PAIGNTON NEIGHBOURHOOD FORUM

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

Paignton neighbourhood plan

c/o 34 Totnes Road
Paignton
TQ4 5JZ

16 November 2014

By email to:
Mr Robert Young Robert.Young@torbay.gov.uk
Local Plan Programme Officer
Room 5
Upton Building
Town Hall
Castle Circus
Torquay TQ1 3DR

Dear Mr Young

Torbay Local Plan Examination in Public

An issue of considerable concern has arisen that I am writing to ask you to bring to the attention of the Inspector conducting the Local Plan Inquiry as a matter of urgency.

The Council has placed onto the Local Plan website the document dated 11 November 2014 entitled *"Examination Briefing Note TC1 – Formal public consultation on Torbay Masterplan SPDs".*

The last paragraph on page 2 states:

> *"The Council is not intending to submit representations received during this consultation to the Examination unless requested to do so by the Inspector since these SPDs function outside the Submitted Local Plan."*

This is procedurally not acceptable and will expose the Inspector's consideration of the Local Plan to risk of formal challenge. This is not a situation the Forum wishes to see arise.

The consultation period set by the Council ends at 9am on Monday 24 November 2014, by which time the Local Plan Examination Hearing may have been completed. Yet information demonstrating lack of development capacity contained in the draft SPD's is directly relevant to the Hearing.

The Forum will be considering a formal response to the Council's consultation at 6:30pm on Thursday 20 November 2014. From initial assessment by our community, the attached draft has been prepared and circulated for the Forum as a whole to consider and formally endorse.

As evidenced in the attached draft letter, there are numerous capacity, impact and procedural issues that affect the Local Plan Examination directly, including the adjacent Judicial Review referred to.

I will be referring to the attached draft when attending the Local Plan Hearing on behalf of the Forum from Tuesday 18 November 2014. Therefore, through you, I am writing to provide the Inspector with a copy in advance so that he can ensure the issues raised are taken fully into account.

Yours sincerely

David Watts
Chairman, Paignton Neighbourhood Forum

cc. Mr Turner, Torbay Council

DRAFT

c/o 34 Totnes Road
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XX November 2014

By hand and email: strategic.planning@torbay.gov.uk
Spatial Planning (FAO Steve Turner)
Torbay Council
Electric House (2nd Floor)
Castle Circus
Torquay
TQ1 3DR

Dear Mr Turner

Consultation on Proposed Supplementary Planning Documents:
Planning & Compulsory Purchase Act 2004
Localism Act 2011
Town & Country Planning Regulations (Local Planning)(England) Regulations 2012

I refer to the Public Notice in the Herald Express of 23 October and to the email notification received by the Forum on 27 October 2014 seeking comment on the Council's stated intention to bring four Masterplans into the planning system on a formal basis as Supplementary Planning Documents (SPD) using the above legislation.

The Forum considered the proposal at its meeting on 20 November 2014 This letter sets out the response of the Forum in respect of the two proposed Masterplans that fall within the designated Paignton Neighbourhood Plan Area, namely the proposed SPD's for Collaton St Mary and for Paignton Town Centre.

To provide a response of material relevance, three questions have been applied by the Forum in coming to a view:

- Do the drafts add value to the emerging Local Plan and Neighbourhood Plan as claimed would be the case when the decision was originally made by the Council to produce Masterplans ?
- Do they accord with the views so far gathered from the community and statutory consultees ?
- Is the Council proposal to adopt each Masterplan as SPD appropriate and lawful ?

The last question is relevant because the Council appears to be departing from the Local Plan documentation submitted to the Planning Inspectorate on 31 July 2014 by now intending to adopt both Masterplans formally as SPD, and at different times. This is referred to further below.

The representations below first consider content, then process and end with conclusions.

Content

In terms of overall format and style of presentation, the Consultants have produced excellent drafts. They are generally easy to read and in each case include new information that adds value to the emerging Local Plan and Neighbourhood Plan. The one exception is that some in the community have found it hard to read those parts where white lettering is used on yellow /orange background.

Also, it is evident the drafts have taken into account a number of comments made by the Forum at the initial stage in the email sent to the Consultants on 2 June 2014 and copied to the Council at the time.

However, the request was made at the time for further discussion on how best to link the Masterplan activity and content with the emerging Neighbourhood Plan. This did not materialise. As a direct result, the Forum has very strong concerns about the content that has emerged in each draft where they conflict with the views previously expressed by the Forum and statutory consultees in respect of a number of critically important aspects.

The following comments are not intended to be an exhaustive list of every detail, as it is appreciated they are to a degree 'indicative' plans as indicated in the drafts. The concerns raised should not be interpreted as a criticism of the Consultants very professional work. They are the result of there having been insufficient opportunity for discussion with the Forum during the formulation process.

a) Collaton St Mary

To understand the concern of the Forum it is important to know of the views previously submitted to the Consultants and copied to the Council on 2 June 2014.

Attention was drawn to a very well attended community meeting that took place at Collaton St Mary Parish Hall on 20 May 2014. This revealed, in answer to the specific question, that only 1 person in 62 present had seen or responded to the considerable amount of consultation work undertaken by the Consultants. This prompted the Neighbourhood Plan Forum to consider the position further at a meeting held on 29 May 2014. This proved very useful because it became possible to see a clear pattern of community thought from the discussion at both meetings. The conclusions reached were sent to the Consultants and copied to the Council in the email above of 2 June as input to the survey taking place at the time that ended on 9 June 2014.

The date is relevant because the Council at that time had not yet decided to submit the draft Local Plan to the Planning Inspectorate. The emailed input made very clear that it was not agreed by the Forum that there is a need to develop 800 homes at Collaton St May between 2024 and 2032 as proposed in the draft Local Plan. It was also pointed out this conclusion has been re-enforced by the latest 2012 population projections published by ONS which for Torbay further reduced the previous growth to 2021 by 34%, and with commensurate reductions to 2037. Similarly, it was indicated that it is very clear the Household projection in due course by DCLG will do exactly the same. Thus it remained the stated community view that, together with the Torquay and Brixham Forum decisions of March 2014, there is support for 8,100 additional homes which more than meets Torbay's NPPF objectively assessed need to 2032 without requiring further Greenfield development at Collaton St Mary. The total of 8,100 falls within the 'aspiration' range of 8-10,000 eventually submitted as part of the Local Plan.

Nevertheless, in a constructive manner, the community discussion did not end there because there is a strong need to end the sporadic growth syndrome that has bedevilled the village for many decades. Thus the discussion in May 2014 considered how in due course a gradual growth of the village could be achieved in a sustainable way. Discussion made use of the two "early concept" drafts produced at the time by the Consultants for a potential first phase and subsequent phases, but with no timescale before 2032 in mind, only the question of how the village might evolve over a longer time sustainably. Taking each draft in turn, the Forum concluded that the "first phase" illustrated at the time merited further work with a view to incorporating the proposals into the Neighbourhood Plan, subject in particular to resolving infrastructure problems anticipated. In respect of the subsequent phases shown at the time, there was much concern about three areas. These were 'flagged-up' as locations where residential development would not be supported, namely:-

a) immediately to the west of the school
b) to the east of the Church, from Borough Park Road
c) immediately to the east of the Motel (currently residential)

It is against this background that the following representations are made on the consultation draft now published.

It is noted the draft would not be adopted until after the outcome of the Local Plan Examination has been determined. The draft has continued to approach the evolution of the village in 4 defined phases that collectively propose 440-460 dwellings overall. It is also noted that only Phase 1 is shown for development before 2024 and involves brownfield land to provide 20-30 dwellings together with key access points for Phases 2 and 3 development beyond 2024. Only Phase 4 involves land on the north side of the A385. This too is shown for the period beyond 2024.

At first glance, the draft gives the impression of recognising that the 'sequence' of development is critically important to prevent any further growth of the village in a sporadic and unsustainable manner and that the pace of any further development reflects community views previously expressed.

However, on closer examination it is clear the proposals shown are a very long way from the views previously expressed by the community, and similarly do not fit with proposed Local Plan being considered at the Local Plan Examination in public from 18 November 2014:

- There continues to be no need for development of any Greenfield land at Collaton St Mary before 2032 at the earliest for the reasons already referred to above. While it is acknowledged that only brownfield sites of Phase 1 are proposed for development before 2024, the draft makes no further distinction on timing thereafter. Thus it implies 420-430 dwellings are proposed for the 8 year period from 2024 to 2032. If this is not the case, the draft requires significant amendment to show in clear terms that the pace of development goes well beyond 2032 to secure gradual growth that is sustainable;

- If it is now being proposed by the Council that the village can only accommodate 440-460 dwellings (instead of 800 shown also in the consultation 'flyer' at the time), this will have to be brought to the attention of the Inspector conducting the Local Plan Examination to pursue statutory publication of formal Major Modifications to the proposed Local Plan. At the very least, consequential and significant amendments are required to the boundary plans in the Key Diagram and Policies Map that form part of the submitted Local Plan as it is clear the assessment in the draft confirms the wider area defined as a 'Future Growth Area' would breach environmental considerations unacceptably;

- The draft (on sheet 8) only touches upon the flight corridors of the rare greater horseshoe bat colony protected by European law via the South Hams Special Area of Conservation (SAC) which covers the whole of the village. The information shown in the draft refers only to flight corridors across the area. Sheet 8 expressly states *"These strategic flight corridors form a connection to important feeding grounds which are located <u>beyond</u> the study area."* This is incorrect as no mention is made in the draft of the sustenance zone that also covers large tracts of the village where development is proposed. It is not accepted that the assessment has been sufficient to demonstrate that there will be no significant effect on the protected species.

- A key constraint on further development in the village is the inadequate capacity of the combined foul and surface water sewer network to accommodate further growth. A number of existing properties in the area are on septic tanks. Flooding of foul and surface water currently takes place, and the Supreme Court decided in December 2009 that water companies do not have the lawful right to prevent developers from connecting to the existing system at the point of their choosing and it is for the planning system to assess the situation before development takes place (UKSC 13 [2009] Barratt Homes Ltd v Welsh Water). From information collected by the Forum in preparation for the aborted Planning Appeal in October 2014 for the site off Totnes Road that runs through the area, it is clear there is a foul drainage problem that must be addressed before any final conclusion is reached on the capacity of the area to accommodate the draft proposals. At the very least, it was expected by the Forum that the draft would indicate where a trunk sewer should be located. This has not been the outcome in the draft, and is a major deficiency.

- The draft proposal to accommodate development on the north side of the A385 in Phase 4 conflicts directly with community views submitted in the email of 2 June previously referred to above. Closer examination of the draft confirms that only a contorted layout can result from development in these two areas. The area to the west of the school will have vehicular traffic at night with lights that will defeat the low lighting regime the draft proposes in order to protect the bat flight path. The area to the east of Borough Park Road ends up with an elongated route

eastward to the A380 (Kings Ash Road) and tortuous connections points southwards onto the A385 (Totnes Road). The draft proposed will intensify the volume of movements along Borough Park Road significantly, and it will be very difficult for commercial vehicles to negotiate the indicated links from Totnes Road. The Forum remains of the view that development at these two locations is totally inappropriate.

- Whilst it is recognised the draft has given special attention to the issue of landscape impact, it is nevertheless the case that all of the land lies within an area that has hitherto been justified and supported as a designated Area of Great Landscape Value. It is not accepted that this should be disregarded as to do so conflicts directly with government planning policy in NPPF109.

For the avoidance of doubt, it continues to be the Forum's view that there is no need to bring forward any Greenfield land in Collaton St Mary within the Local Plan period to 2032.

b) Paignton Town Centre

It is noted and welcomed that the draft has recognised the importance of needing to protect and enhance green spaces in the Town Centre. This is essential to ensure the Local Plan and Neighbourhood Plan objective is achieved of regenerating the garden town heritage of the area. In particular, the protection shown for Victoria Park, Queens Park, seafront Greens and other areas that make up the green network is welcomed. Associated proposals included are also welcomed that seek to enhance the public realm and improve the appearance overall, for example by more coordinated use of materials.

However, it is of great concern to see the scale of change and nature of some of the proposals has gone too far. Whilst recognising they are aspirational, it is not accepted they are supportable as shown in the current draft or realistic as required by NPPF154. Principal examples include:

- Emphasis has been placed on securing major change to the highway network, and at an early stage in order to achieve a 'quick win'. The overall change shown is extensive and relies entirely on being able to convert Hyde Road / Great Western Road into a two way traffic artery. Leaving aside the concern that this would bisect town centre pedestrian movement to a much greater extent, such proposals are not considered to be realistic in best use of scarce public funds, and above all would increase risk of highway danger at the critically important junction of Hyde Road, Victoria Street and Torbay Road. This is a dog-leg junction where it is considered the changed network proposed would put public transport and articulated heavy goods vehicles at serious risk of colliding with each other as they attempt to negotiate the junction's off-set alignment;

- Nearly 350 additional dwellings are proposed. There is no evidence presented that demonstrates how this scale of increase can be accommodated in an area where the Victorian combined foul and surface water system is known to be overloaded, and where such a very large proportion of the town centre is at high risk of flooding;

- Several sites involve clearing away existing developments and replacing them with other structures. In some cases this legitimately brings into question the need to show such proposals would be viable having regard to direct and indirect implementation costs likely to be involved. Only the seafront Cinema location has been recognised as having the problem, and has realistically resulted in an alternative approach being included within the draft. No such alternative information has been included for other key sites to show that such aspirations will not put additional cost burdens on prospective developers in due course, or result in a scale of provision out of keeping with the surroundings. The 'tower block' proposed on the west side of the railway crossing and proposals on the south side of the Harbour are the main examples. Neither of these proposals is considered to be in keeping with the character of the area or realistic in viability terms;

- Retail frontage details are helpfully shown on background information map 5 and assume the primary retail frontage is limited only to Victoria Street. This is incorrect and is clearly a reflection of the proposal included in the draft Local Plan that the Forum has previously indicated is not correct and not supported. To continue to include this would be totally at odds with retaining and enhancing the role of the town centre as a retail centre. This conflict of information is important

because the draft proposals underplay the effect the highway changes would have in such retail locations as Torquay Road;

- Interesting examples of developments elsewhere have been included as photographic information, but none have been incorporated into the draft that show where and how 'green walls' and similar proposals could be incorporated as part of a much wider agenda to reduce energy consumption and move towards urban cooling and a zero carbon economy.

Whilst the above comments have centred on points of great concern, it is acknowledged that there is much in the draft that merits support. The problem has clearly been that further discussion was necessary but did not take place and would have helped enable the drafts to fit seamlessly with the draft policies of the Neighbourhood Plan.

Process

Paragraph 2.3.5 of Document 28 submitted by the Council with the Local Plan on 31 July 2014 clearly states:

> *"The two Torbay Local Plan Future Growth Areas and two town centre studies that are currently the subject of masterplanning could also become the subject of Supplementary Planning Documents, in order to provide a statutory framework for delivery. However, the option being pursued at present is for masterplanning work to be incorporated within Torbay's three emerging Neighbourhood Plans."*

No explanation has been given for departing from this stated process, which as a result has now caused the need to consider if the intention to move to adopt each draft as SPD is appropriate and lawful. The following issues are considered to be of material relevance:

a) Collaton St Mary

It is recognised that in respect of Collaton St Mary the draft states that the Council would not, and it is considered could not, adopt the draft as SPD until the outcome of the Local Plan process is known.

However, the situation is not that simple. The comments above have drawn attention to the disparity that now exists with the proposals in the submitted Local Plan and shortcomings of the draft in demonstrating that it has met the requirement to assess the impact on the protected bat colony sufficiently in accordance with European and UK law. In this regard it is noted that the objection submitted by Natural England on 4 April 2014 in response to the submitted Local Plan has pointed out that it is not lawful to delegate the assessment to a lower level of planning where an assessment of capacity for further development is involved. It is also known that a Judicial Review has been launched against the recently adopted Teignbridge Local Plan adjoining Torbay and is expected to be heard by the High Court after the Torbay Local Plan Examination in public is programmed to be completed. It is understood the same issue has arisen. The outcome of the Judicial Review could have a profound effect on the process as well as content of the Torbay Local Plan.

Additionally the Forum concerns above have drawn specific attention to the foul water drainage constraint that exists and absence of any assessment that would satisfy the Supreme Court decision of 2009. In this context, it has been noted that on 15 October 2014 South West Water submitted a formal response to the Council in respect of the development proposal recently submitted for planning approval on land off Brixham Road / Long Road (P/2014/0947). The response states *"it is unlikely that the public foul drainage network would have capacity to accommodate this current application / development."* The site involved is down stream of Collaton St Mary thus reinforcing the need for a properly assessed view of drainage capacity before the extent and pace of proposed development at Collaton St Mary are defined.

b) Paignton Town Centre

In respect of the draft for Paignton Town Centre, it is not accepted that the way is clear to adopt the draft as SPD on the back of the existing Torbay Local Plan that currently has 'saved' status only. The published draft Masterplan is not accompanied by any document that shows how it meets the statutory requirement of the Environmental Assessment of Plans and Programmes Regulations 2004.

Without such information it is considered that adoption of the document would not be legally compliant, and therefore of no effect statutorily, thus failing to achieve the stated objective in Council document 28 already referred to above. In support of this conclusion it is noted that Planning Practice Guidance (PPG) issued by the Government in March 2014 draws attention to the possible need for a Strategic Environmental Assessment (SEA) in exceptional circumstances (PPG ID: 12 paragraph 028). Seeking to adopt an SPD to implement a 'Saved' Local Plan that was intended to expire in 2011 is arguably such an exceptional circumstance.

The reason for being concerned is not simply to be bureaucratic. As already referred to above, the draft proposes to include a quantum of additional housing development in an area where no indication has been given of how the foul and surface water issues will be addressed in a situation where a large part of the area is at risk of flooding. Additionally, the objection by Natural England of 4 April 2014 has prompted relevant concern for the effect that flash flooding could have at the emergency outfall at Sharkham Point in terms of the potential effect on protected marine life in that area. There is nothing in the Public Notice documents accompanying the draft that show this issue has been considered and addressed.

Conclusion

The drafts have added information of value to the proposed Local Plan and Neighbourhood Plan, but have not addressed critically important issues sufficiently, or at all, that enable the draft Masterplans to be adopted as SPD as the next step.

It is also the case that the Neighbourhood Plan will supersede any SPD that may be adopted as it will carry greater weight as a statutory Development Plan in due course.

It is therefore proposed that early collaboration takes place between the Forum and Council officers to integrate those parts of each draft into the Neighbourhood Plan where it is possible to do so without further delay and to agree how the issues of concern raised above will be addressed and resolved rather than having to seek the intervention of the Secretary of State under Regulation 16 of the 2012 Regulations being used by the Council in the heading of this letter.

As many of the concerns raised are of direct relevance to the Local Plan Examination currently in progress, a copy of this letter is being sent to the Planning Inspector via the Programme Officer to avoid any delay, which it is hoped will be seen as helpful.

Yours sincerely

David Watts
Chairman, Paignton Neighbourhood Forum

cc
Elected Mayor of Torbay and all Torbay Councillors
Local Plan Inspector, Mr Keith Holland BA (Hons) DiP TP MRTPI ARICS