

[REDACTED]

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**From:** Adam Billings [REDACTED]  
**Sent:** 28 May 2018 23:35  
**To:** 'NP Programme Officer'  
**Cc:** [REDACTED]  
**Subject:** Brixham Neighbourhood Plan  
**Attachments:** Forum Submission (28May)(sent).pdf

Dear Tom,

Please find attached a submission from the Brixham Neighbourhood Forum which we ask you kindly pass to Deborah McCann.

Rgds,



Brixham Town Council  
Town Council Office,  
Brixham Town Hall  
New Road,  
Brixham,  
TQ5 8TA

[www.brixhampeninsula.com](http://www.brixhampeninsula.com)

By email to:

[Neighbourhood plan program officer](#)

Torbay Council

for the attention of the Examiner, Ms Deborah McCann

Monday, 28 May 2018

Dear Ms McCann,

**Re: Brixham Peninsular Neighbourhood Plan**

On behalf of our Forum I would like to thank you as the Examiner for taking the time to consider our Neighbourhood Plan.

We hope we have communicated our intention in the plan and in the policies clearly and we appreciate your assistance in helping move the plan on to the next stage.

Included with this letter is a submission from the Working Group of the Forum. This submission provides observations on some limited issues raised in the Regulation 16 representations. Recognising the need for you to exercise discretion, these observations are limited. We have tried to address only issues where we feel particularly strongly; where there is new information; where we can add clarity; or where there is a practical suggestion we wish to support.

We hope this assists.

Yours sincerely

Cllr Jackie Stockman

Chairman,

Brixham Peninsula Neighbourhood Plan Forum

## **BRIXHAM PENINSULA NEIGHBOURHOOD PLAN**

### **General - HRA**

- 1) Further to the '*People Over Wind*' ECJ judgement and 4 May email from Officers of the Local Planning Authority ("LPA") to the Examiner, the Forum has sought advice. We were advised the key points are:
  - (i.) the LPA as 'competent authority' determined the HRA "*information provided is sufficient*" such that it "*substantively meet[s] the requirements*"; and
  - (ii.) "*For absolute clarity, this could be made clearer through a minor re-formatting to set out the same in an 'Appropriate Assessment' Stage*".
- 2) If the LPA believe a "*minor re-formatting*" of the HRA Screening "*could*" add clarity, the Forum is happy if the Examiner chooses to recommend such a modification.
- 3) On a practical note, as the HRA Screening is an AECOM document, we can confirm that AECOM have offered to *consider* minor reformatting of their document so the LPA can continue to rely on a self standing document from professional advisors. This could save the resource implications flowing from the LPA needing to produce their own separate HRA Screening document.

### **General - "subject to compliance with the other policies of this Neighbourhood Plan"**

- 4) The LPA 18 Dec representation suggests the phrase "*subject to compliance with the other policies of this Neighbourhood Plan*" is dropped in multiple policies.
- 5) The Forum considers that clarity is reduced by this change. The Forum acknowledges that for a professional audience this phrase may be superfluous and repetitive. However our plan was also written for, and indeed by, the wider community. On this basis we consider this phrase adds clarity. The phrase has been used selectively, for 'positively' drafted policies, where it is important to also consider other more restrictive policies.

### **General - "and beyond"**

- 6) The LPA 18 Dec representation suggests the phrase "*and beyond*" is dropped.
- 7) Expanding on paragraph 4.4.1 of the Basic Conditions Statement, the Forum has produced a plan for the defined "2012 – 2030" period. In addition, we have sought to communicate that aspects of the plan are capable of enduring beyond the plan period, e.g., Local Green Space as per NPPF paragraph 76. The Forum considers the phrase "*and beyond*" helps communicate to the wider community the long term importance of our plan and fosters community engagement.

- 8) Should the Examiner be minded to recommend a modification, the Forum queries whether this could focus on the explanatory text in the main body of the Policy Document rather than on the front cover?

### **General - Appendices**

- 9) The LPA 18 Dec representation suggests that a large volume of information in the plan is moved to Appendices as “*It is not clear in practical terms which part so the draft plan for the ‘neighbourhood plan proposal’... and which do not...*”
- 10) The Forum disagrees. We consider our plan is clear. For example; in the Policy Document the Policies are set out in coloured boxes; and in the Design Statements the Design Guidelines are also set out in coloured boxes.
- 11) The Forum believes the first time the plan was used was on 28 Mar at a Councillor briefing for “Inglewood” (planning application P/2017/1133 which involves some of the land rejected as site H3-R7). At that briefing, Forum members relied interchangeably on the Policy Document, the Policy Maps and the Housing Site Assessment – in other words interchangeably on documents which are advocated by the LPA to comprise the “*key documents*” and “*appendices*”.
- 12) The Forum is concerned moving documents to Appendices might cause such information, which over a considerable period volunteers have worked hard to assemble, to be lost. This concern is in part because in preparing our plan the Forum found difficulty with the website of the LPA following a website update when the submission library for the LP ceased to work.

### **Policy J1: Employment Land – ‘Identification’ v ‘Allocation’ at paragraph J1.4**

- 13) The LPA 18 Dec representation states:

*If the sites are not ‘allocated’ the Policy J1 fails to be in strategic conformity with Policy SS5 and SDB1 of the Local Plan.*

- 14) The Forum disagrees. In the LP, neither policy SS5 nor policy SDB1 use the word ‘*allocate*’. Rather, policy SS5 states uses the word ‘*identify*’. The LP says:

*In order to meet the needs of existing, growing and new businesses, sufficient high quality space will be provided to meet existing and arising requirements of employers. Specific sites will be identified through Neighbourhood Plans... (emphasis added).*

- 15) Our plan has responded to this LP expectation and the Basic Conditions Statement at paragraph 5.0.26, under the heading ‘Employment sites’ on page 23, sets out further detail on the Forum’s reasoning for ‘*identifying*’ sites.

- 16) Regarding habitats and associated EU obligations, as set out in the AECOM HRA Screening, the plan adopts the “safeguarding” approach<sup>1</sup> used in the LP and further developed here in Policy E8. Accordingly, the decision not to ‘allocate’ has not been driven by a concern about a ‘likely significant effect’.
- 17) Rather, there is a greater level of site level environmental data available for housing sites compared to employment sites. Hence, by definition, there is a greater level of information over the certainty of future delivery. The Forum believes it appropriate to acknowledge this by ‘allocating’ housing sites and ‘identifying’ employment sites. This distinction also reflects previous Regulation 14 Natural England comments, as reproduced at the bottom of page 229 of the Consultation Statement (second version).

### **Policy J1 Employment Land – Retention of sites at paragraphs J1.1 and J1.2**

- 18) The LPA 18 Dec representation states:

*In reference to Section J1.1 and J1.2 is in conflict with the strategic Policy SS5 where Loss of employment is allowed:*

- 19) This theme of identifying one discrete policy aspect of our plan and comparing it to one discrete aspect of the LP policy appears in several places in the LPA representations. In response, the Forum refers to the judgement in *Crownhall v Chichester DC and Loxwood PC (2016)*. In that case the parties agreed a document entitled “Agreed Legal Propositions”. This included the proposition, at paragraph 29, that:

*Where it is engaged, the basic condition in paragraph 8(2)(e) of schedule 4B to TCPA 1990 only requires that the draft neighbourhood plan as a whole be in “general conformity” with the strategic policies of the adopted development plan (in so far as it exists) as a whole. Thus, there is no need to consider whether there is a conflict or tension between one policy of a neighbourhood plan and one element of the local plan;*

- 20) The Forum has sought to ensure our plan as a whole is in general conformity with LP as a whole. At the broader LP level there is a clear strategic priority placed on job creation. The LP states:

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<sup>1</sup> As per the approach of The Hon. Mr Justice Morris in *Feeney v Oxford CC and the Secretary of State (2011)* at paragraph 90, which states “The Core Strategy in its final form includes the “safeguard” of the qualifying wording. Since there is a safeguard built into and within the Core Strategy as adopted to ensure that there will be no harm in the future, then the adoption of the Core Strategy as so qualified will, necessarily, not cause harm. As Mr Crean QC put it in his skeleton argument, “the Core Strategy explicitly excludes development where it cannot be demonstrated that it will not have an adverse effect on the Oxford Meadows SAC””.

### ***Jobs, jobs, jobs***

*1.1.9 The Local Plan, working alongside Torbay's Economic Strategy (2013), supports a step change in the economic fortunes of the Bay. The Plan is based on achieving 5,000–5,500 net new jobs to 2030, mirroring the 300 jobs per year created during the 'boom' years of 1998-2008....*

- 21) However, jobs in Torbay have fallen. Trying our best, in our plan we have sought to assist the wider objective of job creation (and job retention) by seeking to protect important employment space. The Forum believes it entirely appropriate to restrict the circumstances in which alternative use can be sought as set out in Policy J1.

### **Policy J1: Employment Land – General**

- 22) The Forum wishes to confirm that a part of the larger Torbay Trading Estate, a site which the plan refers to as "*Torbay Trading Estate*" for identification proposes (LP site reference BPNPH6) is both identified for employment (J1-3) and allocated for housing (H3-15). This is shown on the "*St Mary's*" map in the Policy Maps. The Forum envisaged live-work units might be suited to this site so that the housing element could enable the associated employment element. We do acknowledge that use of the phrase "live-work units" could have made the text clearer.
- 23) The Forum also wishes to confirm at paragraph J1-3 the reference to "*Coastal Protection Area*" is an error and this should be a reference to "*Undeveloped Coast*".

### **Policy J5: Sustaining a vibrant harbour-side economy**

- 24) The LPA 18 Dec representation suggests that the area referred to as the Brixham Harbour Estate in the Policy Document should be clarified on the Policy Maps. The Forum is happy if the Examiner wishes to recommend these changes.
- 25) In this event, the Forum identifies the area referred to as the Brixham Harbour Estate is the same as the area identified in the maps for the Tor Bay Harbour Authority Port Masterplan (July 2013) within the red line on page 48.
- 26) For completeness the Forum notes this area is not quite the same as the area suggested by the LPA as TO1.5 in the LP. TO1.5 is an area corresponding to the Inner Harbour only. Where the phrase Inner Harbour is meant, for example in the Town Centre Masterplan at Section 7, on page 12, the text says this.

## **BH2: Allocation of new affordable homes – at paragraph BH2.2**

- 27) The LPA 18 Dec representation suggests several minor changes to Policy BH2 at paragraph BH2.2. These suggested changes appear helpful in achieving the intention of the policy.

## **BH3: Housing allocations**

- 28) The LPA 18 Dec representation makes a significant number of statements which the Forum fundamentally disagrees with. To avoid a lengthy document the Forum has chosen not to detail this disagreement further. However, should the Examiner be persuaded by any of the matters raised by the LPA, particularly matters which are raised at this late stage for the first time, the Forum would like to assist by providing further clarification.

## **BH3: Housing allocations - site H3-I10: Waterside Quarry**

- 29) The LPA 11 Apr representation, by Jacobs, states:

*We would contest the conclusion of no potential effect on GHB reached by Aecom for Waterside Quarry is not based on all of the available information, as the Green Ecology records do not appear to have been considered. We would recommend that this site is assessed again, with a presumption that the site is used by GHB and recognising the presence of a GHB roost immediately adjacent, before determining whether or not a significant effect on GHB (and subsequently the South Hams SAC) is likely for Waterside Quarry*” (emphasis added).

- 30) In the AECOM HRA Screening these Green Ecology records are cited in Appendix D, Greena Ecological Consultancy Addendum Ecological Survey Report (2017), in the list of References on page 18. They are also discussed in the main text on page 16 under the heading ‘Waterside Quarry’ which states:

*Study of previous records from the area revealed confirmed presence of Greater and Lesser horseshoe bats on the adjacent land (not part of this proposal).*

- 31) More widely, it appears to the Forum there is a difference of opinion between the LPA / Jacobs 11 Apr representation and the Natural England 10 Jan representation. The Forum has identified the judgement of Mr Justice Sullivan in *R(Hart DC) v Secretary of State (2008)* at paragraph 49:

*Since [Natural England] is the "appropriate nature conservation body", as defined by Regulation 4 of the Regulations, the [Secretary of State] was entitled to give "great weight" to its views if she chose to do so. Indeed it would have required some cogent explanation in the decision letter if the [Secretary of State] had chosen not to give considerable weight to the views of [Natural England].*

And also of Lady Hale in *R(Morge) v Hamshire CC (2011)* at paragraph 45:

*Natural England rather than to the planning authority... were the people with the expertise to assess the meaning of the Updated Bat Survey and whether it did indeed meet the requirements of the Directive.*

- 32) The Stride Treglown 4 May representation, by DAC Beachcroft, states a need for "further survey data". The submitted plan contains survey data for Apr to Jun and the Forum 17 Dec regulation 16 representation contains survey data for Jul to Oct. In aggregate this is the full bat season survey data for 2017. Accordingly, it is not understood what "further survey data" is contemplated.
- 33) There is also further information which the Forum has become aware of:
- (i.) Planning permission P/2016/0822 and P/2016/0824 was granted for 3 detached houses on 6 April 2018. These applications relate to land where there is a greater horseshoe bat roost and for which the Green Ecology evidence referenced above was provided. Site H3-I10 Waterside Quarry lies adjacent;
  - (ii.) Freedom of Information documents obtained on 20 Apr 2018 by the Forum show that, following the Natural England regulation 14 representation of 7 Mar 2017 (reproduced in the Consultation Statement second version, page 227), the LPA wrote to Natural England regarding Waterside Quarry on 18 May 2017 and then later met with them on 8 Jun 2017. Despite the close scrutiny directed towards this one site, at no stage has Natural England raised any concern; and
  - (iii.) The landowner of part of the Waterside Quarry allocated site has supplied the Forum with a copy of a project level HRA Screening from Professor John Altringham dated Mar 2018 and an advice on that document from Natural England dated Apr 2018. These project level screening documents support the plan level screening documents.

In all cases, should it assist the Examiner, the documents referred to can be made available.

## **Policy E1: Natural Environment**

- 34) The LPA 18 Dec and the Natural England 10 Jan representations query whether policy E1.2 could better separate out biodiversity/geodiversity interest from landscape interest.
- 35) Consultation feedback indicated to the Forum that the community values the natural environment in all its forms and that this was all part of what the community felt made the area special. The intention of Policy E1 to draw attention to the importance of the natural environment in all its forms right at the start of the Natural Environment section. Should the Examiner be minded to recommend a modification, Forum queries whether improved wording could say this better.

## **Policy E2: Settlement Boundaries**

- 36) The LPA 18 Dec representation queries the relationship between the LP “village envelope” for Churston and Galmpton and NP Policy E2 Settlement Boundaries.
- 37) Explanatory paragraph 6.3.1.12 of the LP says:

*Forthcoming neighbourhood plans may add detail to this Policy concerning Village Envelopes, consistent with their ability to shape and direct sustainable development in their area, as set out in the NPPF. This could include amending the boundaries and/ or further defining the nature of development which is acceptable.*
- 38) Policy E2 responds to this. The policy adds detail to the positioning of the boundary between countryside and settlements in accordance with community preferences. Policy E2 also seeks to provide clarity by removing inconsistencies in LP policy C1. For example, in the LP (east of site E5-23 in the Neighbourhood Plan (“NP”)) there is a parcel of land which is both within the “countryside zone” and the “village envelope”. The Forum considered this was unclear and has sought to clarify this.
- 39) Dependent on how it is read, the LPA 18 Dec representation also appears to query the positioning of the settlement boundaries in the vicinity of Churston Golf Course and Memorial Playing Field. The Forum confirms the boundary as shown in the Policy Maps is correct. No part of Churston Golf Course or Memorial Playing Field is within the settlement boundary.
- 40) The Forum accepts the mapping system used places lines on top of each other and it is not technically possible using that system to draw them adjacent to each other. This said, the Forum believe it clear that the solid red settlement boundary extends round the southern edge of the Memorial Playing Field (as per “Galmpton-Brokenbury” map area page in the Policy Maps).

### **Policy E3: Settlement Gaps**

- 41) The LPA 18 Dec representation states:

*The strategic gaps designation is not recommended in its current form. Ellipses can be used as indicative schematic tools at a large scale but policy boundaries need to be clear and precise. The Strategic Gaps as shown do not provide clarity in accordance with the spirit of NPPG Para 41.*

*Settlement gaps difficult to interpret on Policies Maps. Ellipse at 1:5000 Scale Does (sic) not work very well and difficult to interpret (PPGN para 41).*

- 42) The LP uses a 1:5000 scale for its main Policy Map and a 1:57000 scale for its Key Diagram Map, both of which are used to describe land areas to which policies relate. The Key Diagram Map makes extensive use of ellipses and the Policy Map also uses ellipses (e.g., TC2.4.9 on map sheet 4).
- 43) The NP has used this policy precedent set by the LP. Our position is that the settlement gaps are clear and easy to interpret.
- 44) Separately, the Forum wishes to confirm that it is intended Policy E3 would add detail to the design considerations pertaining to any project proposal for sports pitches at Brokenbury but not operate as a moratorium against them.

### **Policy E4: Local Green Spaces**

- 45) The TDA Estates 18 Dec representation makes a significant number of statements which the Forum fundamentally disagrees with. To avoid a lengthy document the Forum has chosen not to detail this disagreement further, but should the Examiner be persuaded by any of the matters raised by the TDA Estates representations the Forum would like to assist by providing further clarification. This is particularly the case given at regulation 14 stage no issue at all was raised, save for an ambiguous “*possible objection*” to site E4-8: Jubilee Gardens.
- 46) Regards site E4-4: Berry Head, the WPG 11 Dec representation for Landscope Holiday Park queries the area of the holiday park excluded from the LGS designated site. The Forum excluded the area “*believed*” to represent the holiday park because the WPG regulation 14 representation did not include a map of what they considered their holiday park site area to be. The Forum now believes there are a few minor differences between the excluded area and the area of the holiday park shown on the map in the regulation 16 representation. These differences appear to relate mainly to an area to the east, adjacent to the coastline, which appears already covered by restrictive Policy C3 in the LP.
- 47) Regards site E4-4: Berry Head and site E4-13: Churston Golf Course, the WPG 11 Dec representation for Landscope Holiday Park and the Tetlow King 15 Dec representation for Bloor Homes and Churston Golf Course, separately raise issue

that the sites comprise “*extensive tracts of land*”. The Forum fundamentally disagrees.

- 48) In preparing the NP the Forum sought advice and considered the Long Ashton Neighbourhood Development Plan. Site E4-4: Berry Head is 67 hectares and site E4-13: Churston Golf Course is 48 hectares. Both of these sites are considerably smaller than the 329 hectare Ashton Court Estate. In any event, adopting the reasoning of that Examiner, the Forum considers both sites to be exceptional.
- 49) Site E4-4: Berry Head is considered exceptional because:
- (i.) Berry Head is an iconic element of Brixham dating back to Napoleonic times;
  - (ii.) It includes an area designated as part of the South Hams SAC because of European protected species (Basic Conditions Statement paragraph 5.0.18) and European protected sites (Basic Conditions Statement paragraph 5.0.29).
  - (iii.) Berry Head is local in character, close to the community it serves and is of particular local importance as a result of its historic significance, beauty and recreational value.
  - (iv.) The designation comprises a definable and recognisable area at the very tip of the peninsula which forms a cohesive whole and which does not read simply as an “extensive tract of countryside”.
  - (v.) There is no conflict with other designations, which already cover part or whole of Berry Head. Indeed the whole site is already designated AONB.
- 50) Site E4-13: Churston Golf Course is considered exceptional because:
- (i.) The close physical relationship between the village of Churston and Churston Golf Course, where the village ‘wraps-round’ the Golf Course, means the Golf Course plays a key part in defining the character of Churston (Churston Village Design Statement, paragraph 4.0.1);
  - (ii.) The Golf Course is local in character and its defining features are clearly described in two separate Agatha Christie novels set in Churston (Churston Village Design Statement, paragraph 4.2.2);
  - (iii.) It is of particular local importance to the community having been the subject of a 4,000 signature petition for protection (Consultation Statement Second version paragraph 4.7.3);
  - (iv.) The designation of a discrete Golf Course area comprises of a definable and recognisable area and on that basis which forms a cohesive whole and is not simply an “extensive tract of countryside”
  - (v.) There is no conflict with other designations, which already cover part or whole of the Golf Course. Indeed the significant majority of the course is already designated AONB.

## **Policy E8: Internationally and nationally important ecological sites and species**

51) The Natural England 10 January representation states:

*Policy E8 gives the same weight to designations of International and national importance and therefore does not accord with the NPPF (para 113). The Neighbourhood plan may wish to rely on adopted Torbay Local Plan policy for protection of designated biodiversity/geodiversity interests rather than repeat generic policy in the Neighbourhood Plan.*

52) Throughout the preparation of the plan the Forum has looked to the expert advice of Natural England to assist the Forum. Whilst we recognise it is a matter of fine judgement, and in all events the ultimate intent of Natural England and the Forum corresponds, our judgement is that the policy wording is appropriate. We feel it useful to explain in more detail why.

53) The NPPF at paragraph 113 states:

*Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.(emphasis added)*

54) As required of us through the basic conditions we have ‘had regard’ to this ‘guidance’. We identified that in section 11 of the NPPF at paragraphs 109 to 125 the guidance variously uses the terms “Local Planning Authorities” and “Planning Policies”. Reading the guidance as written we considered paragraph 113 was not directed towards Neighbourhood Plans.

55) Although discrete elements of paragraphs E8.1 and E8.2 group environmental assets of varying levels of designation, the whole of paragraph E8.3 explicitly distinguishes international sites. Hence reading Policy E8 as a whole we consider the policy does reflect the hierarchy of site protection according to site “status”.

56) We found difficulty in setting out this hierarchy in a more binary way given the “contribution” made by lower status sites to the “wider ecological network”. For example, referring to the list of sites at paragraph E8.1, it appeared to us all of the sites listed in the bullet points inter-relate with one another.

57) Policy E8 is considered by the Forum to be important and we do not wish to rely solely on the LP for protection of important designated biodiversity/geodiversity assets. Indeed, we consider that paragraph E8.3 is particularly relevant. Should the Examiner be minded to recommend modifications we would respectfully ask she consider wording changes prior to striking out the policy.

**Policy T1: Linking of new developments to travel improvements**

- 58) The LPA 18 Dec representation suggests the existing wording is too onerous as it could apply to a porch extension etc. This was not intended. Rather the intention of the policy was that it should apply to any new developments i.e., new dwellings or new employment spaces. The Forum is happy if the Examiner wishes to recommend changes to effect this.

**A&C1: Promotion and protection for the arts and local culture**

- 59) The LPA 18 Dec representation suggests the existing reference to “fringe benefits” could be improved. The Forum is happy if the Examiner wishes to recommend the changes as suggested by the LPA.

Brixham Peninsula Neighbourhood Forum

Working Group

28 May 2018