**TOTNES NEIGHBOURHOOD PLAN HEARING, TUESDAY 6TH SEPTEMBER AT 10.30AM IN THE GUILDHALL, TOTNES**

**Participants Present** (for a list of observers see end of note)**:**

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| Deborah McCann (Examiner) |  |  |
| **Totnes Town Council:** | **South Hams District Council:** | **Fastglobe:** |
| Cllr Georgina Allen  Cllr Jacqi Hodgson  Cllr Ben Piper  Duncan Tilney (Stephens Scown LLP)  Sara Halliday (TTC Officer) | David Fairbairn  Elliott Hale  Chris Shears  Graham Swiss  Andrew Tabachnik QC | Pat Gillies  David Seaton (PCL Planning  Will Ridalls (PCL Planning) |

1. The Examiner welcomed those present as participants and observers to the hearing and stated that the hearing would be video recorded and made available after the meeting. [Note: the recording is available on the Totnes Town Council [and South Hams District Council] website neighbourhood plan page.

2. The Examiner explained the purpose of the hearing is to ask questions in relation to Policy C12 Former Dairy Crest Site, and is 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, strategic policy, Habitats Regulations Assessment and Human Rights criteria or can be modified to do so. This will enable the Examiner to assess whether the Plan meets the Basic Conditions in particular that it is in general conformity with the strategic policies of the Development Plan and has regard for National Planning Policy and Guidance. The process may:

* identify non-compliance with basic conditions or legal requirements and the Examiner’s report may make recommendations for compliance;
* suggest the suspension of the examination process after the hearing to sort out a procedural failing (the purpose of any suspension will be clear and with a time frame set by the Examiner for the matter to be resolved); or
* suggest making modifications to the plan to see if it can go to referendum.

3. The Examiner congratulates the Totnes Neighbourhood Plan Group on its hard work and for pushing the boundaries of the plan. The main purpose of the plan is to be used in the determination of planning applications – some elements of the plan fall outside of the remit for plans or would put in place tasks that are too onerous and on this basis the Examiner will be suggesting changes and modifications to the plan. But the focus of the hearing is on Policy C12, not these other matters.

4. The Examiner asked South Hams District Council (SHDC) which strategic policies of the Joint Local Plan (JLP) are relevant to Totnes. Mr Swiss set out that a range of policies in the JLP are of relevance to Totnes, and specifically those that relate to: strategic policies for housing and employment across the district; delivery of infrastructure; environment; climate change; SO7 maintaining a strong network of main towns; and TTV22 other site allocations in Totnes which includes the former Dairy Crest Site. He explained that the four sites in Totnes listed in TTV22 were development areas which were already approved and for the former Dairy Crest Site this was through the Community Right to Build Order that was extant at the time of the JLP’s approval.

5. The Examiner asked SHDC to explain JLP Policy TTV22. Mr Swiss explained that the fifth site listed in TTV22 ‘ATMOS (former Dairy Crest Site)’ was for a mixed use development with a range of commercial and community uses. The estimate of housing given was 62 dwellings, with policy considerations for appropriate flood risk mitigation, remediation of contaminated land, sensitive and high quality design, and setting for heritage assets.

6. The Examiner asked about the background to the Community Right to Build Order (CRTBO). Mr Swiss set out that the site which policy C12 refers to was the formerly the Dairy Crest factory, Totnes’ largest employer until its closure in 2007, and the site of Brunel’s atmospheric railway. It is a brownfield site of approximately 3.5 hectares which has been included as an area for development in previous local plans. The District Council and community had worked together to find ways to redevelop the challenging site (for example it is on a flood plan, contaminated buildings requiring demolition, wildlife considerations with the greater horseshoe bat presence, the A385 Air Quality Management Area). CRTBOs were introduced by the Localism Act of 2011, and it has been the only CRTBO progressed by SHDC. The application was submitted in early 2016 and following successful examination followed by a referendum in November 2016 it came into being in March 2017 to develop the site to include: community and retirement housing; a green energy centre; hotel, health and wellbeing centre; and community space. SHDC checked that the CRTBO met the basic conditions required. With the CRTBO made in March 2017, SHDC now consider that the Order has lapsed – SHDC received a reserved matters application for a bat hotel in February 2020 for the site which kept the Order live for a further 2 years after this date but no progress was made on this application. Mr Tabachnik confirmed that SHDC had considered the question of the CRTBO in Summer2021 and formed the view that it had lapsed, and this view was communicated to the owners of the site and those involved in the CRTBO. The site owners applied to the High Court for a legal position on the status of the CRTBO and the Court has ruled that the Order has lapsed and no work had been started, therefore this matter/question has been resolved by the Court.

7. Mr Seaton suggested that the CRTBO was not in order with the 2019 JLP but had taken detail from the Totnes Land Allocation dated February 2011 policy T4 for mixed use regeneration of the site with 30 dwellings and employment land. The examiner of the CRTBO found a higher number of dwellings to be in order with the policy. Mr Swiss said that the February 2011 policy stated 30 dwellings both north and south of the leat, so 60 dwellings in total, and that SHDC does not feel that there is any conflict between the earlier 2011 land allocation and the CRTBO. With regards to the current JLP and policy TTV22, SHDC’s position is that the CRTBO no longer applies but the other points in the text for the former Dairy Crest site are still relevant (which was confirmed by Mr Tabachnik).

8. Cllr Allen explained that the aim of Policy C12 is to expand on the policy as set out in the JLP. At the beginning of the neighbourhood plan process, and more recently in the refining of the plan for Regulation 14 consultation in 2019, the professional advice was not to include policies in the neighbourhood plan that are already set out in the JLP. When the CRTBO lapsed members of the community came to the Council to ask for elements of that policy to be included in the neighbourhood plan. The Council has some confidence in the level of community support for the CRTBO and its aims given the result of the CRTBO referendum in 2016.

8. The Examiner explained how she was looking for a ‘golden thread’ through community consultation and a community desire for something to be included in the neighbourhood plan about this site. Cllr Hodgson explained that she had been involved in the plan much earlier and that in the early stages of community consultation and workshops held for the plan there was community will for the development of the former Dairy Crest site to be included. However, due to the site then forming part of policy TTV22 in the JLP it wasn’t included in the neighbourhood plan.

9. The Examiner set out that Totnes Town Council has submitted the plan at Regulation 14 and 15 stages to SHDC, set up the examination process through the appointment of an examiner and then made a decision to include policy C12 - why? Cllr Allen explained that the Council had approaches from the community to ‘fill the gaps’ left by the lapse in the CRTBO and felt they needed to respond to this. Cllr Piper said Council support had been unanimous to include this policy in the plan. Ms Halliday corrected to say that the Full Council minutes record that it was majority support, not unanimous.

10. The Examiner asked what the consultation process was for policy C12 and who was consulted. Cllr Allen said that there had been a six-week consultation running from 18th October to 28th November 2021. Ms Halliday set out that all those who were consulted at Regulation 14 were contacted again, as well as all those who had commented as part of the Regulation 14 consultation and also Fastglobe as the land owner. Mr Seaton asked if there had been any comments or objection to the neighbourhood plan about the omission of reference to ATMOS or the former Dairy Crest site. Ms Halliday said she couldn’t recall, but any that were received were not that strong and she would check the consultation responses and share them with Mr Seaton and the Examiner.

11. The Examiner asked how Fastglobe feel their interest have been prejudiced by the process. Mr Seaton said that the Town Council did not consult with Fastglobe prior to the consultation on Policy C12 which has meant that they have not been able to discuss the matters of concern and has resulted in an undeliverable policy which Fastglobe see as prejudicial to their interests. The Examiner asked the Town Council why they didn’t consult Fastglobe. Cllr Allen asked Ms Halliday to respond. Ms Halliday said that it was an administrative oversight – there had been staff sickness and Council were under pressure from the community to respond and were keen to progress the consultation on Policy C12. Mr Seaton observed that Fastglobe had not been involved in any earlier discussions and didn’t have any involvement with the emerging local plan as the former Dairy Crest site wasn’t identified or included in the Regulation 14 draft plan. PCL Planning on behalf of Fastglobe have submitted details comments on the procedure that was followed and the areas where they believe there are concerns.

12. The Examiner explained that many neighbourhood plans change between Regulation 14 and 16 in response to the consultation process that is conducted. The Town Council not consulting the landowner in advance of the subsequent consultation for Policy C12 is not good practice, but they were consulted as part of the wider consultation process. Mr Seaton said that none of the supporting documents to the neighbourhood plan made reference to Policy C12 or makes mention of the site and therefore Fastglobe believe there is a dislocation between understanding the policy, how it has been constituted, assessed and evidenced. They do not believe that Policy C12 relates to JLP TTV22, as it is constraining the use of the site, providing for a prescribed process of development which is not deliverable. Cllr Allen said that she had spoken informally to Mr Gillies in advance to let him know that the consultation was going to take place. Mr Tilney added that working on a neighbourhood plan is a dynamic process and while consultation in advance with the landowner for a policy is best practice it is not set in statute. Mr Tabachnik said that SHDC had not taken a position on any of these points and wouldn’t until it had seen the Examiner’s report, and his position is that the examination should be of the plan as it was submitted at Regulation 16 which is without Policy C12.

13. The Examiner asked if the Habitats Regulation Assessment (HRA) had been re-screened to include Policy C12? Cllr Allen set out that the HRA finalised in May 2021 did not include the former Dairy Crest site but that following consultation on Policy C12 the HRA was updated in March 2022 and the policies re-screened to include the C12 site. The Examiner pointed out that if the HRA re-screen has been carried out then it is not on the SHDC website and that the HRA must come from the local authority, SHDC, not the Town Council. Mr Hale clarified that all responses to the Policy C12 consultation are on the SHDC website and are comments on the consultation, not the HRA.

14. The Examiner moved to whether Policy C12 meets the basic conditions with regard to national policy and guidance. Mr Tabachnik said that there is a need to focus on the viability gap and that the SHDC view is that it is hard to conclude that the scheme is deliverable as set out in the policy and needs to be reconsidered. The Examiner asked if it is the SHDC view that the policy could be modified to meet the basic conditions. Mr Tabachnik said no modifications to the policy would address the viability gap. The Examiner asked why SHDC had put the CRTBO in place if it was unlikely to be viable. Mr Swiss said at the time SHDC were satisfied that the CRTBO was deliverable and appropriate for inclusion in the JLP. JLP joint inspectors considered evidence at the time that the site supported its wider policies for TTV22, but it didn’t go through viability on a site-by-site basis. Mr Fairbairn said that it was up to those proposing the CRTBO to be satisfied that the project was deliverable.

15. The Examiner said that Councils sometimes make recommendations to modify policies which isn’t seen to prejudge or prejudice their position going forward. Mr Seaton said that Policy C12 as worded doesn’t allow for delivery – the use of the site doesn’t allow to give a return on investment with the policy constraints as drafted which Fastglobe see as prescriptive and against planning guidance which will not enable a viable proposal to come forward. The mixed use of the site can’t be delivered as set out in the CRTBO or in Policy C12 as drafted - following updated flood modelling carried out by the Environment Agency it states the area of land suitable for development is much less than when the CRTBO was granted. Mr Tilney said that a CRTBO would be delivered on a different basis to a commercial concern and therefore the viability issue is different, and that no modifications have been suggested to make the policy less prescriptive.

16. The Examiner asked about whether the policy has conformity with the JLP. Mr Tabachnik said SHDC had no general concerns. Mr Seaton said TTV22 is to deliver on a mixed use scheme and development aspirations for the town; Policy C12 is too constrained, and community use of the Brunel building is part of the proposed Fastglobe scheme. Mr Tilney set out that the Policy as drafted says that the plan ‘supports’ the various improvements and qualities, not that they are ‘required’. Mr Seaton said that Fastglobe could not support any of the policy elements listed as currently drafted. Mr Tabachnik said all considerations in the policy equate to the CRTBO and that is where deliverability is a concern, and that there are no modifications that SHDC would invite the Examiner to consider,

17. The Examiner asked views on possible modifications to Policy C12 as drafted. Mr Seaton said Fastglobe’s view is that there are no modifications that can be made to meet basic conditions. Mr Tabachnik said the SHDC view is that there are no modifications that can be made to meet basic conditions. The Examiner asked if Totnes Town Council can draft a modification to the Policy that they feel addresses the concerns heard today, which can be circulated to all participants to get their views.

18. The Examiner summarised that the Habitats Regulations Assessment had been addressed previously, and asked if Fastglobe had anything they would wish to add on human rights. Mr Seaton said that he had nothing further to say on that matter.

19. The Examiner concluded by thanking all for taking part in the process, that she will go away and review the evidence that she has heard today.