



Torbay Five Year Housing Supply 2020: Draft Statement for Consultation

Representations submitted on behalf of Abacus Projects Limited and Deeley Freed Estates Limited

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Appendices

Appendix 1: Appeal Reference APP/Z1510/W/16/3162004: Secretary of State Decision and IR

Appendix 2: Braintree Essex Housing Supply Statement (April 2019)

Appendix 3: Counsel Opinion (January 2020)

1.0 Introduction

- 1.1 These representations are prepared and submitted on behalf of Abacus Projects Limited and Deeley Freed Estates Limited. The representations seek to establish the robustness of the five year land supply position as presented in Torbay Council's May 2020 Consultation Statement against the nationally prescribed methodology.
- 1.2 The statement establishes that the Council cannot identify a robust land supply against the five year requirement and estimates the supply to be 2.77 years. Paragraph 6.1 of the Paper correctly identifies the relevant paragraphs of the NPPF that are engaged in the event that a five year supply cannot be demonstrated. It goes on to acknowledge that the protection afforded to Neighbourhood Plan areas by NPPF paragraph 14 does not apply given the supply is less than three years.
- 1.3 For the reasons set out below, Alder King does not consider the 2.77 years estimate to be a robust position.

2.0 The Housing Requirement

- 2.1 Alder King (AK) agrees with Torbay Council's (TC) methodology for the calculation of the five year housing requirement; AK notes that TC has followed the methodology advanced in its July 2019 representations and considers the five year requirement calculation of 3,395 dwellings to be robust.
- 2.2 Paragraph 6.4 of the consultation paper references past under-delivery in Torbay and that an Action Plan has been prepared in accordance with the failure to meet the relevant thresholds in the 2018 Housing Delivery Test (HDT). Paragraph 6.4 references an improvement in the position from 2018 to 2019 which relates to a spike in completions in 2018/19, albeit an Action Plan is still required as it still falls short of expectation.
- 2.3 The statement is however silent on the implications of a significant drop in the level of completions in 2019/20. Completions of 188 is a poor return on a requirement of 495 and the implications are shown below:

	Requirement					Completions					HDT
	2016-2017	2017-2018	2018-2019	2019-2020	Total required	2016-2017	2017-2018	2018-2019	2019-2020	Total delivered	
2019	400	470*	495	-	1,365	326	414	531	-	1,271	93%
2020	-	495	495	495	1,485	-	414	531	188	1,133	76%

*This figure is taken from the published HDT but is incorrect

- 2.4 The HDT results for 2020 will mean that TC falls below the 85% threshold and will mean that a 20% buffer will need to be applied to the five year housing requirement. The Action Plan has failed to deliver. Completions in 2020/21 from major sites are anticipated to be 143 homes. At no stage in the five year period does the anticipated level of completions (not including small sites and windfalls as there is no trajectory) get close to the 495 homes per annum requirement.

- 2.5 The requirement of 3,395 dwellings is therefore somewhat of a false position. The HDT is a matter of simple arithmetic and since TC has published its completions for 2019/20 early the reality is clear. When the HDT is formally published the requirement will increase to 3,880. Against the claimed land supply of 1,881 dwellings, a supply of 2.42 years results. For the reasons set out below AK does not consider the supply of 1,881 dwellings to be robust.

3.0 The Housing Supply

- 3.1 Paragraph 1.4 of the statement states that calculating 5 year supply is not an exact science and inevitably involves a planning judgement. AK does not agree with this statement. The five year supply should be based on fact and certainty; of course it is hard to predict with complete accuracy the trajectory for any one site for any particular year; this is never more true in the current Covid-19 pandemic and it is impossible to predict how it will affect delivery over the next two to three years with any accuracy. However, over the course of a five year period, the total anticipated from any site should not really come down to a matter of planning judgement. This is an evidence-led exercise; if the evidence is robust then there is no need to exert any planning judgement. It cannot be based on hearsay or anecdotal evidence.

- 3.2 In some respects the NPPG extract highlighted at paragraph 4.2¹ of the consultation statement is a consolidated version of previous iterations, but does provide more clarity over the necessary tests. For any such site that falls within the categories of the first four bullet points, there is little doubt that the bar for inclusion in any LPA five year supply is a high one. Whilst paragraph 4.3 of the consultation paper states that the above tests (in the previous NPPG) have been applied to sites in Torbay ‘as far as the information is available at the time of writing’ the evidence presented falls woefully short of the standard required.

- 3.3 It is important to consider how those tests are being applied through appeal and Secretary of State decisions. A recent Secretary of State decision relating to a residential site in Braintree, Essex² is reproduced at **Appendix 1**. Paragraph 46 of the SoS decision states that,

“Having reviewed the housing trajectory published on 11 April 2019, the Secretary of State considers that the evidence provided to support some of the claimed supply in respect of sites with outline planning permission of 10 dwellings or more and sites without planning permission, does not meet the requirement in the Framework Glossary definition of “deliverable” that there be clear evidence that housing completions will begin on site within five years. He has therefore removed 10 sites from the housing trajectory, these are listed at Annex D to this letter.”

- 3.4 The Braintree Monitoring Report (April 2019 Addendum) is provided at **Appendix 2**. This follows a similar format to that presented by Torbay, however, further evidence is provided at Appendix 2 of the report containing pro-formas prepared by the LPA and completed by relevant developers/site promoters. This is

¹ Paragraph: 007 Reference ID: 68-007-20190722

² APP/Z1510/W/16/3162004

not an uncommon approach, and in some instances the SoS accepted the content of the responses to represent sufficiently clear evidence that outline consents will be delivered within the five year period.

3.5 However, the SoS discounted sites:

- Where no information (ie pro-formas/statement of common ground) was forthcoming;
- Where new full applications had been submitted (not determined) that sought to supersede the outline;
- Where reserved matters had not been submitted.

3.6 In relation to an adopted 'Growth Location' area (much the same as Torbay's Future Growth Areas), despite the fact that a hybrid planning application had been made and relevant pro-forma produced, the site was discounted from the five year supply. Evidently that site failed the test of *'a hybrid planning permission for large sites which links to a planning performance agreement that sets out the timescale for conclusion of reserved matters applications and discharge of conditions.'*

3.7 When these tests and 'rules' are applied to the Torbay supply, many sites within the trajectory fail. Indeed, in the context of NPPF Annex 2, any site that falls within the Torbay supply that is not subject to either full consent or reserved matters approval is automatically discounted on the basis that no clear evidence of the standard required is presented.

3.8 The two main components of supply are critiqued below.

4.0 Part A: Sites of 10+ units with full planning permission

4.1 AK accepts that the majority of sites within Part A should form part of the five year supply. For sites within this category it is accepted that it is not the Council's obligation to provide clear evidence; the onus is on any objector to demonstrate issues with deliverability. Nevertheless, AK does not consider that the following sites merit inclusion:

- **Former Paignton Police Station, Southfield Road:** Outline consent exists for 46 dwellings but reserved matters was granted for 36 dwellings in 2019. It is clear from the proposals that the scheme was revised down; the delegated report confirming that, *"the main divergence is that the scheme is for 10 fewer apartments to the number approved at outline stage and, principally as a result of this reduction, the proposal is also one storey less in height than indicatively shown at outline stage"*. Further reserved matters have been submitted (validated in February 2020) but still reflecting 36 units. Those 10 dwellings cannot be relied upon and should be discounted from the supply. The developer clearly does not intend to deliver 46 dwellings.
- **Queensway, Torquay, Southfield Road:** In February 2020 this site was identified with a supply of 6 dwellings. It is accepted that full permission exists for 12 dwellings but this dates back to an application submitted in 2007 and approved in May 2008. No other applications have been submitted since. It is assumed that the consent has been implemented and is still capable of delivery but it is not clear why the supply has increased to 11 in the space of 3 months (from

February 2020). Five units are anticipated for completion in 2020/21 so it is assumed that this is robust and developers are effectively onsite. There is no evidence to suggest that the remaining 6 units will be delivered given they are not anticipated until year 5 (2024/5). There is no logic to that estimate not least since the consent dates to 2008. Those six dwellings should therefore be discounted.

- **South Devon College (Torre Marine):** This site does not have full planning permission and to that end sits in the wrong section (ie it should fall into Category B). P/2016/1047 is an outline permission for which no reserved matters have been submitted. Clear evidence is required as a consequence and it must pass the tests. In accordance with the above SoS Decision, even where a pro-forma response is provided, since no RM submissions have been made and no conditions discharged, the site should be discounted from the supply. The commentary provides no comfort that the site is coming forward and the fact that the 75 units are programmed for year three provides no confidence. The outline consent will expire in November 2020 so there is a clear mismatch in terms of expectations for delivery.

Following the submission of representations in July 2019 the site was removed from the 2019 supply. There is no justification for its inclusion now as there has been no change in circumstance. The site should sit in category B but only if there is clear evidence of demonstrated intent; as it stands there is nothing.

- **Brixham Paint Station, Kings Drive:** Notably this site did not feature in the 2018 trajectory despite being subject to an implemented consent. It featured in the draft July 2019 consultation paper but was subsequently removed in the final February 2020 statement. The consent dates back to 2006. It is not appropriate to rely on a part implemented consent from 2006 without any evidence of delivery. The fact that it is programmed for delivery in years 3 and 4 suggests that the site has not progressed at all since the last update in February 2020. TC seems no further forward in advancing any evidence to suggest delivery will be forthcoming. It should therefore be discounted from the supply.

4.2 AK does not consider that the above sites should contribute to the supply and has discounted all or parts of them as a consequence. The supply from major sites with planning permission should therefore be reduced by 113 dwellings from the stated 694 to 581 in accordance with a:

- reduction in 10 units from 46 to 36 at Former Paignton Police Station, Southfield Road;
- reduction in 6 units from 11 to 5 at Queensway, Torquay, Southfield Road;
- reduction in 75 units and deletion from supply at South Devon College (Torre Marine); and
- reduction in 22 units and deletion from supply at Brixham Paint Station, Kings Drive

5.0 Part B: Sites with demonstrated intent

- 5.1 On the basis of the above analysis describing how the methodology relating to the presentation of clear evidence should be applied, the majority of sites within this category should be discounted from the supply. In some circumstances should clear evidence be provided by TC then those sites could make a contribution to supply; in respect of others then in accordance with the SoS decision making process it is hard to see how they possibly could.
- 5.2 Not all sites are the subject of either outline or full planning permission. In some instances no planning application has been submitted. Whilst it is acknowledged that such sites can feature within the five year supply, given their status, clear and compelling evidence needs to be provided demonstrating certainty of delivery. It is acknowledged that an adopted allocation provides certainty in respect of the principle of development. In all other respects however, there is no certainty until such time as planning permission is forthcoming. There are many hundreds of examples of allocated sites across the country that have not come forward for development (or in the numbers anticipated), whether that is in part or at all, or in the timescales originally envisaged.
- 5.3 There are a number of sites that featured in the 2019 July HLS consultation paper that were subsequently removed in the final version published in February 2020. These are examined below to understand whether there has been a change in circumstance to justify inclusion now:

- Collaton St Mary (Blagdon Farm). In 2019 AK's representations stated that, *"This site cannot reasonably form part of the supply. No application is submitted and not due until next year. It is impossible to know whether it will accord with the adopted masterplan and thus whether the principle of development in the form ultimately presented will be acceptable. We do not know the nature of the application or how the 60 units has been derived. The site has no status as required by the NPPG (the FGA status is insufficient) and no clear evidence of delivery has been provided."*

Little appears to have changed. It is recognised that the Taunton Development Agency (TDA) controls the site but only a detailed consent for access exists and that is presently subject of a legal challenge; it remains to be seen how that process will unfold. TC sought to test the appropriateness of whether this site could be included within the 2019 HLS and sought Counsel's opinion on this and a number of other sites (**Appendix 3**). Counsel advised TC that:

"The existence of grant funding, and the permission for the spur road, are both relevant factors, as is the fact that the Council owns the site. They all point towards its deliverability. However, these factors alone are unlikely to persuade an inspector that "there is clear evidence that housing completions will begin on site within five years".

It is highly relevant that a planning application is expected in 2020. However, in order to persuade an inspector of the site's deliverability, more evidence is likely to be needed. When is that permission expected to be received? What pre-application discussions have there been? Is it likely

that the application will be in conformity with the adopted masterplan? Will the application be in outline or full? Is there a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rate? And what evidence does the developer have to support their position?"

None of these questions have been addressed and no further evidence has been advanced; it is impossible to understand what justifies its inclusion now.

- **Collaton St Mary, North of Totnes Road (Taylor Wimpey):** The site was removed from the 2019 supply on the basis that a) only an outline application had been submitted, b) it was contrary to the approved masterplan (73 units against the masterplan of 40), and c) was refused planning permission at Committee.

Taylor Wimpey has subsequently appealed the refusal and on the basis that the Council clearly does not support the scheme it is difficult to understand how it could possibly feature in the supply. TW has submitted a duplicate application in April 2020 presumably to offer an olive branch and enable TC to determine the application favourably but there is no reason to suggest it will. Indeed, it is noted that the HLS only makes provision for 40 dwellings as per the masterplan but clearly this is not what TW intends to deliver. There are clear tensions between the intentions of the developer and those of the Council and until such time as they are resolved this site cannot feature.

- **Collaton St Mary, North of Totnes Road (Bloor):** Technically the site should not feature in the 5 year supply as an outline consent is not normally sufficient to represent a clear demonstration of delivery. However, on the basis that the site will be reported to committee in June, the fact that the application is promoted by a volume housebuilder would suggest there is a reasonable probability that reserved matters will be forthcoming soon. Of course, in the event that the application is refused at committee the site would not be eligible to feature in the five year supply.
- **Totnes Road (Motel Site):** Again whilst there has been some progression with an outline application (a revised pack being submitted in March 2020), consent has yet to be granted. There is no certainty of permission or when reserved matters will be submitted and on that basis should continue to be discounted.
- **St Kilda's:** Notably St Kilda's is the only one of three Neighbourhood Plan sites that were identified in 2019, subsequently removed in February 2020 and now re-instated (the other two being Hatchcombe Lane and Westhill Garage). All of these sites enjoy a similar status; allocated in Neighbourhood Plans but not subject to any planning application. The only evidence provided in the commentary was in relation 'pre-app discussions'. It is the same response in 2020. We have no knowledge of the nature or outcome of those discussions. We do not know whether the pre-application proposals have been positively or negatively received, or indeed whether any response has been provided.

The commentary falls woefully short of national requirements. When considered against the SoS criteria, there is no possibility that St Kilda's should be included within the supply. There is no compelling evidence to demonstrate that St Kilda's will be delivered; the fact that it is a Torbay Development Agency (TDA) controlled site gives it no more elevated status given no evidence has been presented. The site is not even referenced in the Housing Action Plan 2019.

- **Victoria Centre:** There is no certainty of delivery even though the principle of development might be acceptable. No application has been submitted. No clear evidence has been provided; whilst a successful bid for funding might have been achieved this in itself is not sufficient. An application submitted for demolition does not constitute meaningful progress.

This is a complex site that needs to go through the planning application process before any reliance in five year supply terms can be placed upon it. It is identified within the Housing Delivery Action Plan (2019) as a site now controlled by TDA but also identifies technical constraints with the site including the need to undertake a flood risk sequential test. There appears uncertainty over what the scheme could and should yield and quotes a range between 60 and 160 dwellings. TC also sought Counsel's advice on the inclusion of this site. Counsel's advice was that:

"It was included within the draft Statement with an indication that "Developer intends to deliver on site within 5 years", although it is not clear what evidence had been obtained from the developer. It was removed in the Statement following objections on the basis that there was no clear evidence that housing completions will begin on site within five years (see representations of Alder King and PBA).

On the basis of the evidence before me I consider it unlikely that an inspector would find that there was clear evidence of a realistic prospect of housing development taking place on the site within five years. However, if further evidence were available, including from the developer, of the type that I outline above in respect of the CSM Land, and that evidence pointed towards the possibility of housing development taking place within five years, it might be possible to persuade an inspector of its deliverability."

No further evidence has been presented and until such time as it has the site should be discounted from the supply. The fact that 85 dwellings have been identified and all programmed for year 5 suggests a complete lack of certainty.

5.4 The following sites are either new for 2020 or have been carried forward from the trajectory in 2019:

- **Dairy Crest site:** This site benefits from an outline consent that has a number of detailed matters also approved. Nevertheless, there is no clear evidence as required to demonstrate that the site can meaningfully contribute to the supply. There is no written agreement between the local planning authority and the site developer which confirms the developers' delivery intentions and anticipated start and build-out rates, or for that matter any information relating to the other tests in the NPPG.

It is programmed for delivery in year five suggesting that there is little confidence from the landowner/developer that delivery is expected anytime soon. With a site with so many technical issues to address, for it to be included in the supply there has to be compelling evidence as to how and when these matters are going to be addressed.

- Edingswell Gateway:** This is acknowledged to be a Future Growth Area but as we have established in the case of Collaton St Mary this is not enough for it to warrant automatic inclusion. It is understood that a planning performance agreement exists which is perhaps why the site now features in the supply, but no details of it are forthcoming. We do not know what commitment to delivery there is or the timescales associated with the planning application process.

One outline application has been submitted south of Moles Lane (P/2019/0710) in July 2019 for 90 dwellings but this is contrary to the Masterplan that identifies the land for employment purposes and is subject to an objection from the lead promoter Cavanna Homes on that basis. No dwellings can be relied upon from this location until such time as there is much greater certainty over delivery.

- Northcliffe:** This is understood to be the former hotel site demolished in the mid-1990s and identified in the Brixham Neighbourhood Plan. TC has correctly identified that the majority of allocated NP sites cannot feature in the supply as this is not sufficient status to guarantee delivery. There is no evidence presented in respect of this particular site and a target of ‘circa 15 units’ delivered in year five suggests there is none. The fact that it has been a vacant site for 25 years does not lead to any confidence that the position will change in the next five.

Summary

5.5 The table below sets out Alder King’s position in respect of the sites in Category B:

Major Sites with demonstrated intent	Torbay	Alder King
Devonshire Park	100	100
Collaton St Mary (Blagdon Farm)	75	0
Collaton St Mary. North of Totnes Road TW)	40	0
Edingswell Gateway	60	0
Dairy Crest Site	43	0
Collaton St Mary. North of Totnes Road (Bloor)	70	70*
Totnes Road (Motel Site)	39	0
St Kildas	20	0
14-16 Midvale Road	10	10*
Victoria Centre	85	0
Northcliffe	15	0
Totals	557	180

*assuming approved at committee

6.0 Conclusion

6.1 Given the lack of supply interim Policy SS13 is engaged, and given the urgency of the situation, TC must consider favourably applications for new housing, consistent with Policy SS2, H1 and other policies of the plan. This reflects the wording of Policy SS13, however, because the strategic policies are out of date given the paucity of supply. The tilted balance applies; the tests in the Local Plan are still material but so are those set out in the NPPF and NPPG.

6.2 A summary of Alder King's position is set out below:

Component	Torbay	Alder King
Five Year Requirement 2020 to 2025	3,223	3,223
Plus Shortfall and 5% Buffer	3,395	3,395
Plus Shortfall and 20% Buffer	3,880	3,880
Part A Supply (sites with full planning permission)	694	581
Part B Supply (allocated and other)	557	180
Part C Supply (small sites)	390	390
Part D Supply (windfall)	240	240
Total Supply	1,881	1,391
Number of Years Supply with 5% buffer	2.77 years	2.05 years
Number of Years Supply with 20% buffer	2.42 years	1.79 years

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