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Our Ref: 19182/A3/NH/jmm

9th March 2015

Dear Robert

RE: TORBAY LOCAL PLAN: INSPECTOR'S INITIAL AND FURTHER FINDINGS

We welcome the progress that is being made regarding the Torbay Local Plan but are concerned that there remain a number of significant outstanding issues which must be addressed before the draft Local Plan is to progress to the 'stage 2' sessions. These concerns are being aired now because a failure to resolve these issues would, in our opinion, result in a fatally flawed plan that would be amenable to a subsequent challenge in the High Court.

The issues set out below were raised in the representations made by the development industry at the Examination in Public, but it is noteworthy that there is no reference to these representations in the Inspector's Initial or Further Findings. The purpose of this letter is not to repeat these representations, but to highlight the unresolved issues.

Full Objectively Assessed Need

The Inspector stated (paragraph 2, Initial Findings):

"A number of those making representations argue that there is an inconsistency between the housing proposed and the housing need that would arise if the economic strategy is successful. These groups argue that the economic strategy will be put at risk if the housing supply is restricted to a level below what is needed on the basis of the predicted job growth. They consider that the inconsistency should be resolved by increasing the level of housing provided for in the plan."

The issue which arises is that the Inspector then restricts his consideration to the district of Torbay, for which he arrives at an objectively assessed need of 12,300 homes in order to deliver 5,430 jobs. This was based on the analysis produced by Peter Brett Associates for the Council in their 2013 study, where they consider a job range of 2,000 to 17,000 but conclude that 5,430 is realistic. These projections are thus both policy-on and dated. It is of note that the need to commence with policy-off projections was confirmed on 17 December 2014 in *Gallagher Homes Ltd*

v Solihull MBC [2014] EWCA Civ 1610. The Inspector has not addressed the more recent evidence provided under the guidance set out in the PPG by Barton Willmore and its policy-off job projection figures. These figures indicated a need for 18,800 dwellings to support the projected net job growth of 12,200.

The procedure to follow, as set out in the PPG, is staged: (1) assess need at housing market area level, (2) consider the latest demographic, employment change and market signals evidence in order to arrive at the full objectively assessed housing need for both the housing market area and the district. This was not done.

Market Signals and Suppressed Housing Demand

An additional highly problematic omission is with regard to market signals. These should be considered at housing market area level and at the level of supply necessary to alleviate them. The Inspector's analysis moves straight from jobs to constraints (paragraph 14 to 15, Initial Findings). The Inspector concludes that the Council's area can accommodate around 10,000 of the Council's accepted objectively assessed need for 12,300 homes. The Inspector concludes this constitutes a significant boost. However, it is worth noting that in the draft Regional Strategy the Panel identified a need of 20,000 dwellings. The Secretary of State subsequently reduced this figure, but only by 5,000 dwellings. Therefore, the Inspector's reduction of another 5,000 dwellings does not, in light of the evidence, accord with the policy imperative to boost significantly the supply of housing.

There was also evidence of suppressed household formation in the evidence before the Inspector. Yet the Inspector's Findings do not refer to headship rates and suppressed household formation. Specifically, at the Examination in Public the 'full return' headship rate approach was discussed as a means to address suppressed household formation. The Inspector asked the Council for their opinion of the approach suggested by Barton Willmore as opposed to the index approach used by Peter Brett Associates. The Council's comments have not been provided nor has the Inspector expressed his opinion on this issue, which therefore remains to be resolved.

Duty to Cooperate

The lack of any reference as to where the Council's unmet need of 2,300 dwellings could be accommodated, if it could be accommodated elsewhere at all, indicates a failure to comply with the Council's duty to cooperate. There is no evidence before the Inspector which would satisfy the Council's duty to actively plan to accommodate this substantial and identified unmet housing need, beyond a plan to review housing requirements every five years and an annual review of delivery through the South Devon Delivery Review Panel. The Inspector was forced to comment only that he "*noted the duty to cooperate material [was] not yet finalized*" (paragraph 4, Further Findings). Unless this material is provided and demonstrates a plan to accommodate these additional dwellings within neighbouring authorities the Council has not satisfied its duty to cooperate. It should be noted there are no means by which such a failure can be rectified.

The Covenant Issue

The Council's officers themselves have expressed their opinion that the covenant issue would render the plan unsound. Following the end of the stage 1 sessions on 20 November 2014 the Mayor approved the covenant on 4 December 2014. The Inspector, upon being informed of this wrote to the Council:

"I also need to know about how [the Council] intend [to proceed] with consulting on the Mayor's decision to go ahead with a referendum. I think this is a critical matter that I will need to consider in the light of the council's revised approach and any representations received in the light of the decision. This matter relates to the question of delivery – a crucial soundness consideration." (15 December 2014)

"...nothing I heard at the hearing sessions led me to believe that the plan could not be made sound. However since then the Council has made their decision about the referendum. I will need to consider how that impacts on soundness, particularly in relation to how effective the plan is likely to be." (22 December 2014)

The Council's proposal to replace the Churston Golf Course development in the five year housing land supply calculations with the recently approved application for 165 dwellings at Wall Park, Brixham does not address the precedent effect for other Council-owned sites. The Council confirms that it has sought legal advice on this issue, and acknowledges that if other sites were subject to the same request it could be subject to legal challenge due to a failure to act consistently.

The Mayor's decision has been referred to the Secretary of State, but it is evident that until the covenant issue is resolved the deliverability and effectiveness of the plan is in question and thus it could not be considered to be sound.

Yours sincerely

Lawrence Turner

LAWRENCE TURNER
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