

APPEAL BY WADDETON PARK LTD AGAINST MID
DEVON DISTRICT COUNCIL'S DECISION TO REFUSE
PLANNING PERMISSION

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

LAND AT HARTNOLLS FARM, TIVERTON

ADDITIONAL PROOF OF EVIDENCE OF DAVID SEATON

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).

OCTOBER 2024



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Appendix A – Carbon Plan Energy Feasibility Report Update, October 2024

Appendix B – Updated KLP letter, 23rd October 2024

1. Additional Proof of Evidence

- 1.1 This Additional Proof of Evidence (PoE) summarises the limited scope of the Council's case against the proposal and sets out the case for the appellant. It should be read in conjunction with my previous PoE (see below).

Proofs of evidence for original inquiry:

- Planning (+summary)
- Housing Supply (+summary)
- Affordable Housing Supply

Rebuttals for original inquiry:

- Rebuttal to Anthony Asbury's Proof of Evidence
- Rebuttal to DCC statement
- Rebuttal to Arron Beecham's Proof of Evidence

- 1.2 It should also be read together with the proof of evidence of Neil Thorne, who deals with Highways matters.
- 1.3 The fundamental merits of the appeal proposal remains the same as originally proposed.
- 1.4 As with my original proof, this proof has been prepared, and is given, in accordance with the guidance of my professional institution the Royal Town Planning Institute (the RTPI). I confirm that the opinions expressed are my true and professional opinions.

2. Scope of the Council's Case/Common Ground

2.1 This case is marked by the narrowness of the dispute between the parties as set out in the Further Additional Statement of Common Ground (FASoCG)

2.2 At the time the previous inquiry opened, the following was already common ground that:

- There is no dispute between the main parties that the extension to the Business Park complies with relevant Local Plan policy, including policies S14 ("countryside") and DM18 ("rural employment development") and is acceptable in principle. The Council has no objection to the employment element of the appeal scheme.
- The Council acknowledge that the extension to the Business Park will help to meet the employment needs of Tiverton, which has suffered a historic shortfall of employment provision.
- The application was supported by a Transport Assessment, the conclusions of which are agreed with the Highways Authority, in that there are no significant off-site highways impacts in terms of capacity or congestion.
- The new access to Post Hill is safe and suitable, with the detailed design having been scrutinised by the officers of both the Council and Highways. It is capable of accommodating traffic not only from the appeal scheme, but also acting as an access for the TEUE (Area B in particular).
- DCC highways officers indicated that the *existing* access to the business park would not be acceptable for the levels of traffic generation being proposed from the TEUE (see OR, para 4.13)
- The proposed development would not adversely harm the landscape character of the area. The Council agreed with the assessment in the LVA that the landscape effects would be neutral, and therefore not harmful.

- In respect of all relevant viewpoints, the visual effects of the proposed development would be “neutral”. Subject to appropriate design and mitigation (which the Council accept is capable of being secured at reserved matters stage) – the overall visual effect could be made to be “neutral.” Neutral effects are, by definition, not adverse.
- The co-existence of commercial and residential uses does not give rise to any residential amenity issues. In particular, it is agreed that suitable separation distances, together with appropriate green infrastructure – in the form of an enhanced bund, a green space buffer and a boundary residential road – will protect residents from any noise generated from the business park.
- The proposal is in a sustainable location in transport terms: including by reference to its accessibility to local facilities and the choice of sustainable transport modes that it offers.
- The development would not result in the loss of Grade 1 Best and Most Versatile (BMV) agricultural land (contrary to the allegation in the reasons for refusal).
- The area of Grade 2 and 3a BMV lost is not significant and not objectionable.
- The proposal would result in a biodiversity net gain.
- There is no objection to the proposal in respect of heritage assets, including non-designated archaeological heritage assets within the appeal site.

2.3 This large measure of agreement between the parties meant that, even prior to the opening of the inquiry, the Council’s case against the development had narrowed considerably. Of the six putative reasons for refusal originally relied upon, the Council only relied on the first reason, and even then they acknowledged that the reference to the loss of Grade 1 BMV in that reason was erroneous.

2.4 During the original inquiry, the slenderness of the Council's remaining case against the proposal became apparent. The agreed position, at the end of the previous inquiry, was as follows:

- i. The Council relies solely on the "in principle" harm which (on their case) arises from the breach of elements of three of the 'Development Strategy and Strategic' policies of the Local Plan (LP).
- ii. The appeal proposals would not give rise to *any* "site-specific" (as opposed to in principle) harm caused to acknowledged planning interests (such as landscape, visual, biodiversity heritage, residential amenity, noise, highways etc).
- iii. The "in principle" harm relied upon by the Council flows from the market residential element of the appeal scheme only. The employment and affordable housing elements are in accord with Development Plan (DP) policy and would give rise to no harm whatsoever (whether "in principle" or "actual").
- iv. On the Council's case the "in principle harm" arises solely as a result of the breach of Policy S1(a) (and parasitic on this, Policy S2) – one of the 13 sustainable development priorities, they accepted the proposal was consistent with the remaining twelve; and Policy S14 (by virtue, solely, of the market housing element). They agreed that Policies S3 & S4 would be complied with.
- v. Notwithstanding their allegation of breach, the Council accepted that (a) the appeal proposals do not conflict with the underlying objectives of Policy S1(a); and (b) the appeal proposal complies with, and indeed advances, the express objectives of Policy S14.

2.5 Therefore, by the end of the previous Inquiry, as is evidenced by their own closing submissions (see CD83), the Council's case against the appeal proposal boiled down to the argument that the appeal proposal was (a) contrary to one of thirteen sustainable development priorities (Policy S1(a)) because, on their case, the appeal site is not "at Tiverton"); and (b) in

breach of Policy S14 because the appeal site was in the countryside. But in respect of both alleged breaches the Council accepted that there was no conflict with the objectives which those policies sought to advance. Furthermore, even on the Council's case, the alleged conflict arose only in relation to the market housing element of the appeal scheme.

3. The Appellant's Case

- 3.1 The appellant contends that, when the relevant policies are properly understood, the appeal proposals do accord with the DP. The Appellant's primary case is that there is compliance with all relevant Development Plan policies (including Policy S1(a) and Policy S14, the only policies now alleged to be breached).
- 3.2 Even if the Inspector were to find breach of these policies, having regard to the fact that (as agreed) there is no conflict with the objectives that those policies seek to promote and the wide range of policies which the appeal proposal complies with (and indeed advances), the appeal proposals clearly comply with the Development Plan when *read as a whole*. This is the Appellant's alternative case.
- 3.3 Further, even if the Inspector were to disagree with this, and find that breach of policies S1(a) and S14 were sufficient to render the proposal in conflict with the development plan as a whole (notwithstanding the lack of any conflict with those policies objectives), then the decision maker is obliged to ask whether material considerations outweigh that breach? In this case the varied and weighty benefits that the scheme would bring forward would clearly outweigh any breach of the DP. This is particularly the case given that there are very good reasons for locating market housing adjacent to (but outside) the defined settlement boundary in this particular case. Not only is it agreed that the location itself is a sustainable and would not give rise to any harm to the countryside (or indeed any site specific harm at all), there is a clear enabling case for the provision of market housing: both in respect of the link road to the TEUE and facilitating the first low carbon commercial development in the district.

A) Quashing Matters

- 3.4 The appellant maintains that the previous Inspector misdirected himself in respect of a wide range of matters. The High Court granted permission to bring statutory review proceedings on the basis of these errors (granting permission on five different grounds).
- 3.5 The original decision was ultimately quashed (by consent of all parties) on the basis that the Inspector erred in respect of his treatment of the link road to be provided as part of the appeal scheme (Ground 4). However, it is important to summarise the remaining grounds of challenge which the Court had granted permission in respect of, but which, because of the Secretary of State's and Council's concession, were not ultimately the subject of a final judgment.

Relevant Policies

- 3.6 The Inspector found that the appeal scheme conflicted with Policies S1, S2 and S14 of Local Plan
- 3.7 Policy S1 establishes the "Sustainable development priorities" for the plan and provides as follows (so far as is relevant to the appeal scheme):

"The following strategic priorities outline what will need to be achieved to deliver the Vision and address the key issues that have been identified in Mid Devon. All development will be expected to support the creation of sustainable communities by:

- a) A development focus at Tiverton, Cullompton and Crediton as Mid Devon's most sustainable settlements, with long-term growth to the east of Cullompton and a limited level of development in identified villages;*
- b) Building a strong, competitive economy through access to education, training and jobs, infrastructure, the creation of new enterprise, economic regeneration and flexibility of uses to respond to changing circumstances;*
- c) Ensuring the vitality of town centres and communities...*

- d) Supporting a prosperous rural economy through ... diversification of agricultural and other land-based businesses....*
- e) Promoting sustainable transport by delivering appropriate infrastructure, reducing the need to travel by car, integrating public transport and other forms of sustainable travel such as walking and cycling, and providing safe environments while recognising Mid Devon's rural locality;*
- f) Supporting high quality communications infrastructure by supporting the expansion of telecommunications and high speed broadband throughout Mid Devon;*
- g) Delivering a wide choice of high quality homes through a diverse housing mix and by meeting the housing needs of all sectors of the community including the provision of accessible housing ... those wishing to build their own home, [and] affordable housing*
- h) Requiring good sustainable design...*
- i) Promoting healthy communities through...access to high quality open space...*
- j) Meeting the challenge of climate change by supporting a low carbon future, energy efficiency, increasing the use and supply of renewable and low carbon energy... Encourage the effective use of land, taking into account the economic and other benefits of the best and most versatile agricultural land;*
- k) Conserving and enhancing the natural environment by protecting and enhancing valued landscapes....*
- l) Minimising impacts on biodiversity and geodiversity by...providing a net gain in biodiversity...*
- m) Conserving and enhancing the historic environment..."*

3.8 Policy S2 sets out the "Amount and distribution of development". It provides:

"The diverse development needs of the community will be met through the provision of a minimum of 7,860 dwellings and 147,000 square metres of commercial floorspace between 1st April 2013 and 31st March 2033.

Development will be concentrated at Tiverton, Cullompton and Crediton, to a scale and mix appropriate to their individual infrastructures, economies, characters and constraints. Other settlements will have more limited development which meets local needs and promotes vibrant rural communities.

Development targets are approximately as follows:

Location	Total Residential (commitments and allocations; dwellings)	Total Commercial (commitments and allocations; square metres)
Tiverton	2,358	29,400
Cullompton	3,930	73,500
Crediton	786	14,700
Rural areas	786	29,400
Total	7,860	147,000

3.9 Policy S14 is entitled "Countryside". It states that:

"Development outside the settlements defined by Policies S10-S13 will preserve and where possible enhance the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural economy. Detailed development management policies will permit agricultural and other appropriate rural uses, subject to the following criteria:

- a) Affordable and low cost housing to meet local needs, gypsy and traveller accommodation, residential conversion of appropriate existing buildings, replacement dwellings, housing essential to accommodate a rural worker and accommodation ancillary to a dwelling;*
- b) Appropriately scaled retail, employment, farm diversification, tourism and leisure related development (including appropriate conversion of existing buildings);*
- c) Appropriately scaled and designed extensions and other physical alterations to existing buildings;*
- d) Agricultural and equestrian development;*
- e) Community facilities, such as educational facilities, buildings associated with public open space, transportation and infrastructure proposals (including green infrastructure); and*
- f) Renewable energy and telecommunications."*

Case Law/Interpretation of Policy

3.10 The proper meaning of development plan policy is a question of law, ultimately for the courts: **Tesco Stores Limited v Dundee City Council** [2012] UKSC 13 (CD16).

- 3.11 Whilst planning policies are not to be interpreted as though they were a statute or a contract, and an unduly legalistic approach is to be avoided, if the decision maker has misinterpreted policy in a material way the court will intervene: see e.g. **R. (on the application of Liverpool Open and Green Spaces Community Interest Co) v Liverpool City Council** [2021] 1 P. & C.R. 10 at [33(2)]
- 3.12 A decision-maker must understand the relevant provisions of the development plan, recognising that they may sometime pull in different directions: **BDW Trading Ltd. v Secretary of State for Communities and Local Government** [2017] P.T.S.R. 1337 at [21]. **In R. (on the application of William Corbett) v The Cornwall Council** [2020] EWCA Civ 508, the Court of Appeal cited with approval the judgment of Sullivan J in **R. v Rochdale Metropolitan Borough Council, ex parte Milne** [2000] EWHC 650 (Admin) in which he said:

"48. It is not at all unusual for development plan policies to pull in different directions. A proposed development may be in accord with development plan policies which, for example, encourage development for employment purposes, and yet be contrary to policies which seek to protect open countryside. In such cases there may be no clear cut answer to the question: "is this proposal in accordance with the plan?" The local planning authority has to make a judgment bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach. ...

and having referred to the well-known dicta of Lord Clyde in **City of Edinburgh Council v Secretary of State for Scotland** [1997] 1 W.L.R. 1447 Sullivan J went onto say

49. In the light of that decision I regard as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be "in accordance with the plan". Given the numerous conflicting interests that development plans seek to reconcile: the needs for more housing, more employment, more leisure and recreational facilities, for improved transport facilities, the protection of listed buildings and attractive landscapes etc., it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan."

3.13 Having regard to the relevant DP policies and the relevant case law the appellant considers that:

Misinterpretation of Policy S1 (Ground 1)

3.14 The inspector misinterpreted Policy S1 in two separate and material respects.

3.15 **First**, the inspector was wrong to interpret the statement in Policy S1(a) that there would be "A development focus at Tiverton, Cullompton and Crediton as Mid Devon's most sustainable settlements" (*emphasis added*) to mean that any development which fell outside the defined settlement boundary of these settlements was necessarily in conflict with this strategic objective (and, on the inspector's interpretation, necessarily in conflict with the policy as a whole).

3.16 That the inspector adopted such an interpretation of Policy S1 is clear from DL35 in which he states: "*The inclusion of the word "at" within the wording of Policy S1a) is consistent with the Council's intention to locate development within the boundaries of the three main settlements identified within the policy; these include Tiverton*". See also DL37.

3.17 This interpretation of Policy S1(a) is wrong because:

- a. **It is inconsistent with the language of the policy.** Although it is recognised that planning policies are not to be read as though it were a statute or contract, the actual words used in policies matter. Had the drafters of the policy intended the strategic priority to focus development "within the settlement boundaries" of certain settlements, they would have said as much. Moreover, the use of the term "at" in respect of Tiverton, Cullompton and Crediton is in contradistinction to the use of the term "in" in respect of the identified villages.

- b. **It is inconsistent with the common usage of that term.** In my experience confusion often occurs in the single tier system that currently operates where Local Plans contain both strategic and development control policies. I recall the three tier system that was dismantled between 2004 and 2010 (i.e. the abolition of Regional Spatial Strategies [RSS] in 2010 and Structure Plans 2004). The word 'at' was common parlance in RSS and Structure Plans and was understood to mean within, adjacent to, or closely proximate to the defined development boundaries of existing settlements (see CD85). The extent of those new allocations were then defined by local plans, which set precise boundaries in due course. In this plan it appears to me that the use of the word 'at' in the strategic policies of the plan should be treated in a similar manner. It is the more detailed policies of the plan (that flow from the strategic policies) that define the precise boundaries. Thus, reading the plan as a whole, the appeal proposals are not in breach of S1(a) which is a strategic policy. The appeal proposals are plainly 'at' Tiverton.
- c. **It is inconsistent with the purpose of Policy S1(a).** It was (and is) common ground between the main parties that the purpose of Policy S1(a) is to focus development in locations where facilities are accessible and the need to use the private car is minimised. This much is made clear from paragraph 2.18 of the supporting text which provides "*The sustainable development priorities aim to deliver varied and vibrant places by concentrating activities and facilities in accessible locations*" (emphasis added). The inspector's interpretation is inconsistent with that purpose. On his interpretation, sites that would offer easy access to the facilities of Tiverton, Cullompton or Crediton by sustainable forms of transport (e.g. walking, cycling and/or by bus), and which would minimise reliance on the private car, would nevertheless be in breach of Policy S1(a) simply because they fall outside the defined settlement boundary of the settlement.

d. **It leads to absurd results** – on the inspector’s interpretation any development which does not fall within the settlement boundary of the three main settlements or the identified villages would necessarily be in breach of Policy S1(a) (and, on the inspector’s interpretation, necessarily in conflict with the policy as a whole).

3.18 The Appellant considers that, on a proper interpretation of Policy S1(a) a decision maker is required to ask himself whether, as a matter of judgement, the development proposed was ‘at’ Tiverton bearing in mind the common understanding of that term and its’ historic usage in strategic planning. That judgement could also have taken account matters such as: the distance between the site and the centre of Tiverton; the physical relationship to the built development of the settlement (both existing and proposed); the accessibility to the settlement’s facilities; and whether or not the site was within the settlement boundary (and if not, how far removed it was). By treating the question of a matter of objective fact, determined only and conclusively by reference to the settlement boundaries, the previous inspector erred in law.

3.19 In my opinion the appeal site is plainly ‘at’ Tiverton since it adjoins the defined development boundary of Tiverton. It cannot be sensibly described as being anywhere else than Tiverton.

3.20 The **second** way in which the inspector erred in law in respect of Policy S1 was by treating it as though it was a criteria-based policy, requiring compliance with each limb as a necessary condition for compliance with the policy as a whole.

3.21 It is clear from the DL that the inspector adopted this approach:

a. At DL34 he stated that *"Policy S1 includes thirteen criteria which are required to be met for new development to be acceptable."*

- b. At DL36 he stated that "*The lead sentence in the Policy S1 in seeking to create sustainable communities requires that each of the thirteen limbs of this policy are met*"; and
- c. At DL82 he states that "*The breach with Policy S1a) reflects a breach with the whole policy; the criteria included in this policy cannot be cherry picked for convenience.*"

3.22 This was plainly a misinterpretation of Policy S1 for the following reasons:

- a. **Policy S1 is a strategic policy, not a development management policy** – Policy S1(a) establishes the "sustainable development priorities" for the Local Plan as a whole. As the policy itself explains, they are "*strategic priorities*" which "*outline what will need to be achieved to deliver the Vision and address the key issues that have been identified in Mid Devon*". These are broad statements of policy. They do not purport to establish criteria each of which must be met in order for development to be considered acceptable.
- b. **The 'lead sentence in Policy S1' does not 'require that each of the thirteen limbs of this policy are met'** – Policy S1 states that "*All development will be expected to support the creation of sustainable communities by:...*" before listing the sustainable development priorities. This cannot be sensibly read as meaning that every development would need to advance (or at least be consistent with) each and every priority in order for the policy to be complied with.
- c. **Strategic development priorities can pull in different directions** – it is not unusual for development plan policies to pull in different directions. The same is true of strategic priorities identified by a single policy. By way of example a large solar farm would "increase the...supply of renewable and low carbon energy" thereby advancing strategic priority (j), but is unlikely to be found at Tiverton,

Cullompton and Crediton or in the identified villages and therefore in potentially in conflict with strategic priority (a). The proper approach in such cases is for the decision maker to reach a balanced judgment as to compliance overall, having regard to the relative importance of those priorities and the extent of compliance or breach: see **Corbett**.

- 3.23 On a proper interpretation of Policy S1 the inspector, having found that the proposal did not comply with Policy S1(a), was then required to arrive at a balanced judgment as to whether the proposal was in compliance with Policy S1 as a whole, having regard amongst other matters to the extent of the breach of Policy S1(a) and the extent to which the proposal complied with or furthered the remaining strategic priorities. Taking this approach was particularly important in this case given that it was common ground between the main parties (with which the inspector does not disagree) that the proposal (a) complied with the underlying objective of Policy S1(a) – the only strategic priority said to be in breach - and (b) was consistent with all of the remaining strategic objectives, some of which were advanced.
- 3.24 Instead, the inspector treated the fact that the proposal was (on his interpretation) in breach of Policy S1(a) as being determinative. On his approach once this was established the proposal was necessarily in conflict with Policy S1, regardless of the extent of that breach or the extent to which the appeal scheme furthered the remaining strategic priorities. Nor was this a case where the inspector found that strategic priority in S1(a) was of such importance that, in his judgement, its breach outweighed compliance with the remaining strategic priorities. He simply did not exercise the evaluative judgement which he was required to undertake.
- 3.25 In *Milne Sullivan J* regarded as “untenable” *“the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be “in accordance with the plan”* at [49]. So too is untenable the proposition that if there is conflict with any one of the thirteen strategic priorities a proposed development cannot be said to be in

accordance with Policy S1 as a whole. That constitutes a clear misinterpretation of Policy S1.

- 3.26 At the inquiry neither Defendant sought to argue that, properly interpreted, Policy S1 is a criteria-based policy which requires compliance with each limb as a necessary condition for compliance with the policy as a whole.
- 3.27 The Inspector found conflict with one of the thirteen limbs of Policy S1 and, having done so, treated this as determinative of the proposal's non-compliance with Policy S1 as a whole. This was to misinterpret that policy.
- 3.28 In my opinion, whatever the correct interpretation of "at Tiverton" in Policy S1(a), the appeal proposals are compliant with policy S1 (see paragraphs 3.50-3.63 for a detailed analysis of this matter)

Ground 2: Misinterpretation of Policy S2

- 3.29 The inspector also misinterpreted Policy S2 in two separate and material respects.
- 3.30 **First**, he interpreted the meaning of "at Tiverton" in Policy S2 in the same manner as he did in respect of Policy S1. For the reasons that I set out in this PoE above that was wrong.
- 3.31 **Second**, and in any event, Policy S2 seeks to explain the "amount and distribution of development" *under the plan*, through commitments and allocations. The distribution of that development is (at least to some extent) consistent with the strategic objective in Policy S1(a). However, as is clear from the text of the policy itself, as well as its supporting text, it does not purport to establish policy which is applicable to 'windfall' development, i.e. sites not specifically identified in the development plan.

Ground 3: Misinterpretation of Policy S14

- 3.32 The inspector also materially misinterpreted Policy S14.
- 3.33 As is clear from DL38-40 and 44, on the inspector's interpretation Policy S14 is a restrictive policy which prohibits any development outside of settlement boundaries (no matter their impact on the countryside), save in respect of particular forms of development which are considered to be acceptable, subject to compliance with criteria established in development management policies.
- 3.34 While such restrictive policies may feature in some (particularly pre-NPPF) development plans, Policy S14 is not such a policy.
- 3.35 Policy S14 is permissive of development in the countryside. The policy's first sentence establishes what "*development outside of settlements....will [do]*" (*emphasis added*). Development will "*preserve and where possible enhance the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural economy.*" Thus, Policy S14 expressly envisages development coming forward outside of settlement boundaries so long as the four stated objectives for the countryside are met (as was accepted to be the case in respect of the appeal scheme). Had the drafters of the policy intended to limit development outside of settlements to particular forms of development regardless of the impact on the countryside, they could and would have said as much (e.g. "*development in the countryside shall be restricted to....*").
- 3.36 The second sentence of Policy S14 indicates that "*Detailed development management policies will permit agricultural and other appropriate rural uses, subject to the following criteria....*" However, this too is permissive. It does not say that that "*only agricultural and other appropriate uses...will be permitted*". Furthermore, those development management policies allow development which would cause harm to the stated objectives. For

instance, DM17 (Rural shopping) and DM 18 (Rural employment) both permit certain types of development in the countryside which would not preserve its character or appearance so long as the "*adverse impact to the character and appearance of the countryside*" is not "*unacceptable*". They are, therefore, better seen as a derogation or exception: permitting certain forms of development outside of settlement boundaries notwithstanding that the development would cause harm to the stated objectives for the countryside.

- 3.37 Where (as here) development in the countryside would "*preserve and where possible enhance the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural economy*" a proposal is consistent with Policy S14. There is no need to rely on the derogations contained within the second sentence.
- 3.38 In my opinion, even if this is wrong and there is a conflict with Policy S14 simply on the basis that the appeal scheme falls (just) outside the settlement boundary, little weight can be accorded to a technical breach of policy in circumstances where: (i) even on the Council's case, the employment element of the appeal scheme would not breach Policy S14; (ii) the agreed position is that the appeal scheme would not result in any actual harm, and would further some of the express objectives of Policy S14; (iii) the appeal scheme is agreed to be in a sustainable location for residential and employment uses; and (iv) as explained below, there is very good reason for locating the marker housing on the appeal site, just outside the settlement boundary.
- 3.39 Accordingly, read as whole, the appeal proposals accord with the relevant provisions of the DP. In essence the only dispute between the parties is a matter of semantics – does 'at Tiverton' mean 'within the settlement boundaries of Tiverton'? In my opinion 'at' means 'at' not 'within' (for the reasons that I set out at paragraphs 3.16 and 3.17 of this PoE). But ultimately (and unsurprisingly), the resolution of this semantic issue does

not determine either whether the appeal scheme is in compliance with the development as a whole, nor the acceptability of the scheme.

Enabling Development (Ground 5(b))

3.40 The inspector concluded that:

"No case has been made why this location is to be preferred given its location in the countryside". (paragraph 82).

3.41 With respect, that conclusion was plainly wrong.

3.42 A detailed case had been made as to why the appeal site was an appropriate location for the appeal proposal. That case was advanced throughout the Claimant's evidence and its closing submissions. The Claimant's case was that the particular location was to be preferred because, amongst other factors:

- (i) it allowed for an extension to the business park, to which there was no objection;
- (ii) the nature of the site and its surroundings meant that the development would give rise to no material landscape or visual harm – or indeed any 'site specific' harm (as was agreed);
- (iii) it enabled provision of a secondary access road to the TEUE; and, critically;
- (iv) it enabled connection to the CHP, allowing the business park to operate as a low carbon development, which could not viably be provided without the market residential element of the scheme.

3.43 Even if the inspector meant that no case had been made as to why this location is to be preferred for *market housing*, again this is wrong. The market housing element of the scheme will provide funding for the CHP connection and the access road.

3.44 In particular, in relation to the CHP connection, the appellant provided the following evidence:

- The physical proximity of the proposed business park to the existing AD plant (CD45)
- The cost of providing such connectivity (CD5 – appendices 9 and 10)
- The need for the market housing to 'forward fund' this infrastructure investment (CD5 appendix 10)
- The pattern of employment provision over the plan period to date (CD44)

3.45 The enabling role of the market housing in respect of the CHP connection and access road is addressed in further detail below.

B) Assessing The Council's Objection

3.46 The Council's 'in principle' objection to the residential element of the appeal proposals is, in my view, misguided. There is no proper basis to advance such an objection and, even if there was, the Council have plainly failed to balance that against the many benefits of the appeal scheme. Indeed, I consider that there are three *alternative* ways in which the Inspector could find in favour of the proposed development:

Paths to a decision

3.47 First, that the appeal proposal is in complete compliance with the applicable policies of the MDLP, including policies S1, S2, and S14. This is the Appellant's primary case.

3.48 Second, even if there is a breach of policy S1(a) and/or S14, given the technicality of that breach (the appeal scheme being agreed to meet the principles underlying Policy S1(a), and the express objectives of S14) and the importance of the policies with which the appeal proposal is consistent, there is compliance with the development plan read as a whole.

3.49 Third, even if there is considered to be a breach of the development plan, and, the benefits of the proposal outweigh that breach (even without applying the 'tilted balance').

3.50 I therefore consider each of these proposals in turn.

C) Compliance with the Development Plan

- 3.51 Reason for refusal 1 alleges that "*by reason of the site's location*" and "*because the Local Planning Authority can demonstrate an up-to-date 5 year land supply*" the residential element of the appeal scheme is contrary to Policies S1, S2, and S14 of the MDLP.
- 3.52 I do not accept that the appeal proposals breach these policies. Addressing them in turn:
- 3.53 **Policy S1: Sustainable development priorities** – The appeal proposals would actively support the achievement of strategic objectives that the policy establishes.
- 3.54 S1a has a development focus at Tiverton. As I have already explained in this PoE in my opinion the appeal proposals are plainly 'at' Tiverton, when that term is properly understood. The appeal proposals therefore accord with this limb of the policy. However, even if this is wrong, there is agreement between the parties that the appeal scheme complies with the underlying objective of Policy S1(a) – namely to focus development in locations where facilities are accessible and the need to use the private car is minimised.
- 3.55 S1b focuses on building a strong competitive economy. The appeal proposals will deliver a substantial expansion to Hartnoll Business Park, enabling access to jobs, creation of new enterprise, and flexibility of employment premises. Therefore, the appeal proposals will accord with this limb of the policy.

- 3.56 S1c focuses on ensuring the vitality of town centres and communities. This application does not propose a form of development that would detract from the existing town centre at Tiverton and that would be secured by the imposition of a suitable condition. The delivery of additional employment space and residential dwellings will help to support employment opportunities in Mid Devon as well as provide housing, both of which will help contribute to sustaining the vitality of Tiverton town centre.
- 3.57 S1d supports a prosperous rural economy. Tiverton serves a large rural hinterland and therefore the appeal proposals will support the rural economy via the provision of well designed employment buildings in an agreed suitable location.
- 3.58 S1e promotes sustainable transport through the delivery of appropriate infrastructure. In this instance, the appeal proposals will allow the delivery of a bus route to run through the TEUE (via rejoining Post Hill). This will also allow the proposed residential development at this site to be on the bus route. In addition, it is common ground that the appeal proposals are in a sustainable location in terms of accessibility to facilities and services.
- 3.59 S1f supports the expansion of telecommunications and high speed broadband throughout Mid Devon. The appeal proposals will deliver such expansion.
- 3.60 S1g focuses on delivering a wide choice of high quality homes. Whilst this application is outline, so the details of the proposed houses are not available, the S106 secures 30% affordable homes (in accordance with DP policy S3), with a dwelling mix to be confirmed via an Affordable Housing Scheme at Reserved matters (to be submitted and approved by the District Council in accordance with the UU). Further, 5% of the dwellings are proposed as self build and custom build dwellings, helping to provide opportunities for those wishing to build their own homes.

- 3.61 S1h focuses on good, sustainable design. This application is made in outline, so these matters will be confirmed at reserved matters stage.
- 3.62 S1i promotes healthy communities through the delivery of a broad range of infrastructure. Open space will be provided on the site, and secured for the lifetime of the development through the UU.
- 3.63 The goals of S1j (which include “meeting the challenge of climate change by supporting a low carbon future”) will be met since the proposed connection between the AD plant and the commercial units will deliver a low carbon energy connection.
- 3.64 The goals of S1k are met since the delivery of the appeal proposals will ensure delivery in accordance with the spatial strategy of the DP. It is outside the AONB and national parks, and public open space (including green infrastructure), is secured, as discussed in response to S1i. There will also be no material harm (let alone significant harm) to soil, air, water, noise and visual quality through the delivery of the appeal proposals.
- 3.65 S1l focuses on minimising impacts on biodiversity and geodiversity. The appeal proposals will deliver an increase in biodiversity.
- 3.66 S1m focuses on conserving and enhancing the historic environment. It is agreed that there is no negative impact upon heritage assets.
- 3.67 Therefore, reading the policy as a whole, I conclude that the appeal proposals accord with policy S1. This is the case even if the Local Planning Authority’s interpretation of “at Tiverton” in Policy S1(a) is to be preferred. The appeal scheme’s compliance with the objective of that policy and its furtherance of a number of the other strategic objectives (both of which are agreed), plainly renders the proposal in compliance with policy S1 as a whole.

- 3.68 **Policy S2: Amount and distribution of development and Policy S3: Meeting Housing Needs** – The suggestion of a breach of this policy is misconceived. The requirements established by S2&S3 are a *minimum*, and do not set a cap on housing provision. So there can be no in principle objection if these requirements are exceeded (and, in any event, whether they would be over the plan period appears unlikely). Tiverton is a key location for growth, as policy S2 sets out.
- 3.69 **Policy S14: Countryside** - The key policy that the Council appear to rely upon in support of their in principle objection is policy S14 (Countryside). However, Policy S14 is not a “classic” preclusive settlement boundary policy. It does not establish an in-principle objection to particular forms of development outside of settlements. Rather its principal objective is to ensure that “*development outside of settlements...preserve[s] and where possible enhance[s] the character, appearance and biodiversity of the countryside*”.
- 3.70 Development which would not cause any material harm to any of those interests is consistent with Policy S14. It is only where a development would cause material harm to those these interests that it would then be necessary to demonstrate compliance with one of the DM policies: this being an exception to the general principle established by Policy S14 that the character, appearance and biodiversity of the countryside should be preserved. So, for instance, DM17 (Rural shopping) and DM18 (Rural employment) both permit certain types of development in the countryside even if they would cause an “*adverse impact to the character and appearance of the countryside*” so long as that adverse impact is not “*unacceptable*” .

- 3.71 The Council now accept that the appeal proposals would not give rise to any material harm to landscape character (SoCG, para 7.4); would have a neutral overall visual effect (SoCG, paras 7.9-7.10); and would result in a biodiversity net gain (SoCG, paras 7.12-7.13). It follows that the appeal proposal is in compliance with (and indeed furthers the objectives of) Policy S14.
- 3.72 Thus, on a proper interpretation of the DP policies referred to by the Council in reason for refusal 1 there is no basis for an in-principle objection to the appeal proposals.
- 3.73 Therefore, in my opinion, the proposal is in compliance with the DP and permission should be granted in accordance with the provisions of s.38(6) and NPPF 11(c).

D) Compliance with Development Plan read as a whole

3.74 Even if this approach to reading policies S1, S2 and S14 as a whole is not accepted, any breach of policy is wholly technical and that breach should be given limited weight. This is because:

- there is no material harm to the interests which the policies seeks to protect;
- the breach only applies to the market residential (facilitating) element of the appeal proposals;
- residential development at Tiverton (that is, in an accessible location to Tiverton's services and facilities – whether within or outside the settlement boundary) is consistent with spatial strategy of plan and the Council's own evidence is that there will be under- delivery at Tiverton against the plan target;

3.75 That limited breach has to be weighed against the policies with which the appeal proposals do comply, and the objectives of the plan which the appeal proposal would further.

3.76 The OR records (CD1, page 18) that the Council considered the appeal proposals against the following policies (OR extract set out overleaf for ease).

DEVELOPMENT PLAN POLICIES

Mid Devon Local Plan Review 2013 – 2033

S1 Sustainable development priorities
S2 Amount and distribution of development
S3 Meeting housing needs
S4 Ensuring housing delivery
S5 Public open space
S6 Employment
S8 Infrastructure
S9 Environment
S10 Tiverton
S14 Countryside

TIV1 Eastern Urban Extension
TIV2 Eastern Urban Extension Transport Provision
TIV3 Eastern Urban Extension Environmental Protection and Green Infrastructure

DM1 High quality design
DM2 Renewable and low carbon energy
DM3 Transport and air quality
DM4 Pollution
DM5 Parking
DM25 Development affecting heritage assets
DM26 Green infrastructure in major development

National Planning Policy Framework

National Planning Practice Guidance

As the site is within the Parish of Halberton the Tiverton Neighbourhood Plan is not a material planning consideration in the determination of this application.

However, the following has been considered for purposes of context and completeness:

- Tiverton Neighbourhood Plan,
- TEUE Masterplan 2018,
- TEUE Design Guide 2016,
- Meeting Housing Needs SPD,
- Meeting housing Needs SPD,
- Open Space SPD,
- EDNA / Employment Land Monitoring review

3.77 Of these policies referenced in the OR (CD1) the Council now only allege a breach of policies S1, S2, and S14 of the DP (an allegation that I disagree with for the reasons summarised above). It is also common ground that the appeal proposals are compliant with policy DM18. This is particularly important, as is compliance with policies S2, S3, S4, S6, S10, TIV1, TIV2 and DM2 (for the reasons that I set out at section 5 of my Planning PoE, dated August 2023). In my opinion without the appeal proposals progress towards the plan objectives that these policies seek to deliver will be substantively diminished.

Appropriate location for a mixed-use scheme

3.78 The suitability of the site for a mix of residential and employment development in land-use terms is obvious. The site lies immediately to the east of the TEUE, an allocation in the Mid Devon Local Plan (MDLP) which includes up to 1830 dwellings and at least 30,000 square meters of commercial floorspace. To the west, the site is bounded by, and wraps around, the Hartnoll Business Centre (HBC), a long standing and successful employment site. As a result of these existing and committed uses which 'hem in' the appeal site, it is common ground that, notwithstanding that it is a greenfield site in a countryside location, development of the site for a mix of employment and residential uses would not adversely harm the landscape character of the area.

3.79 The residential element of the appeal proposals simply infills between dwellings that are served from Manley Lane and the existing bund that forms the boundary of HBC.

3.80 A mixed-use development on the appeal site not only makes obvious sense in land-use terms, the principle of permitting such a development in this location – when it is acknowledged by the Council that there would be no actual harm arising from the proposal – is also consistent with the policies of the MDLP – it is 'at Tiverton' and, for reasons set out at paragraphs 3.16

– 3.19 (p.13) of this PoE, can only take place at the appeal site, thus furthering the Council’s renewable and low carbon energy objectives (that are enshrined in policy DM2 of the Development Plan).

3.81 The only objection of the Council is to the market housing element of the appeal proposals (not the affordable housing element, that being in accordance with the express provisions of DP policy, in particular policy S14).

Facilitating the Development Plan – Access to ‘Area B’

3.82 Via DP policy TIV1i), the adopted SPD (CD14), Area B masterplan (CD13), and the Council’s acknowledgement that at least part of Area A is unlikely to be delivered during the DP period (see Arron Beecham PoE August 2023, Appendix A(2) consented allocations, 14/00881/MOUT); then the appeal proposals are linked to delivery of the DP (i.e. that part of the DP is unlikely to be delivered without the appeal proposals being allowed).

3.83 Policy TIV1i) of the DP clearly states that development should comply:

‘with the adopted masterplan and completion of a public Masterplanning exercise in respect of the southeast of the site (Area B in the adopted masterplan)’.

3.84 The Tiverton Eastern Urban Extension Masterplan SPD (adopted 14th June 2018, CD14) sets out Guiding Principles. At section 3.3 (page 50) Guiding Principle C3 states that (page 50):

“the new neighbourhood should have a clear and legible hierarchy of streets and spaces to respond to different travel and movement needs.”

3.85 Under Section 4.1 (page 66) (CD14) the SPD continues:

“The principal street in the area hierarchy would be Blundell’s Road with a secondary vehicular ‘loop’ in the vicinity of the

neighbourhood centre providing access to the residential areas in the southern part of the site."

3.86 This hierarchy is set out within the image "Movement" at Page 70 of the SPD (CD14). This identifies Blundell's Road/Post Hill as the "Primary route", with the main access streets within the TEUE as a "Secondary route". This plan also shows this "Secondary route" pointing towards the Appeal site at the eastern boundary.

3.87 The Area B masterplanning process was undertaken over a considerable period of time with the Stage 1 public consultation being reported to MDDC's Cabinet on 26/10/2017 (CD97A). That report identified that:

- *'The Highway Authority's preferred access to the site is via the distributor road through Area A' (paragraph 2.9, page 15)*
- *'The delivery of access from Area A to Area B will also require a private agreement between landowners as this route is ransomed.'* (paragraph 2.10, page 15)
- *'65 of the 79 non-statutory consultee comments received made reference to unsuitability of any alternative means of access into Area B other than through Area A.'*
- *'The consultation process indicated an over whelming response that access through Mayfair should not be provided as an alternative means of access.'*

3.88 The Cabinet meeting (CD79) resolved that:

- *'The masterplanning of Area B of the Tiverton Eastern Urban Extension be progressed with the engagement of consultants to assist in the production of the draft masterplan' and that;*
- *'c) Subject to acceptable planning impacts, alternative access arrangements be considered that do not include Mayfair and/or the Manley Lane/Post Hill Junction'*

3.89 The Area B Masterplan was published in August 2020. Figure 33 "Movement" (CD13 page p68) identified Blundell's Road / Post Hill as the

“Primary Road”, with the main access streets within the TEUE as a “Secondary road”. This figure also shows this “Secondary road”, with vehicular access indicated, at the eastern extent, from the appeal site (via a yellow arrow).

3.90 The policy position of the Council (in both the DP, SPD and the consulted upon and published Area B masterplan) is therefore clear. It plainly points (excuse the pun) to the access proposals that are embodied in the appeal proposals. An analysis of the evidence base that underpins that policy position clearly considered, and rejected, an access to serve Area B from that part of Post Hill that WCL have been trying, without success, to promote for at least a year now.

3.91 Further, this part of the Hartnoll Farm site was considered as part of the process of considering what land to include in the current DP (at paragraph 5.14 of the report included as CD84A). Officers considered that an extension to (what became) the TEUE for circa 200 dwellings to be logical, well screened from wider view and maintaining the strategic green gap between the edge of Tiverton and Halberton village. Whilst members chose to allocate further land at Blundells, this does not detract from the clear acceptability of the Western and Southern part of Hartnoll Farm as an urban extension of Tiverton. Those areas considered are broader than the appeal site (see plan at page 53 of the report). The broader matters raised at paragraph 5.15 of the report are not triggered by the appeal proposals.

3.92 It is agreed that the provision of the link road that, as well as serving the appeal site, will also serve to provide a through route to the TEUE, in accordance with the Council’s adopted policy on this matter (see CD14). It will enable the unlocking of ‘Area B’ of that site (which is in different ownership to the consented part of the TEUE and which is unlikely to benefit from a suitable road access to that area for a considerable period of time).

3.93 The Council also agree (see OR CD1) that the proposed link road provision

is a benefit that will assist both the delivery of Area B of the TEUE and the public transport provision for the whole TEUE:

"There is a recognised access issue on the eastern side of the EUE, due to land ownership and phasing, which will impact the development in the medium to long term. It is generally agreed that providing an eastern access as early on in the life of the EUE would be expedient to ensure the timely delivery of the EUE as envisaged within the local plan." (OR, paragraph 4.9, page 43)

- 3.94 This is also recorded in the Further Additional Statement of Common Ground at paragraph 3.5, page 9 (CD6B).
- 3.95 The importance of these benefits is not to be underestimated. In my opinion it is the only way that the Council give themselves a 'fighting chance' of any significant delivery from 'Area B' during the DP period (up to 2033). And a plan failure, of that scale (possibly/probably in excess of circa 500 units) from the most sustainable settlement in the plan area, is a very serious matter. My reading of the OR convinces me that whilst this matter was 'touched upon' it was not given the prominence nor depth of consideration that it merits and, as a result, the weight to be accorded to the appeal proposals was significantly underplayed.
- 3.96 In conclusion there is no credible evidence that the access issues that afflict Area B of the TEUE are likely to be satisfactorily resolved in the foreseeable future. Indeed the ongoing efforts of the developer interested in that area clearly demonstrate the substantial problems with providing any form of access to that area, and demonstrate that, in no way, can an access suitable to serve the TEUE as a through route (in accordance with the published Masterplan) be provided.
- 3.97 This simply underlines the weight that should be attached to the benefit of the appeal proposals providing an access to the TEUE that would provide for a through-route (including an access to serve Area B). The access proposals being promoted by Westcountry Land Ltd should not be afforded any weight in this appeal (see section 4 of this PoE).

Connection to existing Anaerobic Digester/use of renewable energy

3.98 It is also common ground that the connection to the existing Anaerobic Digester at Hartnoll Farm in order to provide both heat and power to the employment element of the appeal proposals accords with policy DM2 of the DP (see SoCG, paragraphs 7.25 CD6).

3.99 The Council's Economic Development Officers were very supportive of this element of the proposal, stating that:

"The proposal to provide the commercial development with a low carbon energy supply from an existing anaerobic digester, will create the first local carbon energy commercial development in the district and could be an exemplar for other schemes, potentially attracting green businesses into the area" (OR CD1, para 5.4)

3.100 The Council had previously misadvised themselves in relation to the implications of constraints on the planning permission for the AD Plant, which meant that whilst they treated the connection as a benefit only limited weight was afforded to this factor (CD1 OR, paras 5.6-5.7 and 11.5). As explained in the Appellant's Response to the Council's Putative RFR (ARtRfR, paras 8.6-8.11 (CD5)), the Council's concerns were misplaced. This has now been agreed through the SoCG (see CD6 SoCG, paras 7.20-7.24).

3.101 The Council's latest concerns on this matter (advanced through their Addendum SoC, section 6 CD3A) were similarly misplaced (see Further Additional Statement of Common Gound, October 2024 and Carbon Plan Energy Feasibility Report Update, October 2024 CD6B - appendix A to this PoE]).

3.102 There is, therefore, no basis on which to reduce the weight to be given to the proposal, which Council Officers acknowledge is *"a unique proposal for MDCC to provide a highly sustainable, joined-up development"* (CD1 OR, para 5.4).

The Market Residential element facilitates both the connection to the AD and provision of the Link Road

3.103 The receipt from the sale of the residential element of the site will forward fund:

- (a) the infrastructure necessary to connect the new employment space to the existing Anaerobic Digester (AD) at Red Linhay Farm,
- (b) the link road across the application site to Manley Lane (connecting with the EUE).

3.104 The scale of the likely residential receipt, and the likely cost of the infrastructure is broadly commensurate with the infrastructure costs identified above (please see appendices 8, 9 and 10 to ARtRfR, CD5 and updated letter from KLP, dated 23/10/24, attached as appendix B to this PoE).

3.105 Thus, the market residential development is facilitating infrastructure that will:

- assist delivery of the EUE (and without such assistance there is no clear way to deliver the link road), as well as making the EUE more accessible for substantial modes of transport by providing the infrastructure to enable a bus serving the TEUE to operate a 'through route' and not an internal loop.
- provide new employment floorspace with its energy needs (both heat and electricity) met from a sustainable/renewable resource.

3.106 It is unarguable that to not provide the employment in the location proposed would result in the loss of an agreed planning benefit.

3.107 It must also follow that such a loss would be likely to lead to the provision of new employment space in a less desirable location (both with regard to

accordance with the spatial strategy of the DP, but also with regard to the loss of the opportunity for a 'low carbon' power source to be provided to new employment floorspace).

3.108 Thus, in order to deliver new employment floorspace in accordance with DP policy and plan strategy (at Tiverton and in a low carbon manner), there is a demonstrable need for an element of enabling development (principally the forward funding of low carbon infrastructure). This is why the market housing is a necessary element of the proposed mix of uses.

3.109 Obviously if the new employment floorspace was to be located further away from the AD plant then the costs would increase (longer pipe runs etc) and the thermal efficiency would reduce (heat loss). Also, the cost and commercial risk would increase if it were to be proposed to establish a new business park, rather than extending an existing successful business park (for which there is significant pressure to extend, see CD44).

3.110 Therefore, in order to limit the costs to a level which is achievable (and to avoid needing to seek a larger level of market housing to enable the forward funding of infrastructure), the market housing is proposed in the location that it is, and there is a clear and compelling case to allow the market housing in this location. Hence why the appellant considers the Inspector's conclusion on this matter (at paragraph 82 of his decision letter) misconceived.

3.111 It is therefore my opinion that the appeal proposals do accord with the DP read as whole (having regard to the legal precedent of the Supreme Court in *Tesco Stores Ltd v Dundee City Council* ([2012] UKSC 13 CD16)). It strikes me that this case gives rise to a similar set of circumstances that Lord Reed was referring to when pointing out (at paragraph 19) that:

"Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad

statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another."

3.112 It is also notable that Lord Hope reiterated (at paragraph 34) that it was "untenable" to say that "if there was a breach of any one policy in a development plan a proposed development could not be said to be "in accordance with the plan". In his view, in the context of considering whether a proposal is in accordance with the development plan as a whole:

"the relative importance of a given policy to the overall objectives of the development plan was essentially a matter for the judgment of the local planning authority [or, on appeal, for the Secretary of State] and that a legalistic approach to the interpretation of development plan policies was to be avoided." (para 34) (my parenthesised words)

3.113 Therefore, read as a whole, there is compliance with the DP read as a whole and permission should be granted.

3.114 By way of example, the approach of the Supreme Court was taken on board by Inspector Boniface when considering an appeal at Broad Piece, Soham (21/3282449, CD17) when he concluded that the proposal in question was in compliance with the development plan overall, despite in conflict with policy which 'strictly controlled' development in the countryside. In particular, at paragraphs 40-43, you will see that the Inspector concluded that:

"Despite a conflict with one important but out of date policy, I have found overwhelming compliance with other relevant policies of the development plan. Overall, I find that that the appeal proposals would be in accordance with the development plan taken as a whole and material considerations indicate firmly in favour of the proposal." (paragraph 43, page 8).

E) Benefits that outweigh any breach of the DP

3.115 Finally, even if there is a breach of the Development Plan the benefits of the appeal proposals are still sufficient to constitute a material consideration which could outweigh any breach of development plan (these benefits are elaborated in the following section).

3.116 I say this because the appeal proposals will: deliver employment provision where there is an agreed need in the area; deliver housing (including much needed affordable housing); provide a link road which will assist with the delivery of the EUE; use low carbon energy to power and heat the new employment floorspace; and result in a demonstrable net gain in biodiversity. These benefits will be realised without any demonstrable harm to acknowledged interests; on a site which is plainly appropriate for the mix of uses proposed; and in a manner which is consistent with the many of the strategic priorities in the MDLP. These material considerations plainly outweigh any harm as a result of any "in principle" breach of the DP.

Provision of employment land

3.117 It is common ground that the proposals are in accordance with the relevant employment policies of the DP (see CD6 SoCG, paragraph 7.19).

3.118 The importance of this benefit should not be underestimated. As the Council recognise (see EDO comments on page 33 of the OR (CD1) and, paragraphs 1.18 and 1.19 on page 37 of the OR CD1):

"There is a delay in allocated sites coming forward for commercial development, particularly in the Tiverton area, leading to a possible short-medium term shortage of commercial land for relocation and indigenous business expansion. We are aware of pent-up demand following the easing of Covid restrictions" (CD1 OR, paragraph 1.18, page 37)

3.119 And that this has led to a breach of the spatial strategy of the DP:

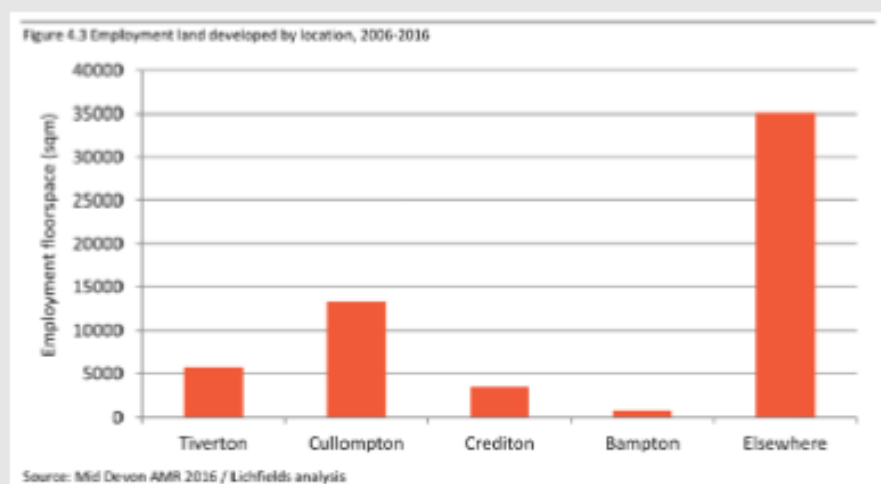
"Forward Planning Officers have confirmed that historically there have been delays in allocated sites coming forward with many windfall/rural employment sites having been approved to satisfy the strategic needs of the LP e.g. Hitchcocks Business Park." (CD1 OR, paragraph 1.19, page 37)

3.120 Hitchcocks Business Park is located to the north of Willand. Willand is not a strategic settlement. As the graph that was included as figure 4 in the submitted Employment Report (dated July 2020) clearly shows that lack of employment development in accordance with DP strategy (there is no strategy that says deliver the majority of new employment floorspace 'elsewhere'). For ease of reference I reproduce the 'Location' section of the Employment Report below:

Location

- 3.11 For this growth to be delivered in a sustainable manner it's important that sites are brought forward in the right locations.
- 3.12 The ELR identified that despite being the largest settlement, and the administrative centre of Mid Devon, Tiverton accommodated less than 10% of new B Class floorspace between 2006 and 2016.
- 3.13 In fact, figure 4 below (figure 4.3 of the ELR) highlights that the delivery of employment in the rural areas far outstrips that in the four defined centres in the first decade of the plan period. Without large scale delivery in the (not particularly sustainably located) rural locations, delivery of employment land over the last decade would have been dire.

Figure 4 – Employment Land Supply



- 3.14 This pattern of development is not consistent with a sustainable pattern of growth that reduces the need to travel. It appears that a lack of supply at sustainable locations has forced development to less suitable rural locations. The most sustainable pattern of growth (and that which would meet the expresses needs of most businesses looking for B-class land) would be to provide suitable B-class land at Tiverton.
- 3.15 It's therefore unsurprising that the ELR identified consistent responses in connection to where employment land is required in the future, with Tiverton being recognised as the most appropriate location for employment land provision.

3.121 I therefore conclude that delivery of employment floorspace in accordance with the spatial strategy of the DP is a very significant material benefit of the appeal proposals.

Connection to existing Anaerobic Digester/use of renewable energy

3.122 As set out at paragraphs 3.98-3.102 of this PoE this is an agreed benefit that is unique to the appeal proposals. I consider this a benefit to which significant weight should be accorded because furthering the energy efficient agenda is vitally important, and it is a unique opportunity.

3.123 It is very surprising that Mid Devon have not placed greater weight on this benefit of the appeal scheme given that: the Council has declared a climate emergency; in March last year it adopted a “Non-Statutory Interim Planning Policy Statement: Climate Emergency” (CD89) which explained that “tackling climate change is a material consideration to the planning process, to which significant weight should be attached”; the use of low carbon sources of energy is one of the *strategic* proprieties of the Local Plan; and the Council’s own officers recognised that the appeal proposal would create the first low carbon commercial development in the district.

Provision of Link Road to the TEUE

3.124 I have set out the benefits of the proposed link road provision at paragraphs 3.82-3.97. That analysis simply underlines the weight that should be attached to the benefit of the appeal proposals providing an access to the TEUE that would provide for a through-route (including an access to serve Area B).

Biodiversity Net Gain

3.125 BNG in excess of 10% will be delivered, and can be secured by condition (CD6 SoCG, para 7.12-7.13). As the application was made before February

2024, there is no legislative requirement to provide BNG.

Provision of housing (including affordable housing)

3.126 At the heart of national planning policy is the objective to significantly boost the supply of homes (NPPF, para 60). This objective does not fall way because the Council is able to currently demonstrate a five year supply of housing. The provision of market housing is plainly a significant benefit. This is particular so given that (i) as the previous Inspector found, the Council is only “just” able to demonstrate a five year supply, and (ii) as I explain below, they will only be a position to do so for the next nine months or so,

3.127 Furthermore, in my opinion the Council’s projections in relation to housing land supply across the plan period are overly optimistic. This ‘misplaced optimism’ is extremely significant when it comes to years 6-11 of their housing trajectory. It is already agreed that a plan failure situation will occur in relation to the TEUE (see my Housing Supply PoE paragraphs 8.8 – 8.10, pages 27 and 28), but, in my opinion it is already obvious that the scale of the failure to deliver at the TEUE will be considerably greater than the Council currently acknowledge (unless a secondary access is provided in expedient fashion). This is explained in the Housing PoE (paragraphs 8.7 to 8.13, pages 27 to 29).

3.128 The delivery of housing in Mid-Devon generally, and at Tiverton specifically, is therefore a benefit which should be afforded significant weight.

3.129 Furthermore, as is explained in my Affordable Housing Proof, the Council is failing, by a wide margin, to meet even the anticipated rate of affordable housing delivery established in the Local Plan (which is lower than the actual identified annual need for affordable housing). Accordingly, the provision of new affordable homes should also be considered to be a benefit which is afforded significant weight.

5 year deliverable land supply

3.130 As set out at paragraph 3.2 of the Further Additional Statement of Common Ground (CD6B), it is agreed that the Council can currently demonstrate a 5 year housing land supply (of 5.22 years). However, the Consultation version of the NPPF is also a material consideration in this appeal.

3.131 In accordance with the provisions of the consultation version of the NPPF, and in accordance with the agreed Housing Land Supply position for this appeal (as set out in the Further Additional SoCG CD6B) the current 5YHLS figure is calculated against the provisions of MDLP policy S3 (393 dwellings pa).

3.132 In July 2025 the MDLP will become 5 years old, at which point (in accordance with NPPF paragraph 77 [and July 2024 NPPF consultation paragraph 76]), the MDLP housing requirement figure should no longer be used, and instead local housing need should be used (calculated using the standard method) when calculating the 5 year housing requirement. Assuming the NPPF consultation standard method figures are adopted, this will raise the annual housing requirement from 393 dwellings p/a to 571 dwellings p/a (CD77). Based on the agreed supply position for this inquiry this would result in the Council only being able to demonstrate a supply of 2.55 years in July 2025.

3.133 Accordingly, at that time, the Council will go from being able to demonstrate a marginal 5 year deliverable residential land supply, to having a significant shortfall.

Under-delivery of housing over the residual plan period

3.134 Delivery of the locational strategy of the DP is also an important material consideration. The available evidence on Employment Land Supply (see Employment Report, CD44) demonstrates a failure to deliver in accordance with that strategy to date.

3.135 It is therefore important to consider where the Council are in relation to the deliverability of the DP and in particular that part of the DP that relates to Tiverton.

3.136 Tiverton is the main settlement within the plan area. It is, in my opinion, the most sustainable settlement in the plan area with the largest population, the largest base for the provision of goods and services, and the only settlement served by a rail station (Tiverton Parkway). Indeed, the primary reason that Cullompton was identified as the primary location for development in the local plan rather than Tiverton, was due to the perception that there were landscape constraints (see CD60, Local Plan Inspector's report, para 26). It is agreed that no such issues arise in respect of this proposal.

3.137 Unfortunately unrealistic expectations regarding the deliverability of the allocations affect the deliverability of key elements of the DP at both Cullompton and Tiverton.

3.138 At Cullompton there are significant infrastructure constraints that embargo delivery from the two main sites (North West Cullompton and East Cullompton (Culm Garden Village). The Council's position is that no occupations of new housing can take place in advance of completion of the town centre relief road, and that is not forecast to complete until 2028.

3.139 Additionally East Cullompton is also fettered by the need for capacity improvements to the existing motorway junction (that are neither agreed, nor programmed). Bearing these (and other constraints in mind) I consider that there is no prospect of delivery from East Cullompton by 2027, nor achievement of the Council's proposed trajectory from that site over the period 2028-2033 (which assumes delivery rates that are wildly optimistic).

3.140 This places a heavy emphasis on delivery from Tiverton if the plan strategy is to be delivered. At Tiverton there has been little/no progress with Allocations TIV9, TIV10 and TIV16.

3.141 The lack of progress with these sites puts more pressure/focus on the need to deliver the TEUE. Whilst part of the TEUE appears as a consented allocation that classification is misleading. Firstly it is only consented in part i.e. primarily the Chettiscombe Trust Land (14/00881/MOUT); and of that consented area only a small part has been subject to a disposal to a housebuilder and a reserved matters consent (21/00454/MARM). This element of the allocation is on site and delivery from this element is not disputed (see map provided as appendix 1 to my Housing Supply PoE).

3.142 The outline permission for 700 units has a residual amount of 536 dwellings that do not benefit from an RM permission (of which 98 are counted by the Council as 'deliverable'). To my knowledge there is no evidence that demonstrates any progress with delivering the balance of this site in the foreseeable future. On the contrary the Council appear to be aware of deliverability issues, but are not entirely cognisant of the implications of those issues. The OR (CD1, paragraph 4.9, page 43) states that:

"there is a recognised access issue on the eastern side of the TEUE, due to land ownership and phasing, which will impact the development in the medium to long term. It is generally agreed that providing an eastern access as early on in the life of the EUE would be expedient to ensure the timely delivery of the EUE as envisaged within the Local Plan."

3.143 This statement fails to recognise the whole picture. It is the progress, or lack thereof, with the Chettiscombe Trust land (the residual 536 units) that currently controls the provision (or not) of a road access to 'Area B' of the TEUE (a further 550 units). As matters stand there is no incentive for the Chettiscombe Trust to make provision for a road to serve Area B and this may well affect their decisions about land release for the balance of the consented site.

3.144 The issue of potential 'ransom' of Area B was recognised by the Council in 2017 (see CD79A, in particular paragraph 2.10, page 15 of the Cabinet Report dated 26/10/2017).

3.145 Secondly, the Council's current position recognises that 138 units (of the residual 536 units) will not be delivered by 2033 (the end date of the current DP – see Appendix A(2) of CD25) – therefore the Council recognise that planned delivery failure will occur. Whilst I concur with that conclusion I think the Council are too optimistic in relation to overcoming the significant obstacles to delivery that exist and that, by 2033 the plan failure figure from this element of the TEUE is likely to be in the region of 250 units (rather than the 138 deficit recognised by the Council) due to the delayed land release process and the need to resolve access provision issues prior to a road serving Area B.

3.146 Allied to the above is the inclusion by the Council (see Appendix A(1) of CD25) of 550 units from Area B between 2027 and 2032. I note that this latest projection by the Council differs from that set out at page 110 of the Area B SPD (CD13) which sets out a more optimistic delivery schedule (with completions occurring a year earlier i.e. 2026/2027). Therefore, in their latest assessment the Council acknowledge that there is a problem here. However, in my opinion the latest projection is not possible, at least without the grant of permission of the appeal proposals. As matters stand:

- Area B is not a fully assembled site and it is potentially ransomed by the consented area to the west.
- The assumptions made about 3 developers and 150 units per annum are unrealistic (it appears that all the Council have done is 'bumped back' the delivery schedule set out in the emerging SPD – and that projection is unevidenced and unrealistic).
- In my opinion none of the 550 units are likely to come forward unless the appeal proposals are granted (thus making a deficit of circa 800 units against the planned provision).

3.147 This would be a significant plan failure. The appeal proposals provide a method of unlocking access to the site, and that gives the Council a fighting chance to use that certainty to catalyse the (currently disparate) land

ownership interests so that a developer could make applications and bring the site forward.

3.148 Even if that were to happen I very much doubt that the full 550 units would be delivered by 2033. My estimate would be circa 400 (and that may well be too optimistic).

3.149 The 100 market units that would be deliverable via the appeal proposals need to be seen in this context when reading the plan as a whole and considering any allegation of breach of that plan.

Conclusions on benefits of the scheme

3.150 In the table set out below I set out what, in my opinion, are the benefits of the appeal proposals and identify the weight that should be accorded to them.

Benefit	Weight
Employment Provision	Very Significant
Renewable Energy linkage	Significant
BNG	Significant
Link Road to TEUE	Very significant
Housing (including affordable and custom build)	Very significant

F) Conclusions to the Appellant's case

3.151 The merits of this scheme are obvious and overwhelming. It is a scheme that will provide employment and housing (including affordable housing), for which there is an acknowledged need. It will do so at Tiverton, the District's most sustainable settlement. It will provide a link road which will assist with the delivery and functioning of the TEUE; use low carbon energy to power and heat the new employment floorspace; and result in a demonstrable net gain in biodiversity. These benefits will be realised without *any* demonstrable harm to acknowledged interests; on a site which is plainly appropriate for the mix of uses proposed; and in a manner which is consistent with the many of the strategic priorities in the MDLP.

3.152 In my view the appeal scheme is in compliance with the development plan. Indeed, it would be surprising the Local Plan did not support schemes of this type. But even if the Council's approach to the local plan is accepted – such that the appeal site's location just outside of the settlement boundary is sufficient on its own to render the entire scheme non-compliant with the development plan – this is plainly a case in which the weighty and multiple benefits justify the grant of planning permission.

4. Issues Raised by Third Parties

- 4.1 I have read the objections raised by third parties, including those of WCL and Halberton Parish Council. I set out my comments on the points raised by those two parties below.

West Country Land (WCL) Objection

Latest position

- 4.2 WCL had requested, and obtained, Rule 6 status for the reconvened inquiry. They submitted a SoC on 19 September 2024. They objected to the appeal proposal, and advanced the case that they were in a position to provide an alternative secondary access to the TEUE, such that the appeal's scheme's link road was not necessary. The SoC includes a 'Preliminary' 'General Arrangement Plan' showing an access arrangement from Post Hill.
- 4.3 A representative of WCL attended the case management conference on 4th October 2024, at which they indicated that they would be appearing at the Inquiry and would consider submitting evidence from a highway's expert in support of their access arrangements. A session was timetabled where WCL's evidence was to be heard and subject to cross examination.
- 4.4 On 17th October 2024 – only 8 working days before proofs were due to be exchanged – they wrote to PINS requesting withdrawal of Rule 6 status.
- 4.5 At the time of writing WCL's position – including the status of its objection and the continuing relevance (or otherwise) of its proposed alternative access – remains unclear. The Appellant will liaise with WCL and the Council in an effort to clarify matters. It would be most regrettable, and may well give rise to issues of procedural unfairness, if reliance is being continued to be placed on WCL's proposed alternative access arrangements, in circumstances where no positive case is being advanced (either in proofs or

evidence or orally) in respect of those arrangements by any party at the Inquiry and the Appellant has no opportunity to test those arrangements through cross-examination.

4.6 As the Appellant has already spent considerable time, effort and money addressing the issues raised by WCL, and given the current uncertainty, this proof of evidence, and that of my colleague Neil Thorne, addresses the matters raised by WCL in their SoC, in particular its proposed alternative access arrangements.

4.7 I set out the main considerations from a planning perspective below. My colleague, Mr Neil Thorne, has address the multiple highway safety issues raised by WCL's proposed access arrangements.

Policy position concerning secondary access to the TEUE

4.8 The WCL objection appears to be based on a clear misunderstanding of the relevant policy position of the Council and a commercial desire to try to deliver a parcel of land, not in accordance with the Council's clearly adopted policy position.

4.9 I have set out the errors inherent within WCL letter of 08/09/2023 (see appendix 6 to CD74B – 'PCL corrected version').

4.10 The WCL SoC was similarly predicated on a series of factual errors (such as believing that Redrow can deliver an access to Area B which they cannot), and a misunderstanding of the adopted policies of the Council.

Key Relevant Facts

4.11 The appeal proposals are supported by a Transport Assessment, the conclusions of which are agreed with the Highways Authority, in that there are no unacceptable impacts on highway safety, and the residual cumulative

impacts on the road network is not severe.

4.12 The latest available traffic data on Post Hill (ATC, w/c 8th June 2023) has been compared with the traffic flows used to inform the Transport Assessment (2021). These are summarised for the peak hours within **Table 1** below and demonstrate that traffic flows along Post Hill have reduced since the original Transport Assessment was undertaken.

Time Period	Eastbound			Westbound			2-way		
	2021	2023	Difference	2021	2023	Difference	2021	2023	Difference
08:00-09:00	295	244	-51	326	252	-74	621	496	-125
17:00-18:00	299	255	-44	344	278	-66	643	533	-110

Table 1: Comparison of Surveyed Traffic Flows – Post Hill (copied from Neil Thorne Highways PoE)

4.13 The original Transport Assessment is therefore considered robust and there have been no other changes since the preparation of the Transport Assessment which alter the conclusions of the appellant or the Highway Authority.

4.14 DCC highways officers indicated that the *existing* access to the business park would not be acceptable for the levels of traffic generation being proposed from the TEUE (see CD1 OR, para 4.13).

4.15 The North Devon Link Road opened in 1988. As DCC's website states:

"The North Devon Link (NDL) Road is the key strategic link connecting northern Devon and northern Cornwall to the rest of the country via the M5. The route is 70km long and comprises of the A361 from the M5 to Barnstaple"

4.16 Should any incident occur on the A361 North Devon Link Road between M5 J27 and Tiverton, then traffic can be re-routed along the Blundell's Road /Post Hill corridor.

- 4.17 Additionally, Blundell's Road/Post Hill remains an important route between Tiverton and settlements to the east such as Willand, Halberton and Sampford Peverell, as evidenced by circa 500 two-way movements in each peak hour period.
- 4.18 There are no particular constraints in close proximity to where the new access proposals adjoining Post Hill. Therefore there are no constraints that would inhibit future improvements to the proposed new junction arrangement should, in a future plan period, it was considered appropriate to permit further development.
- 4.19 The West Country Land (WCL) access proposals (see appendix 3 to their SoC) are proposed along a section of Post Hill where there are a number of properties located in close proximity to the existing highway and to two existing junctions (Manley Lane and the road serving Tiverton Golf Club/Fairway).

Relevant Policy/Guidance

- 4.20 The relevant policy position of the Council (in both the DP, SPD and the consulted upon and published Area B masterplan) is clear and I have set that out at paragraphs 3.82 – 3.92 of this PoE. It plainly points (excuse the pun) to the access proposals that are embodied in the appeal proposals. An analysis of the evidence base that underpins that policy position clearly considered, and rejected, an access to serve Area B from that part of Post Hill that WCL have been trying, without success, to promote for at least a year now.

Matters of Consideration

- 4.21 An established street hierarchy is important. Neither the TEUE SPD, or the Area B masterplan, propose changing this street hierarchy or diverting the Primary Route, which accommodates the predominant vehicular movement, between Tiverton and settlements to the east.

- 4.22 Junctions need to be carefully designed, in accordance with relevant design guidance, so as not to unnecessarily increase turning movements which interrupt the predominant flow and materially increase potential for vehicular conflicts. In this case the base flow to consider is circa 500 two-way movements in the peak hour along Post Hill.
- 4.23 The proposed new access arrangement for the Appeal proposals accord with both the adopted TEUE SPD and Area B Masterplan street hierarchy (CD13) in maintaining Blundells Road / Post Hill as the Primary Route, with a minor arm proposed for the site access at the junction. This is also consistent with the approved (and implemented) western junction into the TEUE which is a T-junction.
- 4.24 The appellant's proposed new access arrangement has been designed in accordance with relevant design guidance and is agreed as safe and suitable. It is capable of accommodating traffic not only from the appeal scheme, but also acting as an access for the TEUE (Area B in particular).
- 4.25 The WCL proposals have been examined by my colleague, Neil Thorne, and I concur with his conclusions. The WCL access proposals will plainly interfere with the free flow of traffic along a busy stretch of a primary route in an unsafe manner.
- 4.26 That is before an amenity considerations of their proposals are made. Those amenity considerations are significant. The queuing that would clearly result should their proposals ever be consented and implemented (and I doubt that either of those will happen) would be likely to produce a detrimental air quality impact, and a detrimental noise impact (caused by the braking and accelerating of vehicles). Both of these matters are likely to be of considerable concern to existing residents of Post Hill and they are likely to make clear a similar level of concern to that demonstrated when the Area B masterplan was consulted upon. The Masterplan effectively considered and discounted an access into 'area B' from this part of Post Hill

and, instead, opted for an access across the appeal site (which is what the appeal proposals will deliver). The WCL access proposals represent little more than a rehashing of previously considered, and discarded, considerations. The amenity issues that underpin the Council's adopted policy position are clearly explained and are valid and important considerations. No doubt, if the WCL proposals are ever subjected to public consultation similar concerns to those previously expressed are likely to emerge.

- 4.27 WCL by their objection have simply demonstrated the problems with delivering area B in accordance with the trajectory upon which the DP relies. Their inability to move matters forwards demonstrates the land ownership and technical problems that they face before amenity concerns are considered (and there is no evidence that amenity issues have been considered).
- 4.28 I therefore conclude that the available evidence demonstrates that there is little likelihood of an alternative access proposal to serve Area B being successfully brought forward other than that embodied within the Council's adopted policy position and that the appeal proposals are compliant with that position. Therefore, there can be no reasonable basis to reduce the weight to be accorded to the very significant benefit that the appeal proposals will deliver, particularly when the acknowledged delivery concerns from Area B are factored in to that consideration.
- 4.29 Furthermore, even if there was in theory an alternative secondary access to the TEUE which was safe, suitable and in accordance with relevant policy (none of which applies to the WCL proposal), this would not materially reduce the weight to be given to the appeal scheme's link road. It is well-established that the consideration of alternative sites for uses will only be relevant to a planning application or appeal in "exceptional circumstances". And even in such exceptional circumstances, vague or inchoate schemes, or which have no real possibility of coming about, are either irrelevant or,

where relevant, should be given little or no weight. The law on was summarised by Lang J in ***Bramley Solar Farm Residents Group v Secretary of State for Levelling Up Housing and Communities*** [2023] EWHC 2842 at paragraphs 162-163 (CD90).

Halberton Parish Council (HPC)

- 4.30 I have carefully considered the matters raised by HPC in their representations. I note the following errors that underpin their submission.
- 4.31 The appeal site is not Grade 1 agricultural land.
- 4.32 The submitted LVA does not assess the appeal proposals would cause material adverse harm to the landscape. On the contrary it is agreed with the Council that no adverse harm to landscape character or visual amenity will occur.
- 4.33 Whilst HPC are correct to record that *'this site has never been allocated for development within the Mid Devon Local Plan 2013-2033'* that statement fails to capture that, via TIV1i), the adopted SPD (CD14), Area B masterplan (CD13), the Council's acknowledgement that at least part of Area B is unlikely to be delivered during the DP period (AB evidence) then the appeal proposals are linked to delivery of the DP (i.e. that part of the DP is unlikely to be delivered without the appeal proposals being allowed).
- 4.34 Further, this part of the Hartnoll Farm site was considered as part of the process of considering what land to include in the current DP (at paragraph 5.14 of the report included as CD84A). Officers considered that an extension to (what became) the TEUE for circa 200 dwellings to be logical, well screened from wider view and maintaining the strategic green gap between the edge of Tiverton and Halberton village. Whilst members chose to allocate further land at Blundells, this does not detract from the in-principle acceptability of the Western and Southern part of Hartnoll Farm as

an urban extension of Tiverton. Those areas considered are broader than the appeal site (see plan at page 53 of the report). The broader matters raised at paragraph 5.15 of the report are not triggered by the appeal proposals.

- 4.35 Neither are HPC correct to record that '*land supply being adequately identified to meet housing targets*'. The evidence is that there is not an adequate supply to meet DP housing targets over the plan period.
- 4.36 The appeal site is NOT within the Tiverton Neighbourhood Plan area and, as is common ground with MDDC, development of the appeal site will not unacceptably erode a green gap between Tiverton and Halberton, nor detrimentally impact upon the setting of the Grand Western Canal Conservation Area, nor does the appeal site adjoin that Canal, nor Conservation Area.
- 4.37 Any proposals to increase the production capacity of the AD plant at Hartnoll Farm is a separate matter and the agreed benefit of utilising the output from the AD plant to serve the new employment floorspace is not reliant upon any increase in capacity above existing consented limits.
- 4.38 Due to this clear misunderstanding of the appeal proposals it appears to me that the concerns raised by HPC are misplaced and are not borne out by the relevant evidence.

5. Planning Balance and Conclusion

- 5.1 In my opinion this is a straightforward case of being cognisant of the Supreme Court's precedent (and in particular Lord Reed's words of wisdom) and reading the DP as a whole. If that is followed then it leads to an inexorable conclusion that the appeal proposals accord with the DP read as a whole (as it must be).
- 5.2 This is, in large part, agreed by the Council. Their objection to the appeal proposals is a technical point (regarding policy S14 as a 'blanket ban' when it is not) that is also reliant upon an over optimistic consideration of housing deliverability that fails to accord with Government policy on the matter, nor the normal practice of Inspectors.
- 5.3 Furthermore, in relation to matters of compliance with/delivering the strategy of the DP the Council have wholly underestimated the importance of the appeal proposals.
- 5.4 There are significant and evidential problems with the delivery of the major allocations at Cullompton due to infrastructure constraints.
- 5.5 There are similar problems at the TEUE.
- 5.6 There is a real danger that lack of delivery at these key locations will simply lead to the grant of permissions at disparate locations (as has clearly happened with employment provision).
- 5.7 The grant of permission of the appeal proposals assists in protecting, and delivering against the strategic objectives of the DP, hence my conclusion that the appeal proposals are in accordance with the plan read as a whole.
- 5.8 Whatever is made of the 3 paths to a decision that I have set out in this PoE the identified, and agreed, benefits of the appeal proposals are

substantial and, in my opinion, clearly point towards a decision to allow the appeal. The Council, on the other hand downplay those acknowledged benefits in a misguided attempt to 'defend the town boundary' of Tiverton 'at all costs' and, in part, rely upon the misguided attempts of WCL to 'shoehorn' an access into an unacceptable location in order to try and advance delivery from Area B of the TEUE when proposal in accord with the Council's own published policy on the matter is being brought forward.

5.9 Bearing in mind the absence of any material harm, and the wide ranging weighty benefits, I consider the appellant case to be a sound and robust proposal and I respectfully suggest that the appeal proposals are allowed.