

## neighbourhood plans

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**From:** Mike Harris [REDACTED]  
**Sent:** 15 December 2017 16:10  
**To:** neighbourhood plans  
**Subject:** Torquay Neighbourhood Plan Regulation 16 Consultation Response  
**Attachments:** 15230\_T\_170908\_TNP Reg14 Representation\_ISSUE.pdf; 151509\_T\_171215\_Reg 16 Representation TNP\_FINAL.pdf

**Importance:** High

Dear Sir/Madam

In accordance with the Neighbourhood Planning regulations, please find attached a Regulation 16 consultation response in respect of the Torquay Neighbourhood Plan, submitted on behalf of my client Abacus Projects/Deeley Freed Estates.

In addition to the Regulation 16 representation, I attach a copy of the Regulation 14 representation as the current response makes a number of references to it.

If there are any issues opening this submission please contact me as soon as possible.

Kind regards

Mike

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**STRIDE TREGLOWN**  
TOWN PLANNING

Mike Harris *BSc (Hons) MA MRTPI*  
Senior Associate Town Planner

T [REDACTED]  
DD [REDACTED]  
M [REDACTED]

mikeharris@stridetreglown.com

LinkedIn

Promenade House, The Promenade, Bristol, BS8 3NE

stridetreglown.com   

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15<sup>th</sup> December 2017

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Neighbourhood Plans  
Spatial Planning  
Electric House  
Castle Circus  
Torquay  
TQ1 3DR

By email only to [neighbourhood.plans@torbay.gov.uk](mailto:neighbourhood.plans@torbay.gov.uk)

Dear Sir/Madam

## **Torquay Neighbourhood Plan Regulation 16 Consultation response**

We act for Abacus Projects/Deeley Freed Estates (AP/DFE) in respect of their interests in the Torbay area. AP/DFE are a landowner/development promoter with interests in Torbay, principally in the Blatchcombe and Churston-with-Galmpton wards. In recent weeks, Stride Treglown, on behalf of AP/DFE, have submitted an outline planning application for a residential-led development on land south of the White Rock area (ref. P/2017/1133), adjacent to Brixham Road.

This letter addresses a number of issues:

- It acts as a representation in accordance with Regulation 16 of The Neighbourhood Planning (General) Regulations 2012;
- In accordance with the provisions set out in Regulation 16(a)(iv) this letter also acts as a request to be notified of the decision made on the plan proposal under Regulation 19; and,
- Finally, in the event that the appointed Examiner(s) elect to hold a hearing(s) on the subject of the proposals, either solely in respect of the Torquay Neighbourhood Plan or in combination with the Paignton and/or Brixham Peninsula Plans, we request to be notified of this and request, in advance, the opportunity to participate.

This representation follows our previous representations to the Forum in respect of their Regulation 14 consultation. These are appended to this submission for completeness and are not repeated here other than the following summary:

- We were supportive of the overall position to, in principle, allocate sites, in line with the requirements of the Local Plan;
- We were supportive of the proposal to identify sites for employment development, again in line with the expectations of the Local Plan;
- Some policies conflicted with the intent of policy contained within the Local Plan; and,

**STRIDE TREGLOWN LTD**  
PROMENADE HOUSE, THE PROMENADE  
CLIFTON DOWN, BRISTOL BS8 3NE  
+44 (0)117 974 3271

**REGISTERED OFFICE**  
PROMENADE HOUSE, THE PROMENADE  
CLIFTON DOWN, BRISTOL BS8 3NE  
REGISTERED IN CARDIFF  
REGISTERED NO: 1748850

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- Arguably most critical, policy sought to restrict the delivery rates of allocated housing sites, in conflict with the Local Plan.

In addition to our own representations, we note that the Council as a statutory consultee made comment at the Regulation 14 stage. Whilst these representations will be before the examination, and may be withdrawn, edited or expanded upon, it is considered important to flag in this representation some particular matters which, in our judgement, remain relevant.

In presenting this representation, we have given consideration to the suite of documents which have been produced as the formal Torquay Neighbourhood Plan submission. Of these, it is evident that the Forum's Consultation Statement is a key document, noting as it does how the Forum have responded to Regulation 14 representations and either amended the Neighbourhood Plan on submission or retained aspects. This Statement therefore demonstrates where potential conflict remains.

Whilst it is for the appointed Examiner to consider the matters arising from the submitted Neighbourhood Plan, it is clear from the legislative framework that the role is limited to testing whether the Plan meets the basic conditions. The following comments are therefore made within this context.

The first of the basic conditions (a) is that the Plan should have regard to national policy and advice. Planning Practice Guidance (Paragraph: 069 Reference ID: 41-069-20140306) notes that a plan

*“must not constrain the delivery of national policy objectives”* with the subsequent paragraph noting that they *“should not promote less development than set out in the Local Plan or undermine its strategic policies”*.

This relates closely to condition (e) which requires a plan to be in *“general conformity with the strategic policies contained in the development plan”*.

Considering the above, whilst there are positive aspects of the submitted Plan, there are clearly a number of instances where it fails to meet the above referenced tests. This is particularly relevant in respect of the following policies:

- H3, specifically the focus on viability in the Edginswell Future Growth Area which could place unreasonable pressures on delivery of a key site.

In high level terms, there are sufficient controls within the adopted Local Plan and NPPF/PPG to ensure that development viability is considered in the context of delivering sustainable development, whether this be a sustainable level of affordable housing or similar.

- H5, in relation to occupancy which goes against wider Council policy and doesn't wholly accord with the approach set out in the Local Plan and Planning Contributions & Affordable Housing SPD.

- H8, which continues to place a brake on delivery rates and runs directly contrary to Local Plan policy SDT3 which, in table 10, indicates delivery coming on stream in years 6-10 (i.e. 2017/18 onwards).

The effect of this significant departure from what is a clear strategic direction in the Local Plan will be to severely restrict the ability for the Council to maintain a rolling 5 year housing land supply (in accordance with the requirements of paragraph 47 of the NPPF) and in turn limit the ability to deliver affordable housing and wider infrastructure which would be funded from s.106 or CIL contributions.

Finally, the TNP Consultation Report is overreaching to suggest that the Edginswell Future Growth Area is being phased on the basis of the presence of European Protected Species as this is a matter that can be reasonably dealt with through the EIA/development management planning process.

We consider that this policy is sufficiently flawed as to warrant its removal (as noted by Torbay Council at Regulation 14 stage).

- H9 is not grounded in evidence (therefore running counter to basic condition test (d) in respect of sustainable development).
- H10, as with H8, unnecessarily goes against the principle of Future Growth Area delivery as set out in the Local Plan and adopted Masterplans (adopted as SPD) and places unnecessary constraints on delivery.

The issues identified above are considered to be of such significance that they should be viewed as fundamentally running counter to the principles set out in the basic conditions tests, namely that they fail the test. In very simple terms, the approach to constraining development at Edginswell, an identified Future Growth Area in the adopted Local Plan, directly conflicts with the expectation to contribute to sustainable development.

It is clear from this representation that we have significant and detailed concerns about the Torquay Neighbourhood Plan as submitted, specifically the extent to which it complies with Local and National policy. In our mind, we consider that the only way forward at this stage is to hold a public hearing to examine the issues and the evidence. As set out above, we have requested that this representation is considered as a holding request to participate at such a hearing.

We would further advocate that, given the strategic responsibility which the adopted Torbay Local Plan places on the three Neighbourhood Plans, all three plans should be considered at a joint hearing(s). It is clear that the issues faced by each of the Forums and covered in their respective Neighbourhood Plans are of a significance that is at a level greater than the neighbourhood. This is, in short, a consequence of the unique nature of Neighbourhood Planning in the Torbay area, specifically the full Local Plan area coverage by designated Neighbourhood Plan areas and the means by which the

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adopted Torbay Local Plan places the onus on each of the three Neighbourhood Plans to allocate housing numbers for delivery to meet the housing requirement of years 6-10 of the Local Plan period.

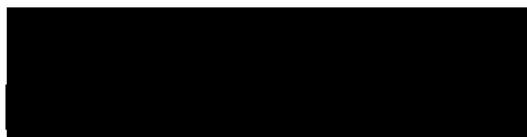
This matter is further compounded by the fact that the Torbay area constitutes a single housing market area and thus the Neighbourhood Plans have a significant responsibility to support the maintenance of a rolling deliverable 5 year housing land supply, as required by paragraph 47 of the National Planning Policy Framework. In addition to the responsibility in respect of delivering housing supply, the NPs are required to give full consideration to matters relating to European protected species and habitats, in particular Greater Horseshoe Bats which are present across the authority area, principally in relation to the roost at Berry Head.

These issues are of such significance that we believe the examination of the Neighbourhood Plans to be a matter of greater than neighbourhood importance. The plans, if made, are critical to the delivery of the Council's wider strategy and as such their examinations should be held together and by a single examiner who is then able to consider the strategic planning issues at play in these cases.

We note also that the Examiner will need to consider (in accordance with paragraph 8(1)(d) of Schedule 4 of the Town & County Planning Act 1990) whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates. In view of the strategic interdependence of the three draft Neighbourhood Plans in Torbay, this issue will require particular consideration and our view is that a joint hearing would assist in doing this.

If however the appointed Examiner considers that a hearing is not required, the only reasonable course of action is either to recommend that the Plan is significantly modified in order to remedy the issues highlighted above or to recommend that the Plan should not be submitted to a referendum and is refused.

Yours sincerely,



**Mike Harris MRTPI**  
**Senior Associate Town Planner**  
For  
**STRIDE TREGLOWN LIMITED**

cc. Andrew Maltby, Deeley Freed Estates  
Enc. Regulation 14 Representation

8<sup>th</sup> September 2017  
15230\_T\_170908\_TNP Reg 14 Representation

Leon Butler, Chair  
Torquay Neighbourhood Plan Forum  
**By email only to – [chair@torquaynp.org](mailto:chair@torquaynp.org)**

Dear Mr Butler,

## **Torquay Neighbourhood Plan – August 2017 Regulation 14 Consultation**

We are writing in response to the publication of the *Torquay Neighbourhood Plan Regulation 14 Draft for Public Consultation* (August 2017) (hereafter cited as the TNP) in accordance with Regulation 14 of the Town and Country Planning Neighbourhood Planning (General) Regulations 2012 (hereafter referred to as 'the Regs'). As provided for within Regulation 14, this letter constitutes a representation on the proposed draft Plan, submitted on behalf of our clients, Deeley Freed/Abacus Projects (DF/AP).

We have been engaged by DF/AP since 2008/09, providing town planning and masterplanning design services in respect of their land holdings in the Torbay area.

Since 2014, we have represented DF/AP in respect of their land holding to the south of land locally referred to as White Rock in Paignton. During this time we took an active role in the examination of the *Torbay Local Plan 2012 to 2030* (the Local Plan). During the Local Plan examination, the Council recommended that our client's landholding south of White Rock (the Site) be allocated for development under a Main Modification.

The proposed allocation was aligned with the identification of surrounding land within a Future Growth Area and in order to support the Council's need to identify capacity to accommodate long term housing needs. However, at the time of the Examination Hearings (which are now some two and a half years ago), there was concern raised by Natural England (amongst others) that there was insufficient ecology and landscape survey data/assessment work so as to be able to confirm an allocation would not have a significant detrimental impact and it therefore did not proceed to the final adopted Local Plan. Nevertheless, the Inspector concluded that the site has merit in meeting strategic housing needs and he agreed that it can be delivered in a comprehensive manner to support the Council in meeting their strategic housing needs.

### **1. Recent Work**

Since the Inspector's report on the soundness of the Local Plan we have been actively engaged in preparing baseline assessment work to underpin decisions on how to bring forward development proposals to meet long term housing needs. This has been predicated on the basis of what, in our view,

**STRIDE TREGLOWN LTD**  
PROMENADE HOUSE, THE PROMENADE  
CLIFTON DOWN, BRISTOL BS8 3NE  
+44 (0)117 974 3271

**REGISTERED OFFICE**  
PROMENADE HOUSE, THE PROMENADE  
CLIFTON DOWN, BRISTOL BS8 3NE  
REGISTERED IN CARDIFF  
REGISTERED NO: 1748850

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are clear indications from the Inspector that the Site has potential to be considered for allocation / a grant of planning permission, subject to satisfying concerns relating to ecology and landscape impacts.

In support of this strategy, Torbay Council have adopted (16th February 2017) an Environmental Impact Assessment (EIA) Scoping Opinion for the Site, confirming the scope of any future EIA and resultant Environmental Statement. This opinion clarifies, amongst other matters, the scope of Landscape and Visual Impact Assessment work (including key viewpoints to be assessed) and the scope of survey work, and likely mitigation required, in respect of ecology.

We have also been engaged in early pre-application discussions with Officers of Torbay Council, South Hams District Council and the office of the South Hams Area of Outstanding Natural Beauty (AONB).

Most recently, we have undertaken public consultation on emerging proposals. This was launched on 11th May 2017 with two key stakeholder sessions and a public event together with a further public event on 13th May 2017. A website which hosts the consultation material together with a link to a feedback survey was launched on 11th May 2017. The consultation period closed at 23:59 on 26th May 2017.

## 2. Neighbourhood Planning Policy

Planning policy is a fundamental component of the Basic Conditions set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as qualified by section 38C of the Planning and Compulsory Purchase Act 2004 in respect of Neighbourhood Plans). Specifically, a draft neighbourhood plan must be appropriate, "*having regard to national policies and advice contained in guidance issued by the Secretary of State*" (sub-paragraph (a)) and be, "*in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)*" (sub-paragraph (e)).

### *National Policy Context*

The basic premise of Neighbourhood Planning is summarised in Planning Practice Guidance (PPG) which notes that:

*Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. They are able to choose where they want new homes, shops and offices to be built...Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community **where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area.** (our emphasis) (ref. 001 41-001- 20140306)*

PPG continues, noting that "*a neighbourhood plan should support the strategic development needs set out in the Local Plan and plan positively to support local development (as outlined in paragraph 16 of the National Planning Policy Framework).* (ref. 004 41-004-20140303). Paragraph 16 of the NPPF confirms that this relates to policies for housing and economic development and further that

neighbourhoods should, *"plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan"*.

Specific policy in relation to neighbourhood planning is set out in paragraphs 183-185 of NPPF. In particular, paragraph 184 states 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... 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."*

This context is important in all neighbourhood plan areas, but critically so in Torbay due to the unique situation where the proposed neighbourhood plans for Torquay, Brixham and Paignton cover the entire area of the local planning authority.

## *Local Policy Context*

The strategy set out in the adopted Torbay Local Plan (December 2015) places great emphasis on the role of the three proposed neighbourhood plans in the detailed delivery of the Local Plan's policies. This role is encapsulated in both the strategic policies in section 4 of the Local Plan and the delivery area policies in section 5. These policies establish clear expectations for how each neighbourhood plan will meet needs within its respective Forum area, including those relating to the supply of land for housing and employment.

The following policies are directly relevant to the proposed TNP:

SS1 – *"In years 6-10 of the Plan (2017/18-2021/22), development will come from completion of committed sites and developable sites identified in Neighbourhood Plans."*

- 4.1.29 – *"...neighbourhood plans...only need to identify sufficient sites to maintain a rolling five year housing supply from 2017"*

SS2 – *"Major development outside of [Future Growth Areas] will only be permitted where the site has been identified by the relevant Neighbourhood Plan..."*

SS4 – *"The Local Plan supports the creation of at least 5,000-5,500 net additional jobs by 2030."*

- 4.2.18 – *"detailed mechanisms for delivering employment-led development, including the quantum, layout and phasing, will be determined through a combination of neighbourhood planning, masterplanning, and supplementary planning documents."*

SS5 - *"Specific sites will be identified through Neighbourhood Plans... The Council, in conjunction with Torbay Development Agency and Neighbourhood Planning Forums, will use Local Enterprise Areas and Local Development Orders to encourage provision of high quality employment space, environmental improvements, and better facilities serving employment"*

*within existing and proposed employment areas, so long as this is consistent with other Policies in this Plan”.*

### **3. Representation**

Following the launch of Regulation 14 Consultation on Monday 7<sup>th</sup> August 2017 we have undertaken a review of the material published on the Forum’s website, namely:

- The TNP Planning Policies for summer 2017 consultation;
- Community Partnership Submissions;
- Summary of the major changes since the last public consultation; and,
- Supporting Information, namely the Council’s Habitats Regulations Assessment Screening Report and Sustainability Appraisal Report, both for consultation in 2017.

#### *Overview*

In general terms, the Objectives of the draft Plan appear to be well framed in the context of local issues whilst reflecting the expectation for the TNP to play an important part in supporting the wider growth strategy of the Torbay Local Plan.

With specific regard to housing supply, the TNP as presented appears to meet the requirements set out in the Torbay Local Plan. Specifically, Policies SS12 and 13 address the spatial distribution and timing of housing delivery across the Torbay area. Table 4 of the Local Plan highlights a need for 3,960 homes in Torquay over the plan period, 1,100 of which are expected to be provided for within the 6 – 10 year plan period (2017/18 – 2021/22). Table 1 of the draft TNP identifies that provision for 1,111 units are identified from the pool of sites provided within the Local Plan.

In respect of employment provision, the TNP reflects the Local Plan policy on employment, specifically by identifying employment sites within proposed Policy J1 that accord with Table 5 of Policy SDT1 of the Local Plan.

In order to ensure that the TNP, on adoption, continues to accord with the Local Plan, Policy H1 provides a helpful and important mechanism to allow for future revision to the TNP.

#### *Specific Policy Comments*

In addition to the overall strategic approach of the draft TNP, and specifically the manner in which housing and employment sites are allocated, the Plan also contains a significant number of policies which aim to steer and guide development proposals, together with protecting certain sites or locations, within the area covered by the Plan. Comments on these are as follows:

Policy H3 – this does not appear to be a reasonably worded policy and could be held to be in conflict with advice on viability and decision taking as set out in Planning Practice Guidance

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Policy H4 – as worded the policy introduces a direct conflict with affordable housing policy contained within the Local Plan, specifically Policy H2 which sets out that for sites of 20 units (i.e. those in the 15 – 29 dwelling band) 25% of units would be expected to be affordable.

Policy H8 – whilst the aspiration to see other sites delivered first is recognised as worded the policy risks putting a brake on housing delivery in the Bay area and artificially constraint the supply of land for housing, in turn impacting on growth prospects.

Policy H10 – it is not clear why this policy is sought given that there is an existing adopted Masterplan for the Edginswell Future Growth Area. Whilst the aspiration may be to ensure wider integration, the spatial extent of the Masterplan has been set for a number of years and developed through the planning process and furthermore is identified within the adopted Local Plan. As worded, the policy risks introducing a brake similar to that included within draft TNP Policy H8, the effect of which could be to throttle land supply with the resultant risk that less preferable sites secure permission, potentially via the planning appeals process.

Policy H16 – the policy fails to add to those matters which would be considered via the Development Management process and as such is superfluous.

Policy E9 – the policy appears to be written in a manner which is very clear cut and does not allow for consideration to be given to wider mitigation opportunities. It is considered that suitable opportunities already exist to deliver the required protections.

Policy HW3 – as drafted this policy is not considered to be deliverable. Whilst the aspiration for ensuring the provision of community facilities is accepted, it appears to fail to consider matters of viability and as with other policies, potentially restricts housing supply in an area of need. The issues that are being sought to be addressed would be considered in the wider determination of an application for planning permission by assessing the proposals against the principles of sustainable development set out in the NPPF and Torbay Local Plan.

Policy TR1 – as with draft Policy HW3, whilst the principle of the policy is recognised, that being to ensure that active travel to school is facilitated where possible, as drafted the Policy risks constraining supply. It is recognised that Torbay has a shortfall of school places at the current time and whilst the planning system can support delivery of land for schools, the physical provision is outside of its control. As drafted the policy is unreasonable.

Policy TR2 – as many policies above, the current drafting risks artificially constraining supply of land for housing. The green field sites identified within the pool in the Local Plan, and drawn upon by the TNP, have already been considered as suitable locations for housing delivery therefore this policy risks reversing that decision and limited delivery/supply through consents, at the point at which an application is determined.

## 4. Summary

The draft TNP is positive in its approach to supporting the growth aspirations of the Torbay area. By allocating sites for housing and employment development, the draft TNP can be seen to directly support the policy framework set out in the adopted Torbay Local Plan.

However, as noted, there are a number of instances within proposed policies of potentially unreasonable restrictions being placed on the ability to deliver sites for development. With this in mind, it is considered that the draft Plan should be reviewed in the context of its role to support growth (as per the main thrust of housing/employment policies) and critically evaluate whether each individual policy, both alone and in-combination, might be considered to have a potential risk of constraining or frustrating the delivery of positive planning outcomes.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

**Mike Harris, MRTPI**  
**Senior Associate Town Planner**  
For  
STRIDE TREGLOWN LIMITED

cc. Andrew Maltby, Deeley Freed Estates