



Meeting: Council

Date: 15 November 2018

Wards Affected: All Wards in Torbay

Report Title: Paignton Neighbourhood Plan – Determination of Independent Examination

Is the decision a key decision? Yes

When does the decision need to be implemented? A decision statement must be issued “as soon as possible” after Council.

Executive Lead Contact Details: Councillor Derek Mills, Deputy Mayor and Executive Lead for Planning, derek.mills@torbay.gov.uk

Supporting Officer Contact Details: Kevin Mowat, Assistant Director Business Services / Acting Assistant Director Planning and Transport, kevin.mowat@torbay.gov.uk

1. Proposal and Introduction

- 1.1 Neighbourhood planning was introduced by the Localism Act 2011; that Act introduced new rights and powers to enable communities to become directly involved in planning for their areas. Neighbourhood planning enables interested communities to produce a Neighbourhood Plan. There are detailed statutory requirements which dictate the process for formulating and making a neighbourhood plan.
- 1.2 Once ‘made’ (i.e. “adopted”), Neighbourhood Plans form part of the statutory development plan and therefore become an important consideration when determining planning applications.
- 1.3 This report sets out the local planning authority (LPA) officers’ recommendations in respect of the submitted plan.
- 1.4 The Paignton Neighbourhood Plan (‘the Plan’) has been submitted by the Paignton Neighbourhood Forum (‘the Forum’) who are the Qualifying Body for the area of Paignton as formally designated in December 2012 and reaffirmed in December 2017. A map of the designated area is shown in Appendix 4. It should be recognised by the Council that the Forum has worked tirelessly to prepare the plan.

- 1.5 The Plan has been the subject of a consultation and, following that, an independent examination which tested whether the Plan meets the requirements of the 'basic conditions' as set out by law.
- 1.6 The Examiner's report on the Plan was received by Torbay Council and the Forum on 18th July 2018. It recommends that, subject to the modifications proposed in the report, the Plan does meet 'basic conditions' and should proceed to a referendum. The Examiner also recommends that the referendum area does not need to be extended beyond the designated Plan Area.
- 1.7 Officers have considered each of the Examiners recommendations and reasons given in accordance with the law as set out in Appendix 2. In summary, a set of modifications that meet the legal 'basic conditions' are now proposed.
- 1.8 These modifications accept the vast majority of the Examiner's recommendations, but make a number of modifications not recommended by her. These additional modifications have reasons for doing so which find a proper statutory basis, and reflect an appropriate exercise of planning judgment taking all of the submitted representations into account. Four policies in particular which the examiner recommended be moved to a community aspiration section of the Plan have been retained. The rewording and retention of these policies are considered to meet the 'basic conditions' more closely than the examiner's unalloyed modifications. The need for re-consultation is discussed later in the Report, but Officers' advice is that this is not legally necessary in this case. In summary, the modifications proposed are not as a result of new evidence, or a new fact, or a different view taken by the authority as to a particular fact. Instead the modifications are as a result of a planning judgement taken on how the submitted Plan can meet the 'basic conditions' whilst maintaining the original intent of the community.
- 1.9 The Forum have indicated that they are in agreement with the Officer recommendations to Council.
- 1.10 It is recommended that the Council:
 1. Agrees the decision statement in Appendix 2, which shall be adopted and published accordingly, and that the Paignton Neighbourhood Plan as modified in Appendix 3, is submitted to a referendum in accordance with the Neighbourhood Planning (General) Regulations 2012 (as amended) and the Neighbourhood Planning (Referendums) Regulations 2012 (as amended); and,
 2. Delegate to the Assistant Director of Transport and Planning to ensure that the Policy maps are finalised for inclusion in the Plan prior to the referendum, reflecting all modifications set out in the decision statement in Appendix 2; and,

3. Accepts the Examiner's recommendation that it is not necessary to extend the referendum area and that the most appropriate area for the referendum will be that of the Paignton Neighbourhood Area.

Appendices

- Appendix 1: Independent Examiner's Report
- Appendix 2: Decision Statement
- Appendix 3: Post Examination Neighbourhood Plan with modifications as recommended
- Appendix 4: Neighbourhood Area Map

Background Documents

- Paignton Neighbourhood Plan Submission Version, and representations – www.torbay.gov.uk/neighbourhood-plans
- Council Approval of area designation – 7th December 2012 – www.torbay.gov.uk/council
- National Planning Policy Frameworks 2012 and 2018
- Planning Practice Guidance
- NPIERS Guidance
- Locality Neighbourhood Plans Roadmap

Supporting Information

Section 1 : Background Information

2. What is the proposal/issue

- 2.1 The Localism Act 2011 introduced new rights and powers to enable communities to get directly involved in planning for their areas. Neighbourhood planning allows interested communities through a Neighbourhood Forum to produce a Neighbourhood Plan.
- 2.2 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPG) state that neighbourhood planning enables communities to play a much stronger role in shaping the areas in which they live and work and in supporting new development proposals. It provides the opportunity for communities to set out a positive vision for how they want their community to develop and can put in place planning policies that will help deliver that vision of granting planning permission for the development they want to see.
- 2.3 In 2012, the Council decided to designate three large neighbourhood areas covering 100% of the geographical area of Torbay. This decision was unusual in the UK and has meant that the three neighbourhood plans are large and complex, which has required significant work by the community and LPA in formulating the plans.
- 2.4 There are a series of regulatory stages required by the Neighbourhood Planning (General) Regulations 2012 (as amended) ('the Regulations') that a plan must follow and the Paignton Neighbourhood Plan has been through these to date. Key dates are as follows:
- December 2012: Paignton Neighbourhood Forum and Area Designated.
 - 19 April - 31 May 2017: Pre-submission (Regulation 14) consultation on the draft Plan.
 - 18 August 2017: Paignton Neighbourhood Plan submitted to Torbay Council as the LPA.
 - 1 November - 18 Dec 2017: Plan published by Torbay Council for formal Regulation 16 public consultations.
 - December 2017: Neighbourhood Forums and Areas Re-Designated for statutory 5 years.
 - March 2018: Independent Examiner (Deborah McCann) appointed. Her examination commenced in April 2018.
 - 10 May 2018: Exploratory Meeting held as part of examination process.
 - 16 May 2018: Further clarification requested by Examiner and provided.
 - 18 July 2018: Final Examiners Report received.
- 2.5 The Council has a duty to provide advice and assistance to neighbourhood forums and to engage constructively with the community throughout the neighbourhood planning process including when considering the recommendations of the independent examiner. However, the Council remains the Local Planning Authority with statutory responsibility for ensuring that the

neighbourhood plans it 'makes' are lawful. If a neighbourhood plan is not lawful, the LPA (not the neighbourhood forum in question) will be liable to legal challenge e.g. by landowners whose interests may be affected by the plan.

- 2.6 A neighbourhood plan must support the strategic development needs set out in the Local Plan, positively support local development, not promote less development than set out in the Local Plan, nor undermine its strategic policies.
- 2.7 If successful at examination and referendum a Neighbourhood Plan must then be 'made' (i.e. adopted) by the Council within 8 weeks and at that point it comes into force as part of the statutory development plan. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Should there be a conflict between a policy in a neighbourhood plan and a policy in a Local Plan, that conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.
- 2.8 Unlike a local plan, the test for a neighbourhood plan is not one of 'soundness'. The role of the Examiner (and the Council acting as LPA) is limited to testing whether the draft Plan meets the 'basic conditions' and other matters set out in para 8 of Schedule 4B of the Town & Country Planning Act 1990 (as amended). The 'basic conditions' are that;
 - a. having regard to national policy, it is appropriate to make the Plan;
 - b. the Plan contributes to the achievement of sustainable development;
 - c. the Plan is in general conformity with the adopted strategic local policies for the local area;
 - d. the Plan is compatible with EU obligations;
 - e. the Plan meets Human Rights requirements.

The Examiner must also consider whether the referendum area should extend beyond the neighbourhood area.

- 2.9 It is the responsibility of the Council, as LPA, considering the recommendations and reasons of the examiner, to ensure that, with or without modifications, the Plan meets the 'basic conditions'. If it is so satisfied, the Council must make arrangements for the Plan to proceed to referendum – in accordance with paragraph 12(4) of the Town & Country Planning Act 1990 (as amended). Although the examiner is the specialist advisor, the Council is the decision-maker. The examiner's report cannot, of itself, be the subject of a legal challenge. The Council must consider each of the examiner's recommendations (and the reasons given) and decide what action to take in response to each of those recommendations. Regulation 18(2)(a) of the Neighbourhood Planning Regulations 2012 (as amended) require the Council to give the reasons for its decision. The decision must then be published in the form of a 'Decision Statement'. A Decision Statement must be published within 5 weeks of receipt of the Examiner's report, unless some other date has been agreed with the Neighbourhood Forum. In this case, it was agreed by the LPA and Neighbourhood Forum that the time would be extended to allow time to consider the matters in full.

- 2.10 The modifications that the Council may make are prescribed in legislation – extract set out below:
- 'a modifications that the authority consider need to be made to secure that the draft order meets the 'basic conditions',
 - b modifications that the authority consider need to be made to secure that the draft order is compatible with the Convention rights,
 - c ...
 - d ..., and
 - e modifications for the purpose of correcting errors.'
- (note: (c) and (d) do not apply to Neighbourhood Plans)

If the Council (as LPA) can make modifications to a neighbourhood plan to enable that plan to meet the 'basic conditions', it must make those modifications (rather than refuse a Plan proposal). However, the Council can only make such changes and cannot modify a plan for betterment. Such modifications should be discussed with the Neighbourhood Forum, but there is no general requirement for a formal consultation with interested parties or the public.

- 2.11 If the Council decides not to follow the Examiner's recommendations, or make minor alterations as described in paragraph 2.9 above; it may instead make alternative modifications or even refuse to submit the plan to referendum. Clear reasons must be given for departing from the Examiner's recommendations. Modifications not recommended by the Examiner must be discussed with the Qualifying Body, which has the option of withdrawing the plan if it is unhappy with the changes proposed by the Council.
- 2.12 Generally paragraph 12 of Schedule 4B gives the LPA a fairly broad power to make minor modifications that accord with the Examiner's recommendations without the need for further consultation. Paragraph 13 of Schedule 4B states that if the LPA propose to make a decision which differs from that recommended by the examiner and the reason for the difference is wholly or partly as a result of new evidence or a new fact or a different view taken by an authority as to a particular fact, then the LPA must consult on the changes for a minimum of six weeks.
- 2.13 In respect of the requirement to undertake further consultation on any changes not recommended by the Examiner, Officers have considered the relevant legislation and taken legal advice¹. It is not considered that further consultation is necessary in this case as there has been no new evidence or facts, and the reasons why the decision is differing from the examiner is based upon the planning judgement of compliance with the 'basic conditions', but it is not a different view of a fact.

¹ The Court of Appeal in *Kebbell Developments* [2018] EWCA Civ 450) especially paragraphs 34-35. It is noted that Lord Justice Lindblom clearly distinguishes between the exercise of planning judgements and matters of fact (paragraph 49). Paragraph 50 rules that paragraph 13 (of Schedule 4B) "*does not generate.... a general entitlement to additional consultation after the examination has taken place*",

- 2.14 A Forum may withdraw its Neighbourhood Plan at any time before the Council issues its Decision Statement (which is to be issued shortly after the Council meeting).
- 2.15 Members should also note that a new National Planning Policy Framework (NPPF) was issued in July 2018. Paragraph 214 of the new NPPF allows a transition period for examining plans submitted up to 24th January 2019: therefore the three Neighbourhood Plans in Torbay continue to be considered against the 2012 NPPF. However the new (2018) NPPF is material to decision-taking, with respect to planning applications, immediately. Paragraph 14 of the 2018 NPPF specifies the weight that may be given to neighbourhood plans and provides a degree of protection against the Presumption in Favour of Sustainable Development (now in NPPF 11).
- 2.16 Legislation sets out that the Secretary of State has powers to intervene at the request of the Qualifying Body, where requested in writing by a qualifying body within 6 weeks of the publication of the decision notice, in the following circumstances:
- the Council fails to make a decision within 5 weeks of an examination report. (*Note: All parties have agreed to an extension to the 5 week period until the Council meeting on 15 November 2018*);or
 - where the Council does not follow all of the Examiner's recommendations; or
 - the Council modifies the plan in a way that was not recommended by the Examiner (except where the modification is to ensure compatibility with EU or human rights obligations or to correct an error).

However the Secretary of State may agree to intervene in other situations.

- 2.17 In such cases the Secretary of State (or an Inspector appointed by him) may exercise the functions of the local planning authority in deciding what actions to take with respect to the Examiner's report.

3. What is the current situation and what options are available

- 3.1 In response to the report of an Independent Examiner, the LPA must decide whether the Plan should be submitted to referendum. The LPA's options are that:

- 1. Council accepts the Independent Examiner's recommendations in their entirety** that the Plan (with any modification by the Independent Examiner) should be submitted to referendum.
- 2. The Council does not accept the Independent Examiner's recommendations in their entirety.** Reasons must be included and what modifications are proposed by the Council which must show they accord with the 'basic conditions' requirements in relation to the plan as submitted. A schedule of proposed further modifications has been prepared (at Appendix 2) which both the Forum and officers support.

- 3. To refuse the plan** (on the basis that the plan proposal does not meet, or cannot meet with modification, the 'basic conditions' and Convention rights). Reasons must be included.
- 3.2 The issues around Paignton Neighbourhood Plan are discussed in section 4 of this report. In summary, officers consider that the Plan is now capable of proceeding to referendum. However, there are a number of matters that have been developed further from the Examiner's recommended modifications, ensuring those modifications are within the limitations of the regulations. The most significant of which are the retention in modified form of four policies recommended for deletion by the Examiner, which are considered by officers to contain legitimate elements capable of being retained in policy form that would meet the 'basic conditions'. These further changes have been discussed with the Neighbourhood Forum, and are considered by officers to maintain the original intent of the community and ensure it meets the 'basic conditions'. These changes are discussed in more detail in Section 4 of this report and set out fully in Appendix 2.
- 3.3 The LPA must also decide whether to extend the area to which the referendum is to take place. As the three neighbourhood areas are clearly defined and there are no significant cross-border policies in the Plan, it is not considered necessary by the Examiner or the LPA to extend the area to which the referendum is to take place.

4. Examiner's Recommendations (see Appendix 1)

- 4.1 The Examiner did not consider it necessary to make significant changes to the policy text of the Paignton Neighbourhood Plan and has instead proposed a series of modifications. Four (out of twenty seven) policies were recommended for deletion and transfer to a non policy part of the plan. Other policies were modified to ensure they meet the 'basic conditions'. The LPA, in consultation with the Forum, consider that these four policies, and some other recommended deletions are capable of being retained in modified form to meet the 'basic conditions'. A more detailed assessment of the Examiner's recommendations is set out at Appendix 2.
- 4.2 The LPA, made a series of representations on the submitted plan which have been considered by the examiner, along with those from other Council departments and third parties including the development industry. The key concerns raised by the LPA are set out below but the Examiner's report, in Appendix 1, addresses these and others in full.

Housing Allocation

- 4.3 Officers raised objections at the formal consultation stages that the Paignton Neighbourhood Plan was not in general conformity with the Adopted Torbay Local Plan 2012-30 as it does not make site allocations for housing, which would make it difficult for Torbay to demonstrate five years' housing supply. The LPA also raised an objection that the net effect of the Plan's regulatory policies would be to promote less development than in the Local Plan. These concerns were echoed by other representations.

- 4.4 Despite these representations, the Examiner's Report concluded that there is no mechanism to require a neighbourhood plan to allocate sites, and on this basis the Neighbourhood Plan is not in conflict with the strategic priorities of the Local Plan (pp 13-14 of the report).
- 4.5 Officers have carefully considered the Examiner's report and whether the Plan should be modified by the insertion of housing sites. Whilst this approach would be consistent with the LPA's representation and advice to the Forum, the Examiner has considered the arguments in detail and recommended that the Plan meets the 'basic conditions' without including site allocations. Accordingly, it is considered that the Council should not seek to modify the Plan by the insertion of housing sites.
- 4.6 It should be noted that housing sites can be allocated through the Local Plan review process (by December 2020) based on up to date evidence at that time and in consultation with the Neighbourhood Forums.
- 4.7 As previously reported to Council, officers have assessed the stock of deliverable housing sites against the local Plan housing requirement and have concluded that Torbay has around 4.19 year supply of deliverable housing sites. The Forums disagree with this figure, and argue that there is at least 6.1 year supply. The LPA's position, including responses to the Forum's position, is set out at:
<https://www.torbay.gov.uk/council/policies/planning-policies/evidence-base-and-monitoring/>

These issues were presented to the Examiner as part of the Exploratory meeting held in public.

- 4.8 National planning policy says that when a council does not have a 5-year supply of deliverable housing sites relevant local policies are considered out-of-date. Instead of planning applications being decided based on local policies, national policies are likely to take precedence. That means that if a site can be considered 'sustainable development' (as defined in the NPPF) then planning permission should be granted, irrespective of what the Local or Neighbourhood Plan may say. Consequently it can be seen that without a 5 year supply, both the LPA and local community will have less control over where new homes are built. Members are asked to note Officer advice that the LPA is not able to demonstrate a 5-year housing land supply, and the Paignton Neighbourhood Plan does not allocate housing sites.
- 4.9 The Government has sought to provide some protection for neighbourhood plans against the effect of a five year supply shortfall. Paragraph 14 of the 2018 NPPF provides that, where a 5-year housing land supply cannot be demonstrated, development which conflicts with the provisions of a recent neighbourhood plan is less likely to be 'sustainable development' where, amongst other things;
- i. the LPA can demonstrate a 3-year housing land supply; and

- ii. the neighbourhood plan contains policies and allocations to meet its identified housing requirement (*emphasis added*).

Therefore, Officer's advice is that at this time the weight that the Paignton Neighbourhood Plan will have in decision making will be significantly affected by Torbay's five year housing supply position.

Employment Allocations

4.10 As with housing, the Neighbourhood Plan has not made employment allocations. However, the Plan polices are generally supportive of employment development. The LPA is not under a NPPF obligation to maintain five years supply of employment sites. The Examiner has held that the Neighbourhood Plan cannot be required to make site allocations. In addition her Modifications render the policies more supportive of development (see below).

“Restrictive” Phasing

4.11 The LPA made representations in respect of the combined weight of the submitted Plan requirements on development, coupled with a sentence in most policies which stated that proposals which do not meet the requirements of the policy can expect not to be approved (or similar). The LPA considered that this “restrictive wording” resulted in the Plan promoting less development than the Local Plan and not supporting the Local Plan's strategic priorities in conflict with Paragraph 184 of the (2012) NPPF.

4.12 The Examiner's Modifications have removed this “negative/restrictive” wording and, along with her other recommended modifications is considered by Officers to have overcome this representation, and brought the Plan into closer alignment with the ‘basic conditions’.

Local Green Spaces

4.13 Local Green Space designations allow local communities give special protection to green areas of particular importance to them. Local Green Spaces have a similar status to green belt and development can only occur in very specific circumstances.

4.14 Government guidance (contained in paragraphs 76 and 77 of the 2012 NPPF) says that the Local Green Space designation will not be appropriate for most green areas or open space; and that the designation should be consistent with the local planning of sustainable development and complement investment insufficient homes, jobs and other essential services. The designation should be capable of enduring beyond the end of the plan period and should only be used:

- where the green space is in reasonably close proximity to the community it serves;
- where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquility or richness of its wildlife; and
- where the green area concerned is local in character and is not an extensive tract of land.

- 4.15 The Submitted Plan designated 62 Local Green Spaces, the Examiner discusses the issue of Local Green Spaces on pages 31-34 of the Report. In summary, the Examiner found that of the 62 areas of designation submitted in the Plan, 53 meet the requirements of the NPPF. It is noted that the Examiner supported Local Green Space designations at Oldway Mansion and Parkfield. Nine proposed areas of Local Green Space are recommended for deletion and the boundaries of two proposed areas have been revised to exclude parts of the originally proposed areas.
- 4.16 The Council in its capacity as landowner and the LPA made representations on a number of Local Green Spaces which were proposed on the basis that they had development potential. The LPA also raised concerns that a blanket LGS could prejudice enabling development needed to secure the longer term conservation of the historic assets such as at Oldway. The Examiner did not consider that to be a valid objection to the Local Green Space tests however, did note the need for all proposals to meet all of the tests in the NPPF, including being consistent with the local planning of sustainable development. A more detailed discussion of specific Local Green Spaces is set out in Appendix 2.
- 4.17 The extent to which the Local Green Space designations at Oldway and Parkfield House are in general conformity with the Local Plan and NPPF requires a planning judgement. The examiner's judgement is considered to be within a range of rational responses. Independent advice from Locality has confirmed that decisions on specific local greenspaces must be made against the 'basic conditions' rather than corporate landownership.

Views of the Forum on Deleted Policies

- 4.18 The Forum did not agree with the Examiner's recommendation that 4 of the policies contained in the Plan were in fact "community aspirations" which should be relegated to a separate section of the Plan. The policies in question are:
- PNP11 - Old Town
 - PNP12 - Getting around
 - PNP23 - Yalberton to Blagdon Valley
 - PNP27 - Preston
- 4.19 The Forum considers that these policies relate to land use matters relevant to planning applications and that the reasoning for the Examiner's decisions was unclear. Officers have had a two way consultation with the Forum on the revised form of wording for these four policies, which Officers consider do now meet the 'basic conditions' and it is accordingly recommended that they should be retained (in modified form) in the Plan. In addition, the LPA and Forum both consider that some policy wording recommended for deletion on local food and designing out crime (in Policy PNP1) provide useful guidance which supports strategic policies in the Local Plan and should accordingly be retained in modified form in the Plan. The schedule of recommended changes are set out in Appendix 2, and are considered by Officers to strengthen the Plan and bring it into closer alignment with the 'basic conditions'.

4.20 The LPA's powers to make modifications that have not been recommended by the Examiner and are not needed to correct errors are explained in paragraph 2.10-13 above. The recommended changes are as a result of a difference of planning judgement rather than "new evidence or a new fact". On this basis, there is not a legal requirement to carry out additional consultation on the proposed modifications.

Policies Map

4.21 In line with the Examiner's recommendation, the Forum and officers have prepared a policies map to support the Plan. In preparing the map it has also been necessary to make minor adjustments to the boundaries shown at a very small scale in the Paignton Neighbourhood Plan inset maps in order to snap onto natural landscape features etc. This has been done solely for mapping consistency reasons and does not change the substantive policy boundaries. This map has agreed with the Forum.

EU Obligations

4.22 The Council maintains the responsibility for deciding whether, or not, a Neighbourhood Plan is compatible with EU regulations.

Strategic Environmental Assessment (SEA)

4.23 A SEA is necessary due to the possibility of significant environmental effects arising from the plan. This was carried out as part of a Sustainability Appraisal which concluded that the plan mitigated negative effects and identified opportunities to enhance positive effects.

Habitats Regulation Assessment (HRA)

4.24 A HRA is required by the Habitats Directive (92/43/EEC) when the implementation of the Plan may lead to likely significant effects on European Sites. Natural England did not object to the Plan on the basis that it does not make site allocations, and therefore the plan was unlikely to result in significant effects to European sites. The ruling of the European Court of Justice in *People over Wind (PoW)* is unlikely to affect this approach. However, necessary review of the HRA position has been undertaken and changes made to the Plan, to ensure compliance with the Habitats Regulations.

4.25 The Examiner has agreed with the LPA's approach (conclusion 4 and pp 19-23 of her report).

Human Rights

4.26 Officers have raised no objection in respect of Human Rights, as considered against the European Convention for Human Rights and the Human Rights act 1998. The examiner did not raise human rights issues in her assessment of the Plan against the 'basic conditions' (Pages 7 and 19 of her report).

5. Recommended Modifications (see Appendix 3)

- 5.1 As discussed in Section 4 above, Officers have given serious consideration to modifying the Plan by the allocation of specific housing sites, but are not recommending this.
- 5.2 Officers have had a two way consultation with the Forum to modify and retain Policies PNP11, 12, 23 and 27 rather than delete them. Officers are satisfied that the policy wording as modified overcomes the Examiner's reasons for their deletion and satisfies the 'basic conditions'. It is therefore appropriate to modify the Plan as set out above and in more detail at appendix 2.
- 5.3 A number of additional minor modifications have been necessary for the purpose of ensuring legibility, grammatical and numbering accuracy of the Plan. These have also been the subject of consultation with the Forum and are indicated at Appendices 2 and 3.

6. Corporate Plan and Responsibilities

- 6.1 The Neighbourhood Plan has no legal requirement to consider or support the Corporate Plan of the Council.
- 6.2 The Paignton Neighbourhood Plan is generally more sceptical about the need for, and benefits of, growth than the Local Plan. It will not deliver the number of homes that Torbay needs. However, the Plan contains strong policies to promote good design and a high quality built and natural environment.
- 6.3 The Neighbourhood Plan has no legal requirement to consider or contribute towards the Council's responsibilities as corporate parents.
- 6.4 The Neighbourhood Plan has no legal requirement to consider deprivation. However, the plan (if approved) would contribute to sustainable development in accordance with the requirement set out in the 'basic conditions'.
- 6.5 As noted above, the Neighbourhood Forum has objected to the level of growth in the adopted Local Plan and to the Government' local housing need methodology. However, those are not relevant considerations to the Submitted Plan. The Plan (as modified) contains strong policies to improve the quality of the built environment and to resist poor quality developments. As such it provides a framework that will help resist poor quality development that would worsen environmental deprivation.

7. Financial and Legal Implications

- 7.1 The Town and Country Planning Act 1990 (as amended), Planning and Compulsory Purchase Act 2004, Localism Act 2011, Neighbourhood Planning Act 2017, and Neighbourhood Planning (General) Regulations 2012 (as amended) all apply. The Council must ensure that the Plan meets the 'basic conditions' as set out in Law.

- 7.2 There will be financial implications in respect of officer resources and direct costs associated with any referendum, should the decision be taken to put the plan to referendum. If the decision is taken to undertake further consultation and examination this will also incur additional costs and time. Central Government will provide additional grant funding to the LPA on completion of the referendum. Any costs not covered by the grant funding will fall to the revenue budget.
- 7.3 The Council can be challenged on its decision and any such challenge arising would incur additional costs as well as the resource implications.
- 7.4 When the Plan is made, the “Neighbourhood Portion” of CIL that must be spent in the area where development arises will increase from 15% to 25%. This matter will be addressed in more detail prior to the Plan being made.

8. Risks

- 8.1 The Council must consider its duty to support Neighbourhood Planning whilst ensuring that only a Plan which meets the ‘basic conditions’ is put to referendum. Failure to do so could result in legal challenge or intervention by the Secretary of State.
- 8.2 If the Plan is approved in line with the recommendations of the Examiner, the Council will not have housing allocations in Paignton other than the Future Growth Areas proposed by the Local Plan. This will exacerbate the LPA’s inability to demonstrate five year housing land supply and means that planning applications must be determined in accordance with the presumption in favour of sustainable development in NPPF 11). This may render greenfield sites more vulnerable to speculative development, although such sites are likely to have environmental or other constraints (including the need for appropriate assessment); and permission cannot be granted “punitively”. The operation of the presumption will however reduce the LPA’s ability to drive up the quality of development.
- 8.3 Additionally, if the Council decides to put the Plan to referendum and in due course it is made (adopted) then, as land owner, it will have a number of Local Greenspace designations on its assets, particularly at Oldway and Parkfield. However, the Examiner has allowed the designations despite objection from Council as landowner, and in some instances the council as LPA. The former planning permission (P/2011/0925) at Oldway Mansion has expired and there is no current scheme that would be obviously undermined by the LGS designation.