Policy SP2

Higher Town, Sampford Peverell
A site of 6 hectares at Higher Town, Sampford Peverell is allocated for a low density residential development, only to come forward following the commencement of development of the M5 Junction 27 allocation as set out in Policy J27.

Development of this site is subject to the following:

a) No more than 60 dwellings with 30% affordable housing;

b) No development until the completion of improved access works to the A361 junction at Sampford Peverell, to create west facing slip roads;

c) Landscaping and design which retain the wall at the west of the site and respect the setting and character of the area, conservation area areas, and listed building and associated heritage assets;

d) Provision of a drainage strategy and Sustainable Urban Drainage Scheme to deal with all surface water from the development and arrangements for future maintenance;

e) Mitigation of any wildlife impact including protection of hedgerows;

f) Archaeological investigation and appropriate mitigation; and

g) 2.5 hectares of the highest ground to remain as undeveloped. Green Infrastructure laid out and managed with landscaping and open space and

h) Improved, safe access to the village for pedestrians and cyclists.

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1 Blue text is the January 2017 wording
2 From 3.224c
3 For clarity
4 For consistency with application 17/01359/MOUT
5 From 3.224c
6 Amendments reflect HEA findings (Env25)
7 From SD14 (Minor Modifications, March 2017)
8 From 3.224a
9 Brown text is from SD14. Insert ‘safe’ as DCC LHA Hearing Statement SP2-05-3.1 concludes there is currently only ‘potential’ for safe access
3.224a The site is on the edge of Sampford Peverell, outside the main built up part of the village. The site is elevated and will require careful landscaping and mitigation measures. Development of the highest ground should remain as undeveloped green infrastructure. Low density and good design will be required to respect the existing character of edge-of-village housing, village and canal conservation areas, and listed building and associated heritage assets. The site is currently bounded by hedgerow and a wall at the west. This wall should be retained in any development. Some loss of hedgerow would be required to enable access however, careful design should be considered to minimise this impact including incorporating new hedgerow into the design of the development.

3.224b This site lies in an area of archaeological potential with the Historic Environment Record recording prehistoric activity. Any application will need to be accompanied by archaeological investigation and appropriate mitigation.

3.224c The Highway Authority has advised that any development of the site should only commence once improvements to the A361 junction at Sampford Peverell have been implemented to create west facing slip roads to enable direct access to and from the west. The site is required to meet additional housing need arising from the allocation at Junction 27 of the M5 motorway. Accordingly it shall only come forward following the commencement of development on that site.

Date is wrong in SD14 – should say March 2017 to reflect the changes arising from consultation

10 Amendments reflect HEA findings (Env25)
My justifications for the revised wording:

1. ‘Only to come forward …’ – Taken from the penultimate line of 3.224c. Inclusion in that paragraph of supporting text lacks the full force of policy. It should be in the main text of Policy SP2.

2. ‘as set out in Policy J27.’ – This inclusion makes it clear that it is not just any development at Junction 27 that can trigger development at Higher Town. The development in question must accord fully with Policy J27.

3. ‘Development of this site is …’ – Purely included for grammatical reasons and to avoid an over-long sentence.

4. 35% – MDDC negotiated the figure to be 35% in the case of Application 17/01359/MOUT. It follows that it believes the 35% figure to be appropriate.

5. ‘… junction at Sampford Peverell, to create west facing slip roads;’ – This wording is used in 3.224c. Inclusion in that paragraph lacks the full force of policy. It should be in the main text of Policy SP2. This clarity was directly requested by Cllr Stanley at the Council meeting on 1/12/16 when this draft policy was voted into the proposed submission. (See Appendices A and B). He was assured that this clarification would be met through minor modifications in agreement with the Inspector. (See Appendix B).

At that Council meeting on 1/12/16, the Cabinet Member for Planning and Regeneration explained to Councillors that ... ‘I wanted it to be very clear what improvements were meant and if those west-facing slip roads are not built and are not done by Devon County, then I don’t see this site as being suitable or able to come forward’ (see Appendix B). It was on this basis that Councillors voted unanimously to include Policy SP2. We have no evidence of unexpected change of circumstances since publication. The criterion cannot be removed as a ‘minor modification’. Instead, it must be clarified within the policy.

6. ‘... retain the wall at the west of the site and respect the setting and character of the area, conservation area areas, and listed building and associated heritage assets’. This wording is needed to acknowledge the text of the Historic Environment Appraisal (HEA-ENV25, p50). The HEA shows, in particular, that two conservation areas are affected by the allocation. The canal conservation area starts c.50m from the site across a road. Policy SP2 must require mitigation for impact on this conservation area. As MDDC’s own legal adviser has acknowledged, ‘If the development would cause harm to the character of or appearance of the Conservation Area, it matters not that it is just to part of it – the physical extent of the harm is
irrelevant. The harm must be acknowledged and given significant weight\(^{11}\). MDDC’s Sustainability Appraisal failed to acknowledge in writing the supposedly less than substantial harm to the GWCCA. That is no excuse for failing to call for mitigation within Policy SP2.

Lindblom J in Forge Field Society v Sevenoaks DC [2014] EWHC 1895 is relevant here. He refers to E Northants DC v Secretary of State for Communities and Local Government [2014] EWCA Civ 137 (‘Barnwell’). Then, at [48] Lindblom 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] Lindblom 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. This is why residents are astonished at the Inspector’s comment on 29/10/18 that MDDC’s failure to record any assessment of impact in its Sustainability Appraisal, was ‘not unreasonable’.

Also, SHLAA (HOU01d, p133) says development at the site ‘would have significant landscape impact’ ... but we are expected to believe that impact is insignificant on a conservation area just 50m away. I urge the Inspector to reconsider the comments he made on 29/10/18 about SP2’s allocation.

Current SP2 wording implies that developers do not need to assess potential harm to a conservation area 50 metres from the site. Indeed, Harcourt Kerr / Place Land (ID 6790), makes no reference to the GWCCA in its Heritage Statement (Appendix C).

S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to preserving or enhancing the character or appearance of a conservation area. By failing to mention the GWCCA in SP2, MDDC allows developers to apply similar low standards across Mid Devon.

\(^{11}\) See the email from a MDDC planning officer to the Conservation Officer (22/5/18). The legal adviser refers to ‘Irving and Mid Sussex’ to show that this point has been upheld in court. The email can be found on MDDC’s planning portal in documents associated with 17/01359/MOUT. Uploaded 24/05/18).
7. ‘2.5 hectares …’ – This change was agreed through consultation in January 2017. It is in MDDC’s list of minor modifications (SD14 and Appendix D): ‘The area of the Green Infrastructure has been extended to further limit the impact on the setting of the listed building’.

8. ‘... the highest ground to remain as undeveloped …’ – from 3.224a. Inclusion there lacks the full force of policy. It should be in the main text of Policy SP2.

   On 1 December 2016, before the vote to allocate SP2 into the proposed Local Plan submission, the Head of Planning and Regeneration showed Councillors the map for this policy. She said ... ‘We have taken a contour-led approach here. We have now updated for the benefit of this amendment a proposed allocation plan for you, showing the highest part of the site and also the area around a listed building as being within Green Infrastructure and as identified within the amended draft policy therefore not being suitable for development’. [My emphasis].

   Green Infrastructure is included in 25 allocations within the Local Plan submission. Of those 25, only one – Policy SP2 – specifically mentions that the GI should remain ‘undeveloped’. This is clearly a special requirement here. The wording must appear within the policy, not just the supporting text. If it is not included, Councillors and residents were misled on 1/12/16.

9. ‘h) Improved, safe access to the village for pedestrians and cyclists’. This text (but excluding the word ‘safe’) was put forward by MDDC in March 2017 in SD14. The relevant extract is shown in Appendix D. That modification arose because ...
   • Cllr Binks, among others, raised residents’ concerns about lack of safe access at the Council meeting on 1 December 2016 (see Appendix B).
   • at least 88 residents complained in the Jan-Feb 2017 consultation (SD08) that access to and from the village would be unsafe. (See Appendix C, from SD08).

   MDDC has responded by proposing the addition of a new criterion that the policy will require ‘improved access to the village for pedestrians and cyclists’. This is too weak. The extra word ‘safe’ should be inserted. Precedent exists in the Proposed Submission (SD01) as MDDC has included direct references to providing ‘safe’ access to and from a site (see Policy CU8 f, g).

   DCC LHA has stated in its hearing statement prepared in August 2017, that ‘there is a potential for safe pedestrian

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12(1 hour, 20 minutes and 45 seconds into that Council meeting – Audio recording at https://soundcloud.com/mid-devon/extraordinary-council-1-december-2016 and as shown in my transcript of parts of that meeting in Appendix B).
accessibility’. The clear implication is that the access must be made safe. The policy should say so.

In order to ensure accuracy, clarity, and to address the concerns expressed during consultation, MDDC should amend their proposed new criterion as shown in my version.

If MDDC rejects the proposal to insert the word ‘safe’, the Inspector should conclude that MDDC does not believe that access to and from the site can be made safe. In that case, the policy cannot be sound.

10. Text in 3.224a has been amended to reflect the findings of the Historic Environment Appraisal.

11. If the process that led to this allocation truly is not ‘flawed’, then the outcomes of that process, as presented to full Council on 1/12/16, must not be amended except to reinforce the true purpose of the conditions pledged at that time.
APPENDIX A – Extracts from Council minutes for 1/12/2016.

Text and plan for the proposed amended draft Policy SP2 for inclusion within the proposed Local Plan submission.

Councillor R J Chesterton MOVED a FURTHER AMENDMENT with regard to (d) seconded by Councillor P H D Hare-Scott that Policy SP2 be amended to read as follows:

Higher Town, Sampford Peverell

A site of 6 hectares at Higher Town, Sampford Peverell is allocated for a low density residential development, to come forward following the commencement of development of the M5 Junction 27 allocation, subject to the following:

a) No more than 60 dwellings with 30% affordable housing;
b) No development until the completion of improved access works to the A361;
c) Landscaping and design which respect the setting and character of the area;
d) Provision of a drainage strategy and Sustainable Urban Drainage Scheme to deal with all surface water from the development and arrangements for future maintenance;
e) Mitigation of any wildlife impact including protection of hedgerows; and
f) Archaeological investigation and appropriate mitigation; and
g) 2 hectares of Green Infrastructure laid out and managed with landscaping and open space.

3.224a The site is on the edge of Sampford Peverell, outside the main built up part of the village. The site is elevated and will require careful landscaping and mitigation measures. Development of the highest ground should remain as undeveloped green infrastructure. Low density and good design will be required to respect the existing character of edge-of-village housing and conservation area. The site is currently bounded by hedge. Some loss of hedge would be required to enable access however, careful design should be considered to minimise this impact including incorporating new hedge into the design of the development.

3.224b This site lies in an area of archaeological potential with the Historic Environment Record recording prehistoric activity. Any application will need to be accompanied by archaeological investigation and appropriate mitigation.

3.224c The Highway Authority has advised that any development of the site should only commence once improvements to the A361 junction have been implemented to create west facing slip roads to enable direct access to and from the west. The site is required to meet additional housing need arising from the allocation at Junction 27 of the M5 motorway. Accordingly it shall only come forward following the commencement of development on that site.

With the following Plan

Council – 1 December 2016
Head of Planning: 1.18.08 [Start of her exposition outlining to Councillors reasoning behind amendments to the original wording proposed for Policy SP2. Appendix A shows the wording proposed for inclusion at 1/12/16]

I turn now, if I may, to the amendment that is before you. [See Appendix A]. And I’ve identified and highlighted in red some proposed changes, or some potential changes to the policy, in order to emphasise some of the elements of sensitivity that have been picked up on this evening …

We’ve also picked up on a concern that was specifically raised by one of the members of the public who appeared at Cabinet when this was discussed. And the question was asked, ‘Is it possible to change the allocation so that it only happens in the event that land at Junction 27 comes forward because its need is based on Junction 27?’ And this amendment text now incorporates ‘to come forward following the commencement of development of the M5 junction 27 allocation’. So we have sought to make a clear connection there and sequence between those two sites …

And we’ve also updated the reference here to elements around junction upgrades on the A361 and also specifically referring to it being needed to meet the additional housing need arising from Junction 27 and therefore only coming forward following the commencement of that development.

1.20.45 I also made reference to the updated plan [ie as shown in Appendix A]. We have taken a contour-led approach here. We have now updated for the benefit of this amendment a proposed allocation plan for you showing the highest part of the site and also the area around a listed building as being within Green Infrastructure and as identified within the amended draft policy therefore not being suitable for development.

In terms of the remaining area that is left, this would work out as sixty dwellings at a density of 15 dwellings per hectare and again members, that is genuinely a very low density.
**Extract 2 – Cabinet Member for Planning and Regeneration, Richard Chesterton, speaking on the proposed amended Draft Policy SP2 that Councillors were asked to approve. Followed by comments from Councillors.**

Cllr Chesterton: 2.51.00
I'll speak briefly. I've spoken already on the last amendment so people will know where I'm thinking.

This amendment ties the development down to be a low-density level development which is key for a site like that.

It ties in an area of Green Infrastructure which has to be respected by any potential developer.

It means that no more than the number of dwellings we are talking about – sixty – can come forward. So many times, I've been in conversations and developers say 'the good news is we can fit twice as many houses on that allocation than we thought and so we are putting in a planning application for that'. That will hopefully stop that happening.

It will also tie in the development to be in the tail end of our Local Plan timescale I think, because it will require both the work on Junction 27 to be under way and also quite key is the advice from Highways that the improvements to the junction at the link road be done. Those improvements were very clear from Highways as being, what they had in mind was, west-facing slip roads so that you can both access and get off the Link Road in the Tiverton direction. Now in the original wording, it was just ‘improvements’. Now, improvements could have potentially meant anything so I wanted it to be very clear what improvements were meant and if those west-facing slip roads are not built and are not done by Devon County, then I don't see this site as being suitable or able to come forward. And this policy was meant to make certain of that. So, that’s the reason behind it.

I hope that people, I appreciate there has been an argument and a split-decision on the previous amendment but I hope this is something that people will support because it makes it a better site than the original one that was in the Local Plan.

Chair: 2.53.00
Thank you Richard. Ray Stanley, please.

Cllr Stanley: 2.53.10
Thank you Chairman. Well I'm clearly disappointed in the previous one, but this is the best second effort. Richard – well done. I will just like to refer to the narrative and I'm not very comfortable with (b), the narrative, because it's not clear whether you are referring to the A361 at Tiverton or the A361 at Sampford Peverell. It needs to be absolutely clear that it is the Sampford Peverell interchange and not anywhere else. And I would also suggest that you add into the works that it is the westward slips on that A361 at Sampford Peverell. If that goes in, I'm very happy to support it.
Chair: 2.53.55
I’m well aware. Richard’s coming back … [Voices in background] Point of information.

Cllr Chesterton: 2.54.10
On a point of information, I believe it is not possible to make amendments today because it has been tabled in this. But you are absolutely right. However I have just checked, with the Head of Planning and the reference to Sampford Peverell at the junction would be clarity that could be added through minor modifications and we will make certain that that is referenced under minor modifications to the Inspector so that it is clear that that is the junction we mean.

Chair: 2.54.35
Appropriate information Councillor Stanley? Councillor Roche.

Cllr Roche: 2.54.40
Thank you Chairman. Standing Orders do state that amendments can be made tonight but I assume that it’s basically a typo error. This amendment has one very good thing in its favour: and the very good thing in the favour is that if Junction 27 was to be thrown out by the Inspector, then – without this amendment – the Sampford Peverell site would go forward. So it’s a very good amendment in that it protects Sampford Peverell. You need the houses, supposedly, because of having Junction 27. You have to have the extra allocation. This amendment is absolutely brilliant because it protects Sampford Peverell as I say because if that doesn’t go ahead, Junction 27 doesn’t go ahead. So, I congratulate Councillor Chesterton on this. I’m sorry Councillor Stanley’s did not get through but this is a good protection for Sampford Peverell.

Chair: 2.55.37
Thank you Councillor Roche. Anyone else wish to speak? Councillor Binks.

Cllr Binks: 2.55.43
Thank you. I wonder if Councillor Chesterton could just clarify for me whether or not this amendment will include improvements to the walkways, pedestrian access which has been mentioned, which actually did concern me in the points raised by at least fifteen of the people who wrote to me and it is a good point. I don’t actually see it clearly enshrined here. Could you confirm for me?

Chair: 2.56.16
Provided Councillor Stanley doesn’t mind, I will quite happily let him come again.
Cllr Chesterton: 2.56.20
You are absolutely right. **It is not in there. Perhaps it should be. It is something that it would be well worth residents writing about.** I know they are going to be writing opposing when it comes but if it was approved by the Inspector, it would be something that would be worth adding. It is the type of thing, though, that you would expect to come forward with a planning application at Devon County’s advice at planning application stage. I would be very surprised if conditions to improve the highways infrastructure, including the access footpaths, was not something that Highways looked very strongly at, at the time of any planning application should it come in the years to pass.

Chair: 2.57.00
Thank you Richard. Is there anyone else wishing to speak or otherwise can we have a vote on this please? Those in favour? That’s what I like – unanimity. Thank you very much Council. Absolutely brilliant. Right.
Appendix C - Extract from SD08: MDDC’s ‘Representations received during Local Plan Review Proposed Submission Consultation January 2017’ Published February 2017.

<table>
<thead>
<tr>
<th>Policy/para</th>
<th>Summary of main comments</th>
<th>Comments made by (customer ID in brackets)</th>
<th>Response</th>
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<tbody>
<tr>
<td>SP2 (mod) Higher Town, Sampford Peverell</td>
<td>Accessibility: lack of safe pedestrian access to site. No continuous footway, Turnpike road must be crossed at various places. SA contains incorrect information on current footpath provision.</td>
<td>Sampford Peverell Parish Council (0071); individual (1365; 1588; 3729; 3754; 4830; 5011; 5346; 5348; 5858; 5921; 6254; 6259; 6264; 6265; 6282; 6286; 6291; 6298; 6300; 6309; 6310; 6320; 6322; 6331; 6336; 6337; 6338; 6339; 6341; 6342; 6345; 6347; 6348; 6349; 6354; 6355; 6360; 6361; 6364; 6366; 6367; 6372; 6373; 6375; 6376; 6383; 6387; 6388; ; 6391; 6392; 6402; 6403; 6404; 6406; 6408; 6410; 6413; 6415; 6424; 6425; 6428; 6430; 6431; 6432; 6433; 6684; 6696; 6697; 6698; 6700; 6701; 6702; 6710; 6713; 6720; 6722; 6723; 6724; 6725; 6726; 6742; 6746; 6761; 6762; 6763; 6785; 6792)</td>
<td>Within the village, pedestrian and cycle links are good, with access to the Grand Western Canal and the cycle path connecting the train station to Tiverton and Willand. It is recognised that there is a small break in the footpath in the village however the statement set out in the Sustainability Appraisal remains correct. The proposal will provide the opportunity to ensure safe access to the village centre for pedestrians and cyclists. The Council is proposing a further minor modification to policy SP2 to add the following criterion to ensure ‘improved access to the village for pedestrians and cyclists’. This proposed change is supported by the Highway Authority.</td>
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Accessibility: topography of site provides poor accessibility | Individual (3729; 4830; 6320; 6354; 6373; 6404; 6700) | The site layout will need to consider safe pedestrian, cycle and vehicular access to and within the site. An important aspect for consideration will be ensuring appropriate gradients for such routes appropriate for wheelchair access. |
Appendix D – Extracts from MDDC’s Schedule of Minor Modifications following consultation in Jan-Feb 2017.

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<tr>
<td>23.</td>
<td>SP2, Higher Town, Sampford Peverell</td>
<td>Include new criterion: “Improved access to the village for pedestrians and cyclists”.</td>
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<tr>
<td>24.</td>
<td>SP2, Higher Town, Sampford Peverell</td>
<td>Amend criterion g) as follows: “2.25 hectares of Green Infrastructure laid out and managed with landscaping and open space.”</td>
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