

Report to: Strategic Planning Committee



Date of Meeting 22 February 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Torbay Local Plan Housing Update Growth Options Consultation

Report summary:

This report summarises the current Torbay Local Plan Housing Update Growth Options Consultation and provides a proposed response from this Council. The consultation document is succinct and sets out five broad options for meeting Torbay's housing requirements up to 2030, together with an alternative way of calculating housing need for the purposes of their five year land supply/housing delivery test. Only one of the options would meet the Government's minimum housing numbers, although the documentation presents a case that the harm caused through meeting Government minimum requirements would be so severe that any such plan would not meet legal plan making requirements.

In response to our Issues and Options consultation last summer Torbay Council asked that East Devon give consideration to meeting unmet housing need from Torbay. East Devon District Council officer assessment work undertaken so far raises concerns that the Torbay work does not yet provide a fully evidenced case for why they cannot accommodate their own housing need. It is suggested that this issue should be explored fully through discussions with Torbay and other interested authorities, as should matters around the appropriateness of authorities beyond Torbay meeting any Torbay need and how options beyond Torbay should be assessed.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

- 1) That Strategic Planning Committee recommends endorsement of the proposed response in this report and delegate authority to the Service Lead – Planning Strategy and Development Management to submit comments accordingly.

Reason for recommendation: To ensure that Members are aware of the issues and to provide a proposed response to the consultation.

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Portfolio(s) (check which apply):

Climate Action

- Corporate Services and COVID-19 Response and Recovery
- Democracy and Transparency
- Economy and Assets
- Coast, Country and Environment
- Finance
- Strategic Planning
- Sustainable Homes and Communities

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information – See links in the attached the report.

Link to [Council Plan](#):

Priorities (check which apply)

- Outstanding Place and Environment
- Outstanding Homes and Communities
- Outstanding Economic Growth, Productivity, and Prosperity
- Outstanding Council and Council Services

1 Introduction

- 1.1 Members' attention is drawn to the fact that Torbay Council are updating the housing supply policies of their adopted Torbay Local Plan 2012/2030. This follows their decision last February to accept the Government's Standard Method of calculating housing need, notwithstanding concerns about the Government methodology, which shows Torbay's housing need is around 580 homes a year. The other parts of the plan are considered by Torbay Council to be up-to-date and are not included in the review.
- 1.2 The consultation runs from 10th January to 28th February 2022 and views are sought on the options for growth. The consultation documents can be viewed at [Local Plan Update - Torbay Council](#). The broad options set out are:

Option 1: *No further greenfield allocation beyond already allocated or approved sites. This is estimated to provide between 190-250 dwellings a year.*

Option 2: *Limited further greenfield development. As per option 1 plus a limited number of greenfield sites deemed as having relatively minor constraints. This is estimated to provide between 250/300 dwellings a year.*

Option 3: *One or two further urban extensions. As per option 2 plus one or two further urban extensions. Several possible "sub-options" for the location of the potential urban*

extension exist. However, further expansion at the west of Paignton appears to be the most likely area. This option is estimated to provide between 320/380 dwellings a year.

Option 4: *All sites that have not been ruled out in principle. This includes sites which have significant environmental constraints. This option could provide between 470/500 dwellings a year.*

Option 5: *Meeting full needs (as required by Government). To achieve a growth rate of around 600 dwellings per year, all sites including many rejected by the HELAA as unsuitable for development would need to be allocated.*

- 1.3 The options are described (including maps showing sites) and the advantages and disadvantages of each are summarised in supporting [documents](#).
- 1.4 Views are also sought by Torbay Council on a 'hybrid' option of setting a minimum housing requirement (below that calculated under the Governments standard method) and having a more ambitious target for urban regeneration sites.
- 1.5 The consultation is supported by a recent Housing and Economic Land Availability Assessment (HELAA), which can be viewed at [Torbay Housing and Economic Land Availability Assessment - Torbay Council](#). A 'call for sites' is included in the current consultation timescale.

Local Plan Test of 'Soundness' and the 'Duty to Co-operate'

- 1.6 In order for a plan to be found 'sound' it must be demonstrated that it has been positively prepared. Paragraph 35 of the National Planning Policy Framework ([NPPF](#)) states that, in order to be positively prepared, a plan should provide '*a strategy which, as a minimum, seeks to meet the area's objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development*'. Paragraph 61 of the NPPF states that '*In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for*'.
- 1.7 Local Planning Authorities (LPA's) are legally required to co-operate with other bodies on cross boundary strategic issues, including meeting housing need: this is known as the 'duty to co-operate'. Where a LPA cannot meet its own housing need, it needs to discuss sharing its housebuilding target with neighbouring authorities early in the plan making process. Local plan Inspectors expect neighbouring authorities to work constructively and attempt to resolve the strategic matter of unmet housing need (see for example Paragraph 23 of the Inspector's report for [Tonbridge](#)).
- 1.8 In response to our 2021 Issues and Options consultation, Torbay stated that it was unlikely to be able to accommodate its standard method derived housing need figure (586 dwellings per annum) beyond the current Torbay Local Plan termination date of 2030. It also stated that the delivery of this level of growth is proving very difficult in the short term and requested that the new East Devon Local Plan takes into account neighbouring needs, as part of ongoing consideration of cross boundary matters.

1.9 An officer level meeting, including discussion of housing issues, has already taken place (on 20 January 2022) between Torbay and neighbouring planning authorities. This report has been informed by matters that were raised at that meeting and further meetings are expected.

2 Key Issues in the Torbay consultation

2.1 The Torbay Growth Options consultation is focussed on the number of homes that could be built in Torbay and potential social, economic and environmental consequences from a range of growth scenarios. The limited scope of their plan review and this consultation raises some issues. It will potentially limit the options open to them to address their housing needs where reviewing aspects of their plan such as landscape work and employment land allocations may help to unlock land for housing.

2.2 The presented options include those to have no greenfield sites coming forward or to limit further greenfield sites coming forward. In the context of an authority struggling to meet its housing needs these options do not seem to be realistic. Although a brownfield first approach is included in government guidance the consultation materials show that without including greenfield sites Torbay cannot meet its housing needs and yet options to do this are still being presented as if they were realistic options. The options can be viewed from page 35 of the consultation [document](#).

2.3 Only one of the five options (Option 5) achieves a growth rate that would meet the Governments housing figure of 586 dwellings. The consultation [document](#) states, however, that Option 5 would “cause very severe environmental harm, and is unlikely to be compatible with Habitats Regulations and other legal requirements”. The document also argues that this level of housing would ‘probably outstrip demand and would not be deliverable’. Disadvantages listed include there being no incentive to use brownfield land, hilly sites would reduce viability and further urbanisation would have a ‘devastating’ impact on tourism. It is also stated that there would be ‘no overall spatial strategy, so planning for infrastructure would be difficult’, although it is not clear why this should be the case. It is concluded (in the Torbay report) that Option 5 would not be a sound option because Habitat Regulations and other environmental objections would result in the plan being ‘unadoptable’. On this basis it could be concluded that Torbay Council are of the opinion that Option 5 is a hypothetical rather than a real option but the evidence does not appear to be available to support this conclusion.

2.4 If Torbay pursue any of the other four options presented, the plan would not be able to demonstrate how its housing needs (assessed against the standard methodology) could be met within Torbay. However robust evidence would be needed to demonstrate this position and it is considered by officers of East Devon District Council that further work is needed (or at least needs to be available and published) to justify such a case.

2.5 It should be noted that the options being considered by Torbay that do not meet their housing numbers, would make their plan vulnerable to being found ‘unsound’ by a planning Inspector. In addition, as Torbay Council has requested that other authorities accommodate their housing need, it raises issues that could potentially result in other authorities finding their plans (specifically for us the East Devon Local Plan) not being deemed acceptable by a Planning Inspector if the Torbay shortfall is not otherwise accommodated.

3 Commentary by officers of East Devon District Council

- 3.1 Officers of East Devon District Council have reviewed the Torbay paperwork and also have discussed possible impacts and implications of the Torbay approach with officers of neighbouring authorities within the Exeter housing market area (specifically Devon County Council and the local authorities of Exeter, Mid Devon and Teignbridge). Torbay held an officer level Duty to Co-operate meeting with these Councils and also those of South Hams, West Devon, Plymouth and Dartmoor National Park authority on 20 January 2022.
- 3.2 From review of the Torbay paperwork, messages coming though in conversations it is recognised that there are some challenges in finding suitable development sites in Torbay. There are limitations on infilling and regeneration opportunities within the built fabric of Torbay and there are a series of constraints on the green spaces around the built up areas, including environmental designations, infrastructure limitations and topographical challenges. It is fully recognised that Torbay does face difficulties in planning for future development.
- 3.3 Facing constraints, however, is not a unique challenge to Torbay and all of the other authorities listed in this report (including East Devon) have significant constraints. At this moment in time, all of the other authorities have policies (in the case of South Hams, West Devon and Plymouth a collective cross-authority plan) or are proposing policy approaches that accommodate their full housing needs inside their boundaries. This obviously contrasts with the Torbay position.
- 3.4 A review of Torbay documents shows that there are some clear references made to adverse impacts of development but also some assertions but these are not backed-up by comprehensive and compelling evidence (or at least such evidence is not cited). Furthermore, it is not clear how far Torbay Council have explicitly encouraged land owners to promote land for development or been proactive themselves in delivering sites to ensure there is available suitable land to meet housing needs. An urban capacity study could help to identify sites that have not been put forward by land owners and instigate conversations to help bring suitable sites forward.
- 3.5 The work that Torbay Council have undertaken assessing sites that have been promoted to them through their HELAA has just been published and officers have not reviewed it in detail. Even if this work is robust and supports Torbay position there is further work that could be undertaken. We are not aware of comprehensive assessment work being undertaken on all land (specifically green field land) across the whole of Torbay and would suggest that this could be a sensible additional stage of work for Torbay to undertake in respect of more fully exploring options.
- 3.6 In considering the potential for Torbay development needs being met in another local planning authority area any assessment work that has been undertaken, and additional work that could be done on looking at development site suitability, should be compared against assessment work on sites elsewhere on a 'like for like' basis. This would allow a 'level playing field' and avoid the danger of any single authority seeking to 'export' its need elsewhere when the 'elsewhere' may have equally, (or perhaps more) constrained site options.

- 3.7 Environmental and other site specific constraints are just one factor that will be relevant in any possible comparative assessment of development options. The potential impacts of accommodating Torbay housing needs outside of Torbay also raise wider issues. If people 'of' Torbay need to live outside of Torbay, because that's where the new homes are built, but are travelling in for jobs, schools, entertainment, visiting friends and the like, this could lead to a range of negative impacts, perhaps most starkly increased carbon emissions associated with an increased need to travel. These and other similar concerns should feature in any comparative assessment work should it be relevant to more fully assess options for development outside of Torbay. The key question being whether the environmental impacts of that would be worse than the impacts of the development opportunities that exist in Torbay. Furthermore, by not building in Torbay the Council will lessen the potential to realise benefits that development might help achieve, such as securing affordable housing.
- 3.8 Torbay advise that they have accepted the Government standard housing methodology outputs, but from their paperwork it is not clear if they may have investigated all possible grounds to challenge the Government figures. It is understood to only be in exceptional circumstances that it may be that there are flaws in the application of the national methodology (for example in respect of anomalous or inaccurate starting point data feeding into equations). It is suggested that it could be appropriate for Torbay Council to more fully investigate this matter before formally seeking to have other Councils accommodate their development.

4 Proposed Response

- 4.1 In responding to the Torbay consultation document it is not felt necessary to comment in detail on the proposed growth options proposed in the document. It is the issue of whether Torbay can accommodate its own housing needs, or not, which is directly relevant to East Devon and if the answer 'is not' it is then a matter of where any shortfall may go or what other approaches to plan making may be relevant. Furthermore, even if Torbay can satisfactorily demonstrate that it cannot reasonably meet its own needs, the merit of unmet need being accommodated in East Devon is highly debatable given the distance between the two authorities.
- 4.2 It is proposed that, in terms of formal representations on the housing options consultation, it is suggested that we forward the text detailed below.

Proposed response to Torbay Council from East Devon District Council

In making representation on the Torbay plan consultation East Devon District Council recognise the challenges that are faced by Torbay but would highlight that these are not unusual. East Devon also has substantial landscape, environmental and bio-diversity constraints as well as an extensive coastline and yet is seeking to meet its own housing needs even if this entails developing significant areas of green field land.

At this stage we remain unconvinced that all options for accommodating housing development in Torbay have been fully explored. As such we consider that further work should be undertaken by Torbay before finalising any conclusions around this matter. We

would encourage further discussion with Torbay and other planning authorities and in particular would stress the importance of consistency of approach to any work undertaken in respect of assessment of development options.

With respect to specific points East Devon District Council consider that:

- a) should Torbay Council accept the Government methodology for calculating housing need then they should firstly, and rigorously, examine every opportunity to accommodate this provision inside Torbay boundaries. From available evidence it is not clear that this exercise has been fully undertaken to date.
- b) in exploring potential for housing development, Torbay Council should be more active in identifying suitable land for development and contact land owners to encourage them to bring forward suitable sites for development and if necessary explore options to seek to acquire land for development themselves in order to provide for housing needs.
- c) should Torbay Council regard it as appropriate to seek to accommodate Torbay growth in other planning authority areas, then they should ensure a consistent approach to any site assessment work so that like for like comparisons are secured to inform possible site selections.
- d) should Torbay Council regard it as appropriate to seek to accommodate Torbay growth in other local authority areas then account should be taken of wider than just environmental site constraints considerations. Specific account should be taken of the impacts of 'Torbay people' living in locations that might be remote from Torbay itself and the adverse impacts, such as increased travel (with resultant carbon emission), that could result.
- e) before seeking to accommodate Torbay growth outside of Torbay, the Government housing requirement methodology and specifically its application in Torbay should be rigorously re-examined.
- f) Torbay Council, given that it is only the housing provisions policies that are deemed out of date (and the Council are of the view that they cannot accommodate their needs) reassess whether there is merit in reviewing their local plan as a whole at this point in time to enable more options for accommodating housing needs or if there could be benefits in a later review rather than the current narrowly focused housing options review.

Financial Implications

There are no financial implications at this stage.

Legal Implications

Strategic policy-making authorities are required to cooperate with each other, and other bodies, when preparing, or supporting the preparation of policies which address strategic matters. However, authorities are not obliged to accept needs from other areas where it can be demonstrated it would have an adverse impact when assessed against policies in the National Planning Policy Framework. There are no legal implications other than as set out in the report.