CLOSING SUBMISSIONS
ON BEHALF OF
MID DEVON DISTRICT COUNCIL

IN THE MATTER OF AN APPEAL BY
WADDETON PARK LIMITED

LAND AT HARTNOLL FARM, TIVERTON, DEVON, EX16 4PZ
LPA REF: 21/01576/MOUT; 23/00011/PI
PINS REF: APP/Y1138/W/22/3313401

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

SEPTEMBER 2023

INTRODUCTION

1. This appeal arises from the non-determination by Mid Devon District Council ('the Council') of outline planning application 21/01576/MOUT, for the proposed extension to the existing business park for up to 3.9ha of employment land and up to 150 residential dwellings with associated open space and infrastructure (with means of access to be determined only) ('the proposed development') on land at Hartnoll Farm, Tiverton, Devon, EX16 4PZ ('the site'). A description of the site[1], and of the appeal proposal[2], is set out in the Main SoCG.

2. The Government is absolutely clear through the NPPF that "*the planning system should be genuinely plan-led*"[3]. That is no doubt why we are directed by them to approve *"development proposals that accord with an up-to-date development plan without delay*"[4] and why it is emphasised by the Government, through the NPPF, that "*the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making*"[5]. Where a planning application conflicts with an up-to-date development plan, "*permission should not usually be granted*[6]". "*Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed*"[7].

3. Though it is clear, and has been for a number of years, that the Government has a policy aim of significantly boosting the supply of housing[8], that does not mean delivering housing anywhere or anyhow. It is not carte blanche. The Government wants homes in the right places, not the wrong ones. The Secretary of State emphasised this most recently in his letter to all Councils dated 8th September 2023[9] which highlighted the "*principal elements*" of the Government's "*long-term plan for housing*"[10].

[1] Page 4, Main SoCG – **CD6**
[2] Page 5, Main SoCG – **CD6**
[3] Paragraph 15, NPPF
[4] Paragraph 11 c), NPPF
[5] Paragraph 12, NPPF
[6] Paragraph 12, NPPF
[7] Paragraph 12, NPPF
[8] Paragraph 60, NPPF emphasises this
[9] Received by the Council on 13th September 2023
[10] Note the section "*building more homes in the right places*" and the emphasis on "local plans" thereafter.

4. The appeal proposals would bring homes in the wrong place. The appeal site is outside of the settlement boundary for development. Housing on the appeal site is not what the Council has planned for. The Development would not be plan-led; even if one considers the Development Plan as a whole.

5. There is no need for the Development Plan to flex. The Council plainly has a 5YS of housing. The Council's expert 5YS witness Mr. Beecham was clear about that. There is no real suggestion, whatever the Appellant might like the Inspector to believe, that the strategies planned for in the Development Plan cannot be brought to bear. There is no reason, at all, to move away from what the Council has carefully curated.

6. But even if the Council is found not to have a 5YS of housing, that does not automatically mean that the appeal proposals should be permitted. The starting point remains the Development Plan[11]. Though the most important policies within it would be considered to be out-of-date as a result of the lack of a 5YS and the operation of footnote 8 of the NPPF, that does not mean that they are to be brushed aside. Appropriate weight must still be given to those policies, albeit not full. The Appellant, it is noted, runs no distinct argument that the most important policies are out-of-date; so, they must agree that they are in accordance with the NPPF.

7. Mr. Aspbury's evidence was clear that the most important policies for deciding the application[12] remain significant in terms of weight. Plainly the strategic policies are absolutely key. That the appeal proposals fall outside of the settlement boundary, thus not within the Council's strategy for development in this area, generates policy harm but harm that is not trivial. Harm that Mr. Aspbury was clear should result in the appeal proposals being dismissed irrespective of the benefits pointed to by Mr. Seaton, which the Council do not agree have the force the Appellant would hope that they would have.

[11] Paragraph 12, NPPF
[12] Using the wording in paragraph 11 of the NPPF. For him, these are at paragraph 4.2 of his PoE. The parties agreed what they consider to be the most relevant policies, synonymous with most important, in the main SoCG – **CD6** paragraph 7.2.

8. The Council has acted reasonably in this appeal. And they are not anti-development. Though starting with six putative RFR, the Council has not stubbornly stood by them ignorantly. Rather, it has continued to actively review its case throughout reducing down the RFR as and when additional information has been presented to it; information which, with respect, the Appellant could've sought to produce sooner before launching an appeal[13].

9. The continued dispute has only ever been because the Council genuinely considers the appeal proposals to fail to accord with the Development Plan and that none of the material considerations advanced by the Appellant suffice to set that position aside irrespective of the nature of the balance applied, flat or tilted.

10. These closing submissions now seek to expand further, in summary form, on the evidence that was heard during this inquiry and where the Council says that should take the Inspector in reaching his decision.

THE MAIN ISSUES

11. The main issues for determination in this appeal as set out by the Inspector at the outset of this inquiry are;

    i) Whether or not the Council has a 5-year housing land supply,

    ii) Whether or not the location of the proposed development is acceptable having regard to adopted national and local policies, and

    iii) Whether or not there is sufficient infrastructure to support the appeal scheme.

WHETHER OR NOT THE COUNCIL HAS A 5YS

12. The NPPF sets out national policy in regard to the supply of land for housing with Chapter 5 dealing with delivering a sufficient supply of homes. Paragraph 74 requires 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 against

[13] The Inspector is referred to the Council's Opening Submissions for the detail in this regard and in particular paragraphs 4 to 6 on pages 2 to 3 – **ID2**

their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The Council is clear that it can, and has, demonstrated to this inquiry a robust 5YS.

13. As detailed in opening, the parties had narrowed the issues between them prior to the opening of this inquiry as set out in the Housing SoCG and reflected in the agreed roundtable agenda. The 5YS requirement is now agreed to be 2,493 applying a 5% buffer[14]. The dispute between the parties relates to a relatively small number of sites whose deliverability status is disputed, a disagreement in respect of windfall allowance[15], and delivery over the plan period including from the TEUE.

14. The Council was clear going into the roundtable session that it had a robust 5YS of **5.41** years and that position has not changed. Though initially the Appellant had contended that the 5YS was 4.23 years[16], it was confirmed during the roundtable session that they conceded the 10% lapse rate on windfall sites of 1-4 units such that they issued an updated table illustrating their position[17] which is excerpted below. This demonstrates a revised position of 4.28 years 5YS:

PCL Supply Assessment conceding 10% lapse rate on windfall sites of 1-4 units

5YHLS Requirement	2,493
Components of Supply	**PCL Assessment**
Unconsented Allocations	21
Consented Allocations	1,477
Consented Windfalls (1-4 dwellings)	393
Consented Windfalls (5+ dwellings)	232
Communal accommodation	9
Windfall Allowance	0
Total	**2,132**
Supply Duration	**4.28 Years**

[14] Table 2, Housing SoCG agrees the 3,128
[15] Paragraph 3.5 and Table 1, Housing SoCG. Disputed sites being TIV10 – Roundhill; TIV9 – Howden Court; TIV1-5 TEUE; Creedy Bridge (CRE5 Pedlerspool); Alexandra Lodge and TIV16 – Blundell's School
[16] Table 3, Housing SoCG.
[17] **ID11**

The appropriate 'standard' for site deliverability assessment

15. As set out above, the NPPF requires local planning authorities to identify 'deliverable' sites sufficient to provide at least five years' worth of housing supply. Before setting out a summary position with regard to each of the disputed sites, and the suggested deliverability status of each, it is helpful to briefly outline what it means to be deliverable in the context of the NPPF and PPG.

16. Annex 2 to the NPPF provides a definition of deliverable, namely:
"Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years".

17. The PPG guidance on housing supply and delivery notes[18] that "*to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions*", and directs back to the definition in Annex 2 of the NPPF. It provides examples of what clear evidence "*may include*", namely:

- *current planning status – for example, on larger scale sites with outline or hybrid*

[18] Paragraph 007 Reference ID: 68-007-20190722

or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;

- *firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;*
- *firm progress with site assessment work; or*

18. Plainly the examples listed are not exhaustive and that the Inspector may be of the view that other forms of evidence constitute clear evidence demonstrating deliverability.

19. The Appellant has drawn attention in this context to a decision of Inspector Harold Stephens at Caddywell/Burwell Lane, Great Torrington, Devon[19] and, in particular paragraph 57 where he stated that:
'Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are the planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute 'clear' evidence. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing form their own site and consequentially remove the need for other sites to come forward'.

20. It must be emphasised in this context that whether or not it is considered that clear evidence has been demonstrated in a particular case is a matter of planning judgement for the individual planning Inspector deciding that particular appeal, in line with the NPPF and guidance of the PPG. What Mr. Stephens is not saying here, and which the

[19] **CD18**

Appellant seemed to accept, is that emails or pro-formas from developers cannot be relied upon. Rather, such evidence should be contextualised for the reasons outlined i.e. not taken at face value. As Mr. Beecham says, this does not mean that information cannot be provided in such a format, if upon such interrogation it is considered that sufficient information has been provided constituting clear evidence[20]. Moreover, it must be remembered that developers and landowners are also incentivised to provide overly cautious assumptions of delivery to invite and encourage opportunities to progress other development sites in their ownership/control on the basis of housing land supply challenges[21].

21. Mr. Beecham was clear in his written and oral evidence that he has not taken emails and pro-formas at face value. Rather, whilst confirmation from a developer forms part of the evidence, the Council has also taken into account a sites current planning status, progress made towards submission of an application, site assessment work, information gathered from Development Management Case Officers, site-specific data gathered through the Council's monitoring records including any relevant information about site viability, ownership constraints or infrastructure provision[22]. Where there is evidence to indicate that a site is deliverable within five years but there is some uncertainty as to exactly how the site will build out within the five-year period, the trajectory is guided by the baseline assumptions in the HELAA Methodology[23] and where additional evidence is available, such as past delivery rates or developer's anticipated delivery trajectories, this will supersede the HELAA build out rate assumptions[24].

[20] Paragraph 6.10, PoE of Arron Beecham

[21] Paragraph 6.11, PoE of Arron Beecham. Note further what he says in this paragraph supporting this statement regarding research undertaken by Bradley (2020) that the '*accounting processes for a 5 year housing land supply in England normalises land speculation as the condition for housebuilding whilst instituting perverse incentives for landowners and developers to reduce the supply of new homes*',

[22] Paragraphs 6.7 and 6.12, PoE of Arron Beecham.
See also paragraph 6.6 - relevant parties were initially contacted by the Council over the period May – August 2022; although the Council's evidence has been continuously updated as further information has become available. Appendix B of the PoE provides further details of the information request sent out to developers, site promoters and landowners, including the letter template and survey pro-forma are provided in Appendix B. Detailed responses received are attached in full at Appendix C.

[23] Appendix 2, Arron Beecham's PoE: HELAA Methodology - May 2021 (middevon.gov.uk) Market conditions model for calculating housing delivery rates – also **CD27**. This provides 'baseline' assumptions for the expected build out of sites according to size and planning status and is based on historical evidence of delivery in the Local Housing Market Area (Exeter HMA) endorsed by representatives from the housebuilding industry who sit on the independent HELAA panel: see paragraph 6.8, PoE of Arron Beecham.

[24] Paragraph 6.8, PoE of Arron Beecham

22. In Mr. Beecham's view[25] the Council has adopted a highly cautious approach to housing land supply which is clear from both the inclusion of sites and the exclusion of other key allocations from the 5YS. That is why no delivery is included for key strategic sites such as Phase 2 of the North West Cullompton Urban Extension or Culm Garden Village. He considers that there remains a genuine realistic prospect of delivery from some of these sites within the 5YS; however, they are not included owing to a level of uncertainty over exact timescales[26]. That is a robust approach.

23. I now turn to briefly address each disputed site with this in mind.

TIV10 – Roundhill

24. The Inspector is referred to Appendix 1 table A(1)[27] of Mr. Beecham's PoE which deals with unconsented allocations where this site features 7 from the bottom of the table. That illustrates the Council's proposed delivery of 14 dwellings in 2025/26 (year 4).

25. The site is wholly within the Council's ownership and Mr. Beecham described the information he had received from senior officers in the Council in support of his conclusions, including at Appendix C of his PoE[28] which made clear that an application is scheduled for quarter 4 of 23/24 with delivery during the 25/26 monitoring year. The email in Appendix C demonstrates that funding has been earmarked within the Council's medium term financial plan to bring forward the site. It has never been the case that Three Rivers Development Ltd would be the developer; rather, the site will be delivered by the Council's HRA (Housing Revenue Account) development programme as 100% Affordable Housing. Mr. Seaton's criticism that the HRA is "*obviously a way short from a named developer*" is unfounded, as the Council is to be the developer, as Mr. Beecham explained. It is to be a Council-led scheme, with the Council managing the housing as a stock holding authority, hence the appropriateness and robustness of having secured evidence and advice from senior officers across the Council which there is no reason to question. The very recent email evidence should be seen in the context of Mr. Beecham not having asked for information on supporting the Council's approach

[25] Paragraph 6.13, PoE of Arron Beecham
[26] Paragraph 6.13, PoE of Arron Beecham
[27] PDF page 2
[28] PDF page 40

but rather an updating position to add to the previous position given to the Appellant in March 2023[29].

26. Though Mr. Seaton forcefully questioned the legalities surrounding the Council developing the site and managing the resultant housing, it is within their gift. The Council is already developing Affordable Housing with schemes under way; Mr. Beecham noted in particular two schemes and that the Council's work has been award winning. The Council has produced a summary note of various excerpts of legislation appended to this closing; however, key to this is section 17 of the Housing Act 1985 which provides the principal power to purchase land and housing, in order to provide housing by erection, or conversion, under section 9. The Council considers that the decision as to whether or not to add to their housing stock is for them[30].

27. The Appellant also questions the potential for mineshafts on site which may at least impact deliverability within a precise timescale. However, as Mr. Beecham explained, the HELAA panel raised no fundamental deliverability issues and no particular concerns regarding mineshafts as part of considering the site. The panel comprises representatives from the Council, DCC and other public organisations as well as representatives from the property and development sector with a mix of volume housebuilders, SMEs, registered providers and any other economic and housing development experts as needed[31]. The Council has taken the precautionary measure of including appropriate policy mitigation through its Local Plan policies to ensure that the issue is investigated and suitable mitigation implemented. But there is no evidence that this would be a showstopper, its inclusion was endorsed by the Examination Inspector for the Local Plan, and it will be noted it features later in the trajectory.

TIV9 – Howden Court

28. The Inspector is again referred to Appendix 1 table A(1)[32] of Mr. Beecham's PoE which deals with unconsented allocations where this site features at the very bottom of the

[29] **CD25**
[30] subject to Wednesbury unreasonableness: R. v Lambeth LBC Ex p. A (1997) 30 H.L.R. 933, CA.
[31] Explained by Arron Beecham during the roundtable session
[32] PDF page 2

table. That illustrates the Council's proposed delivery of 6 dwellings in 2024/25 (year 3).

29. The Appellant raises similar issues with this site insofar as site ownership and the absence of a developer, and the Council relies on the same email from officers at Appendix C of his PoE[33].

30. During the roundtable session, Mr. Beecham acknowledged Mr. Seaton's concern that the email refers to Howden Court being "*slightly further out in the programme*" than Roundhill and fairly conceded that it may fall later in the trajectory, towards the final year. However, he was clear that this is a very minor scheme of only six units which is part of a previously completed development wholly within Council ownership. It is the Council that will bring the site forward, with the intention being that it would be Affordable Housing. Though the allocation is for 10 dwellings, the proposal is for only six. In his view, there remains a realistic prospect of delivery within the five-year period given its size and that it is relatively unconstrained in terms of Local Plan policy.

TIV1-5 – TEUE

31. The Inspector is referred to Appendix 1 table A(2)[34] of Mr. Beecham's PoE which deals with consented allocations where this site features 7th from the bottom of the table. In short, this notes the outline permission 14/00881/MOUT for the site in respect of which the application reference 21/00454/MARM in the row below is the first RM approval. There is a further RM application for 122 dwellings currently pending decision. The Council illustrates the proposed delivery of 98 dwellings; 48 in 2025/26 (year 4) and 50 in 2026/27 (year 5).

32. It is the Council's view that it is logical that, subject to the determination of the pending RM application, Redrow will simply turn from the site it is currently building out (to which 21/00454/MARM relates) to the other (to which the pending RM application relates). Mr. Seaton accepted that they "*probably will move across to the blue hashed area in due course*" but questioned the clear evidence that this will happen within the

[33] PDF page 40
[34] PDF page 3

five-year period in doing so pointing to the current economic circumstances – such as high interest rates and low sales rates - and that developers are reacting by reducing build out rates. However, there is no suggestion this is preventing Redrow from building out sites in this location. As Mr. Beecham emphasised, the Council has seen significant delivery at the TEUE with a number of homes now completed and developers "*continuing to deliver at pace*". Redrow are on site at the moment in respect of application 21/00454/MARM with 40-50 units commenced. There is a realistic prospect that that they will continue. There is "*clearly still a demand in the area*", in Mr. Beecham's view, the delivery of the TEUE speaking for itself.

Creedy Bridge (CRE5 Pedlerspool)

33. The Inspector is again referred to Appendix 1 table A(2)[35] of Mr. Beecham's PoE where this site features three from the bottom of the table. That illustrates the Council's proposed delivery of 60 dwellings per annum in the last three years of the five-year period totalling 180 dwellings.

34. Mr. Beecham points to evidence at Appendix C to his PoE[36] from Bellway Homes which provides a 60 dwellings per annum build out rate. The Appellant questions the speed of delivery suggesting that the information is out of date, likely having been completed around May 2022 when the Bank of England interest rate was 1% and it being noted that there was at that time some delay in the timescales progressing the RM application. They say that the recent increase will have a major impact on housing demand and therefore housing delivery rates.

35. However, the information comes from a reputable developer with an RM consent issued in March 2023. As Mr. Beecham explained, Bellway Homes are an active developer in Mid Devon actively building out other sites with Meadow Park at Willand being built out at pace, which was not disputed. There has been a lot of activity on file to discharge conditions which Mr. Beecham considers suggests that they are building up to commence construction such that he has no concerns regarding the suggested build out rate. He further explained that he had, rather than taking the information provided by

[35] PDF page 3
[36] PDF page 52

Bellway at face value, already added to its robustness by moving back the delivery rate one year in the five-year period to allow for any delay in the provision of a RM application and discharging conditions[37].

Alexandra Lodge

36. The Inspector is referred to Appendix 1 table A(3)[38] of Mr. Beecham's PoE where this site features in the first row. That illustrates the Council's proposed delivery of 45 dwellings in year one.

37. The site has full planning permission for 45 extra care apartments and there has been a technical start insofar as drainage. The Appellant questions a lack of progress since deemed commencement alleging that it is a stalled site pointing to Google imaging and a site visit carried out by his team[39].

38. Mr. Beecham fairly conceded in rebuttal and during the roundtable session that it was unlikely that there would be delivery in the exact timescales indicated i.e. 2022/23; however, he maintained that there was still a reasonable prospect that the site would be delivered within the five-year period. In his view, though there are known historic environment issues, there is active developer interest and the applicant is working with the Council to address the same.

TIV16 - Blundell's School

39. The Inspector is referred to Appendix 1 table A(1)[40] of Mr. Beecham's PoE where this site features four from the bottom of the table. That illustrates the Council's proposed delivery of 25 dwellings in 2025/26 and 50 in 2026/27.

40. There is a resolution to grant the outline planning application in respect of the site subject to a s106 agreement. Mr. Seaton contends that the site is in close proximity to

[37] Which notably Mr. Beecham said illustrates the *Caddywell* appeal decision point discussed above; he had considered the developer information in the pro forma but also information surrounding the planning status of the site and the HELAA methodology.
[38] PDF page 4
[39] Appendix 2, Mr. Seaton's 5YS PoE
[40] PDF page 2

the watercourse with an existing scrapyard on the site[41] which the Inspector will see on his site visit. He says that significant remediation is required and reprofiling of the land is needed to create a raised development area. It is unclear if this will necessitate an element of imported fill. He suggests that such preparatory works, progressing RM and discharging pre commencement conditions mean that there will not be delivery in the plan-period.

41. Mr. Beecham relies upon evidence from the agent at his Appendix C to his PoE which it will be recalled was updated during the course of the inquiry, the information in respect of this site having been missed from the PDF. The Inspector is referred to that update. In short, the site was considered through the Local Plan examination process and recognised for allocation. Though there are complicated elements, the Examination Inspector took a view that the site was deliverable and there were considerable discussions at the time with the Environment Agency. Mr. Beecham emphasised that it was in recognition of the issues to resolve that he had put delivery towards the end of the five-year period. He is satisfied this is realistic.

Windfall Allowance

42. The Council has included a windfall allowance in its 5YS calculation to account for the future delivery of currently unconsented windfall developments. That allowance is added to years 4 and 5 to avoid double counting since build out of windfall commitments is distributed over the first three years[42].

43. It is acknowledged that paragraph 71 of the NPPF states that:
"Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends…"

44. It is the Appellant's contention that this is a higher threshold than clear evidence and that it is not enough to project forward trends. The Council is criticised for its

[41] To the west of the 'T' on the map at Appendix 1 to the Housing SoCG
[42] Paragraph 6.21, PoE of Arron Beecham

methodology, in the Appellant's view, simply having regard to historic rates of delivery and not seeking to look forward at all. That is not accepted.

45. It should be noted that the NPPF, in stating that any allowance should be "*realistic*" requires "*having **regard***" (my emphasis) to the three matters which follow, which it is accepted includes *"expected future trends".* What it does not import is any specified standard or threshold for what constitutes "*having regard*", just that regard is had. It is plainly, ultimately, a matter for the Inspector as to whether or not he considers that there has at least been "*regard*" and whether whatever evidence he has seen and heard is in his planning judgement "*compelling*".

46. Mr. Beecham has clearly considered the strategic housing land availability assessment, historic windfall delivery rates and expected future trends as evidenced by his PoE, Rebuttal and oral submissions at the roundtable. He considers the authority's monitoring data to demonstrate that windfall sites have consistently formed a significant element of housing completions within the district even through periods of economic recession[43] setting out the Council's historic windfall sites provision at Appendix D, which he has taken into account. That he states that "*there is every reason to expect that they will continue to provide a reliable source of supply*[44]", and specifically addresses concerns raised by the Appellant - concerning brownfield sites having already been developed, double counting, and changes in the taxation of residential development via housing quotas and s106[45] - illustrates that he has had regard to expected future trends.

47. In short, housing completions on brownfield land has always comprised a very small component of overall completion figure such that "*it is highly unlikely that lack of availability of larger brownfield sites going forwards will make any material difference to future completions figures*"[46]. Double counting has not occurred as the HELAA methodology[47] establishes a robust methodology for determining housing potential of

[43] Paragraph 6.22, PoE of Arron Beecham
[44] Paragraph 6.22, PoE of Arron Beecham
[45] Paragraph 4.3, Rebuttal PoE of Arron Beecham
[46] Paragraph 4.3, Rebuttal PoE of Arron Beecham. He further notes that of the windfall data included within Appendix C of his PoE, there are only 14 completions on brownfield sites of 5+ units (but less than 20 units as these are already discounted as per the HELAA methodology).
[47] Appendix 4; **CD27**. See also page 21 of **CD27**. Paragraph 4.3, Rebuttal PoE of Arron Beecham.

windfall sites jointly agreed by partner Local Authorities and endorsed by the HELAA panel going forwards. All data used within the calculation of the windfall allowance is 2015 or later whereby development would have been subject to similar 'taxation' via affordable housing or any other infrastructure requirements, and the previous Development Plan for Mid Devon (in place until 2020) required higher proportions of Affordable Housing[48].

48. Indeed, further regard was had to the issue during the roundtable session where Mr. Beecham emphasised and expanded upon the above points including noting that recent changes in Government policy, such as in respect of PD rights, provide additional flexibility.

49. Mr. Beecham's view is clearly precautionary and, if anything, conservative having followed the HELAA methodology, which is clear that it was prepared by partner LPAs having regard to the NPPF. Larger sites have been deducted to avoid double counting.

Delivery Post 5YS period

50. Much of the Appellant's case is based on perceived delivery issues associated with strategic allocations including the Tiverton Eastern Urban Extension, the North West Cullompton Urban Extension and East Cullompton / Culm Garden Village.

51. As a preliminary point, it must be borne in mind that there is no specific requirement in national policy or guidance to ensure that sites in years 6+ meet the definition of 'deliverable' in the NPPF. Instead, the Council must ensure that they are 'developable'; namely in a "*suitable location for housing development with a reasonable prospect that they will be available and could be viably developed at the point envisaged"* per the definition at Annex 2. Mr. Beecham notes that this was established through the Local Plan 2013 – 2033 Examination and ultimately accepted by the Inspector in 2020[49].

[48] Paragraph 4.3, Rebuttal PoE of Arron Beecham.
[49] Paragraph 6.1, Rebuttal PoE of Arron Beecham. See also **CD60**.

52. As he emphasised[50], only a small component of such allocations is included within the 5YS where the Council has specific evidence of deliverability and indeed where site build out is progressing at pace. There is no requirement to deliver the entire local plan strategy, which has been informed by extensive evidence gathering and undergone an independent examination, in a five-year period. Mr. Beecham is confident that it will be delivered over the lifetime of the plan[51].

53. Issues raised regarding the provision of a link road to Area B of the TEUE are dealt with when considering benefits below. Though it is accepted that the Council has included 138 dwellings outside of the plan period, that does not by any stretch indicate total plan failure. There will be at least two local plan reviews during the remaining plan period and sufficient time to give confidence in the Council's position. With regard to Cullompton, it is understood that the main point of concern raised is the delay in the provision of the relief road. The Appellant points in particular to the Local Plan Inspector's report[52] which notes what may happen were it to run into problems emphasising that this would result in unplanned sites coming forward. However, it is also important to bear in mind that the Inspector did consider at that time concerns "*some"* has raised that the revised programme for the delivery of the CTCRR is still unrealistic and concluded that "*what the Council has put forward remains optimistic, but it is not unreasonably so"*[53]. Furthermore, though it is acknowledged that the Inspector noted the need for rapid progress, he also acknowledged "*the Council's obvious appreciation"* of that and that he considered *"that they will do all they can to bring it forward quickly, and make decisions about it in that context".* Mr. Seaton considers that as three years have passed since that report insufficient progress has been made, that it has not been rapid enough. But he does accept that the Council are making progress[54]. It would always have taken time from the start of the plan period to carry out preliminary and technical work, and there are still 10 years to run in the plan period.

[50] Paragraph 2.3, Rebuttal PoE of Arron Beecham
[51] Paragraph 2.3, Rebuttal PoE of Arron Beecham
[52] **CD60**, paragraph 50
[53] **CD60**, paragraph 49
[54] In XX it was put to Mr. Seaton that a technical scheme of development has occurred, which is the context within which he accepted that progress had been made.

Shortfall in 5YS

54. Though the Council is very clear that its 5YS is robust, were the Inspector to find a shortfall it becomes relevant to consider how that should be assessed and how that might impact his planning judgement.

55. As the Court made clear in **Hallam Land**[55] "*...in a case where the local planning authority is unable to demonstrate five years' supply of housing land, the policy leaves to the decision-maker's planning judgment the weight he gives to relevant restrictive policies. Logically, however, one would expect the weight given to such policies to be less if the shortfall in the housing land supply is large, and more if it is small*…". Mr. Seaton rightly accepted this point[56]. Insofar as the weight to be given in such circumstances, the Court further held that it "…*is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet"*[57].

56. Mr. Seaton accepted[58] that even on the Appellant's best case, there would be a "*limited*" shortfall. That must be right.

57. That is not only because of the numbers, but on the Council's case because their monitoring data confirms a pipeline of 1,652 homes in total, of which 639 have commenced and 1013 remain unimplemented with planning permission; evidence of a strong pipeline of development that is coming forward in Mid Devon[59]. Any shortfall is unlikely to persist for an extended period. Mr. Beecham's evidence is clear that the Council works proactively to accelerate housing delivery in the district, including proactive master planning for key strategic allocations, securing infrastructure funding and engaging positively with landowners and developers[60].

[55] **CD 23**, paragraph 47
[56] In XX
[57] **CD23**, paragraph 51
[58] In XX
[59] Paragraph 7.3, PoE of Arron Beecham
[60] Paragraph 7.3, PoE of Arron Beecham

WHETHER OR NOT THE LOCATION OF THE PROPOSED DEVELOPMENT IS ACCEPTABLE

58. This focus of this main issue is RFR1[61]. The Council remains of the view that this is sound and sustainable in itself as a stand-alone reason for withholding Planning Permission[62].

59. In XX of Mr. Aspbury, the Appellant took issue with how RFR1 is constructed suggesting that it is predicated on the Council having a 5YS; the implication being if it doesn't, there might not have been a RFR. It is suggested that a more reasonable and proper interpretation of RFR1 is that it is a reason with a number of parts but that each stand on their own merits.

60. That is clear when one reads the wording in full[63] and sees from its construct that it is in fact made up of more than just two components including that the proposals are on Grade 1 BMV land, an issue that the Council agreed prior to this inquiry had fallen away without the Appellant suggesting in turn that RFR1 as a whole then failed. Mr. Seaton accepted[64] that though he considered it reasonable to read RFR1 as a whole, trying to understand the use of commas within it he understood why it was read in the alternately proposed way. It is suggested that there is nothing in the Appellant's point that should cause concern.

61. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions be made in accordance with the Development Plan, unless material considerations indicate otherwise. For the purposes of this decision that is the Mid Devon Local Plan 2013-2033[65], the policies of most relevance being agreed between the parties[66] but including a number of spatial strategy policies including S1-S4 and

[61] **CD2** – with the omission of reliance on BMV Land as a RFR
[62] Paragraph R2.14.2, Rebuttal of AA
[63] At **CD2**: "*By reason of the site's location, which is defined as countryside, on Grade 1 BMV agricultural land, beyond a settlement boundary identified within strategic policies S10-S13 of the adopted Local Plan, and because the Local Planning Authority can demonstrate an up-to-date housing 5 year land supply, the proposed development of 150 dwellings is contrary to Policies S1, S2, S3, S4 & S14 of the Mid Devon Local Plan 2013-2033 and guidance within the National Planning Policy Framework".*

[64] In XX
[65] **CD12**
[66] Paragraph 5.2, Main SoCG – **CD6**. It was the evidence of both parties in EIC and XX that the phrase is considered synonymous with 'most important'. It will be noted that Mr. Aspbury, at 4.2 of his PoE, takes a different view as to the most important policies.

S14. Mr. Seaton agreed[67] that the Development Plan is one that was relatively recently adopted and thus relatively recently found sound.

62. Mr. Aspbury was criticised for not having included DM18 as a most important policy in his own analysis; however, he plainly considers it to be a relevant policy[68]. He has clearly focused on the policies in RFR1 as most important given they are the focus of Council's reason for taking issue with the scheme. Inevitably, therefore, this concentrates on the housing element of the proposal; but that does not mean that Mr. Aspbury has not been cognisant of the reality that this is a proposal for a mixed-use and it is that mixed-use which must be considered against policy.

63. It was agreed by Mr. Seaton that the NPPF is an important material consideration and that paragraph 15 sets out that "*the planning system should be genuinely plan-led*". That emphasises the importance which the Government places on the "plan-led" system. It was put to Mr. Seaton that if a proposal is plainly in conflict with policies in the plan, granting planning permission for it might be seen as undermining the credibility of the plan[69]. He accepted that to be "*a possible outcome*"[70]. It is of note that in his recent letter of 8th September 2023, the Secretary of State stated that "*we know that local plans are the best way to ensure the right homes are built in the right places, so we are introducing reforms to make plans simpler, shorter and faster to prepare*".

64. Turning to the structure of the Development Plan, it is section 2.0 which sets out the development strategy and strategic policies[71] – the 'S' policies – with section 3.0

[67] In XX
[68] Paragraph 4.2, PoE of Mr. Aspbury
[69] See see paragraph 56 of the Court's decision in *Gladman* – **CD22**: *56. Paragraph 15, which opens chapter 3, "Plan-making", emphasises the Government's adherence to the "plan-led" system. The policy in paragraph 15, that "the planning system should be genuinely plan-led", underpins the whole of the NPPF. As Mr Honey argued, the question of whether granting planning permission for a proposed development is consistent with this fundamental policy of the NPPF may be judged by the proposal's compliance or lack of compliance with the relevant policies of the development plan. If the proposal is plainly in conflict with policies in the plan, granting planning permission for it might be seen as undermining the credibility of the plan, inimical to the "plan-led" system itself, and contrary therefore to a basic policy of the NPPF. This might be an "adverse [impact]" within paragraph 11d)ii. But as Mr Honey submitted, this could only be determined if the relevant policies of the development plan were taken into account in the paragraph 11d)ii assessment*. Mr. Seaton suggested this be read with paragraphs 59-61.
[70] In XX
[71] page 14

moving to deal with site allocations before section 4.0 deals with managing development – the 'DM' policies in the plan.

65. It is agreed that the appeal site is not an allocated site[72] and is outside the settlement boundary of Tiverton in the countryside[73].

66. It is obvious when one considers the structure and layout of the Development Plan, and how it seeks to operate as a whole, that the S policies set out the overarching strategy of what the Council wants to achieve – the fundamentals – and the DM policies assist with how to then manage the development strategically planned for to carry that strategy forwards. It is plainly to consider that the strategic policies have a greater importance, where relevant to a given proposal, than the development management policies which, though important, serve to assist in ensuring that strategy is achieved.

67. Policy interpretation is a matter of law. It is accepted, as per *Tesco v Dundee*[74], that policy shouldn't be construed in the same way as a contract. But it is the Council's view that the correct interpretation of the relevant strategic policies in this appeal is clear without the need for over analysis but, rather, when considering the basic meaning of the words used.

68. Policy S1 deals with Sustainable development priorities[75] and is the core sustainability policy in the plan. It sets out "strategic priorities"; the requirements necessary for the creation of sustainable communities. A pre cursor to the list is that "*all development will be expected to support the creation of sustainable communities by*". Mr. Aspbury is clearly right that one needs to comply with all of that listed insofar as relevant to the proposals.

69. Mr. Aspbury reasonably agreed[76] that there is no hierarchy to the listed priorities, that b) onwards are either complied with or not relevant, and that the underlying objective

[72] Mr. Seaton in XX. Also note Site allocations section 3.0 plan **CD12** page 49
[73] Mr. Seaton in XX.
[74] **CD16**
[75] Page 22-23, **CD12**
[76] In XX

of a) – which Mr. Seaton agreed[77] is also relevant to the proposals, is complied with. However, Mr. Aspbury is clearly right that this does not mean that a) is in fact complied with nor does it mean that the policy may be said to be complied with as a whole. If he is right that compliance with the objectives of a) is insufficient then there would need to be actual compliance with it. The Appellant argues that there is because the phrase "*at Tiverton*" encompasses being adjacent to or around the boundary. However, as put to him in XX, it would only make sense to describe having arrived 'at Tiverton' for this inquiry if one were actually in the settlement boundary. It is also clearly the purpose of the strategy behind the Development Plan. Development is to be within the settlement boundaries; there are strategic policies which come later to deal with where that is not the case namely, relevant to this appeal, policy S14. The appeal proposals do not comply.

70. The same arguments are made by the Appellant with regard to policy S2 which deals with the amount and distribution of development[78]. Again, the appeal proposals do not comply. In respect of both policies, the conflict should be given significant weight. These are two key strategic policies comprising a fundamental part of the Development Plan.

71. Mr. Aspbury fairly agreed in XX that there is compliance with policies S3 and S4. However, it remains that policy S14 is not satisfied.

72. Policy S14[79] deals with development in the Countryside, which this is, and is agreed[80] to be a key policy between the parties. The Appellant says that there is compliance because they preserve character and appearance, enhance biodiversity, and promote sustainable diversification of the rural economy. In short, they suggest that a development may demonstrate compliance with only the first sentence of policy S14. In the alternative, they comply with the objectives of policy S14 such that there is only a technical breach. But, to use Mr. Seaton's phrase when criticising the Council, that is a gross misinterpretation of the policy.

[77] In XX
[78] Page 23-24, **CD12**
[79] Page 48, **CD12**
[80] Confirmed by Mr. Seaton in XX

73. The first sentence of policy S14 does, as Mr. Aspbury accepted in XX, set out four objectives to the policy with which the Appellant complies. However, as he qualified, there is an overall objective to the policy of permitting only certain types of development in the countryside. That objective underpins the whole policy which cannot be read as though one can cherry pick compliance with either the first or the second sentence. There is no 'or' in the policy wording for good reason.

74. That overarching objective is reflective in the second sentence which details which types of development are to be permitted and sets out the criteria such development should meet. It states clearly: "*Detailed development management policies will permit agricultural and other appropriate rural uses, subject to the following criteria".* Though Mr. Seaton sought to suggest in XX that it was the first sentence of S14 which is the permissive part, the literal words "*will permit*" in the second sentence of S14 make plain it is in fact that part which is permissive.

75. The appeal proposals are not agricultural nor an '*other appropriate rural use'*. Though there may be affordable housing included in the scheme, and the Council has been clear that the employment element would meet policy S14 crucially it would also meet DM18. And policy S14 is clear that the DM policies permit the type of development deemed to be acceptable subject to the criteria set out. Of course, irrespective of whether or not certain elements of the proposals might find in principle appear acceptable to policy if presented on their own, the appeal proposals are in fact a mixed-use scheme which, as the Appellant has in taking Mr. Aspbury to task been at pains to emphasis, and there is no use of its type permitted by policy S14. As Mr. Aspbury said, in his view the policy was never intended to provide for such uses. That is even if the Inspector were to accept the Appellant's late suggestion that this is an employment-led scheme which is not accepted nor has been a clear part of the Appellant's case before.

76. Though supporting text is not policy, it aids interpretation and the Inspector is asked to take note of paragraphs 2.81 to 2.83 which it is suggested only further aids the Council's point. Even reading S14 as a whole would not result in a conclusion of compliance.

77. If Inspector considers that the Council is correct that there is clear conflict with the policy, plainly significant weight should be directed to that conflict as it is a core strategic policy in the Local Plan. That is so even taking account of the Council's acknowledgment of how the employment element of the proposals might be received which, it is suggested, goes to the weight of the benefit of that provision.

78. The Appellant suggests that even if the Council is correct and they conflict with policies S1, S2 and S14 there is compliance with the Development Plan as a whole. But that can't be right either, even acknowledging Mr. Seaton's summary of case law and appeal decisions[81]. There are no mutually irreconcilable differences between the most important policies such that one must give way to the other. As *Tesco v Dundee* makes clear[82] the relative importance of a given policy to the overall objectives of the development plan is essentially a matter for the judgement of the decision maker. As has already been discussed, it is the Council's view that the Inspector can reasonably conclude that the strategic policies of the Development Plan have a greater importance in the basket of policies than the DM policies given their purpose, particularly S1, S2 and S14 which guide strategically the placement of development, and that given the conflict with those policies he could comfortably conclude that there is not compliance with the Development Plan as a whole.

Harm

79. As to the harm that would flow from such a breach, there has already been discussion in these closings as to the importance of a plan-led system and the potential impact of a breach on the credibility of the Development plan. Though described as an in-principle breach, it is more than merely 'technical'[83]. The settlement boundaries and distinction between land within them and that outside them is clearly intended to be clear-cut and determinative and not fluid or permeable[84]. The fact that the site lies immediately to the east of the TEUE is not an objective, site-specific, spatial planning justification for its development[85]. There is no need for the boundary to flex. For it to

[81] Page 21 of his PoE. It being noted that Mr. Seaton set out in XX that his reliance on the Soham case at **CD17** was to simply demonstrate that there can be non-compliance with policy.
[82] Paragraph 34, **CD16**. And Mr. Seaton accepts.
[83] Paragraph R2.13.10, Rebuttal of AA
[84] See paragraph 4.8, PoE of AA
[85] Paragraph R2.4.2, Rebuttal of AA

do so would notably harm the overall 'integrity' and effectiveness of the Local Plan undermining the plan-making process[86].

80. Boundaries have relevant role to play, particularly against the hierarchy in the Development Plan. They are indicative of where it considers development would be sustainable. Mr. Aspbury makes the point that there is a *sustainability argument in principle in policy terms*[87]. Though the development is capable of being rendered sustainable in itself, subject to a range of appropriate mitigation measures being secured, there is still a fundamental undermining of the sustainable objectives of the Development Plan. It is a fundamental objective of the Local Plan to deliver sustainable Development and it has been rigorously examined and found sound. It is implicit that the Local Plan provides for a sustainable pattern of development. The Local Plan has made a decision as to where to direct development in a sustainable way and if important policies are breached, that goes to the overall sustainability of development in the area impacting the overall strategy.

81. Allied to that harm is the potential for an unacceptable precedent to be set in respect of development outside of the settlement boundary[88]. Whilst it is accepted that each case is to be determined on its own facts, were the appeal proposals to be permitted they would provide an example of development being able to move outside and the boundary flexing which others may seek to rely upon. Though Mr. Aspbury fairly accepted that this is an unusual site, it is not wholly unique and in his terms is "*one bite*".

82. Overall, there is clear significant or substantial harm to which Mr. Aspbury gave significant weight. In the event that there is found to be no 5YS, that weight would not change as the strategic harm remains.

WHETHER OR NOT THERE IS SUFFICIENT INFRASTRUCTURE TO SUPPORT THE APPEAL SCHEME

83. As noted in opening, the Council fairly reconsidered initial requests for contributions in respect of transport and waste, which are not pursued.

[86] See paragraph 4.8, PoE of AA and Paragraph R3.2 of the Rebuttal of AA
[87] See the additional SoCG
[88] See the additional SoCG

84. It remains the Council's case that DCC's request for an education contribution is CIL compliant as detailed in the CIL Compliance Statement produced by Mr. Aspbury on the Council's behalf. Nothing that the Council heard from either DCC or the Appellant during the relevant roundtable session changed their view. For the avoidance of any doubt, the Council maintains its position that the NHS contribution sought is not CIL compliant. Whether or not NHS contributions have been agreed in any cases in the past, it remains that it is not the Council's practice to agree to such contributions as a matter of course. Insufficient evidence has been demonstrated here.

THE PLANNING BALANCE

85. As set out above, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions be made in accordance with the Development Plan, unless material considerations indicate otherwise. The Development Plan and weight to be given to the most important policies within it have already been discussed above thus are not repeated.

86. To be clear, there is no suggestion being made by the Council that a numerical or forensic approach should be taken to the planning balance. But it is plainly helpful to understand where each planning witness pitches the weight to be applied to various benefits and harms in order that there can be a better appreciation of the reasoning that has been applied.

87. Allied to that, it is helpful to remember the scales adopted by both experts:
    i) Zero, limited, moderate, significant and substantial – Mr. Aspbury; and
    ii) Zero, limited, moderate, significant and very significant – Mr. Seaton.

88. The NPPF is a material consideration and sets out a presumption in favour of sustainable development at paragraph 11. The Appellant contends that the tilted balance at paragraph 11 d ii) applies and that the most important policies for determining this appeal are out of date by virtue of footnote 8 and the Council's alleged lack of 5YS. The Council disagrees.

89. Even if the Council cannot demonstrate a 5YS, triggering the tilted balance, paragraph 12 of the NPPF is clear that the Framework does not change the primacy of the Development Plan is not displaced. The policies most important to determining this appeal are not automatically given no or limited weight; due weight should still be applied in accordance taking account their consistency with the NPPF, noting that Mr. Seaton does not allege any inconsistencies with the Framework. It is a matter for the Inspector; Mr. Aspbury's view is that significant weight remains appropriate.

BENEFITS

90. There are a number of benefits to the appeal proposal which Mr. Aspbury acknowledges. He helpfully provides a summary table of both his and Mr. Seaton's positions[89]:

Benefit	DS Weight	APA Weight
Employment Provision	Very Significant	Moderate
Renewable Energy Linkage	Significant	Moderate
BNG	Significant	Moderate
Link Road to TEUE	Very significant	Zero
Housing (including affordable and custom build)	Very significant	Significant

Link Road to TEUE

91. In short, the Appellant's case[90] is that the link road the appeal proposals will provide will also provide a through route to the TEUE, unlocking 'Area B' of that site which is unlikely to benefit from a suitable road access to that area for a considerable period and is, in their view, the only way that the Council can give themselves a 'fighting chance' of any significant delivery from 'Area B' during the Development Plan period. That is not accepted.

[89] Paragraph R2.14.3, Rebuttal PoE of Mr. Aspbury
[90] Paragraphs 4.18-4.20, Planning PoE of Mr. Seaton. Confirmed in XX as a fair summary.

92. The principal point of vehicular access to Area B is established through the masterplan for Area A and can be seen on figure 33 of the Emerging SPD Masterplan for Area B[91]. It is acknowledged that when the OR[92] talks about "*a recognised access issue on the eastern side of the EUE, due to land ownership and phasing, which will impact the development in the medium to long term*", this relates to that proposed access. What it does not say is that the access road will not come forward at all[93].

93. Though the Appellant has raised concerns about the Area A access coming forward, there is plenty of time left in the plan period. It is right that neither the OL Permission nor RM thus far to include a condition or provide for the same. But, as Mr. Seaton accepted[94] it is possible that a future RM could come forward including the access. Though concerns were raised regarding the provision of Gypsy and Traveller pitches as a constraint, Mr. Seaton fairly accepted[95] that he cannot possibly speak for the landowner or Redrow nor any other potential developer as to how they would view the same. That Chessicombe Trust has not sold off other parts of the Area A land yet doesn't mean that they won't (nor that they have no confidential agreements underway). There is nothing from them to suggest that and Mr. Aspbury makes a good point regarding landowners tending to release parts of larger sites over time to retain value.

94. It is acknowledged that the OR recognises[96] that "*It is generally agreed that providing an eastern access as early on in the life of the EUE would be expedient to ensure the timely delivery of the EUE as envisaged within the local plan".* Further, that the Emerging SPD in respect of Area B[97] also acknowledges that "*The delivery of Area B would benefit from additional alternative vehicular access point"*[98]. But it continues *"There are a number of potential opportunities for this to be delivered, although all would require land beyond the direct influence of this SPD";* and neither the OR nor Emerging SPD say that an alternative is *needed* or needed *right now*.

---

[91] See **CD13** and **CD13a** page 68. **Appendix 1** of the Housing SoCG may also help to contextualise. The main road linking the neighbourhood centre and central part of Area A with Blundell's Road turns east to meet the boundary with Area B with the road alignment continued in the Area B masterplan, west-east across the site towards Manley Lane.
[92] **CD1** page 43
[93] Agreed by Mr. Seaton in XX
[94] During 5YS roundtable and confirmed in XX
[95] In XX
[96] At paragraph 4.9
[97] **CD13** and **CD13a**, taking account of the document circulated by the Appellant's upon my note that these two CD excerpts related to different versions of the SPD but that there were no material changes.
[98] **CD13a**, page 62, second column last paragraph

95. The Appellant points to a proposed alternative vehicular access indicated on figure 33 of the Emerging SPD[99]. However, that is plainly indicative, as the Appellant accepts. Indeed, the Emerging SPD states[100] that the "*actual position and alignment of routes, shape of blocks, streets and open space will of course vary from what is illustrated in the framework plan*". It is clear that any "*potential amended access arrangements should not include those at Mayfair and/or Manley Lane / Post Hill Junction"*[101]*;* but that is not insurmountable without the appeal scheme.

96. One such opportunity for an alternate access is presented by Westcountry Land in their letter of 8th September 2023[102]. That can be read by the Inspector without regurgitation here. What is clear, is that it is a submission from a reputable and experienced developer who has enough confidence in their scheme to have taken the effort to write to the inquiry. Though unfortunately details remain confidential, it has been confirmed that the Council has received a detailed design and TA; it is not at Mayfair and/or Manley Lane / Post Hill Junction coming from the north; and as per the letter it is considered bus routes can be provided.

97. Though Mr. Seaton made efforts to rebut it, and to be fair to him he has not seen the proposal, it is suggested that the Inspector should not made assumptions as to whether or not, as he says, the offer would require demolition or going through gardens resulting in harm. What is more appropriate is for the Inspector to assess what he does know and apply weight as he sees fit with regard to what he doesn't know. Even if the Inspector disagrees, and makes such assumptions, as Mr. Seaton accepted[103], even if there were a requirement to demolish/go through gardens it would be a matter of planning judgement. It is not insurmountable, it is suggested. There is insufficient evidence that the Appellant is needed to save the day either at all, but in any event now.

Housing (including affordable and custom build)

98. As was confirmed by Mr. Aspbury in XX, there is no disagreement with Mr. Seaton's conclusions that it is "*clear that identified affordable housing needs are significant*"[104].

[99] Page 68 **CD13** and **CD13a**
[100] **CD13a** page 61, column 1 at the bottom
[101] **CD13** page 31
[102] **ID3**
[103] In XX
[104] Paragraph 7.6, AH PoE of Mr. Seaton

Both Mr. Aspbury and Mr. Seaton apply significant weight[105]. It is understood that this includes the provision of custom build housing.

99. With regard market housing, in his written evidence Mr. Seaton also suggested significant weight[106] should be applied just like Mr. Aspbury but confusingly came to very significant weight overall for the benefits combined. That does not make sense. Though he explained in evidence that the market element was "very important" as it is "necessary to fund" the connection to the anaerobic digester, as was put to him that very much feels like double counting; using one benefit to uplift another benefit rather than judging the benefit on its own accord.

Employment Provision

100. Though much was made of the Council's failure to recognise a delay in allocated sites coming forward for commercial development, particularly in the Tiverton area, and a shortage in local employment sites, it was absolutely clear from Mr. Aspbury's evidence[107] that he had considered this issue. Similarly, the provision of 400 jobs and confidence of success in the site. The difference between the parties is whether the weight should be tempered bearing in mind the undisputed[108] reality that there is no district wide shortage[109]. That must be relevant. Yes, delivery in the past has not been where it should have been. And yes, new development proposals should accord with the Local Plan Strategy. But that does not mean that it is irrelevant that there is now no overarching need district-wide nor that the weight to be applied to the benefit of provision should not be reduced bearing in mind the clear difference in value of the benefit where there is both local and district-wide need.

[105] Paragraph 4.14, AH PoE of Mr. Seaton
[106] Paragraph 4.13, AH PoE of Mr. Seaton
[107] In EiC and XX
[108] By the Appellant
[109] Note paragraph 1.16 and 1.17 in the OR at **CD1**. The Employment Land Monitoring Review of the District concludes that the Council is meeting and exceeding the requirements of strategic Policy S2 which requires 147,000sqm of commercial floorspace comprising a range of employment-generating uses in the period 2013 – 2033. The total completed and committed employment floorspace (Class B space and Class E office, research and development, light industrial) is 175,929 sq m. The OR concludes that the proposed employment space "*is not therefore required to satisfy an unmet need in advance of employment at EUE and elsewhere in the District*".

Renewable Energy Linkage and BNG

101. It is absolutely acknowledged by the Council that these are separate benefits and they are taken together in this closing only because the issues in dispute are broadly the same. Though Mr. Aspbury fully acknowledges the material provided by the Appellant produces in respect of each, ultimately the benefits are very localised in nature. To attract greater weight in the scale, it is his view that they would need to be a wider-reaching. There plainly needs to be sufficient room in the scale for such elevated benefits.

102. More specifically with regard to the connection to the anaerobic digester, this is confined to the business park extension. It is that which the residential housing is required for (though it is noted that the full financial figures are not before the inquiry[110]).

Harm

103. Though there are such benefits, they would not be of nearly sufficient weight to override the fundamental policy conflicts and harm discussed above. It is clear that those are harms which would not and could not, be overcome either insofar as the normal s38(6) planning balance or, in the case of the Council being found not to have a 5YS, if one were to apply the tilted balance in which case the harm in any event "*significantly and demonstrably*" outweighs the benefits.

CONCLUSION

104. Whether through a straightforward section 38(6) planning balance or the application of the tilted balance, the identified policy harm and conflict cannot be overcome by any benefits or other material considerations such that the appeal should be dismissed

15th SEPTEMBER 2023 **LEANNE BUCKLEY-THOMSON**

NO5 CHAMBERS, LONDON

[110] As accepted by the Appellant yesterday

ABBREVIATIONS

5YS -	Five-year Housing Land Supply
AB -	Arron Beecham
AH -	Affordable Housing
DP -	Development Plan
DS -	David Seaton
EIC -	Examination in Chief
LPA -	Local Planning Authority
NPPF -	National Planning Policy Framework
PPG -	Planning Practice Guidance
ReX -	Re-examination
RFR -	Reason for Refusal/Reasons for Refusal
SoCG -	Statement of Common Ground
TA -	Tony Aspbury
XX -	Cross examination