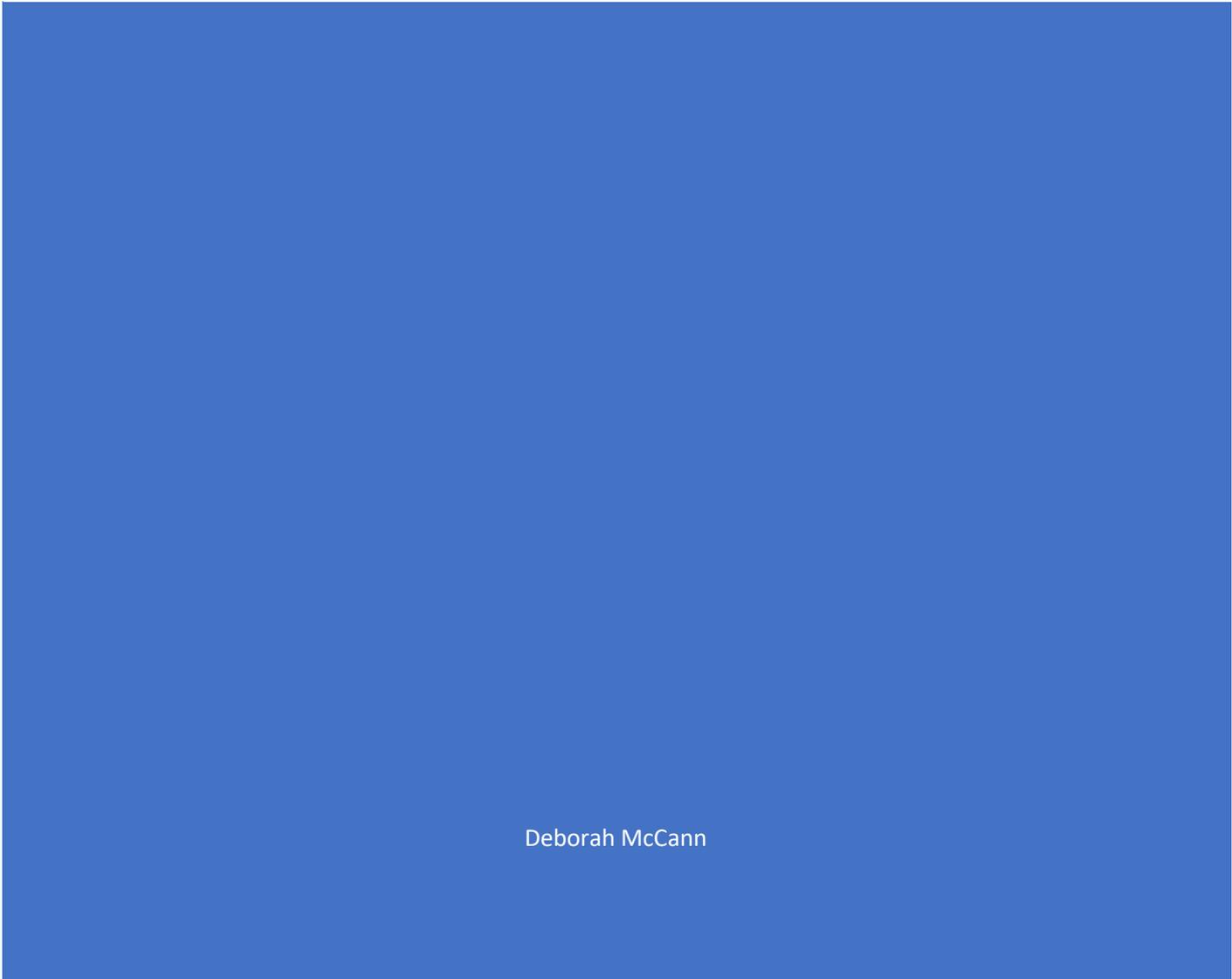




**Independent Examiner's Report of the Totnes
Town Neighbourhood Development Plan**



Deborah McCann

Author

Deborah McCann BSc MRICS MRTPI Dip Arch Con Dip LD

Planning Consultant

NPIERS Examiner

CEDR accredited mediator

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SECTION 1 Contents

CONTENTS

Section 1

Contents.....	3
---------------	---

Section 2

Summary.....	4-5
--------------	-----

Section 3

Introduction.....	6-9
-------------------	-----

Section 4

The Report.....	9-63
-----------------	------

1. Appointment of the Independent Examiner.....	9
2. Qualifying Body.....	9
3. Neighbourhood Plan Area.....	9
4. Plan Period.....	9
5. South Hams District Council Regulation 15 assessment of the plan.....	9
6. Consultation Process.....	9
7. Regulation 16 Consultation and Comment on Responses.....	9
8. Site Visit.....	11
9. Hearing.....	11
10. Compliance with the Basic Conditions.....	12
11. Planning Policy.....	13
12. Other Relevant Policy Considerations.....	15-19
13. Totnes Neighbourhood Plan Policies.....	20-63

Section 5

Conclusions and Recommendations.....	64
--------------------------------------	----

SECTION 2

Summary

As the Independent Examiner appointed by South Hams District Council to examine the Totnes Neighbourhood Plan, I can summarise my findings as follows:

1. I find the Totnes Neighbourhood Plan and the policies within it, subject to the recommended modifications does meet the Basic Conditions.
2. I am satisfied that the Referendum Area should be the same as the Plan Area, should the Totnes Neighbourhood Plan go to Referendum.
3. I have read the Totnes Consultation Statement and the representations made in connection with this subject I consider that the consultation process was robust and that the Neighbourhood Plan and its policies reflect the outcome of the consultation process including recording representations and tracking the changes made as a result of those representations.
4. I find that the Totnes Neighbourhood Plan can, subject to the recommended modifications proceed to Referendum.
5. The Totnes Neighbourhood Plan Area is within the area covered by South Hams District Council. The development plan for the area is the Plymouth and South West Devon Joint Local Plan (the JLP), adopted in March 2019.
6. The Totnes Neighbourhood Development Plan was initially submitted under Regulation 15 in 2021 and Regulation 16 consultation was undertaken between 28 June 2021 and 22 August 2021. I was appointed to examine the Plan in September 2021. On the 7 October 2021 (and before I had commenced my examination) Totnes Town Council wrote to me requesting that the examination be paused for up to four months following the decision of the Town Council to tackle the expiration of a Community Right to Build Order for the former Dairy Crest site by drafting a policy to address the issue and re consult on the drafted policy. This effectively resulted in a rerun of the Regulation 16 consultation period but focused only on the draft Policy C12. This consultation period ran from 18 October to 28 November 2021. During my examination I have had regard for the representations submitted during the initial period of Regulation 16 consultation, and the secondary consultation process. To clarify the issues raised by the

inclusion of Policy C12 I called a Hearing which was held on Tuesday 6 September at the Guildhall, Totnes. I will discuss the issues raised at the Hearing and my conclusions in Section 4 of my report in relation to Policy C12. A record of the meeting can be found on the SHDC website.

SECTION 3

Introduction

1. Neighbourhood Plan Examination.

My name is Deborah McCann, and I am the Independent Examiner appointed to examine the Totnes Neighbourhood Development Plan.

I am independent of the qualifying body, I do not have any interest in the land in the plan area, and I have appropriate qualifications and experience, including experience in public, private and community sectors.

My role is to consider whether the submitted Totnes Neighbourhood Development Plan meets the Basic Conditions and has taken into account human rights; and to recommend whether the Plan should proceed to Referendum. My role is as set out in more detail below under the section covering the Examiner's Role. My recommendation is given in summary in Section 2 and in full under Section 5 of this document.

The Totnes Neighbourhood Development Plan has to be independently examined following processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012.

The expectation is that the examination of the issues will take the form of the consideration of the written representations. However, there are two circumstances when an examiner may consider it necessary to hold a hearing. These are where the examiner considers that it is necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case. Having read the plan and considered the representations I concluded that it was necessary to hold a hearing. Details of the hearing are set out in section 4 of my report in relation to Policy C12.

2. The Role of the Examiner including the examination process and legislative background.

The examiner is required to check whether the neighbourhood plan:

- Has been prepared and submitted for examination by a qualifying body
- Has been prepared for an area that has been properly designated for such plan preparation
- Meets the requirements to:
 - i) specify the period to which it has effect;
 - ii) not include provision about excluded development; and
 - iii) not relate to more than one neighbourhood area and that
- Its policies relate to the development and use of land for a designated neighbourhood plan area.

The examiner must assess whether a neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

As an independent Examiner, having examined the Plan, I am required to make one of the following recommendations:

1. The Plan can proceed to a Referendum.
2. The Plan, with recommended modifications can proceed to a Referendum.

Where a policy does not meet the Basic Conditions or other legal requirement I may, on occasion, need to delete wording, including potentially an entire plan policy and/or section of text, although I will first consider modifying the policy rather than deleting it. Where a policy concerns a non-land use matter, advice in the Planning Practice Guidance states “Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable, or example, set out in a companion document or annex.” As such, when considering the deletion of any non-land use matters from the plan, I will consider if I can make a modification to place the relevant proposed actions in a non-statutory annex to the plan, dealing with ‘Wider Community Aspirations’. I will not generally refer back to parties on these detailed revisions. I will make modification either in order to meet the Basic Conditions, to correct errors or provide clarification. However, the focus of my examination, as set out in legislation is relatively narrow, I must focus on compliance

with the Basic Conditions. The main purpose of a neighbourhood plan is to provide a framework for the determination of planning applications. Policies in a plan which seek to control things which fall outside the scope of the planning system or introduce requirements which are indiscriminate in terms of the size of development or are overly onerous do not meet the Basic Conditions. In these circumstances it will be necessary to make modifications to the plan. In making any modifications I have a duty to ensure that the Basic Conditions are met however I am also very careful to ensure, where possible that the intention and spirit of the plan is retained so that the plan, when modified still reflects the community's intent in producing their neighbourhood plan.

3. The Plan does not meet the legal requirements and cannot proceed to a Referendum.

3.1 I am also required to recommend whether the Referendum Area should be different from the Plan Area, should the Totnes Town Neighbourhood Plan go to Referendum.

3.2 In examining the Plan, I am required to check, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, whether:

- the policies in the Plan relate to the development and use of land for a designated Neighbourhood Area are in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act 2004
- the Plan meets the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 to specify the period for which it has effect
- the Plan has been prepared for an area designated under the Localism Act 2011 and has been developed and submitted for examination by a qualifying body.

3.3 I am also required to determine whether the Plan complies with the Basic Conditions, which are that the proposed Neighbourhood Plan:

- Has regard to national policies and advice contained in guidance issued by the Secretary of State;
- Contributes to the achievement of sustainable development; and

- Is in general conformity with the strategic policies contained in the Development Plan for the area; and
- Does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017; and
- Does not breach, and otherwise is compatible with EU obligations and Human Rights requirements

South Hams District Council will consider my report and decide whether it is satisfied with my recommendations. The Council will publicise its decision on whether or not the plan will be submitted to a referendum, with or without modifications. If the Neighbourhood Plan is submitted to a referendum, then 28 working days' notice will be given of the referendum procedure and Neighbourhood Plan details. If the referendum results in more than half those voting (i.e., greater than 50%), voting in favour of the plan, then the Council must "make" the Neighbourhood Plan a part of its Development Plan as soon as possible. If approved by a referendum and then "made" by the local planning authority, the Neighbourhood Plan then forms part of the Development Plan.

SECTION 4

The Report

1. Appointment of the Independent examiner

South Hams District Council appointed me as the Independent Examiner for the Totnes Neighbourhood Development Plan with the agreement of Totnes Town Council in September 2020.

2. Qualifying body

I am satisfied that Totnes Town Council is the Qualifying Body.

3. Neighbourhood Plan Area

The Totnes Neighbourhood Plan Area, which covers the parish of Totnes was designated by South Hams District Council on the 15 February 2013 under the Neighbourhood Planning Regulations 2012 (part 2 S6). The area covers the administrative boundaries of the Parish of Totnes. The Qualifying Body have confirmed that there are no other neighbourhood plans covering the designated area.

4. Plan Period

The Plan identifies the period to which it relates as 2019 to 2034, a period chosen to tie in with the development plan for the area, the Plymouth and South West Devon Joint Local Plan (the JLP).

5. South Hams District Council Regulation 15 Assessment of the Plan.

Totnes Town Council submitted the plan to South Hams District Council for consideration under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012. The Council has made an initial assessment of the submitted Totnes Town Neighbourhood Plan and the supporting documents and was satisfied that these comply with the specified criteria. However, following the inclusion of Policy C12, SHDC raised concerns regarding whether or not the policy could be included in the Plan and whether or not the Policy could meet the Basic Conditions.

This issue is explored in greater detail in Section 4 of my report which deals with Policy C12.

6. The Consultation Process

The Totnes Neighbourhood Development Plan has been submitted for examination with a Consultation Statement which sets out the consultation process that has led to the production of the plan, as set out in the regulations in the Neighbourhood Planning (General) Regulations 2012.

The Statement describes the approach to consultation, the stages undertaken and explains how the Plan has been amended in relation to comments received. It is set out according to the requirements in Regulation 15.1.b of the Neighbourhood Planning (General) Regulations 2012):

- (a) It contains details of the persons and bodies who were consulted about the proposed Neighbourhood Plan;
- (b) It explains how they were consulted;
- (c) It summarises the main issues and concerns raised by the persons consulted; and
- (d) It describes how these issues and concerns were considered and, where relevant, addressed in the proposed Neighbourhood Plan.

Having examined the documents and considered the focus of the Neighbourhood Plan I conclude that the consultation process was robust, well conducted and recorded.

A list of statutory bodies consulted is included in the Consultation Statement.

7.Regulation 16 consultation by South Hams District Council and record of responses.

The Totnes Neighbourhood Development Plan was initially submitted under Regulation 15 in 2021 and Regulation 16 consultation was undertaken between 28 June 2021 and 22 August 2021, and I was appointed to examine the Plan in

September 2021. On the 7 October 2021 (and before I had commenced my examination) Totnes Town Council wrote to me requesting that the examination be paused for up to four months following the decision of the Town Council to tackle the expiration of a Community Right to Build Order for the former Dairy Crest site by drafting a policy to address the site and re consult on the draft policy. This effectively resulted in a rerun of the Regulation consultation focused on the draft policy conducted however by Totnes Town Council. This consultation period ran from 18 October to 28 November 2021. During my examination I have had regard for the representations submitted during the initial period of Regulation 16 consultation, and the secondary consultation process.

Representations received during the initial and subsequent consultation periods are available to view on the SHDC website.

A number of detailed representations were received during the consultation period, and these were supplied by SHDC and Totnes Town Council as part of the supporting information for the examination process. I considered the representations, have taken them into account in my examination of the plan and referred to them where appropriate.

8.Site Visit

I carried out an unaccompanied site visit to familiarise myself with the Neighbourhood Plan Area on 29 July 2022.

9.Hearing

To clarify the issues raised by SHDC and the landowner following the inclusion of Policy C12 I called a Hearing which was held on Tuesday 6 September at the Guildhall, Totnes. I will discuss the issues raised at the Hearing and my conclusions in Section 4 of my report in relation to Policy C12. A record of the meeting can be found on the SHDC website.

10.Compliance with the Basic Conditions

The Qualifying Body have produced a Basic Conditions Statement. The purpose of this statement is to set out in some detail how the Neighbourhood Plan as submitted

meets the Basic Conditions. It is the Examiner's Role to take this document into consideration but also take an independent view as to whether or not the assessment as submitted is correct.

I have to determine whether the Totnes Town Neighbourhood Plan:

- Has regard to national policies and advice contained in guidance issued by the Secretary of State;
- Contributes to the achievement of sustainable development; and
- Is in general conformity with the strategic policies contained in the Development Plan for the area; and
- Does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017; and
- Does not breach, and otherwise is compatible with EU obligations and Human Rights requirements.

Documents brought to my attention by the Borough Council for my examination include:

- Totnes Neighbourhood Development Plan - the main document which includes policies developed in consultation with the community at various engagement events and workshops.
- Basic Conditions Statement - sets out how the plan meets the Basic Conditions
- Consultation Statement – sets out how the community, and other stakeholders, have been involved in preparing the Plan.
- Strategic Environmental Assessment (SEA) Screening Report
- Habitats Regulations Assessment (HRA) screening opinion

Comment on Documents submitted

I am satisfied having regard to these documents and other relevant documents, policies and legislation that the Totnes Town Neighbourhood Plan does, subject to the recommended modifications, meet the Basic Conditions.

4.10. Planning Policy

4.10.1. National Planning Policy

National Policy guidance is in the National Planning Policy Framework (NPPF). At the time of the preparation of the Neighbourhood Plan the relevant NPPF was the National Planning Policy Framework (NPPF) July 2021(as updated).

To meet the Basic Conditions, the Plan must have “regard to national policy and advice”. In addition, the NPPF requires that a Neighbourhood Plan "must be in general conformity with the strategic policies of the local plan”.

Paragraph 29 states:

“Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic policies.”

The Totnes Town Neighbourhood Plan does not need to repeat these national policies, but to demonstrate it has taken them into account.

I have examined the plan and consider that, subject to modification, the plan does have “regard for National Policy and Advice” and therefore the Plan, subject to minor modification does meet the Basic Conditions in this respect.

4.11 Local Planning Policy- The Development Plan

The Totnes Neighbourhood Development Plan Area is within the area covered by South Hams District Council. At the time of my examination, the Development Plan for the area was the Plymouth and South West Devon Joint Local Plan (the JLP), adopted in March 2019.

The most relevant strategic policy from the JLP relating to the former Dairy Crest Site is Policy TTV22:

"Other site allocations in Totnes

The following additional sites at Totnes are allocated for development.

ATMOS (former Dairy Crest site)

Mixed use - including new homes and a range of business, commercial and community uses

62 homes

1. Delivery in accordance with the provisions of the Community Right to Build Order (CRtBO), including appropriate flood risk mitigation measures (including improvements to the leat to protect existing development downstream), remediation of contaminated land and habitat enhancement.
2. Sensitive and high-quality design which integrates with the existing area and the setting of nearby heritage assets."

To meet the Basic Conditions, the Totnes Neighbourhood Development Plan must be in "general conformity" with the strategic policies of the development plan.

The NPPF 2021 (as updated) states:

"20. Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision for:

- a) housing (including affordable housing), employment, retail, leisure and other commercial development;
- b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);
- c) community facilities (such as health, education and cultural infrastructure); and
- d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation."

Neighbourhood Plans should only contain non-strategic policies. The NPPF 2021(updated) states:

"Non-strategic policies

28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic policies.”

Should there be a conflict between a policy in a neighbourhood plan and a policy in a Local Plan, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy, which is contained in the last document to become part of the development plan.

The distinction between strategic and non-strategic policies is important because of the relationship with Neighbourhood Plans. Neighbourhood Plans only have to be in general conformity with the strategic policies of the development plan (Localism Act 2011, Schedule 4B, s7 (2)(e)) When made, neighbourhood plan policies take precedence over existing non-strategic policies in the local plan, where they are in conflict.

Planning Policy Guidance paragraph 41-076-20140306 sets out that:

“Strategic policies will be different in each local planning authority area. When reaching a view on whether a policy is a strategic policy the following are useful considerations:

- whether the policy sets out an overarching direction or objective
- whether the policy seeks to shape the broad characteristics of development
- the scale at which the policy is intended to operate

- whether the policy sets a framework for decisions on how competing priorities should be balanced
- whether the policy sets a standard or other requirement that is essential to achieving the wider vision and aspirations in the Local Plan
- in the case of site allocations, whether bringing the site forward is central to achieving the vision and aspirations of the Local Plan
- whether the Local Plan identifies the policy as being strategic”

I have examined the Totnes Town Neighbourhood Plan and consider that, subject to modification, the plan is in general conformity with the Strategic Policies of the Development Plan and does meet the Basic Conditions in this respect.

4.12. Other Relevant Policy Considerations

4.12.1 European Convention on Human Rights (ECHR) and other European Union Obligations

As a ‘local plan’, the Neighbourhood Plan is required to take cognisance of the EU Strategic Environmental Assessment (SEA) Directive 2001/42/EC.

The draft plan was screened for Strategic Environmental Assessment (SEA) at Regulation 14 stage. Having taken all of the relevant policies of the draft Neighbourhood Plan into account and assessed the potential environmental impact on designated sites and landscapes, it was SHDC’s opinion that a full SEA was not required for the Totnes Neighbourhood Plan.

Following the drafting of Policy C12 an updated screening was carried out by SHDC, and the relevant Statutory Authorities were consulted. The conclusion of the screening process was that SEA was not required. The EA concurred with this conclusion. NE made the following comments:

Natural England agreed with this conclusion (that a SEA was not required).

"i. The objection from PCL Planning on behalf of Fastglobe Mastics Ltd does not alter our view that Policy C12 is not an allocation policy, it adds detail to allocation policy TTV22 in the JLP;

ii. The basis of their objection, with respect to the HRA process, is that the Neighbourhood Planning group have not submitted ecological surveys and will be unable to do so within the proposed timescale of the Examination. However, the requirement on the group is to provide "such information as the competent authority may reasonably require", and this doesn't necessarily mean ecological surveys, particularly in the context of a neighbourhood plan policy that isn't allocating development;

iii. I'm assuming that Policy TTV22 remains extant even though the CRtBO has lapsed, is this correct?

iv. Policy TTV2 was subject to the HRA undertaken for the JLP and which concluded no LSE (pre People Over Wind), the findings of the HRA are based on the CRtBO surveys and whilst up-to-date surveys will be needed at the project stage the findings of the JLP HRA should inform the project-level HRA;"

HE raised queries directly with Totnes Town Council regarding Heritage Impact. HE was concerned that the inclusion of a development threshold for live/work and other employment development could lead to overdevelopment as there was no upper limit to the area for development, only a minimum. It was agreed that a revision to the original text to say, 'no more than 6500m²' (which is under the area mentioned in the detail of the JLP policy) would resolve the issue.

However, in the light of my modification deleting Policy C12 these issues are not relevant and the conclusion of the original SEA screening stands.

This was resolved in the amendment of the original text of policy C12. Historic England (HE) raised concern about the original language in Policy C12:

c. live/work and other employment units with a development threshold of in excess of 5000m²'.

Habitats Regulations Assessment (HRA)

In May 2021, AECOM carried out an HRA screening on the Totnes NDP to comply with Regulation 105 of the Habitats Regulations 2017. Under these Regulations, a competent authority must consider whether a relevant plan is likely to have a significant effect on any European sites before deciding to give any consent, permission or other authorisation.

The conclusion of the report was as follows:

"All potential impact pathways could be screened out during the test of likely significant effects. This is largely due to the fact that the Neighbourhood Plan does not allocate any sites for development but confines itself to shaping the form and details of development that is consented in the parish. As such, there is no potential for likely significant effects on any European sites as a result of TNP policies and allocations. No Appropriate Assessment was required. There is no need for the TNP to include further policy and/or mitigation requirements to avoid impacts on the integrity of any European sites."

South Hams District Council, as the competent authority were satisfied with the report and its conclusion.

Natural England made the following comments:

"Natural England notes that the Habitats Regulations Assessment (HRA) has not been produced by your authority, but by a consultant on behalf of the qualifying body (Totnes Town Council). As competent authority, it is your responsibility to produce the HRA and be accountable for its conclusions. We provide the advice enclosed on the assumption that your authority intends to adopt this HRA to fulfil your duty as competent authority.

Para. 1.7 – the competent authority for this Neighbourhood Development Plan HRA is South Hams District Council rather than Devon Council.

Para. 4.2 – the Plan area is within 10km of the Lyme Bay and Torbay SAC and this site also has public access/disturbance identified as a pressure/threat in the Site Improvement Plan. For completeness, the SAC should be considered for screening.

Para. 5.1 – the assessment concludes that the Plan can be screened out from further stages of assessment because significant effects are unlikely to occur, either alone or in combination. On the basis of the information provided, Natural England concurs with this view. "

Prescribed Matters

Regulation 32 of the Neighbourhood Planning (General) Regulations 2012 (as amended) sets out a further basic condition for a Neighbourhood Development Plan in addition to those set out in the primary legislation. Being that:

- the making of the neighbourhood plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects). (See Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 (as amended) in relation to the examination of neighbourhood development plans.)

The Totnes NDP updated HRA Screening Opinion confirms that the Totnes NDP will not cause significant environmental effects on these areas.

I am satisfied with this conclusion.

4.12.2 Sustainable development

Paragraphs 7 to 14 of the NPPF (July 2021 as updated) identify the components of sustainable development, and how planning applications and local plans can meet these requirements.

The Basic Conditions Statement sets out how the neighbourhood plan addresses the requirement to achieve sustainable development.

My conclusion is that the principles of Sustainable Development required in the

NPPF have been taken into account in the development of the plan and its policies and where issues have been identified they were addressed by revisions to the document prior to submission. I am satisfied that the Totnes Town Neighbourhood Development Plan subject to the recommended modifications addresses the sustainability issues adequately.

Human Rights

The Neighbourhood Plan is required to take cognisance of the European Convention on Human Rights and to comply with the Human Rights Act 1998.

The Basic Conditions Statement states:

"The Totnes Neighbourhood Plan has regard to the fundamental rights and freedoms guaranteed under the European Convention on Human Rights and complies with the Human Rights Act 1998. The consultation process has aimed to include all sections of the community, including hard-to-reach and under-represented groups such as young people and the disabled, with local events in accessible locations and an effective digital presence."

Although there have been issues raised regarding the consultation process for policy C12 I am satisfied that the Totnes Town Neighbourhood Plan as modified has taken cognisance of the European Convention on Human Rights and complies with the Human Rights Act 1998.

I am therefore satisfied that the Totnes Town Neighbourhood Plan meets the basic conditions on EU obligations.

4.12.3 Excluded development

I am satisfied that the Totnes Town Neighbourhood Plan does not cover County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.

4.12.4 Development and use of land

I am satisfied that the Totnes NDP subject to modification covers development and

land use matters.

General Comments

Planning Guidance on preparing neighbourhood plans and policies is clear, it states:

“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.

Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements. Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.”

In order to provide clarity and to ensure that the policies in the Totnes Town Neighbourhood Plan meet the Basic Conditions it has been necessary for me to make modifications to a number of policies. This includes modifications where policies have sought to introduce controls outside the scope of the planning system or where existing policy already sets out the scope of control.

As I have found it necessary to modify a number of policies it may also be necessary to modify the supporting text within the plan to align with the modified policies, where this is necessary. The details of these modifications are set out within my comments on the related policies. My comments on policies are in **blue** with the modified policies in **red**.

4.13 The Neighbourhood Plan Vision, Strategic Aims and Policies

4.13.1 VISION Statement

As Totnes changes and develops over the coming decades its identity MUST not be lost. The town will continue to be a model of sustainability, innovation, inclusivity and creativity, becoming an even better place for residents of all ages, visitors and businesses.

Objectives

- a. Protect the distinctive historic character of Totnes and its many architecturally significant buildings, streets, squares, open spaces and the wider public realm for their vital importance to the identity and heritage of the town.
- b. Seek to ensure that all new housing developments, small or large, give priority to the needs of local people, with particular emphasis on social and affordable homes.
- c. Support community-led development and community asset ownership as ways of achieving sustainable development.
- d. Support and enhance the Totnes retail and service roles and the way they combine to create a place which is much more than just the sum of its physical attributes.
- e. Support and enhance the Totnes economic capability and its role as a visitor destination via the associated hospitality sector.
- f. Extend the strength, variety and distinctiveness which characterise the thriving local economy.
- g. Encourage and support 'green' and 'ethical' businesses and their local networks and clusters based on the existing strengths in this area of the town.
- h. Support the improvement of existing business space and expansion of new space to meet the needs of the local economy.
- i. Support and extend the Totnes pioneering approach to sustainable development and local resilience, seeking to reduce the environmental impacts of the town, and mitigate and adapt for climate change.

j. Seek to create a more sustainable transport network for Totnes and its hinterland via transport development which reduces the need for travel by independent vehicle and makes the best use of more sustainable modes of travel, directly reducing the adverse impact of vehicular traffic on the environment and health.

k. Enhance opportunities for open space and recreation facilities to be developed and contribute more to the community's active health and wellbeing.

l. Eliminate discrimination, advance equality of opportunity and advance good relations between those sharing protected characteristics and those who do not.

COMMENT

I am satisfied that the Totnes NDP vision and objectives were developed from the consultation process and that the policies within the plan reflect the vision and objectives.

4.13.2 TOTNES TOWN NEIGHBOURHOOD PLAN POLICIES

POLICY V1 – LOCAL IDENTITY

Support will be given to new development in Totnes which conserves and enhances the town and its reputation by:

a. respecting local distinctiveness and historic character in land use, scale, form and appearance;

b. stimulating innovation and creativity in design and practice;

c. enriching culture and community wellbeing by providing facilities, services or amenities of local value; and/or

d. enhancing sustainability by promoting low carbon travel, employing low energy use materials and construction techniques and incorporating renewable energy generation.

COMMENT

I have no comment on this policy.

POLICY V2: HEALTH AND WELLBEING

Support will be given to new development which results in benefits to local community health and wellbeing through:

- a. more opportunities for food to be grown and consumed locally;
- b. new housing options for those excluded from the market;
- c. new employment opportunities and raised job security and quality;
- d. increased access to public green spaces and the river;
- e. greater participation in culture, sport and recreation;
- f. safe, convenient, comfortable movement without recourse to a car; and/or
- g. equal accessibility and opportunity for all.

COMMENT

I have no comment on this policy.

POLICY En1: SUSTAINABLE DEVELOPMENT AND THE SETTLEMENT BOUNDARY

1. Within the settlement boundary development will only be permitted provided:
 - a. it will help to meet local needs or enhance local services and facilities;
 - b. it will make efficient use of the site in terms of layout, density and mix of uses;
 - c. its scale and character will be in keeping with the site and surroundings;
 - d. it will maintain or enhance local identity and distinctiveness; and
 - e. it will incorporate all reasonable measures to reduce adverse impacts and deliver

environmental benefits including improved access for all.

2. Outside the settlement boundary development will be permitted only where:

a. it meets the above criteria; and

b. it will meet a proven local need which is neither being nor likely to be met in the town and cannot reasonably be met inside the boundary.

3. In all cases development should be of a high design quality, respecting and complementing the site and its setting, being of sustainable construction, promoting sustainable lifestyles and incorporating the latest energy efficiency measures.

COMMENT

I have carefully considered the proposed settlement boundary and am satisfied that the process to establish the boundary was thorough and consistent.

Development in the countryside is covered by JLP Policy TTV26 and to avoid confusion it would be helpful to make reference to that policy. The decision-making authority for planning applications is the local planning authority and therefore the term "permitted" should be replaced with "supported". For clarity and to meet the Basic Conditions, the policy should be modified as follows:

POLICY En1: SUSTAINABLE DEVELOPMENT AND THE SETTLEMENT BOUNDARY

1. Within the settlement boundary development will only be supported in accordance with the development plan and where:

a. it will help to meet local needs or enhance local services and facilities;

b. it will make efficient use of the site in terms of layout, density and mix of uses;

c. its scale and character will be in keeping with the site and surroundings;

d. it will maintain or enhance local identity and distinctiveness; and

e. it will incorporate all reasonable measures to reduce adverse impacts and deliver environmental benefits including improved access for all.

2. Outside the settlement boundary development will be supported in accordance with the development plan where:

a. it meets the above criteria; and

b. it will meet a proven local need which is neither being nor likely to be met in the town and cannot reasonably be met inside the boundary.

3. In all cases development should be of a high design quality, respecting and complementing the site and its setting, being of sustainable construction, promoting sustainable lifestyles and incorporating the latest energy efficiency measures.

POLICY En2: DEVELOPMENT AND DESIGN

All new development should display a high quality of design by meeting the following criteria:

a. maintaining and where possible enhancing local distinctiveness;

b. respecting historic character and interest above and below ground;

c. being in scale and keeping with its site and setting, protecting the local landscape and important views;

d. using appropriate materials not only for buildings but also for boundaries;

e. including where possible and practicable enough garden space to enable food growing;

f. incorporating meters, bin storage and other such features inconspicuously and so as to avoid street clutter;

g. being safe, attractive, inclusive and accessible for all, reducing opportunities for crime and the fear of crime;

h. being of sustainable construction, promoting sustainable lifestyles and incorporating the latest water and energy efficiency measures;

i. reducing the need to travel, causing no unnecessary noise, light, air or other pollution, safeguarding against risks of contamination, erosion or flooding, and ensuring satisfactory surface water drainage including Sustainable Urban Drainage Schemes (SUDS); and

j. providing safeguards during and after construction to protect against environmental damage, local nuisance, unnecessary noise, light, air or other pollution.

COMMENT

I have no comment on this policy.

POLICY En3: HISTORIC AND BUILT CHARACTER

1. New development should:

a. respect the historic and built character of the town;

b. protect and where possible enhance heritage assets, both designated and non-designated; and

c. have regard to the Totnes Conservation Area Appraisal.

2. Good innovative design offering a fresh interpretation of local distinctiveness will be welcomed.

COMMENT

I have no comment on this policy.

POLICY En4 – LANDSCAPE SETTING OF TOTNES

1. New development should have no adverse impact on the landscape setting of Totnes or on its historic landscape features.
2. New building should not be of a height or mass to obscure important views shown on the Proposals Map, nor of a height to break the historic skyline.
3. New development should not damage but enhance the contribution the town makes to the landscape character of the wider area.

COMMENT

I have concerns in relation to this policy. Firstly, as I set out in my general comments, Planning Guidance on preparing neighbourhood plans and policies is clear, it states:

“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”

Assessing whether or not a development proposal has an "adverse impact" is subjective and is not sufficiently clear for a decision maker to apply consistently. For clarity the policy should be modified as follows:

POLICY En4 – LANDSCAPE SETTING OF TOTNES

- 1. New development should protect the landscape setting of Totnes and its historic landscape features in accordance with national policy and the development plan.**
- 2. New building should not be of a height or mass to obscure important views shown on the Proposals Map, nor of a height to break the historic skyline.**
- 3. New development should protect and where possible enhance the**

contribution the town makes to the landscape character of the wider area.

POLICY En5: THE RIVER DART

Development on or adjacent to the river should:

- a. conserve or improve local identity and the appearance of the riverside;
- b. maintain or enhance local biodiversity; and
- c. create increased opportunities for improved public access for all, leisure and community use.

COMMENT

The requirement for Biodiversity Net Gain is now part of national policy and this policy should reflect that requirement. For clarity and to meet the Basic Conditions, the policy should be modified as follows:

POLICY En5: THE RIVER DART

Development on or adjacent to the river should:

- a. conserve or improve local identity and the appearance of the riverside;**
- b. provide biodiversity net gain in accordance with national policy; and**
- c. create increased opportunities for improved public access for all, leisure and community use.**

POLICY En6: ENHANCING LOCAL ENVIRONMENTAL CAPACITY

Development of new dwellings, employment, commercial or community buildings should provide an overall enhancement in local environmental capacity commensurate with the scale of the development. This should be demonstrated in terms of the current and proposed environmental capacity of the site.

COMMENT

I have no comment on this policy.

POLICY En7: RENEWABLE ENERGY GENERATION

New development should incorporate and maximize opportunities for on-site renewable energy generation and storage which will not negatively impact on local built character, landscape or amenity. Solar gain, through the orientation of new buildings and solar panels on south facing roofs will be supported.

COMMENT

I have no comment on this policy.

POLICY En8: DOMESTIC AND SMALL-SCALE WASTE MANAGEMENT

New development should make provision for waste to be processed on site wherever possible. Support will be given to:

- a. on site processing of putrescible waste for small scale domestic, employment and community facilities;
- b. the provision of community composting facilities; and
- c. improvements to waste management and recycling, particularly in residential areas and the town centre.

COMMENT

I have no comment on this policy.

POLICY En9: LOCAL FOOD GROWING

New development, where appropriate, is encouraged to take full advantage of and enable on-site potential to grow food for those living on or visiting the site, including on all land not built on, within and on the outside of buildings, and in public spaces.

COMMENT

I have no comment on this policy.

POLICY E1: THE LOCAL ECONOMY

1. New employment and economic development should, without harming the town's social and environmental qualities:

- a. reinforce the local economy and the function of Totnes as a market town;
- b. enhance its reputation as a vibrant and distinctive place;
- c. enable innovation and diversification in the local economy, including the formation of clusters and networks of local enterprises; and
- d. enhance local employment opportunities and the trading experience of locals and visitors.

2. Businesses drawing on the town's distinctive character and identity will be particularly welcomed.

3. Development which will generate significant amounts of movement must be accompanied by a travel plan and transport assessment to demonstrate their acceptability.

COMMENT

I have no comment on this policy.

POLICY E2: EXISTING EMPLOYMENT LAND AND PREMISES

Existing employment land and premises will be safeguarded and kept available for such use unless it can be demonstrated that there is no reasonable prospect of their continued use for employment purposes.

COMMENT

I have no comment on this policy.

POLICY E3: THE TOWN CENTRE

1. Developments which promote the vitality, viability and retail health of the town centre area are encouraged and will be supported.
2. Proposals which reinforce the distinct character of Totnes as an independent market town focused on its historic centre will be particularly welcomed.
3. Within the town centre's primary shopping area, as defined in the JLP, ground floor space and shopping frontages should be retained predominantly in retail use.
4. Development which will maintain or enhance existing or new markets, community and arts events will be supported.
5. New development in the town centre will be required, where appropriate, to contribute, either through a Section 106 obligation or through CIL, towards the following priorities:
 - a. improved vehicle, bicycle and car parking provision;
 - b. enhancements to public squares and spaces and the public realm in general;
 - c. improvements to pedestrian safety and facilities;
 - d. improved signage, information and interpretation for visitors;
 - e. maintaining the offer for convenience and everyday goods;
 - f. support for local markets, community and arts events; and
 - g. monitoring and improving air quality.
6. Retail developments outside the town centre's primary shopping area will be resisted unless:
 - a. they are minor and ancillary to an established business, or
 - b. it can be demonstrated that there is an operational need for them to be so located,

there is no suitable central site available and they satisfy the requirements of the sequential test set out in the JLP.

COMMENT

The CIL priorities identified in POLICY E3: THE TOWN CENTRE do not form part of planning policy. They should be deleted from the policy but can be included in the supporting text for the policy.

POLICY E4: TRAINING AND EDUCATION

1. New development which will support the provision of local training and education and, where possible, enhances the distinct cultural offer of Totnes will be supported.
2. New development which will support the provision of vocational training to meet the needs of local employees, young people and those seeking work will be supported.

COMMENT

I have no comment on this policy.

POLICY E5: THE INDUSTRIAL ESTATE

1. New development increasing the amount and quality of industrial floor space on the industrial estate will be supported and must include adequate parking and servicing arrangements. Retail use will only be permitted where it is ancillary and subsidiary to the business.
2. Development should include improvements to the quality or function of the industrial estate wherever possible, including improved public transport, parking and pedestrian, cyclist and riverside access.

COMMENT

The decision-making authority for planning applications is the local planning authority and therefore the term "permitted" should be replaced with

"supported" in part 1. of this policy.

POLICY E6: THE GREEN ECONOMY

New development enabling the green economy in Totnes will be supported and encouraged. This includes development which enables circular economy, re-localisation, the local food economy, reducing waste, generating renewable energy, and social and community-supported enterprise.

COMMENT

I have no comment on this policy.

POLICY E7: SUSTAINABLE TRANSPORT

1. New development should be designed to reduce the likelihood of travel by car and support a more sustainable local transport network. This means that it should:

- a. prioritise walking and cycling as the most favoured modes of transport;
- b. prioritise public and community transport as the next most favoured modes of transport; and
- c. take all available and reasonable steps to reduce use of cars, local road congestion and air pollution.

2. Development which would prioritise travel by car will not be supported.

3. Development will be expected to contribute, either through on-site works or by way of a S106 agreement, towards whatever traffic and transport measures may be required to enable that development to be delivered and used sustainably. Such measures may include:

- a. green travel plans, information points and signposting;
- b. provision of safe and convenient footpaths, cycle lanes, cycle racks and storage;
- c. subsidising public and community transport;

- d. local collection points to support green deliveries; and
- e. provision of charging points for electric vehicles.

COMMENT

I have no comment on this policy.

POLICY E8: WALKING AND CYCLING

1. New development must be well connected to, maintain and seek to improve the functionality and quality of the walking and cycling network in and beyond the town.
2. Good connections to the walking and cycling network must be a design priority, taking up opportunities to improve freedom of use and road safety for pedestrians and cyclists.
3. Good provision for safe cycle storage, parking, charging and changing facilities for cyclists and motorcyclists should be designed into development proposals.

COMMENT

I have no comment on this policy.

POLICY E9: PUBLIC AND COMMUNITY TRANSPORT

New development should:

- a. maintain and improve the functionality and quality of the public and community transport network in the town;
 - b. incorporate good, safe connections to the public and community transport network as a design priority;
 - c. support the development of the railway station as a transport hub for train, bus and coach connections, with good, safe cycle and pedestrian routes and taxi facilities;
- and

d. promote car sharing.

COMMENT

I have no comment on this policy.

POLICY E10: CAR PARKING

1. Existing public car parking should be used and managed to best support the overall functional sustainability of the town. Where new development has impacts on public car parking these should be neutral or positive in terms of the overall functional sustainability of the town.

2. Development that would involve the loss of public car parking will not be permitted unless that loss is made up for elsewhere which will be of equal benefit to the overall functional sustainability of the town, or it can be demonstrated that the parking is no longer needed due to changes in vehicle use.

3. New development should meet its assessed needs for parking on site unless off site provision would be of greater overall benefit to the functional sustainability of the town and the development in question, and that off-site provision can be guaranteed as permanently available to the development.

4. Parking and charging facilities for electric vehicles, car club/pool vehicles and autonomous vehicles will be preferred to parking for normal private cars. Where new housing development can demonstrate a reduced need for parking due to the utilisation of car club/pool vehicles and autonomous vehicles this will be supported, provided that there are measures in place to support their use.

5. Provision for cycle and motorcycle storage, parking and EV charging should be provided wherever appropriate.

COMMENT

The decision-making authority for planning applications is the local planning authority and therefore the term "permitted" should be replaced with

"supported" in part 2. of this policy.

POLICY C1: THE PUBLIC REALM

1. New development should, wherever possible, make a positive contribution to the public realm, particularly within the historic core of the town, supporting Totnes' reputation as a cultural and tourist destination.
2. Design and layout should create public spaces and streets and spaces which are:
 - a. in character with the town;
 - b. safe and well connected;
 - c. accessible and inclusive;
 - d. uncluttered and easy to maintain; and
 - e. incorporate suitable materials, landscaping, planting, street furniture and surfaces.

COMMENT

I have no comment on this policy.

POLICY C2: PUBLIC OPEN SPACES

1. The open spaces, amenity spaces, growing spaces and civic spaces shown on the Proposals Map are protected and should be retained in their current use and enhanced to raise their usefulness as such. Only development associated with and which will enhance the value of their current use will be permitted.
2. Any loss of open space should be replaced by alternative provision which is of equal or greater value to the community and local environment.
3. New developments should include open space at least in accordance with adopted standards and provide for its long-term management and maintenance.
4. Where the need for open space cannot be met on site a commensurate

contribution towards provision of such open space elsewhere in the town should be made.

5. Open space provision should include:

- a. formal and informal spaces for leisure, sport, recreation and play;
- b. amenity green spaces, spaces for nature conservation and greenways; and
- c. growing spaces.

COMMENT

The protection for open space and recreation is set out in the NPPF 2021 as follows:

"Open space and recreation

98. Access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities and can deliver wider benefits for nature and support efforts to address climate change. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.

99. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use."

For clarity Policy C2 should be modified to reflect national policy:

POLICY C2: PUBLIC OPEN SPACES

1. The open spaces, amenity spaces, growing spaces and civic spaces shown on the Proposals Map are protected and should be retained in their current use, enhanced to raise their usefulness and should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

2. New developments should include open space at least in accordance with adopted standards and provide for its long-term management and maintenance.

3. Where the need for open space cannot be met on site a commensurate contribution towards provision of such open space elsewhere in the town should be made.

4. Open space provision should include:

a. formal and informal spaces for leisure, sport, recreation and play;

b. amenity green spaces, spaces for nature conservation and greenways; and

c. growing spaces.

POLICY C3: LOCAL GREEN SPACES

The following are designated as local green spaces:

1a-c. Totnes Cemetery, St Mary's and St John's Churchyards;

2a-d. Allotments at Kingsbridge Hill, Castle Meadow, Camomile Lawn, and Smithfields,

3. Borough Park;

4a-c. Leechwell, Heath and Lamb Gardens;

5a. Vire Island;

5b. The Chicken Run in Bridgetown;

5c. Follaton House Arboretum;

5d-e. Totnes Castle Grounds and meadow;

5f. Dedicated green spaces in new developments at Follaton Oak, Baltic Wharf and Camomile Lawn;

5g. Wetland adjacent to Brutus Bridge; and

6a-f. Play areas at Smithfields, Meadow Park, Westonfields Park, Higher Westonfields Loop, rear Follaton Community Hall and Collapark.

COMMENT

Representations received at Regulation 16 raised issues regarding how a footpath across Castle Meadow linking the allotments with Castle Street is referred to, specifically that this is not a public right of way. This issue should be clarified and corrected as necessary.

Paragraphs 99 of the NPPF 2021 states:

“Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.”

Local Green Space designation is a “restrictive and significant policy designation” equivalent to Green Belt designation. It is essential that, when allocating Local Green Space, plan-makers can clearly demonstrate that the requirements for its allocation are met in full.

The NPPF 2021 states:

“101. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs, and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated and be capable of enduring beyond the end of the plan period.

102. The Local Green Space designation should only be used where the green space is:

a) in reasonably close proximity to the community it serves;

b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance,

recreational value (including as a playing field), tranquility or richness of its wildlife; and

c) local in character and is not an extensive tract of land.

103. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.”

Given that the Framework is not ambiguous in stating that a Local Green Space designation is not (my emphasis) appropriate for most green areas or open space, it is entirely reasonable to expect compelling evidence to demonstrate that any such allocation meets national policy requirements.

In addition, Neighbourhood planning guidance states:

" Different types of designations are intended to achieve different purposes. If land is already protected by designation, then consideration should be given to whether any additional local benefit would be gained by designation as Local Green Space."

Importantly, sites which are subject to a statutory designation such as Historic Parks and Gardens or Scheduled Monuments are already subject to high levels of protection and would not benefit from an additional local designation. Likewise, sites which fall within the curtilage of a listed building or Conservation Area do not necessarily need additional protection under this policy as their importance and contribution to a settlement must already be considered if any application falls within or in the vicinity of these sites.

Paragraph 103 of the NPPF states that the policies for managing development within a Local Green Space should be consistent with those for Green Belts. Paragraphs 147-149 detail the policy framework for development affecting the Green Belt. Paragraph 147, in particular states:

“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”

Designation as a LGS does not preclude all development. It protects a designated site from inappropriate development except in very special circumstances. Paragraph 149 of the NPPF (2021) sets out what types of development would not (my emphasis) be considered inappropriate:

" 149. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

a) buildings for agriculture and forestry;

b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;

d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;

e) limited infilling in villages;

f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

– not have a greater impact on the openness of the Green Belt than the existing development; or

– not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to

meeting an identified affordable housing need within the area of the local planning authority.”

I have carefully considered the evidence put before me for the designations proposed. The decision to designate a particular site is a matter of planning balance and I have made my decision based on whether or not I consider the proposed designations meet the NPPF tests and I find that the proposed LGSs do meet the requirements of the NPPF.

POLICY C4: HOUSING

1. New housing development should address housing needs, particularly in terms of tenure and size, with priority given to meeting local housing needs.
2. Affordable homes should be included at least in line with adopted targets and arrangements should be made to ensure that they remain affordable in perpetuity.
3. Developments of 11 dwellings or more should include 75% one and two bedroom homes, for smaller developments (apart from single dwellings) the target is at least 50%.
4. New homes should be designed for sustainable living, incorporate carbon reduction and energy efficiency measures, minimise waste, complement their setting and enhance the locality. Incorporation of the latest energy efficiency measures and sustainable construction methods will be supported.

COMMENT

Policy DEV8 of the JLP Meeting local housing need in the Thriving Towns and Villages Policy Area sets out the strategic policy in relation to housing delivery. This policy states:

"The following provisions will apply:

- 1. A mix of housing sizes, types and tenure appropriate to the area and as supported by local housing evidence should be provided, to ensure that there**

is a range of housing, broadening choice and meeting specialist needs for existing and future residents. The most particular needs in the policy area are:

- i. Homes that redress an imbalance within the existing housing stock.
- ii. Housing suitable for households with specific need.
- iii. Dwellings most suited to younger people, working families and older people who wish to retain a sense of self-sufficiency."

i have not been provided with adequate evidence to support the requirement under 3. of this policy for:

"3. Developments of 11 dwellings or more should include 75% one and two bedroom homes, for smaller developments (apart from single dwellings) the target is at least 50%."

Whilst I acknowledge there is very likely to be a local need for smaller homes, the precise percentage and housing mix should be determined for any application in accordance with appropriate evidence. For clarity and to meet the Basic Conditions, the policy should be modified as follows:

POLICY C4: HOUSING

1. New housing development should address housing needs, particularly in terms of tenure and size, with priority given to meeting local housing needs.

2. Affordable homes should be included at least in line with adopted targets and arrangements should be made to ensure that they remain affordable in perpetuity.

3. New homes should be designed for sustainable living, incorporate carbon reduction and energy efficiency measures, minimise waste, complement their setting and enhance the locality. Incorporation of the latest energy efficiency measures and sustainable construction methods will be supported.

POLICY C5: SERVICES AND FACILITIES

New development is expected to maintain or enhance community services and facilities as a whole within the town. Proposals involving the loss of community services or facilities will not be permitted unless:

a. they are to be replaced with services or facilities of an equal or higher quality and value to the community on the same site, or another equally or better suited site within the town; or

b. the services or facilities can be demonstrated to be no longer needed or viable, and the proposed alternative use would provide equal or greater benefits to the local economy and community, including through contributions to development on other sites.

COMMENT

The decision-making authority for planning applications is the local planning authority and therefore the term "permitted" should be replaced with "supported" in the second sentence of this policy.

POLICY C6: NEW SERVICES AND FACILITIES

1. The provision of new services and facilities which will improve the breadth, depth and distinctiveness of the overall provision of services and facilities in the town will be welcomed.

2. Provision of new 'everyday' services and facilities in areas of the town where these are lacking will be particularly welcomed.

COMMENT

I have no comment on this policy.

POLICY C7: EDUCATIONAL IMPROVEMENT AT KEVICC

Proposals for the rationalisation and upgrading of secondary educational facilities on land currently occupied by KEVICC will be supported providing they:

- a. make appropriate provision to at least maintain and where possible or enhance community use of sports, leisure and arts/cultural facilities;
- b. adopt appropriate measures to minimise the impact of traffic through provision for sustainable travel by staff, pupils and visitors; and
- c. are part of a holistic approach to the whole site.

COMMENT

I have no comment on this policy.

POLICY C8: DEVELOPMENT OF LAND AT KEVICC AS IDENTIFIED IN THE JLP

Residential development will be supported on land no longer required for educational or recreational purposes at KEVICC providing it:

- a. is pursued through widespread inclusive community consultation which encompasses all of the KEVICC site and the Sheepfield;
- b. is demonstrated how the proposals will facilitate the upgrading of the school facilities and can be integrated satisfactorily with the school; and
- c. will contribute to the broader objectives of the NP, particularly for continuous riverside access and associated community facilities.

COMMENT

There are requirements for consultation on proposals affecting schools which fall outside the control of the planning system and whilst good community consultation on planning proposals is supported and encouraged through national policy it is not an absolute requirement. Elements of this policy repeat requirements set out in JLP Policy TTV20. For clarity and to meet the Basic Conditions, the policy should be modified as follows:

POLICY C8: DEVELOPMENT OF LAND AT KEVICC

Residential development will be supported on land at KEVICC in accordance with Policy TTV20 of the JLP and Paragraph 99 of the NPPF 2021.

Widespread inclusive community consultation which encompasses all of the KEVICC site and the Sheepfield is encouraged.

POLICY C9: STEAMER QUAY

At Steamer Quay only leisure or river related development will be supported, providing it has no adverse impact on the South Hams Special Area of Conservation's population of greater horseshoe bats. Any such development must:

- a. maintain or enhance leisure and river related facilities and activities on the site;
- b. maintain or enhance existing services, uses, facilities, public areas and rights of way;
- c. is pursued through widespread inclusive community consultation;
- d. not harm the character, amenity, wellbeing, historic, environmental, nature conversation or archaeological values of the area and its surroundings;
- e. respect the site's scenic quality and distinctive sense of place and the setting of the adjacent Conservation Area; and
- f. adopt a high standard of design reflecting the prominence of the location and enhancing the riverside scene.

COMMENT

Whilst the NPPF 2021 is supportive of community involvement and consultation it is not an absolute requirement for the positive support of a planning application. For clarity and to meet the Basic Conditions, the policy should be modified as follows:

POLICY C9: STEAMER QUAY

At Steamer Quay only leisure or river related development will be supported, providing it has no adverse impact on the South Hams Special Area of Conservation's population of greater horseshoe bats and where they:

a. maintain or enhance leisure and river related facilities and activities on the site;

b. maintain or enhance existing services, uses, facilities, public areas and rights of way;

c. do not harm the character, amenity, wellbeing, historic, environmental, nature conversation or archaeological values of the area and its surroundings;

d. respect the site's scenic quality and distinctive sense of place and the setting of the adjacent Conservation Area; and

e. adopt a high standard of design reflecting the prominence of the location and enhancing the riverside scene.

Widespread, inclusive community consultation in developing proposals is encouraged.

POLICY C10: MARKET SQUARE AND CIVIC HALL

Proposals for positive change to the Market Square and Civic Hall will be supported providing they will:

a. be pursued through widespread inclusive community consultation;

b. support and complement the economic and social functioning of Totnes town centre;

c. ensure continuity of market operations;

d. at least maintain the number of trading pitches available;

e. at least maintain current levels of town centre parking; and

f. reflect the sensitive historic nature of the location.

COMMENT

Whilst the NPPF 2021 is supportive of community involvement and consultation it is not an absolute requirement for the positive support of a planning application. For clarity and to meet the Basic Conditions, the policy should be modified as follows:

POLICY C10: MARKET SQUARE AND CIVIC HALL

Proposals for positive change to the Market Square and Civic Hall will be supported where they:

- a. support and complement the economic and social functioning of Totnes town centre;**
- b. ensure continuity of market operations;**
- c. as a minimum, maintain the number of trading pitches available;**
- d. as a minimum, maintain current levels of town centre parking; and**
- e. reflect the sensitive historic nature of the location.**

Widespread, inclusive community consultation in developing proposals is encouraged.

POLICY C11: TOWN CENTRE CAR PARKS

Proposals for redevelopment of any land currently used for town centre car parking (Victoria Street, Heath's Nursery, North Street, the Lamb, Heath Way and the Nursery) will only be supported providing it:

- a. is pursued through widespread inclusive community consultation;
- b. at least maintains the current levels of parking with sufficient resident and visitor car parking within easy walking distance of the town centre;

- c. makes provision for the introduction of electric cars and car sharing technologies;
- d. enhances the visual appearance of town centre parking through the introduction of hard and soft landscaping; such as permeable surfaces, tree planting and flower beds;
- e. respects local amenity, especially for neighbours; and
- f. contributes to the vitality, viability and functioning of the town centre.

COMMENT

Whilst the NPPF 2021 is supportive of community involvement and consultation it is not an absolute requirement for the positive support of a planning application. For clarity and to meet the Basic Conditions, the policy should be modified as follows:

POLICY C11: TOWN CENTRE CAR PARKS

Proposals for redevelopment of any land currently used for town centre car parking (Victoria Street, Heath's Nursery, North Street, the Lamb, Heath Way and the Nursery) will only be supported where:

- a. the current levels of parking are maintained with sufficient resident and visitor car parking within easy walking distance of the town centre;**
- b. there is provision for the introduction of electric car and car sharing technologies;**
- c. the visual appearance of town centre parking is enhanced through the introduction of hard and soft landscaping; such as permeable surfaces, tree planting and flower beds;**
- e. local amenity, especially for neighbours is respected; and**
- f. it contributes to the vitality, viability and functioning of the town centre.**

Widespread, inclusive community consultation in developing proposals is encouraged.

POLICY C12: FORMER DAIRY CREST SITE

The Plan supports improvements to the former Dairy Crest site which develop further the aims of JLP Spatial Policy SP6 and Policy TTV 22.

The improvements and qualities include:

- a. restoration and reuse of the listed Brunel Building for community and public use;
- b. mixed use development to meet local housing need, sustainable businesses and increase employment opportunities;
- c. live/work and other employment units with a development threshold of no more than 6500m² to 25000 m²;
- d. a sustainable transport hub for non-fossil fuel modes of transport;
- e. on site low carbon energy centre with the most appropriate technologies;
- f. low cost, low energy hotel development with approximately 60 beds;
- g. homes in the order of 60 plus units addressing local needs;
- h. appropriate flood risk mitigation and management measures (including improvements to the leat to protect existing development downstream);
- i. the wildlife corridor that follows the river Dart and associated natural habitat heritage assets are fully respected, protected and enhanced;
- j. overall enhancement of the public realm while retaining the existing links.

A development brief expanding on the above qualities is included in Appendix E. All redevelopment of the former Dairy Crest site should respect this brief. The area covered by this policy is illustrated in Figure 3.

Re-development of the former Dairy Crest site should be subject to a comprehensive survey of the existing heritage assets and associated natural habitat assets and must avoid harm to these assets and protect and enhance the natural and built historic environment as set out in national and local policy. All proposals must also address the level 3 flood risks, the Sequential Test must first be successfully applied. The Exception Test may also need to be applied for certain components of the proposed redevelopment.

COMMENT

Having examined this policy, the accompanying development brief and representations submitted I concluded that I would hold a hearing. The Hearing held on Tuesday 6 September at the Guildhall, Totnes enabled me to explore the issues raised through representation in relation to this policy. The purpose of the hearing was to ask questions in relation to Policy C12 Former Dairy Crest Site, and to assist understanding on matters of procedure, the reason for its inclusion after the Regulation 14 stage, and whether Policy C12 meets the Basic Conditions with regard to strategic policy in the JLP, Habitats Regulations Assessment and Human Rights criteria or could be modified to do so. The full transcript of the Hearing is available to read on the SHDC website. The participants were given the opportunity to clarify issues raised by their representations and to explore whether there was an opportunity for the parties to reach agreement on a way forward, including a possible policy modification.

The two main issues considered in relation to this policy and the associated design brief were:

1. Did the process carried out by the Town Council to introduce Policy C12 and associated development brief, meet the legal requirements?

2. Does Policy C12 meet the Basic Conditions, or could it do so by modification?

1. The process.

To understand the process followed it is important to understand the chronology of events. The Totnes Neighbourhood Development Plan was initially submitted under Regulation 15 in 2021 and Regulation 16 consultation was undertaken between 28 June 2021 and 22 August 2021, and I was appointed to examine the Plan in September 2021. Totnes Town Council became aware that the Community Right to Build Order that had been in place for the former Dairy Crest site had lapsed. At that point the Town Council became concerned that with the lapse of the Community Right to Build Order there was no policy in the TNDP reflecting or addressing the community's aspirations for the site. The Town Council made the decision to draft a policy for the site and go through a process of additional consultation equivalent to a Regulation 16 consultation process, run by Totnes Town Council rather than SHDC, but supported by them. On the 7 October 2021 (and before I had commenced my examination) Totnes Town Council wrote to me requesting that the examination be paused for up to four months to give the opportunity for this additional consultation to take place. This effectively resulted in a rerun of the Regulation 16 policy focused on the draft policy. This consultation period ran from 18 October to 28 November 2021. Following the end of the additional 6-week consultation period I commenced my examination.

In addition, SHDC were approached regarding a rescreening of the plan for SEA and HRA to reflect the inclusion of the former Dairy Crest site within the Plan.

The concerns raised in connection with this process can be summarised as follows:

1. That the process of inclusion of Policy C12 was flawed:

- Incorporation of Policy C12 and Appendix E into the Draft NP would not comply with reg. 14 of the Neighbourhood Planning (General) Regulations 2012 ("the 2012 Regulations")
- incorporation of Policy C12 and Appendix E into the Draft NP would not comply with reg. 15 of the 2012 Regulations:

- incorporation of Policy C12 and Appendix E into the Draft NP would not comply with reg. 106 of the Conservation of the Habitats and Species Regulations 2017 ("the Habitats Regulations") and it is not possible in present circumstances for the Council to comply with reg. 105 of the Habitats Regulations, para. 1 of Sch. 2 to the 2012 Regulations and para. 8(2)(g) of Sch. 4B TCPA 1990.

MY response to the issues raised in connection with process and compliance with the legal requirements are as follows:

The Neighbourhood Planning process is an iterative one, which responds to consultation outcomes and changes in circumstance. Most neighbourhood plans are modified between Regulation 14 and examination. This can be very minor changes but is often more substantive. I see nothing in `Regulation 14 that precludes changes occurring and indeed it could be argued that the additional consultation at Regulation 16 is specifically there to enable statutory consultees and the wider community to make comment prior to examination and ultimately a referendum should a plan reach that stage.

It is clear that there was considerable support within the community for the Community Right to Build Order and it is not unreasonable to conclude that had the community been aware, at an earlier date that this had lapsed, Policy C12 (or a version of it) would have been included in the Regulation 14 version of the Plan.

I cannot see how any prejudice has arisen from the process in connection with Regulation 14.

TTC did submit the necessary documents in compliance with Regulation 15 and sought to address the policy gap for the site in a reasonable and pragmatic way, in discussion with SHDC. I believe that there has been a mixing of issues in relation to the inclusion of the policy and a misunderstanding of the process of examination in terms of the scope of policy modification, in particular. I do not consider that anyone has been prejudiced by the process, in terms of natural justice. I have however concluded that there is sufficient

uncertainty around the compliance of the process with the relevant Regulations to make the likelihood of the Plan proceeding to referendum unlikely and in agreement with Totnes Town Council recommend deletion of Policy C12 and the associated development brief from the Plan.

In addition, PCL Planning on behalf of Fast Globe raised the issue that they had not been consulted directly in connection with the inclusion of Policy C12 and were therefore disadvantaged in some way. However, it is clear that the landowners were aware of the proposed policy inclusion and additional consultation, making written representation. Whilst it is strongly advised and good practice for a neighbourhood plan group to engage with any landowners affected by policies within a neighbourhood plan there is no requirement to do so. It is unfortunate that the Town Council did not engage directly with the landowners as there may have been an opportunity to advance the community's aspirations for the site however, I am satisfied that the landowners were not disadvantaged in this instance.

2. That the content of Policy C12 and the associated development brief does not meet the Basic Conditions.

- the incorporation of Policy C12 and Appendix E into the Draft NP will prevent compliance with the basic conditions, specifically para. 8(2)(a) of Sch. 4B TCPA 1990;
- the incorporation of Policy C12 and Appendix E into the Draft NP will prevent compliance with the basic conditions, specifically para. 8(2)(d) of Sch. 4B TCPA 1990;
- the incorporation of Policy C12 and Appendix E into the Draft NP will prevent compliance with the basic conditions, specifically para. 8(2)(e) of Sch. 4B TCPA 1990.

My response to the issues raised in connection with meeting the Basic Conditions is as follows:

I agree that without modification, Policy C12 would fail to meet the Basic Conditions on a number of issues. I do not agree that a policy for the site, that

would meet the Basic Conditions couldn't be arrived at through the scope of modification available to an examiner.

There was a rescreening of the Plan for SEA and HRA including Policy C12, and the conclusion was that an SEA and Appropriate Assessment was not required. The Statutory Consultees agreed with this conclusion with the exception of HE who raised some concerns regarding heritage impact. The consultation comment from HE concluded with the following sentence:

“An alternative approach, and perhaps more attractive expedient given the advanced status of the Plan, may be to remove from the policy the additional development quantum if evidence for it doesn't exist.” The Town Council addressed this concern in a revision to the policy.

There is an existing strategic policy within the JLP which includes criteria for the development of the site, JLP Policy TTV22. The relevance of this policy and how it relates to Policy C12, and the development of the Former Dairy Crest site was discussed at the Hearing. I am satisfied that Policy does set out criteria for shaping development of the site and that with modification, Policy C12 could be in general conformity with that policy. There was also discussion as to whether or not JLP Policy TTV22 is out of date following the lapse of the Community Right to Build Order. I accept that reference to the Community Right to Build Order in this policy is no longer relevant however I consider that the remainder of the policy would still be relevant to the consideration of any proposal.

I am clear that the policy as submitted does not meet the Basic Conditions, it is overly prescriptive and would not have regard for national policy and guidance or be in general conformity with strategic policy TTV22 of the JLP.

However, I do not agree that the policy could not be modified to meet the Basic Conditions. Responding to my request to the parties for a suggested modification to the policy post Hearing, the Town Council proposed the following modification to the policy and supporting text:

"Former Dairy Crest Site

The former Dairy Crest site is designated for 'Mixed use - including 62 new homes and a range of business, commercial and community uses' in policy TTV22 of the Joint Local Plan. 62 homes are identified as the estimated provision of housing.

The Community Right to Build Order for the site has now lapsed and therefore a separate grant of planning permission is now needed for redevelopment of the site.

The site is of strategic importance to Totnes, being adjacent to the railway station, bounded by the river Dart and close to existing housing and employment development. This is why TTV22 focuses on mixed use, maximising benefits for the local community, economy and environment. Specific material considerations also identified in TTV22 are:

- Appropriate flood risk mitigation measures (including improvements to the leat to protect existing development downstream)
- Remediation of contaminated land
- Habitat enhancement
- Sensitive and high-quality design which integrates with the existing area and the setting of nearby heritage assets.

Whilst the Community Right to Build Order has lapsed the placemaking principles it was founded on remain relevant to the redevelopment of the site. This plan carries them forward, recognising that what may now be achievable on the site may differ from the detail contained in the Community Right to Build Order. The strategic significance of the site, that it will be comprehensively redeveloped, and its potential to contribute to the promotion of low carbon transport, create an important opportunity for the site to be one of Totnes's exemplars of sustainable development.

Policy C12: Former Dairy Crest Site

Mixed-use redevelopment of the former Dairy Crest site for a range of business, commercial and community uses will be supported.

Flood risk mitigation measures (including improvements to the leat) must be included to both protect development on the site from flooding and reduce the risk of flooding elsewhere in Totnes. Works necessary for flood risk mitigation must maximise the developable area of the site.

Any such development must satisfy the following requirements:

Masterplan

Redevelopment of the site will be in accordance with a site-wide masterplan for mixed use of the site, addressing the following:

- a) Enhancement of biodiversity and habitats for the site as a whole and ecological connectivity with surrounding habitats including the ecological corridor of the River Dart and the South Hams Special Area of Conservation.**
- b) High standards of design to:**
 - i. Create a strong sense of place within the site and around the Brunel Building and the railway station**
 - ii. Enhance the contribution the site makes to the character and quality of development of the town as a whole and integrate with the existing area**
 - iii. Enhance the setting of the Brunel Building, Totnes Signal Box, and local non-designated heritage assets**
- c) Provision of 62 homes, including live-work units, to meet local needs, including affordable housing in accordance with the other policies of this plan**
- d) Provision of small units for commercial use to the maximum extent possible whilst meeting the other requirements of this policy, to:**
 - i. Meet the needs of the local economy**

- ii. **Make best use of strategic functions of the site**
- iii. **Be in keeping with the design approach required above**
- e) **Restoration and reuse of the Brunel Building for community and public use.**

Other Priorities

Where possible, existing rights of way adjacent to the site will be enhanced, including National Cycle Route 2, and new routes created within the site for pedestrians and cyclists, and access to open and green space increased.

Opportunities for promoting low carbon travel, employing low energy use materials and construction techniques, and incorporating renewable energy generation will be maximised across the site."

Whilst this modification does go some way to addressing my concerns, it would, in my opinion require further modification to meet the Basic Conditions.

Whilst all parties to the Hearing were invited to provide a suggested modification to the policy, I only received a suggested modification from Totnes Town Council. It is my hope that in the future the parties can work together to find an agreed solution for the site which will address the aspirations of the community and the reasonable commercial expectations of the owner in a mutually beneficial way.

I have considered the representations made in connection with this policy, both in writing and at the Hearing. I have concluded that there is sufficient uncertainty with regard to whether or not the process followed for the inclusion of both Policy C12, and the accompanying design brief meet the regulations and should therefore be deleted from the Plan.

However, due to the evident importance of the site to the community, text relating to the site and the community's aspirations for it can be included in

the body of the Plan as follows (I suggest that this text is most appropriately located within the Town Centre section of the plan at paragraph 5.2.6):

Former Dairy Crest Site

5.2.6 The former Dairy Crest site is allocated for 'Mixed use - including 62 new homes and a range of business, commercial and community uses' in policy TTV22 (5) of the Joint Local Plan. The figure of 62 homes is an estimate of the potential housing provision.

The Community Right to Build Order for the site has now lapsed and therefore a separate grant of planning permission will be needed for redevelopment of the site. Whilst the Community Right to Build Order has lapsed the placemaking principles it was founded on remain relevant to the redevelopment of the site. This plan carries them forward, recognising that what may now be achievable on the site may differ from the detail contained in the Community Right to Build Order as a result of policy, site and viability constraints.

The site is of strategic importance to Totnes, being adjacent to the railway station, bounded by the river Dart and close to existing housing and employment development. This is why TTV22(5) focuses on mixed use, maximising benefits for the local community, economy and environment and the community have aspirations to see the site contribute to the promotion of low carbon transport and create an important opportunity for the to be one of Totnes's exemplars of sustainable development.

Specific material considerations also identified in TTV22 are:

- Appropriate flood risk mitigation measures (including improvements to the leat to protect existing development downstream)**
- Remediation of contaminated land**
- Habitat enhancement**

- **Sensitive and high-quality design which integrates with the existing area and the setting of nearby heritage assets.**

Also, alongside any progress made through working with the landowner there is the opportunity to review the plan in the future and include a policy relating to the site.

SECTION 5

Conclusion and Recommendations

1. I find that the Totnes Town Neighbourhood Plan has been prepared in accordance with the statutory requirements and processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012.
2. The Neighbourhood Plan does not deal with County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.
3. The Totnes Town Neighbourhood Plan does not relate to more than one Neighbourhood Area and there are no other Neighbourhood Plans in place within the Neighbourhood Area.
4. The Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) screening, meet the EU Obligation.
5. The policies and plans in the Totnes Town Neighbourhood Plan, subject to the recommended modifications would contribute to achieving sustainable development. They have regard to national policy and to guidance, and generally conform to the strategic policies of the Development Plan. At the time of my examination, the development plan for the area is the Plymouth and South West Devon Joint Local Plan (the JLP), adopted in March 2019.
6. I therefore conclude that the Totnes Town Neighbourhood Plan subject to the recommended modifications can proceed to Referendum.

Deborah McCann BSc MRICS MRTPI Dip Arch Con Dip LD

Planning Consultant

NPIERS Examiner

CEDR accredited mediator

15 May 2023

