

# PAIGNTON NEIGHBOURHOOD FORUM

- Clifton with Maidenway.
- Collaton St Mary.
- Goodrington with Roselands.
- Kings Ash.
- Preston.
- Roundham with Hyde.
- and Hookhills, part of Churston with Galmpton



## **Response by Paignton Neighbourhood Forum to the “Changes to the Current Planning System” Consultation. (Due 11:45 p.m., 1 October 2020)**

### **Preamble**

Thank you for the opportunity to comment on the proposed Changes to the current planning system document. These comments relate solely to the “Changes to the Current Planning System” consultation document.

We have serious concerns about the proposals in the consultation document at detailed levels and more generally. The planning system is a function of law, as debated and decided by Parliament; it should not be changed in fundamental ways without Parliamentary action. There is a statutory basis for Local Development Plans and Neighbourhood Development Plans and these should not be overridden through guidance or ministerial actions.

Paignton has a Neighbourhood Development Plan, as do the other two areas in the Torbay unitary authority. These plans are an important part of the planning system as defined by the Localism Act (2011) and other relevant legislation and regulations. Our plans were developed through the substantial and sustained efforts of volunteers in our community and were overwhelmingly endorsed by voters. They represent a substantial investment by our community in the interests of our community.

The proposals in Changes to the Current Planning System will, if brought in, have far reaching consequences for local areas but will be introduced through changes to guidance, Ministerial Statements and secondary legislation. Their effect, combined with recent changes to permitted development and use classes, will be to reduce local authorities and forums’ powers to make meaningful decisions about their areas. Moreover the extensive use of guidance, ministerial statements and secondary legislation is likely to increase uncertainty and result in further judicial challenges, either of the proposals themselves, or on planning decisions based on them.

### ***Consultation Questions***

#### ***The standard method for assessing housing numbers in strategic plans***

*Q1: Do you agree that planning practice guidance should be amended to specify that the appropriate baseline for the standard method is whichever is the higher of the level of 0.5% of housing stock in each local authority area OR the latest household projections averaged over a 10-year period?*

First, the standard methodology is often presented as though it was law. It is important to emphasize at every step along the way that it the standard methodology is guidance only.

Second, revisions to the standard methodology should be postponed until they can be reintroduced in a fully considered form through Primary Legislation following the

White Paper. The House of Lords Committee on Secondary legislation has recently expressed concerns about the excessive use of secondary legislation in the planning system given the far reaching effects of PD changes. The same must apply to changes to the Standard Methodology, which will have a huge impact on the local areas and could be introduced by non-statutory guidance, and with very little scrutiny.

The use of a top down standard methodology to set minimum local housing levels reintroduces “. . . a terrible, expensive, time-consuming way to impose house building and worst of all threatened the destruction of the green belt....(Regional Strategies) were a national disaster that robbed local people of their democratic voice, alienating them and entrenching opposition against new development”. (former Secretary of State, Eric Pickles in a speech dated 6 July 2010)

Top down targets, in the guise of a standard methodology for calculating housing need, will have a similar effect. Where, such as in Torbay, Neighbourhood Forums have gone to great efforts to prepare neighbourhood development plans, these are at risk of being overturned by a top down housing need methodology that ignores the careful plan making that has taken place at a local level.

These minimum housing targets have already, in our area, led to requirements for additional housing resulting in a disregard of the lack of necessary infrastructure to support the additional population. The inadequacy of the highways, sewage handling capability, health resources and educational resources are all recognized by the village Masterplan, the Neighbourhood Plan and the Local Plan, but all are overridden by the top-down targets imposed on our area.

Environmental and infrastructure constraints are neglected in the existing and proposed standard methodology. Area like ours with protected coastlines and environmentally protected areas have no hope of meeting the minimum requirements without causing serious environmental damage. The Duty to Cooperate is not adequate: Increasing the demand for housing in neighbouring areas is not a sensible approach. What is logical and reasonable is to include consideration of these constraints in determining the requirement for additional housing.

### **Comments on the proposed revised standard methodology.**

Household Projections based on two years' (migration) data are not acceptable. ONS projections are inherently models based on assumptions and are not always accurate, especially with the underlying data base is insufficient.

*Q2: In the stock element of the baseline, do you agree that 0.5% of existing stock for the standard method is appropriate? If not, please explain why.*

As above, existing stock is not an indicator of need per se. There may be an argument that settlements need to grow by a certain % to maintain vitality and opportunities for local people, and that larger settlements may have the facilities needed to sustain future growth. But the figure of 0.5% needs further justification. Such a consideration is part of a wider “requirement” assessment rather than a narrow “need” consideration.

The standard methodology must include consideration of infrastructure capacity and environmental constraint.

*Q3: Do you agree that using the workplace-based median house price to median earnings ratio from the most recent year for which data is available to adjust the standard method's baseline is appropriate? If not, please explain why.*

We absolutely do not agree with the use of the workplace-based median house price to median earnings ratio. The Office for National Statistics also does not agree (Research Output: Alternative measures of housing affordability: financial year ending 2018, published 19 March 2020). The ONS report on calculating housing affordability makes several valid points. We object to the current limited, inadequate approach to identifying housing need,

The use of median workplace earnings of individuals is completely inadequate. Household income would be more appropriate because:

- It includes sources of income other than workplace earnings, including pensions, benefits, and sources of unearned income.
- Household income is typically the basis for determining how much can be afforded for housing costs – not individual workplace earnings.

The use of median house price is also inadequate. Many people rent, often by choice, but rental prices are not considered. It is not reasonable to base a model on the assumption that everyone will purchase their home.

Income in an area is important and can be the limiting factor. Developers will not build houses if the houses will not sell at the prices they set. Areas with low household incomes will inevitably have a high ratio of house price to income. In areas with low-income households the present approach will require approval for the building of more houses, but the developers, having received approval, will not build the houses because they will not be saleable at the developers' price. Therefore house prices will not drop to become affordable, but developers will hold land to ransom. Where incomes are low, better and more employment is necessary to make houses more affordable. In our own area, house prices have not risen in line with surrounding areas because incomes are low.

Finally – the medians do not describe the population. Rather than relying on medians alone, better understanding and decisions can be made if deciles are considered. The recent ONS report highlights the importance of considering housing affordability (rental and purchase) for people in the lower, middle and higher deciles. Medians alone do not provide an adequate basis for reasonable conclusions about housing affordability.

*Q4: Do you agree that incorporating an adjustment for the change of affordability over 10 years is a positive way to look at whether affordability has improved? If not, please explain why.*

As noted above, affordability needs to be considered in terms of household incomes and house prices – not merely the ratio between the two. Where household incomes are low, developers will not build housing that is affordable to the population. Analysis of affordability can be improved in many ways; the ONS have made a reasonable start in that direction.

*Q5: Do you agree that affordability is given an appropriate weighting within the standard method? If not, please explain why.*

A valid and useful assessment of affordability, alongside consideration of the contributing factors (Low incomes? Or high house prices? Or limited capacity for development?), should be given considerable weight. Where infrastructure and environmental considerations allow for building more houses and area incomes are sufficient to afford houses at the prices that developers will charge, then a method should call for additional housing.

A measure of affordability can only be useful when considered alongside many other, important factors

As a market signal (which is the main context of this question), the ratio of house prices to earnings oversimplifies the highly complex and imperfect nature of the housing market. High house prices to earnings ratios reflect a myriad of factors including:

- The cost and availability of mortgage finance and other sources of money.
- Housebuilders' ability to ration supply to avoid reductions in house prices, (or pursue other strategies such as build at a rate that keeps the core work force employed without increasing marginal costs by taking on additional capacity).
- The lag between market signals and housing completions (Housing is a classic "Hog cycle" model).
- Housing supply is oligopolistic in its nature, being dominated by a small number of volume housebuilders, which again results in imperfect market conditions.

Most importantly "affordability" does not address an area's capacity to meet that need. A more rounded concept of housing requirements should be developed that considers infrastructure capacity, environmental constraints and community aspirations. This should be developed through primary legislation.

*Q6: Authorities which are already at the second stage of the strategic plan consultation process (Regulation 19), which should be given 6 months to submit their plan to the Planning Inspectorate for examination?*

*Q7: Authorities close to publishing their second stage consultation (Regulation 19), which should be given 3 months from the publication date of the revised guidance to publish their Regulation 19 plan, and a further 6 months to submit their plan to the Planning Inspectorate?*

*If not, please explain why. Are there particular circumstances which need to be catered for?*

Q6 and Q7 No specific comment. As noted above the concept of standard methodology local housing need should wait for the development of White Paper proposals for a more rounded "requirement" methodology that considers constraints as well as demand.

In the interim the PPG should be amended to indicate that it is guidance and not the law, and that LPAs and Inspectors can deviate from should there be sound planning reasons to do so (not just exceptional reasons).

The additional protection given to Neighbourhood Plans currently in paragraph 14 of the NPPF should be extended to five years from date of the Plan coming into force, and so long as the Neighbourhood Development Plan allocates sufficient housing to meet the need identified for that NP area in the Local Plan. .

## Delivering First Homes

Q8: The Government is proposing policy compliant planning applications will deliver a minimum of 25% of onsite affordable housing as First Homes, and a minimum of 25% of offsite contributions towards First Homes where appropriate. Which do you think is the most appropriate option for the remaining 75% of affordable housing secured through developer contributions? Please provide reasons and / or evidence for your views (if possible):

i) Prioritising the replacement of affordable home ownership tenures, and delivering rental tenures in the ratio set out in the local plan policy.

ii) Negotiation between a local authority and developer.

iii) Other (please specify)

With regards to current exemptions from delivery of affordable home ownership products:

The most pressing need in many local authority areas is for affordable housing for rent, particularly to meet local needs and key workers. Whilst it is recognised that increasing affordable home ownership is a longstanding government objective; this should avoid squeezing out other tenures of housing.

Neighbourhood Plans may have set their own targets for affordable home tenures or local need, and such policies should be respected.

Accordingly local authorities should retain the ability to determine the tenure of the remaining 75% of affordable housing not required to be delivered as first homes, (rather than other tenures being reduced on a pro-rata basis). Under planning law the remainder of affordable housing would need to be allocated according to development plan policy (option i), although other factors such as viability negotiations inevitably influence the final affordability level and tenure mix.

Q9: Should the existing exemptions from the requirement for affordable home ownership products (e.g. for build to rent) also apply to apply to this First Homes requirement?

No comment

Q10: Are any existing exemptions not required? If not, please set out which exemptions and why.

No comment

Q11: Are any other exemptions needed? If so, please provide reasons and /or evidence for your views.

The phrasing “. . . unless this would . . . significantly prejudice the ability to meet the identified affordable housing needs of specific groups” (paragraph 64 of the NPPF) should be retained to maintain a degree of local flexibility. .

Q12: Do you agree with the proposed approach to transitional arrangements set out above?

The inclusion of transitional arrangements is supported. 12 months rather than the proposed 6 months would be more reasonable to allow LPAs to put the required changes in place.

Q13: Do you agree with the proposed approach to different levels of discount?

Flexibility over discounts is supported. However, a clear and simple way of measuring the discount using publically available data (e.g. land registry) should be set out in guidance. It should not rely on data that is not publically and freely available. (It is helpful that the PPG provides links to some datasets such as median earnings and house prices).

In practice setting the discount for new housing may be more difficult to determine than it sounds on paper. It will be important that clear guidance is set out in the PPG.

A claw-back mechanism should be put in place should the house be sold within (a minimum of) twenty years, to allow an element of the subsidy to be recycled into other affordable housing.

*Q14: Do you agree with the approach of allowing a small proportion of market housing on First Homes exception sites, in order to ensure site viability?*

Only if set out and agreed in the development plan- such matters at a very local level will often be subject to a Neighbourhood Plan policy and national guidance should not seek to override these.

*Q15: Do you agree with the removal of the site size threshold set out in the National Planning Policy Framework?*

(N.b. This relates to the 1ha/ 5% of size of a settlement threshold in NPPF footnote 33)

No. It is reasonable that there is an upper size threshold for exception sites. The NPPF footnote 33 size of 1ha or 5% of the size of a settlement already stretches the concept of “entry level” and exceeding it would introduce sites outside the spirit of an exception.

Neighbourhood Plans should have greater discretion to specify exception sites. Where neighbourhood plans have set out conditions or size limits for Exception Sites, these should take precedence over national guidance.

*Q16: Do you agree that the First Homes exception sites policy should not apply in designated rural areas?*

Yes- The proposal to exclude designated rural areas is supported.

### ***Supporting small and medium-sized developers (Raising thresholds)***

*For each of these questions, please provide reasons and / or evidence for your views (if possible):*

*Q17: Do you agree with the proposed approach to raise the small sites threshold for a time-limited period? (see question 18 for comments on level of threshold)*

No. It will result in a reduction in the provision of affordable housing and thereby subsidises housebuilders at the expense of people in housing need, at a time when falling income and economic insecurity are likely to increase the need for affordable housing. Such a clearly regressive policy could fall foul of the Public Sector Equality Duty.

A size threshold of 40-50 dwellings will not just benefit small to medium size house builders, but also volume housebuilders developing smaller sites. It could lead to issues of site-subdivision to undercut the threshold.

There would be better and more effectively targeted ways of subsidising small/medium sized housebuilders.

Many Local Plans/SPDs already contain mechanisms for negotiating viability due to exceptional circumstances; where these are in place the higher threshold serves no practical purpose.

If, despite objections, a higher threshold is introduced, the exemption should be strictly time limited to address COVID-19 related viability issues.

*Q18: What is the appropriate level of small sites threshold?*

*i) Up to 40 homes*

*ii) Up to 50 homes*

*iii) Other (please specify)*

10 dwellings (or fewer in designated rural areas) has had a long and troubled evolution and exempts no major sites from affordable housing.

In any event, affordable housing thresholds are more appropriately set at a local level, through development plans, which take into account local circumstances and need.

*Q19: Do you agree with the proposed approach to the site size threshold?*

No- see above

*Q20: Do you agree with linking the time-limited period to economic recovery and raising the threshold for an initial period of 18 months?*

Yes. As above, it is perverse to reduce the supply of affordable housing at a time when the need for affordable housing is increasing. But if it is done, it should be strictly a time limited measure.

*Q21: Do you agree with the proposed approach to minimising threshold effects?*

It is important that clear guidance is published preventing the system being “gamed” to minimise affordable housing liability. As identified above, there will be a significant incentive for developers to subdivide or phase sites to come in just under the threshold.

*Q22: Do you agree with the Government’s proposed approach to setting thresholds in rural areas?*

Yes- the current approach to thresholds in designated rural areas should be maintained.

*Q23: Are there any other ways in which the Government can support SME builders to deliver new homes during the economic recovery period?*

The Council acknowledges that the Government has increased funding on affordable housing, with £12.2 bn announced in the 2020 budget. Increasing the provision of affordable housing is a more effective and targeting way of supporting the construction sector than raising the affordable housing threshold.

Should S106 or CIL “holidays” introduced, they should be payment holidays rather than exemptions from payment. They should also be linked to the provision of high quality design and layout.

### *Extension of the Permission in Principle consent regime*

*Q24: Do you agree that the new Permission in Principle should remove the restriction on major development?*

No. Permission in Principle should remain limited to non-major development. Raising the threshold to up to 150 dwellings could result in very significant development being allowed without proper scrutiny or assessment. The devil will often be in the detail with such applications. Granting a PiP may result in the principle of development being conceded in instances where the detailed matters (e.g. highway impact, flooding, landscape impact, wildlife mitigation) may be such that development is not sustainable. Conversely, even if the technical matters are capable of satisfactory resolution, a PiP may simply “kick the can down the road” rather than actually resolve anything.

Given that LPAs will not reasonably be able to determine the acceptability of many major PiPs, they may end up refusing sites that could be rendered acceptable through a proper planning process.

It is perverse that an LPA may have 8 weeks to determine a domestic extension, (where it requires planning permission) but only 5 weeks to determine a PiP for as many as 150 dwellings. Such a short timescale will be too short for Committee timescales both for the LPA but also stakeholders such as parish/town councils.

Outline Planning permission (or allocation in the development plan) is the appropriate mechanism to establish the principle of development. It is recognised that there has been some “mission creep” in the level of detail required at outline stage; and guidance simplifying the requirements for outline applications may achieve the government’s objectives without sacrificing proper scrutiny of applications. It is noted that the White Paper makes useful suggestions about simplifying the application process.

*Q25: Should the new Permission in Principle for major development set any limit on the amount of commercial development (providing housing still occupies the majority of the floorspace of the overall scheme)? Please provide any comments in support of your views.*

Notwithstanding the deregulation of commercial use classes in to Class E, commercial floorspace will require a sequential and impact test under Chapter 7 of the NPPF; and this cannot be carried out or assessed effectively under a PiP regime.

Accordingly commercial development sought through a PiP regime should be below the threshold to trigger such tests. The default threshold of 2,500 sq m for an Impact test seems unduly high. The Council would suggest a figure of @ 280 sq m would encompass small commercial units (possibly capable of being within Class F2) that would not give rise to significant sequential test or impact concerns.

*Q26: Do you agree with our proposal that information requirements for Permission in Principle by application for major development should broadly remain unchanged? If you disagree, what changes would you suggest and why?*

No. The minimal information requirements are unlikely to enable an LPA to assess the complex impacts that are likely to arise from larger proposals. As noted above, the proposed 5 week determination timescale and 2 week consultation period will also be insufficient to assess complex proposals effectively.

*Q27: Should there be an additional height parameter for Permission in Principle? Please provide comments in support of your views.*

Height will often be a critical factor in determining the acceptability of proposals, both within an urban environment where overbearing, light and townscape are key considerations; and in a rural setting where landscape impact will be important. The issue highlights the problems with extending PiP to cover major development.

If PiP is extended, the height should be limited to either the prevailing height in the area or what could be achieved under permitted development, whichever is lower.

*Q28: Do you agree that publicity arrangements for Permission in Principle by application should be extended for large developments? If so, should local planning authorities be:*

- i) required to publish a notice in a local newspaper?*
- ii) subject to a general requirement to publicise the application or*
- iii) both?*
- iv) disagree*

*If you disagree, please state your reasons.*

The impact of a PiP will be the same as for a major application, and therefore the publicity arrangements should be comparable. Option ii) a general notification requirement is the closest option to this. The need for proper publicity again highlights the inadequacy of the proposed timescales to allow the community to reach an informed decision about major proposals.

*Q29: Do you agree with our proposal for a banded fee structure based on a flat fee per hectare, with a maximum fee cap?*

*Q30: What level of flat fee do you consider appropriate, and why?*

A flat fee per hectare is unlikely to reflect the complexities of consideration of major proposals. The fee for PiPs should be the equivalent to an outline planning application with all matters reserved.

The fee structure for outline applications should be modified to allow the LPA to charge an additional fee for detailed issues that are submitted at outline stage rather than being reserved.

*Q31: Do you agree that any brownfield site that is granted Permission in Principle through the application process should be included in Part 2 of the Brownfield Land Register? If you disagree, please state why.*

Yes- this is a logical suggestion.

*Q32: What guidance would help support applicants and local planning authorities to make decisions about Permission in Principle? Where possible, please set out any areas of guidance you consider are currently lacking and would assist stakeholders.*

Guidance will not overcome the underlying problem that major proposals will often result in complex site considerations that require proper scrutiny. The penalties such a judicial review or Ombudsman rulings still falls on the LPA. No amount of guidance will overcome this.

*Q33: What costs and benefits do you envisage the proposed scheme would cause? Where you have identified drawbacks, how might these be overcome?*

The problems with the scheme are detailed above, i.e. major proposals may be too complex to determine through PiP and the timescales and resources are inadequate. The penalties for mistakes fall on the LPA.

The Government should improve funding to LPAs (ring fenced to planning functions) and consider some form of PiP indemnification scheme if it wishes to see LPAs embracing PiPs and similar streamlining mechanisms.

*Q34: To what extent do you consider landowners and developers are likely to use the proposed measure? Please provide evidence where possible.*

It is not clear that PiP will offer any significant benefits to landowners or developers over existing pre-application and application routes. The reduction in scrutiny of detailed matters may store up problems for the Technical Details stage. The reduction in upfront community involvement may result in longer term objections or informed objectors resorting to judicial channels to fight proposals. This all reduces rather than improves certainty.

### **Public Sector Equality Duty**

*Q35: In light of the proposals set out in this consultation, are there any direct or indirect impacts in terms of eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations on people who share characteristics protected under the Public Sector Equality Duty?*

*If so, please specify the proposal and explain the impact. If there is an impact – are there any actions which the department could take to mitigate that impact?*

The proposals which reduce the supply of affordable housing (increasing thresholds) and reduction in affordable housing for rent (i.e. requiring 25% of affordable homes as First Homes), at a time when the need for affordable housing for rent is increasing, run counter to the PSED.

Assessment should be carried out on the impact of the proposals upon groups with protected characteristics who are likely to be disproportionately affected by the reduction in affordable housing opportunities.

**Catherine Fritz, Chair (pnfchair@paigtonneighbourhoodplan.org.uk)**

**Paignton Neighbourhood Forum**