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APPEAL BY WADDETON PARK LIMITED

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

LAND AT HARNOLLS FARM, TIVERTON

PROOF OF EVIDENCE OF

ANTONY ASPBURY BA MRTPI

**ON BEHALF OF MID DEVON DISTRICT
COUNCIL**

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1.0 INTRODUCTION

1.1 Qualifications and Experience

- 1.1.1 I am **Antony Peter Asbury**, a Director of **Asbury Planning Limited**, Town Planning and Development Consultants, which Practice was founded by me in 1983. Prior to that I held a variety of positions in Local Government. I have 45 years' post qualification experience as a practising Town Planner, nearly 40 years of that in private practice.
- 1.1.2 I hold a Bachelor of Arts Degree in Geography and I am a Member of the Royal Town Planning Institute.
- 1.1.3 I am a past President of the East Midlands Chamber of Commerce and Industry, the largest representative business organisation in the Region, and prior to that I was Chairman of the Environment Committee of the Chamber. I am also a past-Chairman of Newark Civic Trust. I am a past Board Director of Nottingham Development Enterprise Limited, a public/private sector partnership promoting the economic development of the Greater Nottingham conurbation. I am currently a private sector member of the Nottingham Express Transit (Tram) Partnership Board; a Council and Executive Committee Member of the Newark & Nottinghamshire Agricultural Society and Chair of the Society's Development Committee; and a member of the Board of the Newark Towns Fund.
- 1.1.4 My Practice acts for a wide range of public and private sector clients, including local authorities and other public agencies, landowners, developers, builders and operators. A number of major national and multi-national companies are counted amongst the private sector clients.
- 1.1.5 During my long and varied consultancy professional career I have, amongst other things acted as agent on numerous major planning applications, appeared at many hearings and planning inquiries (acting for Appellants, Objectors and Local Planning Authorities), including into old-style development plans and, more recently, at examinations of development plan documents.

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

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

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

1.2 My Instructions

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

1.2.1 The LPA's substantive case was set out in a Statement of Case (SoC)(CD3), but there have since been further developments in relation to that case which I discuss below. I am also aware that Statements of Common Ground (SoCG) (CD6, CD7 and CD8) are in preparation between the parties. However, at the time of drafting my Proof, not all these latter Statements had not been finally agreed and, thus, I reserve the right to comment further on those matters at the Inquiry.

1.3 The Scope of my Evidence

1.3.1 Although this Appeal is based on the failure of the Local Planning Authority to determine the Planning Application, the Local Planning Authority subsequently issued (19 January 2023) a decision notice (CD2) with 6 putative Reasons for Refusal. A number of the issues raised by these RfRs have since been resolved and/or the Authority has confirmed that it is no longer pursuing certain of them. Thus, the Authority has since abandoned RfR 2, 3, 5 and 6, subject to the imposition of suitably worded conditions

1.3.2 Based on the residual objections maintained by the Authority, I judge the material spatial planning considerations in this case to be:

- the relevant provisions of the development plan, and national policy in the NPPF ('The Framework');
- the housing land supply position and the implications of that specifically for the engagement or not of the 'tilted balance';
- the location of the proposed development and the implications thereof or the proper planning of the area;
- the adequacy or not of infrastructure to support the Appeal scheme and how any deficit is/is not satisfactorily addressed through any agreed Section 106 Obligation;
- whether in the current circumstances the ad hoc Application and Appeal process is an appropriate medium for bringing forward a greenfield urban extension of this size.

1.3.3 This Proof is drafted having regard to the latest versions of the Statements of Common Ground between the Parties (CDs 6 to 8 inc.) and the Inspectors post CMC Summary Note.

1.3.4 My own evidence is to be read alongside, complements and is complemented by the Evidence of *Mr Arron Beecham*, Principal Housing Enabling and Forward Planning Officer, Mid-Devon DC in relation to housing land supply. I endorse that evidence and rely on its substance and conclusions, to the extent necessary, in my assessment of 'policy' compliance and in striking the planning balance. I comment on this further below.

1.3.5 At the time of the drafting of this Proof it was unclear what the full and final position of Devon County Council as the competent authority is with respect to the scope and adequacy of Section 106 contributions (see below) and whether that Council will tender a witness and proof of evidence, or, make available (a) representative(s) to participate in a round-table session on this issue. At the present time the County Council is certainly maintaining its request for certain contributions. In the meantime, subject to my comments below, I reserve my position as to the relevance and weight to be afforded to this matter in striking the planning balance.

2.0 THE MAIN SPATIAL PLANNING ISSUES IN THIS CASE

2.1 Having regard to considerations listed at 1.3.2 above and the Inspector's post-CMC Note I suggest that the main spatial planning issues are:

- Whether, or not the Council has a 5-year Housing Land Supply and, thus, whether, or not, the 'tilted balance' (under footnote 8 of NPPF Policy 11 d)] is engaged;
- Whether or not the location of the proposed development is acceptable having regard to adopted national and local policies; and,
- Whether or not there is sufficient infrastructure to support the Appeal Scheme .

However, I would invite the Inspector to agree to three related additions to this list:

- Whether the Appeal Proposal complies/conflicts with the provisions of the development plan and national policy in the NPPF when taken as a whole
- Whether such conflict/compliance is outweighed by other material considerations.
- Whether the Appeal Proposals constitute sustainable development as defined in the NPPF.

Notwithstanding the above, I would suggest that the two *primary* issues at the heart of this case are: first, whether the proposed development would be appropriately and acceptably located and, thus, sustainable; and second, whether the District Council] can demonstrate a 5-year supply of deliverable housing sites.

2.2 Mr Beecham's evidence addresses specifically the *first* identified issue and my own evidence herein addresses the *other* listed issues at 2.1 above and, based on my conclusions thereon, I come to a recommendation as to how the Inspector should strike the 'planning balance' in arriving at this decision on the Appeal.

2.3 The Report to Planning Committee (CD1) sets out the background (including the timetable) to the Application (LPA Ref. 21/01576/MOUT), including the requirement for an Environmental Statement consequent upon a positive screening of the Application under the EIA Regulations.

3.0 THE APPEAL SITE AND ITS SURROUNDINGS.

3.1 The above-cited Officer's Report to Planning Committee and the main Statement of Common Ground provide a satisfactory basic factual description of the Appeal Site and its surrounding. I do not propose to rehearse that description here. There are, however, some elements of the Site and its context upon which I wish to comment further.

3.2 The Appeal Site lies to the east of Post Hill (the topographical feature, not the highway), a 'ridge' which runs broadly diagonally from northeast to southwest on the existing eastern edge of the built-up area of Tiverton. It rises to about 115 metres AOD and is clearly the dominant topographical element in the immediate area. To the east the land falls to 99 metres AOD at the junction of Manley Lane with Post Hill/Tiverton Road, to 93 metres AOD at the existing entrance to the Hartnoll Farm Business Park and then to about 85 metres AOD in the vicinity of the junction with Crown Hill. It also slopes southwards to Ailsa Brook and beyond that to the Grand Western Canal.

3.3 It is my assessment that, moving in both directions along the main east/west road axis - eastwards along Post Hill/Tiverton Road towards Halberton and in reverse from that Village towards Tiverton (and also in both directions on Manley Lane), there is a clear sense that the Hill represents the physical and visual boundary between the Town to the west and the open countryside to the east and that this latter area constitutes an important open break between the two settlements.

3.4 I consider that that assessment is underpinned by the conspicuous transition in character, appearance and land uses – with agriculture (and to a lesser extent, the golf course) dominating the clearly open extensive landscape east of the Hill, and with the established and developing urban area domination to the west.

3.5 I will comment further on this assessment below.

4.0 THE RELEVANT PROVISIONS OF THE DEVELOPMENT PLAN AND POLICY IN THE NPPF AND GUIDANCE IN ONLINE PLANNING POLICY GUIDANCE.

4.1 So far as this Appeal is concerned, the development plan for the purposes of Section 38(6) of the Planning & Compulsory Purchase Act 2004 and Section 70[2] of the Town & Country Planning Act 1990 comprises The Mid Devon Local Plan 2013 to 2033 (Adopted July 2020) (CD12). The Appeal Site lies outside the recently-made Tiverton Neighbourhood Plan Area (CD15) and is not strictly subject to its provisions therefore. However, insofar as it abuts the Neighbourhood Plan Area and the Plan reinforces and amplifies relevant provisions of the Local Plan, I make reference to it below.

Mid-Devon Local Plan 2013-2033

4.2 The relevant provisions of the Local Plan are agreed to be: Policies - S1, S2, S3, S4, S5, S6, S8, S9, S10, S11, S12, S13, S14, S19, TIV1, TIV2, TIV3, TIV4, TIV5, DM1, DM2, DM3, DM4, DM5, DM9, DM14, DM15, DM18, DM25, DM26 (See Statement of Common Ground). I do not propose to address them all exhaustively here and I will confine myself to those policies which are most important for determining this Appeal. I deem these to be:

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

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

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

4.3 Subject to the Inspector’s conclusion as to whether the relevant policies are out-of-date and that the tilted balance (in accordance with Paragraph 11d) and Footnote 8 of the NPPF) is engaged, I rely on the evidence of Mr Beecham with respect to the current 5-Year Housing Land Supply and consider that these policies are indeed up-to-date and relevant and should be accorded substantial weight in this case. I comment on this further below.

4.4 As a matter of simple chronology, I note that the Local Plan was adopted as recently as July 2020 and the development provision it makes – including housing provision – is still being implemented, notably, amongst other locations, on the Tiverton EUE. Subject to the Inspector’s conclusions in respect of housing land supply, I consider that it is up-to-date and relevant. As I understand the Appellant’s case, it is not disputing the relevance of these policies, but that the alleged lack of a 5-Year HLS renders them out of date. It is understood that the Appellant is not alleging that they are out of date for other reasons.

4.5 I understand that work on a review/replacement of the Local Plan has already commenced and that the Local Development Scheme, updated in July 2023, sets out the following programme:

- Regulation 18 Issues Consultation January – March 2022 (Completed)
- Draft Policies and Site Options Consultation (Regulation 18 continued) November 2024 – January 2025
- Regulation 19 Publication (Proposed Submission) consultation December 2025 – February 2026
- Submission April 2026
- Examination and Main Modifications April 2026 – March 2027
- Adoption April 2027

In this context I accept that the timescale indicated in the LDS is slightly greater than specified by Paragraph 33 of the NPPF, but in my view not significantly so and, as with other development plan work elsewhere in the country, the timetable was no doubt significantly impacted by the Covid Pandemic.

- 4.6 As noted, amongst other places (Notably Policy S2 [paragraphs 2.21 and 2.23 of the supporting text thereto and S14], by the Examining Inspector in his Report on the Local Plan (CD57) at paragraph 24:

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

- 4.7 Policy S1 and S2 (together with the specific settlement specific allocation policies) self-evidently reflect this strategy and Policy S3 provides for the objectively assessed level of housing needs in accordance with the strategy. These policies are, in my contention, clearly still relevant and, as Mr Beecham demonstrates in his evidence, up-to-date. The policies ultimately seek to promote a plan-led approach to site selection and none of the relevant policies or the strategy support ad-hoc developments on unallocated sites outside of settlement boundaries of anything like the scale proposed.
- 4.8 In formulating the adopted Local Plan, having established the appropriate and deliverable level of planned development for each major settlement, including Tiverton, it was entirely appropriate (and indeed is common [almost universal] practice in other development plans) to define a settlement boundary containing existing and planned/allocated development and to designate land *outside* those boundaries as countryside where restrictive development policies apply in a manner appropriate to what is clearly understood by a designation - precisely what Policy S14 does. Such boundaries and the planning policy implications thereof can reasonably be expected to endure for the life of the plan or at least one statutory review cycle. 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.

To put the matter in simple terms, one has to draw a line somewhere and, having drawn that line, adhere to it, save in exceptional circumstances. To treat such boundaries as flexible and the policy distinctions they encompass as matters to be casually set aside on an ad hoc basis undermines and subverts the Local Plan itself and the plan-making process.

Tiverton Neighbourhood Plan (2022)

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

- T1 – ‘Location and Scale of development’. Attention is drawn particularly to Clause B of the Policy. Relevant commentary in the supporting text to the Policy is to be found at paragraphs 4.2 and 4.3 and the Settlement Boundary is defined in Figure 4.4).

4.10 Clause B of Policy T1 states inter alia:

“Development proposals outside the settlement boundary will not be supported unless:

- they are in accordance with Mid Devon Local Plan (adopted 2020) policies in respect of appropriate uses in the countryside; or*
- the development preserves or enhances the character or appearance of the area....”*

Paragraph 4.2 of the supporting text notes:

- 4.2. “In a rural parish such as Tiverton, it is particularly important that development is directed to appropriate locations and that sprawl or ribbon development, and in particular coalescence with surrounding settlements, is avoided.....”

- 4.3. *“The purpose of a settlement boundary is to provide that direction. Policy T1 defines the settlement boundary within the neighbourhood area to which development will be directed. This will help to ensure that new development takes place in the most sustainable locations, near to local services and amenities, while protecting the valued green corridors within the parish, avoiding sprawl and coalescence of the individual settlements.....”*

Policy in the National Planning Policy Framework

- 4.11 The policies relevant to this case are at paragraphs: 7-10 inclusive, 11, 12, 14, 15, 38, 47, 50, 57/58, 81, 85, 104/105, 174b), and 219.

5.0 ASSESSMENT OF THE RELEVANCE, APPLICATION AND INTERPRETATION OF PLANNING POLICY (DEVELOPMENT PLAN AND NPPF) IN THIS CASE

- 5.1 As the Inspector will be aware, the NPPF makes clear (at Paragraphs 15 and 47) that the planning system should be genuinely plan led and that the primacy of this plan-led system should only be overridden in exceptional circumstances, where material considerations in a particular case indicate that a plan should not be followed (notably, of course, if Paragraph 11 d) ii. in conjunction with footnote 8 of the Framework is engaged, as the Appellant is contending in this case) (See also NPPF Paragraph 12) and where this fact, and the advantages of development, clearly and demonstrably outweighs the adverse impacts.

- 5.2 Pursuant to NPPF para 11(d), footnote 8, there are, I suggest, three criteria that determine whether the tilted balance should be engaged:

- Whether there are no relevant development plan policies; or
- Whether the policies which “are most important for determining the appeal”, are out of date because they no longer perform their intended role, or if certain material considerations mean that the policy concerned can no longer be relied upon or given weight;
- Whether the policies which are most important for determining the Appeal are considered out of date (for housing proposals such as this) due to the fact that there is a lack of five-year supply, or, where a council has delivered substantially fewer homes than were needed in its area.

5.3 I invite the Inspector to conclude that neither of the first two bullets apply in this case and a review of the Appellant's Appeal documents to date suggest to me that the Appellant is not arguing that these bullets are engaged. I commend the evidence of Mr Beecham to the Inspector in relation to the third bullet (See Section 8.0 below). Thus, it is our contention that, since the Council can demonstrate a five-year supply of deliverable housing sites, the tilted balance should not be engaged in this case.

5.4 However, even were the Inspector to conclude on the evidence that the supply is deficient, especially if only marginally so, I invite him to find that the adverse spatial planning impacts of granting permission in this case significantly and demonstrably outweigh the benefits, for all the reasons I adduce in this evidence below. The Inspector will be aware that case law, including those cases cited at CDs 22, 23 and 24 ('Gladman', 'Hallam Land' and 'Hopkins Homes'), has established that engagement of the tilted balance', when the policy in paragraph 11d) ii. is 'triggered' because a five-year supply of housing land cannot be demonstrated, the decision-maker will still need to assess the weight to be given to development plan policies including whether or not they are in substance out-of-date and if so for what reasons.

5.5 Against this background, I now consider below the policies most important for the determination of the Appeal as listed above, firstly in the context of the other main issue in this case, the appropriateness and acceptability of location of the proposed development.

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

6.1 The most important policy for determining the Appeal with respect to this issue and one which I suggest should attract significant weight in striking the planning balance, is **Policy S14** of the Local Plan and (related to it) Paragraph 174 b) of the Framework. In my view, Policy S14 performs a dual role:

- A strategic locational role, complementing the positive development allocations in the Plan and ensuring that development is directed to those allocations as a clear priority, consistent with the Local Plan strategy, and is not dispersed and dissipated in an ad hoc manner in unsustainable locations (See the second sentence of paragraph 2.81 of the supporting text to S14); and,
- An 'environmental protection' role, preventing development in the open countryside and harming the 'rural amenity' of the countryside thereby. This is an important and legitimate spatial planning objective and one that I consider the policy in Section 174 b) is seeking to achieve as well.

Thus, although, I acknowledge that national policy (in The Framework) no longer seeks to protect the countryside "for its own sake", this provision recognises that there are still countryside areas which are worthy of protection from development even though they carry no designation. The paragraph provides that (my emphasis) *"planning decisions should contribute to and enhance the natural and local environment by...recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services."*

- 6.2 So far as the first, 'strategic', role is concerned the proposal is clearly in conflict with Policy S14. Self-evidently, the Appeal Site has not been identified in a local plan or a neighbourhood plan. It lies in the defined countryside outside of Tiverton. The proposal is, therefore, fundamentally contrary to the spatial strategy seeking to concentrate growth in (Cullompton), Tiverton (and Crediton) and within the defined settlement boundaries thereof.
- 6.3 Turning to the environmental protection role, I have discussed in Section 3.0 above the local landscape context of the Appeal Site with particular regard to the main features, notably Post Hill and the contrast in the character and appearance of the land to the west of the Hill and that to the east. In my opinion these visual characteristics fully justifies the selection of this point as the settlement limit of Tiverton on the Local Plan Policies Map on its own objective merits, even without the evolving impact of the progressive development of the Tiverton EUE, which I discuss below.

(It is probably no coincidence that this also happens to be the administrative boundary between Tiverton Town - and Halberton Parish Councils).

- 6.4 It is my professional judgement, based on my own observations, that the Appeal Site, on any objective assessment, is demonstrably 'countryside' and that it is countryside that possesses some "*intrinsic character and beauty*", which should be recognised even though it is not in itself a 'designated' landscape, in accordance with Paragraph 174 a). Those characteristics would be best retained by preventing urban development. Given these characteristics it is entirely appropriate that the area encompassing the Appeal Site is explicitly designated as 'Countryside' under the terms of Policy S14 of the Local Plan on the basis of its inherent countryside character, *as well as* planning policy grounds.
- 6.5 In this context the Business Park represents an isolated anomaly, rather than determining the character of the area (and certainly not a pretext or justification for further expansion of the built-up area eastwards), not least because it is generally inconspicuous, 'sitting down' in the landscape and strongly contained by well-established, mature perimeter tree and shrub planting.
- 6.6 Against this background, the definition of the settlement boundary and the Tiverton EUE outer eastern boundary properly utilises the strong Post Hill topographic feature as a key determinant/starting point. From near the crest of this eminence, two north-south roads run - the unnamed (?) lane running from Post Hill [the highway] north to Uplowman Road, along the western side of the Golf Course, and Manley Lane, running south from the main road. These hedgerow-lined physical/man-made features provide lucid, well-defined, established, logical and 'defensible' boundaries, complementing the local topography. The consolidation of the urban form of the Town up to these boundaries will not intrude upon or detract from the openness and countryside character of the land to the east, including the Appeal Site, which, for the reasons I have given above, lies within a clearly recognisable open rural landscape extending uninterrupted (across the Grand Western Canal) eastwards. The definition of this boundary has been settled and justified in the Plan-making process and I see no grounds for seeking to override it now through this Appeal.

6.7 Within this wider landscape envelope east of Post Hill, the Appeal Site is not contained by existing (strong) natural or man-made boundaries. On its north-eastern and south-eastern sides, the proposed development boundary cuts arbitrarily through existing fields, where the Appellant proposes extensive new structural landscaping to contain it visually. The perceived need for and the very scale and extent of this proposed mitigation underlines how visually intrusive and incongruous the proposed development would be and this landscaping would, in itself, constitute an alien feature. Thus, whilst the proposed development would be relatively inconspicuous in longer distance views, because of the topography and 'compartmentalisation' of the landscape with field boundaries and intervening landscape features, it will remain prominent in medium- and short- distance views from the east and south (including from the towpath of The Canal). The proposed access from Tiverton Road and the development around it will be especially prominent and intrusive as will the south east corner of the proposed extension to the Business Park and it will be some time before this harsh and arbitrary development edge is softened and screened by the new landscaping. Moreover, because, as I have noted above, the Site is not contained by strong natural or man-made features (and also because the land to the east is in the same agricultural land use and ownership), its development would set a precedent and, once such development has occurred, there would be nothing to prevent proposals for further ad hoc sprawl eastwards and southwards, justified on the same basis as is the present Appeal.

6.8 I should make clear at this point that I am not seeking to run a landscape harm case here, contrary to the SocG about no longer pursuing putative Reason for Refusal Number 2. Rather I am suggesting that the Appeal Proposal would be an unacceptable visual intrusion by introducing major urban development into an open area as well as constituting a clear policy conflict with the development plan and that reinforces the harm arising from that conflict. This harm should in my view attract significant weight.

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

7.1 In my view, because of the issues it raises, the suitability of the Appeal Site as a candidate for development cannot be properly considered outwith a comprehensive assessment of the wider area east of Post Hill/Manley Lane and extending at least as far as The Canal, because this whole area patently forms part of a single uniform landscape character area and lies within a common visual envelope. I consider that such an exercise can and should properly be carried out only in the context of a review of the Local Plan and not through an ad hoc decision on a Planning Application or Appeal. A decision to grant Planning Permission for this Appeal would, I submit, prejudice and pre-empt a proper consideration of development options in the Plan Area. I will address this issue further below.

7.2 Beyond the general presumption in favour of a plan-led system, I would suggest that there are considerations specific to the Mid Devon DC area that strongly suggest that decisions on the location and scale of major (housing) development in future should be made exclusively through the ongoing plan-making process as follows:

- An assessment of the overall quantitative development (housing) needs of the District as a whole;
- The appropriate strategic distribution of major development across the Plan -area as a whole and specifically the apportionment of such development between the major settlements of Tiverton, Cullompton and Crediton, based on an objective assessment of the respective opportunities and constraints in and around these settlements and their capacity to accommodate development (and whether, for example, future development might be better directed to a new free-standing [garden] village/town). In this context I draw attention to the current Local Plan strategy which has apportioned 50% of housing growth to Cullompton and only 30% to the larger town of Tiverton, amongst other things driven by perceived environmental/capacity constraints around Tiverton other than to the east where the main development allocation has been made and is being built out. (see Policy S2, paragraphs 2.21 to 2.23 inclusive [op cit] of the supporting text of the Local Plan).

- Even were it to be determined that further major development should still to be accommodated in or around Tiverton in future, the development plan process is the most appropriate vehicle to determine the best location for such development here. Whilst I acknowledge that the opportunities for further peripheral development may well be constrained (by the same topography, landscape and other environmental factors that have informed the current Local Plan Review provision [See Policy S10 and paragraph 2.59 of the supporting text in the Local Plan]) particularly on the north, south and west of the Town, that does not mean that such locations should be summarily dismissed and the plan-making process will afford opportunities for a thorough and objective examination of the comparative merits of *all* candidate sites/directions for growth . Furthermore, changing circumstances may throw up redevelopment opportunities *within* the existing built-up area.

- There must also be a legitimate question about the appropriateness of *further* eastward elongation of the built-up area (encompassing Hartnoll Farm), for reasons I have cited in 3.7 above, particularly with regard to the distance from/relationship to the Town Centre and whether major development in this location would be sustainable and admit of access by sustainable transport modes.

7.3 Because of the size of the Appeal Site, the amount and scale of development it can accommodate (150 dwellings and 3.9 hectares of employment development with an overall site size of 12.7 hectares) and the *precedent* that I have contended above it would set for further development, there is, therefore, a demonstrable risk that if it is developed now, such development would fundamentally prejudice and -pre-empt the ongoing Plan review/replacement process by predetermining the strategic location/direction of growth around Tiverton and, indeed, whether further significant growth should be admitted in and around the Town at all for the time being. In this context, I am not advancing a 'prematurity' argument here as I accept that the terms of Paragraphs 49 and 50 of the NPPF are not met in this case.

7.4 So far as the *employment* element of the Appeal Proposal is concerned, the Council does not object to further such development in and around the Town, but considers that, as with further housing development, the best location for major proposals is best left to the Local Plan review/replacement. In the meantime, if an extension to the Business Park alone were to be promoted separately by the Appellant (something that is not before the Inspector), that would be considered on its merits in accordance with Policy S14, clause b) of the Local Plan, but I take the view that the Business Park extension as currently proposed, by its prominence and intrusive visual impact contributes cumulatively to the harm that the whole of the Appeal Proposal occasions.

7.5 In this context, moreover, I consider that it is a significant material consideration in this case that the Appeal Site was actively promoted as a candidate for allocation in the current Local Plan Review preparation process as part of a larger site (**OTIV2 – Hartnoll Farm**) - in which respect see my comments at 7.3 above in relation to precedent - but was rejected for allocation. The Local Plan Review Evidence base explains why the proposed allocation was in fact rejected at the time. In summary the reasons for rejection were:

- Significant landscape impact;
- Potential (environmental) impact on the Grand Western Canal Conservation Area, County Wildlife Site and Local Nature Reserve;
- Impact on Heritage (Archaeological) Assets;
- Loss of best and most versatile agricultural land (BMV);
- Impact on the urban form of Tiverton through the (over) extension of development eastward, leading to an imbalance in that form with two specific adverse consequences:
 - ❖ the distance of development from the Town Centre, leading, amongst other things, to increased reliance on the motor car; and,
 - ❖ Erosion of the gap between Tiverton and Halberton and the threat of coalescence of the two settlements.
- Cumulative highway and traffic impacts.

7.6 Whilst I fully accept that some of the reasons relied upon were a function of the promotion of an altogether larger site than is currently proposed (and the Council's case in this Appeal does not, therefore, rely on them), other reasons apply with equal force to the Appeal Site, as I have demonstrated above. Moreover, the fact of the promotion of a larger site in the Local Plan Review process underlines the risk that the development of the Appeal Site in isolation would nevertheless be seen as setting a local precedent as I have argued at 7.3 above. It does not appear to me that there has been any material change in local conditions in this area since the preparation of the Local Plan that would cause the validity of the decision to reject the wider location as a candidate for allocation to be set aside.

8.0 WHETHER OR NOT THE COUNCIL CAN DEMONSTRATE A 5-YEAR HOUSING LAND SUPPLY

The Land Supply Position

8.1 I have made it clear that I rely on the evidence of Mr Beecham to address this issue. He demonstrates, through a robust analysis, that the required supply exists with appropriate buffers, based on a precautionary and risk-averse approach.

8.2 He asserts that the Council is, therefore, able to demonstrate **5.40** years of housing land supply.

Whether or not the Tilted Balance is engaged in this case

8.3 In the circumstances, the tilted balance is **NOT** engaged and there is no basis for the overturning of adopted policy in relation to the supply of housing, that is Policies S1, S2, S3 and S4 which should attract substantial weight.

8.4 It is a matter for the Inspector on the evidence to determine whether an adequate land supply exists, but in any event, as I have argued at 5.4 above, even were he to conclude that the 5-year supply *is* deficient, especially if only marginally so, I am inviting him to find that the adverse spatial planning impacts of granting permission in this

case specifically in the context of the appropriate application of Policy S14 of the Local Plan significantly and demonstrably outweigh the benefits, for all the reasons I adduce in this evidence.

8.5 Once again, I would observe that the case law I have cited above (at CDs 22, 23 and 24 ['Gladman', 'Hallam Land' and 'Hopkins Homes']) obliges the decision-maker still to give the requisite weight simultaneously to both the policies in the NPPF and equally in the development plan. Moreover, the decision-maker is left with a discretion to apply the policy faithfully to its own terms, in a manner appropriate to the circumstances of the case. Thus, the policy in paragraph 11 d) footnote 8, if engaged, is not prescriptive and does not automatically override other relevant planning policy. (see also Paragraph 219 of the NPPF). The precise extent of any shortfall (e.g. if it is relatively small) and whether it is likely to overcome in the near future is also a matter of weight for the decision maker.

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

9.1 I have stated above that, pending a definitive response (including provision of the requisite evidence) from the County Council justifying the scope and value of the Section 106 Obligations requested, I am obliged to reserve my position on behalf of the Local Planning Authority. At present the County Council's claimed contributions which are subject to dispute by the Appellant (as to CIL compliance, need and quantum) relate to:

- Education
- Transport
- Waste Management

It remains for the County Council to justify these items, but pending such justification they remain issues in the Appeal. In the meantime, I can now confirm that the Council considers that the **NHS contribution** sought is **not** CIL compliant and is not, therefore, supported/required by the Authority.

10.0 OTHER CONSIDERATIONS

Transport Infrastructure

- 10.1 I note that, amongst other things, the Appellant claims that the provision of the Appeal development will provide necessary highway infrastructure, in the form of a link road, essential to the implementation of later phases of the Tiverton EUE and thus to the full delivery of all the housing it encompasses. I understand this is based on an assumption of a predicted funding shortfall in the funds required to deliver the necessary highway infrastructure for the EUE.
- 10.2 It is not clear precisely how implementation of the Appeal Proposals would address this alleged issue and no doubt that will become clearer when the Appellant's evidence is submitted. In the meantime, I am instructed that the Local Planning Authority does not accept that the EUE is effectively ransomed, and its full delivery constrained, without the link road proffered in the Appeal proposals. The LPA is continuing to work pro-actively and in productive discussions with landowners and developers to achieve the delivery of current and future phases of the EUE, and including other potential points of access to this development, and there is no evidence before the LPA to show that the EUE cannot be delivered in full in accordance with the Local Plan trajectory.
- 10.3 Notwithstanding that position, it is highly relevant to this case that, as Mr Beecham makes clear in his evidence, delivery of *later* phases of the EUE, over and above current allocations/commitments **does** not contribute to the current 5-Year Housing Land Supply period and their delivery is not required to secure the Council's claimed supply.

Accessibility of the Appeal Site by modes other than the private motor car

- 10.4 Whilst I have noted the Appellant's proposals to optimise sustainable transport access, including the Framework Travel Plan, I consider that the strategic location of the Appeal Site and its relationship to the rest of Tiverton, mean that the development would not be sustainable or be capable of being made so and it would be heavily dependent on the private motor car mode, contrary to Paragraph 105 of the Framework.

In my view this is not a location which is, or is likely to be in the foreseeable future, adequately served by sustainable transport modes for the scale of development proposed. In this context, I consider that the Appeal Site, by its location, would be heavily dependent on the progress of the implementation of the adjoining EUE and on the delivery over time of the sustainable transport infrastructure it provides. As already noted above, the full delivery of the EUE, particularly the phases closest to the Appeal Site is likely to evolve over some years.

- 10.5 In the circumstances, and having regard to the my overall assessment of the Appeal Proposals in this and other part of my Proof, I do not consider that they can be considered to be 'sustainable development', attracting the presumption under Paragraph 11 of the NPPF, irrespective of whether the tilted balance is engaged.

The Benefits of the Development

- 10.6 I acknowledge some of the benefits of the Appeal Proposals claimed by the Appellant. Thus, I accept that the scheme is capable of delivering, amongst other things:

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

I accept that there is a shortfall in affordable housing provision in the Plan Area and that the proposed provision thereof should attract considerable weight in itself, therefore. However, with the exception possibly of the use of renewable energy from the nearby Anaerobic Digester, to which benefit I would attach moderate weight, none of these other benefits would necessarily be unique to this proposal and could be achieved on other sites and should attract little weight, therefore. Moreover, I do not consider, however that Section 106 contributions amount to a 'benefit' since, if they are CIL compliant, they would merely mitigate the impacts of the development on infrastructure.

Overall, I contend that the claimed benefits are modest and unexceptional and should attract at best, moderate weight overall

- 10.7 Set against these benefits the appeal scheme would be situated beyond the settlement boundary of Tiverton and in the countryside. It would conflict with the development plan's overarching locational strategy, perpetuate unsustainable travel from what is a relatively poorly served location and be visually intrusive.

11.0 CONCLUSIONS

- 11.1 Mr Beecham has shown that the Council can demonstrate a satisfactory 5-year Housing Land Supply and I have argued that consequently the tilted balance under NPPF Paragraph 11 d) Footnote 8 is not engaged in this case.
- 11.2 I have demonstrated above that the location of the proposed development is not acceptable having regard to adopted national and local policies and to local conditions on the ground..
- 11.3 I have found that there is material and substantial conflict with the provisions of the development plan and national policy in the NPPF when taken as a whole and that such conflict is not outweighed by other material considerations – on the contrary.
- 11.4 I have further found that the Appeal Proposal would not amount to sustainable development as defined in the NPPF and indeed that it would, on balance, be unsustainable.
- 11.5 In the light of these conclusions, I invite the Inspector, in striking the planning balance, to find that the adverse impacts of the proposed development significantly and demonstrably outweigh the benefits of granting permission and, therefore, to dismiss this Appeal. Even if he finds the 'imbalance' to be more even/marginal than I am suggesting, I suggest that he should still, on the basis the harm the proposal would occasion, find against it.



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