

Meeting: Cabinet

Date: 17 November 2020

Wards Affected: All

Report Title: Torbay Local Plan 2012-30: Five Year Review.

Cabinet Member Contact Details: Mike Morey, Cabinet Member for Infrastructure, Environment and Culture. Mike.Morey@Torbay.gov.uk email

Director/Assistant Director Contact Details: David Edmondson, Assistant Director, of Planning, Housing & Climate Emergency. David.Edmondson@Torbay.gov.uk

1. Purpose of Report

- 1.1 Local Plans are required by law to be reviewed at least every five years from adoption. The Torbay Local Plan 2012-30 was adopted on 10th December 2015 and is therefore nearing its five year review date. The Government has set a target for all areas to have an up to date Local Plan by 2023. Torbay is one of 248 local authorities which need to review or update their Local Plan in the near future.
- 1.2 The review (in this context) is an assessment of whether the plan needs to be updated, and is a decision for the Council as Local Planning Authority to make based on planning merits. If the review concludes that an update is necessary, those parts of the Local Plan then need to be updated, following the procedures set out in the Local Planning Regulations 2012 (as amended)¹.
- 1.3 A review of the Local Plan is set out at Appendix 1. This considers the Local Plan against changes that have taken place since 2015, including the 2019 National Planning Policy Framework (NPPF), the adoption of Bay-wide Neighbourhood Plans in Torbay and more recent indications of Government policy, including the "Planning for the Future" White Paper.
- 1.4 A change in housing need is the most common reason why Local Plans need updating. The NPPF states that strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly.
- 1.5 The NPPF also requires the minimum number of homes needed to be calculated using the "standard method" unless exceptional circumstances justify an alternative approach. At October 2020 this is 586 dwellings a year for Torbay, but may change. This is sufficiently different from the Adopted Local Plan to require that the Plan is updated. A local plan update is also a chance to consider more recent local evidence such as delivery rates and employment figures.
- 1.6 The assessment concludes that apart from housing numbers, the Plan remains relatively consistent with the NPPF, although there is inevitably scope to improve and shorten the Plan.

¹ Unfortunately the terminology is confusing. Most people commonly call the update of a local plan a "local plan review". This report seeks to use the term "review" in its narrow sense of the assessment of whether the local plan needs to be updated.

2. Reason for Proposal and its benefits

We want Torbay and its residents to thrive.

We want Torbay to be a place where we have turned the tide on poverty and tackled inequalities; where our children and older people will have high aspirations and where there are quality jobs, good pay and affordable housing for our residents.

We want Torbay to be the premier resort in the UK, with a vibrant arts and cultural offer for our residents and visitors to enjoy; where our built and natural environment is celebrated and where we play our part in addressing the climate change emergency.

- 2.1 The proposals in this report help us to deliver this ambition by seeking agreement of the scope of the Local Plan Update. An up to date development plan is the legal starting point for determining planning applications. It sets a framework for the delivery of affordable and market housing, contains policies on employment, tourism, reducing deprivation, and improving the built and natural environment.
- 2.2 This report seeks to reach agreement on the need for an update of the Local Plan and the scope of that update. Broadly there are three options:
- 1) To carry out a partial update of policies for the supply of housing (i.e. those which set a housing number).
 - 2) To carry out a partial update of policies for the supply of housing (i.e. those which set a housing number) and to carry out a light touch update of other policies to reduce repetition and make minor amendments. This is the recommended approach.
 - 3) To carry out a more detailed re-write to create a new Local Plan.
- 2.3 **Option 1** would be an assessment of whether the local plan's housing figure should be updated in line with the most recent standard methodology housing figure. It would require an update to Local Plan Policies SS1, SS2, SS12 and SS13. There may be a consequential impact on other policies dealing with housing supply, particularly Policy SS2 and neighbourhood area policies (SDT1, SDP1 and SDB1). A key issue will be whether the standard methodology figure is followed. Officer advice is that Government Policy and good practice advice is that the standard methodology figure should be followed. However, no decision needs to be made on this issue as part of this report. A provisional time-line is set out in the Supporting Information section. It appears possible to complete this partial update by late Summer/Autumn 2022. A key unknown is how long the updated plan takes at examination, and whether major modifications to it are required. Over the last 5 years, plans have taken on average around 65 weeks to go through examination. A main reason for a longer examination period is issues around the Test of Soundness at paragraph 35 of the NPPF. Duty to Cooperate and Sustainability Appraisal issues can also cause significant delays.
- 2.4 **Option 2.** In practice, reviewing housing numbers will result in the need to make consequential edits to related policies, and there is scope to make the Local Plan more concise, ensure consistency with Neighbourhood Plan policies and address other environmental issues that have come to light as a result of the Sustainability Appraisal and other factors. While such minor changes would not make the current policies out of date per se, there is a scope to improve on them. Such an update to "Local Plan 1.1" could improve the Plan significantly and would only take slightly longer than option 1, with a fair prospect of adoption by Autumn 2022 (i.e. not significantly longer than Option 1) The caveats noted above also apply here.
- 2.5 Option 2 could also allow a trimming of policies where there is considered to be an overlap with Neighbourhood Plans, or where there is scope to place more detailed guidance within Supplementary Planning Documents. SPDs can be prepared quickly, although they do not have the full weight of a development plan document.

- 2.6 **Option 3.** A total rewrite of the Plan would take significantly longer to achieve than either options 1 or 2 as it would require a whole round of visioning and issues consultations. This option would provide greater opportunity to more significantly rewrite, remove and introduce policies through more far reaching updates to the Plan. However, unless a radically different course is intended, such an approach is unlikely to justify the additional time it would take, and there is a possibility that it would be overtaken by events such as the proposed White Paper. Because the amount of work entailed is the greatest of all the options, and potential soundness issues are also the most significant, it is unlikely that a plan would be adopted before mid-2024, which misses the Government's 2023 target. This option would also imply that the Local Plan is significantly out of step with government policy and other material considerations, which reduces the weight it could be given in decision making. It may have a knock on effect on Neighbourhood Plans (particularly post June 2021).
- 2.7 A fourth option has been considered, which is to argue that the Plan does not need to be updated, as the Local Plan's housing number with a backlog of under supply is actually higher than the standard methodology figure. The Local Plan contains policies to boost housing numbers in the event of a shortfall against five year supply (SS3 and SS13). This is not a recommended approach. The Council is unable to demonstrate five years' worth of deliverable housing land, which means that the Local Plan would be "deemed" to be out of date by the NPPF, and the presumption in favour of sustainable development would apply to applications for housing. Option 4 would in effect be adding a "double presumption" in favour of granting applications for housing, even where this conflicted with other Local or Neighbourhood Plan policies.
- 2.8 Irrespective of which option is chosen, in the short term housing supply will need (from December 2020) to be assessed against the current standard methodology figure, which is currently 586 dwellings per year. On this basis applications involving the supply of housing will need to be determined on the basis of the presumption in favour of sustainable development in Paragraph 11 of the NPPF. Neighbourhood Plan policies enjoy additional protection under paragraph 14 of the NPPF.
- 2.9 It is worth noting that the Courts have held that out of date policies may still carry weight in decision making².
- 2.10 The Local Plan Working Party met on 7 October 2020 and 5 November 2020 and heard from key stakeholders. At the meeting on 5 November 2020, Officers made a recommendation to the Local Plan Working Party which was as follows:
- That the Local Plan Working Party recommend to cabinet that:
- (i) the review of the Torbay Local Plan 2012-30 in Appendix 1 be approved.
 - (ii) as per option 2 set out in this report, the scope of the update will be: "To carry out a partial update of policies for the supply of housing (i.e. those which set a housing number) and to carry out a light touch update of other policies to reduce repetition and make minor amendments, noting that only those policies for the supply of housing are out of date."
- 2.11 Members of the Local Plan Working Party, and Neighbourhood Forum attendees, discussed the options presented in the report alongside the review in Appendix 1.
- 2.12 Some points of clarification were raised which are noted below:
- (i) The review in appendix 1 is an officer assessment and members can take a different view on what is necessary to update

² i.e. an assessment under paragraph 11 d)ii. of the NPPF that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits can also take local plan policies into account.

- (ii) The process for updating the plan is prescribed and includes some key stages (as well as evidence gathering, document preparation, and reflection on/consideration of consultation responses): publication of Options paper for consultation consider representations; produce a Preferred Option and consult (6 week) consider representations and Submission Version (consultation 6 weeks) and Examination subject to the Planning Inspectorate but on average takes over a year. Gant charts are proportionate to other Local Planning Authority timescales.
- (iii) That there can be no guarantee that updating the housing policies will provide a five year housing land supply as that is also dependent on planning application approvals and progress by applicants on delivering the consents.
- (iv) That there may be a marginal effect on the length of Examination depending on the scope of the amendments/updates proposed in terms of Options 1 and 2. It is for the LPA to determine what goes into the update. Examination timeframe will depend on representations made.
- (v) It was clarified that Option 1 Update of Housing Policies would only include those for the supply of housing i.e.: SS1 SS2 [et al] and STP SDP and SDB policies but not those for housing density or affordable housing for example.

2.13 During the discussion concern was raised about broadening the scope and the ability to maintain focus on those issues identified as most in need of an update, namely the housing policies and associated five year housing land supply.

2.12 Members also recognised however, that there are other aspects of the plan that whilst perhaps broadly according with the NPPF would benefit from an update given changes in circumstances. In particular matters such as planning contributions to the NHS, town centre policies, climate policies, housing density/tenure, parking and street layout were raised.

2.13 It was highlighted that Supplementary Planning Documents (SPDs) can be updated where they already exist or new proposals can be brought forward to address some matters. However, those SPDs are intended to expand upon policy or provide further detail to policies in development plan documents (DPDs), but they do not have development plan status. These documents can demonstrate how policies can be taken forward. They do not include land allocations or policies which should be subject to independent examination. These documents need to be consistent with the policies of the Local Plan.

2.14 On the particular issue of NHS contributions, the existing Planning Contributions and Affordable Housing SPD can be reviewed and updated where appropriate but any changes would need to accord with the existing Local Plan policy and cannot increase the funding envelope, meaning that contributions would be balanced against the other identified needs.

2.15 The focussed scope of the update proposed in Option 1 may, over time, need to be reconsidered but this process is available to the Council through a revised Local Development Scheme. This is because, as noted in Option 2 above, in following Option 1 there may be consequential impacts on other policies that would require edits. The scope of the update through Option 1 does not allow for that, nor does it allow for making general edits to the plan more widely.

3. Recommendation(s) / Proposed Decision

The Local Plan Working Party recommends to Cabinet that:

- (i) the review of the Torbay Local Plan 2012-30 in Appendix 1 be approved and that the decision be published in accordance with Section 17 of the Planning and Compulsory Purchase Act 2004 and Regulation 10A of the Town and Country Planning (Local Plan) (England) Regulations 2012.
- (ii) as per option 1 set out in this report, the scope of the update will be:
To assess whether the local plan's housing figure should updated in line with the most recent standard methodology housing figure. It would require an update to

Local Plan Policies SS1, SS12 and SS13. There may be a consequential impact on other policies dealing with housing supply, particularly Policy SS2 and neighbourhood area policies (SDT1, SDP1 and SDB1).

- (iii) a decision on any further amendments to the plan arising from updates to the housing policies in line with the review; or identified as necessary following legislative changes; or the identified as necessary to ensure the plan is sound, be delegated to the Assistant Director of Planning, Housing & Climate Emergency in consultation with the Local Plan Working Party.
- (iv) The terms of reference of the Local Plan Working Party, to reflect the work necessary beyond the review to update the Local Plan, are amended from:

“To support the Local Planning Authority’s review of the Torbay Local Plan 2012-2030 and any other associated documents as may be deemed appropriate by the Assistant Director of Planning, Housing and Climate Emergency”

To:

“To support the Local Planning Authority’s review **and update** of the Torbay Local Plan 2012-2030 and any other associated documents as may be deemed appropriate by the Assistant Director of Planning, Housing and Climate Emergency”

Appendices

Appendix 1: Local Plan PAS Toolkit Part 2: Local Plan Content Checklist.

Background Documents

Torbay Local Plan 2012-2030

National Planning Policy Framework (NPPF)

(National) Planning Practice Guidance (PPG)

Torquay, Paignton and Brixham Peninsula Neighbourhood Plans.

Supporting Information

4. Introduction

- 4.1 The Need to review local plans is set out in Regulation 10A of the Local Planning Regulations 2012. Paragraph 33 of the NPPF states:
“Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future”.
- 4.2 A review of the Local Plan, using a Planning Advisory Service Checklist is set out at appendix 1. The main issue that will trigger a need to update the plan is the government’s standard methodology local housing need figure (LHN). As October 2020 this requires 586 dwellings per year, i.e. 2930 over five years. With a 5% buffer required by the NPPF, this becomes 615 dwellings a year. It is noted that the figure may change, and the government has recently consulted upon a revised methodology which (if brought into force) would require 635 dwellings per year.
- 4.3 The standard methodology figure is higher than the Local Plan’s average growth rate (495 dwellings per year). However, the Torbay Local Plan 2012-30 has an overall requirement of 8,900 dwellings, with a stepped trajectory (set out in Policy SS13) as follows:
- 400 dwellings per year 2012/13- 2016/17
 - 495 dwellings per year 2017/18—2021/22
 - 555 dwellings per year 2022/23-2029/30
- 4.4 In the 8 years of the plan period 2012-20 there have been 2,907 net new dwellings completed, against a requirement of 3,485, making a shortfall of 578 dwellings. The average number of completions was 363 a year. The shortfall must be made up in 5 years³, making an additional 115.6 dwellings a year. With that and a 5% buffer required by the NPPF⁴, the requirement is currently 3,395 dwellings over five years, or 679 dwellings a year.
- 4.5 The standard methodology LHN figure is actually lower than the current figure (615 dwellings per annum (dpa) under the standard methodology plus 5% buffer; against 679 dpa under the local plan with backlog and 5% buffer). However, the difference in the figures, coupled with a shortfall in 5 year supply of deliverable sites is recommended to be sufficient to trigger a review of housing numbers. These are set out in Policies SS1, SS2, SS12 and SS13 of the Local Plan. There is likely to be a consequential impact on other policies dealing with housing supply, particularly Policy SS2 and neighbourhood area policies (SDT1, SDP1 and SDB1). However these latter policies appear robust in terms of their broader conformity to the NPPF, notwithstanding the issue of housing numbers.
- 4.6 **Corporate and Community Plan 2019-23.** Although the Local Plan predates the Corporate and Community Plan, it contains policies that address its objectives. It has policies for schools, affordable housing, local amenities and turning the tide on poverty, which are all part of the “helping people thrive” objective. It contains policies to support the economy, regenerate town centres and to make Torbay the premier resort. The Local Plan has policies on tackling climate change, recycling, flooding and transport connectivity.

³ Unless an alternative method is agreed at the Plan making stage.

⁴ Where the Housing Delivery Test (HDT) is below 85% of the requirement for the last three years, the buffer becomes 20% (NPPF footnote 39). If the HDT is <75% the Presumption is automatically triggered.

Torbay has pioneered partnership working between communities and the council through the roll out of Bay wide neighbourhood planning.

- 4.7 **Neighbourhood Plans.** Torbay has bay wide coverage of Neighbourhood Plans, which were all “made” in June 2019. The online Planning Practice Guidance (PPG) states that:

*“Where a neighbourhood plan has been brought into force, the local planning authority should take its policies and proposals into account when preparing the local plan. Local plan policies should not duplicate those in the neighbourhood plan, and do not need to supersede them unless changed circumstances justify this. It is important for local plans to make appropriate reference to neighbourhood plan policies and proposals, and similarly for neighbourhood plans to acknowledge local plan policies that they relate to” .
Paragraph: 006 Reference ID: 61-006-20190723”*

- 4.8 Whilst there are some differences between the Local Plan and the Neighbourhood Plans, these are not considered sufficiently great to necessitate a major update of the Local Plan. In particular, all three Neighbourhood Plans set out strong urban renewal policies which make best use of land, in accordance with the Local Plan and the 2019 NPPF (para 117 et seq.). The Neighbourhood Plan policies were assessed by independent examinations and by Full Council (in November 2019 and June 2019), and found to be in general conformity with the Local Plan. Where there are non-strategic differences, the Neighbourhood Plan takes precedence over the Local Plan (NPPF 30).
- 4.9 It is noted that the Planning for the Future White Paper was published in August 2020. This proposes much shorter Local Plans which allocate land for either growth, renewal or protection. These changes will require primary legislation, and the government is urging local authorities to keep plans up to date in the meantime.

5. Options under consideration

- 5.1 Three Options are set out in the main report: 1) to carry out a partial update of policies for the supply of housing; 2) To carry out a partial update of policies for the supply of housing and to carry out a light touch update of other policies to reduce repetition and make minor amendments; or 3) To carry out a more detailed re-write to create a new Local Plan. The second option is recommended as being the most effective.
- 5.2 In terms of timescales, the most significant unknown is examination period. Planning Inspectorate data from the last five years shows that strategic plans such as local plans take on average about 65 weeks to go through examination (post submission), with housing numbers being a significant issue at examinations.

Figure 1: Duration of Strategic Plan Examinations over 2015-20 in Weeks (Source PINS)

flexible policies for town centre regeneration. The neighbourhood plans and Masterplan Supplementary Planning Documents have added further detail to these regeneration proposals. There are also policies seeking to tackle climate change and promoting low carbon development and resilience measures.

- 5.7 Because the Local Plan is broadly consistent with the NPPF and Community Plan, such a root and branch rewrite of the Plan is not recommended to be necessary. It would be very time consuming and may go full circle and come up with a similar strategy to the existing Plan. Furthermore the plan may be overtaken by events if changes to the planning system mooted in the White Paper are progressed.
- 5.8 It is accepted that in some cases, the implementation/effectiveness of policies may benefit from clarification or improvement. Option 2 would allow for a “light touch” update so long as the fundamental thrust of policies is not changed. Further clarification could be achieved through Supplementary Planning Documents and Masterplans. Several policies in the Local Plan contain “hooks” that allow for supplementary guidance. SPD updates can be achieved in a straightforward and simpler manner, although they do not hold the same weight in decision-making as the development plan itself.

6. Financial Opportunities and Implications

- 6.1 The Local Plan is a significant financial commitment, but reviewing and updating plans is a legal requirement. The Local Plan sets the framework for seeking S106 contributions and Community Infrastructure Levy (or their replacement “infrastructure levy”). A minimal update to the Local Plan will mean that the broad framework set out in the Planning Contributions and Affordable Housing SPD is likely to remain relevant, reducing the need for a “deep dive” into the SPD.

7. Legal Implications

- 7.1 The Local Plan, together with neighbourhood plans constitute the “development plan”. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990).
- 7.2 Many aspects of the planning system have been clarified by the Courts. In particular, there is a debate about plans being out of date. The Courts have held that out of date policies may still be given “substantial or even full weight” by the decision maker. In particular, whilst lack of five year supply may “deem” policies to be out of date, other factors such as consistency with national policy, factual and policy changes and the reasons for a housing shortfall may all be material in considering how far a plan is assessed as being out of date, and accordingly how much weight it is reasonable to give it⁵.
- 7.3 The above assessment suggests that, given that the Local Plan is broadly consistent with the 2019 NPPF, and sets out a flexible approach to town centres, it is capable of carrying significant weight in planning decisions- and full weight for non-housing proposals. The housing shortfall means that applications involving the provision of housing must be determined on the basis of the presumption in favour of sustainable development; and housing proposals should be approved unless they can be shown to be significantly and demonstrably harmful (NPPF paragraph 11 d)ii, often called the “tilted balance”). However, the Local Plan may, as a planning judgement, continue to be given significant weight in decision making. Neighbourhood Plans enjoy separate protection under paragraph 14 of the NPPF, so long as they meet the conditions set out therein.

⁵ Holgate J in Gladman v S of S MHCLG, Corby BC and Uttlesfield DC [2020] EWHC 518 (Admin). Paragraphs 94-97. This ruling also determined that development plan policies should be considered within the “tilted balance” in paragraph 11d)ii of the NPPF.

8. Engagement and Consultation

- 8.1 The Checklist has been prepared in discussion with the Planning Advisory Service. Discussions have taken place with Torbay's Neighbourhood Forums/Plan Group in relation to the Local Plan Update.

9. Purchasing or Hiring of Goods and/or Services

- 9.1 Not directly applicable. Updating the Local Plan evidence base is likely to entail appointing consultants on matters such as viability.

10. Tackling Climate Change

- 10.1 The Local Plan is required by law to promote sustainable development. Aspiration 5 (p37) is to respond to climate change. Whilst many policies in the Local Plan are relevant to climate change, Policy SS14 "Low carbon development and adaptation to climate change", ES1 "Energy", and ES2 "Renewable Energy and low-carbon infrastructure" are particularly relevant.

11. Associated Risks

- 11.1 If a review has not been carried out inspectors at appeal may give the plan very little weight. Whilst acknowledging that the Plan is out of date will mean that the Presumption In favour of sustainable development (at paragraph 11 of the NPPF) will apply, the council will be able to argue that most aspects of the plan remain relevant and that accordingly significant weight may be given to it.
- 11.2 The Government has stated that it wants all areas to have an up to date local plan by 2023. Whilst not updating the Local Plan could result in the Government intervention to force an update, this contingency is very unlikely in Torbay's case. A more likely risk would be planning by appeal.

Equality Impacts Please complete this section if your proposal results in a change to services and impact on the community or parts of the community – seek advice and help from Policy, Performance and Engagement Team – equalities@torbay.go.uk

9.	Identify the potential positive and negative impacts on specific groups			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people	The Local Plan can help provide affordable housing, and contains policies on education and reducing child poverty.		
	People with caring Responsibilities	The Local Plan includes policies on providing and improving the quality of accommodation for people in need of care.		
	People with a disability	Policy H6 of the Local Plan requires the provision of accessible dwellings on larger developments. It contains policies for specialist accommodation (H6) and the provision of disabled parking and other accessibility matters.		
	Women or men		Neutral impact	
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>	There is a search for temporary stopping sites for Travellers taking place in parallel to the Local Plan Review.	Overall neutral. Policy H5 deals with travellers, but is a criteria based policy rather than a specific allocation.	
	Religion or belief (including lack of belief)	The local plan provides a framework for the provision of community facilities.	Overall neutral	
	People who are lesbian, gay or bisexual		Neutral impact	

	People who are transgendered		Neutral impact
	People who are in a marriage or civil partnership		Neutral impact
	Women who are pregnant / on maternity leave		Neutral impact
	Socio-economic impacts (Including impact on child poverty issues and deprivation)	The Local Plan contains policies seeking to reduce deprivation and child poverty.	
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)	The provision of housing, affordable housing and open space and recreational facilities all contribute towards better health. Policy SC1 Healthy Bat requires health impact assessments to be carried out for developments of 30+ dwellings.	
10..	Cumulative Council Impact (proposed changes elsewhere which might worsen the impacts identified above)	None direct	
11.	Cumulative Community Impacts (proposed changes within the wider community (inc the public sector) which might worsen	None direct	

	the impacts identified above)	
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