

MID DEVON LOCAL PLAN REVIEW 2013-2033

INDEPENDENT EXAMINATION

HEARING 5A

POLICY J27

POSITION STATEMENT

ON BEHALF OF

LAND SECURITIES PLC

ID: 6269



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1. Introduction

- 1.1 This Position Statement sets out a brief response on behalf of Landsec Plc (LS) to the Inspector's questions in relation to Hearing 5A.
- 1.2 The original representations to Policy J27 were made on behalf of Hermes who at the time were the owners of Clarks Village in Street. However, since the original representations were made, Clarks Village has been acquired by Land Securities. Since LS have now acquired Hermes' interest in Clarks Village, the duly made objections to the J27 proposals have, in consequence, passed to them.
- 1.3 This Hearing Statement should be should be read in conjunction with the comprehensive submissions made on behalf of Hermes (hereinafter referred to as LS1) to the Mid Devon Local Plan Review 2013-2033 (ID: 6269), and the Hearing Statement on behalf of Landsec to Preliminary Hearing 1 in September 2018. Copies of those previous submissions are included at Annexes 1 and 2 respectively for the Inspector's ease of reference.

2. Issue 1

In the light of the conclusions that flowed from the Preliminary Hearings, is the wording of Draft Policy J27 (Land at Junction 27 of the M5 Motorway) too restrictive?

- 2.1 Following the preliminary hearings the Inspector has concluded that the allocation of a site a J27 for a major tourist facility can be accommodated in the Plan. However, having regard to the evidence base, he expressed reservations about the “... *detailed and specific nature of the policy as drafted, and the way it seems to be directed at a particular scheme, rather than more generally at a tourism-based development*”¹. His concern was that this could have the effect of preventing other schemes, that take a different approach to the site, or the mix of uses on it, from coming forward.
- 2.2 The Inspector’s findings endorse the views of Landsec as set out in LS1, and in their subsequent Hearing Statement to Preliminary Hearing 1. The evidence base underpinning an allocation for a major tourist facility at Junction 27 is set out in the Mid Devon Tourism Study². The complexion of the proposal envisaged is new tourism infrastructure to increase visitor numbers and spend. It is acknowledged that the opportunity could be quite ‘varied’, but could include “... *delivery of new man-made tourism attraction, such as an amusement park or a major climbing/high ropes course to cater for families and/or the adventure market; and/or development of a tourism facility which showcased local food and produce, linked to the slow tourism agenda and the strong agricultural economy in Devon*”³.
- 2.3 The policy, as currently worded, reflects the ‘specific’ proposals put forward by the current promoter, including the ‘enabling development’ that they envisage to be necessary to deliver their specific proposals, notably the Designer Outlet Village (DOV), the need for which is neither foreshadowed in, nor supported by, the Council’s evidence base.
- 2.4 It is germane that the current promoters of the J27 proposals themselves do not seek to justify the DOV element of their proposals as comprising development that would directly deliver the objectives of the Tourism Strategy, and *ipso facto*, of Policy J27. On the contrary,

¹ Inspector’s Note ID08 dated 29 October 2018

² EC05, Mid Devon Tourism Study, November 2014

³ Ibid, para. 6.12

the promoters' position is that the DOV is enabling development to facilitate the delivery of the wider proposals that will directly meet the objectives of the tourism strategy. Moreover, the Council's own advisers have consistently failed to endorse any synergy between the DOV and the tourism and leisure proposals⁴

2.5 For reasons set out in LS1, and in LS' Preliminary Hearing Statement, and as now endorsed by the preliminary findings of the Inspector, the policy wording needs to be generic to provide for achieving the objectives of the tourism strategy, rather than the specific proposals of the current promoter. Given that the DOV is justified simply on the basis that it is enabling development for the specific proposals currently being promoted, and the Council's own advisers have consistently failed to endorse the need for it⁵, or the legitimacy of enabling development for purposes other than associated with the protection of heritage assets, it has no locus in the policy.

2.6 The following alternative wording is suggested:

Policy J27

Land at Junction 27 of the M5 Motorway

A site of up to 71 hectares adjoining the south bound carriageway of the M5 motorway, adjacent to junction 27 is ~~identified for major development. The land, which lies to the south of the A38, is allocated for the provision of a major high quality regional tourism and leisure and retail attraction~~ development, with supporting supported by ancillary roadside services and supporting infrastructure, including a pedestrian bridge across the M5 motorway linking the site to Tiverton Parkway railway station.

The site provides a prime location for delivery of a major leisure destination themed around agriculture and the agri-economy; the regional environment and tourism; outdoor land and water-based adventure activities and ~~outlet retailing~~. The site provides a major opportunity to deliver a unique leisure destination at the gateway to Devon and Cornwall which should be realised as a single cohesive and comprehensively masterplanned visitor attraction.

⁴ LS Hearing Statement, Hearing 1, paras. 6.8-6.9

⁵ See LS1, paras. 4.5-4.12

The allocation ~~makes~~ *may include some or all of* the following elements:

- Travel Hub ~~(7ha)~~—Motorway/roadside services; electric car hub; hotel.
- Agronomy Visitor Centre ~~(9ha)~~— exhibition space and hall, gallery; research and education space; regional visitor centre and hotel. ~~The Agronomy centre will include up to 1,000 square metres of ancillary retail.~~
- Outdoor Adventure Zone ~~(6ha)~~— Surf lake/lagoon; beach; high ropes adventure area.

Other uses that would compliment the theme of a major leisure destination and that would facilitate its delivery will be considered on their merits as part of specific proposals that may come forward and subject to evidence to confirm the need for a wider range of uses and that they will not give rise to adverse social, economic and/or environmental impacts.

~~Outlet Shopping Village (6ha)— Designer outlet shopping centre retailing controlled goods comprising discontinued/end-of-range lines, seconds and surplus/sample stock. The Outlet Shopping Village to include up to 14,000 square metres of controlled comparison goods and up to 2,000 square metres of A3 uses.~~

2.7 The amendments outlined above will result in a policy that is focused on delivering the requirements identified in the evidence base. It is aspirational in terms of setting a policy framework that will facilitate the delivery of a major tourism and leisure facility of the nature contemplated in the Tourism Strategy. However, it is also realistic in terms of allowing flexibility in terms of the precise composition for a future scheme. By allowing for other ‘complimentary’ uses the policy leaves open the possibility of uses additional to the principal leisure and tourism elements on which the policy is focused, providing the justification for those wider elements can be appropriately made through the development management process, and it can be shown that overriding harm will not be occasioned.

2.8 It is therefore considered that the revised wording will provide an aspirational but realistic policy framework for delivering the policy objectives and ambitions, with sufficient flexibility for any future promoter to mould specific proposals and achieve overall viability. The inclusion of specific provision for a DOV in the policy as currently worded is aimed at the



particular scheme of the current promoter, rather than more generally at a tourism-based development. As such, as correctly acknowledged by the Inspector, the policy requires amendment to delete reference to such promoter-specific elements.



ANNEX 1

LS1 ORIGINAL REPRESENTATIONS



MID DEVON LOCAL PLAN REVIEW 2013-2033

Proposed Modifications

Representations by Hermes

February 2017

ROCKE ASSOCIATES

The representations below set out the response of Hermes to the Proposed Modifications to the Mid Devon Local Plan Review (MDLPR) identified in the title banners. Whilst these representations focus on Proposed Modifications to the Plan from the Proposed Submission Consultation Draft (February 2015), since the latter version of the Plan was not submitted for Examination, it is considered that MDDC ought properly to have invited comments on the entire Plan as Proposed to be Modified, which is now the Proposed Submission Plan.

PROPOSED MODIFICATION(S)	
MODIFICATION NUMBER	PLAN POLICY/PARAGRAPH
4	SPATIAL STRATEGY
15	POLICY S1
16	POLICY S2
24	POLICY S6
25	POLICY S7
120	POLICY J27

OBJECTION

1. Preliminary

- 1.1 **Objection** is raised to **Policy J27 (Land at Junction 27)** and the associated **Policy Map** (Modification Number 120), and other consequential amendments in the Proposed Modifications cited above, that identifies land at Junction 27 of the M5 for major development incorporating a major regional tourism, leisure and retail attraction. This objection is particularly focused on the inclusion of a major regional retail facility in the proposals incorporating an Outlet Shopping Village.
- 1.2 In consequence of the modification of the Plan to include this major development at J27, the Plan is considered to be neither legally compliant nor sound. The reasons for this conclusion are set out below.

2. Procedural Matters

- 2.1 The MDLPR has already been subject to a three stage consultation process, commencing with Scope and Content (July-August 2013), followed by Options for Development Strategy and Potential Site Allocations (January-March 2014), and finally Proposed Submission version (February-March

2015). Through this consultation process the development strategy and site allocations have evolved in the light of the consultation responses, such that the Proposed Submission Plan was based on a strategy that had been subject to, and evolved from, the earlier consultation stages.

- 2.2 Following consultation on the Proposed Submission Plan, the Plan has yet to be submitted for Examination. The Council has made a substantial change to the Submission Draft Plan, to include a major allocation at J27.
- 2.3 A strategic site allocation at Junction 27 of the M5, to include a substantial quantum of commercial development (including retail floorspace), has not been canvassed as a part of any development strategy / site allocation options that have been subject to consultation to date. The allocation has been superimposed on the development strategy of the Plan, and has profound implications for it, in particular the retail strategy, yet the strategy has not been amended accordingly. The Plan is therefore internally inconsistent, and its site allocations are in conflict with the development strategy.
- 2.4 The current consultation is inviting comments only on the Proposed Modifications to the Submission Plan that was subject to consultation in February 2015. Since the strategy has not been modified, there is no opportunity to comment on the revised development strategy to include a major commercial development at J27, the implications of which are to substantially exceed the commercial development requirements arising from within the district itself, and to seek to accommodate regional needs, and therefore needs arising from beyond the district. The strategy to accommodate regional needs has not been subject to consultation, and is not available for consultation at this juncture since the development strategy has not been amended to reflect the development provisions of the Plan.
- 2.5 In addition, the Duty to Cooperate has not been satisfactorily discharged. For reasons that are set out below, no agreement has been reached with other relevant authorities to vire needs arising within their administrative areas and to accommodate them within Mid Devon. This is particularly the case with regard to needs for retail floorspace. Through providing for a regional scale comparison goods retail facility, Mid Devon District Council (MDDC) has taken a unilateral decision to accommodate needs arising from other local authority areas within their own, with an expectation that neighbouring local authorities will adjust their development strategies, and in particular those for retail development, accordingly.

2.6 Whilst accepting that the Duty to Cooperate is not a duty to agree, in a matter of this nature which is in *prima facie* conflict with the town centre first principle set out in national policy, it is a reasonable expectation that a broad measure of agreement should be reached on the strategy approach. It is understood that there has been little in the way of constructive engagement with neighbouring authorities, other than to advise them of MDDC's intentions. As will be outlined below, the evidence base documents of both the promoters of the proposals and the Council's retail advisors are entirely 'aspirational' in the 'expectation' that neighbouring authorities will adjust their retail strategies to accommodate MDDC's proposals, and by so doing will effectively dilute regeneration strategies for their own town centres.

2.7 It is therefore considered that MDDC has not satisfactorily complied with the Duty to Cooperate.

3. Contrary to the Spatial Strategy of the Proposed Submission MDLPR

3.1 The Proposed Submission MDLPR is based on a spatial strategy that can be summarised as follows.

- Cullompton is the strategic focus for new development, followed by Tiverton and Crediton.
- Elsewhere, a network of villages is identified as locations for limited development.
- Very limited development in countryside areas outside defined towns and villages.

3.2 The above spatial strategy is reflected in Policy S1 (Sustainable Development Priorities) which provides as follows:

The following strategic priorities outline what will need to be achieved to deliver the Vision and address the key issues that have been identified in Mid Devon. All development will be expected to support the creation of sustainable communities by:

- a) A development focus at Tiverton, Cullompton and Crediton as Mid Devon's most sustainable settlements, with long-term growth to the east of Cullompton and a limited level of development in identified villages; ...

3.3 Following this strategy, the distribution of 'commercial development'¹ proposed in the MDLPR is as follows:

Location	Completions	Commitments	Local Plan Provision (sqm)
Tiverton	1,550	805	37,000 38,000
Cullompton	3,598	19,669	57,000 65,000
Crediton	520	2,052	9,820
<u>Junction 27</u>	<u>0</u>	<u>0</u>	<u>42,550</u>
Rural	4,119	20,733	<u>13,000</u> 8,800
Totals	9,787	43,259	<u>159,370</u> 121,620

(Source: MDLPR, p.28, para. 2.13, Table 9: Commercial land completions, commitments and allocations)²

3.4 As is advised in the reasoned justification for the Plan:

Allocations for commercial development are consistent with the Local Plan strategy being broadly in accordance with the housing locations for significant growth long-term in Cullompton, short-medium term growth in Tiverton, and growth in Crediton and the rural areas that is proportionate to their circumstances and environmental constraints. (para. 2.13)

¹ 'Commercial development' is defined in the MDLPR as including employment uses (B1-B8 use classes) such as offices, industrial development and storage and distribution, and also a range of other commercial uses such as retail, leisure and hospitality.

² Changes tracked to highlight Proposed Modifications

- 3.5 The spatial strategy of the submitted plan is therefore based on a primary distribution of commercial development to Cullompton, and lesser distributions to Tiverton and Crediton. It is also based on a strategy of co-location of housing and commercial development.
- 3.6 The proposals for Eden Westwood are in direct conflict with the spatial strategy of the submission draft Plan. As is clear from the above table in which the Proposed Modifications from the 2015 version have been tracked, the J27 proposals represent an addition to the previously identified commercial floorspace provisions that are intended to meet local needs. This is confirmed in para. 2.25a in which the J27 floorspace is stipulated to be 'an addition' to the requirements set out in Policy S2. They are therefore not justified by needs arising within the district, and have been superimposed on the floorspace quanta and distributions that have been made in accordance with the spatial and development strategies of the plan. Moreover, the allocation at J27 cuts across the spatial and development strategy of the plan, and is neither justified nor supported by it.
- 3.7 The additional commercial floorspace quanta represented by the proposals for J27 is not insignificant. It represents an increase in the overall commercial floorspace provisions by approximately 35%. What this means is that over one-third of the commercial floorspace provisions of the plan is being brought forward without justification and other than in accordance with the spatial strategy. An allocation at J27 would in planning policy terms be an allocation in the rural areas. However, this is being masqueraded in the Plan by identifying Junction 27 as a separate policy area in its own right. The strategy in the 2015 Submission Version Plan provided for a distribution of only 8,800 sqm of additional commercial floorspace to the rural areas across the district as a whole. The current provisions exceed that distribution by nearly 500%.
- 3.8 The allocation at J27 therefore represents a fundamental change in the spatial strategy on which the Submission Plan is based, including the development focus on the three main towns and co-location of housing and commercial development. It proposed a major allocation in the Rural Areas Policy Area equivalent to approximately 35% of the commercial floorspace provisions of the plan, and without any accompanying housing allocation. It is contrary to the sustainable development strategy set out in Policy S1, and to the development distribution strategy set out in Policy S2. It has simply been superimposed on the sustainable development and development distribution strategies, with which it is inconsistent.

- 3.9 Since the increased commercial floorspace provisions have not been incorporated in Policy S2, the increased quanta and revised distribution have not been subject to sustainability appraisal. The revised Sustainability Appraisal does not test the implications of a 35% increase in commercial floorspace distributed to J27 in the Rural Areas policy area without any accompanying housing allocation in terms of a sustainable development strategy.
- 3.10 It would seem, in effect, to be a fundamentally different Plan. Since the provisions for J27 in effect represent a different spatial development strategy for the District, they are tantamount to a fundamentally different Plan. However, by failing to acknowledge this in the spatial and development distribution strategies, and not subjecting the revised strategies to sustainability appraisal, the revised provisions are neither supported nor justified by the evidence base. Therefore, if the revised strategy is to be pursued, the Submission Plan should properly be withdrawn, and a new Plan published for consultation purposes accompanied by a new sustainability appraisal which tests reasonable alternatives.
- 3.11 There is therefore currently no evidence base to support such an elevated level of commercial floorspace. Whilst the Plan seeks to maintain a flexible approach to employment development and will consider job creation as a supporting factor in any proposals, the scale of commercial development proposed would exceed the requirements that are justified by the evidence base to such an extent as to result in a Plan that is unsupported by evidence and could predetermine decisions about the future location of development beyond the Plan period that ought properly be made through a future Plan review.
- 3.12 It is therefore considered that the consequence of the proposed allocation at J27 is a fundamentally different Plan from the one that has been subject to consultation at earlier stages, and the sustainable development strategies on which it has been based. However, neither the spatial strategy nor the development distribution strategy have been modified accordingly, and presented for consultation as Proposed Modifications. In consequence, the Plan is now internally inconsistent, and contains a major strategic allocation that is in *prima facie* conflict with the sustainable development strategy on which the Plan is based. As such, the Plan should be withdrawn, be supported by a revised evidence base and sustainability appraisal, and be subject to further pre-submission consultation.

4. Contrary to the Retail Strategy of the Proposed Submission MDLPR and the NPPF

- 4.1 In addition to conflicting with the spatial development strategy of the Plan in general, the proposals for the Outlet Shopping Village (OSV) at J27 are also contrary to the specific provisions and strategy for retailing. Moreover, they would not be NPPF-compliant.
- 4.2 Policies S7 and DM14 promote the sustainable growth and regeneration of Tiverton, Cullompton and Crediton and Bampton town centres, and seek to resist proposals for retail, leisure, commercial, office, tourism and residential development away from them. The commercial development provisions reproduced at paragraph 3.3 above include growth in retail floorspace at the main towns in accordance with the retail strategy set out in Policies S7 and DM14.
- 4.3 There is no headroom in the commercial development provisions for additional retail floorspace outside the main towns identified in the spatial development strategy. Moreover there is no provision in the retail strategy of the Plan, or Policy S7, for the development of a stand alone, sub-regional scale, out-of-centre and out-of-town retail development at Junction 27. It would be essentially a car-borne facility that would be a destination in its own right, and unlikely to support any of the district's existing town centres. Its sustainability credentials are therefore questionable to say the least, and unsupported by the evidence base which underpins the submission Plan.
- 4.4 To include a substantial, sub-regional scale retail development at J27 involves a fundamental change in the retail strategy and provisions of the Plan. There has been no change to Policy S7 to incorporate it. Instead, MDDC is attempting to incorporate it through modification of the reasoned justification. This is considered to be a wholly incorrect approach to introducing proposals of a strategic nature that are acknowledged as providing for a regional need. Moreover, it is not currently justified by the evidence, nor has it been subject to sustainability appraisal reflecting its absence from the provisions of relevant strategic policies.
- 4.5 It is pertinent to note the succession of advice taken by MDDC from two consultants, none of which has resulted in the conclusion that the proposals should be supported. In their advice in November 2014³, GVA's position was unequivocal that:

³ GVA, Assessment of Retail & Main Town Centre Use Planning Policy: Proposed Mixed Use Development at 'Westwood', near Tiverton, November 2014

- Need had not been demonstrated for a significant quantum of retail floorspace from either a quantitative or qualitative perspective. (para. 7.5)
- The proposed allocation did not accord with the sequential approach to site selection, there not being a convincing case to allocate the site for the proposed suite of main town centre uses, particularly when opportunities exist to accommodate parts of the development on more sequentially preferable sites in or on the edge of town centres in the catchment area. (para. 7.8)
- The proposed development had the potential to materially affect the role and function of existing centres in the retail hierarchy having regard to the scale and breadth of main town centre uses proposed, many of which are to be found in existing centres. (para. 7.11)

4.6 It is interesting to note that, following their advice in November 2014, GVA were not retained by MDDC to advise further on the matter, and were replaced by Nathaniel Lichfield and Partners (NLP). In their (July 2015) critique of Eden Westwood's Retail and Leisure Statement, NLP acknowledged the Council's rejection of the inclusion of earlier proposals at J27 by Friends Life in the Proposed Submission Local Plan *inter alia*:

- because the quantitative (numerical) need for the proposed retail element of the development had not been demonstrated;
- the proposal did not meet the sequential test set out in the National Planning Policy Framework when there were opportunities to accommodate parts within sequentially more preferable sites in the catchment area and not all sites had been examined;
- the retail impact analysis provided by the site promoters was not considered adequate, and the proposal had the potential to materially affect the role and function of the existing centres in the retail hierarchy through the loss of market share, adverse financial impact, and the potential to impact upon investment proposals.

4.7 In the conclusions to their 2015 critique, NLP held that the non-allocation of a major tourism proposal at J27 was defensible at Examination since Policy DM22 allows for tourism proposals to be considered in line with the Tourism Strategy as they arise (para. 7.6). However, should they decide

to include the allocation as a major alteration to the draft Local Plan, it would have a number of implications, including:

- A need for acceptance that the proposal comes as a package and the tourism components are largely financially dependent on the retail and hotel elements of the scheme.
- A duty to assess the need for the development and undertake a sequential test to site selection, and in this respect the promoters' assessment should be extended to include other Local Plan allocations.
- Objectively assessed retail needs confirm that the proposals at Eden Westwood far exceed comparison floorspace requirements during the Plan period in order to meet local needs which are already accounted for in 'commercial floorspace' allocations, and therefore pursuing an allocation at J27 would likely reduce the size of commercial floorspace allocations already made.
- Further work would be necessary to estimate the proportion, and origin, of trade drawn from beyond the district, and to examine the implications for allocations in other local authority areas.
- Having established the retail implications for local authority areas beyond the district, the need to engage the Duty to Cooperate given that the allocation would effectively be reducing the need in some local authority areas.

4.8 NLP's advice was that:

... in the absence of the necessary evidence that demonstrates need, a complete sequential site analysis and a complete study of the potential impacts on other development plan proposals and retail draw it is not possible for the Council to allocate the site for the proposed development at the present time. (para. 7.8).

4.9 In their Addendum Critique issued in March 2016 NLP's position against the proposals has moderated. Without sight of the terms of their engagement, it is not possible to ascertain whether this is due to a Council instruction that they were seeking evidence in support of the proposals. Although their overall conclusion was that the proposals were acceptable in terms of the sequential and impact tests, it is considered that the basis on which they reached this conclusion is potentially

flawed. Notwithstanding the foregoing, simply because the proposals satisfy the impact and sequential tests does not justify their inclusion in the Plan.

- 4.10 First, the 'need' for the scale of comparison retail floorspace proposed remains unproven. This is accepted by NLP in their finding that:

There is no quantitative need for the DOV comparison floorspace, over and above other allocations within Mid Devon, based on local expenditure generated within the District alone. (para. 2.22)

- 4.11 The need is therefore completely unrelated to the expenditure generated by the local population, and is grounded in an enabling development argument relating to the delivery of a major tourism proposal. However, NLP's position on the enabling development justification is, at best, equivocal. It is apparent from their report that they are sceptical that enabling development to achieve viability of development that is not related to securing the future of heritage assets, is NPPF-compliant. They leave this matter unresolved by concluding that *"the case for enabling development and the benefits to the public interest would need to be compelling"* (para. 5.3).

- 4.12 Notwithstanding the foregoing, NLP correctly identify that:

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

From NLP's review of the Town Centre Uses Statement, we conclude that there is a need for the tourism, hotel, leisure and convenience goods retailing elements proposed. NLP has not been instructed to consider the merits of the proposed employment related development. (para. 5.14)

If the Council accepts that a compelling enabling development case has not been demonstrated then the DOV could still be included within the Plan allocation if the Council is satisfied NLP's analysis in other sections of this report demonstrate there is a need for the DOV and that the sequential approach has been satisfied. (para. 5.16)

- 4.13 NLP's overall conclusion in their Addendum Critique is that, if the Council seek to include Eden Westwood as an allocation, this would not render the Plan unsound (para. 6.7). However, their advice stops well short of confirming to the Council that the DOV is justified by the evidence, and the inference to be drawn from their report overall is that it is their view that it is not.
- 4.14 The consistent message that emerges from all of the retail advice that the Council has received from two different consultants (GVA and NLP) is that the retail element of the J27 proposals, and in particular the DOV, has not been justified. Moreover, it is clear that the advisors to the Council have concerns relating to both the assessment of retail impact and application of the sequential test, and in consequence the compliance of the proposals with the NPPF.
- 4.15 It is both a surprise, and indeed a concern, that the response to the issues identified has been to request that the Council's own consultants revisit their advice rather than placing the onus on the promoters of the proposals to provide robust evidence in justification for them. In the light of this, the representors have commissioned their own expert advice on the matter, which is included as Annex 1 to these representations.
- 4.16 In summary, the evidence base supporting the J27 allocation, and in particular the comparison goods element comprising the OSV, is considered to be completely lacking in robustness, and therefore wholly deficient justification for the proposals, for the following principal reasons:
- An objective assessment of need that supports the allocation is not in place, and therefore the requirements of the NPPF (paragraphs 158 and 182) are not met.
 - The allocation has not been informed by a robust quantitative analysis of retail capacity. The limited analysis that has been undertaken is flawed in terms of deficiencies in the catchment area and household survey, and erroneous assumptions concerning the baseline trading circumstances, turnover of commitments, and failure to acknowledge other schemes.
 - The assessment of retail impact is not based on realistic assumptions regarding expenditure draw. Moreover, it fails to reflect the findings of the promoters' own assessment of catchment areas, and to project realistic and justifiable trade diversion from competing destinations within the same market place. In particular, the assessment has significantly under-estimated the level

of trade diversion likely to be experienced by both Clarks Village and, *ipso facto*, Street town centre. Given that the latter benefits from the ‘town centre first’ policy protection that is part of the sustainable development framework of the NPPF, that is a significant and potentially fatal flaw in the evidence base. Moreover, the town centre health checks are too limited in their scope and should extend to additional, more distant centres given the extent of the catchment area of the proposed allocation. The overall conclusion is that the evidence unequivocally fails to demonstrate that the proposed allocation will not result in significant adverse impacts on public or private sector investment in relevant centres, and/or their role in the catchment area. The proposed allocation therefore fails to follow the guidance in the PPG, and cannot be shown to be NPPF-compliant.

- The sequential site assessment is deficient since it fails to incorporate an appropriate area of search based on the type and amount of retail development proposed, and the market it is intended to serve. Given the extensive catchment of the proposal, confining the sequential assessment to sites on the edge of six towns is an incorrect approach.
- The overall conclusion is therefore that the evidence base:
 - Fails to provide a robust assessment of retail need for floorspace.
 - Under-represents the level of trade draw from Clarks Village and Street, and therefore impact on Street town centre.
 - Fails to undertake a correct sequential assessment.
 - In consequence, provides no justified policy basis for the proposed allocation.

4.17 The above findings endorse those of NLP. Whilst NLP’s views have subsequently moderated, the retail critique at Annex 1 suggests there is no evidential basis for departing from their preliminary conclusions.

4.18 Concerning whether inclusion of the J27 proposals in the Plan would render it unsound, having regard to the findings set out in the representors’ critique of the retail evidence base, it is considered that NLP are incorrect in their conclusions that it would not. Moreover, drawing on the (deficient)

evidence submitted by the promoters, they seek to set aside the implications for allocations in neighbouring authorities on the basis that there is scope for adjustment of floorspace requirements in those most affected through forthcoming Local Plan reviews.

- 4.19 The basis on which the implications for neighbouring authorities' are set aside is considered to be wholly untenable and unsatisfactory, and in conflict with precepts of sustainable development. First, it would be in *prima facie* conflict with the town centre first principle that is grounded in the NPPF, and with which all emerging Local Plans must comply. Absent agreement with the neighbouring authorities, pursuant to the Duty to Cooperate, that their needs for additional retail floorspace should be accommodated at J27 rather than through investment to sustain the vitality and viability and regeneration of town centres within their respective administrative areas, this approach cannot be justified. Whilst the Duty to Cooperate normally requires positive action on the part of an authority to accommodate the development needs arising within the administrative area of its neighbour, it would be wholly unjustifiable for an authority to vire floorspace requirements from its neighbours without their agreement, and to take a unilateral decision to do so.
- 4.20 Moreover, it would need to be demonstrated through sustainability appraisal that such an approach would be the preferred alternative, and that the disbenefits of potentially lost investment and increased travel demands are outweighed by the benefits. Absent such appraisal, which has not been undertaken, it would be wholly incorrect and untenable to rely on any such scenario. As outlined earlier, the sustainability appraisal does not test the revised spatial and development distribution strategies implied by inclusion of the substantial uplift of commercial floorspace provision at J27. Nor does it appraise the implications of a regional scale development proposal for impacts beyond the district. The methodology and framework has been neither devised nor designed to appraise a proposal of a sub-regional scale with a commensurate scale of impacts.
- 4.21 Even in their additional retail response in July 2016, NLP remain ambivalent concerning the acceptability of the proposed development. They maintain reservations about the synergy of the DOV with the proposed tourist attraction, simply noting that co-location would be beneficial in terms of spin-off trade and linked trips (para. 3.6). However, since there would be no benefits in terms of sustaining existing town centres, those are not considerations that auger in favour of the proposals. Moreover, they do not confirm that there are no sequentially preferable sites or that disaggregation would be inappropriate. They simply conclude that a site area of the size proposed would be necessary absent disaggregation (para. 3.7).

4.22 With regard to the duty to cooperate, it is:

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

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

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

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

4.23 In relation to the duty to cooperate, if a broad measure of consensus has not been reached on a strategy that involves accommodating some of the floorspace requirements arising in neighbouring authorities at J27, requiring neighbouring authorities to reduce their floorspace provisions in forthcoming Local Plan reviews, any allocation incorporating the scale of retail floorspace proposed by the promoters cannot be held to be effective and deliverable since the MDDC has no ability to deliver the floorspace reductions in neighbouring authorities on which it is premised. It is understood that such a consensus has not been reached, and that neighbouring authorities are likely to object to the retail floorspace provisions incorporated in the J27 allocation.

4.24 For all of the foregoing reasons it is concluded that the major modification to include the J27 allocation incorporating a sub-regional scale of retail floorspace that is not justified by the objectively

assessed needs arising from within the district itself, means that the Plan is unsound. It is neither justified by the evidence base nor effective since it relies on the cooperation of other authorities, cooperation which has not been secured. If the J27 proposals are included in their current form, there would seem to be a realistic prospect that the Plan will not proceed to Examination given that the legal duty to cooperate has not been satisfactorily discharged.

- 4.25 To incorporate the J27 proposals also requires consequential, and fundamental, changes to the retail strategy of the Plan in terms of both reconsideration of the provisions for accommodating the district's own needs, and to incorporate a strategy that provides for the needs of neighbouring authorities within Mid Devon. The revised strategy has not been subject to sustainability appraisal, including testing against reasonable alternatives, not least because the retail strategy is not included as a Proposed Modification to the Plan. It is therefore not available for consideration through the consultation process. Moreover, it is also affected by the legal duty to cooperate, and demonstration that every effort has been made to secure the necessary cooperation of other affected authorities 'before' the Plan is submitted. That cooperation has not been secured, and therefore the circumstances on which the inclusion of the J27 proposals are premised, are not present. The provisions on which the plan is justified will therefore not be effective and deliverable in consequence. As such, the Plan is neither sound, nor legally compliant.
- 4.26 For all of the foregoing reasons it is considered the OSV should be deleted from Policy J27. Alternatively, if the OSV remains as part of the proposed allocation, the Proposed Submission Plan should be withdrawn. This will enable proper and meaningful consultation to be undertaken on what will, in effect, be a new Plan based on a different spatial strategy, properly supported by a revised sustainability appraisal, and with the legal duty to cooperate fully engaged 'before' its submission for Examination. Any alternative course of action is considered to carry with it a risk of either the Examination not being allowed to proceed, or a finding that the Plan is unsound.

5. Tourism Strategy

- 5.1 The justification for a sub-regional scale of retail floorspace, that would be contrary, not only to the retail strategy of the submitted Plan, but that of the NPPF and would not fit with the retail strategies of neighbouring local planning authorities that it would affect, on the basis that it is necessary to provide for the tourism strategy, is considered to be both inadequate and flawed. NLP have

confirmed that failure to allocate a site for a major tourism facility at Junction 27 would not render the Plan unsound since it could still come forward in accordance with the provisions of Policy DM22 (see para. 4.6 above). At that stage, if there is compelling evidence to justify the OSV in order to facilitate delivery of a major tourist facility, that would be a material consideration in determining whether to allow it as a departure from the Development Plan. However, as clearly acknowledged by NLP in both their original and addendum critiques, the evidence to support an OSV as part of an allocation is, unequivocally, absent at the present time and therefore the case for it has not been robustly made.

- 5.2 Caution must be exercised in relation to the evidence base on which reliance is placed for a major tourist facility at Junction 27. It is rooted in a multi-pronged strategy that is identified in the 'Mid Devon Tourism Study'⁴ published in November 2014, and in which Strand 5 of the Conclusions holds as follows:

Strand 5: Catching Passing Tourists/Major Tourist Facility

- 6.11 *Mid Devon has an excellent strategic location, particularly with the mainline railway and the motorway (M5) running through the east of the District. It is also accessible from the regional airports at Exeter and Bristol. Given the volume of tourists who pass through Mid Devon on route to other destinations, such as North and South Devon and Cornwall, and as recognised by stakeholders, more could be done to encourage these tourists to stop en-route and increase the length of time (and money) tourists spend in Mid Devon.*
- 6.12 *Based on the analysis set out, there could be an opportunity for the development of new tourism infrastructure or facilities to increase visitor numbers and spend. Based on the evidence set out, the opportunity here could be quite varied, but could include:*
- *Delivery of a new man-made tourism attraction, such as an amusement park or a major climbing/high ropes course to cater for families and/or the adventure market; and/or*

⁴ Mid Devon Tourism Study, Mid Devon District Council, Final Report, November 2014

- *Development of a tourism facility which showcased local food and produce, linked to the slow tourism agenda and the strong agricultural economy in Devon.*

6.13 *A major facility or attraction would also be likely to provide a number of associated services, such as a visitor attraction or activity, retail space, accommodation and café/restaurant floorspace; with a critical mass of 'things to do or stop for' being important in attracting visitors and maximising economic benefit. The precise nature of the facility is difficult to precisely predict, and any proposal would need to be supported by bespoke market research, but it could also link to Strand 2: Developing the Accommodation Offer.*

6.14 *Proposals for any major facility would need to be considered carefully in terms of any impacts (economic impact or trade) on other parts of the district, and particularly the market towns, and potentially on other adjoining areas, depending on the scale or focus of any major investment, in view of the Duty to Cooperate required of local authorities by the 2011 Localism Act.*

5.3 What is clear from this is that the evidence base that underpins Policy J27 does not identify a major visitor attraction at Junction 27 as an absolute requirement that is critical to the economic strategy for the district. Moreover, the composition remains very generic and one of a number of options that should properly be canvassed with key stakeholders, including other local authorities under the Duty to Cooperate depending on their scale. The language used in the study is that there 'could' be opportunities for increasing visitor numbers and spend, which 'could' include a major facility, but not necessarily so. There is nothing in the findings of the study that indicate that provision 'must' be made for a major tourist facility, that it is critical to the economic base of the district, even less so that it should include a sub-regional retail attraction and destination. Moreover, there is no reference to the including of a substantial retail attraction and destination.

5.4 *Ipso facto*, it is neither a tenable nor logical argument that, failure of the Local Plan to provide for a major facility, would render it unsound. Even less so if the requirements to secure the delivery of such a major facility would conflict with the spatial development strategy on which the Plan is based. It is quite clear from the evidence base that a major facility is one option, but not necessarily the only

one, for increasing visitor numbers and spend. Since it was not identified at an earlier stage in the plan process, alternative options have not been canvassed and subject to public consultation.

- 5.5 Extreme caution would also be prudent in this matter given that the Council were advised by G L Hearn Limited, who are the authors of the Mid Devon Tourism Study and its recommendations. As is clear from the list of documents submitted to the Council in support of the Eden Westwood proposals as cited in NLP's 2015 critique (para. 1.6), the same consultants are actively involved in promoting the proposals on behalf of Eden Westwood, having made representations on their behalf to the MDLPR Proposed Submission Consultation in April 2015. This would seem to be a conflict of interest, and it must be questioned whether the consultants concerned were in a position to make impartial and objective recommendations on a tourism strategy simultaneously with promoting a specific tourism proposal that fits closely with one of the key, and potentially most controversial, recommendations of the strategy.
- 5.6 Regarding the composition of any scheme, the Council is not bound to accept the specific proposals put forward by a particular promoter when allocating land. It would be open to them to identify land at Junction 27 for the purposes of a major tourist facility pursuant to the recommendations of the tourism strategy, but not to include provision for a sub-regional scale of comparison retail floorspace. As NLP correctly acknowledge in their addendum critique in considering the promoters' sequential assessment, unlike the situation in relation to the determination of planning applications it is open to the Council to consider the scope to disaggregate or change the content of the proposed development at Eden Westwood when considering the appropriateness of a plan allocation (para. 4.11). Whilst NLP accepted there to be synergy between the proposed tourist attraction, themed hotel, restaurants, cafes and food hall, and therefore it would not be appropriate to disaggregate these uses (para. 4.13), they found the DOV to be less inextricably linked, other than a mutual benefit in terms of spin-off trade and linked trips (para. 4.14).
- 5.7 Considerable emphasis is placed in the reasoned justification for Policy J27 on a facility that 'encourages visitors passing through to stop and spend time in Mid Devon'. However, it is quite clear from the retail assessment undertaken by CBRE that, with the inclusion of a DOV, the proposals will act as a 'destination' rather than simply intercepting visitors who are otherwise travelling through the region en route to somewhere else. The justification for the proposed

development is therefore flawed and, with the inclusion of an OSV, it would function in a very different way from the purpose on which its justification is premised.

- 5.8 If an allocation for a major tourist facility at Junction 27 is found to be supported by the evidence base, and is retained in the Plan, it should not include the OSV as part of the allocation. For the reasons outlined, the inclusion of an OSV puts the spatial and retail strategies at risk. Moreover, as is evident from their own consultants' advice, it is unsupported by necessary evidence. Inclusion of the OSV therefore renders the Plan unsound.
- 5.9 Exclusion of the OSV from the allocation does not preclude the site promoters from including it as part of a future planning application if it can be demonstrated to be essential to the delivery of the overall scheme, not to give rise to harmful impacts, and that the overall benefits outweigh any disbenefits. Under such circumstances, the OSV or other elements can be justified by the overall planning balance. However, it would be wrong to include elements at this stage which are in conflict with the spatial development strategy of the Plan, inconsistent with national policy, are unsupported by clear evidence, have not been subject to robust sustainability appraisal and testing against reasonable alternatives, and require such fundamental changes to the Plan that it is effectively a new Plan. If such fundamental changes are to be pursued, then the Plan should be withdrawn, and a new Plan published and subject to consultation and sustainability appraisal, with the legal duty to cooperate properly discharged 'before' the Plan is submitted.

6. Transportation Impacts

- 6.1 The representors do not consider that the transportation evidence supporting the J27 allocation is robust, and sufficient to demonstrate that the proposed development will not give rise to severe residual cumulative impacts. A critique of the evidence base is included as Annex 2 to these representations.
- 6.2 The starting point is that the location of such major development, isolated from any existing urban area and on a motorway junction which will encourage car use, is contrary to core planning principles that underpin national policy set out in the NPPF. Since those principles have informed the development strategy in the MDLPR, and manifest themselves in a development focus on the main towns, as adduced in earlier evidence, it places the proposed allocation under Policy J27 in

conflict with the development strategy of the Plan, and results in the Plan being internally inconsistent.

- 6.3 Whilst the conflict with the NPPF and internal inconsistencies in the Plan raise fundamental issues of soundness in themselves, the flaws in the transport evidence base simply compound the difficulties with the allocation. As the transport critique clearly demonstrates, the assumptions regarding mode share are at best aspirational, and bordering on fantasy. They plainly and simply have no grounding in evidential analysis of mode share and non-car travel. It is perhaps pathological that the promoters' evidence relies on assumptions from a scheme, of a very different complexion and in an urban context, that has yet to be built and become operational. In contrast, the representors' critique draws on relevant comparisons that are operational and from which evidential analysis severely challenges the assumptions in the evidence base supporting the proposed allocation.
- 6.4 The proposed allocation will also absorb recent improvements intended to deliver localised improvements to the strategic road network to support the growth needs arising from within the district. Given that the capacity will be absorbed by non-local trips to what will be a largely stand alone attraction and destination with a regional draw, this would be contrary to the purposes of the improvements and potentially prejudicial to the benefits that they are intended to deliver.
- 6.5 The evidence therefore fails to demonstrate that the proposed allocation would be sustainable in transportation terms, and would not give rise to residual cumulative transport impacts that are severe. They are inconsistent with the sustainable development strategy of the Plan on which they have been superimposed, and are contrary to the core planning principles of the NPPF, and in particular the penultimate bullet point of paragraph 17, which underpin the provisions of paragraphs 29-41.

7. Sustainability Appraisal

- 7.1 The Sustainability Appraisal (SA) of Policy J 27 is inadequate. For reasons adduced in earlier submissions, since there has been no modification of the spatial strategy to reflect the revised provisions of the Plan, and in consequence of which it is internally inconsistent, the revised spatial and development strategies have not been appraised and considered in relation to alternatives.

- 7.2 There is no assessment of reasonable alternatives, and in particular against the alternative strategies for enhancing tourism as identified in the tourism strategy. This is a major weakness given that the Selection of Option 5 has more than local consequences and is therefore of particular sensitivity in sustainability terms vis-à-vis other options.
- 7.3 Given that Policy J27 is a new allocation, it is considered that the SA is flawed in not subjecting it to a full, 'first instance' assessment against the sustainability objectives. Instead, a brief comparison is made against a non-specific alternative option comprising a very different complexion of development, and one which was not taken forward. The justification for the current allocation is premised substantially on it comprising an improved option from the alternative option previously appraised.
- 7.4 As is clear from the previous appraisal, a number of impacts associated with the generic previous proposals were unable to be quantified with any degree of certainty, as is reflected in their annotation with a '?'.
- 7.5 The complexion of the current proposals is completely different. It is no longer proposed as a new community. On the contrary, what is proposed is a regional facility that is targeted at the local community and will have little relevance for many of them. Since it is intended as a regional facility for a non-resident population, the SA framework would seem to be ill-suited towards appraising the impacts of Policy J27, which will be of a very different scale, reach and complexion than the majority of the Plan's policies and proposals, which do not extend beyond the district boundaries. This reflects the difficulties of MDDC taking a unilateral decision to include a major development proposal that will have significant impacts beyond the district boundaries, without reaching agreement with neighbouring authorities.
- 7.6 The weaknesses of the SA for appraising the impact of Policy J27 are reflected in its findings in relation to retail impact. It concludes that there will be a significant positive impact arising from the enhancement of the retail offer of the district. Although it concludes that all centres, including those outside Mid Devon district, will continue to achieve higher future trading turnovers, this ignores the implications of future investment not being made in those centres, which the retail assessment evidence indicates may be the case, and the implications for regeneration objectives. Moreover, the

SA fails to allow for the conflict of the retail floorspace comprised within Policy J27 with the town centre first principle that underlies the retail strategies of both the emerging Plan and those of neighbouring authorities from which the proposals may vire retail floorspace.

- 7.7 Similarly, there seems to be a complete absence of robust assessment of the impacts of Policy J27 in terms of the objectives to mitigate the effects of climate change. Given that the proposed development will function as a destination, it is likely to score very poorly against this sustainability objective consequential upon the substantial travel demands that it will generate, in particular by car.
- 7.8 Policy J27 has therefore not been subject to adequate and robust sustainability appraisal. It has not been subject to overall assessment in its own right against the 'SA Framework – Appraisal Guidance (Allocations)' set out on pages 4-8 of the SA Update. Had this been assessment been undertaken, it is likely that the proposed allocation would have performed poorly in overall sustainability terms. Moreover, the SA framework would seem ill-suited to appraising the sustainability of proposals which have potential impacts on a regional scale, and therefore that extend considerably beyond the district's boundaries.
- 7.9 As such, the policy is neither supported, nor justified, by the Sustainability Appraisal.

8. Summary and Conclusion

- 8.1 Having regard to all of the foregoing considerations it is concluded that modification of the Plan to include Policy J27 would result in a Plan that is neither legally compliant nor sound. The reasons for this are set out in the foregoing submissions, and can be summarised as follows:

- The quantum of commercial floorspace proposed, and its proposed location in the 'rural areas', would be contrary to the spatial development strategy of the Proposed Submission Plan. It would in effect be a new Plan based on a different spatial strategy which has not been canvassed through the earlier consultation strategy options, nor is it available for comment as part of the current consultation process. It has not been subject to sustainability appraisal, and would result in a Plan that is internally inconsistent.

- The quantum of retail floorspace proposed, and its proposed location away from any existing centre and in an out-of-town location, would be contrary to the retail strategy of the plan and is unsupported by the evidence base, which is substantively deficient and flawed. It would require not only a fundamental change in the retail strategy, but also the cooperation of neighbouring authorities to reduce the floorspace quanta to be accommodated in their administrative areas. Absent effective and deliverable policies on such cross-boundary matters, the duty to cooperate will not have been satisfactorily discharged.
- The development of a major tourist facility at J27 is neither central, nor critical, to the economic development strategy for the district, and does not justify the inclusion of an OSV that is unsupported by the evidence base and requires a fundamental change to the spatial development and retail strategies of the Plan, as well as potentially those of neighbouring authorities.
- The evidence base relating to the retail capacity, impact and sequential test is lacking in robustness. The impact on existing centres, and in particularly Street town centre which is underpinned by a comparable facility, is grossly underestimated.
- The evidence base relating to transportation impacts is lacking in robustness. The assumptions regarding mode share are not grounded in empirical evidence.
- The proposals have not been subject to robust sustainability appraisal, and are therefore not justified by a robust evidence base.

8.2 The overall conclusion is that the inclusion of Policy J27 entails such fundamental change to the Proposed Submission Plan, and its spatial development strategy, that it would, in effect, be a new Plan. As such, the Proposed Submission Plan should be withdrawn and any revised Plan including such an allocation as Junction 27 be subject to consultation. Moreover, 'before' submission of any revised Plan it will be necessary to demonstrate that the 'duty to cooperate' has been adequately discharged, and has produced 'effective and deliverable' policies on the strategic cross boundary matters, in particular the strategy for accommodating growth in retail floorspace to accommodate future needs.

- 8.3 Should the Council continue with Policy J27 as a major modification to the Proposed Submission Plan, and proceed to submit the Plan for Examination, the Inspector is urged to give the Council early notification that the Plan is neither legally compliant nor a *prima facie* sound Development Plan Document, and to invite them to reconsider the proposed allocation under Policy J27.
- 8.4 A specific land allocation for a major tourist facility at J27 is unnecessary since Policy DM22 of the Proposed Submission Plan would enable development to come forward in accordance with the Tourism Study and Strategy. However, should the Council be intent on allocating a site for a major facility, then it should exclude the OSV, the case for which has not been made, is unsupported by the evidence base, has not been subject to robust sustainability appraisal and/or impact assessment, nor has the Duty to Cooperate been satisfactorily discharged in relation to it.
- 8.5 Neither the Plan-making authority, nor the Inspector, are bound to accept a promoter's specific proposals for the purposes of allocating land, and exclusion of the OSV would reduce the risk of the Examination being suspended or the Plan being found unsound. It would not preclude planning permission subsequently being granted for retail development to enable delivery of the tourist facilities, providing there is robust justification for it and a clear demonstration that the wider benefits outweigh any harm. That case and evidence has yet to be provided.
- 8.6 In its current form the Plan is considered to be neither legally compliant nor sound for the following reasons:
- **Legal Compliance:** the duty to cooperate has not been satisfactorily discharged.
 - **Soundness:** for the reasons adduced the Plan is not sufficiently 'justified', it will not be 'effective', nor is it 'consistent with national policy'.

REQUIRED CHANGES

The following changes are required, as a minimum, to overcome the legal compliance and soundness issues:

- Omission of Policy J27;
- In the alternative, amendment of Policy J27 to omit the proposal for an Outlet Shopping Village comprising up to 14,000 sq m of comparison goods retailing.
- Consequential amendments to other policies and paragraphs to delete reference to the Outlet Shopping Village / comparison goods floorspace.

In the event that Policy J27 remains in the Plan and unchanged, the Plan should not proceed to submission, and should be subject to overall review of the spatial strategy, preparation of additional evidence that robustly assesses the impacts and reconsideration in the light thereof, and an effective mechanism for discharging the Duty to Cooperate not only with neighbouring authorities, but those on whom the key impacts of Policy J27 will fall.

ANNEX 1

CRITIQUE OF RETAIL EVIDENCE

Eden Westwood - Critique of Retail Evidence — Hermes



1. Introduction

- 1.1. Planning Potential has been instructed by Rocke Associates on behalf of Hermes to review retail planning evidence that has been prepared in support of the proposed allocation of a *“major high quality regional tourism, leisure and retail attraction”* on land at Junction 27 of the M5 motorway (Local Plan Review: Proposed Submission Policy J27). The proposed allocation would support the future development of ‘Eden Westwood’.
- 1.2. The Eden Westwood development would comprise a number elements, including a Designer Shopping Village across six hectares (providing up to 14,000 square metres of controlled comparison goods floorspace and up to 2,000 square metres gross Class A3 uses). The proposed Policy J27 states that the comparison goods floorspace would be controlled to *“discounted/end-of-range lines, seconds and surplus/sample stock.”*
- 1.3. Planning Potential has been invited to review the evidence prepared and submitted on behalf of the site promoter, together with the retail policy advice provided to the Council in the preparation of the Local Plan Review. Our review therefore considers the case set out within the following documents prepared on behalf of the site promoter (AXA/Friends’ Life Ltd):
 - Retail Assessment: Briefing on Proposed Approach and Key Assumptions (CBRE, 7 August 2014); and
 - Town Centre Uses Statement for Local Plan Proposed Submission Consultation (CBRE, 27 April 2015).
- 1.4. Our review also considered advice prepared on behalf of the District Council, which is included within the following documents:
 - Assessment of Retail & Main Town Centre Use Planning Policy: Proposed Mixed Use Development at ‘Westwood’ (GVA, November 2014);
 - Critique of Retail and Leisure Statement (NLP, 17 July 2015);
 - Critique of Retail and Leisure Statement (NLP, 7 March 2016); and
 - Retail Response (NLP, 19 July 2016).
- 1.5. Having undertaken our review, we consider that there are a number of significant flaws in the approach adopted on behalf of the site promoter, which seriously undermine the robustness of the case that is presented in support of the proposed allocation. We note that a number of these flaws were identified previously in advice prepared on behalf of the District Council.
- 1.6. As a result, we conclude that the proposed allocation at Junction 27 does not meet the relevant retail planning policy tests and cannot be considered sound. We therefore consider that the proposed allocation should be deleted from the Plan.

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- 1.7. It should be noted that our review does not consider the policy case for the other elements that fall within the proposed allocation (e.g. travel hub, Agronomy Visitor Centre). Our assessment also focuses on the comparison goods retail element and does not consider the merits of the proposed convenience goods floorspace, which is minor or ancillary in nature.

2. Retail Planning Policy

- 2.1. The NPPF (and supporting PPG) provide retail policy advice, both with regard to the determination of applications for development ('decision-taking') and the preparation of Local Plans ('plan-making'). Paragraph 23 of the NPPF states specifically that:

'Planning policies should be positive, promote competitive town centre environments and set policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should [inter alia]:

- Recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;*
- Allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres. It is important that needs for retail, leisure, office and other main town centres uses are met in full and are not compromised by limited site availability. Local planning authorities should therefore undertake an assessment of the need to expand town centres to ensure sufficient supply of suitable sites;*
- Allocate appropriate edge of centre sites for main town centre uses that are well connected to the town centre where suitable and viable town centre sites are not available. If sufficient edge of centre sites cannot be identified, set policies for meeting the identified needs in other accessible locations that are well connected to the town centre.*

- 2.2. Paragraph 158 provides further advice with regard to the preparation of the local plan evidence base and confirms that:

'Each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals'

- 2.3. In considering whether a Local Plan is 'sound', paragraph 182 of the NPPF confirms that the Plan should be:

'Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements,...;

Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;...'

- 2.4. In this case, Mid Devon District Council has prepared an objective assessment of the need for further retail development over the forthcoming Local Plan review period. This is set out in the Mid Devon Retail Study, which was prepared by GVA in 2012. We note that this Retail Study remains an evidence base document for the purposes of the Local Plan Review and that no other Retail Study has been prepared on behalf of the District Council.
- 2.5. In setting out an analysis of future retail capacity in the District, GVA advises the Council that in the period to 2026, there is insufficient capacity in the Tiverton area to support the proposed allocation (Appendix C, Table 18) and negative capacity in the Crediton and Cullompton areas until 2026 (Tables 19 & 20).
- 2.6. The Council's objective assessment of need does not, therefore, support the proposed allocation.

3. CBRE Evidence on Behalf of Eden Westwood

- 3.1. Detailed evidence has been prepared on behalf of the site promoters of Eden Westwood to support the allocation of the site at Junction 27. This evidence has included economic and employment land reviews, a town centre uses statement (supported by an extensive household telephone survey), and a leisure impact assessment. The documents reviewed as part of this critique are set out at paragraphs 1.3 and 1.4 above.
- 3.2. The essence of the arguments put forward in the various submissions is, however, that Eden Westwood would represent a unique opportunity for a scheme as a 'gateway' proposal that will attract visitors from a wide area.
- 3.3. Indeed, the proposed allocation is stated as *"not a development aimed at meeting gaps in local provision for retail and leisure"* and *"a development of the nature and scale proposed for Westwood could not be sustained by local people"* (CBRE, paragraphs 2.10 and 2.11). It is this clear strategic nature that has influenced the extent of the catchment area and survey data obtained to support an assessment of the proposals.

4. Advice given to MDDC

- 4.1. We are aware that the District Council has obtained advice with regard to the proposed allocation site. This previous advice has stated the following:
 - *"we have reached a conclusion that a need for the proposed quantum of Class A1 retail floorspace has not been demonstrated"* (GVA, Nov. 2014, paragraph 7.5);
 - *"there is not a convincing case to allocate the subject site... particularly when opportunities exist to accommodate parts of the development on more sequentially preferable sites in or on the edge of town centres in the catchment area"* (GVA, paragraph 7.8);
 - *"we have reached the view that [the impact assessment] is incomplete... and has failed to adequately assess the wider impact of the proposal"* (GVA, paragraph 7.9);

- *“we have reached the conclusion that the current proposed allocation has the potential to materially affect the role and function of existing centres in the local retail hierarchy”* (GVA, paragraph 7.11);
- *“..in the absence of the necessary evidence that demonstrates need, a complete sequential site analysis and a complete study of the potential impacts on other development plan proposals and retail draw it is not possible for the Council to allocate the site for the proposed development at this time.”* (NLP, July 2015, paragraph 7.8).

5. Critique of Retail Evidence Presented

- 5.1. In the light of the above policy context and advice provided to the District Council to date, we have undertaken a further review of all the evidence presented as part of the Local Plan Review. In doing so, we have identified numerous flaws in the methodological approach that has been adopted, and several apparent errors in the quantitative analysis that has been presented on behalf of Eden Westwood.
- 5.2. Some of these errors have been highlighted previously, either by GVA or NLP, but have not been addressed by any further submissions made by the site promoters. We consider that the evidence presented to date is significantly short of a robust basis on which to support the proposed allocation and that it would not result in a sound retail policy basis for the site's inclusion in the Plan.
- 5.3. Our specific comments are set out in summary form below.

Objective Assessment of Need

- 5.4. As set out above, the NPPF is clear that LPAs should undertake their own objective assessment of need. Mid Devon District Council's objective assessment is set out in the 2012 Retail Study and demonstrates insufficient retail capacity for the proposed allocation.
- 5.5. An alternative assessment has been submitted by the promoters of the Eden Westwood proposal, which has been reviewed on behalf of the District Council. These reviews identify several errors within the assessment that have not been addressed subsequently. As a result, we do not consider that an objective assessment to support the site's allocation has been undertaken and consider that the requirements of NPPF paragraphs 158 and 182 have not been met.

Overall Quantitative Assessment

- 5.6. A quantitative assessment of retail capacity and impact is put forward by Eden Westwood within CBRE's Town Centre Uses Statement (27 April 2015). In considering retail capacity for the proposed Designer Shopping Village, this assessment is very brief – it comprises only a few short paragraphs and a summary table of 'headroom expenditure' in 2024 (Table 5.1). Such an assessment falls well short of what could reasonably be considered a robust analysis of retail capacity.
- 5.7. The further analysis contained within the Appendices to CBRE's assessment contains numerous flaws, which are considered further below.

Catchment Area and Household Survey

- 5.8. We have noted that the retail assessment put forward relies on a substantial catchment area, which extends to a 90-minute drive-time from the proposed allocation site. This catchment area extends from Bodmin in the south-west, to Wiltshire in the east, Cardiff and Newport in South Wales, and includes the entire Bristol urban area. A total of 19 sub-zones are identified for the purposes of a household telephone survey.
- 5.9. An extensive survey area such as this has the potential to contain significant variations with regard to shopping patterns and may fail to reflect accurately the shopping habits of the residential population and, therefore, shopping patterns that might be associated with the proposed allocation. It is not clear what sample size was used to inform the household survey, but the overall catchment contains a residential population in excess of 5.5 million. Without further information regarding sample size, we consider that it is impossible to be confident that the survey data is sufficiently robust.
- 5.10. The inherent difficulties with the approach adopted are emphasised by the results of the survey that CBRE set out. For example, the results of the survey give rise to abnormal results, one case being that the turnover of small convenience goods facilities is vastly over-stated and inaccurate. This is demonstrated in Appendix E, Table E5, which indicates clearly excessive turnovers for facilities such as Lidl in Chard, ALDI in Cullompton, together with the ALDI stores in Newport and Longwell Green, Bristol.
- 5.11. The same issue arises with comparison goods destinations, whose attractiveness to shoppers is not accurately reflected. For example, Appendix G, Table G5 puts forward a comparison goods turnover of Atlantic Village, Bideford as £4.1m per annum. This is clearly incorrect and emphasises that the approach adopted and survey results that follow is not robust or credible.
- 5.12. We also note apparent flaws within the presentation and interpretation of the household survey results. For example, Appendix I, Table I2 appears to completely omit the survey-derived turnover of comparison shopping destinations within Zone 6.
- 5.13. We also note that the household survey that was undertaken asked respondents questions with regard to their shopping patterns for several types of comparison goods shopping trips – for example, clothes, footwear and fashion accessories (Question 10), or chemist goods (Question 14). It is not, however, clear how the subsequent analysis has interpreted these responses to identify an overall distribution of all comparison shopping – for example, Appendix G, Table G4 only sets out an overall market share of all comparison goods shopping.
- 5.14. In order to confirm whether these market shares are robust and suitably reflect trading patterns, it is necessary to understand the weighting that has been given to the results for each question, and the proportion of overall comparison goods expenditure that has been allocated to each type of comparison shopping trip (clothes, chemist goods etc.). Without this analysis, the market shares stated by CBRE cannot be determined as a reliable or robust basis on which to undertake further analysis.

Retail Capacity Assessment

- 5.15. CBRE sets out a comparison goods capacity assessment at Appendix G, Table G7. This sets out comparison goods capacity at the forecast years of 2019, 2024, 2029 and 2033, and starts from an assumed position of trade 'equilibrium' in 2014.
- 5.16. We consider that it has not been demonstrated that this represents an appropriate starting point for assessing capacity in this case. CBRE has not undertaken a quantitative assessment of the trading performance of existing comparison goods floorspace within the core or extended catchment area at 2014. It is therefore not possible to determine how well existing facilities are performing, or whether there is any existing surplus of floorspace.
- 5.17. By assuming that existing floorspace is trading in 'equilibrium', it is self-evident that with forecast growth in population and available expenditure, 'capacity' will arise in future years. Without determining whether there is any existing 'surplus' of floorspace (i.e. if the amount of existing floorspace is greater than that required to meet demand), future capacity may be significantly over-stated.
- 5.18. We note that the capacity estimate set out in Appendix G, Table G7 includes an allowance for 'Claims on Expenditure', (namely, the turnover of existing stores, an assumption regarding future floorspace efficiency, increases in 'special forms of trading', and existing floorspace commitments).
- 5.19. Although footnote 9 states that the turnover of commitments is derived from Table K6, no such table appears within the submitted assessment. We understand that the turnover of commitments may actually be derived from Table I4. There are two significant points that can be drawn from this:
- The list of commitments in Table I4 includes proposals in Bideford, Barnstaple, Exeter, Street, Weston-super-Mare and Bristol (which lies outside the core catchment area). This list is not comprehensive and does not list all comparison goods commitments within the catchment area that have a 'claim' on available future expenditure. Without a comprehensive list of commitments, the capacity assessment is incomplete and its conclusions unreliable.
 - Table I4 indicates that the commitments that have been identified have a turnover (assumed to be in 2014) of £124.5m. The capacity assessment at Table G7 identifies the turnover of these commitments as only £89.5m in 2019, rising to £117.2m in 2033. We have been unable to identify any explanation of how these figures have been derived and cannot, therefore, verify their reliability.
- 5.20. We also consider that the assessment of 'claims on expenditure' fails to acknowledge other schemes, particularly other floorspace allocations within the catchment area that can be expected to proceed during the assessment period. We note that this issue was highlighted in advice provided to the District Council (GVA, paragraph 4.13) and has not been addressed by further submissions on behalf of Eden Westwood. We note and therefore agree with GVA's advice that *"we therefore cannot agree with the conclusion...that there is a quantitative need for the proposed comparison goods floorspace"* (GVA paragraph 4.14).

Retail Impact Assessment

- 5.21. With reference to the impact assessment that CBRE has undertaken, we note (as set out above) that the 90-minute study area continues to be adopted on the basis that the majority of the comparison goods floorspace comprises the designer outlet village *“which typically operate from a dispersed catchment area”* (CBRE, paragraph 9.20). However, CBRE also adopt a ‘core catchment area’, which is represented by a 60-minute drive-time from the proposed site. CBRE assume that the proposed destination would derive 80% of its turnover from the core catchment and 20% from beyond (paragraph 9.23).
- 5.22. We have doubts about this approach, specifically given CBRE’s own acknowledgement that outlet facilities draw from a dispersed area and the overall strategy for the Eden Westwood proposals, which is that *“Westwood could not be sustained by local people...”* and *“the leisure uses at Westwood would rely for most of their custom on people who live outside the area, a proportion of which are taking holidays in the area, a proportion of which are en-route to holidays elsewhere, and a proportion of which make a day trip from some distance.”* (Quoted at CBRE paragraph 2.11, with our emphasis).
- 5.23. We therefore consider it likely that a lower proportion of turnover would derive from within the 60-minute drive time and a higher proportion from beyond. This is reinforced by evidence from other outlet villages in the region, for which up to 40% of customers travel to the destination from beyond a 60-minute drive-time.

Assumed Levels of Trade Diversion and Impact

- 5.24. CBRE’s assessment of the comparison goods impact of the proposed allocation is set out in a series of Tables included as Appendix I. Notwithstanding our comments above with regard to the assessment of existing retail ‘commitments’, Tables I5 and I6 set out CBRE’s assessment of trade draw to the Eden Westwood scheme. There are several key points that we have noted from this assessment:
- The two destinations of ‘Street’ and Clarks Village Outlet Shopping are treated as separate destinations within the CBRE assessment. Although not within the defined town centre, Clarks Village is functionally part of Street town centre and its attractiveness to customers is key to the overall retail health of Street.
 - On the basis of CBRE’s own assessment, the Clarks Village Outlet Shopping facility derives c.83% of its turnover from within the ‘core’ catchment area adopted for Eden Westwood, while Street derives more than 95% of its trade from the same catchment. Atlantic Village, Bideford derives 100% of its trade from the catchment (derived from CBRE Table I2).
 - Notwithstanding these identified trading patterns, CBRE assert that only 2% of the proposed Eden Westwood scheme’s turnover would be diverted from Clarks Village, and that there would be no trade diversion from either Street town centre or Atlantic Village.
 - Given both Clarks Village and Atlantic Village are competing destinations within the same market place and within a 50-minute drive time of the proposed allocation site, we consider the true levels of trade diversion will be significantly greater than that set out in CBRE’s assessment.

- 5.25. We consider that the CBRE assessment has significantly under-estimated the level of trade diversion likely to be experienced by both Clarks Village and Street town centre. Recent survey data of customers visiting Clarks Village indicates that up to 9% of customers' origin of travel is from postcode sectors beginning EX, TQ, PL and TR. All these postcode zones are to the west of the Eden Westwood site and are therefore likely to be diverted away from Clarks Village. In addition, customers with travel origins up to 50 minutes' drive-time east/north-east of the proposed allocation site are also likely to be diverted from Clarks Village.
- 5.26. We therefore consider that a significantly greater level of trade diversion will arise from Clarks Village and conservatively estimate this would be in the order of 15-20%. Based on CBRE's own figures, a 20% diversion would lead to £16.68m per annum trade being lost from Clarks Village, which would equate to a retail impact of -24.6%. We consider that such a level of impact would be significant in terms of the vitality and viability of Street town centre specifically, with associated impacts on the role of other centres within the catchment area.
- 5.27. Within their assessment, CBRE undertakes a review of the retail health of certain town centres within the identified catchment area. The centres considered are Tiverton, Taunton, Bridgwater, Crediton, Exeter, Torquay, Newton Abbot, Plymouth, Tavistock, Bideford, Barnstaple, Yeovil, Dorchester and Weymouth. We note that no review is undertaken of the health of other centres, including Honiton and Street, despite CBRE forecasting that trade will be diverted from these towns. In the absence of a suitable review, CBRE's statement at paragraph 10.4 that *"centres are generally in good health and, therefore, unlikely to be vulnerable"* cannot be substantiated.
- 5.28. Of a more technical nature, we note that the trade draw analysis presented by CBRE at Appendix I, Table I6 appears to model the trade draw of 95% of the proposed development's turnover only. Table I1 identifies the likely turnover of the Designer Outlet Village as £87.79m in 2014, but Table I6 only models the impact of floorspace with a turnover of £83.4m per annum (in 2024).
- 5.29. We also note that no allowance has apparently been made for floorspace efficiencies, or increases in turnover between 2014 and 2024 for either the proposed development or the identified commitments. We therefore consider that the likely turnover of the scheme (and other commitments) in 2024 has been understated within the impact analysis that is presented.
- 5.30. We have reviewed the subsequent advice that has been given to Mid Devon District Council with regard to retail impact, specifically that set out in the 'Critique of Retail and Leisure Statement' (NLP, dated 7 March 2016). We do not agree with the advice that NLP has provided, and particularly note that they appear to assess the impact of the proposal on the basis of inconsistent turnover figures (£70.24m in Table 3 and £74.5m in Table 4), both of which are below the 2014 turnover figure put forward by Eden Westwood themselves.
- 5.31. Without further explanation of this apparent discrepancy, the robustness and conclusions of NLP's advice must be in doubt. We further note that NLP's advice regarding retail impact is provided in the context of impact on the number of vacant units within the affected centres. We have not seen an impact analysis

undertaken in this way previously and note that the number of retail vacancies is only one of several indicators of a centre's performance.

- 5.32. For the reasons set out above, we therefore conclude that the evidence presented on behalf of Eden Westwood has not demonstrated that the retail impact of the proposed allocation is acceptable and that it would not lead to adverse impact on public or private investment in relevant centres. It has also not been demonstrated that the proposed allocation would not have a detrimental impact on the role of centres in the catchment area, and the advice set out in the PPG has not therefore been followed.
- 5.33. NLP's advice to the District Council does not address these points.

Sequential Site Assessment

- 5.34. We have also taken the opportunity of reviewing the site promoter's approach to the assessment of alternative sequential sites. This has been done in the context of the scheme's strategic nature, apparent reliance on an extensive (90-minute drive-time) catchment area and stated intention to serve customers and visitors from a wide geographical area.
- 5.35. We note that at paragraph 7.15, CBRE confirms that the appropriate area of search for the sequential assessment is *"dependent on the type and amount of retail development proposed and the market they are intended to serve"*.
- 5.36. In this case, it is clear that the market and associated scheme's catchment is extensive. Nevertheless, CBRE state that *"only centres within a reasonably short distance of the application (sic) site could realistically serve the visitors the development is intended to attract..."* (paragraph 7.19). Only sites in or on the edge of six towns (Tiverton, Crediton, Exeter, Exmouth, Taunton and Bridgwater) are considered.
- 5.37. We consider this is a self-fulfilling and incorrect approach for the following reasons:
- NPPF paragraph 23 states that LPAs should *"allocate a range of suitable sites to meet the scale and type of retail... development needed in town centres."* In this case, the alleged 'need' is derived from a wide catchment with numerous designated centres that are not assessed by CBRE;
 - Recent guidance (Aldergate Properties Ltd. V. Mansfield District Council, CO/6256/2015, 8 July 2016) has highlighted that the sequential approach should be applied for the *"broad type of development proposed"* and that the requirements of the sequential approach should not be interpreted as envisaging that the requirements or preferences of an individual retailer's trading style, commercial attitudes, site preferences or competitive preferences should dictate what sites are 'suitable' or 'available'.
- Indeed, paragraph 38 of the Mansfield decision confirmed that paragraph 23 of the NPPF is *"simply not couched in terms of an individual retailer's corporate requirements or limitations. That would be the antithesis of planning for land uses."* (our emphasis).
- 5.38. We therefore consider that for the sequential approach to be satisfied in this case, all relevant sites in and on the edge of centres within the area in which the 'need'

is identified should be assessed (in accordance with PPG paragraph 009 – Ref. ID:2b-009-20140309). Limiting the assessment to six towns within a 30-minute catchment area is a flawed approach and on this basis the requirements of the sequential approach have not been met.

6. Overall Conclusions

6.1. On the basis of the critique of retail evidence set out above, we draw the following key conclusions:

- The evidence presented fails to adopt a robust survey area with clear flaws within the shopping patterns identified;
- The quantitative analysis lacks clarity with regard to the interpretation of the survey results;
- The evidence fails to present any analysis of the current trading performance of existing comparison goods retail floorspace;
- The quantitative capacity analysis fails to consider all commitments and 'claims on expenditure' across the adopted catchment area;
- The impact analysis presented adopts inappropriate assumptions with regard to trade draws across the catchment area;
- Insufficient consideration is given to trade draws from competing facilities and the associated impact on centres that benefit from planning policy protection; and
- The sequential site analysis that is presented adopts inappropriate search parameters that are based on the proposed operator's preferences and is therefore inconsistent with relevant guidance and recent case law.

6.2. On this basis, we conclude that the proposed Junction 27 site allocation is not supported by an objective assessment of need and is not justified through robust or credible retail evidence. We therefore consider that the proposed allocation should be deleted from the Local Plan.



ANNEX 2

CRITIQUE OF TRANSPORTATION EVIDENCE



Mid Devon Local Plan Review

Policy J27 : Highways & Transport Written Representations on behalf of Hermes

10/02/17

Project no. 172880

Introduction

1. This written representation considers the highways and transport implications of the proposed Westwood development supported as part of the Mid Devon Local Plan Review Policy J27. The review considers how the proposed Policy J27 accords, or otherwise, with current national policy and best practice, in particular its compliance with the overriding principles set out within the National Planning Policy Framework.
2. In preparing this written representation we have reviewed the key transport evidence base supporting the proposals, including the following documents;
 - Transport Assessment Scoping Report – Parsons Brinckerhoff – January 2014
 - Trip Generation Technical Note - Parsons Brinckerhoff – 30 May 2014
 - High Level Junction Assessment Technical Note – Parsons Brinckerhoff – 4 July 2014
 - Modal Split Sensitivity Testing Technical Note - Parsons Brinckerhoff – 11 July 2014
 - Westwood Leisure Destination Impact Assessment – Colliers International – July 2014

Policy

3. The principle policy requirements for allocation of retail and leisure land uses are set out within the National Planning Policy Framework (NPPF). It is clear that the site and proposals are contrary to the overarching transport themes set out within the NPPF, specifically in relation to 'town centre uses' and Section 2 of the NPPF, the core principles as set out in para 23 include;

"If sufficient edge of centre sites cannot be identified, set policies for meeting the identified needs in other accessible locations that are well connected to the town centre"

4. While the site is located near to Tiverton Parkway Station, the site is isolated from any urban catchments. The site is adjacent to the M5 which provides direct access, via junction 27, to the site and, given the lack of a range of alternative travel choices, will inevitably create a car focused development. It's also difficult to determine what town the development would relate to and what connections exist or could be reasonably provided to connect to any local towns and provide meaningful levels of transport sustainability. For this reason, the proposals are plainly contrary to para 23 of the NPPF.
5. Local planning authorities are also required to undertake a sequential test to planning applications for town centre uses that are not in an existing centre as set out in para. 24. Para 24 sets out that when considering out of centre proposals;

"preference should be given to accessible sites that are well connected to the town centre"
6. The Leisure Destination Impact Assessment prepared by Colliers International refers to the sequential test and identifies only to the Exeter Bus Station site as a suitable alternative site. It's unclear why other sites with good access to the strategic road network, but allied to existing towns have not been considered. Irrespective, the site and its location cannot be considered to be 'well connected to the town centre'. For this reason, the proposals are contrary to para. 24 of the NPPF.
7. Section 4 of NPPF sets out the requirements in relation to promoting sustainable transport and the role policies have in facilitating sustainable development. Para. 34 states that;

"...developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised"
8. Clearly, where car travel is so easily achieved, being located on a motorway junction, and non-car travel options are extremely limited, to a parkway station, and where rail is unlikely to be attractive to the vast majority of retail and leisure visitors (this aspect is considered later) it cannot be considered that the proposals come close to according with para. 34 of the NPPF. Evidence suggests (see Table 1 later in this report) that the greatest opportunities for these uses are likely to be via walk, bus or coach, modes of which are clearly challenging in this location.

Mode Share and Non-Car Travel

9. When considering the development mix and its location, the ability to generate any significant non-car travel will be extremely challenging. The approach to assessment has focused heavily on road capacity with little evidential analysis of non-car travel – suggesting an acknowledgement that sustainable travel will be inconsequential.
10. The assessment reports prepared by Parsons Brinckerhoff which refer to mode share, quote an assumed mode share of 70%/20%/10% car/rail/bus. This mode share split is

quoted as being obtained from the Bristol Wave Park project. This is a scheme which is still only a planning consent and itself based on assumptions and predictions as opposed to development specific data and facts, not to mention that it is purely a leisure scheme (with only ancillary food and drink outlets).

11. The Bristol Wave Park project has an associated Travel Plan prepared by Hydrock December 2013 with 5 year targets. The baseline car mode share is 88%, at the end of year 5, with full implantation of sustainable travel measures, the proposed car mode share is still 85%, with the remaining 15% by non-car modes. As such it's unclear how the J27 scheme achieves a 70% car mode share and what exceptional measures are to be implemented so as to exceed that projected for the Bristol Wave Park project. The assumption refers only to 'high quality bus routes' and the location of Tiverton Parkway.
12. As a comparison, mode share figures have been obtained for a range of retail and leisure uses, all with access to bus and rail, many of which being located in established and highly sustainable locations. Mode Share for a range of leading visitor attractions has been gathered from the Association of Leading Visitor Attractions (ALVA). Mode share for large out of town shopping centres has been obtained from actual survey data obtained from various sources.

Table 1 – Retail and Leisure Schemes – Mode Share Examples

SITE	WALK	BICYCLE / MOTORCYCLE	CAR	TOUR COACH /PRIVATE OR MINI BUS	PUBLIC BUS	TUBE, TRAM, TRAIN
Leisure						
Anne Hathaways Cottage	12%	0%	70%	10%	2%	6%
Beaulieu	0%	1%	95%	3%	0%	0%
Blenheim Place	4%	0%	82%	8%	4%	1%
Bletchley Park	0%	0%	81%	8%	0%	9%
Chatsworth House	2%	0%	86%	5%	5%	2%
Chester Zoo	1%	0%	94%	2%	2%	2%
IWM Duxford	0%	1%	94%	3%	1%	1%
Ironbridge Gorge Trust	2%	0%	90%	7%	1%	0%
Leeds Castle	0%	0%	88%	10%	0%	2%
Natural History Museum Tring	6%	0%	89%	0%	2%	2%
Portsmouth Dock	5%	0%	69%	6%	5%	11%
RAF Museum Cosford	0%	0%	94%	3%	0%	2%
Stonehenge	0%	0%	67%	27%	1%	4%
Historic Dockyard	3%	0%	86%	5%	2%	3%
Retail Parks						
Bluewater	0.4%	0.1%	90.4%	0.2%	8.5%	0.4%
Freeport Braintree Outlet Shopping Village	2.8%	0.2%	92.5%	0.2%	0.8%	2.7%
Cribs Causeway	0.8%	0.1%	90%	0.2%	8.4%	

13. The above indicates that typically leisure and retail developments experience a car mode share of 67% to 94%. Those at the lower end of the scale have high private coach

or walk mode share. The combined public bus or train mode share is at most 16% for any scheme.

14. The 'high quality' bus routes proposed for Westwood, would only be effective if they were also high frequency and linked to the key catchment destinations, and supported by a diverse range of complementary surrounding land uses. 10% bus use for development within well connected towns and cities is still a challenging target, if this is to be relied upon, the basis for this should be well considered and evidenced with details of a bold strategy of public transport enhancements. The site currently only benefits from one service which operates an hourly frequency between Exeter and Tiverton. There is no mention of predicted bus patronage levels and what this means in terms of service capacity and frequency.
15. An example of where high bus patronage is currently being achieved is Cribs Causeway, Bristol, as set out in Table 1 above in this report. The shopping centre achieves a bus mode share of 8.4%. The shopping centre has a significant residential catchment on the fringe of a large city and has levels of service of some 30 buses per hour passing the site to an extensive range of destinations within Bristol and beyond. This level of service is sustained, not solely by the shopping centre but by the complementary surrounding land uses and high neighbouring population.
16. The assumption of 20% rail use set out in the Parsons Brinckerhoff report only relates to consequential evidence that the site falls within the location of Tiverton Parkway. The proposed uses in themselves would rarely generate any significant rail use, even in highly sustainable locations with direct and attractive links to the rail network. The arguments and justification for the development also suggest that the main uses seek to attract passing trade from the M5 (rather than rail).
17. The only site in Table 1 which comes anywhere close to the proposed 20% rail mode share is Plymouth Historic Dockyard which achieves an excellent rail mode share of 11%. This site is immediately adjacent to a busy public transport hub in an area which is difficult to access by car (busy City location where access by non-car modes is excellent). Allied to that is the excellent rail service frequency with trains departing Portsmouth Harbour terminal every 10 to 15mins throughout the day to a range of destinations with attractive and direct pedestrian connections to the entrance of the Historic Dockyard.
18. The opportunities for rail use are likely to be greater for employees who could be incentivised via Travel Plan initiatives. Employees will make up a modest level of the overall trip generation for the site and, given the main local employee catchments of Tiverton, Willand and Cullompton, these don't benefit from access to the rail network. While a bridge could be provided over the M5, given the remote location of the railway station, the rural surroundings and lack of mix of land uses, it's difficult to see how rail would be a significantly attractive travel option.
19. Overall, the lowest generator of car trips, which is also the highest public bus and train generator is Portsmouth Dock. As detailed above, this is located within the City and

within walking distance of the town centre, at the terminal of the railway line, and adjacent to the bus station and local ferry terminal. There is also no dedicated parking, other than off-site council pay and display car parks.

20. In relation to retail (food and non-food), the Parsons Brinckerhoff Trip Generation Technical Note suggests this element of the development will generate 77% of the overall footfall. Singling out retail only schemes such as Bluewater, bus and coach mode share is just 8.9%, and overall car borne trips constitute 90.4% with a modest residual linked to walk, taxi and motorcycle.
21. Rail trips associated with Freeport Outlet Village Braintree are just 1%, with the rail station being located immediately adjacent to the retail village.
22. Clearly the assumptions for non-car travel are not only challenging but also poorly evidenced with limited consideration of the relationship between travel options and existing and proposed land uses.

Vehicle Occupants

23. The Parsons Brinckerhoff Trip Generation Note makes a very broad assumption of vehicle occupation of three people per car. This level again, is not evidenced but assumed and is applied to all uses. Typically, leisure uses such as Eden Project do achieve levels of car occupancy at this level however, most retail uses achieve significantly lower occupancy levels.
24. As an example, Cribs Causeway Bristol achieves car sharing patronage of 1.75 (i.e. typically 75% of cars accommodating one passenger) whereas Bluewater and Braintree achieving just 1.33 and 1.29 respectively. This level is significantly lower than that assumed in the Parsons Brinckerhoff assessment, some 40% to 60% lower. Of the overall footfall, 77% is attributed to retail, on balance then, overall the development is only likely to achieve car occupancy levels of less than two per vehicle overall.

Junction Capacity & Junction 27 Pinch Point Scheme

25. The capacity of the road network has been assessed in the Parsons Brinckerhoff reports, 'High Level Junction Assessment - Technical Note' and 'High Level Junction Assessment – Modal Split Sensitivity Testing – Technical Note'.
26. The latter report sets out the findings of earlier assessments and considers the potential to improve capacity of Junction 27, which it identifies as failing (i.e. operating above 92% practical reserve capacity) in all scenarios, even after the implementation of the Highways England (formerly Highways Agency) pinch-point funded junction capacity improvements.
27. The Modal Split Sensitivity Testing Technical Note considers the potential modal split of 90% by car, with the remaining 10% by bus and rail. As part of its recommendations it suggests a range of options to improve the operation of the junction, however, the

report only sets these out qualitatively, placing potential improvements in modal shift at the top of the list. The remaining five suggestions all relate to capacity improvements (new construction and signal timing improvements), but includes no assessment of these effects or the ability to deliver the improvements, therefore it is suggested that little if any weight can be placed on these safeguarding measures

28. The Highways England pinch point programme was designed to deliver localised improvements to the strategic road network that will help to stimulate growth in the local economy and relieve congestion and/or improve safety that would otherwise hinder that growth. Specifically, the pinch point scheme at Junction 27 was identified to reduce local congestion and delay experienced during the AM and PM peak as well as the summer period
29. This infrastructure was driven by the need to accommodate the well planned sustainable future growth in housing and jobs in Tiverton and Mid Devon and to provide better access to Tiverton Parkway Station.
30. The associated analysis of Westwood traffic impacts indicates that, not only would the scheme place a significant burden on this junction, but it's likely that the scheme would consume all capacity benefit delivered through the HE's pinch point improvements with congestion and delay impacting drivers who use the junction to access Tiverton, North Devon and rural towns.
31. In conclusion, it is very evident that not only does the Westwood scheme use up this new road capacity, it also takes it away from development schemes that were identified by the DfT as being the growth needs for the area and which will rely on daily access to the M5 for travel to work and access to Tiverton Parkway Station.

Summary and Conclusions

32. The review of the transport evidence base highlights a number of significantly fundamental flaws in the approach to assessment of the development and its impacts and the overall sustainability of the site in accordance with best practice and policy.
33. The mode share assumptions rely on the findings of a single use leisure application, the Wave Park Bristol, that has not been built and therefore itself remains a prediction of anticipated use. A review of the supporting Travel Plan for the Wave Park Bristol indicates that the mode share adopted as a baseline is actually just 12% by non-car modes, not the 30% adopted in the assessment.
34. Evidence suggests that other typical leisure and retail developments exhibit car mode share figures of typically 90% car mode share, 20% higher than those used in the assessment of the Westwood proposals.
35. While the development is located near to Tiverton Parkway railway station, the uses and the nature of the development which will have direct access to the M5 and the

attractiveness of rail will be diminished. Typically, the leisure and retail uses referred to indicate rail use of around 1% to 10%, significantly short of the 20% adopted in the assessment.

36. The same is the case for bus use, the site currently only benefits from one service which operates on an hourly basis passing along the A38. This level of service which only provides a route between Tiverton and Exeter would be inadequate to serve the development, or achieve a 10% bus mode share. There would need to be significant investment in bus services to a range of locations to make this an attractive mode of travel to the site.
37. In summary, the development is likely to generate a significant level of car borne trips with limited potential to maximise non-car travel. It's unclear whether the development can be served from Junction 27 without significant further capacity improvements, or whether these could be cost effectively delivered within the available land constraints. If the capacity could be delivered, this would have an inversely proportional detrimental impact on non-car travel.
38. Fundamentally, the proposals are contrary to para. 23, 24 and 34 of the NPPF.



ANNEX 2

HEARING STATEMENT PRELIMINARY HEARING 1

MID DEVON LOCAL PLAN REVIEW 2013-2033

INDEPENDENT EXAMINATION

HEARING 1

POLICY J27

POSITION STATEMENT

ON BEHALF OF

LAND SECURITIES PLC

ID: 6269



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1. Introduction

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

2. Issue 1

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

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

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

² ECO05, para. 6.12

³ Ibid, para. 6.14

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

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

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

⁵ SSE15, para. 7.4

3. Issue 2

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

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

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

⁷ Ibid

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

4. Issue 3

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

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

⁸ SSE12, para. 7.8

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

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

*In this case there is no evidence that the proposed format is necessary or fundamental to the proposal. Whilst the proposal is in outline, not a single retailer has been identified, and the size and location of units within the site has not been established and there is no defined timescale or phasing. It is difficult to conceive of a more open ended proposal. ... Most importantly, the Appellants have themselves disaggregated within the appeal site with three distinct zones. DZ1 and DZ3 are some distance apart. In these circumstances disaggregation within the sequential test would be justified*¹⁰.

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

⁹ SSE17, para. 2.69

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

5. Issue 4

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

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

5.2 The DTC is:

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

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

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

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

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

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

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

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

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

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

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

¹¹ DTC Statement, pp. 8-9

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

5.9 As is clear from the DTC Statement:

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

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

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

¹² Ibid, pp. 10-11

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

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

6. Issue 5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Issue 6

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

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

¹³ SSE15, para. 7.5

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

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

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

¹⁴ SSE16, para. 4.11

8. Issue 7

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

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

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

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

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

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

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

¹⁵ SSE16, para. 5.5

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

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

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

8.5 NLP’s conclusion on this point was unequivocal:

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

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

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

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

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

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

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

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

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

9. Issue 8

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

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

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

10. Issue 9

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

10.1 No comments in relation to this issue.

11. Issue 10

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

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

12. Issue 11

Does provision need to be made for compensatory flood plan?

12.1 No comments to make on this issue.

