



Town and Country Planning Act 1990 (as amended)

PUBLIC INQUIRY

Appeal by: Tidcombe Holdings LLP

Site address: Tidcombe Hall, Tidcombe Lane, TIVERTON EX16 4EJ

Planning application reference: 24/00045/MOUT

PINS reference: APP/Y1138/W/24/3358001

STATEMENT OF CASE ON BEHALF OF MID DEVON DISTRICT COUNCIL

APPEAL AGAINST THE REFUSAL OF OUTLINE PLANNING PERMISSION FOR THE
ERECTION OF UP TO 100 DWELLINGS TO INCLUDE THE CONVERSION OF
TIDCOMBE HALL AND OUTBUILDINGS, PROVISION OF COMMUNITY GROWING AREA,
PUBLIC OPEN SPACE, ASSOCIATED INFRASTRUCTURE, ANCILLARY WORKS AND
ACCESS WITH ALL OTHER MATTERS RESERVED

1. INTRODUCTION

- 1.1. This Statement of Case has been prepared by Mid Devon District Council ('The Local Planning Authority' [LPA] in relation to a planning appeal by Tidcombe Holdings LLP ('The Appellant') in respect of land at Tidcombe Hall ('The Appeal Site').
- 1.2. The Appeal followed the submission of an application for outline planning permission (LPA reference 24/00045/MOUT) for;

Outline for the erection of up to 100 dwellings to include the conversion of Tidcombe Hall and outbuildings, provision of community growing area, public open space, associated infrastructure, ancillary works and access with all other matters reserved.

- 1.3. The application was validated on 8th January 2024 and advertised in accordance with the Town and Country Planning (Development Management Procedure)(England) Order 2015 and the Council's adopted Statement of Community Involvement.
- 1.4. The application was considered by the Council's Planning Committee on 31st July 2024. The officer recommendation was to refuse planning permission (see appeal documents- officer report). The Planning Committee agreed with the officer recommendation and voted to refuse the application.
- 1.5. The Decision Notice, dated 8th August 2024, comprises four Reasons for Refusal as follows:

1. The application site is located outside the settlement boundary of Tiverton and within the countryside. Policy S14 of the Mid Devon Local Plan 2013-2033 requires development outside settlement limits to preserve and where possible enhance the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural economy. The scale and nature of the proposed residential development would not be permitted in accordance with criteria a) of Policy S14. The proposal also conflicts with the remaining criteria of Policy S14. The site partly falls within the area of land identified as a contingency site by Policy TIV13. The Council considers it is able to demonstrate a five year housing land supply. The delivery of housing across the district is considered to be in excess of the action levels identified by Policy S4 such that the release of the contingency site and the additional site area outside the allocation for the proposed residential development is considered to conflict with the adopted development plan strategy. It is not considered that there are any material considerations that could be offered sufficient weight to overcome the adopted local plan position, the proposal is considered to conflict with Policies S1, S4, S10, S14 and TIV13 of the Mid Devon Local Plan 2013- 2033.

2. In the opinion of the Local Planning Authority, the proposed development would result in harm to the character, appearance, setting and significance of the Grand Western Canal Conservation Area and Tidcombe Farm (grade II listed). The proposal would also result in harm to the setting of Tidcombe Hall, a non-designated heritage asset. The less than substantial harm that has been identified is not considered to be outweighed by public benefits of the scheme. On this basis it is considered that the proposal conflicts with the statutory duty to have special regard to preserving or enhancing conservation areas and to the desirability of preserving listed buildings and their settings. The proposal does not accord with Policies S1, S9, DM1 and DM25 of the Mid Devon Local Plan 2013-2033 in

respect of heritage assets or government advice in the National Planning Policy Framework.

3. In the opinion of the local planning authority the proposed development, including the provision of the proposed access, is likely to result in harm to the character and appearance of the area. The scale and siting of the development is considered to be inappropriate in this landscape setting and would result in the loss of best and most versatile agricultural land. On this basis it is considered that the proposal would fail to preserve the character and appearance of the countryside or to preserve Mid Devon's cultural and historic environment contrary to the requirements of Policies S1, S9 and S14 of the Mid Devon Local Plan 2013-2033.

4. The provision of 100 dwellings on the site would result in requirements for 30% affordable housing, 5% self build dwellings, a financial contribution to education infrastructure, health care services and off-site public open space (where not provided on site). There is no legal agreement to secure the provision of these matters and therefore the development is considered to be contrary to Policies S3, S5, S8 and TIV15 of the Mid Devon Local Plan 2013- 2033 and the National Planning Policy Framework.

2. SITE AND SURROUNDING AREA

2.1. The site extends to approximately 7.09 hectares, located to the east of Tiverton. It comprises Tidcombe Hall with its associated outbuildings, access, parking and garden areas. The eastern part of the site comprises two agricultural fields, generally sloping downwards from south to north, forming part of the rising landscape of the wider rural agricultural. The site is currently accessed via an existing driveway access from Tidcombe Lane.

2.2. To the north, the site is bordered by the Grand Western Canal and tow path, the site sits partly within the Grand Western Canal Conservation Area. To the east the site adjoins agricultural land and the access lane and buildings of Tidcombe Farm. To the south there are a number of residential properties located along Warnicombe Lane. To the west the site is bordered by agricultural land and beyond this, Tidcombe Lane. The site sits beyond the clearly defined edge of the town, and by virtue of the topography is visible within the open rural landscape.

3. PLANNING POLICY

3.1. For the purposes of s38(6) of the 2004 Act, the Development Plan is the Mid Devon Local Plan 2013- 2033 which was adopted on 30th July 2020.

3.2. The Tiverton Neighbourhood Plan was made on 14th December 2022 and the Appeal Site falls within the neighbourhood plan area.

3.3. Other relevant Development Plan Documents include the following:

- Devon County Council Education Infrastructure Plan (revised) 2016- 2033

3.4. The Council will rely upon the following policies which are most important for determination of the application:

- Policy S1 - Sustainable development priorities

- Policy S2 – Amount and distribution of development
- Policy S3 - Meeting housing needs
- Policy S4 - Ensuring housing delivery
- Policy S5 - Public open space
- Policy S8 - Infrastructure
- Policy S9 - Environment
- Policy S10 - Tiverton
- Policy S14 - Countryside
- Policy TIV13 - Tidcombe Hall (CONTINGENCY SITE)
- Policy TIV15 - Tiverton Infrastructure
- Policy DM1 - High quality design
- Policy DM25 - Development affecting heritage assets

3.5. The Tiverton Neighbourhood Plan was 'made' on 14 December 2022. The following policies are relevant to this appeal:

- Policy T1: Location And Scale Of Development
- Policy T2: Meeting Local Housing Needs
- Policy T4: Character Of Development
- Policy T5: Design Of Development
- Policy T11: Locally Significant Views

3.6. Since determination of the application the Council has adopted an updated Grand Western Canal Conservation Area Appraisal and Management Plan on 18th December 2024. Whilst it is a material consideration, the Council's Conservation Officer has commented on the implications of this and confirms the following:

The GWC CAAMP was adopted on the 18th December, this sets out the special interest of the area in summary. The process of adoption included a review of the existing boundary and changes included an extension to include the limekilns at Canonsleigh and the rationalisation of the boundary in other areas. For the appeal site, no changes have occurred and Section 4.5 of the CAAMP identifies the contribution of the rural setting to the character of the area.

3.7. The revised National Planning Policy Framework (NPPF) was published on 12th December 2024 and for development management purposes took immediate effect. At the heart of the NPPF is a presumption in favour of sustainable development. The following paragraphs are considered to be most relevant to this appeal:

- Paragraph 2
- Paragraph 8
- Paragraph 11
- Footnote 7
- Footnote 8
- Paragraph 12

- Paragraph 13
- Paragraph 14
- Paragraph 33
- Paragraph 61
- Paragraph 78
- Paragraph 79
- Paragraph 110
- Paragraph 115
- Paragraph 124
- Paragraph 187
- Paragraph 194
- Paragraph 202
- Paragraph 212
- Paragraph 213
- Paragraph 215
- Paragraph 216
- Paragraph 219
- Paragraph 220
- Paragraph 231
- Paragraph 232
- Annex 2- Glossary

4. IMPACT TO LANDSCAPE CHARACTER AND VISUAL AMENITY OF THE AREA

- 4.1. The appeal documents include an illustrative layout plan (reference 230301 L 02 02 revised 12th July 2024). The application was also supported by a Landscape and Visual Impact Appraisal (LVIA) by Tapestry.
- 4.2. The Council obtained an independent review of the submitted LVIA which was conducted by Cornwall Environmental Consultants. The Council's expert witness in respect of landscape matters will be Jane Fowles of Novell Tullett.
- 4.3. The extent of the open landscape, within which the appeal site is set, lies on the south-eastern edge of Tiverton and is contained by the Grand Western Canal (GWC) to the north and by Tidcombe Lane to the west. Here, these two elements comprise the clearly defined edge to the development boundary of the town. West of Tidcombe Lane lies the Canal Hill residential area and to the south, towards the Warnicombe plantation and east towards Manley, the rising landscape is contiguous with wider rural agricultural land which is described within Landscape Character Type 3E Lowland Plains of the Devon landscape assessment.
- 4.4. Within the frame of the area in question lies Tidcombe Hall, a Non- Designated Heritage Asset that is situated in a designed and planted park including an extensive walled garden that runs east from the hall, overlooking the curving route of the GWC. The hall and its grounds lie within the Conservation Area (CA) of the GWC.

Little Tidcombe farmhouse (Grade II listed) is situated further into the open fields south and east of the hall. Accessed via a narrow, rough surfaced lane, the farmhouse has a relationship with the agricultural land around it, and its frontage addresses particularly those fields to the north and west of the building.

- 4.5. The canal-side fields are set at c. 95 AOD beyond which there is a gentle rise to approximately the southern edge of the Tidcombe Hall grounds at 100 AOD. The land south of this rises more steeply towards Warnicombe Lane to an elevation of 130 AOD. This indicates that the visibility of the upper quadrant of the land within the Appeal site is more pronounced when seen from the GWC CA. Whereas the western land has a closer relationship to the development edge at Tidcombe Lane and is also less likely to impact on the setting of Little Tidcombe Farmhouse.
- 4.6. While setting is not strictly defined, the landscape impact is tied up with the concept of setting, since landscape, or open space, generally comprises a large part of what constitutes a setting. Setting is described in the National Planning Policy Framework (NPPF) as:
- “the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”
- (NPPF Annex 2: Glossary)
- 4.7. It is pertinent that the settings of this group of heritage assets overlap and combine to add weight to the sensitivity and value of the landscape described. The alignment of the towpath on the northern edge of the canal provides a continual view of the hall, the agricultural landscape and the rising land beyond and the value of this outlook as part of the character of a well-used public route has been well documented in the GWC CAMMP¹ with View 2 being notable:
- “Adjacent to Tidcombe Bridge and Tidcombe Hall, views in an easterly direction across the rural landscape are appreciable. Tidcombe Hall is a prominent building set within the rural landscape and views are appreciable across the undeveloped setting of the Conservation Area.....”
- 4.8. In order to understand the value, quality and contribution that the landscape setting makes to the heritage assets of the immediate area of the development proposals (which includes Little Tidcombe Farmhouse, Tidcombe Bridge) along with the conservation area of the Grand Western Canal (GWC) there is recourse to the Grand Western Canal Conservation Area Assessment and Management Plan (CAAMP).
- 4.9. A conservation area (as defined by English Heritage) is “a place of special architectural and historic interest” - in other words the features that make it unique and distinctive are what are conserved by the designation.

¹ Grand Western Canal Conservation Area

4.10. With regard to the GWC the CAAMP describes the canal as:

“an historic route through the rural landscape, which provides opportunities for views across the landscape. Tidcombe Hall is a prominent building that has historically been appreciable from the canal and the views across the surrounding agricultural land provides a strong visual relationship.”

CAAMP page 25

and the non-designated asset of Tidcombe Hall as:

“Tidcombe Hall is a large house to the south of the Grand Western Canal, historic maps show it is on the site of St.Lawrence’s Chapel. It is a prominent building and makes an important contribution to the architectural and historic special interest of the Conservation Area. The building is highly distinctive within the rural landscape.

CAAMP page 28

and

“ Tidcombe Hall includes a large boundary wall of brick with supporting buttresses. This wall can be appreciated from along the towpath. Much of the boundary to the towpath is that of mature trees and hedgerows which reinforces the rural character of the Conservation Area”

CAAMP page 30

4.11. The appreciation of the settings in which the designated assets are situated is both from within the edge of Tiverton and from the countryside on the southern fringe of the town, looking north. The Appellants’ LVIA has documented some of these views but generally downplays those associated with the towpath where there are clear views to the site as well as those from Newtes Hill where there are panoramic views of the town within its wider setting. Views which clearly illustrate the termination of the town along the canal edge and its relationship with the agricultural land (the wider landscape setting) beyond. Views overlooked and unassessed by the Appellants include those from Warnicombe Lane, where properties accessed by the lane would be directly abutted by the proposed development, including Little Tidcombe Farmhouse.

4.12. Mid Devon District Council’s local plan (adopted 2020) shows that part of the Appeal site is covered by TIV13, a contingency site for 100 houses, rather than an allocation (as described in detail in the housing allocation section 6, below). This includes the fields due south of the hall, the hall and its walled garden and the field immediately adjacent to Little Tidcombe Farmhouse. The meadow north of the hall and walled garden and the field to its east that lies due south of the GWC edge are excluded.

4.13. In noting the site as contingency housing site, Mid Devon DC provided the following description within the supporting text of policy TIV13 to set out some of the constraints and sensitivities of the site, as described in more detail above:

3.48 This site is primarily greenfield and is identified as a contingency site to be released in accordance with Policy S4. Whilst acceptable in some

respects there are a number of constraints which make it less suitable than the sites allocated in the Local Plan, including landscape and highway constraints that need to be mitigated.

3.49 *The site adjoins the south-eastern limits of Tiverton. It extends from the grounds of Tidcombe Hall southwards including agricultural land as far as Newts Hill. Rising generally from north to south, it is more prominent at its south west corner. Although the site could accommodate more than 100 dwellings, a lower density would help protect the setting of the canal and Tidcombe Hall. The site is adjacent to residential development to the west, and low density reflecting this existing development would be appropriate.*

3.50 *The northern part of the site at Tidcombe Hall lies within the Grand Western Canal Conservation Area and faces the canal itself, which is also a Country Park. Tidcombe Hall is an unlisted building but is considered a heritage asset and the setting should be respected. Development to the south and east of the hall may be significant. Design and landscaping should protect Tidcombe Hall and the Grand Western Canal Conservation Area from the impact of the development including their settings. There is potential for archaeological remains that should be surveyed with appropriate mitigation provided if necessary.*

4.14. In considering how the setting of the heritage assets should be respected, and enhanced, the National Planning Policy Framework (NPPF) under paragraph 219 includes provision that:

“Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.”

NPPF 2024 para 219

4.15. Turning to the development proposal in relation to the above mentioned guidance and statutory obligations the salient question is ***does the proposed development enhance or better reveal the significance of the heritage assets, and does it preserve those elements of the setting that make a positive contribution to the asset?***

4.16. The outline design proposal for 100 houses on the Appeal site indicates that the majority would be sited in the field immediately west of Little Tidcombe farmhouse, with 9 dwellings proposed within the hall and 8 within its walled garden. The concentration of the development on this particular field has a pronounced and detrimental effect on the character of the landscape setting of the GWC CA as well as that of Little Tidcombe Farmhouse and, because of the elevation of the land, it would cause the development to be more visible in near and farther views of the site.

- 4.17. Because the extent of TIV13 (8.4Ha) is more than double the area of the Appeal Site which is shown to accommodate the main proportion of dwellings on the illustrative masterplan, using the whole of the contingency site could have resulted in better consideration of the setting of the heritage assets, simply because of the greater space available to accommodate landscape structure and distance between the most sensitive elements. As it is, the Appeal site condenses the whole potential allocation of 100 houses onto the most visible and sensitive part of the TIV13 contingency site and makes no use of land better related to urban edge to the west. This relatively dense arrangement means that all the dwellings are accessed via cul-de-sacs terminating on narrow bands of planting along the hedgerow boundaries. This linear landscape structure is insufficient to provide a suitable setting to Little Tidcombe Farmhouse especially, which currently faces out to an open series of fields and a prospect towards the hall, the conservation area and the canal. As a method of containing and framing the built development, particularly on the higher parts of the field, this approach only highlights the alignment of the housing and underscores the change from open rural land to serried suburban housing.
- 4.18. The rigidity of design approach harms the landscape setting of Tiverton and the setting and significance of designated heritage assets. The scheme will appear as an outlier, sprawling into the countryside rather than reading as a natural and properly contained extension of the existing settlement.
- 4.19. The form and scale of development also makes it impossible to develop out the remainder of TIV13 in accordance with the policy.
- 4.20. In short, this scheme is ill-conceived. Even allowing for the fact the application is in outline and the masterplan is for illustrative purposes only it will not be possible to build out the quantum of development that is sought without causing serious harm to landscape and heritage assets and the setting of the town. There is a better scheme, which involves development at a lower density, using the whole site so as to accommodate development in the least sensitive parts, avoiding the most sensitive parts and utilising them instead to create landscape structure that absorbs the scheme into the countryside.

5. IMPACT TO HERITAGE ASSETS

- 5.1. The second reason for refusal considered that the proposed development would result in harm to the significance of the following heritage assets Grade II listed Tidcombe Farmhouse, the Grand Western Canal Conservation Area (GWCCA) and Tidcombe Hall (non-designated heritage asset).
- 5.2. The significance of Tidcombe Farmhouse derives from its special architectural and historic interest, as an early rural farmhouse. Tidcombe Farmhouse is a fine example of a historic farmhouse and farmstead within Devon, within the rural landscape. In its current state, the appeal site proves part of an appropriate agrarian setting for the designated heritage asset, Tidcombe Farmhouse, which contributes to the ability of people to appreciate and understand its significance. The proposed development would impact the rural setting of Tidcombe Farmhouse and would consequently erode our appreciation of the functional and historic relationship between the appeal site and the asset.

- 5.3. The significance of Tidcombe Farmhouse was highlighted in the previous application (20/01174/MOUT). The Design Principles document was referred to as a document to guide subsequent reserved matters, this sets out a landscape buffer to the west of Tidcombe Farm. The Design and Access Statement also makes reference to consideration of the Heritage Assets;

2.9.7 Any development close to the listed Tidcombe Farmhouse must ensure that its setting is enhanced and not compromised, and the potential for maintaining 'breathing space' around the building will help mitigate any impact on the views from the property.

4.1.7 Proposals have been carefully shaped by the heritage advice and the identified constraints and opportunities; the development parcels have been defined by the setting of the house and Little Tidcombe Farm to ensure that sufficient space has been given to the area around listed building.

- 5.4. Conversely, the appeal scheme proposes the development of up to 100 dwellings, indicated to be immediately adjacent to the listed building.
- 5.5. The extent of the proposed development is considered to invariably result in harm and this harm is found in the principle of this form of development. The harm to the designated heritage asset would be less than substantial as referred to in the NPPF, and therefore Paragraph 215 would apply. If considered in the scale of lower, middle and upper, the harm is considered to lie in the middle section of this scale.
- 5.6. The significance of the Grand Western Canal Conservation Area derives from its special architectural and historic interest. Architecturally, the conservation area contains a rich variety of building types and ages illustrating the development of the area, whilst contributing aesthetically to the variety of building materials, styles, scale design and detailing. The Grand Western Canal is a nineteenth-century structure and the surviving historic building stock within the area contributes to an understanding of the development of the canal and the historic land use in response to social changes over time. The setting of the conservation area makes a positive contribution to its significance by reinforcing its prevailing character, allowing the asset to be appreciated within its context, and providing important views of the heritage asset from within and outside of the conservation area.
- 5.7. The proposed development would result in both direct and indirect impacts to the Grand Western Canal Conservation Area. The impacts are either impacts on the setting of the heritage asset or impacts that affect the experience of the asset and the ability to appreciate its significance. The proposed development would result in prominent built form of a distinctly urban character which would detract from and adversely impact the ability to appreciate and understand the significance of the conservation area and the character and appearance of the conservation area. The harm with regards to the NPPF would be less than substantial and if we consider there to be a scale or spectrum, the harm is considered to lie in the low section of this scale. While the harm is agreed to be classified as less than substantial, the NPPF makes it clear that 'great weight' should be given to the conservation of these assets.

5.8. The significance of Tidcombe Hall is predominantly derived from its archaeological and architectural interest as a large nineteenth-century house. The setting of the heritage asset is found to positively contribute to the experience and understanding of the asset's significance. The appeal site includes Tidcombe Hall, its grounds and the fields adjacent to the asset. The proposed development will compete with and detract from the sense of prominence and visual dominance of Tidcombe Hall, reducing the ability to appreciate the heritage asset within its historic context, and have a detrimental visual impact on the views of the heritage asset from within the conservation area. The proposed development would fail to preserve the significance of the heritage asset due to change in its setting. The extent and layout of the proposed development also represents significant missed opportunities to enhance the Grand Western Canal Conservation Area and Tidcombe Hall. The harm to the Non-Designated Heritage Asset would engage Paragraph 216 of the NPPF.

5.9. Policy TIV13 contemplated development of part of the appeal site and the adjacent field to the west, with a total amount of up to 100 dwellings. Therefore the TIV13 policy contemplates a lower density of development which would allow for the potential to create a landscape buffer around sensitive designated heritage assets, namely Tidcombe Farmhouse, the Grand Western Canal Conservation Area and the Non Designated Heritage Asset Tidcombe Hall. The appeal proposal introduces the entire quantum of development contemplated by TIV13 onto approximately half of the TIV13 site area, and moreover the most sensitive parts of the TIV13 site area adjoining designated and undesignated heritage assets. Therefore resulting in built development being located in areas of land best used for buffers to heritage assets. The result being that the appeal proposal would result in an intrusive urban form of development that is harmful to the setting and significance of the heritage assets.

5.10. To the extent the appeal site should be developed at all, it plainly cannot satisfactorily accommodate up to 100 houses without harm to the identified heritage assets. The density of development envisaged by the TIV13 policy would provide a better scheme enabling a lower density of development, utilising the whole TIV13 site area to accommodate development in the least sensitive parts, avoiding the most sensitive parts and utilising them instead to create a landscape buffer that protects the heritage assets and better assimilates the scheme into the landscape. Therefore the irreversible harm arising from the appeal proposals is not justified.

5.11. The Council will consider whether the public benefits of the scheme outweigh the identified harm to heritage assets in the planning balance section below.

6. PLANNING POLICY INCLUDING HOUSING LAND SUPPLY

6.1. It is accepted that the Appeal Site, whilst outside the defined development limits in the Local Plan, lies in sufficiently close proximity to Tiverton to not conflict with Policy S1 read in isolation. However, the development plan must be read as a whole. Policy S2 sets out the amount and distribution of development across the Plan Period, with development to be focused on Tiverton, Cullompton and Crediton , but with the largest proportion of residential development at Cullompton. The explanatory text states that central to Policy S2 is the role of Cullompton in meeting

the District's long-term development needs and that this is a departure from the previous Local Plan strategy, which focussed development at Tiverton. This is because, beyond the Tiverton East Urban Extension and a few smaller allocated sites in and around the Town, Tiverton is seen to have reached capacity due primarily to landscape constraints on the edge thereof, including the same sort of constraints from which the Appeal Site suffers.

- 6.2. Set within the overall context that development outside the three main settlements defined in Policies S10 to S13 will preserve and, where possible, enhance the character, appearance and biodiversity of the countryside, whilst promoting rural diversification, Policy S14 permits certain development categories in the countryside listed in clauses a) to f) inclusive thereof. The explanatory text states that development in the countryside is defined by land outside the settlement limits of the main towns, including Tiverton. As noted elsewhere, because it is not a positive allocation, TIV 13 was intentionally left outside those limits and the Council's landscape evidence will demonstrate that the Appeal Site has a strong and distinctive rural character and appearance and is appropriately classified and treated as countryside, therefore. Based on a plain reading of Policy S14, the overall objective of the Policy is to restrict development only to those categories defined in the aforementioned clauses a) to f) through the relevant development management policies. Since the Appeal Proposal is a major development of a clearly urban character, it does not fall into any of those categories it must, therefore, conflict with Policy S14.
- 6.3. The Appeal Site also falls within the Tiverton Neighbourhood Plan area and the provisions thereof attract the same primacy as the Local Plan. The Local Planning Authority will demonstrate that the Appeal Proposal conflicts materially with those provision, notably Policy T1 and T11.
- 6.4. Overall, therefore, there would be conflict with Policies S2 and S14 of the Local Plan, which, taken together, emphasize Cullompton as a location central to the role of delivering the Plan's strategy, direct new development to within settlement limits and restrict development within the countryside only to certain types in order to deliver sustainable development over the Plan period. Thus, the Council will demonstrate in evidence that the conflict with the development plan, read as a whole, amounts to very significant weight against the Appeal scheme.

The contingency site at Tidcombe Hall (Policy TIV13)

- 6.5. Firstly, it is important to state at the outset that the site subject to this appeal is not congruent with the area identified by Policy TIV13 in the Mid Devon Local Plan 2013 - 2033. Indeed, it is the Council's case that the appeal proposal is confined to the more prominent and sensitive areas of TIV13, adjoining designated and undesignated heritage assets and excludes the more developable areas included within the area covered by Policy TIV13 (See sections 4 and 5 of the SOC).
- 6.6. Policy TIV13 of the Mid Devon Local Plan 2013 -2033 identifies a site of 8.4 hectares at Tidcombe Hall as a contingency site for residential development to be released in accordance with Policy S4. Its status as a contingency site and not as an allocation within the Local Plan is due to the wide range of constraints and

sensitivities that were evident to decision makers at the time the Local Plan was prepared. The decision was therefore taken that the site should only come forward where the expected level of housing delivery falls significantly below the annual target set out in Policy S3 of the Local Plan, and only in accordance with the conditions set out in Policy S4.

6.7 These issues are detailed throughout the adopted Local Plan evidence base. For example, the Sustainability Appraisal underpinning the Local Plan² states: “*Tidcombe Hall is reasonably well contained in the landscape but has a potential localised impact on landscape character, the setting of Tidcombe Hall and the Grand Western Canal. The site would also result in the loss of grade 1 agricultural land and would require improvements to Tidcombe Lane.*”

6.8 Accordingly, the supporting text to the policy makes clear that whilst the site is ‘*acceptable in some respects there are a number of constraints which make it less suitable than the sites allocated in the Local Plan, including landscape and highway constraints that need to be mitigated.*’

6.9 It is also for these reasons that the site yield was lowered significantly from 151 – 252 dwellings as identified in the Strategic Housing Land Availability Assessment Report (SHLAA)³ to 100 dwellings⁴ as set out in the text of Policy TIV13, in recognition of the fact that the site requires a careful design and landscape solution that protects the setting of the Grand Western Canal, Tidcombe Hall and Conservation Areas.

6.10 Policy S4 stipulates that the local planning authority will monitor the delivery of housing against the annual target set out in Policy S3 and against the total completions which should have taken place since the start of the Local Plan period. The policy makes clear that where cumulative completions since 2013 fall below the expected completions total by over two years’ worth of the annual target (as expressed in the defined action level for that year), or a five year supply of deliverable sites cannot be demonstrated, the Council will work proactively to bring forward allocations or outstanding planning consents. If this is insufficient to deliver the necessary level of housing, an identified contingency site will be permitted to boost housing supply.

6.11 To date, cumulative housing completions within the plan period (2013 – 2033) amount to 3,949 homes⁵, against a target of 4,323 (the 2023/24 action level defined in Policy S4). This represents a shortfall of 374 homes, which is less than one years’ worth of completions. However, as set out in more detail below the Council accepts that it is no longer able to demonstrate a five year supply and therefore the requirement for intervention has been triggered.

² [Local Plan Sustainability Appraisal Proposed Submission Report 2015](#)

³ [SHLAA appraisals \(central\) 2013](#)

⁴ This decision is recorded within the [Mid Devon SHLAA Report 2013 \(final\)](#) and the minutes for a subsequent [shlaa panel meeting \(June 2014\).pdf](#)

⁵ Completions 1st April 2013 – 31st March 2018 are published in Table 6, page 18 of the adopted Mid Devon Local Plan [Mid Devon Local Plan Review 2013-2033](#)

Completions 1st April 2018 – 31st March 2020 are published in the Council’s [Housing Land Supply Update 2019-20 \(middevon.gov.uk\)](#)

Completions 1st April 2020 – 31st March 2024 are taken from the Council’s current Residential Land Monitor database.

Housing Land supply

6.12 The National Planning Policy Framework (NPPF) (paragraph 78) makes clear that 'Local Planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.

6.13 Following a review of the latest housing monitoring data and the Council's current housing trajectory, it is now the Council's case that it is no longer able to demonstrate a supply in excess of five years, albeit only marginally below. This however, is of little consequence given that in July 2025 the Mid Devon Local Plan will become five years old and the new standard method will form the basis of future housing land supply calculations instead of the current adopted housing requirement. This results in a change from 393 dwellings per annum to 572. It is accepted that this will have the effect of significantly increasing the level of shortfall.

6.14 The Council accepts that the lack of a five year supply is a material consideration in the determination of this appeal. However, to be clear, the tilted balance is not applicable in this case. The NPPF (paragraph 11d) states that:

"where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i) The application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or*
- ii) Any adverse impacts of doing so would be significant and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination."*

6.15 The application of limb i) of paragraph 11d) is qualified by Footnote 7 of the Framework which makes clear that:

"The policies referred to are those in this Framework (rather than those in development plans) relating to habitats sites (and those sites listed in paragraph 194) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 75); and areas at risk of flooding or coastal change."

6.16 The operation of paragraph 11(d) of the Framework was considered in detail by Mr Justice Holgate in *Monkhill v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 1993 (Admin). Section 39 (6) of the judgement stipulates that:

“Because paragraph 11(d) states that planning permission should be granted unless the requirements of either alternative is met, it follows that if either limb (i) or limb (ii) is satisfied, the presumption in favour of sustainable development ceases to apply. The application of each limb is essentially a matter of planning judgement for the decision maker”.

And further to this:

“If limb (i) does apply, the decision taker must consider whether the applications of the relevant “Footnote 6” [now Footnote 7] policy (or policies) provides a clear reason to refuse planning permission for the development”

6.17 It is the Council’s case that limb i) of paragraph 11 d) is satisfied and the presumption in favour of sustainable development ceases to apply. This is since the application of ‘Footnote 7’ policies in respect of heritage assets constitute a clear reason to refuse planning permission for the development as set out in Reason for Refusal 2 and the conclusions reached by the Council that the proposed development would result in harm to the character, appearance, setting and significance of designated and non-designated heritage assets.

6.18 In addition, the 2023 Housing Delivery Test Measurement was published on 12 December 2024 which states that Mid Devon’s housing delivery over the past three years was 86% of the housing requirement⁶. In accordance with paragraph 79 of the Framework, this triggers the requirement to prepare an action plan to assess the causes of under-delivery and identify actions to increase delivery in future years.

6.19 The Council is currently progressing an action plan and, for transparency, intends to share this with the Appellant at the earliest possible opportunity. It is envisaged that a draft action plan will be considered by the Council’s Cabinet in early April. The action plan will consider a range of measures that may be taken by the Council. Some of the key short term measures will include:

- Revisiting the Housing Economic Land Availability Assessment to identify sites potentially suitable and available for housing development that could increase delivery rates.
- Undertake a new call for sites (this measure is already taking place)
- Encourage the development of small and medium-sized sites.
- Review site allocation policies and identify any barriers to delivery
- Consider the release of the contingency site at TIV13 Tidcombe Hall.

⁶ However, there is a minor discrepancy between the figures published for 2022-23 in the Housing Delivery Test 2023 measurement (which records 253 completions) and the related Live Tables on Housing Supply (which records 249 completions). The Council confirms that 249 is the correct figure for 2022-23 and has therefore recalculated the HDT results on this basis – giving a figure of 85% rather than the currently published 86% result. The Council will write to MHCLG to request this is updated.

6.20 In preparing the action plan, the Council will have particular regards to all relevant matters pertaining to deliverability and in taking actions that will have the effect of helping to boost delivery in the short term to mitigate the five year housing land supply shortfall.

6.21 However, at the time of writing this Statement of Case, the Council is not in a position to indicate whether the action plan will result in the formal release of Policy TIV13 'Tidcombe Hall'. The Council does not therefore concede that TIV13 should come forward and goes no further than conceding it must be considered for release as part of the Council's Action Plan.

6.22 Nevertheless, even if Policy TIV13 is released, it is the Council's case that this is the wrong scheme that prejudices the delivery of a sustainable development of 100 homes across the whole site.

7 PLANNING OBLIGATIONS (REASON FOR REFUSAL 4)

7.1 Mitigation in the form of financial contributions and obligations are required to mitigate the impacts of the proposed development.

7.2 The Appellants have indicated that they intend to submit a S106 agreement as part of the appeal process in order to secure the required contributions and planning obligations and address reason for refusal number 4.

7.3 It is the Council's position that an appropriate legal agreement to secure the necessary contributions could overcome this reason for refusal. However at this stage the LPA has not received a draft agreement for consideration and reason for refusal is therefore still pursued at this stage.

8 PLANNING BALANCE

8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that 'where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise'.

8.2 The site subject to this appeal is not congruent with the area identified by Policy TIV13 in the Mid Devon Local Plan 2013 - 2033. Furthermore the Council does not concede that the TIV13 contingency should be released. Nevertheless, even if Policy TIV13 is released, it is the Council's case that this is the wrong scheme that prejudices the delivery of a sustainable development of 100 homes across the whole site.

8.3 The appeal proposal is confined to the more prominent and sensitive areas of TIV13, adjoining designated and undesignated heritage assets and excludes the more developable areas included within the area covered by Policy TIV13. The Council has identified harms attributable to the appeal scheme arising to landscape

and heritage assets. The proposal is considered to conflict with policies S1, S2, S3, S4, S5, S8, S9, S14, TIV13, TIV15, DM1 and DM25 of the Mid Devon Local Plan 2013 -2033, policies T1, T4, T5, T11 of the Tiverton Neighbourhood Plan 2022 and relevant policies of the NPPF.

8.4 The appellant's statement of case summarises the benefits they consider to be attributable to the appeal scheme, including contribution to housing delivery, betterments by removing transport from Tidcombe Bridge, economic benefits in the form of providing jobs in construction, support to existing shops and services and will secure the refurbishment of Tidcombe Hall.

8.5 The Council considers that the less than substantial harm identified to heritage assets is not outweighed by the public benefits of the proposal. Therefore, notwithstanding that the Council is unable to demonstrate a 5YHLS, the Council will make the case that the impacts to heritage assets provides a strong reason for refusing the development as set out at 11d)(i) and the presumption in favour of sustainable development ceases to apply.

8.6 Considered as a whole, the evidence will demonstrate that the proposal would conflict with the Development plan and that there are no other material considerations that would outweigh the conflict.

8 CONCLUSION

9.1 The appeal scheme would result in serious harm to the landscape and the setting and significance of heritage assets. The consequence of this poorly conceived scheme also prejudices the sustainable delivery of TIV13 even if it was released and demonstrated to be deliverable. The appeal proposal is considered to be unsustainable development and therefore the Council maintains that the appeal should be dismissed.

10 LIST OF DOCUMENTS

10.1 Please see below list of documents the Council intends to refer to in its case.

- Grand Western Canal Conservation Area Appraisal and Management Plan 2024
- Assessment of submitted landscape proposals by Novell Tullett (January 2025)
- Mid Devon Landscape Character Assessment October 2011
- Mid Devon LCA Review Final Report (October 2024)
- Guidelines for Landscape and Visual Impact Assessment (3rd edition) LI and IEMA
- The setting of Knightshayes Park and Garden A historic landscape assessment LUC 2007

- Appeal decision reference APP/Y1138/W/22/3313401 (Hartnolls Farm)
- Land Registry Title Number and plan DN668559 and copy of conveyance
- 180319 L 02 04 A Design Principles Plan (May 2021) - application reference 20/01174
- Design and Access Statement 180305 R 02 01 (July 2020) by Clifton Emery Design – application reference 20/01174
- Judgement CO/539/2019 - Monkhill v Secretary of State for Housing, Communities and Local Government [2019] EWHC 1993 (Admin).#
- Local Plan Sustainability Appraisal Proposed Submission Report 2015
- Strategic Housing Land Availability Assessment (SHLAA) site appraisals (central) 2013
- Mid Devon SHLAA Report 2013 (final)
- SHLAA Panel Meeting minutes (June_2014)
- Housing Land Supply Update 2019-20 (middevon.gov.uk)
- Mid Devon Local Development Framework Allocations and Infrastructure Development Plan Document)
- Tithe maps and apportionment
- Historic Environment Good Practice Advice Note 2: Decision-Taking in the Historic Environment 2015;
- Historic England Historic Environment Good Practice Advice Note 3: The Setting of Heritage Assets (Second Edition, 2017)
- Historic England Statements of Heritage Significance: Analysing Significance in Heritage Assets (Advice Note 12).
- East Northamptonshire DC v SSCLG [2014] EWCA Civ 137 (Barnwell Manor wind turbine case)
- R (Forge Field Society) v Sevenoaks DC [2014] EWHC 1895 (Admin) (Penshurst Place affordable housing case)
- South Lakeland District Council v Secretary of State for the Environment and another [1992] 1 ALL ER 573
- (2019) EWHC 2899 (Admin), 2019 WL 05864885, James Hall and Company Limited v City of Bradford Metropolitan District Council v Co-Operative Group Limited, Dalehead Properties Limited
- R (on the application of Jonathan Codd) v. Secretary of State for Communities and Local Government [2018] EWCA Civ 2390
- London Borough of Camden v. Secretary of State for Communities and Local Government [2014] EWHC 3058 (Admin)