

# TORBAY FIVE YEAR LAND SUPPLY STATEMENT 2017/2018

## Introduction

The following sets out an officer level assessment of Torbay's five year housing supply position for 2017/18 - 2021/22.

Local planning authorities (LPAs) are required to maintain 5 years supply of deliverable housing land (National Planning Policy Framework (NPPF) paragraph 47). The Government has repeatedly stated that increasing housing supply is a high priority. This document sets out Torbay's five year supply position for the five year period 1 April 2017 – 31 March 2022. This statement will be updated annually or where there is a significant change in circumstances affecting its accuracy.

## Housing Targets

The Torbay Local Plan was adopted in December 2015 and provides the up-to-date development plan for the authority, including housing targets. Policy SS12 'Housing' and Policy SS13 'Five year land supply' refer. The housing trajectory of 8,900 dwellings over the Plan period 2012-2030 (including an allowance for windfall sites) is set out as below;

400 dwellings per year for the period 2012/13 – 2016/17

495 dwellings per year for the period 2017/18 – 2021/22

555 dwellings per year for the period 2022/23 – 2029/30

## Five year supply requirement

During the first five years of the plan period (2012/13 - 2016/17), 1778 units were completed. This is an undersupply of 222 units on the five-year target of 2000. This undersupply is only 11% on the five-year target, and considering that Torbay exceeded housing targets in the previous development plans (Torbay Local Plan 1995-2011 and the Devon Structure Plan and in two of the last five years (2013/14 and 2015/16) it is not considered that the authority has a "record of persistent under delivery", therefore a 5% buffer is appropriate. The five year supply table is shown below.

Five Year Supply					
Year	1	2	3	4	5
	17/18	18/19	19/20	20/21	21/22
Target	495	495	495	495	495
Target + 5%	520	520	520	520	520
Target + 5% + Undersupply (annualised over 5 yrs)	564	564	564	564	564
Cumulative Target	564	1129	1693	2258	2822

Policy SS13 of the Local Plan sets out a target of 495 dwellings per year over the next five years (2017/18 - 2021/22). When a 5% buffer is applied (in accordance with NPPF para 47), this becomes 520 units per year. The undersupply of 222 units is then added<sup>1</sup>, resulting in a five year supply requirement of 2822 units (564 per year annualised over the next five years). As the undersupply is

<sup>1</sup> The backlog of undersupply must be met within five years. This is referred to as the 'Sedgefield Method' and is advocated by Planning Practice Guidance.

relatively small, it has been annualised over the five year period rather than spread over the Plan period. This ensures that future forecasts remain robust.

### Five year supply forecast

Sites included in Torbay’s future five year supply calculation are shown in Appendix A. National Planning Policy Guidance (NPPG) states that “deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission...unless there is clear evidence that schemes will not be implemented within 5 years” (Para: 030 Reference ID: 3-030-20140306). A detailed discussion of deliverability is set out in the appendix.

Torbay’s case is unusual in that the Local Plan allocates only ‘Future Growth Areas (FGAs)’ (larger-scale sites due to deliver towards the end of the plan period) and has left the allocation of other sites (particularly those proposed to deliver in the ‘middle’ years 6-10 period) for Neighbourhood Plans to allocate<sup>2</sup>.

Due to a combination of reasons, it has taken longer than anticipated for the Neighbourhood Plans to reach submission stage<sup>3</sup> following adoption of the Local Plan in December 2015. As the next five years covers the Local Plan years 6-10 period, this has left Torbay with a lack of allocated sites to include in the five year supply. This was identified as a risk by the Local Plan Inspector<sup>4</sup>. The five year supply therefore constitutes sites with a net gain of 6 units or more with a permission as at 03.08.17 (the time at which the spreadsheet was compiled)<sup>5</sup>, (parts) of FGAs which are likely to start delivering towards the end of the next five year period and an allowance for windfall sites<sup>6</sup>.

The LPA has reviewed the sites included in its five year supply in the light of recent judicial decisions, particularly that of Lord Justice Lindblom in St Modwen Developments<sup>7</sup> and has included sites where it considers that there is a realistic prospect of the site being delivered in five years.

**The five year housing land supply is 2362 units against a target of 2822 units, which equates to 4.19 years’ worth of deliverable sites.**

Five year supply calculation	2362 / 564 (target + annualised undersupply) = 4.19
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### Discounted Sites

Those sites which the Council did not include in the five year supply spreadsheet are neighbourhood plan sites on which there are no current applications or knowledge of any interest in developing; some masterplan sites; and ‘old’ sites with an implemented permission which have seen no recent activity. Officers took the view that these did not pass the NPPF footnote 11 test and there was not a realistic prospect that they would be delivered in five years.

<sup>2</sup> Torbay has 100% neighbourhood plan coverage, provided by three plans; Torquay, Paignton and Brixham Peninsula. In general, these cover larger areas and populations than other neighbourhood plans across the country.

<sup>3</sup> This is the current stage which all three neighbourhood plans are at.

<sup>4</sup> Paragraph 56 of Inspector’s Report dated 12 October 2015

<sup>5</sup> With the exception of the comment added to the South Devon College (Torre Marine) site stating when the most recent application was permitted (prior permission had been implemented therefore this site has been included on previous 5 year supply spreadsheets)

<sup>6</sup> The annual windfall allowance has been reduced from 130 (in the latest SHLAA) to 100 as a result of averaging windfall completions over the past 5 years (the start of the Plan period).

<sup>7</sup> Court of Appeal [2017] EWCA Civ 1643

## Consequences of shortfall in five year supply

In the absence of a five year supply, paragraph 49 of the NPPF indicates that policies for the supply of housing cannot be considered up to date. The Supreme Court has held that a “narrow” definition should be applied to what constitutes policies for the supply of housing. However where five year supply cannot be demonstrated the balance is tilted in favour of the grant of permission, except where the benefits are “significantly and demonstrably” outweighed by the adverse effects or where specific policies indicate otherwise”<sup>8</sup>

## Potential solutions

**Policy SS13** of the Adopted Local Plan sets out that:

*“Where the supply of deliverable sites (plus windfall allowance) falls below this (five year supply) figure, or Neighbourhood Plans do not identify sufficient sites to meet the five year requirement...the Council will either:*

- 1) *Bring forward additional housing land from the later stages of the Plan, working closely with landowners, developers and Neighbourhood Forums; or*
- 2) *Identify additional sites through new site allocation development plan documents.*
- 3) *Consider favourably applications for new housing, consistent with Policy SS2, H1 and other Policies of this Plan.*

In terms of the solutions set out in Policy SS13 (above), the Council is already seeking to do 1) and 3). Preparing a site allocations development plan document (DPD) (2) (above) would require, at the very least, an updated Strategic Housing and Employment Land Availability Assessment (SHELAA), two rounds of consultation and an examination in public. This would take a significant amount of time (18 months – 2 years) to carry out. Due to the timescales involved, it will be more efficient to undertake an (early) Local Plan First Review (see paragraph below).

Local Plans should be reviewed every five years, therefore a Local Plan First Review is due in 2020. Work on the evidence base for this will begin within the next year, and if necessary and resources allow, an early Review of the Local Plan (i.e. prior to the 2020 required date) is a likely option to deal with housing supply issues. This work will also feed in to five year supply calculations where appropriate.

Another opportunity to resolve the lack of supply will be through the adoption of Neighbourhood Plans where they allocate sufficient housing land supply. The three neighbourhood plans (covering Torquay, Paignton and Brixham Peninsula) have been formally submitted to the Council and were publicised for (Regulation 16) consultation between Wednesday 1 November and Monday 18 December 2017. They are currently awaiting examination by an Independent Examiner. Both Torquay and Brixham Peninsula Neighbourhood Plans propose site allocations, Paignton does not.

When they come into force, Neighbourhood Plans (that allocate sites) enjoy some protection from the Written Ministerial Statement of 12 December 2016 which states that Policies for the supply of housing in Neighbourhood Plans should not be deemed to be out of date where all of the following circumstances are met:

- The written ministerial statement is less than 2 years old, or the neighbourhood plan has been part of the development plan for 2 years or less;

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<sup>8</sup> As per paragraph 14 of the NPPF. Lords Carnwath and Gill in Suffolk CDC, Hopkins Homes Ltd, etc. [2017] UKSC 37

- the neighbourhood plan allocates sites for housing; and
- the local planning authority can demonstrate a three-year supply of deliverable housing sites.

This decision was upheld in the High Court<sup>9</sup>. The “three year supply” principle is repeated in the Draft NPPF (para 14).

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<sup>9</sup> Richborough Estates vs S of S [2018] EWHC 33 (Admin). It is noted that the idea of polies for the supply of housing being out of date has been somewhat overtaken by the Supreme Court).

## Appendix 1: Response to Consultation on Five Year Supply.

The council published a draft five year supply position statement in January 2018, which indicated that Torbay had 3.96 years supply of deliverable housing sites. This view was contested by the Neighbourhood Forums and consequently the LPA carried out a targeted consultation (between 24<sup>th</sup> February and 5<sup>th</sup> March 2018) with the Forums and developers who had recently made representations to the LPA where the five year supply situation was relevant.

There were three representations in response to this consultation:

- Stride Treglown for Deely Freed
- WYG for Cavanna Homes
- Joint response from the Neighbourhood Forums.

**Stride Treglown** largely agreed with the LPA's position. **WYG for Cavanna Homes** argued that Torbay should be a 20% authority because it had persistently not delivered the Local Plan average requirement of 495 dwellings per year. In consequence WYG argued that there was about 3.5 years' supply. The LPA does not agree with WYG's use of the averaged out housing figure (495 dpa) but instead consider that the trajectory set out in Policy SS13 is applicable. In any event WYG's assessment is that there is more than 3 years' supply and the policy implications of this are similar to the Council's assessment. Both WYG and the Neighbourhood Forums challenged the deliverability of Edginswell Gateway.

The **Neighbourhood Forums** submitted a more detailed combined response which argues that the LPA is able to show 6.1 years supply. There reasons for arguing this are as follows:

- a) The requirement figure should be reduced because jobs growth has not kept pace with housing growth and vacant homes have increased.
- b) The 222 dwelling shortfall 2012-17 should be made up over the Plan period ("Liverpool method") rather than over 5 years ("Sedgefield Method")
- c) More sites should be included in the five year supply- lack of income and not supply is the driving factor. Sites that are capable of being delivered can be included: there does not need to be a certainty of delivery. Neighbourhood Plan sites should be included.
- d) Windfalls should be counted as the "approved allowance" of 130 dpa or on the basis of permissions granted (770 approved since 2012/13= 154dpa).

The Neighbourhood Forums' arguments are considered below:

- a) **Requirement.** Reassessing objectively assessed need (OAN) is largely beyond the scope of this paper. The PPG indicates that considerable weight should be given to Local Plan housing requirements, as they have been through public examination (3-030-20140306). An assessment of OAN will need to take place within the context of the Local Plan review, however the 2014 based Household Projections are higher than the 2012 figures which informed the Local Plan. The Government's standardised OAN is currently in draft form, but is 588 dpa for Torbay. The Council does not consider that housing and economic data justify a move away from the Local Plan's housing trajectory or requirement. Whilst NOMIS figures indicate a fall of 2000 jobs in Torbay since 2012, other NOMIS statistics show a record number of people living in Torbay being in employment and that there is a relatively low

rate of unemployment. In any event it is difficult to see how the housing requirement could be changed outside of the Local Plan Review.

- b) **Shortfall should be reallocated using the Liverpool Method.** PPG 3-025 indicates that LPAs should aim to deal with any undersupply within the first 5 years of the Plan period where possible. Whilst it is acknowledged that some appeals have allowed the Liverpool Method, others have favoured the Sedgefield Method, and this is more consistent with the wider objective of significantly increasing the supply of housing. Although the proposed revisions to the PPG do not have full weight, p13-14 indicates that shortfalls should be addressed to meet the requirement over the next five years (i.e. Sedgefield), unless a longer period is agreed at the plan making stage. Torbay does not have large urban extensions (by national or sub-regional standards) that could be cited as a reason to use the Liverpool Method. In any event the difference in numbers is not sufficient to ensure that the LPA has a 5 year supply ( $222/5= 44.4$ .  $222/12= 18.5$  i.e. 26 dwellings a year or 130 over 5 years).
- c) **More sites could be considered as deliverable.** The assessment of what sites may be treated as deliverable is considered, by officers, to be the Neighbourhood Forums' strongest argument. NPPF footnote 11 states *"To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented in five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans."*

PPG 3-031-20140306 references the NPPF definition and offers further advice. Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years. However planning permission or allocation in a development plan is not a pre-requisite for a site being deliverable. LPAs need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out. If there are no significant constraints (e.g. infrastructure) unallocated sites without planning permission can be considered deliverable. Site size is an important consideration and plan makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust 5 year supply.

The Court of Appeal has provided useful clarification of sites that can be treated as deliverable in *St Modwen Developments V Sof S [2017] EWCA CIV*. The Court of appeal reiterated that to be considered deliverable, LPAs needed no more than a "realistic prospect" that the dwelling would be completed in five years. This has been interpreted by some as "lowering the bar" to demonstrating a five year supply: the ruling has not changed the status of NPPF footnote 11.

To complicate matters further the Draft NPPF amends the definition of deliverability and is accompanied by draft Planning Practice Guidance. The draft NPPF's deliverable test appears to be more restrictive than the PPG text, as sites which are allocated in development plans, have permission in principle or identified on a brownfield register can only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. The LPA has given the draft NPPF limited weight in assessing deliverable sites, but has sought to apply the "realistic prospect" test in the NPPF and St Modwen.

At present footnote 11 of the NPPF is the quasi-legal test. It requires practitioners to make a judgement about whether sites are available now, are a suitable location for development, and achievable with a *realistic prospect* that housing will be delivered on the site within five years, and that the site is viable. Where sites have planning permission there is a presumption that they are deliverable unless there is clear evidence that the schemes will not be implemented in five years. The LPA has always factored in build out rates into this calculation. Officers have sought to carry out the exercise of assessing deliverability on the basis of the NPPF footnote 11 test, and it is recognised that an element of planning judgement is involved in making this assessment.

In response to the Forum's detailed comments on sites, the LPA has added an additional 130 units (net) which are considered to have a realistic prospect of delivery in five years. This takes the number of deliverable units to 2362 (up from 2232).

#### **TORQUAY**

Bishops Court Hotel	38 units
Country House, Ellacombe Road (2 sites)	13 units
Pavilion/Marina Car Park	43 units
Dairy Crest	67 units

#### **PAIGNTON**

2 Courtland Road	3 units (total site 6 units but 3 units complete)
Former Paignton Police Station	46 units
SUB-TOTAL additional	210 units
Remove units at Edginswell FGA	-80 units
TOTAL additional	130 units

**d) Windfall allowance should be increased.** NPPF 48 indicates that windfalls may be counted in the five year supply if the LPA has compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the SHLAA, historic windfall delivery rates and expected future trends, and should not include residential gardens". This is echoed in the draft NPPF (para 71) and PPG 3-24-20140306.

The figure of 130 windfall dwellings per year (which the Local Plan defines as dwellings of 5 or fewer dwellings) is derived from the 2008 and 2013 SHLAAs based on windfall delivery rates from 2000/01- 2011/12, with a significant spike in 2006/7 and 2007/8. The annual average between 2012 and present has been around 100 dpa. Whilst the Local Plan anticipates 130 windfall dwellings per year (para 4.5.19, table 3, 4.5.46 et al), the Plan indicates that delivery will be monitored on an annual basis (Policy SS13).

The Forums have noted that permissions for 770 dwellings arose on sites of 5 or fewer units between 2012/13 and 2016/17, equal to 154 dwellings per year. Some of these will now have expired and it is not clear if repeat applications have been eliminated. However, the NPPF refers to historic delivery rates rather than permissions (per se). If windfall permissions are used, it is considered that a certainty of completion figure would need to be factored in.

The figure of 100 dwellings per year for windfalls is more recent and reflects the current policy and economic framework than the SHLAA figure and therefore is considered by the LPA's officers to be the more robust figure having regard to the NPPF.

Notwithstanding this, the difference between the SHLAA windfall rate of 130 and delivery rate of 100 dwellings a year is 150 dwellings (30 x 5) which would not meet the shortfall in five year supply.

#### **Summary of response to Forums' comments**

The LPA has assessed its supply position to be 4.19 years based on the additional sites.

Using the Liverpool method, and adding in the 150 extra windfall sites would result in 4.67 years supply (i.e.  $(2362+150)/(564-26)= 4.67$ ). Whilst the LPA does not agree with this approach, it still results in a supply of more than 3 but less than 5 years.

It is recognised that a judgement needs to be made about which sites are "deliverable" and officers have sought to make this in an objective way.

The above assessment is for 2016/17. A new assessment will be made for 2017/18 when the results of the housing monitoring are known.