Rebuttal Proof of Evidence

Town and Country Planning Act 1990 (as amended)
Section 78

Appeal against the non-determination of a planning application by Mid Devon District Council

Outline application for the proposed 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)

Address: Land at NGR 298976 112882 (Hartnoll Farm) Tiverton Devon

LPA Reference: 21/01576/MOUT
PINS Reference: APP/Y1138/W/22/3313401

Rebuttal Proof of Evidence on behalf of the Local Planning Authority

Compiled by:

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Contents:

1. Rebuttal to the Appellant's Housing Land Supply Proof of Evidence

1.1. In this rebuttal proof of evidence, I have not sought to provide a comprehensive response to the Appellant's evidence. The approach set out below is to identify specific matters referenced within the proof of evidence of Mr David Seaton on which the Inspector may find it helpful to have a written response in advance of the inquiry. If I have not responded to or referred to other points in the Appellant's evidence, it is not because I have accepted these points.

1.2. I present these rebuttal comments with reference to the specific paragraphs within Mr Seaton's Proof for ease of cross-referencing. This rebuttal proof responds to matters raised within the Appellant's Housing Land Supply. Separate rebuttal comments will be provided by Mr Tony Aspbury in response to the Planning Proof.

2. Overarching rebuttal comments

2.1. As set out within the Inspector's Post CMC note, the main issue (for the purposes of my Proof of Evidence and this rebuttal) is whether or not the Council has a five year housing land supply.

2.2. Much of the Appellant's case is based on perceived delivery issues associated with strategic allocations including the Tiverton Eastern Urban Extension, the North West Cullompton Urban Extension and East Cullompton / Culm Garden Village (Deliverability over the residual DP period). Only a small component of such allocations is included within the five-year housing land supply where the Council has specific evidence of deliverability and indeed where site build out is progressing at pace. In my view, the Appellant is straying into plan-making territory and goes beyond the scope of this inquiry which is, fundamentally, whether the Council can demonstrate a five-year housing land supply.

2.3. There is no requirement to deliver the entire local plan strategy in a five-year period. The Local Plan strategy, which has been informed by extensive evidence gathering and undergone an independent examination, will be delivered over the lifetime of the plan

period as a whole. In any case, the requirement for sites 6-10 and 11-15 is to identify a supply of 'developable' sites as opposed to the more onerous 'deliverable' requirement. This is addressed in paragraph 5.21 of this rebuttal.

2.4. Furthermore, the Appellant's case is predicated on the basis that the appeal site would assist in addressing a perceived shortfall in housing land supply to deliver the plan strategy. However, there is no evidence to suggest that the appeal site is any more deliverable. The appeal proposal is made in outline, therefore in accordance with the definition of 'deliverable' should only be considered deliverable where there is clear evidence that housing completions will begin on site within 5 years. No such clear evidence is available.

2.5. Finally, I note that the Appellant does not include any evidence with regards to previously disputed sites at Church Lane, Cheriton Bishop and Gold Street, Tiverton. I therefore assume that the Appellant now accepts the Council's evidence in respect of these sites but reserve the opportunity to comment further should this not be the case.

3. Gypsy and Traveller Pitches

3.1. The Appellant's figures at 3.10 are incorrect. The correct figure is 32 pitches between 2013 – 2022 which the Council agrees to deduct from the 5YHLS (and I append a corrected 5YHLS position to this rebuttal – Appendix 1). Whilst the FOI response (CD64) correctly identifies 42 pitches between 2013 – 2033 only 32 of these had previously been counted within the Council's completions figures – See Appendix 2.

4. The Council's evidence base

4.1. The Appellant argues at paragraph 4.9 that the Council's evidence '*cannot be considered any more than unsubstantiated assertion'*. Upon any reasonable reading of my evidence, this plainly incorrect. The commentary in the spreadsheet provides a brief summary of the Council's evidence and in many places references specific sources. Whilst the Council does not, as a matter of course, routinely publish all of its evidence as it is invariably continuously updated, the Appellant could have, at any time, requested it and the Council would not have withheld this information. In any case, to assist the inquiry, the evidence has been published at Appendix C of my Proof. The Council's approach to evidence is set out in detail within my proof of evidence and is not repeated in this rebuttal.

4.2. Indeed, if it is the case that the Council's evidence is no more than '*unsubstantiated assertions'* I query why so few sites are disputed by the Appellant. The Draft (at the time of writing) Statement of Common Ground (Housing) confirms that the Appellant disputes only 10 sites (8 according to the Appellant's proof – see paragraph 2.5), plus a broad dismissal of the windfall allowance. It is evidently clear that the Appellant has, in large part, accepted the evidence and the Council's position on the vast majority of sites. The Appellant cannot therefore legitimately challenge the overall standard of evidence on this basis.

4.3. In respect of the windfall allowance, the Appellant claims that the Council's evidence '*falls some way short of 'compelling evidence*'', consistent with Government Policy. Paragraph 5.4 of Mr Seaton's proof advances several arguments, which are addressed in turn below:

- *"Most larger brownfield sites within Mid Devon have already been redeveloped so there is little potential future supply form this source"*

  Housing completions on brownfield land has always comprised a very small component of overall completion figure. In my view, it is highly unlikely that lack of availability of larger brownfield sites going forwards will make any material difference to future completions figures. Notably, of the windfall data included within Appendix C of my Proof, there are only 14 completions on brownfield sites of 5+ units (but less than 20 units as these are already discounted as per the HELAA methodology – see below response)

- "*Double counting – the SHLAA process seeks and identifies such sites whereas historically many SHLAA sites would be recorded as windfalls (therefore inflating historic rates)*

  This assertion is incorrect. The HELAA methodology (Appendix 4) (CD27) establishes a robust methodology for determining housing potential of windfall sites. Indeed, this approach was jointly agreed by partner Local Authorities and endorsed by the HELAA panel[1], which comprises a broad range of housing and economic development industry experts. The approach specifically recommends (Page 21 of CD27) excluding windfall completions on sites of 20 or more gross dwellings. This reflects the fact that overall historic windfall completions are likely to have been uplifted by larger sites permitted prior to current plan periods and/or not being able to demonstrate five year land supply which are perhaps less likely to be realised going forwards. Accordingly, the windfall allowance included in my evidence represents a conservative approach to windfall projections that accords with the NPPF requirement.

- *"'Taxation of residential development (via affordable housing quotas and S106) cumulatively means that existing uses are more viable in comparison (since they are not subject to the same financial costs and redevelopment costs do not need to be incurred"*

  All data used within the calculation of the windfall allowance is 2015 or later whereby development would have been subject to similar 'taxation' via affordable housing or any other infrastructure requirements. Indeed, the previous Development Plan for Mid Devon (in place until 2020) required higher proportions of AH [2] so if anything, the windfall assumption is conservative. In any case, larger sites (20 or more dwellings) are specifically excluded.

4.4. As set out in paragraph 6.22 of my proof, there is every reason to expect that windfall completions will continue to provide a reliable source of supply. The approach has been

[1] The HELAA Panel adopted the the methodology at its meeting to consider East Devon sites on 21 October 2021.

[2] Policy AL/DE/3 (page 31) of the Mid Devon Allocations and Infrastructure Development Plan Document (January 2011)

endorsed by the Exeter Housing Market Area HELAA expert panel and the Appellant has not set out any convincing evidence to the contrary.

5. Disputed Sites

5.1. Firstly, it should be noted that the entirety of the Appellant's evidence in respect of disputed sites is contingent on applying a very rigid and narrow interpretation of the definition of 'deliverable' as set in the Framework. As set out in paragraph 6.3 of my proof, the courts have made clear that this is not the correct approach. The examples given in categories a) and b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgement on the evidence available. Additionally, where Mr Seaton disputes the Council's deliverability evidence, he does so whilst offering little substantive evidence in return to justify his assertions, beyond a statement contending that it is not "clear evidence".

Unconsented Allocations

CU1 – CU6 – North West Cullompton; Phase 2: Codex 315

5.2. The Council concurs that due to uncertainty over exact delivery timescales, development on phase 2 of the NW Cullompton Urban Extension should be excluded from the five year housing land supply, resulting in a deduction of 50 dwellings. This has already been deducted from the HLS position set out in Appendix A of my Proof of Evidence.

5.3. The Appellant argues that the site-specific constraints due to the CTCRR prevents the occupation of almost all of Phase 2 for the foreseeable future,although the Council is proactively investigating alternative methods of delivery. In any case, no delivery that is reliant on the delivery of the Relief Road is now included within the Council's five-year housing land supply position.

TIV10 - Roundhill

5.4. The Appellant contends (at paragraph 7.17 of their Proof) that the current planning status does not comprise sufficient evidence to demonstrate deliverability and notes the potential for mineshafts in the area.

5.5. The site is wholly within the Council's ownership. As set out in Appendix C of my Proof, a planning application is scheduled for submission Q4 23/24 and delivery to take place in the 25/26 monitoring year. Funding is also earmarked via the Council's current 5 year HRA Medium Term Financial Plan for 23/24 onwards.

5.6. With regards to the potential for mineshafts in the area, this was considered through the local plan evidence base. Notably, the HELAA panel did not raise any deliverability concerns. There is no evidence to suggest this presents a fundamental deliverability issue that cannot be addressed through appropriate mitigation.

5.7. This constitutes clear evidence of deliverability of the site in accordance with national planning policy and relevant case law. My evidence clearly demonstrates housing completions will begin on sites within five years.

TIV16 – Blundells School

5.8. The Appellant's information in respect of this site is out of date. Planning permission has been granted for 120 dwellings (22/01098/MOUT).

5.9. At paragraph 7.22 of their proof, the Appellant states that '*there is also the onerous task of relocating the recycling centre/scrap year prior to residential development*'. Whilst I concur that in the interests of good planning and residential amenity the scrapyard should be removed and the site remediated prior to residential development, I do not consider that this is an insurmountable deliverability challenge to the site. I therefore maintain that there is a realistic prospect that housing will be delivered on the site within five years. The planning permission does not stipulate any specific conditions or obligations preventing residential development coming forward in a timely manner. I also note that the site is in single ownership and therefore there are any number of different routes to delivery. For example, the owner could elect to close the scrapyard whilst a new site is found in order to facilitate a more financially lucrative residential led development.

5.10. My evidence at Appendix A of my proof reflects build out information from the developer that housing completions will begin on site within five years. I maintain that there is no evidence to suggest that a different view should be taken and the Appellant has not provided any tangible evidence to the contrary within their proof.

TIV9 – Howden Court

5.11. The site is wholly within the Council's ownership and my evidence sets out the Council's position in respect of this site. I maintain that there is a realistic prospect of delivery within five years.

Consented Allocations

14/00881/MOUT – TIV1 to TIV5 Eastern Urban Extension, Tiverton – Chettiscombe Trust Land

5.12. The Appellant notes that only one residential application (for 164) dwellings pursuant to the outline permission has been granted leaving the delivery of 536 dwellings outstanding pursuant to the outline permission. Mr Seaton also acknowledges that a further RM application has been submitted (23/00394/MARM) for 122 dwellings although this has not yet been determined. It is argued that '*there is no evidence that the 98 dwellings included in the 5YHLS can be delivered*'.

5.13. On the contrary, the recently submitted RM, whilst undetermined, is clear evidence of deliverability. It is logical to assume that the applicant, Redrow Homes Ltd (a reputable and well-established national housebuilder), will seek to build out this application following completion of their development to the North West (21/00454/MARM) and simply transition from one site to the next to ensure efficient development planning and construction management.

17/00348/MOUT & 22/00063/MARM – CRE5 Pedlerspool, Exhibition Road, Crediton

5.14. The Appellant does not dispute the deliverability of the permission but does not consider that the 60 dwellings per year is realistic.

5.15. The trajectory information (as set out in Appendix C of my proof) reflects delivery information provided to the Council from Bellway Homes, who are a reputable large-scale developer currently building out several other sites within Mid Devon, at considerable pace. I maintain that my evidence provides a realistic build out trajectory for the site. Bellway Homes are actively progressing discharge of conditions on various matters (as evident from the DOC application form, plans and information submitted in August 2023) and have site boards up with the intention of commencing construction imminently.

5.16. The Appellant has also incorrectly reduced the supply by five units, contending that these were included in the overall supply. This is not the case.

Consented windfalls 1 – 4

5.17. The Appellant contends that a 10% lapse rate should be applied to the figure of 248. This is unnecessary since the Council has already deducted a proportion of small windfall sites from the calculation. This is set out in paragraph 6.16 of my proof of evidence.

Consented windfalls (4+ dwellings)

15/01822/MFUL – Alexandra Lodge, 5 Old Road, Tiverton

5.18. The Appellant notes, at paragraph 7.50 of their proof that '*due to the length of time that has passed since confirmation of commencement was published and the lack of progress on site it appears unlikely that the development will be completed within the timeframe contained in the Appendix to the 5YHLS*'.

5.19. Whilst I accept that delivery is unlikely to take place in accordance with the exact timeframe provided in my HLS position, I maintain that there is a realistic prospect of delivery within five years. There are known historic environment issues to address, although there remains a clear interest in developing the site and the applicant's development consultant is actively working with the Council to address these issues.

20/02128/FULL – Pleasant Streams, Uffculme, Cullompton

5.20. The Council concurs with the Appellant's position regarding this site. The 6 pitches had previously been included in error.

Windfall Allowance

5.21. I do not accept the Appellant's position in respect of the windfall allowance. I have set out my responses to specific arguments in section 4 of this rebuttal. In addition, paragraphs 6.19 – 6.23 of my Proof set out the basis for the Council's windfall allowance.

6. Deliverability over the Residual DP Period

6.1. At paragraphs 8.1 and 8.3 of their proof, the Appellant contests the deliverability of the Development Plan and, in particular, the part that relates to Tiverton. Fundamentally, there is no specific requirement in national policy or guidance to ensure that sites in years 6+ meet the definition of 'deliverable' in the Framework. Instead, the Council must ensure that they are 'developable'. Therefore, the requirement for these sites is to ensure that they are in a '*suitable location for housing development with a reasonable prospect that they will be available and could be viably developed at the point envisaged'*(NPPF – Annex 2). This was established through the Local Plan 2013 – 2033 Examination and ultimately accepted by the Inspector in 2020 (CD60).

6.2. The Appellant asserts that '*the appeal proposals are necessary for the planned delivery from the EUE to occur*'. I do not accept that this is the case and I commend to the Inspector Mr Aspbury's rebuttal, which sets out the Council's response on this issue.