

neighbourhood plans

From: Mike Harris [REDACTED]
Sent: 15 December 2017 16:10
To: neighbourhood plans
Subject: Brixham Peninsula Neighbourhood Plan Regulation 16 Consultation Response
Attachments: 15230_T_170310_Brixham NP Reg 14 Rep_FINAL.pdf; 151509_T_171215_Reg 16 Representation BPNP_FINAL.pdf

Importance: High

Dear Sir/Madam

In accordance with the Neighbourhood Planning regulations, please find attached a Regulation 16 consultation response in respect of the Brixham Peninsula Neighbourhood Plan, submitted on behalf of my client Abacus Projects/Deeley Freed Estates.

In addition to the Regulation 16 representation, I attach a copy of the Regulation 14 representation as the current response makes a number of references to it.

If there are any issues opening this submission please contact me as soon as possible.

Kind regards

Mike

STRIDE TREGLOWN
TOWN PLANNING

Mike Harris *BSc (Hons) MA MRTPI*
Senior Associate Town Planner

T +441179743271

DD +441179157365

M +447718962449

mikeharris@stridetreglown.com

LinkedIn

Promenade House, The Promenade, Bristol, BS8 3NE

stridetreglown.com   

Follow our latest projects on Instagram

PLANNING CONSULTANCY OF THE YEAR

**THE PLANNING
& PLACEMAKING
AWARDS 2016**



Stride Treglown Ltd may monitor email traffic data and also the content of email for the purposes of security.

Registered Office: Promenade House, The Promenade, Clifton Down, Bristol, BS8 3NE. Registered Number: 1748850

15th December 2017

151509_T_171215_Reg 16 Representation BPNP

Neighbourhood Plans
Spatial Planning
Electric House
Castle Circus
Torquay
TQ1 3DR

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

Dear Sir/Madam

Brixham Peninsula Neighbourhood Plan Regulation 16 Consultation response

We act for Abacus Projects/Deeley Freed Estates (AP/DFE) in respect of their interests in the Torbay area. AP/DFE are a landowner/development promoter with interests in Torbay, principally in the Blatchcombe and Churston-with-Galmpton wards. In recent weeks, Stride Treglown, on behalf of AP/DFE, have submitted an outline planning application for a residential-led development on land south of the White Rock area (ref. P/2017/1133), adjacent to Brixham Road.

This letter addresses a number of issues:

- It acts as a representation in accordance with Regulation 16 of The Neighbourhood Planning (General) Regulations 2012;
- In accordance with the provisions set out in Regulation 16(a)(iv) this letter also acts as a request to be notified of the decision made on the plan proposal under Regulation 19; and,
- Finally, in the event that the appointed Examiner(s) elect to hold a hearing(s) on the subject of the proposals, either solely in respect of the Brixham Peninsula Neighbourhood Plan or in combination with the draft Torquay and/or Paignton Neighbourhood Plans, we request to be notified of this and request, in advance, the opportunity to participate.

This representation follows our previous representations to the Brixham Peninsula Neighbourhood Forum in respect of their Regulation 14 consultation. These are appended to this submission for completeness and are not repeated here other than the following summary:

- Whilst identifying sites for housing to broadly align with the expectations set out in the adopted Local Plan there is/was a heavy reliance on windfall sites;
- Inconsistency in respect of the assessment of opportunities, constraints and capacity of sites;
- Inconsistent approach to survey data, particularly in respect of the potential impact on European protected species; and,

STRIDE TREGLOWN LTD
PROMENADE HOUSE, THE PROMENADE
CLIFTON DOWN, BRISTOL BS8 3NE
+44 (0)117 974 3271

REGISTERED OFFICE
PROMENADE HOUSE, THE PROMENADE
CLIFTON DOWN, BRISTOL BS8 3NE
REGISTERED IN CARDIFF
REGISTERED NO: 1748850

STRIDETREGLOWN.COM

- Misrepresentation and subsequently incorrect analysis of the development potential of land south of White Rock, running counter to the position adopted by the Inspector in his report on the examination of the now adopted Local Plan.

In addition to our own representations, we note that the Council as a statutory consultee made comments at the Regulation 14 stage. Whilst these representations will be before the Examiner, and may be withdrawn, edited or expanded upon by the Council, it is considered important to flag in this representation some particular matters which, in our judgement, remain relevant.

It is unfortunate that the Forum's Consultation Report is not as clear as others in that it does not clearly set out the changes made (or otherwise) in response to specific comments. Specifically, section 7 of the Report simply indicates where amendments have been made. However, in reviewing the Council's Regulation 14 response, the Forum's Consultation Report and the submitted draft Neighbourhood Plan, it is apparent that there are instances where changes have not been made and which therefore have the effect of rendering the Plan deficient. Specifically:

- Policy H2 was flagged by the Council as having inappropriate wording in respect of the employment status of those seeking affordable housing;
- Policy BH3 (previously H3) continues to allocate sites which are considered to be classed as windfall sites in the adopted Local Plan sense (therefore running counter to adopted Local Plan Policy);
- There remains inconsistency in respect of site capacity. For instance, despite H3-I3 St Kilda being reduced from 20 units to 12 this continues to conflict with the submitted evidence base; and
- The Council's question as to whether Policy BH6 seeks to introduce an Article 4 Direction remains.

The above is not necessarily exhaustive and as such it will be for the Examiner(s) to give detailed consideration as to whether the Forum have submitted a draft Neighbourhood Plan which appropriately addresses any potential conflicts with the adopted Local Plan or the NPPF and passes the relevant Basic Conditions tests.

In order to prepare this representation, a review of the points made in our Regulation 14 submission has been undertaken, principally with reference to the Forum's submitted Consultation Report Version 2. The following issues are of continued concern:

- Allocated housing Site H3-I2 St Mary's/Old Dairy is said in the consultation report to be protected by policy E8 of the submitted Neighbourhood Plan. However, our Regulation 14 submission highlighted that the allocation has been proposed despite the supporting evidence indicating a need for further ecology survey work. We are not aware that this survey work has been conducted and in our view, this issue stands. As such, there are significant concerns remaining as to whether this allocation (of significance at 25 units in the wider context) can be judged to be robust. It is important to recognise that sites were not allocated within the Local Plan due to a similar lack of survey data.

- In respect of allocated housing site H3-I3 St Kilda our Regulation 14 submission raised concerns regarding the potential flood risk on this site. The Forum's Consultation Report suggests (page 89) that as the use is as existing there will be an ability to mitigate. Whilst this may well be the case, it nevertheless remains the case that the site would appear to be allocated for a use which does not accord with the NPPF on flood risk. As with H3-I2, questions remain as to whether it is appropriate to confirm an allocation on this site in the absence of clarity on deliverability.
- The concerns raised in our Regulation 14 submission in respect of allocated housing site H3-I4 Northcliffe Hotel remain valid on the basis that no further evidence has been submitted, in fact the Consultation Report notes that no survey data exists. On this basis the proposed housing supply (15 units) is at risk of further reduction.
- There is an inconsistency within the evidence base for allocated housing site H3-I5 Torbay Trading Estate. The Consultation Report, in response to our previous comments, suggests that the TPOs are on a separate site. However, the submitted 'Updated Site Appraisal' Report (July 2017) continues to note the presence of TPOs and a review of the Council's TPO mapping would appear to support this.
- In respect of allocated housing site H3-I11 (formerly I9) Knapman's Yard our regulation 14 comments stand; whilst the Forum note that a planning application can address issues of flooding it is questioned whether this is appropriate given the importance that the site will play in meeting the wider housing numbers.

In addition, whilst a matter relating to the evidence base rather than the submitted Neighbourhood Plan, the consideration of land to the south of White Rock is flawed insofar as it misrepresents the potential of the site to make a sustainable contribution to the growth of Torbay (as acknowledged by the Inspector).

Firstly, the assessed site does not relate to the proposed main modification allocation put forward by the Council during the Local Plan examination process. Specifically the assessment considers a much larger site which arguably would have the potential to result in settlement coalescence whereas the Local Plan promoted site/Inglewood planning application (P/2017/1133) maintains a critical strategic gap to Galmpton. Secondly, unlike other sites, the Forum have dismissed the site on ecological grounds despite having allocated others in the absence of suitable evidence (e.g. the Northcliffe Hotel site). Finally, an assessment of potential visual impacts of development can only reasonably be complete based on an emerging design, something which the Forum have not considered and therefore the conclusion is flawed.

In the context of the above, it is necessary to consider whether these issues (amongst others) have the potential to mean that the Plan fails to meet the Basic Conditions tests.

The first of the basic conditions (a) is that the Plan should have regard to national policy and advice. Planning Practice Guidance (Paragraph: 069 Reference ID: 41-069-20140306) notes that a plan

“must not constrain the delivery of national policy objectives” with the subsequent paragraph noting that they *“should not promote less development than set out in the Local Plan or undermine its strategic policies”*.

This relates closely to condition (e) which requires a plan to be in *“general conformity with the strategic policies contained in the development plan”*.

Considering the above, whilst there are positive aspects of the submitted Plan (it is for example acknowledged that the Forum do seek to allocate sites for development) there are clearly a number of instances where it fails to meet the above referenced tests. This is particularly relevant in respect of a number of the proposed housing allocations and the evidence underpinning them; very real concerns exist as to whether the submitted Neighbourhood Plan can be reasonably considered to allocate sufficient sites for housing as required by the adopted Local Plan. As such, there is a significant potential for the proposed Neighbourhood Plan to fail to accord with Basic Condition (a).

In addition to the concern relating to housing supply/delivery in the context of site specific constraints or capacity, it cannot in our view be certain at this stage whether test (f) – in relation to breaches of or compatibility with EU obligations - is met. This is a matter for the examination process however we would highlight that there are potential issues in respect of, although not necessarily limited to, the proposal to allocate housing on the Northcliffe Hotel site (H3-I4). Reference should be made to our Regulation 14 response for details.

It is clear from this representation that we have significant and detailed concerns about the Brixham Peninsula Neighbourhood Plan as submitted, specifically the extent to which it complies with Local and National policy. It is our opinion that the only way forward at this stage is to hold a public hearing to consider the issues and the evidence. As set out above, we have requested that this representation is considered as a holding request to participate at such a hearing.

We would further advocate that given the strategic responsibility which the adopted Torbay Local Plan places on the three Neighbourhood Plans, all three plans should be considered at a joint hearing(s). It is clear that the issues faced by each of the Forums and covered in the respective Neighbourhood Plans are of a significance that is at a level greater than the neighbourhood. This is, in short, a consequence of the unique nature of Neighbourhood Planning in the Torbay area, specifically the full Local Plan area coverage by designated Neighbourhood Plan areas and the means by which the adopted Torbay Local Plan places the onus on each of the three Neighbourhood Plans to allocate housing numbers for delivery to meet the housing requirement of years 6-10 of the Local Plan period.

This matter is further compounded by the fact that the Torbay area constitutes a single housing market area and thus the Neighbourhood Plans have a significant responsibility to support the maintenance of a rolling deliverable 5 year housing land supply, as required by paragraph 47 of the National Planning Policy Framework. In addition to the responsibility in respect of delivering housing supply, the Neighbourhood Plans are required to give full consideration to matters relating to European protected

STRIDE TREGLOWN

species and habitats, in particular Greater Horseshoe Bats which are present across the authority area, principally in relation to the roost at Berry Head.

These issues are of such significance that we believe the examination of the proposed Neighbourhood Plans to be a matter of greater than neighbourhood importance. The plans, if made, are critical to the delivery of the Council's wider strategy and as such their examinations should be held together and by a single examiner who is then able to consider strategic planning issues at play in these cases.

We note also that the Examiner will need to consider (in accordance with paragraph 8(1)(d) of Schedule 4 of the Town & County Planning Act 1990) whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates. In view of the strategic interdependence of the three draft Neighbourhood Plans in Torbay, this issue will require particular consideration and our view is that a joint hearing would assist in doing this.

If however the appointed Examiner considers that a hearing is not required, we consider that the only reasonable course of action is either to recommend that the Plan is significantly modified in order to remedy the issues highlighted above or to recommend that the Plan should not be submitted to a referendum and is refused.

Yours sincerely,

Mike Harris MRTPI
Senior Associate Town Planner
For
STRIDE TREGLOWN LIMITED

cc. Andrew Maltby, Deeley Freed Estates
Enc. Regulation 14 Representation

15th December 2017

151509_T_171215_Reg 16 Representation BPNP

Neighbourhood Plans
Spatial Planning
Electric House
Castle Circus
Torquay
TQ1 3DR

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

Dear Sir/Madam

Brixham Peninsula Neighbourhood Plan Regulation 16 Consultation response

We act for Abacus Projects/Deeley Freed Estates (AP/DFE) in respect of their interests in the Torbay area. AP/DFE are a landowner/development promoter with interests in Torbay, principally in the Blatchcombe and Churston-with-Galmpton wards. In recent weeks, Stride Treglown, on behalf of AP/DFE, have submitted an outline planning application for a residential-led development on land south of the White Rock area (ref. P/2017/1133), adjacent to Brixham Road.

This letter addresses a number of issues:

- It acts as a representation in accordance with Regulation 16 of The Neighbourhood Planning (General) Regulations 2012;
- In accordance with the provisions set out in Regulation 16(a)(iv) this letter also acts as a request to be notified of the decision made on the plan proposal under Regulation 19; and,
- Finally, in the event that the appointed Examiner(s) elect to hold a hearing(s) on the subject of the proposals, either solely in respect of the Brixham Peninsula Neighbourhood Plan or in combination with the draft Torquay and/or Paignton Neighbourhood Plans, we request to be notified of this and request, in advance, the opportunity to participate.

This representation follows our previous representations to the Brixham Peninsula Neighbourhood Forum in respect of their Regulation 14 consultation. These are appended to this submission for completeness and are not repeated here other than the following summary:

- Whilst identifying sites for housing to broadly align with the expectations set out in the adopted Local Plan there is/was a heavy reliance on windfall sites;
- Inconsistency in respect of the assessment of opportunities, constraints and capacity of sites;
- Inconsistent approach to survey data, particularly in respect of the potential impact on European protected species; and,

STRIDE TREGLOWN LTD
PROMENADE HOUSE, THE PROMENADE
CLIFTON DOWN, BRISTOL BS8 3NE
+44 (0)117 974 3271

REGISTERED OFFICE
PROMENADE HOUSE, THE PROMENADE
CLIFTON DOWN, BRISTOL BS8 3NE
REGISTERED IN CARDIFF
REGISTERED NO: 1748850

STRIDETREGLOWN.COM

- Misrepresentation and subsequently incorrect analysis of the development potential of land south of White Rock, running counter to the position adopted by the Inspector in his report on the examination of the now adopted Local Plan.

In addition to our own representations, we note that the Council as a statutory consultee made comments at the Regulation 14 stage. Whilst these representations will be before the Examiner, and may be withdrawn, edited or expanded upon by the Council, it is considered important to flag in this representation some particular matters which, in our judgement, remain relevant.

It is unfortunate that the Forum's Consultation Report is not as clear as others in that it does not clearly set out the changes made (or otherwise) in response to specific comments. Specifically, section 7 of the Report simply indicates where amendments have been made. However, in reviewing the Council's Regulation 14 response, the Forum's Consultation Report and the submitted draft Neighbourhood Plan, it is apparent that there are instances where changes have not been made and which therefore have the effect of rendering the Plan deficient. Specifically:

- Policy H2 was flagged by the Council as having inappropriate wording in respect of the employment status of those seeking affordable housing;
- Policy BH3 (previously H3) continues to allocate sites which are considered to be classed as windfall sites in the adopted Local Plan sense (therefore running counter to adopted Local Plan Policy);
- There remains inconsistency in respect of site capacity. For instance, despite H3-I3 St Kilda being reduced from 20 units to 12 this continues to conflict with the submitted evidence base; and
- The Council's question as to whether Policy BH6 seeks to introduce an Article 4 Direction remains.

The above is not necessarily exhaustive and as such it will be for the Examiner(s) to give detailed consideration as to whether the Forum have submitted a draft Neighbourhood Plan which appropriately addresses any potential conflicts with the adopted Local Plan or the NPPF and passes the relevant Basic Conditions tests.

In order to prepare this representation, a review of the points made in our Regulation 14 submission has been undertaken, principally with reference to the Forum's submitted Consultation Report Version 2. The following issues are of continued concern:

- Allocated housing Site H3-I2 St Mary's/Old Dairy is said in the consultation report to be protected by policy E8 of the submitted Neighbourhood Plan. However, our Regulation 14 submission highlighted that the allocation has been proposed despite the supporting evidence indicating a need for further ecology survey work. We are not aware that this survey work has been conducted and in our view, this issue stands. As such, there are significant concerns remaining as to whether this allocation (of significance at 25 units in the wider context) can be judged to be robust. It is important to recognise that sites were not allocated within the Local Plan due to a similar lack of survey data.

- In respect of allocated housing site H3-I3 St Kilda our Regulation 14 submission raised concerns regarding the potential flood risk on this site. The Forum's Consultation Report suggests (page 89) that as the use is as existing there will be an ability to mitigate. Whilst this may well be the case, it nevertheless remains the case that the site would appear to be allocated for a use which does not accord with the NPPF on flood risk. As with H3-I2, questions remain as to whether it is appropriate to confirm an allocation on this site in the absence of clarity on deliverability.
- The concerns raised in our Regulation 14 submission in respect of allocated housing site H3-I4 Northcliffe Hotel remain valid on the basis that no further evidence has been submitted, in fact the Consultation Report notes that no survey data exists. On this basis the proposed housing supply (15 units) is at risk of further reduction.
- There is an inconsistency within the evidence base for allocated housing site H3-I5 Torbay Trading Estate. The Consultation Report, in response to our previous comments, suggests that the TPOs are on a separate site. However, the submitted 'Updated Site Appraisal' Report (July 2017) continues to note the presence of TPOs and a review of the Council's TPO mapping would appear to support this.
- In respect of allocated housing site H3-I11 (formerly I9) Knapman's Yard our regulation 14 comments stand; whilst the Forum note that a planning application can address issues of flooding it is questioned whether this is appropriate given the importance that the site will play in meeting the wider housing numbers.

In addition, whilst a matter relating to the evidence base rather than the submitted Neighbourhood Plan, the consideration of land to the south of White Rock is flawed insofar as it misrepresents the potential of the site to make a sustainable contribution to the growth of Torbay (as acknowledged by the Inspector).

Firstly, the assessed site does not relate to the proposed main modification allocation put forward by the Council during the Local Plan examination process. Specifically the assessment considers a much larger site which arguably would have the potential to result in settlement coalescence whereas the Local Plan promoted site/Inglewood planning application (P/2017/1133) maintains a critical strategic gap to Galmpton. Secondly, unlike other sites, the Forum have dismissed the site on ecological grounds despite having allocated others in the absence of suitable evidence (e.g. the Northcliffe Hotel site). Finally, an assessment of potential visual impacts of development can only reasonably be complete based on an emerging design, something which the Forum have not considered and therefore the conclusion is flawed.

In the context of the above, it is necessary to consider whether these issues (amongst others) have the potential to mean that the Plan fails to meet the Basic Conditions tests.

The first of the basic conditions (a) is that the Plan should have regard to national policy and advice. Planning Practice Guidance (Paragraph: 069 Reference ID: 41-069-20140306) notes that a plan

“must not constrain the delivery of national policy objectives” with the subsequent paragraph noting that they *“should not promote less development than set out in the Local Plan or undermine its strategic policies”*.

This relates closely to condition (e) which requires a plan to be in *“general conformity with the strategic policies contained in the development plan”*.

Considering the above, whilst there are positive aspects of the submitted Plan (it is for example acknowledged that the Forum do seek to allocate sites for development) there are clearly a number of instances where it fails to meet the above referenced tests. This is particularly relevant in respect of a number of the proposed housing allocations and the evidence underpinning them; very real concerns exist as to whether the submitted Neighbourhood Plan can be reasonably considered to allocate sufficient sites for housing as required by the adopted Local Plan. As such, there is a significant potential for the proposed Neighbourhood Plan to fail to accord with Basic Condition (a).

In addition to the concern relating to housing supply/delivery in the context of site specific constraints or capacity, it cannot in our view be certain at this stage whether test (f) – in relation to breaches of or compatibility with EU obligations - is met. This is a matter for the examination process however we would highlight that there are potential issues in respect of, although not necessarily limited to, the proposal to allocate housing on the Northcliffe Hotel site (H3-I4). Reference should be made to our Regulation 14 response for details.

It is clear from this representation that we have significant and detailed concerns about the Brixham Peninsula Neighbourhood Plan as submitted, specifically the extent to which it complies with Local and National policy. It is our opinion that the only way forward at this stage is to hold a public hearing to consider the issues and the evidence. As set out above, we have requested that this representation is considered as a holding request to participate at such a hearing.

We would further advocate that given the strategic responsibility which the adopted Torbay Local Plan places on the three Neighbourhood Plans, all three plans should be considered at a joint hearing(s). It is clear that the issues faced by each of the Forums and covered in the respective Neighbourhood Plans are of a significance that is at a level greater than the neighbourhood. This is, in short, a consequence of the unique nature of Neighbourhood Planning in the Torbay area, specifically the full Local Plan area coverage by designated Neighbourhood Plan areas and the means by which the adopted Torbay Local Plan places the onus on each of the three Neighbourhood Plans to allocate housing numbers for delivery to meet the housing requirement of years 6-10 of the Local Plan period.

This matter is further compounded by the fact that the Torbay area constitutes a single housing market area and thus the Neighbourhood Plans have a significant responsibility to support the maintenance of a rolling deliverable 5 year housing land supply, as required by paragraph 47 of the National Planning Policy Framework. In addition to the responsibility in respect of delivering housing supply, the Neighbourhood Plans are required to give full consideration to matters relating to European protected

STRIDE TREGLOWN

species and habitats, in particular Greater Horseshoe Bats which are present across the authority area, principally in relation to the roost at Berry Head.

These issues are of such significance that we believe the examination of the proposed Neighbourhood Plans to be a matter of greater than neighbourhood importance. The plans, if made, are critical to the delivery of the Council's wider strategy and as such their examinations should be held together and by a single examiner who is then able to consider strategic planning issues at play in these cases.

We note also that the Examiner will need to consider (in accordance with paragraph 8(1)(d) of Schedule 4 of the Town & County Planning Act 1990) whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates. In view of the strategic interdependence of the three draft Neighbourhood Plans in Torbay, this issue will require particular consideration and our view is that a joint hearing would assist in doing this.

If however the appointed Examiner considers that a hearing is not required, we consider that the only reasonable course of action is either to recommend that the Plan is significantly modified in order to remedy the issues highlighted above or to recommend that the Plan should not be submitted to a referendum and is refused.

Yours sincerely,



Mike Harris MRTPI
Senior Associate Town Planner
For
STRIDE TREGLOWN LIMITED

cc. Andrew Maltby, Deeley Freed Estates
Enc. Regulation 14 Representation