



Meeting: Council

Date: 17 July 2014

Wards Affected: All wards in Torbay

Report Title: Submission of the new Torbay Local Plan (A Landscape for Success) to the Secretary of State

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1. Introduction and purpose

- 1.1 A new Local Plan is being prepared for Torbay, entitled 'A Landscape for Success'. This process has been ongoing since 2006. Submission of the Local Plan to the Secretary of State, as recommended in this report, marks the beginning of the final stage of preparation. It is anticipated that it will lead to adoption of the Local Plan before Spring 2015
- 1.2 This report describes the outcomes of the publication of the Proposed Submission version in February 2014, in particular the responses received, and the next steps leading up to the formal submission of the Local Plan and its subsequent Independent Examination. Recommendations to Members of the Council are set out below in order to facilitate these imminent stages of the plan making process.
- 1.3 Following completion of the February 2014 consultation, the Development Plan Regulations now require the Council formally to submit the Local Plan, a number of related documents and a summary of representations to the Secretary of State for Independent Examination by the Planning Inspectorate (PINS). This Report recommends that the Council agree to the formal submission of the Local Plan to the Secretary of State.
- 1.4 A new Local Plan is required, as soon as possible, to provide a robust and positive planning framework to secure the best outcomes from investment and development in Torbay. Those outcomes are set out in the Proposed Submission Local Plan as:
 - Secure economic recovery and success;
 - Achieve a better connected, accessible Torbay and critical infrastructure;
 - Protect and enhance a superb natural and built environment;
 - Create more sustainable communities and better places.
 - Respond to climate change

- 1.5 In the absence of a new Local Plan, decisions on investment and new development will be assessed against the National Planning Policy Framework (NPPF) and the existing Local Plan, which are less likely to secure the best outcomes for Torbay than an up to date new Local Plan.
- 1.6 Council approval for formal Submission of the Plan will enable its timely progression through the Examination process and, subject to the recommendations of the Planning Inspectorate, the subsequent adoption of the Plan by the Council during 2015.

2. Proposed decision and reasons

- 2.1 **In order to progress the Torbay Local Plan, the Council is recommended to agree the following actions:**
- a) The Proposed Submission Plan be submitted formally to the Secretary of State for Independent Examination by the Planning Inspectorate;**
 - b) Officers be authorised to agree minor editorial changes to the Proposed Submission Plan for submission to PINS, in consultation with the Director of Place and the Executive Lead for Spatial Planning, Housing, Waste and Energy; and**
 - c) Officers be given delegated powers to agree amendments to policy and related matters with the appointed Planning Inspector to facilitate the timely progression of the Independent Examination; and**
 - d) Officers keep Members briefed on the evolving Examination timescales, and any issues emerging from the Planning Inspectorate's initial assessment of the Submission Plan.**

Reason for decision

- 2.2 A decision by the Council on the above recommendations is required for the following reasons:
- 2.2.1 **Timing and need:** It is important for the Council to progress the Local Plan as quickly as possible. The NPPF now takes precedence over the existing Local Plan and whilst the existing Local Plan is 80% compliant with the NPPF, there remains a pressing need to ensure a new Local Plan is adopted as soon as possible. This is especially the case as, nationally and locally, there are positive signs of economic recovery. The emerging Local Plan, even at Proposed Submission Stage, is a material consideration and carries some weight in determining development proposals, especially if there is support for parts of the plan following consultation.
- 2.2.2 Without a new Plan in place, the Council is less likely to be able to secure the high quality outcomes required for the Bay. Timely approval to the formal Submission of

the Local Plan will ensure that change, growth and conservation of resources in Torbay continues to take place on a 'Plan-led' basis. Approval of the above recommendations will allow the new Plan to be submitted to Government during the coming summer and taken through an Independent Examination at the earliest opportunity during autumn 2014.

- 2.2.3 **Neighbourhood Plans:** Neighbourhood Plans need to follow and broadly comply with the Local Plan. Until a new Local Plan is in place Neighbourhood Plans can make only limited progress. In order to maintain momentum in neighbourhood plan making, and the value those plans can bring to communities in the Bay, it is important to move forward quickly with a new Local Plan.
- 2.2.4 **Evidence:** There is a need for a new Local Plan which is supported by the most up to date evidence. Members and each Neighbourhood Forum have supported a refresh of the evidence base, specifically in relation to demand for new homes and the physical capacity of Torbay to accommodate new homes. This includes the Government's latest household projections, which support the numbers of new homes being put forward in the Local Plan. It is therefore vital for the robustness of the Local Plan, and to underpin debate at the Examination, that its policies are based on up to date evidence. Timely submission is essential to ensure that the Plan's evidence base remains as up to date as possible at the opening of the Examination. If submission of the Local Plan is delayed then some of the existing evidence base could be considered, by the Planning Inspectorate, as being out of date and the Council may be required to commission new evidence. East Devon District Council has recently experienced this issue, mid way through the Local Plan Examination process.

3. Background

Context

- 3.1 The new Torbay Local Plan (A landscape for success: The Plan for Torbay - 2012 to 2032 and beyond) is the Council's key development plan document. It will replace the 'Saved' Adopted Torbay Local Plan 1995 – 2011 and will form the basis for decisions on spatial planning matters within Torbay over the next twenty years. The Plan sets out a balanced strategy for change in the Bay, which embraces growth but puts protection and enhancement of Torbay's unique environment at its heart. The Council has previously approved the key growth strategy element of the Plan (15 May 2013). That strategy remains in place and will not be changed before submission.
- 3.2 The Plan sets out the broad provision and targets for development in Torbay, including housing and jobs, and identifies Strategic Delivery Areas and Future Growth Areas. It has been informed by the community and in turn sets a planning policy framework for the three Neighbourhood Plans being prepared for Torquay, Paignton and Brixham. The Plan includes a wide range of policies covering key spatial planning issues and will provide the basis for the determination of planning applications.

3.3 In September 2012, a draft Local Plan was published for consultation. This document was subsequently revised to take account of a number of factors, including responses received, completion of work to refresh the evidence base for the Plan and publication by the Government of Household Projections. To guide this work, a framework for growth and change, specifically in relation to Torbay's environmental capacity, new jobs and homes, was approved by Council on 15 May 2013.

Representations received on Proposed Submission Plan

3.4 The resultant Proposed Submission Plan was published between 24 February and 7 April 2014 for representations on its soundness, legal compliance and duty to cooperate requirements. A number of representations were received, details of which are set out in Appendix 1. The following is a summary of the key issues raised by representations:

- Support from neighbouring Districts and the County Council;
- Support from the business community and TDA;
- About 50% of the objections were re Broadley Drive – a site identified as a potential development land, but one for the Neighbourhood Plan to allocate;
- Most statutory consultees were very supportive, but some minor changes are needed;
- There was very little comment about tourism policy, showing strong support for Local Plan policies;
- Four key organisations / groups raised objections – Natural England; English Heritage; Paignton Neighbourhood Forum; Housebuilders and Registered Providers.

3.4 There are two key ways, at this stage, of handling changes to the Plan, namely: Major modification requiring further consultation before formal submission, or minor editorial modifications not requiring further consultation and submitted as a schedule to the Planning Inspectorate. Officers consider that most representations can be addressed by proposing minor editorial changes for consideration by the Planning Inspectorate. As part of this work, Officers have held discussions, and continue to work, with relevant organisations to resolve objections wherever possible prior to formal Submission of the Plan. It is anticipated that objections from Natural England will be resolved prior to submission of the Plan and further evidence has been commissioned to secure that position. Concerns expressed by English Heritage have already been addressed via minor modifications to the Plan. Accordingly, it is proposed to submit a Schedule of Proposed Editorial Changes to PINS.

3.5 Importantly, there is no need for any major amendment of a scale or level of policy significance that would necessitate a re-publication of a revised Plan for further comment. The outstanding representations relating to important issues such as the proposed level of growth and the economy are considered to be legitimate matters for debate at the Examination.

Formal Submission procedure

- 3.6 The formal Submission of the Proposed Submission Plan (following its earlier publication for representations) represents a critical stage in the statutory development plan system. The assumption is made by the Secretary of State that the Local Plan is considered to be sound when submitted; the purpose of the Examination is to test this soundness. As part of this procedure, the Council is required to submit the following documents:
- Proposed Submission Plan
 - Key Diagram and Policies Map
 - Sustainability Appraisal + SA Non-Technical Summary
 - Habitats Regulations Assessment + HRA Non-Technical Summary
 - Regulation 18 Plan Preparation (Statement of Consultation and Engagement)
 - Regulation 20 Statement of Representations + Summary of Issues
 - Regulation 20 Folder of Representations
 - Statement of Legal Compliance
 - Duty to Co-operate Statement
 - Schedule of Proposed Editorial Changes
 - Local Plan Topic Papers
- 3.7 Subject to Council approval the Local Plan and associated documentation will be submitted to the Secretary of State in July 2014, as soon as possible following the Council meeting of 17 July.

The Independent Examination

- 3.8 Submission of the Local Plan to the Secretary of State marks the 'procedural' start of the Independent Examination process. In accordance with the Service Level Agreement that has been entered into by the Council and PINS, the Examination will be conducted on the basis of a well established procedure and timescales. It is anticipated that the actual 'hearing session' of the Examination could start towards the end of October 2014 and should start no later than mid November 2014. The Planning Inspectorate (PINS) will appoint a Planning Inspector who will conduct the Examination into the soundness etc of the submitted Torbay Local Plan. In addition, it is the Council's responsibility to appoint a Programme Officer (PO) to manage the Examination. The role of the PO is to act as an independent liaison officer between the Inspector, Council and community during the Examination (see also 6.2 below).
- 3.9 The Inspector is expected to carry out an initial assessment of how the Plan meets the duty to cooperate, soundness and legal compliance, and to notify the local authority accordingly. Where necessary, the Inspector will write to the Council to seek clarification on any issues raised by this initial Plan appraisal. If the Inspector has any serious concerns about specific aspects of the Submission Plan, PINS may request that the opening of the formal 'sitting' part of the Examination is deferred to enable further work to be undertaken by the Council to ensure that these matters are addressed. The way in which local authorities have met the Duty to Cooperate is the first test of a Local Plan at Examination. Failure to show that the Duty has been met in

full will result in the Examination being curtailed and the opening of the formal hearing session will be suspended (see also 8.4 below).

- 3.10 Based on representations received, and his/her own initial assessments, the Inspector will identify key issues for public examination and debate. Working in liaison with the Programme Officer (PO), a programme will be drawn up for the Examination. A key feature of the Examination will be the representations database. This is a major piece of work that has been created by officers for the PO. It holds details of all individuals and organisations who have made representations, the policies objected to or supported, and any changes sought to the Plan. The PO will use the database constantly and it will be interrogated to run reports and generate correspondence to assist the Inspector with the management of the Examination and preparation of the Examination Report.
- 3.11 The length of the Examination is unknown at this stage and is always subject to availability of key participants. However, it is likely that the formal sessions could run over a period of at least four weeks. During these sessions, Council officers giving evidence may be required to negotiate changes put forward by the Inspector to address some of the objections to soundness. To ensure that momentum can be maintained, it is essential that officers are able to confirm or otherwise the acceptability of such amendments. This is exactly as officers do at present for appeals, via Public Inquiry, against refusal of planning permission. Members are therefore requested to delegate such negotiations to officers in Spatial Planning [see Recommendation 2.1 c)].
- 3.12 It is conceivable that the Inspector will propose a series of 'Main Modifications' during the Examination that he/she considers to be necessary in order to make the Local Plan sound. These will have to be advertised for a prescribed period, usually 6 weeks, during the Examination, after which the Inspector would resume the hearing session to consider the representations received. Such an occurrence now appears to be commonplace for many submitted local plans across the country, and has been factored in to the Local Plan work programme.
- 3.13 Following the close of the formal hearing sessions, the Inspector will complete a Report on the Examination of the Local Plan, assisted by the Programme Officer as necessary, and submit it to the Council. Officers will report the findings to Members prior to putting in place the necessary arrangements for adoption of the Plan by the Council, possibly in Spring 2015.

4. Possibilities and Options

- 4.1 There are essentially two options in relation to the formal submission of the Local Plan:
- 4.2 **“Do nothing”**: The existing Local Plan is 80% compliant with the NPPF, which provides some comfort for the Council in making decisions about major planning

applications. In addition, the Council has a supply of land for new homes that exceeds the requirements suggested by the Government's recent household projections. As such, one option is to "do nothing". However the lack of a new Local Plan would result in a reactive rather than proactive approach to planning in Torbay; there would be no new framework for the preparation of Neighbourhood Plans; the Council would be less likely to achieve the best outcomes for the Bay and more susceptible to proposals for new development in environmentally sensitive parts of Torbay (see also Section 9. below regarding further details concerning risks).

4.3 **"Submit"**: Formal submission of the Proposed Submission Plan is the next legal step in the statutory plan-making process and necessary to ensure the speedy adoption of the Local Plan

4.4 For good reasons given elsewhere in this Report, it is the "Submit" option that is recommended to the Council for approval.

5. **Equal Opportunities**

5.1 The Local Plan has been the subject of Equality Impact Assessment (EqIA) throughout its evolution, including at the Draft Plan stage (2012). The Proposed Submission version of the Plan is very similar to the Draft Plan in terms of matters such as locations of development, scales of new housing provision, sustainability, community provision, employment opportunities and skills development. The main difference between the draft and submission versions of the Local Plan is the proposed scale of new jobs.

5.2 An assessment of the impact of this change has been addressed by an updated EqIA of the Proposed Submission Plan, carried out in February 2014, as well as by the Local Plan Sustainability Appraisal.

6. **Public Services (Social Value) Act 2012**

6.1 The formally submitted Local Plan will be considered by an Independent Planning Inspector, appointed by Government. The Examination of the Local Plan is paid for by Torbay Council and, based on estimates from the Planning Inspectorate, is expected to cost in the region of £80,000. The appointment of an Independent Inspector and the operation of the Public Examination process is not a procurement matter.

6.2 An experienced Programme Officer has been appointed and is now in place, carrying out essential preparatory work leading up to the formal part of the Examination. The post is graded at Scale I (Scale Points 34 – 37, pro rata) and will run for a nominal period of 9 months, or until the Examination process is completed. The post will operate on both a part-time and full-time basis, depending on the particular stage of this process.

7. Consultation

Consultation process

- 7.1 The preparation of local plans is a statutory process and consultation requirements are prescribed in 'The Town and Country Planning (Local Planning) (England) Regulations 2012 [as Amended]', in the context of the Planning and Compulsory Purchase Act 2004 and the Localism Act 2011. Further guidance is set out in the Council's Statement of Community Involvement (SCI). A variety of methods of public participation and engagement have been used, consistent with the SCI, according to the stage reached in Plan preparation.
- 7.2 A Consultation and Engagement Strategy has been developed as appropriate for each Plan preparation stage. It involves widespread use of the press and other local media, websites, community liaison, posters, and email and paper correspondence with a large number of consultees. Council Offices, Libraries and Connections Offices are used to display Local Plan reference documents
- 7.3 The recommendations in this Report have been informed by responses to consultation on the Proposed Submission Plan, undertaken in February 2014. The headlines of those responses are included in Appendix 1 of this Report.
- 7.4 Following agreement by the Council to Submission of the Local Plan, the relevant consultation bodies and other interested parties must be notified of the Submission by the local authority. Statutory consultation requirements also apply to the later adoption stages.

Consultees

- 7.5 Plan preparation involves consultation and engagement with a large number and range of individuals and organisations, details of which are retained in the Local Plan Database. This includes residents, Neighbourhood Forums and Community Partnerships, amenity organisations, statutory bodies, utilities, businesses, planning consultants and developers. All Ward Councillors are consultees and have been closely involved in the evolution of the Local Plan.
- 7.6 The recommendations included in this Report have been considered and discussed by Members on a continuous basis, which has included involvement of the Place Policy Development Group.

8. Risks

- 8.1 Preparation of the Torbay Local Plan is a corporate priority. The key aim of the Plan is to provide a clear direction for sustainable growth in Torbay over the next twenty years or so. Failure to progress Submission of the Local Plan to the Secretary of State for Independent Examination, and subsequent Adoption by the Council, would result in a high risk of ad hoc speculative development taking place in an uncoordinated way and

in unsustainable locations. This is particularly relevant in the context of the National Planning Policy Framework (NPPF), which emphasises the need to produce up-to-date local plans and sets out the risks to local planning authorities that fail to pursue this approach.

- 8.2 Failure to continue to support work on the Local Plan would also result in a lost opportunity to secure community gains for local areas, remove the potential benefits to be derived from 'parallel tracking' with the three Neighbourhood Plans, and lead in turn to a loss of confidence within the community.
- 8.3 A decision to agree the recommendations would mean the Local Plan progresses to the Independent Examination stage.
- 8.4 Members are reminded that there are also 'consequential risks' associated with submission of the Local Plan to the Secretary of State. These may arise from the Inspector's subsequent interpretation of the legitimacy of both the Plan's policy framework (particularly levels of growth and housing numbers) and the way in which it has been prepared. These risks have been referred to in paragraph 3.6 above.

Appendices

Appendix 1:

Summary of the representations received in response to publication of the Proposed Submission Plan in February 2014, and main issues.

Additional Information

The Proposed Submission version of the Local Plan and related documents can be accessed via www.torbay.gov.uk/newlocalplan