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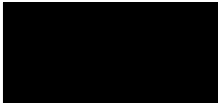
For and on behalf of  
**GLEESON STRATEGIC LAND**

**STATEMENT TO THE MDDC LOCAL PLAN REVIEW EXAMINATION**

**Supplementary Statement regarding Mid Devon's response to Harcourt Kerr's Update Note relating to the delivery of Gypsy and Traveller Pitches and associated lending issues**

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<b>CONTENTS</b>	<b>PAGE</b>
1.0 INTRODUCTION .....	4
2.0 CONSIDERATION OF THE SUPPLEMENTARY SUBMISSION FROM HARCOURT KERR AND THE MDDC RESPONSE TO IT .....	5
3.0 CONSIDERATION AGAINST THE REQUIREMENTS OF THE NATIONAL PLANNING POLICY FRAMEWORK 2012.....	9
4.0 CONCLUSIONS .....	15

## **1.0 INTRODUCTION**

- 1.1 This Supplementary Statement is prepared by DLP Planning Ltd on behalf of our client Gleeson Strategic Land. It is submitted regarding the MDDC response to Mr Kerr's Update Note (Mr Kerr of Harcourt Kerr, a firm of chartered surveyors providing experienced property development and market advice). The Update Note provides a record of a meeting held in March 2017 relating to the delivery of Gypsy and Traveller Pitches and lending issues at a site at Post Hill, Tiverton.
- 1.2 The points raised in previous submissions made on behalf of our client Gleeson Strategic Land are not rehearsed again here but inevitably reference to them is made as they are integral to the points made by Harcourt Kerr and ultimately delivery.
- 1.3 We confirm that we have seen the supplementary submission by Persimmon Homes in response to the Harcourt Kerr note and that we concur with the statements contained within it.

## 2.0 CONSIDERATION OF THE SUPPLEMENTARY SUBMISSION FROM HARCOURT KERR AND THE MDDC RESPONSE TO IT

### Mr Kerr's Update Note

2.1 It is useful to set out the points raised in Mr Kerr's Update Note. The key points are:

- i) The lending institution in question confirmed that they are not anti-Gypsy and Travellers;
- ii) The lending institution do not have a policy in place relation to Gypsy and Traveller pitches including where these are on new housing developments;
- iii) The ability / willingness of lending institutions is established through taking risk-based decisions;
- iv) Risk-based decisions are made on a number of factors. In relation to the presence of Gypsy and Traveller pitches these include *inter alia*, proximity and distance, outlook, prominence and visibility, access arrangements etc. and the likely response of potential purchasers to those factors.
- v) Decisions are also influenced by the recommendation of surveying firms: 13 out of 14 of the surveying firms attending the referenced meeting confirmed that they would not recommend the approval of applications for lending on sites with on-site pitches;
- vi) The attitude of other lenders towards lending which would impact on the level of exposure to any perceived risk. As the same circumstances apply to all lenders, it is a reasonable assumption that the same response would be forthcoming from others as well.

2.2 The conclusion of the Update Note was that where pitches are in situ it is 'highly unlikely' that lending would be forthcoming. To avoid the uncertainty of such situations, the lender's recommendation was that pitches should be off-site.

2.3 The above narrative does not give a categorical answer in terms of lending where pitches are concerned. However, it highlights the issues and risk-based approach to lending decisions and casts considerable uncertainty on whether lending for on-site pitches would

be forthcoming.

### **MDDC Response**

2.4 By way of response MDDC set out the following:

- i) All MDDC evidence is set out in the Hearing Statements already submitted;
- ii) Reference is made to the Equalities Act 2000;
- iii) The submitted Update Note is anecdotal, and objectors do not have any 'clear evidence' of a bank's past or current lending policy.

2.5 The MDDC response adds nothing by way of response to the additional submission made by Harcourt Kerr.

### **Consideration**

2.6 The NPPF (paragraph 158 required local planning authorities to ensure that Local Plans are based on adequate, up to date and relevant evidence about the characteristics of the area that their strategies are integrated and that they take full account of relevant market and economic signals.

2.7 Rather than ensuring that this evidence base is in place in relation to the delivery of Gypsy and Traveller pitches, MDDC state that the evidence submitted by the housebuilding industry is only anecdotal and cannot therefore be taken into account. This is incorrect particularly on the basis of the nature of the issue.

2.8 To summarise:

- The decisions of lending institutions are risk-based and risk-averse. In the same way that the availability of funding is linked to the prevailing economic situation, this means that every lending decision taken is different, based on a particular mix of circumstances on a site by site basis at the time rather than being based on any policy in place.
- The level of risk associated with lending, both in relation to funding the purchase of sites and construction of units and funding individuals purchasing the finished units, is influenced by the site/scheme characteristics and the likely purchaser response to those

(the appetite for individuals to purchase those units).

- Purchaser response will impact on the market which will in turn, impact on the rate of construction and overall quantum of delivery.
- The problem with MDDC seeking hard evidence on such a risk-based process is that 'hard' evidence will only become evident post-construction. But there can be no certainty prior to delivery in relation to how the market will respond to on-site pitches. Up until that point decisions in relation to both lending and construction finance are taken on the perceived risk which is a function of impact of the identified risk (the consequence) and probability (the likelihood of that impact happening).

Risk Assessment Matrix				
Impact of Risk (Consequence)	Major	Medium	High	Extreme
	Moderate	Medium	Medium	High
	Minor	Low	Medium	Medium
Seriousness of Risk = Probability x Impact		Unlikely (0-33%)	Moderately Likely (33%-66%)	Highly Likely (66%-100%)
Probability of Risk (Likelihood)				

Figure 1. Risk Matrix

2.9 As such the 'hard evidence' apparently required by MDDC is simply not available. But that is missing the point, as it is the perception of risk involved in lending to housebuilders (in successfully selling the completed units at a market price) and individual house purchasers (in the ability to successfully re-sell the property) which will dictate the level of risk and therefore whether lending / delivery of units affected, will be forthcoming. This is the evidence that has been submitted to the Examination – that the consequences of bringing a site forward with on-site provision would be major and the likelihood of that happening could be high/extreme – the degree of uncertainty surrounding the scenario of on-site pitch provision is / will adversely impact on deliverability (high risk).

2.10 The repeated failure of MDDC to listen to the industry ignores national policy which requires Local Plans to be realistic (NPPF paragraph 154), based on a relevant and proportionate evidence base (paragraph 158) and deliverable (paragraph 173). Consequently, the Local Plan Review cannot be considered to be:

**Justified** – MDDC has not been shown that the plan is the most appropriate strategy for the delivery of Gypsy and Traveller pitches when considered against reasonable alternatives, nor based on proportionate evidence; or

**Effective** – deliverable.

(paragraph 182)

2.11 The tests of soundness have not been established and Main Modifications are required in order to establish the most appropriate strategy for delivery of Gypsy and Traveller pitches.



### 3.0 CONSIDERATION AGAINST THE REQUIREMENTS OF THE NATIONAL PLANNING POLICY FRAMEWORK 2012

3.1 NPPF 2019 confirms that the policies in the NPPF 2012 will apply for the purpose of examination plans where these were submitted on or before 24<sup>th</sup> January 2019. Consequently, reference is made here to NPPF 2012. There are some key passages in the NPPF worth highlighting in relation to the issues raised by lending institutions and the housebuilding industry, and the MDDC response. These are set out below.

#### Core Planning Principles

3.2 The core planning principles (paragraph 17) set out that amongst other things, planning should:

- *'proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities.'* (my emphasis)

3.3 There is no question as to the requirement to identify and meet the objective needs of an area and no one that I am aware of is suggesting that the needs of the Gypsy and Traveller communities are not met, in the same way that market and affordable housing needs are. However, the strategy being pursued is not considered to be either justified or effective because MDDC has provided no robust evidence to demonstrate that these pitches will or can be delivered at all:

- *'The MDDC strategy for meeting the needs of the Gypsy and Traveller communities is essentially, that pitches will be accommodated within the strategic housing allocations: there are no stand-alone allocations or broad areas of search identified for pitch provision and the generic policy for the provision of pitches outside of defined settlement boundaries is so restrictive that it is prohibitive.'*

- *There is no robust trajectory reflecting how and when the required number of pitches will be delivered. Rather the delivery of pitches has been based on assumptions without recourse to the housebuilders in question or the details of the consents in place / emerging. This was discussed in detail at Hearing session 1 in relation to the Pedlerspool allocation at CRE5.'*

3.4 There is also a requirement within the above core planning principle, that plans should take account of the market signals. The market signals in this instance, indicate that there is a significant level of uncertainty within the house-building industry in relation to the lending situation and the impact on viability. This uncertainty is evidenced through the representations of the house building industry to the Local Plan examination. Where there is uncertainty it raises significant investment implications which in turn, have significant implications on deliverability; not only on the deliverability of G&T pitches but on market and affordable housing as well. The consequence of this will be that at best, developments are delayed whilst the lending and marketing situations are resolved or more likely at worst, the number of units required (pitches as well as housing) will simply not come forward at all because the investment risks are too high.

### **Delivery**

3.5 Despite significant industry concerns as to the strategic approach, Mid Devon has not provided any reassurances to dispel the uncertainties. As a consequence, these uncertainties remain and will impact on investment and delivery decisions

3.6 Paragraph 47 states:

*'47. To boost significantly the supply of housing, local planning authorities should:*

- *use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period';*

The requirement here is that local planning authorities should use their evidence base to ensure that needs are met. This includes, but not exclusively, the identification of key sites critical to delivery of the housing strategy. In addition to the identification of sites (through

allocation as well as application of the policy framework) there needs to be a level of certainty that these sites or opportunities will actually be delivered.

- *'identify and update annually a supply of specific deliverable<sup>11</sup> sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land; (my emphasis)*

*<sup>11</sup> To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long-term phasing plans.' (my emphasis)*

3.7 The level of concern being expressed by the housebuilding industry as to the uncertainties raised through the MDDC strategy to locate pitches on-site, demonstrates a level of uncertainty which cannot be considered to provide a realistic prospect of achieving planned supply. Neither does it ensure choice and competition as to where the Gypsy & Traveller communities actually wish to locate.

- *'identify a supply of specific, developable<sup>12</sup> sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;*

*<sup>12</sup> To be considered developable, sites should be in a suitable location for housing development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged.' (my emphasis)*

3.8 Without recourse to the relevant housebuilders, MDDC have provided no trajectory for the provision of G&T pitches but have made assumptions as to delivery which are not evidence based. Accordingly, there can be no 'realistic prospect' that the pitches will be delivered within the timeframe. There is therefore no robust evidence base as to delivery.

- *'for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target;' (my emphasis)*

MDDC has not provided a trajectory for the delivery of G&T pitches which has been tested against application requirements and build out decisions. Consequently, there can be no assurance that the MDDC assumptions will deliver the required pitches.

- 3.9 The requirement set out in paragraph 47 is that local planning authorities should use their evidence base to ensure that needs are met. This includes, but not exclusively, the identification of key sites critical to delivery of the housing strategy. In addition to the identification of sites (through allocation as well as application of the policy framework) there needs to be a level of certainty that these sites or opportunities will actually be delivered.

### **Plan-making**

- 3.10 Paragraph 150 sets out that Local Plans are the key to delivering sustainable development and should therefore be consistent with the principles and policies set out in the Framework.
- 3.11 Local Plans should seek opportunities to achieve each of the strands of sustainable development and net gains across all three (paragraph 152). This includes the social strand within which the provision of Gypsy and Traveller pitches is a constituent element. MDDC have not sought to seek opportunities but seemingly taken the easy option to require the provision of pitches on strategic sites (albeit this also includes Pedlerspool, policy CRE5 which is NOT a strategic site and therefore has less scope to successfully accommodate the required pitches). The approach as previously considered ignores the market evidence that on-site delivery will have perverse impact on the delivery of market and affordable housing generally and which will as a consequence have a negative impact on the five-year housing land supply. In order to deal with any potential lack of delivery, previous submissions to the Examination have requested additional flexibility be built into the relevant policies (allocations and development management policies).
- 3.12 Paragraph 153 sets out that supplementary planning documents should be used where they assist successful applications to be made. Previous representations have objected to the development management policy DM7 for provision through windfall sites because it

restrictive in nature. We have requested that this policy is redrafted and augmented through the identification of developable sites or broad locations for a further period of 10 years of predicted growth,

- 3.13 Local Plans should be aspirational but realistic (paragraph 154) and that they should set out opportunities for development and clear policies on what will or will not be permitted and where. Only policies that provide a clear indication of how a decision-maker should react to a development proposal should be included in the plan. Flexibility is required for potential off-site provision. Policy DM7 for the provision of Gypsy and Traveller pitches outside allocated sites is not positively prepared (para 16 2nd bullet) nor indeed does it offer a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency (para 17 1st bullet)
- 3.14 Paragraph 157 (3<sup>rd</sup> bullet) states that Local Plans should be based on co-operation with *inter alia*, private sector organisations. No such co-operation has been evident through the Local Plan-making process with MDDC repeatedly failing to listen to the views of either the lending or housebuilding organisations.
- 3.15 Paragraph 158 states that each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence and ensure that their strategies are integrated and take full account of relevant market and economic signals. As above, MDDC repeatedly failing to listen to or take into account, the views of either the lending or housebuilding organisations.
- 3.16 Paragraph 159 2<sup>nd</sup> bullet requires local planning authorities to have a clear understanding of housing needs and to prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing. Nowhere as far as I am aware, has the suitability of any site been considered for Gypsy and Traveller provision (the suitability of either strategic / large sites or any other sites) through any of the SHLAA reviews. Nor have discussions taken place with the landowners or those promoting sites been undertaken with a view to ascertaining these realistic assumptions.
- 3.17 Paragraph 173 highlights that the pursuit of sustainable development requires careful attention to viability and costs in plan making and decision-taking, and that plans should be deliverable. It goes on to state that to ensure viability, the costs of any requirements likely to

be applied to development should provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. The point here is not so much one of impact on viability of a scheme but the willingness of landowners, lending institutions and developers to bring forward sites. This willingness is affected by their perception of risk and where the risk is 'too' high, sites will not come forward or not come forward at the rate or quantum that is assumed by the local planning authority.

- 3.18 Paragraph 182 deals with the soundness test which requires plans to be positively prepared, justified, effective and consistent with national policy. For the reasons set out, we do not consider that the Plan fulfils these tests and cannot therefore be considered sound (see consideration within section 2).

## 4.0 CONCLUSIONS

4.1 The NPPF (paragraph 158 required local planning authorities to ensure that Local Plans are based on adequate, up to date and relevant evidence about the characteristics of the area that their strategies are integrated and that they take full account of relevant market and economic signals.

4.2 Rather than ensuring that this evidence base is in place in relation to the delivery of Gypsy and Traveller pitches, MDDC state that the evidence submitted by the housebuilding industry is only anecdotal and cannot therefore be taken into account. This misses the point in that decisions taken on lending, investment and construction are risk-based and this is based on perception and experience rather than 'hard evidence'.

4.3 MDDC do not have a robust evidence base to demonstrate that their strategy for the delivery of Gypsy and Traveller pitches is justified, will be effective or is consistent with national policy:

- There is no trajectory of deliverable or developable sites in place which makes it impossible to confirm that a five-year supply of gypsy and traveller pitches is in place.
- The basis on which the five-year supply has been calculated is not considered to be robust being based on incorrect assumptions as to the deliverability of pitches through the strategic sites (and CRE5).
- There is no evidence that sites coming forward for development through the SHLAA process have ever been considered for their suitability for delivery of Gypsy and Traveller pitches. No specific exercise has been carried out to identify Gypsy and Traveller sites for inclusion within the SHLAA.
- The reliance on windfalls coming forward to achieve the five-year supply is not robust.
- Evidence from lending institutions and the house-building industry has not been taken into account and landowners and housebuilders have not been involved in determining whether sites are suitable or have reasonable prospects of delivering Gypsy and Traveller pitches.
- The emerging policy framework for the provision of gypsy and traveller pitches is overly restrictive which will prohibit rather than facilitate the provision of pitches.

- There is no flexibility within the proposed policy framework to allow for a robust supply of pitches to come forward.

4.4 MDDC have repeatedly failed to listen to the industry and ignored national policy which requires Local Plans to be realistic (NPPF paragraph 154), based on a relevant and proportionate evidence base (paragraph 158) and deliverable (paragraph 173). Consequently, the Local Plan Review cannot be considered to be:

- **Justified** – MDDC has not been shown that the plan is the most appropriate strategy for the delivery of Gypsy and Traveller pitches when considered against reasonable alternatives, nor based on proportionate evidence; or
- **Effective** – deliverable.

(paragraph 182)

4.5 The tests of soundness have not been established and Main Modifications are required in order to establish the most appropriate strategy for delivery of Gypsy and Traveller pitches.

4.6 In order to make the Plan sound it is considered that the following Main Modifications are required:

- To remove the requirement for on-site pitch provision within allocated sites and instead, prepare a DPD with fresh evidence base. This is what the majority of neighbouring authorities have done and is likely to be a more effective way of achieving delivery of pitch provision without (unintended) negative consequences to the delivery of general and affordable housing. This could be brought forward in conjunction with the additional flexibility sought (see bullet points below) and which would enable the emerging Local Plan Review to proceed following the publication and consultation on Main Modifications which out the need to delay the Local Plan whilst standalone sites and / or broad areas are identified.

Alternatively, the following Main Modifications would be required:

- The allocation of stand-alone gypsy and traveller sites in consultation with the G&T community in terms of site characteristics, location and requirements, which could come forward either on their own or funded through developer contributions.



- The identification of a broad location which would guide and facilitate the delivery of gypsy and traveller sites, giving 'teeth' to the approach set out in Policy DM7 / S13 / S14.
- The re-introduction and allocation of a public site which can be brought forward in consultation with the gypsy and traveller community, with the potential for this to be funded through financial contributions from allocated sites.
- Policy DM7 should be redrafted to change it to a positive rather than a restrictive policy for the provision of new pitches in the countryside.
- Flexibility should be incorporated into the requirement for on-site Gypsy and Traveller pitches within the strategic site allocations and CRE5 Pedlerspool such that should it become evident that on-site provision is preventing delivery, consideration will be given either to alternative off-site provision or a financial contribution towards public pitch provision.

4.7 The above would provide more effective identification and delivery of sites/pitches reflecting the needs of the gypsy and traveller community and provide flexibility to overcome difficulties with the existing framework which currently prohibits and inhibits rather than facilitates delivery. Coincidentally it would avoid any unintended but perverse negative consequences on the delivery of market and affordable housing.

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