

John Slater Planning Ltd

Abbotskerswell Neighbourhood Plan 2016-33

Submission Version

A Report to Teignbridge District Council on the Examination of the
Abbotskerswell Neighbourhood Plan

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Contents

	Page
Introduction	3
The Examiner's Role	3
The Examination Process	5
The Consultation Process	5
Regulation 16 Consultation	6
The Basic Conditions	6
Compliance with the Development Plan	7
Compatibility with EU Obligations and Human Rights Legislation	8
The Neighbourhood Plan: An Overview	8
The Neighbourhood Plan Policies	9
The Referendum Area	16
Summary	16

Introduction

Neighbourhood planning is a process, introduced by the Localism Act 2011, which allows local communities to create the policies which will shape the places where they live and work. The Neighbourhood Plan provides the community with the opportunity to allocate land for particular purposes and to prepare the policies which will be used in the determination of planning applications in their area. Once a neighbourhood plan is made, it will form part of the statutory development plan alongside Teignbridge's Local Plan. Decision makers are required to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.

The neighbourhood plan making process has been led by Abbotskerswell Parish Council. A Steering Group (AKNPSG) was appointed to undertake the plan preparation, initially made up of an equal mix of Parish Councillors and lay members. Abbotskerswell Parish Council is a "qualifying body" under the Neighbourhood Planning legislation.

This report is the outcome of my examination of the Submission Version of the Abbotskerswell Neighbourhood Plan. My report will make recommendations based on my findings on whether the Plan should go forward to a referendum. If the plan then receives the support of over 50% of those voting at the referendum, the Plan will be "made" by Teignbridge District Council, the Local Planning Authority for the neighbourhood plan area.

The Examiner's Role

I was formally appointed by Teignbridge District Council in March 2017, with the agreement of Abbotskerswell Parish Council, to conduct this examination. My role is known as an Independent Examiner. My selection has been facilitated by the Neighbourhood Planning Independent Examiner Referral Service which is administered by the Royal Institute of Chartered Surveyors (RICS).

In order for me to be appointed to this role, I am required to be appropriately experienced and qualified. I have over 38 years' experience as a planning practitioner, primarily working in local government, which included 8 years as a Head of Planning at a large unitary authority on the south coast, but latterly as an independent planning consultant. I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I am independent of both Teignbridge District Council, and Abbotskerswell Parish Council and I can confirm that I have no interest in any land that is affected by the Neighbourhood Plan.

Under the terms of the neighbourhood planning legislation I am required to make one of three possible recommendations:

- That the plan should proceed to referendum on the basis that it meets all the legal requirements.
- That the plan should proceed to referendum if modified
- That the plan should not proceed to referendum on the basis that it does not meet all the legal requirements.

Furthermore, if I am to conclude that the Plan should proceed to referendum I need to consider whether the area covered by the referendum should extend beyond the boundaries of area covered by the Abbotskerswell Neighbourhood Plan area.

In examining the Plan, the Independent Examiner is expected to address the following questions

- a. Do the policies relate to the development and use of land for a Designated Neighbourhood Plan area in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004?
- b. Does the Neighbourhood Plan meet the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 namely that it specifies the period to which it is to have effect? It must not relate to matters which are referred to as “excluded development” and also that it must not cover more than one Neighbourhood Plan area.
- c. Has the Neighbourhood Plan been prepared for an area designated under Section 61G of the Localism Act and has been developed and submitted by a qualifying body.

I am able to confirm that the Plan, if amended in line with my recommendations, does relate to the development and use of land, covering the area designated by Teignbridge District Council, for the Abbotskerswell Neighbourhood Plan on 15th May 2014. This requires the removal of that part of the Local Green Space designation (LGS) for Site A that fall outside the Plan boundary.

I can also confirm that it does specify the period over which the plan has effect namely the period from 2016 up to 2033.

The Plan does refer to mineral matters. It references the local quarries as the source of local materials and I have no difficulty with that statement as it does not deal with the planning of minerals. However, in the italicised text under Figure 13 on page 33, it includes the statement “The extraction of sand and gravel from NA3 Wolborough will not be supported by this plan because of the potential extreme risk to Wolborough Fen SSSI” This statement is a specific statement that deals with mineral planning policy, which is a County matter, one of the definitions of “excluded development”. I will be

recommending that this sentence be deleted from the Plan and if this modification is made then I can confirm that the plan does not cover any “excluded development”.

There are no other neighbourhood plans covering the area covered by the Plan designation.

Abbotskerswell Parish Council as a parish council is a qualifying body under the terms of the legislation.

Recommendation

Remove from text under Figure 13 the following sentence - “The extraction of sand and gravel from NA3 Wolborough will not be supported by this plan because of the potential extreme risk to Wolborough Fen SSSI”

The Examination Process

The presumption is that the neighbourhood plan will proceed by way of an examination of written evidence only. However, the Examiner can ask for a public hearing in order to hear oral evidence on matters which he or she wishes to explore further or if a person has a fair chance to put a case.

I am required to give reasons for each of my recommendations and also provide a summary of my main conclusions.

I am satisfied that I am in a position to properly examine the plan without the need for a hearing. One party at Regulation 16 stage, a planning consultant on behalf of Linden Homes, who was promoting the Manor Farm site “requested the opportunity to participate in the examination of this NP”. However, I have decided that there is no need for me to hold a public hearing to assist my examination so that opportunity does not arise but I have had regard to their written submission.

I carried out an unaccompanied visit to Abbotskerswell and the surrounding countryside on 31st May 2017. This enabled me to familiarise myself with the village. I saw the relationship with Newton Abbott and was able to appreciate the relationship between the Wolborough allocation site and the village.

The Consultation Process

Work started when the Parish Council made the decision to produce a neighbourhood plan in February 2013. The first public consultation event took place on 20th and 21st June 2014. This was a Scoping Community Opinion Workshop which was attended by over 100 attendees. This was followed by a Parish Community Survey in March

2015, following High Court action taken by the Parish with others, against the NA3 Wolborough allocation in the Local Plan. The purpose of the survey was to test the workshop results and to guide a Vision for the Parish and outline the Aims and Objectives of the Plan. This had a 37% response rate. This was followed by a second community survey in February 2016 which had 63 responses and a Vision, Aims and Objectives Workshop attended by 37 attendees.

The Pre-Submission Consultation (Regulation 14) took place between 29th September and 11th November 2016. This had responses from 20 households, 4 local groups, 6 statutory bodies and 6 bodies, described in the Consultation Statement as key stakeholders.

I am satisfied that the public and relevant stakeholders have had ample opportunities to contribute to the neighbourhood plan process.

Regulation 16 Consultation

I have had regard, in carrying out this examination, to all the comments made during the period of final consultation, which took place over a 6-week period between 20th February 2017 and 3rd April 2017. This consultation was organised by Teignbridge District Council, prior to it being passed to me for its examination. That stage is known as the Regulation 16 Consultation.

In total 17 individual responses were received including a late response from Devon County Council's Heritage Team. Responses also have come from Historic England, Natural England, Devon County Council, Teignbridge District Council, East Devon District Council, Wolborough Residents Association, WYG on behalf of Linden Homes and Exminster Parish Council. I also have seen the 9 letters, all of which support the Plan but none are actually resident in the Plan area, 5 letters came from residents of a property called Westlands, which is described as being close to the boundary.

I have carefully read all the correspondence and I will refer to the representations where it is relevant to my considerations and conclusions in respect of specific policies or the plan as a whole.

The Basic Conditions

The Neighbourhood Planning Examination process is different to a Local Plan Examination, in that the test is not one of "soundness". The Neighbourhood Plan is tested against what is known as the Basic Conditions which are set down in legislation. It will be against these criteria that my examination must focus.

The six questions which constitute the basic conditions test seek to establish that the Neighbourhood Plan: -

- Has had regard to the national policies and advice contained in the guidance issued by the Secretary of State and it is appropriate to make the Plan?
- Will the making of the Plan contribute to the achievement of sustainable development?
- Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?
- The making of the Plan does not breach or is otherwise incompatible with EU obligations or human rights legislation?
- Whether prescribed conditions are met and prescribed matters have been complied with?
- Whether the making of the Plan will have a significant effect upon a European site or a European offshore marine site, either alone or in combination with other plans and projects?

Compliance with the Development Plan

To meet the basic conditions test, the Neighbourhood Plan is required to be in general conformity with the strategic policies of the Development Plan, which in this case is the Teignbridge Local Plan adopted in 2014

Abbotskerswell is one of a number of villages identified in Policy 21 which are signalled to be appropriate locations for limited development which meets their social and economic needs, protects their rural character and is consistent with the need to minimise travel.

The village is to have a settlement limit within which Policy 21A states that development will be permitted consistent with the provisions of the Local Plan. Policy 22 covers the policies outside the settlement limits. Policy EC1 supports economic activities with the villages and Policy EC3 covers the areas in open countryside.

Also relevant to the neighbourhood plan making is Policy EN1 which identifies three Strategic Open Breaks including one between Newton Abbott, Kingskerswell, Abbotskerswell and Torbay.

Policy EN9 deals with important habitat and features and sets out a hierarchy of sites of ecological value based on their importance and this places County Wildlife Sites within the third tier of the hierarchy.

Of particular importance to Abbotskerswell is the Local Plan's allocation of a strategic development site via Policy NA3 – Wolborough which covers some 120 ha to provide at least 1500 new homes and includes land within the Parish, both for development and buffer areas.

I have found no strategic policies in the Local Plan which are in any way undermined or compromised by the policies in this Neighbourhood Plan and this element of basic condition is met.

Compliance with European and Human Rights Legislation

Teignbridge District Council carried out a Screening Opinion on the Submission Version of the Plan and produced a reported dated February 2017 which concluded that it is unlikely that there will be any significant effect arising from the Plan and a full Strategic Environmental Assessment (SEA) as required by EU Directive 2001/42/EC which is enshrined into UK law by the "Environmental Assessment of Plans and Programmes Regulations 2004" would not be required.

The District Council, as competent authority, also carried out at the same time, a screening opinion under the Habitat Regulations. The assessment concluded that the Plan will not likely have a significant effect on the South Hams Special Area of Conservation when implemented in conjunction with the Teignbridge Local Plan and the latest edition of the South Hams SAC Planning Guidance.

I am satisfied that the basic conditions regarding compliance with European legislation are met. I am also content that the plan has no conflict with the Human Rights Act.

The Neighbourhood Plan: An Overview

The Parish Council have grasped the opportunities offered by the neighbourhood plan process and has produced a plan that addresses the village's planning agenda, at the same time fitting in with the strategic policies of the Local Plan, including its housing policy, working within the settlement boundary set by the Local Plan and the major development allocation at Wolborough. Abbotskerswell will have the benefit of a plan covering the next decade and a half, that has been tailored by what the residents consider to be important, including recognising the ecological importance of the area, the village's attractive countryside setting, confronts concerns about flooding and also protects the assets and facilities which are valued by local residents. I was impressed by the wealth of services and facilities that the village currently boasts, as well as the quality of the Conservation Area and the wonderful Devon lanes and surrounding countryside.

The Steering Group has done a first-class job, in the way that the document and all the supporting evidence has been prepared and presented. It is a coherent and very readable document. I have had to make recommendations which address specific concerns, some of which are aimed at ensuring the plan can be used effectively by applicants and decision makers, when preparing and considering planning applications. It is through that process that the policies set out in the Plan will be delivered.

I do need to make some specific comments about the quality of the mapping in the document. Whilst I can appreciate the needs to put a document together that looks good to the eye, I am concerned about the quality and usefulness of a number of the plans. I found a number of the plans to be too small to be capable of being interrogated to identify whether particular sites are affected by the policy. The size of plan and the scale have been designed to fit the text and the page rather than printed at a quality and scale that allows decision makers to know whether a site is covered by a designation or a constraint. During the course of my examination, I requested from the Teignbridge Planning Department new versions of the maps prepared at a larger scale and these have resolved my concerns. I will be recommending that these plans (suitably adjusted in terms of content, as necessary) be inserted in the neighbourhood plan. I would recommend that the plan's authors review the document as there are a number of errors in terms of links and other plans where the clarity can be improved. The basic test should be whether individual sites can be identified on maps and plans.

Some Reg 16 representations propose additional policies covering different aspects but I do not consider that a neighbourhood plan needs to cover matters that the community has not chosen to address, so I will not be recommending the inclusion of additional policies. I also do not consider that the case has been made to change the settlement boundary from that which was recently included in the adopted Local Plan which is an up to date plan. The proposals from Linden Homes would be putting development into a strategic open break designed to act as a buffer between settlements.

My recommendations generally are concentrated on the Plan's policies and it may well be necessary for alterations to be made to the supporting text and justification to reflect my recommended changes so that the plan reads as a coherent document.

The Neighbourhood Development Policy

Policy NE1 – Development and the Natural Environment

Guidance on how neighbourhood plan policies are to be worded is to be found in the on-line Planning Practice Guidance (Para 041 rev ID 41–0 41–20140306). This 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.”

My concern is that the first paragraph of the policy reads more as a justification of a policy than actually being a policy which can be used to determine planning applications.

I have no difficulty with what the policy is trying to achieve but I find the wording somewhat vague – e.g. what is good environmental design. I will propose an amended form of wording that will achieve the same outcomes but provides the clarity required of a development plan policy when used for determining planning applications. It follows the principles set out in the NPPF and also Policy EN9 of the local plan.

Recommendations

Replace policy with the following:

“Development proposals should seek to minimise the impact on the biodiversity of the Plan area and where possible provide enhancements to its value for biodiversity. This will be achieved by paying particular regard to protecting and enhancing those habitats which are important to valued species by careful design, siting and landscaping and providing appropriate mitigation and minimising noise and light pollution. Particular importance will be attached to protecting the ecological network of bats flyways, foraging areas and routes which cross the plan area and proposals will be required to demonstrate that the lighting proposals have been specifically designed to prevent light pollution affecting the strategic bat flyways shown on Figure 4. Furthermore, any development proposals that harm (directly or indirectly) any of the locally designated sites or other areas of biodiversity value shown on Figure 6 will not be permitted, unless taking account of the weight to be attached to the site’s protection, the public interest benefits arising from development outweigh the harm.”

Enlarge plan at A4 showing the plan area only or as close as possible.

Policy NE2- Devon Banks/Hedgerows

From my visit to the area I fully appreciate the importance of the Devon Banks in the rural landscape. I have read the Planning Advice Note referred to in the policy and I consider it provides valuable advice for protecting existing hedgerows or where new hedges are to be planted.

I have also looked at the Devon County Council Highway Protocol. However, the document itself points out that the advice contained therein only covers “protected landscapes”. As this area is not in a National Park or an Area of Outstanding Natural Beauty it appears on the face of it that the protocol does not cover these areas which

lie outside that designation. I would not ordinarily consider it appropriate to confer development plan status reference to a document that was not designed to deal with the areas which are not covered by it, in terms of a particular landscape designation. However, I note from the county council's website that the advice contained within the Protocol can still be used for areas outside of the protected areas. I therefore propose to leave reference to the protocol in the wording of the policy. The policy is drafted to impose a requirement only to show that the applicant has considered the advice in the document - it does not require total compliance. I am content that the policy meets the basic conditions test.

Policy NE3- Local Green Space(Biodiversity)

Paragraph 77 of the NPPF states that designations of land as open space can be made, if the area is demonstrably special to the local community and holds local significance and it gives as an example, beauty and tranquillity or richness of the wildlife. I am satisfied that the sites meet these criteria and I believe their importance warrants LGS status. However, the policy cover some of the areas already protected by Policy NE1 as all the sites are already identified by Figure 6 as locally designated sites. In order to comply with basic conditions the local green space provides protection against inappropriate development. The consideration of the impact of any development on the ecological aspects of the LGS, once designated, is unnecessary as the sites are already covered by Policy NE1. To retain both references would create confusion as to what policies need to be addressed.

I would also comment on the LGS Site A, Coniton Copse. Part of this designation is shown as being outside the Neighbourhood Plan area. A neighbourhood plan cannot designate land outside the boundary of the Plan area. That part of Site A which falls outside the Plan boundary must be deleted from the Plan so as not to conflict with the statutory requirements.

Recommendations

Delete "are identified on Figure 3" and also "and to ensure their wildlife and habitat value is retained".

Delete the final paragraph.

Remove that part of Site A which lies outside the Plan area boundary on Figure 6.

Provide Fig 6 at A4 size.

Policy NE4 Local Flooding

The first paragraph of the policy supports developments specifically to reduce flood risk. The second part of the policy, firstly requires compliance with another part of the development plan. It then goes further and requires the development not to increase local flood risk to known surface water flooding locations. These are shown by yellow triangles on Figure 9. However, the map does not show with sufficient clarity the specific location of the flooding or its extent nor does it give information as to the regularity of the flood event, its depth and whether the properties have been flooded. My second point is how would an applicant know whether their development will increase flood risk at these particular locations shown by the triangle. As the Plan acknowledges, the village lies in an amphitheatre and any surface water runoff will likely to find its way to those flood points.

Government advice on sustainable drainage systems was made by the Secretary of State in a statement published on 18 December 2014, which took effect from 6 April 2015. It states that the statement should be taken into account in the preparation of neighbourhood plans. It suggests a balance of needs to be struck between the need to protect the public and avoiding excessive burdens on business. The policy in the statement was therefore to apply SUDS to residential schemes of 10 or more homes and major commercial development. He did say that the limits of where SUDS would be required would be kept under review.

I do not find that the identification of known flood spots to be particularly helpful as applicants would not necessarily know whether their development would directly contribute to a problem at any of those locations identified. The topography of the village is such that this must be a real issue and I consider a local policy is justified, below the national threshold. To this extent, I believe the correct approach is to put the onus on the applicant to demonstrate that their proposals will not increase the surface water run-off as a result of their development. The use of SUDS techniques may well be one way to ensure this but I would not require their use as there could be other techniques available. The objective should be for each site to deal with its own surface water so as not to increase run off from the site beyond existing flows, which may involve the taking of appropriate mitigation, which could include SUDS.

Recommendation

Delete all the policy wording after “increase” in ii) and insert “surface water runoff beyond existing rates of flow by the taking of appropriate mitigation measures where necessary”.

Policy BHE1 High Quality Design in Abbotskerswell

This is basically a sound design policy with many of the elements which I would expect to see in a neighbourhood plan. In terms of the five criteria, there is only one area where I believe the threshold to be set too low, that is a requirement in the criterion 4 that nearby residents amenity is not compromised. I believe that threshold of harm is set too low. Planning is a matter of balancing different party's needs, interests and expectations. Merely to have another party's amenity compromised, albeit to a minor extent, would not in my view, be sustainable grounds for refusing planning permission. I propose to change the threshold to not "seriously adversely affect."

The penultimate paragraph deals with permitted development rights being withdrawn in circumstances where it would give rise to an unacceptable impact on characteristics of the building or setting. Government advice in the Planning Practice Guidance (Para 017 rev ID 20 1A – 017–20140356) is that such conditions removing permitted development rights should only be used in exceptional circumstances. I therefore consider that it will be inappropriate, in view of the Secretary of State's clear advice, to retain the paragraph which promotes their use. It is of course open to the local planning authority, in response to a particular scheme to include such a condition, but it should not be a facet of development plan policy.

Turning now to the issue of engagement with the local community and the Parish Council with the proposer's preparation of their planning proposals. The NPPF in the chapter entitled Decision Making encourages early engagement and the frontloading of applications. This highlights the benefits of such pre-application consultations and it states that local planning authorities have the key role in encouraging other partners to take maximum advantage of the pre-application stage. But in paragraph 189 it recognises that a LPA (and by implication a qualifying body) cannot require an applicant to engage even with the planning authority. It goes on to *encourage* engagement with the local community before an application is submitted. The Localism Act 2011 did insert a permissive power for the government to impose, through a development order, the requirement for developers to consult the public on specific types of development. However, to date the only category of development where this requirement has been enacted relates to the erection of large scale wind turbines.

My conclusion is that the objective of this part of the policy is to be supported but the policy cannot impose an absolute requirement. I will therefore be proposing the substitution of "should" rather than "must".

Recommendations

In criterion iv) replace "compromised" by "seriously adversely affected"

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Delete the penultimate paragraph.

In the final paragraph replace “must” with “should”.

Policy PH1 Local Needs Housing / Affordable Housing in Abbotskerswell

I do not have any comments to make on this policy.

Policy PH 2 Minimising the Impact of Local Plan allocation NA3 Wolborough

I have noted the Memorandum of Understanding between the Parish Council, Newton Abbott Town Council and Teignbridge District Council and I commend the positive approach of all parties to what is to be a major development site on the outskirts of the village. I do not believe the policy will do anything but assist the delivery of this strategically important development site.

Policy PH 3 Custom Built Dwellings

I do not have concerns regarding this policy with regards to the basic conditions.

Policy TA1 Off Road Parking

I agree with the District Council that the wording of criterion i) is rather clumsy. I will be recommending the district council’s revised wording. Other than that, I have no other comments to make.

Recommendation

In i) replace “travel origin and/ or destination” with “proposed use”.

Policy TA2 Traffic Management

Neighbourhood Plan policies must relate to the use and development of land. The wording of policies covering a scenario where a development proposal(s) will result in improved traffic management in the parish. That maybe appropriate although I must say in my experience is unlikely. However, the policy also supports “measures for improved traffic management” This goes beyond what will be delivered via a planning application and could be interpreted as to cover highway authority initiated works or traffic regulation orders etc. This cannot be described as a policy for the use and development of land and accordingly I propose that this element of the policy be removed. It can form part of the document that covers non-land-use policies but must be clearly differentiated as such.

Recommendation

Remove “or measures for, or”

Policy TA3 Improving Safe Pedestrian and Cycle Accessibility

My only concern regarding this policy covers the same point as I made in respect of the previous policy, Policy TA2 in that it offers support for “other measures to support pedestrian and cycle improvements”.

Recommendation

Remove “and measures” in the second paragraph.

Policy TA4 Safe Access to and from New Development at Abbotskerswell Parish

This policy requires applicants to demonstrate through their Design and Access Statement or Planning Statements what measures they will introduce to improve safe pedestrian and cycle access to the Parish. I believe that is not reasonable to impose requirements to improve safe pedestrian and cycle access on all developments e.g. small infill residential development or individual plots or changes of use. There will however be occasions where development opportunities will present the possibility to achieve such improvements. I propose the substitution of “will” by “can”.

Recommendation

Replace “will” by “can”

Policy EE1 Supporting Micro and Small Enterprises

I am concerned that the policy repeats some of the criteria set out in the Local Plan Policy EC3 in particular covering the flood risk, the natural environment and the South Hams SAC. As these aspects are covered already, their inclusion in the neighbourhood plan policy covering the same development is unnecessary duplication which can cause confusion, as to what applicants are required to address with their application.

Recommendations

Remove “and natural” from criterion)

Remove criteria c) and g)

Policy CP1 Community Facilities, Green Space and Assets

I have no comments regarding this policy apart from the need to provide the enlarged version of the Plan at A4 size.

Recommendation

Provide copy of enlarged plan at A4

The Referendum Area

If I am to recommend that the Plan progresses to its referendum stage, I am required to confirm whether the referendum should cover a larger area than the area covered by the Neighbourhood Plan. In this instance, I can confirm that the area of the Abbotskerswell Neighbourhood Plan as designated by Teignbridge District Council on 15th May 2014, is the appropriate area for the referendum to be held and the area for the referendum does not need to be extended.

Summary

The Steering Group and the Parish Council are to be congratulated for producing a well-focused and locally distinctive neighbourhood plan. The policies cover the matters which are of importance to the community but at the same time sit comfortably with the strategic policies in the Teignbridge Local Plan, including the large Wolborough strategic allocation which stands astride of the Parish boundary in the north of the Plan Area. The overall thrust of the policies and proposal have been clearly shaped by the constraints imposed by the wealth of ecological assets and networks that cross the Parish, especially in term of the Greater Horseshoe Bat, a European protected species. I consider that it will deliver sustainable development.

I have recommended changes to a number of the policies to address technical issues which are necessary to ensure the plan meets the Basic Conditions. I have not had to recommend the total removal of any policies but some of the wording of policies has had to change, to bring them in line with basic conditions, particularly Secretary of State advice

To conclude, I can confirm that my overall conclusions are that the Plan, if amended in line with my recommendations, meets all the statutory requirements including the basic conditions test and that it is appropriate, if successful at referendum, that the Plan, as amended, be made.

I am therefore delighted to recommend to the Teignbridge District Council that the Abbotskerswell Neighbourhood Plan, as modified by my recommendations, should now proceed to referendum.

JOHN SLATER BA(Hons), DMS, MRTPI

John Slater Planning Ltd

13th June 2017