

Your ref:

Our ref: 42542/BRI/CD/EM/SG

02 August 2019

Spatial Planning  
Torbay Council  
Floor 2 North  
Tor Hill House  
Torquay  
TQ2 5TF

**Attn: Spatial Planning**

Dear Sir/Madam

**RE: TORBAY 5 YEAR SUPPLY 2019: DRAFT STATEMENT FOR CONSULTATION**

Peter Brett Associates, now part of Stantec (“PBA”) submit these representations on behalf of our client Taylor Wimpey Homes (South West). To put them into context, Taylor Wimpey submitted an outline application for 73 dwellings at Land to the North of Totnes Road, Collaton St Mary (“the Site”) in June 2019 (P/2019/0604/MOA). The Site is currently included within the Draft Five-Year Land Supply Statement (“Draft 5YLS Statement”) for the delivery of 50 dwellings within the five-year period.

PBA welcome the opportunity to comment on Torbay’s District’s five-year housing land supply position; however, it is disappointing that this consultation will not provide a formal Annual Position Statement and be subject to consideration of the Secretary of State (SoS). Notwithstanding this, PBAs comments are set out below.

**Land to the North of Totnes Road**

Taylor Wimpey’s current outline application is a result of extensive technical assessment as well as engagement with the council and other stakeholders since 2012<sup>1</sup> and represents a proposal which responds to the adopted Development Plan and design principles of the Collaton St Mary Masterplan Supplementary Planning Document (“SPD”). The proposal adheres to the overarching guidance and objectives of the NPPF2019, and furthermore, the application is subject to no ownership or viability concerns which would delay its delivery were planning permission granted.

Once outline planning permission is granted, Taylor Wimpey is committed to the timely submission of a reserved matters application at the Site and the subsequent delivery of 73 dwellings within the established five-year supply period. However, for reasons set out below, it is unfortunate, but like many other sites, it cannot yet form part of the five-year land supply calculation having not received planning permission. Were the LPA to grant planning permission it would make a valuable and full contribution to supply during the next 5 years.

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<sup>1</sup> The first application at the Site was submitted in December 2012 (reference P/2012/1037).

## **The NPPF Definition of Deliverable**

The new NPPF2019 takes a more rigid approach to what constitutes a 'deliverable' site for the purposes of monitoring five-year land supply than its predecessor document (NPPF2012). The current definition of 'deliverable' is included in the NPPF2019 (Annex 2) and is correctly referenced at paragraph 5.1 of the Draft 5YLS Statement and thus not repeated here. This definition is being tested at appeal and will be undoubtedly subject to further testing and clarification on what can constitute 'clear evidence'. The most recent Secretary of State ("SoS") appeal decision is at the Land Off Stone Path Drive, Hatfield Peverel, Essex<sup>2</sup>. Paragraph 47 of the SoS appeal decision helps confirm the following assertions for considering the inclusion of sites as 'deliverable' within a Council's five-year housing land supply:

- a) Sites without planning permission cannot be considered as currently 'deliverable' with the exception of Annex 2(b)<sup>3</sup> sites which are accompanied by 'clear evidence' that housing completions will begin on site; and,
- b) Outline applications for major development should not be automatically considered as deliverable without such 'clear evidence'.

It is noted that since the production of this Draft 5YLS Statement and the SoS appeal decision, the Planning Practice Guidance (NPPG) has been updated<sup>4</sup> to provide further clarity on what can constitute acceptable 'clear evidence'. Paragraph 5.2 of the Draft 5YLS should therefore be updated to reference paragraph 007 (68-007-20190722).

## **The Inclusion of Sites within the Five-Year Supply**

For the purposes of this letter, PBA has applied the above test for the inclusion of Sites within the five-year land supply based on the evidence which has been presented in the Draft 5YLS Statement, the results are summarised as follows.

### *Category A Sites – Full Planning Permission*

PBA agrees with the principle of the inclusion of sites with full planning permission within the council's five-year land supply providing that they are not sites which have been implemented historically with no recent activity.

PBA highlight that one of the sites, South Devon College, which is included within this category is in fact an outline application. This outline application appears to fail the clear evidence test. No conditions have been discharged at the site, no reserved matters applications have been submitted at the site, and there is no further clear evidence presented that the site will be delivered within the five-year period. This site should therefore be removed from the five-year land supply based on the available evidence.

PBA also question the availability of clear evidence to include the Hollicombe Gas Works for the delivery of 92 dwellings in year's four and five of the established five-year supply period. Although it is recognised that this permission has been implemented in part, no dwellings to date have been delivered at the site despite receiving planning permission in October 2012. This suggests that the site may be subject to viability and delivery issues. This site should therefore be discounted unless clear evidence is provided to demonstrate housing completions will begin within the established five-year period.

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<sup>2</sup> APP/Z1510/W/16/3162004.

<sup>3</sup> See NPPF Glossary definition of 'deliverable' (page 66 of the NPPF). These sites are those allocated in a development plan, have a grant of permission in principle, or are identified on a brownfield register.

<sup>4</sup> Revised on July 22nd, 2019.

With these two sites removed, Category A sites could amount to a **472 dwelling** contribution towards the council's five-year housing land supply.

Category B Sites – Allocated and Other Sites with Demonstrated Intent

PBA notes that some of the sites included in Category B are not Annex 2(b) sites and do not have outline planning permission and thus do not accord to the Annex 2 definition of deliverable. There is no clear evidence presented by the LPA. Other sites have outline.

The council must first work with the development industry to issue implementable planning permissions before it can later consider what 'clear evidence' is available at these sites. Sites without planning permission should in the meantime be discounted from the five-year supply.

Our Client's site, (part of Land North of Totnes Road) which is both in a Future Growth Area and subject to an adopted Masterplan Document is currently the subject of a live outline planning application. It has previously been the subject of a number of outline and full planning applications since 2012. The applicant, Taylor Wimpey has sought to work collaboratively with the LPA and stakeholders to provide a set of deliverable proposals over a number of years but has, so far, been unable to secure planning permission to enable a start on site. The latest outline planning application was submitted some 7 weeks ago and has unfortunately made little progress, having only received a small number of consultation responses. Whilst Taylor Wimpey is able to deliver the site in a timely manner and within the five-year period, it is reliant upon the local planning authority enabling this through the grant of a timely outline planning permission, reserved matter approval and the discharge of conditions. Through its experience to date, it is disappointing that Taylor Wimpey is unable to rely upon the timely grant of planning permission. It cannot therefore form part of any reliable five-year supply until such time as its planning status changes.

In the same manner, PBA believe the following sites should be omitted from the Councils five-year supply on the basis of the current evidence presented.

Relevant Site(s)	Total completions listed in Draft 5TLS Statement	Reason for omission based on national guidance
Land South of Yalberton Road	150	The site has outline planning permission but there is no certainty or clear evidence such as a committee report that the LPA will grant Reserved Matter approval or discharge planning conditions, or that the site will be started. The site is not an Annex 2(b) site. It is recognised this position may change if RMs were granted, but that is not the case yet. There is no clear evidence that 45dpa can be achieved in any event; previous evidence suggested a maximum of 35dpa.
Devonshire Park	150	The site has outline planning permission but there is no certainty or clear evidence such as a committee report that the LPA will grant Reserved Matter approval or discharge planning conditions, or that the site will be started. The site is not an Annex 2(b) site. It is recognised this position may change if RMs were granted, but that is not the case yet. There is no clear evidence that 45dpa can be achieved in any event; previous evidence suggested a maximum of 35dpa.
Collaton St Mary (Little Blagdon)	65	The site is not an Annex 2(b) site. A Future Growth Area does not constitute a development plan site allocation and there are no housing allocations in Paignton Neighbourhood Plan. A planning application is yet to be submitted for any residential development.

Relevant Site(s)	Total completions listed in Draft 5TLS Statement	Reason for omission based on national guidance
Victoria Centre	60	Whilst the site may be on the BF register, there needs to be clear evidence that it will be delivered. A successful application for funding does not mean that timely planning permission will be granted or that a start will then be made. The site is an Annex 2(b) site.
Dairy Crest	43	The site is an Annex 2(b) site. An outline application has been submitted, however there is no clear evidence that homes will be delivered within the five-year supply window.
Hatchcombe Lane	50	The site is an Annex 2(b) site. The previous planning permission has lapsed. A reference to pre application discussions taking place does not constitute clear evidence that homes will be delivered within the five-year window.
Palace Hotel	38	This site is an Annex 2(b) sites; however, a planning application has been submitted, however includes no affordable housing and no viability evidence has been submitted to support the application. This approach is contrary to adopted policy. There is no clear evidence is presented that homes will be delivered within the five-year supply window.
Conway Court	14	This site is an Annex 2(b) sites; however, no planning applications have been submitted and no clear evidence is presented that homes will be delivered within the five-year supply window.
Westhill Grange	15	This site is an Annex 2(b) sites; however, no planning applications have been submitted and no clear evidence is presented that homes will be delivered within the five-year supply window.
St Kildas	12	This site is an Annex 2(b) sites; however, no planning applications have been submitted and no clear evidence is presented that homes will be delivered within the five-year supply window.
Land North of Totnes Road (Bloor)	55	These sites are not Annex 2(b) sites. Planning applications on these sites are yet to be decided.
Land to the North of Totnes Road (TW)	55	These sites are not Annex 2(b) sites. Planning applications on these sites are yet to be decided.
Former Torbay Holiday Motel	40	These sites are not Annex 2(b) sites. Planning applications on these sites are yet to be decided.
<b>Total</b>	<b>747</b>	

If the above sites are removed. Category B sites are not yet proven to be deliverable through clear evidence and therefore cannot be included in the Council's five-year housing land supply in accordance with the Planning Practice Guidance (paragraph 007 68-007-20190722). It is recognised that the LPA has the ability to grant full planning permission or reserved matters approval, but until such time their contribution cannot be used to support the five-year land supply position.

For the purposes of undertaking this exercise in accordance with NPPF2019 and NPPG, **0 dwellings** can be counted as contributing towards the council's five-year housing land supply.

#### Category C Sites – Minor Applications with Planning Permission

PBA agree with the inclusion of minor applications with planning permission. However, no information is provided on the applications which have been included. 298 dwellings from this

source can be included but should be monitored on a regular basis as there will be a time when some permissions will lapse. PBA has not suggested the inclusion of a lapse rate.

**298 dwellings** can be counted as contributing towards the council's five-year housing land supply.

Category D Sites – Windfall

PBA observe that the NPPF definition of deliverable does not include windfall sites unless they are included on a brownfield register and in the context of plan making (NPPF para 70). Even in the plan making the council has would not have demonstrated 'compelling evidence', which is a more onerous test that 'clear evidence'. It has not published a SHLAA or any cometary of how any historic trends will carry through into expected future trends. Even if this were eventually proven, to avoid double counting of small planning permissions, an allowance should only be made for years 4 and 5 of the five-year period.

**0 dwellings** can be counted as contributing towards the council's five-year housing land supply.

Future Growth Areas and the Inclusion of the Site in the Five-Year Supply

It is noted that the LPA has not included any wider FGA locations within the supply calculation and this is supported. They should be the locations where growth is delivered, but in order to achieve this, it requires the grant of planning permission on identified sites.

Total

A summary of PBA's current position is as follows.

	Torbay Position (dwellings)	PBA Position (dwellings)
TBLP Housing Requirement 2012-2019	2990	2990
Completions 2012-2019	2,719	2,719
Shortfall	271	271
Five-year requirement 2019-2024	2,595	2,595
Plus Shortfall and 5% Buffer	3,009	3,009
Category A	639	472
Category B	747	0
Category C	298	298
Category D	283	0
Total Supply	1967	770
Evidencable 5YLS	3.28 years	1.28 years

**Conclusion**

Although the Draft 5YLS Statement correctly references the up to date NPPF definition of deliverability, it does not appear to test the included sites against these definitions. Where clear evidence is available, this evidence should be made public to inform the consultation, otherwise the sites highlighted in this letter should be removed from the council's five-year land supply. This would provide a five-year land supply position of **1.28 years**.

It is clear there is a land supply issue in Torbay which will threaten to become an increased housing delivery issue in the coming years. Torbay should therefore work with developers to implement planning permissions in areas which are already established as the most sustainable areas for growth.

Taylor Wimpey has almost continually had a live application at the Land to the North of Totnes Road for the last seven years and has sought to work positively with the council to address matters as they have arisen. Most recently this included the withdrawal of a planning application and submission of a fresh application at a considerably reduced development density on the 18<sup>th</sup> June 2019. The current application is due for consideration at planning committee on 09<sup>th</sup> September 2019. Should permission be granted, Taylor Wimpey can then supply the relevant evidence for the inclusion of the Site in the council's five-year supply statement.

Yours sincerely



**Colin Danks**  
**Director Planning and Growth - South West**  
For and on behalf of  
**PETER BRETT ASSOCIATES LLP**