

# PAIGNTON NEIGHBOURHOOD FORUM

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



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By email to: [future.planning@tobay.gov.uk](mailto:future.planning@tobay.gov.uk)  
Strategic Planning (FAO Mr David Pickhaver)  
Torbay Council  
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Dear David

## **Delivering the Torbay Local Plan: Planning Obligations & Affordable Housing Supplementary Planning Document (SPD) - Consultation Draft**

Thank you for inviting the Forum to comment on the above draft proposals by no later than 31 October 2016. At the meeting on 20 October 2016 the Forum considered the draft and decided to submit the following comments for the Council's consideration.

The Forum supports the view that an updated SPD will help developers by clarifying expected contributions and how they will be applied. This includes reference made in many places to the Community Infrastructure Levy (CIL) being taken forward by the Council via separate procedure and different timetable.

However, the Forum is concerned that proposals in the draft SPD will not deliver key parts of the recently adopted Local Plan and should be amended. Additionally, they impact on the CIL proposals not yet resolved, as referred to first in the comments below:

### The SPD and CIL relationship

The draft SPD has emerged before the CIL outcome is known and provides more detail on how the two will relate to each other. However, the CIL has only just reached Examination in Public stage with Modifications proposed by the Council in response to earlier objections. The Forum has submitted objections to the Modifications within the consultation period that ended only recently (17 October 2016). Consequently they have not yet been given due consideration by the Council and the appointed independent Examiner.

Concern about timing is justified because the SPD directly affects matters of development viability which sit at the core of the CIL proposal and objection submitted by the Forum. Notably, the Council has taken the view that larger scale Greenfield development in designated Future Growth Areas should not be subject to CIL because of concern about development viability after account is taken of S106 contributions that would flow from the SPD.

It is clear the SPD should therefore not be finalised until the outcome of the CIL is known. Similarly, as evidenced above, the SPD proposals directly affect consideration of viability matters at the core of objections made to the CIL proposals. Examination in Public of the CIL therefore needs to include the ability to examine relevant parts of the SPD through a Hearing by the Examiner as the quickest way to address and resolve the concerns with both the CIL and SPD.

A copy of this letter has therefore been sent to the CIL Examination Programme Officer for onward submission to the appointed Examiner.

Comments below on the draft SPD have of necessity been based on the CIL proposal as it currently stands (i.e. as last Modified), which in combination with the draft SPD would appear to result in the following (in summary):

- a) S106 direct "Site acceptability" requirement on all development in all areas;
- b) S106 "Affordable housing" requirement less than the adopted Local Plan;
- c) S106 "Sustainable development" requirement would be given the lowest priority;
- d) CIL charged at different rates in different areas;
- e) CIL funds collected would be spent on:
  - A mandatory 15-25% for neighbourhood items (currently undefined);
  - South Devon Link Road (opened 15 December 2015);
  - Impact of CIL paying development on limestone grassland and protected Greater Horseshoe Bats (spent only within the Brixham area ?);
- f) S106 not sought on CIL spend items from CIL payers (i.e. no 'double dipping').

#### Comment on the draft SPD

To assist consideration, the comments are made in the order of headings in the draft:

*"1) Introduction and overall approach" – pages 6 -14 (and throughout)*

The category defined as "*Development Site Acceptability Matters*" throughout the draft can be open to misinterpretation. It is suggested that replacing the term with Development Site Deliverability Matters would convey more accurately the nature and scope of elements involved.

*'A Note on Thresholds' - page 7 (and subsequent sections)*

There is deep concern that the SPD proposes to change the threshold at which provision for affordable housing will be required. The Local Plan adopted on 10 December 2015 set the Greenfield threshold at schemes of 3 dwellings or more. The SPD proposes to relax this to developments of 11 dwellings or more.

Relaxation of the threshold is of concern because the critical need for affordable housing in Torbay was the reason why the threshold was set, examined and confirmed at a level of 3 dwellings. Relaxation of the threshold would change the balance of sustainable development approved in the Local Plan and seeking to amend the statutory development plan via a SPD proposal is not appropriate.

Justification for the change given in the draft SPD is the reference made to the Court of Appeal decision confirming the Minister's ability to indicate an expected level. The SPD states the Council believe this to be a 'material consideration' that justifies the change in the SPD.

There are three reasons why the proposed change is not appropriate:

- i) Local Plans are devolved to local level because it has long been established that planning Ministers cannot be all seeing in all places at all times and local variation can be made when justified;
- ii) A threshold of 3 has only very recently been approved in the adopted Local Plan following formal examination having regard to local need;
- iii) Appeal decisions more recently issued by the Planning Inspectorate have confirmed that Local Plan thresholds are able to take priority over the PPG, and Written Ministerial Statement the Council rely on (see Elmbridge APP/K3605/W/16/31466 determined 12 August 2016 and South Cambridgeshire APP/W0530/W/16/3142834 determined 22 September 2016). These Appeal decisions are also ‘material consideration’ which enable the Council to retain the Local Plan Greenfield threshold of 3 dwellings.

If the threshold is not retained at 3 dwellings, this adds further weight to the Forum objection to the CIL Modification that larger Greenfield development can withstand being included within CIL payment and the growth strategy underlying the Local Plan would be undermined if the Local Plan threshold is not retained.

In conclusion, there has been no change in the need for affordable housing in Torbay. The proposed change to the up to date adopted Local Plan Policy H2 requirement is not justified and procedurally inappropriate to make via the SPD.

*“2) Development site acceptability (deliverability) matters”*

*‘Development Impacts on Biodiversity’ – pages 17 - 21*

Where reference is made to habitat ‘compensation’ it needs to be made clear that use of such measures can only apply where the development causing the need for compensation is development that is required in the national interest (not public interest). Judgement 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*) confirmed that compensatory measures can only be approved where it is in the national interest – not simply where it derives ‘public benefit’. It is important to clarify in the SPD the test that will be applied where impact on protected species and habitats are involved, as acknowledged by paragraph 6.1.2.27 of the adopted Local Plan.

Use of ‘Grampian’ style conditions as proposed on page 20 of the SPD would not be appropriate and needs to be deleted. If a development is not able to meet the condition above for ‘compensatory’ provision, such development would need to be refused. Similarly, ‘mitigating’ measures off-site cannot be accepted unless it can be demonstrated beforehand via binding agreement that they are actually deliverable, as determined by the Section 78 Appeal decision at Churston Golf Course (P/2013/0019).

*“3) Affordable housing, employment and health”*

*‘Affordable Housing’ - pages 24 - 31*

The comments made earlier above regarding affordable housing apply especially here and are not therefore repeated.

'Loss of employment' – pages 31 – 33

Achieving net growth in job numbers by enhancing infrastructure provision sits at the heart of the adopted Local Plan strategy. Coupled with this is the extensive area of employment land, in the west of Paignton area especially, that has been re-designated for non-employment use. It is therefore not justified to adopt a lower figure of £8,000 per further job lost when the information presented justifies a requirement for £19,000 within Torbay. The contribution requirement to mitigate any further loss needs to be upwardly adjusted to the local figure of £19,000 per full time equivalent.

'Development which creates a specific Health / Social Service need e.g. Care Homes, Sheltered Housing' - pages 34 - 37

There is a significant mismatch here between the SPD requirement and intention of the South Devon and Torbay Clinical Commissioning Group (CCG).

The CCG is currently consulting on the closure of Paignton Hospital and providing in its place a care model that “stimulates” the care home / intermediate market. No indication has been given in the consultation and public meetings so far held in Paignton that evidence how this will be achieved from a CCG resource base that is required to be reduced by NHS England.

Requiring Healthcare contributions of the size shown in Table 3.6 for accommodation for people in need of care does not fit with the CCG strategy of increasing the provision of such facilities and is more likely to become a disincentive to further development provision. The requirement in Table 3.6 needs to be reduced if not removed completely.

“4) Sustainable development infrastructure”

'Public Realm Improvements' – page 46

The Forum requests the opportunity to see and comment on the “Kay Elliot” report referred to on page 46 and how this relates to the global figure estimated of £700,000 for works within town centres and associated with town centres referred to in the same paragraph. The Forum is aware of the decision taken recently by the Council as local planning authority that gave priority to a contribution for such enhancements over affordable housing proposed by the development within the town centre of Paignton, but without indicating what the enhancements would be

“5) Implementation”

'Viability – Content of Viability Assessments' – page 52

There is strong support for the ‘open book’ accounting approach indicated.

However, the draft needs to clarify that it will not be possible or appropriate for the Council to withhold publication of viability assessments received where they are required to be published on request following the outcome of the Information Tribunal’s decision in 2014. (*LB Southwark v IC, Lend Lease and Glasspool (EA/2013/0162)*).

“6) Summary of Likely Contributions” – pages 54 - 56

Though very useful, Table 6.1 appears to be a summary of residential development. A summary of other forms of development would be very helpful, or appropriate

adjustment of Table 6.1 to make it clear it covers all developments required to engage with the SPD.

I trust the above comments of the Forum are of assistance. Should you wish to have any further clarification, please do not hesitate to let me know.

Yours sincerely

David Watts

Chairman, Paignton Neighbourhood Plan Forum

c.c. Mike Parkes, Forum Secretary  
David Pickhaver, Torbay Council  
Helen Wills, CIL Examination Programme Officer