

DCS 1

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Torbay Council  
Planning & Development Services  
Town Hall Castle Circus  
TORQUAY  
TQ1 3DR

**Our ref:** DC/2012/112403/CS-  
02/PO1-L01

**Your ref:**

**Date:** 13 March 2015

Dear Sir/Madam

## **TORBAY PROPOSED SUBMISSION PLAN FEBRUARY 2014 SCHEDULE OF PROPOSED MODIFICATIONS TO THE LOCAL PLAN**

Thank you for the recent consultation with regards to the above Schedule of Proposed Modifications.

We welcome the positive changes included in the document which reflect our continued partnership working. In addition we would like to offer some further modifications for your consideration.

We note that flood risk is not included within the CIL Draft Charging Schedule List of Key Infrastructure Projects (Section 18, Page 14).

We suggest that Paignton sea frontage be considered for inclusion on the list given its sea defence function, the number of properties it protects and the redevelopment pressures it faces.

In respect of the detailed Sustainability Appraisal of Proposed Sites, Paignton Harbor Car park should make reference to potential impacts of wave action.

In terms of the Station Lane/Great Western Car Park site we would recommend that reference to the impacts of sea level rise should be included. The same issue should also be addressed with the Victoria Car Park site.

Environment Agency  
Sir John Moore House, Victoria Square, Cornwall, Bodmin, PL31 1EB.  
Customer services line: 03708 506 506  
[www.gov.uk/environment-agency](http://www.gov.uk/environment-agency)  
Cont/d..

Should you have any queries with regards to the above please do not hesitate to contact me.

Yours faithfully

**Shaun Pritchard**  
**Sustainable Places Technical Specialist**

Direct dial 01208 265047

Direct fax 01208 78321

Direct e-mail [shaun.pritchard@environment-agency.gov.uk](mailto:shaun.pritchard@environment-agency.gov.uk)

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DCS 2

Date: 18 March 2015  
Our ref: 144499  
Your ref:



Mr Steve Turner  
Team Leader - Strategic Planning  
Spatial Planning  
Place and Resources  
Torbay Council  
**BY EMAIL ONLY**

Customer Services  
Hombeam House  
Crewe Business Park  
Electra Way  
Crewe  
Cheshire  
CW1 6GJ

T 0300 060 3900

Dear Steve

### **Planning consultation: Community Infrastructure Levy – Torbay Council**

Thank you for your consultation on the above dated February 2015 which we were consulted upon on 09 February 2015

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

We note that the Authority have determined only to charge Out of Town retail development for CIL excluding all other development. We also note that the only infrastructure on the Regulation 123 list is for a single education development and the new Kingskerswell Bypass. Whilst it is for the Authority to determine what will be funded by CIL and what by other means, the Authority must ensure that funding for European Site mitigation has certainty of delivery.

Natural England has previously considered what constitutes certainty of funding for recreational pressure mitigation measures and the processes how that might be achieved. This position is amplified in a letter to other Authorities in the Thames Basin Heath area and that letter is enclosed. Whilst that letter is concerned with those authorities and those mitigation measures, some principles are applicable here. In particular we would like to draw your attention to our position of the acceptability of Supplementary Planning Documents to secure funding for mitigation measures. Whilst this may be an appropriate mechanism to set out the updated evidence base and the mitigation necessary, it is not sufficient for certainty of funding.

As competent Authority for Habitat Regulations Assessment, the Authority has screened the proposed development at Brixham and concluded that Likely Significant Effects cannot be ruled out for additional recreational pressures on calcareous grasslands at Berry Head, a feature of the SAC. As these effects would result from development throughout the Brixham development area, the authority propose to instigate a strategic solution for developer funded mitigation for any effect over and above that which cannot be managed by an updating of the management plan for the European site to enable the site to be in a favourable condition.

Given the limitations to the pooling of s106 money after 1 April 2015, it is highly unlikely that that will be a suitable means for certainty of funding as there has been one application since 2010 where



mitigation measures are identified, leaving only 4 more potentially pooled applications to contribute to a solution. A feature of proposed development at Brixham is a relatively higher number of smaller developments, greater than the total number of pooled permissions permitted by the Regulations. We do not accept the Authority's suggestion of individual applications funding individual elements of the total necessary funding as all applications where LSE cannot be ruled out are likely require some funding for all elements. Alternatively it is conceivable that some larger applications might be able to justify no or limited LSE due to the provision of additional on-site Green Infrastructure. Where LSE are determined, with mitigation being uncertain of delivery (in this case due to funding uncertainties) then the Plan cannot be said to be sound until there is sufficient certainty of funding.

We note that section 8 on page 10 of the draft document proposes that an SPD is used to determine funding for necessary biodiversity mitigation measures. This would not be an acceptable method of ensuring certainty of funding.

We therefore advise that the Authority review their proposals to ensure that, if not through CIL., certainty of funding of mitigation measures for European sites is achieved having regard to the current legislation.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact Laura Horner on 0777 589 2929. For any new consultations, or to provide further information on this consultation please send your correspondences to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

Yours sincerely

Mrs Laura Horner  
Lead Advisor Plans Devon, Cornwall and Isles of Scilly Area Team

DCS3

**Pickhaver, David**

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**From:** Gary Parsons [Gary.Parsons@sportengland.org]  
**Sent:** 20 March 2015 15:18  
**To:** Planning, Strategic  
**Subject:** RE: Proposed draft CIL Charging Schedule

Thanks

Im in Torbay Monday morning to agree a way forward (with leisure colleagues) to get the emerging PPS to adoption and agree a process for delivery/implementation. How we link into S106 or CIL is important to resolve (an issue that's cropping up everywhere).

Happy to discuss when convenient. Either by phone or in Torbay.

Regards

**Gary Parsons** Planning Manager **T:** 020 7273 1861 **M:** 07711 086487

**From:** Planning, Strategic [mailto:Strategic.Planning@torbay.gov.uk]  
**Sent:** 20 March 2015 14:55  
**To:** Gary Parsons  
**Subject:** RE: Proposed draft CIL Charging Schedule

Hi Gary

Thank you for Sport England's comments on the CIL Draft Charging Schedule.

I agree with your comments and would welcome further discussion on how we deal with the pooling of S106 issues etc.

Best regards

David

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**From:** Gary Parsons [<mailto:Gary.Parsons@sportengland.org>]  
**Sent:** 20 March 2015 14:33  
**To:** Planning, Strategic  
**Subject:** Proposed draft CIL Charging Schedule  
**Importance:** High

Sport England supports use of planning obligations (s106)/community infrastructure levy (CIL) as a way of securing the provision of new or enhanced places for sport and a contribution towards their future maintenance, to meet the needs arising from new development. This does need to be based on a robust NPPF evidence base for sport and recreation. This includes indoor sports facilities (swimming pools, sports halls, etc) as well as playing fields and multi use games courts.

All new dwellings in Torbay in the plan period should provide for new or enhance existing sport and recreation facilities to help create opportunities for physical activity whilst having a major positive impact on health and mental wellbeing.

'Sporting and recreation facilities' are included within the definition of Community Infrastructure Levy (CIL) infrastructure in the 2008 Planning Act (section 216) which means money raised can be used to fund new or enhanced sports facilities.

For sport and recreation, Sport England would advise that generally it may be more effective if the contributions are sought through planning obligations rather than CIL, unless there is a specific

project identified. If such a project is deliverable, then it may be more appropriate to fund through CIL and consequentially should on the Regulation 123 List.

In removing 'playing fields' from the Regulation 123 List and focussing on the use of Section 106 Agreements the Council should be aware that after April 2015, no more than five planning obligations can be used to pool funds for any one piece of infrastructure/project. Therefore the Council will need to think quite strategically and plan effectively for sports infrastructure delivery in the future linking development sites with specific projects to meet identified sporting needs. This will enable the Council to take a proactive approach and ensure the most effective use of planning obligations and CIL together to help deliver this/meet the needs of the population.

Any planning obligations must also pass the following tests as set out in paragraph 204 of the NPPF:

- 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.

**Gary Parsons**

Planning Manager

**T:** 020 7273 1861

**M:** 07711 086487

**F:** 01460 77263

**E:** [Gary.Parsons@sportengland.org](mailto:Gary.Parsons@sportengland.org)

Sport England's London office has moved to 1st Floor, 21 Bloomsbury Street, London, WC1B 3HF



**Creating a sporting habit for life**



Ashlands House, Ashlands, Crewkerne, Somerset, TA18 7LQ

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**Pickhaver, David**

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**From:** Ross Anthony [ross.anthony@theatrust.org.uk]  
**Sent:** 11 March 2015 17:02  
**To:** Planning, Strategic  
**Subject:** Community Infrastructure Levy Preliminary Charging Schedule

Our Ref.: A/6430

Thank you for consulting The Theatres Trust on the preliminary draft charging schedule for the Community Infrastructure Levy.

The Theatres Trust is The National Advisory Public Body for Theatres. The Theatres Trust Act 1976 states that 'The Theatres Trust exists to promote the better protection of theatres. It currently delivers statutory planning advice on theatre buildings and theatre use through the Town & Country Planning (General Development Procedure) (England) Order 2010 (DMPO), Articles 16 & 17, Schedule 5, para.(w) that requires the Trust to be consulted by local authorities on planning applications which include 'development involving any land on which there is a theatre.'

The Theatres Trust supports the exclusion of D1 and D2 from the CIL as these uses often do not generate sufficient income streams to cover their costs. Consequently, they require some form of subsidy to operate and this type of facility is very unlikely to be built by the private sector if CIL is charged.

However it should be noted that similar uses such as theatres are sui generis not D2. It may be easier to list 'All other uses – Nil rate'.

Regards,

Ross Anthony  
Planning Adviser  
The Theatres Trust  
22 Charing Cross Road, London WC2H 0QL  
Tel: 020 7836 8591  
Fax:020 7836 3302  
[www.theatrust.org.uk](http://www.theatrust.org.uk)

The Theatres Trust  
Protecting Theatres for Everyone  
National Advisory Public Body for Theatres

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National Advisory Public Body for Theatres

DCSS  
CIL

**Pickhaver, David**

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**From:** D Watts [dwdw@paigntonneighbourhoodplan.org.uk]  
**Sent:** 20 March 2015 10:46  
**To:** Steward, Pat; Pickhaver, David; Planning, Strategic  
**Cc:** Mike Parkes  
**Subject:** Paignton Neighbourhood Forum response to the proposed LP Mods, CIL and LVL  
**Attachments:** 2015-03-20 Forum Submission-Letter+Appendices.doc; 2015-03-20 Forum Submission-Letter+Appendices.pdf

**Importance:** High

Dear Pat and David

I attach the Forum's formal submission on each of the above consultation documents incorporating the final amendments agreed by the Forum at the meeting last night.

I would be grateful to receive electronic acknowledgement of safe receipt.

As you will see above, a copy has been emailed also to the strategic planning email address as requested in the Public Notice.

Also attached is a version in word that I hope is of assistance with the next stage collation of all views received on the consultation.

Please don't hesitate to let me know if any clarification is required.

With best wishes

David Watts  
Chairman, Paignton Neighbourhood Plan Forum  
<http://www.paigntonneighbourhoodplan.org.uk/>  
Tel: 01803-523434

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# PAIGNTON NEIGHBOURHOOD FORUM

- Blatchcombe
- Clifton with Maidenway
- Goodrington, Roselands & Hookhills
- Paignton Town
- Preston



c/o 34 Totnes Road  
Paignton  
TQ4 5JZ

20 March 2015

By email to [strategic.planning@torbay.gov.uk](mailto:strategic.planning@torbay.gov.uk)  
To Spatial Planning (FAO Pat Steward)  
Torbay Council  
Electric House (2nd Floor)  
Castle Circus  
Torquay  
TQ1 3DR

Dear Pat

- i) Proposed Modifications to the submitted Torbay Local Plan;**
- ii) Proposed Community Infrastructure Levy;**
- iii) Proposed Local Validation List.**

1. These are the views of the Paignton Neighbourhood Forum on the above proposals published by the Council on 9 February 2015 for response before 9am on 23 March 2015.
2. The views are presented in a single submission because the proposals are inter-related and have been assessed collectively, as well as separately.
3. Sub-headings and appendices have been adopted to assist the next stage assessment of component parts by the Council and Local Plan Inspector as requested in the consultation notification. However it is stressed the views set out in this covering letter form an integral part of the submission, and are to be read in conjunction with the appendices. Cross references are included to help with this.

#### **i) Proposed Modifications to the submitted Torbay Local Plan:**

4. It continues to be the Forum's view overall that the Local Plan is unsound, but can be made 'sound', as required by the National Planning Policy Framework (NPPF). However, review of the proposed Modifications has led to the conclusion that this will not be possible unless a number of the Modifications are amended further. Full details are set out in this submission with supporting appendices that evidence where and why further change is necessary to achieve the soundness required.
5. As requested, the submission does not stray into other parts of the Local Plan that remain unchanged by the Modifications proposed. For ease of reference, the views of the Forum on the Plan submitted were made by letter on 31 March 2014, and by supplementary letters on 24 October and 16 November 2014 shortly before the Hearing opened on 18 November 2014. The supplementary letters drew attention to

key evidence relating to soundness from authoritative sources published after the Local Plan had been submitted. Where relevant these are referred to further below.

### **Relevant tests and procedural matters**

6. In coming to conclusions on the Modifications proposed by the Council, the Forum has applied only the following considerations:-
  - The tests of soundness required to be met as defined in NPPF158.
  - NPPF154 which states Local Plans are expected to be 'aspirational but realistic'.
  - The 'Wednesbury' test of reasonableness that must be met by the final decision of the Inspector and the Council in order to be legally compliant on the basis of the evidence available. (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1947) 2 All ER 680*).
7. The Forum is concerned that the composite set of Modification documents in particular must be considered 'in the round', not separately under the next stage process as defined in the consultation notification. This submission is therefore being copied in full and concurrently to the Local Plan Inspector via the Programme Officer.
8. This is the first opportunity the Forum has had to comment on the additional information provided to the Inspector by the Council after the Hearing session in November 2014, and on the findings so far published by the Inspector. Forum comments on these Post Hearing document sets (numbered PH1 to PH8 on the Council's website) have been included below.
9. The Forum has found the Inspector's interim findings in PH2 and PH4 clear, concise, and helpful on the following key issues:
  - support for the proposed 'step-change' in the local economy and net addition of 5-6,000 jobs by 2032 (PH2-para.13);
  - recognition that there is no evidence yet of net job growth – and assumption made that net job growth will start to show from 2016 (PH2-para 12);
  - the Strategic Housing Market Assessment (SHMA) growth is not justified at present (PH2-para 14);
  - the interim figure indicated of 10,000 homes is not immutable, and review may justify less (PH2-para 18);
  - the housing trajectory is not clear (PH4-para.9);
  - Part 5 of the Plan needs to be made clearer (PH2-para.20);
  - monitoring needs to be flexible, highly responsive, and allow for downward revision as well as upward (PH2-para.21).
10. Conversely, the Forum is concerned to see the Inspector has so far concluded (in PH4):
  - the challenge to job growth is '*very largely based on unsubstantiated assertions*' (PH4 para.2);

- additional information from the Council on Sustainability Assessment (SA) does not show 10,000 additional dwellings would be unsustainable (PH4 para.3);
  - the need for a trigger point for site allocation Development Plan Documents (DPDs) if Neighbourhood Plans (NPs) fail (PH4-para.7).
11. However, it is noted the Inspector has confirmed his interim and further findings are not final, pending his consideration of the responses made to the Councils proposed Modifications (PH2-para.1 and PH6-email).
  12. This is important because the Forum has relevant concerns about some of the additional 'evidence' provided to the Inspector by the Council, and resulting conclusions drawn by the Inspector.
  13. Account must also be taken of the Government's Household Projection for 2012 to 2037 published on 27 February 2015 by the Department for Communities and Local Government (DCLG). The projections have been revised to 2021, and extended to 2037. They are lower than has so far been assumed by the Council and the Inspector. These changes are new and relevant evidence, and must be taken into account.

#### **Conclusions reached and why**

14. The Forum has examined the changed mix of proposed Main Modifications (MMs) and Additional Modifications (AMs) that occurred between the drafts published by the Council on 8 January 2015 and those published for formal consultation on 9 February 2015, including the corrections published only on the Council's web site on 17 February 2015.
15. In summary, the Forum:
  - broadly agrees with the published consultation classification of MM's and AM's, apart from a few important exceptions defined later below;
  - supports the majority of AMs, if the wordings proposed remain unchanged;
  - could support a further 20 AMs if amended;
  - does not support 6 AMs, and nearly all of the MMs, without significant change to reflect more up to date evidence now available
16. The conclusions reached on the MMs and AMs individually are shown in **Appendix 1** herewith attached.
17. For quick reference, a colour code is shown:
  - Green - those MMs and AMs the Forum supports;
  - Yellow - those that can be supported if adjusted as shown;
  - Red - those requiring significant change as shown.
18. In summary, the red Modifications fail to resolve the key issues identified to date, and in their published form fail the test of 'soundness' for one or more of the following reasons:

- failure to accord with the evidence;
  - Inadequate safeguard of the now clear risk of a significant homes/jobs imbalance;
  - Inadequate consideration of the drainage infrastructure problem identified, and duty to assess this in accordance with the Supreme Court decision referred to later below;
  - insufficient consideration of the impact on protected species as required by the agreement reached with Natural England;
  - inadequate provision of a flexible, highly responsive, monitoring mechanism the Inspector has agreed is required.
19. Further details are given below under the 3 key sustainability roles for planning defined by NPPF7. The details are to be read in conjunction with the attached appendices:
- a) The Economic role
20. The Forum continues to support in full the proposed 'step-change' in the local economy by planning for a 5-6,000 net increase in jobs by 2032. Since the Hearing in November, the latest evidence now available shows that only 8,300 additional homes are required by the 'policy-on' /Full Objectively Assessed Need (FOAN).
21. The post Hearing evidence provided to the Inspector by the Council, and DCLG household projections now available, prove this conclusion to be clear and correct, as shown below:
- The evidence on job increase is set out in Post Hearing document PH1 Appendix 3, and 3.1d in particular. The Inspector called for this further information from the Council because the Council agreed at the Hearing that no net increase in job provision has so far been achieved, even though further homes have been built. The Inspector wished to ensure the net increase in jobs proposed was soundly evidenced
  - The Council's evidence in PH1 Appendix 3.1a states (page 2 fifth bullet point) that the "*PBA and subsequent Oxford Economics projections are more robust than the current in-house assessment of net job increases could provide. The January 2014 Oxford Economics Projections indicate a net increase of 5,700 new jobs in Torbay between 2012-30. This is higher than the figures used by PBA but broadly compatible with PBA's overall findings.*"
  - In support of the submitted Local Plan, the Council has already confirmed in Technical Paper SD24 entitled '*Growth Strategy and capacity for change*' that in the 'policy-off' state, the demographic OAN would be negative growth because deaths exceed births in Torbay, and future growth depends entirely on the assumed rate at which net-inward migration will return. Growth from migration dried up in the previous 10 years due to economic decline locally that occurred well before the national economic recession commenced in 2008.
  - The Council's Technical Paper SD24 correctly points out that the population projection to 2032 by ONS already includes an assumption that net-inward migration will restart from the nil level reached at the time of the 2011



Census. It is this assumed pace of return to net-inward migration, driven by an assumed return to job growth, that the FOAN is attempting to anticipate and address.

- Therefore, by aligning the latest projections alongside each other, as shown in **Appendix 2** attached herewith, and summarised below, the position is now clear.

**Table 1:** Alignment of most recent evidence (Summary of Appendix 2)

Period	Year	ONS Population Projection	DCLG Household Projection	Oxford Econometrics Jobs
0	2012	131,500	59,404	59,500
5	2017	133,700	61,267	63,000
10	2022	136,600	63,461	64,500
15	2027	139,600	65,677	65,000
20	2032	142,500	67,746	n/a
20yrs	2012-32	+11,000	+8,342	+5,500 min

Source:

ONS - Population projection (2012 based) released 29 May 2014

DCLG - Household projection (2012 based) released 27 February 2015

Oxford Econometrics - Jobs projection produced for the Council January 2014

22. It is relevant to note the PBA work for the Council predates any of the latest ONS and DCLG projections to 2032. The Council very clearly now relies on the Oxford Econometrics projection. This too at the time (January 2014) did not have the benefit of the ONS and DCLG projections now available. The Job projection now being used by the Council in 3.1d assumes a more rapid job growth than has so far occurred, but does provide sufficient evidence that a 5-6,000 net increase is realistic over the full plan period to 2032. It is therefore no longer appropriate for the Council or the Inspector to prefer the evidence of the PBA reports. To do so would run the unnecessary risk of challenge.
23. There are further matters of relevance at this point:
- It is noted that post hearing exchanges between the Council and the Inspector occasionally appear to confuse the terms of net job growth and new job growth. The two terms are of course different. There can be new job growth without there being net job growth. Referring only to new job growth gives no indication of the net growth position. The agreed Local Plan Policy is to achieve 5-6,000 net job growth not new job growth. The Forum requests that confusion be avoided.
  - There is no base figure included in the Local Plan or Modifications that will enable effective monitoring and Review proposed. From **Appendix 2** herewith attached that contains the table given to the Inspector by the Council, the base figure for 2012 for monitoring is 59,500 jobs. Job growth figures also need to be included in the Modifications to the summary shown in Table 7.1 (*Local Plan Phasing and Review*), to enable effective monitoring of both jobs and homes.
  - There is the question of whether or not it is now appropriate to amend the job delivery trajectory, given it has been agreed there is no evidence of net job growth having so far been achieved, even though new homes have been

constructed, and we are halfway through the first 5 year monitoring period (2012-2017). The Forum supports the view of the Council and the Inspector that the tide may start to turn when the South Devon Link Road opens later this year (2015), thus enabling net growth to show through before the first 5 year Review point in 2017. The Forum supports this view, and therefore does not propose any change to the net job growth trajectory. However, it is clear the same cannot be the case with the housing trajectory referred to next below.

b) The Social role

24. The Forum has found the Modifications will not provide a housing delivery trajectory that is 'sound' having examined each of the following:
  - as shown in the submitted Local Plan to achieve 8-10,000 additional homes;
  - as proposed in the Modifications to attain 10,000;
  - as will result from the household projections recently issued by DCLG.
25. Account has also been taken of the NPPF47 requirement to include a 5% addition in the first 5 year period drawn from the supply for future years. The resulting comparison is shown in Appendix 3 attached herewith.
26. The conclusions reached are:
  - a 'flat line' trajectory would not be 'sound' as it will result in an unjustified rolling 5 year delivery rate that would significantly exceed the FOAN (see Table 1 above) and cause premature Greenfield land release in very sensitive areas of drainage constraint and habitats of protected species;
  - the trajectory proposed in the Modifications no longer follows equally spaced 5 year time periods, thus introduces an unnecessary risk of monitoring confusion at the 5 year Review periods proposed and supported;
  - actual delivery of planning consents in the first 5 year period significantly exceeds the requirement shown in the DCLG projections recently issued, and without a net job addition being achieved.
27. The last conclusion is of particular concern as it provides conclusive evidence that a repeat has already started to occur of the over supply that arose in Torbay from 2001 to 2011 which the evidence supporting the Local Plan confirms resulted in more than 5,000 dwellings being built but only 1,400 increase in population. This is why the Plan area now suffers from a large number of dwellings that have stood vacant for more than 6 months and cause the Council to use scarce resources to bring back into use 150 per year.
28. Having considered each of these factors, and the need to keep a realistic and sustainable balance between FOAN job and homes growth, it is the Forum's conclusion that a 'sound' trajectory would be achieved by adopting the DCLG household projection from 2012:
  - it incorporates the corrections by DCLG to household size change in future years that previously caused the Forum concern (i.e. household growth to 2021 is now significantly less than 4,400 contained in the interim projections issued and less than the 'extrapolated 8,800' assumed by the Council at 2032);

- the projection supports in full the 5-6,000 net additional growth in jobs as evidenced in paragraphs 20-23 above;
- because an over supply has already occurred, the government's wish to see a 'significant boost' in housing supply has already been met (NPPF47).

29. The resulting trajectory the Forum has found would achieve the 'soundness' required is shown in Table 2 below (figures rounded to nearest 5):

Table 2: Housing delivery trajectory

Period	Year	Annually	5 yr Total	Cumulative
Yrs 0-5	2012-17	375	1,875	1,875
Yrs 6-10	2017-22	440	2,200	4,075
Yrs 11-15	2022-27	440	2,200	6,275
Yrs 16-20	2027-32	415	2,075	8,350

Source: Appendix 3

30. The trajectory would remain subject to each 5 year Review, and will provide the soundness lacking in the Modifications proposed because the trajectory shown in Table 2 relates correctly to the FOAN and justifying evidence.
31. The trajectory in Table 2 would also give more time to address the foul water drainage issue that has not been addressed sufficiently so far in either the Inspectors interim findings or the Modifications proposed, as the following evidence demonstrates:

- In the Forum's letter of 24 October 2014 (see para.5 above) attention has been drawn to the findings of the Council's Sewer Capacity Study (SD88) that show very significant assumptions have been made about the ability to accommodate the scale of additional development proposed. As a result, the Inspector requested further information from the Council. This has been provided to the Inspector in PH1 at pages 14 and 15 under heading Appendix 6.1 entitled 'Infrastructure'. The additional information only confirms the evidence given by the Forum at the Hearing and has not addressed the concerns raised.
- The critically important concern raised by the Council's Sewer Capacity Study is that the asserted adequacy of sewer capacity to accept additional foul water is actually based on three assumptions that are being accepted as fact without examination of the evidence and robustness:
  - (i) the assumption that spare capacity for foul water in the combined sewer will arise because existing households will use less water and thereby release capacity in existing sewers for additional development – an assumption defined in the report as *"a substantial challenge"* (SD88 page 3)
  - (ii) the assumption that climate change in combination with 'urban creep' caused by soft areas converting to hard surfaces will not increase surface water run-off into existing sewers – an assumption defined in the report as *"highly likely to cause significant detriment"* (SD88 page 3)
  - (iii) the assumption that a robust strategy can be put in place by the Council to remove surface water from the existing system in order to maintain the current level of service – with no indication given of how this can be achieved by the Council realistically, yet it is clearly fundamental to overcoming the development constraint that exists.

- The clarification supplied in the Post Hearing information has not addressed any of these assumptions, and only superficially refers to other aspects. The Forum remains concerned that there is very clearly a need for some form of Infrastructure Delivery Plan that shows where, when and how this constraint will be overcome if the Modifications continue to propose a substantial number of additional homes.
  - Since the Hearing in November, the issue has grown in significance and salience. A planning application was made to the Council for development of Greenfield land off Yalberton Road that is already allocated for development in the existing Local Plan of 2004 (Application P/2014/0983). On 10 December 2014, South West Water submitted formal objection on the grounds of inadequate sewer capacity. A copy is attached herewith at (**Appendix 4**). The Inspector must consider this further evidence of the problem the Forum has already drawn attention to.
  - At the Hearing in November, and by letters from the Forum of 24 October and 16 November 2014, attention has been drawn to the foul water flooding that takes place currently at Collaton St Mary, and absence of any indication that the foul drainage problems of the Masterplan area has been addressed, also in the Town Centre.
  - At the Hearing in November, the assumption was clearly being made by developers (and it would appear by the Inspector) that these are matters of construction detail to be resolved by financial contributions in due course to provide the drainage solutions required. This is not the point the Forum has raised. The evidence clearly shows there is a need to plan for trunk sewers or expensive routes that will have to serve a number of new sites. There is no plan of where these need to be located, and they are likely to involve significant viability issues. The Supreme Court ruling of 2009 has determined that Water Undertakers such as South West Water, do not have the lawful right to prevent a developer from connecting to an existing sewer, and it falls to the responsibility of the planning system to address the issue where a problem of capacity exists. This obviously includes Local Plan making (*Barratt Homes Ltd v Welsh Water 2009 UKSC 13*).
32. It is very clear a foul water drainage constraint has been identified, but not yet addressed in the Local Plan capacity considerations. The Modifications seek only to require the provision of drainage information when planning applications are submitted and determined. This does not provide for a properly assessed and co-ordinated solution necessary at the Local Plan level having regard to the situation of actual flooding that already takes place, and was evidenced at the Hearing when the Inspector heard first hand how residents in Collaton St Mary already suffer foul water flooding in their homes.
33. The Modifications similarly have not addressed the environmental capacity constraint to anything like the degree required as referred to next below.

c) The Environmental role

- 34 The starting point the Forum has taken into account is that it is unlawful to allow development that harms protected species. NPPF119 similarly makes clear that “*The presumption in favour of sustainable development does not apply where*

*development requiring appropriate assessment under the Birds and Habitats Directives is being considered, planned or determined”.*

35. The Forum has drawn the Inspector's attention to the challenge made by Judicial Review of the decision to adopt the Teignbridge Local Plan because of the capacity constraint to development resulting from the South Hams Special Area of Conservation (SAC). It is understood the case has now been referred to the Court of Appeal. The same SAC affects the Torbay Local Plan area and the outcome will be directly of relevance.
36. There was no opportunity at the Hearing to consider the changes agreed by the Council with Natural England outside of the Hearing, nor has there been subsequent opportunity to examine their implications, simply because relevant documents and details have not been made publicly available. As evidenced in PH1 at Appendix 7 the agreement was not reached until the letter from Natural England dated 24 November 2014. The appendices referred to in the letter have not been posted on the Council's website, though it is understood the amendments agreed have been included in the Council's proposed Modifications.
37. The Forum has noted that it has taken nearly one year of negotiations between the Council and Natural England to reach the point of agreement. This is a valid mark of how challenging the problem has been, and remains, to resolve the concern about the capacity of the Plan area to accommodate further development without harm to protected species.
38. In response to the proposed Modifications and Habitats Regulation Assessment (HRA), the Forum's views are:
  - The HRA of the additional sites proposed does not settle the question of the capacity available for development in the further locations identified, especially in respect of the new site proposed off Brixham Road south of White Rock;
  - As a result, there is insufficient evidence that demonstrates beyond reasonable doubt that significant harm will not be caused to protected species recognised to be present in the area;
  - Similarly, there is a large discrepancy between the assumed capacity of the south of White Rock site and the SHLAA. The Modifications say it is 460 homes (MM's Annex 2 Table 5.14) yet the SHLAA refers only to 250 (T756b). Even taking account of possible boundary differences, the discrepancy is nearly two fold.
  - The same problem has already arisen with the proposed Masterplan for development at Collaton St Mary. As evidenced in the Forum's letter of 16 November 2014, the capacity assumed by the Council in the submitted Local Plan has proven to be considerably less, and has not yet been settled in respect of impact on protected species.
  - Of particular concern is the issue of 'in-combination' impact the law requires must also be addressed when making decisions involving protected species present in the area. It is not accepted by the Forum that the in-combination impact has been recognised either by the Council or the Inspector. The scale of additional development in the area west of Paignton is considerable when having regard to the 'in-combination' impact on the South Hams SAC in particular, as shown in **Appendix 5** attached herewith;

- At individual site level, the outcome of the Churston Golf Course Section 78 Appeal (Appeal Ref: APP/X1165/A/13/2205208) has confirmed that 'mitigation' can be accepted only after it has been demonstrated to be actually deliverable. This test has not been passed by the Modifications proposed;
- In the Modifications proposed, reference is made incorrectly to the last resort being 'compensation' for loss of habitat, and where the development is in the 'public interest'. The European Court has ruled that 'compensation' can be considered an available option only where the proposed development can be demonstrated to be in the 'national interest'. (*Judgment of the European Court on 15 May 2014 (Case C-521/12, T.C. Briels and Others v Minister van Infrastructuur en Milieu (Netherlands Government) and supported by the United Kingdom Government*). There is no provision in law that allows loss of protected habitat in the 'public interest'. The terms used in the Modifications have been incorrectly applied.

39. In response to the Sustainability Appraisal (SA) addition, the Forum's further views are:

- The Inspector has concluded in his initial findings that the further information provided by the Council had not shown that a provision of 10,000 would be unacceptable in terms of sustainability (PH4-para 3). This is unsurprising as the further information provided by the Council to the Inspector at that point (PH1 Appendix 4) was little more than the superficial assessment questioned at the Hearing as being a technique of limited assistance. This remains the Forum's view on the additional information supplied to the Inspector.
- The more detailed SA documentation provided alongside the proposed Modifications contains more information, and has drawn attention to such issues as the conflict that would arise with previous decisions made by the Secretary of State in respect of the additional site proposed at Brixham Road south of White Rock in particular (Appeal Ref: SW/ P/5183/220/4). The same is the case with previous decisions by the Secretary of State in respect of land within the Masterplan area at Collaton St Mary (Appeal Ref: SW/APP/5183/A/81/15785). In both cases, the Secretary of State intervened and did not support development of the land at these locations for reasons that apply with equal weight today.
- The Torbay Landscape Character Assessment (SD92b) submitted by the Council as evidence in support of the Local Plan shows the proposed Future Growth Area in the Modification site south of White Rock, and at Collaton St Mary, as "Highly Sensitive". Additionally, both locations are of Grade 1, 2, and upper 3 agricultural quality. To attempt to classify these sites as appropriate for development fails to comply with NPPF47 which states very clearly that Local Plans are required to meet the FOAN "*as far as is consistent with the policies set out in this Framework*". NPPF109 has particular significance here in requiring the protection of valued landscapes and soils. The Inspector agreed at the Hearing (as confirmed by the Hunston Court of Appeal Judgement [2013] EWCA Civ 1610) the assessment is first made of the FOAN, then whether or not it can be met without conflicting with other NPPF requirements. This submission by the Forum has evidenced that the FOAN does not need the development of either of these Greenfield locations, and even if it did, the FOAN does not override other requirements of the NPPF.

Implications if further changes are not made

40. For all the above reasons, it is the Forum's view that the NPPF position in respect of the 'policy-on'/FOAN has clarified significantly since the Hearing in November 2014 as a result of the further evidence that has become available and not yet been considered by the Council or the Inspector.
41. The conclusion, as evidenced above, is that the FOAN from 2012 to 2032 is a net growth of 11,000 population / 8,300 homes / 5,700 jobs. In this submission the Forum has evidenced how this housing trajectory and net jobs trajectory can be met, and Appendix 1 sets out in detail the exact changes required to the published Modifications to make the Plan justified, effective and therefore 'sound'.
42. At this point, it is relevant to note that the three Neighbourhood Forums have already agreed to provide 8,100 additional homes in decisions that each has so far taken, as confirmed in the Forum's letter of 31 March 2014 and referred to by the Inspector at the Hearing.
43. A pro-rata apportionment of the additional 200 homes required would result in Part 5 of the Local Plan needing to be modified to show the following for each Neighbourhood Plan area:

Table 3: Neighbourhood Plan provision

NP Area	Additional homes (31 Mar 2014)	Modified
Torquay NP	3,860	3,955
Paignton NP	3,450	3,535
Brixham NP	790	810
Total	8,100	8,300

*(all figures rounded)*

44. Such a provision would not require the development of the Greenfield land at Collaton St Mary, nor of a new site south of White Rock. Nor would it require the addition of other sensitive sites that have been added by the proposed Modifications published by the Council, nor the early development of existing sites such as the Yalberton Road currently the subject of an application as referred to at paragraph 31 bullet 4 above. By way of example, the schedule at **Appendix 6** attached herewith illustrates exactly how the Tables in Part 5 of the Plan could be adjusted, and thereby leave each Neighbourhood Plan to assess further the additional sites required in the NP drafts so far prepared, and would remain subject to the 5 yearly Review mechanism already proposed. If this does not commend itself to the Inspector, it would be possible as an alternative for the Council and the respective Forums to agree the details of the sites to achieve the uplift from 8,100 to 8,300 before the Modifications are finalised for Adoption. One way of securing this would be via a meeting of the Local Plan / Neighbourhood Plan Reference Group that the Council chairs that has not met for more than a year.
45. If the Modifications are not amended further, and were to continue as they are, the Forum concludes the consequences would be:
  - The uplift to 10,000 homes and trajectory proposed in the Modifications would not be consistent with the evidence now available and would struggle to meet the 'Wednesbury' test of reasonableness;

- Neighbourhood Plans would not be able to resolve the capacity question marks of infrastructure deficiency and HRA issues by October 2015;
  - It would not be possible for site allocation DPDs to resolve the situation without there first being a Public Inquiry to deal with the deliverability objections that it is clear will arise with good reason;
46. Conversely, if the Modifications are adjusted as proposed in this submission there is a realistic prospect of a 'sound' Local Plan being achieved with the minimum of further delay, and followed shortly after by Neighbourhood Plans that provide the integrated coverage as originally intended. It is unfortunate that the Local Plan / Neighbourhood Plan Reference Group chaired by the Council has not met for more than a year, and it would be fair to say has not helped the effort being made by the Forum to achieve synergy between the respective plans.

### **ii) Proposed Community Infrastructure Levy**

47. The Forum had not expected the draft to be published for consultation concurrently with the proposed Local Plan Modifications, but welcomes the opportunity to comment.
48. The draft appears to be proposing that CIL will be levied on smaller schemes, but not on larger schemes for which reliance will be placed on continued use of Section 106 payments or works where they are still lawful under new rules that come into operation in April (2015).
49. The draft charging schedule appears to be proposing that brownfield sites of fewer than 15 dwellings and Greenfield sites of less than 11 dwellings will be charged a CIL Levy at £70 per sq.m., while for larger sites the levy will be zero.
50. If understood correctly, the logic of this appears to be at odds with wanting to encourage the development of brownfield sites before Greenfield as the priority and the Forum would welcome further discussion before coming to a final view.
51. Additionally, it is disappointing to see that no estimate has been included of the overall amount that will be generated. Also, the levy collected will be directed towards only two schemes, the South Devon Link Road already well under way, and a school in Paignton. While appreciating the rules now allow only up to 5 schemes to be identified for pooled funds collected, it is disappointing to see the Link Road identified which already has capital spend approval and with it the funding source in place as required by the Compulsory Purchase Order involved. There is no evidence that the CIL will generate sufficient funds to assist delivery of the Local Plan. For example, there is no reference to an Infrastructure Delivery Plan (IDP) needed to deal with the problem of foul water disposal referred to in paragraph 31 above (bullet 3). Without such an IDP it is clear that a substantial number of additional homes cannot be shown to be deliverable.
52. If it is the intention of the Council to use CIL funds collected to enable the release of funds already committed to the Link Road to be allocated to other items, the Forum would welcome further discussion on the projects that this would involve. It would be a worthy Agenda item for the Local Plan / Neighbourhood Plan Reference Group Chaired by the Council which, as already noted with concern, has not met for more than a year.

### **iii) Proposed Local Validation List**



53. As will already be known by Council's officers, the Forum has already identified the need to change the information submitted with some types of application at the time of first submission, instead of later via conditions, in particular in respect of sewer infrastructure and tree impact.
54. The Forum welcomes the proposal overall, and has the following comments:
- For 'Major Developments', there appears to be a typographical error at a) - typo 'Wining' should be Mining, and the same again under sub heading "Mining operations";
  - Under 'Householder Application for Planning Permission for works or extension to a dwelling - Local Requirements – EIA', as the word "significantly" is open to interpretation it should be replaced with "any". Similarly, add wording "or to any other protected species";
  - Under 'Applications for Outline or Full Planning Permission - Local Requirements – EIA, remove the word "significantly" and replace with "any". Similarly, add after "Greater Horseshoe bats" "or any other protected species"
  - Under Employment Statement/EIA, since the figure of 10 or more houses represents a "Major development" in order to prevent gradual erosion of employment land, the figure of 30 houses in this section should be reduced to 10, also the word "significantly" should be removed to avoid ambiguity;
  - Under 'Flood Risk Assessment', "Development in any flood risk Zone or which would cause run off into such Zones which have drainage problems or where the site is 1 ha or more" would be a safer way of ensuring flooding prevention.
  - Under 'Health Impact Assessment', to align with "Major Development" figure of 30 should be reduced to 10, also the word "significant" should be replaced with "any" preventing any disagreement over what the definition of the word actually means. Add after "expected" "including traffic pollution"
  - Under 'Independent Viability Assessment', if the developer indicates that they cannot afford the minimum affordable housing requirement or any Planning Contribution including section 106, CIL, or infrastructure improvements then the application must be refused. There is no point in having conditions laid down which a developer can circumvent later on by seeking to argue that the necessary contributions cannot be afforded. This could lead to problems, not only for those occupying the resulting houses but also those in the surrounding area. In short if it is unviable then don't build it.
  - Under 'Infrastructure Assessment', traffic flow/congestion should be specifically included.
  - Under 'Noise Impact Assessment', it is not clear in its meaning with regards to "or for sensitive development proposals close to a use". The whole paragraph should be rephrased as "Development proposals that will create an increase in noise causing an adverse effect on nearby houses/facilities of any sort"
  - Under 'Pollution Prevention Plans', demolition on any site anywhere in Torbay should be subject to an investigation of whether there is any risk of pollution.
  - Under 'Retail Impact Assessment', as read does not make sense. It is assumed that it means that any A1 retail goods proposals that are out of town and over 1,000 sq. metres gross area, or A1 convenience retail use of over

500 sq. metres gross floor space also out of town will need a Retail Impact Assessment.

- Under 'Shading Diagrams / Sun path Shading Analysis', "Development Proposals that will overshadow adjoining properties or public space adversely affecting amenities", could benefit from a clearer description of the type of amenities that will expect to be considered.
- Under 'Statement of Community Involvement', amend to "Proposals that are not in accordance with all policies in the adopted Local Plan/Neighbourhood Plan"
- Under 'Topographical Survey', remove the words "major" and "significant" to prevent ambiguity.
- Under 'Travel Plan', "Development proposals that will have a transport implication" needs clarification to avoid ambiguity.
- Under 'Visual Impact Assessment', remove words "Major" and "could".
- Under 'Waste Audit', instead of "significant volumes" a precise maximum volume figure needs to be incorporated to avoid ambiguity.
- Under 'Local Requirements Bat and Breeding Birds', add "and any other protected species."
- Under '9. Bats and breeding bird assessment', add "and any other protected species."
- Under '13. Prior Approval of Proposed Change of use. Flood risk assessment.', change to "Developments in all flood zones and areas where drainage problems exist or where the site area is greater than 1 ha"
- For 14, 16, 17 and 18, as 13 above;
- For '19. Application to extend time limits. Local requirements, remove "significant".

55. The Forum would be very pleased to discuss any or all of the above suggestions further with you, if that would be of assistance.

Yours sincerely

David Watts, Forum Chairman

Enclosures:

- Appendix 1 - Comments on each Local Plan Modification (in 2 parts)
- Appendix 2 - DCLG Household projections to 2037 released 27 February 2015 and summary of Oxford Econometric projection of Jobs
- Appendix 3 - Comparison of Housing Trajectories
- Appendix 4 - Recent objection by South West Water to Application P/2014/0983
- Appendix 5 - "In-combination" sites within Paignton and HRA impact

Appendix 6 - Re-profiled Local Plan Part 5 housing site delivery

Copies to:

Elected Mayor Oliver and all Torbay Councillors,  
Local Plan Inspector, via the Programme Officer; Planning Inspectorate



# Brixham neighbourhood plan

By email to [strategic.planning@torbay.gov.uk](mailto:strategic.planning@torbay.gov.uk)  
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22 March 2015

Dear Pat,

- i) **Proposed Modifications to the submitted Torbay Local Plan; and**
- ii) **Proposed Community Infrastructure Levy**

These are the views of the Brixham Peninsula Neighbourhood Forum on the above proposals published by the Council on 9 February 2015 for response by 9am on 23 March 2015.

On both matters, the Brixham Peninsula Neighbourhood Forum has been working in close collaboration with our neighbours the Paignton Neighbourhood Forum. We have considered their representation and are in agreement with what they say.

In addition, we highlight certain key issues related to our plan area below.

i) **Proposed Modifications to the submitted Torbay Local Plan:**

1. The Forum is concerned about the substantial increase in housing sites for our plan area as proposed in the modifications. The previous target of 800 has been replaced with a target of 1,320 – an increase of 65%. Given that the Brixham Peninsula is the site of the SAC for Greater Horseshoe Bats, it is the most environmentally sensitive part of the Bay. As a result it is surprising at best that our target housing numbers have gone up when those of Paignton our neighbours who experience this same constraint to a lesser extent have gone down. There is no explanation provided for this irregularity other than the fact that numbers had to be reduced at Collaton St Mary because detailed work included in the draft Masterplan work found that environmental and infrastructure capacity was a significant constraint. The same applies to an even greater extent in our area.
2. Initial concentration on identifying residential sites has given rise to concern that these will be brought forward to the detriment of employment sites. At several sites, land which is currently being used for employment is now being considered by the Forum for residential. When this is the case for an 800 new homes target it will be by definition very much the

case for a 1,320 new homes target. With this in mind, despite working hard as a Forum to accommodate development in our area we must caution that we simply do not believe it is possible to sustainably accommodate 2700 sq m of new employment space at the same time as accommodating 1320 new homes (which are the two targets in the Local Plan Mods).

3. Separate from the apportionment of housing allocations to our Forum area, we have concerns about the overall target for the Bay as a whole. We note the latest February 2015 Household projections by the Department for Communities and Local Government (DCLG) show a downward revision. This latest information should be the basis for future projections which would indicate fewer houses are required than assumed by the historical plan of the Council and historical correspondence by the Inspector. Accordingly this would indicate fewer Greenfield sites are needed than are set out in the Modifications.

#### **Whiterock**

4. As regards the allocation of the large site at Whiterock the Secretary of State has previously made a determination into the development of this land and concluded:

*"In balancing the environmental and visual impact of the proposal against the economic justification for the development, the Secretary of State attaches substantial weight to preserve the high quality of the Dart Valley AONB, as one of the finest riverine landscapes in the country. He accepts the Inspector's appraisal that the development itself and the very extensive areas of woodland planting envisaged would have a significantly adverse and wholly unacceptable impact on the AONB..." (Appendix 1 – see para 12)*

5. The Forum agrees with the position of the Secretary of State and prefers his view to that of the Council in the Local Plan Mods. Accordingly the Forum believes this site should not be relied on to deliver homes and should be struck out.

#### **Churston Golf Course**

6. As regards the allocation of Churston Golf Course the Forum has concerns the site is totally undeliverable. The recent upholding at appeal of now the 5<sup>th</sup> planning refusal over a 40 year period to relocate the clubhouse and golf holes (APP/X1165/A/13/2205208 on 3 Feb 2015) is demonstrable evidence of the historic undeliverability of the site.
7. Close scrutiny of the Inspector's findings shows that it is highly unlikely that any further application could come forward to relocate the clubhouse and golf holes which would be acceptable in planning terms as regards the impact on protected species, traffic and landscape. Accordingly the Forum believes this site should not be relied on to deliver homes and should be struck out.

#### **St Marys Bay**

8. As regards the allocation of St Marys Bay the Forum notes the February 2015 HRA Site Appraisal Report does not consider the site. As it is assumed to deliver 50 units and is therefore clearly an important site for the Forum it is unclear why. The Forum believes this information being available for public inspection is required before this site can be relied on to deliver homes. This has not happened.

ii) **Proposed Community Infrastructure Levy**

9. The Forum is unclear how the CIL will work for the whole Forum area. The document sets out that 25% of money raised will be passed to the Town Council which is welcome. However, as the Forum includes a wider area than just the Parish boundary the Town Council would need to be able to spend part of this money outside its boundary and in areas to which it has no democratic accountability if the Churston, Galmpton and Broadsands area is to receive any of the funds. It is unclear how it can do this so further discussion is welcome.
10. The preference for the Forum on sustainability grounds has been for the development of more smaller sites as opposed to fewer larger sites. In this context we have paid attention to the fact that the draft appears to be proposing that CIL will be levied on smaller schemes only and not on larger schemes for which reliance will continue to be placed on Section 106 agreements.
11. We understand that the draft charging schedule appears to be proposing that brownfield sites of fewer than 15 dwellings and Greenfield sites of less than 11 dwellings will be charged a CIL Levy at £70 per sq.m., while for larger sites the levy will be zero. If understood correctly, the logic of this appears to be at odds with wanting to encourage the development of brownfield sites before Greenfield as the priority and the Forum would welcome further discussion.
12. As regards the 75% of CIL contributions retained by the LPA, if it is the intention of the Council to use CIL funds collected to enable the release of funds already committed to the Link Road to be allocated to other items, the Forum would welcome further discussion on the projects that this would involve. It would be a worthy Agenda item for the Local Plan / Neighbourhood Plan Reference Group Chaired by the Council which, disappointed to highlight, has not met for more than a year despite requests by the Forum.

Yours sincerely

Adam Billings,  
Forum Vice- Chairman

**Enclosures:**

Appendix 1 - Secretary of State determination on the Whiterock site

**Copies to:**

Elected Mayor Oliver and all Torbay Councillors,  
Local Plan Inspector, via the Programme Officer.

DC57



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Date: 20 March 2015  
Our Ref: JS/CB M6/0209-11

By email only:  
[strategic.planning@torbay.gov.uk](mailto:strategic.planning@torbay.gov.uk)

Dear Sir or Madam

**RE: CONSULTATION ON DRAFT COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

We represent the **South West HARP Planning Consortium** which includes all the leading Housing Association Registered Providers (HARPs) in the South West. Our clients' principal concerns are to optimise the provision of social/affordable housing and to ensure the evolution and preparation of consistent policies throughout the region.

**Viability Study**

Since the Preliminary Draft Charging Schedule was commented on in February 2012 we are pleased to see that further viability work has been commissioned by the Council. This new viability testing is important as there has been considerable change in not just the residential market but also the cost of procuring development materials, labour and land.

**Affordable Housing**

The modifications to the Local Plan, which are running a simultaneous consultation, have included the recent changes to affordable housing policy in terms of the introduction, in the PPG, of a 10 unit threshold. From our reading of the viability study it appears these changes have not been incorporated into the CIL Charging Schedule. We would be interested to know if the Council has considered the implications of the policy and the effect this will have on CIL viability as there may now be an option to increase CIL on smaller sites where the burden of affordable housing has been lifted.

**Older Peoples' Housing**

Extra Care schemes within the C3 Use Class do often share some characteristics with general market housing, such as provision of each unit with its own front door, however the comparative differences in terms of their structure and funding are far greater.

Many Extra Care schemes provide a very significant degree of care, indeed frequently to a level comparable with that offered in a traditional care home. Unlike general market housing which benefits from being sold 'off plan', all of these forms of care and accommodation are funded entirely upfront and at risk by the provider, with sales only able to occur after completion. By their very nature, schemes also require dedication of a significant element of their floor space to care and communal facilities, thus the balance of gross saleable and un-saleable communal space is very much reduced from that of the general market housing.

With that in mind, the Statutory Guidance makes it clear that specialist forms of development should not be unduly affected by CIL charges:

*"A charging authority that plans to set differential rates should seek to avoid undue complexity. Charging schedules with differential rates should not have a disproportionate impact on particular sectors or specialist forms of development"* (Reference ID 25-021-20140612).

It is disappointing that Extra Care schemes have not been individually tested as we are of the opinion that this oversight may render them unviable.

#### **Section 106**

The PPG (reference ID 25-018-20140612) stipulates that information on a Council's ability to meet its affordable housing targets and the amounts raised in previous years through Section 106 Agreements should be included within the evidence base. This is an important inclusion and its omission makes assessment of viability difficult.

The Draft Regulation 123 List has earmarked a funding gap of £24.5 million. It would have been useful to see if CIL was able to cover the funding gap, especially considering that Torbay is in the unique position of potentially having 100% neighborhood plan coverage, meaning that 25% of CIL receipts will have been immediately earmarked for the Neighbourhood Plan areas covering the towns.

#### **Chapter 11 of the Charging Schedule**

As a point of clarity we would ask the Council to re-examine Chapter 11 of the Draft Charging Schedule:

*Social housing (as defined in Regulation 49 of the CIL Regulations (as amended)) and self build/custom build housing have a mandatory exemption from CIL. CIL will not be levied on social /self build homes on small sites.*

The two sentences are contradictory, with the second sentence implying CIL exemption will only applied to smaller sites, which would be incorrect.

The above comments are intended to be constructive and we welcome further opportunities to provide input into CIL. We would like to be informed of the progress of the Community Infrastructure Levy; please ensure that the **South West HARP Planning Consortium** are retained on the LDF database, with **Tetlow King Planning** listed as their agents.

Yours faithfully

**CHRIS BURTON MPlan**  
**ASSISTANT PLANNER**  
For and On Behalf Of  
**TETLOW KING PLANNING**

[christopher.burton@tetlow-king.co.uk](mailto:christopher.burton@tetlow-king.co.uk)

cc: Aster Group  
DCH Group  
Guinness Partnership  
Sovereign Housing Association  
Spectrum Housing Group  
Westward Housing Group

Jeannie Haycock, Housing Department



WYG



Ref: V001504/RR/rr  
Date: 19 March 2015

Spatial Planning  
Torbay Council  
Floor 2 Electric House  
Castle Circus  
Torquay  
TQ1 3DR

**VIA EMAIL**

Dear Sirs

**SAINSBURY'S SUPERMARKETS LTD  
TORBAY COUNCIL – COMMUNITY INFRASTRUCTURE LEVY (CIL) DRAFT CHARGING SCHEDULE**

---

We wish to make the following representations on behalf of our client, Sainsbury's Supermarkets Ltd, in connection with the above.

Figure 2 Draft CIL Charging Schedule: Commercial and Non Residential Development

We note that The Willows District Centre is in the 'everywhere else' charging zone in the draft charging schedule and not within the Town and District Centres charging zone. Hence a CIL charge for Class A1 retail over 300 sq m of £150 per sq m is proposed, as opposed to a nil charge for retail proposals within the Town Centres and remaining District Centres.

There is no evidence within the draft charging schedule or within the supporting viability evidence to justify including The Willows District Centre within the 'everywhere else' charging zone. The Willows District Centre should be treated the same as other District Centres in Torbay. Therefore, a nil CIL charge should be applied to retail proposals within The Willows District Centre.

Note 6 Exceptional Relief

Note 6 relating to figure 2 states that where retail development is proposed as part of a major mixed use scheme within the 'everywhere else (including The Willows District Centre)' charging zone the Council may grant exceptional relief in order to secure a sustainable and successful form of development. However, it is unclear what retail development would be considered exceptional to be granted such relief.

The draft charging schedule should provide further clarification on what type of retail proposals may be considered to be granted 'exceptional relief' from the proposed CIL charge.

creative minds safe hands

---

WYG, Ropemaker Court, 11-12 Lower Park Row, Bristol, BS1 5BN  
Tel: +44 (0)117 925 4393 Fax: +44 (0)117 925 4239 Email: [bristol.planning@wyg.com](mailto:bristol.planning@wyg.com)

WYG Environment Planning Transport Ltd Registered in England Number: 3050297

Registered office: Arndale Court, Otley Road, Headingley, Leeds, LS6 2UJ

Torbay Council  
19 March 2015  
Page 2



We trust you will find these representations helpful. Please contact us if you have any queries.

Yours faithfully

A handwritten signature in black ink that reads 'R Robinson'.

Rachel Robinson  
**Senior Planner**

**Pickhaver, David**

---

**From:** rachel.robinson2 (Bristol) [rachel.robinson2@wyg.com]  
**Sent:** 19 March 2015 15:53  
**To:** Planning, Strategic  
**Subject:** Torbay CIL Draft Charging Schedule Representations  
**Attachments:** CIL DCS Reps 19.03.15..pdf

Dear Sir/Madam

On behalf of our client, Sainsbury's Supermarkets Ltd, please find attached representations relating to your CIL Draft Charging Schedule.

Many thanks.

**Rachel Robinson**  
Senior Planner

Please [Click Here](#) for our Winter 2014/15 edition of the Planning & Environment newsletter.

**WYG**

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Strategic Planning Team  
Spatial Planning  
Torbay Council  
Electric House (2<sup>nd</sup> Floor)  
Castle Circus  
Torquay

(Representations submitted by email to [strategic.planning@torbay.gov.uk](mailto:strategic.planning@torbay.gov.uk))

20<sup>th</sup> March 2015

**RE: Torbay Community Infrastructure Levy – Draft Charging Schedule**

### **Introduction**

Gladman Developments has considerable experience in the development industry in a number of sectors including residential and employment land. Gladman are aware that Torbay Council are currently in the process of preparing their new Local Plan and that alongside this the Council are preparing a Community Infrastructure Levy (CIL) for the area. This Consultation is for the Draft Charging Schedule of CIL.

CIL is intended to have a positive effect on development. The latest CLG guidance notes that *“The levy is expected to have a positive economic effect on development across a local plan area. When deciding the levy rates, an appropriate balance must be struck between additional investment for infrastructure to support development and the potential economic effect on the viability of developments...This balance is at the centre of the charge setting process”* (Section 2.2, CLG Guidance, 2014).

In accordance with the latest CIL Regulations, the Council is required to strike an appropriate balance between the desirability of funding from CIL and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across the local authority area. The Council must consider the impact of CIL together with the policies contained in the Local Plan on developments within the borough when deciding an appropriate CIL rate.

Setting the levy at the appropriate rate will be key to ensuring that development comes forward in your local authority area and subsequently that the Local Plan is implemented. These representations address some key areas that local planning authorities must consider when preparing their CIL charging schedule, drawing on recent guidance produced by the CLG.

### **Funding gap / evidence base**

Local planning authorities need to be able to demonstrate the infrastructure need and subsequent funding gap and must ensure that the level of total CIL receipts that could be generated through the

levy reflects these true needs and the proposals in the Local Plan. The CIL should not be used by Council's as a mechanism for creating an unrealistic 'wish list' of infrastructure projects in their area.

When establishing a funding gap that CIL receipts are intended to contribute towards filling, it is vital that the Council take account of every possible income stream. This has to include an accurate assessment of future New Homes Bonus and council tax and business rates receipts generated as a result of new developments allocated in the Local Plan, as well as central government funding streams. This should also include an assessment of statutory undertakers' asset management plans, as these companies will at some stage be upgrading their systems/facilities. This also needs to be taken account of when assessing the infrastructure requirements of the authority.

The Council need to have an up to date, robust evidence base that fully justifies the infrastructure needs based on the amount of development that is required. Information on these infrastructure needs should, wherever possible, be drawn directly from the infrastructure planning that underpins the Development Plan, as this should identify the quantum and type of infrastructure required to realise their local development needs. If the authority's infrastructure planning is weak or out of date then the Council should undertake an exercise to refresh this. If the evidence base is not complete, robust and up to date the charging schedule will be unsound and the local planning authority will have difficulty adequately demonstrating their funding gap and subsequent CIL requirements.

The CLG guidance notes that: *"Charging authorities should be able to show and explain how their proposed Community Infrastructure Levy rate or rates will contribute towards the implementation of the relevant Plan, and support development across their area. Charging authorities will need to summarise their economic viability evidence. This evidence should be presented in a document (separate from the charging schedule) that shows the potential effects of the proposed levy rate or rates on the economic viability of development across the authority area"* (Section 2:2:2:3, CLG Guidance, 2014).

It is important that in calculating the level of infrastructure the authority needs as a result of development the Council distinguishes between *new* and *existing* demands. New houses do not always create new pressure on infrastructure as evidence shows that a large proportion will be occupied by people already living in the borough, attending local schools, and registered with local GP surgeries. They will therefore require less infrastructure provision compared to new residents in the borough.

The available guidance makes it clear that CIL is expected to have a positive economic effect on development across an area in the medium to long term. As outlined in recent Inspector's Letters to East Devon District Council (April 2014), the CIL charging rates should not be set at such a level that would threaten development, and must be based on robust evidence and assumptions. The rate will also need to be appropriate over time, bearing in mind land values, market conditions and the wider economic climate change rapidly. The viability impact of incremental policy obligations, such as stepped Code for Sustainable Homes targets, must be assessed and reflected in the charging schedule.

The Council needs to ensure that they have a full understanding of the potential costs of infrastructure projects needed to meet the infrastructure needs. Gladman believe that it is inappropriate to set the levy based on a partial understanding of these infrastructure costs and in particular if the total money needed for infrastructure is unknown.

### **Differential charging rates**

The CLG guidance notes that the use of differential charging rates can be an appropriate approach where there is clear viability evidence to justify this. The CIL regulations allow charging authorities to apply differential rates in a flexible way, to help ensure the viability of development is not put at risk.

The rules around the use of differential rates in the Charging Schedule are clear: they can only be applied in relation to different geographical zones in which development would be situated, related to different types of development, and/or scales of development. Furthermore as the Government's CIL guidance and inspectors have made clear, differential rates should be set *"based on economic viability considerations alone, rather than any planning or any other public policy related choices"* (Paragraph 14, Newark and Sherwood EIP report, August 2011), and *"CIL is not intended to be a planning policy tool"* (Paragraph 23, Huntingdonshire EIP report, April 2012). Charging schedules with differential rates should not have a disproportionate impact on particular sectors or specialist forms of development.

It is integral when setting differential rates for different geographical areas that these differential rates are based on accurate, up to date housing market intelligence forming the evidence base for this decision.

### **Discretionary Relief**

Regulation 55 of the CIL Regulations allows local authorities to grant relief for exceptional circumstances from liability to pay CIL. Such provision should be factored into the Council's CIL and will avoid rendering sites with specific and exceptional cost burdens unviable should exceptional circumstances arise.

### **Payments in Kind**

Regulations 73 and 73A of the CIL Regulations provides a mechanism for local authorities to accept infrastructure payments, or payments in kind, for land or infrastructure to be provided instead of money to satisfy a charge arising from the levy. An allowance for infrastructure payments should therefore be made available by the Council, recognising that there may be time, cost and efficiency benefits in accepting land or infrastructure from parties liable for payment of the levy.

### **Requirement to consult**

As with Local Plans, local planning authorities have an obligation to consult at various stages of the CIL preparation process. However, the guidance does not provide details as to the format that this consultation must take or length of the consultation period. Gladman echo the CIL guidance and would urge your local authority to engage with local developers and others in the property industry early and throughout the process. This will help your authority to gain opinions from the market to feed into the preparatory work.

### **Examination**

As outlined in Section 2:2:5:1 of the 2014 CLG guidance the charging authority must appoint the examiner. The examiner must be independent and have the appropriate qualifications and experience. The guidance confirms that a Planning Inspector would fulfil these criteria.

### **Conformity with Framework**

The National Planning Policy Framework (from here on referred to as the Framework) provides the current central government planning policy and requirements for local planning authorities to meet. The Framework places emphasis on sustainable development and in particular ensuring that the objectively assessed needs of an area are met through the requirements and policies within the new Local Plan.

It is fundamental that the Council ensures that the proposed levy rates are realistic and not set too high. Arbitrarily high rates may jeopardise the delivery of housing schemes within the area. This would be contrary to the Government's aim outlined in the Framework to "*significantly boost the supply of housing*", as schemes may not come forward due to viability issues.

The Council's CIL charging rates must not threaten the overall delivery of the Local Plan, by making sites unviable. This point is reiterated in the CLG guidance, which states that "*Charging authorities should set a rate which does not threaten the ability to develop viably the sites and scale of development identified in the relevant Plan*" (Section 2:2, CLG Guidance, 2014). When testing the impact of CIL it is vital that the assumptions that underlie the standard residual valuation approach used to test the impact on viability of CIL are realistic and accurate. This should include abnormal costs, contingency costs, preliminary costs, and developer profit, which should reflect the current level of risk perceived in the market.

Gladman would urge the Council to adopt an instalments policy for CIL payments as this will give developers the flexibility to pay contributions in line with development phasing schemes and will facilitate cash flow and therefore development viability. With this in mind, in accordance with Regulation 8(3A) of the CIL Regulations the Council should also accept the phasing of planning permissions, with each phase treated as a separate chargeable development.

Gladman also remind the Council of the need to review CIL tariffs once these have been set. The economic climate will inevitably change over the course of the plan period and as such the levy rates that can be set whilst ensuring development remains viable will also change. In accordance with the CLG guidance "*Charging authorities must keep their charging schedules under review and should ensure that levy charges remain appropriate over time. For example charging schedules should take account of changes in market conditions, and remain relevant to the funding gap for the infrastructure needed to support the development of the area*" (Section 2:2:6:3, CLG Guidance, 2014).

The Local Plan for your area will need to be in place prior to the CIL being adopted. Gladman believe that the Council need to have a clear understanding of the level of residential development to be brought forward in the plan period when preparing the charging schedule as this will directly influence the scale of CIL that will be generated. Without this the charging schedule will not reflect the relevant and true infrastructure needs of the area.

I hope that these representations were helpful in the process of preparing the CIL charging schedule. If you require any further information or wish to meet with one of the Gladman team then please do not hesitate to contact me.

Yours faithfully,

Peter Dutton  
Strategic Land Team  
Gladman Developments

**Pickhaver, David**

---

**From:** Peter Dutton [P.Dutton@gladman.co.uk]  
**Sent:** 20 March 2015 15:40  
**To:** Planning, Strategic  
**Subject:** Torbay CIL Draft Charging Schedule  
**Attachments:** CIL Draft Charging Schedule - Gladman Representations.pdf



**Re: Torbay CIL Draft Charging Schedule Consultation**

Please find attached Gladman Developments' representations in relation to the above consultation. I would be grateful if you could acknowledge receipt of our submission by email.

Kind regards

Peter

[Peter Dutton](#) - Graduate Planner | [p.dutton@gladman.co.uk](mailto:p.dutton@gladman.co.uk) | DDI: 01260 288 818 | [www.gladman.co.uk](http://www.gladman.co.uk)

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DCS10

**Pickhaver, David**

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**From:** Michael Newman [MNewman@cavannahomes.co.uk]  
**Sent:** 20 March 2015 10:12  
**To:** Planning, Strategic  
**Subject:** torbay council CIL consultation

Dear Sir / Madam

The following is the only comment regarding the consultation document;

1. Intro – 3<sup>rd</sup> para states CIL will be charged on brownfield resi dev sites of 15 or more dwellings – presumably this is a typo as Figure 1 makes clear CIL will not be charged on 15+ units.

Regards

Michael

Michael Newman  
Development Manager

The Cavanna Group of Companies

Tel: 01803 618688  
Fax: 01803 618690  
Email: [MNewman@cavannahomes.co.uk](mailto:MNewman@cavannahomes.co.uk)  
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**Pickhaver, David**

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**From:** Planning  
**Sent:** 06 February 2015 08:41  
**To:** Turner, Steve; Pickhaver, David  
**Subject:** FW: Torbay Council Spatial Planning Newsflash 05-02-15

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**From:** jason sandland [mailto:[jsandland@msn.com](mailto:jsandland@msn.com)]  
**Sent:** 05 February 2015 17:58  
**To:** Planning  
**Subject:** Re: Torbay Council Spatial Planning Newsflash 05-02-15

Dear Sirs

**FEEDBACK CIL RESPONSE J. SANDLAND LIMITED 05-02-15**

If CIL is adopted, then it may (as other authorities have been finding out) stagnate development, or reduce design space standards, AND APPLICATIONS, if based on silly square meter fees.

As professionals, of a non political agenda, we appreciate central government is "ringing the life out" of LA fees and LPA's are looking to make up for missing costs where possible.

However, we are in recession, and as others have found out, non sensible CIL fees drive away business for planning/ building control, professionals etc. where rates are set at a stupid level. (to a point where their own B Control department is ringing up to enquire on future submissions due to falls - associated to CIL implementation... so it also effects your B. Control dept. if brought in at non sensible levels!!!!)

As Torbay Council is a unitary authority, and having grown up, gone to school and college (many years ago) in Torquay, when it was in a better place, I would hate to see the authority follow like sheep other neighbouring authorities, that have blundered in such areas. Business men/developers etc are not impressed with CIL from feedback to us in another LPA area, and neither are we.

I trust that these are my own independent personal opinions, but hope that someone with some common sense is not going to fall for the CIL quick fix, as in reality it appears to be the opposite!

Kind Regards

**Jason Sandland**

*Dipl.Arch. MASl. FIPD. MSc. DipSurv(BS). MRICS. DipHI. MCIQB. CBuildE. MCABE. RFAPS. MCMI.*

Director

For & On Behalf of

**J. SANDLAND LIMITED**

**Tel: 01626 867090**

E-Mail: [jsandland@msn.com](mailto:jsandland@msn.com)

Web: [www.jsandland.com](http://www.jsandland.com)

On 5 Feb 2015, at 15:35, Planning <[Planning@torbay.gov.uk](mailto:Planning@torbay.gov.uk)> wrote:

<image001.png>

## Latest news – Feb 5 2015

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**Publication of the Proposed Modifications to the Submission Torbay Local Plan, the Community Infrastructure Levy, and the Local Validation List.**

Views are being invited from the public, businesses and all interested parties on each of the above documents which will be published for formal representations over a six week period from 9.00am Monday 9 February to 9.00am Monday 23 March 2015.

All comments should be received no later than 9.00am on Monday 23 March 2015, and will be made available for public inspection. Late comments will not be accepted.

Please see the attached document for further details and links.

**'Spatial Planning Newsflash' has been sent to you to keep you informed about changes to Spatial Planning at Torbay Council. If you do not wish to receive any further newsflash messages from us then please *send an email*.**

<image003.png>

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**Pickhaver, David**

---

**From:** Nigel Bennetto  
**Sent:** 22 March 2015 23:20  
**To:** Planning, Strategic  
**Subject:** Comment on the Proposed Draft CIL Charging Schedule and Draft Regulation 123 List

Dear Sir or Madam,

As it is only a matter of time before the ongoing housing crisis overwhelms the current and no doubt temporary political desire to tax new development, I recommend Torbay Council to not proceed with the introduction of its hybrid CIL proposal.

The Development Charge of the 1950's, Land Commission Charge of the 1960's and Development Land Tax of the 1970's all frustrated development and made UK housing less affordable. All had to be repealed after having caused material deterioration in the quality of life and having wasted scarce resources.

In the 1990's the S106 Obligation Charge was introduced which has similarly frustrated development and led to the housing crisis of today. The unpopularity of S106s has in turn led to the introduction of the Community Infrastructure Levy and Torbay Council's proposed hybrid system.

Are consultants' forecasts on future development viability made in 2011 to command Torbay's ability to attract desperately needed future inward investment? I sincerely hope not. Russia and its Eastern Satellites made similar forecasts at commanding their economies from 1945 to 1989 with disastrous outcomes for hundreds of millions of people. The Council has provided no evidence showing that its consultants have financially guaranteed their ability to forecast future development viability successfully.

The majority of Conservative run Councils have or are introducing CIL whereas the majority of Labour run Councils have not. So in addition there is the complexity of the ever changing political agenda and a General Election in a few weeks' time on 7 May 2015 to consider. What we do know for certain is that CIL itself is to be changed after the election whilst the housing crisis will still be a crisis. What we don't know yet is who then will be changing CIL to what or when.

The less administrative resource that the Council is able to waste on CIL command economics at this time the better the outcome for Torbay residents.

Kind regards,

Nigel Bennetto

## Pickhaver, David

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