

Meeting: Council

Date: 7 December 2017

Wards Affected: All Wards

Report Title: Application for Designation of Neighbourhood Forums and Areas for Torquay, Paignton and Brixham Peninsula

Is the decision a key decision? Yes

When does the decision need to be implemented? Prior to 5th January 2018

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1. Proposal and Introduction

- 1.1 Applications have been received to re-designate the three Neighbourhood Forums as “qualifying bodies” (Reg 8)¹ as well as the neighbourhood areas (Reg 5). These require separate decisions for each application. The current designations, both neighbourhood areas and qualifying bodies, for each of the three current designations expire on 6 December 2017. Torbay Council, as Local Planning Authority (LPA), must consult on the applications for designation and make a decision within 13 weeks of publicising the application. The proposals are due for consideration by Council on the 7th December 2017, which is the last Council meeting within the 13 week deadline to determine applications. The consultation period has been completed.
- 1.2 The primary function of the Neighbourhood Forums is to prepare neighbourhood plans. In addition to preparing neighbourhood plans, Forums are also consultees on planning applications in their area². The Localism Act 2011 also allows them other planning functions such as bringing forward local development orders. Forums also have a role in commenting on other plans and strategies in the area and may choose to update their plans.
- 1.3 This report sets out the background, legal framework and considerations that apply to the applications to designate the Neighbourhood Forums and their associated areas. A joint statement by the Forums in support of their application for re-designation is reproduced at Appendix 2.

¹ Unless stated “the Regs” refer to the Neighbourhood Planning (General) Regulations 2012 (as amended).

² The Neighbourhood Planning Act 2017 requires Forums to be notified of planning applications in their area.

2 Reason for Proposal

- 2.1 Neighbourhood Forums were created by the Localism Act 2011. Neighbourhood planning is intended to “provide a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. When ‘made’ (adopted) Neighbourhood Plans will form part of the Development Plan for the area upon which planning applications will be determined. Neighbourhood Plans should therefore (amongst other basic conditions) be in general conformity with the strategic priorities of the Local Plan” (NPPF 184).
- 2.2 Torbay is very unusual in that it opted in 2011/12 to have district wide Neighbourhood Plan coverage, comprising three Forums (Torquay, Paignton and Brixham Peninsula), and to rely on Neighbourhood Plans to deliver a significant part of the Bay’s housing and development requirements. This was in line with the “localism agenda”. The Local Plan strategy was structured around the three areas, setting clear minimum growth targets for each area.
- 2.3 The three Neighbourhood Forums and Areas were approved by full Council on 6 December 2012. Forum designation lasts for five years and therefore their status expires in December 2017. The publication and consultation on Forum and area designations has been carried out between 6 October and 20 November 2017. These are larger than the size of areas suggested by the Planning Practice Guidance, which suggests that LPAs should consider Forums based on parish or ward boundaries, of around 5,500 people (PPG 41-033-20140306). However, the PPG is only advice and was not in any event available to the Council when it previously approved the Forums and their associated areas in 2012.
- 2.4 The Forums have submitted a joint statement supporting the applications for the renewal of their status and their areas, which is attached at Appendix 2. A key purpose in applying to re-designate their status is in order to make any modifications to the Submitted Plans that might be required post Examination (likely to be held early 2018). The Forums were consulted on an earlier version of this report, and asked for comments on the tone and accuracy of this report.
- 2.5 There is no legislative process for re-designation. The legislation only makes provision for a new designation. This may have been because it was not anticipated that a qualifying body was required to continue their role once a plan had been produced. In this case, the new applications are made to designate in accordance with the regulations. There is also no provision for varying the term of the Forum status except that a Forum can choose to voluntarily withdraw the designation. It would be expected therefore that any such re-designation would be in place until December 2022, whether or not the submitted plans are approved through examination, referendum, and Council.
- 2.6 When determining neighbourhood area applications, a Local Authority can choose to designate as submitted, make modifications to the area proposed, or refuse the application. However, where a valid application is made, there is no overlapping with another designated area, and the authority are minded to refuse because the area is not appropriate, the authority must ensure that area is included in one or more other areas.

- 2.7 These applications directly relate to the areas set out within the Local Plan and are strategically important in the distribution of growth across Torbay. The designation of an area does not expire and as such will be maintained in accordance with the December 2012 decision.
- 2.8 Representations have been submitted which propose amendments to the boundaries. The main focus of concern is whether Brixham Town Council should have a designation that only includes the parish boundary, excluding the Churston, Galmpton, Broadsands and Waterside areas from the current Brixham Peninsula area. The various representations propose that these areas are included within Paignton, or are separated with parts to be included within Paignton and a fourth Forum area designated. A concern has also been raised about the scale of the areas concerned, with particular reference to Torquay.
- 2.9 In this case the areas are considered to support the Local Plan. Whilst there may be benefits from designating smaller areas (in accordance with Planning Practice Guidance advice), it would not offer benefit to modify the designated areas at this stage, not least following the submission of the plans. The scale is significant and whilst unusual, Torbay is not unique in designating large scale areas. Again, there is little justification to propose alternative boundaries. This is a separate matter from Forum designation.
- 2.10 The Localism Act 2011, specifies where a LPA may designate a “qualifying body” (i.e. a Forum) and area³. In summary, in order to be eligible for designation as a Forum, a group must:
- Include the town or parish council where they exist in an area (i.e. Brixham Town Council)
 - Be the only Forum in a particular area, and boundaries cannot overlap.
 - Be established for the express purpose of promoting or improving the social, economic and environmental well-being of the Forum area.
 - Be open to individuals who live or work in the area or are elected to it.
 - Have at least 21 members who live in, work in or are elected to an area.
 - Have a written constitution.
 - Meet other conditions as may be prescribed (by Government).
- 2.11 The Localism Act (as inserted into the T&C Planning Act 1990) indicates that local planning authorities must, when determining applications for Forum designation have regard to the desirability of designating an organisation or body:
- (i) which has secured (or taken reasonable steps to attempt to secure) that its membership includes at least one individual falling within each of individuals that live in the area, work in the area or are elected members in the area concerned.

³ Schedule 9 Section 61F of the Localism Act 2011, inserted into the Town and Country Planning Act 1990.
<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9>

- (ii) whose membership is drawn from different places in the neighbourhood area concerned and from different sections of the community in that area, and
- (iii) whose purpose reflects (in general terms) the character of that area

- 2.12 All three Forums have submitted Plans to Torbay Council for publication and independent examination. The three plans are out for public consultation between 1st November 2017 and 18th December 2017. As stated in Paragraph 1.2, the primary function of the Forums is to prepare the Neighbourhood Plans. Following submission and LPA led consultation, the LPA must appoint an examiner who will consider the Plan and prepare a report. Once this report has been submitted to the LPA, and any modifications are made, the report must be put to referendum. Finally it will be for Council to “make” or approve the document as part of the development plan.
- 2.13 When considering applications for designating Forums the Planning Practice Guidance advises against pre-judging plan proposals and accordance with “basic conditions”: *“a local planning authority should avoid pre-judging what a qualifying body may subsequently decide to put in its draft neighbourhood plan or Order. It should not make assumptions about the neighbourhood plan or Order that will emerge”*⁴.
- 2.14 In this case, the plans have been submitted and, although not examined, the intent of the qualifying bodies is made clear in the proposal. This is an exceptional circumstance where the application for designation overlaps the period between submission and Council deciding or refusing to make a Neighbourhood Development Plan. Council officers have made representations to earlier draft publications of the Neighbourhood Plans and is considering the response to the current submission. Discussions are ongoing with the Forums about the criteria which should apply to appointing an independent examiner. This slight delay is unfortunate but it is important that agreement is reached about fair criteria for appointing the independent examiners.
- 2.15** Concerns raised about the submitted Plans to date are set out in more detail in Appendix 1. However, in summary there is a concern that the combined effects of the policies in the Submitted Plans, coupled with the Forums’ role as a consultee on planning applications and other strategies, would result in a more restrictive planning regime than set out in the Local Plan. All three Plans make significant provision for additional landscape protection and demanding criteria for any new development, potentially impacting on the deliverability and viability of development opportunities. It is recognised that both Brixham and Torquay Neighbourhood Plans do make site allocations, which appear, subject to testing at examination, to be in accordance with the requirements of the Local Plan for housing and employment. Paignton Neighbourhood Plan is accompanied by a detailed statement indicating why it considers further allocations are not required⁵. However, although meeting the Local Plan target is the principal step, there was a hope, or an aspiration, that in accordance with consistent messages from Government and knowing that the Local Plan conformity would not prevent it, additional provision could be included. Government have stated that they consider housing to be the single biggest challenge of our age and

⁴ PPG 41-035-20161116. This is guidance and not law. It relates to creating forums rather than renewing them, and assumes that plan proposals have not been prepared.

<https://www.gov.uk/guidance/neighbourhood-planning--2>

⁵ Document 1 Basic Conditions Statement, Appendix 4 pp 16-54

that all Councils are expected to do their bit. This must include the Neighbourhood Forums and the Plans that they produce, which are integral to our development plan policies for the years to come.

- 2.16 It could reasonably be argued, for the reasons set out in 2.15 above, that the Forums have not necessarily met the requirements of the Localism Act (61F (5) (a)) i.e. 'established for the express purpose of promoting or improving the social, economic or environmental well-being of an area'. Indeed a significant number of representations also support the re-designation because the Forums are a good way of supporting the community aspirations to resist development. This could be interpreted as being in at odds with the Corporate Plan objective of **"Working towards a prosperous Torbay"**; but equally it would support the objective **"to ensure Torbay remains an attractive and safe place to live and visit"**.
- 2.17 Following the public consultation, representations have also been received which challenge how representative the Forums are and/or have been, both in quantum and diversity. The applications each confirm that the minimum requirements are met. However, a request for further clarification on membership has been submitted to each Forum.
- 2.18 It has also been noted that Forums have a role, recognised in law, as a consultee on planning matters. This would include all planning applications and new policy documents, such as the updated Local Plan and other Supplementary Planning Documents. Approval by Council to re-designate would give the Forums the opportunity to submit representations as a qualifying body, until December 2022. Experience to date has shown that this has had a significant impact on Council resources day to day, not least through the current Local Plan making process. Council officers have given considerable amounts of time to support the Forums to produce and submit their plans. The advice given has not always been accepted and has resulted in the concerns raised about the plans to date.
- 2.19 The issue of Neighbourhood Plan renewal was discussed at PDDG on the 6th November 2017, where Members expressed a general view of support for Forum renewal, notwithstanding the ongoing public consultation, and expressed thanks to the large amount of volunteer time that had gone into preparing the submitted Neighbourhood Plans.
- 2.20 Representations received on the Forum and area renewal consultation (carried out together) are set out in Appendix 3. It will be noted that there were 142 representations in support of re-designation. The majority of these were from individuals although a number of local organisations also expressed support. Many of these saw the Forums as a way of resisting what they perceive as unsustainably high levels of housing. There were two objections to Forum and area renewal, one of which was from a developer. There were 3 objections to the boundaries of the Brixham Peninsula neighbourhood area and 1 letter suggesting that Paignton's area should be enlarged. The total response equates to approximately 0.13% of Torbay's electorate.
- 2.21 It will be noted that the criteria for considering Forum creation, set out at 2.10 and 2.11 above, require regard to be had to the desirability of creating Forums which meet the specified criteria. It is also noted that, in the event of the Forums not being renewed, Brixham Town Council would, in any event, remain authorised to act as the "designated body" within the parished area of Brixham.

2.21 **The issues relating to the content of Neighbourhood Plans will be considered separately and by an Independent Examiner, this is not a matter for this report.** Each Plan will be assessed on the basis of how far they meet “basic conditions” (which include being in general conformity with the Local Plan and having regard to national policy). As stated above this is a separate issue to Forum and Area renewal however the intentions of the Forum should be noted by Members and given consideration when reaching a decision.

2.22 **The recommendation from the Executive is set out below and all of the options for Members to consider are set out in more detail in section 3 of Appendix 1.**

3 Executive Recommendation(s) / Proposed Decision

- 3.1 That the Council considers the three applications for area and Forum re-designation, in accordance with the specified criteria set out in the Localism Act 2011 (and summarised in this report), whilst recognising that this decision is without prejudice to any representation to, or considerations of, the submitted Plans.
- 3.2 That the Council recognises that the area status does not expire and will still be maintained in accordance with the decision made in December 2012.
- 3.3 That the application in accordance with the Neighbourhood Planning (General) Regulations 2012 (as amended), Regulation 8 for the qualifying body for Torquay be approved, and that the Council publicise this decision in accordance with Regulation 10.
- 3.4 That the application in accordance with the Neighbourhood Planning (General) Regulations 2012 (as amended), Regulation 8 for the qualifying body for Paignton be approved, and that the Council publicise this decision in accordance with Regulation 10.
- 3.5 That the application in accordance with the Neighbourhood Planning (General) Regulations 2012 (as amended), Regulation 8 for the qualifying body for Brixham Peninsula be approved, and that the Council publicise this decision in accordance with Regulation 10.

Appendices

Appendix 1: Supporting Information and Impact Assessment.

Appendix 2 Joint Statement by the Neighbourhood Forums

Appendix 3: Summary of representations received on the Regulation 5 and 8 consultations (which ran between 6th October- 20th November 2017).

Background Documents

Localism Act 2011 especially Schedule 9 Section 61(F) (Which is inserted into the Town and Country Planning Act 1990)

The Neighbourhood Planning (General) Regulations 2012 as amended. Particularly Regs 5 to 10

National Planning Policy Framework (NPPF)

(National) Planning Practice Guidance (PPG) Chapter 41

Submitted Neighbourhood Plans for Torquay, Paignton and Brixham and accompanying documents. Available at www.torbay.gov.uk/neighbourhood-plans

Torbay Local Plan 2012-30 A landscape for success. <http://www.torbay.gov.uk/newlocalplan>
Torbay Council Corporate Plan and delivery Plans 2015-2019.