Forward Planning
Mid Devon District Council
Phoenix House
Tiverton
EX16 6PP

By email to: planningconsultations@middevon.gov.uk

April 2018

Dear Sirs

Consultation on the Schedule of amendments made to the Sustainability Appraisal Update 2017

Please find attached herewith my representations in respect of the above. This comprises a pdf statement with attachments as referred to therein. It should also be noted that the statement contains links, such as to Google, and these links would be lost if the document were merely printed out.

Yours faithfully

Mr Martin Peter John Drew
Response to Sustainability Appraisal [SA] Consultation
April 2018

What is the Council trying to achieve by this consultation?

1. I start by asking rhetorically what the Council is trying to achieve by this consultation. In an article in the RTPI magazine Nick Wright, a “specialist in community engagement”, said: “All the plain English in the world won’t help if people don’t trust us and what we do. There are fundamental questions that we as a profession need to ask ourselves on every project. Why are we engaging the public? What are we asking them? Is it to inform about proposals that we as planners want to do anyway? Is it to ask people for their reactions on what we’d like to do, perhaps modifying our ideas in response to comments? Or do we want to empower communities to decide their future. Being honest about the purposes of engagement, and then doing that engagement well is what we all need to do if we are to build trust, respect and confidence in the system. If you say you’re consulting but in fact you’ve made your mind up, don’t say you’re consulting; be honest and say you’re informing”1.

2. In the light of the powerful case that local residents put to the Full Council on 21st February 2018, detailed below, it is clear that Mid Devon District Council [MDDC] are not interested in what the residents of Sampford Peverell actually want for their own community. It is clear from what is set out below that MDDC want to pursue SP2 regardless of any feedback that is given at any stage by the residents of the village. This appears to be an exercise in informing residents.

Scope of the review

3. The consultation says: “This adjournment provided the opportunity for the Council to commission an independent report to review the Sustainability Appraisal of the proposed plan”. Stopping there, for reasons I shall explore below, LUC have only undertaken a selective review of the SA. Their terms of reference did not extend, by way of example, to looking at the detailed site appraisals. The consultation continues: “The Council considered that this precautionary additional work would benefit the Examination, aid the Inspector’s decision making and give additional assurance to all hearing participants and the public that a fair and thorough assessment had been undertaken”2. I dispute that this work was precautionary. The timing, just 2 weeks before the Hearings were due to be convened in September 2017, suggests to me that the Council belatedly took legal advice that indicated that there were fundamental problems with the SA. Moreover, as a participant in the Hearing process, local resident and Council Tax payer, I am not remotely reassured that this has been a fair or thorough assessment. It appears to have been a self-serving exercise in an 

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1 Source of quote: “Trust is the foundation of an effective planning system” page 16 “The Planner” March 2018.
attempt to salvage a fundamentally flawed SA that was undertaken in-house by inexperienced staff rather than being put out to professional consultants.

**What is and is not covered by the review**

4. The Inspector will note from my original representations submitted in response to the consultation in February 2017 that I had 2 key complaints\(^3\). The first was that the Council’s reasons for choosing SP2 and rejecting reasonable alternatives that the SHLAA says are available, including those in the village and elsewhere, are impossible to detect. I accept that as a result of the LUC review that reasons have belatedly been given and I shall comment on these below.

5. The second generic complaint was that insofar as the SA assesses the proposed allocation at Higher Town, it contains a number of significant and material errors that affect the assessment and scoring. The most surprising is that it fails to identify the Grand Western Canal Conservation Area [‘the Canal Conservation Area’], let alone assess the effect of the allocation on that designated heritage asset. This fundamental complaint has not been addressed. As a result I stand by my earlier opinion that the SA is not legally compliant and, hence, unsound as an evidence base to support the allocation of the site at Higher Town for 60 houses. On this basis I maintain my earlier submission that this renders the Local Plan, as a whole, unsound because it is neither justified, i.e. the most appropriate strategy, nor consistent with national policy.

6. However I propose to start by bringing the Inspector up to speed on recent developments since September 2017 and as a result of that I shall comment on what is not in the review, in particular by reference to what Officers said at Cabinet and Full Council in February 2018. I will then provide a critique of the Council’s reasons for choosing SP2 and rejecting reasonable alternatives.

**Brief summary of what has happened since September 2017**

7. The first point to note is that a planning application [No 17/01359/MOUT] has been submitted to the Council. It was made in outline with all matters reserved except for access. The original scheme was for 84 houses with vehicular access proposed in a 100 foot wide cutting into the hillside opposite the cemetery. After a consultation exercise in which over 100 local residents objected, the scheme has been modified to 60 houses with access being sought from the unclassified and derestricted road that runs north of Battens Cross to the west of the site. There have now been a total of 6 consultations on the outline planning application and the numerous objections can be viewed on the Council’s planning search facility. I attach, at Appendix 1, my most recent response dated 26 February 2018, including a copy of the highways advice that I obtained. It is understood that the planning application is scheduled to be reported to the Planning Committee on 16 May 2018, which is after this consultation has closed. However there are still a number of problems with the application and so that

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\(^3\) See terms of Executive Summary at the start of my submission dated 9 February 2017.
date might change. The outcome is plainly material to the examination and I invite the Inspector to ask the Council about it in due course.

8. Associated with my first consultation response I made a complaint through the Council’s complaint process, ultimately to the Local Government Ombudsman [LGO]. The LGO ruled against me but in the interests of openness I attach a copy of the ruling at Appendix 2. Apparently a Council can ignore a designated heritage asset and that is “a result of the democratic planning process rather than fault by the Council”; I fundamentally disagree. Noting that paragraph 3 of the ruling describes the Planning Inspector’s role solely in terms of development management functions, I am unconvinced the LGO even properly understood that my complaint related solely to the Local Plan process.

9. Associated with my first consultation response I also communicated, for the first time in my life, with my local Conservative MP. However I have not had even an acknowledgement to 2 communications that I have sent to him.

10. Notwithstanding the above, and given the terms of the LGO’s ruling, I have gone out of my way to engage with the democratic planning process. Apart from the letters sent as part of the consultations on the planning applications, I have made speeches at meetings of the Cabinet on 9th February 2018 and Full Council on 21st February 2018. The Minutes of the respective meetings are available via the following links:

   https://democracy.middevon.gov.uk/ieListDocuments.aspx?CId=133&MId=1011&Ver=4
   https://democracy.middevon.gov.uk/ieListDocuments.aspx?CId=156&MId=849&Ver=4

11. The second link is to draft minutes at the time of writing. It should be noted that the Minutes do not provide a verbatim record of what was said at either meeting and in some instances the Minutes are completely silent. An example is the statement made by Councillor Heather Bainbridge at the Cabinet meeting which is conspicuous by its absence in the printed Minutes but is recorded in the newspaper article at Appendix 3. The lesson I take from this is that the printed Minutes of MDDC are not a complete record of the meetings.

12. In between the Cabinet and Full Council I had a conversation with one of my local Councillors in which I received a verbal assurance that she was against the SP2 allocation only to find that both of my local Councillors voted in favour of endorsing the unfettered progress of the Local Plan at Full Council. I also had a meeting with Councillor Richard Chesterton, which was attended by the Council’s Chief Executive, the Council’s solicitor and Tristan Peat (Forward Planning Team Leader), substituting for the Head of Planning who was unwell. Independent

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4 The online version of this article on Devon Live contains a useful aerial image that shows the close relationship between the site at Mountain Oak Farm [not the field in the bottom right of the first photograph] and the existing built development in the village: https://www.devonlive.com/news/devon-news/villagers-fears-sixty-homes-plan-1265018. This includes the SP1 site middle left of that image to the right of the road.

5 As recorded at the foot of page 75 of the Minutes of the Cabinet on 9 February 2018.
Response of MP Drew, participant 6786, to SA consultation by MDDC, April 2018

evidence from Stags was provided ahead of that meeting to show that the site at Mountain Oak Farm is deliverable and developable.

**Response to what was said at Cabinet**

13. I particularly wish to highlight the following response from the Officers to the question I put at Cabinet: “In relation to the Grand Western Canal Conservation Area officers did take it into account through this process but the critical issue was that it was not felt to have a significant impact upon it, accordingly it had not formed part of the written inclusions within the SA in relation to impacts because those impacts were not considered to be significant. Accordingly it was also not referred to specifically within mitigation measures, again because the impacts were not considered to be significant. There was therefore a fundamental difference of opinion with Mr Drew in relation to the SA process and the degree of impact in the terms of Policy SP2 and the relationship with the Grand Western Canal conservation area”[my emphasis].

14. The Council appears to be claiming that it took the existence of the Canal Conservation Area into account as part of its SA and assessed significance, but did so orally and did not record that appraisal because it was so insignificant. However I have to question the veracity of this version of events. There is no evidence that the Officers either identified the Canal Conservation Area or had a conversation with regard to significance. MDDC has had several opportunities to set down this version of events, for example in response to earlier consultation representations. I have made extensive submissions to MDDC at every opportunity, including pursuing its complaints procedure to the LGO but never, throughout that extensive exchange of correspondence, has the Council made this claim until it did so verbally at Cabinet on 9 February 2018.

15. Given the Officers’ stance I attach at Appendix 4 a statutory declaration that I have sworn with regard to my first contact with Officers at MDDC. The Inspector might wish to note that I have openly recorded this experience at all stages, including in my first representations, and it has never been challenged by the Council. The fact that the most senior Officer of the Council present at the only consultation event to be held in the village was, when asked, unable to identify the Canal Conservation Area contradicts the Council’s version of events. Even if a different Officer prepared the SA, on the Council’s version of events that Officer must have had a conversation with a senior Officer, so my sworn evidence is highly significant in that context because the senior Officer could not identify it. The Inspector should give my sworn evidence substantial weight.

16. The other point I take issue with from the Officer’s response is the claim that there is merely a difference of professional judgment between I and the Council in terms of significance. I make absolutely clear that the difference between MDDC and I is far more fundamental than that. To use a planning analogy I say that the Council has not taken account of a material consideration because at the point where it made the relevant decision to include the land at Higher Town

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6 Source of quote: page 73 of the printed minutes.
in the draft Local Plan, up to and including the meeting of the Full Council on 1st December 2016, there is no evidence to support any claim that MDDC had even identified the Canal Conservation Area, let alone considered the effect upon it. Subsequent publication of the Historic Environment Appraisal does not alter this.

17. The Inspector will be aware of relevant case law on this broad point. The case of Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council & Others [2014] EWCA Civ 137 is a good starting point. Sullivan LJ held: “There is a "strong presumption" against granting planning permission for development which would harm the character or appearance of a conservation area precisely because the desirability of preserving the character or appearance of the area is a consideration of "considerable importance and weight"."[24, my emphasis]. Applied to the facts of this case I say that the Council failed to take account of a critical factor that it was required to give considerable importance and weight.

18. Similar sentiments were expressed by Lindblom J in Forge Field Society v Sevenoaks DC [2014] EWHC 1895. At [48] he held: “…the duties in sections 66 and 72 of the Listed Buildings Act do not allow a local planning authority to treat the desirability of preserving the settings of listed buildings and the character and appearance of conservation areas as mere material considerations to which it can simply attach such weight as it sees fit… When an authority finds that a proposed development would harm the setting of a listed building or the character and appearance of a conservation area, it must give that harm considerable importance and weight”. At [49] he continues: “…a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one…an authority can only properly strikes the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering” [my emphasis]. One cannot demonstrate something if one fails to document it.

19. The failure to identify the Canal Conservation Area is, in my view, a clear breach of the requirements of the Directive. The Planning Practice Guidance says: “Where the Directive applies there are some specific requirements that must be complied with and which, in the case of Local Plans, should be addressed as an integral part of the sustainability appraisal process”[7][my emphasis]. The embedded link in that quote takes one to a “requirements checklist”, as recited in the left hand column of Table A1.1 of the LUC report. Criterion b) on that list is: “The relevant aspects of the current state of the environment”[8] and in the right hand column the embedded link under Local Plans takes one to a section "What is baseline information?"[9]. The Canal Conservation Area should have been baseline information but because it was not identified as part of the Higher

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Town site there has been a breach of the requirements of the Directive. My view that it should have been identified as baseline information is entirely consistent with my subsequent analysis of Historic England’s advice in this matter.

20. It is appropriate to note that paragraph 2.8 of the 2014 interim SA says: “The impact on heritage assets on development should be proportionally considered in relation to their significance”. Paragraph 2.7 of the 2015 SA repeats this. The 2017 and 2018 updates must also therefore accept this as they retain the main 2015 SA as their basis. The term “their significance” must be referring to the plural “heritage assets” not the singular “impact”. This means that it is the actual significance of the assets that triggers a formal recorded assessment rather than the need for a significant impact.

21. This interpretation is entirely consistent with the Council’s approach on other sites, such as SP1 and J27 [pages 202 and 171, respectively, of the SA Update January 2018]. Specifically with regard to the site at J27, which is the other side of the motorway, including the elevated slip roads, the SA says: “…the landscape settings of Sampford Peverell Conservation Area and the Grand Western Canal Conservation Area will also be affected [by J27]”\(^\text{10}\). I estimate this is at least 1 km distant and therefore 20 times the distance that the Higher Town site is from the Canal Conservation Area. The Council has therefore been grossly inconsistent in its approach to Higher Town and has not approached it in line with the ground rules that are established in its own SA.

22. The second point I wish to highlight from the minutes is the Officer’s response that: “the historic environment appraisal did consider the Grand Western Canal and did not identify any substantial harm”\(^\text{11}\). That is factually incorrect. The Inspector will find that the only reference to the Canal Conservation Area in the Historic Environment Appraisal is that it: “…lies some distance to the south”. That is an inaccurate geographical description in a document that post-dates when all the key decisions had been made but, crucially, the effect on the designated heritage asset was not considered in the “impact and mitigation” columns of the document. This appears to be misleading.

23. The minutes recording the same Officer continues: “In relation to the question regarding Historic England’s advice, this advice only came out at the end of 2016 so some of the SA work had been carried out before that”\(^\text{12}\). I accept that this is factually correct in respect of the advice note to which I referred, but this is no defence to the substance of my complaint for the reasons that I will outline at length below. It is clear that the Council has not followed the advice given by Historic England or its predecessor, English Heritage, in relation to Higher Town.

\(^\text{10}\) Source of quote: page 171 of the SA Update January 2018.
\(^\text{11}\) Source of quote: page 73 of the printed minutes.
\(^\text{12}\) Source of quote: page 74 of the printed minutes.
Response to what Officers said at Full Council, including my comments on the LUC report

24. The Minutes record the following response: “With regard to the robustness of the process, LUC (Land Use Consultants) were asked for an independent assessment, this was undertaken, they did not look at the site assessments, they felt this unnecessary as the site assessments had already considered reasonable alternatives”[13] [my emphasis: “they” can only reasonably be LUC].

25. In that context let us see what LUC actually say in their report. Paragraph 1.4 says: “...this report does not assess [the 2015 SA report]”. Paragraph 1.7 is clear that MDDC has asked LUC to consider a number of specific items and the 3 subsequent bullet-points are all related to reasonable alternatives. Paragraph 1.8 of the LUC report says: “a full review of the whole SA process for the Local Plan Review (as recorded in other documents) has not been undertaken as it lies outside the scope of this commission” [my emphasis]. Paragraph 1.8 of the LUC report continues: “It is important to note that LUC’s review has focussed on the SA process that has been undertaken and has not included a review of the detailed findings of the appraisal of site and policy options” [my emphasis].

26. As a result when one looks at Appendix 1 to the LUC report what one sees is a series of disclaimers, in response to the various requirements of the Directive, along the lines of: “It is assumed that this requirement was met...”. LUC has to assume because they have not looked at, amongst other things, the site assessments because it was explicitly outside of the scope of the review. Whilst paragraph 1.10 does say: “...LUC is not aware of any requirements that have not been met within the SA documents prepared to date”, that statement must be read in the context of the limited scope of the review and the assumptions it has had to make to fill that void.

27. The Officer’s response at Full Council is therefore misleading. LUC did not look at the site assessments because it was outside the scope of their commission and the Council’s claim that LUC did not do so because they [LUC] felt that it was unnecessary is manifestly incorrect. So what the Council has done is to get an independent consultancy to endorse a flawed SA by controlling the nature of the instruction in order to get the independent endorsement that it seeks.

28. For completeness in reaching this view I have noted paragraph 1.38 of the LUC report which says: “LUC recommends that the further SA work required is not necessarily new appraisal work in relation to alternative site options to TIV16 and SP2”. However given the limited terms of its remit it was bound to put that qualification in. LUC did not know whether it was necessary because it did not have a remit to look at the site appraisals. This does not alter my earlier view. I have also noted the terms of paragraph 1.41 of the LUC report but that appears to be at odds with the remainder of its report. Amongst other things its conclusion that it was unnecessary to undertake additional SA work in relation to “other options”[14] appears to directly contradict its earlier statement that “all of

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the site options for housing”\textsuperscript{15} should be considered as reasonable alternatives. However the site option that I put forward has never been considered.

29. I turn now to deal with other aspects of the LUC report. LUC say: “The selection criteria used for identifying additional sites were: [fourth bullet-point] sites proximate to the development proposal at Junction 27”\textsuperscript{16}. If that was one of only 4 key criteria for selection it is unclear why the sites at the eastern end of Sampford Peverell were not considered by the Council at any stage in September 2016. Instead paragraph 5.23 of the Cabinet report\textsuperscript{17} says: “The Planning Policy Advisory Group considered the options set out below” and there is then a table that is reproduced below:

<table>
<thead>
<tr>
<th>Potential Site</th>
<th>Number of Dwellings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tiverton – Hartnoll Farm</td>
<td>200</td>
</tr>
<tr>
<td>Tiverton – Land at Blundells</td>
<td>200</td>
</tr>
<tr>
<td>Sampford Peverell – Higher Town</td>
<td>60</td>
</tr>
<tr>
<td>Kentisbeare</td>
<td>20</td>
</tr>
<tr>
<td>Hemyock – Land SW of Conigar Close</td>
<td>22</td>
</tr>
</tbody>
</table>

To be clear the objective was to identify sites for 260 dwellings, but whilst there appears to have been a genuine choice between 2 sites for 200 dwellings there is no practical choice in the search for a 60 dwelling site. The 2 sites for 20 and 22 dwellings, respectively, were not a realistic alternative and there is no sign that the ‘spare’ site for 200 dwellings could have been chosen for just 60 units.

30. It also follows that when the Council made its crucial decision in September 2016 to allocate the Higher Town site that it expressly did not consider the sites at the north-eastern end of Sampford Peverell. In doing so it ignored one of only 4 criteria that LUC say it established for site selection. Although paragraph 1.35 of the LUC report suggests this list of sites was later expanded, it is clear that no other sites in Sampford Peverell were considered even at Full Council. Paragraph 1.36 of the LUC report is therefore correct to say: “…there is no specific information in the report about why other site options at Tiverton and the villages that were considered as reasonable alternatives earlier in the Plan making process were not considered as allocations for the additional housing”.

It is clear other sites were not considered and the Council is now retrospectively identifying reasons as to why it says the Higher Town site should be preferred.

31. Paragraph 1.37 of the LUC report continues: “…it appears that MDDC has only undertaken further SA work in the SA Update 2017 where there was new information available about the site that needed to be reflected in the SA, or address consultation comments. The SA Update 2017 does not set out a methodical process of how the list of previously rejected site options was revisited and why the two sites chosen as the additional housing sites in association with Junction 27 were selected over other options. It is therefore

\textsuperscript{15} Source of quote: paragraph 1.38 of the LUC report.
\textsuperscript{16} Source of quote: paragraph 1.32 of the LUC report.
\textsuperscript{17} See Agenda reports pack via the following link: https://democracy.middevon.gov.uk//ieListDocuments.aspx?CId=133&MId=719&Ver=4
unclear how the SA fed into the decision making process about which additional sites to allocate.

32. For reasons I give elsewhere the SA has only been updated selectively predominantly, if not exclusively, in relation to the land at Higher Town, and this new information has been positively sought by MDDC rather than as a reaction to information received. By way of example MDDC should itself have sought highways advice in relation to all available sites around the village rather than just Higher Town. The SA has never been updated to take account of my consultation response that identified the smaller site at Mountain Oak Farm. This was new information that, on any fair appraisal, should have been reflected in any update or revision to the SA at some stage18. This is yet another example of how the Council has been partial in its approach. It is also directly contrary to LUC’s recommendation that says: “The SA Update (2017) should accordingly include a clear audit trail listing all of the site options for housing and state which are reasonable alternatives…”19 [my emphasis]. To this extent the Council has not followed the advice of its own consultants. Indeed the audit trail that is available through the committee minutes is clear about which sites were not taken into account in the decision making process.

33. The other key point that I take from paragraph 1.37 of the LUC report is that there is no evidence that the SA fed into the decision making process about which sites to allocate at all. It is understood that MDDC's Policy Planning Advisory Group [PPAG], which met on 5 September 2016 and recommended the Higher Town site to Cabinet, is a closed meeting that is not open to the public. That raises all sorts of propriety issues and is an anathema to good practice. The fact that the company, Place Land LLP, was formed within a matter of days of the Cabinet meeting only heightens my very real concerns on this point.

34. The Minutes continue: “She [the Head of Planning] had heard all the representations regarding the use of the alternative site at Mountain Oak however it was felt that the Policy SP2 allocation was appropriate20. However, despite the fact that I put forward a specific reasonable alternative at Mountain Oak Farm as part of my response to the 2017 consultation, which has a smaller land take of lower grade agricultural land than the SHLAA site considered by the Council, the modified smaller site has not been considered by the Council. It has not been identified as: “additional information or [in response to] consultation comments received”21 and has not been assessed as a reasonable alternative at any stage. The Council, by its actions, do not therefore support a finding that it has in fact properly considered that reasonable alternative. I deal at length with this point in due course. So whilst I note the focus of the LUC report, as set out

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18 For example associated with the schedule of proposed modifications published in March 2017, referred to on page 3 of the "Schedule of Amendments to the SA Update 2017 (and included in the SA Update 2018)".
19 Source of quote: paragraph 1.38 of the LUC report.
20 Source of quote: page 58 of the printed minutes.
21 Source of quote: paragraph 1.30 of the LUC report.
in paragraph 1.28 thereof, it would appear that LUC was not informed of this available reasonable alternative either.

35. The Minutes continue: “There were several questions regarding transport issues, highway safety, access and pedestrian issues; the Highway Authority had not objected to the site”. I accept that statement is true. However I refer the Inspector to paragraphs 8-70 and 135-143 of my letter dated 26 February 2018, together with the letter from my Highways Consultant of the same date, at Appendix 1. This is clear evidence of the substance underpinning this issue. Since writing that letter the Applicant has reluctantly, over 5 months after it was produced, released a Road Safety Audit in relation to the footway crossing adjacent to the canal bridge at the end of Turnpike that says: “…achievable visibility distances in particular are below the requirements for the design standards [such that they are] substandard”. They cannot be improved and the assertion that this nevertheless represents an improvement is flawed because pedestrians do not need to cross the road on the corner at present and in any event the number of houses served off Turnpike would more than triple. The fact that Place Land LLP has been unable to come up with a solution that addresses this issue properly, in compliance with all relevant standards, despite various revisions to the scheme of highway works, shows that this matter cannot be dismissed so lightly. Whilst I return to this point further in due course the key point to take is that none of the problems that exist with the footway and crossing on Turnpike would apply to sites at the other end of the village. There is a continuous pavement of an appropriate width and direct access to the canal path/cycleway can easily be achieved to the smaller site at Mountain Oak Farm.

36. The Minutes continue by addressing the: “flood risk from the canal”. The fact that the Officer chose to respond to the joke question, but failed to respond in any detail to the significant questions that had, for the most part, been supplied in advance of the meeting to the Council at its request so that it had a chance to formulate a response, only serves to show that it has no answer to the serious criticisms that I and other residents have in relation to the land at Higher Town.

37. Finally under this section I draw attention to what Mr Byrom said: “the executive summary of the latest 2018 sustainability appraisal wrongly claims that policy SP2 makes mitigation for 2 conservation areas This has been corrected but only because we drew it to your officers attention”. The point can be traced back to page 476 of the cabinet papers, which said the site at Higher Town was selected because: “…criteria have now been included in the policy to ensure landscaping and design reflects the setting and character of the area, conservation areas.

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22 Source of quote: page 58 of the printed minutes.
23 Source of quote: paragraph 3.1, of J Bartlett Consulting Ltd report dated 12 October 2017, which can be found at Appendix A to the Highways response from Place Land published on 28 March 2018 on MDDC’s planning application record for 17/01359/MOUT: https://planning.middevon.gov.uk/online-applications/.
24 Source of quote: page 59 of the printed minutes.
25 See question posed by Mrs Pearce on page 49 of the printed minutes.
26 Source of quote: page 43 of the printed minutes.
[plural] and listed building”. The additional “s” has now been removed. It necessarily follows there are no criteria in Policy SP2 to ensure the landscaping and design reflects the setting and character of the Canal Conservation Area. There are no criteria in the policy because the very existence of the Canal Conservation Area was not identified in the evidence base underpinning the allocation and so the evidence base does not support introducing them.

**Response to what is covered by the review**

38. I accept that the Council has now given reasons for its selection. However it has not taken account of the reasonable alternative at Mountain Oak Farm, shown for ease of reference on the plan at Appendix 5 to this submission. Against that background I turn to the reasons given in the "Schedule of amendments made to the SA Update 2017 (and included in the SA Update 2018), following the advice and recommendations provided by Land Use Consultants to Mid Devon District Council", dated January 2018.

39. The first point to make is that this document is very poor in the way in which it has been set out. The second point is that I shall confine my analysis below to just 3 of the 4 sites around the village that were the subject of my initial consultation response. I see little point in commenting further on the Morrells Farm site because the Council and I agree that the site is unsuitable and merits no further consideration. However it is material to note that even the Morrells Farm site affects only 2 designated heritage assets, whereas 3 are affected at Higher Town. I stand by my original assessment of the 3 sites that merit further consideration around Sampford Peverell and nothing that I have seen leads me to a different view. In other words the sites on land off Whitnage Road and at Mountain Oak Farm are far better options for the identified scale of development than Higher Town for the reasons set out in my original consultation response.

40. Essentially the reasons for its selection that the Council has now given read as a set and are argued in favour of the selected site and against the others. I shall break down the reasons and then comment upon them in what is set out below.

41. **Reason**: “criteria have now been included in the policy to ensure landscaping and design respects the setting and character of the area, conservation area and listed building”. **Response**: The need for landscaping and design had already been noted but had not been enough to stop concerns over elevation and visual impact being given as reasons for not using the site in 2015. The scoring in 2015 already included mitigation through policies on design and environment that had been included by then. By keeping the scoring unchanged from 2015, the 2017 SA acknowledges that the inclusion of GI in Policy SP2 simply responds to that mitigation requirement. The fact that scoring in the SA remains the same shows that nothing additional and significant has been done to provide extra mitigation to overcome the reason given in 2015 for not selecting Higher Town for an allocation, namely its elevation and potential for landscape and visual impacts.

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27 See page 34 of 41 of the “Executive Summary of SA Review Process (2018)".
42. **Reason:** reference to reports to Cabinet and Full Council in September 2016 at which the site was considered. **Response:** these reports pre-date the Historic Environment Appraisal and so it is clear that the very existence of the Canal Conservation Area was not taken into account at these meetings or in making a decision, at any stage, to include the Higher Town site in the draft Local Plan.

43. **Reason:** “The site is elevated and would require careful landscaping and mitigation measures”. **Response:** The Council has not done an LVIA and the only relevant LVIA in relation to Higher Town before the examination is that prepared by myself and submitted with my consultation response in February 2017. It shows that the site can be seen from 10 km away in 2 directions. It would not be possible to landscape or mitigate development on a hillside that rises 35 m above the canal and 25 m above 16 Turnpike for the reasons set out in paragraphs 32, 74 and 117-129 of my letter dated 26 February 2018 and the other material referred to therein. It should be noted that the LVIA provided by Place Land LLP as part of the planning application was, at that time, incomplete and did not comply with the GLVIA for the reasons set out in my letter.

44. **Reason:** “development is proportionate in scale to the existing village”. **Response:** This appears to be a new criterion for housing allocations that has appeared from nowhere, but in any event it should be common ground that all of the reasonable alternatives can provide 60 houses. In the case of Mountain Oak Farm it would be on a smaller site without the loss of Grade II agricultural land.

45. **Reason:** “The Highway Authority has advised that any development of the site should be phased until after improved access to the A361”. **Response:** This is not a reason to choose the Higher Town site and in any event the Inspector will be aware from the Highway Authority’s response to the 2017 consultation that it appears to have retracted from this position.

46. **Reason:** reference to reports to Cabinet and Full Council in September 2016 at which the site was considered, to which my earlier comments apply, and it is said: “other potential sites in Sampford Peverell were not considered to be of an appropriate scale or would impact adversely on heritage assets”. **Response:** this reason is necessarily flawed because the Council did not identify the existence of the Canal Conservation Area at that time and so the comparative assessment was not undertaken correctly. In simplistic terms there is a negative against Higher Town that alters the weighting exercise that the Council undertook and the entire exercise has to be run again if it is to be lawful and hence sound. The Council has also adopted a selective approach by allocating only 60 houses onto the 6 hectare site at Higher Town that its own SHLAA said could accommodate 180 houses at a conventional density of 30 dph. However it then says that the other sites, such as land off Whitnage Road and at Mountain Oak Farm, are not of an appropriate scale. However there is absolutely no reason why only part of those sites could not be selected. This is the exercise that I have done and upon which the Council has not commented because it has not considered the best of the reasonable alternatives that I have identified [see Appendix 5].

47. **Reason:** “Several of the sites in Sampford Peverell are reasonable alternatives, and have similar landscape or heritage characteristics”. **Response:** I accept the
first limb of this sentence but not the second. Dealing initially with landscape the site at Mountain Oak Farm lies below the canal at between 85 and 90 m AOD. It is a gently sloping site that is relatively inconspicuous in the wider landscape because it is behind the housing on the main road frontage and below the A361 and the associated junction slip roads when seen from the east. In contrast the Higher Town site rises approximately 20 metres above Turnpike to around 125 m AOD, up to 40 vertical metres higher than the site at Mountain Oak Farm and is highly exposed in the landscape. Its landscape character is completely different. In terms of heritage designations, whereas Higher Town impacts on the setting of 3 designated heritage assets, including a listed building, the site at Mountain Oak Farm potentially impacts on just one and the reasonable alternative that I have put forward allows for a belt of landscaping that could effectively screen, or at the very least filter, views towards any new housing on that site. As such this reasoning is manifestly incorrect.

48. Reason: “They have an advantage of being slightly closer to J27 than Higher Town”. Response: I agree that they are all closer, but disagree with the word “slightly”. In accessibility terms it makes a crucial difference because the site at Mountain Oak Farm would allow prospective residents to walk to J27 via the new lit footway that Devon County Council is about to commission, which will connect that end of the village with Tiverton Parkway station. In contrast, for reasons set out in my letter dated 26 February 2018, notably paragraphs 135-143, together with the letter from my Highways Consultant of the same date, at Appendix 1, walking is not a realistic option for prospective residents of SP2. I have already drawn attention to the Road Safety Audit in this respect. This is without taking account of the additional distance from J27 and the fact that residents would have to climb up to 40 vertical metres higher to get home.

49. Reason: “However, they are part of more extensive tracts of land, and their allocation would result in larger housing sites than the identified additional need for 60 dwellings. It would not be realistic to seek to artificially subdivide sites to limit the number of units that are developed. As such, development of a number of potentially suitable sites in Sampford Peverell would result in much more significant expansion of the village”. Response: I repeat the Council is being selective in its approach because this is exactly what the Council has itself done at Higher Town. There is absolutely no reason why an allocation for more than 60 houses should be made. The reasonable alternative that I have identified is bounded by an established hedge line to its eastern boundary that has a small stream along it, the canal to the north, existing housing to the south and to the west, along with the sports field. The claim that this is an artificial subdivision is manifestly incorrect. The Council has not therefore considered this site. In the circumstances because this reason is, itself, artificial, no purpose would be served by commenting on the alleged conflict with Policy S2. Both the Parish Council and I only endorse the release of a site for 60 dwellings in Sampford Peverell but only in the scenario that the J27 allocation is found to be sound.

50. Reason: “SP2 is a naturally enclosed site, bounded by hedgerows and road”. Response: I disagree. It is a highly exposed hillside and in any event the SP2
allocation works to a random line halfway up the slope beyond which is LI. The allocation might make sense to someone when viewed in plan form but viewed from No 16 Turnpike, or elsewhere within the Canal Conservation Area, it is quite literally a green field that runs to an open skyline28.

51. **Reason:** “The location of the site on the west of the village is considered to be only a minor disadvantage”. **Response:** I agree it is a disadvantage, but a major one, which adds to the reasons why it is a fundamentally unsound allocation.

52. **Reason:** “The site is being actively promoted and is deliverable”. **Response:** This is also true of the site at Mountain Oak Farm. The Council has been provided with a letter dated 13 February 2018 from Stags to demonstrate this and I have invited the landowners to put it into the public domain. However the Council is fully aware of the contents of that letter because it was tabled ahead of the meeting referred to at paragraph 12 above.

53. For all of the above reasons I say that the reasons given by the Council for its selection are unsound. Whilst I accept that there is an element of planning judgment involved I have explained why these reasons are flawed because, in particular, the Council has not taken account of the Canal Conservation Area. Thus it is with supreme irony that one of the reasons is that other potential sites around the village would impact adversely on heritage assets when the site at Higher Town is the only one that would affect 3 designated heritage assets.

54. In view of the comprehensive analysis of the reasons given for selection of the Higher Town site and that many of the same reasons are used to counter the reasonable alternatives around the village I can be brief. The site at Whitnage Road is rejected because it has a long boundary with a busy road with “potential for negative impacts from noise”. I addressed this in my original representations and gave an example of major housing development at a new settlement where a noise fence and, in that case, bund is to be installed next to the M4029. The guidance issued by Historic England, discussed further below, requires that where there would be harm to designated heritage assets that alternatives that do not result in such harm should be looked at first. The site at Whitnage Road is such a site. The noise issue can be resolved by conventional mitigation and so the Council should have selected this site in preference to that at Higher Town.

55. Turning to Mountain Oak Farm, and dealing with each component in turn, it is said that: “This option is a large site”. This comment appears to relate to the SHLAA site of 9 hectares rather than the smaller site that has been identified during the Local Plan examination. The area within the red edge on the plan at Appendix 5, which is put forward for housing development, extends to approximately 2.5 hectares. The housing site at Mountain Oak Farm is therefore considerably smaller than the allocated site at Higher Town. On this basis the Council’s reason is manifestly incorrect. If the Council is concerned about minimising loss of agricultural/green field land, which it should be, then the Mountain Oak Farm site is far preferable even before one takes account of the higher grade of land at the allocated site.

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28 Apart from No 48.
56. Turning to the claim that the site at Mountain Oak Farm is: "slightly divorced from the main body of the village", I have already commented on this in my original representations on the Local Plan and drawn out a number of reasons why the Council has been inconsistent in relation to its approach to this matter. Amongst other things paragraph 4.137, on page 57, of the 2015 SA merely describes the Mountain Oak Farm site as "slightly divorced from the main body of the village" whereas the Higher Town site was described in the same document as "divorced from the village" [page 309 of the 2015 SA]. It is material that only a small part of the Mountain Oak Farm site would be required for 60 dwellings, as described above, and that this would be in that part of the larger SHLAA site closest to the village. Moreover the allocation at SP1 would materially change the relationship and further integrate the Mountain Oak Farm site. The above distinction is retained in the 2018 SA and so the Council’s own assessment in its latest version of the SA is that the selected site is more divorced from the village than Mountain Oak Farm. On any analysis something that is "slightly divorced" is less than something that is "divorced". It is clear that the Council’s own reasoning is illogical.

57. Finally I turn to the claim that the Mountain Oak Farm site: "does not offer the most logical extension to the built extent". I accept that there is an element of planning judgment involved in this reason but for the reasons given in my initial response to the Local Plan consultation I say this is not made out. The Inspector might again wish to look at the aerial image in the Devon Live article or a similar aerial photograph appended to my original representations to inform his view in this matter. I would also refer him to the analysis of the Copplestone appeal in my letter dated 26 February 2018, at Appendix 1, including paragraph 126 and its reference to a "finger" of development. That aptly describes housing along Turnpike which, in contrast to the Mountain Oak Farm frontage, the Council has expressly chosen to exclude from its character appraisal. The Council’s own evidence base for the Local Plan therefore contradicts its stated reason for selecting the land at Higher Town in preference to the Mountain Oak Farm site.

58. Noting that I have already commented on the only other reasoning that is given to rejecting the Mountain Oak Farm site, in terms of scale and adverse impact on heritage assets, it is clear from this brief analysis that these reasons do not add up. I actually go so far as to suggest that they are Wednesbury unreasonable because, in the round, they are irrational.

59. The Council has made a mistake. It has failed to take account of a material consideration of considerable importance and weight in its assessment of the Higher Town site and it has given reasons for its selection that are, taken in the round, demonstrably false. There is a clearly preferable reasonable alternative before the examination that the Council has simply not given any consideration to. However it is now clear from the strong case that local residents and the

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31 See plan at page 37 of: [https://www.middevon.gov.uk/media/103553/tvc-settlement-character-part-1.pdf](https://www.middevon.gov.uk/media/103553/tvc-settlement-character-part-1.pdf)
Parish Council made at Cabinet and Full Council that MDDC have no intention of changing its course of action and they rely instead on the Inspector telling the Council that it has got it wrong.

**Review of the position and advice given by Historic England**

60. Historic England’s predecessor, English Heritage, wrote a letter to the Council dated 19 August 2013 which said: “While villages may have the capacity to grow and ensure long term viability the impact on the place and it’s locally distinctive qualities must be properly considered through the plan process”. It continues: “Sound Local Plans are based on adequate up-to-date evidence about the historic environment which is used to assess the significance of heritage assets and the contribution they make to the local area”. It also says: “Significantly, the NPPF is clear that the conservation and enhancement of heritage assets is part of sustainable development rather than a constraint to it. Consequently the evidence base needs to go further than simply setting out a list of designated assets” [my emphasis]. Finally, and with supreme irony given the position that I and other residents of Sampford Peverell now find ourselves in, the letter says: “The NPPF highlights the role of participation in gaining the views of the local community and others who have a stake in the future of the area”.

61. What I take from this is that right from the outset the relevant statutory consultee has been quite clear about the approach required towards the historic environment but MDDC has not taken the correct approach. With regard to the Higher Town site it failed to even “list”, or identify, the Canal Conservation Area. It has still not corrected that error and, applying the clear inference from English Heritage’s letter, the Local Plan is therefore unsound.

62. Paragraph 2.1 of the Historic Environment Appraisal records Historic England’s position as at 6 April 2015 to be: “Any site allocation and the implications should be informed by and provide a direct response to the Historic Environment to ensure a positive and proactive strategy for the conservation and enjoyment of the historic environment (NPPF para.126) and we are unsure if this is the case” [my emphasis]. The Inspector might wish to review Historic England’s full response of that date, but it is clear that MDDC have not complied with this advice because the land at Higher Town, being a site allocation pursuant to SP2, is not even informed by the very existence of the designated heritage asset in the SA. To be clear the Higher Town site was not subject to Historic England’s scrutiny in 2015 because it was not allocated at that time.

63. Historic England’s Good Practice Advice [GPA] note 1: “The Historic Environment in Local Plans” says: “A positive strategy in the terms of NPPF paragraphs 9 and 126 is not a passive exercise but requires a plan for the maintenance and use of heritage assets and for the delivery of development including within their setting that will afford appropriate protection for the asset(s) and make a positive contribution to local character and distinctiveness”32. For reasons previously

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32 Source of quote: paragraph 10, GPA1.
outlined at length, including those in paragraphs 80-116 of my letter dated 26 February 2018, at Appendix 1, this is not the case.

64. GPA1 continues by saying: “In formulating the strategy it is advisable and often necessary to consider the following factors: [first bullet-point] How the historic environment can assist the delivery of the positive strategy and the economic, social and environmental objectives for the plan area (NPPF, Paragraphs 126 and 132 and Sections 66 and 72 of the Planning (Listed Buildings & Conservation Areas) Act 1990) [sixth bullet-point] The means by which new development in Conservation Areas and within the setting of heritage assets might enhance or better reveal their significance (NPPF, Paragraph 137)”\(^\text{33}\). It is significant in my submission that Historic England’s GPA on “The Historic Environment in Local Plans” [my emphasis] refers to the statutory duties in sections 66 and 72. The Council is aware that I have taken advice which confirms my submission that these duties apply to the Local Plan process. Since the Council failed to identify the Canal Conservation Area it must follow that it has failed to discharge the statutory duty in section 72 of the Planning (Listed Buildings & Conservation Areas) Act 1990). I draw this point out further below.

65. GPA1 also says: “Site allocations should be informed by an evidence base and an analysis of potential effects on heritage assets”\(^\text{34}\) [my emphasis]. I shall give an example in due course of the correct approach to this advice.

66. GPA3: “The Historic Environment and Site Allocations in Local Plans” says: “In allocating sites, in order to be found sound, it is important to note that as set out in paragraph 182 of the NPPF the proposals are to be positively prepared; justified; effective and consistent with national policy. It is also important to note various legislative and policy requirements: [first bullet-point] The Local Plan should set out a positive strategy for the conservation and enjoyment of the historic environment, in which the desirability of sustaining and enhancing the significance of heritage assets should be considered (NPPF paragraph 126); the associated statutory duty regarding the desirability of preserving or enhancing the character or appearance of a conservation area must be considered in this regard (S72, Planning (Listed Buildings and Conservation Areas) Act 1990); [second bullet-point] Development will be expected to avoid or minimise conflict between any heritage asset’s conservation and any aspect of the proposal, taking into account an assessment of its significance (NPPF paragraph 129); [third bullet-point] Great weight should be given to an asset’s conservation and the more important the asset, the greater the weight to the asset’s conservation there should be (NPPF paragraph 132); [fourth bullet-point] Local plans must be prepared with the objective of contributing to the achievement of sustainable development (NPPF, paragraph 151). As such, significant adverse impacts on the three dimensions of sustainable development (including heritage and therefore environmental impacts) should be avoided in the first instance. Only where adverse impacts are unavoidable should mitigation or compensation measures be considered (NPPF paragraph 152). Any proposals that would result in harm to

\(^{33}\) Source of quote: paragraph 13, GPA1.

\(^{34}\) Source of quote: paragraph 18, GPA1.
heritage assets need to be fully justified and evidenced to ensure they are appropriate, including mitigation or compensation measures." [my emphasis].

67. The emphasis in the above quote, from the Government’s statutory advisor with regard to the historic environment, in its GPA on “The Historic Environment and Site Allocations in Local Plans” [my emphasis] is unambiguous. The statutory duty in section 72 “must be considered” [my emphasis]. In my professional opinion nearby developments, i.e. not actually within the conservation area, come within the scope of this duty if they would have an impact on the character or appearance of the designated area. The Council has acknowledged, the Canal Conservation Area is in “reasonable proximity to the site” and having regard to the definition of “setting of a heritage asset” in the Glossary to the National Planning Policy Framework, there can be no doubt that the land at Higher Town comprises the setting of the Canal Conservation Area. Housing development on the crest of an open hillside up to 35 m above the canal and within 50 m of the designated area would plainly be subject to the duty. The Council has yet to explain how it says it discharged this statutory duty when it allocated the site.

68. GPA3 states: “The site allocation process is best informed by an up-to-date and robust historic environment evidence base. It is important that the gathering of this evidence begins prior to the commencement of work on the Plan, to provide baseline information at all stages in its preparation. The relevant Historic Environment Record (HER) and other evidence held by the local planning authority will help establish the baseline information. This in turn will help identify heritage assets affected… The evidence gathered should relate to both designated and non-designated heritage assets, in accordance with the NPPF. It should be used at all stages of plan making if soundness is to be demonstrated, and inform the Sustainability Appraisal…” [my emphasis].

69. This underlines my clear view as to why SP2 should be found to be unsound. The Council has failed to identify the Canal Conservation Area, which is a designated heritage asset, in relation to the land at Higher Town in its SA and so its baseline information is deficient. It has not corrected this error and so, applying this clear advice from Historic England, soundness cannot be demonstrated.

70. GPA3 continues: “It is important to understand the significance of any heritage assets that would be affected by a potential site allocation. This involves more than identifying known heritage assets within a given distance, but rather a more holistic process which seeks to understand their significance and value. Whilst a useful starting point, a focus on distance or visibility alone as a gauge of impact is not appropriate... an allocation at a considerable distance away from a heritage asset may cause harm to its significance, reducing the suitability of the site allocation in sustainable development terms” [my emphasis].

35 Source of quote: page 2 of GPA3.
36 Source of quote: paragraph 13.1 of the Council’s examination ‘Matters and Issues’ statement, which was submitted ahead of the first abortive Hearing.
37 Source of quote: paragraph 1.1 of GPA3.
38 Source of quote: paragraph 2.2 of GPA3.
71. I have explained my position with regard to the Historic Environment Appraisal, but even if I am wrong such that it is acceptable to bolt on a document of this nature after the key decisions are made, it only refers to the Canal Conservation Area as being an unquantified distance away. That is contrary to this advice. It does not go on to make any assessment of its significance or value. Even if the Officer’s claim that this was done orally is admitted, it was not documented.

72. GPA3 also says: “Mitigation and enhancement measures identified as part of the site selection process and evidence gathering are best set out within the policy to ensure that these are implemented”\(^{39}\). There are no criteria in the policy with regard to the Canal Conservation Area and this is because it was not considered during the evidence gathering and site selection process.

73. The “Site Selection Methodology” on page 5 of GPA3 include what is set out below and overleaf:

"STEP 1 Identify which heritage assets are affected by the potential site allocation

- Informed by the evidence base, local heritage expertise and, where needed, site surveys...

STEP 2 Understand what contribution the site (in its current form) makes to the significance of the heritage asset(s) including:

- Understanding the significance of the heritage assets, in a proportionate manner, including the contribution made by its setting considering its physical surroundings, the experience of the asset and its associations...

- Understanding the relationship of the site to the heritage asset, which is not solely determined by distance or inter-visibility...

STEP 3 Identify what impact the allocation might have on that significance, considering:

- Location and siting of development e.g. proximity, extent, position, topography, relationship, understanding, key views

- Form and appearance of development e.g. prominence, scale and massing, materials, movement

- Other effects of development e.g. lighting, changes to general character, access and use, landscape, context, permanence ...

STEP 4 Consider maximising enhancements and avoiding harm through:

- Avoiding Harm
- Identifying reasonable alternative sites

STEP 5 Determine whether the proposed site allocation is appropriate in light of the NPPF’s tests of soundness

- Positively prepared...and consistent with achieving sustainable development (including the conservation of the historic environment)

\(^{39}\) Source of quote: paragraph 3.2 of GPA3.
■ Justified in terms of any impacts on heritage assets, when considered against reasonable alternative sites and based on proportionate evidence
■ Effective in terms of deliverability, so that enhancement is maximised and harm minimised
■ Consistent with national policy in the NPPF, including the need to conserve heritage assets in a manner appropriate to their significance

Decisions should be clearly stated and evidenced within the Local Plan, particularly where site allocations are put forward where some degree of harm cannot be avoided, and be consistent with legislative requirements”.

74. I have already referred in my original representations to GPA8: “Sustainability Appraisal and Strategic Environmental Assessment” and so I do not repeat that analysis. With reference to what was said at Cabinet, whilst I accept it is dated 1 December 2016 it supersedes that published in 2013, and the general thrust is the same. Its date alone is not a good reason for the Council to distinguish it.

75. GPA8 says stage 1, screening, does not apply here and so one starts with stage 2, scoping. It says: “The intention is to identify the key characteristics of the area in question [including, second bullet-point] "Collects baseline information to establish current situation”40. The Council did not identify the Canal Conservation Area as part of its baseline. The next bullet-point is: “Identifies sustainability issues and problems, including threats and opportunities for the historic environment”. Since the Council did not identify it in its baseline it could not identify threats. In the next paragraph, 2.3, reference is made to the Planning (Listed Buildings & Conservation Areas) Act 1990); my earlier comments apply.

76. GPA8 then says: “The establishment of a robust and comprehensive baseline will assist in demonstrating a proportionate evidence base for the plan in question, as well as help to strengthen its case for soundness when subject to examination. Baseline information that describes the current and future likely condition of the historic environment in terms of its significance, sensitivity and capacity to accommodate change can also help identify areas of particular sensitivity to development, sustainability issues, predict and monitor likely effects and in identifying alternative solutions”41. Again my earlier comments apply. The Council simply did not identify it in its baseline assessment.

77. GPA8 continues: “analysis of a range of baseline information appropriate to the type and level of plan can help identify sustainability issues relating to the historic environment. These might include: [bullet-point] Conserving and enhancing designated and non-designated heritage assets and the contribution made by their settings”42. As the Canal Conservation Area was not in the baseline information it must follow that this analysis did not occur. At no stage has the Canal Conservation Area been identified in the SA for Higher Town.

78. GPA8 then recommends establishing decision making criteria. It says adopting this approach: “...will help ensure that key heritage issues are incorporated in
the framework and that likely effects on the historic environment are properly assessed. Examples of appropriate criteria include [first bullet-point] Environmental: will the policy or proposal Conserve and/or enhance heritage assets, their setting and the wider historic environment?”. I will examine good practice where this has been done in due course, but it is clear that MDDC has not adopted this approach.

79. GPA8 says: “Identification and prediction of significant effects (both positive and negative) on the historic environment may involve [first bullet-point] Loss of, or damage to, any heritage asset and/or its setting”\(^{43}\). The Council did not identify the designated heritage asset in its SA and so it did not assess significance.

80. It continues: “The avoidance of damage to all heritage assets remains highly desirable owing to the finite nature of the resource. Alternative proposals that avoid or result in less harm to the historic environment should be considered preferentially before considering whether mitigation appropriate to the level of impact and type of harm involved can be identified”. Even on the Council’s own approach to Higher Town there was damage, or harm, to designated heritage assets. This advice is clear and influences what I have said in respect of Whitnage Road: it should have been selected in preference to Higher Town because the quantified need for 60 houses can be achieved on part of it without any harm to any designated heritage asset\(^{44}\).

81. In conclusion the above precis of Historic England’s pertinent advice, both sent to the Council specifically as part of the Local Plan process and available more generally on its website, has shown how far short of good practice MDDC falls.

**An example of good practice in a comparable situation**

82. As a life member of Salisbury Civic Society I have reviewed the concurrent Wiltshire Site Allocation Plan and I have identified an example of what I consider to be good practice with regard to a comparable site in an SA. I regard this to be a neutral example. All of the documents I refer to below can be accessed via the following link:

http://www.wiltshire.gov.uk/wiltshsgsiteallocationsplan.htm

83. The first point to note is that the SA has been done by a firm of independent consultants, Atkins. The site I have identified is “S159” known as “Land to the north of Downtown [should be Downton] Road, Salisbury”. At 13.5 hectares I acknowledge it is larger than SP2 but it is still only said to have a capacity for around 203 dwellings which is around 15 dph so, like SP2, relatively low density. Indeed paragraph 7.7.22 of the SA says “mitigation measures might reduce this number”. In contrast to SP2, site S159 is low lying and runs down from the A338 towards the valley bottom of the River Avon to the south-east of Salisbury in a gentle pastoral landscape that directly abuts the suburban edge to the west.

\(^{43}\) Source of quote: paragraph 3.3 of GPA8.

\(^{44}\) See my initial consultation response, but the area concerned is that to the west of Whitnage Road and, if required, a small area between Mount Pleasant and the road.
84. The key reason for making the comparison is in relation to designated heritage assets. Annex 1 A.6 to the SA makes a comprehensive 19-page assessment of the site, from pages 40-58 thereof, against the clearly stated SA objective 6 to “Protect, maintain and enhance the historic environment”. Straight away the contrast to the limited appraisal of Higher Town undertaken by MDDC is evident. It says: “The site is located directly adjacent to the Salisbury Conservation Area and is approx. 60m away from listed barns associated with the listed building Bridge Farmhouse which is approx. 100m away. A development of this size in such close proximity to the CA and listed buildings raises concerns about potential impacts on these designations. Development on this site would also raise concerns about development infilling between Salisbury and Britford which would also contribute towards potential for harm to the setting of Britford Conservation Area. A Heritage Impact Assessment would be required”. For the avoidance of doubt Salisbury Conservation Area is extensive and the cathedral is around a mile away with views of the existing urban edge in the foreground. This is not a case where the cathedral is at issue as is evident from this quote.

85. In this short paragraph the scene is encapsulated, distances quantified [not “some distance to the south”] and one can see that there is a listed building and two conservation areas at issue, the settings of which could be harmed. In that sense it is directly comparable to SP2, even though the listed building is much further away than is the position at Higher Town. Having undertaken further analysis against “Decision Aiding Questions”, broadly in line with GPA8, the “on balance” assessment of Atkins is that: “A development of this size in such close proximity to these CAs and listed buildings raises significant concerns about potential impacts on these designations”. The conclusion is that: “Overall, it is considered that there are likely to be moderate adverse effects against this objective” where “moderate adverse effect” is said to be: “option will have a significant adverse effect” on designated heritage assets or their setting.

86. What Atkins does then is make a comparative assessment of site S159 on page 159 of the main SA. Paragraph 7.7.23 records there were no major adverse effects, but paragraph 7.7.24 goes on to record five moderate adverse effects, one of which is heritage, as detailed in paragraph 7.7.25. Paragraph 7.7.28 concludes: “Given the number of moderate adverse effects associated with this site, the site is considered to be less sustainable in this area of search”. Table 7.6 then shows the summary of scores of site options assessments and this recommends that site S159 is not proposed to be taken forward in the plan.

87. In my submission this effortlessly shows how easy it is to undertake a rigorous SA. The contrast to MDDC’s in-house effort is stark and whilst I have not looked more widely at MDDC’s SA this must raise doubts about whether the entire SA is fit for purpose to support its Local Plan. The fact that Atkins found “a significant adverse effect” when the topography is far less extreme and the listed building further away does, in my view, raise doubts about MDDC’s planning judgment. However on my analysis we do not get to make a judgment about significance at

45 Source of quote: page 49 of Annex 1 A.6 to the SA.
46 Source of quote: page 52 of the main SA
the forthcoming Hearing because MDDC has not account of the very existence of
the Canal Conservation Area in its SA. On this point it is noticeable that the
entire appraisal by Atkins is in the SA rather than dubious add-ons compiled
after decisions are made, as is the case with the Historic Environment Appraisal.
I submit the Inspector should be slow to endorse such poor working practices.
This example reinforces my belief that MDDC’s SA is an inadequate evidence
base to support the allocation at Higher Town, which is fundamentally unsound.

Conclusion

88. For all of the reasons set out above, having regard to my earlier consultation
response, the Hearing statement and all of my attachments, the Inspector is
invited to declare the allocation at SP2 to be unsound.

List of Appendices [submitted as separate pdfs]

1. Letters dated 26 February 2018 that were submitted to the Council as part
   of the fourth consultation on planning application No 17/01359/MOUT.

2. LGO’s report.

3. Article from the Gazette, 6 March 2018.


5. Map showing the Mountain Oak Farm site that has not been considered by
   the Council despite the fact that it was put forward over 12 months ago.
26 February 2018

Principal Planning Officer
Mid Devon District Council
Phoenix House
Tiverton
EX16 6PP
By email to: devcon@middevon.gov.uk

Dear Sir

Response to consultation letter No 4 on planning application No 17/01359/MOUT

1. Thank you for your letter dated 9 February 2018 regarding this outline planning application with all matters except access reserved. You will note that I made a brief online representation on 4 January 2018, in response to the second or third consultation letter, I've lost count now, to point to examples where the submission was absent and hence deficient.

2. To my surprise, these omissions are not addressed by the Applicant. In other words the Design and Access Statement [DAS] and the Landscape and Visual Impact Assessment [LVIA] are both incomplete. The covering letter dated 30 January 2018 lists the supporting information, but half of this is no longer available or appears to have been superseded. To take an uncontroversial example there is reference to a “Road Safety Audit (Stage 1)” from “Hydrock”. I am not aware that I have ever seen such a document. There are 3 documents entitled “Road Safety Audit (Stage 1)” but none are produced by “Hydrock”. Is there something missing?

3. There are internal contradictions between the submitted documents that are too numerous to list. However to take a simple example the covering letter dated 30 January 2018 lists the Transport Assessment [TA] to be dated July 2017 [Ref. C-06685-C] and refers to a Transport Assessment Addendum Note [TAAN] dated “22.12.17”. The second of these, TAAN, is available online, but the first is not and appears to have been replaced by the latest TA dated February 2018 [Ref. R/C-06685-C/TA/001]. I am unclear whether the TAAN supplement the later TA or whether, as seems likely, it too has been superseded? There are also duplications, e.g. there are 2 different versions of the “Assessment of effects on the setting and significance of Heritage Assets” [Heritage Assessment], one listed as an “Archaeological Assessment” and the other as a “Heritage Statement”. Are both versions still current and being relied on for different purposes?
4. I am not even clear what the complete list of drawings is because they are not listed anywhere. Again to give an example, most of the highway drawings now appear as appendices within the TA, but drawing No 06685-HYD-XX-XX-DR-TP-0111 Rev P1 is not appended to the TA, but is listed as a proposed plan in an entry dated “03 Jan 2018”. Is that still relied on or not? Another entry of the same date is listed as “Proposed Plan C-06685-C”, but that might duplicate drawing No 06685-HYD-XX-XX-DR-TP-P-04. If I, as a suitably qualified expert, am confused, how can the Applicant or the Council reasonably expect a member of the public to be in a position to make a full and fair response to this shambolic planning application?

5. Moreover there appear to be some significant contradictions. When one compares the illustrative masterplan [Drawing No 1238.4] with the plan at Appendix N to the TA dated February 2018 it is clear that the position of the proposed access onto Higher Town is in a different place. The detailed drawing must take precedent having regard to the definition of access in The Town and Country Planning (Development Management Procedure) (England) Order 2015, reiterated in the Planning Practice Guidance1. However, as I shall demonstrate, the drawing at Appendix N, by way of example, does not comply with the definition of access and appears to be illustrative, despite the fact access is not a reserved matter. The weight to be given to an illustrative masterplan that does not even get the points of access onto the highways in the right place, when those are fixed and not being reserved, is tiny because it is inconsistent with the application.

6. In light of the above I am substantially prejudiced in my ability to respond to the planning application in its present form. Local residents and I have not had a “fair crack of the whip”2. In the circumstances if you rely on, in particular, the missing evidence when making your decision, I put you on notice that I reserve my right to bring any subsequent proceedings that prove proportionate and necessary in this regard. In particular I may, at my discretion, bring judicial review proceedings against your Council.

7. Notwithstanding the above I will endeavour to make a constructive response to the latest form of substandard application that has been made. In doing so I refer you to the comprehensive terms of my letter dated 21 September 2017 in which I set out a number of putative reasons for refusal that might assist you in drafting your reasons for rejecting this poorly conceived scheme. However there are in fact additional reasons that you should consider. Given the fact that the application purports to provide full details of access I propose to start my analysis with this topic area, but it should be noted that I also review pertinent appeal decisions towards the end of my letter, some of which have a bearing on this topic.

Access

8. The application is made on a form entitled “Application for Outline Planning Permission With Some Matters Reserved”. Section 3 of the

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1 Paragraph 14-006-20140306 of the Planning Practice Guidance.
2 Source of quote: R (oao Poole) v SSCLG and Anor [2008] EWHC 676 (Admin).
application form, dated 12 August 2017, confirms that access is not a reserved matter. If outline permission were to be granted it is the planning permission and the reserved matters would be akin to painting by numbers, merely filling in the blanks within the permitted framework. In the context of that analogy I would expect this outline application to be accompanied by full details of the multiple proposed accesses and associated highway works with nothing reserved for future consideration.

9. I start with the main vehicular access shown on the plan at Appendix G to the TA. This shows an access with a 2.4 m x 43 m visibility splay, but I note that Figure 23 in the DAS shows a similar plan with a 4.5 m x 43 m visibility splay. Whilst I shall assume the former is proposed, because I can see no case for a 4.5 m x-distance, this is one of the numerous contradictions that exist in the submitted documentary material. I have inspected this part of the site from the public highway and my estimate is that a significant proportion of the stone wall along that boundary would have to be removed in order to provide this access, the associated splays and the forward visibility shown on the drawing at Appendix H to the TA. In practice I think all of the existing wall would be likely to be demolished and I return to this point under the title “Heritage” in due course.

10. My inspection confirmed that speeds along that section of road are quite high, particularly for vehicles travelling north-east to south-west. I have seen no speed data for this section of road arising from measurement, in contrast to the actual speeds that were recorded, by way of example, on Turnpike, just down the hill from No 16. My inspection revealed that this part of the stone wall acts, to some extent, as a retaining wall with ground levels higher than the verge. The topographical survey is not particularly helpful in this respect because it records heights along the top of the wall [TOW] at around 126 m AOD, but the spot heights in the field are shown set back from the wall. All of the spot heights in the vicinity of the proposed access are above 125 m AOD; the highest is 125.82 m AOD.

11. Dealing first with ground levels, the cross section on the bottom half of the drawing at Appendix G to the TA purports to show that the existing ground levels drop to just below 125 m AOD at the junction. Although it shows a reduction in the existing ground levels my inspection revealed this is far more abrupt than the cross section suggests. In other words, directly at the rear of the stone wall that needs to be removed there would have to be a significant engineering operation comprising a cutting into the ground in order to provide the level approach along the access road shown on the cross section. I find the cross section to be misleading.

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3 The Highway Authority’s suggested conditions are reserving everything for future approval without requiring, by way of example, all of the visibility splays to be kept clear of obstruction. This cannot be done at reserved matters stage because access is not a reserved matter. For this reason I have concerns with the conditions as there is no retention clause, e.g. for the cycleway splays.

4 This is my interpretation of what the cross section purports to show in the absence of any indication on the plan, for example A-B.
12. Turning to the visibility splays, paragraph 4.2.3 of the TA asserts: “This is in line with the recommendations of MFS”. That assertion is simply wrong. Table 7.1 of MFS says that a y-distance of 43 m is appropriate for speeds of 30 mph but, in the absence of any evidence that speeds are restricted to 30 mph, it would be wrong to relax the stopping sight distance for what is a derestricted road, where the national speed limit of 60 mph applies. For the avoidance of doubt I have reviewed the application submission in its entirety for any indication that a reduction in speed limit is proposed, but there is none. The heads of terms of section 106 refer to “highway matters”, generically, but there is no indication that this is envisaged.

13. Table 7/1 of TD42/95 “Geometric Design of Major/Minor Priority Junctions” says that for a design speed of 100 kph, which is approximately 60 mph, the appropriate y-distance is 215 m. It says relaxations are not available, but even if the distance one step below the desirable minimum was taken, the y-distance would be 160 m. It is beyond dispute that a visibility splay of 2.4 m x 160 m could not be achieved on this stretch of country lane.

14. MFS2 says: “The y-distance should be based on the recommended SSD values”, but even though I recognise there is a professional judgment to be made, since it continues: “a reduction in visibility below recommended levels will not necessarily lead to a significant problem”, the magnitude of reduction in this instance is extraordinary. The recommended SSD is 215 m and I am suggesting a reduction to 160 m, applicable for a design speed of 85 kph, or 52 mph, might represent a reasonable judgment. The reduction being advocated by the Applicant is to just 43 m, which is just 20 % of the recommended SSD. No case has been made to justify this.

15. Page 5 of MFS says: “MFS focuses on lightly-trafficked residential streets, but many of its key principles may be applicable to other types of street, for example...lightly trafficked lanes in rural areas. It is the responsibility of users of MFS to ensure that its application to the design of streets not specifically covered is appropriate”. The Applicant has not provided any evidence with regard to traffic flows along this road and so it has not been established that this is a lightly trafficked lane. For this reason I dispute that it is even correct to apply MFS to this country lane, which acts as a rat-run for drivers from Uplowman and the large rural area to the north in order to get to the strategic highway network, avoiding Higher Town.

16. My view in this matter is reinforced by paragraph 7.5.1 of MFS, which says: “This section provides guidance on stopping sight distance (SSDs) for streets where 85th percentile speeds are up to 60 km/h. At speeds above this, the recommended SSDs in the Design Manual for Roads and Bridges may be more appropriate”. A speed of 60 km/h is just 37 mph, but drivers who use this country lane can legitimately drive at 60 mph. In the absence of any speed data to record actual, measured speeds it would be highly inappropriate to assume that 85th percentile speeds are below 37 mph, particularly going downhill on approach from the north. Since the Applicant has not provided such evidence the Council would, in

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5 Source of quotes: paragraph 10.5.9 of MFS2.
my professional opinion, be entirely justified in refusing the application based on lack of evidence, which is a common theme of this letter.

17. In that context I do not understand the position that has been taken by the Highway Authority in its response dated 6 December 2017. This consultation response pre-dates the second, third and fourth consultation letters that have been issued by the Council to interested parties. Given its date it must follow that it does not take account of the TA or the TAAN, but says, on its face, it was based on “the submitted information”, none of which remains current. No reason is offered in that consultation response as to why an access would be acceptable onto a derestricted country lane in the absence of any survey data to show the actual speed of vehicles. There is in fact no reference at all in the consultation response to MfS to establish why its application would even be appropriate in this instance.

18. As a taxpayer and member of the public I have a reasonable expectation that the Highway Authority should explain its position when it significantly departs from a fair reading of longstanding national guidance, such as set out in MfS and/or other published documents such as TD42/95 or MfS2. In its absence the very least the Council should do is demand the Highway Authority provides a reasoned explanation based on the current TA. In my opinion the Council should also require evidence from the Applicant to support the inference that this is a lightly trafficked road and that actual speeds are below 30 mph. I repeat, my experience of standing next to the verge at the proposed access point might suggest otherwise. It is not clear whether the Highway Authority’s Officer or Hydrock have done this.

Forward visibility on road north of Battens Cross

19. The improvements to forward visibility proposed on the corner north of Battens Cross are shown on the drawing at Appendix H to the TA. Given my earlier analysis it follows that I do not accept that the 43 m forward visibility shown on this drawing meets the required standard either. I do not however propose to repeat my reasoning. Nevertheless I observe that the practical effect of increasing forward visibility is likely to increase the speed of vehicles coming downhill. This reinforces my clearly expressed view that there is a need to obtain actual speed measurements for this stretch of country lane to ensure they do not exceed 30 mph, still less 37 mph, at which point MfS might not provide appropriate guidance.

Emergency, pedestrian and cycleway access onto Turnpike

20. I deal first with the proposed pedestrian, cycle and emergency access that is proposed onto Turnpike, as shown on the drawings at Appendices I and J to the TA. The illustration on the margin of the latter shows a “fire appliance” that is 8.68 m long, 2.18 m wide with a minimum body ground clearance of 0.337 m. The clear inference from the swept path analysis is that it is envisaged that such a vehicle would be able to utilise this access. This is confirmed at paragraph 4.4.9 of the TA, the preceding paragraph to which describes the plan at Appendix I as a “General Arrangement (GA)

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6 85th percentile speed.
Design”, which appears to be confirmation that it is essentially illustrative. There is no reason to doubt an access is proposed onto Turnpike at this point, but everything on that plan within the red edge is only an indication of what is proposed. The following analysis will demonstrate why.

21. The existing gateway has not been used by a vehicle to access the field via this route since I moved here in 2011\(^7\). At the point where the existing gate is shown on the drawing at Appendix I to the TA, the proposed access road scales at approximately 6 m wide, materially wider than the existing gate shown. The spot heights on the base plan have not changed from what exists and so straight away it is clear that they would have to in order to provide the bell mouth access being proposed on that drawing. The proposed access road scales at approximately 3.75 m wide from here.

22. Along the length of access road shown, which is around 25 m, the vertical height difference is approximately 4.3 m\(^8\). My maths says this is a rise of approximately 17.2 \%, or a 1 in 6 slope. There would need to be some engineering works to smooth out the slope, e.g. from existing spot heights 105.41 m AOD to 107.07 m AOD, which are around 3 m apart within the line of the access road. My maths says this is a rise of around 55.3 \%, or greater than a 1 in 2 slope. No fire engine of the dimensions shown could get up a slope of this incline\(^9\) and the conclusion must be that significant engineering works are proposed in order to achieve an emergency access.

23. Looking at this junction from the point of view of the cyclist confirms that significant engineering works are proposed. Design guidance\(^10\) published by Devon County Council says, in Table 7.3.6, that the maximum longitudinal gradient for a cycleway is 3 \%, but note 3 to the table says: “the gradient of cycleways may be increased to 5 \% for lengths up to 100m, or 7 \% for lengths up to 30m”\(^11\). This is repeated in paragraph 7.6.1 of the current design guidance, which adds: “Steeper gradients will only be permitted for very short lengths under difficult circumstances”.

24. Given that these routes are proposed as shared cycleways and footways, my view that 5 \% is the most appropriate gradient is reinforced by the Government publication “Inclusive Mobility”. Section 3.2 says: “There is general agreement among guidelines from many countries that an 8 per cent (1 in 12) slope is the maximum that may be used; anything greater than this will cause difficulties for manual wheelchair users. Most guidelines also agree that 5 per cent (1 in 20) is preferred”. It continues: “the standard of 5 per cent should be borne in mind when designing new footpaths and pedestrian areas. Steeper gradients than these can be managed by some wheelchair users, but only over very short distances.

\(^7\) The covering letter refers to it as an existing access but this is misleading. It also refers to it as Turnpike Road but it is simply Turnpike.

\(^8\) Spot heights either side of carriageway edge are 103.13 m AOD and 103.44 m AOD, so a mid-point of around 103.29 is assumed. At the top of the slope a spot height of 107.59 m AOD is on the route of the proposed access road at a distance of approximately 25 m from the carriageway edge, hence the reference to 4.3m.

\(^9\) See for example: http://www.london-fire.gov.uk/Documents/FOIA629.1.pdf


(1000mm or less)”. Plainly the distances on this site far exceed 1 m and so the gradient needs to be kept to 5 %. I have sought to apply this guidance to the topography of the site and analyse this in what follows.

25. For the reasons already given the minimum vertical height difference is 4.3 m and it must follow from my earlier calculation that the gradient is over 7 % over the first 30 m from the rear edge of the carriageway. For this reason the appropriate gradient is a maximum of 5 %. To keep the maths simple if the cycleway was 100 m long, a vertical height difference of 4.3 m would be a 4.3 % rise, which is less than 5 %. On this basis the minimum length of cycleway might be slightly less than 100 m in order to ensure the maximum gradient was not exceeded. However the slope of the hillside keeps rising and so I estimate that around, say, 90 m into the site, north of the proposed junction, the spot heights on the topographical survey have risen from around 107 m AOD to around 110 m AOD. I invite the Applicant to prove me wrong, but I suggest that even if the cycleway kept going straight up at the maximum 5 % gradient that even when one got to Higher Town the cycleway would not have reached ground level!

26. In light of the above the only conclusion must be that the cycleway must take a series of zig zags up the hillside in order to achieve the maximum gradient of 5 %. Although the gradient might still be above 5 % on the inside of the turns this might be allowed having regard to the quote from paragraph 7.6.1 above. However the question arises as to how a fire engine that is 8.68 m long, 2.18 m wide and with a minimum body ground clearance of 0.337 m is going to manoeuvre around a series of zig zags? It plainly is not going to and so the conclusion must be that the shared access point is going to result in an emergency access route that is separate to a cycleway zig zagging its way up the hillside at a steady 5 %.

27. For the avoidance of doubt nowhere in the TA is this situation analysed. Instead we have platitudes such as: “...providing safe and suitable access for pedestrians/cyclists was considered to be of high importance in regards to the acceptability of the scheme”12. It follows that if safety is the priority, and here it is relevant to note the Stage 1 Safety Audit that has been undertaken for this junction13, the Applicant must be proposing to comply with the design guidance published by Devon County Council.

28. In other words, if the audit team have been unable to identify any safety issues from the design of this junction, it would be reasonable to assume that cyclists will not be coming down a 1 in 6 slope, still less a 1 in 2 slope, straight out into the path of an HGV going past at 40 mph. It is clear only a “proposed knock-down bollard for emergency vehicle access”14 is proposed here15. Anything else would restrict emergency

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12 Source of quote: paragraph 4.3.1 of the TA.
13 See paragraph 2.2 of the Bartlett report dated 24 January 2018 entitled “Proposed Vulnerable Road User Facilities” noting that, at the point where the cyclist emerges onto the highway they will be a user of the highway network.
14 As per annotation on drawing at Appendix I to the TA.
access. To have any credibility the safety audit must have made this assumption. The TA does not expressly comment on the safety aspects of this junction for cyclists, just, at paragraph 4.4.12, for pedestrians.

29. It might be helpful at this point to refer to what the illustrative site layout [drawing No 1238.04] shows. The kink in the emergency access on the drawing in Appendix I to the TA appears to mirror what is shown on the illustrative plan, but past this point the cycleway is shown to go straight up the hillside. For reasons I have explained this cannot keep below the maximum gradient. If, instead, it is necessary to have zig zags one can assume that they will not encroach into the SuDS facility. Accordingly the only conclusion must be that the zig zag cycleway would have to be where the housing is shown on the illustrative site layout, opposite the cemetery.

30. I draw out brief salient points. First this simple exercise has illustrated why the application submission is inadequate in its present form. The Council has a power under article 5(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to require further details to be submitted. I acknowledge that these provisions refer to a period of one month, but the fact is that the revisions to the planning application have only been registered within the last month\textsuperscript{16}, so the point at issue has only just come to light. Conversely if the Applicant refuses to supply such details I consider the Council should refuse the application on this basis. It has significant implications for a proper assessment of the proposed development, which I explore under the title “Heritage” below.

31. Second it illustrates that the Applicant has given no serious consideration to the implications of the form of development that is proposed. It has simply not been thought through. The illustrative layout might look glossy on paper, but takes no account of the extreme topography across the site. The proposed access is around 125 m AOD, but my own house is below the 100 m contour line, a vertical difference of over 25 m, or over 80 feet.

32. Third, with reference to the Highway Authority’s consultation response, the Council needs to fully appreciate the implications of the reference to, amongst other things, “gradients” in suggested condition 1. There is also a reference in suggested condition 5 to “street lighting for the spine road and cul-de-sac and footpaths” and this has implications for the visibility of the proposed development in the wider landscape, also considered below. In my experience most things are technically possible from the narrow perspective of highways, but these can have significant implications for other matters, such as landscape and heritage, as is the case here.

**Pedestrian and cycleway access onto Higher Town**

33. Similar issues arise in respect of the footpath/cycleway that is proposed onto Higher Town in the north-east corner of the site. The topographical

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\textsuperscript{15} The annotation on the drawing says bollard [singular], but paragraph 4.4.6 of the TA says bollards [plural], which is another example of inconsistency in the documentation supporting this outline planning application.

\textsuperscript{16} As demonstrated by the fact the consultation letter is dated 9 February 2018.
survey shows that at the point where the proposed footpath/cycleway is shown to join Higher Town, ground levels drop from approximately 118 m AOD\textsuperscript{17} to around 115.5 m AOD\textsuperscript{18}. When I scale from the vicinity of spot height 118.13 m, at the head of the illustrative cutting, to the edge of the carriageway, I measure a distance of 18 m, or a maximum of 20 m if one goes to the start of the corner. Assuming the latter, that works out as a gradient of 12.5 \%, far in excess of the maximum gradient\textsuperscript{19}. So I test first for 7 \% over 30 m, but my maths say the gradient would be over 8 \%. On this basis the maximum gradient needs to be 5 \% and, assuming the levels remain constant, my maths say the cutting must be 50 m long.

34. I accept that on approach from this direction the topography works in favour of the actual distance being lower than this because, past a certain point, the ground levels fall away. However, what this rough calculation does clearly show is that the cutting onto Higher Town would need to be much longer than is shown on the drawing at Appendix N to the TA. This too will have significant implications for the setting of designated heritage assets, which are again considered under the title “Heritage” below.

35. Paragraph 3.8.5 of the design guidance published by Devon County Council says: “The visibility requirements at priority junctions are as set out in paragraph 7.2.1, using the appropriate ”y” distances and an ”x” distance of 1.5 metres”. At this point Higher Town is derestricted and subject to the national speed limit of 60 mph, but I accept that speed data was obtained for this stretch of road, as per paragraph 4.4.22 of the TA.

36. However paragraph 7.2.1 of the design guidance is unambiguous in saying that a 45 m y-distance applies to a “road within residential estate” where there is a speed limit of 20 mph. The first point is that paragraph 4.4.22 of the TA records that 85\textsuperscript{th} percentile speeds are approximately 26 mph in both directions, so well above 20 mph. Second the speed limit is 60 mph, not 20 mph. Third, this is not a road within a residential estate. For all of these reasons the Applicant is relying on the incorrect standard but, of relevance to my earlier point with regard to the gradient of the cycleway, this does demonstrate awareness by Hydrock of the design guidance. I do not know any other guidance that would stipulate a 45 m visibility splay.

37. Accordingly paragraph 7.2.1 of the design guidance specifies the correct y-distance to be 70 m, which is the lowest figure in the box that is entitled “Outside residential estate”. It stands to reason that this stretch of public highway is outside a residential estate because it is a country lane outside of the 30-mph zone, where the national speed limit applies. For these reasons the required visibility splay is 1.5 m x 70 m in both directions.

\textsuperscript{17} Spot heights in that area of the site, on either side of the proposed route shown on the drawing at Appendix N to the TA, include 117.89 and 118.33, and the spot height near the head of the illustrative cutting is 118.13 m AOD.

\textsuperscript{18} The spot heights on Higher Town, on either side of the proposed route shown on the drawing at Appendix N to the TA, include 115.68 and 115.38.

\textsuperscript{19} This is confirmed at paragraph 4.4.21 of the TA, which refers to 1 in 12.5, but no explanation is offered as to why this would be acceptable or justified in the face of the Highway Authority's standard. Again the Highway Authority's response in this matter is deficient and provides no explanation.
38. When I scale from the submitted drawing at Appendix N to the TA there is a distance of approximately 45 m from the centre point of the junction to the edge of the red line area, west of the proposed junction. The 70 m that is required therefore extends beyond the ownership and control of the Applicant and there is no evidence that it can be achieved. Moreover even if it might be said that some of the land beyond this point is within the public highway, and this is far from clear, if the visibility requirement is greater the visual “envelope” would extend further back. This would encroach into the traditional Devon hedge bank that defines the southern boundary of Higher Town at this point. I consider this point further below.

39. To the east is a garage that is attached to the listed building and therefore listed, which is outside of the ownership and control of the Applicant. If the visibility requirement is greater the visual “envelope” would extend further back and the existence of the garage would suggest that it cannot be achieved. Conversely the Applicant has not demonstrated that it can.

40. Again the position of the Highway Authority is noted, but no reasons are given as to why it is prepared to ignore its own published guidance. If this application does go to appeal I put all parties on notice that I will rely on these arguments regardless of the position of the Highway Authority and I would support the Council in any reason for refusal to this effect.

41. The drawing at Appendix N to the TA shows a priority system is proposed around what paragraph 4.4.21 of the TA calls a “buildout”. The area on which the buildout is proposed is currently used as an informal passing bay and for parking by residents of adjoining houses. It is unclear where they would be able to park their cars if the buildout was constructed. This not only shows a lack of consideration for local residents, but also leads to the question as to where oncoming vehicles would be able to pass?

42. In this respect the drawing at Appendix N appears to suggest that vehicles travelling north-east would have priority and that those travelling west would have to give way adjacent to the listed garage. At this point the carriageway is less than 3.5 m wide. Figure 7.1 of MfS says the minimum width of road at which two cars can pass is 4.1 m. It follows that cars, still less anything larger, would not be able to pass at this point. Moreover the mere prospect might lead to vehicles damaging the listed building.

43. The buildout shown on the drawing at Appendix N scales at approximately 10 m long. Appendix C to the TA shows the full extent of the adopted highway and confirms that to the north-east it is quite narrow for some distance. However that plan is at an unusual scale of 1:1,750 and so I have not tried to scale from that drawing. My inspection would however suggest that the first point at which the highway is 4.1 m wide, to the north-east of the pinch point by the listed garage, is approximately 50 m distant. So, in practice, what is being proposed is that a 60 m stretch of highway would have to be subject to priority and the give way markings and associated signage would have to be moved to reflect this. For the avoidance of doubt it would not be appropriate to expect private drives to serve this function. Owners of those driveways, notably that serving
No 40 Higher Town, would be perfectly entitled to take physical measures to preclude passing vehicles from damaging their property in this way. This might include gates, posts or stones. It is not therefore an option. The Highway Authority has not addressed this situation in its response.

Pedestrian access onto Battens Cross

44. This is shown on the drawing at Appendix K to the TA. Whilst the basis for a 45 m pedestrian visibility splay to the north-west of the junction might be questioned, I have no adverse observations on the proposed layout. However I shall deal with the implications of this access on ecology below.

Works within the highway on Turnpike

45. This is shown on the 3 drawings at Appendices L and M to the TA. I have no observations to make on the swept path analysis at Appendix M, so my focus is on the proposed pedestrian crossing arrangements. As I noted in my letter dated 21 September 2017 I normally walk around the inside of the bend and either down onto the canal path or down the steps to Chains Road because this is safer than crossing 3 roads to get to the same point.

46. What is being proposed on the drawing at Appendix L would force me to cross Turnpike from just past the inside of the bend. In my view this manoeuvre would increase the risk of accidents to me, as a pedestrian, and to other road users. One cannot see oncoming vehicles from the proposed crossing point on the inside of the bend and, perhaps even more significantly, drivers would not see pedestrians starting to cross at this point. It would be highly inappropriate for pedestrians to be forced to rely on the sound of approaching vehicles alone, especially as we move towards a society with more hybrid and particularly electric vehicles. Although, at this stage of my life, I enjoy good hearing the Highway Authority should be planning for all road users, including those who might not be as fortunate as I.

47. Naively the drawing at Appendix L is annotated “Existing bushes within the highway boundary to be trimmed/cut back or removed” and the text in paragraph 4.4.17 says the existing bushes will be cut back/removed. The householders have rightly expressed their indignation at this threat given that none of the bushes in their garden encroach into the highway. The bushes have already been cut back and they do not extend into the highway, such that the powers in section 154 of the Highways Act could not be exercised. I also note that the householders have planted a number of evergreen shrubs, such as viburnum, in order to try and make their garden more private. This is perfectly understandable and they are totally within their rights to do this. However, as these plants grow, the forward visibility around the corner is going to deteriorate, not improve. There is therefore absolutely nothing that the Applicant or the Highway Authority can do to improve forward visibility on this corner and, for the reasons I have given, over the coming years it is going to get worse.

48. The contrast between the drawings at Appendices H and L is striking in this respect. The former shows that “43 m forward visibility splay to be
"accommodated within the site"\textsuperscript{20}. The derivation for this appears to be MFS, paragraph 7.8.1 of which says: "The minimum forward visibility required is equal to the minimum SSD" [my emphasis]. This part of Turnpike is within the 30-mph zone and so reference to Table 7.1 of MFS confirms that the minimum required SSD is 43 m. It is clear this cannot be achieved on land within the public highway, beyond which there is existing vegetation in a private garden that will grow higher and denser.

49. The annotation on the drawing at Appendix L, at the point at which orange setts appear to be annotated on the plan to show a crossing point, says: "25 m forward visibility splay". I have no reason to think that this cannot be achieved, but equally there is no reason to think that forward visibility can be improved. It must follow that forward visibility for drivers around this corner is seriously below the required minimum standard. This chimes with my experience as both a pedestrian and a driver.

50. In that context it is absolutely clear that the proposed pedestrian crossing point would be dangerous. Put bluntly, forcing pedestrians to cross from the inside of a blind bend where forward visibility for drivers is well below the minimum required by MFS is nothing short of reckless. My calculation is that a vehicle coming around the inside of the bend within the speed limit of 30 mph would cover the 25 m that is identified as the maximum forward visibility in approximately 2 seconds\textsuperscript{21}. Paragraph 7.5.4 of MFS refers to a driver reaction time of 2 seconds, so this suggests a person crossing the road at this point might be hit at the full 30 mph and this is likely to result in a fatality or, at best, serious injury. Paragraph 7.5.5 of MFS continues by saying stopping distances in the Highway Code assume a driver reaction time of 0.67 seconds and a deceleration rate of 6.57m/s\textsuperscript{2} but even in this best case scenario the pedestrian is going to be hit.

51. I assume that the thinking is that what is proposed is better than what exists\textsuperscript{22}, but I disagree. Firstly, whilst there are 24 existing houses on Turnpike\textsuperscript{23}, even if it is assumed that only half of the residents of the new houses were to walk into the village along Turnpike rather than Higher Town, this would mean the number of dwellings served off this footway would more than double. Second, whilst the TA points to the absence of injury accidents, this is precisely because people like myself do not cross the road. However the annotation on the drawing at Appendix L says: "Existing white line to be removed". The protection that I currently enjoy which, ironically, was only renewed on 23 August 2017, is proposed to be removed and the objective is to force me to cross the road from the inside of a blind bend. I would be less inclined to walk that route if I have to cross the road from the inside of a blind bend. Chances are I will start

\textsuperscript{20} Source of quote: annotation on that drawing.
\textsuperscript{21} 30 mph = 48.279 kmh, which means a vehicle travels 804 m per minute or 13 m per second at this speed, so 25 m would be covered in less than 2 seconds.
\textsuperscript{22} Paragraph 4.4.14 of the TA refers to existing pedestrian visibility splays of 1.5 m x 20 m but, implicit to that statement, is an assumption that pedestrians cross the road whereas I do not precisely because my experience is that it is too dangerous.
\textsuperscript{23} 1, 3-5 [one property], 7, 9, Wharf House, 2-16 inclusive, 16a, 18, Ascot House, 20-26, Battens House, Oak House and 28-30 [2 bungalows] at the western end.
Representations from MP Drew on application No 17/01359/MOUT [March 2018]

... driving to pick up the newspaper from the shop and take the dog in the back of the car to walk her from the car park. Is that the sustainable pattern of movement that the Applicant seeks to encourage?

52. I note paragraph 4.4.18 of the TA says that “...an RSA1 was undertaken” and this claim is repeated in the penultimate sentence of paragraph 4.6.1. This appears to be deliberately couched in jargon to confuse but I shall assume that “RSA1” stands for a Stage 1 Road Safety Audit. However when I look at the Bartlett Stage 1 Road Safety Audits dated 24 January 2018, I find that neither comment on the drawings at Appendix L and M to the TA. As I noted at the outset the covering letter refers to a “Road Safety Audit (Stage 1)” from “Hydrock”, but none has been provided. The “RSA1” referred to in paragraphs 4.4.18 and 4.6.1 has not been provided and, for the reasons given, I strongly dispute that any such audit would not have highlighted safety issues based on my reading of MfS. The claims in paragraphs 4.4.18 and 4.6.1 can be given no weight because the RSA1 has not been provided and/or I am substantially prejudiced in responding to the consultation. My earlier warning applies in this respect.

53. The other aspect of concern arising from the drawing at Appendix L is the annotation: “Existing guardrailing to be removed”. Many residents of the village, including myself, can attest to the fact that the existing guard rail was for a long time, until relatively recently, bashed in where a car had gone into the guard rail, presumably at some speed. With the removal of the guard rail pedestrians using the footway at this junction will therefore be more vulnerable. It might be in prospect that a vehicle could pin a pedestrian against the wall, or even worse. It is unclear whether Devon County Council has considered this point in its capacity as canal owner.

**Miscellaneous other points arising from Hydrock’s evidence**

54. I do not propose to repeat my comprehensive analysis of the relationship between the Higher Town site and village services and facilities, notably in terms of walking distance. I accept however that Table 3.1 of the revised TA appears to have corrected the more obvious errors in the original. Amongst other things I note that it has been conceded that the Post Office and Convenience Store is twice the distance originally claimed and hence the walk time has also doubled to more than 12 minutes. For reasons I gave in my letter dated 21 September 2017 the distance and travel time to Tiverton Parkway Railway Station remains incorrect in Table 3.1. This fallacy is repeated in paragraph 3.5.5 of the TA and at various places throughout the Residential Travel Plan [RTP]. For these reasons I remain of the view this evidence, specifically Table 3.1 of the TA, is unreliable.

55. It remains unclear where the distances in Table 3.1 have been measured from and I suggest many of the dwellings shown on the illustrative layout plan are likely to be in excess of the claimed distance from the site. It is noted, amongst other things, that there are no red entries in Table 3.1, which confirms there is no significant source of employment in the village. Paragraph 2.4.9 of the TA refers to the “tourism-led mixed-use scheme on land to the east of the motorway”, but a decision maker needs to be very
clear that this application is being brought forward now, in conflict with this requirement of draft Local Plan Policy SP2, without reference to it.

56. It is understandable, but the data from www.crashmap.co.uk is out of date because there was a serious accident in the village late last year. I am afraid I did not note the date, but the road was closed for several hours and when I arrived back on the train from London at approximately 2100 hours I had to walk back from Tiverton Parkway station in the dark.

57. Paragraph 3.3.4 of the TA maintains the fallacy, arising from the Council’s SA, that a “footway continues along the southern side of Turnpike”. There is no continuous footway into the village centre from this end of Sampford Peverell. The next paragraph, 3.3.5, is also misleading in saying: “Once the road [Higher Town] enters the built-up area of the village, the width remains similar”. One only has to look at Appendix C to the TA to see that is false because there is a clear pinch point by the listed building.

58. Paragraph 4.2.4 of the TA refers to “…a priority ‘T’ junction onto Turnpike” and whilst there is such a junction, as shown on the drawing at Appendix I to the TA, this is stated to be an emergency access. I assume this text is wrong and has been retained in error from the now superseded TA.

59. I explained in my letter dated 21 September 2017 why the assumption with regard to the level of pedestrian movements is flawed. Given that the TA has picked up on my identification of the problems with Table 3.1 it is reasonable to assume the Applicant has read my earlier correspondence but Hydrock has not provided any fresh justification for the low figures quoted and I assume this is a concession that new residents will drive. Given the unsafe pedestrian crossing being proposed on Turnpike, I agree and this should inform a proper reading of paragraph 4.4.15 of the TA.

60. Paragraph 4.4.26 et seq of the TA, including Figure 4.3, refers to the prospect of a permissive path route. However this land is outside of the red/blue edge and there is no evidence that it is under the ownership or control of the Applicant. Amongst other things it would appear to require engineering operations, for example where any path drops down to the lane, which would require planning permission, as well as the removal of part of a hedgerow. In these circumstances the alleged benefit cannot be delivered by the imposition of planning conditions or otherwise because it is not merely a matter of agreeing a permissive footway over the land concerned. The Council should give no weight to this alleged benefit.

61. The internal layout, discussed in section 4.5 of the TA, is illustrative and I have given reasons elsewhere in this letter why it cannot be achieved, with specific reference to the gradients of the cycle paths.

62. Turning briefly to the RTP, this is clearly a half-baked rehash of what was submitted last time, as is evident from paragraph 1.3.3 of the document, which says: “…the site access onto Turnpike has been designed to accommodate the traffic flows”. This does not inspire confidence in the rest of the document. Again the canard with regard to the continuous footway is maintained in paragraph 2.3.3 insofar as it says: “A footway
commences on the southern side of Turnpike in the vicinity of the 30 mph speed limit change and leads eastwards towards the village centre”. The footway commences at the entrance to 16 Turnpike, but it does not go to the village centre. The same error is repeated at paragraph 4.3.4.

63. Nevertheless paragraph 3.4.5 of the RTP helpfully draws my attention to the CIHT document “Planning for Walking” [2015]. The Introduction to the document stresses that: “Safe road crossings are an essential element of routes” and, for the reasons I have given, that is not what is proposed. It continues: “Walking” is best thought of as a nonvehicle movement including all forms of assistance, such as sticks, wheelchairs, baby buggies and pavement vehicles. Good provision for users requiring such forms of assistance helps everybody”. Paragraph 6.2 says: “Road crossings should be safe both objectively and as perceived by pedestrians”. The proposed crossing would be neither and this will deter walking as defined above. Paragraph 8.3 concerns planning for more elderly disabled pedestrians who are likely to walk more slowly. It says: “Planners wanting to get an insight into being an elderly pedestrian may want to experiment with going out wearing clouded spectacles and earplugs or taking trips in a hand-propelled wheelchair”. I invite the Office[r][s] to, in particular, try crossing from the inside of the bend on Turnpike with earplugs in, as I am sure it will be a sobering experience. It is for me even without disability.

64. Paragraphs 5.5.3-5.5.5 of the TA assert that a Technical Note [TN] has been produced, but it is not appended. I have checked the planning application submission but cannot find it.24 I am substantially prejudiced by its absence because I have been unable to form a view upon it. In my letter dated 21 September 2017 I anticipated this issue and said that consultation would be required to allow, amongst others, the residents of Halberton to comment. It is extremely arrogant for the Applicant to assume that local residents would not wish to see it and comment on it. This reinforces my view that the Council could refuse this application based on the lack of submitted information.

65. Paragraphs 5.5.6-5.5.10 of the TA concern the impact on the A361. In my letter dated 21 September 2017 I said this was properly a matter for Devon County Council, as Highway Authority. However its consultation response dated 6 December 2017 is silent, despite the fact that this is a requirement of draft Policy SP2. For this reason the Highway Authority’s response is also unreasoned and inadequate.

66. Section 6 of the TA appears to duplicate what is said elsewhere for no obvious reason. However paragraph 6.2.3 of the TA asserts that there is no reason why planning permission should be refused on highway safety grounds, but I disagree. In particular the absence of the road safety audit on the proposed pedestrian crossing point on Turnpike suggests that the Applicant is trying to mislead all parties into sanctioning an extremely dangerous crossing from the inside of a blind bend.

24 I have reviewed the TAAN in case this is the document referred to but it is clear from the fact that it does not mention Halberton that it is not.
67. Hydrock have not assessed the proposal against the Development Plan [DP], which includes the adopted Core Strategy [CS]. CS Policy COR9 says development and transport planning will be co-ordinated to improve accessibility for the whole community, reduce the need to travel by car and increase, among others, walking. The proposed crossing on the bridge will have the opposite effect and deter me from walking into the village.

68. Far from improving accessibility for the whole community, as required by the adopted policy, the proposed solution would particularly discriminate against those who are deaf or hard of hearing\(^\text{25}\) who can currently walk within the white line around the inside of the bend and not have to cross the road. This would contravene the public sector equality duty under the Equality Act 2010, which requires: “A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination...[and] (b) advance equality of opportunity”. The CIHT document “Planning for Walking” says: “In practice, this [the duty] means that the design of footways, footpaths and road crossings must, to the extent that is reasonably possible, provide for the requirements of people with locomotive and sensory disabilities” [my emphasis]. Must means it is mandatory and so not only has the Highway Authority breached its duty, the District Council would do so as well if it adopted this approach. The proposed crossing would materially worsen the existing arrangements.

69. For these reasons the practical effect would be to increase the use of the private car. I am not saying it is impossible to identify solutions to this issue\(^\text{26}\), but that put forward would not enhance road safety, which is required by criterion b); the substandard visibility would also fail this. In my view the scheme that has been put forward would detract from road safety. There is a conflict with this adopted DP Policy and the proposed scheme should be refused for an additional highway safety reason.

70. Hydrock refer, in paragraph 6.2.3 of the TA, to the advice in paragraph 32 of the National Planning Policy Framework [the Framework] and they say its reference to “severe” relates to highway safety. This is incorrect, as per the judgment of Mayowa-Emmanuel v Royal Borough of Greenwich [2015] EWHC 4076. The judge held: “In my judgment, paragraph 32 of the National Planning Policy Framework that the Claimant relies on under this ground 2 is addressing matters of highway capacity and congestion. It is not concerned with highway safety considerations in themselves. It cannot be, because it cannot be the case that the Government considers anything other than severe impact on highway safety would be acceptable, which would be the implication of the Claimant’s argument”\(^\text{27}\). As such the Applicant has misunderstood and misapplied the Framework. This is not a consideration that alters my finding of conflict with the DP.

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\(^{25}\) For the avoidance of doubt a sensory disability includes hearing.

\(^{26}\) It is not for me to set out solutions, but the one put forward is inappropriate.

\(^{27}\) Source of quote: paragraph 29 of the judgment.
Implications of the proposed development for ecology

71. The Ecological Appraisal dated January 2018 identifies, on Figure 2, the location of a badger sett on the Higher Town frontage of the site. Figure 3 identifies a 20 m protected non-impact zone around the badger sett and whilst I appreciate it is not to scale it appears to conflict with the proposed cycle/pedestrian access onto Higher Town. Section 7.7 asserts, apparently without evidence, that this area is not to be impacted by the development but this is far from clear. As I have shown the cutting shown on the plan at Appendix N to the TA is illustrative and because of the need to reduce the gradient to comply with design guidance published by Devon County Council the cutting might need to be longer and/or wider. An example is if the cycleway had to be designed with a zig zag arrangement as would be necessary on the Turnpike frontage of the site. I have also found that the visibility envelope would need to be larger and it is clear that the key reason that the red line extends to where it does is to provide visibility on this frontage. Physical works and the removal of at least some of the hedge is therefore in prospect. The Applicant has not addressed this in a co-ordinated manner and has not shown there would be no disturbance.28

72. Figure 2 of the Ecological Appraisal also identifies the highway verge north of Battens Cross as reptile habitat. A number of works are proposed in this area including a new 2 m wide footway and the removal of the fence and hedgerow to provide forward visibility, as shown on the drawings at Appendices K and H, respectively, to the TA. Moreover it would appear from the latter that ground levels would be reduced within the forward visibility zone. Figure 7.17 of MfS identifies a car driver eye line to be 1050 mm but some of the levels on the bank are far more than this above the level of the carriageway.29 The conclusion must be that ground levels would be reduced in this area to provide the proposed forward visibility.

73. Page 15 of the Ecological Appraisal says that reptiles are a protected species but no action is required because there would be: “No predicted loss as reptile habitat will not be impacted”. Page 24 identifies mitigation and says: “Do not cut or otherwise impact the grassy area outlined as reptile habitat”. However the proposed scheme shown on Appendix H to the TA directly contravenes this mitigation. The Applicant has not shown that the proposed works would not impact on the reptile habitat. Given these threats the Council should seek a phase 2 survey before it considers granting planning permission given their protected status.30 This would be wholly in line with what the Ecological Appraisal says.31

28 As defined in section 9 of the Ecological Appraisal, on page 50 thereof.
29 For example on the apex of the corner where the edge of the metalled portion of the carriageway is 118.04 m AOD and the level on the bank is 120.95 m AOD.
30 See pages 7 and 53 of the ecological Appraisal.
31 Section 7.4 clearly says: “...this habitat cannot be impacted until without a protected species survey” [sic] and the only reason it is said that a phase 2 survey is unnecessary is because it is assumed that the habitat will not be impacted. Since the survey was done on 11/04/2017 however the proposed access arrangements have been fundamentally altered and so it would appear that the report has not been updated to reflect this change and/or the author has not been advised of what has changed in this respect.
74. Turning to bats, there appears to be a fundamental tension between the lighting strategy in section 8 of the Ecological Appraisal and the design guidance published by Devon County Council. The latter requires, in paragraph 7.10.1, the adequate provision of street lighting to, amongst other things, reduce night time accidents. It is highly likely that street lighting will therefore extend onto the country lane at the junction with the estate access road, which is at the highest point and will be seen from miles away. Paragraph 3.8.8 says adequate lighting be provided for cycleways. Paragraph 7.5.11 also says: “no tree or shrub should be planted which would, when mature interfere with street lighting”. Given the cycleways proposed on the Turnpike and Higher Town frontages, including the inevitable zig zags on the former, it is likely that landscaping would lose out in the interests of safety, or otherwise, to street lighting. It would appear to be far more than: “solar powered road studs”.

75. As noted in my letter dated 21 September 2017 I have bats that roost on my property and routinely fly up and down the length of the house on summer evenings. I have recently put up new double chamber bat boxes on my property. Any new foraging and navigating habitat is unlikely to be significant and the utility of that proposed is likely to be compromised by the extensive street and household lighting proposed. In light of the foregoing, the loss of dark is likely to have an adverse effect on the bats roosting on my property for which no mitigation is proposed.

76. I note the Ecological Appraisal has not considered little owls or buzzards. We had a little owl residing in a bird box [designed for barn owls] in our garden for several weeks this winter. It is in prospect the little owl will return rather than barn owls, which I accept are referred to in the report. However I have seen a barn owl in our garden and, regularly, buzzards, a photograph of one of which can be seen on the same Facebook page link. I have personally seen the barn owl on the field next to No 16, probably after a mouse or rabbit, and whilst I cannot say I have seen one on the application site, this leads me to dispute the claim it is highly unlikely this species would be found on the site when they are on the field opposite. We also have a number of UK BAP priority bird species in our garden, including: sparrow, starling and thrush. The starlings do murmurations around our garden into and out of, mainly, the cedar and pine trees.

77. Finally I cannot leave ecological issues without noting the brutally flailed hedgerow along the Turnpike frontage of the site, which appears to have been undertaken by the farmer in anticipation of its complete demise to allow for the now withdrawn access and splays onto Turnpike. This was a beautiful ancient hedgerow that was previously alive with birds and will take years to recover, if at all, from the insensitive and reckless actions of the farmer who stands to benefit financially from housing on this site.

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33 See definition of bat roost in section 9 of the Ecological Appraisal, on page 51.
34 See Facebook page photos at: https://en-gb.facebook.com/manleysbandb/
35 See: http://jncc.defra.gov.uk/page-S163
When I am taking all possible steps to encourage wildlife\(^{36}\) in my garden these actions are nothing short of a disgrace in my view. It is quite clear that this is not what the author of the Ecological Appraisal had in mind when it was said: “Hedgerows... are being retained wherever possible”\(^{37}\).

78. So to summarise, the report has failed to take account of the revised highways arrangements, at a crude level illustrated by the fact that it is dated 31 January 2018\(^{38}\) whereas the TA is dated February 2018. In these circumstances, particularly in the absence of a phase 2 survey for lizards and the very real prospect of disturbance to badgers, I consider that there would be a conflict with the DP. CS Policy COR2 d) says development will support opportunities for protecting and enhancing species populations, but this proposal would not even protect, let alone enhance, species that have been identified on the site following the initial survey in April 2017.

79. Paragraph 118 of the Framework uses similar language to CS Policy COR2 in saying that the aim is to conserve and enhance biodiversity and so I find no inconsistency, which leads me to attach the policy full weight. In the absence of a phase 2 survey and for all the reasons set out above I consider that the first bullet-point of paragraph 118 should lead to the application being refused. The proposed mitigation in respect of badgers and reptiles is inadequate and compensation has not been put forward.

**Heritage**

80. I propose to start this section on a positive note by acknowledging that the revised illustrative layout does at least propose to maintain a visual connection between the designated heritage assets. This, together with the removal of the deep cutting previously proposed opposite my drive, is welcome and the Applicant deserves credit for responding in this manner to my earlier concerns. In my letter dated 21 September 2017 I set out reasons why the scheme then proposed would cause substantial harm to designated heritage assets and I stand by that assessment. Although the revised layout would still cause harm, for reasons that I explore below, I accept at the outset that the magnitude of harm has slightly reduced.

81. On a similar positive note I would acknowledge that the report\(^{39}\) by AC Archaeology is more professional than what was submitted previously. There are still some omissions, but otherwise the differences that remain between the author and I essentially involve a professional judgment.

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\(^{36}\) Except for rabbits.


\(^{38}\) The survey was undertaken in April 2017 and because the original Ecological Appraisal is no longer available online it is impossible to say how it has changed.

\(^{39}\) I shall assume that the latest version listed as “revised 07.02.18” and “Archaeological Assessment” on the Council’s website is that which is relied upon.
Omissions

82. The most significant omission relates to the wall on the country lane to the west of the site. I have previously given reasons why it is likely that the entire wall will be demolished in association with the proposed access works. This directly contradicts the Historic Environment Appraisal [HEA] dated December 2016 that forms part of the Council’s evidence base for the emerging Local Plan which was itself deficient for reasons that I have set down elsewhere. The HEA says: “A local stone boundary wall marks a long section of the western boundary. Any scheme should be designed to retain this feature”\(^{40}\) [my emphasis]. Even on this assumption and without assessing the effect on the Grand Western Canal Conservation Area, the HEA still assessed the traffic light score as “Amber” and so, as a matter of logic, the in-house expert should be pressing the red alert on this scheme.

83. I acknowledge that the wall at issue is not a designated heritage asset, but reference to the Glossary in the Framework confirms that it should be properly considered to be a heritage asset, as defined therein. The report by AC Archaeology is deficient in not identifying this heritage asset and the application, which is predicated on destroying the single historic feature on the site that the Conservation Officer said should be retained, is compromised. There is simply no way around this given that access is not reserved for future consideration and so this is a new source of harm. So, on a balanced assessment, whilst there is some reduction in harm as a result of the revised layout, this factor weighs against the new scheme.

84. The HEA also focusses on the setting of the designated heritage assets, the listed building and village Conservation Area, but is restricted to a consideration of “new buildings” being respectful thereof. The illustrative layout appears to be broadly consistent with this view and in any event I acknowledge it is only illustrative. However a fair reading of paragraph 3.1 of the report by AC Archaeology strongly suggests this was the only plan that was provided to the author. For reasons that I explore below this is consistent with the report’s findings and reasoning. It must follow that the report has not taken account of the detailed drawings appended to the TA, let alone the numerous problems I have identified with them. This reinforces my submission that there is a lack of co-ordination between the respective expert reports that have been commissioned by the Applicant.

Observations on significance in the report by AC Archaeology

85. Table 1 of the report suggests that its derivation is: “...after DMRB 2009”. However paragraph 2.10 refers to the “Design Manual for Roads and Bridges (The Highways Agency 2001)”. It is assumed that DMRB stands for “Design Manual for Roads and Bridges”, but if that is correct no explanation is offered for the difference in date. I have also noted the reference in paragraph 2.10 to ICOMOS, but Table 1 does not expressly cite this source. In short, the derivation of the ranking of significance in Table 1 is, perhaps by design, opaque and I have been unable to trace it. In this respect the source is not transparent and this is not best practice.

\(^{40}\) Source of quote: page 50 of the HEA.
86. In any event I have to question why a design manual for roads and bridges would provide an appropriate benchmark for the assessment of significance of heritage assets around a Devon village. To take a simple example I have already noted the Conservation Officer’s view of the wall that is set out in the HEA and implicit to this is that it is of value. When one looks at Table 1 it might be said that the reason the report has not dealt with the wall is because it is an “undesignated heritage asset of local importance”, of low significance. Paragraph 2.13 says the report focusses on assets of medium or higher significance. If that rationale is correct it would appear the Conservation Officer’s assessment directly contradicts Table 1. In other words she assessed it to be of medium significance, or higher, which influenced her views. I acknowledge this is speculation but this does tend to reinforce my doubt that Table 1 is correct.

87. Historic England has provided a series of Good Practice Advice Notes that I shall refer to hereafter as “GPA”. GPA2 concerns significance and was published in 2015. Paragraph 2.9 of the report by AC Archaeology refers to this, and the earlier report by English Heritage dated 2008, but it does not appear to have informed Table 1. There is no cross-reference from GPA2 to DMRB and if, as an existing resource whether from 2001 or 2009, Historic England was advocating this be used as “Good Practice” I would have expected to see this. For all these reasons I cannot agree Table 1.

88. Notwithstanding the above on a 5-point scale it would be sensible to agree that none of the heritage assets in the vicinity of the site are of very high significance. However I consider that all of the heritage assets are of high or medium significance. It is noted, amongst other things, that Table 1 does not list “Conservation Areas” other than those with very important buildings which, assuming the listed building would be treated separately, would not apply in this case. This is remiss. Moreover I find it odd that an undesignated heritage asset would be of higher significance than a Grade II listed building. As such I am unconvinced that Table 1 is fit for purpose.

89. Despite not being able to trace the derivation of Table 2 for the reasons outlined above, I am content to adopt this 5-point scale of effects.

The Sampford Peverell Conservation Area and listed building

90. I acknowledge the report by AC Archaeology deals with these separately, but to avoid duplication I propose to take them together. In doing so I defer to the submission of Mr Byrom in this respect, whose expertise in terms of historical analysis, as well as 3D drawings, exceeds mine.

91. I agree the Sampford Peverell Conservation Area is of high significance and I do not disagree with anything said in paragraphs 3.3-3.6, inclusive. However paragraph 3.7 says its setting makes a “smaller contribution to its significance”, but this term is ambiguous. Smaller than high might mean medium, but this is far from clear. In any event paragraph 9 of GPA3 says the importance of setting: “… lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance”. I can therefore agree the last 3 sentences of paragraph 3.7.
I am able to agree paragraphs 3.8 and 3.9 with the caveat that this solely relates to the village Conservation Area, not the Grade II listed building.

92. Paragraph 3.10 is where we start to depart and this is because the author has not taken full account of what is being proposed. The land adjacent to the designated heritage assets on Higher Town is not proposed to be a paddock. This area would fundamentally change because of the cutting for the cycleway/footway that is being proposed. Residential development would harm the rural character of the area, which paragraph 3.7 agrees to make a contribution to setting. The Council has not produced an Appraisal of the Grand Western Canal Conservation Area, but in my view there is a key view\(^{41}\) from the towpath towards the application site that takes in the listed building and the unlisted buildings within the Sampford Peverell Conservation Area. So whilst I have acknowledged that the illustrative layout would no longer obstruct that vista I consider the proposed scheme would harm the ability to appreciate its significance. It would change from a complex of old buildings associated with its agricultural origins to a low lying structure that would be dominated by a new housing estate. Using the descriptors in Table 2 I consider there would be a moderate change, i.e. that the significance of the resource would be substantially modified.

93. For the above reasons I dispute the conclusion, in paragraph 3.10 of the report by AC Archaeology, there would be no change to the significance of the Sampford Peverell Conservation Area as a result of what is proposed. Among other things I note paragraph 9, second bullet-point, of GPA3 says where the significance of a heritage asset has been compromised in the past\(^{42}\), that negative change could include severing the last link between an asset and its original setting. This is a case in point.

94. Against that finding I turn to the listed building. On a 5-point scale of value I disagree that this is only of medium significance, as claimed at paragraph 3.19 of the report. I do agree that the listing does not make reference to setting but, in my experience of listed buildings, that is typical of most Grade II list descriptions. As paragraph 9 of GPA3 makes clear setting is not itself a heritage asset. The key phrase in paragraph 3.20 is, in that context, the reference to: “...its history as a farmhouse”. 

95. Paragraph 3.21 of the report says the setting of the listed building at No 42 contributes to its significance; I agree. It continues by saying its setting makes a “smaller contribution towards significance”, but this term is again ambiguous. Smaller than medium must mean low or negligible, having regard to Table 1, but given it is agreed that it was a farmhouse this appears to be wrong. If the value of the asset was assessed as high I might concede the significance of its setting is medium. This recognises that its significance derives mainly from the structure and fabric of the building. It reinforces my view that the significance of the listed building as a heritage asset is understated in both paragraph 3.19 and Table 1.

\(^{41}\) Including, but not limited to, the existing bench on the towpath.

\(^{42}\) This appears to be the inference of the reference in paragraph 3.10 of the report to 20\(^{th}\) century residential development.
96. I feel unable to comment on the claim in paragraph 3.22 that the land to
the south and west was in a different ownership in the 19th century, such
that there was no functional relationship. I can agree that there is likely
to have been a historical relationship between the farmhouse and the land
that now forms part of the application site. The ownership of each is now
in different hands and so that functional relationship was severed at some
point. I am simply not in a position to say when that was, but if evidence
to substantiate the claim was put to me I would be prepared to agree it.

97. With reference to paragraph 3.23 I accept that the listed building faces
the road and is at a lower level than the land. Given the winds that we
experience, even at the bottom of the slope, this is likely to have been as
a result of practical, weather-related, considerations and it should not be
inferred that there was no functional relationship with the agricultural
land. However I can agree that the architectural characteristics of No 42
can best be appreciated from, among others, “the approach along Higher
Town”\(^{43}\). The plan at Appendix N to the TA shows this would change to a
substantial extent, with a physical buildout, signage, anti-skid surfacing
and, most importantly, a large new cutting and the associated visibility
splays that would alter the approach along the characteristic sunken lane.
In combination it is clear that these changes would cause serious harm
and, amongst other things, the high hedge banks referred to in paragraph
3.2.3 would be breached and potentially reprofiled to provide visibility.

98. I understand the point being made about the view shown in Plate 10 but,
amongst other things, the distinctive chimney stack and hipped slate roof,
which are expressly referred to in the list description, can be appreciated
from this point. Although this is not a public view it perfectly illustrates
the rural character of the area in which the listed building sits. Apart from
the complex of buildings at Nos 42-26, all within the village Conservation
Area, there is hardly another dwelling in sight. This rural character and
context would substantially change as a result of the proposed scheme\(^{44}\).

99. I do not accept what is said in paragraph 3.24. The proposal eliminates,
rather than reduces, the surrounding agricultural land because the small
paddock would be severed from the listed building by a cutting. There
is an unfortunate assumption that trees are proposed in the northeast
corner of the application site. A site inspection would demonstrate that
the dwellings in this complex are below the level of the field and have a
number of habitable room windows facing southwest. If trees were to be
planted in this area this would have the potential to seriously compromise
the living conditions of residents in terms of overshadowing. Any planting
in this area is unlikely to be more than groundcover both for this reason
and because trees would compromise the open setting of the designated
heritage assets. Moreover, in the light of earlier analysis, the route of the
cycleway might take a different form, such as zig zags or a longer and/or
wider cutting, which would open up views of the proposed dwellings. In

\(^{43}\) Source of quote: paragraph 3.23 of the report by AC Archaeology.
\(^{44}\) See reference to such attributes as tranquillity and remoteness in the third
bullet-point of paragraph 9 of GPA3.
combination I strongly dispute the claim that the proposed dwellings would be unlikely to be visible when viewing No 42 from Higher Town.

100. The flawed assumption about trees in this area undermines reference to ‘edge of development’ character in paragraph 3.24. Ground cover plants or low level vegetation would have no appreciable impact on reducing the harm that I have identified. I can see the chimney stack and hipped slate roof every time I walk up my spiral staircase, at the eastern end of my house within the Grand Western Canal Conservation Area, and that is at a far more acute angle than land within the northern part of the application site. Accordingly views from within that area readily allow an appreciation of its significance. Externally, the stack is a distinctive and characteristic feature. For reasons previously identified the characteristics of its roadside location would significantly change.

101. In summary, for the reasons given above, I disagree with the claims that the proposed development would result in no change to the significance of these heritage assets. In my view it is clear that there would be harm to their significance and the ability to appreciate it from a range of public and private viewpoints. The scale, prominence, proximity and, in the case of the cutting and highway alterations, detailed design being proposed would substantially modify the significance of these designated heritage assets. The change would be permanent and could not be ameliorated by plants.

Grand Western Canal Conservation Area

102. Turning to the Grand Western Canal Conservation Area, I start with a brief recap of how this has been consistently under-estimated. The Council failed to identify it at all in its Sustainability Appraisal [SA]. The HEA only referred to it in geographic terms and did not assess the effect upon it. These errors led Place Land LLP, the current Applicant, to fail to identify it in the first heritage assessment that was submitted on their behalf to the Local Plan examination. This omission was remedied in the second heritage assessment that was submitted with the planning application but, for reasons set out in my letter dated 21 September 2017, I said this was “hopeless and clearly unfit for purpose”. I stand by that assessment. In that context I am not surprised that a new company has been appointed, but it has not taken up my previous invitation, extended to the Applicant, to come onto my property in order to make a more informed assessment.

103. The report by AC Archaeology deals with this in paragraphs 3.11-3.18 and again I will try to deal with them sequentially. I am pleased to note that for the first time someone, other than I, has recognised that the Grand Western Canal Conservation Area is an asset of high significance based on, among other things, its aesthetic value. Paragraph 13 of GPA2 does use the word aesthetic, which my concise OED defines as: “...concerned with beauty or the appreciation of beauty”. Paragraph 13 of GPA2 says: “This is simply another way of analysing its significance”. Paragraph 4 of GPA2 says: “The significance of a heritage asset is the sum of its archaeological, architectural, historic, and artistic interest”, which reflects the definition of significance in the Glossary in the Framework. On my reading artistic has now replaced aesthetic and that is why I relied on the
former in my letter dated 21 September 2017. To this extent I perceive that there is actually common ground between the author of the report and I because it cannot reasonably be argued that the property makes a: “...negative contribution to the significance of the Conservation Area”\footnote{Source of quote: paragraph 18a-025-20140306 of Planning Practice Guidance.}

104. Turning to paragraph 3.12 I agree that the absence of a Conservation Area Appraisal makes life difficult. However when the Conservation Area was first designated, which I believe to have been slightly earlier than the village Conservation Area, there must have been a designation report. Within the Council's archives there must be an indication as to why, in the case of 16 Turnpike, it was included within the designated area. I have previously established that it must have been for artistic reasons, in particular because of its attractive sylvan character. I accept that 16 Turnpike would not have been included for any other [archaeological, architectural and historic] reasons. The house was built in 1954 and the bungalow at No 16A was erected in the early 1980s and served as the village Doctor’s surgery until the start of the twenty first century. Whilst a track, originally serving the farm complex, appears to run across the land on the plans that pre-date the canal, it is unlikely that this was the cause of its designation because there is no evidence of it on the ground now.

105. In light of the above concession I take no issue with anything that is said in paragraphs 3.13 and 3.14 of the report by AC Archaeology. However it is noticeable that the analysis\footnote{Specifically in paragraphs 3.11-3.18 of the report by AC Archaeology.} does not use the word artistic. It was prepared in full knowledge of the terms of my letter dated 21 September 2017 and I suggest this omission is deliberate. Given the frequent use of the word in GPA2 and the fact that I used it, I consider that it is surprising that the report by AC Archaeology has not dealt with this point. In short, having regard to both the definition of significance in the Glossary to the Framework and paragraph 11 of GPA2, I consider that the assessment of significance undertaken by AC Archaeology is deficient in this respect.

106. In my view this particular part of the Grand Western Canal Conservation Area is an asset of high significance based on its aesthetic and/or artistic value. The 2008 report referenced in paragraph 13 of GPA2 is current\footnote{See Historic England’s website: https://content.historicengland.org.uk/images-books/publications/conservation-principles-sustainable-management-historic-environment/conservationprinciplespoliciesguidanceapr08web.pdf/} and aesthetic value is dealt with, starting at paragraph 46. In terms of sensory stimulation I have previously referred to beauty [visual] and birdsong [aural]. At paragraph 51 it says: “Some aesthetic values are not substantially the product of formal design, but develop more or less fortuitously over time, as the result of a succession of responses within a particular cultural framework. They include, for example, the seemingly organic form of an urban or rural landscape”. My property is precisely that. I have kept the best of what I inherited, in terms of both built form and trees, to, in my opinion, positively enhance the Conservation Area.
107. Paragraph 54 of the 2008 report says that communal values are closely bound up with aesthetic values. In terms of conservation policies and guidance paragraph 144 says: “The eye appreciates the aesthetic qualities of a place such as its scale, composition, silhouette, and proportions, and tells us whether the intervention fits comfortably in its context”. I have been clear throughout that to my eye the proposed intervention, namely housing on the hillside up to 25 m above my house, and far more above the level of the canal, would not fit comfortably in this particular context. This goes to the effect on the asset’s significance, not just its setting.

108. By reference to the structured approach in paragraph 6 of GPA2, I submit that the author of the report by AC Archaeology has not understood the significance of the affected asset in terms of its artistic value. As a direct consequence the impact of the proposal on that significance has not been assessed. It follows that the remaining stages have not been examined.

109. Turning to setting, I agree with the statement in paragraph 3.15 that the predominantly rural setting enhances the experience and appreciation of the Conservation Area. However I disagree with the claim in paragraph 3.16 that views of the canal along this stretch are restricted to the immediate vicinity. I can see, amongst other things, the Sidmouth Gap, around 25 miles away, from my property and views from this part of the towpath are expansive. Conversely I have shown in my LVIA that the site, and linear features such as the canal, is visible from over 10 miles away in more than one direction. I also strongly dispute the claim that the canal is not visible from the land within the application area. Whilst I have not been on the land the water in the canal can be seen from the existing gate on the north-western boundary of the site, which is a public viewpoint on the far side of the application site, and so it stands to reason that it can be viewed from a significant part of the application site itself.

110. I agree with the statement in paragraph 3.17 that there are local views of the landscape to the northwest that do not extend such a long way. That is because they terminate on the verdant open hillside that is proposed to be covered with houses, which will redefine what is a largely undeveloped skyline that users of the towpath currently value. There would clearly be harm. Again, the report seems partial in not acknowledging this fact.

111. Turning finally to paragraph 3.18 of the report, the claim that this vista is “...a very small area within the setting of the 11-mile long Conservation Area and therefore the setting of the Conservation Area would still remain predominantly rural”, has an air of desperation about it. On this analysis why not build an at grade\(^48\) dual carriageway around the southern flank of the Stonehenge World Heritage Site on the basis that it is around 25 square kilometres in extent\(^49\). It is, with respect, a very poor argument. In my view small changes are important to one’s experience of valued assets. In any event incremental harm should not be underestimated\(^50\). It would not remain predominantly rural if taken to its logical conclusion.

\(^48\) Recent consultation included a bored tunnel along the critical section.
\(^49\) See: [http://whc.unesco.org/en/list/373](http://whc.unesco.org/en/list/373)
\(^50\) See again second bullet-point in paragraph 9 of GPA3.
112. As shown in Plate 8, taken in winter and therefore a worst case scenario, housing in Paulet etc, barely intrude into the view at issue from the towpath. The beech trees along the southern side of Turnpike largely screen these dwellings in spring/summer. For this reason the proposed housing would not be seen as an extension of the existing housing, but a significant intrusion into a settled and predominantly rural landscape.

113. For reasons given earlier I strongly disagree with the claim that this is not an important view. In addition to the existing bench we have recently been approached about the installation of a second bench along this stretch of canal. The existing bench is orientated towards the application site, not the other way. It is frequently used, perhaps reinforced by the prospect of another being proposed. There are linear views as one walks along the towpath, but appreciation of the asset is not just transitory. Put another way the reason the canal is an international tourist attraction is that it can be appreciated in its attractive landscaped setting. By way of example, when guests arrive at 16 Turnpike they look directly at the open hillside on which houses are proposed. It is therefore manifestly incorrect to say the topographical setting, which the report acknowledges “makes an important contribution towards its setting”, would remain unaffected. To the contrary that is precisely why I say that its significance would be substantially modified. The proposed housing would redefine the skyline. Some of the housing on the layout plan, albeit illustrative, is proposed at a higher ground level than No 48. This would affect not only its artistic significance but also the communal value of the Conservation Area.

114. In summary, for the reasons given above, I strongly disagree with the claim that the proposed development would result in no change to the significance of this designated heritage asset. In my view it is clear that there would be harm to its significance as well as its setting. The scale, prominence, siting and, in the case of the emergency access and zig zag cutting, detailed design of the proposal would substantially modify the significance of this designated heritage asset. This permanent change could not be ameliorated by landscaping due to the extreme topography.

**Conclusion with regard to heritage issues**

115. In light of the above analysis, I have reviewed the terms of the putative reason for refusal that I previously recommended to the Council in my letter dated 21 September 2017, but see no reason to depart from it in any respect. Neither the report by AC Archaeology nor the covering letter

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51 We have recently been approached by Mark Baker, the Canal Warden, about the prospect of another bench being installed along this part of the towpath and we requested that it should not be placed directly opposite the bottom of our garden in the interests of privacy. So, whilst this is a matter for Devon County Council, it is likely that a new bench will be installed in the near future along this section of the towpath and we can get written confirmation, if required.

52 In the last 12 months my wife’s B&B has welcomed guests from across Europe and the US, and we have future bookings from residents of Canada and Sweden.

53 Source of quote: paragraph 3.18 of the report by AC Archaeology.
dated 30 January 2018 attempts any form of balancing exercise of harm against benefits. It is not my role to do the Applicant’s job for them.

116. The HEA alone means that the Council must find that there has been, at a minimum, less than substantial harm. It would be perverse if it were otherwise. Accordingly the Applicant should have expressly identified what public benefits, in its view, should be balanced against any harm that was identified. However since the Applicant’s submission is silent, and it is quite clear that there are only heritage dis-benefits, the planning application should properly be refused because of the conflict with the DP. The statutory duties imposed by sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 are plainly not met.

Landscape

117. I have already analysed this at length in my LVIA, which accompanied my Local Plan submission, and again in my letter dated 21 September 2017. In these circumstances I propose to deal with this matter relatively briefly because, as noted at the start of this letter, the revised LVIA available online\(^\text{54}\) is incomplete. It is a complicated 57-page report even without any of the figures or the appendix listed on page “56/57”. I cannot begin to comment on this document without any of the photos, viewpoints and photomontages that form the basis of the detailed analysis contained in the report. In short I have been substantially prejudiced by this omission.

118. My view is reinforced by reference to the Guidelines for Landscape and Visual Impact Assessment, third edition [hereinafter GLVIA3]. To give a couple of examples, paragraph 8.16 of GLVIA3 says: “Photographs should be used in the baseline for the visual effects assessment to illustrate existing views and visual amenity at agreed viewpoints”. There are actually 2 points arising. First “should” is mandatory, and since there are no photographs at all in the AECOM LVIA, it does not comply with this unambiguous advice in GLVIA3. Second, despite the fact that I produced my LVIA last summer [2017] and it has been available on the examination website ever since, AECOM have not contacted me to agree viewpoints.

119. It would appear that “VR14” relates to a point to the south east of the site on the canal towpath\(^\text{55}\), but no figure\(^\text{56}\) is even listed and I have never seen this photograph. To the extent that other photographs might be the same the comments in my letter dated 21 September 2017 might apply. However I cannot be sure as life is too short to wade through a 57-page report trying to anticipate what might be in photographs that might be the same as some I briefly reviewed almost 6-months ago but are no longer available. It would appear that AECOM have still not viewed the site from the public vantage-points that I identified 10 miles away in two different directions and their approach is remiss in not doing so or agreeing why not with me. In the alternative AECOM should have agreed the viewpoints

\(^{54}\) Revision 02, dated 22.12.17, “Issue 02 Draft” [my emphasis].

\(^{55}\) I can only tell this because of the text in the column “Receptor” in several of the tables, such as Table 14 on page 52/57.

\(^{56}\) In the list of figures on page 56/57.
with the Council, but I can detect no evidence that this was done. This approach does not comply with this unambiguous advice in GLVIA3 either.

120. The second example relates to landscape effects. The summary advice on good practice says: “For landscape effects photographs should illustrate the landscape character of the site and its context, from locations carefully chosen in discussion with the competent authority...”\(^\text{57}\). Again “should” is mandatory and so my earlier point applies. I accept that I am not the competent authority, which in this instance would be the Council. However I repeat that there is no evidence that the locations were agreed and the fact that the replacement LVIA identifies a new location, “VR14”, strongly suggests that there have been no discussions with the Council.

121. Section 2.1 of the AECOM LVIA sets out the General Approach and makes no reference to approaching the Council to agree locations. From this passage it would appear that the one and only site visit was undertaken on 11 April 2017. This is curious because my letter dated 21 September 2017 highlighted the failure of the original report: “...to even identify what I consider to be the most important view of the site from the tow path to the southeast”. So, noting the absence of a reference to viewpoint 14 in the list of figures, how did AECOM allegedly obtain a photograph that has not been produced or listed in the list of figures, if it was not in the original report and the author did not do a site visit after 11 April 2017? Extraordinarily this leads me to challenge the veracity of the AECOM LVIA.

122. Notwithstanding the above I have read the AECOM LVIA and amongst other things note the reference to “9 m AOD”\(^\text{58}\) in section 6. This might be the explanation as to why the author has been unable to appreciate why the site can be seen from 10 miles away in 2 different directions.

123. For these reasons no evidence has been provided by the Applicant that leads me to change the views that I expressed in my earlier LVIA and letter dated 21 September 2017. If the Council resolves to grant planning permission on the basis of evidence that I have not seen or had a chance to comment upon then it is likely that proceedings will be brought.

Copplestone appeal

124. Subsequent to my letter dated 21 September 2017 I have become aware of an appeal decision\(^\text{59}\) [Ref APP/Y1138/W/17/3167891], dated 16 June 2017. The proposal is directly comparable because it was made in outline with all matters except access reserved. The scheme was for 60 houses but included a new Doctor’s surgery, which is a substantial public benefit that is not proposed as part of the current planning application. It was proposed on land outside a similar sized village, Copplestone, which has a railway station actually within the village. On the basis of a site visit that I undertook on Sunday 7 January 2018, I suggest that the village has a

\(^\text{57}\) Source of quote: page 153 of GLVIA3.
\(^\text{58}\) Source of quote: page 30/57.
\(^\text{59}\) See: \url{https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3167891}
comparable level of services and facilities, but unlike Sampford Peverell Copplestone appears to have a number of sources of employment.

125. Against a backdrop of an agreed 5YHLS deficit\textsuperscript{60} the Inspector concluded that: “...in undertaking the tilted balance the shortfall in supply does not override all other considerations. In this instance, the harm that I have identified to the character and appearance of the area significantly and demonstrably outweighs the benefits that would be derived from the scheme. The proposal would not satisfy the environmental dimension to sustainable development, as defined within the Framework, and in failing to meet overall sustainability objectives it would also conflict with CS policy COR1 and DMP policy DM1\textsuperscript{61}.

126. The site appears to be highly comparable and the planning officer/decision maker should visit it if they are not familiar with it. The site lies to the east of a modern residential estate and to the north of the A377 behind a “finger\textsuperscript{62} of development that is prominent in the landscape when viewed from the public right of way network to the southeast of the site\textsuperscript{63}. I do accept there is a footpath across that site, but I consider similar pleasing views are obtained around the Higher Town site, e.g. from the lane from which access is proposed to be derived. This forms part of a well-used walking route from Higher Town down to the canal via Batten’s Cross. There would be a high magnitude of adverse change for high sensitivity receptors, such as walkers and horse riders, who use that route.

127. The sentence: “The pleasing, unspoilt open qualities of the appeal site form part of the attractive setting to Copplestone and make an important contribution to its identity and sense of place\textsuperscript{64}, applies to this application site without reservation. The decision maker could cut and paste that sentence and put Sampford Peverell instead of Copplestone. The analysis in paragraph 20 of the appeal decision equally seems to apply here. In my professional opinion however the current application is even more harmful than what was proposed in that case because the Copplestone site is set down in the wider landscape at a lower level from the A377. In contrast the houses proposed here are up to 25 m above 16 Turnpike.

128. I draw attention to paragraph 34 of that decision because this site is also on grade 2 agricultural land and this weighs against this proposal. I have given reasons elsewhere why the proposed development would detract, rather than enhance, biodiversity and so, unlike in Copplestone, this also weighs against this proposal. With reference to paragraph 37 of the decision 35 % affordable housing was proposed in that case which is more than is proposed here. Moreover, since my earlier letter, a Community

\textsuperscript{60} See my letter dated 21 September 2017, noting that the Applicant’s covering letter dated 30 January 2018 still relies on the same assessment that is now almost 3-years out of date. As such I do not need to comment further upon it.

\textsuperscript{61} Source of quote: paragraph 43 of the said appeal decision.

\textsuperscript{62} Source of quote: paragraph 16 of the said appeal decision.

\textsuperscript{63} I walked in a big circle around that appeal site but, in particular, highlight views from the public footpath that runs to the west of Knowle.

\textsuperscript{64} Source of quote: paragraph 16 of the said appeal decision.
Land Trust has been formed[^65], which would appear to address the scale of the identified local need in the village[^66]. With reference to the analysis of various financial contributions the position appears to be similar in this case. The Education Authority’s response dated 4 October 2017 is now out of date and the LPA has not addressed the CIL Regulation 123(3) point. There appears to be no significant financial or other benefits proposed that have been justified by reference to CIL Regulation 122 and so nothing to weigh positively in the planning balance at this time. The affordable housing exceeds the identified need which is, in any event, going to be met by the Community Land Trust elsewhere in the village.

129. For all of the above reasons I say that if this planning application were to be considered at appeal the same overall conclusion would be reached as was the case in the Copplestone appeal. Indeed for the reasons I have outlined in my letter dated 21 September 2017 and this letter I am quite clear that should paragraph 14 of the Framework be engaged the planning balance is weighed far more heavily in this case against permission being granted. I have now identified 7 refusal reasons and would support the Council at appeal should it recommend refusal on this basis.

**Willand appeal**

130. The second appeal to which I refer is [Ref APP/Y1138/W/17/3172380], dated 3 November 2017[^67]. I rely on this appeal decision because it concerns the nearby village of Willand where the absence of a 5-year housing land supply was accepted by the Council.

131. I am sure both main parties are familiar with this case and so I do not propose to quote from it at length, because in that appeal there was only minor harm to the character and appearance of the countryside [see paragraph 15] whereas the Copplestone appeal is more pertinent in that respect to the situation at Higher Town. However the Inspector found that in contrast to the Uffculme appeal: “...the scale of development proposed in this appeal would represent a very significantly greater level of growth relating to a settlement with no greater level of services and facilities”. I acknowledge that the scheme, for 259 dwellings, was much larger but Willand is the fourth largest settlement in Mid Devon.

132. The 2011 census figure is 3,360 but the most recent mid-year estimate is 3,426[^68]. The average household size in the UK in 2015 was 2.5[^69] and so it could be reasonably anticipated that the 259 dwellings proposed would give rise to 647 new residents. This would give rise to an increase of over 18% in the population of the village. In my letter dated 21 September 2017 I arrived at a similar figure for Sampford Peverell, but I acknowledge that the scheme has now reduced to 60 dwellings, although the latest

[^65]: http://www.sampevclt.org/
[^66]: See submission of Housing Option Manager dated 14 February 2018.
[^67]: https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3172380
[^68]: See: population_link
[^69]: See: ONS_link
population estimate has also reduced. Reworking the earlier calculation results in an increase of over 12% without any allowance for any extant planning permissions, to ensure a consistent approach.

133. Again in the Willand appeal there is reference to 35% affordable housing in contrast to “up to” 30% is proposed in this application. However in this respect the Inspector comments: “I have not been made aware of a pressing need for affordable housing in Willand” and I have already given a reason to say why these sentiments apply equally in Sampford Peverell. In concluding on the planning balance, in a case where there was virtually no other harm, the Inspector says: “I attach significant weight to its conflict with the development plan policies relevant to the scale and distribution of housing in Mid Devon and which I consider broadly reflect the sustainable development principles in national planning policy. In my view, the totality of these adverse impacts significantly and demonstrably outweighs the benefits of the appeal scheme.”

134. To avoid any ambiguity I make clear that I do not oppose 60 dwellings in Sampford Peverell in the event that the J27 development is given the go ahead and I am on the public record to this effect. This is the position that the Parish Council has adopted too, but we do not accept Higher Town is the right location. Moreover, in contrast to the large industrial units and impending employment at Willand, unless or until something like J27 is developed at Sampford Peverell new residents can reasonably be expected to commute out for employment. That is why the emerging policy contains the criteria that it does and why I say that even the 12% growth in population would lead to the policy conflict identified at Willand.

**Cornwall appeal**

135. The third appeal to which I refer is [Ref APP/Y3615/W/17/3171249], dated 28 June 2017. I rely on this appeal because of its analysis of the footway standards in MfS and its application to a substandard network. It should be particularly noted that the Highway Authority deemed the scheme to be satisfactory following advice from an independent safety auditor. As I have noted the TA claims an “RSA1” was done here, but it has not been the subject of consultation and so I have been prejudiced.

136. Paragraph 7 of the decision says: “Manual for Streets (MfS) provides technical guidance on highway design. It indicates that “generally” the minimum unobstructed width in lightly used streets (such as those with a purely residential function) should be 2m. The use of the word “generally” indicates that there are circumstances where exceptions might be made.

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70 60 x 2.5 = 150 expressed as % of population of 1,210; see: Population_link.
71 Source of quote: page 4 of the DAS.
72 Source of quote: paragraph 53 of the said appeal decision.
73 Source of quote: paragraph 60 of the said appeal decision.
74 See Minutes of Full Council meeting on 21 February 2018.
76 See: https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3171249
77 See paragraph 6 of the said appeal decision.
However, I do not consider St Ive Road to be a "lightly used" street; it is a C Class road, being the main road”. That situation is directly transferrable to Turnpike. In my letter dated 21 September 2017 I described how, in the event that the North Devon Link Road is closed, the trunk road traffic uses Turnpike. This situation is ongoing to a greater or lesser extent and in particular traffic levels have increased markedly whilst resurfacing and new bridge works are taking place north of Tiverton. For these reasons Turnpike is not a lightly used street, but frequently becomes a heavily used carriageway and the main route from J27 of the M5 to North Devon.

137. Paragraph 8 continues: “At 1.2m, the footway width would be significantly below the minimum recommended width for lightly used residential streets; for a well-used road, it follows that the minimum width should be above 2 m. At 1.2m, the footway would be of insufficient width to allow 2 pedestrians or a wheelchair user and an ambulant person to walk side by side, and only just wide enough to allow a pedestrian and a child to pass along, with no margin for safety. This weighs heavily against the proposal”. Paragraph 9 continues, by reference to “Inclusive Mobility”, by making clear that the Inspector regards the minimum width to be 1.5m.

138. In that context paragraph 11, referring to a footway of 1.2 m, says: “...the lack of space on the footpath, and the closeness of passing traffic would be likely to make the footway feel unsafe, and discourage its use. This would run counter to aims to encourage walking as a means of travel, and to provide good accessibility to services and facilities”. Frankly, for users of the footway along Turnpike, its width is the least of one’s worries. The real problem comes when it runs out. However it is clear from this recent analysis by an experienced Inspector that the existing footway would also, potentially, be a reason in itself to refuse planning permission in this case.

139. In these circumstances I have taken a number of measurements along the footway. Outside my next door neighbour, No 14 Turnpike, the footway is 1.3 m, already below the minimum width identified by the Inspector. By the time the footway gets to No 10 it is down to 0.9 m and it remains at less than 1.0 m outside No 8. At one point, by the telegraph pole outside No 6, the footway width is down to 0.75 m. Outside No 4 it is back up to 1.2 m, but it reduces again to 1.0 m outside No 2. In front of Wharf House there is another pinch point by a telegraph pole of 0.7 m, before the footway runs out. The white line on the inside of the bend is up to 0.9 m from the wall but much less than this over the canal bridge. It is clear that this is a long stretch of footway of a substandard width, which is a fundamental constraint to new housing development being served off it.

140. Section 3.7 of “Inclusive Mobility” says: “Posts, poles, bollards etc should be positioned to leave at least the minimum footway widths given in Section 3.1”. Section 3.1 says: “The absolute minimum, where there is an obstacle, should be 1000mm clear space. The maximum length of restricted width should be 6 metres” [Original emphasis]. It is beyond dispute that the Government’s current standards are not met and I am entirely unclear why the Highway Authority has not considered this point. In my view the Council would be completely justified in refusing the application, having regard to the Cornwall appeal, on this basis alone.
141. Ironically the position of the Highway Authority with regard to the footway along Turnpike is at odds with the position of the Transport Coordination Officer of Devon County Council. In an email dated 21 February 2018 [14:35 hours], which will be provided by other local residents, Devon County Council indicate that a new bus pick-up point was established at Batten’s Cross because there are “sections” of Turnpike where there is no pavement. This would mean “students would need to walk along the roadside.” One of the sections is past Wharf House over the canal bridge.

142. In the Cornwall appeal 61% affordable housing was proposed, but this did not dissuade the Inspector from concluding: “...the highway safety shortcomings are so severe that they outweigh all other considerations [because] the creation of safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians, and the consideration of the needs of people with disabilities are important parts of the Framework’s aim to promote sustainable transport.” My neighbours, Dr Christopher & Mary Chesney, spoke publicly and powerfully of their own experiences of using this footway at Full Council on 21 February 2018 and the Council should take account of their testimony which is available in the Minutes.

143. In the light of this appeal decision my earlier submission that this planning application should be refused by reason of highway safety is, when taken with the independent highways advice that I have commissioned, clearly made out. Just as in paragraph 15 of the Cornwall appeal decision, the Council would be well advised to attach little weight to the observations made by the Highway Authority because they appear to be inadequate.

Cranbrook appeal

144. The fourth appeal to which I refer is [Ref APP/M2270/W/16/3161379], dated 14 June 2017. I rely on this appeal because it illustrates a simple application of the Framework where there are designated heritage assets.

145. It concludes: “Although in the context of a lack of a 5 year housing land supply both parties have referred me to the presumption in favour of sustainable development, in accordance with the requirements of paragraph 14 and footnote 9 of the Framework, I have found that specific policies in the Framework indicate that development should be restricted. As such, the presumption in favour of sustainable development does not apply.” The footnote related to this quote refers to designated heritage assets. The Inspector therefore found: “...the proposal would conflict with the development plan, when read as a whole and the Framework.”

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78 Source of quotes: paragraphs 17 and 16 of the appeal decision, respectively.
80 Source of quote: paragraphs 70 of the appeal decision.
81 Source of quote: paragraphs 71 of the appeal decision.
Other miscellaneous points

146. I have reviewed the application submission to assess the need to make any other comments. The covering letter dated 30 January 2018 refers to a site area of 4.6 hectares but the application form says 4.3 hectares; this is ambiguous. It is suggested conditions can require green infrastructure within the blue edge, but if this is proposed the areas concerned should be within the red edge and be part of the application site. Otherwise the blue edge signifies adjoining land within the control of the Applicant, namely the company, which does not form part of the application site. Why is Place Land LLP retaining big areas of the site and not including it within the land edged red? In the absence of any other explanation it appears to be to come back with an application for more houses, as per Uffculme.

147. The covering letter dated 30 January 2018 claims the DAS “demonstrates how the proposed development has regard to its location and setting, whilst respecting the local environment and seeking to make a positive contribution to the local character of the area”. However the DAS dated 20.12.17 does not do this. Section 07 refers to a process of evaluation in section 04 but that has not been provided. Having regard to Article 9 (3) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 there must be a doubt whether the application is even valid in these circumstances. Again potential judicial review point. Given the incomplete DAS relied on I see no point in offering comment on the rest of it because I am substantially prejudiced by the omissions.

148. The covering letter dated 30 January 2018 claims the density is 23dph, but whether the site area is 4.3 or 4.6 hectares the density calculation is wrong. It says the emerging policy has been used as a guide but Policy SP2 is caveated by reference to J27 and criterion b) requires improved access to A361. The Highway Authority has not addressed this in its reply. Whilst the Applicant has assumed the Council has undertaken a balancing exercise given its approach to the Grand Western Canal Conservation Area this is clearly presumptive. It is equally of note that the covering letter has not attempted to deal with the substantive reasons given in my letter dated 21 September 2017 as to why the tilted balance does not apply. In this respect I draw attention again to the Cranbrook appeal decision.

149. I turn briefly to drainage. At least, unlike the Council’s SA, the FRA does not claim the site is in sufficient danger of inundation from the canal, up to 35 m below, for that risk to be written into every iteration of its SA from June 2014 to January 2017. This does not necessarily make it competent. Section 4.1 says: "The proposed school development...". I was not aware that a school was being proposed. Section 4.3 says finished floor levels [FFL] would be raised by 150 mm and when the illustrative layout is examined this would exacerbate the harm in terms of both landscape impact and effect on designated heritage assets. By way of example Figure 26 to the DAS identifies active frontages overlooking

82 See Minutes to Full Council on 21 February 2018 recording a question from Mrs Pearce.
the village graveyard, which is highly inappropriate\textsuperscript{83}, which would also potentially harm the living conditions of the occupier of No 16A. I do acknowledge the distance but the key here is the topography. Even if this might be capable of being addressed at reserved matters the combination of topography, FFL and overlooking frontages would make for a highly conspicuous residential block and reinforces my conclusion on heritage.

150. Section 6.3 of the FRA says infiltration testing was done in July, probably the driest month of the year. Despite this the pit [SA03] in the southeast corner of the site “failed”. Reference to drawing No C-06685-C-002 in the drainage report shows this is on the road side bank right in front of where the SuDS is proposed. I must question the wisdom of proposing a major new SuDS area on a high bank above Turnpike if the water table is high in this, one of the lowest areas of the application site, in July. There must be an increased potential for bank instability in these circumstances. The penultimate bullet-point in section 8.0 refers to tanks and flow control in the southwest of the site. However it is contrary to what the plans show.

Conclusion

151. The evidence that I have prepared and provide for this application is true, and has been prepared and is given in accordance with the guidance of my professional institution, and I confirm that the opinions expressed are my true and professional opinions.

152. Having regard to the terms of my letter dated 21 September 2017 and to all that is stated above there is absolutely no doubt in my mind that this application should be refused. Cumulatively I have identified 7 reasons and just to be clear putative reason 4 would relate to sustainability issues, putative reason 6 would be highway safety and putative reason 7 would be ecology\textsuperscript{84}. I acknowledge that I do not have a highways qualification, although I do bring years of experience, but for this reason I instructed a suitably qualified highways consultant to review my preliminary findings\textsuperscript{85}. In any event I again draw the parallels to the Cornwall appeal and share the views expressed therein.

153. I maintain that putative reason 5 remains justified given that the Local Plan examination remains in suspension and even if it does resume later

\textsuperscript{83} See earlier application consultation response of Miss Sarah Henderson.

\textsuperscript{84} Apart from a reason with regard to the inadequacies of the submission, which would be consistent with the published exchange of emails between the Applicant and the Council in which the case officer says: “The Authority … has to ensure the necessary information is available for consultees and members of the public to scrutinize the proposal … If you wish to I can determine the application this week on the information which we have which is incomplete and contradictory, and I would have no alternative but to recommend refusal” [6 Feb email at 09:34].

\textsuperscript{85} I can provide a copy of what I sent upon specific written request, but in essence it was the highways section of this letter, the TA and the Highway Authority’s correspondence dated 6 December 2017. I have not sought to influence the outcome of that independent commission in any way whatsoever. Depending on timing that may accompany this letter or be sent as a separate submission, because I am working away from home all this week.
this year it is inevitable that it will focus on J27 and the related housing allocations. Having regard to paragraphs 3.7 and 3.8 of the published\(^\text{86}\) advice I am satisfied that these have been identified as fundamental flaws with the Local Plan and that specific hearing sessions will be rescheduled to deal with these particular allocations, perhaps in the summer of 2018.

154. For the avoidance of doubt I write to confirm that if an appeal is lodged against any refusal of planning permission for the above reasons that I will support the Council’s reasons at appeal stage with evidence\(^\text{87}\).

**Site visit**

155. I again write to request that the Planning Committee inspect the site from 16 Turnpike prior to reaching a decision on the planning application. I reiterate that the need for this is underlined by the fact that Planning Officers and the Applicant have failed to identify the Grand Western Canal Conservation Area, within which my property lies, at an earlier stage. The Planning Committee need to fully appreciate the significant impact that the proposed development would have on this part of the Grand Western Canal Conservation Area. It can only be appreciated by a site inspection and, I suggest, from here the members of the Planning Committee might wish to walk down Turnpike down onto the canal path and along it to the west, to again see the application site from various vantage-points.

156. Please do not hesitate to contact me if you require any clarification of the points I have made or wish to make practical arrangements for a site visit.

Yours faithfully

Martin Peter John Drew MRTPI

Copies to:

1. Councillor Christine Collis
2. Councillor Heather Bainbridge
3. Sampford Peverell Parish Council

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\(^{87}\) Subject to the Council giving me access to its full HLS data and otherwise working collaboratively with me at all stages.
19752/MB/jwv  
26th February 2018

Dear Sir,

MID DEVON DISTRICT COUNCIL APPLICATION 17/01359/MOUT  
LAND TO THE SOUTH OF HIGHER TOWN SAMPFORD PEVERELL

This advice has been prepared to consider three documents relating to a planning application for residential development on land to the south of Higher Town to the west of Sampford Peverell.

THE PLANNING APPLICATION

The planning application, Mid Devon District Council’s (the Council’s) reference 17/01359/MOUT, is in outline with all matters reserved for future determination save for the means of access. Access is defined as relating to all modes so includes access by vehicles, by foot, and by cycle. The planning application has been tested in the Transport Assessment (TA) prepared by Hydrock, and submitted in support of the planning application as comprising 60 mixed affordable and open market housing although Devon County Council’s (the County Council’s) consultation response to the planning application refers to 84 units. At the time of preparing this advice there has been no updated consultation response of the County Council for this lesser level of development.

It should be stressed at the outset that access is not reserved for future consideration, and issues relating to access have to be fully addressed at this stage because in our experience whilst the issues addressed within this advice may be technically possible to address from the narrow perspective of a highways perspective these can have significant implications for other disciplines such as ecology, landscape and heritage. The Council need to consider all issues and apply the appropriate planning balance but should be provided with the technical basis from which to assess.

SCOPE OF OUR WORK

Our commission is to consider the following documents submitted in support of the planning application namely:

i) The submitted TA prepared by Hydrock,
ii) The consultation response of the County Council, and
iii) Your detailed objection letter.
In providing these comments, we should stress at the outset that we have not contacted any officer either from either a highways or planning perspective at the Council or the County Council such that this advice can be considered to be an independent assessment of the highways and transport issues based on our professional judgement.

**TRANSPORT ASSESSMENT**

This section of our advice provides a summary critique of the submitted TA. You have prepared a separate critique of the TA that as detailed below we do not demur from, and the comments in this section of this advice should be taken as our summary concerns with regards to the submitted TA based on our professional experience.

Our consideration of the principal issues contained within the various sections of the TA are now detailed.

Section 1 of the TA is the introduction and background for which there are no comments except in respect of paragraph 1.3.4 as it is not accepted for the reasons detailed below that the TA has “considered that there would be no material highways or transportation matters that would preclude the LHA from approving the planning application”.

In our opinion, the reverse is true, and the Council should refuse the planning application on a number of valid technical concerns regarding the access, and the accessibility of the site by modes other than the car.

Section 2 of the TA details the site location, and existing conditions. The site is detailed as being bounded as follows:

a) To the north by Higher Town which is a single tracked country lane, and past the site is subject to the national speed limit of 60 mph though at the north eastern corner of the site the speed limit drops to 30 mph on entering Sampford Peverell. There is no footway provision, and the road operates as a shared surface. It is along this section of road that a separate pedestrian access is proposed to serve the development,

b) To the west by a road referred to as Turnpike Link Road which runs between Turnpike to the south, and Higher Town to the north. This road is two way but is also subject to the national speed limit, and it is along this section that the main vehicular access is proposed, and there are proposed improvements to improve the road’s geometry. This road also has no footway provision, and the roads also operates as a shared surface. It has no frontage development along it, and has the character of a country lane, and

c) To the south by Turnpike which is single tracked with a speed limit of 40 mph, and along this section two pedestrian links are proposed namely at the south western and south eastern corners of the site. Along the site’s frontage there is no footway provision. The road operates as a shared surface, and also is essentially of a rural character.
The TA at paragraph 2.3.3 indicates that actual vehicle speeds along Higher Town are below the posted speed with the road operating as a relatively low speed link with shared use. However, any speed surveys undertaken at this location simply cannot be applied elsewhere as the speeds were collected on the approach to the 30 mph speed limited area. These speeds will not be representative of those for example along Turnpike Link Road, but it is not clear from the TA whether these surveys have in fact also been erroneously applied to Turnpike Link Road, or whether the values used as design values are based on judgement unsupported by any technical evidence, and as such not sound in either regard.

Section 3 of the TA details sustainability issues, and table 3.1 lists a number of facilities. The TA at paragraph 3.3.1 refers to the Manual for Streets (MfS) guidance that indicates a walk distance of 800m for walkable neighbourhoods with the caveat that this is not a limit to walking, and with an upper limit of 2km.

The 800m distance is also referred to in the Institute of Highways and Transportation (IHT) Guidelines “Providing for Journeys on Foot” amongst other distances. Table 2 of the IHT guidance indicates suggested acceptable walking distances to facilities of:

<table>
<thead>
<tr>
<th>Facility</th>
<th>Distance</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary school</td>
<td>300m</td>
<td>Within desirable</td>
</tr>
<tr>
<td>Bus stops</td>
<td>300m</td>
<td>Within acceptable</td>
</tr>
<tr>
<td>Public house</td>
<td>800m</td>
<td>Within acceptable</td>
</tr>
<tr>
<td>Surgery</td>
<td>850m</td>
<td>Within preferred maximum</td>
</tr>
<tr>
<td>Post office / convenience store</td>
<td>1000m</td>
<td>Within preferred maximum</td>
</tr>
<tr>
<td>Butchers</td>
<td>1600m</td>
<td>Outside preferred maximum</td>
</tr>
</tbody>
</table>

For this location, it is the “elsewhere” distances that are pertinent to consider. With this in mind, reconsidering paragraph 3.3.1 of the TA the local facilities can be defined by reference to the IHT guidance as follows:

Whereas some of the facilities are within the acceptable distances it should be noted that the village does not contain a wide range of services, and has no major employment opportunities within an easy walk. The need to work for residents of the proposed development will require an outward commute from the village, and in this context, the frequencies of bus services, and the travel time to key towns means they are unlikely to be used. There are no early morning or late evening bus services.

Exeter is an 80 minutes journey away by bus which is unrealistic to be undertaken by bus through Cullompton at 38 minutes and Tiverton town centre at 15 minutes away are more realistic though in both cases the bus service at hourly and with no early morning services towards Tiverton or serves beyond early evening means that the use of bus would not be an attractive option for trips to a wide choice of employment opportunities, for leisure trips, for convenience and comparison shopping, or for trips to secondary education.
Tiverton Parkway allows train travel after a 2km walk, or using the infrequent bus service, but the services available are cited as only being hourly on Mondays to Saturdays and two hourly on Sundays to Taunton, and Bristol to the north, and Exeter and Plymouth to the south. The TA does not assess whether any bus service in any direction allows for the use of bus wither to or from the station to link to an onward or incoming bus service. Overall, in our opinion rail does not provide a likely alternative to the car to reach employment or shopping opportunities further afield.

The TA concludes on the issue of sustainability that:

“there are realistic opportunities for residents and visitors accessing the application site to be able to travel by sustainable modes of travel.”

We would not concur with that conclusion. There is reference to the Travel Plan setting out initiatives and measures to encourage the adoption of more sustainable forms of transport though in our opinion these are simply not available locally, and the development if approved would be heavily if not totally reliant on the car for travel to weekly convenience and comparison shopping, secondary schools, and employment opportunities.

On this basis, the planning application should be refused as there are few realistic sustainable transport alternatives available.

Section 4 of the TA details the development proposal. The main vehicular access is designed as a shared surface without a separate footway and is just 4.8m wide with visibility splays in both directions along Turnpike Link Road of 2.4m by 43m, and the TA indicates this “is in line with the requirements of MfS.” In addition a 43m forward visibility envelope is provided on the bend along Turnpike Link Road. A 43m splay is indicated by MfS if a site is either in a 30 mph speed limited area, or if elsewhere where speeds are proven to be at that level.

At both points, there is no empirical evidence that has been provided within the TA to demonstrate that vehicular speeds are restricted to 30 mph, and in this context it would be wrong to relax the stopping sight distance for a derestricted road, where the national speed limit of 60 mph applies unless and until otherwise demonstrated as safety will be compromised.

The practical effect of increasing the forward visibility at the bend is likely to increase the speed of vehicles travelling downhill. Even if speed surveys had been undertaken, they would not be valid to be used for the bend as they would not take account of the potential for the consequent “speeding up” of traffic that may result when the forward visibility is improved.

In both cases, there is a deficiency of 172m or about 80% in the required stopping distance as it has not been proven what the design speed is at either location. The default for a derestricted road being 215m in the absence of speed surveys to prove a lower requirement. The 172m is defined as the 215m required for a derestricted road minus the 43m based on MfS if and only if speeds are proven to be 30 mph.
On this ground alone the planning application should be refused on the basis that a safe access has not been verified. It should be stressed that access is not reserved for future consideration, and issues relating to access have to be fully addressed at this stage because in our experience whilst the issues may be technically possible to address from the narrow perspective of highways point of view these can have significant implications for other disciplines such as ecology, landscape and heritage issues.

Pedestrian and cyclist access as acknowledged in the TA is of importance and in this context the strategy appears to be to guide pedestrians and cyclists through the proposed estate towards the north eastern corner of the site onto Higher Town, and to the south western and south eastern corners onto Turnpike. Given that all roads bounding the site have no existing footways along the site frontages, there will be varying degrees of increased levels of pedestrian movements along the adjacent country lanes of Turnpike, Higher Town, and Turnpike Link Road.

The swept paths of vehicles using the south eastern access are required as demonstrated by the applicants’ AutoTRACK assessment to use the whole of the emergency link’s width such that, even acknowledging it to be a potential minor chance of emergency vehicles using, when emergency vehicles use the link there is simply nowhere for pedestrians to step aside, and their safety would be compromised.

There is also a concern as elaborated by you regarding the proposed gradients of both the footways, and the cycle link that may deter from their propensity to use. The County Council requested that the applicant consider the potential for additional pedestrian provision on Turnpike to facilitate easier access across Higher Town and onto the pedestrian bridge crossing the Great Western Canal. The applicants are proposing a formal footway in lieu of the virtual one with dropped kerbs but there would only be 1.5m by 14m visibility to the north to observe approaching southbound traffic. This visibility is severely deficient for a crossing located within a 30 mph speed limited area, where 43m is required. The TA merely indicates that the visibility splays:

“are considered to be commensurate with observed speeds, supporting the lack of accidents in this location.”

The TA seeks to argue that improvements are not justified due to the proposal’s impact but where offered they need to be appropriate, safe and usable by all. This proposed improvement is unsafe as it encourages people to cross where, whilst it is acknowledged there are kerbing and dropped kerbs proposed, the AutoTRACK assessments show that the design vehicle uses the whole of Higher Town to manoeuvre through the junction, and pedestrians are required to look in three directions where two are deficient and the third requires an oblique view over a shoulder before walking across. Safety is inevitably compromised.

On this ground the planning application should be refused as the proposed works to the Turnpike / Higher Town junction will encourage pedestrians to cross at a location where visibility is severely substandard, and as such pedestrian safety is compromised.
Section 5 of the TA considers the overall traffic impact of the proposal. The TA provides details of the assumed trip rates, traffic generation, modal split and the distribution of traffic. There is no detailed assessment of how the trip rates have been assessed apart from them being based on trip rates for Court Farm, Cullompton using a TA for phase 2 produced in October 2009. That TA is now nine years old, and the trip rates being based on a larger less rural location will be likely to be lower than a development located such as this proposal. The TA does not provide a robust assessment of traffic impact. Notwithstanding this, the predicted levels of traffic however are at the order of an additional vehicles every two minutes using their predictions likely to be capable of being accommodated on the local and wider highway network, and there would be no valid objection raised on the basis of traffic impact alone.

Section 6 of the TA presents the summary and conclusions of the TA. It follows due to the comments variously detailed that we do not concur with their conclusions.

Our main concerns in summary are in the following regards:

i) The levels of the proposed visibility splays from the main residential access onto Turnpike Link Road, which are deficient by of the order of 80% compared to that required by the posted speed limit, and no technical justification is provided for the reduced level of provision proposed,

ii) The cycleway onto Higher Town, which directs vulnerable users onto a section of shared surface with restricted widths, and at a location where from the west vehicles are entering the built up area, and

iii) Footway visibility at the Turnpike / Higher Town junction by the Great Western Canal bridge, and the proposed crossing improvement, but the resulting pedestrian visibility splays at 14m to the north are severely deficient for a crossing within a 30 mph speed limited area..

This is given the overall context either nationally or by reference to the Local Plan as set out in the National Planning Policy Framework (NPPF) paragraph 32 that:

“All developments that generate significant amounts of movements should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
- safe and suitable access to the site can be achieved for all people; and
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”
To comply with this paragraph requires all three bullet points to be satisfied, and if one part fails then it follows that a development cannot be regarded as compliant.

In our opinion, the opportunities for sustainable transport cannot be fully taken up due to the locational characteristics of this site, furthermore that safe and suitable access to the site has not been demonstrated to be achieved either for vehicles due to the lack of a thorough technical justification of the design parameters, or by foot / cycle due to concerns about the proposed crossing points and concerns regarding the achieved gradients, and finally that the residual impact has not been proven by any reasonable interpretation to not be severe as the consultants have used an inappropriate, and arguably erroneous test. Overall, there are considered to be sustainable highways and transport objections to the proposal.

RESIDENTIAL TRAVEL PLAN

The Travel Plan contains little meaningful in terms of how to encourage modes of travel other than the use of the private car apart from the provision of information. There are within the RTP a set of two targets namely one set to be achieved at the end of 2 years, and a further set 3 years after i.e.: by the end of 5 years. The targets are:

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<tr>
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<th>2 year</th>
<th>5 year</th>
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<tr>
<td>Car / van driver</td>
<td>-5%</td>
<td>-5%</td>
</tr>
<tr>
<td>Car / van passenger</td>
<td>+1%</td>
<td>+1%</td>
</tr>
<tr>
<td>Walking</td>
<td>+1%</td>
<td>+1%</td>
</tr>
<tr>
<td>Bus</td>
<td>+1%</td>
<td>+1%</td>
</tr>
<tr>
<td>Train</td>
<td>+1%</td>
<td>+1%</td>
</tr>
<tr>
<td>Cycling</td>
<td>+1%</td>
<td>+1%</td>
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The target reductions are by reference to the local ward census data though by our interpretation the RTP contains no detailed information as to what happens if those targets are not achieved. There is reference to the Travel Plan setting out initiatives and measures to encourage the adoption of more sustainable forms of transport though in our opinion these are simply not available locally, and the development if approved would be heavily if not totally reliant on the car for travel to weekly convenience and comparison shopping, secondary schools, and employment opportunities.

The RTP as submitted is deficient, and meaningful targets are not provided together with a lack of details of penalties if the targets are not achieved.

ROAD SAFETY AUDITS

Two RSAs have been prepared relating to the vehicular accesses, and to access by vulnerable groups. The auditors indicated for the later element that they had:

“been unable to identify any issues with regard to the road safety of users of the highway network resulting from the information provided”.
However, there are issues indicated as “being outside of the scope of this road safety audit” that should in our opinion be addressed before any consent. The issues being advance signage, barriers to deter pedestrians and cyclists gaining access directly onto Turnpike though this then prejudices emergency access causing a requirement to redesign this interface, and the requirement for hardstanding for pedestrians to wait to enter Turnpike that may require additional third party land, and the recommendation to reverse the shuttle working on Higher Town to reduce speeds.

THE COUNTY COUNCIL’S HIGHWAYS CONSULTATION RESPONSE

The County Council’s highways consultation response dated 6th December 2017 indicated inter alia that there is no objection to any element of the proposal subject to the completion of a Section 278 agreement, the relevant technical design and the next stages of the safety audit process. Conditions are recommended by the County Council but none of these seemingly require verification of the design speeds past the location of the proposed main access, and in particular verification that speeds are for design purposes below 30mph.

This can be considered to be a significant oversight of the County Council as access by all modes is not reserved, and the County Council should be absolutely certain that the levels of the visibility splays are commensurate with observed speeds, and that data is currently lacking.

Given that access is not reserved for future consideration, the issues relating to access have to be fully addressed at this stage because in our experience whilst the issues to be addressed may be technically possible to address from the narrow perspective of highways point of view these can have significant implications for other disciplines such as ecology, landscape and heritage issues.

In our opinion, the County Council’s recommendation should not be followed by the Council. As the County Council are a consultee, the Council can demur from their recommendation, and should be encouraged to do so.

YOUR OBJECTION LETTER

You have prepared a comprehensive objection letter which we have not repeated.

We do not demur from either its general or detailed commentary, and our summary of the key issues in terms of the planning application as detailed above are in accord with your observations.

We trust that if you have any queries, require further information or clarification of any point that you will not hesitate to contact us.

Yours faithfully

M Baker
Director
MBC
The Ombudsman’s final decision

Summary: Mr X complains about the Council’s intention to amend the local development plan. The Ombudsman will not investigate this complaint because this is a matter for the Planning Inspector and no significant injustice is caused at this point.

The complaint
1. Mr X complains about the Council’s intention to amend the local development plan.

The Ombudsman’s role and powers
2. We investigate complaints about ‘maladministration’ and ‘service failure’. In this statement, I have used the word ‘fault’ to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as ‘injustice’. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
   • it is unlikely we would find fault, or
   • the fault has not caused injustice to the person who complained, or
   • the injustice is not significant enough to justify our involvement.

(Local Government Act 1974, section 24A(6), as amended)
3. The Planning Inspector acts on behalf of the responsible Government minister. The Planning Inspector considers appeals about:
   • delay – usually over eight weeks – by an authority in deciding an application for planning permission
   • a decision to refuse planning permission
   • conditions placed on planning permission
   • a planning enforcement notice.

How I considered this complaint
4. I have considered the complainant’s comments and the Council’s comments and Mr X has commented on the draft decision.
What I found

5. Mr X is unhappy about proposals made by the Council to amend its local plan regarding possible housing development near him and the local conservation area.

6. The final local plan is a matter for approval by the Planning Inspector at the end of the consultation stage. Any arguments as to appropriate policy and development in the area can be put to the Planning Inspector (as well as at various stages in the consultation scheme process). As such, this is not a matter the Local Government Ombudsman would investigate.

7. Any specific planning applications will have to consider the plan as it exists at that point and Mr X will have the opportunity to object then.

8. I appreciate that Mr X feels he has been put to some time and trouble in making his comments but I consider that this is a result of the democratic planning process rather than fault by the Council.

Final decision

9. The Ombudsman will not investigate this complaint. This is a matter for the Planning Inspector.

Investigator’s decision on behalf of the Ombudsman
Villagers are ‘dismayed’ by SP2 proposals

BY LEWIS CLARKE

Sampford Peverell residents have expressed concern over plans to build 60 homes in the village.

As part of the Local Plan proposal known as SP2 a site of six hectares at Higher Town is allocated for housing following the start of development of the M5 Junction 27 allocation.

No more than 60 dwellings will be built.

Speaking at a Cabinet meeting of Mid Devon District Council on Friday, February 9, Cllr Christine Holland, representing Sampford Peverell Parish Council said if J27 comes forward, the parish council is not opposed to 60 houses being brought forward in the village. However, the council felt these homes were being proposed on the wrong site. She said: “We would respectfully request that councillors revisit that decision and, if a reasonable alternative site is not available elsewhere, consider allocating a site at the eastern edge of the village.”

Head of planning, regeneration and economy Jenny Clifford said SP2 was considered the most reasonable site.

She said: “The sites to the east were not seen to be reasonable alternatives. One of the issues being scale, the sites on the east were being promoted for larger-scale allocation.”

Resident Dr Christopher Chesney had concerns regarding light pollution and the cost incurred through by the Local Plan to seek legal advice.

He said: “Having lived in Sampford Peverell for over 11 years and for the last five been chairman of the village hall committee I know there is dismay at the proposals. Villagers are united in saying the site at Higher Town is entirely unsuitable for housing.”

Cllr Heather Rainbridge called for the Local Plan to be approved as swiftly as possible. She said: “It comes across loud and clear that there are some very concerned people. On the other hand, they agreed years ago this was an appropriate site and I think we must not delay anymore. It’s taken longer than the gestation period of an elephant so we must do nothing to delay this. All the feelings and points of view of those of Sampford Peverell will come forward at the inspection, so let us get on with it.”
Statutory Declaration

I, Martin Peter John Drew, of Manleys Close, 16 Turnpike, Sampford Peverell, Tiverton, Devon EX16 7BN, do solemnly and sincerely declare as follows:

On 1st February 2017 I attended a consultation event at approximately 3 pm [1500 hours] in Sampford Peverell Village Hall. The consultation event had been arranged by Mid-Devon District Council as part of its 6-week consultation, during January and February 2017, in respect of the Local Plan Review. To the best of my knowledge this is the one and only time that Mid-Devon District Council has run such an event in Sampford Peverell as part of its Local Plan Review.

There were 2 Mid-Devon District Council Officers who attended the consultation event on 1st February 2017. The first to whom I spoke was Arron Beacham who confirmed that the Sustainability Appraisal [SA] had been done in-house by the Council. However Mr Beacham said he was not familiar with the details of the SA and so he suggested that I speak with a more senior Officer.

Mr Beacham introduced me to the most senior Forward Planning Officer who was in attendance at the consultation event in Sampford Peverell Village Hall on 1st February 2017, Mr Adrian Welsh. I asked Mr Welsh what the red line was around my property, pointing to the excerpt from the Policies Map which is hereby produced as exhibit “MPJD1” as I did so. Mr Welsh said in reply that the red line was the Sampford Peverell Conservation Area. When I corrected him and told Mr Welsh that it was in fact the Grand Western Canal Conservation Area, Mr Welsh let out an audible sigh. It was clear to me he fully realised the significance of the matter that I had drawn to his attention on 1st February 2017.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at:

This.................day of ...............March..................2018.

Signed:...

Before me: Charlotte Victoria Morgan

A solicitor / commissioner for oaths empowered to admin declarations.
This is exhibit "MPJD1" to the statutory declaration of Martin Peter John Drew.

Signed: .....................

Before me: CHARLOTTE VICTORIA MORGAN

This day of March 2018.