



# **Planning Summary Proof of Evidence for the Appellant Abacus Projects Limited and Deeley Freed Estates Limited**

## **Land at Inglewood, Torbay APP/X1165/W/20/3245011**

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## Endorsement

1. I am a member of the Royal Town Planning Institute (RTPI) and have been since 2002. I hold a BA (Hons) degree in Urban Planning and Management and also a Diploma in Town Planning both gained at Nottingham University in the period 1994-1998.
2. I have over twenty years practical post qualification experience in the profession, firstly at a national housebuilder, Redrow Homes between 1998 and 2000; secondly with a planning and environmental consultancy, RPS between 2001 and 2014 (Mason Richards Partnership between 2001 and 2004, before the Partnership was acquired by RPS). I was promoted to the role of Technical Director in 2007.
3. I am currently Head of Planning and a Partner in the Practice of Alder King Property Consultants and have been since 2014. Alder King provides property and planning services principally in the commercial property sector from its offices in Bristol, Exeter, Swindon, Taunton, Cardiff, Gloucester, and Truro.
4. My practical experience includes dealing with planning matters concerning development particularly on land across the South West and South Wales for public and private sector clients.
5. I was initially instructed by the appellant in July 2019 to assess and prepare representations on Torbay Council's draft 2019 Housing Land Supply Position Statement. I had no prior involvement in the planning application prior to this date, but took full planning consultancy responsibility for the appeal process after the Appellant's agent at Stride Treglown left that practice in summer 2019.
6. The evidence which I have prepared and provide for this appeal is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

## 1.0 Introduction

1.1 This evidence examines the planning policy basis for assessment of this proposal and the consideration of a number of material considerations that are also relevant to the determination of the appeal. To that end my evidence seeks to establish whether Torbay Council can demonstrate a five year supply of housing land as required by paragraph 73 of the National Planning Policy Framework (NPPF). On the basis that it cannot, my evidence goes on to consider the implications of applying the ‘tilted balance’ in accordance with paragraph 11(d)(ii) of the NPPF and the weight that should be afforded to otherwise restrictive development plan policies.

## 2.0 The Correct Approach

2.1 The relevant tests for this appeal are contained within NPPF paragraphs 11(d)(i) and (ii). Torbay Council’s Statement of Case contends that the appeal proposals fail the test in 11(d)(i) insofar as the harm to the natural beauty of the South Devon AONB provides a clear reason for refusal. For the reasons set out in the evidence of Mr Leaver and my own evidence, that contention is not accepted. As a consequence, it is appropriate to proceed to the test in 11(d)(ii). Paragraph 11(d)(ii) requires the decision taker to consider any adverse impacts, but to only refuse permission where those impacts significantly and demonstrably outweigh the benefits of the proposal.

## 3.0 Five Year Housing Land Requirement

3.1 Following publication of the Housing Delivery Test, in 2019 and 2020 Torbay Council has had to produce an ‘Action Plan’. As a consequence of continued underperformance, in accordance with NPPF paragraph 73c and footnote 39, it will become a 20% buffer authority when the 2020 Housing Delivery Test results are published given it will fall below the 85% threshold.

3.2 The 2021 HDT measure is likely to be in the order of 66% based on a requirement of 1,485 homes and completions of 986 over the three year period. By November 2021 the Brixham Peninsula Neighbourhood Plan will be more than two years old and the protection afforded by NPPF paragraph 14a will not apply. In November 2021 the presumption in NPPF paragraph 11d will apply irrespective of the housing land supply position.

Monitoring Year	Number of homes required	Number of homes delivered	HDT Measure	Implications
November 2018	1,295	1,144	88%	Action Plan
November 2019	1,390	1,267	91%	Action Plan
November 2020	1,485	1,129	76%	20% buffer
November 2021 Local Plan	1,485	986	66%	NPPF paragraph 11d presumption applies regardless of supply position.
November 2021 Standard Method	1,758	986	56%	

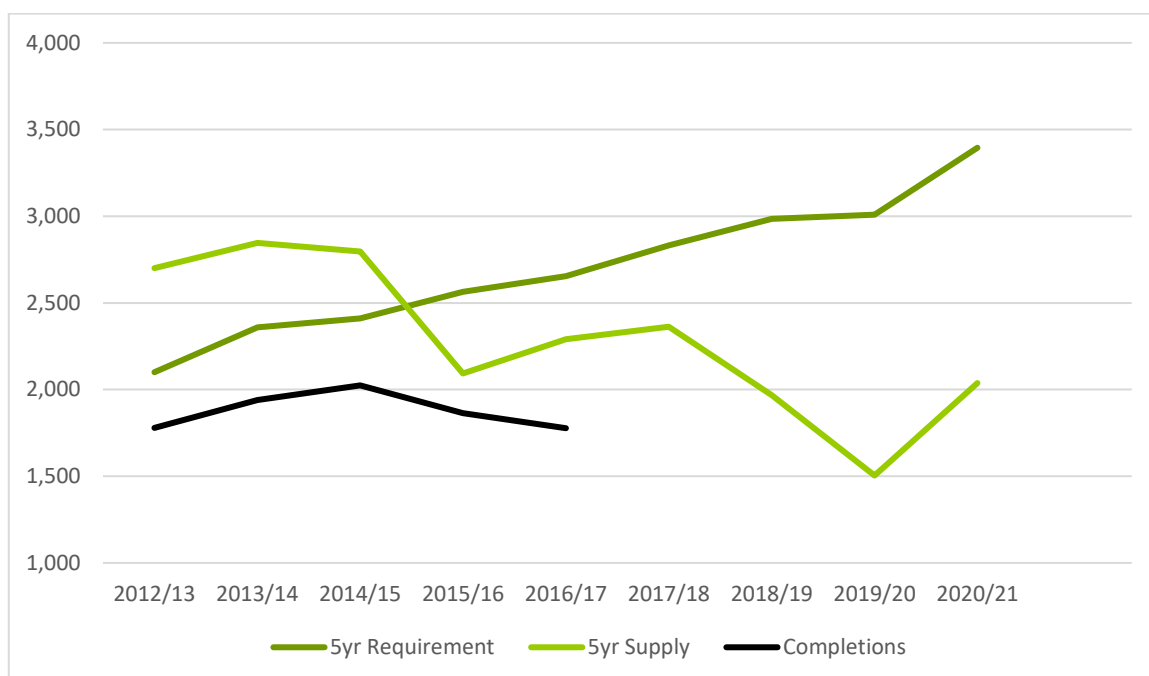
**Table 1: HDT Results and Forecast**

3.3 The position in January 2021 is dire. It requires urgent action to remedy the situation.

## 4.0 Five Year Housing Land Supply

4.1 Since its Local Plan was adopted in 2015 Torbay Council has never met the stated supply in any five year period and in reality has rarely got close. With one year left of the five year period to 2021, it would have to achieve 836 completions in 2020/21 to hit the target, for which it has no prospect of achieving. The evidence suggests that the Council has over-promised and under-delivered year on year and there is nothing to suggest that trend won't continue. The TC contended supply of 2,038 homes must be treated with caution from the outset.

4.2 The supply has consistently diminished over time. In the initial years of the Local Plan a five year supply could be demonstrated as the Local Plan was moving towards adoption in 2015. It has gone backwards ever since and shows that the Local Plan and subsequent Neighbourhood Plan policies have proven entirely ineffective. What is all the more remarkable is that the Council has not sought to facilitate any meaningful intervention strategy despite the need to produce Action Plans in the past two years.



**Figure 1: 5Yr Requirement, Supply and Completions within the 5 year period since the start of the LP period**

4.3 The problem in Torbay is not a new one. There is clear evidence of past under-delivery since the start of the plan period in 2012. At no stage of the plan period has the level of cumulative completions been in surplus. The five year requirement has grown year on year. As the requirement increases, the level of supply has decreased and the deficit has grown. This is a wholly unsustainable position that cannot easily be rectified. It amply justifies the application of the tilted balance and, where appropriate, granting planning permission on sustainable sites that are not presently subject of allocation in either the Local Plan or Neighbourhood Plan.

4.4 Brixham Town Council has produced a position statement that both Torbay Council and the appellant has responded to. Four sites are referenced in that response that are critiqued in my evidence; this should be

read alongside the representations on other sites submitted on the draft Housing Land Supply Statement in June 2020. I do not consider that Torbay Council can demonstrate a three year supply of housing land. The 2,038 supply figure is unjustified.

- 4.5 A decision-maker may take into account the nature and extent of any housing shortfall, the reasons for the shortfall, the steps being taken to remedy the shortfall, and the prospects of the shortfall being reduced in the future. These are all measures that Torbay Council has failed against.
- 4.6 The imposition of a 20% buffer will establish that the Council does not have a three year supply of land against its own inflated supply figure. There is no doubt that the 20% buffer will be imposed. The situation will not improve during 2021; it will only worsen. It will fail the HDT by an even greater extent in November 2021 and the tilted balance will apply irrespective of the land supply position.
- 4.7 To deny the application of the tilted balance would be inappropriate and short sighted, particularly given the very short period of time before the 20% buffer is, upon any basis, formally established. To dismiss the appeal on this basis alone would only be to delay the inevitable to nobody's advantage. It would result in a lost year of potential delivery at the appeal site that would achieve absolutely nothing and deny people in need of a home that is required now.

## 5.0 Application of the Tilted Balance

- 5.1 Since the appellant contends that there is no clear reason for refusing the development proposed on the basis of the impact on the AONB (ie paragraph 11(d)(i)), the tilted balance prescribed in paragraph 11(d)(ii) of the NPPF must be applied.
- 5.2 The tilted balance is engaged and the extent of underperformance and the inability for Torbay Council to have responded requires it to be given significant emphasis and weight. There has been ample opportunity to address the problem but there has been no effective action. There is no obvious plan making remedy and by the time any new Local Plan is adopted the problem will only be substantially worse.
- 5.3 The 2017 Local Development Scheme<sup>1</sup> advocates a staged approach that specifically identifies the land south of White Rock (ie the appeal site) as a first stage to resolving a five year supply deficit. Evidently the Council has reneged on its support for the appeal site. This is all the more surprising given the failure of the Neighbourhood Forums to allocate sufficient land. Solutions to the problem were identified Policy SS13 and in the 2017 LDS but no action was taken.
- 5.4 The 2017 LDS and the Inspector's Report that precedes it establish that the Council considered the appeal site to be an appropriate and sustainable location for growth, and reflects the fact that the only reason the site does not feature in the current Local Plan is by virtue of the HRA issues at the time of the Local Plan examination. The Statement of Common Ground confirms that the HRA matters have been satisfactorily resolved, subject to the delivery of the proposed mitigation.
- 5.5 The new Local Plan review is still at inception stage despite the fact that it should now be nearing adoption. There has been no reason to withhold its preparation. The only realistic solution for the foreseeable future

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<sup>1</sup> CD 6.40

and certainly next 3-4 year period (ie until such time as new allocations can start to deliver) is to apply the presumption and positively support sustainable development. There is no other reasonable option.

## 6.0 Conformity with the Development Plan

- 6.1 When looked at as a whole I consider the appeal proposals to be in conformity with the Local Plan. That is so whether one considers either a 'flat balance' scenario (ie where the important policies are not out of date) or a 'tilted' one (ie where they are). Policy SS3 sets out a clear presumption in favour of the development. In a flat balance scenario I consider the appeal proposals to meet the tests for social, economic and environmental improvement. They also constitute material considerations that weigh strongly in favour of the proposed development. In a tilted balance scenario, the same applies and for the reasons set out below I consider the benefits of the proposal to significantly and demonstrably outweigh the any adverse impacts when assessed against the policies in the NPPF.
- 6.2 The most important policies for determining this appeal, as identified in paragraphs 6.1 and 6.2 of my evidence, are out of date by virtue of the fact that the Council cannot demonstrate a three year supply of deliverable housing sites.
- 6.3 The fact of the matter is that there is a critical undersupply of housing in Torbay. In the context of applying the tilted balance, Policy C1 (and other policies that might preclude development at the appeal site) is relevant but it should be afforded less weight in the decision making process.
- 6.4 Policy C1 must be read as part of the whole Development Plan. The Local Plan provides scope for advancing sustainable development on greenfield land that is not allocated in the Development Plan. In a flat balance scenario if the appeal proposals were judged against Policy SS3, and assuming the landscape and biodiversity considerations and policy references can be satisfactorily met, then I see no reason why planning permission should be withheld. In a tilted balance scenario I accept that the appeal proposals will impact to a degree upon the settlement gap in BNP Policy E3, however, the evidence of my colleague Mr Leaver establishes that the proposals do not compromise the three criteria against which the proposals should be judged. To that end I consider that the appeal proposals could be found to be in conformity with the BNP even in a flat balance scenario.
- 6.5 For housing land supply reasons the reality is that the tilted balance is in play and the second part of Policy SS3 is engaged, as is NPPF paragraph 11d. The evidence of Mr Leaver establishes that negligible or only minor adverse effects on the setting and special qualities of the AONB arise and those effects have been found to be not significant. To that end neither the first criterion in SS3 or NPPF 11(d)(i) are engaged; criterion 2 and paragraph 11(d)(ii) are.

## 7.0 Applying the Planning Balance

- 7.1 There are very significant benefits that will be delivered by the proposal as acknowledged by the planning officer in his report to Committee on 10 February 2020<sup>2</sup>. I agree with his assessment and summarise the significant benefits arising from the development as being:
1. The appeal proposals seek the delivery of up to 373 dwellings across a range of unit sizes, 30% of which will be affordable. Both the Local Plan and Neighbourhood Plan make great play of the need for more affordable housing in the Brixham Peninsular; the provision of 112 affordable homes will make a very significant contribution to meeting housing need in Torbay.
  2. Local education delivery is supported through the provision of land for a 2 form entry primary school to meet the needs of new households arising from the appeal proposals and wider unmet need and demand for primary school places in the wider community.
  3. Provision of community facilities through the inclusion of a site for a new public house/restaurant;
  4. The school and the public house/restaurant could yield up to 125 new jobs<sup>3</sup>. There will be significant local demand for construction workers which could yield around 140 jobs per annum during the construction period.
  5. Much wider direct and indirect benefit to the local economy as set out in a report prepared by Hatch Regeneris in November 2019 (**Appendix 8** of my evidence).
  6. Provision of significant areas of public open space in excess of policy requirements and community food growing land with their long term management secured in perpetuity via a not-for-profit management company;
  7. Delivery of biodiversity net gain as confirmed in the Update Habitat Assessment 2019<sup>4</sup>; and
  8. Provision of countryside access for existing and future residents, providing links to the wider network.

## 8.0 Conclusions

- 8.1 In accordance with paragraph 11d of the NPPF, the appeal proposals should be allowed. Any adverse impacts of doing so would not significantly and demonstrably outweigh the benefits of the proposals. The benefits of the appeal proposals are wide and are significant. Allowing this appeal is necessary to secure the Council's housing land supply and on a site which has previously been recognised as a sustainable solution. In addition, it would also strengthen the ability for the Council to resist proposals in locations which have not been so recognised and which are less preferable. The site is suitable for release now and is considered essential if the Council has any prospect of maintaining a credible supply of housing land and meeting its requirement to 2030.

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<sup>2</sup> CD 10.1

<sup>3</sup> Paragraph 5.4.4 CD 10.1

<sup>4</sup> CD 2.40