

Brooks, Tracy

From: SALLY KING (redacted)
Sent: 18 June 2018 21:45
To: Future Planning; Stockman, Jackie; Deborah McCann (redacted)
Subject: land behind 39 Wall Park Road Brixham
Attachments: 1005-05.M16 - Representation to the Brixham NP (1).pdf

To whom it may concern

I am very concerned re the following in the responses of BPNF to Deborah Mccann dated 18/06/2018

I seek clarification on the following policies/supporting information:

2. Local Green Spaces

Please confirm whether or not the owners of the proposed Local Green Spaces have been consulted and whether or not any objections have been received other than TDA objections. 92. The Forum did consult owners of the proposed Local Green Spaces. 93. At early stages of plan preparation Forum members met with representatives of Brixham Rugby Club (E4-2), Brixham Cricket Ground (E4-6), Stoney Park Allotments (E4-12) and Churston Golf Course (E4-13)

Our rear garden has been earmarked for a local green space BUT we were never consulted or invited to any of the meetings

our property lies of Haycock Lane behind 39 Wall Park Road

Please can this be explained to me as we have appealed this and have attached the appeal documents

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Date: 15 December 2017
Our Ref: JST/JD M16/1005-05

By email only:
neighbourhood.plans@torbay.gov.uk

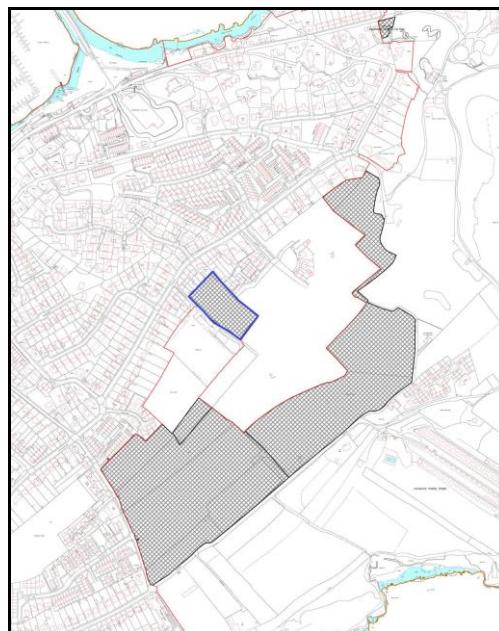
Dear Sirs,

RE: CONSULTATION ON THE BRIXHAM PENINSULA NEIGHBOURHOOD PLAN - LAND TO THE REAR OF 39 WALL PARK ROAD, BRIXHAM

We write with reference to the current consultation on the Brixham Peninsula Neighbourhood Plan on behalf of our client who has an interest in a site which is situated to the rear of 39 Wall Park Road in Brixham and is adjacent to the site of the housing development on the Former Wall Park Holiday Park site; a location plan is enclosed.

In late 2016 / early 2017 pre-application advice was applied for by a developer to Torbay Council on a proposal for 26 dwellings on this site including policy compliant 7 affordable dwellings. A copy of the draft layout which was presented at the pre-application is enclosed together with the pre-application response.

Rejected Sites: H3 – R1 and H3 – R2: Wall Park Extensions and Berry Head Road



The site with which this representation makes reference to, is included within the Neighbourhood Plan's assessment of a wider 15 hectare site which has been rejected as a suitable site for development; this 15 hectare site is shown on the above extract from the Neighbourhood Plan site

assessment with the site at the rear of 39 Wall Park Road which this representation relates to highlighted with a blue border.

The Neighbourhood Plan's assessment of this 15 hectare site sets out that "*the sites are greenfield and are highly sensitive landscapes due to their location with the AONB, their prominent coastal position, overlaying designations and visual prominence*". It goes on to state that "*the landscape of the sites is highly sensitive to change and they also lie on an area of Brixham Limestone that forms part of the New Local Plan Mineral Safeguarding Area*. In conclusion it therefore states that "*given the number of constraints above, the sites would represent development beyond the environmental capacity of the highly sensitive area and have been excluded from the Neighbourhood and Local Plans*".

Whilst such an assessment may be correct regarding some of this 15 hectare site, it is not appropriate to suggest that this assessment is true of all areas of the highlighted site identified on the Neighbourhood Plan site assessment map extract on the previous page and is certainly not applicable to the site with which this representation relates to at the rear of 39 Wall Park Road edged blue on the map on the previous page because the landscape character significantly differs in each part.

Whilst the site is located within the AONB, it is surrounded by development in the form of housing to the North, the Wall Park Holiday Park development to the East and South and the playing fields to the West. Views in and out of the site from the West are obscured substantially by a soil heap or bund which sits adjacent to the boundary of the site on the land which accommodates the playing fields. The site is therefore visually well contained.

In Torbay Council's pre-application response on 30th January 2017, in relation to the impact of the proposed development on the AONB in this location, the Council stated the following:

"The position of the application site between the approved Wall Park development site and the existing buildings on Wall Park Road suggests that some form of development of an appropriate quality, style, building height and density in this location could be acceptable. A form of development of this type is considered unlikely to harm the integrity of the South Devon AONB, its natural beauty, special qualities, landscape or scenic beauty given the scale of Wall Park development on the adjacent site."

With regards to the impact of the proposed development of the site on the South Hams Special Area of Conservation (SAC), Torbay Council noted that "*in consultation with the Council's Ecological Consultant it is considered unlikely that a further 26 dwellings in this location will constitute a likely significant effect above and beyond what has already been considered as part of the Habitat Regulations Assessment for the original Wall Park scheme*".

In relation to the Mineral Safeguarding Area designation, the pre-application response states that "*any proposal on or in the vicinity of an important mineral resources should demonstrate that it will not cause unnecessary sterilisation or prejudice the future extraction of important minerals or building stone on these sites. The location of this site for mineral extraction is considered unlikely given the sites environmentally sensitive location in both ecology and landscape terms*".

In conclusion, the pre-application response states that "*in summary, the residential development of this site has the potential to be acceptable*".

With the above in mind, it is considered that contrary to the Neighbourhood Plan's site assessment, in relation to the parcel of land edged blue on the map on the previous page, the site is suitable, available and achievable.

Fundamentally, in its current form the Neighbourhood Plan is based on flawed evidence as the site to the rear of 39 Wall Park Road has not been correctly considered as a reasonable alternative for an allocation for residential development. The site assessment disregards the potential for the site to deliver housing on the assumption that it shares the same constraints as the wider 15 hectare site;

this is clearly incorrect and supported by the pre-app response attached. Neighbourhood plans elsewhere in the country have been quashed on judicial review on the basis of a material error of fact in the assessment of sites such as is the case here, with the courts finding they were not based on sound evidence; this includes such decisions as those in relation to the Henfield Neighbourhood Plan and the Haddenham Neighbourhood Plan.

The site should therefore be removed from the hatched site assessment of Rejected Sites H3-R1 and H3-R2 of the Brixham Peninsula Neighbourhood Plan. Considering the constrained nature of the Brixham Peninsula and the need for housing, this site which is well contained, well connected for public transport and not visually sensitive should be considered as an allocation for housing in the Neighbourhood Plan and allocated now. The enclosed pre-application response from Torbay Council in relation to the site supports this assertion.

Should the incorrect assessment of this site in the supporting evidence of the Neighbourhood Plan not be addressed, our client will have no choice but to consider their options for challenging the making of the Plan as others have done on other Neighbourhood Plans as set out above.

Policy Document

Policy BH7: Sustainable Construction

The Housing Standards Review, which concluded in March 2015, has created a new approach for the setting of technical standards for new housing. The new streamlined system which took effect from 1 October 2015 comprises of national optional Building Regulations (technical standards) and an optional Nationally Described Space Standard. The application of the new optional technical standards in decision-taking and plan making was set out by the Government in the Written Ministerial Statement (WMS) of 25 March 2015.

As set out in the WMS, “*local planning authorities should not set in their emerging Local Plans, neighbourhood plans or supplementary planning documents, any additional technical standards or requirements relating to the construction, internal layout or performance of new dwellings*”.

Paragraph 002 (Reference ID: 56-002-20150327) under *Housing – Optional Technical Standards* of the Planning Practice Guidance (PPG), states that if a Council wishes to introduce the optional technical standards “*local planning authorities will need to gather evidence to determine whether there is a need for additional standards in their area, and justify setting appropriate policies in their Local Plans*”.

Policy BH7 of the Brixham Peninsula Neighbourhood Plan is contrary to the government guidance set out within the WMS and fails condition ‘A’ of the basic conditions that a draft neighbourhood plan must meet if it is to proceed to referendum as it does not have regard to “*national policies and advice contained in guidance issued by the Secretary of State*”. Policy BH7 should therefore be removed.

Policy BH8: Access to New Dwellings

The policy sets out that “*no more than five dwellings shall be accessed off an existing unadopted highway*”. The supporting text of the policy notes that this relates to any “*existing unadopted highway without that highway being improved throughout its full length to bring it up to the standard required for adoption by the Local Highways Authority*” and “*will not prevent the development of more than five homes being created off a new unadopted highway*”.

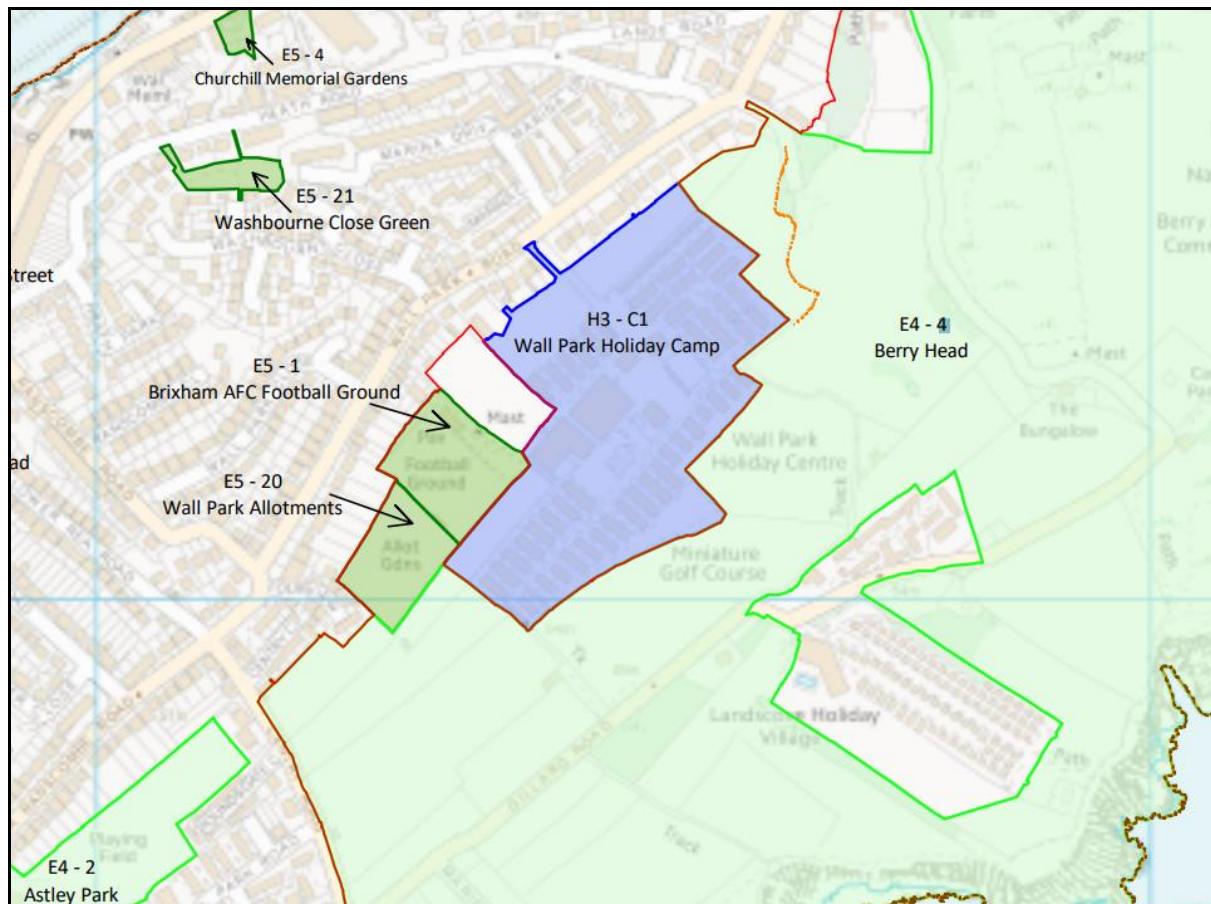
The supporting text of a policy sets out the reasoned justification as to why it has been drafted however does not form part of the policy itself. As such whilst this supporting text gives exceptions to the policy this needs to be set out within the main policy text of policy BH8 for it to carry weight in the consideration of applications.

Whilst there isn't a national standard, it is common place across the country for Highway Authorities to require that no more than 5 dwellings are accessed off of a private drive on residential schemes. This is different from requiring that no more than 5 dwellings are accessed off of an unadopted highway. It is becoming increasingly common for developers of housing schemes to not pursue adoption of the highways on their schemes and to instead have the highways managed by a management company. This is true of schemes which have already been built in the Torbay and Brixham area as well as ones which are likely to come forward in the future. As such, this policy restricts the development of more than 5 dwellings off of existing and future private estates which have highways which are managed by a management company and which have been constructed to a high and adoptable standard.

This policy is overly restrictive and has the potential to prevent development coming forward in sustainable locations where access would be taken via unadopted highways which have been constructed to a high and adoptable standard; this will put further pressure on development of less sustainable sites. With this in mind, the policy is not in accordance with the principles of the NPPF or strategic policies of the Torbay Local Plan and should be removed as it does not meet basic conditions 'A', 'D' and 'E'.

Policy E2: Settlement Boundaries and the Policies Maps

Policy E2 sets out the approach which will be taken to applications within and outside of the defined settlement boundaries. This policy should be read in conjunction with the Policies Maps which also form part of the Neighbourhood Plan. The below image is an extract from the Policies Map in relation to our client's site to the rear of 39 Wall Park Road.



As can be seen from the above extract, despite our client's site being surrounded by the built development of the housing along Wall Park Road, the residential development which is currently being built out on the former Wall Park Holiday Camp and the football club facility buildings, the site is

proposed to be set outside of the settlement boundary which is shown as a red line on the above extract.

Whilst the site is well contained within the built up area of Brixham (as shown above) and a positive response has been received at pre-application stage to the principle of residential development of the site from Torbay Council, the restrictive wording of Policy E2 in conjunction with the above extract from the Policies Map showing the site outside of the settlement boundary would severely restrict the potential for this logical and sustainable site from being brought forward for development.

The Policies Map should therefore be amended to include our clients site within the settlement limit.

Our client is keen to engage positively in the process of the making of the Neighbourhood Plan and the above comments are intended to be constructive. We believe that a hearing should take place as part of the examination of the Neighbourhood Plan in order that the implications of the proposed policies can be fully considered.

We politely request that we are kept up to date with any progress on the Neighbourhood Plan examination and any hearings which take place in the future.

Yours faithfully

JAMES DURANT BA (HONS) MA MRTPI
PRINCIPAL PLANNER

For and On Behalf Of
TETLOW KING PLANNING

(redacted)

Enc. Location Plan
Site Layout Plan
Pre-application Response