

Our Ref DS/WJR/2086(a)
Date 30th September 2024



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Information Commissioner's Office

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF



Dear Sir/Madam,

FOI COMPLAINT AGAINST MID DEVON DISTRICT COUNCIL

On behalf of our client, Waddeton Park Limited (WPL) we wish to submit a **complaint against Mid Devon District Council's** (MDDC) handling of a Freedom of Information request. We have provided a timeline of events below:

1. We submitted a Freedom of Information request to MDDC on 31/07/2024 (attached as Appendix I).
2. MDDC considered the request pursuant to the Environmental Information Regulations and chose not to disclose the information pursuant to Regulation 12(5)(d) on the 15/08/2024 (the '**FoI Response**', see Appendix II).
3. Pursuant to 11(1) of the Environmental Information Regulations 2004 we requested that MDDC review that decision on the 27/08/2024 for the reasons in the letter (the '**FoI Review Request**', see Appendix III).
4. MDDC responded to the FoI Review Request on 25/09/2024 and concluded that they applied the Regulation 12(5)(d) test correctly, and will not disclose the pre-application (the '**FoI Review Response**', Appendix IV).

Grounds

MDDC rely upon the following exemption:

"Exceptions to the duty to disclose environmental information

12.—(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

(a) an exception to disclosure applies under paragraphs (4) or (5);

and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

...

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

...

(d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;" (PCL highlighting).

Therefore, in this case, MDDC must demonstrate that a specific exemption applies and that to apply that exemption is in the public interest. With respect MDDC cannot demonstrate either.

Further, Regulation 12(2) requires that '**A public authority shall apply a presumption in favour of disclosure**'. This is a 'high bar' since MDDC must therefore demonstrate a public interest case that is so compelling that it outweighs the statutory presumption of disclosure.

Failure to provide a justification pursuant to 12(5)(d)

In the FoI Review Request to MDDC (Appendix III), we set out why the Regulation 12(5)(d) exemption does not apply to our FoI request. Unfortunately, MDDC continue to apply this exemption, and in their FoI Review Response (Appendix IV) have failed to satisfactorily address our reasoning for it not applying. These have not been repeated in this letter (but can be found in the FoI Review Request, Appendix III), however where the Council have failed to adequately respond to these matters, our concerns are raised below.

One matter raised in the FoI Review Request (Appendix III) is that MDDC and the potential applicant (Westcountry Land) have entered the details of the pre-application into the public domain (in a letter addressed to Mr Richard Marsh [MDDC], copied to the Planning Inspectorate and entered into the Planning Inquiry, Appendix III, Appendix B). In the FoI Review Response (Appendix IV), MDDC have misunderstood this letter, claiming that it was a letter inquiring about pre application advice, and containing no information about advice offered on received. This is incorrect, with page 2 of the letter stating:

"...

3. We have engaged with the Local Planning Authority, including a preliminary meeting in July, followed by the submission of a formal pre-

allocation, dated 3rd September, specifically in respect of our proposed alternative access.

4. We have received a positive response to our pre-application submission above, from your planning officers. ...” (Appendix III, Appendix B, p. 2)

Clearly, this letter is not **“...*simply a letter inquiring about pre application advice*”** (Appendix IV, p.3, first complete paragraph), as MDDC described in their FoI Review Response.

MDDC later state that:

“Secondly information provided for the purposes of legal proceedings do not amount to open disclosure and such a letter being placed within a bundle should not be considered as such.” (Appendix IV, p.3, first complete paragraph)

This is a further misunderstanding. This letter was not provided for the purpose of legal proceedings. This was a letter voluntarily written and subsequently placed into the public domain by Westcountry Land, the potential applicant (sending it to MDDC and the Planning Inspectorate, email attached as Appendix V). This was intentionally disclosed to the public by Westcountry Land.

Clearly the pre-application has been intentionally placed into the public domain. It is not appropriate, and is procedurally unfair, for MDDC to continue to rely on the availability of an alternative access route, and the pre-application **discussions relating to the same, as part of their case against our client’s** proposal, yet at the same time refuse to disclose the substance of those pre-application discussions.

Turning to the matter of Public Interest for disclosure, MDDC state that:

“It is also believed that this is an integral part of an appeal then standard disclosure will be made” (Appendix IV, p.3, first paragraph under ***“Is there a Public Interest argument for disclosure?”***).

In Appendix 3 of the FoI Review Request (Appendix III) the high court judgement was quashed on Grounds 4(b)(c) and (d), pertaining to the delivery of a link road to the south of the site. Further, Appendix 4 (page 4, para 3.4 – 3.6) of the FoI Review Request identifies that the Council continues to rely on this alternative access. Therefore, given that the appeal decision has been quashed on matters relating to this alternative access, and this continues to be in contention, it is only logical to conclude that this information is integral to the

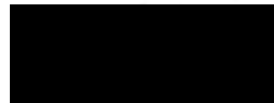
production of the appellants evidence at appeal. However, this has still yet to be disclosed by the Council.

Moving to the section on "*Is there a Public Interest argument for non-disclosure?*" (p.3), the Council materially misunderstand the current context. They draw on a previous ICO decision on disclosure of pre-application advice when there is a pending decision (ref. IC-282440-Y7D8). In this instance, there is no planning application pursuant to the pre-application advice, and instead both the Council and the potential applicant for the pre-application are using extracts of the advice to attempt to discredit alternative access opportunity. The justification in the previous ICO decision was that "***Disclosure at this time, therefore, would increase the likelihood of disruption to the formal planning process via enquiries regarding non relevant pre-application matters.***" (paragraph 41). This is not the case here, and the pre-application engagement **is the only 'relevant' matter (as there is no planning application).**

We note that the Council also raise two other cases. Both of these are also materially different to the pre-application subject to the Freedom of Information request raised here.

We therefore request that the Information Commissioner Office promptly reviews this complaint (wary of the forthcoming re-opened inquiry on the 26th November 2024 to which this request directly relates).

Kind regards,



David Seaton, BA (Hons) MRTPI
For PCL Planning Ltd



Enc. Appendices I-V

Appendix I

Will Ridalls

From: Will Ridalls
Sent: 31 July 2024 15:27
To: Freedom Of Information
Cc: David Seaton
Subject: Tiverton Eastern Urban Extension - Area B access Freedom of Information requests.
Attachments: Westcountry Land Letter MDDC 08-09-23.pdf; Westcountry Land Access 1496-01-SK-101-B.pdf

Tracking:	Recipient	Delivery
	Freedom Of Information	
	David Seaton	Delivered: 31/07/2024 15:27

Dear Sir/Madam,

I would be grateful if you can register the following Freedom of Information request:

In the Summer of 2023, Westcountry Land engaged with Mid Devon District Council as the local planning authority regarding a proposed access to 'Area B' of the Tiverton Eastern Urban Extension [TEUE] (page 2, point '3' of the attached Westcountry Land letter).

Please provide a full copy of all the pre-application engagement you have had with Westcountry Land (and any of their professional representatives) for this proposed access to the TEUE. In your response to the above request, please include all documents provided to the Council, as well as all the advice proffered by the Council (and any representatives engaged on your behalf). We expect the response to this request will include (but will not be limited to):

- All written correspondence;
- Meeting notes;
- Details, information and surveys provided to the Council; and
- Copies of any plans provided to the Council.

We enclose for clarity a plan and email chain (which MDDC was included in) that we understand formed part of this process.

Further, please provide a complete list of pre-application engagement you have received regarding all potential access routes to 'Area B' of the Tiverton Eastern Urban Extension including all documents provided to the Council in association with the pre-application engagement, and a copy of all advice proffered by the Council.

Should you have any queries with the above, please let me know.

Please confirm receipt of this request.

Kind regards,
Will

Will Ridalls

PCL PLANNING LTD

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Devon, EX1 3WD
United Kingdom


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IMPORTANT: This message, and any files transmitted with it may be confidential and is intended for the above named only. If you are not the intended recipient please notify the sender immediately or [REDACTED] You must not disclose or copy the contents to a third party.

Please note that Internet e-mail is not a fully secure communication medium. Any attachments to this e-mail are believed to be virus free, however it is the responsibility of the recipient to make the necessary virus checks. The views expressed in this communication are not necessarily those held by PCL Planning Limited.

Will Ridalls

From: Will Ridalls
Sent: 01 August 2024 11:12
To: Freedom Of Information
Subject: RE: FOI09705
Attachments: Email chain.pdf

Good morning,

Please find the email chain attached.

Kind regards,

Will

Will Ridalls

PCL PLANNING LTD

13a-15a Old Park Avenue
Exeter
Devon, EX1 3WD
United Kingdom

www.pclplanning.co.uk

IMPORTANT: This message, and any files transmitted with it may be confidential and is intended for the above named only. If you are not the intended recipient please notify the sender immediately or [REDACTED]. You must not disclose or copy the contents to a third party.

Please note that Internet e-mail is not a fully secure communication medium. Any attachments to this e-mail are believed to be virus free, however it is the responsibility of the recipient to make the necessary virus checks. The views expressed in this communication are not necessarily those held by PCL Planning Limited.

From: Freedom Of Information [REDACTED]
Sent: Thursday, August 1, 2024 11:06 AM
To: Will Ridalls [REDACTED]
Subject: FW: FOI09705

Hello

Further to your request, you state that "We enclose for clarity a plan and email chain (which MDDC was included in) that we understand formed part of this process".

In order to facilitate this request are you able to enclose the email chain stated above?

Yours sincerely

Information Management

From: Freedom Of Information [REDACTED]

Sent: 31 July 2024 16:47

To: [w.ridalls](#) [REDACTED]

Subject: FOI Acknowledgement

Subject: FOI09705 Acknowledgement

Thank you for your request for information, this email is your official acknowledgement.

Your request has been logged and assigned reference FOI09705, please quote this reference in any future correspondence relating to your request.

Your request will be dealt with under the Freedom of Information Act 2000 and you will receive an official response within 20 working days, by 30/08/2024.

Sometimes, a fee may be payable under [FOIA 2000/36/section/9](#). If this is the case, we will let you know and a fees notice will be issued, but you will be required to pay before we proceed to deal with your request.

If you have any queries regarding this email, please do not hesitate to contact me.

Information on Mid Devon District Council's Freedom of Information and Environmental Information Regulations responses is published on our website each quarter, these are known as disclosure logs. Please see the [Access to information](#) page on our website for further information on what is available to you.

Yours sincerely

Information Management

Save time and do it online <https://www.middevon.gov.uk>

This email and any files transmitted with it are intended solely for the person to whom it is addressed. It may be confidential and also legally privileged. If you are not the intended recipient, please notify the sender and delete the message from your system immediately.

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Senders and recipients should be aware that emails and their contents may have to be disclosed in response to a request made under UK Data Protection and Freedom of Information legislation.

This email message has been scanned for the presence of computer viruses. However, Mid Devon District Council does not accept any liability in respect of damage caused by any virus that is not detected.

Appendix II



FOI09705 Request

Date received: 31/07/2024

Date response due: 30/08/2024

Date response provided: 15/08/2024

Request

In the Summer of 2023, Westcountry Land engaged with Mid Devon District Council as the local planning authority regarding a proposed access to 'Area B' of the Tiverton Eastern Urban Extension [TEUE] (page 2, point '3' of the attached Westcountry Land letter).

Please provide a full copy of all the pre-application engagement you have had with Westcountry Land (and any of their professional representatives) for this proposed access to the TEUE. In your response to the above request, please include all documents provided to the Council, as well as all the advice proffered by the Council (and any representatives engaged on your behalf). We expect the response to this request will include (but will not be limited to):

- All written correspondence;
- Meeting notes;
- Details, information and surveys provided to the Council; and
- Copies of any plans provided to the Council.

We enclose for clarity a plan and email chain (which MDDC was included in) that we understand formed part of this process.

Further, please provide a complete list of pre-application engagement you have received regarding all potential access routes to 'Area B' of the Tiverton Eastern Urban Extension including all documents provided to the Council in association with the pre-application engagement, and a copy of all advice proffered by the Council.

Response

I can confirm that Mid Devon District Council has now considered your request, and that it has been dealt with under the Environmental Information Regulations (EIR) 2004. This is because the information requested falls within the definition of 'Environmental Information' under section 2(1)(c) of that Act.

We can confirm that Mid Devon District Council holds information relevant to your request, and that this response serves as a refusal notice on the grounds that the information requested is exempt under Regulation 12(5)(d) of the EIR, namely that disclosure of the information would adversely affect the confidentiality of the

proceedings of that or any other public authority where such confidentiality is provided by law.

The three conditions required to exempt information under Regulation 12(5)(d) are

- The confidentiality in question must specifically relate to the confidentiality of proceedings;
- This confidentiality must be provided by law;
- It must be demonstrated that disclosure would have an adverse effect on the confidentiality of the proceedings in question.

The pre-application advice service offered by the Council is a formal process, offered by all local authorities, which has been accepted by the Information Commissioner as falling within the definition of a formal 'proceeding' for the purposes of engaging Regulation 12(5)(d), and therefore this information relates to the confidentiality of proceedings.

We consider the information requested meets the threshold for the common law of confidentiality. This is because the information is not trivial and was submitted to the Council as part of a pre-application advice process, which Westcountry Land would consider to be confidential. Whilst the pre-application advice process is not statutory, it is intended to assist developers to identify and address any potential issues early on during the planning process, prior to submitting a planning application. Planning applications and supporting documents are made available for public consumption and consultation in due course, however pre-application advice does not form part of the planning application process or outcome and the applicant may choose to take the advice or not and it is therefore regarded as confidential by both the Council and planning applicants.

Planning applicants have expectations about how their information will be treated. There would likely be significant damage to the relationship between the Council and planning applicants should the Council disclose information that applicants considered to be confidential. If applicants do not feel they can trust the Council, this would significantly undermine the process of providing a confidential pre-application opinion, and would undermine the ability to have full and frank discussions regarding planning proposals.

Whilst the pre-application process provides no guarantee that a subsequent application will be approved, it assists applicants, and the Council, by potentially improving the quality of applications and serves a purpose in avoiding the Council spending time and resources on considering inappropriate and non-compliant planning applications that would result in harm to the interests of the Council, applicants, and to the public purse.

Disclosing the information would discourage full engagement with the pre-application process by the applicant, and by future applicants, for fear that their information would be shared publically and such disclosure would have an adverse effect on the confidentiality of the pre-application process as it would damage the general principle of confidentiality itself.

Public interest test

We are required to consider the public interest of releasing or withholding the information.

Public interest arguments favouring disclosing the information

The Council fully supports the principle of open, transparent and accountable local democracy. Disclosing the information would provide the public with information about potential planning proposals and development schemes in the council area, and an insight into guidance that the Council may share with applicants considering a planning application, demonstrating accountability to local residents.

Public interest arguments favouring maintaining the exemption

Enabling confidential pre-application communication between the Council and applicants promotes opportunity for open and frank exchange, which supports and encourages engagement with the Council's planning officers.

Applicants benefitting from pre-application advice are more likely to submit planning applications that require less overall Council time and resource resulting in less impact on the public purse because potential problems are identified before the formal planning process.

Any advice given is superseded by the subsequent, public, formal planning application process, which follows strict procedures. It is important that the integrity of the formal planning process is maintained.

The formal planning process provides the public with the opportunity to comment on planning proposals prior to the Council's decision on an application. It would be an inefficient use of public resources to disclose pre-application information because it would likely prompt additional public enquiries to the Council on matters that could be very different in the subsequent formal planning application.

Pre-application advice will be reflected in any subsequent planning application – whether or not the advice is taken by the applicant.

Balance test

The Council fully supports the principle of open, transparent and accountable local democracy. On balance, the arguments in favour of maintaining the exemption outweigh the arguments for disclosing the information.

Appendix III

Your Ref
Our Ref DS/SJS/2086
Date 27th August 2024



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13a-15a Old Park Avenue
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www.pclplanning.co.uk

Mid Devon District Council
Phoenix House
Phoenix Lane
Tiverton
EX16 6PP

Dear Sir/Madam,

FOI DECISION REVIEW

On behalf of our client, Waddeton Park Limited (WPL), we submitted a Freedom of Information request on 31/07/2024 (see e-mail, attached as appendix 1).

Mid Devon District Council have considered this request pursuant to the Environmental Information Regulations and have chosen not to disclose the information pursuant to Regulation 12 (5) (d).

Pursuant to 11(1) of the Environmental Information Regulations 2004 we request that the Council review that decision for the reasons that are set out in this letter.

Grounds

The Council rely upon the following exemption:

"Exceptions to the duty to disclose environmental information

12.—(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

(a) an exception to disclosure applies under paragraphs (4) or (5);

and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

...

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

...

(d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;" (PCL highlighting).

Therefore, in this case, the Council must demonstrate that a specific exemption applies and that to apply that exemption is in the public interest. With respect the Council cannot demonstrate either.

Further, Regulation 12(2) requires that '**A public authority shall apply a presumption in favour of disclosure**'. This is a 'high bar' since the Council must therefore demonstrate a public interest case that is so compelling that it outweighs the statutory presumption of disclosure.

Failure to provide a justification pursuant to 12(5)(d)

In this case, there **are no relevant "proceedings", and in any event there** is no confidentiality that is provided by law, therefore there is no exception pursuant to 12(1) (a) [via reliance on 12(5) (d)].

We direct your attention to the ICO guidance and relevant case law on regulation **12(f)(d)**. **You will be aware that "proceedings" apply to the final decision-making stages of an authority and there must be a sufficient degree of formality. The pre-application stage prior to the making of a formal planning application clearly does not fall within the scope of "proceedings" as used within the regulation, as it is far from a final decision-making process and nor is it a formal process.**

Even if this process was caught by the term "proceedings" (which it is not), then in any event there is no confidentiality provided by law (either in statute or common law) in respect of pre-application advice. There must be a legal basis for the confidentiality, which simply does not exist in this context.

In this case there is merely an expectation between potential planning applicants and the Council that these matters will be treated as confidential. The pre-application process is non-statutory and the matter of confidentiality is not universally applied by Councils (for example Cornwall Council regularly publish pre-application details on their Planning Register which they are required to maintain in accordance with S69 and S69A of the Town and Country Planning Act 1990 and Article 40, 41 and 42 of The Town and Country Planning (Development Management Procedure) (England) Order 2015). An example of

this is a pre-application for four dwellings is publicly available on their website, with Cornwall Council ref. PA24/00866/PREAPP, link: <https://planning.cornwall.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=SGO5AIFG0IS00>

You have also failed to consider whether disclosing the information would adversely affect confidentiality, and failed to properly apply the public interest balance.

With respect, the confidentiality relied upon by the Council cannot be a legitimate expectation having regard to the particular facts of this case.

This is because both the Council and the potential applicant (West Country Land [WCL]) have, jointly, placed this pre-application process into the public domain (via the WCL letter of 08/09/2023, see appendix 2).

Further, by relying upon it, the Inspector who determined the appeal was held, by the High Court, to have erred in law. Both the Secretary of State for Levelling Up, Housing and Communities (SoS) and Mid Devon District Council (MDDC) submitted to judgment on this point and the inquiry will now be re-opened by The Planning Inspectorate (PINS) and a new Inspector has been appointed to re-determine the appeal (see attached judgement attached as appendix 3).

More recently, via the MDDC Addendum Statement of Case (ASoC, attached as appendix 4) of Mid Devon District Council (served on the appellant on 02/08/2024 via e-mail from PINS). Paragraphs 3.4-3.6 (page 4) of the Council's SoC in particular deal with this matter. **It must be noted (from MDDC's ASoC, paragraph 3.6 in particular) that MDDC are seeking to continue to rely upon this pre-application process at that inquiry.**

With respect, it is not appropriate, and is procedurally unfair, for MDDC to continue to rely on the availability of an alternative access route, and the pre-application discussions relating to the same, as part of their case against our **client's proposal, yet at the same time refuse to disclose the substance of those pre-application discussions.**

As the appellant's Supplemental Statement of Case (SSoC, attached as appendix 5) clearly points out (at paragraphs 3.10-3.13, page 11) if the Council seek to rely upon this information to make their case at the forthcoming inquiry then

the appellant requests that they must disclose that information. Not to do so would probably legally taint a decision made via the re-opened inquiry process.

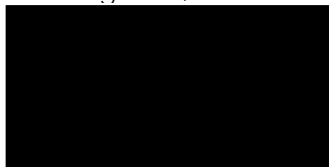
This is particularly pertinent since the WCL letter is based upon incorrect statements that are not borne out by the relevant facts, and the claims made within the letter are therefore not truthful (see PCL corrected letter, attached as appendix 6).

By choosing to place this information into the public domain, and then for the Council to continue to rely upon it when making their case at the re-convened inquiry, it cannot be regarded as a confidential exception pursuant to regulation 12(1)(b) since it cannot be in the public interest for the Inspector who will now determine the appeal to be placed in the invidious position that the previous Inspector was placed in (i.e. by the Council relying upon a claim, the veracity of which is then not subjected to testing the normal rules of evidence disclosure and cross-examination of that evidence).

Having regard to the particular facts of this case it is quite evident that there are no good grounds to **seek to disapply the statutory 'presumption in favour of disclosure'**.

Therefore we respectfully request that the Council accede to our client's eminently reasonable request for full disclosure (if the Council continue to rely upon this matter as part of their case to the forthcoming inquiry).

Kind regards,



David Seaton, BA (Hons) MRTPI
For PCL Planning Ltd



Enc. Appendices 1-6

APPENDIX 1
WR email dated 31/07/2024

Will Ridalls

From: Will Ridalls
Sent: 31 July 2024 15:27
To: Freedom Of Information
Cc: David Seaton
Subject: Tiverton Eastern Urban Extension - Area B access Freedom of Information requests.
Attachments: Westcountry Land Letter MDDC 08-09-23.pdf; Westcountry Land Access 1496-01-SK-101-B.pdf

Tracking:	Recipient	Delivery
	Freedom Of Information	
	David Seaton	Delivered: 31/07/2024 15:27

Dear Sir/Madam,

I would be grateful if you can register the following Freedom of Information request:

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Please provide a full copy of all the pre-application engagement you have had with Westcountry Land (and any of their professional representatives) for this proposed access to the TEUE. In your response to the above request, please include all documents provided to the Council, as well as all the advice proffered by the Council (and any representatives engaged on your behalf). We expect the response to this request will include (but will not be limited to):

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We enclose for clarity a plan and email chain (which MDDC was included in) that we understand formed part of this process.

Further, please provide a complete list of pre-application engagement you have received regarding all potential access routes to 'Area B' of the Tiverton Eastern Urban Extension including all documents provided to the Council in association with the pre-application engagement, and a copy of all advice proffered by the Council.

Should you have any queries with the above, please let me know.

Please confirm receipt of this request.

Kind regards,
Will

Will Ridalls

PCL PLANNING LTD

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Devon, EX1 3WD
United Kingdom

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APPENDIX 2
Westcountry Land letter dated 08/09/2023



Our Ref: TivEUE-It-lpa-07-09-23

Mr Richard Marsh

Director of Place
Mid Devon District Council
Phoenix House
Phoenix Lane
Tiverton
EX16 6PP

Friday 8th September 2023

Dear Richard,

Re: Proposed Development of Area B of TIV 1 EUE in the Mid Devon Local Plan and Waddeton Park Appeal Reference App/Y1138/W/22/3313401

I would like to take this opportunity to write to you, to set out our position in respect of Area B of the Tiverton Eastern Urban Expansion area, TIV1, allocated in the Mid Devon Local Plan.

We are experienced, specialist land developers, who work exclusively in Devon and Cornwall. Our specific expertise encompasses land acquisition and assembly to unlock land for development, and to obtain planning permission. We have a significant track record of success in this industry.

Your council has allocated a significant area of land for residential development together with an indicative masterplan to accompany the allocation within the Local Plan, identified as TIV1. Area A is being developed by Redrow Homes, and planning permission has been granted for the first phases of development, which is currently under construction. At present, Area B is currently dependent on the delivery of the Area A estate road, to provide access, which will take some time before it connects to the balance of the allocation. The Local Plan period is from 2013 – 2033, so still has considerable time to run.

We are working in partnership with Mid Devon Homes, who have procured land to create a new, alternative access to service Area B, without the need to wait for the connection from Redrow, as identified above. This alternative access is contained entirely within the existing settlement boundary and the allocated area, without the need for any land outside of that, identified by the Local Plan.

Accordingly, we believe that there is a fantastic opportunity here, to accelerate the delivery of the Area B allocation, without the need for the Redrow link, or any other alternative access, such as that proposed by the Waddeton Park scheme, to the east. Which your council have recently refused planning permission, under reference 21/01576/MOUT, and is currently the subject of a non-determination planning appeal, under reference App/Y1138/W/22/3313401.

CORNWALL OFFICE

1 Riverside House, Heron Way,
Newham, Truro, Cornwall TR1 2XN

DEVON OFFICE

2 Parkwood Close, Broadley
Industrial Park, Plymouth, PL6 7SG

We understand that a key part of the appellant's case and justification for their scheme, which would form a departure from the Local Plan, is the creation of a new road junction and connecting estate road to serve Area B.

We have read the council's proof of evidence, prepared by Antony Aspbury, and we concur with the content of this document and the council's previous reasons for refusal. We do not consider that, at this time, when the Local Plan has 11 years to run, there is any need to depart from the council's local plan and allocation. Indeed, we would like to supplement Mr Aspbury's proof of evidence, by confirming the following;

1. In conjunction with Mid Devon Homes, we have sufficient land (within the allocation area and existing settlement boundary) to successfully deliver a suitable alternative access to Area B.
2. We have employed a specialist highways consultant, to review our site and consider the most appropriate form of junction/access design and visibility. The junction and access can be designed to provide a suitable two-way junction, with sufficient capacity to service the Area B allocation, to connect to the Area A link/estate road in due course, and to accommodate buses, and to provide the bus route/loop, in accordance with the aspirations of the Local Plan.
3. We have engaged with the Local Planning Authority, including a preliminary meeting in July, followed by the submission of a formal pre-application submission, dated 3rd September, specifically in respect of our proposed alternative access.
4. We have received a positive response to our pre-application submission above, from your planning officers. As part of that process, we have also engaged with Devon County Highways, who have also confirmed that the general principle of our access is acceptable.
5. Given all of the above, we are now committed to the preparation and submission of a planning application for the access and residential development of the first phase of Area B of the TIV1 allocation, within the next 12 months.

To summarise; we have sufficient land and the capability to deliver a technically compliant, secondary access to Area B. As such, we believe that the council is right to resist any further development, outside of the allocation within the Mid Devon Local Plan, which would be premature, whilst the local plan still has so long to run.

The implementation of the Mid Devon Local Plan and development of Area B of the TIV1 allocation can be secured within the plan period, without need for development of additional land, outside of the allocation.

We hope that the content of this letter is of assistance to you in respect of the forthcoming planning appeal and we look forward to working with you and your officers to progress our planning application to deliver this allocation, in accordance with the Local Plan.

Kind regards



Justin Dodge (Director)

Westcountry Land & Homes and on behalf of Mid Devon Homes

APPENDIX 3
High Court Judgment

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

~~AC-2023-LON-003510~~



AC-2023-LON-003510

BETWEEN:

WADDETON PARK LTD

Claimant

- and -

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) MID DEVON DISTRICT COUNCIL

Defendants

CONSENT ORDER

Before Mr Justice Holgate sitting in the Planning Court, King's Bench Division, High Court of Justice, The Strand, London WC2A 2LL

UPON considering the Claimant's Statement of Facts and Grounds and supporting evidence

AND UPON consideration of the Statement of Reasons set out in the Schedule to this Order

BY CONSENT IT IS ORDERED THAT

- 1) The decision of the First Defendant dated 20 October 2023 under reference APP/Y1138/W/22/3313401 is quashed.
- 2) The matter is remitted to the First Defendant for redetermination.
- 3) The First Defendant do pay the costs of the Claimant, such costs to be the subject of detailed assessment if not agreed.

Dated 5 June 2024

We consent to an order in the above terms.

Pinsent MASONS LLP

For the Treasury Solicitor

.....

.....

On behalf of the Claimant

On behalf of the First Defendant

Clare Mirfin

Gemma File

Pinsent Masons LLP

Government Legal Department

30 Crown Place

102 Petty France

Earl Street

Westminster, London

London

SW1H 9GL

EC2A 4ES

For Mid Devon District Council

On behalf of the Second Defendant

Deborah Sharpley

Mid Devon District Council

Phoenix House

Phoenix Lane

Tiverton

EX16 6PP

SCHEDULE

1. These proceedings concern a claim for planning statutory review under section 288 of the Town and Country Planning Act 1990 of a decision to dismiss an appeal against the Second Defendant's refusal of the Claimant's planning application (reference 21/01576/MOUT).

2. The claim is brought on six grounds which, in summary, are as follows;
 - (i) **Ground 1** – The inspector misinterpreted Policy S1 ('Sustainable development priorities') of the Mid Devon Local Plan 2013-2033 ("**the Local Plan**") in two separate and material respects.

 - (ii) **Ground 2** - The inspector misinterpreted Policy S2 ('Amount and Distribution of Development') of the Local Plan again in two separate and material respects.

 - (iii) **Ground 3** - The inspector misinterpreted Policy S14 ('Countryside') of the Local Plan.

 - (iv) **Ground 4** – The inspector's approach to the link road provided as part of the appeal scheme was wrong in law in the following separate respects:
 - (a) it involved a misdirection of law as to the status of the Framework Plan;

 - (b) the inspector failed to take account a mandatory material consideration, namely that the provision of the link road as part of the appeal scheme would be secured by a proposed condition;

 - (c) his conclusion that the evidence in respect of the link road was "inconclusive" was procedurally unfair, as neither the deliverability nor suitability of the link road delivered as part of the appeal scheme

was in issue at the inquiry; and the inspector did not give the Claimant an opportunity to address his (unvoiced) concerns;

(d) his reasons were legally inadequate; and his conclusion was irrational.

(v) **Ground 5** – The inspector’s conclusions as to compliance with the development plan overall and the planning balance:

(a) failed to take account of mandatory material considerations, namely the common ground between the parties as to the proposal’s compliance with the objectives (both express and underlying) of Policies S1 and S14; and

(b) took into account irrelevant considerations, namely the erroneous proposition that no case had been made as to why this location was “to be preferred given its location in the countryside”.

(vi) **Ground 6** – The inspector conclusion that the proposal’s generation of 400 new jobs should only be afforded “moderate weight” was wrong in law. The inspector either (a) failed to have regard to a mandatory material consideration, namely the requirement in NPPF, para 81 to place “significant weight on the need to support economic growth and productivity”; (b) misinterpreted this policy; or (c) failed to give reasons for departing from it.

3. At the Renewal Hearing on 18 April 2024 Mould J granted permission to bring the claim for planning statutory review on Grounds 1-5 (inclusive), having found each of them to meet the threshold of arguability. He refused permission on Ground 6.
4. The Defendants accept that the decision is legally flawed in respect of Ground 4, specifically on Grounds 4(b), (c) and (d), for the reasons set out at paragraph 6 below.
5. Ground 4 arises from the Inspector’s consideration of the Claimant’s proposed link road to the Tiverton Eastern Urban Extension (‘TEUE’) at paragraphs 49 – 53 of the decision letter.

6. Neither the suitability nor the deliverability of the Claimant's link road was put in issue at the Inquiry. Nor were any further details of the Claimant's link road requested by any party or the Inspector. In that context, the Inspector's conclusion that the evidence in respect of the link road was "inconclusive" was procedurally unfair (Ground 4(c)). The Claimant had produced various plans which illustrated the proposed route, and the link road was the subject of an express condition (Condition 21) which secured *inter alia* certain details of the link road and its delivery prior to occupation of any dwellings. This condition was obviously material to the determination, and the Inspector's failure to have regard to it was an error of law (Ground 4(b)). The Defendants also accept that in his decision the Inspector failed to provide legally adequate reasons for why he considered the Claimant's evidence on the matter of the proposed link road to be "inconclusive", or why there was not "sufficient detail" provided (Ground 4(d)).
7. For the avoidance of doubt the Defendants do not accept that the Inspector misdirected himself about the status of the Framework Plan (Ground 4(a)).
8. The decision therefore stands to be quashed and the appeal reconsidered by the First Defendant.
9. The parties reserve their respective positions with regards to the other Grounds. In particular, in addition to the errors identified in Ground 4, the Claimant maintains its position that the Inspector's approach to Local Plan policy (Grounds 1-3) and the overall planning balance (Ground 5) was legally flawed.
10. The parties are agreed that any redetermination is to be made by a different Inspector who will carry out the redetermination with reference to the matters set out in this Schedule and in accordance with the usual procedure and relevant guidance (Procedural Guide: Planning appeals – England).

We hereby consent to an order in the above terms.

Pinsent MASONS LLP

For the Treasury Solicitor

.....
On behalf of the Claimant

Clare Mirfin

Pinsent Masons LLP

30 Crown Place

Earl Street

London

EC2A 4ES

.....
On behalf of the First Defendant

Gemma File

Government Legal Department

102 Petty France

Westminster, London

SW1H 9GL

For Mid Devon District Council

.....
On behalf of the Second Defendant

Deborah Sharpley

Mid Devon District Council

Phoenix House

Phoenix Lane

Tiverton

EX16 6PP

Approved

David Holgate

5 June 2024.

BY THE COURT

APPENDIX 4
MDDC Addendum SoC



Town and Country Planning Act 1990

PUBLIC INQUIRY

Appeal by: Waddeton Park Ltd

Site Address: Land at Hartnoll Farm, Tiverton

Planning Application: 21/01576/MOUT

PINS Ref: APP/Y1138/W/22/3313401

ADDENDUM STATEMENT OF CASE ON BEHALF OF MID DEVON DISTRICT COUNCIL BY:

Arron Beecham BSc (Hons) MSc

Principal Housing Enabling and Forward Planning Officer

REDETERMINATION APPEAL TO THE SECRETARY OF STATE FOR THE MINISTRY OF HOUSING COMMUNITIES AND LOCAL GOVERNMENT AGAINST OUTLINE PLANNING PERMISSION FOR THE EXTENSION OF 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 DETERMED ONLY)

1. INTRODUCTION

- 1.1. This Addendum Statement of Case has been prepared by Mid Devon District Council ('The Local Planning Authority' [LPA]) in relation to a Planning Appeal for Non-Determination – PINS REF: APP/Y1138/W/22/3313401 by Waddeton Park Ltd ('The Appellant') in respect of Land at NGR 298976 112882 (Hartnoll Farm) Tiverton, Devon ('The Appeal Site'). It has been prepared following a Consent Order issued by the High Court on the 5th June 2024 (Appendix 1) directing that the Inspector's decision dated 20 October 2023 is quashed and remitted back to the Secretary of State for redetermination.
- 1.2. This Addendum Statement of Case should be read in conjunction with the LPA's original Statement of Case, Proofs, and the Statements of Common Ground agreed with the Appellant during the course of the previous inquiry.
- 1.3. Unless expressly stated in this Addendum, the LPA continues to rely upon its case as previously set out. The Council's case is not repeated in full in this Addendum which seeks only to set out further representations, any material changes in circumstances and new or altered material considerations.

2. PLANNING POLICY

- 2.1. The Local Planning Authority previously outlined all relevant planning policy and Government guidance relevant to this case.
- 2.2. For the purposes of s38 (6) of the 2004 Act, the Development Plan is the Mid Devon Local Plan 2013 – 2033. Other relevant Development Plan Documents include the following:
 - The Devon Waste Plan 2011 – 2033 (Adopted December 2014)
 - Devon County Council Education Infrastructure Plan (Revised) 2016 – 2033;
 - Tiverton Neighbourhood Plan (made 14th December 2022)
- 2.3. For the avoidance of doubt, there are no changes to the Development Plan since the Inspector's decision on the appeal dated 20th October 2023.
- 2.4. However, the Council has since adopted a Meeting Housing Needs Supplementary Planning Document¹ and this is now a material consideration for the determination of planning applications. This provides updated guidance on tenure and dwelling size mix, among other matters, to reflect the findings of the Council's latest Local Housing Needs Assessment. However, there are no immediate implications of this SPD for this inquiry, subject to the draft Unilateral Undertaking (UU) remaining unchanged. The UU includes a specific requirement for an Affordable Housing Scheme which will provide details on location, layout, tenure and dwelling sizes so all relevant requirements of the SPD can be satisfactorily addressed at Reserved Matters stage.

¹ [Meeting Housing Needs SPD \(middevon.gov.uk\)](https://www.middevon.gov.uk)

2.5. The Council is also at advanced stages in preparing an updated Grand Western Canal Conservation Area Appraisal and Management Plan² and it is expected that this will be formally adopted by the Council prior to this redetermination appeal being heard. Whilst it is a material consideration, the Council's Conservation Officer has commented on the implications of this and confirmed the following:

- There is no proposed change to the boundary of the Conservation Area by the Hartnoll site;
- The appraisal identifies key views including one which overlooks part of the Hartnoll site (View 3)
- In addition to key views the appraisal includes Section 4.5 Setting and mentions View 3 within the context of the agrarian setting of the Conservation Area.
- The Management Proposals (Section 6) includes a note in setting and how this must be considered for future development proposals.

3. CONSENT ORDER / PROPOSED LINK ROAD PROVISION

3.1. This redetermination appeal arose following a claim for statutory review under section 288 of the Town and Country Planning Act 1990. The claim was brought on six grounds, of which the defendants (the Secretary of State for Levelling Up, Housing and Communities and Mid Devon District Council) conceded in respect of part of Ground 4, which states:

“The inspector’s approach to the link road provided as part of the appeal scheme was wrong in law in the following separate respects:

- (a) It involved a misdirection of law as to the status of the Framework Plan;*
- (b) The inspector failed to take account a mandatory material consideration, namely that the provision of the link road as part of the appeal scheme would be secured by a proposed condition;*
- (c) His conclusion that the evidence in respect of the link road was “inconclusive” was procedurally unfair, as neither the deliverability nor suitability of the link road delivered as part of the appeal scheme was in issue at the inquiry, and the inspector did not give the Claimant an opportunity to address his (unvoiced) concerns;*
- (d) His reasons were legally inadequate; and his conclusion was irrational.”*

3.2. The defendants accepted that the decision was legally flawed in respect of Ground 4, specifically on Grounds 4(b), (c) and (d), which arose from the Inspector's consideration of the Claimant's proposed link road to the Tiverton Eastern Urban Extension ('TEUE') at paragraphs 49 – 53 of the decision letter. The defendants did not accept that the Inspector misdirected himself about the status of the Framework Plan (Ground 4a) (See Appendix 1).

3.3. Notwithstanding the concession detailed above, the Council's case in respect of the proposed link road provision remains unchanged. The key arguments in respect of the TEUE surround the extent to which the link road was needed now, and therefore a benefit to the extent that the Claimant / Appellant suggests. The Rebuttal Proof of Evidence by Arron

² [Grand Western Canal, Public Consultation \(middevon.gov.uk\)](https://www.middevon.gov.uk/Grand-Western-Canal-Public-Consultation)

Beecham, argued that *“There is no requirement to deliver the entire local plan strategy in a five-year period. The Local Plan strategy, which has been informed by extensive evidence gathering and undergone an independent examination, will be delivered over the lifetime of the plan period as a whole.”* Similarly, evidence provided by Anthony Aspbury, stated that *“There is now at least one option for delivering an eastern access to the EUE as an alternative to that previously envisaged.....it is the Council’s position that either access option is capable of delivery within the Plan Period and on a timetable that will allow the delivery of the whole EUE as programmed”*³. This remains the case and was ultimately accepted by the Inspector who concluded in his report that there was *“still sufficient time in the plan period for the access to Phase B to be satisfactorily resolved in a way which would not impact on the delivery of the total housing requirement during the life of the plan”*⁴.

3.4. During the previous inquiry proceedings, a letter was submitted from Westcountry Land⁵, which outlined that they have *“sufficient land and the capability to deliver a technically compliant, secondary access to Area B”* and that *“The implementation of the Mid Devon Local Plan and development of Area B of the TIV1 allocation can be secured within the plan period, without the need for development of additional land, outside of the allocation.”*

3.5. Since then, significant progress has been made in respect of delivery at Area B. The applicant has engaged with the Council in a number of detailed and wide-ranging pre-application discussions, including means of access, and has agreed a timetable to progress the Masterplan for Area B for adoption by the Council as a Supplementary Planning Document in accordance with Clause i) of Policy TIV1 of the Local Plan 2013 -2033. In parallel, it is understood that a planning application is due to be submitted by the end of this calendar year. This reinforces and strengthens the LPA’s case that the appeal proposals are not necessary for the planned delivery of the Tiverton Eastern Urban Extension to occur, as set out in the Proof of Evidence and rebuttals of Mr Aspbury.

3.6. As set out in the Consent Order, the parties reserved their respective positions with regards to Local Plan Policy (Grounds 1 – 3) and the overall planning balance (Ground 5). Therefore, the Council maintains its case and evidence in respect of these grounds. The following sections provide further representations and comments on any material changes since the Inspector’s decision.

4. HOUSING LAND SUPPLY

4.1. The LPA maintains that it is able to demonstrate a robust five year supply of deliverable housing land. At this stage, the Council’s position remains unchanged following the Inspector’s Decision as at 20th October 2023. The Council’s Housing Land Supply position therefore stands at **5.22 years**, which reflects the Inspector’s conclusions on the short list of sites that were in contention between the LPA and the Appellant. Indeed, the Inspector concluded that following a handful of reductions to the Council’s anticipated supply, he was *“satisfied that the evidence being provided by the Council is robust in being drawn from a*

³ Para R2.11.2 - Rebuttal of the PoE of David Seaton. By Antony Aspbury BA MRTPI.

⁴ Para 52 of the Inspector’s Decision dated 20 October 2023.

⁵ ID3 Letter from Westcountry Land 8 September 2023

*range of sources.*⁶ This remains the position that the Council relies upon to inform decision making and did not form any part of the statutory review grounds for complaint.

- 4.2. As part of the Council's ongoing monitoring of housing supply, a five year land supply update is in progress to take account of updated housing completion records. However, this is unlikely to be available before December 2024.
- 4.3. It is also material that the current National Planning Policy Framework (paragraph 76) does not currently require local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing for decision making purposes, providing that their adopted plan is less than 5 years old, which is the case for Mid Devon. It is recognised that footnote 79 includes transitional arrangements when dealing with applications made on or after the date of publication of the Framework, although it is pertinent to take into account the direction of national planning policy.
- 4.4. Similarly, the Chancellor, in her speech dated 8th July 2024⁷ stated that *"we will reform the National Planning Policy Framework, consulting on a new growth-focussed approach to the planning system before the end of the month, including restoring mandatory housing targets"*. The King's Speech on 17th July also signalled significant and widespread reforms via a new Planning and Infrastructure Bill.

5. PLANNING CASE

- 5.1. The Council's case remains that Reason for Refusal 1⁸ is sound and sustainable in itself as a stand-alone reason for withholding planning permission. This fundamental, core argument was one which was clearly accepted by the Inspector in his decision⁹ which states that:

"A common sense reading of Policies S1, S2, S3, S4 and S14 is that they have a strategic purpose designed to direct development to within settlement boundaries with only a limited number of exceptions allowed in the countryside.

"For the reasons above, I conclude the appeal scheme conflicts with Policies S1, S2 and S14 of the Mid Devon local Plan (2020). This conflict is more than just a technical matter as the appellant suggest but goes to the heart of the adopted plan's settlement strategy."

- 5.2. The Council concurs with the Inspector's conclusions in his regard and consequently does not accept that the Inspector's decision was legally flawed in respect of his approach to Local Plan policy¹⁰ and the overall planning balance¹¹ as disputed by the Claimant / Appellant.

⁶ Para 29 of the Inspector's decision dated 20th October 2023.

⁷ [Chancellor Rachel Reeves is taking immediate action to fix the foundations of our economy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/chancellor-rachel-reeves-is-taking-immediate-action-to-fix-the-foundations-of-our-economy)

⁸ CD2 – with the omission of reliance on BMV Land as a RFR

⁹ Paras 43 & 44 of the Inspector's decision dated 20th October 2023

¹⁰ Grounds 1-3 of the Consent Order – See Appendix 1

¹¹ Ground 5 of the Consent Order – See Appendix 1

5.3. The Council maintains that the evidence provided by Anthony Aspbury remains sound and robust in the context of the redetermination appeal, subject to minor amendments, consequent mainly upon the passage of time since the evidence was heard and considered by the previous Inspector.

6. RENEWABLE ENERGY LINKAGE

6.1. During the inquiry, the Council's case was that the benefits in respect of the renewable energy linkage are very localised in scale, therefore ascribing moderate weight to this element of the proposals¹². The Inspector concurred with the Council's position in this regard, noting that the *"link would be restricted to serving the new employment area only. For these reasons, I accord this part of the scheme moderate weight."*¹³

6.2. Since the Inspector's decision, it has become apparent that the anaerobic digester at Red Linhay Farm is currently operating in breach of condition in respect of submitting required log books that confirm the output of the plant to ensure it is not operating above and beyond 500KW as per the original planning permission. As such, the Council has recently served a Breach of Condition notice to the landowner of the digester, which requires them to submit the required log books no later than 28 days of the notice being served. This is appended for information (Appendix 2). Should the log books not be forthcoming to demonstrate the digester is operating within the parameters of the planning permission, then further enforcement action will be taken.

7. EMPLOYMENT PROVISION

7.1. The Inspector afforded moderate weight to the employment proposed as part of the appeal scheme¹⁴. The Council's position on employment land remains unchanged at this stage. However, as part of the Council's ongoing monitoring of employment land, an update is in progress to reflect the latest data available although this is not expected to be available until the Autumn.

Appendix 1: High Court Consent Order

Appendix 2: Breach of Condition Notice 21-00091-BRE

¹² Rebuttal of the Planning Proof of Evidence of David Seaton. Anthony Aspbury BA MRTPI

¹³ Para 48 of the Inspector's decision dated 20th October 2023

¹⁴ Para 47 of Inspector's Decision dated 20th October 2023

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990

(As amended by the Planning and Compensation Act 1991)

BREACH OF CONDITION NOTICE

SERVED BY: Mid Devon District Council

**To: Mr J Clapp
Land at NGR 299621 112764 (Red Linhay)
Crown Hill
Halberton
Devon
EX16 7AY**

1. **THIS NOTICE** is served by the Council, under Section 187A of the above Act, because they consider that a condition imposed on a grant of planning permission, relating to the land described in paragraph 2 below, has not been complied with. The Council consider that you should be required to comply with the condition (s) specified in the notice. The Annex at the end of this notice contains important additional information.

2. THE LAND TO WHICH THE NOTICE RELATES

Land at NGR 299621 112764 (Red Linhay), Crown Hill, Halberton, Devon, EX16 7AY ("the Land") which is shown outlined in **red** on the attached plan ("the Plan").

3. THE RELEVANT PLANNING PERMISSION

The relevant planning permission to which this notice relates is the permission granted by the Council on **5 October 2017** for:

Variation of Condition 9 of planning permission 16/01180/FULL to change sections i) and ii) of the condition with reference to the location and source of feedstock and the subsequent ultimate destination of digestate from the anaerobic digester.

under application reference 17/01142/FULL ("the Permission")

4. THE BREACH OF CONDITION

The following condition in respect of the Permission has not been complied with:

Condition 9

9 i) The feedstock and approved quantities for the anaerobic digester shall be slurry (2,000 tonnes), farmyard and chicken manure (3,000 tonnes), grass and arable crops (8,925 tonnes) only, originally sourced from the sites named in Transport Statement(s) of this application (Hartnoll Farm 62.13ha, Manley Lane 37.60ha, plots 1-13 41.48ha, Maunders 7.71ha, Wellington 23.55ha and Blocks A 19.92ha and B 96ha and shown on plans/aerial photos, Drawing numbers 13425/T04 Revision A 13425/T05 Revision A set out in the approved transport statement date stamped 21st August 2015 under application 15/01034/MFUL and Drawing 3 set out in the approved transport statement date stamped 15th August 2017 and

ii) The ultimate destination for the digestate from the anaerobic digester shall be to the sites named in the Transport Statement of this application Hartnoll Farm 62.13ha, Manley Lane 37.60ha, plots 1-13 41.48ha, Maunders 7.71ha Blocks A 19.92ha and B 96ha only and shown on plan/aerial photos Drawing numbers 13425/T04 Revision A and 13425/T05 Revision A set out in the approved transport statement date stamped 21st August 2015 under application 15/01034/MFUL and set out in the approved transport statement date stamped 15th August 2017.

iii) A log book shall be maintained and completed detailing where and when the feedstock(s) for the AD plant have come from and where, when and mode of transport of the digestate leaving the site. The Log book shall record name of farm, plot, supplier, number and gross and net weight of vehicles along with date and time of feedstock delivery / digestate distribution.

iv) No other sites are to be utilised for either feedstock source or digestate destination. Such log book records shall be submitted to the Local Planning Authority quarterly or within any other frequency as requested by the Local Planning Authority.

v) Records of feedstock input into the digester by weight from the hopper (triolet) shall be kept and submitted to the Local Planning authority in writing quarterly or within any other frequency as requested by the Local Planning Authority.

There has been a breach of condition 9 v) in that log book records have not been submitted to the Local Planning Authority quarterly since August 2022 and furthermore, a request in writing on 24 May 2024 requesting the logs subject of Condition 9 v) be submitted to the Local Planning Authority by 3 June 2024 has not resulted in the submission of the said logs.

5. WHAT YOU ARE REQUIRED TO DO

As the person responsible for the breach of condition specified in paragraph 4 of this notice, you are required to comply with the stated condition by taking the following steps:

Submit the records of feedstock input into the digester by weight from the hopper (triolet) to the Local Planning Authority. The records submitted to be in accordance with condition 9 iii) of the Permission and show where and when the feedstock(s) for the AD plant have come from and where, when and mode of transport of the digestate leaving the site. The Log book

shall record the name of farm, plot, supplier, number and gross and net weight of vehicles along with date and time of feedstock delivery/digestate distribution.

Period for compliance: **28 days** beginning with the day on which this notice is served on you.

Dated: 22 July 2024

Signed:

On behalf of: Mid Devon District Council, Phoenix House, Phoenix Lane, Tiverton, EX16 6PP

Nominated Officer: Heather Nesbitt, Senior Enforcement Officer

Telephone number: 01884 255255

ANNEX

WARNING

THIS NOTICE TAKES EFFECT IMMEDIATELY IT IS SERVED ON YOU IN PERSON OR ON THE DAY YOU RECEIVED IT BY POST.

THERE IS NO RIGHT OF APPEAL TO THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT AGAINST THIS NOTICE.

It is an offence to contravene the requirements stated in paragraph 5 of this notice after the end of the compliance period. You will then be at risk of immediate prosecution in the Magistrates' Court, for which the maximum penalty is £2,500 for a first offence and for any subsequent offence.

If you are in any doubt about what this notice requires you to do, you should get in touch immediately with Heather Nesbitt, Mid Devon District Council, Phoenix House, Phoenix Lane, Tiverton, EX16 6PP, telephone number 01884 255255 or

If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of this notice, you may only do so by an application to the High Court for judicial review.

PERSONS SERVED WITH A COPY OF THIS BREACH OF CONDITION NOTICE ARE AS FOLLOWS;

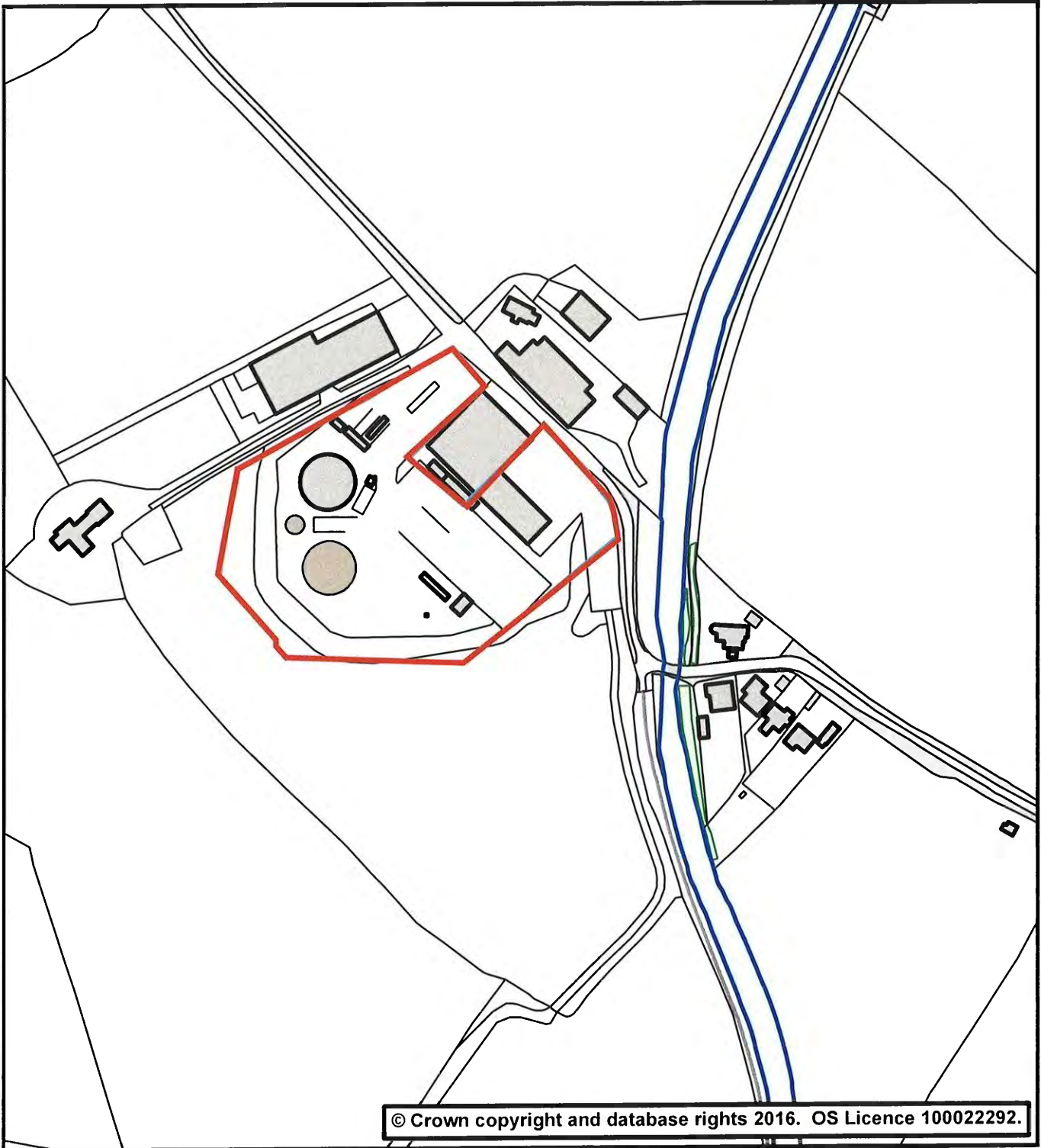
Mr Johnathan Mark Clapp of The Red Linhay, Hartnoll Farm, Post Hill, Tiverton, Devon EX16 4NG

National Westminster Bank PLC (Co. Regn. No. 929027) of Credit Documentation, P.O. Box 339, Manchester M60 2AH.



Phoenix House
Phoenix Lane, Tiverton EX16 6PP

Tel: 01884 255255 Website: www.middevon.gov.uk



23/00085/BRE	
Scale: 1:2,500	Date: 17/07/2024
Drg. No: Not Set	User Name: hnesbitt

APPENDIX 5
Appellants SSoC

EXTENSION TO HARTNOLLS BUSINESS CENTRE

SUPPLEMENTAL STATEMENT OF CASE (SSoC)

PREPARED FOR WADDETON PARK LTD

JULY 2024



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

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Annex A – Appellant's closing submission

1. Introduction

- 1.1 This supplemental Statement of Case (“SoC”) is produced following the quashing of the original appeal decision by Order of the High Court and in response to PINS letter of 5th July which invited representations on any material change in circumstances since the appeal decision and comments on the grounds on which the appeal decision was quashed.
- 1.2 Save in respect of housing land supply (which we address below) the **substance of the Appellant’s case remains unchanged from** when the original inquiry closed in September 2023. Our closing submissions [Annex A] set this out in full.
- 1.3 The Secretary of State conceded that the way in which the Inspector addressed the access road proposed as part of the scheme was wrong in law. This was the basis on which the High Court, with the agreement of the parties, quashed the decision (Ground 4 of the challenge). However, it is important to recognise that, following a court hearing, the High Court had already granted permission to bring the legal challenge to the Inspector’s decision on a wide range of grounds, including his interpretation and application of development plan policies S1, S2 and S14 (Grounds 1-3); his failure to take into account the enabling development element of the proposal (Ground 5(b)); and his approach to the planning balance (Ground 5(a)).
- 1.4 The structure of this SoC is as follows:
- An outline of the common ground between the parties
 - Comments on the access road issue (Ground 4)
 - Comments on the enabling development issue (Ground 5(b))
 - **Comments on the proposal’s compliance with** Settlement Strategy issues (Ground 1-3)
 - Comments on the Planning balance issue (Ground 5(b))

- An identification of any new material considerations which may have arisen since the Inquiry closed.

2. Common Ground

2.1 This case is marked by the narrowness of the dispute between the parties.

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

- 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 inquiry, the slenderness of the Council’s remaining case (such that it was) against the proposal** became apparent. The agreed position, at the end of the 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.**

- 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 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 Inquiry, as is evidenced by their own closing submissions, **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.

2.6 There had been no material change to national or local development plan policies which would justify a different approach now being taken by the Council.

3. Access Matters (Ground 4)

3.1 In relation to the matter to which both the First and Second defendants submitted to judgement the Court Order sets out that:

"4. The Defendants accept that the decision is legally flawed in respect of Ground 4, specifically on Grounds 4(b), (c) and (d), for the reasons set out at paragraph 6 below.

5. Ground 4 arises from the Inspector's consideration of the Claimant's proposed link road to the Tiverton Eastern Urban Extension ('TEUE') at paragraphs 49 – 53 of the decision letter.

6. Neither the suitability nor the deliverability of the Claimant's link road was put in issue at the Inquiry. Nor were any further details of the Claimant's link road requested by any party or the Inspector. In that context, the Inspector's conclusion that the evidence in respect of the link road was "inconclusive" was procedurally unfair (Ground 4(c)). The Claimant had produced various plans which illustrated the proposed route, and the link road was the subject of an express condition (Condition 21) which secured inter alia certain details of the link road and its delivery prior to occupation of any dwellings. This condition was obviously material to the determination, and the Inspector's failure to have regard to it was an error of law (Ground 4(b)). The Defendants also accept that in his decision the Inspector failed to provide legally adequate reasons for why he considered the Claimant's evidence on the matter of the proposed link road to be "inconclusive", or why there was not "sufficient detail" provided (Ground 4(d))."

3.2 The Inspector's decision letter set out at (at paragraphs 49-53) that:

'Access to the TEUE

49. The appeal scheme includes an access from Post Hill. The indicative layout (which does not form the plans on which this decision is made) identifies a road across the northern part of the site to Manley Lane. This suggested point of access from the appeal site would be consistent with a suggested access point from Area B identified in the draft Supplementary Planning Guidance (SPG) and masterplan identified for Area B of the TEUE. The new road would be funded by the residential element of the appeal scheme.

50. Both the draft SPG¹⁹ and the additional evidence submitted during the Inquiry²⁰ confirm that the development of Area B would benefit from an additional access point from the east. The draft SPG identifies that options for pursuing a route are limited given surrounding constraints. The Council's preferred access (as indicated by the draft Guidance) is from Area A which lies immediately to the west although the potential was raised during the Inquiry of an

alternative additional access apparently under consideration from Post Hill²¹.

51. The Council has concerns over the delivery of a new access from Area A²². The appellant speculates that the potential access from Area A could be ransomed given how planning conditions included in the extant permission for Area A operate regarding requirements for Gypsy and Traveller pitches and whether the additional land required will be released by the landowner for development. However, no robust evidence was presented on these points.

52. There is still sufficient time in the plan period for the access to Phase B to be satisfactorily resolved in a way which would not impact on the delivery of the total housing requirement during the life of the plan.

*53. Furthermore, the SPG has not been adopted and the evidence from both parties on their suggested alternative access routes from **outside the TEUE to Area B is inconclusive. Whilst the appellant's suggested route included in the indicative drawing (which does not form a plan on which this decision is made) includes more detail than the alternative access suggested by the Council neither contain sufficient detail to weigh conclusively either in favour or against the appeal scheme before me.***

3.3 The appellant considers that, had the Inspector properly considered the relevant evidence on the matter of the link road (Ground 4c) it would have been apparent (Ground 4d) that the West Country Land ("WCL") access proposals (that were introduced by, and relied upon by, the Council) were:

- Not properly disclosed to the inquiry,
- wholly speculative,
- not capable of performing the function claimed in a safe and satisfactory manner, and;
- not capable of delivery.

3.4 Whereas **the appellant's access proposals were in some detail via:**

- a detailed means of access drawing (48582/5501/SK02 H) that was before the inquiry for approval;
- an indicative layout drawing (ref. DE_425_SK11 rev D) which clearly demonstrated that a suitable access to serve Area B can be delivered. No-one had sought to suggest otherwise, or that further detail was needed at this stage – **the Inspector's apparent suggestion to the**

contrary (without forewarning) was one of a number of ways in which he erred in law.

- and a proposed condition to secure delivery of that access (proposed condition 21).

3.5 Further, during the inquiry, the appellant clearly demonstrated that:

- There is no obligation on the beneficiary of planning permission for part of Area A (CD63(a)) to deliver a road to Area B (at all);
- And that the land released from that outline permission (CD63) to the development industry does not go to the boundary with Area B;
- And that permission pre-dates the LPIR (CD60) and the MM to the MDLP such that the permission does not accord with the modified (and now adopted) DP.

3.6 This is important because, as the LP Inspector accepted

"the Plan needs to avoid building in hurdles to delivery. As such the Plan needs to make it possible for developers of the major housing allocations to provide accommodation for Gypsies and Travellers and Travelling Show-People off-site" (LPIR, CD60, paragraph 86)

3.7 This is partly why the residual area of the outline permission (CD63 – and ref. 23/00394/MARM) has not been released to the development industry. **Hence the Council's concerns (that are shared by the appellant) in relation to the delivery of an access to serve Area B from Area A (and hence the access solution proposed in the SPD for Area B (CD13).**

3.8 There is further common ground on this matter with agreement between the main parties that this will preclude the delivery of the full quantum of the TIV1 allocation during the plan period.

3.9 **The appellant considers the Council's delivery projection overly optimistic. The Council accept that 138 units won't be delivered during the plan period** whereas, having regard to the available evidence (which is compelling), the appellant considers that the only way that there is likely to be any delivery from Area B during the plan period is if the appeal proposals are allowed.

This evidence goes to underpin the acceptance of the irrationality of the **Inspector's conclusions on this matter (Ground 4d)**. **There is absolutely no** evidence that points towards a conclusion that Area B is likely to be delivered during the plan period. On the contrary all of the available **evidence substantiates the appellant's conclusion and demonstrates the irrationality of the Inspector's conclusions on this matter**.

- 3.10 Since both the Council and the Inspector relied heavily on the WCL letter, and in relation to that matter both defendants submitted to judgement, then the appellant reasonably requests that should the Council seek to rely upon this proposed access at the re-opened inquiry then they must fully disclose their case and documents that that they intend to rely upon in a timely manner in order to allow the appellant to assess it. Much of the difficulty caused at the previous Inquiry arose because the WCL letter was produced so late and without any proper explanation.
- 3.11 The appellant has obtained and can now disclose some of the documents that underpinned the claims made in the WCL letter (see New Core Documents - AWP plan and e-mail correspondence with DCC [CD73] and **FoI's of MDDC and DCC [CD74]**) and will demonstrate, unequivocally, that the claims made in the WCL letter (and introduced to the inquiry by the Council) were incorrect in fact, and therefore significantly misleading.
- 3.12 If the WCL proposed access (as set out in the AWP correspondence) is no longer relied upon by the Council, and they seek to rely upon an alternative access proposal (in order to seek to reduce the weight that should be **accorded to the appellant's proposal** in the planning balance), then those proposals should be disclosed in a timely manner.
- 3.13 In any event, even if there were a plausible alternative access to Area B of the TEUE (which we do not consider to be the case), this would not materially reduce the weight to be given to the access route provided by the appeal scheme. The access provided by the appeal scheme is safe, suitable and deliverable, and will realise a long held aspiration of the Council.

4. Enabling Development (Ground 5(b))

4.1 The inspector concluded that:

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

4.2 With respect, that conclusion was plainly wrong.

4.3 A detailed case had been made as to why this countryside location was an appropriate location for the development proposed. 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 residential element of the scheme.

4.4 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 to the CHP connection and the access road.

4.5 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 and updated evidence)
- 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)

4.6 Furthermore, it is unarguable that to not provide the employment in the location proposed would result in the loss of an agreed planning benefit.

4.7 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).

4.8 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.

4.9 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 CD44).

4.10 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) wholly unsustainable.

5. Compliance with Settlement Strategy (Grounds 1, 2 and 3)
- 5.1 Irrespective of the clear enabling case for the provision of market housing outside of the defined development boundary of Tiverton the appellant argues that the appeal proposals do accord with the Development Plan. The appellant maintains that the DP must be read as a whole (and not read selectively) and that the Inspector misdirected himself on this matter. In **outline the appellant's case (on this matter) is set out below.**
- 5.2 The Inspector found that the appeal scheme conflicted with Policies S1, S2 and S14 of Local Plan
- 5.3 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..."*

5.4 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

5.5 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

5.6 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.

5.7 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)]

5.8 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."

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

Misinterpretation of Policy S1 (Ground 1)

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

5.11 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).

5.12 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.

5.13 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 purpose of Policy S1(a). It was common ground between the main parties that the purpose of Policy S1(a) was 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.
- c. 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).

5.14 On a proper interpretation of Policy S1(a) the inspector was required to ask himself whether, as a matter of judgement, the development proposed was **"at" Tiverton. That judgement could 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 inspector erred in law.

5.15 Second, and in any event, the inspector was wrong to treat Policy S1 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.

5.16 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."***

5.17 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) established 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*.

5.18 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 *inter alia* 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.

5.19 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.

5.20 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.

5.21 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. Nor do we understand them to interpret Policy S1 in this manner

5.22 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.

Ground 2: Misinterpretation of Policy S2

5.23 The inspector also misinterpreted Policy S2 in two separate and material respects.

5.24 **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 set above this was wrong.**

5.25 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

5.26 The inspector also materially misinterpreted Policy S14.

5.27 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.

5.28 While such restrictive policies may feature in some (particularly pre-NPPF) development plans, Policy S14 is not such a policy.

5.29 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... ”*).

- 5.30 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.
- 5.31 **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.
- 5.32 **Accordingly the appellant's case is that, 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'? The appellant maintains that 'at' means 'at' and will explain, more fully, in evidence why this is the appropriate way to read the DP having regard to the particular circumstances of this case.**

6. Planning Balance (Ground 5(b))

6.1 The Appellant closed the previous inquiry on the basis that there were at least four alternative ways in which the planning balance could be struck, each of which led to the same conclusion: that planning permission ought to be granted (see Closings, paras 71-79). In short these alternatives were as follows:

- i. First, on a proper interpretation of Policies S1, S2 and S14 (the only policies left in dispute), the appeal scheme is entirely in compliance with all the relevant policies of the development plan. That was (and **remains) the Appellant's primary case**
- ii. **Second, even if the Council's interpretation of those policies is** accepted, and there is a degree of non-compliance with them, there is overall compliance with the development plan read as a whole.
- iii. Third, even if the Inspector were to conclude that the appeal scheme was in conflict with the development plan as a whole, that breach would have to be weighed against the benefits of the scheme. If the Inspector concluded that the Council could not demonstrate a five year supply for housing, the minimal adverse impacts would not come near to outweighing the benefits of the scheme
- iv. Fourth, even if the Inspector were to conclude that the Council could **demonstrate a five year supply for housing, and a 'straight balance'** were to be applied, the answer would be the same. The multiple and very significant benefits that the appeal scheme would bring substantially outweighs the, at most, limited harm resulting solely from the breach of strategic policies, whose objectives (it is agreed) are nevertheless furthered.

6.2 The Inspector's failure to properly grapple with **the Appellant's case on the** planning balance formed the basis of Ground 5(b). In particular, the Inspector failed to factor into his planning balance the agreed position (with

which he did not disagree) that the appeal proposal complied with: (a) at least twelve of the thirteen strategic priorities in Policy S1; (b) the underlying objective of Policy S1(a); and (c) the express objectives for the countryside in Policy S14.

- 6.3 The **Appellant's case as to how the planning balance should be struck** remains the same as in its closing submissions, save that in respect of five year housing land supply the Appellant is willing, for the purposes of the reconvened inquiry, to proceed on the basis of the finding by the Inspector **that the Council is able to demonstrate "just over five years" of housing land supply (DL30)**. This is subject, of course, to any material change of circumstance, including a change in national policy concerning housing land supply.

7. Other Material Considerations

7.1 The following material considerations have arisen since the original appeal decision was issued.

New NPPF

7.2 The Conservative government issued a new version of the NPPF on 19 December 2023. Given the issues raised by this appeal, there are relatively limited changes of any materiality. The following changes are, however, of some relevance:

- Para 7 – now emphasises that the ***"achievement of sustainable development"*** includes ***"the provision of homes, commercial development and infrastructure in a sustainable manner"***. The appeal scheme would, of course, provide all three: an expansion to the employment space; market and affordable housing; and a link road to the TEUE.
- Para 77 - the requirement to demonstrate five years supply of housing still applies to Mid-Devon. The lower four year requirement does not apply because, although the Council has published a Regulation 18 draft Plan (in January 2023), it neither includes a policies map nor proposed housing allocation (NPPF, para 226). Nor does the exception in para 76 apply, because the application was made before this version of the NPPF was published (see fn 79)
- Para 164 – requires decision makers to give ***"significant weight to the need to support energy efficiency and low carbon heating improvements to existing buildings, both domestic and non-domestic"***. This only serves to underscore the significant weight which should be attached to the benefit of creating the first low carbon commercial development in the district, as a result of the business park expansion being heated and powered by a low carbon sources.

7.3 The new government has indicated that it will publish a draft revised NPPF this month. Submissions will be made in the proofs of evidence and at the Inquiry in respect of any new policies this may contain.

Change in local road network

7.4 The Left in/Left out (LiLo) junction onto the A361 has now been opened. Accordingly the appellant has undertaken a comparison of traffic flows along the Post Hill site frontage within the original (Stantec) TA (2021) supporting the proposed development, and those within the more recent AD Plant TA (2023). The comparison is below, and demonstrates a significant reduction in flows along Post Hill since the original TA was produced, and therefore the conclusions of the original TA can be considered even more robust than concluded by DCC at the time.

Time Period	Eastbound			Westbound			2-way		
	2021 (Original TA)	2023	Difference	2021 (Original TA)	2023	Difference	2021 (Original TA)	2023	Difference
08:00 - 09:00	295	244	-51	326	148	-178	621	392	-229
17:00 - 18:00	299	255	-44	344	278	-66	643	533	-110

8. Conclusions

- 8.1 The Appellant will say that the merits of this appeal proposal are obvious and compelling.
- 8.2 The proposal is, on a proper interpretation of the relevant policies, in compliance with the development plan. And this is the case, even if the **Council's restrictive approach to the word "at Tiverton" in Policy S1(a)** and strained reading of Policy S14 were to be preferred (which they should not). Even if (which the Appellant does not accept) there is a conflict with those policies, the proposal is consistent with the development plan as a whole, having regard to agreed position that the proposal would not undermine (and indeed would further) the objectives that Policies S1 and S14 seek to achieve; and would further many of the strategic objectives which the Local Plan seeks to deliver.
- 8.3 Thus, **the Appellant's primary case is that** the proposal should be approved without delay on the basis that it accords with an up-to-date development plan (NPPF, para 11(c))
- 8.4 Even if this is not accepted, the multiple and very significant benefits of the appeal proposal clearly outweigh any limited breach of the development plan. Those benefits include: the provision of much needed employment space at Tiverton; the provision of market, affordable and custom build housing; the creation of the first low carbon commercial development in the district (which would be unviable without the cross-subsidy provided by the market housing); the biodiversity net gain, in excess of policy requirements; and the provision of an secondary access to Area B of the TEUE, which has been a long held aspiration of the Council (again which would be funded by the market housing).
- 8.5 All of this is in the highly unusual context where it is agreed that the appeal scheme would cause no material harm to acknowledged planning interests (such as landscape, visual, biodiversity heritage, residential amenity, noise, highways etc).

SSoC
Appendix A

LAND AT HARTNOLLS FARM, TIVERTON

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

I. INTRODUCTION

1. We opened by saying that this appeal was remarkable for what was not in dispute between the main parties. Remarkably, following four days of Inquiry, that dispute has narrowed even further.
2. There is no dispute between the main parties that:
 - i. the extension to the Business Park complies with relevant Local Plan policy, including polices S14 (“countryside”) and DM18 (“rural employment development”) and is acceptable in principle.¹ As Mr Aspbury (“AA”) readily agreed², even on the Council’s case, the location of the employment element of the mixed-use scheme is acceptable.
 - ii. 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.³
 - iii. 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.⁴
 - iv. 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

¹ Main SoCG, para 7.1 [CD6]

² XX(AA) Day 2

³ See OR, paras 1.18 and 1.20 [CD1]

⁴ See OR, para 4.12

Authority.⁵ It is capable of accommodating traffic not only from the appeal scheme, but also acting as an access for the TEUE.⁶

- v. the proposed development would not adversely harm the landscape character of the area.⁷ AA confirmed this was the position of the Council, accepting that one should not equate a change with harm, and confirming that the Council agreed with the assessment in the LVA that the landscape effects would be neutral, and therefore not harmful.⁸
- vi. in respect of all relevant viewpoints, the visual effects of the proposed development would be “neutral”⁹. 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”.¹⁰ Neutral effects are, by definition, not adverse. Again, AA confirmed that the Council agree that the overall visual effects of the appeal scheme would not be harmful.¹¹
- vii. 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 on an enhanced bund, a green space buffer and a boundary residential road – will protect residents from any noise generated from the business park.¹²
- viii. 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.¹³ As Mr Buckley-Thomson (“LB-T”)

⁵See OR, paras 4.12-4.13

⁶ XX (AA) Day 2. The 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), which is the primary reason for promoting a new access to Post Hill

⁷ Main SoCG, para 7.4 [CD6]

⁸ XX(AA) Day 2

⁹ Additional SoCG, para 2, bullet 3

¹⁰ Additional SoCG, para 2, bullet 3

¹¹ XX(AA) Day 2

¹² OR, paras 8.3&8.7 and 9.1-9.4

¹³ Additional SoCG, para 2, bullet 5

explained in her XX of DS the Council do not say that the site itself is unsustainable.¹⁴

- ix. 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).¹⁵ The area of Grade 2 and 3a BMV lost is not significant¹⁶ and not objectionable.¹⁷ Although AA said in his rebuttal proof that the loss is a material consideration, he accepts that the Council does not contend that it is a consideration weighing against the proposal.¹⁸
 - x. The proposal would result in a biodiversity net gain.¹⁹
 - xi. There is no objection to the proposal in respect of heritage assets, including non-designated archaeological heritage assets within the appeal site.²⁰
3. This large measure of agreement meant between the parties that, even prior to the opening of this Inquiry, the Council's case against the development had narrowed considerably. Of the six putative reasons for refusal originally relied upon, the Council now relies only on the first reason, and even then they acknowledged that the reference to the loss of Grade 1 BMV in that reason was erroneous.
4. During the inquiry, the slenderness of the Council's remaining case (such that it is) against the proposal has become apparent. Following cross-examination of AA²¹ – from which, LB-T, on behalf her client, quite properly has not sought to row back – the position is now as follows:
- i. the Council relies solely on the “in principle” harm which (on their case) arises from the breach of spatial policies of the Local Plan. They agree that

¹⁴ XIC(DS) Day 3

¹⁵ Main SoCG, para 7.2

¹⁶ OR, para 1.23

¹⁷ Main SoCG, para 7.2

¹⁸ AA XX(Day 2)

¹⁹ Main SoCG,

²⁰ Archaeology SoCG, para 2.5 [CD7]

²¹ XX(AA) Day 2

the appeal proposal would not give rise to any other discrete harm which is to be weighed against the appeal proposal.

- ii. In particular, the Council accept that there is no “actual”, 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 residential element of the appeal scheme only. The employment element would give rise to no harm whatsoever.
 - iv. On the Council’s case the “in principle harm” arises solely as a result of the breach of Policies S1(a) (and parasitic on this, Policy S2) and Policy S14. They now agreed that Policies S3 & S4 are complied with.
 - v. Notwithstanding their allegation of breach, the Council accepts that (a) the appeal proposal does not conflict with the underlying objective of Policy S1(a); and (b) the appeal proposal complies, and indeed advances, the express objectives of Policy S14.
5. To put it bluntly, the Council’s case against the proposal has collapsed. There remains only a scintilla of the case as original advanced in the reasons for refusal.

II. HOUSING LAND SUPPLY

Introduction

6. The Appellant has not and does not promote the appeal scheme solely on the basis that there is a lack of a demonstrable five-year supply of housing. We say the merits of the proposal are self-evident, and justify the grant of permission, regardless of the housing land supply position. However, we do say that, on analysis, the Council cannot demonstrate a five-year supply of housing. We also contend that there are real issues with delivery of housing over the plan-period as a whole.

7. In contrast the Council's first – and only remaining - reason for refusal was, within the decision notice, expressly predicated on them demonstrating a five-year supply. The Council was under an obligation to “state clearly and precisely their full reasons for refusal”²². This they did. It was “by reason” of the site's location beyond the settlement boundary “and because the Local Planning Authority can demonstrate an up-to-date housing 5 year land supply”²³ (emphasis added) that reason for refusal 1 was advanced. Although the Council dispute that this is the correct reading of reason for refusal 1, it is clear from the OR that the Council placed considerable weight on the five-year supply position in the planning (noting that this “strongly weighs against granting consent for the scheme”²⁴). On any account, there is no evidence of either members or officers considering what their position would be if the Council could not demonstrate a five-year supply.

Main Issue 1: Whether or not the Council can demonstrate a 5-year supply of housing

Principles

8. The definition of “deliverable” is set out in the Glossary to the NPPF²⁵. The following principles apply to the application of that test to individual sites:
- a. **The burden is on the local planning authority to demonstrate deliverability; not on the Appellant to demonstrate undeliverability** – This much is clear from both the NPPF, para 74 (which places on the onus on “Local Planning Authorities” to “identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing”) and the Planning Practice Guidance concerning ‘Housing supply and delivery’ (which states that “an authority will need to be able to demonstrate a 5 year housing land supply when dealing with applications and appeals”²⁶).

²² Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015

²³ CD2, RfR1

²⁴ CD1, para 11.1

²⁵ NPPF, p67

²⁶ PPG Para 004. See also Para 008.

- b. **The evidence relied upon by the authority must be “robust [and] up to date”²⁷.**
- c. **The amended definition (introduced by the 2019 NPPF) establishes evidential presumptions.**
- d. **In respect of “category A” cases (sites with full planning permission; or any planning permission if under 10 units), there is an evidential presumption that the site is deliverable, rebuttal only by “clear evidence” to the contrary.**
- e. **In respect of “category B” cases (including sites with outline permission; and allocations), there is an evidential presumption that the site is *undeliverable*, rebuttal only by “clear evidence” to the contrary.**
- f. **In order to meet the “clear evidence” threshold, the evidence must be cogent, as opposed to mere assertions** – This much was explained by Inspector Stephens in the *Caddywell Lane* decision²⁸, and is accepted by the Council.²⁹
- g. **In particular, reliance on emails or pro-formas from a developer *alone* will not meet the clear evidence threshold** - Again this was explained by Inspector Stephens in the *Caddywell Lane* decision, who pointed to the incentive on developers to forecast optimistically. Again, this is accepted by the Council.³⁰
- h. **The fact that a site has been allocated in the local plan does not demonstrate deliverability** – Mr Beecham regularly prayed in aid the fact that a site had been allocated in the local plan as supporting its deliverability. This is, with respect, to elide two separate considerations. Allocation in the plan may indicate that (at least at the time that the plan was examined), there were no showstoppers which would prevent the site delivering within the plan period. That is quite different from – and does not support – a conclusion that the site

²⁷ PPG para 007

²⁸ See DS Housing Proof, p10, para 4.5

²⁹ See Mr Beecham, p10, para 6.9-6.10

³⁰ See Mr Beecham, p10, para 6.9-6.10

is deliverable within five years. Indeed, this much is this is evident from the fact that allocations are treated as category B cases, and therefore (where they do not benefit from the grant of a full planning permission) require “clear evidence” to rebut the evidential presumption of undeliverability.

Individual Sites

9. The deliverability of six sites is in dispute:

a. **Tiv 10 – Roundhill – 14 units in dispute**

- i. This is a category B site (evidential presumption against). No permission granted. No planning application. Clear evidence of deliverability is needed.
- ii. The only evidence advanced by the Council is an email exchange with an unnamed officer at the Council³¹. Far from meeting the “clear evidence” threshold, that evidence in fact tells against the site having a realistic prospect of delivering within 5 years. The email exchange indicates that: scheme-specific evidence could not be provided; feasibility studies had not yet been completed (it is unclear whether they had yet been commissioned); although the application has been “scheduled for submission in Q23/24”, there is no positive evidence as to whether the schedule had been adhered to; and the site’s delivery is based on assumptions about future funding being forthcoming.
- iii. The site is currently occupied by an inconsistent user, namely garages, with users having rights of access. There are also risks of mineshafts in the area. Mr Seaton gave evidence as to why these factors, even if not insuperable in the long term, are likely to rise to delays in delivery. Mr Beecham’s response that the site had been through the HELAA and local plan process tells us nothing about the deliverability of the site by 2027.

³¹ Beecham, Appendix C, p39. Emails 8 August 2023

iv. Although Mr Beecham suggested that the site was not earmarked for delivery by the Council's arm's length delivery vehicle (3 Rivers Developments Ltd), which is subject to closure³², it is entirely unclear who the developer would be. Even if the Council is to deliver the site itself, that fact alone cannot constitute the clear evidence to rebut the evidential presumption. This is particularly so given the entirely unpersuasive evidence relied upon by the Council, as described above.

b. **TIV 9 - Howden Court - 6 units in dispute**

i. This is a category B site (evidential presumption against). No permission granted. No planning application. Clear evidence of deliverability is needed.

ii. The Council relies on the materially similar evidence as in respect of Roundhill.³³ It is equally unpersuasive. Indeed, the latest evidence indicates that Howden Court is further out in the programme than Roundhill.³⁴ This was not reflected in the current 5 year supply trajectory, which Mr Beacham accepted was in error.

iii. Mr Beecham could not confirm whether the site had funding via the Council's MTFS (medium term funding strategy).

c. **TIV1-TIV5 - TEUE, Chettiscombe Trust Land - 98 units in dispute**³⁵

i. This is a category B site (evidential presumption against). Outline permission only. Reserved matters application not yet determined. Clear evidence of deliverability is needed.

³² See DS Housing Rebuttal, para 5.6-5.7

³³ Beecham, Appendix C, p38. Emails 2 May 2023

³⁴ Beecham, Appendix C, p39. Emails 8 August 2023

³⁵ This site is identified in the plan attached to HSoCG by a dotted blue line.

- ii. Remarkably, the Council seeks to include this site in its deliverable supply even though it has no evidence whatsoever from the developer (Redrow Homes) to support this position.
- iii. The height of Mr Beecham's case was that it is "logical to assume" that Redrow Homes will continue to develop out the TEUE once it has built out the area of land within the TEUE which it is currently developing. This may or not be true, but it tells us nothing about: the timescales for determination of the current reserved matters application (which has only recently been made); whether that application is likely to be approved; and, critically, if, and when it is approved, the timescales for bringing forward such development.

d. **Creedy Bridge/ CRE Pedlerspool - 35 units in dispute**

- i. This is a category A site (evidential presumption in favour). Full permission granted. The Appellant does not dispute that the site has a realistic prospect of delivering within five years. However, it disputes whether the delivery is realistic.
- ii. It does so because: the delivery rate adopted by the Council exceeds that which is assumed within the HEELA methodology for sites of this size (50dpa), with Mr Seaton confirming that 50dpa is a realistic delivery rate for developments within this area; the sole basis for the Council departing from the HEELA assumptions is an assertion made by the developer in a pro-forma³⁶; that proforma expressly noted the possibility for slippage given that the reserved matters application had not (at that time) been determined; and because the pro-forma appears to have been completed prior to the recent exponential rise in interest rates which, as Mr Seaton explained, is already having a dampening effect on delivery rates.³⁷

³⁶ Beecham, Appendix C, p52

³⁷ See also Seaton Rubuttal, paras 5.14-5.15 and photos at Appendix 2

e. **Alexandra Lodge - 45 units in dispute**

- i. This is a category A site (evidential presumption in favour). Full permission granted.
- ii. There is clear evidence that the site does not have a realistic prospect of delivering within 5 years. As Mr Seaton's evidence demonstrates³⁸, and as the Council accepted, since making a technical start shortly after permission was granted in July 2019 (to implement the permission), the site has stalled. No discernible work has taken place for three and half years.
- iii. The elongated period in which work on the site has stalled; the acknowledged historic environment issues to address³⁹; and the lack of any evidence from the developer to indicate when work may restart, constitute clear evidence to rebut the presumption of deliverability.

f. **TIV16 - Blundell's School - 75 units in dispute**

- i. This is a category B site (evidential presumption against). Clear evidence of deliverability is needed. No grant of planning permission. Resolution to grant outline planning permission only (even if granted it would remain a category B site).
- ii. The evidence (very belatedly) relied upon by the Council, in the form of a pro-forma from the site developer⁴⁰, only seeks to raise further issues about the deliverability of this site. As Mr Seaton had noted, the central impediments to delivery of this site is the fact that it is currently occupied by an operating recycling centre and scrapyard. The late evidence underscores this noting that *"Relocation of metal recycling centre/scrapyard needed before redevelopment can take place"* and that *"Suitable site for the relocation of the metals recycling centre/scrapyard has not been established."* In the face of this agreed impediment to delivery, the developer's mere assertion

³⁸ Seaton Housing Proof, paras 7.48-7.50

³⁹ Beecham, Rebuttal, para 5.19

⁴⁰ Circulated by Mr Beecham mid way through the Husing roundtable

that projected build out includes 75 units in the five year period plainly cannot constitute the requisite clear evidence of deliverability.

Windfall delivery - 274 dwellings

10. The NPPF establishes an exacting threshold for inclusion of a windfall allowance within a deliverable supply. It requires that *“compelling evidence that they will provide a reliable source of supply.”*(NPPF, para 71). Thus the evidential standard required is high – higher even than the standard of evidence required to rebut the presumption against deliverability in category B cases (“compelling” rather than “clear evidence”). But the degree of certainty of delivery is also high (“will provide” as opposed to “realistic prospect” for individual sites.)
11. Moreover, the NPPF requires that, in setting any allowance, regard is to be had *“to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends.”* (NPPF, para 71). It is clear from these mandatory considerations that any allowance must have regard not only to historic trends, but also the likely pool of sites available (identified in the SHLAA) and expected future trends. It is not enough simply to basis windfall allowance on historic trends.
12. Unfortunately, this is precisely what the HEELA methodology⁴¹ - on which the Council relies - does. It simply projects forwards historic trends, with some discounting to avoid double counting, to strip out larger sites and omit garden sites. It makes no attempt to consider the pool of sites available in the area as established through the SHLAA process. Nor does it have regard to expected future trends.
13. This is particularly troublesome where there is good reason to think that future windfall contributions will not reflect historic trends, not least because of recent exponential increase in interest rates which is plainly likely to have a dampening effect on delivery from small windfall sites. But also due to the factors identified

⁴¹ CD27

by Mr Seaton in his proof of evidence⁴² (including increased “taxation” of small sites, and the fact that the opportunities for windfall development on larger brownfield sites is likely to have been realised already)

14. As the Council have not produced evidence which meets the exacting standard established in the NPPF for including windfall allowance in the deliverable supply, the assumed contribution from this source should be discounted in its entirety.

Conclusion on five-year housing land supply

15. The Appellant’s position is that the Council can only demonstrate a **4.28 year supply** of deliverable housing sites⁴³.
16. Even if, contrary to the Appellant’s case, the Council’s case on deliverability was accepted in full, the housing land supply position would be marginal, amounting to only 205 dwellings above the five year requirement.⁴⁴

Delivery of housing over the plan period

17. The Appellant also has concerns – to put it mildly – about the ability of the plan to deliver its overall housing requirement across the plan period as a whole.
18. As a starting point, as Mr Seaton explained⁴⁵ the allocations at Cullompton – where most allocated growth is directed within the plan – are largely contingent on the Cullompton Town Centre Relief Road.⁴⁶ Funding has still not been secured, with two funding bids having been rejected.
19. Perhaps of more relevance to this proposal is the delay in delivery of housing that is being experienced at TEUE. The Council position is that Area A of the TEUE will not be completed within the plan period (their own projections – which Mr Seaton considers to be optimistic – have 138 dwellings from the outline permission

⁴² Seaton Housing Proof, para 5.3

⁴³ ID11

⁴⁴ 2698 (Council’s supply) -2493 (requirement) = 205

⁴⁵ XIC and XX

⁴⁶ See CD60, paras 44-50

granted over Area A delivering outside the plan period⁴⁷). Given that the delivery of Area B is largely contingent on the delivery of Area A, then realistically – at least without a separate link road from the east, to which we will return – the majority of housing from this area is likely to come forwards beyond the plan period.

III. APPROPRIATE LOCATION (Main Issue 2: Whether or not the location of the proposed development is acceptable having regard to adopted national and local policies)

Appropriate location in land use terms

20. The suitability of the location in land use terms for a mixed-used residential and employment scheme is obvious. Tiverton is the largest and most sustainable settlement in Mid-Devon. The appeal site lies adjacent to its settlement boundary, immediately to the east of the TEUE, an allocation in the Local Plan which include up to 1830 dwellings and at least 30,000 sqm of commercial floorspace. To the east, the appeal site is bounded by, and wraps around, the Hartnoll Farm Business Park, a long standing and successful business park. To the north is existing residential development along Post Hill.
21. It is predominantly because of the existing and future uses in the vicinity of the appeal site that, notwithstanding the proposals constitute development of a greenfield site, it is common ground between the main parties that there would be no adverse impact on the landscape character or visual amenity of the area.
22. AA accepted that development of a greenfield site, of circa 12 ha in the countryside, for commercial and residential which gives rise to no adverse impact on landscape character or visual amenity is “unusual”. That is a significant understatement. The lack of any “site-specific” (to use AA’s phrase) adverse impact is exceptional and illustrates the appropriateness of this location for the mixed-use development proposed.

⁴⁷ Housing SoCG, para 3.8

Appropriate location in policy terms

23. The appropriateness of the location for the appeal scheme is also evident in policy terms. The Appellant's primary case is that the appeal proposal is fully compliant with the relevant policies in the development plan, including strategic policies. However, even if the Council's interpretation of those policies is accepted, any breach would properly be described as "technical": it being accepted that the objectives which those policies seek to advance are met.

Development Plan policies

Policy S1 – Sustainable development priorities

24. Policy S1 establishes the strategic priorities which will need to be achieved in order to deliver the Vision of the plan. It is common ground that:⁴⁸

- a. there is no *a priori* hierarchy identified between the thirteen priorities identified;
- b. the appeal scheme would either not conflict with, or would actively advance, twelve of those thirteen objectives (namely objectives (b) to (m)).⁴⁹
- c. the only dispute concerns whether the appeal proposal conflicts with strategic priority (a).
- d. the underlying objective of this strategic priority is to focus development coming forwards in locations where facilities are accessible and the need to use the private car is minimised.
- e. given Tiverton is the most sustainable settlement in Mid Devon, and given that it is accepted that its facilities (both those currently and coming forward on the TEUE) would be accessible to future residents of the appeal, AA agreed that the appeal proposal would not harm the underlying objective of this strategic

⁴⁸ XX(AA) Day 2

⁴⁹ It was agreed that the appeal scheme would advance (b) [due to the provision of jobs], (d) [via diversification of agriculture], (g) [by providing affordable and custom build housing], (j) [by increasing the use of low carbon energy], and (l) [by providing a net gain in biodiversity]

priority. LB-T later confirmed that the Council did not seek to resile from this concession.⁵⁰

25. The only dispute between the parties is therefore a matter of semantics. Does “at Tiverton” mean “within the settlement boundaries of Tiverton”?
26. We say “at” means “at”. Had the drafters of the policy wished the strategic priority to focus development “within the settlement boundaries” of certain settlements, they would have said so. What is more, that interpretation accords with the (agreed) underlying objective of the policy, as outlined above, whereas the Council’s interpretation is in tension with it. Put simply if a decision maker, having regard *inter alia* to the proximity of the development to Tiverton and the accessibility of its facilities, concludes that development is “at Tiverton” then it complies with this strategic priority.
27. Moreover, there has been no suggestion by the Council that the appeal site is anywhere other than “at Tiverton” in the common understanding of that phrase (i.e. if it is not restricted to within the settlement boundaries).
28. But even if the Inspector were to conclude that this interpretation is wrong, it does not much matter.
29. In circumstances where it is common ground that twelve out of thirteen of the strategic priorities are either not conflicted with, or actively advance and where it is accepted that the appeal proposal is consistent with the underlying objective of strategic priority (a), then there is plainly overall compliance with Policy S1. AA’s refusal to acknowledge as much⁵¹ betrayed his myopic view of this appeal proposal.
30. Therefore, whatever the correct interpretation of Policy S1(a), there is compliance with the policy in the Local Plan which establishes its strategic priorities. This is an

⁵⁰ XX(DS) Day 3

⁵¹ XX(AA) Day 2

very important consideration. It underscores the appropriateness of the location for this form of development.

Policy S2: Amount and distribution of development

31. The policy has two functions. To establish the amount of development coming forward under the plan. And to identify the distribution of that development.

32. It is common ground that there is no conflict with the first function. Policy S2 establishes a minimum figure for housing and commercial floorspace. It does not impose a cap.

33. In terms of the second function, the policy seeks to distribute development under the plan, in terms of commitments and allocations, consistent with Policy S1(a). There are, therefore, two clear reasons why the appeal proposal is not in conflict with this policy. First, it is not a commitment or allocation in the plan. Second, and more fundamentally, for the reasons given above, the appeal proposal is consistent with both the letter of, and objective underlying, strategic priority (a).

Policy S14: Countryside

34. The appeal proposal will preserve the character and appearance of the countryside; enhance biodiversity; and promote the sustainable diversification of the rural economy. These are, it is agreed, the stated objectives of Policy S14, and it is also agreed that the appeal proposal does not conflict with – and indeed actively advances – these objectives.⁵²

⁵² XX(AA) Day 2. In XX (Day 2) AA briefly appeared to suggest that although the appeal proposal would cause no harm to the character and appearance of the countryside, it would not preserve it because there would be change. However, he quickly reversed this position. He was right to do so. It is settled law in the context of heritage matters – and specifically s.66 and 72 Planning (Listed Buildings and Conservation Areas) Act 1990 - that “preserve” means “do no harm”. It does not mean preserve in aspic. See *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council* [2014] EWCA Civ 137 at [16] *per* Sullivan LJ and *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141, *per* Lord Bridge at page 150. There is no reason to adopt a different interpretation in respect of Policy S14. The Appellant understands that the Council agrees with this interpretation of the meaning of the term “preserve” in Policy S14.

35. This is precisely what Policy S14 says “development outside of the settlements....will [do]”. Accordingly, we say, that on a proper interpretation, the proposal accords entirely with this policy.
36. The Council advances an alternative interpretation, which restricts development in the countryside to those uses which are listed in S14(a)-(f), and which comply with the related development management policies. This interpretation should be rejected. Firstly, the policy does not say “development in the countryside shall be restricted to”, or even that “*only* agricultural and other appropriate uses...will be permitted”. Thus, the Appellant’s interpretation relies on words being read into the policy which are not there. Secondly, LB-T said, in support of the Council’s interpretation, that it was through the restriction to those appropriate uses, together compliance with the development management policies, that the stated objectives for the countryside will be achieved. However, with respect to LB-T, this is wrong. Those development management policies expressly allow development which would cause harm to those 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 from the stated objectives for the countryside. Which is why the policy expressly permits them.
37. Properly understood, therefore, development which furthers the stated objectives of Policy S14 is (unsurprisingly) consistent with the policy.
38. However, even if the Inspector were to disagree with the Appellant’s interpretation, any breach of this policy would be wholly technical given that (as is common ground): (a) that the appeal proposal would comply with Policy S14’s stated objectives for the countryside and (b) any breach would be limited to the residential element of the appeal proposal only, it being accepted that the Business Park extension is compliant with Policy S14(b) and DM18.

39. Having regard to these factors, AA accepted (albeit only after much prevarication) that the weight to any breach of Policy S14 “could be reduced”. He also agreed that the weight given to any breach should be limited, albeit he subject that to the caveat “[when put] in those narrow terms”.⁵³ By “narrow terms” we had understood AA to mean when having regard to the compliance with the stated objectives and the fact that the commercial element complies with Policy S14(b) and DM18.
40. Whether or not this is what AA meant, it is plain as a pikestaff that if (contrary to the Appellant’s case) there is any breach of policy S14, can be given only the most limited weight.

Tiverton Neighbourhood Plan

41. The Appellant’s has proceed on the basis that, as the site falls outside the plan area, the Tiverton Neighbourhood Plan (TNP) does not form part of the relevant development plan policy. The OR took the same approach.⁵⁴ However, AA refers to the TNP as a material consideration.⁵⁵ Even if AA’s approach is correct, this is a material consideration that weighs in favour of the development plan, given that Policy T1 of the TNP permits development outside of settlement boundaries where it preserves or enhances the appearance of the area.

National Policy

42. In terms of **national policy**, it is common ground that the site does not form part of a valued landscape (in respect of which the relevant policy objective is to “protect and enhance”⁵⁶). The intrinsic character and beauty of the countryside is recognised⁵⁷ – and indeed preserved - by the appeal scheme.

⁵³ XX(AA) Day 2

⁵⁴ OR, p18 [CD1]

⁵⁵ AA Proof, para 4.9

⁵⁶ NPPF, para 174(a)

⁵⁷ NPPF, para 174(b)

IV. INFRASTRUCTURE PROVISION/PLANNING OBLIGATIONS (Main issue 3: Whether or not there is sufficient infrastructure to support the appeal scheme)

43. As with the primary case, the issues in respect of required planning obligations have narrowed considerably. The Council no longer seek contributions in respect of transport, waste and recycling or secondary education. Several education contributions are sought, although the request for Secondary Education funding has been withdrawn. The Appellant challenges whether they are compliant with Reg 122 of The Community Infrastructure Levy Regulations 2010 (“CIL Regs”), for the reasons set out in the CIL Non-Compliance Statement⁵⁸, and were amplified at the roundtable session.

44. Likewise, the request in terms of NHS funding has narrowed. The Council have confirmed that they do not support the request for such funding. The Royal Devon University Healthcare NHS Foundation Trust have confirmed that they are not seeking the NHS Funding Gap contribution. This leaves the NHS Devon Integrated Care Board (“ICB”) who are seeking the GP Provision Contribution and, very belated, late last week submitted a letter in support of this request only. The Appellant challenges whether this contribution is Reg 122 compliant, for the reasons set out in the CIL Non-Compliance Statement⁵⁹, which were amplified at the roundtable session.

45. This (already lengthy) closing is would not benefit from repetition of those matters, save to stress that in respect of all obligations, the burden is on the requesting party to persuade the Inspector that the contribution meets the tests in Regulation 122. In respect of the ICB request in particular this weighty burden given that the Council does not consider the request to be Regulation 122 compliant and as the Foundation Trust (albeit it is accepted in respect of a different type of NHS

⁵⁸ CD10

⁵⁹ CD11

funding) have recognised that there is not currently a sufficiently cogent evidence base on which to advance their request.⁶⁰

46. In all cases the relevant obligations are included in the unilateral undertaking, albeit subject to a “blue pencil” clause. Therefore, whatever the Inspector’s conclusion on Reg 122 compliance, the appeal scheme will provide the requisite infrastructure funding. As AA confirmed⁶¹, this means that reason for refusal 4 no longer constitutes a basis for refusing permission for the appeal scheme.

V. BENEFITS

47. There is agreement between the main parties that the appeal scheme would give rise to a number of tangible benefits which weigh in favour of the proposal. Agreed benefits of the appeal scheme include: the provision of housing, including affordable and custom build housing; the employment provision; the utilisation of a low carbon energy source; and biodiversity net gain.⁶² The only dispute in respect of these matters is the weight to be given to these benefits. The Appellant also says that provision of a link road amounts to a significant benefit of the scheme, something which the Council, belatedly, has disputed.

48. As DS explains⁶³, the Appellant contends that the weight to be given to these benefits is as follows⁶⁴:

Benefit	Weight
Employment Provision	Very Significant
Housing (including affordable and custom build)	Very Significant
Renewable/Low Carbon linkage	Significant
BNG	Significant

⁶⁰ See the email from the NHS Foundation Trust dated 7th September 2023

⁶¹ XX(AA) Day 2

⁶² See Aspbury Rebuttal, p14

⁶³ DS Proof, p26

⁶⁴ DS confirmed that his scale of weighting of benefits was as follows: Very Significant, Significant, Moderate, Limited, Zero

Link Road to TEUE	Significant
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Employment Provision

49. The agreed position⁶⁵ is that:

- i. Hartnolls Farm is a successful and well utilised business park. There is no reason to believe that the proposed extension would not be equally successful;
- ii. the extension would generate circa 400 additional jobs.⁶⁶ AA had come to the same assessment of job creation independently.
- iii. the Council's economic team are in favour of the development⁶⁷
- iv. both the economic team and the planning officers at the Council recognised that there has been a "historic shortfall of employment provision and delivery in Tiverton"⁶⁸. The employment proposals would meet that need.
- v. Whilst officers were of the view that there is no unmet need for employment land at a district-wide level, AA did not dispute DS's evidence⁶⁹ that the historic supply had been significantly skewed towards the rural, and therefore inherently less sustainable, locations.⁷⁰

50. In those circumstances the provision of additional employment at Tiverton is a very real benefit which should be given **very significant weight**.

Housing (including affordable and custom build)

51. The Council does not dispute DS's evidence⁷¹ of the extent of affordable housing need in the district, with AA describing the weight to be given to affordable

⁶⁵ XX(AA) Day 2

⁶⁶ CD53(b)

⁶⁷ OR, para 1.18 [CD1]

⁶⁸ *Ibid*, para 1.20

⁶⁹ DS Proof, p11, in particular fig 4

⁷⁰

⁷¹ DS Affordable Housing Proof

housing provision alone as “considerable”⁷². DS demonstrates that since the beginning of the plan period there has been very significant shortfall of affordable housing delivery against both the target within the plan (shortfall of 689 affordable homes) and assessed need (shortfall of 743 affordable homes).⁷³ The appeal scheme would deliver up to 45 much needed affordable homes. It would also deliver policy compliant levels of custom and self-build housing.

52. In terms of market housing, the position is set out above. AA rightly accepted that if the inspector were to conclude that the Council could not demonstrate a five year supply of housing this would increase the weight to be given to this matter.

53. Taken those matters together, the **very significant weight** to be given to the delivery of housing.

Renewable/Low Carbon linkage

54. The units on the 3.9 ha extension to the business park would be powered and heated by a combined heat and power plant (CHP) sourced by an Anaerobic Digester (AD) on a nearby farm which is operated by the owner of the Business Park.

55. Again the relevant context is undisputed:⁷⁴

- i. Mid-Devon declared a climate emergency in February 2019, following the IPCC’s 15th report into climate change
- ii. Following the IPCC’s report, the UK Parliamentary Committee on Climate Change published a report in May 2019 which stated in terms that “*every tonne of carbon, counts, wherever it is emitted*”

⁷² AA Proof, para 10.6

⁷³ DS AH Proof, paras 5.11 and 5.12

⁷⁴ XX(AA) Day 2

- iii. In March of this year, Mid-Devon adopted a “Non-Statutory Interim Planning Policy Statement: Climate Emergency”⁷⁵ which was “intended to raise the profile and importance ...of climate change and climate emergency considerations in the planning process in Mid Devon”. It indicates that “Tackling climate change is a material consideration to the planning process, to which significant weight should be attached”.⁷⁶
- iv. The use of low carbon sources of energy is one of the strategic priorities of the Local Plan.⁷⁷
- v. The AD/CHP is a low carbon source of electricity and heat.
- vi. The AD is currently producing excess heat which is going to waste. This proposal would enable that wasted heat to be utilised by heating the business park. Electricity which is currently exported to the grid would be diverted to a local end-user.
- vii. 100% of the total annual energy demands and 100% of the electric demands from the Business Park extension would be sourced from the AD/CHP.⁷⁸
- viii. The use of the excess heat alone would save as much as 281 Tonnes of CO2 per year⁷⁹.
- ix. The AD/CHP link to the business park extension could not be viably provided if the business park was to come forward in isolation (at least without external funding)⁸⁰. As DS explained, the intention is that the profits from residential element of the mixed use scheme will cross-subsidise this linkage. Condition 21 operates so as to require the linkage to

⁷⁵ <https://www.middevon.gov.uk/residents/planning-policy/interim-climate-change-statement/> . This document is not before the Inquiry, but AA confirmed that he was aware of its existence and that it included the statements put to him.

⁷⁶ At para 1.3

⁷⁷ Policy S1(j) and DM2

⁷⁸ Energy Feasibility Report CD 5, Appendix 8, p4 [PDF, p147]

⁷⁹ Energy Feasibility Report CD5, Appendix 8, p5 [PDF, p148]

⁸⁰ See Costs Feasibility Report, CD5, Appendix 9 [PDF, p160] and KLP Letter, appendix 0 [PDF, p173]

be in place, and available to the units on the business park, before the 100th dwelling is built and before any of the business units are occupied.

x. The Council's economic team received the proposal very warmly, indicating that it would create the first low carbon commercial development in the district, and would act as an exemplar for other schemes.⁸¹ The planning officers explained that this is a "unique proposal to provide a highly sustainable, joined up development"⁸²

xi. As confirmed by AA, the factors which led planning officers in the OR – notwithstanding this very positive assessment – to reduce the weight to be given to this benefit are agreed to have been erroneous.⁸³

56. In all these circumstances, at the very least **significant weight** must be given to use of low carbon energy sources.

Biodiversity Net Gain

57. The agreed position is that the appeal scheme is capable of providing a biodiversity net gain which is in excess of the policy requirement, and in excess of the emerging legislative requirement (which is not yet in place). It is agreed that the net gain can be secured by condition. **Significant weight** should be given to his benefit.

Link Road to Area B of the TEUE

58. The Council's refusal to treat this as a benefit of the appeal scheme is perplexing. When seen in context, this is a very real benefit which should be afforded **significant weight**.

59. The context is as follows:

i. securing a secondary access to Area B of the TEUE has been a long-held objective of the Council. As long ago as October 2017 Mid-Devon's Cabinet

⁸¹ OR, para 1.18 [CD1]

⁸² OR, para 5.4

⁸³ Main SoCG, paras 7.21-7.25.

resolved that alternative access arranged may be considered as part of the master planning process for Area B.⁸⁴

- ii. the emerging SPD, which has been through two rounds of public consultation and is in a version ready for adoption, concludes that *“the delivery of Area B would benefit from additional alternative vehicular access points”*⁸⁵ However, given the nature of the roads the SPD concludes that, other than emergency access, *“no direct vehicular access to serve the residential and employment development areas shall be provided via Manley Lane, West Manley Lane or Mayfair”*⁸⁶. This is plainly to be understood as meaning the Manley Lane/Post Hill Lane should not be used for the secondary access (for reasons which will become obvious following the site visit), because it goes onto say that there is a *“potential for a new vehicular access onto Post Hill or to the east of the development should these opportunities become available and be acceptable (but protecting Manley lane from additional traffic movements)”*⁸⁷. It is not without import that the illustrative plans show the secondary access road running from the east of the development, with access clearly being envisioned to be taken from the appeal site across Manley Lane. This is most clearly seen from the movement plan (fig 33)⁸⁸, which notes that *“third party land [is] required”*: the appeal site is that third party land.
- iii. The benefits of the secondary access are, at least, two-fold. First, it would accelerate delivery of Area B, which then wouldn't be contingent on access being provided from Area A for development to begin. This much was recognised by officers of the Council.⁸⁹ Second, it would enable the bus services serving the TEUE to run as through route, rather than on an

⁸⁴ Emerging SPD Area B Masterplan, p31 [CD13]

⁸⁵ Emerging SPD Area B Masterplan, p62 [CD13a]

⁸⁶ *Ibid.*

⁸⁷ *Ibid*, p69

⁸⁸ *Ibid.* p68

⁸⁹ OR, paras 4.9-4.11

internal loop, which is obviously preferable.⁹⁰ AA accepted that these were both benefits of a secondary access from TEUE onto Post Hill.

iv. Officers of the Highway Authority are satisfied that the new access provided by the appeal proposals onto Post Hill⁹¹ – which is the subject of detailed design drawings and a matter for determination at this appeal - is safe and suitable, including for the volume of traffic that would be generated by the TEUE.⁹²

v. Providing a secondary access to the TEUE is not an afterthought. It has been integral to the design process of appeal scheme from its inception.⁹³

60. AA accepted that the secondary access to Area B of the TEUE would provide the benefits detailed above. And he accepted that the appeal proposal would provide such an access in a safe and suitable manner. His steadfast refusal to afford this factor any weight – apparently on the basis that access can still be provided from Area A - defies logic.

61. Shortly prior to the Inquiry, the Council disclosed the potential of an ‘alternative’ potential access to the TEUE, promoted by Westcountry Land. As DS rightly said, no weight can be given to this alternative in circumstances where: (a) the location of the access has not been disclosed to the inquiry; (b) no plans, even on a schematic level, have been provided to the inquiry; (c) no details of the enabling scheme have been provided (save that it would constitute an application for access and residential development); (d) although we are told that Devon County Highways have confirmed “that the general principle of our access is acceptable” , we have no evidence from the Highways Authority themselves; and (e) having been told by AA in his rebuttal proof served only last week that a planning application is expected in the near future⁹⁴, the Westcountry Land letter confirms that this is yet

⁹⁰ See Neil Thorne Rebuttal, paras 3.24

⁹¹ CD39. See also CD41 Framework Plan

⁹² Highways Officers considered that the existing access to the Business Park (which is being closed) would not be suitable for access to the TEUE. No such concerns were raised with the proposed access.

⁹³ See. Eg. DAS,p42 [CD42]

⁹⁴ AA Rebuttal, p7, R2.11.2

to be prepared and commits only to making the application “within the next 12 months”.

62. We do not know whether, once detailed designs are considered, this alternative will be considered to provide a safe and suitable secondary access to the TEUE. Contrast this with the agreed position concerning the appeal site access. We do not know what the planning impacts of the alternative scheme (both the access itself and its enabling development) would be, or whether they would be acceptable. Contrast this with the appeal scheme, which is agreed to have no “site specific” (as opposed to in principle) adverse impacts. And we do not know when the application will be made, let alone determined. Whereas the application for the appeal scheme was made some 2 years ago, and has been thoroughly scrutinised, including through this appeal process.

63. The Westcountry letter therefore provides no sensible basis for reducing the weight to be given to link road provided by the appeal scheme to the TEUE. Indeed, all that letter does is underscore the benefits of, and need for, a secondary access to Area B.

VI. MISCELLANEOUS

Precedent

64. AA advances the argument that to allow the appeal site would establish an “unacceptable precedent” for the granting of permission for developments outside of settlement boundaries in “disparate locations”. With what only can be described as significant hyperbole, he says this would “undermine and subvert the Local Plan”.⁹⁵

65. With respect to AA, this is a thoroughly bad point. Which is probably why this was not raised in the OR, decision notice or statement of case.

⁹⁵ AA Rebuttal, para 7.1.2

66. It is a bad point not simply because each application must be dealt with on its own merits, such that potential for precedent setting in the planning system is, in general terms, low. And not simply because AA does not point to any site-specific factors which would give rise to the risk of precedent. But because, as DS pointed out, the circumstances of this appeal scheme (adjacent to existing business park, adjacent to planned urban extension; proximate to low-carbon source of energy; ability to provide an access road; and no site specific adverse impacts) will be hard, if not impossible, to replicate.

Interested Parties

67. The Appellant listened closely to the representations made by Halberton Parish Council (“HPC”) and Tiverton Civic Society (“TCS”). The primary concern of both – beyond the matters addressed within the main issues above – concerned impacts of additional traffic on the safety and operation of the local road network.

68. As set out in Section 5 of Mr Thorne’s Rebuttal, the planning application submission included a Transport Assessment (“TA”), dated July 2021.⁹⁶ This comprehensive assessment was prepared following a detailed scoping exercise with DCC and is in accordance with best practice guidance. The TA considered the impacts of traffic associated with the proposed development, as well as other committed development (including the TEUE), throughout the local road network, including Halberton, Sampford Peverell and past Blundell’s School.

69. The TA concluded that safe and suitable access can be achieved for all users, that there would be no unacceptable impact on highway safety, and the residual cumulative impacts on the road network would not be severe (NPPF Paras 110 and 111). This conclusion was agreed with DCC. DCC and MDDC confirm that they have no objection to the application, subject to the imposition of appropriate conditions. No reasoned basis has been advanced to depart from this view.

⁹⁶ CD37

70. HPC also raised concerns about the implications of the appeal scheme in respect of the amount of feedstock which would be required for the AD plant. However, The agreed position between the main parties is that the appeal scheme would not result in the need for additional feedstock to supply the AD plant⁹⁷: the excess heat which is currently being created would simply be utilised, and existing electricity generation diverted.

VIII. PLANNING BALANCE AND CONCLUSIONS

71. As Mr Seaton explains in his evidence⁹⁸, there are a number of ways in which the planning balance in this case can be struck, all of which lead to the same end: that planning permission ought to be granted for this scheme.

72. **First**, on a proper interpretation of Policies S1, S2 and S14 (the only policies left in dispute), the appeal scheme is **entirely in compliance with all the relevant policies of the development plan**. This is the Appellant's primary case.

73. **Second**, even if the Council's interpretation of those policies is accepted, and there is a degree of non-compliance with them, **there is overall compliance with the development plan read as a whole**. On the Council's own case, the appeal scheme complies with the underlying objective of Policy S1(a); and meets the express objectives of Policy S14. In those circumstances, even if the appeal scheme is technically in breach of those policies, only the most limited weight can be given to the breach of those policies. Reading the plan as a whole that breach is plainly outweighed by the appeal schemes compliance -and indeed advancement - of the remaining policies in, and objectives of, the development plan, including the strategic priorities established in Policy S1(b)-(l), DM2 (renewable and low carbon energy), DM18 (Rural employment development), and DM26 (Green Infrastructure in major development).

⁹⁷ Main SoCG, para 7.20-7.25

⁹⁸ Seaton Proof, Section 5.

74. AA accepts⁹⁹ that if the Inspector concludes that the appeal scheme is in compliance with the development plan as a whole, then applying the section 38(6) test planning permission should be granted. There are no material considerations which “indicate otherwise” .
75. **Third**, even if the Inspector were to conclude that the appeal scheme was in conflict with the development plan as a whole, that breach would have to be weighed against the multiple and substantial benefits of the scheme. This is plainly not a case where planning permission might be seen as undermining the credibility of the plan. That cannot be so where, on the Council’s own case, the appeal scheme would further the objectives (underling objectives in respect of Policy S1(a) and express objectives in respect of Policy S14) of the only policies which it is said to breach.
76. If the Inspector were to conclude that the Council cannot demonstrate a five year supply of housing, then the question (at least as a matter of national policy) would be whether the adverse impact – which is limited to “in principle harm” from the residential element of the appeal scheme – “significantly and demonstrably” outweigh the benefits outlined above.
77. The answer, we say, is self-evident.
78. **Fourth**, if the Inspector were to conclude that the Council can demonstrate a five year supply of housing, and a ‘straight balance’ were to be applied, we submit the answer would be the same. The multiple and very significant benefits that the appeal scheme would bring substantially outweighs the, at most, limited harm resulting solely from the breach of strategic policies, whose objectives (it is agreed) are nevertheless furthered.
79. As we said in opening, this conclusion is not surprising. 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

⁹⁹ XX(AA) Day 2

settlement. And it will do so, without causing any material harm to acknowledged planning interests, and whilst bringing with it tangible and substantial benefits.

80. Accordingly, the Appellant commends the proposal to the inspector and requests that he grants planning permission, subject to appropriate conditions.

ROBERT WILLIAMS

CORNERSTONE BARRISTERS

15th September 2023

APPENDIX 6
PCL Corrected Letter



Our Ref: TivEUE-It-lpa-07-09-23

Mr Richard Marsh

Director of Place
Mid Devon District Council
Phoenix House
Phoenix Lane
Tiverton
EX16 6PP

Friday 8th September 2023

Dear Richard,

Re: Proposed Development of Area B of TIV 1 EUE in the Mid Devon Local Plan and Waddeton Park Appeal Reference App/Y1138/W/22/3313401

I would like to take this opportunity to write to you, to set out our position in respect of Area B of the Tiverton Eastern Urban Expansion area, TIV1, allocated in the Mid Devon Local Plan.

We are experienced, specialist land developers, who work exclusively in Devon and Cornwall. Our specific expertise encompasses land acquisition and assembly to unlock land for development, and to obtain planning permission. We have a significant track record of success in this industry.

Your council has allocated a significant area of land for residential development together with an indicative masterplan to accompany the allocation within the Local Plan, identified as TIV1. Area A is being developed by Redrow Homes, and planning permission has been granted for the first phases of development, which is currently under construction. At present, Area B is currently dependent on the delivery of the Area A estate road, to provide access, which will take some time before it connects to the balance of the allocation. The Local Plan period is from 2013 – 2033, so still has considerable time to run.

[2] some of

[1] Part of

[3] [and for which there is no certainty of actual delivery]

We are working in partnership with Mid Devon Homes, who have procured land to create a new, alternative access to service Area B, without the need to wait for the connection from Redrow, as identified above. This alternative access is contained entirely within the existing settlement boundary [and the allocated area] without the need for any land outside of that, identified by the Local Plan.

[4] delete

[5] a link from Area A

Accordingly, we believe that there is a fantastic opportunity here, to accelerate the delivery of the Area B allocation, without the need for [the Redrow link] or any other alternative access, such as that proposed by the Waddeton Park scheme, to the east. Which your council have recently refused planning permission, under reference 21/01576/MOUT, and is currently the subject of a non-determination planning appeal, under reference App/Y1138/W/22/3313401.

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DEVON OFFICE

2 Parkwood Close, Broadley
Industrial Park, Plymouth, PL6 7SG



We understand that a key part of the appellant's case and justification for their scheme, which would form a departure from the Local Plan, is the creation of a new road junction and connecting estate road to serve Area B.

We have read the council's proof of evidence, prepared by Antony Aspbury, and we concur with the content of this document and the council's previous reasons for refusal. We do not consider that, at this time, when the Local Plan has 11 years to run, there is any need to depart from the council's local plan and allocation. Indeed, we would like to supplement Mr Aspbury's proof of evidence, by confirming the following;

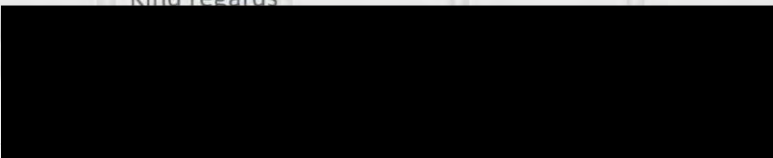
1. In conjunction with Mid Devon Homes, we have sufficient land (within the allocation area and existing settlement boundary) to successfully deliver a suitable alternative access to Area B. [6] incorrect
2. We have employed a specialist highways consultant, to review our site and consider the most appropriate form of junction/access design and visibility. The junction and access can be designed to provide a suitable two-way junction, with sufficient capacity to service the Area B allocation, to connect to the Area A link/estate road in due course, and to accommodate buses, and to provide the bus route/loop, in accordance with the aspirations of the Local Plan. [7] incorrect
3. We have engaged with the Local Planning Authority, including a preliminary meeting in July, followed by the submission of a formal pre-application submission, dated 3rd September, specifically in respect of our proposed alternative access. [8] See FOI request
4. We have received a positive response to our pre-application submission above, from your planning officers. As part of that process, we have also engaged with Devon County Highways, who have also confirmed that the general principle of our access is acceptable. [9] See submission and FOI
5. Given all of the above, we are now committed to the preparation and submission of a planning application for the access and residential development of the first phase of Area B of the TIV1 allocation, [within the next 12 months] incorrect [10]

To summarise, [we have sufficient land and the capability to deliver a technically compliant, secondary access to Area B.] As such, we believe that the council is right to resist any further development, outside of the allocation within the Mid Devon Local Plan, which would be premature, whilst the local plan still has so long to run. [11] incorrect

The implementation of the Mid Devon Local Plan and development of Area B of the TIV1 allocation can be secured within the plan period, [without need for development of additional land, outside of the allocation.] incorrect, and inconsistent with the Area B SPD. [12]

We hope that the content of this letter is of assistance to you in respect of the forthcoming planning appeal and we look forward to working with you and your officers to progress our planning application to deliver this allocation, in accordance with the Local Plan.

Kind regards



Justin Dodge (Director)

Westcountry Land & Homes and on behalf of Mid Devon Homes

Ref	PCL Comment
1	Only part of Area is being developed by Redrow Homes – see CD63
2	Only part of Area A has been released for development
3	To reflect the problems with release of the balance of the outline consented area
4	The alternative access lies outside of the area of the allocation (and is contrary to the movement provisions of the SPD which has been consulted upon in accordance with the provisions of TIV 1 i) (and subsequently published on the Council's website)
5	Replace to reflect the undisputable fact that Redrow's permission cannot provide a link to Area B
6	This statement is incorrect. Mid Devon Homes/WCL do not control sufficient land to deliver the AWP access proposal, nor is it within the allocation TIV 1. In fact it is contrary to the movement provisions of the SPD that elaborates TIV 1.
7	Incorrect – see Rappor comments
8	Disclosure is required
9	Incorrect, as at the date of the letter DCC had not responded (see e-mail chain). Their subsequent response is caveated, and it cannot be reasonably recorded as a confirmation <i>'that the general principle of our access is acceptable.'</i>
10	Incorrect – no such application has been submitted to date
11	Incorrect – the reason why is that WCL do not control sufficient land to deliver the AWP proposals
12	An incorrect statement, the AWP access proposals rely upon land outside of the allocation, and are contrary to the provisions of the SPD. The only way that Area B is likely to be delivered during the plan period is if the appeal proposals are granted

Appendix IV



Internal Review IR09705

Date received: 28/08/2024

Date response due: 26/09/2024

Date response provided: 25/09/2024

Review request:

Please see Attached

Information Requested in the original FOI:

I would be grateful if you can register the following Freedom of Information request:

In the Summer of 2023, West country Land engaged with Mid Devon District Council as the local planning authority regarding a proposed access to 'Area B' of the Tiverton Eastern Urban Extension [TEUE] (page 2, point '3' of the attached West country Land letter).

Please provide a full copy of all the pre-application engagement you have had with West country Land (and any of their professional representatives) for this proposed access to the TEUE. In your response to the above request, please include all documents provided to the Council, as well as all the advice proffered by the Council (and any representatives engaged on your behalf). We expect the response to this request will include (but will not be limited to):

- All written correspondence;
- Meeting notes;
- Details, information and surveys provided to the Council; and
- Copies of any plans provided to the Council.

We enclose for clarity a plan and email chain (which MDDC was included in) that we understand formed part of this process.

Further, please provide a complete list of pre-application engagement you have received regarding all potential access routes to 'Area B' of the Tiverton Eastern Urban Extension including all documents provided to the Council in association with the pre-application engagement, and a copy of all advice proffered by the Council.

Should you have any queries with the above, please let me know.

Please confirm receipt of this request.

Was the FOI/EIR procedure followed correctly?

Yes, the request was responded to fully within the 20 working day period.

What exemptions were applied?

Regulation 12(5d) confidentiality of proceedings.

Were the reasons these exemptions were applied correct?

Please note this request has been considered based upon the date the request was made and at no point thereafter. This is in accordance with the Upper Tribunal precedent of *Montague v Information Commissioner and the Department of International Trade* [2022] UKUT 104 (AAC). This review has been conducted based upon the application of Environmental Information Regulations, not standard disclosure as this is not relevant to these requests.

At this point we are going to address the arguments made within the review request. To clarify it is the position of the review that the exemption was applied correctly.

You have referenced the guidance notes by the ICO on exemption 12(5d), that confidentiality of proceedings related to the final decision making process. The Council interprets this part of the notes differently. The council also believes that decision notices support this interpretation. The ICO considers anything that is has a formal level of proceeding as possessing a certain level of formality. The ICO has also considered pre application process under this regulation on a number of occasions.

In [IC-292887-Z7J4](#) the ICO assessed whether Regulation 12(5d) should be engaged for pre-application advice and communications for a high profile Solar Farm (notably similar information to that requested above). The ICO, favouring non-disclosure, stated in paragraph 16 notes that “the commissioner has previously acknowledged in a range of decisions that such a process represents a ‘proceeding’ for the purposes of engaging regulation 12(5d)” the Commissioner went on the state they were satisfied that this was still the case in that decision. This shows that on numerous occasions the ICO has specifically identified pre-application advice as a formal proceeding.

Within the review request, you have stated that common law confidentiality does not apply to pre-application advice. This has also been considered carefully by the commissioner on numerous occasions. In Paragraph 16 and 17 of Decision Notice [IC-286268-Z8G5](#) the commissioner stated that confidentiality does indeed apply to Pre-application advice. Pre-application advice is not trivial information, it is an integral part of the planning process and is entered into entirely voluntarily by the applicant. It is also paid for service that supports the applicants planning process. These all support the position that planning advice falls under common law confidentiality. The Commissioner in Paragraph 18 of IC-286268-Z8G5 makes it clear the commissioner supports the position that Pre-application advice and communication relating to the advice falls under common law confidentiality. This has been further confirmed by numerous other decision notices.

In reference to the point raised regarding Cornwall Council. The council does not believe an isolated policy towards pre-application advice proves any statutory requirement to publish. The S69 and S69A of the Town and Country Planning Act 1990 and Article 40, 41 and 42 of The Town and Country Planning (Development Management Procedure) (England) Order 2015) do not apply to pre-application and the majority of councils do not publish this advice. Furthermore in decision notice [IC-282440-Y7D8](#) Paragraph 18 it was confirmed that there are “no circumstances, statutory or otherwise in which it is required to publish pre-application advice given to applicants under EIR”. This shows that your position is not supported by the commissioner. The only instance found amongst ICO Decision notices that required disclosure of Pre application advice under Regulation 12(5d), [FS50640768](#), the clearly distinguished between the minority of local authorities, like South Downs National Park, that openly publish pre-application advice, and those who don't. In Paragraph 26 of FS50640768 the commissioner stated “the council distinguishes itself from the Majority of other councils by disclosing this data.” This shows that Cornwall council are in the

minority when it comes to this process, and this is not a position that is supported by other authorities. This should therefore not be considered a valid point.

To address the claim made that Appendix 2, the letter sent to a council officer inquiring about pre application advice, shows an expectation that pre-application advice will be placed in the public domain. The council believes this incorrect for a number of reasons: firstly, the letter does not show any advice offered or received, it is simply a letter inquiring about advice for an application. It is not unreasonable to assume that any further information would not be fundamentally different, more detailed and therefore confidential in nature. Secondly information provided for the purposes of legal proceedings do not amount to open disclosure and such a letter being placed within a bundle should not be considered as such.

In reference to appendix 3, it is the understanding of the council that this relates to a new planning application, but not to the planning application in question here. Nor does it refer the pre-application advice specifically. It refers to the inspectorate as the decision made and should not be considered to hold any weight when assessing information under EIR regulations. And may only provide circumstantial support in the public interest test, this will be discussed later.

The Council supports the position held by the commissioner in a number of cases, that confidential Pre Application advice and communications that have not been placed in the public domain, should not be disclosed under EIR. The Commissioner believes, as can be seen in the decision notices of all three cited above. That the council allowing disclosures of confidential pre application advice would discourage full engagement with pre application advice process. This would be by current and future applicants who would hold concerns of public dissemination of such information. While the requester may not feel this is a satisfactory reason, numerous Commissioner Decisions show that the deciding authority disagrees. The providing pre-application advice under EIR would set a precedent that would have a wider impact on the planning process itself.

Is there a Public Interest argument for disclosure?

This review has assessed the public interest argument in the original response. The Review has agreed with all the arguments presented. There is always a public interest argument in favour of disclosure. Planning applications often facilitate a higher level of transparency. In the submission of the review it appears that the public interest argument should be favoured due to the fact this is a pending appeal. The council contests this being a legitimate argument when analysing public interest. While it may create a general public interest around favouring disclosure. This also creates arguments against disclosure. If this is indeed a pending appeal case, then the impact of wider disclosure could have a broader impact on other applications. It strengthens the potential damage to the pre-application procedure itself. It is also believed that this is an integral part of an appeal then standard disclosure will be made. Therefore there is little to gain for the wider public. The planning application process itself is transparent and the public interest is alleviated with this wider disclosure of the application process. Pre-application does little to support this.

Reviewing decision notices shows that the commissioner supports the position that public interest does not support disclosure of pre application advice as a precedent. While the council appreciates the ICO will review decisions on their own merit. We have provided examples of decision notices that show the level require for Pre application advice be disclosed.

Is there a Public Interest argument for non-disclosure?

In Paragraph 41 of decision [IC-282440-Y7D8](#), the commissioner states that applications that involve pending decisions, including appeals, would potential inhibit this process and therefore strengthens the argument against disclosure. In this instance the Commissioner found the public interest favoured non-disclosure.

Decision [IC-292887-Z7J4](#), involved a large and controversial decision relating to a large scale solar farm. In this instance, despite the Commissioner defining the position as marginal, still found that the public interest did not favour disclosure. This is an example of a controversial decision that had a strong public interest position favouring disclosure not being sufficient to

circumvent the importance of maintaining the confidentiality of proceedings in the Pre-application process.

[IC-253477-S4D1](#) Applied a public interest relating to pre-application on a site that was currently under appeal. In Paragraph 25 identified this as a reason that strengthens the argument against disclosure.

While the commissioner would review all cases on their own merit, it is highly unusual the commissioner to side with disclosure in cases relating to pre-application advice has been exempted under Regulation 12(5d).

Considering the above case notes, your submission and the Public Interest test provided in the original response we can only conclude that the test was applied correctly in this instance.

Appendix V

Will Ridalls

From: Tony Aspbury [REDACTED]
Sent: 08 September 2023 12:38
To: David Seaton; Sarah Smith
Subject: Fwd: Proposed Development of Area B of the Tiverton Eastern Urban Expansion and Waddeton Park Appeal Reference: App/Y1138/W/22/3313401
Attachments: WCL-Letter-MDDC-R-Marsh-PL-APP-08-09-23.pdf

David/Sarah,

Please see attached a letter from a third party sent to the Council and PINS which appears not to have been sent to the you obo the Appellant.

I now attach same.

Tony Aspbury

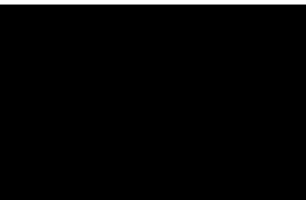
Get [Outlook for Android](#)

From: Justin Dodge [REDACTED]
Sent: Friday, September 8, 2023 11:33:43 AM
To: rmarsh [REDACTED] Robert.wordsworth [REDACTED]
<Robert.wordsworth@planninginspectorate.gov.uk>
Cc: abeecham [REDACTED] appeals@middevon.gov.uk
[REDACTED] cmccombe [REDACTED] Tony Aspbury
[REDACTED] John Schuttkacker [REDACTED]
<jmbuilding1 [REDACTED] davidmilford [REDACTED] davidmilford [REDACTED]>
Subject: Proposed Development of Area B of the Tiverton Eastern Urban Expansion and Waddeton Park Appeal Reference: App/Y1138/W/22/3313401

**FAO. Richard Marsh, Director of Place, Mid Devon District Council
And FAO. The Planning Inspector in respect of Planning Appeal Ref: App/Y1138/W/22/3313401)**

I am e-mailing in respect of the forthcoming planning inquiry, reference above.
Please see the attached letter, in respect of this matter.

Kind Regards



Justin Dodge
Director



Tel: [REDACTED]

Website: www.westcountryland.com

Devon Office: Little Orchard, North Road, Yelverton, Devon PL20 6EE

Cornwall Office: 1 Riverside House, Heron Way, Truro, Cornwall TR1 2XN

Our Ref: TivEUE-It-lpa-07-09-23

Mr Richard Marsh

Director of Place

Mid Devon District Council

Phoenix House

Phoenix Lane

Tiverton

EX16 6PP

Friday 8th September 2023

Dear Richard,

Re: Proposed Development of Area B of TIV 1 EUE in the Mid Devon Local Plan and Waddeton Park Appeal Reference App/Y1138/W/22/3313401

I would like to take this opportunity to write to you, to set out our position in respect of Area B of the Tiverton Eastern Urban Expansion area, TIV1, allocated in the Mid Devon Local Plan.

We are experienced, specialist land developers, who work exclusively in Devon and Cornwall. Our specific expertise encompasses land acquisition and assembly to unlock land for development, and to obtain planning permission. We have a significant track record of success in this industry.

Your council has allocated a significant area of land for residential development together with an indicative masterplan to accompany the allocation within the Local Plan, identified as TIV1. Area A is being developed by Redrow Homes, and planning permission has been granted for the first phases of development, which is currently under construction. At present, Area B is currently dependent on the delivery of the Area A estate road, to provide access, which will take some time before it connects to the balance of the allocation. The Local Plan period is from 2013 – 2033, so still has considerable time to run.

We are working in partnership with Mid Devon Homes, who have procured land to create a new, alternative access to service Area B, without the need to wait for the connection from Redrow, as identified above. This alternative access is contained entirely within the existing settlement boundary and the allocated area, without the need for any land outside of that, identified by the Local Plan.

Accordingly, we believe that there is a fantastic opportunity here, to accelerate the delivery of the Area B allocation, without the need for the Redrow link, or any other alternative access, such as that proposed by the Waddeton Park scheme, to the east. Which your council have recently refused planning permission, under reference 21/01576/MOUT, and is currently the subject of a non-determination planning appeal, under reference App/Y1138/W/22/3313401.

CORNWALL OFFICE

1 Riverside House, Heron Way,
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DEVON OFFICE

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Industrial Park, Plymouth, PL6 7SG

T 01752 967616

E john@westcountryland.com

We understand that a key part of the appellant's case and justification for their scheme, which would form a departure from the Local Plan, is the creation of a new road junction and connecting estate road to serve Area B.

We have read the council's proof of evidence, prepared by Antony Aspbury, and we concur with the content of this document and the council's previous reasons for refusal. We do not consider that, at this time, when the Local Plan has 11 years to run, there is any need to depart from the council's local plan and allocation. Indeed, we would like to supplement Mr Aspbury's proof of evidence, by confirming the following;

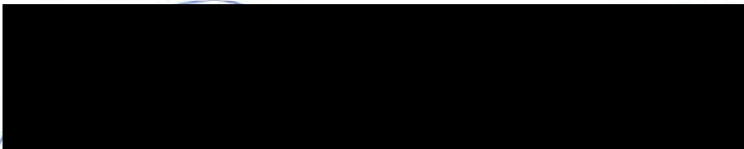
1. In conjunction with Mid Devon Homes, we have sufficient land (within the allocation area and existing settlement boundary) to successfully deliver a suitable alternative access to Area B.
2. We have employed a specialist highways consultant, to review our site and consider the most appropriate form of junction/access design and visibility. The junction and access can be designed to provide a suitable two-way junction, with sufficient capacity to service the Area B allocation, to connect to the Area A link/estate road in due course, and to accommodate buses, and to provide the bus route/loop, in accordance with the aspirations of the Local Plan.
3. We have engaged with the Local Planning Authority, including a preliminary meeting in July, followed by the submission of a formal pre-application submission, dated 3rd September, specifically in respect of our proposed alternative access.
4. We have received a positive response to our pre-application submission above, from your planning officers. As part of that process, we have also engaged with Devon County Highways, who have also confirmed that the general principle of our access is acceptable.
5. Given all of the above, we are now committed to the preparation and submission of a planning application for the access and residential development of the first phase of Area B of the TIV1 allocation, within the next 12 months.

To summarise; we have sufficient land and the capability to deliver a technically compliant, secondary access to Area B. As such, we believe that the council is right to resist any further development, outside of the allocation within the Mid Devon Local Plan, which would be premature, whilst the local plan still has so long to run.

The implementation of the Mid Devon Local Plan and development of Area B of the TIV1 allocation can be secured within the plan period, without need for development of additional land, outside of the allocation.

We hope that the content of this letter is of assistance to you in respect of the forthcoming planning appeal and we look forward to working with you and your officers to progress our planning application to deliver this allocation, in accordance with the Local Plan.

Kind regards



Justin Dodge (Director)

Westcountry Land & Homes and on behalf of Mid Devon Homes