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APPEAL BY WADDETON PARK LIMITED

PINS REF.: APP/Y1138/W/22/3313401

LAND AT HARTNOLLS FARM, TIVERTON

SUPPLEMENTARY PROOF OF EVIDENCE

OF

ANTONY ASPBURY BA MRTPI

ON BEHALF OF MID DEVON DISTRICT
COUNCIL

OCTOBER 2024

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1.0 INTRODUCTION

1.1 Qualifications and Experience

1.1.1 I am **Antony Peter Asbury**, a Director of **Asbury Planning Limited**, Town Planning and Development Consultants, founded by me in 1983. Prior to that I held a variety of positions in Local Government. I have 47 years' post qualification experience as a practising Town Planner, 41 years of that in private practice.

1.1.2 I hold a Bachelor of Arts Degree in Geography and I am a Member of the Royal Town Planning Institute.

1.1.3 I am a past President of the East Midlands Chamber of Commerce and Industry, the largest representative business organisation in the Region. Prior to that I was Chairman of the Environment Committee of the Chamber. I am also a past-Chairman of Newark Civic Trust. I am a past Board Director of Nottingham Development Enterprise Limited, a public/private sector partnership promoting the economic development of the Greater Nottingham conurbation. I am currently a private sector member of the Nottingham Express Transit (Tram) Partnership Board; a Council and Executive Committee Member of the Newark & Nottinghamshire Agricultural Society and Chair of the Society's Development Committee; and a member of the Board of the Newark Towns Fund.

1.1.4 My Practice acts for a wide range of public and private sector clients, including local authorities and other public agencies, landowners, developers, builders and operators. A number of major national and multi-national companies are counted amongst the private sector clients.

1.1.5 During my long and varied consultancy professional career I have, amongst other things acted as agent on numerous major planning applications, appeared at many hearings and planning inquiries (acting for Appellants, Objectors and Local Planning Authorities), including into old-style development plans and, more recently, at examinations of development plan documents.

I am therefore fully conversant with development management and the development plan system, with current national policy and guidance as set out in the National Planning Policy Framework and online Planning Practice Guidance, and with a wide range of individual development plan documents across Great Britain.

1.1.6 I am familiar with the provisions of the adopted development plan in this area. I have visited Tiverton, including the Appeal Site, on a number of occasions. I have also undertaken research and collected documentary evidence about the area in preparing this Proof.

1.1.7 I am aware that my duty is to the Inquiry, irrespective of by whom I am instructed. The evidence which I have prepared and provide for this appeal, reference APP/Y1138/W/22/3313401, in both this Supplementary- and my main Proof of Evidence is true (and has been prepared and is given in accordance with the guidance of my professional institution [The Royal Town Planning Institute]) and I confirm that the opinions expressed are my true and professional opinions.

1.2 My Instructions

1.2.1 This Supplementary Proof has been prepared on behalf of the Local Planning Authority (LPA), Mid-Devon District Council.

1.2.2 I prepared and presented evidence to the previous Public Local Inquiry in September 2023. The previous Inspector's Decision Letter, dismissing the Appeal, was dated 20 October 2023 (CD 86). That Decision was subsequently quashed (by Consent Order AC-2023-LON-003510 dated 06 June 2024) and the Appeal is now being redetermined. I have read and reflected on my previous proof of evidence and have concluded that, apart from relatively minor amendments and updates, primarily necessitated by the passage of time since the last Inquiry, I have no reason to resile from the overall scope, content and thrust thereof and that conclusion is reflected in this Supplementary Proof below. I have also had regard to the findings of the first Inspector on the main issues in this case.

Although his decision was quashed on one issue, it can still, nevertheless, be regarded as a material consideration.

1.2.3 The LPA's original substantive case was set out in a Statement of Case (SoC)(CD3) following which, before the previous Inquiry, there were further developments in relation to that case which I outline below. Amongst other things, Statements of Common Ground (SoCG) (CD6, CD7 and CD8) between the parties were prepared previously. Both parties have now prepared a Supplementary SoC (**CD 3a and 4a**) and have agreed a Further Additional SoCG (**CD 6b**). In addition, the Appellant has submitted a SoCG with Devon County Council as Local Highway Authority (**CD ??**), whilst *West Country Land* – formerly a Rule 6 -, now an Interested party - has submitted a SoCG with Mid Devon DC as Local Planning Authority and Devon County Council as Local Highway Authority in relation to the Tiverton East Urban Extension (**CD 87**). This Supplementary PoE takes full account of the above.

1.2.4 It was previously agreed that, although this Appeal is based on the failure of the Local Planning Authority to determine the Planning Application, the Local Planning Authority subsequently issued (19 January 2023) a decision notice (CD2) with 6 putative Reasons for Refusal. A number of the issues raised by these RfRs have since been resolved and/or the Authority has confirmed that it is no longer pursuing certain of them. Thus, before the preparation of evidence for the last Inquiry and following the receipt of further information from the Appellant and/or agreement of appropriate planning conditions, the Authority was (and is now) no longer pursuing RsfR 2, 3, 5 and 6. Finally, upon the submission by the Applicant of a Unilateral Undertaking dated 26 September 2023, the objections encompassed RfR 4 were effectively overcome. This left only RfR 1 at issue.

2.0 THE MAIN SPATIAL PLANNING ISSUES AND THE SCOPE OF MY EVIDENCE

2.1 In the light of the commentary at 1.2.4 above, the Inspector's post CMC Note has set out the following main issues now to be addressed:

- 2.1.1 Whether or not the appeal proposal would be in a suitable location having regard to the policies for the location of development in the Mid Devon Local Plan 2013 – 2033, including in particular Policies S1, S2 and S14.
- 2.1.2 The weight to be given to the material considerations in the planning balance in this case, including provision of a secondary access road to Area B of the Tiverton Eastern Urban Extension, and the implications for the Appeal.
- 2.2 It is agreed between the parties that the issue of five-year housing land supply is no longer a matter of disagreement, as confirmed in the Further Additional SoCG (CD 6b – Paragraph 3.2). It follows that there is no potential to engage the ‘tilted balance’ as previously asserted by the Appellant.
- 2.3 Any broader points relating to housing land supply and delivery are covered in the other planning evidence and proofs and my Supplementary Evidence here is to be read alongside, complements and is complemented by the Supplementary Proof of Evidence of *Mr Arron Beecham*, Principal Housing Enabling and Forward Planning Officer, Mid-Devon DC in relation to these broader issue. I endorse that evidence and rely on its substance and conclusions, to the extent necessary, in my assessment of ‘policy’ compliance and in striking the planning balance. I comment on this further below.

3.0 THE APPEAL SITE AND ITS SURROUNDINGS.

- 3.1 The Officer’s Report to Planning Committee and the main Statement of Common Ground provide a satisfactory basic factual description of the Appeal Site and its surrounding. As with my main PoE, I do not propose to revisit that description here, but I do wish to draw attention to the commentary at paragraphs 3.2 and 3.3 of that document which I consider continue to be relevant and in need of highlighting.

4.0 THE RELEVANT PROVISIONS OF THE DEVELOPMENT PLAN, AND POLICY IN THE NPPF

4.1 It is agreed that, so far as this Appeal is concerned, the development plan for the purposes of Section 38(6) of the Planning & Compulsory Purchase Act 2004 ('the PCPA 2004') and Section 70(2) of the Town & Country Planning Act 1990 ('the TCPA 1990') comprises the Mid Devon Local Plan 2013 to 2033 (Adopted July 2020) (CD12). The Appeal Site lies outside the recently-made Tiverton Neighbourhood Plan Area (CD15) and is not strictly subject to its provisions therefore. However, insofar as the AS directly abuts the Neighbourhood Plan Area and the Plan reinforces and amplifies relevant provisions of the Local Plan, I referred to it in my main Proof as referenced (4.16) below..

4.2 The parties are agreed as to the relevant provisions of the development plan and, for clarity, they have been listed again in the Further Additional Statement of Common Ground (CD 6b - Paragraph 2 (i)).

4.3 As previously, I do not propose to address them all exhaustively here and confine myself to those policies which are most important for determining this Appeal. I deem these to be:

- S1 – Sustainable Development Priorities
- S2 – Amount and Distribution of Development
- S3 – Meeting Housing Needs
- S4 - Ensuring Housing Delivery
- S14 – Countryside
- TIV1- Eastern Urban Extension

The two following policies are of incidental, but less direct importance.

- TIV2 – Eastern Urban Extension Transport Provision
- TIV5 – Eastern Urban Phasing.

I have highlighted above those that are at issue in this case and have been identified in the Inspectors Post-CMC Note, upon which I focus in this Supplementary Proof of Evidence.

- 4.4 As a matter of simple chronology, I note that the Local Plan was adopted as recently as July 2020 and the development provision it makes – including housing provision – is still being implemented, notably, amongst other locations, on the Tiverton EUE. I consider that it is up-to-date and relevant. As I understand the Appellant's case, they do not dispute the relevance of these policies, but how they are applied and interpreted in this case.
- 4.5 Work on a review/replacement of the Local Plan has already commenced. The Council is progressing the preparation of a Regulation 18 Draft Policies and Site Options consultation report which is intended for publication in the period November 2024 – January 2025. However, this publication may be subject to change in the event that amendments to the Local Development Scheme are necessary following the outcome of the Government's consultation on proposed revisions to the National Planning Policy Framework which are now expected in early 2025. Clearly, this review/replacement Plan has not yet reached a stage where it can be given weight in this Appeal. But the fact that the process is already in hand, within 5 years of the adopted Plan and some 8 years before the end of the current Plan Period demonstrates that any risk of under-delivery of housing/'plan failure' in the adopted Local Plan beyond the current 5-year supply period (including non-/incomplete delivery of TEUE Area B) - in (the Council contends) the unlikely event of such an outcome – can be effectively addressed in a timely fashion. Moreover, the timing of the Plan review/replacement process furnishes an appropriate, expedient mechanism for addressing any increased housing requirements arising from the provisions of the new NPPF, including a new standard method for addressing housing needs in due course. See also Mr Beecham's evidence.
- 4.6 In my main PoE I noted in, amongst other places (notably Policy S2, paragraphs 2.21 and 2.23 of the supporting text thereto, and S14), the comments of the Examining Inspector in his Report on the Local Plan (CD57) at paragraph 24:

“The spatial strategy of the Plan, in the medium to long term, is to make the market town of Cullompton the strategic focus of new development, reflective of its existing status as one of the larger settlements in the District as well as its accessibility, economic potential and environmental capacity. The market towns of Tiverton and Crediton are treated as secondary for development; a reflection of their infrastructure, economies, characters and constraints....while development in....the countryside will be limited to forms of development that bring benefit to the rural economy....” (my emphasis).

- 4.7 Policy S1 and S2 (together with the specific settlement specific allocation policies) self-evidently reflect this strategy (and Policy S3 provides for the objectively assessed level of housing needs in accordance with the strategy). These policies ultimately seek to promote a plan-led approach to site selection and none of the relevant policies or the strategy support ad-hoc developments on unallocated sites outside of settlement boundaries on anything like the scale proposed by the Appellant (See IDL Paragraph 43). This is clearly consistent with national policy in the NPPF, notably Paragraphs 12 and 15.
- 4.8 Policy S1 sets out thirteen criteria, *all* of which are required to be met for new development to be acceptable. This is clear from the lead sentence of the Policy. The parties have agreed that 12 are either met or not relevant, the one at issue being S1(a). (IDL Para.34).
- 4.9 As the previous Inspector concluded at paragraph 35 of his decision letter ('IDL'): *“ The inclusion of the word ‘at’ within the wording of Policy S1(a) is wholly consistent with Local Plan’s strategy to locate development **within** the defined boundaries of the three main settlements identified in the Policy, including Tiverton”*. I contend that, if this were not the case, there would be little or no logic or purpose in defining settlement boundaries which also incorporate Local Plan allocations (In this respect, see *also* IDL Paragraph 40, second sentence).
- 4.10 Policy S2 sets out development targets for the three principal centres of Cullompton, Tiverton and Crediton based on both dwelling numbers and employment space. Again, the Policy seeks to concentrate development ‘*at*’ each of these centres which, as I have consistently contended in my evidence, means *within* the settlement boundary.

- 4.11 Policies S3 and S4 require the delivery of an appropriate mix and amount of housing over the Plan Period to meet housing needs with the Council actively engaged in bringing sites forward. These policies are consistent with Policies S1 and S2 although not related to the main issues in this case. The Appeal scheme includes a policy-compliant amount of both affordable housing and custom and self-build housing.
- 4.12 In formulating the adopted Local Plan, having established the appropriate and deliverable level of planned development for each major settlement, including Tiverton, it was entirely appropriate (and indeed is common [almost universal] practice in other development plans) to define a settlement boundary containing existing and planned/allocated development and to designate land *outside* those boundaries as 'countryside' where restrictive development policies apply in a manner appropriate to what is clearly understood by a designation - precisely what Policy S14 does, as I note below. Such boundaries and the planning policy implications thereof can reasonably be expected to endure for the life of the plan or at least one statutory review cycle.
- 4.13 The settlement boundaries and distinction between land within them and that outside them is intended to be clear-cut and determinative and not fluid or permeable. To put the matter in simple terms, one has to draw a line somewhere and, having drawn that line, adhere to it, save only where material considerations in a particular case indicate that the plan should not be followed (NPPF Paragraph 12). To treat such boundaries as, in themselves, flexible and the policy distinctions they encompass as matters to be casually ignored on an ad hoc basis, is clearly not what the Local Plan intends and undermines and subverts the Plan itself and the plan-making process. It follows that, as with the other conflicts with the provisions of development plan in this case, development should only be permitted where the Inspector is satisfied that the purported benefits outweigh the harm of trespassing over the settlement boundary.
- 4.14 Policy S14, requires that development outside settlement boundaries and within the countryside should meet several requirements. These include the preservation and enhancement of both the character, appearance and biodiversity of the countryside.

Subject to these requirements the location of housing in the countryside is predicated on *local* housing needs being met. It is consistent with Policies S1 and S2, as it refers to development proposed on sites located 'outside' the settlements defined by Policies S10, S11 and S12. To assert otherwise, as I have said above, would by its very nature, undermine the purpose of settlement boundaries and thereby the local plan strategy.

- 4.15 To quote the previous Inspector's conclusion at paragraph 43 of the DL (op cit): "*A common sense reading of Policies S1, S2, S3, S4 and S14 is that they have a common, interrelated strategic purpose designed to direct development to within settlement boundaries with only a limited number of small scale exceptions allowed in the countryside.*" I entirely concur with that planning judgement.

Tiverton Neighbourhood Plan (2022)

- 4.16 I have noted previously and above that the Appeal Site lies just outside, but abutting, the Neighbourhood Plan area. Nevertheless, in my Main Proof, insofar as the NP necessarily accords with and amplifies the provisions of the Local Plan, particularly in regard to the setting of limits to development around the Town, I consider it appropriate to draw attention to the relevant policies, as a material consideration only, whilst acknowledging that these cannot attract the weight attached to the provisions of the statutory development plan. To be clear, my conclusions on the Appeal Proposal would be the same irrespective of the Neighbourhood Plan. The provisions relevant to this Appeal in the Neighbourhood Plan are quoted at 4.9 and 4.10 of my Main Proof.

Supplementary Planning Documents

The Tiverton EUE Masterplan

- 4.17 The Tiverton Eastern Urban Extension (EUE) Masterplan Supplementary Planning Document (SPD) was adopted in 2014 and revised in 2018. Whilst it covered the whole of the Allocation, it was not able to consider all of the area to the same degree of detail.

This was due to the absence of some site-wide survey work on land to the rear of properties on the southern side of Post Hill. The area of land known as 'Area B'.

- 4.18 The Local Plan requires the whole area to be masterplanned prior to any development happening on this area. Consultation on a draft update to the Masterplan took place in 2017 and 2020, but owing to uncertainty about some features of the development, including the issue of secondary vehicular access, the updated SPD has not subsequently been progressed. The provisions of the latest draft were discussed at the previous Inquiry, in relation to the Appellant's claimed benefit of providing such access through the Appeal Site.
- 4.19 One of the reasons for not progressing the finalisation and adoption of the updated SPD was the evolving situation with respect to a 'lead' developer for Area B, together with the fact that – as Mr Beecham's evidence makes clear - there was no urgent pressing need to bring Area B forward in the early part of the Local Plan Period.
- 4.20 During the previous inquiry proceedings, a letter (dated 8 September 2023) was submitted from Westcountry Land (WCL) , which outlined that they have "*sufficient land and the capability to deliver a technically compliant, secondary access to Area B*" and that "*The implementation of the Mid Devon Local Plan and development of Area B of the TIV1 allocation can be secured within the plan period, without the need for development of additional land, outside of the allocation.*"
- 4.21 It is now clear from the 'Rule 6 Statement' initially submitted by WCL (now an interested party) and from the SoCG between WCL, MDDC and DCC, that significant progress has been made in respect of delivery at Area B. WCL has engaged proactively with the Council in a number of detailed and wide-ranging pre-application discussions, including means of access, and has agreed a timetable to progress the updated Masterplan for Area B for adoption by the Council as a SPD in accordance with Clause i) of Policy TIV1 of the Local Plan 2013 -2033. In parallel, it is evident that a planning application is due to be submitted in the near future. Whilst we cannot prejudge the outcome of that application, the fact and content of the SoCG indicates a high level of agreement on the main issues.

Thus, as the SoCG in question makes clear, there is, in my professional view, strongly persuasive evidence that the Area B of the TEUE can and will now be delivered during the current Plan Period and that a separate direct vehicular access/egress to/from Post Hill of the requisite technical standard is achievable. Consequently there will be no 'plan failure' in respect of the delivery in full of the TEUE, nor any need for access to be delivered through the Appeal Site.

Policy in the National Planning Policy Framework

4.22 The policies relevant to this case are at paragraphs: 7-10 inclusive, 11, 12, 15, 38, 47, 82, 88/89, 180 b), and 224.

4.23 As the Inspector will be aware, the NPPF makes clear (at paragraphs 15 and 47) that the planning system should be genuinely plan-led and that the primacy of this plan-led system should only be overridden where material considerations in a particular case indicate that a plan should not be followed and where this fact, and the benefits of development, clearly and demonstrably outweighs the adverse impacts (Paragraph 11 d) ii) and 12).

5.0 WHETHER OR NOT THE LOCATION OF THE PROPOSED DEVELOPMENT IS ACCEPTABLE HAVING REGARD TO ADOPTED NATIONAL AND LOCAL POLICIES

5.1 On the basis of my assessment in Section 4.0 above the location of the Appeal Site *beyond* the settlement boundary constitutes a clear conflict with **Policy S1**. Similarly, The Appeal Proposal also demonstrably conflicts with **Policy S2** for the same reason.

5.2 A key policy for determining the Appeal with respect to the acceptability of the location of Appeal Site, and one which I suggest should attract significant weight in striking the planning balance, is **Policy S14** of the Local Plan and (related to it) paragraph 180 b) of the Framework which sets the national policy context.

- 5.3 I stand by, whilst not reproducing again here, the analysis at 6.1 to 6.6 (as amended) of my Main PoE.
- 5.4 The Appellant previously argued - on a narrow selective reading of the wording in the opening sentences of the Policy - that the requirements set out therein would be met by the Appeal Proposal. But that is to interpret the provisions of the Policy wholly outwith its strategic context and purpose. Thus, as the previous Inspector concluded (IDL Paragraph 39) *"the promotion of 100 market dwellings clearly goes beyond the intended scope of this policy in that no evidence was presented in support of a countryside location."* It is a fact that this scale of market housing development proposed is a major one and not based on any claimed or quantified local need. This clearly goes beyond the intended scope of Policy S14.
- 5.5 I accept that the **employment** part of the scheme complies with Policy S14b) and, incidentally, I am of the opinion that there is no conflict with the subordinate Policy DM18 either. However, it is a fundamentally wrong approach to attempt to disaggregate/cherry pick individual elements of the proposal. This is a single **mixed-use** scheme and the conflict with this policy arises from the size and location of the **whole** scheme in the countryside. Thus the Appellant has clearly sought from the outset to promote and justify it as an integrated inter-related package (see Further Additional SoCG Paragraph 3.1).
- 5.6 I maintain the professional judgement made in my main Proof (Section 6.0 as amended) based on my own observations, that the Appeal Site, on any objective assessment, is demonstrably 'countryside' at present and that it is countryside that possesses some *"intrinsic character and beauty"*, which should be recognised even though it is not in itself a 'designated' landscape, in accordance with Paragraph 180 b). The latter reflects a long-standing feature of national and local policy that seeks to protect the countryside generally (if no longer explicitly "for its own sake").

5.7 Given the demonstrable rural character and contextual characteristics I have identified it is entirely appropriate that the area encompassing the Appeal Site is explicitly designated and treated as 'Countryside' under the terms of Policy S14, *as well as* on planning policy grounds. Moreover, as noted above, the definition of the settlement boundary has been settled and justified in the Plan-making process and I see no grounds for seeking to override it now through this Appeal.

5.8 The countryside characteristics of the Appeal Site would be best retained by preventing urban development. I say this even though the Council accepts that the development would not cause landscape and visual harm and/or, such harm as there would be can be mitigated and that significant biodiversity net gain can also be achieved. Thus, the Appeal proposal necessarily involves an absolute *loss* of countryside. This represents a harm in itself, in conflict with Policy S14, which can only be justified if the Inspector decides that the purported benefits of the scheme outweigh this and other identified harm.

6.0 THE APPROPRIATENESS OF BRINGING THE APPEAL SITE FORWARD THROUGH THE AD HOC PLANNING APPLICATION/APPEAL PROCESS, RATHER THAN THROUGH THE DEVELOPMENT PLAN

6.1 This issue is fully dealt with in Section 7.0 of my main PoE and I see no reason to change my assessment therein.

7.0 THE APPELLANT'S CLAIMED BENEFITS OF THE DEVELOPMENT AND THE WEIGHT TO BE ACCORDED TO THEM.

7.1 I note the benefits of the Appeal Proposals claimed by the Appellant. Thus, I have previously accepted that, in principle, the scheme is capable of delivering, amongst other things:

- Housing;
- Affordable housing;
- Employment;
- Energy-efficient development; and,
- Biodiversity Net Gain (if over and above the 'statutory' minimum requirement).

- A Link Road to Area B of the Tiverton EUE.

7.2 On the matter of the weight to be afforded to these putative benefits I have revisited my previous weighting exercise in an objective manner and taking account of the previous Inspector's conclusions on this issue. Accordingly, I propose the following:

7.2.1 Market Housing etc.

Given the housing land supply position and the wider housing delivery prospects for the rest of the Local Plan Period, I consider that the provision of 100 market and five custom and/or self-build homes should attract, at best, only *moderate* weight.

7.2.2 Affordable Housing and Custom Build

I accept that there is a shortfall in affordable housing supply in the Plan Area, despite the overall housing land supply and, accordingly, that the proposed provision of 45 affordable dwellings merits *significant* weight in itself.

7.2.3 Employment

The appeal scheme has the potential to create up to 400 new jobs in a location relatively close to Tiverton. However, the Council contends that whilst there have been delays in allocated employment sites being brought forward in Tiverton, there is no overall shortage of employment land across the District and no reason not to expect that the localised shortfall in Tiverton will not be made up during the Plan Period, including on the TEUE. Furthermore, as I have noted above, were the extension to the Business Park to be pursued in isolation, it would be policy-compliant (S14b) and DM18) and, thus, acceptable in principle. Accordingly, I propose that this element of the scheme be accorded only *moderate* weight.

7.2.4 Link to the Red Linhay Farm Anaerobic Digester.

The proposed link from the anaerobic digester operated from Red Linhay Farm to the proposed employment space would, it is claimed, be funded by the residential element of the proposed scheme. I acknowledge that this would be consistent with the Council's strategic priorities following its declaration of a Climate Change Emergency in 2019 and is supported by Policies S1 and DM2. The provision of green energy to an employment area would be the first in the District and could in principle be an exemplar of this sort of development for future schemes. However, the link would be restricted to serving the new employment area only. For these reasons, I suggest that this part of the scheme should be accorded *moderate* weight.

Notwithstanding this conclusion there remains some current uncertainty as to the lawfulness of the Anaerobic Digester in question as it is presently operated. In this context, I draw attention to Paragraph 3.4 of the Further Additional SoCG and particularly to the section as follows:

"The Council has concerns that the AD plant is operating in excess of its consented electrical output limit (500kW) although the appellant has confirmed that the appeal proposals do not seek to rely upon any additional output that may, or may not, be occurring in breach of planning permission. The appellant is in the process of preparing an updated report to demonstrate that the appeal scheme only seeks to utilise output that stems from the consented limit (which relates only to electrical output). Subject to the Council reviewing the findings of this report, and being content that this is the case, then the Council can continue to agree to this benefit."

I have seen a copy of this Appellants Report which arrived very shortly before the deadline for submission of PoEs, The Council still has queries as to its content and conclusions and has reverted to the Appellant for clarification accordingly. In the meantime my current weighting judgement above stands.

7.2.5 Biodiversity Net Gain

I accept that the Appeal Proposal has the potential to deliver BNG above the now statutory national requirements (which would not be engaged in this case) and that this should attract *significant* weight in striking the planning balance.

7.2.6 A Link Road to Area B of the TEUE.

Whilst I accept that the Appellant's proposed link road represents a *potential* benefit, paragraphs 4.17 to 4.21 above, in the context of the latest emerging draft of Tiverton EUE Masterplan and an imminent planning application by WCL, are directly relevant to this claimed benefit. The commentary above and the SoCG in question underlines the Council's case that the appeal proposals are not necessary for the full planned delivery of the Tiverton EUE to occur, as set out in the by previous PoE and Rebuttal Proof, and in the SoCG between WCL, MDDC and DCC. Even if, for some reason, the WCL option were not after all delivered, there remains sufficient time and procedural mechanisms to deliver Area B before the end of the Plan Period. The delivery could still, if necessary, involve access through Area A as originally envisaged, although the Council would prefer a second main access solution. In the circumstances, since it is not needed, I contend that claimed benefit should attract *no weight*.

7.3 Set against the claimed benefits the Appeal scheme would clearly be situated beyond the settlement boundary of Tiverton and in the countryside. It would conflict fundamentally with the development plan's overarching locational strategy as encompassed by Policies S1, S2 and S14 of the Local Plan. This is not an abstract effect, but goes fundamentally to the integrity and credibility of the development plan system and to the adopted Mid Devon Local Plan in particular (see previous IDL paragraphs 82, 85 and 86). Thus, notwithstanding the significant weight that I would accept should be attached to the provision of Affordable Housing and Biodiversity Net Gain, the substantial harm consequent upon the policy conflict is not outweighed by those considerations.

8.0 CONCLUSIONS

- 8.1 I have demonstrated above and in my Main PoE that the location of the proposed development is not acceptable and is harmful having regard to conflict with adopted national and local policies and to local conditions on the ground..
- 8.2 I have found that there is material and substantial conflict with the provisions of the development plan and national policy in the NPPF when taken as a whole, that this is not an abstract or merely 'technical' conflict, but has real adverse consequences for the development plan process and the integrity, credibility and deliverability of the adopted Local Plan in particular and that such conflict is not outweighed by other material considerations – on the contrary.
- 8.3 Mr Beecham's evidence makes clear that there are no wider Local Plan (and specifically housing land) delivery issues and no risk of Plan-failure therefore, that would justify the Appeal Proposal being allowed. He has argued in his PoE that even if the Local Plan were 'failing', it would be of little consequence to the Appeal as there is no 'presumption' or any other required response in national or local policy that deals with a failure of the wider plan, except in relation to the absence of a demonstrable 5-year housing land supply which is no longer claimed by the Appellant in this case.
- 8.4 I consider that the Appeal Proposal would not amount to sustainable development attracting the positive presumption under Paragraph 11 of the NPPF.
- 8.5 In the light of these conclusions, I invite the Inspector, in striking the planning balance, to find – as do I and did her predecessor - that the adverse impacts of the proposed development significantly and demonstrably outweigh the benefits of granting permission and, therefore, to dismiss this Appeal. Even if she finds the 'imbalance' to be more even/marginal than I am proposing, I suggest that she should still, on the basis the fundamental harm the proposal would occasion, find against it.



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