

APPEAL BY WADDETON PARK LTD

APPEAL REFERENCE: APP/Y1138/W/22/3313401

LAND AT HARTNOLLS FARM, TIVERTON

DAVID SEATON

REBUTTAL TO ANTHONY ASPBURY'S PROOF OF
EVIDENCE

OUTLINE PLANNING APPEAL FOR THE EXTENSION TO
THE EXISTING BUSINESS PARK FOR UP TO 3.9HA OF
EMPLOYMENT LAND AND UP TO 150 RESIDENTIAL
DWELLINGS WITH ASSOCIATED OPEN SPACE AND
INFRASTRUCTURE (WITH MEANS OF ACCESS TO BE
DETERMINED ONLY).

AUGUST 2023



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1. Rebuttal to Tony Asbury's Statement

1.1 This rebuttal evidence addresses some of the matters raised in AA's PoE. I have some difficulty addressing AA's PoE due to the objectionable scope of it (see PCL letter to MDDC dated 21st August 2023, attached as annex A to the Additional Statement of Common Ground dated August 2023). I will therefore try to restrict my comments to matters that are not raised in that letter. The key points are summarised below.

S106/CIL regulation 122 matters

1.2 At paragraph 1.3.5 of his PoE (page 4) AA mischaracterises the legal responsibilities of the decision maker in relation to CIL regulation 122. It is for the LPA in the first instance to assess the evidence presented by those seeking mitigation. That responsibility now falls to the Inspector. At no time are DCC the 'competent authority' in relation to that matter.

New Point – an allegation of 'unsustainable location'

1.3 This misunderstanding may, to some extent, explain a confusion with AA's consideration of his first primary issue i.e. '*appropriately and acceptably located and, thus sustainable*' (see 3rd paragraph of paragraph 2.1, page 4). This is plainly a new matter (see relevant correspondence at Annex A to SoCG dated August 2023). In rebuttal I point out the following:

1.4 Tiverton is the largest town in Mid Devon, with the largest employment and service base in the district, and is served by a rail station. An urban extension to the east of Tiverton is an inherently sustainable location (and DCC as highway authority do not demur from this point). The Council came to this conclusion when considering the current DP (and thus making the allocation for the TEUE). The Local Plan Inspector clearly found the location of the TEUE sustainable (see paragraph 143 of CD60 and Framework 35).

1.5 The Council came to a similar conclusion on the appeal proposals. The Council concluded that the appeal proposals accord with DM18 (contrary to

AA's assertion made at paragraph 4.7 of his PoE, page 8). AA's assertion is inconsistent with the clear approach set out in the appellant's Planning Statement (CD36) and that approach was agreed by MDDC (evidenced by the finding of compliance with DM18 at paragraph 1.20, page 37 of the OR, CD1). I presume AA can only reach this conclusion by excluding DM18 from his analysis (and I note that he does that at paragraph 4.2 of his PoE).

- 1.6 AA does not explain what is so 'magical' about Manley Lane (in that a location to the west of it is 'sustainable' but a location to the east of it 'unsustainable'). The reality is that there is no such 'magic' and that the appeal site is plainly a sustainable location for urban growth to Tiverton (see appendix 1, paragraph 5.14). I note that AA, at paragraph 6.5 of his PoE, accepts that Hartnoll Business Park is "*generally inconspicuous, 'sitting down' in the landscape and strongly contained by well-established, mature perimeter tree and shrub planting.*"
- 1.7 Since adoption of the DP the Council have since recognised that they need to use part of the appeal site to ensure appropriate infrastructure is provided to the TEUE (see CD13 and my Planning PoE paragraph 4.18 – 4.23). The appeal proposals will deliver this necessary element of infrastructure that will improve the sustainability credentials of the TEUE and the area generally (by facilitating a through bus service linking to the proposed local centre within the TEUE). I also point out that (at paragraphs 10.1-10.3 of his PoE) AA appears confused – the point is that land ownership matters restrict the deliverability of the TEUE and the Appellant's proposed link road will overcome this problem and that the problem is so substantive that it will inhibit delivery of a key allocation of the DP. AA's attempt to downplay the benefit of the link road is clearly contrary to the position adopted in the OR (CD1, paragraph 4.9, page 43) and was not previously foreshadowed.
- 1.8 Perhaps AA's inconsistency with the Council's stated position may, possibly, be explained by (at paragraph 5.2 3rd bullet point, page 10 of his PoE) his mischaracterisation of the appeal proposals as a housing proposal (and

therefore, at paragraph 4.2, page 6, of his PoE, the exclusion of DM18 from his analysis). DM18 is plainly a MIP for this appeal and the appeal proposals plainly need to be located where they are to be able to:

- expand the existing employment site
- connect to the existing AD plant

(both significant benefits that underpin the environmental and economic credentials of the appeal proposals)

1.9 This fixes the location of the appeal site. The use of the intervening land for housing enables the AD connection to be made to the new employment use and raises no unacceptable harm. On the contrary, the delivery of housing (including affordable housing) bearing in mind the significant deliverability problems that the Council face (both within the current 5YHLS period and over the balance of the DP period) underpins the social and economic benefits of the appeal proposals.

1.10 Properly assessed, as a mixed use, the appeal proposals meet all three limbs of an assessment of sustainability and, it is agreed, without any unacceptable landscape and visual impact. Thus, allowing the appeal will enable the delivery of sustainable development.

1.11 It is also noted that AA has not read the text and supporting information of policy S14 with precision. I have dealt with this matter at paragraphs 5.11 – 5.13 of my PoE. It is agreed that the appeal proposals will not produce any unacceptable landscape harm.

Misrepresentation of Local Plan Review

1.12 At paragraph 7.5 of his PoE AA makes a generalised reference to '*The Local Plan Review Evidence base*'. What he fails to draw attention to is that officers actually suggested to members that the appeal site element of that wider site was considered acceptable as a housing site (see appendix 1 to this rebuttal). It is misleading to refer to considerations of the wider site,

but not note that, in isolation, the appeal site was considered, by officers, acceptable as a housing site.

- 1.13 The reason for not proceeding with an allocation for the appeal site in isolation was simply the desire/need to try to create critical mass at Cullompton in a (likely futile) attempt to underpin viability of the proposed new settlement at Cullompton. The flaws in that approach are now becoming evident, as is the flaw with the lack of an implementation plan for the TEUE. The appeal proposals respond positively to both of those current material considerations (that AA does not consider).
- 1.14 The Council were correct not rely upon any of the bullet points that AA sets out at paragraph 7.5 of his PoE (in the OR, or putative RfR, or SoC) when considering the appeal proposals. Bearing in mind my paragraph 1.12 (above) I fail to see why these points are relevant to the determination of this appeal.

New Point - Precedent

- 1.15 At section 7 AA seeks to introduce a precedent point. As the Inspector is well aware each case falls to be considered on its own merits. In this case I simply point out that the situation of this appeal site, sandwiched between the TEUE and Hartnoll Business Park, is unlikely to be replicated. And, as a related point, all parties agree that no demonstrable harm would occur should the appeal be allowed, again a situation unlikely to be easily replicated. Thus, in reality, the precedent point adds nothing to the Council's 'in principle' point which is based upon (a) a flawed understanding of S14 and (b) even if not, then any breach is outweighed by compliance with other elements of the DP and the identified benefits of the appeal proposals.

Flawed assessment of benefits

- 1.16 Finally I need to point out that AA's PoE appears to have been prepared in ignorance of the scale of deliverability issues evident with:

- the Council's housing delivery vehicle (3 Rivers – See my Housing Rebuttal)
- the (infrastructure heavy) development at Cullompton
- the (currently inaccessible) Area B element of the TEUE

1.17 And thus fails to grapple with the identified material considerations that fetter the deliverability of key provisions of the DP. As a result he 'blanks'(at paragraph 10.6) the benefits of housing in its' own right.

1.18 AA also underplays:

- the employment benefits (contrary to the Council's position, see OR, in particular paragraphs 1.18-1.21 (page 37) and 11.4 (page 48))
- the uniqueness of the AD link opportunity
- the importance of the proposal link road to 'Area B'

1.19 And fails to acknowledge that it is extremely unusual to identify a greenfield urban extension scheme which, as agreed with the Council, would not give rise to any objectionable landscape or visual impact (or, indeed, any demonstrable harm whatsoever).

1.20 His comment, at paragraph 10.7 of his PoE, regarding non-compliance with locational strategy is factually incorrect (Tiverton is a key location for growth in the DP), as are his comments about visual intrusion and sustainable travel opportunities (see the additional SoCG and the rebuttals of my colleagues Andy Williams and Neil Thorne). In reality the Council's case is solely based on being located adjacent to, but outside, a settlement boundary.

Conclusion

1.21 AA significantly underplays the clear benefits of the appeal proposals whilst simultaneously advancing points which are not supported by the Council.

Appendix 1

**CABINET
SEPTEMBER 2016**

REPORT OF THE HEAD OF PLANNING AND REGENERATION

IMPLICATIONS OF MAKING A MAJOR MODIFICATION TO THE LOCAL PLAN REVIEW TO ALLOCATE LAND AT JUNCTION 27 OF THE M5 FOR A LEISURE/RETAIL/TOURISM AND EMPLOYMENT DEVELOPMENT.

Cabinet Member Cllr Richard Chesterton
Responsible Officer Jenny Clifford, Head of Planning and Regeneration

Reason for Report:

At the Council Meeting on the 27th April 2016 the Council considered the following Motion (Motion 525) in respect of the current Local Plan Review.

1. That the outcomes of the Local Plan Review pre-submission consultation and subsequent technical work together with officer recommendations be considered by Cabinet and Council prior to plan submission and;
2. That the report of these outcomes include the implications to the local plan of making a major modification to the Local Plan Review to allocate land at J27 of the M5 for a leisure/retail/tourism and employment development.

Both parts of the motion were carried.

Issue 1 will be reported to Cabinet and Council at future meetings in October / November 2016.

Issue 2 is addressed in this report.

OPTIONS FOR DECISION.

- 1) RESOLVE NOT TO ALLOCATE THE SITE, OR**
- 2) RESOLVE TO ALLOCATE THE SITE FOR TOURISM, LEISURE AND RETAIL DEVELOPMENT**
and in the event of the decision to allocate land at J27
- 3) ALLOCATE THE ASSOCIATED ADDITIONAL HOUSING SITES GIVING THE EXTRA PROVISION FOR 260 ADDITIONAL HOUSES.**

Relationship to Corporate Plan:

The Mid Devon Corporate Plan 2016 to 2020 seeks to bring new businesses into the district and grow the tourism sector. It sets out under priority 1, the economy section of the plan, the following aims:

Aim 1 - Attract new businesses to the District

- Focus on particular sectors and their supply chains e.g. agriculture, food and drink offer, leisure and tourism, professional scientific and technical, etc

Aim 4 - Grow the tourism sector

- Increase the number of people visiting, staying and spending money in the District

evidence which is considered to demonstrate the interdependency of the tourism, leisure and retail (DOV) proposals.

5.0 Housing need

The Strategic Housing Market Assessment (relates to the whole Local Plan Review).

- 5.1 The Pre-Submission Draft identified a Local Plan requirement of 7,200 dwellings during the plan period (360 per year). Since it was prepared the Strategic Housing Market Assessment (SHMA) has been finalised which gives an objectively assessed need of between 361 – 400 dwellings per year. **The SHMA mid-range figure of 7,600 dwellings during the plan period (380 per year) is considered by Officers to be appropriate and justified.** This figure also accords with the latest release of demographic information with regard to the 2014 sub-national population projections and latest household formation rates.
- 5.2 Officers propose amending the emerging Plan to reflect this revised figure. Officers consider that the increase in objectively assessed need to 7,600 dwellings during the plan period can be met without allocating additional sites for residential development. This can be achieved partly as monitoring results from the first two years of the plan period indicate a higher than expected level of planning permissions granted during this period and also as a result of greater knowledge of allocated site capacity gained as a result of the local plan consultations and ongoing site analysis.

Additional Housing Requirements related to a Junction 27 Allocation.

- 5.3 National planning policy acknowledges the importance of ensuring housing numbers and employment opportunities are considered in tandem. Edge Analytics has been commissioned by the Council to assess what the additional housing requirements would be to meet the housing needs arising from the Junction 27 proposal.
- 5.4 The allocation currently being considered is smaller than previously considered schemes. As referred to above in the background section of this report, this scheme previously estimated an indicative number of jobs arising from the proposal at approximately 3,500. The promoters' representation to the Local Plan consultation had refined this figure to 2,266 jobs based on an amended proposal and full time equivalent jobs. The proposals, which are now presented on the promoters' website, no longer include a warehousing/logistics element and their proposed site area is now reduced from 96 hectares to 71 hectares, with an estimated 1,186 jobs.
- 5.5 A range of scenarios relating to the relationship between jobs, population and housing have been considered including one in relation to the impact of allocating a scheme at J27. Different job numbers associated with the scheme were assessed and sensitivity tested taking account of different economic activity rates and changes in commuting patterns.
- 5.6 Edge Analytics concluded that with the junction 27 proposal the overall housing requirement for the plan period should be 7,860, or 393 per year.

Therefore the additional housing requirement resulting from this proposal would be 260 dwellings during the plan period, which equates to 13 additional dwellings per year.

- 5.7 The table below sets out the various local plan housing requirements referred to above:

	Plan period requirement	Annual requirement
Pre-submission Draft LP	7,200	360
LP adjusted to reflect latest evidence	7,600	380
LP with J27	7,860	393
Additional dwellings required if J27 allocated	260	13

Additional Housing Options.

- 5.8 If members are minded to make a modification to the plan to allocate land at J27, sites for the additional 260 dwellings will also need to be allocated in the Local Plan. The Planning Policy Advisory Group met recently and considered various options over how an additional housing need could be met. The selection criteria used for identifying additional sites were as follows: sites previously consulted on as part of the Local Plan Review Options consultation (January 2014) or received as a local plan representation; sites considered by the Strategic Housing Land Availability Assessment Panel; compliance with the Local Plan Review Distribution Strategy; and proximate to the development proposal at Junction 27.
- 5.9 **Cullompton** is the main focus of growth during the plan period. Any additional development would have to be phased until after the strategic highways improvements have been delivered. A significant amount of development is already programmed for Cullompton during this period. Cullompton was therefore not considered as an appropriate location to meet this extra level of need.
- 5.12 **Crediton** is not well related to the proposal at Junction 27 and is therefore not an area considered for additional residential development to meet this extra need.

5.13 **Tiverton (Appendix 3)**

The Tiverton Eastern Urban Extension in the adopted Local Plan allocates up to 2,000 dwellings. The figure of 2,000 dwellings reflected advice from Devon County Council with regard to constraints on the highways network. The proposed number of dwellings for the site was subsequently reduced as part of the Masterplanning work to 1,520 dwellings. The Master Plan figure of 1,520 dwellings was included in the Local Plan Review. An additional 480 dwellings could therefore be allocated within the existing 'planned for' infrastructure constraints. It should be noted however that if a further 480 dwellings were to be accommodated in the area this would need to extend beyond the currently allocated area as work on Tiverton Eastern Urban Extension Masterplanning would suggest that there are limitations on site densities on the existing allocated site.

5.14 If the eastern urban extension site, currently identified in the local plan, was to be extended it is logical for this to include **land at Hartnoll Farm** which abuts the current urban extension. This land was previously considered at the Local Plan Review Options Consultation January 2014. If only part of this site was needed it would be sensible for this to comprise the western and southern parts of the site which are predominantly Grade 3 agricultural land and are well screened from wider view. This would also allow for the areas adjoining the Grand Western Canal to be left undeveloped, also maintaining the strategic green gap between the edge of Tiverton and Halberton village. A new access, or reconfiguration of current Hartnoll Farm/employment land access arrangements, would be needed to allow development to occur independently of the development of the current eastern urban extension. If members are minded to allocate some land at Hartnoll Farm it is recommended that this should be capable of accommodating approximately 200 dwellings to allow flexibility with further refinement of densities at Tiverton Eastern Urban Extension should that be necessary.

5.15 Alternatively the whole of the Hartnoll Farm site could be developed, which would trigger additional highways improvements. This would require approximately 1,000 dwellings at Hartnoll Farm and the development of land at Blundells, referred to below, would also be required to provide a new strategic access point. This would equate to 1,200 dwellings in total, which is over and beyond the additional need referred to above. It would also involve grade 1 agricultural land and extend Tiverton significantly closer to Halberton.

5.16 **Land at Blundells School** is allocated in the adopted Local Plan for 200 dwellings. The site is bounded by development to three sides, with the River Lowman forming the northern boundary. It is currently proposed to be deleted in the Local Plan Review as the site had not come forward. However officers now understand that the land is still available and developable. Development of the site would need to safeguard highway access to accommodate growth beyond the plan period. Part of the site is brownfield and the development would provide an opportunity to clean up contaminated land. Devon County Council officers have confirmed that development of 200 dwellings at Blundells would be acceptable over and above the current Tiverton Eastern Urban Extension limit of 2,000 dwellings, if the Blundells development is accessed off Heathcoat Way and a future highway route safeguarded.

- 5.17 The flooding issues associated with the development of this site have been examined previously and have been the subject of discussions with the Environment Agency. It is considered that flooding issues can be overcome via mitigation. This development would create a total of 6 hectares of developable land along the southern edge of the site, and 8 hectares of floodplain, which would be provided as Green Infrastructure.
- 5.18 **Sampford Peverell (Appendix 4)**
Land at Higher Town could provide 60 dwellings. The site is elevated and would require careful landscaping and mitigation measures. This development is proportionate in scale to the existing village. The Highway Authority has advised that any development of the site should be phased until after improved access to the A361. Other potential sites in the village were assessed but were not considered of an appropriate scale or would impact adversely on heritage assets.
- 5.19 **Hemyock (Appendix 5)**
Land south west of Connigar Close was assessed positively through the SHLAA process and an application has recently been submitted. This site could provide 22 dwellings. However given that the site is within the Area of Outstanding Natural Beauty it would need sensitive design and landscaping. Other sites were considered in Hemyock but were not favoured owing to their scale and impact on the Area of Outstanding Natural Beauty.
- 5.20 **Kentisbeare (Appendix 6)**
Land was previously included in the Local Plan at Kentisbeare next to the Village Hall as an affordable housing allocation for 20 dwellings. This was removed owing to a lack of impetus in the site coming forward for affordable housing and due to strong objection from the Parish Council. However if allocated for a mix of market and affordable housing it is considered that it would come forward for development. This site was not supported by the Planning Policy Advisory Group.
- 5.21 **Uffculme**
Sites were also considered at Uffculme but were not included as options as the sites were not deemed to be appropriate extensions to the village, had access difficulties and some were in Minerals Safeguarding Areas.
- 5.22 **Willand**
Given the proximity of the proposed development at Junction 27 to Willand its suitability to accommodate potential additional housing sites was also considered. Although there are developable sites in the village, sites in Willand are not recommended as Devon County Council has advised that development of these sites would exacerbate traffic problems prior to planned future improvements.
- 5.23 The **Planning Policy Advisory Group** considered the options set out below. The Group recommended to Cabinet that if Cabinet Members were minded to recommend an allocation at Junction 27 to Council, then **the corresponding additional housing should be met at Land at Blundells, Tiverton and at Higher Town, Sampford Peverell**. This is also the favoured approach of officers in meeting the additional housing need should members decide to make a J27 allocation.

Potential Site	Number of Dwellings
Tiverton – Hartnoll Farm	200
Tiverton – Land at Blundells	200
Sampfords Peverell – Higher Town	60
Kentisbeare	20
Hemyock – Land SW of Conigar Close	22

6.0 Mid Devon Tourism Study 2014 November 2014

6.1 The Study concludes:-

“Existing tourism facilities within the District largely draw on a visitor pool from within the region, and particularly within a 20-40km catchment. However there are a number of strategic routes through the District – the M5 and A361 in particular. There should be an opportunity to develop the tourism infrastructure around these key links to encourage a greater proportion of people to “stop” or break their journey in the area, for instance to visit a local attraction, market or retail facilities or to stay. This opportunity builds on the District’s location at Gateway location to Exmoor and the North Devon Coast; and on the route to Dartmoor, the South Devon Coast and Cornwall from much of the UK.

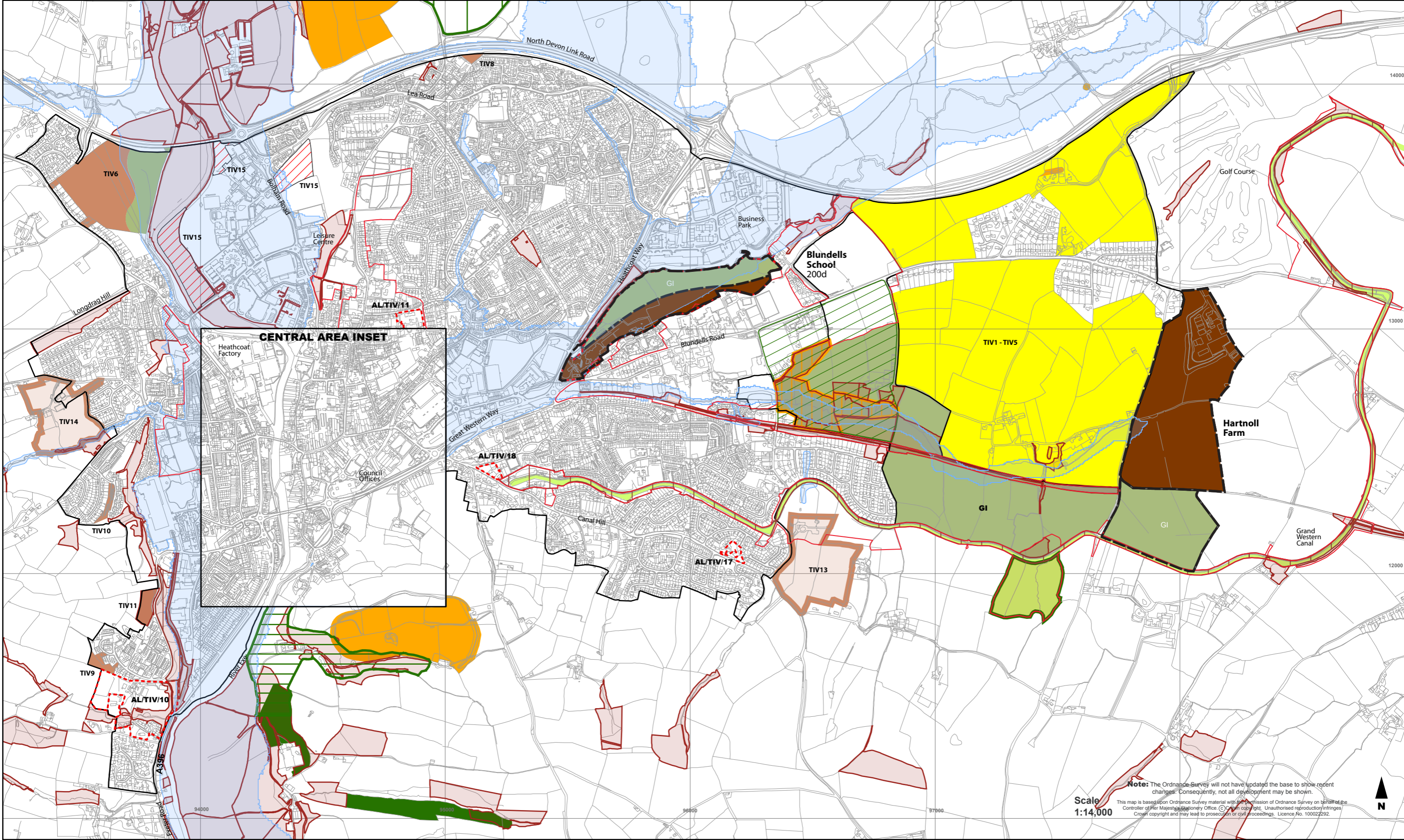
6.2 *The opportunity which exists seems to particularly relate to encouraging day visits, as well as short stay trips (such as long weekends).*

6.3 It identifies 6 strands to increase the tourism offer of Mid Devon. The proposed allocation at J27 would respond to Strand 5 (Catching passing tourists / major tourist facility) and 6 (Fun for the kids). Additionally in making provision for additional hotel accommodation it would also in part address Strand 2 (Developing the accommodation offer). For more detail on each of these strands please see **Appendix 7**.

6.4 The promoters for the commercial allocation at J27 have submitted as part of their representation a “Leisure Impact Assessment” produced by Colliers international. Their report concludes an allocation J27 *“has potential to make a step change in the district’s performance as a tourism area and the jobs which tourism sustains.*

6.5 *“It delivers the opportunity which was identified in the Mid Devon Tourism Study (November 2014) commissioned by Mid-Devon in developing its evidence base for the new Local Plan.*

6.6 *The destination attractions planned would, while being major attractors, only need to capture a relatively small proportion of the market there is in the area for day trips from home and from holiday accommodation. A high proportion of those trips would not otherwise be made to Devon. It is unlikely that there*



Scale 1:14,000

Note: The Ordnance Survey will not have updated the base to show recent changes. Consequently, not all development may be shown.

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September 2016

Possible Housing Options
(Overlaid on Local Plan Proposed Submission Map Feb 2015)

Tiverton

Possible Housing Options		Proposed Mixed Use Allocation		County Wildlife Site (2007 data)		Site of Special Scientific Interest	
Possible GI		Proposed Green Infrastructure		Local Nature Reserve		Priority Habitats	
Settlement Limit		Conservation Area		National Register of Historic Parks and Gardens		Safeguarded Areas for School Expansion	
Proposed Residential Allocation		Ancient Monument		Local Register of Historic Parks and Gardens		Proposed Deleted Sites	
Proposed Contingency Housing Site		Ancient Woodlands		Tidcombe Lane Fen Catchment Area		Floodplain	