

**Independent Examiner's Report of the
Brixham Peninsula Neighbourhood
Development Plan**

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SECTION 2

Summary

As the Independent Examiner appointed by Torbay Council to examine the Brixham Peninsula Neighbourhood Development Plan, I can summarise my findings as follows:

- 1. I find the Brixham Peninsula Neighbourhood Plan and the policies within it, subject to the recommended modifications does meet the Basic Conditions.*
- 2. I am satisfied that the Referendum Area should be the same as the Plan Area, should the Brixham Peninsula Neighbourhood Development Plan go to Referendum.*
- 3. I have read the Brixham Peninsula Consultation Statement and the representations made in connection with this subject. I consider that the consultation process was adequate and that the Neighbourhood Development Plan and its policies reflect the outcome of the consultation process including recording representations and tracking the changes made as a result of those representations.*
- 4. I find that the Brixham Peninsula Neighbourhood Development Plan can, subject to the recommended modifications proceed to Referendum.*
- 5. The current development plan for the Neighbourhood Plan Area is the Torbay Local Plan 2012- 2030 adopted December 2015.*

SECTION 3

Introduction

1. Neighbourhood Plan Examination.

1.1 *My name is Deborah McCann and I am the Independent Examiner appointed to examine the Brixham Peninsula Neighbourhood Development Plan.*

1.2 *I am independent of the qualifying body, I do not have any interest in the land in the plan area, and I have appropriate qualifications and experience, including experience in public, private and community sectors.*

1.3 *My role is to consider whether the submitted Brixham Peninsula Neighbourhood Development Plan meets the Basic Conditions and has taken into account human rights; and to recommend whether the Brixham Peninsula Neighbourhood Development Plan should proceed to Referendum. My role is as set out in more detail below under the section covering the Examiner's Role. My recommendation is given in summary in Section 2 and in full under Section 5 of this document.*

1.4 *The Brixham Peninsula Neighbourhood Development Plan has to be independently examined following processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012 (as amended).*

1.5 *The expectation is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However, there are two circumstances when an examiner may consider it necessary to hold a hearing. These are where the examiner considers that it is necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case. Having read the plan and considered the representations I concluded that it was not necessary to hold a Hearing.*

2. The Role of Examiner including the examination process and legislative background.

2.1 *The examiner is required to check whether the neighbourhood plan:*

- *Has been prepared and submitted for examination by a qualifying body*
- *Has been prepared for an area that has been properly designated for such plan preparation*
- *Meets the requirements to i) specify the period to which it has effect; ii) not include provision about excluded development; and iii) not relate to more than one*

neighbourhood area and that

- *Its policies relate to the development and use of land for a designated neighbourhood area.*

2.2 The examiner must assess whether a neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

2.3 As an independent Examiner, having examined the Plan, I am required to make one of the following recommendations:

1. The Plan can proceed to a Referendum

2. The Plan with recommended modifications can proceed to a Referendum

2.4 Where a policy does not meet the basic conditions or other legal requirement I may, on occasion, need to delete wording, including potentially an entire plan policy and/or section of text, although I will first consider modifying the policy rather than deleting it. Where a policy concerns a non-land use matter, advice in the Planning Practice Guidance states “Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.” As such, when considering the deletion of any non-land use matters from the plan, I will consider if I can make a modification to place the relevant proposed actions in a non-statutory annex to the plan, dealing with ‘Wider Community Aspirations’. I will not generally refer back to parties on these detailed revisions. I will make modification either in order to meet the Basic Conditions, to correct errors or provide clarification. However, the focus of my examination, as set out in legislation is relatively narrow, I must focus on compliance with the Basic Conditions. The main purpose of a neighbourhood plan is to provide a framework for the determination of planning applications, policies in a plan which have elements which either seek to control things which fall outside the scope of the planning system or introduce requirements which are indiscriminate in terms of the size of development or overly onerous and would not meet the Basic Conditions. In these circumstances it will be necessary to make modifications to the plan. In making any modifications I have a duty to ensure that the Basic Conditions are met however I am also very careful to ensure, where possible that the intention and spirit of the plan is retained so that the plan, when modified still reflects the community’s intent in producing their neighbourhood plan.

3. The Plan does not meet the legal requirements and cannot proceed to a Referendum

3.1 I am also required to recommend whether the Referendum Area should be different from the Plan Area, should the Brixham Peninsula Neighbourhood Development Plan go to

Referendum.

3.2 In examining the Plan, I am required to check, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, whether:

- the policies in the Plan relate to the development and use of land for a designated Neighbourhood Area are in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act 2004*
- the Plan meets the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 to specify the period for which it has effect*
- the Plan has been prepared for an area designated under the Localism Act 2011 and has been developed and submitted for examination by a qualifying body.*

3.3 I am also required to determine whether the Plan complies with the Basic Conditions, which are that the proposed Neighbourhood Plan:

- Has regard to national policies and advice contained in guidance issued by the Secretary of State;*
- Contributes to the achievement of sustainable development; and*
- Is in general conformity with the strategic policies contained in the Development Plan for the area.*

The Plan must also not breach, and otherwise be compatible with EU obligations and Human Rights requirements.

3.4 Torbay Council will consider my report and decide whether it is satisfied with my recommendations. The Council will publicise its decision on whether or not the plan will be submitted to a referendum, with or without modifications. If the Neighbourhood Plan is submitted to a referendum, then 28 working days' notice will be given of the referendum procedure and Neighbourhood Plan details. If the referendum results in more than half those voting (i.e. greater than 50%), voting in favour of the plan, then the Local Planning Authority must "make" the Neighbourhood Plan a part of its Development Plan as soon as possible. If approved by a referendum and then "made" by the local planning authority, the Neighbourhood Plan then forms part of the Development Plan.

SECTION 4

The Report

1. Appointment of the Independent examiner

Torbay Council appointed me as the Independent Examiner for the Brixham Peninsula Neighbourhood Development Plan with the agreement of Brixham Neighbourhood Forum.

2. Qualifying body

2.1 I am satisfied that the Brixham Peninsula Neighbourhood Forum (the Forum) meets the necessary requirements and is the Qualifying Body.

2.2 Where there is no parish or town council who can lead on the creation of a neighbourhood plan, members of the community can form a neighbourhood forum to take forward the development of a neighbourhood plan or Order. A group or organisation must apply to the local planning authority to be designated as a neighbourhood forum (a forum application). Those making a forum application must show how they have sought to comply with the conditions for neighbourhood forum designation. These are set out in section 61F (5) of the Town and Country Planning Act 1990 as applied to Neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004.

2.3 To be designated a neighbourhood forum must have a membership that includes a minimum of 21 individuals who either:

- live in the neighbourhood area*
- work there; and/or*
- are elected members for a local authority that includes all or part of the neighbourhood area*

4.2.4 The original application for Neighbourhood Area and Neighbourhood Forum status in Brixham was approved in December 2012. The Forum status expired after 5 years (December 2017). The Brixham Neighbourhood Forum was re-designated by Torbay Council on 7 December 2017. The designation lasts, in accordance with the regulations, for 5 years.

3. Neighbourhood Plan Area

3.1 The Neighbourhood Plan area covers the designated Brixham Peninsula Neighbourhood Area which includes the whole of the administrative area of Brixham Town Council and the non parished villages of Churston, Galmpton and Broadsands.

3.2 The Brixham with Churston, Galampton & Broadsands Neighbourhood Plan Forum (also known as the “Brixham Peninsula Neighbourhood Forum”) was re-designated by full Council on 7 December 2017 (the Report (Item 11) and Minutes can be accessed online). The designation lasts, in accordance with the regulations, for 5 years.

3.3 No part of the Neighbourhood Area overlaps any part of any other Neighbourhood Area (Section 61G (7) of the Act). The boundary is the same as the Brixham Strategic Policy Area defined in the Torbay Local Plan adopted by the Council on 10 December 2015.

4. Plan Period

It is intended that the Brixham Peninsula Neighbourhood Development Plan will cover the period 2012-2030, to align with the Torbay Local Plan, reference to ‘and beyond’ should be removed to align with the Torbay Local Plan.

5. Torbay Council Assessment of the Plan under regulation 15 of the Neighbourhood Planning (General) Regulations 2017.

4.5.1 Plan proposals and modification proposals

15.—(1) Where a qualifying body submits a plan proposal or a modification proposal to the local planning authority, it must include—

(a) a map or statement which identifies the area to which the proposed neighbourhood development plan relates;

(b) a consultation statement;

(c) the proposed neighbourhood development plan or neighbourhood development plan as proposed to be modified”; and

(d) a statement explaining how the proposed neighbourhood development plan meets the requirements of paragraph 8 of Schedule 4B to the 1990 Act or in the case of a modification proposal, how the neighbourhood development plan as proposed to be modified meets the requirements of paragraph 11 of Schedule A2 to the 2004 Act.

e) in relation to a modification proposal, a statement setting out the whether or not the qualifying body consider that the modifications contained in the modification proposal are so significant or substantial as to change the nature of the neighbourhood development plan which the modification proposal would modify, giving reasons for why the qualifying body is of this opinion.

(2) In this regulation “consultation statement” means a document which—

(a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan or neighbourhood development plan as proposed to be modified;

(b) explains how they were consulted;

(c) summarises the main issues and concerns raised by the persons consulted; and

(d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.

5.2 Brixham Neighbourhood Forum, the qualifying body for preparing the Brixham Peninsula Neighbourhood Development Plan, submitted it to Torbay Council for consideration under Regulation 15. Torbay Council has made an initial assessment of the submitted Brixham Peninsula Neighbourhood Development Plan and the supporting documents and is satisfied that these comply with the specified criteria.

6. Site Visit

I carried out an unaccompanied site visit to familiarise myself with the Neighbourhood Plan Area on 31st May 2018.

7. Questions for Clarification

7.1 The expectation is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However, there are two circumstances when an examiner may consider it necessary to hold a hearing. These are where the examiner considers that it is necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case. Having read the plan and considered the representations I concluded that it was not necessary to hold a Hearing. However, there were a number of issues on which I required clarification from the Forum. These questions were published on the Torbay Council website together with the response from the Forum. There were also a number of representations received in the light of the questions and responses and these too have been published on the Council's website. I have carefully considered the responses and representations taken them into consideration in my conclusions and made reference to them in my report where appropriate.

8. The Consultation Process

4.8.1 The Brixham Peninsula Neighbourhood Development Plan has been submitted for examination with a Consultation Statement which sets out the consultation process that has led to the production of the plan, as set out in the regulations in the Neighbourhood Planning (General) Regulations 2012.

The Statement describes the approach to consultation, the stages undertaken and explains how the Plan has been amended in relation to comments received. It is set out according to the requirements in Regulation 15.1.b of the Neighbourhood Planning (General) Regulations 2012):

(a) It contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;

(b) It explains how they were consulted; (c) It summarises the main issues and concerns raised by the persons consulted; and

(d) It describes how these issues and concerns were considered and, where relevant, addressed in the proposed neighbourhood development plan.

4.8.2 Having examined the documents and considered the focus of the Neighbourhood Plan I conclude that the consultation process was adequate, well conducted and recorded.

4.8.3 A list of statutory bodies consulted is included in the Consultation Statement.

9.Regulation 16 consultation by Torbay Council and record of responses.

9.1 The Local Planning Authority placed the Brixham Peninsula Neighbourhood Development Plan out for consultation under Regulation 16 from Wednesday 1st of November Monday 18th of December 2017.

9.2 A number of detailed representations were received during the consultation period and these were supplied by Torbay Council as part of the supporting information for the examination process. I considered the representations, have taken them into account in my examination of the plan and referred to them where appropriate.

9.3 A number of late representations were also received and published on Torbay Council's website. Where appropriate I took these into consideration in my examination of the Plan.

10. Compliance with the Basic Conditions

10.1 The Brixham Neighbourhood Plan Forum produced a Basic Conditions Statement. The purpose of this statement is to set out in some detail how the Neighbourhood Plan as submitted does meet the Basic Conditions. It is the Examiner's Role to take this document into consideration but also make take an independent view as to whether or not the assessment as submitted is correct.

10.2 I have to determine whether the Brixham Peninsula Neighbourhood Development Plan:

1. *Has regard to national policies and advice*
2. *Contributes to sustainable development*
3. *Is in general conformity with the strategic policies in the appropriate Development Plan*
4. *Is not in breach and is otherwise compatible with EU obligations and Human Rights requirements.*

10.3 Documents brought to my attention by the Local Planning Authority for my examination include:

(i) The Brixham Peninsula Neighbourhood Plan - the main document which includes policies developed in consultation with the community at various engagement events and workshops.

(ii) Consultation Statement – sets out how the community, and other stakeholders, have been involved in preparing the Plan.

(iii) Basic Conditions Statement - An appraisal of the Plan policies against European Union (EU) and national policies, as well as the strategic policies of the Torbay Local Plan and any other policies and guidance.

(iv) Policy Document

(v) Policy Maps

(vi) Housing Site Assessment

(vii) Employment Site Assessment

(viii) Greenspace Site Assessment

(ix) Broadsands Village Design Statement

(x) Churston Village Design Statement

(xi) Galampton Village Design Statement

(xii) Brixham Town Design Statement

(xiii) Brixham Town Centre Master Plan

(ixx) Habitats Regulations Assessment Screening prepared by AECOM

(xxi) Strategic Environmental Assessment prepared by AECOM

(xxii) Housing Site Assessment prepared by AECOM

Comment on Documents submitted

4.10.4 In my report I addressed a number of concerns and questions relating in particular to the following documents:

(vi) Housing Site Assessment

(vii) Employment Site Assessment

(viii) Greenspace Site Assessment

(ix) Habitats Regulations Assessment Screening prepared by AECOM

(x) Strategic Environmental Assessment prepared by AECOM

(xi) Housing Site Assessment prepared by AECOM

These concerns have been addressed in the appropriate section of my report.

4.10.5 However, I am satisfied having regard to these documents and other relevant documents, policies and legislation that the Brixham Peninsula Neighbourhood Plan does, subject to the recommended modifications, meet the Basic Conditions.

11.Planning Policy

11.1. National Planning Policy

11.1.1 The National Planning Policy Framework (NPPF) 2012 sets out national policy, supporting this document is National Planning Policy Guidance (NPPG). The Government published its new National planning Policy Framework on 24 July 2018. Whilst the revised NPPF becomes a material consideration from the date of publication, paragraph 214 sets out a transitional period:

“214. The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted⁽⁶⁹⁾ on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.

(69) For neighbourhood plans, ‘submission’ in this context means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.

During the transitional period for emerging plans submitted for examination (set out in paragraph 214), consistency should be tested against the previous Framework published in

March 2012.”

Accordingly, my report, which was at a second fact check stage on 24 July, has considered the Neighbourhood Plan on the basis of the 2012 NPPF and paragraph numbers relate to that document.

11.1.2 To meet the Basic Conditions, the Plan must have “regard to national policy and advice”. In addition, the NPPF requires that a Neighbourhood Plan “must be in general conformity with the strategic policies of the local plan”. Paragraph 16 states that neighbourhoods should “develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development; plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan”.

11.1.3 The Brixham Peninsula Neighbourhood Development Plan does not need to repeat these national policies, but to demonstrate it has taken them into account.

11.1.4 I have examined the Brixham Peninsula Neighbourhood Development Plan and consider that, subject to modification, the plan does have “regard for National Policy and Advice” and therefore the Plan, subject to minor modification does meet the Basic Conditions in this respect. For clarity, should the plan be Made documents i, iv and v will become part or the development plan.

11.2. Local Planning Policy- The Development Plan

11.2.1 Brixham Peninsula is within the area covered by Torbay Council. Currently the relevant development plan is Torbay Local Plan 2012-2030.

The Local Plan states that:

“Brixham is expected to provide sufficient land to enable delivery of at least 2,700 square metres (sqm) of employment floor space and 660 new homes over the Plan period.

11.2.2 Such development will only be acceptable if it can be accommodated without prejudicing the integrity of the Area of Outstanding Natural Beauty (AONB) and Special Areas of Conservation, and provided that the interests of priority species, such as the Greater Horseshoe Bat and Cirl Buntings, can be safeguarded.”

11.2.3 To meet the Basic Conditions, the Brixham Neighbourhood Plan must be in “general conformity” with the strategic policies of the development plan.

11.2.4 National planning policy states that the neighbourhood plan should support the strategic development needs set out in the Local Plan, plan positively to support local development and should not promote less development than set out in the Local Plan or

undermine its strategic policies (see paragraph 16 and paragraph 184 of the National Planning Policy Framework). Nor should it be used to constrain the delivery of a strategic site allocated for development in the Local Plan.

11.2.5 Should there be a conflict between a policy in a neighbourhood plan and a policy in a Local Plan, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy, which is contained in the last document to become part of the development plan.

11.2.6 The distinction between strategic and non-strategic policies is important because of the relationship with Neighbourhood Plans. Neighbourhood Plans only have to be in general conformity with the strategic policies of the development plan (Localism Act 2011, Schedule 4B, s7 (2)(e) and National Planning Policy Framework 184). When made, neighbourhood plan policies take precedence over existing non-strategic policies in the local plan, where they are in conflict.

11.2.7 Paragraph 156 of the National Planning Policy Framework states that strategic policies are those designed to deliver

- the homes and jobs needed in the area;*
- the provision of retail, leisure and other commercial development;*
- the provision of infrastructure for transport, telecommunications, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);*
- the provision of health, security, community and cultural infrastructure and other local facilities; and*
- climate change mitigation and adaptation, conservation and enhancement of the natural and historic environment, including landscape.*

11.2.8 Planning Policy Guidance paragraph 41-076-20140306 sets out that:

“Strategic policies will be different in each local planning authority area. When reaching a view on whether a policy is a strategic policy the following are useful considerations:

- whether the policy sets out an overarching direction or objective*
- whether the policy seeks to shape the broad characteristics of development*
- the scale at which the policy is intended to operate*

- *whether the policy sets a framework for decisions on how competing priorities should be balanced*
- *whether the policy sets a standard or other requirement that is essential to achieving the wider vision and aspirations in the Local Plan*
- *in the case of site allocations, whether bringing the site forward is central to achieving the vision and aspirations of the Local Plan*
- *whether the Local Plan identifies the policy as being strategic”*

Torbay Council have provided the following information on their strategic policies, as required:

“As a minimum the following Policies in the Local Plan are strategic:

- *All spatial strategy and policies for strategic direction (Part 4, Policies SS1-14).*
- *Strategic Delivery Area Policies (Part 5, SD Policies).*
- *Some of the policies in “Part 6 Policies for managing change” which contain strategic elements, as assessed against National Planning Policy Framework 156 and the PPG (Part 41-2014).*

11.2.9 I am satisfied that subject to modification the Brixham Peninsula Neighbourhood Plan is in general conformity with the Strategic Policies of the Torbay Local Plan 2012-2030.

12. Other Relevant Policy Considerations

12.1 European Convention on Human Rights (ECMR) and other European Union Obligations

12.1.1 As a ‘local plan’, the Neighbourhood Development Plan is required to take cognisance of the EU Strategic Environmental Assessment (SEA) Directive 2001/42/EC.

A Strategic Environmental Assessment (SEA) screening opinion was sought as required from the following organisations during the formal consultation period:

- *Natural England*
- *Historic England*
- *Environment Agency*
- *Torbay Council*

The view of Torbay Council was that a Strategic Environmental Assessment (SEA) and Habitats Regulation Appraisal (HRA) was required:

The SEA was carried out by AECOM.

12.1.2 The SEA concluded that:

“the current version of the BPNP is likely to lead to significant positive effects in relation to the ‘population and community’ and ‘health and wellbeing’ sustainability themes. These benefits largely relate to the carefully targeted spatial approach proposed by the current version of the BPNP, the focus on enhancing the vitality of the Neighbourhood Plan area and the BPNP’s impetus on protecting and enhancing open space and green infrastructure networks. In addition, the allocations proposed through the Neighbourhood Plan will enable significant enhancements to be made to the quality of townscapes and the setting of the historic environment at key locations of existing poor public realm in the Brixham Peninsula, leading to significant positive effects in relation to the ‘historic environment and landscape’ theme.

In relation to the ‘biodiversity and geodiversity’ sustainability theme, the scope and scale of the proposed policy approaches relating to the natural environment will help ensure that wide ranging benefits in relation to this theme are secured through the Neighbourhood Plan. Whilst the delivery of the allocations through the BPNP will inevitably lead to some minor localised adverse effects in relation to biodiversity, the approach initiated by the Neighbourhood Plan will both limit the potential magnitude of adverse effects and secure enhancements. The focus on allocating sites on previously developed land will also bring positive effects in relation to the ‘land, soil and water resources theme’ through limiting the development of agricultural land, including land classified as the Best and Most Versatile Agricultural Land. It will also help support the remediation of contaminated land at a number of locations.

The current version of the BPNP will initiate a number of beneficial approaches regarding the ‘transportation’ and ‘climate change’ sustainability themes. However, these are not considered to be significant in the context of the SEA process given the scope of the Neighbourhood Plan and the scale of proposals.”

12.2 Habitats Regulations Assessment

12.2.1 An HRA is required by the Habitats Directive (92/43/EEC) in appropriate circumstances. Land use plans may require the undertaking of an HRA to assess their implications for European sites. The purpose of HRA is to assess the impacts of a land use plan against the conservation objectives of a European site and to ascertain whether it would have a likely significant effect on the integrity of that site, whether alone or in combination with other plans and projects.

12.2.2 AECOM was appointed by the Brixham Neighbourhood Forum to assist in undertaking a Habitats Regulations Assessment (HRA) of the Brixham Peninsula Neighbourhood Plan (hereafter referred to as the Neighbourhood Plan or the ‘Plan’). The report identified that the

objectives of the assessment were to (extracts from the report shown in parentheses):

- *“Identify any aspects of the Neighbourhood Plan that would cause an adverse effect on the integrity of Natura 2000 sites, otherwise known as European sites (Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and, as a matter of Government policy, Ramsar sites), either in isolation or in combination with other plans and projects; and*
- *To advise on appropriate policy mechanisms for delivering mitigation where such effects were identified.*

12.2.3 In accordance with the Screening Report, the Neighbourhood Plan voluntary appraisal considered two European sites present within Torbay’s boundaries (South Hams SAC and Lyme Bay and Torbay Marine SAC) and four further European sites within a 20km buffer zone from Torbay’s boundaries:

- 1. Lyme Bay and Torbay Marine SAC*
- 2. South Hams SAC*
- 3. Dartmoor SAC*
- 4. South Dartmoor Woods SAC*
- 5. Dawlish Warren SAC*
- 6. Exe Estuary SPA & Ramsar*

12.2.4 The Neighbourhood Plan does not add to or substitute any of the identified development sites that the Local Plan HRA has already considered and the policy proposals of the Neighbourhood Plan add further protection to the natural environment and biodiversity of the Plan area. Appraisal of the Neighbourhood Plan has therefore drawn first upon the conclusions of the Local Plan HRA in this Screening assessment.” (Taken from the AECOM SEA Report)

12.3 Torbay Local Plan HRA

12.3.1 The adopted Local Plan identifies a number of committed development sites, potential development sites (subject to consideration in the proposed Neighbourhood Plans) and future growth areas (LP Appendix C and Policy SS2). All were included in the HRA appraisal of the Local Plan to determine any likely significant effects on the six European sites situated within 20 km of Torbay (LP HRA December 2015).

12.3.2 The HRA concluded that the Local Plan is not considered to have a significant impact on South Dartmoor Woods SAC, Dawlish Warren SAC and Exe Estuary SPA and Ramsar

because of the distances involved (13.23 km, 9.75km and 10km, respectively) and were “screened out” of any further assessment.

12.3.3 Of the remaining three European sites, because likely significant effect could not be ruled out, a Stage 2 HRA “Appropriate Assessment” was undertaken and considered the likely significant effects of the Local Plan and made recommendations where necessary of specific mitigation required.

12.3.4 The HRA concluded that if the mitigation actions proposed are implemented, the impacts of additional development would be reduced to an insignificant level. With the proposed mitigation, the Local Plan policies will have no adverse effect upon the integrity of any of the European sites and the conservation objectives would be sustained.

12.3.5 The HRA further concluded that the Local Plan should make it clear (as the adopted version does) that its policies and proposals do not provide support to any proposal which would have an adverse effect on the integrity of any European site. The HRA recommended that the Local Plan HRA outcomes feed into the Neighbourhood Plans together with the imperative that project based HRA is undertaken for each planning application and makes it clear that permission should only ever be granted where it is categorically proven that there will be no adverse impacts on European sites (Torbay Local Plan HRA December 2015 para. 9.1.6).

12.4 Screening of the Neighbourhood Plan

12.4.1 Having regard to the Local Plan HRA outcome, AECOM carried out a screening of the Neighbourhood Plan. This has taken into account the assessment of development sites identified in the Local Plan alongside the policy proposals and allocations of the Neighbourhood Plan to ensure a comprehensive screening of individual proposals and “in-combination” effect is achieved.

Likely significant effects

12.4.2 The Report’s screening of the allocations and Neighbourhood Plan policy proposals resulted in the following conclusions:

“During the initial screening of the Brixham Peninsula Neighbourhood Plan, two policies (Policy J1: Employment land – proposed, retained and refurbished and Policy H3: Delivery of New Homes) were initially screened in for further assessment (see Chapter 4) as impact pathways potentially existed that could have a likely significant effect upon the South Hams SAC via the following impact pathways:

- Fragmentation, loss and disturbance of commuting routes and foraging areas for greater horseshoe bats; and

- *Recreational pressure on the calcareous grassland and European dry heath.*

Potential recreational pressure and water quality impacts on Lyme Bay and Torbay SAC were also identified.

12.4.3 Following this initial screening exercise, further investigation was undertaken, and a Likely Significant Effect test was conducted of the two policies that could not be initially screened out during the screening exercise.

12.4.4 Two sites identified for employment within Policy J1 of the Neighbourhood Plan (and which do not already have planning permission), have not been previously assessed in the Local Plan HRA. These are Torbay Trading Estate, and Brixham Town Centre Car Park, However, this policy can be screened out of this assessment due to the mechanisms in place in the Local Plan and Neighbourhood Plan to ensure greater horseshoe bat surveys at the project stage.

12.4.5 Two sites identified for housing in the Neighbourhood Plan have been assessed as having a potential effect on greater horseshoe bats: Castor Road and St. Mary's/Old Dairy. However, given the nature of the sites and the policy framework provided by the Torbay Local Plan and Brixham Peninsula Neighbourhood Plan, it is considered that the sites could be delivered without a likely significant effect on South Hams SAC.

12.4.6 As a general principle, all identified sites that are deemed suitable for greater horseshoe bats should be resurveyed to support a planning application if the most recent survey data is more than 2 survey seasons in age. For example, since the most recent surveys for St Mary's/Old Dairy were undertaken in 2015, it would be advisable to repeat them in the next (2018) survey season. As another example, since the investigation of Knapman's Yard for roosts in summer 2016 is now 12 months old, any planning application for that site should include an updated survey. "

"It is therefore considered that no likely significant effects of the Neighbourhood Plan on the SAC will arise alone or in combination with other plans and projects."

12.5 Adequacy of the HRA

12.5.1 In the Basic Conditions Statement, the Forum have identified three main areas of difference between Torbay Borough Council and the Forum in terms of the adequacy of the HRA Assessment as follows:

"1. Survey information

- *The area of difference here concerns the level of information which has been provided for all sites allocated or suggested for allocation in the Local Plan (e.g., in*

“Appendix C: Pools of Housing and Employment Sites”).

- *The Forum’s position is that they have asked the Council for evidence that sites were screened at an individual site level by a properly qualified ecologist physically attending the site. Having not received such information the Forum’s position is that on the precautionary principle it must conclude that sites have not been properly screened.*
- *Torbay Council’s position is that all sites were screened using a “landscape approach”²⁴ but “not identified individually”. This approach is explained in the Torbay Council HRA documents as follows:*

areas within the Sustainance Zone that are within existing built up areas have also not been subject to appraisal because such areas do not have suitable habitat to support either commuting or foraging GHBs”.

12.5.2 In response to this, the Forum considers Torbay Council’s HRA screening methodology to be less robust than the Neighbourhood Plan’s HRA screening methodology, where all allocated and identified sites were visited by a properly qualified ecologist.

12.5.3 Further, it is the Forum’s position is that Torbay Council’s application of its HRA screening methodology is inconsistent with its more recent representations on one Housing Site, as set out below, which is in the urban area.

12. 6 Housing sites

12.6.1 The area of difference here concerns an allocated housing site Waterside Quarry H3 – I11. For the avoidance of doubt, part of this site is owned by the family of the Vice Chairman of the Forum having previously been sold in June 2014 by Torbay Council as set out in the Housing Site Assessment.

12.6.2 The Forum’s position as so advised by Greena Ecology Consultancy and AECOM with endorsement from Natural England is that a proportionate level of surveys have been undertaken.

12.6.3 The site was assessed by Greena Ecology Consultancy in their November 2016 report and determined not suitable for Greater Horseshoe Bats. Following representations from Torbay Council at the regulation 14 consultation stage that the site needed to be resurveyed, despite their conclusion that the site was not suitable for bats, Greena Ecology Consultancy were asked to undertake further bat surveys.

12.6.4 On the basis of in aggregate 4 months worth of survey data where no Greater Horseshoe Bats were found, Greena Ecology Consultancy in their July 2017 addendum report determined the site was “suitable for the inclusion as an allocated site in the Neighbourhood Plan”.

12.6.5 Torbay Council's position, as the Forum understands it, is that (despite being located within an existing built-up area) this one site needs to be subject to a full suite of 6 months of bat surveys before it can be allocated in this Neighbourhood Plan.

12.6.6 In response to this, the Forum having been so advised consider Torbay Council's position to be correct for a project level planning application, but wrong in law for a plan level site allocation. This has been raised in correspondence between the Forum and Torbay Council and should it assist the Assessor such correspondence can be made available.

12.7 Employment sites

12.7.1 The area of difference here concerns an identified employment site Oxen Cove and Freshwater Quarry J1 – 2. For the avoidance of doubt, this site is owned by Torbay Council.

12.7.2 The Forum's position as set out by Greena Ecology Consultancy and AECOM and confirmed by the Natural England regulation 14 consultation response is that insufficient survey information has been provided to allocate the site. Specifically, no survey work at all has taken place and having been so advised the Forum's position is that as a minimum some survey evidence would be required to establish the use of the site by bats. However, to recognise the potential of the site, it has been identified.

12.7.3 Torbay Council's position, as the Forum understands it, is that as the site is located in an existing build-up area it does not need to be surveyed.

Notwithstanding any differences of the scope and depth of information at the plan making stage, the Forum state that no allocation or identification in the Neighbourhood Plan removes the Local Plan HRA (December 2015) requirement for further information at the project level planning application stage.

12.8 Conclusion

12.8.1 Having given the evidence and representations before me very careful consideration

I have come to the following conclusions:

Oxen Cove and Freshwater Quarry J1 – 2 is not a formal site allocation but an "identified site" and as such I am satisfied that as the sites have not been allocated any potential shortfall in evidence in relation to an HRA can be adequately addressed should any planning application come forward

Waterside Quarry H3 – I11 In my planning judgment I consider that there is sufficient doubt, given the evidence before me and the representations received that the HRA is adequate to allocate this site for housing development and on that basis, it should be deleted as an allocation from the plan.

12.9 PoW

12.9.1 I have received a number of representations as to whether or not in the light of the Court of Justice of the European Union (“CJEU”) *People Over Wind and Sweetman v Coillte Teoranta (C-323/17)* decision dated 12 April 2018- referred to as *People over Wind or PoW* the HRA Screening stage was adequate for assessment of the *Brixham Peninsula Neighbourhood Plan* particularly.

12.9.2 The decision in the case means that measures intended to avoid or reduce the harmful effects of a proposed project on a European site may no longer be taken into account by competent authorities at the *Habitat Regulations Assessment (“HRA”) “screening stage”* when judging whether a proposed plan or project is likely to have a significant effect on the integrity of a European designated site.

12.9.3 Concern has been expressed that there has been a reliance on protective policies in the *Local Plan* to screen out the need for appropriate assessment of the *Brixham Peninsula Neighbourhood Plan*, paragraph 4.22 that “the package of measures and mitigations that resulted from the *Local Plan HRA* have provided the necessary safeguards in the *Local Plan* (as finally adopted) that make it unnecessary and disproportionate for a Stage 2 “Appropriate Assessment” of the *Neighbourhood Plan* to be undertaken.”

12.9.4 During the course of my examination I received the following submission from *Torbay Council*:

The Council has been made aware of the following “*European Court (Seventh Chamber)*” decision dated 12 April 2018:

Article 6(3) of *Council Directive 92/43/EEC* of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.

Our current understanding is that proposed mitigation measures are not to be taken into account when determining whether a plan or project will have a likely significant effect. The argument behind the judgment is that, if mitigation measures are included in a proposal it is likely that the protected site will be affected significantly and that, as a result, an assessment should be carried out (para 35).

The Council, as competent authority under the *Habitats Regulations* is empowered to require the *Qualifying Bodies* to provide sufficient information to enable it to be satisfied in *HRA* terms. We have therefore reviewed the associated *Neighbourhood Plan HRAs*, and in the *Brixham Neighbourhood Plan Report*

context of the above (not withstanding any other representations on sites/specific elements) consider that the Assessment and Mitigation Measures set out in all three Neighbourhood Plan HRA 'Screening Stages' substantively meet the requirements. For absolute clarity, this could be made clearer through a minor re-formatting to set out the same in an 'Appropriate Assessment' Stage. Given that the information provided is sufficient to make the assessment, the LPA is prepared to make the minor amendments to formatting before making the plan. This would, in terms of the Council, (as competent authority), meet the HRA regulations.

However, you may wish to amend your associated HRA's in order for the Examiner to see that they comply with the HRA Regulations."

On the basis that Waterside Quarry is deleted from the plan I am satisfied that the HRA 'Screening Stage' does substantively meet the requirements, subject to the mitigation measures identified in the BPNP HRA.

12.4 Sustainable development

The Forum state:

"Particular care has been taken throughout preparation of the Neighbourhood Plan to ensure that it provides a positive approach towards supporting the achievement of sustainable development able to meet the needs identified by the community. All three sustainability "dimensions" of the NPPF (economic, social and environmental) have been incorporated into the Plan."

My conclusion is that the principles of Sustainable Development required in the NPPF have been taken into account in the development of the plan and its policies and where issues have been identified they were addressed by revisions to the document prior to submission. I am satisfied that the Brixham Peninsula Neighbourhood Development Plan subject to the recommended modifications addresses the sustainability issues adequately.

The Neighbourhood Development Plan is required to take cognisance of the European Convention of Human Rights and to comply with the Human Rights Act 1998.

I am satisfied that the Brixham Peninsula Neighbourhood Development Plan has done so.

I am therefore satisfied that the Brixham Peninsula Neighbourhood Development Plan meets the basic conditions on EU obligations.

12.10 Excluded development

12.10.1 am satisfied that the Brixham Peninsula Neighbourhood Development Plan does not cover County matters (mineral extraction and waste development), nationally significant

infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.

12.11 Development and use of land

12.11.1 I am satisfied that the Brixham Peninsula Neighbourhood Development Plan, subject to modification covers development and land use matters.

12.12 The Neighbourhood Plan Vision, Strategic Aims and Policies

12.12.1 The Brixham Neighbourhood Plan does not have a clearly labelled vision and strategic aims however it is clear from the following extract from the plan:

“Our Neighbourhood Plan will be a guide for all developments that will regenerate and enhance, especially those areas that we wish to improve, whilst avoiding harm to what we value. We need to create jobs and affordable housing to ensure a more balanced community, reduce commuting, sustain our infrastructure and improve our health and wellbeing. We also have a clear duty to enhance our environment, protect our wildlife, preserve our open spaces and celebrate our heritage. We also need to ensure that developments are economically sustainable and that they will help our key industries prosper, especially fishing, tourism, agriculture and light industry.”

that the themes for the Neighbourhood Plan have developed as a result of the community consultation carried out and that the policies of the plan respond to those themes.

13. Brixham Peninsula Neighbourhood Development Plan Policies

13.1 Neighbourhood Planning Guidance states:

“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).

A neighbourhood plan can be used to address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan 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 (see section 38(6) of the Planning and Compulsory Purchase Act 2004).

Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements. Wider community aspirations than those relating to development and use of land can be included in a

neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.

If the policies and proposals are to be implemented as the community intended a neighbourhood plan needs to be deliverable. The National Planning Policy Framework requires that the sites and the scale of development identified in a plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.

A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.

The resulting draft neighbourhood plan must meet the basic conditions if it is to proceed. National planning policy states that it should support the strategic development needs set out in the Local Plan, plan positively to support local development and should not promote less development than set out in the Local Plan or undermine its strategic policies (see paragraph 16 and paragraph 184 of the National Planning Policy Framework). Nor should it be used to constrain the delivery of a strategic site allocated for development in the Local Plan.

Should there be a conflict between a policy in a neighbourhood plan and a policy in a Local Plan, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy, which is contained in the last document to become part of the development plan.”

For ease of reference, in this section the proposed Brixham Peninsula Neighbourhood Plan policies are in black, my comments and any proposed modifications are in blue.

13.1.2 General Comments

In order to provide clarity and to ensure that the policies in the Brixham Peninsula Neighbourhood Plan meet the Basic Conditions it has been necessary for me to make modifications to a number of policies and delete some parts of others.

Were modification has been made to a policy the supporting text/justification should be modified accordingly.

Policy J1: Employment land – proposed, retained and refurbished

J1.1 Employment land, commercial and business premises are to be retained unless

there is no reasonable prospect of the site being used for employment purposes on grounds of viability. A lack of viability is to be established by clear evidence from an active marketing effort that it would not be possible to achieve a lease or sale of the premises at a reasonable market rate. The greater the contribution to employment, the higher the level of evidence which must be provided and in all events a minimum period of six months of marketing should be undertaken.

J1.2 In the event of a lack of viability being established under J1.1 above, subject to compliance with the other policies of this Neighbourhood Plan, a change of use will be supported where the alternative use will contribute to the needs of the community by addressing an identified Brixham Peninsula need for

- affordable housing in accordance with the definition in the NPPF;*
- purpose-built accommodation for older people (with a minimum age of 60); or*
- purpose-built accommodation for the disabled.*

This contribution could be delivered either directly on-site or through financial contributions to provide an equal amount of development on other sites within the Brixham Peninsula.

J1.3 Employment development will be promoted particularly that which generates permanent jobs; increases the diversity of industries across the peninsula; or promotes key industries. Development on brownfield sites in preference to greenfield sites will be promoted and supported. Application of this policy will be subject to compliance with the other policies of this Neighbourhood Plan and not prejudicing the integrity of the AONB, Special Areas of Conservation and the Coastal Preservation Area.

J1.4 The sites listed in Table 1 below and shown on the accompanying Policy Maps (Document 2) are identified for employment development at the plan making stage in this Neighbourhood Plan. Detailed evidence will be required at the project stage as regards the compliance of any development planning application with environmental legislative requirements.

Table 1: Identified employment sites.

Site Address	Yield (sqm)
<i>J1 – 1: Brixham Town Centre (identified site)</i>	<i>500</i>
<i>J1 – 2: Oxen Cove and Freshwater Quarry (identified site)</i>	<i>2,000</i>

J1 – 3: Torbay Trading Estate (identified site) 200

J1 – 4: 74 New Road (committed site) 220

COMMENT

Torbay Council object to the wording of this policy on the basis that it is not in general conformity with paragraph 22 of the NPPF and the Strategic Policies of the Torbay Local Plan. In addition, the Council expresses concern that the employment sites are “identified” rather than allocated and therefore fail to be in general conformity with Policy SS5 and SDB1 of the Torbay Local Plan.

Concern has also been raised that site J1-2 has not been adequately assessed for impact on the Greater Horseshoe Bat. However, the neighbourhood plan does not allocate these sites but identifies them. Point J1.4 states “Detailed evidence will be required at the project stage as regards the compliance of any development planning application with environmental legislative requirements.” Although this is a fine distinction I am clear that as the sites have not been allocated any potential shortfall in evidence in relation to the HRA can be adequately addressed should any planning application come forward. Please see pages 19-26 of my report entitled 11.4 Habitat Regulations Assessment for my detailed examination of this issue.

For clarity and in order to meet the Basic Conditions the policy should be modified as follows:

Policy J1: Employment land – proposed, retained and refurbished

J1.1 Employment development will be promoted appropriate to meet the local and strategic needs set out in the Torbay Local Plan 2012-2030, particularly that which generates permanent jobs; increases the diversity of industries across the peninsula; or promotes key industries. Development on brownfield sites in preference to greenfield sites will be promoted and supported. Application of this policy will be subject to compliance with the other policies of this Neighbourhood Plan and not prejudicing the integrity of the AONB, Special Areas of Conservation and the Undeveloped Coast

J1.2 The sites listed in Table 1 below and shown on the accompanying Policy Maps (Document 2) are identified for employment development at the plan making stage in this Neighbourhood Plan. Detailed evidence will be required at the project stage as regards the compliance of any development planning application with environmental legislative requirements.

Table 1: Identified employment sites.

Site Address	Yield (sqm)
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<i>J1 – 1: Brixham Town Centre (identified site)</i>	<i>500</i>
<i>J1-2 Oxen Cove and Freshwater Quarry</i>	<i>2,000</i>
<i>J1 – 3: Torbay Trading Estate (identified site)</i>	<i>200</i>
<i>J1 – 4: 74 New Road (committed site)</i>	<i>220</i>

J1.3 Employment land, commercial and business premises are to be retained unless there is no reasonable prospect of the site being used for employment purposes on grounds of viability and in accordance with Policy SS5 of the Torbay Local Plan.

J1.4 In the event of a lack of viability being established under J1.3 above, subject to compliance with the other policies of this Neighbourhood Plan, for appropriate sites a change of use will be supported where the alternative use will contribute to the needs of the community by addressing an identified Brixham Peninsula need for

- affordable housing in accordance with the definition in the NPPF;*
- purpose-built accommodation for older people (with a minimum age of 60);*
- or*
- purpose-built accommodation for the disabled.*

Where the proposed loss of employment space is agreed contributions will be sought to mitigate the loss of employment in accordance with the tests set out in the CIL Regulations.

Policy J2: Provision of information and communication technology

All proposals for new employment and residential development should be designed to be connected to high-quality communications infrastructure to ensure that fibre optic or other cabling does not need to be retro-fitted. If not possible then evidence to show that development cannot be directly connected to high-quality communications infrastructure due to viability or technical reasons must be provided.

COMMENT

I have no comment on this policy.

Policy J3:

Local employment – training and skills

Subject to compliance with the other policies of this Neighbourhood Plan, applications for development proposals that include any or all of the following will be welcomed:

- **Raise skills levels and increase employability.**
- **Link with local educational/training facilities, including South Devon College.**
- **Tackle skills shortages in existing and potential business sector clusters that are, or have the potential to be, strengths in the local economy.**
- **Address barriers to employment for economically inactive people, and**
- **Provide for the development of childcare facilities within or in close proximity to employment sites.**

COMMENT

I have no comment on this policy.

Policy J4: Local employment – increased employment and local amenity

J4.1 Subject to compliance with the other policies of this Neighbourhood Plan, new start-up businesses or incubation units will be supported within the defined settlement boundaries and home-based jobs, web-based commerce, live/work units and work hubs providing/facilitating an increase in employment will be particularly welcomed.

J4.2 Development will not be allowed which generates unacceptable noise, air pollution, levels of traffic or where the residential amenity of the area will be adversely affected.

J4.3 Where a new employment development has 10 or more workers, travel planning is strongly encouraged to ensure that staff travel is made sustainable (e.g. via car share, public transport, bicycle, use of park and ride and walking).

COMMENT

I have no comment on this policy.

Policy J5: Sustaining a vibrant harbour-side economy

J5.1 Brixham Harbour shall be maintained and further developed as a working harbour, to support the harbour-based economy and harbour-side businesses, and to safeguard the town's heritage and image.

J5.2 Subject to compliance with the other policies of this Neighbourhood Plan, support will be given to applications for a range of fishing and marine-related developments,

including shellfish processing on the Harbour Estate that would benefit the fishing industry and harbour-side economy while paying due regard to resident and visitor amenity. Developments around the harbour will comply with Local Plan Policies TO3 (Marine economy) and DE3 (Development amenity), and will address Local Plan Policies SS6 (Strategic Transport Improvements) and SS6.6 (Ferry Transport Links) but will not rely on the construction of a Northern Arm Breakwater as a prerequisite to new developments. They will also observe where relevant the requirements of Neighbourhood Plan Policy BE1 in respect of Heritage assets and any requirements relating to maintenance or enhancement of the Brixham Town Conservation Area in the development plan.

COMMENT

For clarity the plan should include a policies map to support this policy and to meet the Basic Conditions the policy should be modified as follows:

Policy J5: Sustaining a vibrant harbour-side economy

J5.1 Brixham Harbour shall be maintained and further developed as a working harbour, to support the harbour-based economy and harbour-side businesses, and to safeguard the town's heritage and image.

J5.2 Subject to compliance with the other policies of this Neighbourhood Plan, support will be given to applications for a range of fishing and marine-related developments, including shellfish processing on the Harbour Estate that would benefit the fishing industry and harbour-side economy while paying due regard to resident and visitor amenity. Developments around the harbour should be in conformity with Local Plan Policies T01 (Tourism, events and culture), TO3 (Marine economy) and DE3 (Development amenity), and will address Local Plan Policies SS6 (Strategic Transport Improvements) and SS6.6 (Ferry Transport Links) but will not rely on the construction of a Northern Arm Breakwater as a prerequisite to new developments. They will also observe where relevant the requirements of Neighbourhood Plan Policy BE1 in respect of Heritage assets and any requirements relating to the preservation or enhancement of the Brixham Town Conservation Area in the development plan.

Policy J6: Brixham Town Centre

A full planning brief/master plan, proportionate in breadth and detail to the size and complexity of any development proposal, should be undertaken for any development of the identified Brixham Town Centre site (see reference J1 – 1 in Table 1 above and the Policy Maps (Document 2)). This planning brief/master plan should ideally be made

public at the earliest possible, hence pre-application or preliminary consultation, stage. This document should detail how heritage assets and the designated conservation area are to be safeguarded and how the local character and the town's attractiveness as a major tourist destination is to be maintained. Access, connectivity, transport issues and design characteristics should also be addressed.

COMMENT

For clarity a more detailed policy map boundary should be provided to accompany this policy.

Policy J7: Oxen Cove and Freshwater Quarry

J7.1 A full planning brief/master plan, proportionate in breadth and detail to the size and complexity of any development proposal, should be undertaken for any development of the identified Oxen Cove and Freshwater Quarry site (see reference J1 – 2 in Table 1 above and the Policy Maps (Document 2)). This planning brief/master plan should ideally be made public at the earliest possible, hence pre-application or preliminary consultation, stage. This document should detail how heritage assets and environmental assets are to be safeguarded and how the local character and the town's attractiveness as a tourist destination is to be maintained. Access and transport issues will be expected to be addressed in any initial development proposal and should include the potential short re- alignment route of the South Devon Coastal Path.

J7.2 Design and development options should be informed by the Port Master Plan and the evolving Town Centre Master Plan, and pay due regard to resident and tourist amenity issues. Appropriate Ecology surveys will need to be undertaken at the project stage for any planning application as set out in the HRA to this Neighbourhood Plan.

COMMENT

Concern has also been raised that site J1-2 has not been adequately assessed for impact on the Greater Horseshoe Bat. However, the neighbourhood plan does not allocate these sites but identifies them. Point J1.4 states "Detailed evidence will be required at the project stage as regards the compliance of any development planning application with environmental legislative requirements." Although this is a fine distinction I am clear that as the sites have not been allocated any potential shortfall in evidence in relation to the HRA can be adequately addressed should any planning application come forward. Please see pages 19-26 of my report entitled 11.4 Habitats Regulations Assessment for my detailed examination of this issue.

Paragraph 3.2.8 should be revised as follows:

“3.2.8 Subject to any environmental constraints the land at Freshwater Quarry could also provide a multi-level car park; some surface level parking is to be made available for high-sided vehicles, coaches, cars with boat trailers etc., together with some residential. Sufficient space will be allowed for a new slipway for public use and associated public facilities along with access to the Northern Arm breakwater, when finance is available for its construction.”

For clarity a boundary map should be provided and to meet the Basic Conditions J7.2 should be modified as follows:

J7.2 Design and development options should be informed by the Port Master Plan and have regard to resident and tourist amenity issues. Appropriate Ecology surveys will need to be undertaken at the project stage for any planning application as set out in the HRA to this Neighbourhood Plan.

Policy J8: Employment in Churston, Galmpton and Broadsands

J8.1 New employment development within the Settlement Boundaries (Policy E2) of the three villages should respect the sensitive countryside and coastal setting of the Peninsula, and the character assessment and design guidance in the Village Design Statement (Policy BH5). Employment proposals should relate to the scale and nature of the existing communities and villages of Churston, Galmpton and Broadsands.

J8.2 Subject to compliance with the other policies of this Neighbourhood Plan, small-scale (defined as set out at Table 21 in Local Plan Policy SDB3 for Brixham Urban Fringe), sensitively designed proposals which provide local employment opportunities appropriate to the countryside and the rural economy (such as rural crafts, farming, heritage, marine, tourism, outdoor leisure and recreation) will be supported. There should be no adverse impact on the character of the village or amenity of residents. Any traffic generated should not adversely impact on the villages, either through impacts on their tranquillity and rural character, their environment or through impacts on the narrow lanes including the safety of all road users.

COMMENT

I have no comment on this policy.

Housing policies (BH)

Policy BH1: Affordable housing

BH1.1 Affordable homes will be provided in new developments as a proportion of new

open market homes in line with the ratios set out in Local Plan Policy H2. Provision of affordable homes is preferred on-site and integrated into the new development. However, where the calculated provision requires provision of part of a house, that partial provision is to be provided by payment of a commuted sum to fund the provision of affordable housing within the Brixham Peninsula defined neighbourhood area.

BH1.2 Where it is determined that a larger number of affordable houses could be provided by payment of a commuted sum rather than on-site provision, a commuted sum may be paid but only if it is directly allocated to the physical provision of affordable homes within the Brixham Peninsula defined neighbourhood area.

BH1.3 Where a commuted sum has not been used to fund the physical provision of affordable housing within the Brixham Peninsula defined neighbourhood area by the 3rd anniversary of its payment date, that sum will be released to fund the physical provision of affordable housing across the wider area served by the Local Planning Authority. Where a commuted sum has not been used to fund the physical provision of affordable housing within the wider area served by the Local Planning Authority by the 5th anniversary of its payment date, that sum will be released back to the developer.

COMMENT

For clarity and in order to meet the Basic Conditions BH1.2 should be modified as follows:

BH1.2 An off-site contribution will be considered where it would result in a larger number of affordable houses being delivered than through on-site provision but only if it is directly allocated to the physical provision of affordable homes within the Brixham Peninsula defined neighbourhood area.

Policy BH2: Allocation of new affordable homes

BH2.1 Affordable houses in the Peninsula shall only be occupied by persons (and their dependents) whose housing needs are not met by the market and:

- who have had a minimum period of 5 years in the last 10 years of permanent and continuous residence in the Peninsula and are currently living in the Peninsula; or**
- who have lived in the Peninsula for at least 5 years and whose parents or children are currently living here and have at least 10 years continuous residency; or**
- who are a key worker as defined by the UK Government and are working**

within the Peninsula.

BH2.2 Where persons cannot be found to meet these criteria, affordable housing may be occupied by people and their dependents whose housing needs are not met by the market. These occupancy requirements shall apply in perpetuity, and be the subject of a legal agreement negotiated during the planning process on any development of affordable housing.

COMMENT

*Torbay Council has made representation that this policy conflicts with the Councils Local Connection Policy which has been approved at Council and as established by Devon Home Choice and would make it particularly difficult to administer a 2-tier system. However, I am satisfied that Neighbourhood Plans can introduce local occupancy conditions in relation to **new** (my emphasis) affordable housing units. I have therefore modified the policy to clarify that the local occupancy condition relates only to any new affordable housing units and that there is a default to the Torbay Council waiting list if no local occupants can be found.*

For clarity and in order to meet the Basic conditions the policy should be modified as follows:

Local allocations policy

Policy BH2: Allocation of new affordable homes

BH2.1 New affordable houses in the Peninsula shall only be occupied by persons (and their dependents) whose housing needs are not met by the market and:

- who have had a minimum period of 5 years in the last 10 years of permanent and continuous residence in the Peninsula and are currently living in the Peninsula; or***
- who have lived in the Peninsula for at least 5 years and whose parents or children are currently living here and have at least 10 years continuous residency; or***

BH2.2 Where persons cannot be found to meet these criteria, affordable housing may be occupied by people and their dependents identified on the Torbay Housing Waiting List.

These occupancy requirements shall apply in perpetuity, and be the subject of a legal agreement negotiated during the planning process on any development of affordable

housing.

Policy BH3: Delivery of new homes

Table 2: Allocated housing sites. (table not included here)

COMMENT

Policy SDB1 of the identifies the requirement for Brixham to provide sufficient land to enable the delivery of at least 660 new homes over the plan period.

Torbay Council have raised objection to this policy on the basis that it cannot be demonstrated that all the sites are deliverable in accordance with NPPF para 47(i.e. within 5 years). Local Plan Policy SS13 seeks site allocations for years 6-10). There are also concerns that some allocated sites have not demonstrated that the constraints can be overcome, and sites or number of units indicated can be delivered as set out in the Housing Assessment Document 3. In addition, I have received representations related to the Habitats Regulation Assessment of the Waterside Quarry site.

National planning policy states that a neighbourhood plan should support the strategic development needs set out in the Local Plan, plan positively to support local development and should not promote less development than set out in the Local Plan or undermine its strategic policies (see paragraph 16 and paragraph 184 of the National Planning Policy Framework). Nor should it be used to constrain the delivery of a strategic site allocated for development in the Local Plan.

Should there be a conflict between a policy in a neighbourhood plan and a policy in a Local Plan, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy, which is contained in the last document to become part of the development plan.

I have considered carefully the allocated sites, the evidence and representations made both in support and objections to those allocations. My conclusions are as follows:

1. Waterside Quarry

I have received many representations regarding this allocation. The issues surrounding this allocation are multiple and complex. Some are relevant to the neighbourhood plan process and examination and others are not. I have considered carefully the evidence and supporting documents available to me and the relevant representations. I have focused on the issue of the adequacy or otherwise of the environmental assessment of the site in the light of the PoW case and whether or not the site as a result of this and other site constraints is developable.

My conclusion is that I am not satisfied that the HRA assessment of the site as submitted is adequate. The NPPF is clear that sites allocated should be both deliverable and developable. In my planning judgement there is sufficient uncertainty about the deliverability and developability of the site that it should be deleted from table.

My detailed consideration of this issue is on pages 19-26 of this report, entitled 11.4 Habitat Regulations Assessment.

2.Supporting the strategic development needs set out in the Local Plan.

I have carefully considered the representations made in connection with the sites in Table 2. These representations, including those from Torbay Council which support in principal the allocations but express concern that either not all of the sites are deliverable or developable or the capacity of some sites has been overestimated.

Having considered the evidence made available to me and taking into consideration the representations received, I conclude, in my planning judgement that there is the potential of a shortfall in the overall numbers that will be delivered from the allocations in Table 2.

Neighbourhood Planning Guidance clearly states 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).”

I have modified the policy to ensure that this policy supports that strategic development needs of the Torbay Local Plan. In order to meet the Basic Conditions, the policy should be modified as follows:

Policy BH3:

Delivery of new homes

The Brixham Neighbourhood Plan supports housing growth appropriate to meet local needs and the strategic needs set out in the Torbay Local Plan 2012-2030, including affordable housing.

The sites listed in Table 2 are allocated for residential development. Appropriate Ecology surveys as set out in the Plan’s accompanying HRA will need to be undertaken at the project stage for any planning application as set out in the HRA

Table 2: Allocated housing sites. (table revised to exclude Waterside Quarry)

Policy BH4: Brownfield and greenfield sites

BH4.1 Subject to compliance with the other policies of this Neighbourhood Plan, development on brownfield (or previously developed) sites in preference to greenfield sites will be encouraged and supported.

BH4.2 Brownfield sites within the defined Settlement Boundaries (Policy E2) are the preferred locations for development.

BH4.3 Development that extends settlements on to adjoining greenfield sites is not supported. The only exception to this is where the development is fully compliant with Policy BH9 in relation to Exception Sites.

COMMENT

This policy does not directly refer to housing but as sits within the housing section it is assumed that it is only intended to relate to housing development. It is also assumed that BH4.3 is intended to refer to rural exception site development.

For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy BH4: Housing Development- brownfield (previously developed) and greenfield (not previously developed) sites

BH4.1 Subject to compliance with the other policies of this Neighbourhood Plan, residential development on brownfield (or previously developed) sites in preference to greenfield sites will be encouraged and supported.

BH4.2 Brownfield sites within the defined Settlement Boundaries (Policy E2) are the preferred locations for residential development.

BH4.3 Development that extends settlements on to adjoining greenfield sites will be considered in the context of TLP Policy C1 and Exception Site development that may meet Local Need through self-build and local affordable housing Provision (BH9)

Policy BH5:

Good design and the town and village Design Statements

BH5.1 All new development should demonstrate good quality design and respect the character and appearance of the surrounding area.

BH5.2 The character and appearance of Brixham Town and the villages of Churston,

Galmpton and Broadsands are set out in detail in the relevant Design Statement (Documents 6, 7, 8 and 9) which include both general and area-specific design guidelines (as denoted by the shading pink of the boxes around text), as well as photographic examples of community views on good and bad design. Design statements apply to their respective area as set out on the Policy Maps (Document 2) by a dashed brown line.

BH5.3 A central part of achieving good design is responding to and integrating with local character and landscape context as well as the built environment.

BH5.4 Development that fails to take the opportunities afforded by good design so as to respect or enhance the local character and quality of the area as set out in the Design Statements, the Landscape Character Assessment 22 or the Brixham Urban Fringe Landscape Assessment,23 or the way the area functions, or does not comply with the general and area-specific design guidelines in the Design Statements, shall not be permitted.

BH5.5 The design of new development and altered buildings or areas in the following categories should adequately take into account the safety and security of the users of the facilities and that of neighbouring residents:

- *Major housing schemes of 10 or more homes*
- *Major commercial office, industrial, retail or leisure schemes*
- *New neighbourhood or district community facilities*
- *Shop Front improvements*
- *Proposals which include significant areas of open space/landscaping as part of a development, including linkage footpaths*
- *Proposals incorporating significant off street car parking provisions*
- *Improvements such as cycle lanes and new or improved footpaths*
- *All developments involving Class A3, A4 and A5 food and drink uses*
- *New or redeveloped schools /education premises*
- *Where intended occupants are particularly vulnerable and require higher standards of security to ensure their personal safety e.g. care homes and drug rehabilitation centres*

COMMENT

Please see my general comments at the beginning of this section. Neighbourhood Planning Guidance states:

“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with

sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”

Paragraph BH5.4 lacks sufficient clarity to allow a decision maker can “apply it consistently and with confidence when determining planning applications”. It repeats elements in other paragraphs in the policy and uses the word “permitted”. As stated in my general comments the decision on any planning applications is made by the Local Planning Authority and not the Neighbourhood Plan.

Neighbourhood Planning Guidance states:

“Decisions on planning applications will be made using both the Local Plan and the neighbourhood plan, and any other material considerations.”

“Planning applications are decided in accordance with the development plan, unless material considerations indicate otherwise. It is for the decision maker in each case to determine what is a material consideration and what weight to give to it. “

In order to meet the Basic conditions paragraph BH5.4 should be deleted.

Policy BH6: Roofscape and dormer management

BH6.1 To protect local amenity, dormers will only be approved where they:

- **are modestly scaled;**
- **are subservient to the roofscape, by being below the ridge line and set in from the sides and eaves lines;**
- **are sympathetic to the original fascia and eaves and retain traditional roof features (such as chimney stacks);**
- **do not include inappropriate projecting roof features (such as Juliette balconies or extractor fans);**
- **use traditional materials and methods of fixing which are consistent with the local character of the area;**
- **include windows that are subordinate in size, aligned to the windows below and sympathetic to traditional fenestration in materials, form and expression;**
and
- **do not result in a detrimental impact to neighbouring residential amenity.**

BH6.2 Design construction should reflect the traditional, intrinsic qualities of the

original building.

BH6.3 Large roof-lights or solar panels can be as visually harmful as poorly designed dormer windows. They should be carefully designed and positioned to avoid impacting on the appearance of a building, particularly where they are not a characteristic feature in the area.

COMMENT

This policy should reference that in certain circumstances planning permission will not be required by the development this policy seeks to control.

For clarity the introduction to the policy should be modified as follows:

Policy BH6: Roofscape and dormer management

To protect local amenity, where planning permission is required dormers will only be approved where they:

BH6.1.

Policy BH7: Sustainable construction

New development is encouraged to, on a basis proportionate to the scale of the development, incorporate the latest in sustainable construction, adaptive technologies, eco-innovation and other measures to combat climate change and enable sustainable lifestyles. Development orientation, design and layout should minimise energy use and maximise energy efficiency.

COMMENT

I have no comment on this policy.

Policy BH8:

Access to new dwellings

BH8.1 No more than five dwellings shall be accessed off an existing un-adopted highway.

BH8.2 In new developments where an un-adopted highway is first planned it will, in principle, be acceptable to access more than five dwellings.

COMMENT

Parking and access standards are set out in the Manual for streets and the adopted Torbay Highway Design Guide for New Development.

I have not been provided with any evidence to support a variance from these standards. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy BH8: Access to new dwellings

Access to new developments should comply with the relevant adopted standards.

Policy BH9: Exception sites

Subject to compliance with the other policies of this Neighbourhood Plan and in particular the Conservation of Habitats & Species Regulations 2010, in exceptional circumstances, proposals for rural exception housing schemes on sites that would not otherwise be acceptable for housing development, may be permitted where the development:

a. Exclusively addresses an identified Brixham Peninsula need for:

- affordable housing in accordance with the definition in the NPPF;***
- purpose-built accommodation for older people (with a minimum age of 60);***
or
- purpose built accommodation for the disabled;***

and the developer has evidenced that scale of the need for that type of housing within the Brixham Peninsula area the time that Planning Permission is sought is sufficient to justify a development on a site which would otherwise not be able to be developed;
and

b. Is subject to planning obligations and safeguards that provide legal certainty that the need will continue to be served in perpetuity; and

c. Is adjacent to a Settlement Boundary (Policy E2) or otherwise demonstrably well related to existing residential development and amenities; and

d. Is not located within a Settlement Gap (Policy E3); and

e. Is appropriate in terms of its scale, form and character and is of low environmental and visual impact; and

f. Does not comprise more than 20 dwellings or buildings with a footprint in excess of 200 sqm unless agreed otherwise in conjunction with the community.

COMMENT

Rural exception sites are defined in the NPPF as follows:

“Rural exception sites: Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. Small numbers of market homes may be allowed at the local authority’s discretion, for example where essential to enable the delivery of affordable units without grant funding. “

Rural exception site policy is specifically aimed at “small sites”. Although there is no definition of small sites in this context I consider that a site accommodating 20 homes could not be considered “small” and for this reason the policy as currently worded does not have regard to national policy.

Neither does the NPPF specify who the affordable housing should be for, other than addressing “ the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection”. Therefore, it may be that a development coming forward will include provision of older and disabled people, but this cannot be a requirement of the policy. Therefore, paragraph f) should be deleted.

Paragraph 4.9 should be modified to reflect this definition and the modification of the policy.

4.9 Policy BH9 (Exception Sites) is intended to deliver affordable housing on “small “ sites that otherwise could not come forward including houses for older person, and disabled persons. It is for the Local planning Authority to determine what constitutes a “small” site however a proposal for 20 homes could not be considered small. In the Regulation 14 consultation a proposal was brought to attention which it appears could deliver a rural exception site, subject to community consultation. Accordingly, through Policy BH9 it is expected that more homes than set out above will come forward. , older person, and disabled persons.

Paragraph e is covered by policy C1 of the Torbay Local Plan and other policies in the Neighbourhood Plan and is unnecessary and should be deleted. For clarity and in order to meet the Basic Conditions the policy should be modified as follows:

Policy BH9: Exception sites

Subject to compliance with the other polices of this Neighbourhood Plan and in particular the Conservation of Habitats & Species Regulations 2010, proposals for rural exception housing schemes, may be permitted where the development:

- a. Addresses an identified Brixham Peninsula need for affordable housing in accordance with the definition in the NPPF and the developer has evidenced that scale of the need for that type of housing within the Brixham Peninsula area the time that Planning Permission is sought is sufficient to justify a development on a site which would otherwise not be able to be developed; and*
- b. Is subject to planning obligations and safeguards that provide legal certainty that the need will continue to be served in perpetuity; and*
- c. Is adjacent to a Settlement Boundary (Policy E2) or otherwise demonstrably well related to existing residential development and amenities;*
- d. Is not located within a Settlement Gap (Policy E3); and*
- e. does not constitute major development in the AONB.*

The natural environment (E)

Policy E1: Landscape beauty and protected areas

E1.1 The natural beauty, landscape character, tranquillity and biodiversity of the Brixham Peninsula, as set out in the Design Statements (Policy BH5), the Landscape Character Assessment or the Brixham Urban Fringe Landscape Assessment will be preserved and enhanced. New development will respect these qualities and wherever possible enhance them.

E1.2 Designated landscapes including the internationally designated Special Area of Conservation (SAC), the nationally designated National Nature Reserve (NNR) or Area of Outstanding Natural Beauty (AONB), and the locally designated Undeveloped Coast (Local Plan Policy C2) or Countryside Area (Local Plan Policy C1) will all be protected. Landscapes which comprise the English Riviera Global Geopark will be protected to ensure the retention of the area's status as an urban geopark. As a minimum, prevailing international, national and local policies will be applied.

E1.3 Development within or impacting on the AONB must demonstrate that "great weight" has been given to conserving landscape and scenic beauty. As a minimum, development will comply with all policies, objectives and guidance from the South Devon AONB and the National Trust.

E1.4 Outside of Settlement Boundaries (Policy E2) priority will be given to protecting and enhancing the countryside from inappropriate development.

E1.5 Unsympathetic development that will harm the wider landscape or introduce or increase light pollution will not be supported.

COMMENT

A statutory framework for the protection of AONBs already exists and does not need to be repeated in a neighbourhood plan. There can be no requirement to comply with policies, objectives or guidance from the National Trust who are a non- governmental charitable organisation .For clarity and to meet the Basic Conditions paragraphs E1.3, E1.4, should be modified as follows and E1.5 deleted as it is duplicating protection covered under existing policy:

E1.3 Development within or impacting on the AONB must comply with the requirements of the National Planning Policy Framework and other statutory documents including the AONB management plan.

E1.4 Priority will be given to protecting and enhancing the countryside from inappropriate development in accordance with Policy C1 of the Torbay Local Plan.

Policy E2: Settlement boundaries

E2.1 Settlement boundaries are defined by this Neighbourhood Plan for the respective settlements of the Town of Brixham and the three villages of Churston, Galampton and Broadsands. These boundaries are shown in the Policy Maps (Document 2).

E2.2 Subject to compliance with the other policies of this Neighbourhood Plan, proposals for sustainable developments within settlement boundaries will be supported where developments demonstrate good design and follow the guidance in the relevant Design Statement (Policy BH5).

E2.3 Areas outside settlement boundaries will be treated as open countryside where, in addition to any protection already afforded in any international, national or development plan policy, only the following development will be supported:

- development which demonstrates an operational need for a countryside location such as for agricultural, horticultural or forestry operations or dwellings for their workforces where the same need is demonstrated;***
- development where there is a need for replacement buildings of similar size;***
- small-scale and low-impact rural/farm diversification schemes appropriate to the site, location and its rural setting;***
- the conversion and/or reuse of existing rural buildings that are permanent structures and can be reused without major reconstruction;***

- **the expansion of existing buildings to facilitate the growth of established businesses proportionate to the original nature and scale of the site and its rural setting;**
- **extensions and alterations to dwellings which do not dominate or have other adverse effects on the character or appearance of the original property, or on the landscape or setting in general;**
- **developments proposed for an Exception Site (Policy BH2) specifically to meet local need in strict accordance with that policy;**
- **facilities for outdoor sport and recreation are appropriate to the rural setting in terms of design and impact which accord with Policy S&L1 and which do not generate unacceptable levels of traffic onto unsuitable roads.**

COMMENT

National Planning Policy defines rural exception sites as follows:

“Rural exception sites: Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. Small numbers of market homes may be allowed at the local authority’s discretion, for example where essential to enable the delivery of affordable units without grant funding.”

In order to be a “rural exception site” it has to conform to this definition. The Local Planning Authority will make the judgment as to whether or not a site coming forward meets this definition. Paragraph E2.3 covers development already controlled by policy C1 of the Torbay Local Plan, it does not need to be repeated.

Paragraph 5.10 should be reworded to reflect the policy modification as follows:

“5.10 Policy E2 is a development of the “village envelope” concept proposed by the Local Plan. This Neighbourhood Plan policy hence provides supporting detail to a Local Plan policy C1.”

For clarity and to meet the Basic Conditions paragraph E2.3 should be modified as follows:

E2.3 Development outside settlement boundaries will need to meet the criteria in Torbay Local Plan Policy C1.

Policy E3: Settlement gaps

E3.1 Settlement gaps have been defined between Paignton, Galmpton, Churston and

Brixham. They are shown at Appendix 3 and on the Policy Maps (Document 2). Countryside around Brixham is largely AONB (Policy E1 at para E1.3). Settlement Gaps relate to areas outside of the AONB where the countryside which forms the “gap” is Undeveloped Coast (Local Plan Policy C2) or Countryside Area (Local Plan Policy C1).

E3.2 Within the settlement gaps no development that visually and or actually closes the gaps between these urban areas will be permitted. In particular, development should not:

- **lead to a reduction in the functional value of the settlement gap by way of a perceived reduction in levels of separation between settlements or a perceived reduction in connectivity to the wider countryside; or**
- **harm the openness or landscape character of the area, including through visual impacts, and/or would otherwise result in harm to settlements in their wider landscape setting; or**
- **lead to a loss of environmental or historical assets that individually or collectively contribute to local identity.**

COMMENT

Torbay Council have made representation on this policy that it fails to adequately describe the proposed settlement gaps on the relevant policy map, that the ellipses are difficult to interpret. On balance I think that the description is adequate however I consider that the first ellipse of 2 is not located within what could reasonably be considered as a “settlement gap” and should be removed from the policy and accompanying map.

Neighbourhood Planning Guidance states that:

“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”

I consider that Policy E3, as currently worded is not “drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications” also it addresses development covered by other policies.

As previously stated, it is for the Local Planning Authority to determine planning applications therefore the word “permitted” is not appropriate in this context.

For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy E3: Settlement gaps

E3.1 Settlement gaps have been identified between Paignton, Galmpton, Churston and Brixham. They are shown at Appendix 3 and on the Policy Maps (Document 2).

Countryside around Brixham is largely AONB (Policy E1 at para E1.3). Settlement Gaps relate to areas outside of the AONB where the countryside which forms the “gap” is Undeveloped Coast (Local Plan Policy C2) or Countryside Area (Local Plan Policy C1).

E3.2 Within the settlement gaps development proposals must meet the criteria set out in Policy C1 of the Torbay Local Plan. No development that visually and or actually closes the gaps between these urban areas will be supported.

Policy E4: Local Green Spaces

The sites set out in Table 3 below and shown in the Policy Maps (Document 2) and the Greenspace Site Assessment (Document 5) are designated Local Green Spaces (LGS), as defined in the NPPF.

They will be protected beyond the lifespan of this Neighbourhood Plan as required by the NPPF.

Development within a LGS will only be permitted in “very special circumstances” and would require robust justification on grounds of specific benefit to the community. For example, where the proposal would enhance recreational, sport or leisure facilities and provided it met stringent design and environmental requirements it might be viewed favourably.

Some land designated as Local Green Space is already protected by higher level international and national protection, for example, the Berry Head Special Area of Conservation (SAC). This policy provides additional protection for such areas; it does not dilute existing protection.

COMMENT

Considering policies E4 and E5 together there seems to be an arbitrary distinction as to why some areas have been designated as Local Green Space and some as public open spaces. For example, there are areas of allotments that are included in E4 and others in E5. However, I have considered Policies E4 and E5 as they are before me. The list of areas put forward for designation as Local Green Spaces includes 16 sites overall. Whilst I acknowledge the importance of these areas to the community, in order to be designated as Local Green Spaces each proposed site must meet all of the tests set out in paragraph 76/77 of the National Planning Policy Framework.

Local Green Space designation is a “restrictive and significant policy designation” equivalent to Green Belt designation. It is essential that, when allocating Local Green Space, plan-makers can clearly demonstrate that the requirements for its allocation are met in full.

Paragraph 77 of the NPPF:

“The Local Green Space designation will not be appropriate for most green areas or open space. The designation 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.*

In addition, the Local Green Space should be capable of enduring beyond the plan period and not be subject to a local plan allocation. Local Green Space designation will rarely be appropriate where the land has planning permission for development. Exceptions could be where the development would be compatible with the reasons for designation or where planning permission is no longer capable of being implemented.

Given that the Framework is not ambiguous in stating that a Local Green Space designation is not appropriate for most green areas or open space, it is entirely reasonable to expect compelling evidence to demonstrate that any such allocation meets national policy requirements.

I have received objection to a number of the proposed designations and I have, where relevant taken these objections into consideration.

In particular, Torbay Council object to the area including the 1st and 18th hole of Churston Golf area being included in the proposed Churston Golf Course LGS on the basis that the site is currently within built up/urban area (village) with potential for sustainable development. This site, including the existing clubhouse has (expired) outline planning permission for 132 units and is identified in the Torbay Local Plan as ‘BPNPH2’ -Appendix C Pool of potential housing sites. The Local Plan Inspector recommended consideration of site as housing allocation in Neighbourhood Plan. Torbay Council consider that there is a resulting lack of Conformity with Strategic Policies: SS12 and SS13 and SDB 1 of the Torbay Local Plan.

Torbay Development Agency has objected to many of the Local Green Spaces in their ownership on the basis that they have development potential. I do not consider this to be a valid objection in terms of whether or not the proposed designations meet the required tests.

A number of the proposed designations are already covered by various policy designations but this in itself is not a reason to exclude a proposed designation however if land is already protected by designation, then consideration should be given to whether any additional local benefit would be gained by designation as Local Green Space.

I have received confirmation that land behind 39, Wall Park Road Brixham is not part of the land proposed to be designated Local Green Space within the Berry Head LGS site (E4-4).

The Forum has confirmed that the owners of the proposed Local Green Spaces have been consulted.

My conclusion is that whilst most of the proposed Local Green Spaces do meet the required tests I have concerns relating to the proposed boundary of the proposed Churston Golf Course LGS. I have considered the Torbay Council objection and my conclusions on the Brixham Peninsula Neighbourhood Plan housing policies and their ability to deliver the level of housing growth identified in the Torbay Local Plan and therefore a lack of SS12 and SS13 and SDB 1 of the Torbay Local Plan. To overcome my concerns and meet the Basic Conditions the boundary of E5-13 should be modified to exclude the area which covers the 1st and 18th hole of Churston Golf Course, including the existing club house as identified as BPN PH2 in the Torbay Local Plan sheet 31 of the policies map.

Policy E5: Public Open Spaces

E5.1 The sites set out in the Table in Appendix 4 to this document and shown in the Policy Maps (Document 2) and the Greenspace Site Assessment (Document 5) are allocated as Public Open Spaces.

E5.2 Public Open Spaces have value to the community and they should be retained as open space for public recreational use. Development on them will only be acceptable where it enhances the public enjoyment of the space or an alternative facility will be provided as part of that development to an equivalent or better standard and location without detriment to biodiversity and landscape requirements.

COMMENT

Please refer to my comments on policy E4.

Planning Policy Guidance states:

“Open space, which includes all open space of public value, can take many forms, from formal sports pitches to open areas within a development, linear corridors and country parks. It can provide health and recreation benefits to people living and working nearby; have an ecological value and contribute to green infrastructure (see National Planning Policy

Framework paragraph 114), as well as being an important part of the landscape and setting of built development, and an important component in the achievement of sustainable development (see National Planning Policy Framework paragraphs 6-10).”

The National Planning Policy Framework, paragraph 74 states:

74. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.*

The neighbourhood planning process does not, in contrast to Local Green Space designation enable the allocation or designation of public open spaces, more the identification existing spaces or the need for additional ones.

I have received objection to a number of the proposed “allocations” and I have considered these carefully. Torbay Development Agency has objected to many of the sites in their ownership on the basis that they have development potential. I do not consider this to be a valid objection in terms of whether or not the sites should be identified under paragraph 74, as paragraph 74 sets out a clear policy process for assessment of whether or not the open space can be redeveloped.

For clarity and in order to meet the Basic Conditions the policy should be modified as follows:

Policy E5: Open Spaces

E5.1 The sites set out in the Table in Appendix 4 to this document and shown in the Policy Maps (Document 2) and the Greenspace Site Assessment (Document 5) are identified as Open Spaces and should not be built on unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or***
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or***

- *the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.*

Policy E6: Views and vistas

Views and vistas, particularly those to and from the sea or the river Dart, including horizons and skylines, must be protected. New development should preserve public views of the townscape, seascape, landscape and skyline that are valued by residents and visitors alike. Examples of such views are given in the Design Statements. In cases where impacts on such views are possible photomontages will be the principle way in which the absence of unacceptable impact can be demonstrated.

COMMENT

For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy E6: Views and vistas

Views and vistas, particularly those to and from the sea or the River Dart, public views of the townscape, seascape, landscape and skyline are valued by residents and visitors alike. Examples of such views are given in the Brixham Town ,Churston, Galmpton and Broadsands Design Statements (Documents 6, 7, 8 and 9); the Landscape Character Assessment and the Brixham Urban Fringe Landscape Assessment. Proposals for developments which affect these views and vistas should be accompanied by a visual impact assessment appropriate to the size and scale of the proposal.

Policy E7: Protecting semi-natural and other landscape features

Semi-natural and other landscape, historic, and environmental assets of local and regional importance will be expected to be preserved in any development proposal. Development should where-ever possible ensure the retention, integration or enhancement of local semi-natural, cultural, historic or man-made features and their contribution to the special character, wildlife habitats and biodiversity of the Peninsula, such as:

- *Devon banks (stone-clad hedges often over 800 years old)*
- *dry-stone walls and gateposts*
- *village orchards*
- *field barns*
- *lime kilns*

COMMENT

For clarity and to meet the Basic Conditions this policy should be modified as follows:

Policy E7: Protecting semi-natural and other landscape features

Development should where-ever possible ensure the retention, integration or enhancement of local semi-natural, cultural, historic or man-made features and their contribution to the special character, wildlife habitats and biodiversity of the Peninsula, such as:

- *Devon banks (stone-clad hedges often over 800 years old)*
- *dry-stone walls and gateposts*
- *village orchards*
- *field barns*
- *lime kilns*

Policy E8: Internationally and nationally important ecological sites and species

E8.1 In relation to important sites, development will not be permitted where it would adversely affect the ecologies of areas designated as:

- ***South Hams SAC (SAC), which includes a coastal strip from Shoalstone to Sharkham and substantial areas of headland at Berry Head;***
- ***Lyme Bay and Torbay Marine Candidate Special Area of Conservation (SAC), which includes all of the coastal waters around Torbay;***
- ***Sites of Special Scientific Interest (SSSI), including Berry Head to Sharkham Point and Saltern Cove;***
- ***National Nature Reserves, including Berry Head;***
- ***Torbay Marine Conservation Zone (MCZ), which includes coastal waters around Torbay from Babbacombe to Sharkham Point; or***
- ***recommended Dart Estuary Marine Conservation Zone (MCZ), which includes the upper waters of the River Dart to below Dittisham.***

E8.2 In relation to important species, all species found on our Peninsula, covered by the Wildlife and Conservation Act (1981) and the Conservation of Habitats and Species Regulations (2010), including Wildlife Countryside Marine Management – The Conservation of Habitats and Species (Amendment) Regulations 2012, will be

protected. In particular, development will not be permitted where it would:

threaten the habitat of the Greater Horseshoe Bat, its roost, its strategic flyways and its sustenance zones, or

- **threaten the habitat and nesting sites of the Cirl Bunting.**

E8.3 To demonstrate compliance with paragraphs E8.1 and E8.2 development will require at the time it is considered a full report setting out, in addition to that already required by way of national and local policy, for the:

- **Greater Horseshoe Bat, survey evidence as set out in the South Hams SAC guidance. 47 For major development additional survey evidence to specifically assess the impact of the development both alone and in combination with all other developments will be required.**
- **dry heaths and calcareous grassland at Berryhead, evidence to show that additional recreational pressure can be mitigated to an acceptable level. For major developments this evidence be required to provide more detail to justify that additional recreational pressure can be mitigated to an acceptable level both alone and combination with all other development. 49**
- **coastal waters around Torbay, evidence of the ability to connect onto mains drains or install alternatives such as septic tanks. For major developments this report will be required to evidence there is sufficient storm and waste water pipe-work, storage and treatment capacity, both alone and in combination with all other development, to ensure no increase in the levels of pollutants likely to have an adverse effect on the integrity of the Lyme Bay and Torbay Marine SAC.50**

For this paragraph 8.3, major development means developments of 20 or more homes, employment development of 1,000 sqm or more floorspace, and all waste and minerals development.

COMMENT

Please see my comments at the beginning of this section. A regulatory policy regime already exists for Internationally and nationally important ecological sites and species. By including a policy which reflects but in part paraphrases this existing policy incorrectly there is the potential for confusion. It is not necessary for the Neighbourhood Plan to repeat this policy and for clarity and in order to meet the Basic Conditions the policy should be modified as follows:

Policy E8: Internationally and nationally important ecological sites and species

E8.1 Internationally important sites and species will be protected. Development on or likely to have an adverse effect on nationally important sites will not normally be permitted. Development proposals will not be permitted where they are not in conformity with the requirements of the National Planning Policy Framework and policy NC1 of the Torbay Local Plan and would adversely impact the biodiversity of areas designated as:

- ***South Hams SAC (SAC), which includes a coastal strip from Shoalstone to Sharkham and substantial areas of headland at Berry Head;***
- ***Lyme Bay and Torbay Marine Candidate Special Area of Conservation (SAC), which includes all of the coastal waters around Torbay;***
- ***Sites of Special Scientific Interest (SSSI), including Berry Head to Sharkham Point and Saltern Cove;***
- ***National Nature Reserves, including Berry Head;***
- ***Torbay Marine Conservation Zone (MCZ), which includes coastal waters***
- ***around Torbay from Babbacombe to Sharkham Point; or***
- ***recommended Dart Estuary Marine Conservation Zone (MCZ), which includes the upper waters of the River Dart to below Dittisham.***

E8.2 In relation to important species, all species found on our Peninsula, covered by the Wildlife and Conservation Act (1981) and the Conservation of Habitats and Species Regulations (2010), including Wildlife Countryside Marine Management – The Conservation of Habitats and Species (Amendment) Regulations 2012, will be protected.

The built environment (BE)

Policy BE1: Heritage Assets and their setting

BE1.1 Any development must conserve and enhance the heritage assets of Brixham Peninsula and their setting, including maintaining traditional settlement separation.

BE1.2 Inappropriate extensions or alterations to nationally Listed properties and other properties that, while not Listed, make a contribution to the character of the area will be resisted. Development must not cause harm or adversely impact on the setting of important heritage sites in the Brixham Peninsula.

BE1.3 The Design Guidelines in the relevant Design Statement should be taken into consideration in all developments to ensure a high quality of design that respects the specific character and historic legacy of each settlement and the surrounding area.

COMMENT

This policy lacks clarity and does not reflect national planning policy and guidance. In order to meet the Basic Conditions, it should be modified as follows:

Policy BE1:

BE1.1 Proposals which affect Designated and Non Designated Heritage Assets must comply with the requirements of the National Planning Policy Framework and the relevant policies of the Torbay Local Plan.

BE1.2 The Design Guidelines in the relevant Design Statement should be taken into consideration in all developments to ensure a high quality of design that respects the specific character and historic legacy of each settlement and the surrounding area.

Transport (T)

Policy T1: Linking of new developments to travel improvements

T1.1 All developments should include safe walking and cycling access.

T1.2 All developments should provide a travel plan proportionate in breadth and detail to the size and complexity of any development proposal to address the impact of travel associated with the development. Evidence should be provided to show that the carbon footprint from travel has been minimised and the health and well-being of travellers (in particular commuters) maximised.

T1.3 All development should seek to minimise commuting distances and seek to include improvements to the safety of cyclists and pedestrians by the provision of new off-road cycleways, highway crossings and greater separation between motor vehicles and other travellers.

COMMENT

For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy T1: Linking of new developments to travel improvements

T1.1 Where appropriate developments should include safe walking and cycling access.

T1.2 Developments should provide a travel plan proportionate in breadth and detail to the size and complexity of any development proposal to address the impact of travel associated with the development. This should include information on how the carbon footprint from travel has been minimised and the health and well-being of travellers (in

particular commuters) maximised.

T1.3 All development should seek to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists.

The health and wellbeing (HW) of the community

Policy HW1: Retention of current health and social care estates

Facilities currently providing health and social care will be strongly encouraged to be retained for such purposes unless the service provided can be demonstrated not to be viable, either financially or clinically at that location. Where the current locations of facilities cannot be retained, an alternative facility within the Brixham Peninsula with as good accessibility will need to be provided. Subject to compliance with the other policies of this Neighbourhood Plan, developments to health facilities that reduce travel and improve accessibility both for our town and village communities will be favoured.

COMMENT

I have no comment on this policy.

Policy HW2: Operational space for voluntary support organisations

Given the increasing role of the voluntary sector in promoting strong and healthy communities across the Peninsula, subject to compliance with the other policies of this Neighbourhood Plan, the retention of existing operational space and the provision of new operational space for voluntary organisations will be prioritised. Where new development may jeopardise or reduce voluntary activity, provision of alternative operational space for that voluntary activity should be provided.

COMMENT

Please see my general comments at the beginning of this section. This is not worded as a policy, it is not drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications and is in part community aspiration. In order to be retained as a policy and meet the Basic conditions it should be reworded as follows:

Policy HW2: Operational space for voluntary support organisations

Given the increasing role of the voluntary sector in promoting strong and healthy communities across the Peninsula the provision of new operational space for

voluntary organisations will be supported. Proposals resulting in the loss of operational space for voluntary organisations will only be supported where it can be demonstrated that the facility is not practically or financially viable at that location, or an alternative facility within the Brixham Peninsula has been provided

Education and learning for all (L)

Policy L1: Protection of existing educational facilities

School buildings, associated playing fields and other educational facilities will be expected to be retained for these purposes. Any proposal to develop these facilities for other purposes should clearly demonstrate that they are either not required to meet either current or anticipated need or that they are no longer viable for appropriate reasons, such as educational policy, financial support, or health and safety.

COMMENT

I have no comment on this policy.

Policy L2: Matching educational provision to local need

Subject to compliance with the other policies of this Neighbourhood Plan, the development of Early Years and Primary School facilities will be supported to ensure excellence in educational provision that is easily accessible to local communities and fully responsive to future demand.

COMMENT

I have no comment on this policy.

Policy L3: Providing for 16–18 years and beyond

Subject to compliance with the other policies of this Neighbourhood Plan, educational and training developments will be supported where they are within, or in close proximity, to our schools, colleges and work places. The latter will include horticultural, maritime establishments and farms, where training and education can be provided within or close to the Brixham Peninsula.

COMMENT

I have no comment on this policy.

Tourism (TO)

Policy TO1: Support for of tourism

TO1.1 Subject to compliance with the other polices of this Neighbourhood Plan, developments that increase the quality and range of tourist accommodation and leisure potential in the Peninsula area will be supported, especially where it can be demonstrated that the development will lead to the creation of local jobs.

TO1.2 Redevelopment for non-tourism use of any significant “holiday camp” or self-catering tourism accommodation site within the Brixham Peninsula will not be supported. Significant in this context means any site providing more than 10 units of all or any of caravan, lodge, chalet, apartment or similar short-term visitor accommodation.

TO1.3 Where there is no reasonable prospect of a tourist facility or amenity being re-developed explicitly for tourism purposes change of use will be supported subject to the following criteria:

- **the alternative use will also support local tourism, including self-catering accommodation; or**
- **the alternative use will otherwise support the local economy by providing employment; or**
- **the alternative use will contribute to the needs of the community by providing affordable, disabled or older person housing in accordance with Policy BH9 or by providing housing for principal residence housing.**

COMMENT

TO1.2 introduces the term “significant “which is then defined as more than 10 units. This number seems to be arbitrary and in addition T01.2 and T01.3 are in conflict. T01.3 seeks to introduce a principal residency restriction and I have not been provided with adequate evidence to support this. For clarity and to meet the Basic Conditions paragraphs TO1.2 and TO1.3 of the policy should be modified as follows:

TO1.2 Proposals for the redevelopment for non-tourism use of any “holiday camp” or self-catering tourism accommodation site within the Brixham Peninsula will only be supported where it can be demonstrated that the use is not practically or financially viable, at that location. A lack of viability is to be established by clear evidence from an active marketing effort that it would not be possible to achieve a lease or sale of the premises at a reasonable market rate.

TO1.3 Where there is no reasonable prospect of a tourist facility or amenity being re-developed explicitly for tourism purposes change of use will be supported subject to the following criteria:

- the alternative use will also support local tourism, including self-catering accommodation; or*
- the alternative use will otherwise support the local economy by providing employment; or*
- the alternative use will contribute to the needs of the community by providing affordable, disabled or older person housing in accordance with Policy BH9.*

Sport and leisure (S&L)

Policy S&L1: Increase available space for outdoor sport and leisure

S&L1.1 Notwithstanding areas already designated as Local Green Spaces or Open Spaces of Public Value, additional and better quality outdoor playing space is required in the Peninsula. Subject to compliance with the other policies of this Neighbourhood Plan, proposals for developments within and adjacent to settlements (but excluding Settlement Gaps) which provide outdoor pursuits will be encouraged. These pursuits will embrace a range of activities and sports including formal games pitches, tracks, courts, parks (e.g., skateboarding) and facilities, signposted walking routes and “Trim Trails”, and more informal “free play” and “free activity” areas.

S&L1.2 The approval of any new, enhanced or improved sport or leisure facility will be subject to assessment of the design and impact, amenity and light emission of the proposed development in relation to its setting and other policies in this Plan. It would not be appropriate to introduce flood-lighting into dark areas or cause larger volumes of traffic to need to negotiate minor rural roads.

COMMENT

I have no comment on this policy.

Policy S&L2: Sport and recreational facilities in new developments

All new large residential development proposals (10 homes or more) are strongly encouraged to integrate space into the development. Where appropriate the financial contributions to the improvement of existing or provision of new off-site facilities will be acceptable as an alternative.

COMMENT

For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy S&L2: Sport and recreational facilities in new developments

New residential development proposals, will be required to provide sport and recreational facilities integrated into the development in accordance with Torbay Council adopted standards. Where appropriate financial contributions to the improvement of existing or provision of new off-site facilities may be acceptable as an alternative.

Art and culture (A&C)

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

Subject to compliance with the other policies of this Neighbourhood Plan, proposals for developments that contain fringe benefits, and promote or create new space for cultural activity will be supported. Developments that threaten the cultural activities and/or facilities of our communities will be resisted.

COMMENT

The wording of this policy lacks clarity and should be modified as follows:

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

Subject to compliance with the other policies of this Neighbourhood Plan, proposals for developments supporting artists, activity, places and the use of heritage assets, and promote or create new space for cultural activity will be supported. Developments that threaten the cultural activities and/or facilities of our communities will be resisted.

SECTION 5

Conclusion and Recommendations

5.1 I find that the Brixham Peninsula Neighbourhood Development Plan has been prepared in accordance with the statutory requirements and processes set out in the Town and Country Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012.

5.2 The Neighbourhood Plan does not deal with County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.

5.3 The Brixham Peninsula Neighbourhood Plan does not relate to more than one Neighbourhood Area and there are no other Neighbourhood Development Plans in place within the Neighbourhood Area.

5.4 The Sustainability Appraisal meets the EU obligations regarding Strategic Environmental Assessment.

5.5 I have given the issue of the Habitats Regulation Assessment (HRA) and the representations received in relation to the evidence base behind it very careful consideration particularly in the light of the “People over Wind” decision by the European Court (Seventh Chamber) dated the 12th of April 2018. In essence this judgment relates to the HRA screening process. I have modified the plan where I have considered it necessary to ensure compliance with the relevant legislation but in regard to the overall HRA process I concur with the opinion of Torbay Council in their email of the 4th of May 2018:

“The Council, as competent authority under the Habitats Regulations is empowered to require the Qualifying Bodies to provide sufficient information to enable it to be satisfied in HRA terms. We have therefore reviewed the associated Neighbourhood Plan HRAs, and in the context of the above (not withstanding any other representations on sites/specific elements) considers that the Assessment and Mitigation Measures set out in all three NP HRA 'Screening Stages' substantively meet the requirements. For absolute clarity, this could be made clearer through a minor re-formatting to set out the same in an 'Appropriate Assessment' Stage. Given that the information provided is sufficient to make the assessment, the LPA is prepared to make the minor amendments to formatting before making the plan. This would, in terms of the Council, (as competent authority), meet the HRA regulations.”

I am therefore satisfied that the Brixham Peninsula Neighbourhood Plan meets the Basic Conditions in this respect.

5.6 The policies and plans in the Brixham Peninsula Neighbourhood Plan, subject to the

recommended modifications would contribute to achieving sustainable development. They have regard to national policy and to guidance, and generally conform to the strategic policies of the Torbay Local Plan 2012-2030.

5.7 I therefore consider that the Brixham Peninsula Neighbourhood Development Plan subject to the recommended modifications can proceed to Referendum.

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26th July 2018