



Our ref: 11057

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The land registry information is available for these parcels under the following title numbers:

- Parcel A land registry title no. DN674616
- Parcel B land registry title no. DN583235

Current and proposed allocation

The overall site comprising Parcels A and B is part of a wider current allocation under Policy SS2.1 of the Torbay Local Plan 2012-2030. This is Edginswell Future Growth Area. The site is proposed again for allocation within the Regulation 19 draft plan, which is supported by both landowners.

The Council's Local Plan was submitted prior to the current NPPF 2026 and is being considered under the examination (legacy system) in respect of conformity with the NPPF December 2024 version. The Regulation 18 consultation took place from November 2025 to January 2026.

The government guidance published in November 2025 relating to 'Create or update a local plan using the legacy system' sets out that the relevant NPPF version should continue to be used. The Planning Practice Guidance (PPG) is also signposted within this legacy system guidance.

The NPPF 2024 sets out the 4 tests for soundness at paragraph 36:

36. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are 'sound' if they are:

- a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;*
- b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;*
- c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and*
- d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.*

The Regulation 19 draft plan is not positively prepared as it does not justify an appropriate strategy in respect of reliance on windfall residential delivery and it also fails to take into account the reasonable alternative which is the allocation of mixed-use residential and commercial on Kingsland, Marldon Road.

Delivery of mixed-use development as the most appropriate sustainable development tool

Under 'Identifying land for homes' within the NPPF 2024 it establishes:

"75. Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should



be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.”

The landowners of Parcels A and B are conscious that given the site’s size, location and limited constraints it offers the opportunity for redevelopment for not only commercial use but for mixed-use residential and commercial development to ensure the most efficient use of land.

The site is more viable, deliverable and essentially more available for a mixed-use residential and commercial development. This underpins the allocation of sites, which need to be deliverable, available and viable. It therefore appears that given the Local Plan evidence base ¹ acceptance that there is a low demand for office space in , as is a trend across geographies in England, the Kingsland and Land adjacent to Kingsland allocations would be better suited to employment led development which incorporates residential development.

The landowners wish to reiterate at this stage that the site is available for mixed-use residential and commercial development. The Council’s HELAA confirms that the methodology for site assessment is that there is a reasonable prospect that the particular type of development will be developed having regard to viability and landowner capacity:

“Achievability/ Viability A site is considered achievable for development where there is a reasonable prospect that the particular type of development will be developed on the site at a particular point in time. This is essentially a judgement about the economic viability of a site, and the capacity of the developer to complete and let or sell the development over a certain period.”

The site is suitable for both housing and employment. The methodology for the Local Plan was too narrow, assessing sites for suitability for housing or employment:

“To be considered developable, sites should be in a suitable location for housing **or** employment development, with a reasonable prospect that they will be available and could be viably developed at the point envisaged.” (HELAA page 20).

This indicates that the Council’s methodology was to assess sites for either housing or employment, with no methodology for assessing sites with a potential for mixed use. This is a flawed approach.

The Council has previously identified HELAA 21T125 - Kingsland, Marldon Road - as capable of accommodating 70 dwellings, subject to an acceptable level of industrial development and satisfactory buffering. The landowners of Parcel A and B consider that the site would be viable with a lower housing yield whilst remaining a commercial-led allocation.

The Regulation 19 Plan continues to allocate the 3.2ha site for commercial use. Whilst an allocation on the site is welcomed by the landowners, E1T.3 does not maximise the site’s potential and is not an efficient use of land. The current plan is not assessed under the NPPF 2026 as it is under the legacy system. Nonetheless it is good planning to take opportunities to secure multiple benefits from mixed-use schemes that provide employment and residential delivery securing economic and social benefits.

¹ Economic Development Needs Assessment dated Feb 2024



Delivery of sufficient supply of homes – mixed use

In respect of the proposed update – the allocation of 8,000 homes over this period is not considered sound as it is clearly not deliverable. The Regulation 19 draft does not set out any mixed-use residential and commercial sites within Policies SS5– Employment space or SDT3 - Torquay Gateway.

Whilst at 7.3.2 it states the policy links housing and employment, the policy does not go far enough to interrogate the most efficient use of land at Kingsland and land adjacent to Kingsland.

Whilst not assessed under the NPPF 2026, providing mixed-use employment and residential on Kingsland and Land adjacent to Kingsland, the benefits highlighted in Policy SS5 of the NPPF 2026 would arise which are demonstrable benefits that ought to be considered at this plan-making stage:

- contribute towards creating safer communities through encouraging passive surveillance at different times of the day
- mixed used developments and live/work units would have a positive impact related to reduced car use and therefore would have positive impacts on climate change, air quality in Torbay and reduced travel costs

Delivery of sufficient supply of homes – reliance on windfall

The housing need figure to be delivered via allocations has been set at 8,000 within the local plan however 8,900 is the identified need figure over the plan period. This calculation is based on the standard method, with a baseline of existing stock and affordability considerations.

The additional 900 homes to be delivered over the plan period are proposed via ‘windfall’ unallocated development. This is not deliverable and is too ambitious given that the Council’s latest [HELAA](#) shows limited windfall delivery:

“Over the current Plan period to date (2012-21) there have been an average of ...123 dwellings a year. For future years, it cannot be guaranteed that all of the sites of 6-9 dwellings would not be allocated in future neighbourhood plans, and therefore a conservative figure of 100 windfall dwellings per year is assumed by the HELAA. Adopting a conservative figure should also minimise the risk of “double counting” small sites identified elsewhere.”

The difficulty with this approach is that the delivery of these homes spans many years of permissions, discharge of conditions and then construction and completion, with many approvals from over 3 years ago finally reaching completion in phased schemes. The data is also an average, reached from the last 14 years. This does not therefore take account of recent slowed delivery.

The HELAA document acknowledges the alternative is to count the actual permissions of windfall, which as at April 2021 showed only 398 consented dwellings which had not yet commenced. This would only provide a 4 year supply of the windfall relied on here, which does not align with the plan period.

The HELAA also acknowledges that non-completions also require consideration and trend data is a more appropriate approach (i.e. data on permissions and completions). The Council’s HELAA demonstrates that the trend data does not illustrate large numbers of windfall developments in recent years.



This should be considered alongside the more recent overall Housing Delivery Test² (HDT) 2025 figures which demonstrates the total number of completions in Torbay, whether delivered from allocated sites or windfall:

Number of homes delivered in Torbay		
2022-23	2023-24	2024-25
251	211	267

The approach taken here to apportion 900 units of windfall allowance is 10.11% of the total housing requirement figure reached by the Council in the Local Plan Regulation 19 version. Assuming that out of the housing delivery test homes delivered in the most recent 3 year period above, this 10.11% is a valid starting point, this would mean that the following was delivered via windfall:

Illustrative number of windfall homes delivered in Torbay (10.11% windfall derived from HDT and HELAA)		
2022-23	2023-24	2024-25
25	21	27

Based on trend data this would illustrate a delivery of 24.3 homes annually via windfall in recent years, it is therefore not only overly ambitious to rely on such high windfall numbers, but unconvincing in the face of evidence.

The continued assumption that 900 windfall homes will be granted and delivered within the plan period is therefore a flawed approach given the historical data from the Council's own HELAA and the government's HDT 2025.

This over-reliance on windfall is also contrary to the NPPF 2024 as there is no compelling evidence for such a strong reliance on windfall.

As required by Paragraph 75 of the NPPF 2024 there should be “... ***compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends...***”

In respect of the NPPF 2024, Paragraph 36 (examining plans) sets out the tests of soundness and confirms that Plans are sound where they are positively prepared with a strategy that as a minimum meets the area's objectively assessed needs (using a clear and justified method). The over-reliance on windfall delivery is not a justified method.

The 2025 HDT measurement gave a result of 40% which is significantly below the requirement. The changes in standard method calculation require a greater number of homes to be allocated and the heavy reliance on windfall schemes to deliver the remaining 900 homes is not supported by the history of delivery.

² <https://www.gov.uk/government/publications/housing-delivery-test-2025-measurement>



Delivery of sufficient supply of homes – reliance on allocations which are not viable

The allocations within the Regulation 19 draft include sites where landowners have raised viability concerns with the yield or proposed use. One such example is understood to be Land at Torquay Gateway, which is a suitable site to allocate development but not the policy which has been put forward. The housing numbers on that site do not appear to have been tested in the context of the site constraints and the viability implications of 550 units at 30% affordable housing. There appear to be complexities with the already allocated site and despite its previous allocation development has not come forward in a decade. If development of this scale were viable as allocated, it would have been carried out.

As a result, the Regulation 19 draft plan is unsound not only due to the over-reliance on windfall numbers set out above, but on the continued reliance on sites for allocations with unrealistic housing numbers and affordable housing requirements which have not been tested to demonstrate they would be viable or deliverable.

As set out within Paragraph 72 of the NPPF 2024, identifying land for homes should be approached by identifying a sufficient supply of sites when taking into account economic viability amongst other things. A robust and justified approach to viability and the impacts on yield for those sites where residential numbers have been reached, and deliverability of these, do not appear to have been incorporated in the Regulation 18 and Regulation 19 draft plan.

This undermines the overarching strategy.

Conclusion

The methodology for assessing sites did not specifically scope for mixed-use sites which is another shortcoming in the approach.

On the basis of the above data, there are fundamental issues with the proposed over-reliance on windfall delivery without compelling evidence to do so and without proper interrogation of the viability implications of retained allocations in the Regulation 19 plan.

Yours sincerely,

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