

MID DEVON LOCAL PLAN REVIEW 2013-2033

INDEPENDENT EXAMINATION

HEARING 1

POLICY J27

POSITION STATEMENT

ON BEHALF OF

LAND SECURITIES PLC

ID: 6269



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1. Introduction

- 1.1 This Position Statement sets out a brief response on behalf of Land Securities Plc (LS) to the Inspector's questions in relation to Hearing 1.
- 1.2 The original representations to Policy J27 were made on behalf of Hermes who at the time were the owners of Clarks Village in Street. However, since the original representations were made, Clarks Village has been acquired by Land Securities. Since LS have now acquired Hermes' interest in Clarks Village, the duly made objections to the J27 proposals have, in consequence, passed to them.
- 1.3 This Hearing Statement should be should be read in conjunction with the comprehensive submissions made on behalf of Hermes (hereinafter referred to as LS1) to the Mid Devon Local Plan Review 2013-2033 (ID: 6269). The objections contained in those submissions remain unresolved.
- 1.4 To assist the Inspector, a brief response is made in this document to the specific questions that he has raised in relation to Hearing 1, drawing on the more detailed submissions contained in LS1. It is assumed that the Inspector is already in possession of a copy of LS1, although further copies can be made available through the Programme Officer, if necessary.

2. Issue 1

Is the evidence base sufficiently robust to demonstrate a need for the scale of tourist attraction proposed?

- 2.1 For reasons set out in LS1, there is no robust evidence to support a need for the scale of tourist attraction proposed.
- 2.2 The Tourism Study 2014 (ECO05)¹ suggests a ‘multi-pronged’ approach in which a major tourist facility is purported as a possible opportunity which could be quite varied, but could include:
- Delivery of a new man-made tourism attraction, such as an amusement park or a major climbing/high ropes course to cater for families and/or the adventure market; and/or
 - Development of a tourism facility which showcased local food and produce, linked to the slow tourism agenda and the strong agricultural economy in Devon².
- 2.3 The study acknowledges that proposals for any major facility would need to be considered carefully in terms of any impacts on other parts of the district, and particularly the market towns, and potentially on other adjoining areas, depending on the scale or focus of any major investment, in view of the Duty to Cooperate³.
- 2.4 There is little evidence to suggest that the Council has robustly tested the various strands, and permutations thereof, and arrived at the conclusion that a major attraction at J27 is the most sustainable, or indeed, appropriate and necessary option. Moreover, there is a lack of evidence commissioned by the Council to test the impacts of the proposals on either the market towns in Mid Devon or adjoining areas.
- 2.5 There is therefore a lack of evidence to support the transition from ‘idea’ in a Tourism Study, to a robustly evidenced proposal in a Local Plan policy. There is certainly no evidence provided by the Council to support the inclusion of a major, sub-regional scale, retail facility

¹ The Inspector’s attention is drawn to paragraph 5.5 of LS1 concerning the possible conflict of interest by the Study’s authors in advising the Council in this matter

² ECO05, para. 6.12

³ Ibid, para. 6.14

as part of the major attraction. That is supported by neither the original concept in ECO05, nor subsequent evidence. Moreover, successive reports by the Council's own economic impact advisors have failed to support the need for the retail element of the tourist attraction proposed⁴.

- 2.6 The concept of a major tourist facility incorporating a sub-regional scale retail attraction is not contemplated in ECO05. Moreover, there is no evidence to confirm that an option based on Strand 5 is the appropriate one. Indeed, NLP's advice to the Council was that, whilst the Tourism Study recommends a multi-pronged approach, "*... it does not automatically follow that all of the six strands have to be followed in order for the Strategy to work*"⁵. The scale of the attraction proposed, incorporating up to 14,000 m² of comparison goods retail floorspace, is therefore not justified by the evidence.
- 2.7 The proposed allocation is driven by the particular proposals put forward by the promoter of the scheme. The Council has done little to objectively test the need for, and scale of, the facilities proposed, or to challenge its constituent elements, in particular, the inclusion of a sub-regional scale retail centre. There is no evidence to support the need for such a large scale facility. On the contrary, the only available evidence points in the opposite direction and confirms that the proposals far exceed the level of objectively assessed retail needs arising from within the plan area.

⁴ As highlighted in LS1, none of the evidence in SSE12, SSE15, SSE16 and/or SSE17 provides unequivocal support for the OSV, or acceptance that it is justified by the evidence

⁵ SSE15, para. 7.4

3. Issue 2

Has a regional need for the retail element and the comparison goods floor-space in particular, been demonstrated?

- 3.1 No regional need for the comparison goods retail floorspace has been demonstrated.
- 3.2 On the contrary, the evidence confirms that there is no such regional need and the proposals will substantially exceed the retail floorspace requirements for the district identified in the evidence base. Indeed, as is accepted by the promoters' economic advisers, the proposed allocation "... is not a development aimed at meeting gaps in local provision for retail and leisure" and "... a development of the nature and scale proposed by Westwood could not be sustained by local people"⁶. Moreover, it is accepted in the promoters' evidence that it will vires retail floorspace needs from other districts within the substantial catchment area of the proposed development.
- 3.3 The Inspector's attention is drawn to the critique of the retail evidence at Annex 1 to LS1 which cites the NPPF requirement that local planning authorities should undertake their own objective assessment of need, and that Mid Devon District Council's objective assessment set out in the 2012 Retail Study (ECO03) demonstrates insufficient retail capacity for the proposed allocation. Since ECO03 provides the retail evidence base that supports the Plan, the evidence does not support the retail element of the proposed allocation.
- 3.4 Whilst the promoters have undertaken their own assessment of retail capacity, that does not amount to an objective assessment of need by the local planning authority that is required to support a retail allocation. Moreover, it is noted that the assessment undertaken by the promoters⁷ is not included in the Core Documents, and is therefore not an evidence base document that is relied on in support of the allocation. In any event, for reasons set out in LS' critique, it is riven with errors which have been elucidated by the Council's own consultants through successive reviews, and which have not been addressed.

⁶ 'Town Centre and Uses Statement for Local Plan Proposed Submission Consultation', CBRE, April 2015, paras. 2.10 and 2.11

⁷ Ibid

- 3.5 For reasons set out in LS1, an objective assessment of need to support the site's allocation is absent. There is no evidence to support the need for a sub-regional comparison goods retail facility, nor any joint strategy amongst the catchment area authorities to promote one. On the contrary, neighbouring authorities, not least Exeter City Council, have objected to the proposed allocation specifically due to the inclusion of the comparison goods floorspace and on the basis of the lack of robust evidence to demonstrate that there is a regional need for it.
- 3.6 The only evidence available to the Council indicates an absence of need. As summarised in LS1, in 2014 GVA (then advisers to the Council) concluded that need had not been demonstrated for a significant quantum of retail floorspace from either a quantitative or qualitative perspective (SSE12), a conclusion echoed by NLP in July 2015 (SSE15). In their addendum critique in March 2016 (SSE16), NLP continued to advise that the quantitative need for the comparison goods retail floorspace remained unproven. Even in their final critique wherein NLP sought to clarify their conclusions on need in the light of alleged misinterpretation (SSE17), they do not confirm a need for the proposed retail floorspace, and seek to refocus the issue on whether there will be adverse impact on town centres and retail strategies elsewhere.
- 3.7 As is correctly pointed out by Exeter City Council, NLP's addendum critiques considered the retail allocations for only three of the neighbouring authorities, and had little regard to those of the 14 other local authorities within the core catchment area of the proposed facility as identified by the promoters. Moreover, for reasons highlighted in Annex 1 to LS1, the promoters' quantitative assessment is considered to be flawed, and to fall well short of what could reasonably be considered a robust analysis of retail capacity.
- 3.8 Having regard to all of the foregoing, it is unequivocal that the regional need for the comparison goods retail element of the proposed allocation has not been demonstrated. That is unsurprising given that the promoters' principal justification for the retail floorspace is on the basis of enabling development rather than need. If need could be demonstrated, the latter justification would be superfluous. The Plan should not make provision for retail floorspace needs that are unsupported by the evidence base.

4. Issue 3

Has the 'sequential test' been approached with sufficient rigour?

- 4.1 Given that there is no evidenced need for a sub-regional scale retail facility of the nature proposed, then the sequential test is academic since the proposed allocation has not been justified. However, for reasons set out in LS1, the sequential test lacks sufficient rigour given the extent of the scheme's catchment.
- 4.2 The promoters have limited their search to centres within a short distance of the proposed site allocation, and in particular the six towns of Tiverton, Crediton, Exeter, Exmouth, Taunton and Bridgwater. However, the search is inappropriately confined to such a narrow radius of the site, and should include all designated centres within the wide catchment from within which the alleged need will be drawn.
- 4.3 The promoters of the scheme confirm that they have not examined sites where only parts of the indicative proposals can be accommodated. This is fatal to the sequential test if the Inspector concludes there to be a lack of 'clear synergy' between the OSV and the tourism and leisure elements of the proposals (Question 5), and/or the OSV to be unnecessary (Questions 6 and 7). Setting aside the issue of unproven need, any such finding(s) would mean that the OSV would only be justified at J27 if it was supported by clear evidence that alternative, sequential preferably sites are unavailable. Given that sites have not been examined where only parts of the indicative proposals can be accommodated, the evidence of the sequential test fails to justify the proposals in this respect.
- 4.4 It is germane that an allocation was not included in the Proposed Submission Local Plan, in part because the proposal did not meet the sequential test when there were opportunities to accommodate parts within sequentially more preferable sites in the catchment area and not all sites had been examined. Moreover, GVA's advice to the Council was that the proposed allocation did not accord with the sequential approach to site selection, there not being a convincing case to allocate it for the proposed suite of main town centre uses, particularly when opportunities existed to accommodate parts of the development on more sequentially preferable sites in, or on the edge of, town centres in the catchment area⁸. This is clear

⁸ SSE12, para. 7.8

evidence that the Council's initial advisers considered it necessary to disaggregate elements of the proposals for the purposes of applying the sequential test.

- 4.5 The subsequent advice of NLP was that "... the Council can consider the scope to disaggregate or change the content of the proposed development at EW, when considering the appropriateness of a plan allocation"⁹. Given that there is no demonstrated need for the OSV, it is considered wholly inappropriate to include it in the allocation, particularly absent a rigorous sequential assessment that demonstrates the absence of suitable and available alternative sites.
- 4.6 A recent Appeal decision for a mixed use (leisure and retail) scheme at Stanway in Essex (Tollgate Village) has confirmed the relevance of disaggregation to certain proposals, particularly where they comprise distinct elements and there is a lack of evidence that particular elements are fundamental to the proposals, the Inspector finding as follows:

In this case there is no evidence that the proposed format is necessary or fundamental to the proposal. Whilst the proposal is in outline, not a single retailer has been identified, and the size and location of units within the site has not been established and there is no defined timescale or phasing. It is difficult to conceive of a more open ended proposal. ... Most importantly, the Appellants have themselves disaggregated within the appeal site with three distinct zones. DZ1 and DZ3 are some distance apart. In these circumstances disaggregation within the sequential test would be justified¹⁰.

- 4.7 These principles are relevant to conducting the sequential test in respect of the proposed allocation. This is particularly so if the Inspector finds the evidence to be inconclusive that the OSV is fundamental to the proposal.

⁹ SSE17, para. 2.69

¹⁰ Appeal Ref: APP/A1530/W/16/3147039, Inspector's Report, para. 12.3.11

5. Issue 4

Has the analysis of the potential impacts of the retail element (2 and 3 above) of the proposal properly fulfilled the duty to co-operate?

5.1 For reasons set out in LS1, the duty to co-operate (DTC) has not been properly fulfilled.

5.2 The DTC is:

... a legal duty on local planning authorities to engage constructively, actively and on an ongoing basis to maximise the effectiveness of Local and Marine Plan preparation in the context of strategic cross boundary matters.

*The duty to cooperate is not a duty to agree. But local planning authorities should make every effort to secure the necessary cooperation on strategic cross boundary matters **before** they submit their Local Plans for Examination.*

Local planning authorities must demonstrate how they have complied with the duty at the independent examination of their Local Plans. If a local planning authority cannot demonstrate that it has complied with the duty then the Local Plan will not be able to proceed further in Examination.

*Local planning authorities will need to satisfy themselves they have complied with the duty. As part of their consideration, local planning authorities will need to bear in mind that the cooperation should produce **effective and deliverable policies** on strategic cross boundary matters. (Planning Practice Guidance, Paragraph: 001 Reference ID: 9-001-20140306, emboldening added)*

5.3 If a broad measure of consensus has not been reached on a strategy that involves accommodating floorspace requirements arising in neighbouring authorities at J27, necessitating neighbouring authorities to reduce their floorspace provisions in forthcoming Local Plan reviews, any allocation incorporating the scale of retail floorspace proposed by the promoters cannot be held to be 'effective and deliverable' since the local planning authority has no ability to deliver the floorspace reductions in neighbouring authorities on

which it is contingent. It is understood that such a consensus has not been reached. On the contrary, neighbouring authorities have objected to the retail floorspace provisions incorporated in the J27 allocation.

- 5.4 The basis on which the implications for neighbouring authorities' are set aside is considered to be wholly untenable and unsatisfactory, and in conflict with precepts of sustainable development. First, it would be in *prima facie* conflict with the town centre first principle that is grounded in the NPPF, and with which all emerging Local Plans must comply. Absent agreement with the neighbouring authorities, pursuant to the DTC, that their needs for additional retail floorspace should be accommodated at J27 rather than through investment to sustain the vitality and viability and regeneration of town centres within their respective administrative areas, this approach cannot be justified. Whilst the DTC normally requires positive action on the part of an adjacent authority to accommodate development needs arising within the administrative area of the plan-making authority that the latter authority has concluded cannot be accommodated within its area, it would be wholly unjustifiable for an authority to vire floorspace requirements from its neighbours without their agreement, and to take a unilateral decision to do so.
- 5.5 Moreover, it would need to be demonstrated through sustainability appraisal that such an approach would be the preferred alternative, and that the disbenefits of potentially lost investment in town centres elsewhere and increased travel demands are outweighed by the benefits. Absent such appraisal, which has not been undertaken, it would be wholly incorrect and untenable to rely on any such scenario. For reasons set out in LS1, the sustainability appraisal does not test the revised spatial and development distribution strategies implied by inclusion of the substantial uplift of commercial floorspace provision at J27. Nor does it appraise the implications of a regional scale development proposal for impacts beyond the district. The methodology and framework has been neither devised nor designed to appraise a proposal of a sub-regional scale with a commensurate scale of impacts.
- 5.6 As is clear from the critique of the Council's advisers (SSE16), the promoters of the scheme are anticipating adjustments in the retail allocations in the catchment area authorities to compensate for the comparison goods floorspace that is included in the proposed allocation.

In the light of this, the allocation is reliant on a broad measure of agreement if the product of the DTC is to be 'effective and deliverable' policies on strategic cross boundary matters.

- 5.7 It is clear from the objections to Policy J27 received from the neighbouring authorities that a broad measure of agreement has not been reached, not least in respect of adjustments to their own retail allocations on which the proposed allocation is reliant. The DTC Statement tracks the evolving situation in respect of the J27 proposals and how they were initially excluded from the Plan following concerns expressed by adjoining and nearby local planning authorities:

During the preparation of the Local Plan it became clear that proposals for a major leisure/tourism/retail proposal close to Junction 27 of the M5 would be promoted by the landowners and developer interests. The option was considered in the Council's Local Plan Review Options Consultation (January 2014), with objections from Taunton Deane, Exeter, North Devon and East Devon. At the Duty to Cooperate meetings referred to above, many of the adjoining and nearby local planning authorities continued to express concerns about the potential impacts on their town and city centres arising from a major proposal in this location. As a result the promoters of the scheme were asked to prepare reports to consider the appropriateness of the proposals against the "town centre first" policies of the NPPF. The Council appointed GVA to consider these assessments. When the Council considered the information in these reports in December 2014 it decided not to pursue an allocation at J27 at that time and resolved to exclude proposals from the Local Plan Review February 2015 Proposed Submission Consultation document. The Council considered at that time that the quantitative need for the proposed retail element of the development had not been demonstrated, the proposal had not adequately addressed sequential test requirements set out in the NPPF and that the potential impacts on the roles and functions of existing centres and other development plan proposals elsewhere had not been fully addressed¹¹.

- 5.8 As is cited in LS1, NLP subsequently superseded GVA as the Council's advisers, and produced a succession of reports and addendum reports through which their advice was successively moderated, but none of which concluded unequivocally that the evidence supported the case for the proposed allocation, and in particular the comparison goods retail

¹¹ DTC Statement, pp. 8-9

element of it. Nevertheless, it is clear from the DTC Statement that the Council's change in position was based on the NLP evidence, and that neighbouring authorities continued to challenge the findings during general liaison updates and duty to co-operate meetings¹².

5.9 As is clear from the DTC Statement:

- The Council proceeded with the J27 allocation in the face of unresolved concerns from the adjoining authorities, and on the basis of consultants' advice that provides neither unequivocal rebuttal of those concerns nor evidence and support for the proposed allocation, and in particular the comparison goods element of it.
- The 'cooperation' extended to little more than meetings at which the neighbouring authorities aired their concerns and Mid-Devon sought to rebut them. The evidence at Appendix A to the DTC indicates only two DTC meetings with the neighbouring authorities since publication of the original submission document in February 2015. One of those meetings (in May 2016) pre-dated the final additional advice received from NLP (in July 2016) (SSE17), and which it therefore must be assumed preceded a decision to include an allocation at J27 in the revised draft Plan. It would therefore appear that only one DTC meeting has been held (in November 2016) that post-dates the resolution to include an allocation at J27, which it is understood was taken in September 2016.

5.10 The outcome of the DTC process has not been a resolution of the concerns. On the contrary, it has been a unilateral decision on the part of Mid Devon District Council to proceed with an allocation that those promoting the scheme have identified will require review of local plan retail strategies and allocations in neighbouring authorities.

5.11 As cited in LS1, the circumstances surrounding the DTC are unusual in this instance in that the cooperation required is not that the plan-making authority is seeking accommodation of parts of its objectively assessed needs in the neighbouring administrative areas. That is not something that can be imposed unilaterally since it requires positive action on the part of the neighbouring authorities before the Plan can proceed, and there is an opportunity for it to be tested and examined through the neighbouring authorities' own plan-making activities. On the contrary, in this instance the neighbouring authority is seeking to vire retail floorspace

¹² Ibid, pp. 10-11

requirements arising from within the neighbouring authorities and a consequential underprovision in those administrative areas. Whilst a unilateral decision can be taken to overprovide comparison goods floorspace in the current plan, that does not pre-empt the cooperation of neighbouring authorities to accept the consequential adjustments in their administrative areas.

- 5.12 The only effective cooperation in this instance that would justify a sub-regional scale of comparison retail floorspace as part of the proposed allocation would therefore be the agreement of a joint sub-regional retail strategy with the neighbouring authorities, and other relevant authorities within the catchment area of the proposals to provide for sub-regional needs as part of the J27 allocation. Given that this has not been agreed, the DTC has not been satisfactorily discharged.
- 5.13 The discharge of the DTC must be construed according to the circumstances of each case. Unusually, in this instance the cooperation sought by the plan-making authority is to enable the accommodation of a level of retail need that is not justified by the evidence or required to meet the needs arising from within the Plan area. Under such circumstances, and given the potential implications for the neighbouring authorities in accommodating their own needs, the bar must be set higher than in circumstances where the cooperation required is to enable objectively assessed needs to be accommodated in the neighbouring authority area. The latter provides the opportunity for proper scrutiny through the neighbouring authorities' plan-making activities.
- 5.14 Given that the cooperation sought in this instance is not to end of meeting objectively assessed needs, there is a greater onus to reach agreement to achieve effective and deliverable policies. Given that agreement has not been reached, it is concluded that the necessary cooperation on strategic cross boundary matters has not been secured before the submission of the Plan for Examination, and therefore the DTC has not been satisfactorily discharged. The local planning authority therefore cannot demonstrate that it has complied with the duty. Where such circumstances arise, the PPG indicates that a Plan should proceed no further in the Examination. Given the strategic significance of the proposed J27 allocation and its potential implications beyond the administrative area of Mid Devon, failure to properly discharge this duty is considered to be potentially fatal to the Plan.

6. Issue 5

Is there a 'clear synergy' between the Outlet Shopping Village (OSV) proposal and the tourism and leisure elements of the proposed allocation?

- 6.1 The only clear synergy between the two elements is that they are both targeted predominantly at a non-local population. However, beyond this, there is little clear synergy.
- 6.2 The tourism and leisure elements are intended to deliver Strand 5 (Catching Passing Tourists / Major Tourist Facility) of the Tourism Study, the purpose of which is to encourage tourists already passing through Mid Devon on route to other destinations, such as North and South Devon and Cornwall, to:

... stop en route and increase the length of time (and money) tourists spend in Mid Devon. (ECO05, para. 6.12)

Based on the analysis set out here, there could be opportunity for the development of new tourism infrastructure or facilities to increase visitor numbers and spend. Based on the evidence set out, the opportunity here could be quite varied, but could include:

- *Delivery of a new man-made tourism attraction, such as an amusement park or a major climbing/high ropes course to cater for families and/or the adventure market; and/or*
- *Development of a tourism facility which showcased local food and produce, linked to the slow tourist agenda and the strong agricultural economy in Devon. (ECO05, para. 6.12)*

A major facility or attraction would also be likely to provide a number of associated services, such as a visitor attraction or activity, retail space, accommodation and café/restaurant floorspace; with a critical mass of 'things to do or stop for' being important in attracting visitors and maximising economic benefit. ... (ECO05, para. 6.13)

- 6.3 It is therefore clear that the tourist/leisure element is intended to provide for visitors already *en route*, and that any retail floorspace is intended to be no more than an 'associated service'. The proposed food retail element conforms to this definition of being a 'service' 'associated' with one of the main elements of the proposals, namely the Agronomy Visitor Centre.
- 6.4 The OSV on the other hand would function as a destination in its own right. This is evident from the OSV's that have been developed in other locations throughout the UK, most of which have no relationship with other tourist facilities. Its principal purpose would therefore not be to provide a facility for those travelling through the area as part of a visit to the wider area. On the contrary, it would be a new 'destination', and therefore trip generator, in its own right mainly accommodating day trips by those who have no wider purpose in the locality and will not contribute to the wider tourism economy. In terms of use and attraction, there would be little synergy between the two facilities, and it is likely that they would draw on different markets and clientele.
- 6.5 The lack of clear synergy between the elements is apparent from the evidence base. The OSV is justified by the promoters, not as an integral ingredient of the tourist/leisure attractions, but as enabling development to achieve a viable scheme. In SSE10 the main destination leisure elements of the proposals are categorised as an outdoor activity park (Westwood Reef), a regionally significant visitor centre providing information services for the region and showcasing the West Country Visitor offer (West Country Visitor Centre), and a major indoor family attraction. There is no reference to the OSV comprising part of the main destination leisure elements.
- 6.6 In Policy J27 itself the intention is to provide a major regional retail attraction in addition to major tourism and leisure elements. The retail attraction is therefore a main attraction in its own right. The reasoned justification for the policy states as follows:

The allocation identifies the land for tourism, leisure and retail development. The proposal seeks to significantly increase the tourism and leisure offer available in Mid Devon as identified in the Mid Devon Tourism Study 2014. ... (para. 3.184a)

*The allocation includes associated outlet/discounted retail floorspace to meet a regional comparison need and **deliver** the tourist and leisure elements of the allocation. Existing town centres will be safeguarded through planning controls. There is a clear synergy between the Designer Outlet Village proposal and the tourism and leisure aspects of the proposed allocation. It is not considered viable to disaggregate this proposed allocation given the nature and interdependency of the uses. ... (para. 3.184c, emphasis added).*

6.7 The justification for the OSV is therefore to meet a regional comparison ‘need’ and ‘deliver’ the tourism and leisure elements. For reasons adduced in earlier evidence, the regional need is neither proven, nor is its accommodation in this location justified and properly discharged through the DTC requirements. Moreover, the synergy between the retail and tourism/leisure elements is essentially a ‘delivery mechanism’ rather than a functional interdependence. This is not considered to amount to ‘clear synergy’ between the elements.

6.8 The lack of ‘clear synergy’ is endorsed by the Council’s own retail advisers. NLPs position is summarised in SSE16 and is as follows:

NLP accepts that there is synergy between the proposed tourist attraction, themed hotel, restaurants, cafes and Food Hall, and therefore it would not be appropriate to disaggregate these uses and seek to accommodate these elements on separate sites. (para. 4.13)

The DOV has less synergy with the proposed tourist attraction, but the co-location of these uses will be beneficial to each other in terms of spin-off trade and linked trips. (para. 4.14)

6.9 Beneficial co-location is not tantamount to ‘clear synergy’ between the different elements, which is considered to necessitate an essential ‘functional’ interrelationship between them. In their additional retail response of July 2016 (SSE17), NLP reiterated their earlier conclusions on synergy set out in the above-cited extracts, but did not seek to depart from them (SSE17, para. 2.71).

6.10 Having regard to the foregoing considerations it is concluded that there is no evidence of 'clear synergy' between the OSV proposal and the tourism and leisure elements of the proposed allocation. Given that the reasoned justification for the proposed allocation is premised on the assumption of a 'clear synergy' between the OSV proposal and the tourism and leisure aspects of the proposed allocations (SD01, para. 3.184c), this further undermines the justification for the proposed allocation.

7. Issue 6

If there is a need for the scale of tourist and leisure elements proposed, why is the OSV necessary?

- 7.1 The OSV is not necessary to achieve the objectives of the Tourism Study at which Policy J27 is purportedly aimed. The policy framework of the plan should allow for development to meet the objectives for tourism as outlined in the evidence base to come forward. However, it would be wholly inappropriate for the policy provisions aimed at meeting relevant and appropriate objectives relating to tourism to incorporate major development that is wholly inappropriate in terms of national and local policies for town centres and retailing, wholly unjustified by the evidence base, has significant implications for neighbouring authorities in the sub-region, and has not been properly resolved through the duty to cooperate.
- 7.2 In the Submission Plan published for consultation purposes in 2015, the Council's policy response to the Tourism Strategy was to include what its adviser, NLP, described as a 'reactionary' policy to tourism proposals (DM22)¹³. This was held by NLP to be an 'appropriate approach' to responding to future tourism proposals that might arise during the plan period in the absence of any 'meaningful' proposals at the time. Their advice to the Council was that the Plan would be sound absent an allocation at J27 since Policy DM22 allowed for tourism proposals to be considered in line with the Tourism Strategy as they arise. Policy DM22 remains part of the Plan, and a properly justified major tourism facility at J27 can potentially be accommodated within its parameters.
- 7.3 Whilst an allocation might provide more certainty in terms of location for a major facility, given that the specific proposal currently before the Council has not been properly justified in terms of scale and/or composition, and the inclusion of the OSV in particular is not supported by the evidence base, the only sound approach at this stage would be to remove Policy J27 from the Plan.
- 7.4 In the alternative, given that the evidence base does not support the provision of the OSV in particular, or the alleged 'clear synergy' between it and the tourism/leisure elements, and that it is this element that is in direct and flagrant conflict with the NPPF, an allocation could

¹³ SSE15, para. 7.5

be made for a major tourist/leisure facility excluding provision for the OSV. This is confirmed by NLP's advice to the Council:

Given that the NPPF/NPPG guidance on flexibility and the case law decisions on flexibility/disaggregation relate to the determination of planning applications rather than plan making, NLP does not accept that the Council cannot consider the scope to disaggregate or change the content of the proposed development at EW, when considering the appropriateness of a plan allocation¹⁴.

- 7.5 For reasons set out in response to Issue 7, to the extent that there is a need for enabling development, that does not justify the inclusion in the Plan of provisions that are in direct conflict with other national and local policy provisions and objectives. That is a matter for consideration through the Development Management process supported by clear and unequivocal evidence of need and scale, and a clear demonstration that the benefits outweigh the harm in the overall planning balance. There is no such evidence at this time that would support an allocation. Therefore, if the allocation at Junction 27 is retained, the proposals for the OSV should be removed from the provisions of Policy J27.

¹⁴ SSE16, para. 4.11

8. Issue 7

If the OSV is necessary to enable or make viable the tourist and leisure elements of the proposal, where is the evidence that an OSV (or retail allocation) of the scale proposed, with its attendant effects, is necessary?

8.1 First, there is no evidence to confirm that the OSV is necessary to enable or make viable the tourist and leisure elements of the proposals. As is pointed out in the representations by North Devon District Council, The Eden Project at St Austell in Cornwall, the promoters of which are party to the current proposals, was delivered, and is viable, absent a large element of retail or other high value land uses. Moreover, the Eden Project is in a former quarry that required substantial site remediation. The promoters of the current venture have provided no evidence to confirm that alternative means of funding are unavailable.

8.2 In their advice to the Council, NLP state as follows:

Evidence from the Eden Project in Cornwall suggests that such ambitious projects can rely heavily on charitable donations and grant funding in order to be developed and sustained¹⁵.

There is nothing in the evidence base to confirm whether such alternative sources of funding have been explored, and why a similar procurement process to the Eden Project cannot be achieved in the circumstances of the current case.

8.3 It is clear from their advice to the Council that NLP were sceptical that justification of the OSV as 'enabling development' was legitimate:

EW suggests that the Designer Outlet Village is inextricably linked to the Westwood Ark proposal, because it cross-subsidises the financing of the Ark. In effect the DOV is proposed as enabling development that will make the tourist attraction deliverable and viable. (SSE16, para. 5.1)

¹⁵ SSE16, para. 5.5

The term ‘enabling development’ is not a statutory one. It generally refers to development that would otherwise be considered harmful but is considered acceptable because it would facilitate (or ‘enable’) benefits that outweigh that harm. (SSE16,para. 5.2)

*The NPPF does not specifically refer to the viability of development proposals, and only refers to enabling development where it is required to secure the future of heritage assets. It does not refer to enabling development required to make other forms of development viable. However, the NPPF does not appear to rule out enabling development for other forms of development, and it is possible enabling development could be a material consideration in certain circumstances. **The case for enabling development and the benefits to the public interest would need to be compelling.** (SSE16, para. 5.3, emphasis added).*

8.4 Setting aside the issue of whether or not ‘enabling development’ is a legitimate justification other than to secure the future of heritage assets, this endorses LS’ position set out in paragraph 7.5 above that, if it is deemed to be legitimate, it necessitates that a balancing exercise be undertaken to weigh the benefits against the disbenefits. There is no evidence that such a balancing exercise has been undertaken by the Council in this instance, and that confirms that the potential harm arising from non-policy compliant retail development is outweighed by the benefits of the tourism and leisure elements. Given NLP’s acceptance that it is not axiomatic that all six of the strands of the multi-pronged approach in the tourism strategy have to be followed in order for the strategy to work, it would be necessary to demonstrate as part of this compelling case that Strand 5 is essential, the OSV critical to its delivery, and that the benefits outweigh the harm in the overall planning balance.

8.5 NLP’s conclusion on this point was unequivocal:

The key issue relates to the proposed DOV and employment development. We do not believe that sufficient evidence has been presented to demonstrate the DOV or employment uses should be included in a plan allocation as required enabling development. SSE16, para. 5.4)

More detailed evidence is needed to clearly demonstrate the DOV and employment land should be permitted as enabling development or that the scale of development proposed is the minimum required to cross subsidise the proposed tourist attraction. (SSE16, para. 5.9)

The necessary and compelling evidence required would need full open book financial appraisal that clearly shows the tourist attraction is unviable without a quantum of proposed enabling development, and that any harm caused by the enabling development would be outweighed by the overall benefits of the development. (SSE16, para. 5.10)

Whether the DOV and employment development could be reduced in size and still prove sufficient to subsidise the rest of the EW project would require more detailed figures. (SSE16, para. 5.11).

Based on the figures provided, the development could still break even if the DOV was reduced in size by 40%. However, we agree there would be a minimum size or critical mass required to make the Designer Outlet Village a viable proposition in its own right. (SSE16, para. 5.12)

Given that the enabling development/viability case for the DOV and employment development have not been clearly demonstrated, the Council need to consider whether the DOV and employment development is needed and acceptable in this location in isolation. (SSE16, para. 5.13)

- 8.6 There is no open book and/or independent assessment of viability included in the Council's evidence base that confirms either the need for the OSV *per se*, or on the scale proposed. Given that the promoters of the proposals seek to justify the OSV as essential enabling development, this is a significant omission.
- 8.7 Furthermore, the OSV is neither needed nor acceptable in the location proposed in isolation, and the Council has not made any case to the contrary.
- 8.8 The position can therefore be summarised as follows:

- The procedural legitimacy of the OSV as enabling development to make the tourism and leisure elements viable, is uncertain.
- Irrespective of the foregoing, the compelling case required to justify the OSV as enabling development has not been made, and there is no evidence that the Council has undertaken a balancing exercise that demonstrates the benefits outweigh the harm.
- As part of that balancing exercise, it would be necessary to demonstrate that Strand 5 is essential to the overall success of the multi-pronged tourism strategy. No evidence has been provided that demonstrates this to be the case.
- No evidence has been provided to demonstrate that alternative sources of funding are not available to deliver the tourism and leisure elements, or that the OSV is necessary *per se* or on the scale proposed.

8.9 The justification for inclusion of the OSV in the allocation has therefore not been made. Moreover, the justification for a specific allocation at J27 has not been made. The proposals could come forward in accordance with the provisions of Policy DM22. If an allocation is retained, then it should exclude the OSV, which is not justified in policy terms, but could still be included if a properly justified and evidenced case is presented through the development management process that clearly demonstrates benefits that outweigh the harm. As has been confirmed by the Council's advisers, the Council is not obliged to accept the composition and/or scale of the promoters' proposals when making a plan allocation. Given the lack of an evidence base to support the promoters proposals, and in particular the OSV, they would be, and have been, well advised to omit the comparison retail provisions from the proposed allocation.

9. Issue 8

Can existing town centre uses be properly protected through 'planning controls'?

- 9.1 It is assumed that this issue relates to the reference in Policy J27 to the OSV retailing “*controlled goods comprising discontinued/end-of-range lines, seconds and surplus/sample stock*”. This is intended to avert head-on competition with town centres. Given that the policy relies on a restriction of retailing to ‘controlled goods’, it is incumbent on the Council to justify what is meant in this respect, what ‘controls’ will be imposed, and that they will work. This is currently unevidenced.
- 9.2 In practice, any restrictions of this nature are extremely difficult to enforce since they would require local planning authorities to be able to distinguish between current lines and those that are discontinued/end-of-range. What this means is also subject to interpretation since, whilst a product may be a discontinued line by the manufacturer, it may be ‘in season’ in high street outlets given that manufacturers start planning and production runs for the next season well in advance.
- 9.3 What constitutes ‘surplus’ stock is also extremely difficult to define. The growth of factory outlet retailing has prompted production overruns since manufacturers and retailers now have additional and alternative outlets through which to promote their merchandise.
- 9.4 What is meant by ‘sample’ stock is unclear. However, some retailers and brands now supply merchandise that is exclusive to factory outlet centres.
- 9.5 In practice, it is therefore extremely difficult to impose meaningful and, in particular, enforceable planning controls to protect town centre uses. Controls are largely dependent on occupiers within outlets not wishing to cannibalise own their market by competing head to head with high street outlets, and seeking to utilise factory outlets to enhance sales through shifting alternative stock to that sold in the high street. However, as a visit to an OSV will confirm, there is often considerable duplication of outlet and high street ranges, and the distinction is often blurred.

- 9.6 It will be incumbent on the Council to explain further its understanding of 'controlled goods' and how it intends to implement this provision of Policy J27 through effective planning controls. Assuming it is able to do this, then the policy requires considerable change to reinforce the definition of, and restriction to, 'controlled goods'. However, LS are sceptical that it can be effectively achieved through planning controls.
- 9.7 It is therefore considered that the notion of 'controlled goods' is aspirational and rhetorical rather than defineable and enforceable. This being the case, the OSV element of Policy J27 is misconceived and is incapable of being restricted in accordance with the requirements of the policy.



10. Issue 9

Is the approach to the SAC sufficient and linked to that, what account is taken of the Priority Habitats that form part of the proposed allocation?

10.1 No comments in relation to this issue.



11. Issue 10

Does the evidence base lead to a conclusion that the impact on M5 Junction 27 can be properly managed?

- 11.1 Given the deficiencies in the retail evidence base, and the underestimate of trade diversion to the proposed OSV in particular as highlighted Annex 1 to in LS1, the traffic impacts on the M5 Junction 27 have been underestimated.
- 11.2 Moreover, for reasons set out in Annex 2 to LS1, the assumptions relating to mode share and non-car travel are considered to be unrealistic and inconsistent with evidence relating to similar facilities elsewhere.
- 11.3 The conclusions of the critique of the transportation evidence at Annex 2 to LS1 are that it is unclear whether the development can be served from Junction 27 without significant further capacity improvements, or whether any necessary improvements could be delivered, and cost-effectively, within the available land constraints.
- 11.4 For the foregoing reasons the evidence base does not lead to a conclusion that the impact on the M5 Junction 27 can be properly managed.



12. Issue 11

Does provision need to be made for compensatory flood plan?

12.1 No comments to make on this issue.



