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Dear Member

CABINET - TUESDAY, 20 OCTOBER 2020

I am now able to enclose, for consideration at the Tuesday, 20 October 2020 meeting of the Cabinet, the following reports that were unavailable when the agenda was printed.

Agenda No	Item	Page
9.	The Planning White Paper: Planning for the Future	(Pages 2 - 19)

Yours sincerely

Lisa Antrobus
Clerk

Meeting: Cabinet

Date: 20 October 2020

Wards Affected: All

Report Title: The Planning White Paper: Planning for the Future. Draft Consultation Responses

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1. Purpose of Report

- 1.1 The **Planning for the Future** White Paper proposes a major overhaul of the English planning system. It will require a new Town and Country Planning Act (replacing the 1990 Act and its numerous accretions). The White Paper is open to consultation until Thursday 29 October 2020.
- 1.2 This Paper sets out a draft response from Torbay Council following presentation and discussion with Members and representatives of the Neighbourhood Forums. The draft proposed response is set out at appendix 1. Whilst this is not a key decision in the Council's Policy Framework, the White Paper's proposals would have a profound effect for planning in Torbay, and therefore this report seeks Members' support for the proposed White Paper response.
- 1.3 The White Paper contains various criticisms of the planning system and calls for radical reform. It seeks to create a faster simpler, rule based system, using digital technology, with community involvement and high quality design. Boosting housing supply and economic recovery from COVID-19 are clear themes in the White Paper.
- 1.4 The White Paper proposals will take some time to introduce. The White Paper acknowledges that some of the proposals are aspirational and further details will need to be added later. The Government has separately consulted on interim measures in "Changes to the Current Planning System". These proposals include a new standard methodology for calculating housing need, changes to affordable housing, and an expansion in the use of Permissions in Principle (PiPs). The Council has objected to these proposals.
- 1.5 This White Paper sets out three pillars of major changes to the planning system:
 - **Pillar One – Planning for development.** This proposes a revised, simpler system of local plans with areas categorised for "growth", "renewal" or "protection". A binding housing requirement would be provided by

government. Local authorities would have 30 months to prepare and adopt Local Plans. Development management policies would be set out in national guidance rather than local documents.

- **Pillar Two – Planning for beautiful and sustainable places.** Neighbourhood Plans would have a key role in setting design codes. There would be a simple, faster system of assessing environmental impacts (replacing SEA), and increase emphasis on climate change in national guidance.
- **Pillar Three – Planning for infrastructure and connected places.** CIL and S106 would be replaced by a single infrastructure levy, which would also deal with affordable housing. The “neighbourhood portion” of levy spent locally would be retained, but greater flexibility is promised about how the remainder of the levy could be spent.

1.6 A delivery section of the White Paper promises a “skills and resources review” and stronger enforcement powers.

2. Reason for Proposal and its benefits

2.1 The proposals in this report help us to deliver the ambitions set out in the Community and Corporate Plan by responding to the Planning White Paper to seek to influence Government in its shaping of a new planning system so that Torbay’s interests are taken into account.

2.2 The White paper and associated planning proposals were presented to Members and Forum representatives on 17th September and to informal Cabinet on 6th October.

2.3 Members’ key concern was that the White Paper seriously diminishes the role of localism and removes democracy from the planning process. Key decisions would be moved to Westminster. The new planning system does not address housebuilders’ land banking but instead presents a system that will be a developers’ charter. If the Government wishes to boost housing supply, it should give local authorities tax raising powers on planning permissions that are not built-out.

2.4 Members did draw some positives from the White Paper. They expressed support for a simplified planning system and the retention of Neighbourhood Plans. They were also supportive of binding local design codes and noted the work of the Neighbourhood Plan groups in preparing such codes, particularly in Brixham. Members also supported the proposal for housing requirements to take into account infrastructure and environmental constraints.

2.3 However, these positives were outweighed by Members’ concerns about the centralisation of powers to Westminster, and reduction of localism and local democracy. Particular issues noted were:

- Serious concern about “top down” binding housing targets, which remove local discretion and centralise a major area of planning given to local authorities under the Localism Act 2011. High requirements could override

locally decided protections and create pressure on the small amount of open countryside around Torbay. More clarity about how the requirement is calculated and handed down to local authorities is needed.

- Concern that the White Paper sees the planning system as an obstacle to development, whereas a million homes have been granted permission nationally since 2012, which the development industry have not built. A better approach would be to allow councils to levy tax on unbuilt planning permissions to incentivise delivery.
- Objection that whilst Neighbourhood Planning and localism are being paid lip service, their role is being diminished and relegated to secondary roles. The Council calls the Government to show stronger commitment to localism. The White Paper (or its successors) should seek to strengthen the principle of local decision making and provide stronger protections where Neighbourhood Plans have been prepared.
- Concern that the proposals –particularly top-down housing numbers could result in additional pressure for greenfield housing at the expense of more sustainable urban renewal strategies. This could result in standardised developments at the expense of the planning for beautiful and sustainable places, which are key aspirations of the White paper.
- The 30 month plan preparation timeframe is very tight and requires resources, investment and front loading community engagement.
- Members supported the principle of digital tools in plan making, but noted that these will be expensive, and that there is a need for more resources to support digitalisation.
- The increased emphasis on design is welcomed, but it was noted that the concept of “beauty” is subjective. There should be greater emphasis on local design codes, especially where drawn up as part of the neighbourhood planning process. Greater local variation in design reflecting local character and materials should be encouraged. However, other tools in the White Paper, such as top down targets could result in more “off the shelf” unsympathetic developments being imposed on areas to meet those targets, whilst not necessarily meeting quality design or local needs.
- The White Paper should give greater emphasis to the climate emergency and strengthen requirements to achieve net zero carbon as quickly as possible. 2050 should be the latest date and the planning reforms should put stronger requirements in place to exceed this target.
- In promoting sustainability, the White Paper should put more emphasis on urban renewal and brownfield regeneration, and remove punitive tools (such as 5 year supply and the housing delivery test) that can be used by volume housebuilders to undermine such strategies.
- The retention of on-site affordable housing was welcomed, however in the context of other proposals such as proposed 40-50 dwelling thresholds, Members wished to emphasise the need for affordable housing to meet local needs, rather than speculative market housing that often provides very little affordable housing.

2.4 A full draft consultation response to the consultation questions is set out in Appendix 1.

3. Recommendation(s) / Proposed Decision

- (i) That Torbay Council's draft consultation response to the Planning White Paper 'Planning for the Future', as set out at Appendix 1, is approved, with the Assistant Director of Planning, Housing and Climate Emergency being given delegated authority to make final changes in consultation with the Cabinet Member for Infrastructure, Environment and Culture.

Appendices

Appendix 1: Draft Consultation Responses.

Background Documents

Planning For the Future: Planning White Paper

<https://www.gov.uk/government/consultations/planning-for-the-future>

Housing backlog – more than a million homes with planning permission not yet built, LGA 2020 <https://local.gov.uk/housing-backlog-more-million-homes-planning-permission-not-yet-built>

Appendix 1 Draft Consultation Responses.

The consultation runs for 12 weeks from 6 August 2020 (i.e. 29 October 2020?) responses can be online <https://www.gov.uk/government/consultations/planning-for-the-future> . Or via email: planningforthefuture@communities.gov.uk

Consultation Questions

1. What three words do you associate most with the planning system in England?

We are seeking Members advice on this!

2. Do you get involved with planning decisions in your local area?

Yes- Unitary Authority.

2(a). If no, why not?

3. Our proposals will make it much easier to access plans and contribute your views to planning decisions. How would you like to find out about plans and planning proposals in the future?

N/A The greater use of ICT and digitally based plans is supported, but will require additional resources for LPAs to implement.

The wording of Q 3 is rather misleading. Key decisions will be shoehorned into the short 30 month plan preparation period and after that meaningful engagement in the planning process will be much more difficult. An issue with the current planning system is that people only become involved in planning matters when key decisions have already been made. Increased centralisation of key decisions such as housing numbers, and squeezing key decisions into the 30 month plan preparation period will not make it easier for people to contribute to the planning system.

The proposals will diminish the role of neighbourhood planning bodies and elected Members in the planning process, to the detriment of local democracy.

4. What are your top three priorities for planning in your local area?

- Empowering Local Communities- through Neighbourhood Planning.
- Tackling the Climate Change Emergency
- Urban regeneration and not speculative greenfield development.

Pillar 1: Local Plans

5. Do you agree that Local Plans should be simplified in line with our proposals?

Yes. However, the 30 month timeframe is incredibly ambitious and will need significant additional resources- but there is a strong case to simplify the planning system. This must not be at the expense of local democracy.

Some of the principles set out in the White paper for Local Plans- shorter simpler documents, with an emphasis on being available on line and map based are good ideas that warrant further consideration.

The Government must recognise that the labyrinthine nature of the English planning system is not the making of LPAs or neighbourhood forums, but rather due to numerous instances of secondary legislation, ministerial statements and guidance making the system unduly complicated. It is noted that the Government's own legislation is not published online in an up to date and clearly understandable fashion.

Successive governments have also sought to give non-statutory tools such as the NPPF excessive weight and can be used to undermine legally drawn up local and neighbourhood plans.

6. Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally?

No- There is already a principle that local polices do not need to duplicate national ones- this could be strengthened. However, scrapping local DM policies is fraught with problems.

In practice it is difficult to see a “one size fits all” development management set of policies working effectively across the country. Experience indicates that in the past such policies have been written for London and the South East- and say little about Devon or seaside resorts. For example the NPPF sees tourism exclusive as a rural or town centre issue.

These is concern that centralising control of DM policies will weaken the influence of localism and the consideration of local factors in decision making. Local and Neighbourhood Plans should still be empowered to introduce policies that address policies of genuine local interests.

An additional issue is that the NPPF does not have (or purport to have) the weight of planning law (and force of Section 38(6) of the 2004 Act. Therefore national DM policies will either have no real weight (which erodes certainty); or more likely will be given weight through secondary legislation, which straightaway recreates complexity into planning regulations that the White Paper rightly excoriates.

7(a). Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of “sustainable development”, which would include consideration of environmental impact?

In principle yes. A simplified test

Yes- A simplified test is very much to be welcomed. There is great scope to simplify the Sustainability Appraisal Process whilst ensuring that the environment is protected.

The Council particularly welcomes the proposed removal of five year housing land supply. Since its introduction in 2005 it has been used as an undemocratic tool by the development industry to force through development, often against local wishes. Worse, it is used to undermine locally drawn up regeneration and urban renewal strategies in favour of profitable but unsustainable greenfield development.

The sustainability test should require genuine sustainability – as per the UNESCO/Bruntland definition. The definition in the NPPF is heavily skewed towards building houses. There should therefore be a stronger emphasis on addressing climate change and regenerating urban areas rather than encouraging further greenfield expansion. There should be increased focus on

7(b). How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?

The Duty to Cooperate doesn't work – other than serving as a vulnerable point that objectors can use to unseat otherwise sound plans. As it's not a duty to agree, or find a workable solution to problems, it has few teeth. So removing it will not deteriorate the process.

The Council would prefer development levels to be set locally, taking account of local constraints, as well as needs. However, it accepts that some larger-than-local coordination needs to take place.

There is a strong case for some formalised plan at City Region/ Housing Market Area or unitary authority level- such as existed under the structure plan system between circa 1968 and 2004. However this should not be at the expense of the role Neighbourhood Plans have in shaping their areas. Any process should be able to consider environmental and infrastructure constraints on a granular basis.

Standard method for Housing Requirement

8(a). Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced?

Torbay Council strongly opposes top-down binding targets as these erode local democracy and disempower local communities. It has set out its reasons for objecting to the revised standard methodology for assessing housing need in more detail in its response to “Changes to the current planning system”.

If a top down figure is to be given, it is essential that it fully takes an area’s environmental and infrastructure constraints into account. They should also take into account employment capacity (with the caveat that the world of work is changing to allow more remote working, which will in turn lead to greater need for ICT infrastructure and bandwidth).

Providing a top-down housing requirement figure will itself be fraught with difficulties. Either MHCLG will have to carry out a HELAA process for every area; or determine the requirement based on a formula that sums up constraints within each area. Such a complex process is likely to result in inconsistencies and unfairness. In practice, the requirement may have to be allocated on the basis of a national plan with housing requirements handed down to regional and then to unitary authority or housing market area. As per question 7 above, the role and detailed knowledge of neighbourhood forums and similar groups should not be overlooked or diminished.

8(b). Do you agree that affordability and the extent of existing urban areas are appropriate indicators of the quantity of development to be accommodated?

Affordability. It is appropriate to consider affordability as one measure. Lower quartile house price to lower quartile earnings are a better measure of affordability. Residence based earnings are a better measure of local affordability than work place based earnings. This is particularly true with the recent increase in home working following the COVID-19 Pandemic.

Ideally affordability should not just be based on “earnings” but also take into account wider incomes including transfer payments to assess affordability. However, it is acknowledged that this may be difficult in practice to measure.

There are better ways to assess affordability as set out by ONS at

<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/articles/alternativemeasuresofhousingaffordability/financialyearending2018>.

Extent of built up area. Existing stock is not an indicator of need per se. There may be an argument that settlements need to grow by a certain % to maintain vitality and opportunities for local people, and that larger settlements may have the facilities needed to sustain future growth. But the figure of 0.5% needs further justification.

However, built up areas may have constraints such as the historic environment or deprivation. Different areas and settlements will have different scope for regeneration and densification. Imposing additional small dwellings into deprivation hotspots can serve to deepen the deprivation, if carried out as a number-game of through wholesale permitted development rights, rather than a plan led process to achieve regeneration and create high quality environments for residents.

Urban regeneration is a key priority for Torbay but it would not be appropriate to expect it to be able to achieve London or Bristol levels of density or building heights.

Such a consideration is part of a wider “requirement” assessment which considers area’s infrastructure and capacity to grow, rather than simply assuming that areas have the capacity to grow by 0.5% (or other proportion) of their population. Such a local assessment needs to be carried out as far as possible at a local level as possible, and to make use of the wealth of local knowledge and skill that has been successfully mobilised through neighbourhood planning.

It is also essential that the housing requirement considers areas' employment history and prospects, rather than imposing new housing on areas without corresponding measures to increase employment.

Consent regimes

9(a). Do you agree that there should be automatic outline permission for areas for substantial development (areas) with faster routes for detailed consent?

No. Torbay Council objects that this removes discretion away from local decision makers and could result in a democratic deficit. All too often the devil will be in the detail when assessing proposals, and there needs to be democracy at a local level to consider such matters.

Given that the White Paper proposes a statutory 30 month plan preparation period, this puts plan makers under immense pressure to approve outline permission on a large number of sites (with little subsequent wriggle room). Either the 30 month timescale will prove unrealistic or poor decisions will be made. The stifling of democratic debate over sites, and rushed decisions is likely to lead to a massive increase in litigation of Local Plan or decisions – either by aggrieved developers challenging why their site was not allocated; or concerned residents/ charities etc. concerned at insufficient scrutiny of proposals.

9(b). Do you agree with our proposals above for the consent arrangements for and areas?

No. As outlined above the proposals risk removing local democratic control.

9(c). Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime?

No. This is another way of centralising decision making at the expense of local democracy, and a way of overriding the local and neighbourhood planning process. It is hard to see a new settlement- even a large one – as being of “national significance” in the same way as major infrastructure projects such as airports, power stations or major transport facilities could be seen.

10. Do you agree with our proposals to make decision-making faster and more certain?

Everyone would want faster and more certain decision making. But not at the expense of local democratic accountability.

There is an adage that decision making can be fast, cheap or good. It is possible to achieve two but not three of these. It logically follows that faster and more certain decision making will require a significant injection of funding into the planning system.

11. Do you agree with our proposals for accessible, web-based Local Plans?

Yes. More resources will be needed for LPAs to achieve this. The Government needs to be careful about overpromising on technology. There is a long history of cost overspend and failure of over-complex IT projects.

There is a need to avoid excluding people without access to high speed internet or with computers unable to deal with large files; as well as people without access to the internet.

12. Do you agree with our proposals for a 30 month statutory timescale for the production of Local Plans?

In principal Torbay Council supports faster plan delivery. However, 30 months is very short and unlikely to be achievable without serious short cuts. Whilst the proposal removes the biggest decision i.e. the level of growth from the LPA, the proposals still require incredibly difficult and complex decisions to be made in a very short time period. There is much less “wriggle room” afterwards to correct errors and apply planning judgement.

The concentration of such important decisions into the 30 month period is likely to result in legal challenges either from developers whose sites are not included in growth areas, or from objectors who are concerned at inadequate scrutiny.

Reducing the scope for legal challenge of decisions (as is the subject of a separate Government consultation) is profoundly unconstitutional and risks opponents of development resorting to direct action.

Neighbourhood Plans

13(a). Do you agree that Neighbourhood Plans should be retained in the reformed planning system?

Yes – The Council strongly supports the retention of Neighbourhood Plans. Torbay has bay-wide coverage of Neighbourhood Plan Forums. Volunteers have worked tirelessly to prepare them and have brought an immense amount of local knowledge and skill to the planning process. It has also involved huge sacrifices by Forum and Town Council members, and this must be respected.

As set out above the Council is very concerned that the proposals seek to reduce the importance in Neighbourhood Planning.

Neighbourhood Plans have been established in law under the Localism Act 2011. They were, to quote the Prime Minister's introduction to the White Paper, part of "stripping the asbestos from the roof".

Where neighbourhood plans have been brought into force the statutory protections they enjoy should be strengthened. Paragraph 14 of the (2019) NPPF should be revised or enshrined in legislation so that Neighbourhood Plans that allocate the Local Plan requirement for that neighbourhood area are protected for 5 years of coming into force (or from being reviewed). The Three year housing land supply clause (c) in NPPF14 only provides developers another windmill to tilt against, and should be removed.

13(b). How can the neighbourhood planning process be developed to meet our objectives, such as in the use of digital tools and reflecting community preferences about design?

Please see 13(a) above. The role and function of neighbourhood plans should be protected and strengthened.

Neighbourhood Planning has a significant and useful role to play in setting design codes; but forums and parish/town councils contain a huge wealth of knowledge and energy that the planning system should continue to mobilise. Forums and Parish/Town Councils have been admirable in making sure plans are online and accessible; but both Councils and Forums will require additional funding to make greater use of digital tools.

Pillar 2 Planning for Beautiful and Sustainable Places.

14. Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support?

Yes and no. There should be greater emphasis on developers building out permissions and development allocations, before additional consents are granted on greenfield sites. Local Planning Authorities can grant planning permission (etc.) but cannot force housebuilders to build out consents. This point was made clearly in the St Modwen Court of Appeal Decision¹.

Research by the LGA published in February 2020², indicates that since 2012/13 councils have approved 90% of applications – and have approved 2,564,000 new homes; but only 1,530,680

¹ St Modwen Developments Ltd v Secretary of State for Communities and Local Government & Ors [2017] EWCA Civ 1643

² <https://local.gov.uk/housing-backlog-more-million-homes-planning-permission-not-yet-built>

have been completed. This represents a backlog of a million homes- 40% of total permissions that have not been built. This does not include homes allocated in development plans.

Pressure should be placed on developers- especially volume housebuilders to build out permissions and take up development plan allocations that provide regeneration of urban areas, before new greenfield sites are permitted for housing. A strong tool, which would vindicate the Government's desire to boost housing numbers would be to give local authorities tax raising powers on planning permissions that have not been built out.

Conversely, the punitive mechanisms that excoriate local authorities and local communities should be abolished. The Council welcomes the proposed removal of Five Year Land Supply. However, the definition of deliverability in the NPPF and the Housing Delivery Test should be significantly revised. The current Janus faced system of five year supply and housing delivery test serves to undermine sustainable development strategies by giving land promoters and volume housebuilders mechanisms to land bank speculative developers opportunities to bypass urban regeneration sites and secure permission on greenfield land.

LPA's and Neighbourhood Plan Forums should be charged with allocating sufficient housing land to meet needs in a sustainable way, as far as consistent with environmental and infrastructural constraints (i.e. a requirement not an unalloyed need figure). They should not be punished if developers do not take up these allocations.

15. What do you think about the design of new development that has happened recently in your area?

There have been good examples, and the White Paper (and its predecessor Housing White Paper and the 2019 NPPF's) support for small housebuilders is welcomed.

However sadly elements of the volume house building industry to use the 2008 financial crisis and subsequent recession as an excuse to impose poor quality standard template developments on little distinctiveness or character.

Tools which seek to undermine LPA's ability to manage the pattern of spatial development such as the "tilted balance" have forced local authorities to focus on boosting number of "units" rather than improving quality.

Design issues have also sometimes been compounded by the creation of unadoptable road layouts, and hidden charges for future residents (the most egregious of these being the sale of leasehold houses and unfair rent charge arrangements). These are matters outside the realm of planning but central to the good management of land in the public interest.

The extensive use of permitted development rights to create flats has also led to poor quality developments, particularly in areas already suffering high levels of deprivation. Proposals for Prior Approval to also consider light and national space standards are welcome, but only partly address the issue.

16. Sustainability is at the heart of our proposals. What is your priority for sustainability in your area?

Greater emphasis on achieving net zero carbon. 2050 should be the latest date to achieve net zero carbon emissions. There should be greater emphasis on promoting energy efficiency in development (including passive solar design through layout etc., electric vehicle charging points as standard etc.); as well as greater emphasis on renewable energy.

There needs to be greater support for plan proposals that achieve urban renewal of previously developed land and regeneration of town centres. Such strategies should not be able to be undermined by volume housebuilders or speculative land promoters using tools such as five year supply, if they result in unsustainable sprawl, loss of best and most versatile farmland, ecology etc.

Protection of the best and most versatile agricultural land is important in a small country for environmental and national security reasons, but tends to carry very little weight in planning decisions, being given the merest passing mention at paragraph 170(b) of the NPPF.

The White Paper focusses excessively upon housing, rather than sustainable development within the proper meaning of the term (see above).

Local Design Codes

17. Do you agree with our proposals for improving the production and use of design guides and codes?

Yes – these are supported. Neighbourhood Plans can have a key role in producing distinctive local design guides and codes. The role of Neighbourhood Planning should be strengthened in this respect.

18. Do you agree that we should establish a new body to support design coding and building better places, and that each authority should have a chief officer for design and place-making?

Yes. However bodies such as the Design Council already exist and could fulfil this role. In particular its role could be expanded to carry out some of the functions that it formerly carried out as CABE.

The idea of a chief officer responsible for design is supported. In practice this will be the head of planning, who will have numerous other responsibilities. There needs to be greater resourcing so that planning departments are able to employ specialist urban designers, conservation officers and landscape architects. There has been a significant loss of such posts in many planning departments due to funding cuts. Other mechanisms to fund planning such as New Homes Bonus have been watered down and removed.

19. Do you agree with our proposal to consider how design might be given greater emphasis in the strategic objectives for Homes England?

Yes. As well as numbers. Securing good design, especially where it meets local design codes should be an objective for Homes England.

A fast-track for beauty

20. Do you agree with our proposals for implementing a fast-track for beauty? Mainly yes- but concern about proposed increased permitted development rights.

This proposal has three elements:

- 1) Stronger emphasis on design codes and guides in the NPPF. This is supported. The NPPF should emphasise the role of neighbourhood forums in preparing local design codes and guides, and have a strong presumption in favour of them being followed.
- 2) Masterplanning and design codes for growth areas. This is supported. Torbay has followed this approach with detailed masterplans for areas designated as “Future Growth Areas” in the Local Plan as well as for its town centres (which are more akin to renewal areas). Thought needs to be given to the status of such masterplans. They are probably best prepared as supplementary planning guidance, particularly if supported by strong national guidance on design. The role of Neighbourhood Planning bodies to prepare masterplans should be expanded.
- 3) Making development that meets “pattern book” design codes permitted development. The council has serious concerns that rolling out permitted development further is unlikely to be conducive to good development, whilst still creating a regulatory burden on councils if a prior-approval system is used; and an enforcement/monitoring burden if it is not. A

presumption in favour of local design codes that follow neighbourhood plan guidelines, as outlined in 1 above, is a more effective way of securing high quality design.

Pillar 3: planning for infrastructure and connected places

21. When new development happens in your area, what is your priority for what comes with it?

All of the examples listed in the question are important [More affordable housing / More or better infrastructure (such as transport, schools, health provision) / Design of new buildings / More shops and/or employment space / Green space)].

Torbay Council divides its developer contributions/S106 ask into three categories:

- 1) Site essential matters such as access, drainage, biodiversity (highest priority)
- 2) Affordable housing, employment and health (active lifestyles etc.); next highest priority.
- 3) Sustainable development- education, lifelong learning, sustainable transport, open space (beyond that mentioned in 2).

This is not an order of importance as they are all needed for sustainable development, and where development contributions are unable to meet them, the cost has to be met through taxation.

All three of Torbay's neighbourhood plans put a high value on the importance of green infrastructure. Locating development within the built up area where it can benefit from existing infrastructure and helps support the viability of existing facilities. There needs to be investment in urban areas to ensure that they remain served with social and environmental infrastructure.

Increasingly S106 is being asked to help support other areas of public spending: education has had a special place in S106/CIL for some time. More recently the NHS and Police have been seeking planning contributions, including for revenue funding.

Torbay Council does not object to the use of developer contributions for such matters in principle. As set out below, it notes that better health facilities are high on people's agendas. However, they should not be at the expense of other matters such as open space, good design and layout, and sustainable transport networks. There is a need for clear guidance about what land value taxation (in whatever form) can fund and what needs to be left to general taxation.

22(a). Should the government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold?

In principle the Council does not object to this, and supports the principle of some form of development land tax. The local collection and spending of the levy is strongly supported.

It is noted that numerous governments have tried to devise a fair and simple form of development land tax system since 1947. The current system is in need of simplification and clarification; but it does basically work. The Government has recently made significant improvements to S106 such as the abolition of pooling restrictions.

A quick and easy win would be to publish on line an up to date version of the CIL Regulations that incorporates the numerous amendments. This would help demonstrate that the current system- with the Government's recent changes – remains a relatively one.

Combining CIL and S106 will need careful thought through. There needs to be a residual role for S106 type agreements that serve other functions such as govern development, undertake to carry out works etc. Some matters such as off-site habitat protection may need a financial element.

Fixing the levy to a fixed proportion of development value will benefit high value areas and penalize low value ones (However, CIL and S106 also operate in this way and that the White Paper acknowledges this issue). There needs to be some additional mechanism- such as a

reinvigorated system of new homes bonus, or new-permissions bonus, to encourage regeneration in lower value areas.

22(b). Should the Infrastructure Levy rates be set nationally at a single rate, set nationally at an area-specific rate, or set locally?

On balance the Council would prefer to have the ability to set local rates as per CIL and S106 obligations.

22(c). Should the Infrastructure Levy aim to capture the same amount of value overall, or more value, to support greater investment in infrastructure, affordable housing and local communities?

As noted above there is a pressing need for more infrastructure across the built environment, and compromise often have to be made when S106 obligations are sought. Members have frequently expressed concern that affordable housing levels are reduced. Similarly, the British Attitude Survey findings indicate that most people are not opposed to new housing per se, but are concerned that local services are not properly funded³. Better medical facilities, transport links and employment being their top three priorities.

On this basis there is a pressing need for the infrastructure levy to capture more value, unless a greater amount of the infrastructure needed by development is to be funded through general taxation.

The Council acknowledge that small housebuilders have faced financial hardship in recent years; but conversely Volume housebuilders have been able to pay well- publicized bonuses and dividends. The 9 largest housebuilders are reported to have paid dividends of £2.3bn in 2018/19 and £8 bn. between 2012-18. The largest volume housebuilder made 1 bn. profit in 2018. Much of this profit was supported by public money through help to buy. Accordingly, there is scope or the larger housebuilders to contribute more to the infrastructure needs generated by development.

22(d). Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area?

Yes. On balance Torbay would prefer the flexibility of being able to borrow against future receipts. However, it is not a substitute for proper funding of local services and infrastructure- particularly at a time when additional burdens have been placed upon local authorities dealing with the public health and financial impact of COVID-19.

There is a longstanding principle that planning permission cannot be bought and sold (the introduction of local finance considerations in Section 143 of the Localism Act notwithstanding). Making local authorities financially dependent upon future levy receipts could erode this principle further, which would dilute their ability to manage land use in the public interest.

23. Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights?

Yes – this proposal is strongly supported.

24(a). Do you agree that we should aim to secure at least the same amount of affordable housing under the Infrastructure Levy, and as much on-site affordable provision, as at present?

Yes- onsite provision of affordable housing is an important element of the planning system in achieving mixed and balanced communities.

³ <https://www.gov.uk/government/publications/public-attitudes-to-house-building-findings-from-the-british-social-attitudes-survey-2018>

Torbay has a pressing need for affordable housing for local people unable to enter the housing market. The government's drive to expand home ownership through products such as First Homes is acknowledged, but it should not be at the expense of affordable homes for rent.

24(b). Should affordable housing be secured as in-kind payment towards the Infrastructure Levy, or as a 'right to purchase' at discounted rates for local authorities?

Treating affordable housing as an in-kind payment of the Levy is the most practical solution. The government will need to issue clear guidelines about the value of affordable homes and therefore the amount of levy that they represent.

24(c). If an in-kind delivery approach is taken, should we mitigate against local authority overpayment risk?

Yes. As noted above, the government will need to issue clear guidance on the value of affordable homes with clear indicators of how much below market value each tenure of affordable home represents. It will also need to set out how market value is calculated- and this must be publically available data, not hidden behind an RICS paywall.

For example land registry data is publicly available to calculate house prices. If BCIS data continues to be used, it should be made publically available.

24(d). If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality?

Yes: Either clear guidelines about design quality should be drawn up in consultation with registered providers. Alternatively, local authorities and neighbourhood planning bodies should be able to specify quality indicators (size standards, accessibility requirements etc.). Neighbourhood Forums in Torbay have demonstrated a willingness and great ability to produce such standards.

25. Should local authorities have fewer restrictions over how they spend the Infrastructure Levy?

Yes. The Government has already removed pooling restrictions and Regulation 123 list restrictions from S106 and CIL and should be praised for these improvements to the regime. The council would prefer as much flexibility as possible over how the levy is spent.

As noted above, development seldom pays for all of the physical, social and environmental "infrastructure it generates a need for. So, whilst greater freedom to spend the levy is strongly welcomed, it will not be a panacea for local spending demands and the idea that the levy could be used to reduce council tax is unrealistic.

25(a). If yes, should an affordable housing 'ring-fence' be developed?

Yes- the on-site provision of affordable housing to create mixed and balanced communities should remain an important principle of the planning system. Developers should not be able to negotiate away their affordable housing obligations. Affordable housing should be set at a reasonable level, e.g. 30% of new homes, and should be a binding requirement.

Delivering Change

26. Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?

No particular views- ensuring proper engagement during a compressed 30 month plan preparation period will be a significant challenge that will need resourcing in order to ensure that hard to reach groups are engaged in the process.

Supporting Information

1. Introduction

- 1.1 As set out in the main report, this report seeks approval for a draft response to the Government's Planning for the Future White Paper

2. Options under consideration

- 2.1 Draft consultation responses are set out at Appendix 1 for consideration and change by Members. They are based on initial Member feedback and a briefing with the Neighbourhood Forums. However, they are a draft response and can be changed if Members wish. .

3. Financial Opportunities and Implications

- 3.1 None directly, but the White paper proposes to replace S106 Agreements and Community Infrastructure levy with a single planning levy.

4. Legal Implications

- 4.1 If the proposal go ahead the entire framework of land Use Planning would be replaced by new primary and secondary legislation.

5. Engagement and Consultation

- 5.1 The draft responses have been drawn up following briefings and discussion with Members, informal Cabinet and the three Neighbourhood Planning bodies.

6. Purchasing or Hiring of Goods and/or Services

- 6.1 Not to respond to the consultation.

7. Tackling Climate Change

- 7.1 The draft response to the White Paper calls for tacking the Climate Change Emergency to be given more emphasis in a proposed reformed planning system.

8. Associated Risks

- 8.1 The risks of not responding to a consultation are minimal. However it is good practice for local Planning Authorities to respond to proposals which will have such a profound effect on the planning system, and by extension the built environment of Torbay.

Equality Impacts

9.	Identify the potential positive and negative impacts on specific groups <i>Responding to the White paper will not have a direct impact on specific groups.</i>			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people			X
	People with caring Responsibilities			X
	People with a disability			X
	Women or men			X
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			X
	Religion or belief (including lack of belief)			X
	People who are lesbian, gay or bisexual			X
	People who are transgendered			X
	People who are in a marriage or civil partnership			X
	Women who are pregnant / on maternity leave			X

	Socio-economic impacts (Including impact on child poverty issues and deprivation)		X
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)		X
10..	Cumulative Council Impact (proposed changes elsewhere which might worsen the impacts identified above)	The Planning White Paper is part of a wider programme of Government reforms. A separate consultation entitled “Changes to the Current Planning System” proposes to amend the methodology for calculating standard housing need. The council submitted an objection to these proposals by the deadline of 1 st October 2020. A parallel review by <i>The Independent Review of Administrative Law (IRAL)</i> panel is considering evidence in relation to scaling back the scope for judicial review. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915905/IRAL-call-for-evidence.pdf	
11.	Cumulative Community Impacts (proposed changes within the wider community (inc the public sector) which might worsen the impacts identified above)	As 10 above.	