

Policy SP2

Issue 12

- 1) The 60 houses may not be necessary even if J27 goes ahead. On 21/11/16, officers told cabinet members that 'no allowance' would be made within the plan to use windfall for flexibility¹. In several responses² MDDC now uses windfall to justify its decisions.
- 2) Even if extra housing is needed, the LPR evidence-base shows no evidence that MDDC properly considered all nominated sites within 'proximity' of J27. Sites were not given the same degree of consideration. MDDC says there that '*New information on SP2 was provided*'³. It seems that MDDC actively sought 'new information' on SP2 in August/September 2016 but nothing shows that officers did this for other sites. For other sites, 2013/2015 scoring is maintained, while SP2 is re-scored.
- 3) There may well be better sites beyond Sampford Peverell. MDDC refers to debates at cabinet/council where, under public pressure, it considered other possibilities⁴ but these are not part of the published evidence base. Even those discussions were constrained by the misleading assertion from an MDDC officer that the Government required the council to submit its plan by March 2017. MDDC maintains this stance⁵ and fails to address my contention that the Ministerial statement was wrongly applied⁶.
- 4) If extra housing is needed, it is not clear that Sampford Peverell is best suited to provide it:
 - a) the Devon County Council (DCC) projection that the Primary School has capacity sits uncomfortably with current evidence. Capacity in the 2015

¹ <https://democracy.middevon.gov.uk/documents/g751/Printed%20minutes%2021st-Nov-2016%2010.00%20Cabinet.pdf?T=1>

² Eg 14 and 23 (Unless specified, all page references are to the MDDC summary of responses to the consultation - sd11-local-plan-review-proposed-submission-january-2017-consultation-summary-document-revised)

³ Eg page 189

⁴ Eg page 138

⁵ Page 134

⁶ See Appendix A – I only restate this case as MDDC maintains its own position.

DCC Community Infrastructure Report is given as 119 places and there are currently 117 on roll (Spring 2017).⁷

- b) DCC has said that the development at SP2 should follow the construction of slip roads serving the A361 at Sampford Peverell⁸. MDDC agreed and included this constraint in policy SP2 and is still committed to it⁹. The fact that DCC now has no immediate plans to fund this work¹⁰ does not negate the substantive issue ie the need for the traffic flow improvements that lay behind the initial decision. Development at SP2 without these is unsustainable.
- 5) The site at Higher Town (SP2) is **not even the best performing of those available within the village.**
- a) The original 2013-15 scoring of sites¹¹ was not consistent or well-judged. The site at Morrell's Farm, adjacent to the main road (for 56 houses) was, for example, thought likely to have an impact on Halberton's traffic-calming scheme. This was not mentioned for SP2 with more houses (or for other sites in the village). Unlike SP2, mention is made of Grade II listed buildings adjacent to the site. The need for improved footway access was seen as a fact needing mitigation in the case of the Morrell's Farm site mentioned above, but – even though MDDC belatedly acknowledges this is also needed for SP2¹² – no such need was identified in 2013-17 for Higher Town¹³.
 - b) MDDC insists that 'there is very little development in the vicinity of the [Mountain Oak] site'¹⁴. This judgement was first made in 2013-15, before MDDC chose to build houses at SP1. That development creates a continuous line of housing from the village centre beyond the access into Mountain Oak. The existing sports field will provide a pleasant green area alongside any green infrastructure within a Mountain Oak development. Compared with SP2, Mountain Oak (for example) would have safer, stronger links to village amenities and main roads (see Appendix B).

⁷ <https://new.devon.gov.uk/educationandfamilies/school-information/education-statistics/school-census-statistics>

⁸ Page 201

⁹ Page 154

¹⁰ Page 154

¹¹ 2015_01_sustainability_appraisal_v3, page 64, (in LDR evidence base)

¹² Page 147

¹³ 2015_01_sustappr_appendix_2_part_2_villages_allocations, pages 543-545 and 527-530

¹⁴ Page 190

Despite all this, MDDC has failed to review the scoring of Mountain Oak¹⁵. Indeed, it now pre-empts the outcome of any such re-scoring¹⁶.

- c) Since the 2013-15 scoring, the local plan now proposes a major development at J27. MDDC asserts that housing is needed in relation to this and says that proximity is a criterion for consideration.¹⁷ This was not part of the 2013 scoring consideration so all sites in the village should have been explicitly reviewed with this and SP1 development in mind.
- d) The creation of new slip roads on the A361 at Sampford Peverell was used in mitigating the re-scoring of SP2¹⁸. If MDDC decides to drop its constraint that the slip roads must be built before SP2 is developed, the site's score/validity would be adversely affected.
- e) MDDC fails to answer arguments that SP2 is on the 'wrong' side of the village. It curiously repeats its assertion that there will be *'improved access to the village for pedestrians and cyclists'* to answer concerns over vehicular access to the M5 and A361!¹⁹ There can be no doubt that a development on the east of the village is better suited for ease of access to and from major roads.
- f) MDDC draws on representations from 2014 to suggest that its choice of SP2 had more support than others²⁰. This is disingenuous: two responses gave some support for the SP2 site. One came from the owners of half the land (the second owner preferring to support another site in the village). The second came from the parish council but with the condition that there might be *'a limited development of NO MORE THAN 20-25 new dwellings in this location'*. (Emphasis is in the original).²¹ MDDC has chosen not to mention this condition. Even then, there were three responses against it. This made opposition to this site as strong as any in the village and stronger than most. MDDC apparently now disregards the parish council's current opposition and that of over 100 respondents in 2017. Once again, the only voices now explicitly and unquestioningly in favour of developing SP2 are those of

¹⁵ In this statement, I shall at times suggest that development on land at Mountain Oak should be preferred to SP2. This is not to prejudice any other site that is put forward as an alternative, each of which should be fairly evaluated. I have no personal connection with, or reason to gain from, a development there.

¹⁶ Page 202

¹⁷ Page 136

¹⁸ 2017 SA, pp311-312

¹⁹ Page 148

²⁰ Page 139

²¹ <https://www.middevon.gov.uk/media/178530/rep-126-c-pearce-t-burns-w-upham.pdf> and <https://www.middevon.gov.uk/media/178527/rep-122-sampford-peverell-parish-council.pdf>

the owners or would-be developers²². Appeals to democracy cannot be used to suggest that the site is 'best-performing'.

Issue 13

- a) MDDC has consistently failed to give due attention to significant historic features around SP2. It is happy to refer to a Historic Environment Appraisal²³ but fails to make clear that this appeared in December 2016, long after site appraisals were made and after elected members had been asked to vote on whether SP2 should be included in the proposed revised local plan. On 1 December 2016, members voted in ignorance of the facts itemised below.
- b) A Grade II listed house in the Sampford Peverell Conservation Area (SP CA) sits alongside the north-eastern corner of SP2. Reference to this was belatedly added to the wording of SP2 in January 2017²⁴. Despite this, in the 2017 SA in a section about the HEA and under a column headed 'New Information', there is still no mention of the Grade II house but the mitigation column acknowledges its existence in passing²⁵. This house and associated buildings and gardens within the SP CA have never been given due weighting in any scoring of sites or sustainability appraisals.
- c) The December 2016 HEA, mentions for the first time anywhere in MDDC's assessments of Higher Town, the proximity of the Grand Western Canal and its status as a Conservation Area (GWC CA). No SA of the Higher Town site has ever mentioned the existence of this CA. Even the HEA dismisses it with the phrase '*that the Grand Western Canal Conservation Area lies some distance to the south*'. Policy SP2 still only refers to "*the Conservation Area*" (singular). Views into and out of the GWC CA are never considered even though land at SP2 is within 50 metres of it. Without having any explicit assessment in the evidence base, MDDC now makes its own judgement when it says that '*The impact would not be significant*'²⁶. By contrast, in the 2017 SA, views of J27 from the GWC CA are rightly considered although they are about 1.5km away²⁷. This is unfair and inconsistent.

²² <https://representations.middevon.gov.uk>

²³ Page 144

²⁴ Local Plan Review 2013 - 2033 Proposed Submission (incorporating proposed modifications), page 146

²⁵ 2017 Sustainability Appraisal Update, page 310

²⁶ Page 204

²⁷ 2017 Sustainability Appraisal, page 208

- d) The slope and elevation of SP2 make it more visible from points within the GWC SA than is the site at Mountain Oak where proximity to the GWC CA was noted in the SA.
- e) While it is good that MDDC has amended the line of the green infrastructure area (GI) on SP2 in response to points made about historic features²⁸, this merely highlights the fact that due note of these was never taken before the site was selected. Appendix C (i) shows how the view from the northern end of GWC CA to the Grade II house and garden in the village CA (SP CA) will be lost even with the repositioned GI. Even bungalows on SP2 would block any view of the Grade II house or of the GI itself. Mitigation for views from the GWC CA is impossible – but none is proposed anyhow as Policy SP2 only recognises the SP CA.
- f) Views from gardens, eg of the listed house in the SP CA, will be impaired by development on SP2. Views to the south-west, taking in the GWC CA, will be blocked for sure. Views to the west may be protected to some extent by the GI (although the alarming ‘illustrative layout’ by Place Land²⁹ fails in this).
- g) Views into and out of two CAs will be adversely affected by development at SP2.

Issue 14

- 1) MDDC’s Landscape Character Reference identifies ‘rounded hilltops’ and ‘curving hills’ as key characteristics of the area³⁰. MDDC suggests that the GI will ‘limit the impact on the skyline’³¹ (page 145) but Appendix C (i and ii) show that it will not, especially from points in the GWC CA.
- 2) The characteristic of hilltops and hills cannot be appreciated from maps or from aerial views. These fail to capture the true character and appearance of the site. The 2013 SHLAA report says of the Higher Town site (SP2): “*although the site is next to the village boundary, the character and topography of the site sets it apart from the village*” and “*Development would have a significant landscape impact*”³².

²⁸ Page 144

²⁹ Based on fliers distributed in Sampford Peverell, 26/6/2017 and 10/08/2017. I do not know how to provide these for the Inspector. The company provided no details of how copies might be accessed and despite the claim on the second flier that the plan ‘has been submitted to the LPA’ it does not appear online and MDDC officers had no knowledge of it when I called on 11/08/2017. See also Appendix F.

³⁰ https://www.middevon.gov.uk/media/103739/chapter_4_part_2_landscape_character_types.pdf
accessed 10/08/2017

³¹ Page 145

³² 2013 - Strategic Housing Land Availability Assessment, page 132

- 3) We have a judgement from the Planning Inspectorate, dated 17 May 2017³³. A developer proposed to build two, two-storey dwellings at a point just south of the gardens of the listed Grade II house (42 Higher Town) and associated historic buildings. Paragraph 22 of the decision says *'the proposal would have a harmful effect on the character and appearance of the area. It would conflict with Policy DM2 of the Local Plan and Policy COR2 of the Mid Devon Core Strategy which aim to promote good design and protect local distinctiveness'*. The Inspector was upholding MDDC's own position. Clearly this judgement cannot be simply applied to SP2, but it must be of relevance.
- 4) The Grade II listed building at 42 Higher Town is a former 16th/17th century farmhouse³⁴. It is nestled into the farmland identified as SP2. Its character is intimately associated with that farmland. Even the provision of a GI area at that point will change the character and setting significantly. Any screening or similar mitigation would have a harmful effect.
- 5) The loss of earth banks and hedgerow along Turnpike would also change the character. MDDC has failed to answer questions about why, when every iteration of the SA describes such loss as *'substantial'*³⁵, it has chosen in Policy SP2 to say that *'some loss of hedgerow would be required'*. It repeats this phrase in its summary of responses³⁶ even though it conflicts with its own evidence base. Applying *'Manual for Streets'*³⁷ suggests that about 100 metres of bank and hedgerow would be lost. New hedgerow will not compensate.
- 6) Even the proposed introduction of the GI is a poor attempt to preserve character. By creating a built-up lower portion and a managed GI higher portion, the effect when viewed from further afield will be out of character with the wider context.
- 7) Under MDDC proposals, two fields at SP2 would be lost, part would be built on and none preserved as Grade 2 farming land. This changes the character of the locality and is economically wasteful.

Issue 15

- 1) The 2017 SA (like others before it) asserts that: *'There is a footpath on Turnpike from the south east corner of the site which leads into the village'*. There is not.

³³ https://planning.middevon.gov.uk/online-applications/files/CE621852AD3B3CD45CB44A1D157EB963/pdf/16_01526_FULL-Appeal_decision-1002450.pdf

³⁴ <http://www.britishlistedbuildings.co.uk/101106394-42-higher-town-sampford-peverell>

³⁵ Eg SA 2017, pages 528 and 530

³⁶ Page 142

³⁷ Manual for Streets, section 7.7 (Department for Transport)

Appendix D, (i and ii) shows a footpath on the south side of Turnpike that can only be accessed by crossing the only Mid-Devon road that the SA calls 'dangerous'. A pedestrian can walk on that footpath to a point just west of the bridge over the canal. There the footpath ends. To continue east into the village, the pedestrian must cross Turnpike again, walk along a short section of the roadway, cross another road (the southern end of Higher Town), use a footbridge over the canal and join a footpath to the north of the main road through the village. MDDC regularly insists that *'It is recognised that there is a small break in the footpath in the village however the statement set out in the Sustainability Appraisal remains correct'*³⁸. This is nonsense.

- 2) MDDC has failed to accept that this footpath is accessed by crossing a 'dangerous' road and now states that *'the relationship between the site and village is positive'* (my emphasis, ie not *'will be'* but *'is'*)³⁹.
- 3) MDDC does not mention the word 'dangerous' in Policy SP2 even though it is used to describe Turnpike in the 2014, 2015 and 2017 SAs. No direct reason is given but MDDC refers to 'reassessing the site' and with no substantive evidence to support its interpretation says *'only some parts of were considered to be dangerous which predominantly relates to the far West of Turnpike'*⁴⁰. Perhaps the Inspector could invite MDDC officers to point on a map to the *'small break in the footpath'*, explain why this is not *'dangerous'* and identify references in the evidence base to support this contention.
- 4) MDDC refers several times⁴¹ to a minor modification (or additional criterion) to policy SP2 *'for clarity'*. The criterion requires *'improved access to the village for pedestrians and cyclists'*. This is not a minor change. It reveals MDDC's failure to evaluate the site and its context properly in the evidence-gathering stages.
- 5) This new criterion is soon repeated alongside a statement that the proposal will *'provide the opportunity to ensure safe access to the village centre for pedestrians and cyclists. Devon County Council officers have stated that "It is technically feasible for an access to be formed on to Higher Town, exact details, levels will need to meet the current design standards set out in the Devon design guide and Manual for streets."'*⁴² Policy SP2 is clear that the footpath that it sees as providing the so-called 'positive' relationship with the village is to be found at the south-east corner of the site. Higher Town, to the north, is not mentioned. The

³⁸ Eg page 147

³⁹ Page 198

⁴⁰ Page 202

⁴¹ Eg page 147

⁴² Page 148

DCC statement introduces a significant new dimension never shared with the public or elected members. The reference to creating pedestrian access at Higher Town also implies that the Turnpike access cannot be made safe, in contradiction to assertions by MDDC.

- 6) 'Devon Design guide' requirements imply that footpaths of the correct width (and gradient for wheelchairs⁴³) to ensure safe pedestrian access to SP2 cannot be provided (see Appendix E). Appendix F shows where Place Land surprisingly proposes pedestrian/wheelchair/pushchair access to SP2. This would require significant earth removal very close to the SP CA and Grade II listed house.
- 7) The DCC statement is used both in contexts where pedestrian access is being discussed and with reference to vehicular access⁴⁴. Is MDDC proposing a separate, new vehicle access from SP2 onto Higher Town, an additional vehicular access to supplement one at Turnpike, or an access purely for pedestrians, cyclists, push-chair, wheel-chair users onto either Turnpike or Higher Town or both? None of this was mentioned in the Local Plan.

Issue 16

Meetings of Cabinet (21/11/2016) and full Council (1/12/2016) heard what is regularly repeated in the MDDC summary of responses⁴⁵ that SP2 was only introduced to the Local Plan as a direct result of Policy J27 being included. This is also why it was re-scored. Elected members voted to include SP2 only once they had been assured that the link to J27 would be retained.

I trust the inspector will deem SP2 unsound and the site unsuitable for sustainable development whether or not J27 proceeds.

(3000 words)

⁴³ Page 147

⁴⁴ Eg page 148 and 149.

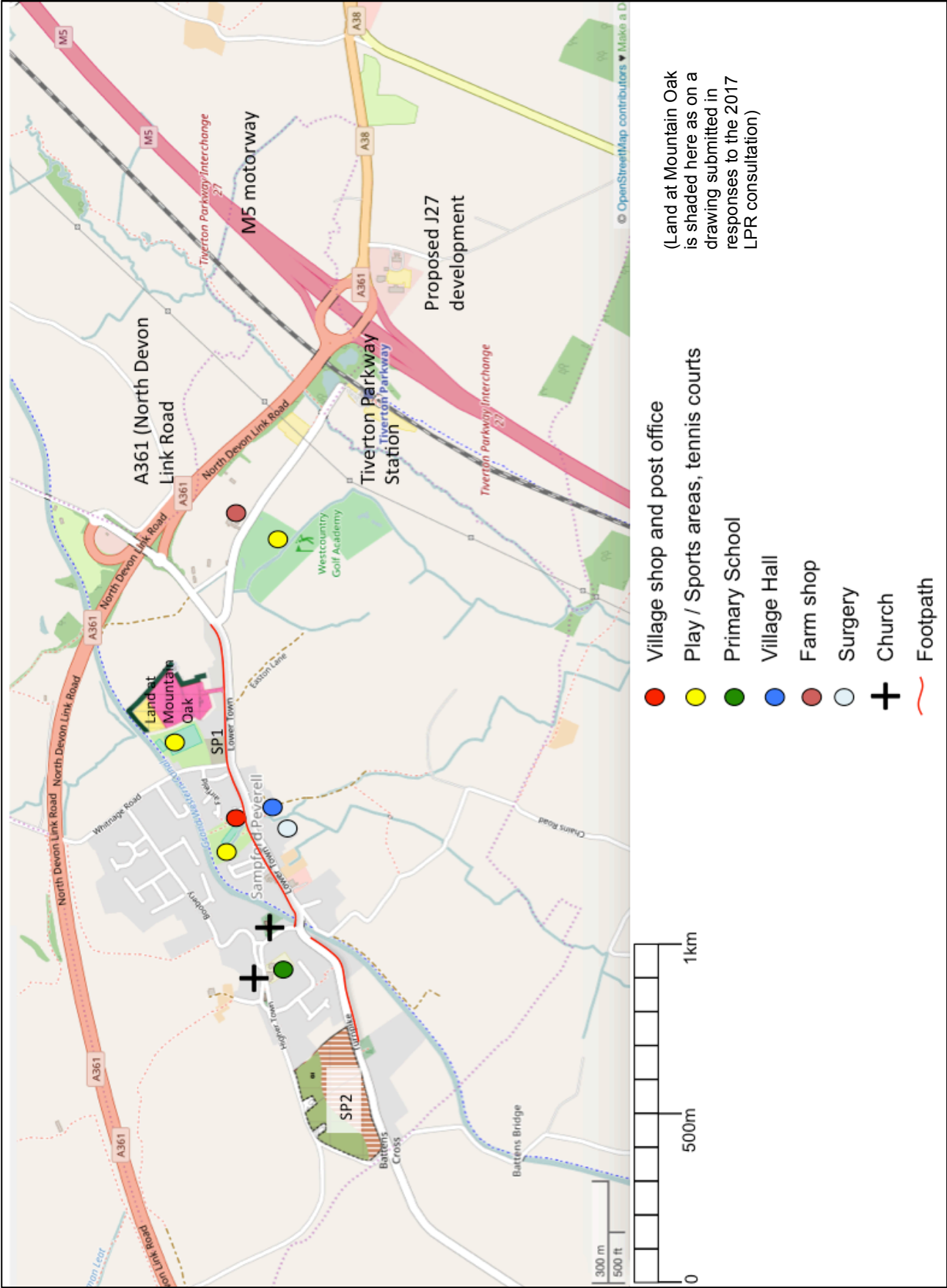
⁴⁵ Eg pages 128, 129, 135, 154

APPENDIX A

Extract from Representation to MDDC made by RBC (Jamie) Byrom on 7/2/17

- f) Returning to issues of failings in the process of review, not only was the allocation made without due consultation, it was voted through as part of the revised local plan with **undue pressure over perceived deadlines**.
- i) A meeting of the full MDDC council took place on 1 December 2016 at which a vote was taken on whether or not the revised plan with J27 and SP2 (among other changes) should proceed to public consultation. Certain councillors and members of the public tried at that last possible moment to seek alternatives. At a critical moment (timed at 45 minutes and 45 seconds on the audio recording) the Head of Planning and Regeneration sought to ensure that all councillors were aware of what she insisted was an important deadline. She gave the end of March 2017 as the deadline they should bear in mind, saying: *"the significance of the March 2017 date is that we have what is effectively a ministerial instruction, by way of a ministerial statement, which basically states that the government may well intervene where local planning authorities don't have an up to date adopted plan or plan submitted to the inspectorate by the end of March. And the precise wording is: 'In cases where no local plan has been produced' (and this is by the end of March 2017) 'we will intervene to arrange for the plan to be written in consultation with local people to accelerate production of a local plan'"*. (My emphasis underlined).
- ii) It should be noted however that the Ministerial written statement from which the Head of Planning and Regeneration quoted does not mention 31 March. It simply says "by early 2017". More significantly, the paragraph before the one quoted makes it abundantly clear that the Minister is addressing his words to planning authorities that have never had a local plan. His statement reads: *"Since the Planning and Compulsory Purchase Act 2004, local authorities have had more than a decade to produce a Local Plan. Most have done so – 82 per cent of authorities have published a Local Plan. Action is required to ensure that all local authorities meet the standards already achieved by the best"*.
- iii) Councillors were not given this context in the prepared statement made by the Head of Planning and Regeneration. MDDC has a local plan in place and the Head of Planning and Regeneration gave them to understand that there was a deadline at 31 March 2017 that may trigger government intervention. No such deadline applies to Mid Devon. On the contrary, in paragraph S25 of its "Report to the Communities Secretary and to the Minister of Housing and Planning" in March 2016, a Local Plans Expert Group proposed that for authorities that do have a plan *"a deadline of March 2018 (six years after the NPPF) should apply"*. Councillors were not told this.
- iv) While it may be the case that there are sound reasons to produce a plan sooner rather than later, the Head of Planning and Regeneration chose to quote from a Ministerial statement inserting a date that he did not give and applying it erroneously to Mid Devon's circumstances. The debate that followed sought to find alternative solutions including calling for new sites. At least four councillors explicitly said that they would like to vote for amendments that would remove SP2 but they could not do so given the deadline and the risk of government intervention. (These can be heard on the audio recording of the meeting). Others may well have felt the same way.
- v) I have sought to report these events factually and have made no attempt to ascribe motive to the use of the quotation from the Ministerial statement. I have just tried to show that this was a serious failure of process that materially affected the nature of the local plan.

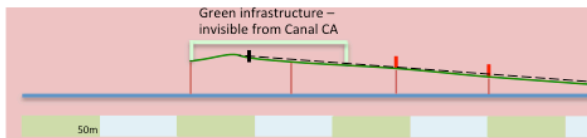
APPENDIX B - Sampford Peverell and area: main amenities and transport links



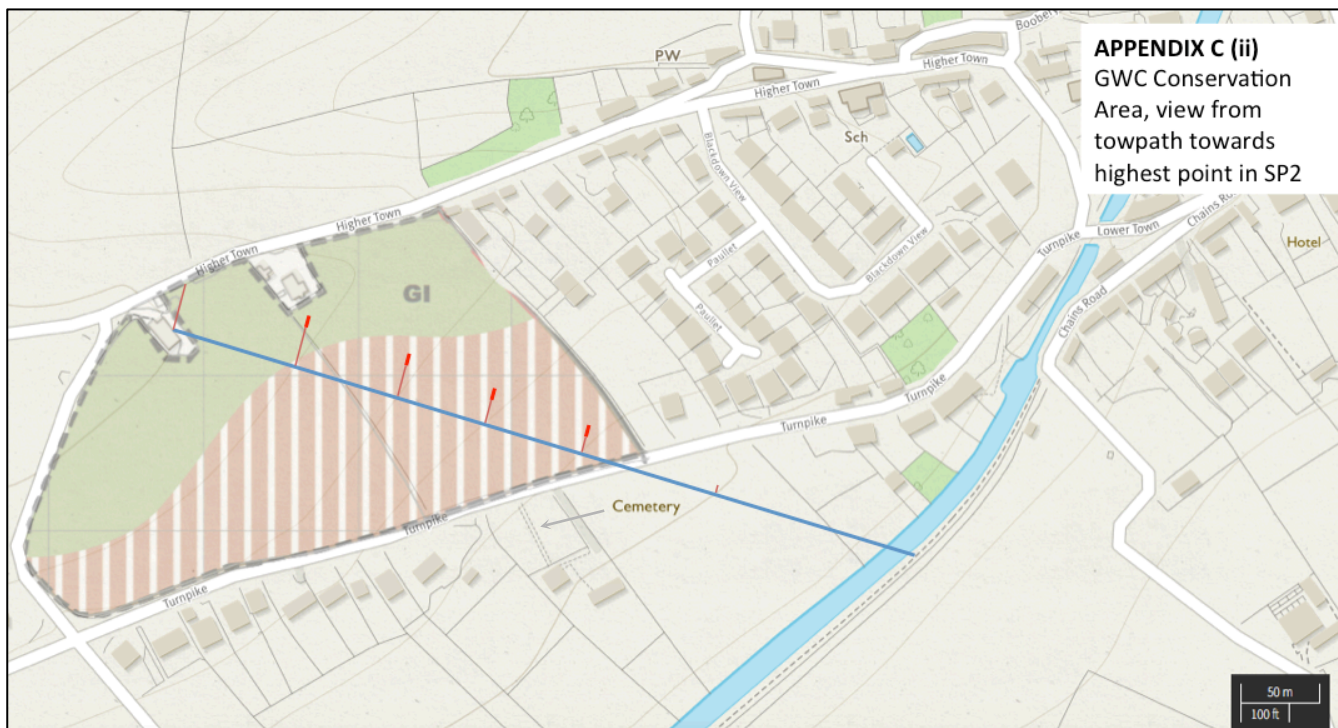


APPENDIX C (i)

GWC Conservation Area, view from northern point within GWC CA, towards village Conservation Area and Grade II listed house at the north-east corner of SP2

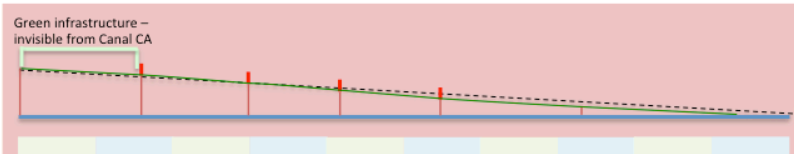


- Main map – contours at 5m intervals
- Blue line shows line of view from near northern end of GWC Conservation Area to Grade II listed house in SP Conservation Area near NE corner of SP2
- Brown vertical lines show elevation above towpath at contour lines
- Green line shows slope of SP2
- Red lines show typical height of two-storey houses on Paultet (c. 7.75m). Only within proposed building area.
- Black dotted line sight line from near the northern point of GWC Conservation Area. A similar line can be drawn from points on the towpath.



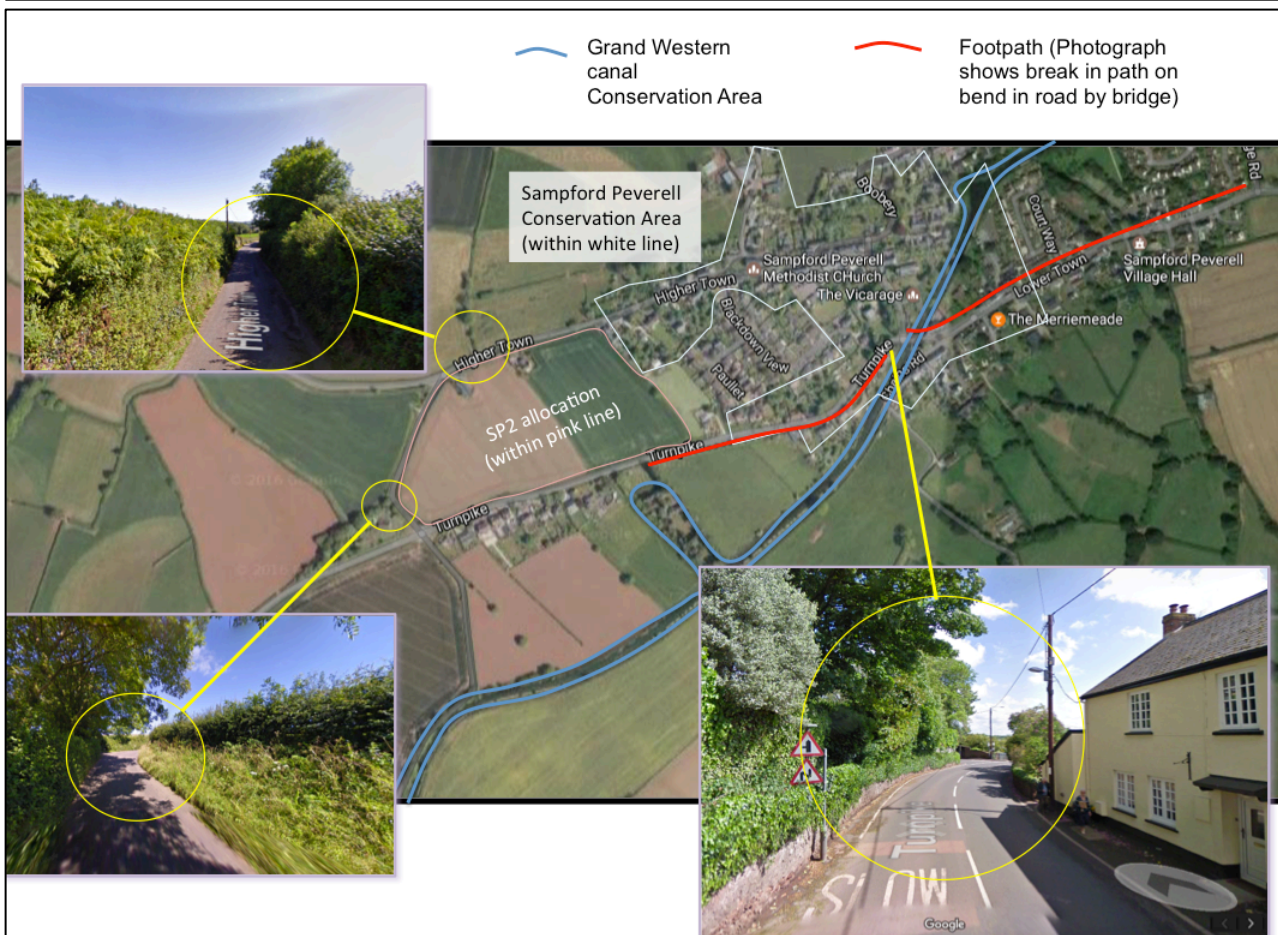
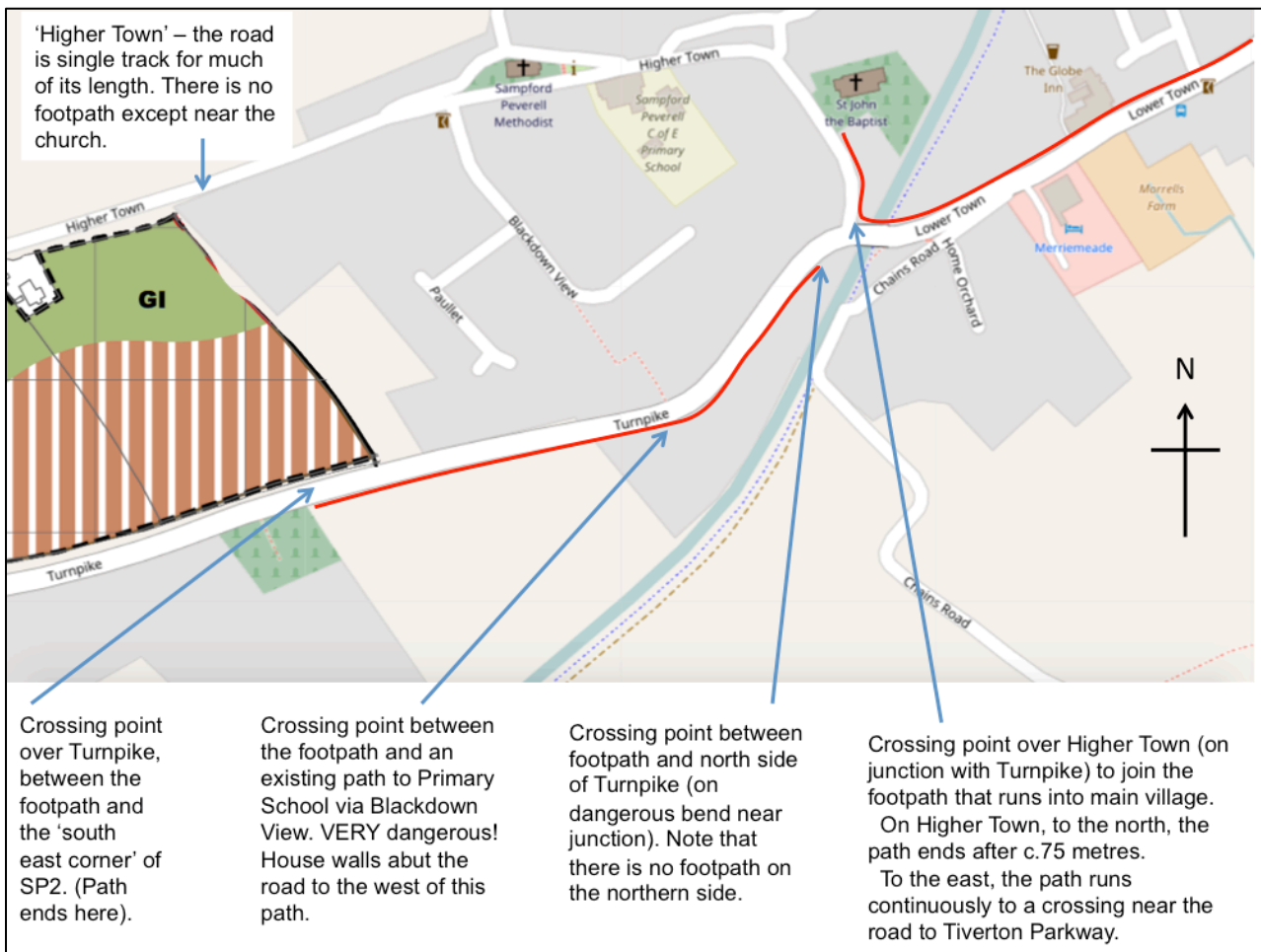
APPENDIX C (ii)

GWC Conservation Area, view from towpath towards highest point in SP2



- Main map – contours at 5m intervals
- Blue line shows view from towpath to top of hill (base of barn) on SP2
- Brown vertical lines show elevation above towpath at contour lines
- Green line shows slope of SP2
- Red lines show typical height of two-storey houses on Paultet (c. 7.5m). Only shown within proposed building area.
- Dotted black line shows sight line from the towpath

APPENDIX D – footpaths and roads around SP2



Appendix E

Extracts from the DCC Design Guide for residential (and commercial) areas.

(Downloaded from <https://new.devon.gov.uk/planning/apply-for-planning-permission/get-help-with-an-application/guidance-for-applicants> on 8/8/2017).

On page 19 this guide says that '*... design of Distributor Roads (i.e. where no frontage access to dwellings is normally permitted) is outside the scope of this guide*'.

Is DCC requiring a redesignation of Turnpike and or Higher Town as residential roads? The closest residential equivalent to a distributor road (Type R1, Residential Transition) requires a footpath on each side of the road. Nevertheless, here are just some relevant extracts from the guide about footpaths:

'A safe means of crossing busy roads is necessary where pedestrian and cycle routes meet them' (Design Guide 2.6.2).

Question – Will MDDC provide three such safe crossings on Turnpike between the south east corner of SP2 and the bridge over the canal? (See Appendix D).

'Footpaths to locations outside the residential development, should follow pedestrian "desire-lines" eg by linking features that generate or attract pedestrian traffic eg shops, play areas, social centres, workplaces etc. Where the footpath crosses major roads the crossing points must be safe and convenient' (Design Guide 3.9.2).

Question – Is MDDC's newly proposed access onto Higher Town suggesting that the 'desire-line' from SP2 would be to walk uphill to access Higher Town and then follow a longer route to 'link' SP2 with the shop, village hall, sports areas shown on Appendix B?

'All footpaths should be direct and wide enough to suit the expected level of use. A minimum width of 2 metres is usually required. It can be 1.35m where frequent 2m wide passing places are provided. It should be easy to use for those with prams and wheelchairs. Steps should be avoided'. (Design Guide 3.9.3 and confirmed by Manual for Streets, (6.3.22).

Question – Is MDDC sure that safe 2m wide footpaths could be created on one or both of Turnpike and Higher Town? Or does it propose to have frequent 2m wide passing places? [See Appendix F] Or does it intend to treat this guidance loosely, asking only 'is it bad enough to refuse' as in February 2016? (See <https://democracy.middevon.gov.uk/documents/g436/Public%20minutes%2010th-Feb-2016%2014.15%20Planning%20Committee.pdf?T=11> page 96).

APPENDIX F – ‘Potential pedestrian connection’ proposed within Place Land’s outline planning application for development of the land identified in SP2. (From flier issued 10/08/2017).



View west at the position circled on plan. The SP2 land lies behind the hedge on the left. The land is at about the red line shown in the middle of the road sign. The yellow tape-measure on the road extends 2 metres, the likely required width of footpath.

View east into village from the position circled on plan. The yellow tape-measure is set at 2 metres (likely footpath width) from the wall that is part of the historic buildings at this north western point of the village Conservation Area.

