is not clear why a 500m buffer around Maidencombe has been selected as being appropriate and what the evidence for this is? We note that a different buffer definition is proposed in respect to Cockington. This is unduly prescriptive.

		In addition, policy H19 suggests that development at Sladnor Park could be acceptable. It is our understanding that the Sladnor Park site is within 500m of the Maidencombe village envelope. As such, policy H17 conflicts with policy H19 and it is not clear how any future planning application for residential or commercial uses should be considered against these conflicting policies.
19	H18	<p>We object to policy H18. Again, the policy is restrictive, inflexible and does not allow any scope for the Council to approve development where material considerations can outweigh conflict with the Development Plan.</p> <p>Existing legislation and adopted local policy provides the appropriate policy context and basis for assessing the impact on Conservation Areas and preserving them as necessary.</p> <p>It is not clear why, and on what basis, a different spatial approach toward controlling housing growth is required in Conservation Areas. Policy H18 is therefore contrary to Basic Condition A.</p>
19	H19	<p>We welcome the reference within the supporting text that development at Sladnor Park could be acceptable.</p> <p>However, we object to Policy H19. We have already commented that it is not necessary or appropriate for the NP to take a different spatial approach to sites inside and outside the Conservation Area.</p> <p>With regard to criterion 'c)', the policy should read:</p> <p><i>'The amenity of neighbouring properties is not <u>unacceptably</u> harmed'.</i></p> <p>The insertion of the word 'unacceptably' is required because almost all infill development is likely to have some impact on amenity, no matter how small.</p> <p>We are unclear as to the purpose of criterion 'd)'. The requirement to reinforce landscape quality and the rural setting appears to be at odds with supporting infill development and it is difficult to envisage how a residential infill scheme could fulfil this criterion.</p> <p>Criterion d) should be deleted.</p> <p>We object to criterion 'e)', which appears to seek to restrict development. It repeats the requirement to consider landscape and historic character and takes a very general and wide-ranging position to prevent 'urban creep and over development'. This wording would appear to restrict the very type of infill development that the policy purports to support.</p> <p>Criterion e) should be deleted.</p> <p>Part 2 of the policy seeks to add another layer of complexity and restriction. It allows for a single dwelling on sites A and B in 'Area 1'</p>

	<p>of the village envelope, but states that proposals on other sites in Area 1 will be refused. It is not clear why development in Area 1 is potentially acceptable but infill development outside this area would be refused. Also, this layer of complexity again seeks to further restrict infill development.</p> <p>Part 2 of the policy should be deleted and reliance instead made on the remaining Part 1 criteria.</p> <p>Part 4 of the policy is confusing. Our reading of it is that any application that consists of 2 or more dwellings should be refused. We consider that there is no evidence, rationale or justification as to why 1 infill dwelling could be acceptable, but more than 1 is not. The acceptability of such schemes should be based on their impacts rather than just scale alone. Such wording will restrict windfall development and be unreasonable and unnecessary. This part of the policy should be deleted.</p> <p>We strongly object to part 5 of the policy, which seeks to constrain development at Sladnor Park to the 'general areas of the footprints' of existing and former buildings. It is not clear, or evidenced, why a development should be restricted to the general footprints of previous buildings. This is unjustified.</p> <p>We note that the NPPF definition of previously developed land includes the 'curtilage of the developed land'. The proposed policy appears to be seeking to restrict development at Sladnor Park to previously developed land, but against the proposed definition which is contrary to that contained in the NPPF. No justification has been provided as to why a different interpretation is proposed. The policy therefore fails to meet Basic Condition A.</p> <p>We consider that a more appropriate response would be for the policy to seek development proposals to make best use of brownfield land (reflecting the NPPF) and require an assessment of a proposed development against wider policies contained in the Development Plan.</p> <p>The following wording is suggested:</p> <p><i>"Any proposed development within Sladnor Park should make best use of previously developed areas of the site and shall be in general conformity with other policies of the Plan, unless material considerations indicate otherwise".</i></p> <p>We object to part 6 of the policy. The NP cannot require the publication of surveys prior to a planning application. It is also not reasonable or appropriate to require that assessments are independent (as per the NP definition of 'independent') and cover a 12 month period.</p> <p>The NP does not make clear who will fund the 'independent' assessment.</p> <p>Part 6 should be deleted because it repeats other policies.</p>
--	---

23	J1	<p>We object to policy J1 on the basis that it is not clear. We assume the policy is seeking to ensure that employment development comes forward, but as worded, could be taken to suggest that residential development should be restricted unless at least 37,200 sq m of employment floorspace is provided over the plan period.</p> <p>Whilst a policy could potentially seek to protect allocated employment sites, we do not understand how, in considering planning applications for residential development, it would be possible for the Council to have certainty that 37,200 sq m of employment floorspace will be provided.</p>
23	J3	<p>Policy J3 is inflexible and would prevent any change of use of business premises. This would be contrary to Section 38(6) of the Act, the NPPF and NP policy S1.</p> <p>The policy is also imprecise and unclear. For example, which trading estates would be subject to this policy? What constitutes a trading estate? What is a 'significant purpose-built employment site'?</p> <p>We are not aware that the NP has investigated the commercial market in Torbay and analysed the effect that a policy to prevent any change of use would have on the local market. The NPPF confirms that Local Plans should plan positively for economic growth and should avoid the long term protection of sites allocated for employment use where there is no prospect of a site being used for that purpose. This policy therefore fails Basic Condition A.</p>
23	J5	<p>We object to policy J5, which seeks to allow the change of use of business premises where the current use is unviable. The policy is not clear on the matter, but we are assuming it is intending to apply to uses falling within the 'B' use classes? We make the below comments on that basis.</p> <p>Criterion 2 of the policy refers to a history of unsustainable profitability. We are unclear if this refers to the profitability of a specific property, or the business that occupies it? We would be concerned that the past profitability of a business is not a good measure of the suitability of a business premises.</p> <p>We consider that the policy should reflect the NPPF in terms of whether the premises are valuable to the economy and whether there is, or is likely to be, demand for the premises.</p>
24	J6	<p>We object to policy J6. As already highlighted in respect to other policies in the NP, whilst the policy can seek to restrict certain development it cannot direct the Council to refuse planning permission for change of use.</p>
26	T1	<p>We object to policy T1 and question the rationale to allow a temporary change of use to residential until 2023.</p>

		<p>On the assumption that the NP is adopted in 2018 and 12 months marketing is required, we would question whether site owners and developers would undertake works to enable residential use of properties for a period of only about 4 years.</p> <p>Would the policy then expect properties to be converted back to the original tourism use by the end of 2023/start of 2024 at a further cost? Has any work been undertaken to establish whether such a policy is feasible for property owners?</p> <p>We consider that it should be made clear that any temporary residential use should not count toward the overall housing requirement.</p>
26	T3	<p>We object to policy T3 on the basis that it is unclear.</p> <p>The policy refers to current uses of '10 rooms'. It is not clear if this is rooms, or bedrooms?</p> <p>We are concerned that change of use would require 12 months marketing.</p> <p>We do not understand why residential units must be within easy walking distance of a green space or beach when they can be served by their own private amenity space.</p> <p>If the policy is seeking to provide criteria to assess whether the sites are acceptable locations for a new residential development (from tourism properties), we consider that access to green space or beach is not an appropriate measure and has the potential to constrain development.</p> <p>This policy requirement could significantly restrict housing growth.</p> <p>The NP is relying on a significant proportion of the houses required in Torquay to be delivered from former tourist accommodation. We are very concerned that the policy will restrict housing growth, for the reasons stated above.</p>
26	T4	<p>We object to policy T4. The policy states the circumstances in which previous extensions to properties can be retained. There is no need for this policy because there is no ability to require existing extensions to be demolished if erected lawfully (even if they do not comply with current policies).</p> <p>The policy is also contrary to legislation and planning guidance including the NPPF because it seeks to introduce a presumption in favour of the change of use of a listed building. However, the Act is clear that the presumption is in favour of preserving and enhancing a listed building.</p> <p>We note the 'community aspiration' in the supporting text to serve Section 215 Notices on 'run down' sites. It is not for the NP to determine such matters and because it reads like a policy, the</p>

		'aspiration' is misleading. We suggest that a better approach would be to say that the Neighbourhood Plan Forum will seek to work with the Council on this matter.
30	E1	<p>We object to policy E1 because it is contrary to Local Plan policy NC1. Whereas policy NC1 states that development in a SSSI would 'not normally be permitted' the policy provides flexibility in certain circumstances (such as where benefits outweigh harm), proposed policy E1 provides no such flexibility.</p> <p>The policy should be re-worded so it deals with impacts, rather than development. However, the policy replicates Local Plan policy NC1, so we suggest the policy is deleted.</p>
30	E2	<p>We object to policy E2, which deals with land in the Countryside and Undeveloped Coastal Area, as designated by the Torbay Local Plan. In respect to sites in the Countryside, policy C1 supports a wider range of development than draft policy E2, including for example outdoor sport and recreation and some renewable energy.</p> <p>It is not clear why self-build housing is acceptable in the Countryside and how this acceptance should be read alongside other policies in the Local Plan that restrict housing outside settlements.</p> <p>We also object to the last sentence of the policy, which requires any proposed development (on greenfield sites) in the countryside to have no greater impact than existing development. It is not possible for development on greenfield land to have <u>no</u> impact on openness. As currently worded, policy E2 could be read to restrict any development on greenfield sites in the Countryside. This needs to be amended to refer to benefits outweighing the harm.</p>
31	E3	<p>We object to policy E3. The policy states that <u>all</u> new tourism based development <u>must</u> be on brownfield sites (unless allocated in the NP).</p> <p>This contradicts policy E2, which says that sites for tents and motorhomes and tourism attractions can be acceptable on greenfield sites in the Countryside. In addition, Local Plan policy TO1 clearly envisages that tourism development could be acceptable on greenfield sites.</p> <p>It would seem unrealistic that all development associated with tourism uses could be on brownfield land, particularly given the NP's (inappropriate) definition of greenfield land. Moreover, there is no reason why tourism related development could not be located on greenfield sites, provided the benefits outweigh the harm of developing a greenfield site.</p>
34	E7	<p>We object to policy E7. Whilst we support the intention to create green corridors, the policy must be flexible enough to accept that this is not always possible. For example, land ownerships issues can affect the ability to create meaningful green corridor links and in some circumstances there could be other design and delivery issues that potentially mean a green corridor cannot be created.</p>

34	E8	<p>We object to policy E8. As worded, the policy requires that development must be supported by evidence that there would be 'no negative impact' on protected species or habitat.</p> <p>As explained elsewhere in these representations, this approach is contrary to national planning guidance and the Torbay Local Plan, which allows for the balancing of harm against benefits. This is not the approach of the NPPF and therefore fails to meet Basic Condition A.</p> <p>'Habitats appraisal' is incorrect terminology- The terminology should be 'Ecological Impact Assessment' to assess the ecological impacts of a development or Habitats Regulations Assessment (to be undertaken by the LPA) for proposals which could affect a European Designated Site.</p> <p>The second part of the policy seems to contradict the first part (mitigation is by definition undertaken where an adverse impact is identified). Residual impacts (impacts following incorporation of mitigation and compensation measures) would be included within an EcIA. The scope for residual impacts to be considered as part of planning balance set out in National Policy is summarised below:</p> <ul style="list-style-type: none"> o NPPF para 109 states the planning system should seek to minimise impacts on biodiversity and provide net gains in biodiversity <u>where possible</u>. Planning policies should promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations (e.g. Habitats and Species of Principal Importance under the NERC Act 2006), linked to national and local targets (para 117). o Paragraph 118 of the NPPF states: "<i>When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:</i> <ul style="list-style-type: none"> ▪ <i>if <u>significant harm</u> resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;</i> <p>The above national policy if not reflected in draft NP E8.</p>
35	E9	<p>We object to policy E9. Whilst we agree that development that could affect European Protected Species should be subject to assessment, we are concerned with the NP's definition of 'independent' as provided in the list of definitions.</p> <p>It is not clear who will fund the 'independent assessment' and is entirely unnecessary.</p>

		<p>All reputable ecological consultants should be members of an appropriate industry body with a written Codes of Professional Conduct such as the Chartered Institute of Ecology and Environmental Management (CIEEM). CIEEM Code of Conduct requires members to “<i>exercise sound professional judgement, apply objectivity, relevance, accuracy, fairness and impartially to the provision of information and advice.</i>” And provides a process for complaints where it is considered that the Institutes values have not been upheld.</p> <p>The word ‘independent’ should be deleted and replaced with ‘suitably qualified’.</p> <p>We are also unclear why parts of the policy refer to only Maidencombe. All protected species are afforded the same protection, irrelevant of location.</p> <p>The policy currently states:</p> <p><i>“Any assessment must include an independent bat assessment and provide mitigating arrangements so that their flight paths, sustenance zones and roosts are protected and enhanced and light levels from the development are below 0.5 lux”.</i></p> <p>This should relate only to greater horseshoe bat population associated with South Hams SAC. Proposed measures would not be relevant for all bat species and there is case law that flight paths and ‘sustenance zones’ are not necessarily protected.</p> <p>Furthermore, the policy is too restrictive. For example, to what area does the 0.5 lux limit apply?</p> <p>There is no requirement to protect existing roosts and it is possible to remove a bat roost (including the roosts at Sladnor) subject to licence from Natural England and provisional of appropriate mitigation.</p> <p>Cirl buntings are discussed under this policy but are not European Protected Species. Furthermore, the policy requires that nesting and sustenance zones are protected but the RSPB document: <i>Wildlife and development guidance note: Cirl Bunting (October 2017)</i> says that financial contributions to mitigation / compensation offsite can be acceptable.</p>
37	HW2	<p>We object to policy HW2, which states that high quality agricultural land <u>must not</u> be developed for non-agricultural use.</p> <p>This is contrary to the NPPF, which steers development away from higher quality land. There may be other issues and benefits that outweigh the loss of agricultural land but the current wording of the policy does not allow for this.</p> <p>Has the NP examined if this policy would prevent any allocated sites coming forward?</p>

37	HW3	<p>We object to policy HW3 on the basis that it is too restrictive and is unclear. We are also concerned that it gives rise to conflict with other policies in the NP and the Torbay Local Plan.</p> <p>The policy states that residential developments of over 20 dwellings <u>must</u> provide community hub facilities or must be within an easy walk of community hub facilities from 50% of the units.</p> <p>Firstly, the requirement of community facilities on site will severely affect the site's viability and in most normal circumstances only very large schemes will support onsite facilities.</p> <p>Secondly, we have already explained our objection to the NP definition of a community hub. The definition includes a post office.</p> <p>A brief 'Google' search suggests that there are only about 10 post offices in Torquay, including the existing main branches. On this basis, it seems highly unlikely that new housing would be within an easy walk of a post office. The same concern would apply equally to food stores or other facilities.</p> <p>It is not clear whether the policy applies to all housing, including housing in the Future Growth Area. The policy has the potential to significantly restrict the delivery of housing.</p>
38	HW5	<p>We object to the policy for very similar reasons to those set out in respect to policy HW3. The policy does not allow any flexibility. A requirement for all developments of more than 20 dwellings to be within 400m of a public transport route is not realistic and will act as a barrier to growth.</p> <p>We are not aware that the impact of this policy on housing delivery and the overall Torquay housing requirement has been tested.</p>
42	TR2	<p>The policy repeats the requirement of policy HW5, but only applies to greenfield sites.</p> <p>We question why there is a need to distinguish between greenfield and brownfield sites? Moreover, we consider that the policy repeats policy HW5 and is not therefore necessary.</p>
44	TR3	<p>The policy should not direct the Council on conditions that it should (or should not) impose on a planning permission.</p>

Community Partnership Statements

We do not provide any further comment on the Community Partnership Statements other than the St. Marychurch and District Community Partnership's, which our client's land interest falls within. This is on the basis of our understanding that by making changes that appear to respond to the recommendations of a 'Healthcheck' of an earlier version of the NP, that the Statements are not policy. Should that not be the case, we reserve the right to make further comments.

- We are unclear why the St. Marychurch Statement has been divided to yet further smaller geographic areas, Part B being related to Maidencombe only. This raises further questions regarding the role and ability of all within the Neighbourhood Plan area having the opportunity to influence and comment upon the NP as a whole.
- We object to the 4th paragraph on page 62. There is no evidence that 'development' would be 'at the brutal cost of destroying the fragile balance of the comb'. This statement should be deleted.
- We object to the community aspiration for Sladnor Park. Policies in the NP deal with development issues and the Sladnor Park site specifically. Whilst we welcome the acknowledgement that development at Sladnor Park could be acceptable, it is not clear how this aspiration sits alongside the policy.
- We object to the inclusion (at page 64) of the aerial view of Sladnor Park including the footprint of existing and former buildings (and previous reference in the community aspiration text at page 63). Restricting development in this way without any landscape or design evidence to support such a departure from the NPPF's approach with regard to previously developed land is not acceptable. This aerial view image should not, therefore, inform any NP policy and we assume that its conclusion alongside the 'aspirations' confirms that it is not to be used for assessing compliance with policies of the NP.
- We also object to the aerial view on the basis that it has been prepared in the context of an incorrect and inappropriate definition of brownfield land, which, as highlighted in these representations, is contrary to the NPPF. In addition, the aerial view plan does not correctly identify the footprint of existing and former buildings. The aerial plan should be deleted. As stated above, we consider that a more appropriate approach would be to encourage reuse of brownfield land at the site, minimise visual impact where possible and seek conformity to other policies in the Plan.

In summary, our view is that the NP can not be 'made' in its current form. Many of the policies are unclear and repeat other policies. Other policies are contrary to the Local Plan and/or national planning policy and guidance.

It is our opinion that a number of policies as drafted will restrict development and the NP is therefore not in general conformity with the strategic policies contained in the local plan. It therefore fails to contribute to the achievement of sustainable development; and does not have regard to national policies and guidance. Therefore, the NP does not meet the Basic Conditions and, in its current form, cannot proceed to referendum.

Due to significant objections raised, as well as the extent to which the NP has not taken on board the comments made in the Health Check, we request that the independent examination is conducted in the form of hearing sessions, rather than written evidence alone.

These representations are accompanied by a legal written opinion by Counsel, Jenny Wigley of Landmark Chambers, and we request that the content of the legal opinion is duly considered.

I trust that the above comments will be taken into consideration.

Yours faithfully



Jonathan Rainey
Regional Director
e-mail: jonathan.rainey@pegasusgroup.co.uk

Torquay Neighbourhood Plan

Representations on Behalf of ECVP Ltd

Sladnor Park, Maidencombe

OPINION

1. I am instructed by the Pegasus Group, on behalf of ECVP Ltd, to advise on the legal effect of the points raised in representations to be made to the Torquay Neighbourhood Plan. I have seen a copy of the representations (the “Pegasus representations”), together with a copy of the ‘Health Check Report’ dated 13 January 2017. I have also had access to the submission draft Torquay Neighbourhood Plan (the “Plan”) and the Plan’s Basic Conditions Statement.
2. The legal effect of points raised in the representations depends on the legal process for the examination and adoption of the Plan. Briefly, the relevant parts of that are as follows:
3. Under Para 8 (1)(a) of Schedule 4B to the Town and Country Planning Act 1990 (as applied by s.38A(3) of the Planning and Compulsory Purchase Act 2004), an examiner must consider whether the draft neighbourhood plan meets the basic conditions set out under para 8(2) of Schedule 4B. Those conditions include:
 - (i) [that], having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan (“condition (a)”);
 - (ii) that the making of the plan contributes to the achievement of sustainable development (“condition (d)”);
 - (iii) that the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area) (“condition (e)”); and

(iv) that the making of the order does not breach, and is otherwise compatible with, EU obligations (“condition (f)”).

4. Under para 10(4) of Schedule 4B, an examiner may not recommend that a Plan be submitted for referendum unless he or she considers that the Plan (with or without modifications) meets the basic conditions set out in paragraph 8(2). The examiner may recommend modifications that he or she considers need to be made to secure that the draft Plan meets the basic conditions (see para 10(3)(a)).
5. After receipt of the examiner’s report, the local planning authority must refuse the Plan and may not put it forward for referendum unless the local planning authority is satisfied that the Plan (with or without further modifications) meets the basic conditions set out under para 8(2) of Schedule 4B (see para 12(4) and (10) of Schedule 4B).
6. It follows from all this that the question of whether or not the Plan meets the basic conditions is key to the legal process and, effectively, only a Plan that meets those conditions may progress through the stages to ultimate adoption. Whilst the examiner and local planning authority both have opportunities to recommend and make modifications to the draft Plan in order to ensure it does meet those basic conditions, the existence of the power to reject or refuse the draft Plan implies that rejection can be the better option where the Plan would require numerous and fundamental changes amounting, in effect, to a re-writing of the Plan.
7. I have not had an opportunity to scrutinise every aspect of the Plan against the basic conditions but a number of points lead me to the conclusion that numerous and substantial changes are required to make the Plan comply with the basic conditions. These points are in summary:
 - (i) The Plan is confusing, ambiguous and unclear. It is not drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications;
 - (ii) In many other places the Plan is in conflict with policies and guidance set out in the NPPF and PPG.

- (iii) The Plan is unduly restrictive and fails to support the strategic development needs set out in the Local Plan, thus also failing to contribute to the achievement of sustainable development and failing to secure conformity with the strategic policies of the Local Plan;
- (iv) The Plan, and, in particular, policies E8 and E9 is not compatible with the Habitats and Wild Birds Directives, which are EU obligations.

I deal with these points more fully below.

- (i) The Plan is confusing, ambiguous and unclear. It is not drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications;

8. This criticism of the Plan goes to the heart of its compliance with the basic conditions. Basic condition (a) requires that it must be appropriate to make the plan having regard to national policies and advice. A key part of that advice is as follows:

“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence.” (Paragraph: 041, ID:41-041-20140306)

9. The Pegasus representations highlight many instances where the Plan policies are unclear, confusing, include internal inconsistencies and where the stance taken in a particular policy is unsupported by any appropriate evidence. Numerous similar points were made in the ‘Health check’ and many of those remain unresolved.

10. It would be unduly repetitive to set out every instance that needs attention (they are set out in the accompanying representations and ‘Health Check’, and each needs to be addressed). However, it is worth highlighting (and repeating) a structural defect in the Plan as a whole which leads to ambiguity and confusion and which will fundamentally impede the ability of decision makers to apply the Plan consistently and with confidence. That defect is the inclusion and muddling of ‘community aspirations’ with

policy. In my opinion these should be very clearly separated out from the policies, they should not be labelled or referred to as policies and, ideally, should be attached as an appendix rather than forming part of the main body of the Plan. If this is not done, it seems to me that the Plan would fundamentally breach the policy guidance set out above such that it would not be appropriate to make the Plan and there would be a failure to meet basic condition (a).

11. The guidance quoted above also requires appropriate supporting evidence. One example of an instance where that is lacking concerns policy H19/5 which restricts development to former building footprints without any landscape or design evidence to support such a departure from the approach to, and definition of, previously developed land in the NPPF.

12. Finally, one other matter is particularly striking under this head. For the reasons set out by Pegasus, the use of the ‘independent’ requirement in various policies (and its related definition in the Plan) renders the effective application of those policies impossible. It is of course not practical or possible for an applicant for planning permission to procure an expert assessment without paying for it. If the fact that such an assessment is funded by a developer renders that assessment not ‘independent’ within the terms of the Plan then it is difficult to see how a decision maker will be able to apply the policies within the Plan ‘consistently and with confidence’ in accordance with the policy guidance set out above.

(ii) In many other places the Plan is in conflict with policies and guidance set out in the NPPF and PPG

13. This point is closely aligned with point (i) above. As pointed out in the Pegasus representations, there are many instances in the Plan where it adopts different definitions to those used in the NPPF. Examples are definitions of affordable housing, brownfield and greenfield land. The use of similar but materially different definitions causes ambiguity and a lack of clarity, contrary to the PPG guidance above. In turn this again is a further reason why basic condition (a) is not met.

(iii) The Plan is unduly restrictive and fails to support the strategic development needs set out in the Local Plan, thus also failing to contribute to the achievement

of sustainable development and failing to secure conformity with the strategic policies of the Local Plan

14. Overall, the Plan is significantly more restrictive of development than the Local Plan. There are many instances set out in the Pegasus representations of individual policies being too restrictive. This is of particular concern given the very significant reliance on windfall development to meet strategic housing needs.

15. This approach causes problems for the Plan's progression in a number of ways. First, and fundamentally, it represents, and will result in, a departure from the strategic housing policies of the Local Plan, meaning that the Plan cannot be concluded to be in 'general conformity with the strategic policies of the development plan for the area' contrary to basic condition (e).

16. Second, it causes a further major conflict with basic condition (a). Critically, national policy in the NPPF makes clear that:

“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 policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies. (para 184, NPPF)

(iv) The Plan, and, in particular, policies E8 and E9 are not compatible with the Habitats and Wild Birds Directives, which are EU obligations.

17. As set out above, a further key basic condition is basic condition (f) requiring that the Plan must be compatible with EU obligations. Broadly speaking, the Habitats Directive sets out EU obligations relating to the protected sites and protected species and the Wild Birds Directive sets out EU obligations relating to the protection of wild birds. The former are implemented into English law by the Conservation of Habitats and Species

Regulations 2017 (the “Habitats Regulations”), SI 2017/1012. The latter are implemented by the Wildlife and Countryside Act 1981 (the “1981 Act”).

18. Under the Habitats Regulations, if a planning proposal is ‘likely to have a significant effect’ on a European protected site, such as the South Hams SAC, a local planning authority must ‘make an appropriate assessment of the project in view of that site’s conservation objectives’ and may grant planning permission only after having ascertained that the proposal does not adversely affect the integrity of that protected site (regulation 63). Further, the Habitats Regulations include provisions preventing the killing and disturbance of protected species, which include bats.
19. Under the 1981 Act, wild birds are protected from deliberate harm and under section 1(5) and Schedule 1 the disturbance of a nesting curlew is a criminal offence.
20. Local Plan Policy NC1 effectively highlights the substance of these legal obligations and ensures that they are reflected and observed.
21. By contrast, policies E8 and E9 cut across and confuse the correct application of the legal obligations. They use conflicting terminology (such as ‘appropriate habitats appraisal’) and impose unrealistic requirements (such as to the requirement for an ‘independent’ assessment – see above). They conflate the role of the developer with the statutory role of the local planning authority and are unduly prescriptive, removing the necessary flexibility for appropriate measures to be considered and designed when the relevant assessments are undertaken.
22. At the very least, these policies are entirely unnecessary, the appropriate protection being achieved by the combination of the legislative provisions and Local Plan Policy NC1. At worst, the policies are incompatible with the EU obligations in that they cause confusion and a lack of clarity, leading to the risk that they distract from the important legal obligations. This is likely to also result in a lack of consistency and a lack of confidence when applying the Plan in the determination of applications.
23. As a result, policies E7 and E8 cause conflicts with basic conditions (f) and (a).

Conclusions

24. In conclusion, in my opinion, and taking into account the entirety of the Pegasus representations, not all of which are referred to here, there are numerous and serious problems with the Plan. These problems are fundamental to the progress of the Plan because they represent breaches of the 'basic conditions'. Both the examiner and then the local planning authority would be acting unlawfully if they allowed the Plan to proceed without being satisfied (on a proper and reasonable basis) that the basic conditions are met. Accordingly, it seems to me that one of the following two options will be required:

- fundamental and numerous modifications will need to be made to the Plan, amounting to much re-drafting and reconsideration; or
- the Plan will need to be rejected outright.

25. I hope that this Opinion sufficiently deals with the question asked. Should you require anything further, please contact me in Chambers.

14 December 2017

JENNY WIGLEY

Landmark Chambers