

Extraordinary Council Meeting – 15 November 2018

Monitoring Officer Briefing Note and revised officer recommendation

Item 7: Brixham Peninsula Neighbourhood Plan – Determination of Independent Examination

Following representations on behalf of Abacus Projects Limited, I have reviewed the history of decision making both in respect of the Town Council, and Torbay Council as LPA.

Brixham Town Council submitted an application to Torbay Council as LPA on 19 July 2012 in respect of designation of a neighbourhood area and designation as a Forum.

This application clearly stated that “*Brixham Town Council is a relevant body making the application in accordance with legislation s.61G Town and Country Planning Act 1990.*” The application included a map identifying the area, together with a statement explaining why the area was considered appropriate to be designated as a Neighbourhood Area.

It is now recognised that an application in respect of forum status was not required, given that the Town Council is considered to be the ‘relevant body’ in accordance with sections 61F and 61G of the Town and Country Planning Act 1990.

The requirement for the Town Council to be the ‘relevant body’ can be evidenced in 2011 by virtue of the report of their Town Clerk dated 27 January 2011 which states inter alia ‘to comply with the requirement that the Town Council should be the Forum....’

Torbay Council, as Local Planning Authority (LPA), considered the applications in respect of areas and forums, for the entirety of Torbay at its meeting on 6 December 2012, and resolved;

“that the Neighbourhood Plan areas and forums of Torquay, Paignton and Brixham, and their constitutions, be approved.....”

The LPA’s decision making in respect of the Neighbourhood Area is considered sound. It received an application from the correct ‘relevant body’ (i.e. the Town Council), that contained the information required by the Act, the required consultation was undertaken, no objections to it were received and the Council minute in respect of the Neighbourhood Area is clear.

In respect of the application for designation as a Neighbourhood Forum there was confusion. Whilst an application was submitted and authorised, this was not required. The designation of the Neighbourhood Area had the automatic effect of making Brixham Town Council the ‘relevant body’ for the entire Neighbourhood Area. The Council’s decision was purporting to do something which it did not have the power to do.

Therefore it is considered that the 'purported' decision in this respect is not material, either in 2012 or 2017.

In order to undertake the work required to progress the Neighbourhood Plan, the Town Council created a 'Working Group' of the Town Council. This Working Group was given the name 'Brixham Peninsula Neighbourhood Forum.' The terms of reference are set out on the Brixham Town Council website at: <http://www.brixhamtowncouncil.gov.uk/data/uploads/1529.pdf>. The Chairman of the Working Group is a Brixham Town Councillor and the Secretary is the Town Clerk of Brixham Town Council.

The intent of Brixham Town Council to approve the content of the Plan prior to its submission to the LPA is clear from its meeting on 16 March 2017 whereby it resolved "to hold a full Council meeting to discuss the BPNFprior to the submission of the Neighbourhood Plan to Torbay Council."

At the next Council meeting on 27 April 2017 Brixham Town Council received a detailed presentation on the Plan. The Town Clerk has advised that that which the Town Council received a presentation upon was that which was submitted to the LPA, save for editorial corrections. The Council having received this presentation resolved "to support the emerging Neighbourhood Plan." There is no doubt that the wording of this decision could have been clearer, however the intent of approving the Plan prior to submission to the LPA can be seen from the meeting minute of 16 March 2017. When this is considered, together with the position of the Clerk in respect of the Plan that was presented and then submitted to the LPA, it can be considered that Brixham Town Council did approve the Plan that was submitted to the LPA.

On 21 August 2017 Brixham Town Council formally submitted the Plan to the LPA.

On the basis of all that is set out, there is not considered to be an impediment to the Council (as LPA), proceeding to consider this matter as planned at the Council meeting on 15 November 2018. I would however advise that the decision in respect of Brixham is amended so as to specifically revoke the Forum designations in 2012 and 2017.

Revised Officer Recommendation:

Revisions shown in bold text

1.9 It is recommended that the Council:

- 1. That the decisions of the Council in respect of designation of the Neighbourhood Forum for Brixham be rescinded (minutes 93/12/12 and 135/12/17 refers) in recognition that an application in respect of forum status was not required, given that the Town Council is considered to be the 'relevant body' in accordance with sections 61F and 61G of the Town and Country Planning Act 1990.***

2. Agrees the decision statement in Appendix 2, which shall be adopted and published accordingly, and that the Brixham Peninsula Neighbourhood Plan as modified in Appendix 3, is submitted to a referendum in accordance with the Neighbourhood Planning (General) Regulations 2012 (as amended) and the Neighbourhood Planning (Referendums) Regulations 2012 (as amended); and,
3. Delegate to the Assistant Director of Transport and Planning to ensure that the Policy maps are finalised for inclusion in the Plan prior to the referendum, reflecting all modifications set out in the decision statement in Appendix 2; and,
4. Accepts the Examiner's recommendation that it is not necessary to extend the referendum area and that the most appropriate area for the referendum will be that of the Brixham Peninsula Neighbourhood Area.

Anne-Marie Bond

Monitoring Officer, 14 November 2018