

Planning Contributions and Affordable Housing

Supplementary Planning Document

Draft Update November 2019

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# INTRODUCTION

## Introduction and Overall Approach

### Planning Obligations are a legal agreement made under Section 106 of the Town and Country Planning Act 1990 (referred to as s106 Agreements). They are an important way of providing the environmental, physical and social infrastructure needed by development. They are also one of the main ways in which affordable housing is provided.

### This document sets out the Council’s approach to planning obligations. It provides additional detail to deliver the Adopted Torbay Local Plan 2012-30 (the Local Plan) as set out in Policy SS7 and paragraphs 4.3.25-37 of the Plan. It also draws attention to relevant policies in the approved Neighbourhood Plans. It is important to note that the purpose of this document is to deliver sustainable development, not to stifle desirable schemes.

### This document provides an interim update on the previous version of the document which was adopted by Council on 2nd February 2017. In summary these changes update the Supplementary Planning Document (SPD) as follows:

* Take into account the February 2019 National Planning Policy Framework (NPPF).
* To make changes in line with updated CIL Regulations and Planning Practice Guidance. (Including the removal of pooling restrictions and restrictions on use of s106.
* Simplify the SPD and attempt to remove snags from the 2017 document.
* Increase contributions in line with inflation (based on Consumer Prices Index increase of 5.3% increase between 2017-19, (unless another measure is indicated).
* Seek contributions on the basis of dwelling floorspace, rather than number of bedrooms (see table 4.1 page 41).

### Contributions will usually be sought through Section 106 (s106), but sometimes other types of agreement may be more appropriate. In particular Section 278 (s278) Highway Agreements may be a better way of securing works to highways.

### Planning Obligations should be considered in conjunction with Community Infrastructure Levy (CIL). The CIL Charging Schedule can be read at <https://www.torbay.gov.uk/council/policies/planning-policies/local-plan/cil/>

### The SPD is relevant to both residential and commercial developments. Planning contributions are sought to mitigate the impact of development. It is often easier to set out the impacts arising from residential development as a formula. However, where commercial or other development impacts upon matters such as highways, biodiversity, flooding, town centre management etc, planning obligations will be sought to mitigate their impact. However, obligations will not be sought where there is no reasonable link between the development and contribution. For example, commercial development is unlikely to result in a need to make education contributions.

### Where formulas are set out for sustainable development contributions, it is emphasised that these are a starting point to seek to quantify the impact of development. S106 Obligations will not be sought as a ‘roof tax’ but must relate to specific projects that development gives rise to a need for (as per regulation 122 of the CIL Regulations 2010 (as amended).

## Who pays Planning Obligations? Section 106 and CIL

### Obligations may be sought on planning applications as well as matters requiring Prior Approval, subject to the tests of lawfulness and other restrictions (see below).

### The Council’s approach is to seek CIL on smaller developments, and larger developments in the built up area.

### Where CIL is sought on smaller sites, the only s106 contributions sought will be considered as specific site deliverability matters. In a limited number of cases, affordable housing may also be sought on CIL liable developments (i.e. greenfield sites of 3 - 15 dwellings in the AONB, in accordance with Policy H2, and brownfield sites of 15+ dwellings). In such instances development viability will be taken into account having regard to the various exemptions that may apply.

### Larger residential developments in Zones 3 and 4 (i.e. outside the built up area, and in Future Growth areas) will be the subject of negotiation with developers to ensure that an appropriate s106 Agreement provides the infrastructure necessary to make development acceptable in planning terms, including the provision of wider community infrastructure.

### It is acknowledged that there may need to be an element of cross subsidy for certain infrastructure, as this approach is considered by the Council to be the fairest and simplest to as many people as possible.

## Restrictions on Section 106 Obligations

### All s106 obligations must meet the CIL Regulations Tests of Lawfulness (set out in Regulation 122 of the CIL Regulations 2010 and NPPF paragraph 204). They must be:

### • Necessary to make the development acceptable in planning terms;

### • Directly related to the development; and

### Fairly and reasonably related in scale and kind to the development.

### Because of the impact that affordable housing and other infrastructure requirements have on development viability for larger sites, the Council seeks to address infrastructure issues arising from such sites through s106 obligations, rather than CIL.

### Where appropriate, s106 obligations may be pooled towards projects. It is important that s106 agreements are worded to allow sufficient flexibility to allow contributions to be spent, so long as alternative projects comply with the above Tests of Lawfulness.

## Thresholds for Affordable Housing Contributions

### **1.4.1** Affordable Housing policy and thresholds are set out in Policy H2 (pp.181-2) of the Adopted Torbay Local Plan 2012-30. The NPPF (February 2019) indicates that affordable housing should only be sought from major developments (10 or more dwellings or 1,000+ sq m), except in designated rural areas (in Torbay this is within the AONB) where a threshold of 5 units *or fewer* may apply. The NPPF is a material consideration, but does not change the legal basis of the development plan as the starting point for decision-making. Accordingly Officers will usually recommend that the NPPF threshold is applied as follows (subject to other material considerations):

* Previously developed land: 15 dwellings (net new dwellings) as per Policy H2
* Greenfield sites (not within the NPPF definition of ‘previously developed land’):
  + 10 dwellings (net new dwellings) (or 0.5 ha or more site area) outside of the AONB
  + 3 or more dwellings (net new dwellings) (usually through commuted payment on sites of 3-10 dwellings within the AONB).

**1.4.2** The council will resist the artificial sub-division of plots or under-development of sites where this would reduce or avoid liability to s106 obligations or the provision of Affordable Housing. Where adjoining sites in the same ownership would trigger the need for affordable housing or other contributions taken as a whole, the Council will consider whether the site should be treated as a single site irrespective of sub-division into phases or development in parcels. This could trigger a retrospective request within five years if contributions have been avoided at earlier stages through plot sub-division etc.

## The Torbay Local Plan 2012-30 (Adopted December 2015) and Neighbourhood Plans (Made June 2019).

### The Local Plan was adopted on 10th December 2015. There are approved three Neighbourhood Plans covering Torquay, Paignton and the Brixham Peninsula, which were all adopted in June 2019. The Local Plan and relevant Neighbourhood Plan form the development plan. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise[[1]](#footnote-1). The development plan provides the framework for development in Torbay as well as the basis for seeking planning obligations.

### Polices for seeking obligations are set out in the Local Plan (see Figure 1.2). This SPD provides guidance on the implementation of these obligations and sets out how the impact of development can be assessed.

### All of the policies in the Local Plan have been assessed for their impact on viability[[2]](#footnote-2). However, there may be instances where planning obligations and/or CIL could undermine development viability. The Local Plan undertakes to negotiate with developers to ensure that sustainable development schemes can be built. This SPD sets out the Council’s approach to assessing and negotiating viability (see Part 5). Note that the scope to negotiate ‘site acceptability’ requirements is much more limited than for affordable housing or wider ‘sustainable development’ style contributions.

### Planning conditions will be used wherever possible (rather than s106 Obligations).

**1.5.5** S106 Agreements received and approved will be made available for public inspection as part of the planning application decision making. So too will viability assessments received and approved and will be required to accord fully with valuation principles where published by such bodies as the Royal Institution of Chartered Surveyors**.**

## Prioritisation of Developer Obligations

### Local Plan Policy SS7 ‘Infrastructure, phasing and delivery of development’ sets out the Local Plan’s overall strategy for seeking planning obligations. It indicates that contributions will be prioritised, to ensure that the most critical infrastructure is delivered. The Council prioritises s106 Obligations as follows:

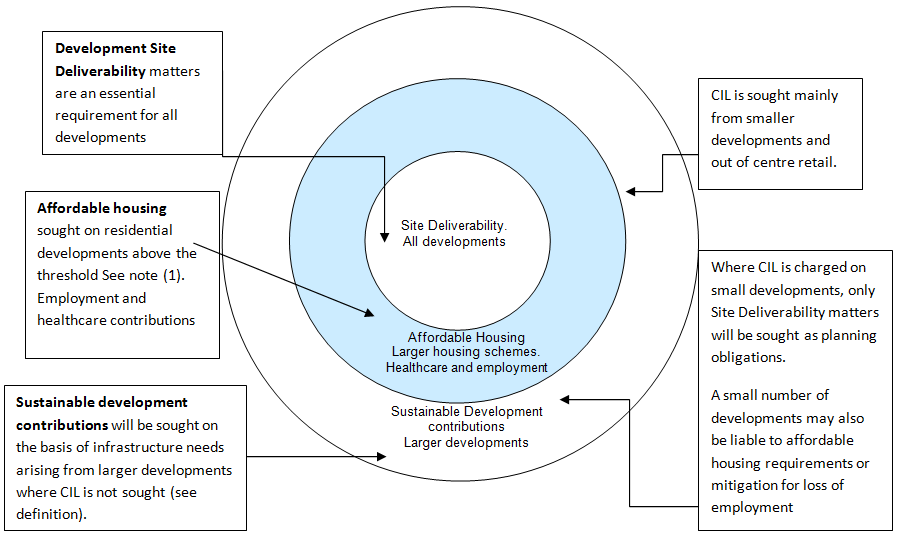
**Table 1.1 Prioritisation of s106 Obligations**

|  |  |
| --- | --- |
| **Site Deliverability Matters** – essential site specific matters to mitigate the impact of development e.g. access and necessary road improvements, flooding, drainage/sewer capacity, direct biodiversity, landscaping.  Compliance with legal requirements such as Habitats Regulations  Planning conditions will be used wherever possible. | Site Deliverability matters apply to all development. |
|  | |
| **Affordable Housing and critical socio-economic infrastructure** (including employment provision and health care on developments giving rise to additional care needs). | **Affordable housing** See note on thresholds. Usually applies to greenfield sites of 10+ dwellings (or 3+ dwellings in the AONB), and previously developed sites of 15 or more dwellings.  Where vacant buildings are being reused or redeveloped, affordable housing contributions will normally be reduced by a proportionate amount of floorspace as advised in NPPF paragraph 63, provided there are no over-riding development plan reasons for seeking affordable housing. Liability to CIL will be taken into account.  **Employment and healthcare:** All applications with an employment or health impact.  Liability for CIL will be a material consideration in determining whether these s106 Obligations are sought. |
|  | |
| **Wider sustainable development style contributions** e.g. waste management, education, open space/ recreation, wider environmental/green infrastructure, town centre management etc (note that safety is a site deliverability matter).  This applies to developments where CIL is not sought (i.e. larger residential developments in Future Growth Areas etc.) and all commercial developments that have an impact which needs to be mitigated.  These matters are required to make development acceptable in planning terms, but are not necessarily essential to render the development physically safe or legal. These are sometimes called ‘tariff style’ contributions. | **Sustainable development contributions** will be used to secure broader infrastructure from larger developments in Future Growth Areas (rather than CIL).  Whilst the SPD sets out figures based on an assessment of likely impacts, sustainable development obligations will not be sought on a ‘roof tax’ basis but must relate to specific items that meet the CIL Tests of Lawfulness, (see restrictions on s106 Obligations above).  Mitigation of specific impacts e.g. monitoring or town centre impacts, principally arising from larger development.  Note that there is no lower threshold for such contributions, but sustainable development contributions are not sought from development that pays CIL or affordable housing units. |

### These are represented as diagrammatically in Figure 1.2

### In the context of this document ‘larger developments where CIL is not sought’ refers to residential developments of 15 or more dwellings (gross) in Charging Zones 3 and 4 where a zero rate of CIL is sought, but where the Council seeks to address the infrastructure needs arising from development through s106 Obligations.

**Figure 1.2: S106 Priorities: Proposed structure of the Planning Obligations and Affordable Housing SPD and relationship to CIL.**



**Note 1: Affordable Housing** is defined in the adopted Local Plan (Appendix A) and National Planning Policy Framework (NPPF). The Council will have regard to a general duty to promote starter homes but this will not take precedence over Policy H2 unless required to do so by Regulations or other legislation. The threshold for affordable housing is set out in Policy H2 of the Local Plan, however paragraph 63 of the NPPF is a material consideration and, other than in exceptional circumstances, weight will be given to the NPPF threshold.

**Note 2: Policy H2 and Policy SS11** of the Local Plan indicates that the Council may agree reduced affordable housing provision where this would secure significant benefits to disadvantaged areas, including enhancement of the local natural or built environment. These would need to be central to the delivery of the site so as to render it a ‘site deliverability’ matter. Regard will be had to development viability, particularly where developments that achieve regeneration benefits are liable for CIL as well as affordable housing.

**1.7 Neighbourhood Plans**

**1.7.1** Torbay has area wide coverage of neighbourhood plans, which were approved at referendum on 2 May 2019 and “made” ( which means adopted) by full Council on 19th June 2019. There is a neighbourhood plan for Torquay (TNP), Paignton (PNP), and Brixham Peninsula (BPNP). The Neighbourhood Plans are part of the development plan with legal weight in decision making. The Policies of the Neighbourhood Plans take precedence over the non-strategic policies of the Local Plan. (and non-strategic elements of the Local Plan Policies.

**1.7.2** The Neighbourhood Plan policies are summarised in Figure 1.4 blow. The main impact of them will be “site delivery” matters such as design, ecology, drainage etc that must be sought as a highest priority from developments. They also set out supporting text and Community Aspirations relevant to matters such as affordable housing. They do not change the structure of “sustainable development” S106 contributions sought, although they may affect the priority given to particular issues, as a decision based on planning merit. The Neighbourhood Forums are consulted on planning applications and may well take a view about S106 priorities. In addition 25% of Community “Neighbourhood Portion” of CIL must be spent in the area in which the development arises.

**1.7.3** A list of Neighbourhood Plans, and their general policy themes is set out at **Appendix 1**

# SITE DELIVERY MATTERS

## Introduction

### These relate to works that must be carried out directly to the site to render development workable in physical terms, safety or meeting legal requirements. It includes matters such as access, landscaping, protected species, drainage and flooding.

### Many matters can be addressed through the use of conditions rather than requiring a s106 agreement. Conditions will be used where possible. However, conditions will not be used to defer considerations that are central to an application’s acceptability, such as drainage, flood risk and biodiversity.

### Because site impacts are unique to each development it is not practical to set standard formulae. Policy SS2 and the Strategic Development (SD) policies of the Local Plan set out key infrastructure matters in proposed ‘Future Growth Areas’.

### Site deliverability matters will need to be addressed before other obligations can be sought, and there is limited scope to negotiate on them.

### This section is not intended to imply that all development is capable of mitigation. Although the Council will endeavour to overcome obstacles to granting permission, some proposals will be unacceptable due to their environmental or other impact.

### Development proposals will also need to accord with the policies in the relevant Neighbourhood Plan.

## Site Access and Direct Safety Works (Local Plan Policy TA2)

### There is an expectation that developers will pay in full for access to a development site that include off site works and/or additional works necessary for safety or operational purposes (e.g. traffic lights, pedestrian crossings, cycle ways, footpaths etc.). The impact of the development upon junction and road capacity in the immediate vicinity of the site (allowing for a reasonable period of traffic growth, usually five years) will also be considered as a site deliverability matter.

### Where traffic levels proposed by a development rely on a bus service/ patronage or other “modal shift” measures and the service or provision is not adequate, this will be a site deliverability matter where the measures are necessary to render junction or road capacity acceptable in planning terms.

### However, impacts on the wider transport network not directly related to junctions etc. in the immediate vicinity of the site will be considered as sustainable development contributions.

### Highway works are currently generally provided through s278 of the 1980 Highways Act.

### The Council will require site access and associated works to be carried out by the developer under s278 in most instances.

### Matters such as internal road layout, parking, provision of cycling facilities etc. will usually be dealt with through conditions as part of the development management process (Policies SS6, TA1 to TA3). For example, roads will need to be provided to an adoptable standard. They should provide necessary access to later phases of development by providing highway land to the edge of sites in order to prevent the creation of ransom strips.

### Where sites are adjacent to main roads (particularly the major road network), they should make provision for future road widening or related improvement works. Layouts should avoid placing homes or other development up to the road without an adequate buffer to allow for future improvements.

### Details of the Council’s highways standards are set out in Torbay Highways Design Guide and Standing Advice on minor applications. <https://www.torbay.gov.uk/council/policies/highways/highways-design-guide/>

### Policy TA3 of the Local Plan promotes the provision of cycle parking and electric vehicle charging points within developments, which will usually be secured through negotiation of layouts or through planning conditions. Large developments will usually be required to provide travel plans to promote alternatives to single occupancy car use.

### The planning system seeks to encourage higher densities of development in locations that are well served by public transport. Accordingly, parking standards are likely to be relaxed in town centres. However, where parking provision is below the standards set out in Local Plan Policy TA3/ Appendix F, contributions will be sought as a site deliverability matter to ensure the quantity, quality, safety, security and accessibility of off-site parking, as well as wider measures to promote accessibility for pedestrians, cyclists and public transport users.

### **2.2.9** Development in Torquay must have regard to TNP Policies TTR1 Access to Primary Schools, TTR2 Sustainable communities, THW5 Access to Sustainable transport and THW6 Cycle storage and changing facilities. Development in Paignton must have regard to Policies PNP1(d) Residential Development and PNP1(h) Sustainable transport. Development in the Brixham Peninsula must have regard to Policies BH8 Access to new dwellings and T1Linking new development to travel improvements.

## On-site Waste provision (New Dwellings)

### All development must make provision for adequate storage of waste and recycling on site, within easy reach of kerbside collection points (as a site deliverability matter and required by Local Plan Policy W1). PNP1(d)-Residential Development and PNP1(e)-Commercial Development both require a specific provision to be made on site in Paignton. Layouts must provide sufficient space, including turning for waste collection vehicles. As noted above, roads should be built to an adoptable standard.

### It is estimated that the additional cost of providing new dwellings with a bin and boxes, and provision of recycling information etc. is around £90 per dwelling.

### The Council will seek the cost of bins and boxes from all new residential developments. If applicants chose not to provide bins/boxes at the planning stage, residents of the dwellings will need to buy compatible bins and boxes directly from the relevant waste collection company before waste collection can commence.

## Flooding, Drainage and Sewerage (Local Plan Policies ER1, ER2, W5, NPPF Chapter 14)

### The NPPF and Policy ER1 ‘Flood risk’ require development to be located in areas with lowest risk of flooding on the basis of sequential and exceptions tests.

### Where (on the basis of the above Policy Framework) development is deemed acceptable subject to flood resilience measures identified in the Flood Risk Assessment; the council will require flood resilience measures to be provided. Policy ER1 requires a focus upon sustainable urban drainage and water sensitive urban design. However, resilience measures such as water resistant doors, raised floor levels and high level electrical wiring will also be encouraged.

### Such matters will usually be dealt with through planning conditions if possible. However, details of flood protection measures will be required when proposals are submitted (i.e. cannot be left to planning conditions).

### Drainage is closely related to the issues of flooding and sewer capacity.

### Torbay has been declared a Critical Drainage Area by the Environment Agency (see Policy ER1 and 6.5.2.13 of the Local Plan). In addition Natural England has raised concern about the impact of combined sewer overflows affecting the Marine Special Area of Conservation (SAC) in Torbay. The Council’s evidence[[3]](#footnote-3) indicates that the impact of “urban creep” and climate change pose a significant risk to Torbay’s sewer capacity.

### Policies ER2 and W5 sets out a test to ensure that no additional surface water is discharged into shared sewers. Planning proposals, including prior notifications must ensure that all development (including brownfield sites) mimic 1 in 10 year greenfield run-off rate (or better) from the impermeable area of the development.

### The use of Sustainable (Urban) Drainage Systems (SUDS) and Water Sensitive Urban Design (WSUDs) to achieve this is strongly encouraged.

### Details of such measures will be required before permission is granted as part of a proposal’s Flood Risk Assessment, and must be fully carried out prior to the development being occupied.

### As with flooding, drainage will not normally be dealt with through planning condition and the use of sustainable drainage/water sensitive urban design will be promoted where possible.

### Planning Obligations for off-site mitigation will only be accepted as a last resort, and if a suitable and implementable project can be identified. If this cannot be achieved, proposals will be refused.

### Developers will require a license from South West Water (SWW) to connect to foul sewers. Where additional sewerage is required the Council, in liaison with SWW, will seek to ensure that sufficient capacity is provided to meet the requirements of the whole Future Growth Area. This may mean that earlier phase developers overpay for drainage/flooding measures and provide proportionately less for less critical infrastructure, which will be met by later phases of development.

### TNP Policy TE7 Marine management policy is relevant to applications close to the coastline. Policies PNP1(i) Surface water and PNP1 Area wide, part (iv) are relevant to applications in Paignton.

## Biodiversity

### In relation to biodiversity the NPPF requires development to minimise impacts on biodiversity and provide net gains where possible (NPPF paragraph 15: paragraph 170-177).

### Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all Local Authorities to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. They should identify ways to integrate biodiversity in developing policies, strategies, in managing land and buildings and developing infrastructure (roads/flood defences) etc.

### In accordance with the NPPF, the Local Plan Policy NC1 states that there should be no net loss of biodiversity through development and the aim should be to secure net gain.

### The approach set out in the following paragraphs is designed to have benefits for developers, local communities, habitats and biodiversity.

## Development Impacts on Biodiversity

### Some development sites will undoubtedly impact on biodiversity. The mitigation hierarchy of avoid, mitigate, compensate, enhance should always be followed. The Policy framework is set out in Policies SS8 and NC1 of the Local Plan as well as Neighbourhood Plan Policies. In particular, see Policies TS1, TE3-6 of the TNP; Policies PNP1 Area Wide(a and f), PNP1(c)-Design Principles (2) of the PNP and Policy E8 of the BPNP.

### Where impacts cannot be avoided, mitigated or compensated for on a development site, or on other land owned by the applicant, contributions for off-site mitigation or compensation will be sought subject to the solution being in the public interest, deliverable and be capable of being maintained in perpetuity in a manner that will ensure protection and enhancement of the species affected.

### It should be noted that this approach is not a replacement for the protection of those habitats and species covered by legislation. Furthermore, the approach will not be appropriate in all cases e.g. where there will be loss or deterioration of irreplaceable habitats. Development likely to affect habitats and/or species associated with an international site will be subject to assessment under the Habitats Regulations and will not be permitted unless any adverse effects upon integrity can be ruled out.

### Note that since the adoption of the Local Plan, the interpretation of the Habitats Regulations has been clarified by the European Court of Justice ruling in *People over Wind & Sweetman v Coillte Teoranta* case C-*323/17* on 12 April 2018. Under the “People over Wind” judgement where proposals rely on mitigation measures to avoid likely significant effects on Habitats Regulations protected species or habitats (such as greater horseshoe bats or calcareous grasslands at Berry Head), such applications will need to be subject to Appropriate Assessment, and effects cannot be screened out by mitigation measures.

### The following deals with specific biodiversity related issues of importance to Torbay:

### • Greater horseshoe bats (GHB) (Rhinolophus ferrumequinum) associated with the Berry Head to Sharkham Point component of the South Hams SAC;

### • Recreational impacts on the Berry Head to Sharkham Point component of the South Hams SAC (Calcareous grassland and other habitats);

### • Cirl buntings (Emberiza cirlus);

### • Protected Sites – locally important sites for biodiversity and geodiversity;

### • Off-Site Habitat Compensation (biodiversity offsetting).

## Greater Horseshoe Bats associated with the Berry Head to Sharkham Point

### GHB is a rare species in the UK with a significant proportion of the population found in South Devon. Most records refer to animals at traditional roost sites, commuting along strategic flyways or foraging in sustenance zones. Local Plan Polices SS8 and NC1 and BPNP policy E8 and PNP1-Area Wide (f) are relevant.

### Natural England has produced the South Hams SAC GHB Consultation Zone Planning Guidance (June 2010). The guidance identifies sustenance (foraging) zones around each of the component roosts of the SAC, as well as the strategic flyways which are most likely to link the SAC roosts. Updated Guidance was produced in 2018 by the authorities in the SAC <https://www.devon.gov.uk/planning/planning-policies/other-county-policy-and-guidance/south-hams-sac-spd-consultation>).

### Those developments located in a GHB strategic flyway or sustenance zone will need to follow the above guidance. Such developments are likely to need a Habitats Regulations Screening Assessment, to determine whether there are any likely significant effects on the SAC. Where mitigation measures are required to avoid likely significant effects, then a full Appropriate Assessment will be required.

### Impacts on GHBs will need to be mitigated for on any development site, or on neighbouring land controlled by the applicant where such solution is deliverable. This can normally be achieved through the maintenance of dark corridors and habitat management measures that ensure that there are no detrimental impacts on the ability of the species to navigate and feed, and that there are no adverse impacts on the favourable conservation status of the species.

### Contributions for these measures will be charged through s106 from developments that are likely to impact upon the GHB population and habitat where a satisfactory solution can be identified arising from the development alone and ‘in-combination’ impact from other plans and developments required to be taken into account. This will be identified through the Habitats Regulations process.

## Recreational Impacts on Berry Head to Sharkham Point

### As detailed in Local Plan Policy NC1 ‘Biodiversity and geodiversity’, all developments that create recreational pressure upon the Berry Head Grassland must pay a contribution to mitigating the impact of increased visitor pressure. As set out in the report by Footprint Ecology (2014)[[4]](#footnote-4) the primary zone of influence is 5 km driving distance, which is roughly equivalent to the Brixham Peninsula Neighbourhood Plan area/ Local Plan Policy SDB1. All residential, tourism, and other development likely to increase recreation pressure upon the calcareous grassland at the Berry Head to Sharkham Point component of the South Hams SAC will be required to make a financial contribution towards mitigating the impact.

### The Footprint Ecology report considers the pressures of development upon the Berry Head grassland and recommends mitigation measures (para 6.14 onwards). It was estimated that the cost of carrying out these mitigation works was £384,000 (£404,350 at 2019 prices). The Footprint Ecology report assessed that 44% of visits were from Brixham. Overall 42% of visitors were from local residents and 58% from tourists. This indicates a cost of £95 per new dwellings in the Brixham Peninsula towards management/reduction of impact on the Berry Head Grassland[[5]](#footnote-5). Whilst the figure for non-residential development is not so easy to calculate, £131 per holiday unit/ bedroom represents the higher proportion of visitors.

### Contributions may exceptionally be sought from outside the BPNP area, where it is likely that development could impact on the Berry Head Grassland, that are not reasonably covered by CIL contributions from that development. However, consideration will be given to the on-site provision of open space that will reduce the recreation impact.

## Cirl buntings

### The cirl bunting is a rare species in the UK, with a very restricted range. Most of its population is in South Devon, and a survey in 2009 showed that just over 8% of the UK population was in Torbay. The cirl bunting is a UK Species of Principal Importance under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006. These species were identified as requiring action under the UK Biodiversity Action Plan and remain conservation priorities under the UK Post-2010 Biodiversity Framework. The Cirl bunting is also protected under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended), and is a red listed bird of conservation concern.

### In areas where there are historic records of cirl bunting breeding territories, or where suitable habitat is present on a development site, the developer and Torbay Council will either need to accept presence of cirl buntings and agree on the level of presence or undertake specific cirl buntings surveys, in accordance with the Wildlife and Development Guidance Note: cirl bunting (Devon County Council, Teignbridge District Council and RSPB, 2016), to determine the level of presence.

### Where loss of summer breeding or winter cirl bunting habitat is unavoidable, suitable compensatory habitat must be provided. This is unlikely to be achieved on the development site but may be able to be achieved on other land owned by the applicant within Torbay.

### Where suitable mitigation or compensation cannot be provided on site, or on other land owned by the applicant within Torbay, contributions towards off-site compensation will be sought, so long as this can be satisfactorily secured and appropriate land identified. .

### Torbay Council is working with the RSPB and the Torbay Coast and Countryside Trust (TCCT) to identify potential off-site compensation sites for cirl buntings in Torbay.

### A payment of £92,112 (£87,500 at 2016 costs X 1.053%) per pair of cirl buntings will be required for compensation for those sites which are owned by Torbay Council and managed by TCCT. The offsite compensation payment covers TCCT management and monitoring costs for 25 years. TCCT has every intention to continue to manage the land in accordance with the agreed Scheme of Management until the expiry of its current lease in 2060. A similar Scheme of Management is being developed for TCCT managed land at Maidencombe.

### Further details can be found within the “Wildlife and Development Guidance Note: Cirl Bunting (Devon County Council, Teignbridge District Council, Torbay Council and RSPB)”, (2017) <https://www.devon.gov.uk/environment/wildlife/wildlife-and-geology-planning-guidance>

## Protected Sites - locally important sites for biodiversity and geodiversity

### The Local Plan identifies locally important sites for biodiversity and geodiversity; these include County Wildlife Sites, Other Sites of Wildlife Interest, Unconfirmed Wildlife Sites and Regionally Important Geological Sites. In addition, policies NC1 and C4 seek to protect veteran trees and woodland. Developments within 500m of locally important sites are likely to impact upon and/or benefit from them. Accordingly, there may be a need for these developments to contribute towards enhanced management of these sites. Contributions will be determined on a case by case basis based on an assessment of the impact on biodiversity and the requirement in Policy NC1 to achieve a net gain in biodiversity.

## Off-Site Habitat Compensation (Biodiversity Offsetting)

### Where impacts on local habitats cannot be avoided, mitigated or compensated for on the development site, or on other local land owned by the applicant, contributions for off-site habitat compensation will be sought provided such solution can be delivered satisfactorily.

### For small (typically householder) developments that involve the loss of local habitat, a contribution of £25 per sq m of lost habitat will be sought (Calculated on the basis of £1 per sq m habitat loss per year for 25 years). For example loss of 100 sq m of habitat lost would result in a contribution of £2,500 (£1 x 25 years x 100 sq m).

### For larger developments contributions will be determined on a case-by-case basis.

### Contributions will be used to provide off-site habitat enhancements in accordance with management plans, including site assessments where necessary. There are a number of locally important sites across Torbay which have the potential to provide off-site compensation through enhanced habitat management. These include County Wildlife Sites, Other Sites of Wildlife Interest and Unconfirmed Wildlife Sites, (see Appendix D of the Local Plan). In addition, there may be potential for off-site compensation on other land, including land owned by Torbay Council and managed by the Council or TCCT.

### Consideration will be given to other biodiversity obligations or on-site provision to avoid ‘double counting’, i.e. financial contributions will only be sought to compensate for a net loss of biodiversity. This planning contribution mitigates a site-specific impact and is therefore a site deliverability matter.

## Design and Active Design

### Local Plan Policy DE1 ‘Design’ sets out a requirement for development to be well designed and contain a checklist of considerations relating to development’s function, visual appeal and quality of open space. Particular attention is drawn to designing out opportunities for crime, anti-social behaviour etc., and liaison with the Police Architectural Liaison Officer on major developments. The Policy also requires the provision of layouts and design which encourage active lifestyles and promote walking, cycling and public transport. Local Plan Policy DE2 encourages the use of Building for Life Criteria.

### Local Plan Policy DE3 ‘Development amenity’ sets out a requirement for good layout of dwellings including guidance on space standards, amenity space, road layout, parking, bin and storage areas. It sets out a guideline requirement for houses to have 55 sq m of outside amenity/garden space and flats to have 10 sq m per unit. Policy DE3 also indicates that developments should be set out to minimise the opportunities for crime and help avoid community conflict: for example by providing adequate parking and secure storage facilities for cycles etc. Policy W1 requires development to make provision for storage of recycling and waste materials.

### Local Plan Policy SC1 ‘Healthy Bay’ requires applicants to have regard to promoting healthy living. Developments of 30 or more dwellings, and smaller scale developments where there is an impact on health will be required to undertake a screening for a Health Impact Assessment. Further details about health considerations in Planning are set out in the Healthy Torbay SPD (April 2017): <https://www.torbay.gov.uk/council/policies/planning-policies/local-plan/spd/>

### Such matters are central to the development management process and it is expected that in most instances they will be addressed through conditions and the negotiation of layouts etc.

### Local Plan Policy SS10 ‘Conservation and the historic environment’ requires development to contribute towards the character and local distinctiveness of the area. There will be instances where public realm improvements are central to the success of development, particularly in town centre and waterfront areas. In such instances public realm improvements may be prioritised.

### Local Plan Policy SS11 ‘Sustainable communities’ sets out a range of measures to regenerate community investment areas, including protecting and enhancement of the built environment or creating better accessibility and connections serving the local community. Helping to promote healthy lifestyles for example through promoting walking and cycling will also be given a high priority in these areas.

### The **Neighbourhood Plans** all set out detailed design Policies. These will need to be incorporated in to development layouts and design. Developments in Torquay must meet the requirements of Torquay Neighbourhood Plan Policies TH2 Designing out Crime, TH5 Sustainable later life homes, TH8 Established Architecture, Health and Wellbeing Policies THW1-6, TT2 Change of Use in Conservation Areas and Listed Buildings, and area specific policies. Policy TJ2 requires all new residential development to have superfast fibre optic broadband connected or provision for retrospective fitting.

### The **Paignton Neighbourhood Plan** contains various design requirements within Policy PNP1 Area wide policy, including PNP1(c) Design principles, PNPF Towards a sustainable low carbon economy PNP1(g) designing out crime as well as area specific policies.

### **Brixham Peninsula Neighbourhood Plan:** Policy BH5 Good Design and the town and village design statements. Policy J2 requires the provision of fibre optic cabling.

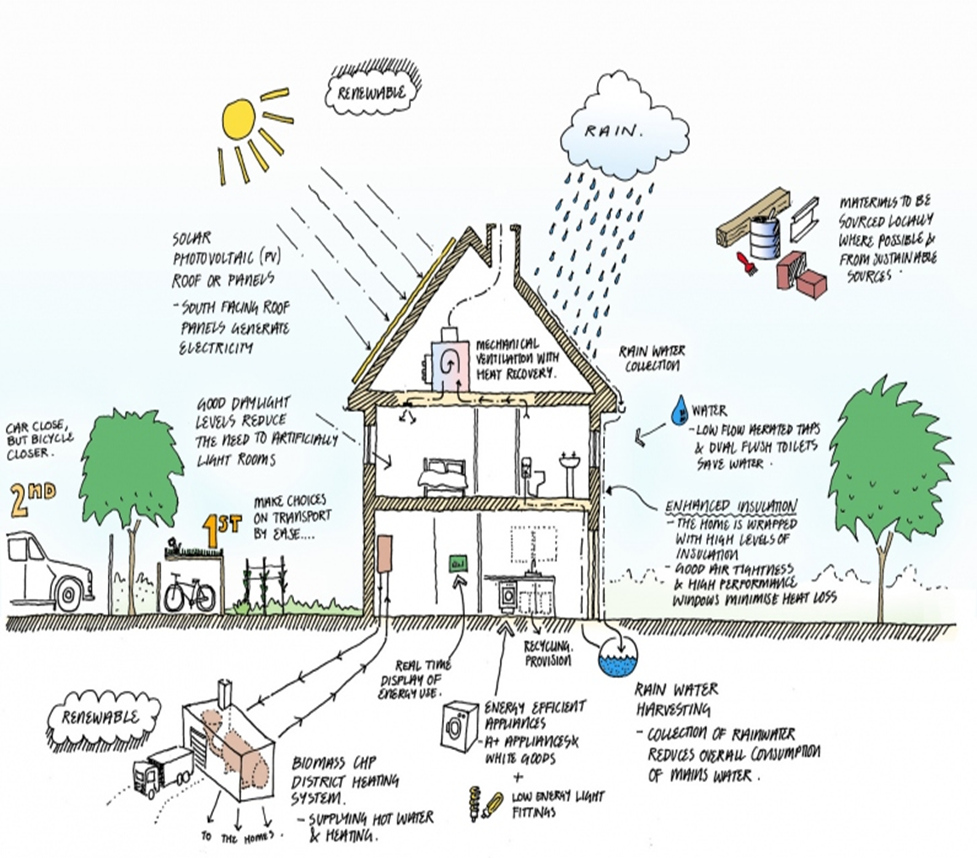
### Whilst broader public realm improvements are treated as a sustainable development contribution (see Section 4), there will be instances where public realm/physical regeneration is considered critical to the success of an application to the extent that it will be considered to be a site deliverability matter, and prioritised accordingly. In many instances this can be achieved through conditions and good design of development and its environs. There may be instances where s106 obligations/s278 agreements if public realm on the highway, are justified for offsite works in close proximity to the site.

**2.13 Energy Efficiency**

**2.13.1** Policy ES1 of the Local Planseeks to minimize carbon emissions from development. Major development should demonstrate how low carbon design has been incorporated into development in a sequential order of:

* Conserving energy through siting and design
* Using energy efficient measures and materials in the fabric of the building
* Use of decentralised heat and cooling and power
* Use of on-site or near-site renewable technologies.

**2.13.2** More information on energy efficiency is contained in the Council’s Housing Strategy, from which the diagram below is taken.



# AFFORDABLE HOUSING, EMPLOYMENT AND HEALTH

## Introduction

### This section sets out guidance on the implementation of the Council’s affordable housing, employment and health policies. These will be given the next highest priority in negotiating s106 obligations after direct site deliverability matters have been taken into account. Note however, that active design and related matters such as on-site open space provision will often be dealt with through planning condition as part of site deliverability considerations.

## Affordable Housing

### Local Plan Policy H2 ‘Affordable Housing’ sets out the Council’s affordable housing requirements. Policy SC5 “Child poverty” also promotes affordable housing and other measures to help reduce child and fuel poverty. The Council’s emerging Housing Strategy is also an important consideration.

### Local Plan Policy H2 remains the Council’s adopted Local Plan Policy in relation to Affordable Housing. However the National Planning Policy Framework (NPPF, February 2019) is a material consideration in determining planning applications. Paragraph 63 of the NPPF states that:

*“Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount. (Defined in footnote 29 as equivalent to the existing gross floorspace of the existing buildings. This does not apply to vacant buildings which have been abandoned)”.*

### This threshold does not affect previously developed sites (where the local plan threshold in 15 units), or sites within the AONB. However for non-major greenfield sites outside the AONB, the Government Policy not to seek affordable housing on non-major greenfield sites outside to the AONB is a material consideration.

**Table 3.1 De Facto Affordable Housing Thresholds taking into account NPPF paragraph 63 as a material consideration.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Net new dwellings/ assessed site capacity** | **Affordable housing target** | **Method of delivery** | |
| **Development ofpreviously developed Sites** | | | |
| 1 -14 dwellings | Zero | N/A | |
| 15 -19 dwellings | 15% | Delivered through on site provision.  Commuted payments will only be accepted where this would achieve more effective provision of affordable housing, or bring significant regeneration benefits. Brownfield credit may apply (paragraph 63 of the NPPF). | |
| 20+ dwellings | 20% | Delivered on site. Commuted sums will only be accepted where this would achieve more effective provision of affordable housing or bring significant regeneration benefits. Brownfield credit may apply (paragraph 63 of the NPPF) | |
| **Development of Greenfield Sites** | | | |
| 3 - 5 dwellings | Zero except development in the AONB | | Zero except for development in the AONB. In the AONB a commuted payment based on 10% affordable housing provision will be sought on sites of 3 or more net new dwellings |
| 6-9 dwellings | Zero except development in the AONB | | Zero except for development in the AONB. In the AONB a commuted payment based on 15% affordable housing provision will be sought (see text below). |
| 10 dwellings | 15% | | Usually through commuted payment based on 15% affordable housing provision will be sought (see text below). |
| 11 - 14 dwellings | 20% | | Delivered through on-site provision.  Commuted payments will only be accepted where this would achieve more effective provision of affordable housing, or bring significant regeneration benefits. |
| 15 - 29 dwellings | 25% | | Delivered through on-site provision. Commuted sums will only be accepted in exceptional circumstances, where this would achieve more effective provision of affordable housing or bring significant regeneration benefits. |
| 30+ dwellings | 30% | | Delivered through on-site provision. 25% affordable housing and 5% self-build plots in accordance with Policy H3. Alternatively 30% affordable housing will be accepted where Self Build Plots are not practicable. |

### Likewise, the Government policy offering brownfield relief will be taken into account; and will in particular be given weight on developments that pay CIL. The Council will not however apply the relief where it considers buildings have been recently made vacant, run down, or left vacant with the intention of gaining planning permission.

### The explanation to Policy H2 (Paragraphs 6.4.1.6-18) provides additional guidance on tenure natural design and implementation. It sets out the Council’s approach to delivering affordable housing as part of mixed and balanced communities. Paragraph 6.4.1.2 indicates that sites should not be artificially subdivided or phased to avoid liability for affordable housing. This should apply both to new sites and the subdivision/redevelopments of existing buildings. Regard will be had to space standards set out in the explanation to Local Plan Policy DE3.

### Dwelling types, mix and location/siting should be provided in agreement with the TDA’s Director of Asset Management Housing Strategy Delivery Manager[[6]](#footnote-6), to accord with the needs of Registered Providers in the Borough.

**3.2.7** The requirement to provide Affordable Housing will apply to all proposals for residential development including (but not limited to): new build, conversions, mixed use scheme, phased developments (whether the result of one or more than one planning application) where the threshold is, exceeded), and schemes providing housing for people receiving care or support, including supported housing developments

## Neighbourhood Plan Policies

### **Torquay** . Affordable homes is dealt with on pages 14-16. It includes Policies TH3 “Future Growth Area Priorities”, TH4 “Affordable homes from greenfield developments”, and a Community Aspiration for increased affordable housing (page15). Policy TH4 indicates a sequential preferred order for affordable homes of on site provision, mixed on site and off site provision, with commuted payment being the last preference. Several community aspirations support the delivery of affordable housing.

### **Paignton** Policy PNP1(c) supports the delivery of affordable housing to meet the Local Plan’s strategic needs.

**3.3.3 Brixham Peninsula.** Development within the Brixham Peninsula , which includes Churston Galmpton and Broadsands will need to conform to **Policy BH1 and BH2** of the approved BPNP. **Policy BH1** seeks on site provision of affordable homes as a first preference. Off-site contributions will be considered where this would result in a larger number of affordable housing being provided, but only if directly allocated towards the physical provison of affordable homes within the Brixham Peninsula. **Policy BH1**.**3** provides a cascade mechanism for commuted sums to be released for wider provision if not used within the Brixham Peninsula.

**3.3.4 Policy BH2** of the Brixham Peninsula Neighbourhood Plan sets a **local occupancy** requirement for new affordable homes in the Peninsula. In practice this is likely to be achieved through priority being given to qualifying residents as part of the Devon Homer Choice bidding process, having regard to the Council’s other legal obligations. **Policies BH4.3 and BH9** consider affordable housing exception sites.

## Tenure Mix

### Local Plan Policy H2 seeks affordable housing as set out in Table 3.1 on the basis of the following:

### **1/3 Social Rent** should be managed by a Registered Provider (e.g. a Housing Association) or alternative organisation approved by the Council. Social rented housing is homes let on assured or secure tenancies (as defined in Section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

### **1/3 Affordable rented** housing is let by Local Authorities or private registered providers of social housing or alternative organisation approved by the Council to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

### **1/3 Intermediate** **and other low cost home ownership.** Intermediate housing is an umbrella term for homes for sale or rent at a discount below market rates but above social and affordable rented products. It includes (but is not limited to) shared equity (shared ownership and equity loans), discounted market sale, intermediate rent (but not affordable rented housing), starter homes, and self-build housing where provided as affordable housing.

### **Intermediate and other low cost home ownership products Housing Products**

### **3.4.2** Paragraph 64 of the NPPF of the seeks at least 10% of homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or seriously prejudice the ability to meet the identified housing needs of specified groups. Certain other exemptions are indicated. Chapter 1 of the Housing and Planning Act (2016) introduces a duty on local authorities to promote the supply of starter homes when carrying out their planning functions. Starter Homes are defined as a new dwelling available for purchase by a qualifying first time buyer, to be sold at a discount of 20% below market value subject to a price cap of £250,000, although further Regulations may clarify or change the definition. At the time of writing this document October 2019) secondary legislation has not been introduced requiring the provision of Starter Homes.

### **3.4.3** Torbay is a low wage economy, whereas house prices are below average[[7]](#footnote-7)**.** The primary need is for rented accommodation. Therefore the starting point for affordable housing tenure (or contributions for offsite provision where agreed-see below), will be the mix identified above and in the Local Plan. A higher proportion of intermediate housing may be agreed where there are viability concerns or where the provision of starter homes is more achievable on-site than other types of affordable housing, for example, as part of a block of flats. However starter homes are unlikely to be the council’s preferred tenure in most instances.

### **3.4.4** Small homes that sell or rent at the lower end of the housing market simply by virtue of their small size will not be considered as affordable housing.

## Self and Custom Build Housing

### Self-build and custom houses are defined as dwellings built by an individual, a group of individuals, or persons working with or for them, to be occupied by that individual; but excludes the building of a house on a plot acquired from a housebuilder who builds the house wholly or mainly to plans or specifications decided by the housebuilder. This SPD uses the term “self-build” to include custom build housing.

### Local Plan Policy H3 sets out the council’s policy on self-build housing. It allows provision of self-build plots as part of the affordable housing provision on larger housing sites (30+ dwellings). Where offered as part of the affordable housing offer, developers will be expected to provide serviced plots for sale to qualifying households within the Council’s waiting list. The S106 Agreement will need to agree an appropriate discount, site -management and claw back mechanism for recycling any subsidy below market price into affordable housing, if the property is sold within a specified period (of not less than 5 years from completion). Note that Local Plan Policy H3 requires self-build plots to be completed within three years of commencement.

**3.5.3** Practice suggests that it is usually simpler and more effective for the affordable housing requirement to be met on sites through standard affordable housing, managed by registered providers. In any event, there is an expectation that the provision of self-build housing will be reduced prior to other forms of affordable housing.

## On-Site Provision or Commuted Sum?

### Policy H2 and the NPPF assume that affordable housing will be on-site. Where on-site delivery is not practical a second option will be the provision of alternative serviced sites or land. Financial contributions in lieu of on-site provision will only be accepted as an option in exceptional circumstances.

### However, Policy H2 makes provision for financial contributions from smaller sites in exceptional circumstances. These will be calculated on the basis of the assumed subsidy needed to deliver the equivalent affordable housing through the open market, including administrative costs.

**3.6.3** Note that Torquay and the Brixham Peninsula Plan Areacontain policies which prioritise on-site provision (TH4 and BH1 respectively). In the Brixham Peninsula, Policy BH2 also requires local occupancy of affordable housing.

## Calculating Commuted Sums

### The council will assess the cost of providing affordable housing, taking account of the value that such housing has in terms of how much occupants would pay for it and rental streams. The value will be below the full open market value. The values of affordable housing in relation to open market value are assessed in the Torbay Whole Plan Viability Testing (PBA 2014, and updated January 2016). These are set out below, along with the tenure split sought by the Local Plan:

### 1/3 Social rent at an assumed discount of 60% below open market rates;

### 1/3 affordable rent at an assumed discount of 50% below open market rates;

### 1/3 Intermediate housing including shared ownership and starter homes at an assumed minimum discount of 35% below the open market rate (which includes service charges).

### This equals out as an average affordable dwelling being worth 48% the value of an open market dwelling (based on (0.6 + 0.5 + 0.35) ÷ 3 = 04.833). In other words there is an average private subsidy assumed of 52% of the value of an affordable dwelling.

## House Price Data

### Table 3.1 below sets out average house prices at June 2016 and January 2019, based on Land Registry data (June 2016 being the baseline of the previous SPD). Overall house prices increased by 8.72% over this period, with slightly weaker increase in the price of smaller properties.

**Table 3.1 Torbay House Prices, June 2016-Jan 2019 (Land Registry)**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Average prices June 2016** | **Average prices January 2019** | **Change 2016-19** |
| Detached | 301,793 | 332,792 | 10.27% |
| Semi detached | 202,166 | 221,311 | 9.47% |
| Terrace | 157,987 | 169,938 | 7.56% |
| Flats | 124,794 | 134,732 | 7.96% |
| All properties | 182,741 | 198,667 | 8.72% |

### On the basis of house price data an average house is likely to cost around £204,000 and a flat/ smaller property of up to 79 sq m around £145,000. These figures are also consistent with Torbay Council’s previous viability testing[[8]](#footnote-8).

## Gross Development Values in Viability Studies

### Torbay’s Local Plan policies, CIL and Planning Obligations SPD were informed by three viability studies (Peter Brett and Associates 2014 and 2016, and Burrows Hutchinson (August) 2016). These are all available at www.torbay.gov.uk/CIL. The most recent assessments (PBA 2016 and Burrows Hutchinson, August 2016) were that average gross development values in Torbay were £2,700 per sq m for flats and £2,400 for houses, or around 2,500 per sq m overall.

### These translate to roughly £135,000 for a 50sq m flat and £223,200 for a 93sq m 3 bed, 5 person house. However, a slightly lower figure for houses has been taken in recognition of house prices noted above.

### Table 3.3 below sets out the Council’s assumed cost of providing affordable housing. These will be used when calculating the cost of affordable housing and off-site contributions, where agreed. They include an allowance for administrative expenses and bringing second hand homes up to an acceptable standard. Table 3.2 sets out the assumed cost of providing affordable dwellings including a 10% additional cost.

### **Table 3.2 Assumed cost of providing affordable housing/commuted sum**

|  |  |  |  |
| --- | --- | --- | --- |
| **Affordable housing type** | **Assessed cost of dwelling** | **Value of assumed subsidy at 52% of market value** | **Cost of provision with 10% administrative costs (rounded to nearest £1000)** |
| **Smaller dwellings 1-2 person (37-79 sq m)** | **£145,000** | **£75,400** | **£82,900** |
| **Medium sized houses (80 sq m or more)** | **£204,000** | **£106,100** | **£116,700** |
|  |  |  |  |

### Where commuted sums are accepted, they should match the value of on-site provision as calculated above i.e. £82,900 per smaller dwelling (79 sq m gross internal area and less) and £116,700 for dwellings of 80+ sq m gross internal floor area). There is no need to round contributions to the nearest whole number where off-site provision is agreed. (Note that Policy BH1 of the Brixham Peninsula Neighbourhood Plan seeks the residual payment owned on part of a dwelling to be provided as a contribution: e.g. if affordable housing liability is for 3.4 dwellings then the BPNP would seek 3 affordable units on site and a commuted sum for the 0.4 of a dwelling ( 04x £116,700= £46,680).

## Calculation of Viability and Deferred Assessment of Viability

### Policy H2 recognises that the provision of affordable housing is a matter for negotiation. Where on-site provision is being made there may be scope to vary tenure to meet sustainable community or Government policy objectives. In particular, paragraph 64 of the NPPF seeks 10% of homes on site to be available for affordable home ownership, which is likely to indicate an increase level of affordable-home ownership products on smaller sites. Policy SS11 of the Local Plan is relevant to Community Investment Areas.

### It will, however, be noted that paragraph 6.4.1.16 of the Local Plan indicates that proposals will be resisted where the reduction in affordable housing or other community benefits would be reduced to the extent that development is rendered unsustainable. In addition attention is drawn to paragraph 57 of the NPPF, which indicates that there is an onus on the applicant to justify the need for a viability assessment. Viability assessments will be made publically available, and should reflect best practice as set out in national planning guidance.

### Where affordable housing or other s106 requirements are argued to render development unviable, the Council will require an open book viability assessment from the applicant. Where, on the basis of the viability assessment, it is agreed that affordable housing would render development unviable then the Council will negotiate an agreed level of provision e.g. increase amount of intermediate housing or a reduction in provision. In all cases where a reduction in the percentage of affordable housing is agreed, the Council will require a deferred contribution arrangement to be in place. Procedures for carrying out viability assessments and deferred contributions are set out in part 5 ‘Implementation’.

## Design and Layout

**3.9.1** To promote inclusive communities affordable housing should not be distinguishable from open market housing by design and must integrate seamlessly into the layout of the development. The mix of new affordable housing on each development site should be representative of the mix of market dwellings types and sizes (including number of bedrooms) being provided.

### Where possible it should be ‘pepper potted’[[9]](#footnote-9) in more than one cluster throughout a development (i.e. not all in one place). As a guideline, clusters of 10-12 affordable homes are appropriate on sites of up to 100 dwellings; and 20-24 on sites of 100 dwellings or more.

### Where being provided together, different tenures of affordable homes should be delivered for example avoiding large numbers of social rented and affordable rented products being adjacent to each other.

### Affordable housing should conform to the design standards normally required by any funding bodies (e.g. Home England) in order to qualify for grant. These standards may be higher than those applicable to market housing, reflecting the needs of the occupants and the implications of the difference in tenure.

### Provision of affordable units should be made as early as practical in the development, having regard to layout and other matters above. The timing of provision woill be set out in the S106 Obligation.

**Wheelchair Adapted Housing**

**3.9.6** Devon Home Choice figures for Torbay demonstrate that there is a clear need for Affordable Housing that is wheelchair accessible. To help meet this need on qualifying sites, 5% of the Affordable Housing should be wheelchair accessible**,** as required by Policy H6 of the Adopted Local Plan

**3.9.7** The Wheelchair accessible housing is to be built in accordance with the most up to date Council’s Wheelchair Accessible Specification or any amended version in force at the time of reserved matter of full application submission.

## Registered Providers

### There is a strong council preference for affordable housing to be provided and managed by a registered provider, and are required to remain as affordable housing in perpetuity (or the grant recycled). Letting should be through Devon Home Choice, and it is noted that the Brixham Peninsula Neighbourhood Plan seeks additional local occupancy conditions on affordable dwellings.

### Early discussion with TDA’s Head of Asset Management and Housing (or another position that the Council put in place to carry out the Council’s Housing function). Note that providers will need to adhere to the local occupancy requirements in Policy BH2 of the Brixham Peninsula Neighbourhood Plan.

### Whilst the Local Plan (and Neighbourhood Plan specify matters such as tenure mix, dwelling types etc., the Council will seek to interpret these flexibly to maximize the delivery of affordable housing is encouraged to discuss affordable housing delivery. Accordingly, it is helpful for developers work with a registered provider at application stage to agree matters such as tenure mix, size and location of affordable housing and similar matters.

### Registered provider applications for affordable housing schemes that exceed the requirements of Policy H2 will be supported subject to other plan considerations. The Council may be able to relax the need for a s106 agreement, so long as there is a grant nomination agreement with the Council, which secures the provision of affordable housing to above the development plan requirements.

## Affordable Housing and Other Planning Obligations

### Where provided and managed by a registered provider, with mechanism to sure provision in-perpetuity, the Council will not seek “sustainable development” contributions in respect of units of affordable housing. However, site deliverability matters must still be addressed. Affordable housing is entitled to mandatory CIL Exemption, so long as this is sought before the commencement of development.

## Employment

### Policies SS1, SS4 and SS5 of the Local Plan place a high emphasis on economic growth, and net job growth. Earnings and gross value added (GVA) are below the national and regional average, and there are significant areas of employment deprivation. There is often a viability problem with the delivery of employment sites in Torbay due to infrastructure costs, or landowners seeking residential land values. Employment is also promoted by Policies TJ1 of the TNP, PNP1 and Policies J1, J3 and J4 of the BPNP. All of the Neighbourhood Plans contain policies relevant to employment areas, including harbour and tourism areas. Policy PNP1-Area Wide (i) seeks job led growth and housing provision to be kept in balance in Paignton.

### Policy SS5 and the Strategic Development (SD) policies of the Local Plan seek to achieve a mix of employment uses on major developments and identify a number of sites for mixed use development. These also set out indicative targets for employment, and indicate that the delivery of employment should be achieved through land equalisation, direct provision of serviced sites and/or developer contributions (paragraph 4.2.27). Where live-work units are provided as part of employment provision, their use will be controlled through condition or s106 Obligations controlling occupancy.

### Where sites are identified for mixed-use development in the Local Plan, the early provision of employment space will be given a high priority in determining obligations sought on site, as indicated in Policy SS2(ii) of the Local Plan.

### Where on-site provision is not practical, the Council will seek developer contributions to help enable the provision of employment elsewhere.

### The Council may seek local labour agreements from all developments as set out in Policy SC3 of the Local Plan. This will be incorporated into s106 Obligations where appropriate to do so. Whilst the use of local labour is relevant to all schemes, it will be particularly relevant to forms of development where a degree of exception to usual planning policies has been made.

## Loss of Employment

### Where a development proposal results in the loss of jobs (for example change of use away from hotels, offices etc.), a commuted sum will be required to help create similar employment elsewhere in Torbay, as set out in Policy SS5.

### In order to improve Torbay’s economic profile and achieve job growth, loss of employment contributions will be given the highest priority after Site Deliverability and affordable housing matters.

### Employment contributions will be used for regeneration projects and unlocking employment development. A range of projects is set out in the Torbay Economic Strategy 2017-2022, as well as Masterplans for the regeneration of town centres. They will be used to help provide enabling infrastructure such as site servicing or decontamination costs for regeneration and enabling employment generating schemes.

### Note that contributions do not imply that a change of use away from employment use is acceptable in terms of planning merit. Such applications will be assessed on the basis of Policies in Local Plan, particularly SS5 Employment Space, Neighbourhood Plan Policies TJ1, PNP1-Area Wide (i) and BPNPJ1 as well as national guidance.

**3.16.5** Where proposals create additional jobs within Torbay (i.e. proposals for employment uses), these will be treated as mitigation from broader sustainable development contributions (based on £8,400 per full time equivalent job, as calculated below). However, such mitigation cannot be provided for site deliverability matters as this could render developments unsafe or unlawful.

## Assessing the Cost of Employment

### The Torbay Economic Strategy contains a detailed Action Plan which identifies projects needed to secure economic growth. These relate closely to the Employment Land review (PBA 2013) which sets out key employment development areas. The cost of projects identified in the Strategy is around £290m. These will realistically take at least the Local Plan period to implement equating to around £4,778 per economically active person in Torbay (60,700).

### When projects that are not costed in detail are taken into account, the likely cost is nearer £500m, which equates to about £8,400 per economically active employee.

### The 2008 Planning Contributions and Affordable Housing SPD assessed, based on work carried out by the TDA, that the cost to the public sector in unlocking employment development was 15-20% of the cost of the job. At 2018, median annual full time earnings in Torbay were £22,121, equal to about £33,180 with on costs. Twenty percent of this, approximating the public sector investment likely to be needed to create a job, is £6,636.30.

**Table 3.3: Assessment of the Cost of Providing Jobs**

|  |  |  |
| --- | --- | --- |
| Median full time annual earnings | Cost to employer with on costs (x1.5) | Contribution at 20%+ hypothetical public sector cost of creating a replacement job. |
| 22,121 | 33,181 | 6,636.3 |

Annual Survey of Hours and Earnings (ASHE2018)

### The TDA have assessed that the average cost of creating a higher value job[[10]](#footnote-10) in Torbay is in the region of £19,000-£22,000 (excluding abnormal costs), whereas nationally a range of £8,000-50,000 has been calculated depending on the project. The Heart of the South West Local Enterprise Partnership and other grant schemes assume a cost of £6,000-10,000 is a reasonable rule of thumb.

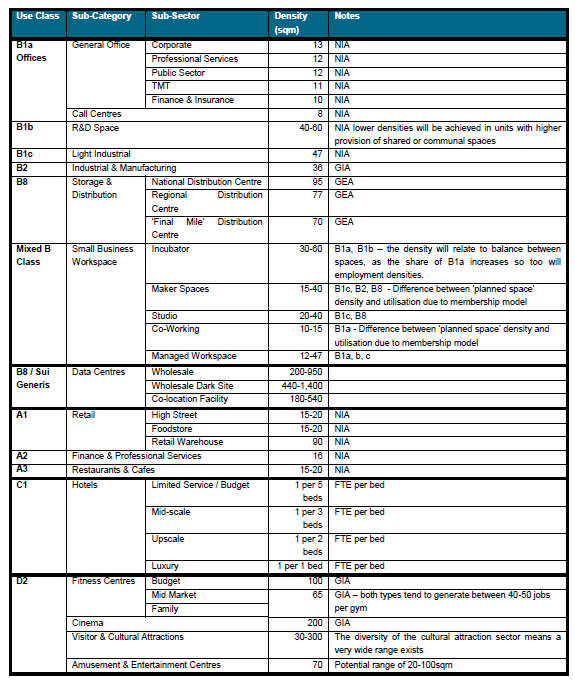
### Accordingly, applications which result in the loss of employment will be asked to pay a loss of employment contribution to mitigate the economic impact, on the basis of the above figures of:

### • £ 8,400 per full time equivalent (FTE) job lost;

### • £ 4,200 per part time job lost.

### The number of jobs lost will be based on evidence supplied by the applicant (Question 20 on the planning application form) and the Employment Densities Guide (3rd Edition 2015 or subsequent, see Table 3.5), which estimates FTE jobs by floor area. On this basis the loss of employment contribution will be calculated on the basis of number of jobs lost x £8,400 per full time equivalent.

**Table 3.4: Estimated Employee/Floorspace Ratios (Employment Densities Guide 3rd Edition)**

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## Healthy Communities and Healthcare

### Policy SC1 ‘Healthy Bay’ of the Local Plan requires development to contribute to improving the health and wellbeing of the community. Torbay has health problems closely related to its demographic structure and deprivation (see paragraph 6.4.3.1 of the Local Plan ). Brixham Peninsula Neighbourhood Plan Policy BPNP HW1 Retention of current health and social care estates is also relevant and PNP26- Clifton with Maidenway (a) provision of community facilities.

### All development should seek to promote active design as a site deliverability matter (see above).

### Policy SC1 requires developments of 30 dwellings or more, or developments where there are particular health impacts to carry out a screening for a Health Impact Assessment. Health Impact Assessment and its screening should be proportional to the size and type of development and identify the most effective measures that can be used to improve health and wellbeing. For smaller developments health impacts can be addressed through Design and Access Statements. These will usually be the promotion of active lifestyles through open space provision, cycling facilities (including secure covered storage).

### Policy SC4 ‘Sustainable food production’ requires that developments of 30+ dwellings should include provision of sustainable food production.

### Policy PNP1(c) of the Paignton Neighbourhood Plan also seeks to increase local food production capacity.

### Regard will need to be had to the provision of open space and multi-functional green infrastructure for all developments. Where possible these facilities will be sought on-site. Where they are maintained by the Council, a commuted sum to fund 25 years maintenance shall be provided through s106 or other financial arrangement. If ongoing maintenance is not funded, details of alternative maintenance arrangements including evidence that such arrangements will be adequately funded for at least 25 years) must be provided as a condition of granting planning permission.

### Torbay Council adopted the Healthy Torbay Supplementary Planning Document in April 2017. <https://www.torbay.gov.uk/council/policies/planning-policies/local-plan/spd/> .

## Healthy Communities and Health Impact Assessments

### The Local Plan seeks to help close the gap between the most and least disadvantaged neighbourhoods, as set out in Policy SS11 ‘Sustainable Communities’. Policy SS5 seeks to reduce child poverty by a range of measures including provision of affordable housing, education and urban design improvements.

### Open space and recreation provision are dealt with in the sustainable development section. However these will be instances where a higher priority is given to matters such as education, public realm, and open space provision in order to achieve Healthy Bay objectives.

## Development which creates a Specific Health/Social Service Need e.g. Care Homes, Sheltered Housing

### The population of Torbay is significantly older than the national average. Torbay’s population growth is driven by net domestic migration by older people into Torbay and outward migration of young people. This places a demand from some new developments on local healthcare and social services.

### From October 2015, Torbay’s adult community health and social care, integrated with Torbay Hospital Services to form a single Integrated Care Organisation. Local government and the NHS are facing unprecedented financial challenges with reduced funding from central government in the face of increasing demand for services. The Council’s Medium term Resource Plan (MTRP)[[11]](#footnote-11) for 2019 indicates that there is an estimated budget gap of £17 million between 2019/20-2021/22. Adult social care is the the largest single budget item for Torbay Council, rising from around £40m per year between 2013-17 to around £48m per year in 2018/19 with further increase projected. Whilst the Government has provided some funding on adult social care (redistributed from New Homes Bonus), this amounted to £2.4 million in 2018/19 and £1.2 m in 2019/20 i.e. well below the increase in the cost of adult social care.

### A clear policy objective of the Torbay NHS Healthcare Trust is to help people live independently in their own homes for as long as possible. Promoting good health is a key Corporate Plan objective. The Joint Commissioning Team and South Devon Clinical Commissioning Group publishes Market Position Statements for Adult Social Care and Support and Children’s Services in Torbay[[12]](#footnote-12). This document indicates that demand for adult social care workforce time is growing twice as fast as population growth, at about +1.3% per year compared to 0.6% population growth. It is estimated that the cost of treating that part of the population aged over 85 is likely to increase to about £8.5 million per year in 2020, up from £7.3 million in 2012[[13]](#footnote-13).

### An ageing population will generate a need for specialist accommodation such as sheltered housing, supported housing and extra care units. Such accommodation can help people live independently for longer. However specialist accommodation for the elderly may attract a further increase in inward migration, which is likely to compound needs and create further health and social care costs for Torbay.

### Local Plan Policy H6 deals with accommodation for people in need of care. There is a move away from the use of traditional care homes, but there are likely to be instances where such applications are approved, particularly where they provide an improved level of care or specialist facilities to deal with issues such as dementia.

### Accordingly Policy H6 indicates that the Council will seek financial contributions to meet the likely healthcare and social service costs arising from care facilities and sheltered accommodation. This is based upon the additional cost arising to Torbay Council Adult Social Services arising from specialist accommodation that attracts inwards migration to the area.

### This obligation will be considered to have been met where the development provides policy compliant affordable housing, or equivalent off-site contributions. Mitigation will also be given for additional facilities such as specialist dementia accommodation (that would not be Social Services funded).

**Assessing the Additional Cost to Torbay Social Services**

### Policy H6 does not seek to recoup the whole cost of elderly care, only that additional cost likely to be incurred in Torbay by specialist accommodation such as care villages. Accordingly the following methodology will be used:

The percentage of elderly people receiving Torbay Council funded care x average cost of care per year (to Torbay Council) x 25 years (representing the hypothetical lifetime of the development).

**3.20.9 Percentage of Elderly receiving care packages.** At June 2016 there were 1616 people aged 65+ in Torbay receiving Torbay Council social care packages either in a care home or domiciliary packages (out of 2169 adults of all ages receiving Torbay funded care) [[14]](#footnote-14). This costs £9.1 million or an average of around £4,200 per person[[15]](#footnote-15). At the 2016 Mid Year Estimate there were 36,600 Torbay residents aged 65+ so the percentages of the population receiving Torbay funded care was 4.4%. For simplicity it is assumed that a similar proportion of specialist accommodation residents will require council funded support as amongst the general population of older people (in practice a higher proportion of residents of specialist accommodation are likely to have care needs but will be self-funded until they become eligible for council funded social care).

**Table 3.5Specialist accommodation for the elderly contribution sought**

|  |  |  |  |
| --- | --- | --- | --- |
|  | No of persons | Cost of care per person (£4,200 x 4.4%) | Contribution sought ( cost of care x 25 year lifetime of development |
| Persons per care home room | 1 | £184 | £4,620 |
| Per unit of self-contained accommodation | 1.4[[16]](#footnote-16) | £184 | £6,440 |

### **Development where there is a need for a Surgery/Local Health Facilities etc.**

### The Joint Commissioning Team and Health Care Trust will keep the need for medical facilities under review as part of the Masterplanning of Future Growth Areas. Where development results in the need for a surgery or other health facility, the Council will seek its provision as part of the s106 Agreement, which should include a delivery timeframe, and fallback option.

# SUSTAINABLE DEVELOPMENT INFRASTRUCTURE

### 

## Introduction

### Sustainable development contributions are sought to render development acceptable in planning terms. However they are less urgently essential to health, safety or legal obligations than Site Deliverability matters.

### Sustainable development contributions will not be sought from development floorspace that pays CIL.

### On this basis “sustainable development” obligations will be sought from developments where the Council has chosen to negotiate s106 Obligations to address the infrastructure requirements needed to serve the development, rather than levy CIL. Regard will be had to the likely impact on development viability and the infrastructure needs generated by the development.

### The following sections set out figures based on assessments of the likely impact of development. However, this should not be construed as a “tariff based” approach

### Each application will need to be assessed in terms of what contributions are lawful in terms of being:

### • Necessary to make the development acceptable in planning terms.

### • Directly related to the development, and

### • Fairly and reasonably related in scale and kind to the development[[17]](#footnote-17).

### Specific projects will ideally be identified, which meet these tests. However it is also important to recognize that there may be several potential projects that could meet the objective of making development acceptable in planning terms, and it is important that s106 Agreements are worded with sufficient flexibility to allow contributions to be spent on projects of equivalent benefit to the development Contributions may be pooled, subject to the legal tests.

### Because sustainable development obligations arise principally from larger developments, provision of many of the items identified will take place on-site; for example sustainable transport measures beyond direct access requirements, provision of open space and multi-use games areas. These can often be secured through planning condition. The provision of “in kind” facilities or land will be counted against financial contributions sought, although the Council will require a mechanism to be identified to ensure long-term maintenance of open space etc. This may either be through the transfer of public open space and the payment of a commuted sum, under s106, towards ongoing (25 year) maintenance, or the provision of a properly constituted and funded management company.

### This section includes the following matters:

### • Transport Infrastructure - Major Road Network and Sustainable Transport

### • Education

### • Open Space/Sports and recreation

### • Lifelong learning

### • Public realm

### • Waste management

### • Difficult to monitor uses including town centre management.

**4.1.9** This SPD is expressed in terms of gross internal floor space, based on the nationally described space standards (see page 197 of the Adopted Local Plan) to provide typical dwelling type and number of bedrooms. Because there is flexibility to make internal changes to dwellings[[18]](#footnote-18) or use rooms for different purposes, floorspace rather than the stated number of bedrooms will be used as the basis for seeking contributions. In the case of outline permissions, an approximate likely floorspace figure will be agreed with the applicant. Where the floorspace at reserved matters is significantly larger (more than +10%) additional contributions may be sought.

### **Table 4.1: Typical floor area per dwelling type**

|  |  |  |
| --- | --- | --- |
| **General description** | **Floorspace range** | **Typical of dwelling type (for information only )** |
| Sui generis Houses in Multiple Occupation[[19]](#footnote-19) | Per room (excluding communal areas) | N/A |
| Smaller apartments | 37-50 sq m | 1 bedroom apartment |
| Smaller medium size dwellings. | 51– 79 sq m | 2-3 bedroom apartments  Smaller 2 bedroom house |
| Medium size dwellings | 80 – 108 sq m | 3-4 bedroom houses |
|
| Larger dwellings | 109+ sq m | 4-6 bedroom houses |
|
|

## Transport Infrastructure - Major Road Network and Sustainable Transport

### The implementation of sustainable transport measures is regarded by Government as essential to reducing traffic congestion, improving air quality and addressing climate change.

### Note that physical works to create safe access for vehicles, cyclists and pedestrians, and onsite layout and design are sought as Site Deliverability matters (see part 2of this SPD). These will usually be delivered through planning condition, negotiation of site layouts or S278 Agreements.

### This section deals with wider sustainable transport matters. These are necessary to make development acceptable in terms of mitigating its effect on wider transport infrastructure, but go beyond the provision of access to the site and its immediate links to the transport network.

### Chapter 9 of the NPPF sets out Government policy on transportation. It requires that development which generates significant amount of traffic should be supported by a Transport Statement or Assessment which considers the opportunities for sustainable transport, provision of safe and suitable access, and whether improvements can be made to limit the impacts of development.

### Local Plan Policies SS6 and TA1 set a framework for seeking sustainable transport measures. Torquay Neighbourhood Plan policies TTR1,2 and THW1-6, Paignton Neighbourhood Plan Policies PNP1(h) PNP2(d), PNP3(d), PNP5, PNP6, PNP12, PNP7(f),PNP17, PNP22 and Brixham Peninsula Neighbourhood Plan Policy T1 are relevant.

### The Torbay Local Transport Plan Implementation Plan 2016-2021(LTIP) sets a framework for a range of projects across all modes and allocates in full the grant funding from central government. The areas of investment cover road safety, reducing congestion, and improving access for all. Local Authorities are required to support essential community facilities such as transport services and maintain infrastructure stemming directly from development. This puts a considerable long-term additional pressure on the Council’s ability to provide high service quality and support. ‘Whole life costing’ assesses the true social, environmental and economic cost of any development throughout its useful life. Unless this is met by developer contributions, it has to be borne by the taxpayer

### Much of Torbay’s transport infrastructure operates at or over-capacity and delivering growth is only likely to be achievable if accompanied by measures to ensure that it does not rely heavily on car-borne transport. Failure to meet these objectives will create additional congestion and have negative health impacts e.g. from poor air quality.

## Sustainable Transport Obligations

### Developments in Torbay (where the Council has opted not to charge CIL) will be assessed to identify whether they generate net additional trips and should therefore contribute towards sustainable transport.

### Sustainable transport contributions will be sought on the basis of a calculation of the additional impact that development has upon the wider transport network, or other costs to the authority such as bus passes in the case of specialist developments.

### The figures set out below will be taken as a starting point. Additional obligations may be sought where developments have a greater impact upon traffic generation or create a particular need for ongoing revenue support for equipment and running costs. In particular where development has significant effects on the requirement for safe and convenient parking, which is not provided on site, contributions may be sought as a site deliverability matter as outlined in Chapter 2 above.

## Assessing the Cost of Additional Trips

### The Council has used Trip Rate Information Computer System[[20]](#footnote-20) to calculate the approximate number of journeys generated by development. It is assessed that development in Torbay over a five year period will generate approximately 37,000 additional trips.

### Torbay Council’s 2019/20 budget indicates a shortfall in Government Funding of £14.052m. In addition the cost of concessionary fares is £4.171m[[21]](#footnote-21).

### Based on the cost of delivering the Local Transport Plan and other Future Growth Area highway infrastructure this would equate to £342 per trip. However the figure has been reduced to £180 per trip, which reflects the figure sought in the 2017 SPD with an allowance for inflation.

### Planning Obligations will be sought from development based on likely additional trip generation.

**Table 4.2: S106 Sustainable Transport Obligations sought from larger development**

|  |  |  |
| --- | --- | --- |
| **Development type bedrooms/typical floorspace range** | **Assumed trip rate per unit or 100 sq m** | **Impact per unitper unit or 100 sq m** (trip rate x £180) |
|  |  |  |
| Small dwellings 37 - 50 sq m | 4 | £720 |
| Small/Medium size dwellings 51-79 sq m | 5 | £900 |
| Medium sized dwellings 80 - 108 sq m | 6 | £1080 |
| Larger dwellings  109+ sq m | 6.5 | £1,170 |
| Sui Generis HMOs. | 1.9 | £340 |
| Specialist accommodation for the elderly (C2 or C3) | 2.1 | £380 |
| B Class employment and other employment uses not listed below. | 7.6 | £1,370 |
| Retail – Town Centre (including, Preston and St Marychurch District Centre and Local Centres in the built up area). | 44 | £7,920 |
| Retail – out of town centre (including the Willows and West of Paignton but not counting other district or local centres). | 120 | £20,520 |
| Restaurants/Pub/restaurants- town, district or local centre[[22]](#footnote-22). | 43 | £7,740 |
| Drive Through Restaurants, Takeaways (in all locations) and out of centre restaurants/pubs/takeaways[[23]](#footnote-23). | 120 | £21,600 |
| Tourism, leisure | 9.5 | £1,620 |
| Other (education, healthcare etc.) Sustanable development obligations are not sought from publically funded schools or healthcare, but may be sought from non-publically funded developments. Site deliverability matters will however be sought[[24]](#footnote-24). | 17.5 | £3,000 |

### These figures will be used as a starting point and will be adjusted for the level of highways and sustainable transport works provided by the developer (as a development Site Deliverability matter or through negotiated direct provision). Regard will also be had to the cost of providing other mitigations to transport such as measures incorporated in Travel Plans etc.

### Obligations will be sought to address sustainable transport/highways network works that are necessary to make development acceptable in broader planning terms. Mitigation will usually be provided for job creation/ town centre regeneration, and liability for CIL will be taken into account.

### Priority will be given to projects which:

### Improve road safety,

### Promote active travel (i.e. make it easier to use non-car modes of transport

### Improve capacity and accessibility, including the quality and availability of public transport within walking distance of the proposed development.

### Improve local air quality (particularly the proximity of Air Quality Action Zones-AQMAs[[25]](#footnote-25)) will be taken into account.

## Education

### Torbay Council has a statutory duty under the Education Act 1996 (as amended) to provide sufficient school places to enable every child between the ages of 4-16 to access a school place. Local Plan Policies SS10 ‘Sustainable communities’, SC3 ‘Education skills and local labour’ and SC5 ‘Child poverty’ all identify the need to provide education facilities to serve development.

### The TDA’s Schools and Capital Planning Manager has indicated that there is a need for additional school places to support additional growth in Torbay.

### The total cost of meeting the education demand arising from the anticipated level of growth in the Local Plan 2012-30 is about £40.71 million. Whilst it is not expected that S106 Obligations could fund the entire requirement, it is reasonable for developers to contribute to the additional requirement for school places generated by development. This has most recently be confirmed by the non-statutory DFE guidance “Securing developer contributions for education” (April 2019)[[26]](#footnote-26). The Planning Practice Guidance also expects S106 contributions to contribute towards school places[[27]](#footnote-27).

### **4.5.4** In accordance with government guidance[[28]](#footnote-28), the level of contribution required from developers will be based upon the latest Department for Education school place scorecards[[29]](#footnote-29). They are indexed linked to inflation (on the BCIS public sector cost index), and a small regional adjustment. Because provision will be through extensions to existing schools and new schools, the figure has been averaged out.

**Table 4.3 Capital Cost per School Place**.

|  |  |
| --- | --- |
| **Education infrastructure** | **Cost per place** |
| Primary New Build | £19,417 |
| Primary Extension | £16,432 |
| **Primary** | **£17,925** |
| Secondary New Build | £23,725 |
| Secondary Extension | £22,513 |
| **Secondary** | **£23,119** |

## Numbers of School Age Children per dwelling

### To establish the impact of existing and new development proposals on education facilities it is necessary to identify the likely number of pupils that will be generated by individual developments.

### Torbay Council assess that an average dwellings with 2 bedrooms or more) generates approximately[[30]](#footnote-30):

### • 0.24 primary aged pupils (ages 5 to 11),

### • 0.15 secondary aged pupils (ages 12 to 16),

### • This equates to 0.39 school spaces per dwelling in total.

### Multiplying the cost per school place by likelihood of there being a school-age child living in a house provides an average capital cost per dwelling of providing a school place. This is the capital cost of providing an additional school place (i.e. it does not include revenue costs, IT, transport, special education needs, or Further Education).

### **Table 4.4 Capital cost of providing School places (at 2019 prices)/ contribution sought where a need is identified.**

|  |  |  |  |
| --- | --- | --- | --- |
| **(A) School Age** | **(C) Capital cost per school place** | **(D) Number of children per dwelling** | **(E) Cost per dwelling[[31]](#footnote-31)** |
| Primary | 17,925 | 0.24 | 4,302 |
| Secondary | 23,119 | 0.15 | 3,468 |
| **Total** |  | 0.39 | **7,770** |

### It is assumed that no education requirement arises from specialist accommodation for the elderly, or from one bedroom dwellings. Accordingly no education contribution is sought from these types of dwelling.

### Whilst it is hypothetically more likely that there are more children in larger homes, evidence from the TDA’s Schools and Capital Planning Manager suggests that smaller houses, often purchased under Help to Buy, are equally likely to contain school-aged children. Accordingly no adjustment to the above average number of children per dwelling is made on the basis of house size (other than to exclude one bedroom dwellings from education contributions).

### The contribution sought from dwellings is set out in table 4.3 of up to £7,770 per dwelling. However this will only be sought where a need for additional school places is identified as arising from the development by the TDA’s Schools and Capital Planning Manager or other responsible officer.

### As set out above, education contributions will only be sought from sites where the Council has opted to use s106 Obligations rather than CIL to fund the infrastructure needed by a development. Obligations will be spent on specific projects that provide for the need that developments generate for school places.

### Where schools are provided on site, as is proposed in several Future Growth Areas, it may be preferable to seek a contribution in kind in terms of provision of free, serviced and safeguarded land[[32]](#footnote-32). S106 Agreements should allow a sufficient timeframe for schools to be built out, and a fall back mechanism to allow financial contributions to be sought in lieu of land, should at the expiry of this period and education need arising from the development remains but has been met elsewhere.

### The Council will endeavour to use s106 education contributions to provide school places or other educational improvements close to the development. However, because catchment areas are Bay-wide, and providing school places in one location can have a knock-on effect of freeing up places closer to a development, this may not always be practicable.

## Public Open Space, Sports and Recreation

### Active design principles apply to all developments as far as practical, and will be sought as site-acceptability matters usually through conditions.

### This section applies to developments where the Council has opted to use s106 rather than CIL to address the infrastructure needs arising from development. Where new development generates a need for public open space, or exacerbates an existing deficiency, new provision will be required. The provision may be by way of on-site facilities or an off-site financial contribution to ensure that proper provision is maintained within the vicinity of the development (for example by improving maintenance, management and equipment at existing facilities).

### Local Plan Policy SC2 ‘Sport leisure and recreation’ of the Local Plan sets a framework for planning for new recreation developments and proposes a number of recreation facilities. Policy SS9 “Green Infrastructure” of the Local Plan is also relevant as is the Countryside, coast and greenspace chapter, particularly the undeveloped coast within Policy C2, and Policy C5 Urban landscape protection areas, where these have public access.

**4.7.4** All three Neighbourhood Plans place a hjigh priorty upon the provision, improvement and protection of open space. In particular they identify a network of Local Green Spaces, most of which will have public access. These have a very high level oqf protection, akin to Greenbelts, in planning terms. The Local Greenspaces are are set out in Policy TNPE2, PNP1(b) and BPNPE4. In addition The TNP contains Policies THW1 and TSL1-3 relevant to other green space. Policy PNP1, PNP1(c) are relevant to Paignton. BPNP polices E5, S&L1 and 2 apply to the Brixham Peninsula.

### The Council’s Greenspace Strategy is an adopted SPD (July 2007). An in-house refresh of standards and costs was carried out in 2017 as part of the preparation of this SPD. These may be incorporated into an updated Strategy. The Greenspace Strategy contains local standards for open space as set out in table 4.5.

**Table 4.5 Open Space Requirements per Person**

|  |  |  |
| --- | --- | --- |
| **Type of open space** | **Hectares per**  **thousand population** | **Square metres per**  **person** |
| Playing pitches | 1.2 | 12 |
| Other Outdoor Sport and Recreation Facilities (e.g. Multi Use Games Areas, outdoor fitness equipment etc) | 0.2 | 2 |
| Equipped play facilities for children and young people | 0.2 | 2 |
| Open space (including but not limited to parks and gardens, amenity space, natural and semi-natural spaces and beaches and promenades) | 2.5 | 25 |
| Allotments/sustainable food production\* | 0.22 | 2.2 |

\* added since 2007 Strategy

### The National Society of Allotment and Leisure Gardeners (NSALG) recommend that the minimum provision should be 20 standard plots (300 sq yd/250 sq m) per 1,000 households. This equates to: 5,000 sq m (20 plots of 250 sq m) per thousand households or 5 sq m per household. This equates to about 2.2 sq m per person.

### The cost of open space provision per person and per dwelling, as per the current Greenspace (at 2019 prices) is set out in Tables 4.6 and 4.7 respectively.

**Table 4.6: Cost of Open Space Provision per Person**

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of open space** | **Sq m per**  **person** | **Cost of provision per metre** | **Cost per person** |
| Playing pitches | 12 | £15.80 | £190 |
| Other Outdoor Sport and Recreation Facilities (e.g. Multi Use Games Areas (MUGAs), outdoor fitness equipment etc). | 2 | £65.80 | £131.60 |
| Equipped play facilities for young people | 2 | £263 | £526.50 |
| Open space (including but not limited to parks and gardens, amenity space, natural and semi-natural spaces and beaches and promenades) | 25 | £10.50 | £263.25 |
| Allotments/sustainable food production | 2.2 | £31.60 | £69.50 |
| Cost of open space per  person |  |  | £1,180.40 |

Source Greenspace Strategy (updated by Residents and Visitors Services to reflect current costs and standards, 2016. Adjusted for inflation based on CP1 to 2019 prices.

**Table 4.7: Cost of Open Space per Dwelling**

|  |  |  |  |
| --- | --- | --- | --- |
| **Size of dwelling** | **Cost Per Person** | **Assumed number of persons (for info)** | **Cost per dwelling** |
| Sui generis Houses in Multiple Occupation | £522 (excludes children’s play facilities and MUGAs etc.) | 1 per letting room | £522 per room |
| 37-50 sq m | £522 (excludes children’s play facilities and MUGAs etc.) | 1.4 | £727 |
| 51-79 sq m | £917 (half children’s play area contribution) | 1.9 | £1,743 |
| 80-108 sq m | £1,180 (full play park  contribution) | 2.5 | £2,950 |
| 109 sq m+ | £1,180 (full play park  contribution) | 2.6 | £3,068 |

### The provision of open space will be assessed on its merits having regard to the Local Plan and Greenspace Strategy as well as the Neighbourhood Plans.

### The consideration of whether open space provision should be on or off-site will depend on:

• The size of development;

• The extent, location, capacity and condition of existing open space; and

• The likely demand that the development will generate.

### Table 4.8 above gives a cost per dwelling of providing open space. However, it is recognized that provision will often be in-kind through the provision of play parks etc. on site. Most large developments will be expected to provide public open space as part of their layouts. Where developers make on-site provision, the cost of this will count against any financial contribution (with the exception of maintenance payments noted below).

### The Council will normally seek on or off-site provision in accordance with Table 4.9 below. However, it is acknowledged that there may be local circumstances where it is considered appropriate to switch from on site to off-site provision (or vice versa, or a combination of both).

### Open space provision will be taken as a whole and over provision if one type may be counted against other types of greenspace. Open space provision (whether off-site or onsite) should match the type of space likely to be used by residents, so for example elderly persons developments will not require children’s play facilities.

### Provision will be a matter for negotiations with developers and pre-application discussions are urged to achieve successful development outcomes.

**Table 4.8 Guideline thresholds for on-site open space provision and off-site financial contribution**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Type of open space** | **~~Approximate~~ Scale of development** | | | | **Comments** |
|  | **Major development** | | |
| **1 - 10 dwellings\*** | **11 - 49 dwellings** | **50 - 199 dwellings** | **200+ dwellings** |
| Playing pitches | Off-site | Off-site | Off-site | Off-site/On site | There may be occasional instances where on-site playing pitches are considered suitable. This is likely to be on larger sites. |
| Other Outdoor Sport and Recreation Facilities (e.g. Multi Use Games Areas, outdoor fitness equipment etc). | Off-site | Off-site | On-site/ Off-site | On-site |  |
| Equipped play facilities for young people:  Local Areas for Play (LAPs) aimed at very young children (also known as doorstep play areas).  Locally Equipped Areas for Play (LEAPs) aimed at children who can go out and play independently (also known as community play areas)  Neighbourhood Equipped Areas for Play (NEAPs) aimed at older children (also known as destination play areas). | Off-site | On-site/Off -site | On-site | On-site | For sites of between 10 and 49 dwellings a split of on-site provision of a LAP and off site contribution to a LEAP, or sole off-site contribution to a LEAP will be considered.  Sites over 50 dwellings will normally need to provide both a LAP and LEAP. It is noted that one quality play space catering for a range of age groups is preferred to two separate play spaces.  Sites over 500 dwellings will also need to provide a NEAP. |
| Greenspace/Open space (including but not limited to parks and gardens, country parks amenity space, natural and semi-natural spaces and beaches and promenades) | On-site/ Off-site | On-site/Off -site | On-site/off site | On-site | Major developments should generally provide greenspace on-site. However the availability of large parks or other public open space within easy walking distance will be taken into account and contributions may be sought for management of offsite greenspace/ beaches where this would achieve an improved standard of provision. |
| Allotments/sustainable food production | Off-site | On-site / Off-site | On-site/Off-site | On-site | Local Plan Policy SC4 sets out those developments of over 30 dwellings should include provision for sustainable food production, including allotments, proportionate to the scale of the development. Off-site contributions towards provision of new allotment sites or improvements / extensions of existing sites may be sought in lieu of on-site provision. |

Sustainable Communities obligations are not sought from developments where CIL is sought.

### Where no new open space is provided to serve new dwellings, the Council may seek contributions to ensure that proper provision is maintained, on specific open space an appropriate distance from the development. Local play parks and informal space should be within easy walking distance (300m) of the development. However, people are likely to travel further for facilities such as sports pitches, beaches etc. Contributions for management of off-site greenspaces/beaches may be sought where these are within easy walking distance and investment in them represents an improved quality of provision.

### Where public open space or equipment is provided through a s106 by a developer, it may be transferred to the Council or retained and managed by the developer or a management company. In all cases financial provision must be made for at least 25 years maintenance. The Council’s preferred method of securing public open space is a transfer of the facilities to the Council and payment of a commuted sum for future maintenance. However management companies may be acceptable providing that they are accountable to residents of the development, will charge proportionate fees and operate an effective dispute resolution process and provision is made for continuing the maintenance in perpetuity in the event of the management company ceasing to exist. Details of how this is achieved should be set out in a S106 Agreement.

### All play space and equipment should be completed to an adoptable standard (currently European Standard EN1776 (Play Areas) and EN1777 (Hard Surfaces)) and agreed by the council.

### Where on site facilities are provided, the Council will use a s106 agreement (or other similar means) to secure the following:

### • Definition of the extent and type of provision (including a plan). Specific quality standards for all open spaces, including play spaces (LAPs, LEAPs and NEAPs), will be set out in the forthcoming update of the Greenspace Strategy.

### • Design, initial establishment, implementation and completion measures.

### • Future maintenance specification and funding arrangements to ensure maintenance in perpetuity (i.e. a minimum of 25 years).

### • Future ownership and management arrangements.

### • Rights of public access and use in perpetuity.

### Any off-site contributions and payment of commuted sums for Council adoption of open spaces and equipment will also be secured by s106 agreement (or other similar means). Agreements will clearly set out the rights and responsibilities of each party.

## Lifelong Learning

### Torbay is a unitary authority with responsibility to provide a range of lifelong learning services to adults, including adult community learning centres, museums and libraries. Libraries are an important element in reducing social inclusion and reducing the inequality gap in Torbay. From April 2018 they have been managed by Libraries Unlimited. Torbay’s museums and cultural attractions also provide education and lifelong learning as well as contributing to tourism and therefore employment in the area. Policy A&C1 of the BPNP specificsally protects cultural facilities.

### The council’s contributions to libraries in Torbay is £802,000 (Torbay Budget 2019/20). . Torbay Council’s net contribution to museums and Torre Abbey (2019/20) is £272,000 and from museums and theatres is £69,000. The combined cost of these lifelong learning facilities is £1.143m or around £8.50 per person in Torbay/ £85 over ten years. .

### Contributions will be sought from major developments that do not pay CIL towards lifelong learning. Note that specific projects or capital items of spending, reasonably related to the development must be identified.

## Public Realm Improvements

### Improvements to public realm, including urban spaces and the fabric of buildings etc that face onto them, are critical elements of regeneration and improve quality of life for residents and visitors alike, and reducing deprivation in town centre areas. Polices SS10, “Conservation and the historic environment”, SS11 “Sustainable Communities”, and DE1 “Design” all support public realm improvements. In addition, the Council adopted masterplans for the regeneration of Torquay and Paignton town centres in June 2015, which set out public realm improvements. The Heritage Strategy (2011) promotes conservation-led regeneration and improvement of the built environment.

### The Transformation Strategy for Torbay’s Town Centres (April 2017)[[33]](#footnote-33) is appended to the Torbay Economic Strategy. This identifies 8 key sites and 7 public realm projects as well as other investment opportunities in the town centres. A £25 million regeneration fund was earmarked by the Council in October 2017 to help kick-start these projects, although the total cost will be much higher.

### Masterplans have been prepared ot Torquay and Paignton Town Centres. Whilst figures are tentative, the Local Plan town centre policies (SDT2, SDP2, SDB2), Neighbourhood Plans and Masterplans indicate in the region of:

### • Torquay 30,000 sq m commercial development and 600 dwellings.

### • Paignton 35,000 sq m commercial development and 520 dwellings.

### • Brixham 2,500 sq m commercial development and 65 dwellings.

### As well as specific Neighbourhood Plan Policies seeking high quality design ( e.g. TNPH8, TNPH10, PNP1(c) and BPNPBH5); all three Neighbourhood Plans contain policies seeking to achieve a high quality of public realm in town centres, harbours, tourism and growth areas.

### On the basis of the above, the achievement of public realm improvements will be a critical driver in the masterplan areas. This applies to residential and non-residential developments which directly impact upon the need for public realm improvements. In most instances urban design improvements such as the removal of clutter or poor quality later additions can be achieved by good design. Additional costs of providing these be taken into account in the negotiation of s106 or s278 Agreements (see paragraph 4.4.37 of the Local Plan). There may be instances where a s106 Obligation is justified to provide off-site public realm improvements. In cases where there is a particularly close relationship with development and public realm improvements, they may be prioritised over other contributions.

## Waste Management Facilities

### Local Plan Policy W1 Waste Hierarchy and paragraph 6.5.3.6 require that all development minimise the generation of waste and encouraging recycling rates. The provision of appropriate recycling and waste storage is a site deliverability matter, that can usually be secured through the development management process and provided on site before development is occupied. The On-site provision of waste and recycling storage is required as a site deliverability matter (see above).

### Torbay’s waste and recycling collection service, operated by Tor2 until June 2020, is operating at 98% capacity, so new development will generate a need for new waste recycling services in the Plan period. On average in Torbay, each household generates 500kg of waste per year, of which 42% (210 kg) is recycled. Based on 2.16 people per household, this equates to about 230 kg per year per person of which about 100kg is recycled and 134kg needs to be disposed of as residual waste, land filled or incinerated.

### The recycling rate falls to about 22% for shared dwellings where the Council’s bin and box recycling system does not operate, which equates to about 180kg of non-recycled waste per person.

### On average it costs the Council £100 per tonne to dispose of residual waste: around £14 per person per year (based on 0.140 tonne x £100). Where recycling systems do not operate, the figure rises to £19 per year (0.019 tonne x £100) i.e. £5 per person per tonne more than where the standard bin and box system operates (£5.30 at 2019 prices).

### It is important to increase recycling rates for financial and environmental reasons. As noted, Torbay’s waste collection service is operating at capacity.

### Policy W2 requires a waste audit to be carried out for all major and significant waste generating developments, proportionate to the scale of the proposal. Developers have the option of purchasing bins and boxes at the planning stage (£90). If they chose not to do so, then they will be billed directly by the Council/Tor2. Developments must provide bin/ recycling box storage as a site acceptability matter.

### Where development creates additional costs in terms of municipal waste, the Council may seek to recuperate these through S106. These will be based on the additional capital cost to the Council.

## Developments that are Unable to Provide Recycling Bins and Boxes

### Where developments are unable to provide the Council’s normal waste recycling bin and boxes, or where waste and recycling are managed in communal bins, evidence shows that recycling rates are lower (see above). On this basis, a waste management plan will be required to set out measures to ensure recycling. Where this is not done, an additional charge will be sought to cover the additional cost to the Council in terms of landfill/incineration costs.

### This will be based on a cost of £53 per person (representing 10 years of £5.30 being the additional cost of landfill etc. as calculated above). However, a development’s liability for CIL will be taken into account.

### Table 4.9 below sets out waste contributions sought from residential/specialist accommodation development.

### **Table 4.9: Waste Management Contributions**

|  |  |  |
| --- | --- | --- |
|  | **Cost of Bin and Recycling Boxes, and recycling information** | **Contribution to additional waste and recycling services** |
| **Sites of where normal bin and box recycling system can operate** | Developers have the option of purchasing bins and boxes at the planning stage (£90). If they chose not to do so, then they will be billed directly by the Council/Tor2. | Only for major developments (10+ dwellings) where additional capital costs of providing a collection service is identified. |
| **Developments where there is a reduced capacity to recycle e.g. lack of recycling facilities or communal bins and collected by the council/Tor (i.e. municipal waste)** | A waste audit/waste management plan will be required to indicate how municipal waste will be managed. Otherwise a contribution will be sought based on the additional cost of dealing with the waste arising from the development. | £53 per dwelling/room as appropriate. |

## Difficult to Monitor Uses and Town Centre Management

### The Local Plan indicates that s106 Obligations will be sought to monitor development that gives rise to specific monitoring requirements such as holiday occupancy conditions, non-Registered Providers of affordable housing (excluding starter homes), town centre management use, annexes to dwellings (where a separate dwelling would not have been permitted or would be liable for other contributions as a separate dwelling), ecological mitigation and house in multiple occupation (HMOs). Note that the Neighbourhood Plans also contain Polices on town centre management and HMOs – see Policies TNP TT1, PNP1g) as well as detailed policies for town centres, harbours and tourism areas.

### Spatial Planning charges a minimum officer rate of £90 per hour, or £308 per half day for monitoring. <https://www.torbay.gov.uk/planning-and-building/planning/pre-planning/non-householder-development-enquiries/> . Table 4.13 below sets out the types of development that require specific monitoring, and the cost to the council over a minimum of 10 years. Ecological mitigation is likely to require annual monitoring for five years and then 5-yearly monitoring thereafter. Note that this is not a definitive list and contributions will be sought proportionately to the requirement to monitor.

### Local Plan Policy TC5 “Evening and night-time economy” indicates that contributions will be sought towards town centre management, maintenance, provision and maintenance of CCTV, and policing. The 2019/20 budget identifies a CCTV replacement and expansion programme of £472k of which £320k is funded; which leaves a shortfall of £152k.

### Contributions will be sought to ensure that measures are carried out to make development acceptable in planning terms. However, this should not be taken to imply that all development is capable of being made acceptable through planning obligations.

**4.14.5 Mitigating Town Centre Impact.** Local PlanPolicy TC3 of the Local Plan sets outsequential and impact tests for considering proposals for main town centre uses (as defined by the NPPF). There may be instances where the Council consider that out of centre development should be approved subject to the impact on centres (as designated in Local Plan Policy TC2)[[34]](#footnote-34) being mitigated. In such instances a s106 contribution towards town centre management and/or regeneration will be sought. This contribution will be based on the assessed impact on designated centres over five years, although mitigation will be provided for job creation/ economic prosperity and liability for CIL. The likely degree of actual conflict on centres will also be taken into account (for example genuinely bulky goods sales are likely to impact less than general retail). If the impact on centres is not assessed through a retail assessment, then the management figure below will be used as a starting point.

### **Table 4.10: Monitoring Contributions**

|  |  |  |  |
| --- | --- | --- | --- |
| **Use** | **Monitoring requirement** | **Cost of Monitoring/ Contribution[[35]](#footnote-35)** | **Notes** |
| Holiday occupancy conditions | Low | £760 | Based on 1/2 day per annum data assessment or site visit.  Cost is per unit. However, a discount may be applied for multiple units. |
| Domestic annexes | Low | £760 | Based on ½ day per annum site visit.  Sought where an annexe is self-contained or substantially self-contained, and permission would not be granted for a separate dwelling (or permission for a separate dwelling would require additional conditions or contributions). |
| Non-RP Affordable Housing (excluding starter homes) | Low | £760 | Based on 1/2 day per annum data assessment or site visit. |
| Ecological Mitigation Works | Low | £760 | Based on 1/2 day per annum data assessment or site visit. |
| Houses in Multiple Occupancy | Medium | £1,520 | Based on circa 1 day per annum data assessment or site visit.  May be reduced where on-site management is provided. The figure will be based on the assessment of Development Management and other stakeholders about the impact of the development and cost of managing and/or monitoring. |
| Night time economy uses, alcohol related uses. Amusement arcades, betting shops, gambling.  Other developments that could create conditions of community conflict. | Medium to High | £3,040 per 100 sq m | Will be based on the assessment by Development Management and other stakeholders about the impact of the development and cost of managing and/or monitoring. |

# IMPLEMENTATION

## Introduction

### Local Plan Policy SS7 undertakes to prioritise developer Obligations according to:

### • The tests of lawfulness

### • Prioritisation of critical infrastructure

### • Evidence of viability

### • Wider development impact

### • Torbay Community Plan themes

### • Availability of other funding, including ring fenced government funding and CIL.

### As noted above, Planning Conditions will be used wherever possible rather than s106 Obligations. Note that “sustainable development” contributions are not sought from developments that pay CIL. Whilst site deliverability matters still apply, these can often be addressed through site layout or conditions. On this basis it is expected that many small developments will not require s106 agreements.

## Section 106 Unilateral Undertakings

### With small-scale developments which only require the payment of commuted sums, and where the developer has been notified that the Council is minded to grant planning permission, it can be faster and less expensive for the developer to pay the sums through a unilateral undertaking. A unilateral undertaking is a legal document made under s106 of the Town & Country Planning Act 1990 under which the developer agrees to pay contributions in respect of necessary measures to make the development acceptable in planning terms. If a unilateral undertaking is considered to be appropriate, a template document will be provided for the developer to complete, sign and return.

## Section 106 Agreements

### Where the Council decides to grant planning permission subject to the completion of a s106 Agreement (or s278 Agreement in the case of works to the highway), matters covered in the s106 agreement will include (as appropriate):

### • Timing of payments and phasing of development

### • Nature of obligation and (where a financial contribution) how it will be spent.

### • In the case of affordable housing:

### The number of affordable units.

### The type and size of the properties.

### Arrangements for ensuring that the housing remains affordable in perpetuity.

### Local occupancy condition, where appropriate.

### How the affordable element will be achieved e.g. through the construction of units, transfer of land, or financial or other off-site contribution.

### Any cascade arrangements including the length of time in which to secure funding for rented housing, before which the tenure mix can be re-negotiated and time that units need to be marketed for.

### A mortgagee in possession clause.

### • Where appropriate a clause for a re-assessment of financial viability and payment of deferred contributions.

### Developers will be expected to pay the Council’s legal costs of drafting s106 Agreements. Details of current legal fees will be provided on request.

## Mitigation

### S106 Obligations are intended to address the net additional impact of development upon the built and natural environment and wider society. On this basis, wider sustainable development contributions may be mitigated where development gives rise to demonstrable social, economic or environmental benefits. Mitigation for existing uses cannot remove the need for contributions towards matters that are necessary to the safe operation of the site or meeting legal requirements (i.e. Site Deliverability matters).

### **Mitigation for Existing Uses.** The Planning Contributions and Affordable Housing SPD is intended to meet the community impact of additional development. Therefore, the existing use should be taken into account and contributions sought on the net additional impact. Note that this requires applicants to be specific about existing uses and provide details of floorspace.

### **Mitigation where there is an Identifiable Social Good**. Where development results in an identifiable social good, for example significant regeneration, built or natural environment or provision of jobs, the authority will take a flexible approach to planning contributions in order to ensure that the social benefits of development are realised.

### **Mitigation for Job Creation.** Economic Prosperity is a high priority for the Council. Therefore it is particularly important that planning obligations do not impede job creation. On this basis, mitigation from “tariff style” contributions will be given for permanent jobs created by development proposals, using the methodology used to calculate employment contributions in Part 3 as a starting point.

### **Affordable Housing** “Sustainable development” contributions will not be sought from affordable housing units where full nomination rights are given to Torbay Council or occupancy is restricted in perpetuity to people already living and working in Torbay (or a mechanism provided whereby the subsidy is recycled into other affordable housing). .

## Viability – Content of Viability Assessments

### The Local Plan acknowledges that s106 Obligations may be negotiated between the Council and developer. Where it is claimed that planning obligations would render development unviable, the Council will require the developer to carry out a viability assessment at the developer’s expense. The Council may also require the developer to pay for a critical review of the viability assessment and a re-appraisal of the proposed development if it deems it necessary. The developer is to pay for the cost of this critical review and re-appraisal.

### Calculation of viability will usually be based on residual land value (i.e. a calculation that the value of land after development costs, policy requirements and contributions remains sufficient for a willing developer to bring forward development). It should follow the guidance set out in the National Planning Practice Guidance (currently section 10 Viability, updated in 2019) or subsequent guidance. Viability assessments should be proportionate, simple and transparent and include an executive summary. They will be publically available as per the advice in the PPG. It is noted that the price paid for land is not a relevant justification for failing to accord with the relevant plan policies (PPG 10-002-20190509).

## Where Development is Unviable

### Where a developer demonstrates to the satisfaction of the Council that a proposed scheme is not currently viable with a policy-complaint level of developer contributions and the Council consider, as a balanced planning judgement, that there is scope to agree an acceptable development, the Council may agree to reduce S106 and other obligations in order to render development viable, subject to a recalculation of viability as set out below.

### Contributions will be reduced in line with the order of priorities set out in Policy SS7 and this SPD (i.e. broader sustainability contributions will generally be relaxed before affordable housing/employment and health contributions). There is no scope to relax Site Deliverability requirements, although these will generally be addressed through conditions rather than developer contributions.

### Where reduced s106 Obligations are agreed and the approved development is completed more than 3 years after the grant of planning permission, the s106 Agreement will include a clause to secure a further viability appraisal/s (at the developer’s expense) to be carried out towards the end of the development. This will generally be three years from the date of the grant of planning permission.

### If actual profit exceeds 20% Gross Development Value (GDV) the developer will be required to pay an additional contribution equivalent to 50% of the profit above 20% GDV. This will apply to the obligations due on buildings not reaching practical completion by three years of the grant of planning permission. If it cannot determined how many units have been completed within three years, then the recorded position at the Council’s most recent annual housing land monitor will be taken as the relevant figure. All valuations will be required to comply with standards issued by such bodies as the Royal Institution of Chartered Surveyors.

### Where a reduced level of affordable housing has been provided, the Council will seek increased provision of on-site affordable housing in the later phases of development, subject to sustainable communities and other relevant considerations.

### A ceiling on the contributions/affordable housing provision will be imposed to ensure the developer does not contribute more than the full amount of contribution that was applicable at the time of submission of the latest relevant application.

## Re-negotiating the Terms of the Section 106 Agreement

### The Council has discretion to renegotiate s106 Agreements, but is under no obligation to do so. There is no right of appeal against a refusal to renegotiate s106 Obligations that are less than five years old. On this basis the Council will only renegotiate s106 Obligations where this would provide net benefits to the community, environment etc.

### Where a s106 Agreement is more than five years old, an application can be made (under S106A of the Town and Country Planning Act) to the local planning authority to change the obligation where it no longer serves a useful purpose, or could be modified to continue to serve a useful purpose.

### Where the developer seeks to re-negotiate previously agreed s106 Obligations, the Council will require proportionate viability appraisal to be carried out at the developer’s expense (insofar as this is relevant to the matter that the developer is seeking to renegotiate). Where the Council agree (as a matter of planning judgement), to reduce contributions, this will be subject to the process of deferred calculation of viability as set out above on units not completed within three years of the date of the revised agreement.

## Monitoring and Spending Section 106 Obligations

### Developers will be expected to pay the Council’s legal costs of drafting a deed to vary the original s106. The Council may charge developers for additional costs it encounters associated with monitoring s106 clause triggers or similar matters.

### An additional administration and monitoring charge of 5% (additional to the figures in this SPD) will be levied on S106 and other contributions. The council will monitor the collection and spending of development contributions and will where practicable spend them within five years of the contribution being paid. The legal agreement will accordingly need to be worded flexibly to allow contributions to be used for alternative projects, within the Tests of Lawfulness, to enable contributions to be spent.

### This SPD is set at 2019 prices and contributions will be increased in line with inflation.

# SUMMARY

## Introduction

### The tables below are intended as a summary of contributions that may be sought from development. Although figures are presented for some items, these are intended to be an assessment of the likely impact of the development and will not be sought as a tariff.

### The SPD will be updated in line with inflation and evidence of need for different items off infrastructure. The Council will to have regard to the evolving nature of government and guidance and legislation on s106 and CIL.

### S106 obligations may also apply to commercial developments, which must be determined on a case by case basis.

### **Table 6.1 Summary of Contributions Sought from residential development**

|  |  |  |
| --- | --- | --- |
|  | **Requirement** | **Notes** |
| **Site Deliverability** | | |
| Direct access/safety | Direct provision or as costed by Highways Department. | S278 Agreement where possible. |
| Flooding, drainage and Sewerage | Direct provision, SUDS, requisition from South West Water. | Note that Torbay is a Critical Drainage Area |
| Biodiversity | Mitigation of biodiversity, including woodland, impacts and compensation for losses. Through condition or s106 Obligation. |  |
| Design and Active Design (including landscaping and public realm) | Through design/conditions. |  |
|  | | |
| **Affordable Housing Employment and Health** | | |
| Affordable Housing | Regard will be had to paragraph 63 of the NPPF which indicates that affordable housing will not be sought from non-major developments other than in designated rural areas (i.e. AONB in Torbay).  Affordable housing is sought from greenfield sites of 3+ dwellings in the AONB and 10+ dwellings elsewhere.  Affordable housing is sought from dwellings on previously developed land of 15+ dwellings | |
| Healthcare | Sought on specialist accommodation that gives rise to health care/ social care needs.  £6,440 per dwelling  £4,620 per care home room or other Class C2 bedspace. | Active design is a Site Deliverability matter (see above).  S106 Contributions sought where there is a specific additional healthcare requirement arising from development e.g. sheltered accommodation. |
| Employment | £8,400 per Full time or equivalent (FTE) job lost. £4,200 per part time job lost. | Applies to all development which entails the loss of employment.  Liability for CIL will be taken into account.  The Council will seek to negotiate local labour arrangements with developers. |
| **Sustainable Development** | | |
|  | Generally applies only to developments that do not pay CIL | See CIL Charging Schedule.  In all cases s106 Obligations will need to meet the tests of lawfulness.  <https://www.torbay.gov.uk/council/policies/planning-policies/local-plan/cil/> |
| The following are a guideline and should not be taken as a tariff. May be achieved on-site provision on larger developments (subject to maintenance agreements).   |  |  |  |  |  | | --- | --- | --- | --- | --- | | **Dwelling size (Gross internal floor area)** | **Sustainable transport** | **Education** | **Open space (unless on-site provision)** | **Lifelong learning** | | Sui generis HMO per room. | £340 | 0 | £522 per rom | Where a specific capital need is identified at £85 per dwelling | | 37-50 sq m | £720 | Zero where 1 bedroom (otherwise as per dwellings). | £727 | | 51– 79 sq m | £900 | Up to £7,770 per dwelling depending on identified need.  **Primary**= £4,302 per dwelling.  **Secondary** £3,468 per dwelling. | £1,743 | | 80 – 108 sq m | £1080 | £2,950 | | 109+ sq m | £1,170 | £3,068 | | | |
| Waste management | £90 per dwellings for bins and boxes and adjustment to collection services.  Additional cost where there is reduced capacity to recycle (e.g. communal bins). £53 per bedroom. | Bins and boxes applies to all new dwellings unless purchased from Tor2 separately.  Applies to larger developments where a need for additional waste management facilities is identified.  *Plus* developments where the Council’s bin and box recycling system is difficult to achieve. |
| Monitoring and management | Developments that have an impact on town centres, etc or generate a need for additional monitoring. |  |
|  | | |
| **Community Infrastructure Levy** | Based on new floorspace. CIL is sought on new dwellings apart from sites of 15+ units in Charging Zones 3 and 4. For such sites, planning obligations will be used. See the CIL Charging Schedule for more information.  Where CIL is levied, sustainable development ‘tariff style’ s106 Obligations will not be sought, but other obligations may apply.  See CIL Charging Schedule. https://www.torbay.gov.uk/council/policies/planning-policies/local-plan/cil/ | |

**Appendix 1 Adopted Local and Neighbourhood Plan Policies and Policy Themes Relating to Planning Obligations.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Figure A1: Justification for Seeking Developer Obligations in the Local Plan** | | | |
| **Item** | **Local Plan Policies/ Reference** | | **Applicable to** |
| **Site Deliverability (highest priority)** | | | |
| Apply to all developments (residential and non-residential). Will be addressed through site design / condition where possible. Limited scope to negotiate. | | | |
| Development Access | TA2  SS6 | | All development where there is an impact on access. Will be through S278 Agreements where possible. |
| Drainage and sewerage | ER1, ER2, 6.5.2.18  C3, 6.3.1,20  SDP2 Paignton town centre  SDP3 Paignton North and Western Area. | | All development including domestic extensions and prior approval. S 2-3. Particularly development within coastal location or flood risk zone |
| Flooding | ER1, ER2, 6.5.2.18  C3, 6.3.20  SDP2 Paignton town centre  SDP3 Paignton North and Western Area  DE1,DE2, DE5  W5 | | All development within coastal location or flood risk zones 2-3 and 1 where there are other flooding risks (wave action etc.). |
| Waste water | W5  6.5.3.23 and 6.5.3.24 Buckland WWTW  6.5.3.27 | | All developments (including Prior Approval) see Drainage above. |
| Marine habitats  Water quality | NC1, 6.3.2.7  ER2 ,6.5.2.18 | | All development where there is an impact marine habitats |
| Greater horseshoe bat mitigation | SS1, SS2, SS8,  NC1,  4.1.20, 4.1.21,  SDP1, SDP3, SDB1, C1 | | All development where there is an impact on greater horseshoe bat foraging area/flightpaths. This is a statutory requirement under the Habitats Regulations.  Non statutory guidance is published at:  https://www.torbay.gov.uk/council/policies/planning-policies/local-plan/guidance/ |
| Recreational Pressure on Berry Head | (SS8, SDB1, NC1  TO1  6.3.2.3 to  6.3.2.5) | | Impact is primarily from development in the Brixham Peninsula Neighbourhood Plan Area.  Contributions may, exceptionally, also be sought from outside the BPNP area where development would increase recreational pressure on Berry Head, and the impact is not considered to be adequately addressed through CIL.  This is also currently a CIL item, but no CIL money was allocated to the grassland. It is therefore necessary to seek s106 obligations from development in the Brixham Peninsula in order to ensure no likely significant effects on the Special Areas of Conservation (SAC). |
| Cirl buntings | SS8, NC1, 6.3.2.12, SDT3, SDP3, SDB3 | | All development where there is an impact on habitat used by breeding or wintering Cirl buntings. |
| Biodiversity-other | SS8, SS9  NC1 | | All development where there is an impact on habitats. |
| Design | 6.1.2.19-20  DE1, DE2, DE3 | | All development – usually through design/conditions |
|  | | | |
| **Affordable Housing, employment and health (Second Priority)** | | | |
| Applies to residential developments above threshold. Proportions of affordable housing have been kept low to safeguard viability. Some scope to negotiate tenure on the basis of viability, subject to an overall development package being in the public interest.  Regard will need to be had to the provision of starter homes as an element of affordable housing provision in Local Plan Policy H2. Local Plan Policy H3 seeks an element of self-build housing as part of the wider affordable housing offer.  Employment provision is essential to delivery of Local Plan Strategy. Some scope to negotiate on the basis of viability, subject to an overall development package being in the public interest.  Additional healthcare/social services impacts arising from development that give rise to healthcare impact (e.g. sheltered housing, extra care units and care homes).  Some scope to negotiate on the basis of viability, subject to an overall development package being in the public interest.  Note that the requirement in the Housing and Planning Act 2016 to provide starter homes will affect the delivery of general needs affordable housing. | | | |
| Affordable housing - general | | Policy H2, 6.4.16 to , 6.4.1.18  H3. 6.4.1.19-27. | Sites over the threshold of 10 dwellings on greenfield sites (3 within the AONB) and 15 on brownfield sites (see note above). |
| Empty homes / regeneration | | 4.5.18, 4.5.32 use of affordable housing contributions to bring empty homes back into use. | Sites where affordable housing is sought as a commuted payment. |
| Self build or custom build housing | | H4, 6.4.1.19-27 (especially 6.4.1.24) | Self build homes (whether built as exception site or as a % of affordable housings).  General needs affordable housing will usually be accepted in lieu of self build plots. |
| Employment (and early delivery). Employment – contributions towards loss of employment | | SS4, SS5, 4.2.19 4.2.27, 4.2.29  6.1.2.15 | Commercial development and development entailing the loss of jobs.  Conversely, mitigation may be given to proposals that create jobs. |
| Live / Work units | | 4.2.31 | Live/Work units, either through condition or S106 Obligation. |
| Healthcare and broader healthy communities | | SS11.4  H6, 6.4.1.49  SC1 | Development likely to give rise to healthcare impact (sheltered housing, extra care and care units).  Health Impact Assessments on developments likely to impact on health  Sites of 50+ dwellings should provide 5% of dwellings to Accessible and Adaptable standard. |
| **Sustainable development infrastructure from larger developments.** (Third priority). | | | |
| *Sustainable development* contributions s106 Obligations will not be sought from developments that pay CIL or from affordable housing units.  Applies to larger residential developments in Charging Zones 3 and 4 where the CIL Charging Schedule indicates that s106/s278 obligations will be sought to fund infrastructure rather than CIL and commercial developments where there is a particular impact which needs to be mitigated (e.g. sustainable transport, town centre management).  Whilst not essential for safety or direct operation of the development, such infrastructure is necessary to make development sustainable and therefore acceptable in Planning terms. Regard will be given to the CIL Regulations Tests of Lawfulness and contributions will be linked to specific projects/items.  There is some scope to negotiate on the basis of viability.  Whilst there is no lower threshold, regard will be had to the efficiency of collection. | | | |
|  | | | |
| Infrastructure, phasing and delivery of development. | | SS7, SS11 |  |
| Transport Infrastructure | | SS6  4.3.10 (Western Corridor)  4.3.16 (A385 Totnes Road) | The South Devon Highway is a CIL item, and s106 Obligations will not be sought towards it. |
| Open space, sport and recreation | | SS9,  SC2 |  |
| Education | | SS11  SC3  6.4.3.15,  SC5 (Child Poverty and equality of access) |  |
| Sustainable food production | | SC4 | Residential developments of 30+ dwellings |
| Sports and Leisure | | SC2  DE1 Active design | Active design principles apply to all developments as far as practical (usually through planning permission). |
| Town centre management | | TC1  TC5 Evening and night time economy  6.1.1.23 | Commercial development which has an impact on town centre management. |
| Monitoring | | 6.12.10  6.4.1.34 | Development which give rise to specific monitoring/ management requirements (e.g. holiday occupancy, HMOs, biodiversity) |
| Waste management facilities | | W1, 6.5.3.6  W2.5 | On-site design for all developments, and sustainable development contribution from larger sites, or where recycling cannot be achieved. |
| **Implementation** | | | |
| Applies to all development. It is intended that most small scale proposals will not require s106 Obligations. | | | |
| Implementation | | Part 7:  7.4, 7.4.8 and 7.4.11  6.4.1.12-18 viability testing |  |

| **Figure A2Policies in the Adopted Torquay Neighbourhood Plan (TNP).** | | |
| --- | --- | --- |
| **Policy Ref:** | **Torquay Neighbourhood Plan**  **Policy Title** | **Policy Theme** |
|  | **General (Sustainable) Polices (TS)** |  |
| TS1 | Sustainable Development | General Policies (area wide) |
| TS2 | Master Plans | Town centre and Torquay Gateway (area wide) |
| TS3 | Community led planning | General Policies (area wide) |
| TS4 | Support for Brownfield and Greenfield development | Employment policies (area wide) |
|  | **Housing policies (TH)** |  |
| TH1 | Housing Allocations | Housing policies (BH) |
| TH2 | Designing out crime | Housing policies (BH) (area wide) |
| TH3 | Future Growth Area priorities | Housing policies (BH) Edginswell Future Growth Area |
| TH4 | Affordable homes from greenfield developments | Housing policies (BH) |
| TH5 | Sustainable later life homes | Housing policies (BH) |
| TH6 | Gateway sustainable community planning | Housing policies (BH) Edginswell Future Growth Area |
| TH7 | HMOs (Houses in Multiple Occupation) | Housing policies (BH) |
| TH8 | Established architecture | Housing policies (BH) |
| TH9 | Parking facilities | Housing policies (BH) |
| TH10 | Protection of the historic built environment | Housing policies (BH) |
| TH11 | Rural village conservation areas | Housing policies (BH) Maidencombe and Cockington Village |
| TH12 | Maidencombe area | Housing policies (BH) Maidencombe area |
| TH13 | Cockington Village and Country Park | Housing policies (BH) Cockington Village and Country Park |
|  | **Economy and Jobs (TJ)** |  |
| TJ1 | Employment | Economy and Jobs (TJ) |
| TJ2 | Home based enterprises | Economy and Jobs (TJ) |
| TJ3 | Commercial street scenes | Economy and Jobs (TJ) (Conservation Areas) |
|  | **Tourism (TT)** |  |
| TT1 | Change of use constraints within and outside a CTIA | Tourism (TT) |
| TT2 | Change of Use in Conservation Areas and Listed Buildings | Tourism (TT) |
| TT3 | Change of use constraints on Babbacombe Downs CTIA | Tourism (TT) -Babbacombe Downs CTIA |
|  | **Environment (TE)** |  |
| TE1 | Tourism accommodation on brownfield sites | Environment (TE) |
| TE2 | Local Green Spaces | Environment (TE) |
| TE3 | Development on established woodland | Environment (TE) |
| TE4 | Green Corridors | Environment (TE) |
| TE5 | Protected species habitats and biodiversity | Environment (TE) |
| TE6 | European protected species on specified sites | Environment (TE) Edginswell Future Growth Area or the Maidencombe area |
| TE7 | Marine Management Planning | Environment (TE) land adjacent to the coastline |
|  | **Health and Wellbeing (THW)** |  |
| THW1 | Travel Plans | Health and Wellbeing (THW) (schools) |
| THW2 | Change of use of allotments and retention of food production areas | Health and Wellbeing (THW) |
| THW3 | Community Facilities | Health and Wellbeing (THW) |
| THW4 | Outside space provision | Health and Wellbeing (THW) |
| THW5 | Access to sustainable transport | Health and Wellbeing (THW) |
| THW6 | Cycle storage and changing facilities | Health and Wellbeing (THW) |
|  | **Sport and Leisure (TSL)** |  |
| TSL1 | Alpine Ski Facility | Sport and Leisure (TSL) (Barton/Willows) |
| TSL2 | Sport and Leisure – Nightingale Park | Sport and Leisure (TSL) (Nightingale Park –Willows/Barton) |
| TSL3 | Sport and Leisure – Sports Grounds and Facilities | Sport and Leisure (TSL) |
|  | **Transport (TTR)** |  |
| TTR1 | Access to primary schools | Transport (TTR) |
| TTR2 | Sustainable Communities | Transport (TTR) |

| **Figure A3 Policies in the Adopted Paignton Neighbourhood Plan (PNP)** | | |
| --- | --- | --- |
| Policy Ref: | Paignton Peninsula Neighbourhood Plan  Policy Title | Policy Theme/Area |
|  | **Area Wide** |  |
| PNP1 | Area Wide | Area wide |
| PNP1(a) | Rural Character Area | Rural character area wide |
| PNP1(b) | Local Green Space (sites 1-53)\* | Green spaces area wide |
| PNP1(c) | Design Principles | Area wide |
| PNP1(d) | Residential Development | Area wide |
| PNP1(e) | Commercial Development | Area wide |
| PNP1(f) | Towards a sustainable low carbon energy efficient economy | Area wide |
| PNP1(g) | Designing out crime | Area wide |
| PNP1(h) | Sustainable transport | Area wide |
| PNP1(i) | Surface Water | Area wide |
|  | **Town Centre, Seafront (and Harbour) Areas** |  |
| PNP2 | Town Centre | Town Centre and Seafront Area |
| PNP3 | Paignton Harbour | Town Centre and Seafront Area |
| PNP4 | Seafront | Town Centre and Seafront Area |
| PNP5 | Torbay Road | Town Centre and Seafront Area |
| PNP6 | Station Square ‘Gateway’ | Town Centre and Seafront Area |
| PNP7 | Victoria Square | Town Centre and Seafront Area |
| PNP8 | Crossways, Hyde Road and Torquay Road | Town Centre and Seafront Area |
| PNP9 | Victoria Park | Town Centre and Seafront Area |
| PNP10 | Queens Park | Town Centre and Seafront Area |
| PNP11 | Old Town | Town Centre and Seafront Area |
| PNP12 | Getting around | Town Centre and Seafront Area |
| PNP13 | Housing opportunities within the Town Centre and Harbour area | Town Centre and Seafront and Harbour Area |
| PNP14 | Paignton Neighbourhood Plan Core Tourism Investment Area | Town Centre and Seafront Area |
| PNP15 | Flood and sea defences | Town Centre and Seafront Area |
| PNP16 | Victoria Street | Town Centre and Seafront Area |
| PNP17 | Transport ‘Gateway’ improvement | Town Centre and Seafront Area |
| PNP18 | Supporting the Retention of Retail Uses | Town Centre and Seafront Area |
|  | **Western Area specific** |  |
| PNP19 | Safeguarding open countryside | Western Area specific |
| PNP20 | Great Parks | Western Area specific |
| PNP21 | White Rock and nearby areas | Western Area specific |
| PNP22 | Western corridor | Western Area specific |
| PNP23 | Yalberton to Blagdon Valley | Western Area specific |
| PNP24 | Collaton St.Mary Village | Western Area specific |
|  | **Adjoining Area specific** |  |
| PNP25 | Clennon Valley | Adjoining Area specific |
| PNP26 | Clifton with Maidenway | Adjoining Area specific |
| PNP27 | Preston | Adjoining Area specific |

| **Figure A4 Policies in the Adopted Brixham Peninsula Neighbourhood Plan (BPNP)** | | |
| --- | --- | --- |
| Policy Ref: | Brixham Peninsula Neighbourhood Plan  Policy Title | Policy Theme |
|  | **3 Employment policies for the Brixham Peninsula** |  |
| J1 | Employment land – proposed, retained and refurbished | Employment policies (area wide) |
| J2 | Provision of information and communication technology | Employment policies (area wide) |
| J3 | Local employment – training and skills | Employment policies (area wide) |
| J4 | Local employment – increased employment and local amenity | Employment policies (area wide) |
| J5 | Sustaining a vibrant harbour-side economy | Employment policies for the Town of Brixham |
| J6 | Redevelopment of the Town Centre Car Park | Employment policies for the Town of Brixham |
| J7 | Oxen Cove and Freshwater Quarry | Employment policies for the Town of Brixham |
| J8 | Employment in Churston, Galmpton and Broadsands | Employment policies for Churston, Galmpton and Broadsands |
|  | **4 Housing policies (BH)** |  |
| BH1 | Affordable housing site allocations | Housing policies (BH) |
| BH2 | Occupation of new affordable homes | Housing policies (BH) |
| BH3 | Delivery of new homes | Housing policies (BH) |
| BH4 | Housing Development -brownfield (previously developed) and greenfield (not previously developed) sites | Housing policies (BH) |
| BH5 | Good design and the town and village Design Statements | Housing policies (BH) |
| BH6 | Roofscape and dormer management | Housing policies (BH) |
| BH7 | Sustainable construction | Housing policies (BH) |
| BH8 | Access to new dwellings | Housing policies (BH) |
| BH9 | Exception sites | Housing policies (BH) |
|  | **5 The natural environment (E)** |  |
| E1 | Landscape beauty and protected areas | The natural environment (E) |
| E2 | Settlement boundaries | The natural environment (E) |
| E3 | Settlement Gaps | The natural environment (E) |
| E4 | Local Green Spaces | The natural environment (E) |
| E5 | Public Open Spaces | The natural environment (E) |
| E6 | Views and vistas | The natural environment (E) |
| E7 | Protecting semi-natural and other landscape features | The natural environment (E) |
| E8 | Internationally and nationally important ecological sites | The natural environment (E) |
|  | **6 The built environment (BE)** |  |
| BE1 | Heritage assets and their setting | The built environment (BE) |
|  | **7 Transport (T)** |  |
| T1 | Linking of new developments to travel improvements | Transport (T) |
|  | **8 The health and wellbeing (HW) of the community** |  |
| HW1 | Retention of current health and social care estates | The health and wellbeing (HW) |
| HW2 | Operational space for voluntary support organisations | The health and wellbeing (HW) |
|  | **9 Education and learning for all (L)** |  |
| L1 | Protection of existing educational facilities | Education and learning for all (L) |
| L2 | Matching educational provision to local need | Education and learning for all (L) |
| L3 | Providing for 16–18 years and beyond | Education and learning for all (L) |
|  | **10 Tourism (TO)** |  |
| TO1 | Support for tourism | Tourism (TO) |
|  | **11 Sport and leisure (S&L)** | Tourism (TO) |
| S&L1 | Increase available space for outdoor sport and leisure | Tourism (TO) |
| S&L2 | Sport and recreational facilities in new developments | Tourism (TO) |
|  | **12 Art and culture (A&C)** |  |
| A&C1 | Promotion and protection for the arts and local culture | Art and culture (A&C) |

1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990). [↑](#footnote-ref-1)
2. Torbay Whole Plan Viability Assessment, Peter Brett Associates, 2014 [↑](#footnote-ref-2)
3. Assessment of Sewer Capacity In Torbay, AECOM/SWW 2014 [↑](#footnote-ref-3)
4. <https://www.torbay.gov.uk/media/8116/sd26a.pdf> See also pp174-5 of the Local Plan. [↑](#footnote-ref-4)
5. Based on the locally attributable impact of residential development – 44% of 42% residential visitors being from Brixham,(i.e. 18.5% of all visits). 18.5% of £404,350= £74,805 divided by 790 proposed dwellings= £94.69 per dwelling. For holiday developments 44% of 58%= 25.5% of visitors being from Tourists staying in the Brixham Peninsula. [↑](#footnote-ref-5)
6. Or other person who the Council has put in place to carry out the housing functions. [↑](#footnote-ref-6)
7. Torbay’s medium gross annual earnings at 2017 were £24,365 (compared to £29,79 in England and £27,123 in the South West) and lower quartile earnings were £13,760 (compared to £20,649 in England and £19,914 in the South West). In Torbay, median house prices at 2017 were £187,000 (£230,000 in England and £239,000 in the South West). Median lower quartile house prices in Torbay were £145,000 in 2017. Therefore, whilst Torbay’s overall affordability ratio in 2017 (7.67) was similar to the England average (7.91) and slightly better than the regional average (8.81); this masks the underlying issue of a low wage economy. [↑](#footnote-ref-7)
8. Peter Brett and Associates 2014 and 2016 and Burrows Hutchinson (August) 2016. There are all available at www.torbay.gov.uk/CIL. The revised figures are based on a 7.5% uplift from the previous figures reflecting house price inflation since 2016; but still within the range of values indicated in the viability evidence. [↑](#footnote-ref-8)
9. A form of mixed use development. It describes an urban planning strategy in which social housing, and privately owned housing are mixed. [↑](#footnote-ref-9)
10. E.g. A jobs within the B1 Use Class of business/light industry. However the Local Plan considers as range of types of employment and not just jobs within the Class B employment use classes. [↑](#footnote-ref-10)
11. https://www.torbay.gov.uk/media/12187/medium-term-resource-plan.pdf [↑](#footnote-ref-11)
12. <http://www.torbay.gov.uk/torbaymps2016.pdf> [↑](#footnote-ref-12)
13. Torbay JSNA 2012/13 [↑](#footnote-ref-13)
14. https://www.torbay.gov.uk/health-and-wellbeing/care-and-support-providers/mps/changing-patterns-of-demand/ [↑](#footnote-ref-14)
15. Living Well@Home Strategy [↑](#footnote-ref-15)
16. At the 2011 Census, there were 59,006 households in Torbay. Of these, 10,556 were households where the household reference person (HRP) was aged 75+ 5,909 of these older households were single person households (56%). 4,262 (40.4%) were 2 person households and 384 (3.6%) 3+ person households. This gives an average household size of just over 1.4 persons for older person households. [↑](#footnote-ref-16)
17. NPPF paragraph 14 and Regulation 122 of the CIL Regulations 2010 (as amended). [↑](#footnote-ref-17)
18. Subject to limited controls such as the need for listed building consent. [↑](#footnote-ref-18)
19. Not including Class C4 small HMO. [↑](#footnote-ref-19)
20. The initial SPD was based on TRICS version 7.3.2. These have been cross referenced against version 7.6.1 [↑](#footnote-ref-20)
21. The Local Transport Plan Implementation Plan (LTiP page 6) lists costed projects coming to £1,403,636. The 2019/20 Torbay Council Budget lists major infrastructure highways items: Gateway improvements £2.927m total, Western corridor £12.271m total, integrated transport schemes £550k per year. Assuming a 5 year programme for this amounts to £17.948m (not counting the LTiP figure to avoid double counting the integrated transport schemes item).   There is £5.3m DofT funding (LTPiP para 1.2.2) which results in a shortfall of £12.648m. Divided by 35,000 trips equates to a cost per trip of £341.84. This figure does not include improvements to the A385 Brixham Road which are likely to be required as part of the delivery of Collaton St Mary Future Growth Area (Local Plan Policy SDP3). Nor does the LTP include the funding for the South Devon Highway, Torbay’s contribution towards this was £20 million, which is being sought through CIL.

    The cost of concessionary fares (£4.171) equates to about £68 per dwelling in Torbay (4.171m/62,000 households). These figures indicate a sustainable transport cost which is significantly higher than the £171 per dwelling calculation in the 2017 SPD. However, without additional viability testing the figure has been pegged to the 2017 figure with an allowance for inflation. [↑](#footnote-ref-21)
22. A contribution will also be sought from outside covers/seating areas based on 50% of the charge sought for inside areas. [↑](#footnote-ref-22)
23. A reduced contribution (akin to the town centre contribution) will be sought where restaurants are within sustainable out of centre locations such as Core Tourism Areas or similar tourism areas. [↑](#footnote-ref-23)
24. Note that where sustainable transport measures are needed to provide highway capacity, they are considered to be site deliverability matters. [↑](#footnote-ref-24)
25. AQMAs are currently being reviewed. [↑](#footnote-ref-25)
26. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793661/Securing_developer_contributions_for_education.pdf> [↑](#footnote-ref-26)
27. PPG 23b-008-20190315 [↑](#footnote-ref-27)
28. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/793661/Securing\_developer\_contributions\_for\_education.pdf [↑](#footnote-ref-28)
29. <https://www.gov.uk/government/collections/school-places-scorecards>. [↑](#footnote-ref-29)
30. Based on TDA school Place Planning and cross referenced with DCC figures for Cranbrook (2015) [↑](#footnote-ref-30)
31. Excluding 1 bed apartments and specialist accommodation for the elderly [↑](#footnote-ref-31)
32. See paragraph 24 of the DFE Securing developer contributions for education guide (2019). [↑](#footnote-ref-32)
33. http://www.investintorbay.com/town-centres-regeneration/

    https://www.investintorbay.com/wp-content/uploads/2017/05/Transformation-Project-Town-Centre-Regeneration-Appendix-1.pdf [↑](#footnote-ref-33)
34. This figure has only been increased to 2019 prices rather than reflecting the full cost identified in paragraph 4.12.2 [↑](#footnote-ref-34)
35. [↑](#footnote-ref-35)