

**Paignton Neighbourhood Plan Exploratory Meeting  
Transcription Note  
Paignton Library - 10<sup>th</sup> May 2018**

The following is a transcript of the Paignton Neighbourhood Plan Exploratory Meeting held on the 10<sup>th</sup> May 2018 taken from the audio file available on the Torquay Council website that is available here (<http://www.torbay.gov.uk/council/policies/planning-policies/neighbourhood-plans/paignton-np/>). This note is not an official document or record. Every effort has been made in terms of accuracy and punctuation has been included to the author's best ability in order to aid readability. However, reference should always be made to the original audio file for correctness – to ensure context and tone are understood properly and any unintentional misinterpretations in this note regarding inflection are avoided. Timestamps are approximate only.

**Participants at the Table**

Deborah McCann (**DM**) – Independent Examiner  
Roger Bristow (**RB**) – Paignton Neighbourhood Forum  
Eileen Donovan (**ED**) – Paignton Neighbourhood Forum  
Alan Hill (**AH**) – Paignton Neighbourhood Forum  
Richard Parish (**RP**) – Paignton Neighbourhood Forum  
Mike Parkes (**MP**) – Paignton Neighbourhood Forum  
David Watts (**DW**) – Paignton Neighbourhood Forum  
Tracy Brooks (**TB**) – Torbay Council  
Adam Luscombe (**AL**) – Torbay Council  
David Pickhaver (**DP**) – Torbay Council  
Ashwag Shimin (**AS**) – Torbay Council

**DM** – 0:00:00

Good afternoon ladies and gentlemen it's one o'clock so I think we'll make a start. I guess that you can all hear me, properly. If at any time during the proceedings you can't hear me or one of the other contributors just shout and we'll make sure that you can. I'd like to welcome you here this afternoon to an exploratory meeting of the Paignton Neighbourhood Plan. An exploratory meeting is probably as new to me as it is to you and I'm going to go on to explain a little bit about it in a couple of minutes but first of all I think we need to do some housekeeping don't we. It hasn't been explained very clearly to me but I believe that there are fire escapes if you go out of obviously those two doors that have fire escape written on them if you turn right you'll see a fire escape at the end of the corridor and if you turn left you'll come to the main stairs that you probably came up, please don't use the lift if there is a fire. We are not expecting any fire drills this afternoon. That's my understanding. I don't know how hot this room is going to get and I don't think there are any opening windows we might be able to open the door for everyone if it does get really hot, so stick your hand up if it does get unbearable. There is also an issue with Wi-Fi so I'm going to make a plea to say please don't use the wi-fi if you don't need it because I do, or I might need it. So I've managed to log into the system at the moment but I think there is some issue with band width so if everybody is using it at the same time I might lose it. Turning to the actual proceedings today I'm very happy for you all to call me Deborah if you're happy that I should address you by your first names. Everyone happy with that? OK. Before we start the main part of the meeting I wanted to take the opportunity to explain a little bit more about the process of the examination of a Neighbourhood Plan. Paignton Neighbourhood Development Plan has to be independently examined, and I am the independent examiner who has been appointed, following the processes set out in the Town and Country Planning Act 1990 as amended by the Localism Act 2011 and the subsequent Neighbourhood Planning General Regulations 2012. It is a bit of a tone I have to read through but I thought it was the best way to be able to explain the process to you. As an examiner I am required to check that under paragraph 1 of schedule 4B of the Town and Country Planning Act 1990 as amended I have to check whether the policies in the plan relate to the development and use of land for the designated Neighbourhood Area and are in line with the requirements of section 38a of the planning and compulsory purchase Act 2004. I have to check whether the plan meets the requirements of section 38B of the planning and compulsory purchase act 2004 which specifies the period for which the plan is to take

effect. I also have to check that the plan is being prepared for an area designated under the localism act 2011 and has been developed in it submitted for examination by a qualifying body. I am also required to determine whether the plan complies with the basic conditions which are, and I'm only summarising them, that the proposed Neighbourhood Plan has regard to national policies and advice contained inside and issued by the Secretary of State; contributes to the achievement of sustainable development, and; is in general conformity with the strategic policies contained within the development plan for the area. The plan must also not breach and otherwise be compatible with EU obligations and human rights requirements. As an independent Examiner having examined the plan I am required to make one of the following recommendations: 1. that the plan can proceed unchanged to referendum; 2. the plan with the recommended modifications can proceed to referendum; 3. that the plan does not meet the legal requirements and cannot proceed to a referendum. I'm also required to recommend whether the referendum area should be different from the plan area and should the Paignton Neighbourhood Development Plan go to referendum. When I've issued my report Torbay Council will consider it and decide whether they are satisfied with the recommendations so they ultimately it rests with Torbay Council to decide whether they agree with my recommendation the decision or not. The Council will decide on my recommendation on whether or not the plan will move to a referendum with or without modification. If the Neighbourhood Plan is submitted to a referendum, then 28 working days' notice will be given of the referendum procedure and the Neighbourhood Plan details. If the referendum, this is a bit you've probably been waiting for, the referendum results in more than half of those voting – that is greater than 50% - voting in favour of the plan then the District Council must make the Neighbourhood Plan a part of the development plan as soon as possible. If approved by referendum and then made by the Local Planning Authority then the Neighbourhood Plan becomes part of the development plan. This is the bit that is less about the legal framework and more about how I have to look at the plan. So during the examination I may find issues of non-compliance with the basic conditions and other legal requirements. I will seek to receive, no resolve, these through recommending modifications the scope of the modifications I can make it set out in legislation. It is likely in most cases that in order for the plan to proceed to referendum, I will need to make modifications I have never examined a plan that I haven't had to make modifications to in order to meet the basic conditions and I have examined over 30 of them now. So it is not unusual to have to make modifications. I will make modifications to make the plan compliant with the conditions and other legal requirements and to correct errors and they are the only modifications I am allowed to make. Apart from I can also make them so that there is greater clarity in the plan. But I am restricted in the changes that I can make to any plan. I may on occasion need to delete wording including potentially an entire plan policy and/or section of text where the policy does not meet the basic conditions or other legal requirement although I will first fully consider modifying that policy rather than deleting it. Where a policy concerns a non land-use matter, advice in planning practice guidance states 'wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan but actions dealing with non land use matters should be clearly identifiable and for example set out in a companion document or Annex. So if I find things in the plan that are more of a community aspiration rather than something that can be part of a planning policy then I will recommend that they are moved to a separate part of the plan. As such when considering the deletion of any non land use policies in the plan, I will consider if I can make a modification to place the relevant proposed action in a non statutory annex dealing with those wider community aspirations. I will not generally refer back to parties on these detailed revisions but where the modification may necessitate a change that in my opinion would be of significance there is a reasonable expectation that a description of any intended modification will be publicised by the local Planning Authority on its website and seeking comments prior to recommending the change. Significant changes will likely require further work before modification particularly in relation to strategic environmental assessment. There will be circumstances where I may have to consider that changes cannot be made to modify to comply with the legal requirements and therefore should not proceed to referendum. The examination of a neighbourhood plan requires the assessment of whether or not the plan meets the basic conditions set out by the government but these basic conditions are not the same as the test set out for a local plan there is no test for soundness of a neighbourhood plan and I must confine my consideration of the plan primarily to whether or not the plan basic conditions and other legal requirements. The examination of a neighbourhood plan is usually carried out by means of written representations and until recently the only exploration of issues available to an examiner in public was to hold a hearing. You may be aware that there is a hearing to be held on the Torquay Neighbourhood Plan next Monday. Today's

proceedings are not a hearing but an exploratory meeting. This is a new that's just been introduced through the guidance for examiners produced by NPIERS who were the body who regulates independent examiners. Like a hearing an exploratory meeting is called at the discretion of the examiner, so I can decide whether to hold it or not, with the examiner determining who should be invited to speak and which areas should be covered. Where it differs from a hearing is that the purpose of the meeting is to help the examiner establish whether or not there is a fundamental issue that may jeopardise the success of the plan at examination. In contrast with a hearing an exploratory meeting provides the flexibility for the examiner to convene a discussion with identified participants about the plan where this may not fall necessarily within the very special statutory reasons for convening a hearing session. An exploratory meeting will provide an opportunity to consider an issue and scope where there is any viable remedy exploring all the options. The exploratory meeting in the best case scenario may in itself provide the necessary clarification and lead to resolution of the issue. Alternatively it may reveal that nothing further can reasonably be done and that will prevent the plan failing the basic conditions or other legal requirements. In certain circumstances it may be that further remedial work can be undertaken subject to the examiner qualifying body and Local Planning Authority agreeing that there is a reasonable prospect of remedying the plans shortcomings by placing the examination on hold that is suspending examination. And I may suggest a suspension if the issues that we're going to discuss today don't seem that they can reasonably be resolved during the meeting. Suspension is likely to be the most relevant to rectifying a procedural feeling rather than a basic conditions compliance issue however even a procedural failing may be dealt with by withdrawing the plan and going back to the point of the plan's preparation including consultation submission to the Local Planning Authority where the failure occurred. If the suspension relates to a policy's basic condition compliance I will be clear what the purpose of the suspension is e.g. to gather more evidence propose a different approach etc. The length of the suspension is at my discretion. Following a suspension period the aim is to be in a position to make the necessary modifications to the plan and recommend it proceeds to a referendum however there can be no guarantee of that. The reason that I have gone through in more detail is for you to understand the reason for having this meeting today and the process behind it and it but it's also to inform you as a qualifying body and you as a community that in addition to the issues that I am looking to discuss today with you and unrelated to the outcome of the meeting today I have identified a number of issues regarding the formatting and wording of the plan and its policies that I consider will require modification in order to meet the basic conditions. To correct errors or provide clarification. Having read the plan and the supporting documents I would like to congratulate the Neighbourhood Forum and the community for producing a plan that seeks to push the boundaries and introduce many innovations that other plans I have examined have not. I am very aware of the amount of time, determination and hard work it takes to get a neighbourhood plan to the examination stage. It's not for the faint hearted as I'm sure you'll agree. As previously stated I must focus on compliance with the basic conditions. The main purpose of a neighbourhood plan is to provide a framework for the determining of planning applications. A number of policies in the plan have elements which seek control things which fall outside the scope of the planning system or introduce requirements which are indiscriminate in terms of the size of the development or are overly onerous and therefore would not meet the basic conditions. It will therefore be necessary for me to make a number of modifications to the plan to ensure that the basic conditions are met. However I'm also I also will be very careful to ensure where possible that the intention and spirit of the plan is retained so that the plan when modified still reflects the community's intent in producing the neighbourhood plan. So I will address the Neighbourhood Plan Forum and ask do you have any questions? At this stage. Everyone happy? I'm sorry that was a bit of a lengthy introduction, but I thought it was necessary for everyone to understand what was happening. So now we can move on to the agenda. The main reason for holding this exploratory meeting is so that we can, I can, understand that it can be explained to me. I'm a bit worried about table. Exactly what's happening in terms of the delivery of housing across the Neighbourhood Plan period. So it's focusing on what's the target housing target how does the Neighbourhood Plan seek to deliver that across the plan. And what happens if it isn't. And that and that really is going to be the main focus I'm not anticipating...the other thing I talked about having to make other modifications the plan. I know what I need to do with those I don't need to discuss them with you at this point. There may be further along something but those will be dealt with by written representations. So if I have any further questions I will deal with those under written representations. Because this issue is so fundamental, goes to the root if you like, of whether the plan meets the basic conditions or not we need to sort this aspect now and that's why I've called the exploratory

meeting. What I'd like to do, there was some sort of scene setting I suppose I'd like to take place and I'd like to address the District Council and ask them to set the scene in terms of Local Plan policy, the housing targets and how they see that as being met.

**DP – 0:16:03**

Thank you. The Torbay Local Plan was adopted in 2015. It covers the period 2012 to 2030. The Local Plan takes a fairly unusual approach in that it allocates larger sites itself which is called strategic future growth areas but there is a reliance on three very large neighbourhood plans to provide a gap, to provide a gap, to provide the less strategic sites to make site allocations and that set out in policies SS1 SS5 for employment SS12 SS13 and policy H1 of the Local Plan as well as the, for the purposes of Paignton, the strategic development policies SDP policies. The overall Local Plan target is for 8900 dwellings over the plan period with a target for Paignton of 4,285 dwellings. We haven't asked Neighbourhood Plan to allocate the entire quantum of that but we have asked the Neighbourhood Forums to allocate sites which are, could be a combination of the appendix d<sup>1</sup> of the Local Plan Local Plan sites.

**DM – 0:17:47**

Can you explain a bit more how that split has happened, what the split is, and why, and why that has been arrived at?

**DP – 0:17:52**

Well, it was arrived at because the decision was taken in 2011 to, go to, to be supportive of Neighbourhood Plans and to get the most out of the neighbourhood plan system that was then coming in. There were a number of Strategic growth areas which are largely the ones covered later in the agenda. So Collaton St Mary Great Parks, White Rock western corridor sites, which are strategic areas but there are a number of smaller sites allocated or identified in the strategic housing land availability assessment which the decision was taken to ask the Forums to bring, to look at bringing those forwards. As I said we aren't expecting the forms to allocate the full quantum of 4285 sites but the appendix d sites which with our pool of sites if they were all developed would come to just under 900 homes which is the sort of quantum that we were asking the forms to allocate.

**DM – 0:19:05**

And that is 900 homes across the plan period?

**DP – 0:19:09**

It is, yes.

**DM – 0:19:13**

So, in the Local Plan, the 3000, whatever it is, 900, comes forward through sites that are identified in the plan. In the Local Plan?

**DP – 0:19:30**

The general approach that was thought of back in 2015, possibly slightly before, was the first five years of the period, which was 2012 to 2017 would be sites that had permission at that time. The middle period of the plan period, so starting from 2017 to 2022 would be the Neighbourhood Forum sites. And then the longer term would be the more strategic sites. What has actually happened in practice is that there's been applications on some of the strategic sites and a lot of the growth that has happened in Paignton over the last five years has been on the Western corridor, those Western corridor sites.

**DM – 0:20:02**

So how much is that? What scale of development has that delivered. Sorry, I've just been past note. I forgot one of my fundamental, that I should have reminded let you know that the actual session is being recorded and the recording will be on the Council's website. Thank you Tom.

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<sup>1</sup> NB Appendix 'd' was changed in the published plan to Appendix 'c'.

**DP** – 0:20:24

Sorry, if you could bear with me, I did take the figures done. The net completions over the whole of the plan period so for the 3 towns have been somewhere in the region of 400 dwellings a year, so there is a shortfall.

**DM** – 0:21:08

It would be easier for me if we just concentrated on Paignton

**DP** – 0:21:11

OK. I can clarify these figures in more detail. But Paignton permissions. So Paignton completions last year were 178 dwellings. There were 289 planning permissions granted for Paignton last year, that's the year just gone, so 2017/18. In terms of the future growth areas at Great Parks which is Alfriston Road there were 37 completions and permission for 80 Dwellings. At White Rock which food avoidance of doubt is the site allocated in the Local Plan site allocated in the Local Plan, not the site to the South. There were 310 permissions, 133 of those, 133 of those have been built out so far of which 39 were completed last year and at Yannon's Farm there were 200, 211 permissions of which 141 were built, sorry, 142 were completed last year.

**DM** – 0:22:34

So how does that affect delivery across the plan period in terms of. So have all your longer term strategic sites come forward?

**DP** – 0:22:44

In Paignton pretty much, yes. The only site which isn't being built at the moment which has got planning permission at the moment is Devonshire Park which is the former Nortel and there are contamination and site assembly issues, but not ownership issues, but delivery issues with that site. Although it is part of a 5 year land supply. The Council has assessed overall that there's a 4.19 years' land supply that is for the 2016/17, the detailed figures aren't available for the 17/18 figures but, but they are likely to be roughly roughly the same so more than 3 but less than 5 years land supply. I'm afraid I can't say break that down into what the exact figure is for Paignton.

**DM** – 0:23:39

No that's ok. That's OK. So I'd like to go to the Neighbourhood Plan Forum. Is there any particular person I can? OK, David.

**DW** – 0:24:07

Yes, I'll be speaking for the Forum. Unless I need some help from my colleagues.

**DM** – 0:24:13

Can I just ask you whether or not that you accept that's the target the 4,828 dwellings for the plan period

**DW** – 0:24:18

The word target is incorrect for the Torbay Plan, and that needs unpacking to explain why. It's not a target, nor is it in isolation because there are two trajectories for the Local Plan that need to be met, not one. If I can unpack that further I will do so.

**DM** – 0:24:40

Go on, explain it, yup.

**DW** – 0:24:42

We obviously haven't sent you any notes on the regulation 16 responses, but I think there are also a number of things that you need to be aware of since August. For example, you've just seen a change in the five year land supply figure from what you have in the regulation 16 submission. We have been doing quite a lot of work on that, all three Forums and we fundamentally disagree with the way that's been arrived and that goes

to the root of the disagreement that exists on how the relationship between the Local Plan and Neighbourhood Plan is being assumed and assessed. So if I can just unpack a bit of this and pick a few things up then you can decide if they relevant or not. I think the first point is that hopefully you will have seen that we've given this matter considerable attention.

**DM** – 0:25:30

I have, yes.

**DW** – 0:25:34

Because we realised that significance of it. At the end of the day it is the community that suffers or not, not the Council and we've set it out in part 3 of the Plan and we've shown, and I think obviously this is an agreed fact that the two objectives are to provide 5000-500 jobs from the base of 59,000 in tandem with 8,900 homes and it's not a target, the whole plan is not predict and provide that was something that's actually key and it's actually confirmed in the Plan. It's a plan monitor and manage situation and there are various reasons for that which obviously get close to examining a Local Plan rather than looking at a Neighbourhood Plan, and we are conscious of that but never the less we have had to address those key issues because they go to the heart of the general conformity. So we've looked at the whole thing and we've explained that there's a reason, that at the core of the plan is a reliance on significant return to net inward migration, this is not a plan that seeking to accommodate the needs of a burgeoning resident population it's all about the effect of net inward migration and if it's happening and how you accommodate it. And that's how the, the issue about plan monitor and manage kicks in. Now we have we have no problem with the plan what we've got with is the fact it's based upon, and the Local Plan inspector drew attention to the importance of the monitoring to see where you are then obviously the 5 year major review and the first five year major review will be in 2020, and we are not far from it, and there will be a second major review in 2025 and we draw attention at paragraph 3.9 of the Plan that the fact is the Local Plan recognises that the rate of which the land supply will be taken up by the market during that each 5 Year period is dependent upon the assumptions are made about the net job growth and migration it is just a fact. We are now in Year 7 of the Local Plan and in March of this year the three Forums, conscious of the importance of needing to know where we are, we, we challenged the Council officer's view about the land supply situation and we've produced but you haven't got it as a set, if you want it we can give it to you, we've produced what we believe as 3 Forums the Five-Year land supply position is for the 2017/22 period. The importance of that period of course is that before that five years is up there will be a major review of the plan. But we have not taken any different figures than are in the plan as they are now and we came to conclusion that actually using the proper interpretations by case law and everything else there is not less than 6.1 years of supply right now. So we don't accept that it's 4.19 years and it has crept up of course from the 3.9 at the regulation 16 stage and we think it will in fact creep up further once it's looked at properly.

**DM** – 0:29:20

Can I just, and not in great detail, can you just very briefly tell me what your method for arriving at the 6.1 years is?

**DW** – 0:29:29

Exactly as set out in the PPG and the cases that have been through the courts about what is and is not usable for the 5 years and in particular the fact that the courts have ruled that it's not the certainty of deliverability it's the availability and they are key here because what we are seeing is, and I will come on to that, that the market actually is now realising that it can't pump out anymore because it is not being rolled out and purchased and that is being driven by the fact, and it is clear to us as the community, it is driven by the fact that the job position has dried up, in fact it has dropped below the 2012 base, so you can't carry on only looking at one trajectory to the complete exclusion of the other one because the two have a direct effect in terms of the regard that you have to the NPPF<sup>2</sup> and the regard that you must have to what the strategy actually is of the Local Plan.

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<sup>2</sup> National Planning Policy Framework

**DM** – 0:30:28

Can I just interrupt you one, because I think that it is, it would be a good idea to have Torbay Council's view on how the five year land supply in their opinion should be. I think that is quite important now so that I can compare the two when I am considering things. So David, are you going to?

**DP** – 0:30:51

Thank you. Myself and David have discussed this over a number of years in quite some detail and I accept that their views are honestly held. I think that there are three main areas of difference between the Council and the Neighbourhood Forum about the calculation of five year land supply. The first one is that I don't think I'm doing them any injustice to say that they favour a lower pace of growth than is in the Local Plan for the reasons that David has said because jobs haven't come forward. I can return to that later if, if you like. The second thing is counting the assumptions we have made about windfalls. Initially we counted 130 windfalls a year but the number of windfalls coming forwards over the last 5 years has been 100 dwellings a year so we have based it on 100 dwellings a year. The third area of difference which is an element of planning judgement is where sites are deliverable within the definition of the NPPF and we believe that we've taken the NPPF definition that if a site has planning permission then it should be treated as deliverable unless there is clear evidence to the contrary and we have counted things like build out rates in in our assessments of the delivery of those sites and the second part of the NPPF states that if a site doesn't have planning permission we can only count it as being deliverable if there is clear evidence of the there being a realistic prospect of the site being built out. For example, we did as part of consultation with the Neighbourhood Forum we did include Paignton police station as a deliverable site because there was clearly a housebuilder champing at the bit to build it out. But we did look at the five year supply in a lot of detail and in my view the 4.19 years supply is a robust figure. I think you could make different assumptions you could get it slightly higher, slightly lower, but it seems to me in my professional opinion that our supply is somewhere more than 3 and less than 5 years.

**DM** – 0:33:38

Thank you

**DW** – 0:33:40

I think the best way that we must deal with this to give you a fair chance of understanding how far apart we are is that both sides should give you a copy of different documents, they both exist. Clearly they have emerged since the submission in August and if you consider them to be relevant then it is important that you take them both into account. But I'm not sure how far you want to get involved in the Neighbourhood Plan in a 5 Year supply. But I do draw to your attention, and I'm just looking for it now, and forgive me David if I've misread it, I think somewhere you take the view that the St Modwen development is merely lowered the bar and that's not where you're going. Well if that's the case I'm afraid it's not for a Local Planning Authority to decide what the judgement should have been. It's clear, the St Modwen decision, how you should approach it and that is how the three Forums have approached it in their submission. So I invite you for to ask both the Council and the Forum to provide you with their five year supply. That would be the proper way I think of dealing with it.

**DM** – 0:34:39

Ok. Can I just go back to you David and ask you about what impact the potential changes in terms of assessment of delivery would be on the five year land supply potentially.

**DP** – 0:34:44

In the draft NPPF?

**DM** – 0:34:45

Yeah

**DP – 0:34:46**

My first reading of it was that the definition of delivery in the draft NPPF was a tougher one in NPPF footnote 11. On thinking about it I'm not sure it is that different. I think that the footnote 11 basically takes the approach that if the site has planning permission it is deliverable unless there is clear evidence that it is not. If it doesn't have permission it's not deliverable unless there is clear evidence that it is. And I think that is broadly what the draft says.

**DM – 0:35:29**

So David, going back to the sort of one of the initial points do you accept, does the Neighbourhood Plan Forum accept, the 4000, 8000, I've just doubled it now, the 4828 dwellings as being.

**DW – 0:35:50**

It is not the figure that you should be measuring this Neighbourhood Plan. And the reason for that is that we are in year 7 of the plan and what we have done in very careful terms is because we had the same question what do you do with the period that has already gone and what has happened and we have set out in detail the calculations from the assessment made by the Local Planning inspector at the 1<sup>st</sup> April 2015 and we have updated that using exactly the figures in the Local Plan and therefore if you were to say well you provide 2400 a day it would be a nonsense because you are always providing an 18 year figure every year. So we have set out in great detail, and I have to say credit to the Council they've not been able to challenge that figure, and they haven't done. Because of the way we have set it out. It is...

**DM – 0:37:08**

So what is your figure for the delivery of housing across the plan period?

**DW – 0:37:11**

The figure that is in the plan is that, leaving aside windfalls is 3000, sorry, if you turn to table 8 as the quick way of doing this. Because we have taken that figure as the proper Local Plan figure and for the period that is left of the plan we calculate that the Local Plan review requires us, the Local Plan requires us to consider identification of 2925. You'll see that in table 8.1. We've actually shown at the time the plan was produced that there are 3080 sites already with planning consent or that have been treated in the Local Plan as committed so we've gone in some detail as we realised that this is quite a finding so we explained it in great detail and in the documents. So we found that there was no need to allocate further sites and leaving aside the obvious point that there is no requirement legally for a Neighbourhood Plan to do so and even the Local Plan says.

**DM – 0:38:40**

Can we come on to that? Because I'm going to come on to that point in a minute

**DW – 0:38:42**

Yes, so we have set out in extreme detail...

**DM – 0:38:44**

So what in. As far as the Neighbourhood Plan Forum is concerned, what will be, you anticipate the delivery across the plan period taking into account, because I'm looking across the plan...

**DW – 0:38:56**

I understand. Assuming there is no change by the Council in the reviews, of which there are two to come then it would be a delivery of 3080 plus the windfalls. We don't agree with what you just heard about windfalls, but let's just stick with sites for the moment. Therefore, demonstrably we exceed the current Local Plan requirement for the full Local Plan period.

**DM – 0:39:31**

Can I come to, David are you going to respond to this? I'm conscious that I am just focusing on.

**DW** – 0:39:38

Perhaps it should be David 1 and David 2?

**DM** – 0:39:29

Can we just explore a bit about the windfall situation in terms of how what allowance is made for windfalls.

**DP** – 0:39:39

Certainly. Torbay is a substantially urban area and we count, for the purposes of this discussion, we count windfalls of dwelling applications for five dwellings or fewer. According to the 2008 and 2013 SHLAAs we were entitled to count 130 dwellings as coming from windfalls per year and that's the figure that is in the Local Plan. The monitoring has shown that since 2012 which is when the Local Plan period started and also when the, the definition of, in the NPPF came into force, the net number of completions was 100 dwellings a year, so we have used that lower figure which I understand is controversial. But the NPPF does say that you do have to have evidence of deliverability to be able to count the windfalls. Even if you counted 130 dwellings per year there would still would be a shortfall against five year supply.

**DM** – 0:41:00

Is there any comment that you want to make on the 3080 figure?

**DP** – 0:42:09

The figures in table 8.1 I don't have a problem with the, the figures themselves the two concerns that I've got about that the figures is that a lot of the for want of better words, the urban sites, are identified they're not proposed in the Local Plan, in the Neighbourhood Plan, and we have asked the Forums to make the clear proposals.

**DM** – 0:41:48

So they are not allocations?

**DP** – 0:41:49

I don't think they are, no. They have been identified, but they are not site allocations.

**DW** – 0:42:00

This is the fundamental issue that we disagree with completely. The word identify is actually the Local Plan policy, you won't find the word allocate anywhere. We have identified well beyond the years 6 to 10, bearing in mind we are in 7 now, well beyond the requirement of the Local Plan and this issue about what is an identified and allocated site is key.

**DM** – 0:42:30

Could you tell me, explain to me the process that he went through in order to identify the sites. So have they gone through a structured process looking at, you know, access, yield.

**DW** – 0:42:43

We didn't need to do that. Because I draw your attention again to the fact that all the sites in this schedule have either been identified on the Local Plan map as committed or they have been identified as for consideration by the Neighbourhood Plan, I use the word consideration, or actually got planning consent so when we came to do our bit we found in actual fact there were no judgements to be made on individual sites because they'd all been made.

**DM** – 0:43:23

OK. Do you mind if I go and ask David for a response to that? Or anyone else that wants to respond.

**DP** – 0:43:27

I think this is the nub of contention between the Council and the Neighbourhood Forums. The Local Plan does seek to ask the Forums to allocate sites I think in fairness I think it would have been better if the policy

actually said, used the word, they should come forward as part of a site specific proposal on a policies map but we are where we are and it does clearly say in policy SS1, SS5, SS12, SS13 and the SDP policies that the Local Plan looks to the Neighbourhood Forums to allocate sites. It also mentions as David says the policies map clearly identifies potential development sites for consideration in Neighbourhood Development plans, primarily for housing. As I say this is...

**TB** – 0:44:12

Just to add, I beg your pardon, just to add under the designations for information only on the key on the policies map.

**DM** – 0:44:22

For the Local Plan?

**TB** – 0:44:24

Yes.

**DM** – 0:44:28

So that I can understand correctly. So in identifying those, for information purposes only, no kind of process was undertaken to that could be a line to an allocations process. So somebody just said, that's a vacant site or that's a previously developed site or something, they didn't actually go through a process.

**DP** – 0:44:53

They did go through a process. They were identified in the 2013 SHLAA<sup>3</sup>. There was an officer level sieving both to consider those sites and also other sites that we considered at the Local Plan examination so there sites that the Council believes are broadly developable but the decision was made, back in 2012 to ask the Neighbourhood Forums to make site specific allocations of them so in the Council's view they are likely to be developable but without, without them being site specific proposals it is harder to say that they are deliverable because we're not in a confrontational meeting I'll say that making them site specific proposals would increase their deliverability but it is not a silver bullet that they would automatically be considered as five year housing supply.

**DM** – 0:45:53

I am struggling to understand why. On the one hand I do understand, but on the other hand I don't. If the sites were identified and a certain level of process was gone through in order to be able to identify those sites, I'm not quite sure why the process didn't carry on. Why you didn't identify them in the Local Plan and why, was it because you wanted them, the Neighbourhood Plan Forum to have autonomy in the decision making of whether those sites should be allocated or not?

**DP** – 0:46:40

My understanding of it is that it was exactly that. It was to provide as much autonomy as possible within the strategic framework to the Neighbourhood Forums to identify, to take ownership of the smaller sites, yes.

**DW** – 0:47:18

I think we've touched on, oh, sorry.

**DM** – 0:47:22

Yes, Roger?

**RB** – 0:47:23

I've got a comment on the under 6 windfalls. I've got a list here for the last year of 151. Which according to the Council is a year and half supply. I've got figures dating right from 2012 which unfortunately 2012 to 17 I can't access here because there's no internet access.

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<sup>3</sup> Strategic Housing Land Availability Assessment

**DM** – 0:48:03

'Cos I've got it all.

**RB** – 0:48:09

I would absolutely guarantee that it is far in excess of the 100 per year that the Council are saying and I got them all and you're quite welcome to all the plan numbers the description and the allocation.

**DM** – 0:48:29

If, if I decide at the end of the proceedings that something like that would be helpful. Then I'll certainly...

**DW** – 0:48:27

Actually you have them because we actually put in

**DM** – 0:48:34

I've got a big long list of them.

**DW** – 0:48:35

Yeah. You will find in the supporting evidence document, you will find every single site that has been granted consent of 5 or less that qualify, and it was Rodger's hard work that did it, and I don't know whether David has great admiration for it.

**DM** – 0:48:40

And have they been delivered?

**DW** – 0:48:41

That is not the test. The test is...

**DM** – 0:48:44

No, but I'm asking you have they been delivered.

**DW** – 0:48:50

I don't know, because we don't keep a record of that. What we were being told was that the figures being granted consent were less than 130 and what we have proved is that they are greater than 130. But can I come back to the point where we're all on, the autonomy

**DM** – 0:48:57

Yes

**DW** – 0:48:58

It's a very important point because what, what has probably struck yourself and the other Examiner because clearly the three forms are working together in a very unique situation. As each Forum has developed the geography and the make-up of each area has influenced the content of the plan and in the case of the other two Forum areas they chose different sites which obviously meant that they would have to replicate the work that had been done at the Local Plan level that is very simply, I think it is fair to say in Brixham. A situation where they wanted to switch, ours we were surprised to find that we had quite a lot and Torquay has in a similar but not quite the same switch way. So the autonomy of each Forum has been happening but in this particular plan we haven't taken that view, that's not the position the community is wanting to pursue we've seen that the sites are granted the sites are allocated, we have seen total inconsistency of the Council on this issue and to bring you up to date the Council has just had land release fund monies released by the government on the basis that the sites identified for Neighbourhood Plan consideration basically have been allocated and there are two specific sites in Paignton so we are surprised that this view is still being pursued by the Council that the Local Plan hasn't allocated them.

**DM** – 0:50:46

This obviously must go to the heart of the problem. What. OK, David, Tracy. What's the missing the missing link between them is it just the form of words that is used in the Neighbourhood Plan that means that Torbay can't be satisfied that it's that they are allocated or what is missing from the process.

**DP** – 0:51:19

On this specific issue, as you will be aware from our representations we did have other issues with the Plan, but on this issue it is missing the word that they are allocations. If the remedy is that they would make them site specific proposals in the Neighbourhood Plan we said that there would be some additional SA work that we needed to do that which we've offered to help with and also in the light of the recent 'People Over Wind' decision there would be a need for some of those sites to be appropriately assessed which we view would be a re-formatting of the work that has already been done as is included in the background papers for the Neighbourhood Plan but, but our view would be that the solution to this objection would be to make the sites proposals.

**DM** – 0:52:11

What is the objection from the Neighbourhood Forum for doing that?

**DW** – 0:52:16

That is precisely what the situation is that we shouldn't be doing. It would be duplicating what has already been done.

**DM** – 0:52:27

But is that your only. Is that the Neighbourhood Forum's only objection to it, the feeling that it would be duplicating what has already been done

**DW**

I'll tell you the simple point. In law there is no requirement to have any allocations at all. That is not the line that we have taken, but it is nevertheless relevant that if we are going to be judged on basic conditions tests using an unlawful step we would be very seriously worried about that. It comes down to this issue about how far the Local Plan did or did not assess the sites that it's identified and also only identify but is pursuing implementation of as allocations.

**DM** – 0:53:23

Yes. If we put to one side the issue of whether or not they would be need a need for further assessment is there fundamentally still an objection on the part of the Neighbourhood Forum seeing those as allocations.

**DW** – 0:53:35

Yes, because that step is unnecessary, a duplication and holds up the plan for developers to implement.

**DM** – 0:53:47

Do you have any comments to make on that?

**DP** – 0:53:51

Yes, I think that you have heard both sides of the picture so it is something for you to take a view about whether or not you can, or the Council is...

**DM** – 0:54:04

I've got some more questions.

**DP** – 0:54:07

Sure, but what I would say is if the site allocations aren't made then it's going to be increasingly difficult for the Council to maintain a 5 year land supply. It's perhaps less of a problem for Paignt...for Torquay and Brixham which do make site allocations and therefore can take some comfort from the written ministerial

statement that the Council that Neighbourhood Plans have wait if they have 3 year's supply. But Paignton Neighbourhood Plan doesn't allocate sites so can't take comfort from that written Ministerial Statement.

**DM** – 0:54:42

Can we go back to policy SSI where it identified sites and throughout it we've got that the, in, in the policy because obviously we would like Neighbourhood Development Plans to identify sites but if they don't that Torbay Council will. Because obviously the Neighbourhood Forum are quite correct Neighbourhood Plans do not have to allocate sites. They do however have to demonstrate that they can deliver the target for across the plan period. So I think personally there are consequences both ways for not allocating sites or not having a site allocations document in place.

**DP** – 0:55:44

Yes

**DM** – 0:55:44

So could you just explain a bit about what the processes you'll, Torbay Council will go through on the basis that there are no sites allocated in the Paignton Plan?

**DP** – 0:55:52

We have we haven't prepared a Site Allocations DPD and that is a matter of resources. Like all planning departments there have been significant cuts in the planning department. So that is the reason why a Site Allocations DPD hasn't been prepared. In my view a Site Allocations DPD would probably be of limited value, certainly at this late stage because I think the, there would inevitably be mission creep and that the whole issue of Torbay's growth rate I don't believe has been finally accepted by the Forum and that there would be the debate about the appropriate growth level going forward with would inevitably come up again and there's a legal requirement for the local authority to have completed a Local Plan first review by 2020 so in my view it would be a better use of time to actually do the move on with the Local Plan first review when we can fairly have that debate about grow levels.

**DM** – 0:57:08

But ignoring the resources issue, you know, it is obviously. I mean. It's unusual to have a policy that says the site allocations will be passed over to the Neighbourhood Plans when there is no requirement for anyone to bring forward a Neighbourhood Plan. So there was always the risk, wasn't there, that that wouldn't happen either that the Neighbourhood Plans wouldn't come forward or the Neighbourhood Forums themselves wouldn't take on those allocations. So. So there is an issue there in terms of delivery on that policy isn't there.

**TB** – 0:57:51

So might I just mention the Policy SSI3 that talks about the delivery supply and how about it might be delivered.

**DM** – 0:58:04

That's on page, I beg your pardon

**TB** – 0:58:06

On page 92 and 93. So that policy sets out a way of monitoring for the five year period and then sets out a process of options that might be available to deliver housing should, should our five year supply be at risk. Which includes bringing our future growth areas forward.

**DW** – 0:58:53

I think. Sorry.

**DM** – 0:58:55

No go on.

**DW** – 0:58:56

You've got two things here being mixed up. You're talking about delivery for the whole plan period, which is not what the Local Plan says, and we are in general conformity with the Local Plan area of discussion here. What the actual plan says, and credit to Mr Pickhaver he actually said it, were required to identify sites to meet years 6 to 10. Well on that basis we only have three more years to identify. Well we've gone way beyond that. We've identified that there are sufficient sites for the entire plan period. Now David Pickhaver is quite right, now clearly if the Local Planning Authority do not address the other trajectory and its effect we would be extremely concerned because it means that Torbay will become a dormitory town which is not in consistency with the NPPF or the Local Plan so this issue about the two trajectories is key around here. Now on the Five-Year supply I'm assuming that we don't need to have much further discussion on that because you're just going to look at the two documents but coming onto your key point this troubled the Local Plan inspector because clearly it's not possible to require the Neighbourhood Plan to have it, I'm not saying that it is because we didn't want to, this is the issue that's come up and that's why at the examination in public the Local Plan inspector required I think is the right word a commitment is the right word from the Council that if for any reason, and we are not the only plan, but if for any reason there was not a sufficient supply that it was an obligation on the Council to do a Site Allocations DPD. Now to have met that obligation it should have been started in 2016 when any concern might have existed and we know that was concern the reality is the Council is now seeing, and debated on the 23rd of April this month, a considerable slowdown in over 100 sites across Torbay because effectively there's now an oversupply and that is something that we are not relying upon at all because the Local Plan quite rightly has actually foreseen that possibility that it does actually say in the plan that the sites may well last longer than the period to 2030 and obviously that would be picked up in any reviews, it ought to be. So I've got some sympathy with the fact that the solution probably now is to have a review of the Local Plan probably earlier than 2020 rather than wandering off into a DPD that is in isolation.

**DM** – 1:02:08

OK, there seem to me to be a number of issues and perhaps David would like to set out what the consequences are with no site allocations with in the, if we assume that find that acceptable, which is a big assumption, but if we were to assume that it was and there is no DPD Site Allocations Document prepared what are the consequences, or potential consequences of that, in the absence, if there is an absence, of a five year land supply.

**DP** – 1:02:46

Well the consequences of not having a five year land supply is that for a large number of sites within Torbay the presumption in favour of sustainable development would, would need to be applied when determining planning applications. There are

**DM** – 1:03:01

So I would be right in saying that you wouldn't be able to direct development to necessarily the sites that have been identified, other sites could come forward.

**DW** – 1:03:22

I disagree.

**DM** – 1:03:26

Ok, well just.

**DP** – 1:03:28

I think it would be difficult in practice, in my view I don't think an inspector would support that approach I think an inspector would look at 5 year supply in a fairly blunt way and would determine the application that was before them on the basis of the presumption in favour of sustainable development assuming there weren't other reasons why the presumption didn't apply to that site.

**DW** – 1:03:49

That last point is one where I think we do meet of minds because the geographical fact is that the fringe of Paignton is its juxtaposition is with the habitat regulation matters of European significance and protected species and in fact that is the caveat in the Local Plan as a whole which is why the 8,900 is not a target it is an assumption to start from and we can go into much greater detail on that if you so wish but it is not a target. So far as Paignton is concerned, the presumption in favour sustainable development of the NPPF almost in every site is ruled out by the requirement in NPPF that it does not apply where there are sites involved with Appropriate Assessment and that is exactly what we have in the majority of the fringe in Paignton.

**DM** – 1:05:01

But it won't be in every case.

**DW** – 1:05:07

In actual fact it probably is because we've got the whole of the boundary of Paignton right up to Collaton St Mary within the sustenance zone of the South Hams SAC and there is only a small part that isn't and the bump into the protected species of curlew buntings so I would say that if you were to assume that the lack of a land, a five-year supply would immediately mean you can't control what's happening that would be totally wrong the NPPF already does that because it can't ignore the requirement of the Habitat Directive.

**AS** – 1:05:57

Sorry, the curlew bunting is not under the Habitat Directive.

**DW** – 1:05:55

It's a red list species.

**AS** – 1:06:00

It is, but not under the Habitat Directive.

**DW** - 1:06:01

And it is the government policy to restore the decline that is happening in the protected species.

**DM** – 1:06:17

You wanted to say something, or is it gone past now?

**RB** – 1:60:20

Yeah, I just think that something being missed that's very basic and that is the Local Plan figure for the 8,000 some odd houses was based on the fact that there would be a five to five and a half thousand increase in jobs. In actual fact there's been a loss of between 1 and 2,000, not exactly sure of the exact figure but there's been a loss of jobs in Torbay between 1 and 2,000 on the basic figure therefore if you are building houses on the basis of bringing in jobs and it's failing you don't need the houses.

**DM** – 1:07:04

Can we just, it's an important point...

**RB** – 1:07:08

And that's part of the basic plan.

**DM** – 1:07:10

...and I just want to explore it a little bit more in terms of the housing figure that was arrived at and what basis it was arrived at and how that meets the requirements of the NPPF.

**DP** – 1:07:27

The figure that's in the Local Plan, as David has rightly said, is constrained below the objectively assessed need. The objectively assessed need is based on the 2013 study by Peter Brett Associates which argued which looked at both demographic change whether or not there was a need to boost housing for affordable housing and also job creation and came up with the figure of 12,300 dwellings. The inspector as I said has constrained that below Objectively Assessed Need. I have to have to accept that what Roger says is right, that the recent Nomis<sup>4</sup> figures do show that there's been a net loss of 2,000 jobs in Torbay since 2012, whereas the growth rate in Exeter, Exeter is the main driver of the sub-regional economy in terms of job take up. I would say that that is only one figure there are other statistics at the number of people in Torquay, in Torbay who have jobs is at a record high it's over 60,000 at the moment and also that the recent demographic figures are that there's 8,200 new households projected between 2012 and 2020, so these things must be taken in the round but it in my view it would be wholly exceptional if the Council's Objectively Assessed Need could be said to be less than the household projection we just said that's 8,200 by the time you've added an allowance for to convert households to numbers of homes you need it still looks like the Local Plan target of 8,900 it is a fair target.

**DW** – 1:09:28

Forgive me, I have a number of comments there. Can I just take a simplistic one at the moment just on the jobs front as I say, it is a specific trajectory alongside the housing one it's not separate to and remember what Supreme Court said about the tilted approach. We now, and this is, what's being used is unemployment figures which is not the target, I've used the word target but this one is a target, it's not the policy of the Local Plan. The policy in the Local Plan is to achieve net growth in jobs of at least 275 a year. Now we should therefore be at 60,000 plus at the moment. In fact we are at 57,000. Now this is the number of people who have jobs in the bay, not the people who are employed or unemployed because you can be living in the bay and employed but you actually work outside the bay and this is fundamental strategic issue that's now coming up that we are becoming a dormitory Town which is not what the Local Plan is nor does it comply with the NPPF. So the review...

**DM** – 1:11:00

In what way doesn't it comply with the NPPF?

**DW** – 1:11:01

Because the NPPF is seeking sustainable development and to a large degree the not needing to travel elsewhere.

**DM** – 1:11:16

It also seeks to significantly boost the supply of housing.

**DW** – 1:11:19

But that is not to the exclusion of the other policies as the Supreme Court ruled and in this particular case the NPPF 37 specifically refers to the fact that reducing journey length is a key objective in terms of achieving sustainable development. You would be, as a dormitory town, committing Torbay to having to live here and work somewhere else. That is not the strategy. Now if we have a Local Plan enquiry where that is the strategy that emerges from it so be it but that's not what this Neighbourhood Plan has to be in general conformity with it has to be in general conformity with the plan that we have and that is seeking to maintain the self-containment at something like 78/79 percent of Torbay. That is the plan you are required to look at in the basic conditions test. If you seek to look at another plan that doesn't exist I would be considerably concerned about that. But the fact is we are at 57,000 jobs now that was published on the 29th of January this year and it's the number of jobs in the town and that obviously is a bi-annual figure which means, which means that we are now at a level of jobs that was the same as 2002 and yet we have seen 5,000 jobs<sup>5</sup> built

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<sup>4</sup> National Employment Statistics

<sup>5</sup> Factual Correction – 5,000 homes

within the inter-census period another nearly the 1,800 jobs<sup>6</sup> built since 2011 so we're seeing a way skewing of the provision of housing and the provision of jobs which is not the plan that we can be measured against. Coming now to the question of consequences and so forth you will find in the 5 Year Supply we've got a table that actually is being missed, actually I'm not sure that it is in the Five Year Supply, if you take the three neighbourhood plans together and the sites that they identify all be it in different ways then they come to just over 8,500 plus the 1,700 that have been built that means that the three Neighbourhood Plans already meet and exceed the plan figure 8,900 to the end of the plan period, already. So this insatiable appetite to significantly boost the housing supply at what point does it actually bang into the principles of sustainable development in the place like Torbay and you realise actually that when the market is slowing down it is not because of the shortage of land that's around it's because you can't actually get any work here.

**DM** – 1:14:00

Do the Council have anything to say?

**DP** – 1:14:06

I think really this is something that will have to be addressed at the Local Plan first review. I've accepted that the Nomis figures do show a loss of jobs, the figures do go up and down so you can't necessarily take 1 year as gospel, but we accept that there has been a loss of jobs against that as I've said demographic projection, which I accept are based on inward net migration have also gone up. The strategy of whether or not Torbay should ask neighbours to take some of our demographic need is something that again will need to be addressed with our neighbours as part of the duty to co-operate with the current policy isn't to do that the current policy is to consume our own smoke. As I've said I think that it would be wholly exceptional if the Local Plan could come up with a housing figure that was less than the demographic projection in terms of our local housing need or Objectively Assessed Need and we're also aware that there is a significant push by the government to boost housing supply and that is in the draft NPPF from the Housing White Paper and that is a pressure that is being applied to local planning authorities.

**DM** – 1:15:28

And would you agree that that is supposed to take into account an element of inward migration in terms of assessing.

**DP** – 1:15:35

The household projections are the starting point for working out the local housing need or objectively assessed need and they do take into account migration yes.

**MP** – 1:15:43

Excuse me, the other dimension that worries me is the number of houses that have been on the market for quite some time ready built houses, added to which I also am concerned about the number of new houses that have been built that remain unoccupied. So to say there is a demand I worry about that. There is an availability of houses.

**DW** – 1:16:17

And can I draw attention again that it was only on the 23rd of this month, sorry April, that the Council's, I'll call them Housing Committee, and I've got the press articles as well, have become concerned that there's over 100 sites that have slowed down. This is not because the land isn't there, it's not because consents don't exist it's very, very basic. Can I come to this belief that the new method of doing things is going to change the position? When the government published the draft of what the proposed formula would do for each area in September of last year Torbay's was quite interesting. As you will know it sought to take the, what one would call the normal objectively assessed need without policy on, and add in a fairly hefty addition to deal with employment and differences of housing prices and so forth quite deliberately. And it went round every authority in the country in its list to work out how much more development that would mean. In the case of Torbay it's quite interesting because based on the current Local Plan it would have produced a figure

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<sup>6</sup> Factual Correction – 1,800 homes

of 1,049 per annum but in actual fact based upon the new formula it'll be 588 and that's the point that the present Local Plan has already gotten one hell of an uplift in it and would even exceed the uplift that the government were proposing. But again the simple point is you can have any figure you like, you have still got to demonstrate that you can fit it in and that's where the issue in this neck of the woods bumps into the Habitats Regulation Assessment problem which quite rightly the Local Plan addressed to the degree that was necessary

**DM** – 1:18:46

Can I just clarify that? A number of the sites that haven't been allocated but have been identified are not subject to that [inaudible]

**DW** – 1:18:55

No, I repeat my key point and we state it in the plan. These, all these sites have either been identified as committed sites or they have been identified, and I'll add in the gloss for the Neighbourhood Plans to consider, but were marked on the plans for the assessment of what effect they would have. And then you have got those that have planning consent, where the Local Planning Authority is required to have ensured that they meet those requirements.

**DM** – 1:19:07

Forgive me, but I'm still struggling to understand in those circumstances why the Neighbourhood Plan Forum didn't want to allocate them, because if they had been identified in that way the chances are they will potentially come forward for development.

**DW** – 1:19:24

We are impressed to not duplicate, and it is not proportionate, and it is not legally required, the sites are already identified in the Local Plan.

**DM** – 1:19:36

So you have no problem with them coming forward?

**DW** – 1:19:39

We have based our entire review on whether or not they would come forward at a reasonable rate because if you actually compare this schedule it's actually a more realistic schedule than the one in the Local Plan. We didn't just switch off and say well it's nothing to do with us and walk away, it's all done. We didn't do that because we said well ok, is it the case that those sites are likely to come forward at each of those five year tranches and that is what we do and we didn't stop at the first review, we didn't even stop at the second review, we went right the way through to 2030. And we've looked at each site again it's in the supporting evidence documents considerable number of tables where we have compared what the SHLAA said, what the Local Plan said, what the latest up to date position is, and then came to a conclusion at the end of it. And what we think we've got here is a far more realistic phasing of those sites, we've not sought to change them swap them add to them or whatever we've not seen that to be what the community wishes to do. We've sought to have a look to see whether or not that is realistic. And I come back to my central point, there is no impediment because the Council has just literally had £3.9 million pounds based upon that they are already allocated.

**DM** – 1:21:30

Can we. As far as, and I don't want to put words into your mouth, as far as the Council is concerned the main thrust of the objection is not because the sites are not likely to be developed to and deliver the numbers that you are expecting them to deliver but it is because they can't be counted towards your 5 Year Land Supply. Is that? Or have I miss understood?

**DP** – 1:21:58

I think that, I think that is right what you've just said.

**DM** – 1:22:00

So in a nut shell that's it?

**DP** – 1:22:03

I think without them being made site specific proposals the impetus to develop will be less but the consequence of them not being allocated will be it contributes to the lack of 5 Year Supply.

**DM** – 1:22:21

So, once again without putting words into your mouth, would the Council's position be that it would be in everyone's interest if they were allocated?

**DP** – 1:22:27

Yes

**DM** – 1:22:33

So your position is the Neighbourhood Plan...

**RB** – 1:22: 37

Can I just put a layman's view point of view?

**DM** – 1:22:40

Of course.

**RB** – 1:22:45

When you give a developer permission for 200 houses on a site, that developer will build let's say 25 houses and then you'll see what sells and as they are selling they then build more. At the Local Plan Examination the builders federation admitted, rather shamefully, that they were only look for per site 25 house per year for allocation and this was because of market problems. Not only market problems but the fact that the price of a new house is far and way beyond the means of anybody living in Torbay and working in Torbay can afford. So these houses are only being built for incomers and if the markets not there they are not building. Therefore, what is the point in allocating a builder another 200 house site when the sites already aren't being completed, the slowdown is even more so than the Builders Federation agreed. With the jobs not being there the only way that you're going to sell those houses is to incomers, and there's only going to be a certain number of incomers like retirees. I wouldn't imagine, I can't prove it I haven't got the figures, but I wouldn't imagine that the influx into Torbay from people coming up country coming down to retire is that great because if it were then the house building rate would be greater. If you take, David was talking about the housing objective needs, there is 2,000 properties in Torbay which have been empty for more than 6 months, we've got new houses being built which are lying empty because they can't be sold. I'm pretty certain that if you looked at the number of people on the list for needing homes in Torbay I bet that hasn't gone down because the affordable housing is not affordable and to continue to build more and more houses which are going to stand empty or wait for somebody from abroad or upcountry to come and buy them, I can't see there is an objective need. The objective need is not being catered for in the Council's applications that are being granted, it's not there.

**DW** – 1:25:38

I think at this point, I must draw to your attention the answer that the Local Plan Inspector gave to this point which is at paragraph 41 of his Report which says - detailed monitoring review are important considerations in the development plan process and the Council is committed to regular reviews of the plan, there will be ample opportunity to increase housing numbers if justified by jobs growth alternatively it may be necessary to reduce housing numbers over the plan period if the Council's jobs growth strategy is less successful than is hoped. At present it is regarded as sensible and pragmatic to plan for 8,900 additional dwellings over the plan period - and he goes on elsewhere to say that it's unrealistic and I use that word in there to identify the longer-term sites. Now we've ignore all of that we have looked to see if the number that's in the Plan that's ascribed to us is achievable with the sites and consents that have been granted and

we concluded that for every criteria that the Local Plan was seeking to implement for example the build out rate a maximum the site of the market want and so forth, that it was going to be achieved. What we have put our hands up to is there is there is a conflict with the policies that the general conformity, general conformity, it's that we think some sites are going to take longer to come forward than others and we've tried in an honest way to set that out in the traffic light system. We could be wrong but that's what we've done. We haven't ignored it. But to require that we go and allocate them all over again is just utterly unjustified.

**DM** – 1:28:06

OK. I must admit that I was hoping that there would be some meeting of minds on this and that there might be some understanding of a pragmatic and practical way forward to resolve the issue of the objection placed by Torbay Council. I mean, we have focused on the, the Local Plan but that's not the only thing I have to look at and it's about general conformity and there's lots of case law which I'm sure you are aware of that relates to what general conformity means. It's always a much happier situation if there isn't a disagreement between the Local Planning Authority and the Neighbourhood Plan group, the Neighbourhood Plan Forum in this case, it would be much better to be able to move forward together on it. But at the end of the day it is my decision isn't it as to what we are going to do, what I am going to do. I don't think there's any need to go through these policies individual policies in great detail. I know but as I said at the beginning of the meeting, regardless of what this the outcome of this, my focus on this particular issue is, there are a number of changes that will have to be made in order to meet the basic conditions in terms of the wording of the policies, and in fact some of the formatting and the way the plan is laid out. And I need to decide whether, taking both the responses that I've had to my questions today taking all into consideration, whether I consider that the, the Plan is as currently worded does, or does not meet the basic conditions and I'm going to have to go away and think about that because it's not straightforward. I think we could have come to a fairly straightforward resolution of it today but that's not the case, so I'm going to take some time to think about it and then I will come back through the Programme Officer with my thinking behind it as to whether or not I think it is a fundamental enough problem to necessitate suspension of the plan or even for me to say the plan cannot proceed. Were you going to say something?

**DW** – 1:30:37

I think you are treading into areas of extreme difficulty, we know that.

**DM** – 1:30:41

I knew that the moment I picked it up.

**DW** – 1:30:59

Yup, but on a slightly important note, you rightly said that we are all working to these new guidance and it's 9 months now since the Forum put in the plans and it does talk in there about, and you've kindly said there's no need to submit further comments on the representations that were made by the Council, but there are some things that have been raised that are new and I was going to ask you if you don't go through these other things what we do about that because there are comments that we may have and are you going to ask us for any further comments or not?

**DM** – 1:31:54

If they are fairly brief then it obviously makes sense to go through them now and if you are happy to respond to them then I think that makes sense and that is a good use of our time. But it may, what I was saying, is it may be that as I look further into other policies in the plan that there may be things that I need you to clarify particularly it comes to mind I probably will need some more information on the local green spaces, that sort of thing. But I'm quite happy for you to.

**DW** – 1:32:40

I would find it helpful because you mention formatting and the way laid out, now there is an issue here that is arguably not a basic condition matter. Clarity yes, but the way it's laid out, no.

**DM** – 1:32:53

Well that depends on whether I consider that contributes or does not contribute to the clarity.

**DW** – 1:32:56

That's where I accept you'll have to demonstrate it but.

**DM** – 1:32:57

I actually don't have to demonstrate it, that's my judgement.

**DW** – 1:33:04

I don't want to take issue with it, but you do because you are taking a decision that is actionable.

**DM** – 1:33:05

But it's my, the decision on my Report is my decision so I make the decision as well as to whether or not something has in my opinion or there is something and I have to say to you that I would only be doing it in the interest of ensuring that the Neighbourhood Plan is...

**DW** – 1:33:16

Excellent. Of course.

**DM** – 1:33:20

...as I said in my opening comments, I'm not trying to make life more difficult for you, I'm looking to make life better for everyone who has to use the document and that would be where the clarity is.

**DW** – 1:33:30

That is exactly what I was hoping you would say, because if we could just touch PNPI, which you have listed as the first policy and I wasn't entirely sure and I'm still not whether that is one that you feel falls into your formatting and looks where it is laid out.

**DM** – 1:33:43

I haven't, it does, but that's not the reason it was listed there It's because it relates to housing.

**DW** – 1:33:47

In that case I need to make a brief comment. We quite deliberately laid out PNP I so that you can see by geography and subject how it links together, OK, the notion of having them as a separate policy moves away from that and it, the coherence goes, so if there is concern about that we need to discuss it because that is how PNP I was put together, deliberately to be an area wide policy, deliberately to take up key issues that the community through the four objectives wanted to see achieve and that's important.

**DM** – 1:34:30

I did say in my opening statement that I don't generally, it's not the process is not one for discussion on those changes. You couldn't . My Report. There will be recommendations about meeting the basic conditions and those are, you couldn't, well it would be for the Council to decide, but that would be a black or white it does or it doesn't meet the basic conditions. It is up to you and the Council to decide if you want to make the changes based on clarity.

**DW** – 1:35:16

That's helpful thank you.

**DM** – 1:35:20

Is there anything else you wanted to raise?

**DW** – 1:35:24

Yes, since you've been left in this difficult position of allocation verses identification, when we get to PNPI3 housing opportunities within the town centre, those sites listed in that policy are completely in accordance with the Local Plan, but one of those sites is one of the sites I've been saying, it's identified by us, but is being used by the Council's as I indicated for which they've now got money to implement it. So I have extreme difficulty in seeing how the Neighbourhood Plan require some further step before implementation is achievable.

**DM** – 1:36:29

I think whether or not, from my perspective, whether or not the Council has achieved funding for the site is not relevant in terms of my consideration of the site.

**DW** – 1:36:36

Well it is on the basis that they consider it is allocated and it is a PNP site.

**DM** – 1:36:42

I think that is for me to make a decision on.

**DW** – 1:36:46

As long as you've got the information.

**DM** – 1:36:46

OK. Are there any more comments that anyone wants to make?

**AS** – 1:36:50

Just for clarification on the application of the work on this identified site. The Local Plan has a broad site SA/SEA of broad areas. The individual SA of the sites hasn't been done in the Local Plan so we were expecting it to be done as...

**DM** – 1:37:10

As part of the Neighbourhood Areas? OK, alright.

**DW** – 1:37:13

Sorry, can that be repeated because it is not correct.

**AS** 1:37:15

No, it is the broad areas, that is the Strategic Delivery Areas, we haven't assessed the individual sites.

**DW** – 1:37:24

What the Local Plan hasn't?

**AS** – 1:37:26

No.

**DW** – 1:37:30

No. Well as you know we did a voluntary Sustainability Appraisal because it says so. So whatever fault that is of the Local Plan, it is not one that is relevant to the Neighbourhood Plan because we have done a voluntary Sustainability Appraisal which includes an SEA and an HRA screening.

**TB** – 1:37:55

Because that hasn't been done for those specific sites in the Local Plan.

**DM** – 1:38:02

Right, last opportunity. Does anyone have anything else that they want to say?

**DP** – 1:38:12

I think we are willing to rely on what we said in our Regulation 16 representation, thank you.

**DM** – 1:38:14

Well, OK, on that basis I'll close the meeting. Thank you very much for everyone attending. Thank you.

[END]