



Planning Proof of Evidence for the Appellant Abacus Projects Limited and Deeley Freed Estates Limited

Land at Inglewood, Torbay APP/X1165/W/20/3245011

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Prepared by: Simon Fitton (BA) (Hons) MRTPI

Alder King Planning Consultants

Pembroke House, 15 Pembroke Road, Clifton, Bristol BS8 3BA



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Endorsement

1. I am a member of the Royal Town Planning Institute (RTPI) and have been since 2002. I hold a BA (Hons) degree in Urban Planning and Management and also a Diploma in Town Planning both gained at Nottingham University in the period 1994-1998.
2. I have over twenty years practical post qualification experience in the profession, firstly at a national housebuilder, Redrow Homes between 1998 and 2000; secondly with a planning and environmental consultancy, RPS between 2001 and 2014 (Mason Richards Partnership between 2001 and 2004, before the Partnership was acquired by RPS). I was promoted to the role of Technical Director in 2007.
3. I am currently Head of Planning and a Partner in the Practice of Alder King Property Consultants and have been since 2014. Alder King provides property and planning services principally in the commercial property sector from its offices in Bristol, Exeter, Swindon, Taunton, Cardiff, Gloucester, and Truro.
4. My practical experience includes dealing with planning matters concerning development particularly on land across the South West and South Wales for public and private sector clients.
5. I was initially instructed by the appellant in July 2019 to assess and prepare representations on Torbay Council's draft 2019 Housing Land Supply Position Statement. I had no prior involvement in the planning application prior to this date, but took full planning consultancy responsibility for the appeal process after the Appellant's agent at Stride Treglown left that practice in summer 2019.
6. The evidence which I have prepared and provide for this appeal is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

1.0 Introduction

- 1.1 I have prepared this proof of evidence in support of an appeal made under s.78 of the Town and Country Planning Act 1990 by Abacus Projects Limited and Deeley Freed Estates Limited (the Appellant) against the failure of Torbay Council (TC) to determine planning application ref: P/2017/1133 within the prescribed time.
- 1.2 This evidence examines the planning policy basis for assessment of this proposal and the consideration of a number of material considerations that are also relevant to the determination of the appeal. To that end this evidence seeks to establish whether TC can demonstrate a five year supply of housing land as required by paragraph 73 of the National Planning Policy Framework (NPPF). On the basis that it cannot the evidence goes on to consider the implications of applying the 'tilted balance' in accordance with paragraph 11(d)(ii) of the NPPF and the weight that should be afforded to otherwise restrictive development plan policies. Given the significant deficit in the land supply I conclude that the tilted balance should be given significant weight in the determination of this appeal. Irrespective of the tilted balance the evidence seeks to consider conformity with the Development Plan and even in a flat-balance scenario the extent to which the appeal proposals comply with Policy,
- 1.3 The evidence then goes on to apply the planning balance concluding that the benefits of allowing the appeal would significantly and demonstrably outweigh any adverse impacts of doing so, when assessed against the policies in the NPPF taken as a whole.
- 1.4 Whilst I consider that the tilted balance is clearly engaged in this case I also consider the outcome in the event that an ordinary planning balance applies.
- 1.5 It is not my intention to repeat what is contained within the full Statement of Case submitted in January 2020 but to reflect on the reasons for refusal that were established at Committee in February 2020 and the further amplification provided in the Council and Rule 6 Party's Statements of Case and subsequent Position Statements. The passage of time and delays to the scheduling of the Inquiry due to COVID-19 also necessitate consideration of the housing land supply position as at 1 April 2020.

2.0 The Correct Approach

- 2.1 The starting point for decision making is Section 38(6) of the Planning and Compulsory Purchase Act 2004, which states that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 2.2 The development plan in this instance is the Torbay Local Plan (TLP)¹ and Brixham Peninsula Neighbourhood Plan (BPNP)². Relevant material considerations include Government policy guidance contained within the National Planning Policy Framework (NPPF)³ and National Planning Practice Guidance (NPPG)⁴, other ministerial statements and legal obligations.
- 2.3 Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development. For decision-taking this means:
- c) approving development proposals that accord with an up-to-date development plan without delay;*
 - or*
 - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*
- 2.4 The Statement of Common Ground establishes that the implication of falling below a five year supply of land is that paragraph 11(d) of the NPPF is engaged.
- 2.5 Paragraph 14 of the NPPF provides that in situations where the paragraph 11d presumption applies to housing proposals the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, though subject to 4 criteria all applying. Hence, even where there is a shortfall against the five year requirement the presumption may not be engaged even where there is a shortfall against the five year requirement because the LPA can demonstrate a three year supply of housing land. In this case TC cannot demonstrate even a three year housing land supply. On the basis of both the April 2019 and April 2020 monitoring data, and applying paragraph 11d and footnote 7, the most important policies for determining the appeal are regarded by the NPPF as being out of date.

¹ Core Document 6.16

² Core Document 6.17

³ Core Document 6.34

⁴ Core Document 6.35

- 2.6 The relevant tests for this appeal are contained within NPPF paragraphs 11(d)(i) and (ii). Torbay Council's (TC) Statement of Case⁵ contends that the appeal proposals fail the test in 11(d)(i) insofar as the harm to the natural beauty of the South Devon AONB provides a clear reason for refusal. For the reasons set out in the evidence of Mr Leaver, and this evidence, that contention is not accepted. . The landscape evidence of my colleague Peter Leaver concludes that the appeal proposals do not result in unacceptable harm to the special landscape qualities of the AONB and comply with Local Plan Policy SS8 in that regard. As a consequence it is entirely appropriate to proceed to the test in 11(d)(ii).
- 2.7 The issue of the weight to be afforded to out-of-date development plan policies has been subject of scrutiny through the courts. In *Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC* [2020] EWHC 518 (Admin)⁶, the following key principles are established:
1. Paragraph 11(d)(ii) does not require development plan provisions to be excluded from consideration and that decision-makers may take them into account when conducting the tilted balance exercise.
 2. There is no legal justification for requiring the tilted balance in paragraph 11(d)(ii) and the s38(6) balance to be applied in two separate stages in sequence. The decision taker can apply the two balances together or separately.
 3. Where paragraph 11(d)(ii) is triggered because of a housing land supply shortage, it is for the decision-maker to decide how much weight should be given to the policies of the development plan, including the "most important policies" referred to in paragraph 11(d). This should involve consideration of whether or not the policies are in substance out-of-date and, if so, for what reasons.
 4. A decision-maker may also take into account for example the nature and extent of any housing shortfall, the reasons for the shortfall, the steps being taken to remedy the shortfall, and the prospects of the shortfall being reduced in the future.
- 2.8 At the heart of NPPF paragraph 11 is the presumption in favour of sustainable development. In effect, it asks of local authorities to not withhold the grant of planning permission on sustainable sites where the policies to deliver housing are failing. That proposition is qualified and paragraph 11(d)(i) may provide a reason to protect land from development regardless of delivery shortcomings if the application of the particular policies in the NPPF set out in footnote 6 (though not policies in the development plan) provide a clear reason for refusing the proposed development. Paragraph 11(d)(ii) requires the decision taker to consider any adverse impacts, but to only refuse permission where those impacts significantly and demonstrably outweigh the benefits of the proposal.
- 2.9 The adverse impacts referred to in paragraph 11(d)(ii) can reasonably be considered in the context of the policies of the development plan, but the failure of that plan to have delivered the necessary quantum of housing needs to be carefully considered. That is the purpose of the application of the tilted balance; it is to encourage the decision-maker to take account of the benefits of the provision of housing and to make that a primary consideration in the determination process. All relevant development plan policies may

⁵ Paragraph 10.7 TC Statement of Case

⁶ CD8.5

continue to have weight afforded to them, but that must be considered in light of the development plan's track record of delivery. Have the policies of the development plan delivered against its own strategic objectives and requirements? For the reasons set out below, the Torbay Development Plan has had ample opportunity to prove itself as a tool for facilitating development; however to date it has singularly failed to do so.

3.0 Five Year Housing Land Requirement

- 3.1 The table below is an extract from the December 2020 Statement of Common Ground which reflects the agreed position in respect of the five year housing land requirement at 1 April 2020. The position at April 2019 (that is referred to the original Statements of Case) is set out for comparison purposes at **Appendix 1**:

	@1 April 2020	@10 December 2020
Torbay LP Housing Requirement 2012-20	3,485	n/a
Completions 2012-2019/20	2,907	n/a
Shortfall 2012-2019/20	578	n/a
Five Year Requirement 1 April 2020 to 31 March 2025	495 dwellings x 2 years plus 555 dwellings x 3 years= 2,655	Standard method of 586 dpa x 5yrs = 2,930
Plus shortfall	3,233	N/A
Plus Shortfall and 5% Buffer	3,395	3,076
Annualised 5YHLS figure (5% buffer)	679	615
Plus Shortfall and 20% Buffer	3,880	3,516
Annualised 5YHLS figure (20% buffer)	776	711

Table 1: April 2020 Five Year Housing Requirement Scenarios

- 3.2 The five year requirement increases from the April 2019 baseline of 3,009 homes at April 2020 for two principal reasons:
- 1) Completions of 188 in 2019/2020 do not meet the Local Plan annual requirement of 495 homes and thus the shortfall increases; and
 - 2) The five year requirement increases further because the Local Plan anticipates a phased increase of the annual requirement over time so there is one less year of 495 homes and one year more of 555 (ie an increase of 60 homes).
- 3.3 The five year housing land requirement increases from 3,009 homes at April 2019 to 3,395 in 2020 if a 5% buffer is applied. For the reasons rehearsed in the Statement of Common Ground and below, the situation in Torbay is complicated by two important factors:
- 1) The Local Plan was five years old on 10 December 2020 and the five year requirement diverts to the standard methodology after this date, as per the requirements of footnote 37 of NPPF paragraph 73. TC has confirmed at its Cabinet Meeting on 17 November 2020 (**Appendix 2**) that its strategic policies have been reviewed and do need updating. The Statement of Common Ground establishes that the

standard method for Torbay is presently circa 586 dwellings per annum. Whilst the figure might well be tested through the Local Plan process, the reality is that as from 10 December 2020, the 586 dpa figure is used in calculating the five year requirement. There is no ‘wriggle room’ to claim it should be anything else and there won’t be until either the Government updates the standard methodology and new figures are released, or the current and any other figure is properly tested through local plan examination; and

- 2) TC will fail the Housing Delivery Test (HDT) for the monitoring period 1 April 2017 to 31 March 2020 and be required to add a 20% buffer to the five year requirement. This matter is explored further below but, as was explained by the Council during the 30th November Case Management Conference (CMC), the Council accept that it was appropriate to apply the 2020 HDT calculation in determining this appeal. However, it may be that others may seek to contend otherwise and it is in that context is important to set out the extent of the shortfall, how it is arisen and what if any steps have been (or will be) taken to effectively remedy it.

Housing Delivery Test

- 3.4 As noted at the CMC, although not yet published by MHCLG (at the time of writing), the position in respect of the 2020 HDT results are a matter of fact. The 2020 results are shown below with a comparison against the 2019 returns:

Year	Number of Homes Required					Number of Homes Delivered					HDT
	2016/2017	2017/2018	2018/2019	2019/2020	Total	2016/2017	2017/2018	2018/2019	2019/2020	Total	
2019	400	495	495	n/a	1,390	326	410	531	n/a	1,267	91%
2020	n/a	495	495	495	1,485	n/a	410	531	188	1,129	76%

Table 2: 2019/2020 HDT Results

- 3.5 It is worth noting that the 2018 results, against a requirement of 1,295 homes and delivery of 1,144 homes resulted in a HDT measure of 88%. In 2019 and 2020, TC has had to produce an ‘action plan’. As a consequence of continued underperformance, in accordance with NPPF paragraph 73c and footnote 39 it will become a 20% buffer authority when the 2020 HDT results are published given it will fall below the 85% threshold.
- 3.6 As an aside, although NPPF paragraph 14(d) has a consequence in context of the three year supply requirement, it is interesting to note that TC is only 1% above the 75% threshold in the NPPF footnote 7. If it were lower (and without recently made Neighbourhood Plans in place) that would mean the presumption in paragraph 11d would apply, irrespective of the supply position.
- 3.7 Rolling that theory on, in 2021 the three year requirement would again be 1,485 homes; it may be more appropriate to use the standard method (or a combination thereof) in which case it would be 1,758 homes. Using TCs 2020/21 Housing Land Supply Statement (July 2020), and applying a pro-rata rate for windfalls

(390/5yrs) and small sites (235/5yrs) added to the trajectory from large sites (142), a reasonable estimate for completions in 2020/21 would be 267 homes.

- 3.8 The 2021 HDT measure is likely to be in the order of 66% based on a requirement of 1,485 homes and completions of 986 over the three year period (531+188+267). Against the standard method requirement of 1,758 (586x3) the measure would be 56%. By November 2021 the BPNP will be more than two years old and the protection afforded by NPPF paragraph 14a will not apply. In November 2021 the presumption in NPPF paragraph 11d will apply irrespective of the housing land supply position. In order to meet the 75% threshold, completions in 2020/21 would need to be 600 homes. Completions since the start of the plan period in 2012 average 363 homes, with the highest monitoring year returning 531 completions. Since 1981 completions have averaged 430 homes⁷. Completions of 600 homes have never happened before and is not going to happen in 2020/21 in a year so affected by Covid-19 and a clear lack of supply in any event. The position can be summarised as:

Monitoring Year	Number of homes required	Number of homes delivered	HDT Measure	Implications
November 2018	1,295	1,144	88%	Action Plan
November 2019	1,390	1,267	91%	Action Plan
November 2020	1,485	1,129	76%	20% buffer
November 2021 Local Plan	1,485	986	66%	NPPF paragraph 11d presumption applies regardless of supply position.
November 2021 Standard Method	1,758	986	56%	

Table 3: HDT results and forecast

- 3.9 The position in January 2021 is dire. It requires urgent action to remedy the situation. It may be observed that these failings are not new and if this appeal was being determined under the terms of the 2012 NPPF it would have been considered in circumstances where TC had a record of persistent under-delivery having failed to meet the annual requirement in five out of the last eight years. TC has failed the HDT in the last two years (since its inception) and on both occasions has been required to produce a Housing Delivery Test Action Plan (HDTAP). Clearly the 2019 version⁸ has not yielded a positive upturn and for the reasons set out below the 2020 version⁹ is unlikely to either. The position is worsening year on year.
- 3.10 It is difficult to understand the logic that TC would 'prefer' to see the appeal site brought through the new Local Plan¹⁰. The crisis is now; delivery cannot afford to wait to 2023 before the Local Plan is adopted (see **Appendix 2**) before consent can be forthcoming. In that scenario, delivery of housing completions at the appeal site would probably be five years from now following grant of outline consent, site disposal,

⁷ Paragraph 2.6.1 Torbay Housing Delivery Test Action Plan (August 2020)

⁸ Core Document 6.15

⁹ Core Document 6.36

¹⁰ Paragraph 10.4 of TC Statement of Case

submission of reserved matters and discharge of conditions, followed by a start onsite and delivery of enabling infrastructure. The need to deliver more homes on alternative sites in Torbay is now; delay is simply not tenable.

3.11 The August 2019 HDTAP states at paragraph 4.3.2 that,

“The current Local Plan is relatively recent however, meeting the standard methodology housing figure will be a significant challenge. An update of the Plan will be essential if the prospect of a five year supply is to be achieved. There will need to provide suitable resources in order to enable an update to the Local Plan.”

3.12 Paragraph 4.6.2 goes on to state,

“Clearly the key action arising in relation to land supply and indeed to ensure that new development is suitably planned and of a high quality, will be the review of the Local Plan.”

3.13 Since these statements were made in August 2019, there has been no action whatsoever. In the August 2020 HDTAP, the very same statements are repeated¹¹ that only confirm this. It is interesting to see that the HDT is working effectively. Torbay has had two years to rectify the position through HDTAPs. They have not worked and it is now time to apply the 20% buffer. As noted above, in another year the tilted balance will apply in any event regardless of the land supply.

3.14 A new LDS was only agreed at Cabinet on 17 November 2020. The process has barely begun. The LDS projects adoption of a LP Review in September 2023 but this seems wildly optimistic as does the promise of a regulation 22 submission version by November 2021.

3.15 There are also repeated references for the need for an early review throughout the Local Plan (Policy SS1 also refers). The problem is not going to be resolved soon by virtue of a range of new allocations coming forward through a new Local Plan. It is too late for that. Eventually a Plan review will be in place but that in itself will not guarantee a five year supply under the terms of the new tests of deliverability. An allocation alone is not enough to establish deliverability. Any such sites aren't likely to make a contribution to the supply for many years (certainly by the time the plan has progressed and permissions secured). There is no quick fix and it is necessary to acknowledge that the Plan has failed to deliver and the Neighbourhood Plans have not met the challenge to bolster supply. In the circumstances, it is necessary to take appropriate action.

3.16 Establishing a five year supply is of critical importance. However, it would appear likely that the presumption in paragraph 11d will apply for at least the next 3 years given the likelihood of continued failure to meet the HDT standards and the five year requirement. Only approval of proposals such as those at the appeal site will enable there to be any prospect of a significant upturn in the position.

3.17 It is important not to lose sight of the importance of delivering affordable homes as part of the appeal proposals. The 2020 HDTAP recognises that there is a particular need for affordable housing in Torbay and that there is a shortage in the local stock (just under 10% of the overall stock in Torbay compared the national average of just under 20%). The HDTAP confirms at paragraph 2.9.2 that,

¹¹ Paragraphs 4.3.2 and 4.6.1 Torbay Housing Delivery Test Action Plan (August 2020)

“The core findings of the ORS assessment was that there was a need for 404 social rented dwellings and 96 intermediate affordable homes in Torbay per year. Desk-top work by Torbay Council indicates that given the gap between house prices/rents and earnings, this figure continues to be an accurate reflection of need amongst forming households.”

3.18 This is in line with the Local Plan Inspector’s finding who reports,

“The updated Exeter and Torbay Housing Market Assessment 2011 identifies a need for 820 dwellings a year in Torbay, 60% of which would need to be affordable dwellings.”¹²

3.19 The situation has not improved at all during the plan period to date. The Inspector went on to conclude that increasing the market sector housing in order to secure more affordable housing would be inappropriate for a number of reasons. These reasons are fair and understood, but it is incumbent on TC to deliver the housing requirement in full so as to at least not exacerbate the problem further. It has singularly failed to do so.

3.20 The 2018 Annual Monitoring Report (AMR)¹³ reports that as at April 2018, there were 1,074 households on the Devon Home Choice register in housing need. Affordable housing completions in Torbay in 2016/17 were 42 units, compared to 46 units in 2015/16. The 2019 AMR¹⁴ confirms the number at April 2019 to be 1,073 households in need. I am advised by TC that the current figure is 1,321 households on the waiting list. The situation is only worsening.

3.21 The section of the HDTAP concludes at paragraph 2.10.3 with the following statement,

“Housing can, and does, bring major social and economic benefits and is essential for the provision of affordable homes, for which there is a pressing need. But it cannot be seen in isolation from the wider economy. Nor will the wider community – including the three large Neighbourhood Forums – accept the need for growth if they do not feel that it is benefiting them, or it is being imposed irrespective of environmental consequences. Without the wider economic improvement, granting planning permission for more homes is a little like pushing string.”

3.22 This is a curious statement at best but perhaps underlines some of the key problems affecting the ability to ever resolve the crisis. To what extent does the provision of affordable homes (and market homes) ever benefit the majority of existing households and specifically those that are members of the Neighbourhood Forums? As Chapter 7 of my evidence sets out, there are actually many direct and indirect benefits of housing development but these can be difficult for some to perceive. Unless existing households are concealing other households the answer to the above question is probably “very little” and if those forums are unable or are unwilling to take a more holistic view of the needs of other sections of Torbay society then it is probably true that officers will forever be ‘pushing string’ in any bid to try to rectify the clear and present problem. Seemingly there are households in need of a home that aren’t being provided with one simply because it provides no benefit to existing households or results in economic improvement. That is neither credible nor fair. Whilst the matter could (and perhaps in an ideal world would) be tested through the LP

¹² Paragraph 25, 2015 LP Inspectors Report (CD 7.3c)

¹³ CD 6.41

¹⁴ CD 6.42

Review, more urgent positive intervention is required and it begins with allowing this appeal and enabling the delivery of 112 desperately needed affordable homes.

- 3.23 The appeal proposals reflect a policy compliant scheme and do not seek to introduce a viability case to reduce the quantum of affordable housing. The provision of 112 affordable homes will make a very significant contribution to meeting housing need in Torbay. Both the Local Plan and Neighbourhood Plan make great play of the need for more affordable housing in the Brixham Peninsula. Whilst the Neighbourhood Plan seeks to identify land for 685 homes in line with Local Plan requirements, the vast majority of allocations are on (small scale) previously developed sites that do not trigger the affordable housing threshold in Policy H2. It is hard to envisage how the sites identified will deliver any meaningful quantum of affordable housing over the plan period.

4.0 Five Year Housing Land Supply

4.1 TCs 2020 Five Year Housing Land Supply Statement (August 2020) establishes a baseline supply of 2,038 homes in the period 1 April 2020 to 31 March 2025. The robustness of the 2,038 homes supply is considered below. Based on the requirement figures above, the following position emerges; this table is reproduced in the agreed Statement of Common Ground:

	@1 April 2020	@10 December 2020
Requirement plus 5% Buffer	3,395	3,076
Resulting number of years supply (based on 2,038 dwellings)	3.00 years	3.31 years
Requirement plus 20% Buffer	3,880	3,516
Resulting number of years supply (based on 2,038 dwellings)	2.63 years	2.90 years

Table 4: Number of years supply based on TCs August 2020 HLS Statement

4.2 In short, it is understood that TC accepts that it has, at most, 2.90 years supply of housing against its five year requirement under the NPPF .As evidenced above, TC has a very poor track record of delivery. The table below seeks to establish the robustness of TCs five year supply since the start of the plan period against the number of homes actually delivered within the same period:

5 Year Period	Supply	Completions	% of supply delivered	Number of completions required to achieve supply
2012-17	2,701	1,778	65.83%	
2013-18	2,846	1,939	68.13%	
2014-19	2,797	2,024	72.36%	
2015-20	2,093	1,863	89.01%	
2016-21	2,291	1,455*	63.51%*	836 per annum*
2017-22	2,362	1,129**	47.80%**	616 per annum**
2018-23	1,967	n/a	n/a	n/a
2019-24	1,504	n/a	n/a	n/a
2020-25	2,038	n/a	n/a	n/a

*with one year remaining

**with two years remaining

Table 5: Assessment of delivery against supply

4.3 The table shows that TC has never met the stated supply in any five year period and in reality has rarely got close. With one year left of the five year period to 2021, TC would have to achieve 836 completions in 2020/21 to hit the target, which I have already established there is no prospect of. With two years left of the

period to 2022, completions of 616 per annum would be required, which is equally unlikely. The evidence suggests that TC has over-promised and under-delivered year on year and there is nothing to suggest that trend won't continue. The supply of 2,038 homes must be treated with caution from the outset.

4.4 The table below assesses the overall trend in supply over the course of the plan period:

Year	5 year Requirement	Cumulative Shortfall	5 Year Requirement (+5%)	TC Supply	No of years supply
2012/13	2,000	0	2,100	2,701	6.43 yrs
2013/14	2,095	151	2,358	2,846	6.03 yrs
2014/15	2,190	105	2,410	2,797	5.80 yrs
2015/16	2,285	156	2,563	2,093	4.80 yrs
2016/17	2,380	148	2,654	2,291	4.31 yrs
2017/18	2,475	222	2,832	2,362	4.17 yrs
2018/19	2,535	307	2,984	1,967	3.29 yrs
2019/20	2,595	271	3,009	1,504	2.50 yrs
2020/21	2,655*	578	3,395 or 3,880 with 20% buffer	2,038	3.00 yrs or 2.63 yrs with 20% buffer
	2,840**	n/a	3,076 or 3,516 with 20% buffer	2,038	3.20 yrs or 2.90 yrs with 20% buffer

*Local Plan Rate

**Standard method rate

Table 6: TC Supply position over Plan period

4.5 The table shows that the supply has consistently diminished over time. Naturally a robust position is established in the early years and as required, a five year supply could be demonstrated as the Local Plan was moving towards adoption in 2015. It has gone backwards ever since and shows that the Local Plan and subsequent Neighbourhood Plan policies have proven entirely ineffective. What is all the more remarkable is that TC has not sought to facilitate any meaningful intervention strategy despite the need to produce HDTAPs in the past two years. It should be a long way down the LP Review route by now but is still at inception stage.

4.6 The figure below shows the effect; the completions line shows how many homes were delivered in the five year period against the supply at the start of that five year period. The completions figure for 2016/17 assumes 267 completions in 2020/21.

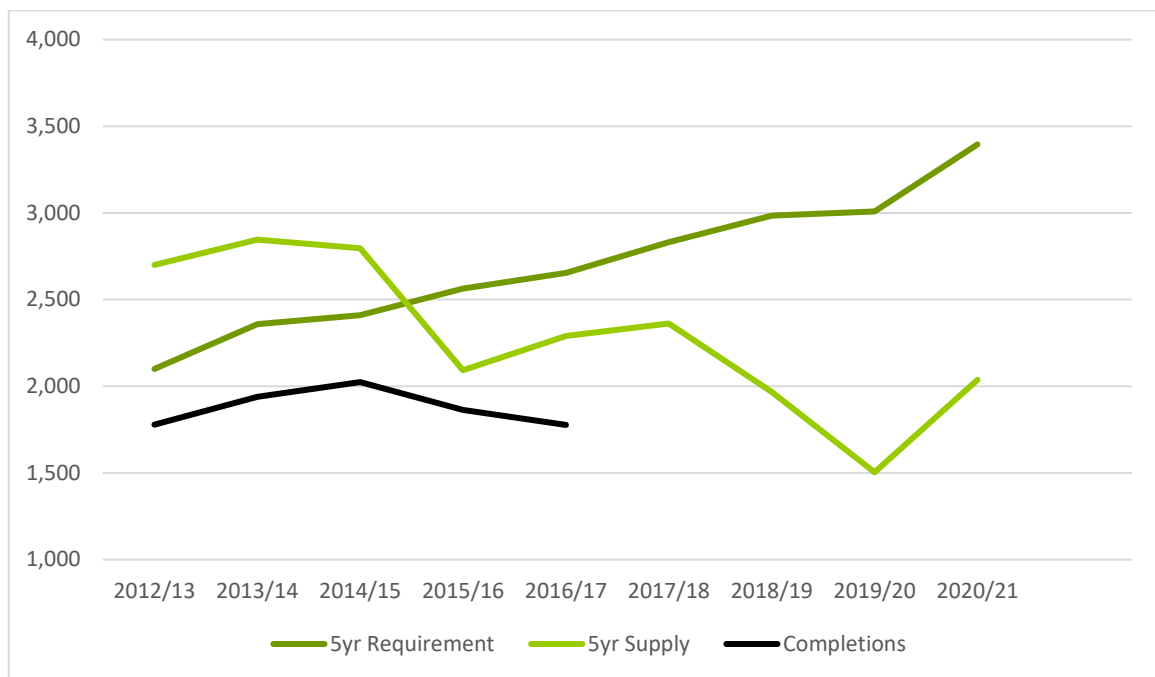


Figure 1: 5Yr Requirement, Supply and Completions within the 5 year period since the start of the LP period

4.7 The problem in Torbay is not a new one. There is clear evidence of past under-delivery since the start of the plan period in 2012. At no stage of the plan period has the level of cumulative completions been in surplus. The five year requirement has grown year on year. As the requirement increases, the level of supply has decreased and the deficit has grown (see further analysis below). This is a wholly unsustainable position that cannot easily be rectified. It amply justifies the application of the tilted balance and, where appropriate, granting planning permission on sustainable sites that are not presently subject of allocation in either the LP or NP.

1 April 2019 Base date

4.8 Paragraph 6.9 of the appellant's Statement of Case references the letter of 28 August 2019¹⁵ confirming the Officer's position that the Council cannot demonstrate a three year supply of housing against the five year requirement at April 2019. The Officer's view has been endorsed by the Council, as the Council's Statement of Case and relevant appendices¹⁶ refer. It is also confirmed at paragraph 5.1 of the Statement of Common Ground agreed between the appellant and TC in March 2020.

4.9 The appellant's position on the sites that can contribute to the definition of deliverable is rehearsed in its July 2019 representations¹⁷ and is not repeated here. The representations advanced a case to demonstrate that a supply of 1.28 years existed.

4.10 The Council's stance, established in the endorsed Five Year Supply Statement (February 2020)¹⁸ responds to the consultation it undertook in July 2019. In July 2019 it asserted that a supply of 3.29 years existed but

¹⁵ CD 3.4(b)

¹⁶ Appendix 11, TC Statement of Case

¹⁷ Appendix 4, Appellant's Statement of Case

¹⁸ CD 6.18

Officers considered the position in light of representations submitted and in accordance with up to date policy and guidance discounted a number of sites that are not subject to detailed consent, or had any clear evidence to suggest that consent and delivery would be forthcoming soon.

4.11 In seeking to derive a robust supply position the Council sought Counsel's opinion on a variety of sites but was advised that no additional sites should be included (**Appendix 3(iii)** refers). The February 2020 Statement establishes a final supply position of 2.5 years at 1 April 2019.

1 April 2020 Base Date

4.12 The passage of time has enabled 1 April 2020 to be used as the base date for the purposes of assessing the appeal proposals.

4.13 The consultation version of the five year position statement was published in May 2020¹⁹. It established a supply of 1,881 homes, equivalent to 2.77 years supply. Alder King made representations to the consultation statement on behalf of the appellant (**Appendix 3**) and concluded that a supply of 1,391 homes existed, equivalent to 2.05 years with a 5% buffer (1.79 years with a 20% buffer).

4.14 That submission is still considered robust, albeit progress has been made on some sites since the submission of the representations.

4.15 Following receipt and consideration of all representations TC produced a final position statement in August 2020²⁰ that yielded a final supply 2,038 homes that appears somewhat conveniently to result in precisely 3.00 years supply. For the reasons set out above, TCs supply has not once proven to be robust and given the change in approach from May to August there is little to suggest that the position for 2020-25 is any more so.

4.16 BTC has produced a position statement that both TC and the appellant has responded to. Four sites are referenced in that response²¹ that are critiqued in turn below. The four sites feature in the HDTAPs and it is therefore important to understand what progress has been made. In respect of the three Council-owned sites, paragraph 5.1.3 of the August 2019 HDTAP states,

"The immediate focus is upon three key sites which cannot currently be considered deliverable for the purposes of five year supply:

- *Collaton St Mary Future Growth Area, Paignton.*
- *Preston Down Road , Paignton*
- *Victoria Square, Paignton"*

4.17 That statement disappears from the August 2020 HDTAP despite there being no obvious progress on the sites in the intervening 12 month period. It is not clear what the change in circumstance is said to have

¹⁹ CD 6.37

²⁰ CD 6.38

²¹ for the reasons dealt with below, one further site at Stoodley Knowle is added to that list of sites to be considered

arisen to warrant their inclusion now. Their planning status (either in terms of policy or applications) has not advanced at all.

- 4.18 I have not sought to repeat what is already contained within the position statement schedule or the representations submitted on the May 2020 HLS consultation paper (**Appendix 3**). However, those representations remain relevant now in context of a decision to be taken.

Preston Down Road and Stoodley Knowle

- 4.19 Put simply the site has very little “policy pedigree” and has in many respects the same policy status as the appeal site. The Local Plan suggests that it could form an allocation within the Paignton Neighbourhood Plan (PNP) but the PNP provides no support for it; rather it recognises the strong public objection²² to it such that it should not be developed.

- 4.20 The site is Council-owned and went through an unsuccessful tender process over the summer. The responsibility has now fallen to TorVista (the newly formed development arm of the Torbay Development Agency) to deliver the site. Perhaps an application will be forthcoming in 2021 and, given the land supply crisis, would fall to be favoured under the terms of the tilted balance. That is as maybe, but to make such an assumption at this stage would be inappropriate. It would, and strongly so, smack of predetermination and would be to deny the public the proper process of consultation. It may also appear to inhibit the position of the LPA to properly assess the application proposals against any environmental constraints that are identified during the preparation of any application. To assume delivery before the proper planning process has been carried out (or, indeed, even commenced) fails the necessary tests of the definition of deliverable in the NPPF Glossary.

- 4.21 It is worth noting that there is one site not covered in the May representations, since it was introduced following the consultation exercise into the final August 2020 statement. It is the site at Stoodly Knowle (69 dwellings). In its summary response paper²³ that accompanies the final August 2020 statement, the officer response states,

“Stoodley Knowle – accept and include. An application (P/2019/1330) was submitted prior to 31st March, but was not included in the draft schedule because it could have undermined the development management process. However, the site had a realistic prospect, at 31st March 2020, of being deliverable, which has been confirmed following approval at Committee in July.”

- 4.22 Two matters arise from this:

- 1) The site still does not have outline planning consent some 6 months after being reported to committee. No evidence has been presented to demonstrate delivery, and on that basis the site should be discounted from the supply.
- 2) It is hard to reconcile the valid point that has been raised elsewhere (that to put a site into the list of deliverable sites identified within the five year supply, but without any status – such as via an allocation or with a planning permission - should be rejected as inappropriate). It is quite correct, and to do so

²² See ‘objectives’ on p.64 of the PNP

²³ CD 6.39

would be prejudicial to the determination of that application and would undermine the development management process. It is hard to understand how TC can take an entirely different view at Preston Down Road. On the basis that it is a Council-owned site, surely it should be taking an even more cautious view so as not to be seen to be pre-determining the outcome of the process? Indeed, to do so (or appear to do so) is, to put it mildly, legally fraught.

- 4.23 Preston Down Road is identified in both the 2019 and 2020 HDTAP. The only additional wording in the 2020 HDTAP is to state at paragraph 5.3.2 that,

“Land Release Funding has been awarded to unlock land for development at Preston Down Road and the TDA are in the process of procuring a development partner for the sites, due to be confirmed by September 2020 with a planning application likely to be submitted by Spring 2021. The TDA is also addressing ecology matters, and the sites’ former status as a local nature reserved has been confirmed by the Council not to be necessary.”

- 4.24 Since the HDTAP was published in August 2020, the procurement process has proven unsuccessful with no development partner having been identified. It is not clear whether the spring 2021 application submission is still realistic or in what form it will take (outline, full, hybrid). TorVista is a new and unproven public sector developer and it is far from clear how quickly it can mobilise and generate the resources necessary to deliver homes in a timely manner. Regardless, for the reasons set out above neither Preston Down Road nor Stoodley Knowle should form part of the five year supply.

Collaton St Mary

- 4.25 The Council-owned element of the future growth area (also known as Little Blagdon Farm) was identified in the original July 2019 HLS consultation statement, the justification being,

“Allocated in Local Plan as part of Future Growth Area. Application submitted for junction. Successful application for Land Release Fund funding. Preparatory site investigations being undertaken. Application due to be submitted 2020.”

- 4.26 It was however removed from the final February 2020 supply on the basis of representations received and lack of any evidence of delivery. That is also consistent with the wording of the 2019 HDTAP (paragraph 5.1.3) referenced above.

- 4.27 By July 2020 Little Blagdon Farm had found its way back into the supply (75 dwellings) despite a lack of any meaningful progress. Certainly no planning application has been submitted. The only planning permission that exists is for demolition of the existing buildings and access into the site. This was approved in September 2019 and was not deemed sufficient at the time to warrant inclusion in the February 2020 HLS. Nothing has changed since.

- 4.28 The only difference between the two HDTAPs is to state that Land Release Funding exists and at paragraph 5,2.5 of the 2020 version that,

“The TDA have confirmed that a development partner should be appointed September 2020, with a full application expected in March 2021, and development intended to start in 2023.”

- 4.29 Much like at Preston Down Road that procurement process proved unsuccessful over summer 2020 but this is not a site that Tor Vista is willing and able to deliver. The site has therefore gone back out to the market with the hope of securing a development partner by the end of the year. It is not clear what the implications are for the Land Release Funding if that process fails to deliver a partner.
- 4.30 It is wholly unrealistic to anticipate that a full application will be submitted by March 2021. Until such time as there is greater certainty of delivery, and clear evidence of it, this site should not feature in the five year supply.

Victoria Centre

- 4.31 As with the other sites considered above there are few differences between the 2019 HDTAP and the 2020 version in respect of this site. The 2020 update does however include ostensibly encouraging text at paragraphs 5.4.1 and 2,

A Development Brief for the Garfield Road site (part of the Victoria Square wider area) was published earlier this year and approval has recently been granted for the demolition of this part of the car park. The Council has received £900,000 to unlock this site, enabling residential development to be brought forward via TorVista, the council's housing company, ensuring residential is brought forward at pace. A full planning application for redevelopment scheduled to be submitted in April 2021.

The site and its redevelopment is included within the Council's Future High Street Funding bid, an announcement for which is expected in Autumn 2020.

- 4.32 These are positive statements, albeit news is still awaited in respect of the High Street Funding bid and the extent to which the site (and any offsite flood defence work) is dependent on it. I do not dispute the clear will to see the site redeveloped even though there is no explicit support for it in the PNP. It is however interesting to note that the following statement from the 2019 HDTAP has been removed (though without explanation) from the 2020 version:

*"There is a flooding issue around the Victoria Square site, and this will mean it may need to be subject to a sequential test, and will need to be subject to an exceptions test for flooding. The sequential test indicates that it is not possible to meet Torbay's housing need entirely in areas with a lower risk of flooding, taking into account wider sustainable development objectives. The exceptions test requires it to be shown that development would provide wider sustainability benefits to the community that outweighs the flood risk, and that development can be made safe for its lifetime without increasing flood risk elsewhere (NPPF 158-160)."*²⁴

- 4.33 It is not clear whether a sequential test has actually been carried out and if so whether it is NPPF paragraph 158 compliant. Certainly, the above text unhelpfully appears to conflate the sequential and exceptions tests. What is clear is that the Council cannot not jump straight to the exceptions test. Certainly the exceptions test has not been carried out and it remains to be seen how residential proposals may conflict with the PNP. It is not clear to what extent strategic offsite defence works are required (and need to be designed, funded, undertaken and completed) before development can proceed. It is not clear how safe means of escape can

²⁴ Paragraph 5.4.2, Housing Delivery Test Action Plan (August 2019)

be delivered. Until such time as these matters are resolved through the planning application process then little reliance can be placed on delivery. There seems acceptance of this given the entirety of the 85 dwellings in the supply are phased for year five (2024/5). If a planning application is targeted for April 2021 then it seems that the Council fully anticipates a long, difficult and protracted planning process. There should be no reliance on completions from this site until that process is complete.

Edginswell

4.34 The July 2020 HLS suggests a trajectory of 75 dwellings within the five year period with first completions (15) in 2022/23. It is acknowledged that this trajectory arises from the agent for the lead developer's May 2020 consultation response but nevertheless seems wildly optimistic.

4.35 The HLS explains that a Planning Performance Agreement was signed in November 2019 (**Appendix 4**). Appendix 1 of that PPA contains a detailed list of phases and stages of planning preparation. In May 2020, the agent for the developer reported,

"In terms of other actions undertaken, these include detailed technical discussions between Cavanna Homes' consultant team, the Council and statutory undertakers. In addition, an Environmental Impact Assessment Scoping Opinion Request has been submitted whilst an initial meeting with Local Councillors and the Neighbourhood Planning Forum has been held."

4.36 That level of progress does not appear to take the applicant beyond the first of the five phases before the application is submitted. They are in effect nearly 12 months behind schedule and at best may be able to submit a planning application before the end of 2021. It remains to be seen what appetite Cavanna Homes has to make continued progress at this pace, not least given the likely huge infrastructure cost burden that is likely to be incurred before meaningful completions can be realised.

4.37 Factoring in the delay already incurred, if the rest of the PPA programme were to be met, planning permission might be forthcoming in summer 2022. The PPA does not seem to factor in a timescale for discharge of conditions but it seems highly unlikely that a start onsite will be made in 2022. In that sense there seems absolutely no prospect of achieving 15 completions by March 2023.

4.38 A more reasonable and certain trajectory needs to be advanced that is based on up to date evidence before any reliance can be placed on Edginswell delivering within the five year period.

Five Year Supply Conclusion

4.39 As set out in paragraph 2.6 of my evidence, a decision-maker may take into account the nature and extent of any housing shortfall, the reasons for the shortfall, the steps being taken to remedy the shortfall, and the prospects of the shortfall being reduced in the future. These are all measures that Torbay Council has failed against. The shortfall is very substantial, the reason for the shortfall is that despite the writing being on the wall years ago it has taken few proactive steps to remedy the shortfall, and new allocations that might remedy the situation are at least three years from securing permission.

4.40 I do not consider that TC can demonstrate a three year supply of housing land. The 2,038 supply figure is unjustified and appears artificially derived to establish a 3.00 years supply position when published in August 2020.

- 4.41 The imposition of a 20% buffer will establish that TC does not have a three year supply of land against its own inflated supply figure. There is no doubt that the 20% buffer will be imposed.
- 4.42 The situation will not improve during 2021; it will only worsen. TC will fail the HDT by an even greater extent in November 2021 and the tilted balance will apply irrespective of the land supply position.
- 4.43 To deny the application of the tilted balance would be inappropriate and short sighted, particularly given the very short period of time before the 20% buffer is, upon any basis, formally established. To dismiss the appeal on this basis alone would only be to delay the inevitable to nobody's advantage. It would result in a lost year of potential delivery at the appeal site that would achieve absolutely nothing and deny people in need of a home that is required now. It would create additional pressure on Council resources to process another planning application at the appeal site in spring/summer 2021. Those resources would be far better spent processing other planning applications that could also make a meaningful contribution to supply, and progressing the Local Plan.

5.0 Application of the Tilted Balance

- 5.1 In terms of other material considerations identified by Section 38(6) it is necessary and appropriate to apply the tests in NPPF paragraph 11(d). TC cannot demonstrate a three year supply of housing land against the five year housing requirement. Since the appellant contends that there is no clear reason for refusing the development proposed on the basis of the impact on the AONB (ie paragraph 11(d)(i)), the tilted balance prescribed in paragraph 11(d)(ii) of the NPPF must be applied.
- 5.2 It is important to stress that the tilted balance applies not to penalise local authorities but to offer a clear and fair means of meeting government policy for housing and to try to alleviate the housing crisis with immediate and proactive action. It is there as a means of enabling proposals for sustainable development where the Local Plan has failed to deliver and the timescales associated with any Local Plan review are not able to respond quickly enough. It is not 'a stick to beat' local authorities with; it is an enabling and assisting mechanism to meet a clear need and should be seen as such.
- 5.3 The relevant policies of both the Local Plan and Neighbourhood Plan remain relevant to the determination of this appeal. The plan-led system lies at the heart of planning for development and Section 38(6) gives primacy to it in the process of decision-making. However, the process does not end there. Section 38(6) refers to 'unless other material considerations indicate otherwise' and both the NPPF and Policy SS3 of the Local Plan refer accordingly.
- 5.4 The tilted balance is engaged and the extent of underperformance and the inability for TC to have responded to (and are now unable to given the timescales associated with the preparation of a new Local Plan) requires it to be given significant emphasis and weight. There has been ample opportunity to address the problem but there has been no effective action. There is no obvious remedy and by the time any new Local Plan is adopted the problem will only be substantially worse.
- 5.5 Policy SS13 (Five year housing land supply) recognises that there might be a lag to meeting the annual requirement in early years of the plan period and presents a staggered approach to increasing the housing requirement over time. Despite this it has still fallen short of even the lower targets in the first half of the plan period. Policy SS13 sets out that where there is a shortfall the Council will either:
- 1) Bring forward additional housing land from later stages of the Plan;
 - 2) Identify additional sites through new site allocation development plan documents; and
 - 3) Consider favourably applications for new housing, consistent with Policy SS2, H1 and other policies of this Plan;
- 5.6 In the Monitoring Chapter of the Local Plan, paragraph 7.5.16 states:
- "It is recognised however that proposals for new development may be brought forward prior to this formal five year Plan review. Any such proposals would need to be accompanied by comprehensive supporting evidence to demonstrate, firstly, that there will be no unacceptable harm to biodiversity and landscape considerations, and secondly, that the proposal was consistent with the overall Local Plan Growth Strategy set out in Policy SS1."*

- 5.7 For the reasons set out in the next chapter of my evidence the appellant contends that the objectives of policy are met and there is no harm to biodiversity and landscape considerations.
- 5.8 TC has not actioned any of the above save for looking to bring some of the Future Growth Areas forward from the latter stages of the Plan period. This has not always proven as straightforward as it ought, as the recent appeal decision that awarded full costs to the appellant at Collaton St Mary ably demonstrates²⁵. There is enough guidance in the Local Plan to have afforded TC ample opportunity to respond to the deficit.
- 5.9 The new Local Plan review is still at inception stage despite the fact that it should now be nearing adoption. There has been no reason to withhold its preparation. The housing requirement pressure will be more acute than it is now even if the latest LDS timetable is met (ie adoption in 2023). It is not my intention to analyse the standard method or TCs contention that it presents a misleading picture of need in Torbay²⁶. That will be a matter for the future Local Plan review process to determine and will not be resolved until Local Plan examination.
- 5.10 Until the November Cabinet Meeting the Local Development Scheme had not been updated since March 2017²⁷. The 2017 LDS states at Section 3.5 – ‘Site Allocations Development Plan Document (provisional)’, *‘where there appears to be a lack of deliverable housing sites to provide for the 5 year requirement, the Council will seek to bring forward additional housing sites through a number of mechanisms, including: Promotion of outline planning applications, or a Local Development Order, for the land south of White Rock, as per Policy SS1 (Growth strategy for a prosperous Torbay), paragraph 4.1.41 and the Local Plan Inspector’s Report.*
- If these measures do not result in at least a 5 year supply of housing land, or if the Neighbourhood Forums are unable to allocate sufficient housing land, the Council will produce a Site Allocations DPD allocating additional sites (in the context of Policies SS1 - Appendix C, SS12 and SS13).’*
- 5.11 The LDS advocates a staged approach that specifically identifies the land south of White Rock (ie the appeal site) as a first stage to resolving a five year supply deficit. If that outline application (or LDO) process had not resulted in a five year supply then the next stage would have been to progress a Site Allocations DPD, assuming that the Neighbourhood Forums were unable to allocate sufficient land to meet the five year requirement. That approach is entirely consistent with the Local Plan, and no doubt was written as a direct consequence of the recommendations of the Local Plan Examination Inspector which I deal with further below.
- 5.12 Evidently the Council has reneged on its support for the appeal site. This is all the more surprising given the failure of the Neighbourhood Forums to allocate sufficient land. Solutions to the problem were identified in Policy SS13 and in the 2017 LDS but no action was taken.

²⁵ APP/X1165/W/20/3250977 (CD 9.7)

²⁶ Paragraph 10.5 of TC Statement of Case

²⁷ CD 6.40

Context to Policy SS13 and previous consideration of the appeal site

- 5.13 It is important to recognise the context behind Policy SS13 and the 2017 LDS references to the site. The text stems from Keith Holland's Local Plan Examination Inspector's Report²⁸ which sets out that in relation to White Rock 2 (ie the appeal site) that,

60. The strong local opposition to development on White Rock 2 is understood. However in the context of the need to find additional housing land as a consequence of the Initial Findings, subject to environmental safeguards this land was regarded at the MM stage by the Council as one of the best alternative green field locations for sustainable growth in Torbay. There are very limited options for strategic housing growth sites in Torbay and having regard to its relationship to existing development and the White Rock 1 site, it is considered that the Council has good reasons to regard the site as potentially offering an opportunity for strategic development.

61. The Council has chosen to follow the first option and says that development of the site should be considered in 5 years when the Plan is scheduled to be reviewed. There are several disadvantages to this approach. First, Government policy clearly looks to local authorities in their local plans to identify sites or broad locations for housing growth for at least 10 years and preferably for 15 years (NPPF paragraph 47). Second, there is an immediate need to provide as much strategic certainty as possible, not least to allow effective NP to be produced. Third, although it is a matter for the Neighbourhood Plan Forums working with the Council, to finally resolve how much housing is allocated to the three different neighbourhood plan areas, it is clear that there could be a problem with identifying sufficient medium and long term housing land. Finally a comprehensive review of the Plan will itself take some time. To wait until the Plan has been completely reviewed would run a high risk of the site not being available for development, if environmentally acceptable, when it or some alternative might be needed.

62. The difficulty is that the necessary "in combination" AA under Regulation 61 of the Habitats and Species Regulations (2010) cannot be done at this point in time to the satisfaction of Natural England. Furthermore the Council says that the necessary work on outstanding issues relating to the impact on greater horseshoe bats and the adjoining AONB cannot be completed for at least 12 months. In these circumstances it is agreed that the Council is right to exclude the land as a Future Growth Area at present. However if the necessary work is undertaken and shows that from an environmental point of view the site is developable, there is nothing to stop the Council from carrying out a partial review of the Plan as soon as it has the necessary evidence. This course of action would enable sensible medium term planning to be undertaken in a timely fashion not least because in 12 months the Council should be much better informed about the likely medium and long term housing supply position as a consequence of the neighbourhood planning process.

- 5.14 The 2017 LDS and the Inspector's Report that precedes it establish that the Council considered the appeal site to be an appropriate and sustainable location for growth, and reflects the fact that the only reason the site does not feature in the current Local Plan is by virtue of the HRA issues at the time of the Local Plan

²⁸ CD 7.3c

examination. The Statement of Common Ground confirms that the HRA matters have been satisfactorily resolved, subject to the delivery of the proposed mitigation.

- 5.15 The LP Inspector had identified the problems of the Plan and the pre-cursor to the above paragraphs is a concern expressed by the Inspector (in paras 55-57) in relation of the lack of reassurance that the Neighbourhood Plans would allocate sufficient land to provide an ongoing five year supply. His concerns were well justified and he makes clear that the disadvantage of not having an adequate supply of housing land should not be under-estimated²⁹.
- 5.16 The recently approved LDS and associated officer report (**Appendix 2**) contains no information or advice as to how the deficit will be bridged in the interim. Whilst the approach approved at Cabinet is to undertake a strategic policy review only, this is unlikely to significantly speed up the plan preparation process. It is after all the strategic policies that centre on the housing and economic growth requirements. The spatial strategy, and strategic allocations for growth are the most contentious and time consuming aspects of any plan. The only realistic solution for the foreseeable future and certainly next 3-4 year period (ie until such time as new allocations can start to deliver) is to apply the presumption and positively support sustainable development. There is no other option. The alternatives presented in the Local Plan and 2017 LDS (LDOs, Site Allocations DPD) could have worked but the lack of any decisive action has meant that those options will not be effective.
- 5.17 Policy SS3 of the Local Plan (presumption in favour of sustainable development) can be applied whether it be in a 'flat balance' scenario (ie where the important policies are not out of date) or a 'tilted' one (ie where they are). It references a positive approach and working proactively with applicants to find sustainable solutions where they will evidently provide a balanced approach to improving economic, social and environmental conditions. It is a permissive policy but is also subject to the same tests in NPPF paragraph 11(d) where there is a shortfall in housing land supply.
- 5.18 TC does not contend that the appeal proposals conflict with this policy other than in the sense of the alleged harm to the AONB causing sufficiently adverse impact on the AONB to refuse the application. It does not contend that the appeal proposals fails any other element of Policy SS3 or any other test of sustainable development.
- 5.19 TCs Statement of Case sets out that it considers the appeal proposals to be in conflict with the Local Plan but does not articulate how or why³⁰. It goes on to consider issues of prematurity and the applicability of the standard method. Neither issue is relevant to this appeal.
- 5.20 TC correctly identifies that under the terms of NPPF paragraph 49, given the early stage of Local Plan preparation any reason relating to prematurity cannot be credibly relied upon. Paragraph 10.5 of the TC Statement of Case references the fact that the plan making process would allow a proper consideration of the level of need and potential options for meeting development needs. The level of need is well

²⁹ Paragraph 56, LP Inspectors Report (October 2015) CD7.3c

³⁰ Paragraph 10.3 TC Statement of Case

established; it does not need further testing. Waiting for a Local Plan review will be of no benefit whatsoever to the people and households that need homes.

6.0 Conformity with the Development Plan

- 6.1 Whilst the tilted balance is engaged by reason of the absence of a five year housing land supply (and, in the these particular circumstances in Torbay, the absence of a three year housing land supply) it is important to establish the most important policies for the determination of the appeal that are out of date. The putative refusal reasons allege conflict with the following:
- Policies SS2, SS8.3, SDB1, SDB3 and C1 of Torbay Local Plan 2012-30; and
 - Policies BH3, BH4, BH9, E1, E2, E3 and E6 of the Brixham Peninsula Neighbourhood Plan.
- 6.2 It may be noted that the most important policies do not need to be restricted to just those used in the refusal reasons³¹; to that end I consider the following to also be part of the 'basket' of important policies:
- Policies SS1, SS3, SS11, SS12 and SS13, H1 and H2 of the Torbay Local Plan.
- 6.3 This is a proposal of significant scale in the Torbay context and lies outside of the settlement boundary where under the terms of Policy C1 development of this scale is normally resisted. The appeal proposals do not sit within the 8 limited exceptions listed in Policy C1. There are however inconsistencies within the Plan that suggest the intention of Policy C1 is not to rule out major development 'in the countryside' completely. If it were to be applied in isolation then it would be difficult to apply the tests of Policy SS3 fairly. There would then be no prospect of any (non-allocated) greenfield site in Torbay being allowed even if it met the tests in the first part of the policy. Full weight cannot be prescribed to Policy C1 and the need to significantly boost the supply of housing must, in the context of Torbay, be given great weight in the balancing exercise.
- 6.4 Policy C1 is a relatively typical example of such policies found in many local plans where settlement boundaries are used. The Policy is generic in nature and would ultimately stymy any proposal for development on greenfield land outside of the Future Growth Areas (FGAs). That cannot be consistent with the Government's message when applying the tilted balance. This Policy is relevant but clearly cannot be given full weight. The plan, when taken as a whole must be to favour proposals for sustainable development particularly where there such an acute failure to deliver in the local authority area.
- 6.5 The last part of Policy C1 is applicable and for the reasons set out below and in the evidence of my colleagues Mr Leaver and Mr Harvey the appeal proposals conform to the need to protect, conserve or enhance landscape characteristics and visual quality, and further establish no adverse impacts (subject to mitigation) on the SAC or other important habitats. Indeed, the planning officer in his report to Committee on 10 February 2020³² (where putative reasons for refusal were established) acknowledges at paragraph 1.20 that,
- "The applicants have gone to significant efforts to minimise the biodiversity, landscape, highways and other impact of the proposal and have revised the scheme in dialogue with the LPA, AONB Partnership and other consultees. Extensive mitigation of potential impacts on the greater horseshoe bat sustenance zone, cirl*

³¹ See Wavendon Properties judgment (CD 8.13)

³² CD 10.1

buntings and other species, through managed agriculture and provision of darkened flight paths is proposed. Landscaping and indicative layout seek to minimise the impact on the South Devon AONB and creating a good quality living environment.”

6.6 The potential for major development on greenfield sites within the Policy C1 ‘countryside’ is supported by Policy SS1 (and in terms of the appeal site Policy SS1 is referred to in the 2017 LDS):

“Major development proposals outside the built-up area and Future Growth Areas, will need to be the subject of environmental assessment. This will need to take account of the impacts of the proposed development itself and the cumulative impact of development.”

6.7 Policy SS2 establishes that growth outside the established built up area should be within identified FGAs. However, the Policy does allow for greenfield development outside of the FGAs subject to similar tests as set out in SS1 (as confirmed at Paragraph 4.1.41).

6.8 Paragraph 4.1.30 explains that development on greenfield sites is required in the latter part of the plan period. It states that the FGAs are “likely” to be the source of greenfield supply. It does not state that FGAs can be the only source of supply and this is reiterated in the SS1 policy wording above that does not preclude development at other greenfield locations. The refusal reasons do not cite conflict with Policy SS1 and to that end, with or without the tilted balance in play I consider the appeal proposals to be in conformity with both SS1 and SS2.

6.9 Policy SS3 makes clear that where relevant policies are out of date at the time of making the decision, the Council will grant planning permission unless material considerations indicate otherwise, taking into account the benefits versus adverse impacts and specific policies in the NPPF that would indicate the development should not gain planning permission. That is clearly pertinent in this case.

6.10 In a flat-balance scenario Policy SS3 creates a permissive context for sustainable development and seeks to enable development proposals to be approved where they will evidently provide a balanced approach to improving economic, social and environmental conditions. The following section of my evidence seeks to establish that the appeal proposals will improve all three of those conditions.

6.11 This sentiment is further expressed in Policy SS11 (Sustainable Communities). TC has not expressed any conflict with the criteria of this policy.

6.12 The second refusal reason alleges specific conflict with Policy SS8 criterion 3, which relates to development outside of the AONB. TC seeks to argue that footnote 6 of the NPPF in relation to paragraph 11(d)(i) and the adverse effect that the appeal proposals have on the AONB provides a clear reason for refusing the development proposed. That is not correct. The NPPF provides that it is only the application of those policies in the NPPF that protect areas or assets of particular importance that provide a clear reason for refusing proposed development. Footnote 6 refers to policies within the Framework. The first part of paragraph 172 of the NPPF provides that great weight should be given to conserving and enhancing landscape and scenic beauty in, so far as relevant here, Areas of Outstanding Natural Beauty. That is not a policy that of itself provides a clear reason for refusing proposed development of the sort found within footnote 6. The second part of the policy deals specifically with major development within the AONB. If relevant, that may fall within the characterisation of policies that provide such a clear reason. The appeal

proposal does not. That is not to say that development outside of and the impact on the AONB is not important. I do not consider that Policy SS8(3) is in conflict with the NPPF nor does it give rise to the disapplication of the tilted balance. If it is contended that it is materially different to the NPPF then it would be inconsistent with it and may properly be regarded as out of date. In either event the tilted balance will remain engaged.

- 6.13 Irrespective of the weight to be prescribed to Policy SS8 the landscape evidence of my colleague Mr Leaver establishes that the development as proposed would have negligible or only minor adverse effects on the setting and special qualities of the AONB and those effects have been found to be not significant. Landscape and scenic beauty overall would not be materially adversely affected and the appeal proposal would not result in an unacceptable impact on the special qualities of the designated area.
- 6.14 To that end I consider the appeal proposals to be in conformity with Policy SS8 and, so far as relevant, in conformity paragraph 172 of the NPPF; paragraph 11(d)(i) of the NPPF is not triggered.
- 6.15 Policy SS12 (Housing) confirms that housing provision will be carefully monitored to maintain a rolling five year supply. It goes on to state that where there is evidence that there is a need to bring forward additional housing, appropriate locations will be identified through cross-boundary review of strategic land availability. This task has not been undertaken despite the critical shortfall in supply.
- 6.16 I have referenced the provisions of Policy SS13 (Five Year Supply) at paragraph 5.5 of my evidence. TC has not actioned a five year Local Plan review quickly enough against the terms expressed in the Policy or at paragraph 4.5.47. A shortfall has been evident since 2015/16; the action promised under paragraph 4.5.49 has not materialised and the Neighbourhood Plans have failed to step up to the challenge. It is also regrettable that the Council has not followed its protocols in the 2017 LDS.
- 6.17 Policy SS13 (Five Year Supply) references the need for conformity with Policy H1 (Applications for New Homes). This is a criteria-based policy against which proposals for new homes on unallocated sites will be assessed. There is no suggestion that the appeal proposals fail when assessed against the criteria. Whilst it cannot necessarily conform to criterion 6 (maximising the re-use of urban brownfield land), that has to be weighed against the tilted balance being in play, the insufficient supply from that source and criteria 1 and 2 of the policy (and other policies of the plan) that stress the need to meet the objectively assessed need and maintain a rolling five year supply.
- 6.18 Policy H2 relates to affordable housing and establishes a 30% requirement on sites of more than 30 dwellings. Paragraph 6.4.1.7 refers to the pressing need; the next paragraph recognises that there are few large sites that can deliver a meaningful quantum of affordable housing. Paragraph 6.4.1.10 confirms that the need to create mixed, prosperous and balanced communities will be taken into account in considering all proposals, particularly where there is a requirement to provide affordable housing. These appeal proposals will deliver a policy compliant level of affordable housing (112 homes) which will undoubtedly make a significant contribution to meeting that pressing need. I consider that conformity with this policy should be given substantial weight in the determination of this appeal.
- 6.19 The appeal site falls within the Brixham Strategic Policy Area (Policy SDB1) but is at the very northern edge of it. There is merit in appreciating the location of the appeal site within its locational context as the extract from the LP Key Diagram below highlights:



Figure 2: Extract of Local Plan Key Diagram

- 6.20 The appeal site does not fall within the Policy SDB3 area of the ‘Brixham Urban Fringe and AONB’. It does not fall within this particularly ‘sensitive location’ to which the Policy refers. Paragraph 5.4.3.1 of the LP confirms that the nationally and internationally important constraints that impact on Brixham’s setting are recognised in the relatively low housing and employment requirements set out in Policy SDB1. The appeal proposals are not related to it nor do they impact on Brixham’s setting.
- 6.21 On the Key Diagram, the entirety of the appeal site (save for the southern tip of the site) falls within the SDP3.5 Paignton North and Western Area Policy area. Whilst the SDP3.5 Policy makes clear that the designation relates specifically to the White Rock development area immediately north of the appeal site, it gives a greater indication that the site should be read in the context of that growth area and Paignton/Goodrington/White Rock, as opposed to Brixham itself.
- 6.22 The rather messy subdivision of areas in Torbay gives rise to some level of logical disconnection. Indeed policy SDP1 would, in that sense and in its own terms, appear more apt for the consideration of the appeal site. Clearly, I recognise that it relates to land on the other side of the SDB1 policy boundary. However, if the terms of Policy SDP1 Paignton were read in isolation, then it would feel more relevant and applicable to the consideration of the appeal proposals than perhaps any other policy:

“Development sites to the west of Paignton will be delivered through neighbourhood planning and masterplanning to provide employment and family housing opportunities. This will be underpinned by

enhanced transport infrastructure along the Western Corridor and A385 Totnes Road and will take account of environmental sensitivity through a green infrastructure led design approach.”

- 6.23 Paragraph 5.3.1.4 states that the development areas require a high quality of design and appropriate landscaping to protect and enhance ‘the rural backdrop of the area’ but makes no mention of the AONB. In providing further explanation and requirements of the development areas, there is no mention of the AONB.
- 6.24 In the Officer’s report (**Appendix 5**) that considered the original outline application reference P/2011/0197³³ for the adjoining White Rock development, there is no reference to the AONB nor is there any suggestion of adverse impacts upon it. Under the terms of the old Local Plan the majority of that site fell under the designation of an Area of Great Landscape Value (now dropped) and the western bowl and central area fell under the designation of a ‘Countryside Zone’. The former sought to ensure development maintains or enhances the special landscape character of the area and the latter seeks to protect against urban sprawl and the merging of developments.
- 6.25 The Officers report sets out that,
- “The proposal seeks to provide strategic landscape planting and the strengthening of existing landscape buffers along the southern and eastern borders of the site to mitigate any likely visual impact of the proposal as it would be perceived. As the proposal is in outline with only indicative information the reserved matters stage is expected to provide further appreciation of this matter, with the potential to secure appropriate positioning, scale and elevation treatment that could aid in lessening the developments prominence.”*
- 6.26 Whilst a number of subsequent reserved matters submissions were made, in one of the more significant submissions (P/2015/1126) for 217 dwellings, the delegated report (**Appendix 6**) again makes no mention of the AONB but simply states that,
- “Longer distance views from the south and west are a key consideration but are capable of mitigation”*
- 6.27 I readily accept that each application must be determined on its own merits and that even though the appeal site and White Rock share a common boundary, it is necessary to consider the impact of the appeal proposals on the setting of the AONB independently of any previous assessment under now superseded policy. The value of the AONB was however as important in 2011 (outline determination) and 2015 (reserved matters) as it is now and there is merit in noting the inconsistency in approach to the proposal now under consideration.

Conclusions on the Local Plan

- 6.28 When looked at as a whole I consider the appeal proposals to be in conformity with the Local Plan. That is so whether one considers either a tilted balance or flat balance scenario. Policy SS3 sets out a clear presumption in favour of the development. In a flat balance scenario I consider the appeal proposals to meet the tests for social, economic and environmental improvement. They also constitute material

³³ Mixed Use Development of 39 Hectares of land at White Rock, Paignton to construct up to 350 dwellings, approximately 36,800m² gross employment floorspace, a local centre including food retail (up to 1652m² gross) with additional 392m²A1/A3 use and student accommodation

considerations that weigh strongly in favour of the proposed development. In a tilted balance scenario, the same applies and for the reasons set out in my next chapter I consider the benefits of the proposal to significantly and demonstrably outweigh the any adverse impacts when assessed against the policies in the NPPF.

The Neighbourhood Plan

- 6.29 I have considered the issue of the tilted balance above. Since TC is unable to demonstrate a three year supply of land, that balance must apply equally to the Neighbourhood Plan.
- 6.30 It is worth reflecting on why that should be so. The Government places great emphasis and encouragement to neighbourhood planning. When the tilted balance is in play, paragraph 14 of the NPPF seeks to give additional significance to those areas where the community has made clear its vision for an area through the preparation of a 'made' neighbourhood plan. It does this by establishing that any conflict with the neighbourhood plan is unlikely to significantly and demonstrably outweigh the benefits even where the presumption in NPPF paragraph 11(d) is triggered.
- 6.31 However, the 4 criteria in paragraph 14 which all have to be met are there in order to ensure delivery of housing can be facilitated where need is not being met. In this instance, TC is failing to deliver in spectacular fashion. The circumstances are extreme. TC has under-delivered and has failed to remedy the situation through any appropriate action. It has failed the Housing Delivery Test and will do so again in 2020 and 2021 to a greater degree than ever before. Whilst the Government supports neighbourhood planning, such plans along with the local plan cannot take precedence and 'at any cost' over other important planning needs. The cost at the moment is to the many households in Torbay that need a home that TC seems unwilling or unable to provide. That is not a sustainable situation and the NPPF seeks only to guard against it and provide a supportive framework to remedy the situation as quickly as practicable.
- 6.32 It is also worth noting that Torbay is in the relatively unique position of being a district that is covered entirely by its three neighbourhood plans. It is not just the case that the Brixham community might feel compromised by Torbay's failure to deliver and maintain supply, it applies equally to Paignton and Torquay. Those who participated in the preparation of the three NPs may consider that they can feel aggrieved but the application of the tilted balance should not be regarded as a penalty; it is to ensure that the delivery of housing can be facilitated when the need is not being met. I refer again to the statement in the HDTAP that establishes that the Forums and the communities they serve will only support development where it benefits them. That in my opinion is not a fair and reasonable stance to adopt and that stance has in large measure led to the problems the Authority faces today. All three Neighbourhood Forums need to be an effective part of the planning system; the LPA should ensure that there is cooperation across the three areas to ensure timely delivery of housing across Torbay. That has simply not happened.
- 6.33 Quite clearly the appeal site is not allocated for development in either the LP or NP (Policy BH3). It lies outside of defined settlement boundaries. Policies BH4 and E2 of the NP do not present a complete bar on development outside of settlement boundaries; they simply reference the need to adhere to the criteria in LP Policy C1. It is not clear why the refusal reason references Policy BH9 as this is a policy related to rural affordable housing exceptions schemes.

- 6.34 Policy E1 further references LP Policy C1 and goes on to establish that development within or impacting on the AONB must demonstrate that great weight has been given to conserving and enhancing landscape and scenic beauty and must comply with the requirements of the NPPF and other statutory documents including the AONB Management Plan. The landscape evidence of my colleague Peter Leaver demonstrates how the appeal proposals meet these tests.
- 6.35 Policy E3 of the NP references settlement gaps. The appeal site falls within one such gap. The policy confirms that development within the gaps must again meet the criteria of LP Policy C1 but goes on to state that no development that visually or actually closes the gaps between these urban areas will be supported.
- 6.36 I acknowledge that not all greenfield sites in Torbay are subject to a settlement gap designation. Policy E3 comes to be considered in context of the tilted balance in favour of development. That does not make the policy irrelevant that it nonetheless materially affects its weight when the decision-maker comes to consider whether the appeal proposals erode the gap to such an extent that its conflict with the policy intent is so significant as to justify dismissal. The evidence of my colleague Peter Leaver addresses the three key criteria in the explanation of Policy E3 which establishes that:
1. The appeal proposals allow the open characteristic of the gap to be maintained;
 2. The appeal proposals do not result in coalescence and the merging of settlements; and
 3. The appeal proposals do not prejudice the role of the gap that will remain to physically connect to and interact with the wider landscape.
- 6.37 To that end, whilst I acknowledge the conflict with the policy that seeks to afford the gap complete protection, the evidence of Mr. Leaver establishes that through detailed assessment the characteristics of the gap that the NP seeks to protect can be maintained. The proposal does not contravene the purposes or rationale of the policy as set out in paragraphs 5.20 to 5.24 of the BPNP, in as far as they relate to landscape and visual considerations. The evidence confirms that the visual functions of the Settlement Gap identified in Policy E3 of the BPNP will continue to be provided.
- 6.38 Policy E6 refers to views identified in, among others, the Galampton Design Statement, the Landscape Character Assessment (LCA) and the Brixham Urban Fringe Landscape Assessment. There is no reference to particular views across or from the site in the Galampton Village Design Statement or the Brixham Urban Fringe Landscape Assessment. No particular views or vistas are identified on the Neighbourhood Plan Map in relation to the policy.
- 6.39 The evidence of my colleague Mr Leaver establishes that the appeal proposals accounts for and safeguards public views out across the site toward Fire Beacon Hill in the South Devon AONB from the northern stretch of the A3022. The extent, layout, design and mitigation proposals for the scheme also respect views over the site towards Torbay from the AONB. In Mr Leaver's judgement, the proposal is in accord with policy E6.

Development Plan Conclusions

- 6.40 The most important policies for determining this appeal as identified in paragraphs 6.1 and 6.2 above are out of date by virtue of the fact that the Council cannot demonstrate a three year supply of deliverable housing sites.

- 6.41 The fact of the matter is that there is a critical undersupply of housing in Torbay. In the context of applying the tilted balance, Policy C1 (and other policies that might preclude development at the appeal site) is relevant but it should be afforded less weight in the decision making process.
- 6.42 Policy C1 must be read as part of the whole Development Plan. The Local Plan provides scope for advancing sustainable development on greenfield land that is not allocated in the Development Plan. In a flat balance scenario if the appeal proposals were judged against Policy SS3 and assuming the landscape and biodiversity considerations and policy references can be satisfactorily met, then I see no reason why planning permission should be withheld. In a flat balance scenario I accept that the appeal proposals will impact to a degree upon the settlement gap in BNP Policy E3, however, the evidence of my colleague Mr Leaver establishes that the proposals do not compromise the three criteria against which the proposals should be judged. To that end I consider that the appeal proposals could be found to be in conformity with the BNP even in a flat balance scenario.
- 6.43 The reality is that the tilted balance is in play and the second part of Policy SS3 is engaged, as is NPPF paragraph 11d. The evidence of Mr Leaver establishes that negligible or only minor adverse effects on the setting and special qualities of the AONB arise and those effects have been found to be not significant. To that end neither the first criterion in SS3 or NPPF 11(d)(i) are engaged; criterion 2 and paragraph 11(d)(ii) are.

7.0 Applying the Planning Balance

7.1 The proposed development has been informed by an assessment of the site characteristics and context which provide the Local Planning Authority with the ability and assurance that the design can be controlled through Reserved Matters to ensure that it provides a suitable, appropriate development that responds to the site's characteristics and integrates with surrounding development.

7.2 There are very significant benefits that will be delivered by the proposal as acknowledged by the planning officer in his report to Committee on 10 February 2020³⁴,

"1.15 Against this, the proposal has significant benefits, which must be given considerable weight. The development would provide a substantial boost to Torbay's housing supply including the provision of 30% (around 112) affordable homes. It would provide a site for a 2 Form Entry Primary School, playing field, sports courts and changing facilities, and would help deliver improved countryside access. It would provide jobs directly on-site (in the school and pub/restaurant) as well as making a contribution to provision of jobs off-site. These are very significant benefits that will need to be weighed against the proposal's impacts and the conflict with the development plan."

7.3 I agree with the Officers assessment and summarise below the significant benefits arising from the development.

1. The appeal proposals seek the delivery of up to 373 dwellings across a range of unit sizes, 30% of which will be affordable. This is a policy compliant scheme and does not seek to introduce a viability case to reduce the quantum of affordable housing. The provision of 112 affordable homes will make a very significant contribution to meeting housing need in Torbay. Both the Local Plan and Neighbourhood Plan make great play of the need for more affordable housing in the Brixham Peninsula. Whilst the Neighbourhood Plan seeks to identify land for 685 homes in line with Local Plan requirements, the vast majority of sites comprise small scale windfall development that will deliver very few affordable homes, or in terms of allocations are on (small scale) previously developed sites that do not trigger the affordable housing threshold in Policy H2.
2. The delivery of a further 261 market homes will provide a much needed boost to the supply that is presently grossly deficient.
3. Local education delivery is supported through the provision of land for a 2 form entry primary school to meet the needs of new households arising from the appeal proposals and wider unmet need and demand for primary school places in the wider community. The need for the school is addressed at paragraphs 5.3.16 to 5.3.23 of the Officer report to Committee³⁵. The Coast Academy consultation response is also referenced in the report and confirms that funding has been secured for opening of a school at the appeal site (and is contingent on planning permission being granted). NPPF paragraph 94 asks local authorities to give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications.

³⁴ CD 10.1

³⁵ CD 10.1

4. Provision of community facilities through the inclusion of a site for a new public house/restaurant;
5. The school and the public house/restaurant could yield up to 80 new jobs. There will be significant local demand for construction workers which could yield around 140 jobs per annum during the construction period.
6. Much wider direct and indirect benefit to the local economy as set out in a report prepared by Hatch Regeneris in November 2019 (**Appendix 7**). The report assesses the socio-economic benefits of the proposed development and references support for local business (through increasing the number of economically active households in the area and associated expenditure) increase in Council Tax and New Homes Bonus revenue.
7. Provision of significant areas of public open space in excess of policy requirements and community food growing land with their long term management secured in perpetuity via a not-for-profit management company (secured via Section 106 Agreement);
8. Delivery of biodiversity net gain as confirmed in the Update Habitat Assessment 2019³⁶. The report identifies that the Biodiversity Metric calculation tool recorded net gains in both area/habitat and linear/hedgerow units; and
9. Provision of countryside access for existing and future residents, providing links to the wider network.

7.4 In terms of the contribution the appeal proposals can make to the five year supply, the table below sets out a timeframe for delivery of dwellings over the next five year period:

Stage	Timeframe
Secure outline consent	Spring 2020
Technical approval process for principal access	March 2022
Submission of 1 st phase reserved matters and discharge of pre-commencement and 1 st phase conditions	April 2022
Undertake mitigation planting and habitat creation	Spring 2022
Approval of 1 st phase reserved matters	April 2023
Commence infrastructure and ground works inclusive of principal access	May 2023
Commence residential development	November 2023
First residential completion/sale	May 2024
First 50 dwellings complete by	May 2025
100 dwellings complete by	April 2026

Table 8: Development trajectory

³⁶ CD 2.40

- 7.5 Naturally the appeal site will continue to make a meaningful contribution to the five year supply for many years to come. Any LPA requires strategic sites of this nature to provide a reliable and continuous source of supply to provide the bedrock that enables other smaller sites and windfall development to supplement the position over time.
- 7.6 These very significant benefits outweigh any identified adverse impacts arising from the development. Mitigation is provided in the form of:
1. Solutions are proposed to mitigate for any potential impacts on the South Hams SAC by providing enhanced habitat and feeding areas for Greater Horseshoe Bats and Cirl Buntings. In total over 3.5km of hedgerow would be provided (a net increase when accounting for the 450m lost in relation to White Rock mitigation) together with 22ha of cattle grazed pasture. The strategy for providing and maintaining the mitigation land is secured via a Landscape and Ecological Management Plan and Farm Management Practices Plan secured via the Section 106 Agreement which will tie the land into being managed in accordance with the agreed management practices. Currently the land can be farmed without safeguarding the habitat for Cirl Bunting and Greater Horseshoe Bats.
 2. Landscape and Visual Impacts are mitigated via embedded design solutions evolved during the course of the pre-application and post-applications stages, in response to concerns raised. This has had the effect of minimising a potential impact and includes structural and internal planting.
 3. Necessary and appropriate CIL contributions and offsite highway works.

8.0 Conclusions

- 8.1 A decision-maker may take into account the nature and extent of any housing shortfall, the reasons for the shortfall, the steps being taken to remedy the shortfall, and the prospects of the shortfall being reduced in the future. These are all measures that Torbay Council has failed against. The shortfall is very substantial, the reason for the shortfall is that despite the writing being on the wall years ago TC has taken few proactive steps to remedy it, and new allocations that might remedy the situation are at least three years from securing permission.
- 8.2 I do not consider that TC can demonstrate a three year supply of housing land; the 2,038 supply figure is unjustified. The imposition of a 20% buffer will establish that TC does not have a three year supply of land against its own inflated supply figure. There is no doubt that the 20% buffer will be imposed. The situation will not improve during 2021; it will only worsen. TC will fail the Housing Delivery Test by an even greater extent in November 2021 and the tilted balance will apply irrespective of the land supply position.
- 8.3 To deny the application of the tilted balance would be inappropriate and short sighted, particularly given the very short period of time before the 20% buffer is, upon any basis, formally established. To dismiss the appeal on this basis alone would only be to delay the inevitable to nobody's advantage. It would result in a lost year of potential delivery at the appeal site that would achieve absolutely nothing and deny people in need of a home that is required now.
- 8.4 The most important policies for determining this appeal are out of date by virtue of the fact that the Council cannot demonstrate a three year supply of deliverable housing sites. The Local Plan provides scope for advancing sustainable development on greenfield land that is not allocated in the Development Plan. In a flat balance scenario if the appeal proposals were judged against Policy SS3 and assuming the landscape and biodiversity considerations and policy references can be satisfactorily met, then I see no reason why planning permission should be withheld. In a flat balance scenario I accept that the appeal proposals will impact to a degree upon the settlement gap in BNP Policy E3, however, the evidence of my colleague Mr Leaver establishes that the proposals do not compromise the three criteria against which the proposals should be judged. To that end I consider that the appeal proposals could be found to be in conformity with both the LP and the BNP even in a flat balance scenario.
- 8.5 The reality is that the tilted balance is in play and the second part of Policy SS3 is engaged, as is NPPF paragraph 11d. The evidence of Mr Leaver establishes that negligible or only minor adverse effects on the setting and special qualities of the AONB arise and those effects have been found to be not significant. To that end neither the first criterion in SS3 or NPPF 11(d)(i) are engaged; criterion 2 and paragraph 11(d)(ii) are.
- 8.6 In accordance with paragraph 11d of the NPPF, the appeal proposals should be allowed. Any adverse impacts of doing so would not significantly and demonstrably outweigh the benefits of the proposals. The benefits of the appeal proposals are wide and are significant. Allowing this appeal is necessary to secure the Council's housing land supply and on a site which has previously been recognised as a sustainable solution. In addition, it would also strengthen the ability for the Council to resist proposals in locations which have not been so recognised and which are less preferable. The site is suitable for release now and is

considered essential if the Council has any prospect of maintaining a credible supply of housing land and meeting its requirement to 2030.

Appendix 1: 2019 Five Year Housing Land Requirement and Supply

Housing Requirement at April 2019	Dwellings
TBLP Housing Requirement 2012-19	2,990
Completions 2012-19	2,719
Shortfall 2012-19	271
Five Year Requirement 2019 to 2024	2,595
Plus Shortfall	2,866
Plus 5% Buffer	3,009
Annual Requirement	602
Supply at 1 April 2019	1,504
Number of years supply	2.5 years

Appendix 2: Cabinet Meeting Papers (17 November 2020)

Appendix 3: Alder King Housing Land Supply Representations (June 2020)

Appendix 4: Edginswell PPA (December 2019)

Appendix 5: Officer Report relating to P/2011/0197

Appendix 6: Officer Report relating to P/2015/1126

Appendix 7: Hatch Regeneris Report (November 2019)