



Report to Mid Devon District Council

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an Inspector appointed by the Secretary of State for Communities and Local Government

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PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

REPORT ON THE EXAMINATION INTO

**THE MID DEVON LOCAL PLAN PART 3 - DEVELOPMENT MANAGEMENT
POLICIES (LP3)**

Document submitted for Examination on 21 December 2012

Examination Hearings held on 13 and 14 March 2013

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Non-Technical Summary

This report concludes that LP3 provides an appropriate basis for the planning of the Area over the next 15 years providing a number of Main Modifications are made to the Plan. The Council has specifically requested that I recommend these Main Modifications to enable them to adopt the Plan.

The Main Modifications can be summarised as follows:

- DM/3 – to achieve consistency with local viability evidence
- DM/5 – to make the Policy more comprehensive and proactive
- DM/8 – to include parking standards
- DM/10 and DM/11 – to widen the Policy to include small scale horticultural enterprises
- DM/13 – to clarify the approach to proposals for replacement dwellings
- DM/16 – to make the Policy more flexible
- DM/22 – to allow the Policy to be more widely applicable
- DM/28 – to make the Policy more pro-active and provide for a systematic approach to the assessment of setting
- BA/1 – to make the Policy implementable

Introduction

1. This report contains my assessment of the Mid Devon Local Plan Part 3 - Development Management Policies (LP3) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan’s preparation has complied with the Duty to Co-operate, in recognition that there is no scope to remedy any failure in this regard. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework (NPPF) at paragraph 182 makes it clear that to be sound a Local Plan should be positively prepared; justified; effective and consistent with National policy. The starting point for the Examination is the assumption that the Local Authority has submitted what it considers to be a sound plan. The basis for my Examination is the submitted draft plan (December 2012), which is the same as the document published for consultation in September 2012.
2. My report deals with the Main Modifications that are needed to make the Plan sound and legally compliant, and they are identified in bold in the report (**MM**). In accordance with section 20(7C) of the 2004 Act the Council requested that I should make any modifications needed to rectify matters that make the Plan unsound/not legally compliant and thus incapable of being adopted. These Main Modifications are set out in the Appendix. The Main Modifications that go to soundness have been subject to public consultation for

a six week period, and I have taken the consultation responses into account in writing this report.

Assessment of Duty to Co-operate

3. Section s20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on them by section 33A of the 2004 Act in relation to the Plan’s preparation.
4. I note that the Plan has been prepared using an extensive evidence base that demonstrates widespread co-operation with all stakeholders. The Council has well established procedures for consultation and continuing engagement with neighbouring authorities including via the Devon Planning Officers Group and through joint working on studies of strategic issues such as housing distribution and green infrastructure. The main areas for change in Mid Devon are located well within the District and so do not have direct implications for neighbouring authorities. Many of the Policies in LP3 do not of course raise cross boundary issues, being concerned with development control criteria and not the location of development.
5. Nevertheless, the Council has identified those few Policies that have the potential to have cross boundary impacts. Those are concerned with environmental issues. The Council has provided satisfactory evidence of its engagement with relevant bodies including adjoining Districts, Devon County Council, the Environment Agency and the Dartmoor National Park Authority during the plan preparation process. There is no evidence of any significant disagreement between those bodies and the Council in respect of those Policies. I am satisfied that the level of engagement by the Council with stakeholders has been proportionate and effective. Therefore the Duty to Co-operate has been complied with.

Assessment of Soundness

Preamble

6. The Policies in LP3 are intended to supplement those in LP1 and LP2 of the Mid Devon Local Plan, which deal with strategic policy and site allocations respectively. The Council intends to commence work on one Local Plan to replace these three documents as soon as LP3 is adopted.
7. In respect of general conformity of LP3 with LP1 and 2, the Council accepts that there is inconsistency in respect of Policies DM/9 - *Cross Subsidy of Affordable Housing on Exception Sites*, and DM/12 – *Conversion of Rural Buildings*. However, this is due to the requirements of the NPPF, which post dates LP1 and 2. The Council intends to address this inconsistency in the forthcoming preparation of one Local Plan document. In other respects and in general terms, subject to anything I write below, I am satisfied that the Policies in LP3 are complementary and consistent with the Council’s other Local Plan documents.

Main Issues

8. Taking account of all the representations, written evidence and the discussions that took place at the Examination Hearings I consider whether the Policies in the Plan are positively prepared; justified; effective and consistent with LP1 and LP2 and with the NPPF. I only comment on those Policies where potential unsoundness has been raised as an issue. In respect of the other Policies in the Plan that I do not refer to below, the Council may take it that there is no question of unsoundness.

Sustainable Development Principles

9. **DM/1 – *Presumption in Favour of Sustainable Development*** is appropriately included to reflect the guidance in paragraph 14 of the NPPF. It is based on the Planning Inspectorate’s model policy. I am satisfied that slight variations in wording between the two do not dilute the thrust of the approach as to how the Local Plan is to be interpreted in order to achieve the positive and pro-active approach the Government urges local authorities to take in plan making and decision taking. I do not consider justified the fears expressed by some that this Policy will allow unfettered development to occur. The Local Plan must be read as a whole. All the Policies in the Plan are available for the Council to use effectively to avoid the adverse impacts of development. This approach will be made clear in paragraph 1.2 of the supporting text, but no Main Modifications are needed to ensure soundness.
10. **DM/2 – *High Quality Design*** aims to build upon and expand LP1 Policy COR2. It focuses on those attributes of high quality design that will be expected and that developers should observe in designing schemes. The Policy is supported appropriately by the Mid Devon Town and Village Character Assessment and by Conservation Area Appraisals. In accordance with the guidance in paragraph 59 of the NPPF, the Policy avoids unnecessary prescription or detail, and does not impose particular architectural styles. The Policy provides the basis for a Design Supplementary Planning Document (SPD), and the Council confirms that it intends to produce such guidance. I am satisfied that it can be used with COR2 to raise the quality of design and reinforce local distinctiveness. Minor changes will be made to reflect the Building for Life criteria, and to add biodiversity and the setting of heritage assets to the aspects of local character listed in criterion (c). I am satisfied that the Policy is justified, consistent and will be effective in delivering high quality design. No Main Modifications are therefore needed.
11. **DM/3 – *Sustainable Design*** complements DM/2 in that it elaborates the criteria that will be used to assess the sustainability of proposed developments to ensure that radical reductions in greenhouse gas emissions will be achieved. I agree with the Council that in seeking to meet the Code for Sustainable Homes standards, which are to be reviewed by the Government, it is also important that viability and the delivery of development is recognised in the Policy. The Main Modification needed therefore is to require compliance with the Code for Sustainable Homes Level 3 from 2013, rising to Level 5 by 2016. This requirement will not apply to all developments but only to major development, which in the case of residential is defined as 10 or more dwellings or a 0.5 hectare site area. For non residential development, the Policy will require the achievement of BREEAM “Very Good” standard by 2013 and “Excellent” by 2016 for proposals with a 1,000 sq m or more of floorspace or a one hectare site area. These changes are justified by the Council’s

viability evidence that was tested at the recent Examination into the Community Infrastructure Levy (CIL). **MM1** will achieve this consistency, and is recommended as a Main Modification to ensure soundness.

12. **DM/5 Renewable and Low Carbon Energy** is aimed at increasing the supply and use of renewable and low carbon energy sources. It is an important Policy that builds upon LP1 Policy COR5, and it will assist in the drive to meet national carbon reduction targets. The Council recognises the need for the Policy and supporting text to include a more comprehensive list of energy generators and to more explicitly recognise that any adverse impacts of renewable and low carbon energy infrastructure proposals will be considered against the undoubted benefits. Such a change would make the Policy more proactive and bring it into line with the guidance in paragraph 97 of the NPPF. It would also follow the approach advocated in the National Policy Statement for Renewable Energy Infrastructure. Accordingly I support and recommend that the Main Modification (**MM2**) be made to ensure the Plan’s soundness in this respect.
13. **DM/8 Parking** is a Policy aiming to achieve appropriate levels of parking for new development, and encourage the use of more sustainable modes of transport including requiring the provision of charging points for electric powered vehicles. In relation to parking standards, paragraph 174 of NPPF clearly states that local planning authorities should set out their policy on local standards in the Local Plan. The submitted Local Plan does not contain parking standards. However, further to discussion at the Hearings the Council confirmed that it would consult on new standards as part of consultation on an SPD on The Provision of Parking in New Development to be included in the Plan. That consultation period ended on 3 May and the Council subsequently confirmed the standards for inclusion in the Plan.
14. The proposed change to Policy DM/8 to state that the Council will seek minimum parking provision across the District according to land use, with provision for any justified variation, is a reasonable approach. The standards themselves are justified by Census data and accord with those in the adopted Local Plan. A sustainability appraisal of those standards indicates they would have an overall positive impact.
15. As for the second part of this Policy and the supporting text, the Council’s initiative in following the guidance in paragraph 35 of the NPPF and requiring for certain types of development charging points for electric vehicles is appropriate. However, the Council accepts that a change is needed to clarify that the Policy is to be applied to developments within the three main towns of Tiverton, Cullompton and Crediton and not elsewhere. In addition, changes are needed to clarify the management arrangements for the provision of such infrastructure. This will be an additional consideration for developers’ calculations of the viability of development.
16. I therefore recommend as a Main Modification that DM/8 and the supporting text be modified in accordance with **MM3**.

Residential Development

17. **DM/9 Cross Subsidy of Affordable Housing on Exception Sites** responds to the need to deliver affordable housing in rural areas. There is some

evidence that sites on the edge of villages would be released for development if some market housing were to be permitted alongside the provision of affordable housing. Paragraph 54 of the NPPF supports a policy that would facilitate this. There was discussion at the Hearings as to whether the Policy should imply that the proportion of market housing must be lower than the amount of affordable housing. I agree with the Council’s stance that the Policy reflects the spirit of the guidance in paragraph 54. To do otherwise and allow more market than affordable housing, even when the numbers of affordable homes delivered in any one scheme might be locally significant, would be unjustified and inconsistent with LP1 Policy COR12. As well as focusing new housing in towns that Policy “*seeks to significantly reduce housing development rates in the rural areas, where historic growth rates have been high*”. Therefore I consider that the Policy is justified and consistent.

18. As to how effective it will be in delivering affordable housing, this will need to be monitored carefully to ensure an appropriate balance between meeting local affordable housing needs in rural areas and the more strategic priority to ensure that the implementation of COR12 is not prejudiced. Accordingly, I conclude that this proactive Policy is sound and no Main Modification is needed.
19. **DM/10 Rural Workers Dwellings and DM/11 Occupancy Conditions** are intended to support rural enterprise and the rural economy, which is a significant feature of the District. The Policies helpfully elaborate the guidance in paragraph 55 of the NPPF. The Council proposes changes to DM/10 and the supporting text to, amongst other matters, allow a temporary mobile home to help a rural business to become established and viable. In the light of discussion at the Hearings and afterwards, the Council considers that the supporting text should give more definition of essential need so that the Policy is less focussed on the needs of traditional livestock farming and could be equally applied to smaller scale but more sustainable horticultural enterprises. I agree with this inclusion as it would bring the Policy closer to the guidance in paragraph 28 of the NPPF. It would support diversification of the local agricultural economy and assist in reducing dependency on food supplies from overseas. This would be the type of sustainable development consistent with other Policies to combat the effects of climate change.
20. As for DM/11, this deals with an aspect of DM/10 and it could usefully be amalgamated with the latter to produce one, clear Policy. Therefore the Plan should be changed by a Main Modification (**MM4**).
21. **DM/13 Replacement Dwellings** was discussed at the Hearings when the need to clarify the Policy and text became apparent. The Policy should make it clear that it applies to dwellings in rural areas and outside defined settlement limits. Otherwise it could be misconstrued as restricting replacements in any part of the District, which would be unreasonable and unjustified. The Council also proposes to clarify that the Policy will restrict the size of the replacement dwelling to that of the original to protect rural character and the supply of lower priced homes. I support these changes and therefore recommend a Main Modification (**MM5**) be made.
22. **DM/15 Design of Housing** is intended to complement DM/2 and DM/3, and LP1 Policy COR2, which promote local distinctiveness. Inevitably, there is

some duplication amongst these Policies. However the need to achieve high quality, locally distinctive designs in developments is a matter to which the Government attaches great importance, as stated in paragraphs 56 to 61 of the NPPF. I am satisfied that DM/15 provides sufficient guidance on the design criteria that should be addressed. There is further guidance on local distinctiveness in the Council’s character assessments. More guidance will be provided in a Supplementary Planning Document the Council intends to produce. In conclusion I am satisfied that this Policy requires no Main Modification to be sound.

23. **DM/16 Dwelling Sizes** responds to local concern that some new housing is inadequate in size. The floorspace standards included in the Policy are those that the Homes and Communities Agency use to assess the adequacy of proposals for affordable housing in relation to the allocation of public finance. The Council has supplied evidence that other Councils are adopting similar standards. The issue discussed at the Hearings was whether strict application of the Policy would be another burden on developers, prejudice the viability of housing schemes and thereby militate against delivery. I consider that this is a valid concern. The Policy needs to be applied with some degree of flexibility, having regard to the viability of schemes. This concern is recognised by the Council in other parts of the Plan, for example in the wording of DM/3. Therefore whilst I consider that there is sufficient justification for the Policy, it needs to be more flexibly worded so that housing delivery is not impeded. I support as a Main Modification **MM6**, which substitutes “should” for “must” in the first line of the Policy and states that the Council will have regard to the viability of proposals to ensure that application of the Policy does not impede the delivery of housing.

Retail, Business and Tourism

24. **DM/18 Development Outside Town Centres** is a Policy designed to promote the vitality of the four town centres in the District. It appropriately reflects the guidance in paragraphs 23 to 26 of the NPPF, including the sequential approach to site selection for main town centre uses. The Policy correctly requires an impact assessment of retail and leisure use proposals outside of the town centres where the gross floorspace exceeds 500 sq m. This locally set threshold is justified by the findings of the Mid Devon Retail Study. The Council proposes a minor change to the supporting text to clarify how proposals will be assessed, including any cumulative impact. I conclude that the Policy is sound without the need for any Main Modification.
25. **DM/21 Employment Development Outside Settlement Limits** is a Policy to support economic growth in the rural areas of the District, in line with the guidance in paragraph 28 of the NPPF. As drafted in the submission version of the Plan, it could lead to some confusion as to where, and to what scale of proposals, the Policy is intended to apply. The Council will clarify that the Policy will apply in rural areas and not to larger scale employment development that may be in direct conflict with the provisions of LP1 Policy COR12 and other strategic Policies. The need for any allocations of strategic employment land, and appropriate Policies that would support such proposals, is clearly a matter for a review of the whole Local Plan, and not something that should be considered or facilitated by this development management document. The Policy is sound without the need for any Main Modification.

26. **DM/22 Protection of Employment Land** is intended to reflect the guidance in paragraph 22 of the NPPF. It will apply to proposals to change the use of employment land but not, as the Council states, inhibit proposals for additional employment land and uses. These will be determined using other Policies in the Plan, such as DM/21, and by LP Policy COR12. However, the submitted version of the Policy has been rightly criticised for being negatively worded, only applying to allocated employment sites, and not supplying sufficient guidance on how the viability of alternative uses would be assessed. The Council points out that all employment land allocations will be reviewed during the preparation of the replacement Local Plan. However, it also recognises these criticisms and has endeavoured to make the Policy more pro-active. I agree with the Council and representors that the Policy should be more comprehensive than originally drafted. It should apply to existing employment land and buildings and to those sites with planning permission for employment purposes as well as to allocated employment sites.
27. In determining the acceptability of alternative use proposals I consider that the Policy should be expanded to provide more guidance. Firstly, by requiring alternative use proposals to have regard to the findings of employment land reviews in respect of the adequacy of supply of employment sites in various parts of the Districts. Secondly, by elaborating how viability considerations for competing uses will be dealt with, including evidence that there is no commercial interest in an employment site and that mixed uses have been considered. I see no need for any additional criteria, such as one suggested by the Council that would seek a satisfactory relationship between a proposed use and neighbouring uses. This matter can be adequately addressed by Policy DM/2. I therefore recommend as a Main Modification **MM7** the reworded Policy in Appendix 1.
28. **DM/25 Tourism and Leisure Development** is a Policy intended to support the rural economy in Mid Devon. It takes a positive approach to supporting sustainable rural tourism. The Policy correctly states the preference for new facilities to be sited within or adjacent to established settlements. An issue was discussed at the Hearings relating to the degree of justification required for a countryside location for proposals for tourism facilities. The Policy is consistent with the long standing general protection afforded to the countryside therefore the need for such locations should be justified. However, the Council recognises that evidence should be proportionate in relation to the potential impact of development. In addition, consistent with the guidance in paragraph 28 of the NPPF, proposals should assess the extent to which there is a need for a facility, having regard to evidence in the Council’s current Tourism Study and subsequent studies. The Council intends to make minor changes to the Policy and supporting text to indicate this evidence base. However, these changes are not so substantial as to amount to a Main Modification, and the Policy is sound as it stands.

Environment

29. **DM/28 Development Affecting Heritage Assets** is a Policy that aims to protect heritage assets and their settings. As worded in the submission version, the Policy largely reflects the thrust of the approach advocated in paragraphs 126 to 141 of the NPPF, and in LP1 Policy COR2. However, to be sound I consider that, in line with the guidance in paragraph 126 of the NPPF,

it should be more positively worded, emphasising the desirability of new development making a positive contribution to local character and encouraging enhancement of local distinctiveness. The Policy and supporting text could also be clearer by referring to the systematic approach to the assessment of proposals affecting setting as set down in guidance from English Heritage: “*The Setting of Heritage Assets*”. The Council proposes to refer in the supporting text to the information that is available to developers on the settings of the National Trust properties at Knighthayes Park and Gardens and at Killerton Park. This would be a helpful addition. Nevertheless, more guidance than that is needed, particularly in relation to the assessment of setting. I therefore recommend as a Main Modification (**MM8**) a rewording of the Policy and supporting text, in order for the Plan to be sound.

Retained Policies

30. **BA1 Bampton Stone Crushing Works** is a Policy carried over from the adopted Local Plan. It is somewhat unsatisfactory that it has not been reviewed but it is the Council’s intention to do so when work begins on the replacement Local Plan. In its current form the Policy is incapable of implementation as there is only 0.45 ha of land remaining to be developed. I understand the Council’s reluctance to release it from potential employment use pending a review of non strategic employment land allocations, which will also be part of the work to inform the new Local Plan. In the interim, I am satisfied that any proposals for mixed use or even wholly residential use should be determined using Policy DM/22, as modified. BA1 should therefore be modified to reflect this position until such time as any new site specific Policy is devised. Accordingly, I recommend a Main Modification (**MM9**) in order for the Plan to be sound.

Policies Maps

31. The Council proposes a number of very minor changes to the submitted Policies Maps, which I am content can be made without any soundness implications. The three criteria used by the Council in assessing the need for such changes were to correct obvious anomalies in settlement boundaries; to include sites within boundaries that have already been developed; and to respond to specific requests to correct anomalies. I agree with the Council that it would be inappropriate for this Local Plan, as a development management document, to otherwise allocate additional residential land outside a settlement boundary. This is a strategic matter that the replacement Local Plan will no doubt address.

Assessment of Legal Compliance

32. My Examination of the compliance of the Plan with the legal requirements is summarised in the table below. I conclude that the Plan meets them all.

LEGAL REQUIREMENTS	
Local Development Scheme (LDS)	The Local Plan is identified within the approved LDS 2012 which sets out an expected adoption date of August 2013. The Local Plan’s content and timing are compliant with the LDS.

Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in August 2012 and consultation has been compliant with the requirements therein, including the consultation on the post-submission proposed ‘Main Modification’ changes (MM)
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Appropriate Assessment (AA)	The Habitats Regulations AA Screening Report 2012 sets out why AA is not necessary.
National Policy	The Local Plan complies with National policy
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the SCS.
2004 Act (as amended) and 2012 Regulations.	The Local Plan complies with the Act and the Regulations.

Overall Conclusion and Recommendation

- 33. The Council has requested that I recommend Main Modifications to make the Plan sound and capable of adoption. I conclude that with the recommended Main Modifications set out in the Appendix, LP3 satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the NPPF.**

Douglas Machin

Inspector

This report is accompanied by the Appendix containing the Main Modifications