HARTNOLLS FARM, TIVERTON

APPEAL REFERENCE APP/Y1138/W/22/3313401

RESPONSE TO COUNCIL'S PUTATIVE RFR

PREPARED FOR WADDETON PARK LTD

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PCL Planning Ltd 13a-15a Old Park Avenue, Exeter,
Devon, EX1 3WD United Kingdom
t: + 44 (0)1392 363812
www.pclplanning.co.uk

Summary

1.1 There are a number of errors that are embodied in the Council's putative reasons for refusal. In short they are:

- The appeal site is not Grade 1 BMV land
- The appeal site will not produce a moderate adverse landscape impact post mitigation
- The appeal proposals will deliver a Biodiversity Net Gain
- The appeal proposals will deliver affordable housing and, if necessary, other contributions via S106 obligation.

1.2 It is also noteworthy that a potential impact upon Tiverton town centre can be avoided by the imposition of a suitable condition.

1.3 In relation to putative reason 6 the appellant is of the opinion that there has already been sufficient archaeological investigation to conclude that there is unlikely to be any harm to archaeology that will occur if the appeal proposals are allowed.

1.4 Once the LVA is properly understood, and the errors in the Council's reasoning are corrected, the Council's objection appears to be solely to the principle of residential development taking place outside of the BUAB of Tiverton.

1.5 The appellant's position is that the Council cannot demonstrate a 5 year supply of deliverable residential land and that the titled balance is engaged in this appeal therefore the Council's approach to this matter starts from an incorrect premise. Therefore the plan needs to be read as a whole (see Soham case attached as appendix 1) and the policies of restraint upon which the Council rely should not be applied with full weight. In reality the housing proposed is needed anyway, and the delivery of the link road (which is facilitated by the residential development) unlocks sites that are incorrectly included in the Council's assessment of 5 year residential land supply (by removing potential obstacles to the timely release of consented

sites at Tiverton) and facilitating the release of other residential land that could contribute to necessary residential supply over the plan period.

1.6 The appellant is therefore responding to the Council's recently provided information on 5 year residential supply via the SoCG process in order to try and agree an accurate figure for supply.

1.7 The appellant's response to the Council's putative reasons for refusal is summarised in this Statement.

Reason 1

Facilitating/Housing element

2.1 The Council state that they *'can demonstrate an up-to-date housing 5 year land supply'.* The appellant disputes this point and considers that the Council do not have a deliverable 5 year residential land supply.

2.2 Government policy on this matter is quite clear – it is for the Council to demonstrate that claim and, in particular, the deliverability of the sites that they rely upon to constitute that claim.

2.3 Paragraph 74 of the NPPF sets out that:

> *"Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies."*

2.4 In this case the appellant is significantly hampered by the late publication of that information by the Council. At the time of the Council's consideration of the appeal proposals there was no published, up to date, information on the matter. This prompted the appellant has write to the Council (cc PINS via letter dated 23/02/2023) urgently seeking the Council's up to date information on the matter. This information was received by the appellant on 13/03/23. This does not leave sufficient time for the appellant to undertake a full assessment of all of the information received before the

submission deadline of 29/03/2023. However, there are some obvious errors in the Council's approach that make it clear that the Council's claim of a 5.44 years supply has not been calculated in accordance with Government policy on the matter. The appellant is therefore confident in their conclusion that a 5 year deliverable supply of residential land cannot be demonstrated. The appellant will continue to seek agreement on the matter via the SoCG process but, at this stage, the key elements of the appellant's case on the matter is summarised below.

2.5 To assist matters the appellant sets out the key discrepancies with Government policy on the matter upon which they rely. The glossary (Annex 2) of the Framework defines *'deliverable'* as:

> *"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:*
>
> *a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).*
>
> *b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."* (our underlining).

2.6 The NPPG provides further guidance on the policies set out in the National Planning Policy Framework. In relation to the consideration of what constitutes a 'deliverable' site, the NPPG states (at paragraph ID 68-007-20190722) that:

> "*In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions. Annex 2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this*

definition also sets out the sites which <u>would require further evidence</u> to be considered deliverable, namely those which:

- *have outline planning permission for major development;*
- *are allocated in a development plan;*
- *have a grant of permission in principle; or*
- *are identified on a brownfield register.*

Such evidence, to demonstrate deliverability, may include:

- *current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;*
- *firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;*
- *firm progress with site assessment work; or*
- *clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects"* (our underlining).

2.7 This approach to assessing evidence then falls to being interpreted by Inspectors on a case by case basis. We draw attention to the approach adopted by Inspector Stephens when assessing this matter in an appeal for up to 181 dwellings at land at Caddywell Lane/Burwood Lane, Great Torrington, Devon (copy attached as appendix 2) which we think is the correct approach to take. The Inspector concluded that the Council could not demonstrate a five year housing land supply. Paragraphs 56 and 57 of the appeal decision state:

"56. I have also had regard to the updated PPG advice published on 22 July 2019 on `Housing supply and delivery' including the section that provides guidance on `What constitutes a `deliverable' housing site in the context of plan-making and decision-taking.' The PPG is clear on what is required:

'In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions.'

This indicates the expectation that `clear evidence' must be something cogent, as opposed to simply mere assertions. There must

> *be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.*
>
> *57. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are the planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute `clear evidence'. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward"* (ref. 3238460, our underlining)

2.8 Therefore, when a site has been allocated in a DP, it should only be considered deliverable where there is clear evidence that completions will take place on site within 5 years.

2.9 Again, the appellant is significantly hampered in undertaking this assessment due to the late service of information, and the paucity of it.

2.10 In relation to the housing supply information provided by the Council the appellant agrees that the 5 year requirement figure of 2459 has been correctly calculated.

2.11 In relation to the supply information provided the appellant considers that:

- for supply component A (unconsented allocations) there is no substantive evidence that supports the inclusion of these 153 units.
- for supply component E (windfall allowance) there is no substantive evidence to support the inclusion of these 274 units.
- for supply component C (consented windfalls) there is a plethora of small consents and, invariably, not all will be implemented within the 5 years period. Therefore the appellant has made provision for a 10% non-implementation allowance and reduced the figure of 635 units by 63.5 units. For windfalls of 5+ units individual sites are being analysed and will reported to the Council (and PINS in due course) via the SoCG process.

- for supply component D the appellant accepts the Council's figure (of 9 units).
- for supply component B (consented allocations) the appellant requires time to investigate each of the sites relied upon by the Council and has commenced this work. It will update its' position once this work has been completed (via the SoCG process).

2.12 Thus, without adjusting in detail supply component B (which the appellant is likely to adjust downwards in due course) the appellant's initial response to the Council's claim of 5.44 years is summarised in the table below.

Table 1 – Initial breakdown of 5 Year Housing Land Supply

	Supply Element	**Council position**	**Appellant Position**
A	Unconsented allocations	153	0
B	Consented allocations	1605	1579
C	Consented windfalls	635	553
D	Communal accommodation with planning consent	9	9
E	Windfall allowance	274	0
F	Total five year supply (A+B+C+D+E)	2676	2186
	Five year housing land supply (2459 requirement)	**5.44 years**	**4.35 years**

2.13 The appellant currently assess the supply, at best, at 4.35 years (and this is likely to fall following completion of the detailed site analysis work that is currently being carried out).

2.14 The appellant therefore must reserve the right to comment on any further information the Council may produce in response to the appellant's position (summarised above) if and when it is provided.

Employment element

2.15 The appellant notes that the Council have made it plain that they do not object to the principle of the proposed employment development (OR paragraphs 1.9-1.21 and 11.4 in particular). It is therefore agreed that this element of the appeal proposals accords with the relevant provisions of the DP (NPPF 11 c).

Errors in undertaking the planning balance

2.16 In relation to the (enabling) housing element it is plain that, at this point in time, the Council are not able to demonstrate a 5 year supply of deliverable residential sites and, therefore, the titled balance is engaged (NPPF 11 d).

2.17 The appellant considers that the adverse impacts of granting permission are significantly and demonstrably outweigh the identified harm of the appeal proposals. Further, the appellant notes that the Council have clearly not considered those harms correctly. They have, in fact, considered an inflated level of harm to agricultural land and a greater harm to the landscape (reason 2) than will arise by virtue of the enabling (residential) element of the appeal proposals.

2.18 In relation to BMV the appellant is unsure where the Council have gleaned their ALC information from. The appellant considers that this information is incorrect. The appellant understands that the appeal site is a mix of Grade 2 and 3a (not Grade 1), and concurs with Natural England on this point (see their consultation response of 26/08/2021). The appellant also notes that NE did not object to the application (including on this basis). BMV is widespread in the area and, in the local context, the appeal site is some of the poorest quality land in the area (see appendix 3).

2.19 In view of the confusion created by RfR 1 the appellant has commissioned a detailed report on the ALC matter and will attempt to clarify this matter via the SoCG process.

2.20 Therefore, in terms of carrying out a 'planning balance' exercise the ALC matter is not so important as was perceived by the Council when making their decision.

2.21 A similar issue also occurs in relation to the provision of affordable and custom build units. Paragraph 11.1 of the OR makes it clear that the Council have assessed the appeal proposals without consideration of these clear benefits. RfR 4 is purely a timing/procedural matter and will be resolved via the completion of a S106. It is noted that the Councils information on affordable need (see OR, page 21) is not up to date. The situation today is

worse than that considered by the Council (see Appendix 4). Therefore very significant weight should be accorded to the proposed provision (which the Council plainly failed to do when carrying out their planning balance exercise).

2.22 In the appellant's opinion, having regard to the actual ALC facts, having regard to the provision of affordable and custom build housing in accordance with DP policy, (and noting that there is no evidence that the Council cannot demonstrate an up to date 5 year supply of deliverable housing land therefore the tilted balance is engaged) the Council have clearly applied their 'planning balance' in an incorrect manner. When the correct benefits (and policy context) is factored it clearly points to a decision to allow the appeal.

Reason 2

3.1 The appellant notes that the Council do not dispute the landscape and visual impact of the appeal proposals as set out in the Landscape and Visual Appraisal (LVA) submitted with the planning application.

3.2 The key conclusions of the LVA in respect of likely landscape effects are set out at Table 5.1 (at page 46 of the document), which is reproduced at Inset 1 below.

Inset 1 – Table 5.1 from the LVA (page 46)

TABLE 5.1: SUMMARY OF LANDSCAPE EFFECTS

Landscape Receptors	Value	Susceptibility	Sensitivity	Magnitude of Change	Overall Effect
LCA 3E Lowland Planes	Medium	Low	Medium-Low	Low	Low (neutral)

3.3 This concludes that the proposed scheme (after establishment of the landscape mitigation strategy that precedes this assessment) gives rise to a **low and neutral** overall landscape effect, because of a low magnitude of change to a landscape that has medium-low sensitivity to the type of change proposed.

3.4 The key conclusions of the LVA in respect of likely visual impacts are set out at Table 5.2 (at page 48 of the document), which is reproduced at Inset 2 over the page.

Inset 2 – Table 5.2 from the LVA (page 48)

TABLE 5.2: SUMMARY OF VISUAL EFFECTS

Visual Receptors	Value	Susceptibility	Sensitivity	Magnitude of Change	Overall Effect*
Visual receptors using the PRoW along the Great Western Canal towpath	High	Medium	Medium-High	Medium	Medium (neutral)
Motorist travelling west over Tiverton Bridge, along Post Hill	Medium	Medium	Medium	Medium	Medium (neutral)
Residents on the eastern edge of Post Hill	High	Medium-High	Medium-High	Medium	Medium (neutral)
Residents of Windana	High	Medium	Medium-High	Medium	Medium (neutral)
Residents of Red Linhay	High	Medium	Medium-High	Medium	Medium (neutral)
Residents of properties on the ridgeline south of the Site, along Warnicombe Lane	High	Low	Medium	Low-Medium	Low-Medium (neutral)
Users of PRoW Tiverton FP21	Medium	Medium	Medium	Low/Negligible	Low (neutral)

3.5 This concludes that the proposed scheme (after establishment of the landscape mitigation strategy that precedes this assessment) predominantly gives rise to a **medium and neutral** overall visual effect, because of a typically medium magnitude of change to views that have a medium or medium-high-low sensitivity.

3.6 This is helpful and can be recorded in the SoCG. The matter for consideration is therefore whether that identified impact is an acceptable impact or not. In this regard a 'planning balance' exercise needs to be carried out.

3.7 The appellant notes that the OR clearly states that:

> *"The proposed extension to the existing employment site is consider to be acceptable in principle subject to appropriate landscape mitigation."* (paragraph 11.4, page 48).

3.8 The appellant agrees and considers that there is no reason why such mitigation cannot be provided via the submission of details of landscaping pursuant to conditions.

3.9 The 'moderate-adverse' impact identified is based on considering the appeal proposals as a whole (although it should be recognised that this is not an accurate depiction of the LVA's findings which concludes a low effect on the local landscape and predominantly medium visual effects – both of which capable of being mitigated to become a neutral effect).

3.10 Bearing in mind the agreed acceptability of the employment element of the appeal proposals (which predominantly affect the eastern and southern boundaries of the appeal site) the Council's concerns (in terms of landscape impact) relate to the small sections of the southern and northern boundaries of the appeal site.

3.11 The appellant has carefully considered the implications of the landscape impact of the residential element of the appeal proposals and, bearing in mind:

- the existing employment context to the east
- the proposed (but considered acceptable employment extension to the east)
- the allocated development to the west
- and the existing built context to the north (houses served by West Manly Lane)

3.12 The appellant considers the landscape and visual impact of the appeal proposals of this element of the appeal scheme is as set out in the submitted LVA, namely a low effect on the local landscape and a medium effect on the

visual amenity of the local area – both of which are capable of being successfully mitigated through the mitigation strategy set out at Section 4 of the submitted LVA.

3.13 It is the appellant's position that these landscape impact are modest and can be successfully mitigated. The Council agrees with this conclusion in regard to the employment land proposed, however the appellant finds that the residential component of the application is marginally easier to mitigate that the employment component. This is due to the residential component being located between the existing employment land use and the allocated Tiverton urban extension and its smaller scale build form being slightly easier to accommodate into the landscape and views than the employment component.

3.14 We agree that the mitigation strategy as set out in the LVA should be conditioned as it contains generous and significant mitigation measures including:

1. Creation of mixed species native hedgerow along the eastern boundary.
2. Planting of small woodland copse at field corners.
3. Planting of additional trees adjacent to the existing eastern hedgerow.
4. Tree and hedgerow planting to fill gaps in existing southern hedgerow.
5. Avenue of trees within the residential area providing an extension to the roadside landscape treatment in the adjacent Tiverton extension.
6. Fill gaps (including existing access point) to create a continuous mixed species native hedgerow along Post Hill to the north.
7. Hedgerow and hedgerow trees to line the northern access road, mimicking the form and character of Crown Hill.
8. Small groupings of native trees to the north east with pedestrian path providing access to Post Hill and the wider landscape.

9. New path connecting the residential and employment areas with Manley Lane and the wider landscape.

3.15 The appellant therefore concludes that the landscape and visual impact of the residential element of the appeal proposals is not of sufficient magnitude to warrant refusal and can be successfully mitigated through the strategy contained within the submitted LVA.

Reason 3

4.1 The appeal proposals will deliver a significant net gain (see appendix 5). This reason is overcome by the imposition of a suitable condition.

4.2 Reason 3 is misguided and cannot be sustained.

Reason 4

5.1 The appeal proposals are to provide policy compliant levels of affordable housing and custom build units (as part of the proposed enabling housing).

5.2 The appellant will provide a suitable S106 to cover other contributions such that the appeal proposals are suitably mitigated (subject to compliance with CIL regulation 122).

5.3 It is notable that the Council's assessment of the appeal proposals is based on no provision of affordable and custom build units. Provision in accordance with policy is proposed by the appellant. This provision should be accorded significant positive weight in the planning balance. It is evident that the Council have not factored this into their decision making.

5.4 Reason 4 is wholly misguided and cannot be sustained.

Reason 5

6.1 The appellant notes the comments provided at paragraph 1.22 (page 37) of the OR. The appellant has no intention of providing uses that are not similar to those provided on the existing business park. This matter is therefore capable of resolution via the imposition of a suitable condition to limit amount of leisure floorspace to a maximum of 500 square metres; thereby ensuring that the appeal proposal cannot have a detrimental impact upon Tiverton town centre.

6.2 Reason 5 cannot be sustained.

Reason 6

7.1 RFR 6 makes reference to guidance within the NPPF. In this context the appellant considers the basis of this RFR to relate wholly to para 194 where the level of information required from the applicant is set out.

7.2 Government policy on this matter is clear – a proportionate and staged approach should be taken by local planning authorities and is clearly set out in the PPG. At Section ref 18a-041-20190723 it states that *Decision-making regarding such assets requires a proportionate response by local planning authorities. Where an initial assessment indicates that the site on which development is proposed includes or has potential to include heritage assets with archaeological interest, applicants should be required to submit an appropriate desk-based assessment and, where necessary, a field evaluation. However, it is estimated that following the initial assessment of archaeological interest only a small proportion – around 3% – of all planning applications justify a requirement for detailed assessment.*

7.3 In this case the appellant has undertaken an initial desk-based assessment (Cotswold Archaeology report, December 2020) that concluded that there is some archaeological interest in the site, that no designated heritage assets could be adversely affected by the development proposals, and recommended further archaeological survey. The applicant subsequently

commissioned a field evaluation, by geophysical survey, in 2021; the report on which (Substrata 2011/HAR-R-1) has been reviewed by the planning authority's archaeological advisors, Devon County Council Historic Environment Service (DCCHES). The survey confirmed the presence of magnetic anomalies within the site that might be indicative of buried archaeological remains.

7.4 A geophysical survey falls within the definition of a 'field evaluation' as determined by the Chartered Institute for Archaeologists, as a non-intrusive means of determining the nature of the archaeological resource in a given area. In this case, the DCCHES has stated, in the Officer's Report, that *The archaeological geophysical survey of the site has confirmed the presence of prehistoric or Romano-British field systems as well as a prehistoric funerary monument in the south-eastern part of the application area*. It is clear, therefore, that the nature and significance of the archaeological interest has been established by this evaluation.

7.5 The DCCHES then states that *it is not possible to determine the extent of survival and significance of any heritage assets with archaeological interest within the application area, or of the impact of development here upon them, without undertaking intrusive field evaluation.* The applicant disagrees with this assessment. First, because this is an outline application and the detail of any impacts on buried heritage assets cannot be determined at this stage. Secondly, in the case of the most important remains, the evidence for a prehistoric funerary monument in the south-eastern part, this heritage asset has previously been investigated as part of an archaeological trial trench evaluation undertaken as part of the Tiverton Eastern Urban Expansion Area in 2008, which provides details of the asset's survival and importance. Thirdly, a significant proportion of the remaining magnetic anomalies can be shown to relate to former field boundaries that can be traced on 20th century OS mapping and are of negligible, if any, heritage significance.

7.6 The LPA has given no indication why the application should fall within the 3% of cases that requires a field evaluation; and in any case the applicant

has complied with this request. The applicant considered that requirement by the DCCHES for intrusive investigation, presumably by trial trenching, is not warranted in this case. Government policy is also very clear on this matter. At para 204 of the NPPF it states that *Local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.* Intrusive evaluation by trenching is inherently damaging to buried archaeological remains, by its very nature, and until an outline permission is granted there could be no certainty of development to justify such harm.

7.7 The applicant is agreeable to the provision of a Written Scheme of Investigation (WSI) to meet the requirements of an intrusive investigation that can be secured in any forthcoming consent and undertaken as part of a future Reserved Matters' application. The proposed WSI is attached as Appendix 6 to this Statement.

7.8 The appellant's approach is consistent with the relevant facts of the case and Government policy on the matter and does not conflict with MDDC Local Plan policies S1, S9, DM1 and DM25.

7.9 The appellant considers that RFR 6 cannot be sustained.

Other Comments

8.1 There are further matters where it is clear that the Council have made errors in their consideration of the appeal proposals and the merits of the appeal proposals have been underplayed by the Council. This relates to two matters.

Link Road Provision

8.2 Provision of Link Road to the EUE is considered at paragraphs 1.6 (page 35), 1.18 and 1.19 (page 37) and paragraph 4.9 (page 43) of the OR.

8.3 In particular it is the points made at paragraph 1.19 – that the delay in allocated sites coming forward means that the spatial strategy of the DP has been undermined with sites coming forward at dispersed locations (rather than close to centres of population well served by public transport infrastructure); and at paragraph 4.9 – that part of the EUE is effectively ransomed and without the link road proffered by the appeal proposals, cannot be released until existing consented elements of the EUE have been completed (and which currently have not been commenced). This problem is more serious than officers appear to appreciate and, without the appeal proposals then is little/no prospect of the EUE being delivered as envisaged in the DP.

8.4 This benefit (of 'unlocking' the unconsented element of the EUE) and enabling the provision of a through-route bus service should have been accorded significant weight in the Council's decision, whilst we find (at paragraph 11.6, page 49 of the OR) this benefit is recognised, that underplays the importance of it, and therefore the weight that should be accorded to it (which should be significant).

8.5 It's important to recognise that if an extension to the existing business park was put forward on its' own then there is no necessity to provide an improved junction arrangement or a new access road. Any such proposal would simply seek to serve the additional area from the existing business park access (see appendix 7).

Renewable Energy Generation and Use

8.6 Paragraph 5.3 of the OR (page 44) recognises that *'The plant does not currently work at full capacity and has excess heat.'* These are two important points.

8.7 Unfortunately the OR goes on to state that *'Additional deliveries of feedstock would however be required'* however this need not be the case. As the Council recognise there is currently surplus heat produced that is simply vented to the atmosphere. The first step is to direct that loss to the

appeal proposals (via the pipework proposed). Thus full and effective use is made of the existing fuel input (feedstock). Please see appendix 8 for a fuller explanation of these proposals.

8.8 Secondly, the electricity produced is currently exported to the National Grid. The proposal is rather than export this electricity from the site to the Grid instead that it is used to directly (and thus more efficiently) supply the commercial element of the appeal proposals directly (see appendix 8).

8.9 Thus, variation to the existing CHP consent is only necessary if it is needed to increase capacity based on user demand. It is not necessary to vary the existing permission in order to provide both a heat and electricity service to future tenants of the expanded business park.

8.10 It is therefore incorrect to record (as officer do at paragraph 5.8 of the OR, page 44) that 'the delivery of the CHP from Red Linhay cannot be guaranteed'. It can, and it can be secured via the imposition of a suitable condition (or a S106 undertaking), please see appendices 9 and 10.

8.11 Therefore, rather than be afforded 'limited weight' (as officer do at paragraph 11.5) the appellant considers that this benefit should be afforded significant weight in determining this appeal.

Conclusion

9.1 Having regard to the provisions of this statement and the supporting information the appellant respectfully requests that the appeal is allowed.