

12<sup>th</sup> July 2024

Our Ref: 772/A3/OA/DOC

0117 930 0413

Mrs Helen Govier  
Mid Devon District Council  
Phoenix house,  
Tiverton,  
EX16 6PP

Dear Ms Govier,

**Response to Consultee comments received in connection with application referenced 24/00045/MOUT - Tidcombe Hall Tidcombe Lane Tiverton Devon EX16 4EJ**

On behalf of our applicant, Land Value Alliances, we provide below responses to the consultee comments received in respect of the above application.

This letter should be read in conjunction with the following enclosed documents;

- Revised Illustrative Master Plan, prepared by Clifton Emery, ref 230301 L 02 02 J;
- Viewpoint 12 with red line defining the proposals added, prepared by Tapestry Studio;
- Arboricultural Impact Assessment Report, prepared by Aspect, ref 05141. AIA. 4.7.2024; and
- Tree Removal and Retention Plans, prepared by Aspect, ref 05141. TRRP Rev C. 4.7.2024 (sheets 1-3)

**Forward Planning & Housing Enabling**

The comments made by the Forward Planning & Housing Enabling Officer identify that the council considers that it can demonstrate a 5-year Housing Land Supply (5YHLS).

The Officer also references paragraph 76 of the revised NPPF (as amended in December 2023), which sets out that if an authority has an adopted Local Plan that is less than 5 years old, and this plan demonstrated a supply of specific, deliverable sites at the time of its examination, then they do not need to demonstrate a 5YHLS within that five year timeframe in order to avoid the application of the 'tilted balance' which is set out in paragraph 11 of the Framework. Effectively saying that in respect to the consideration of this application, the five-year housing land supply position is irrelevant.

We do not agree with this position. This is because notwithstanding the above, the Council should agree that the starting point for decision making is the Local Plan - with Section 38(6) of the Planning and Compulsory Purchase Act 2004 requiring proposals to be determined in accordance with the development plan unless material considerations indicate otherwise. In this regard the main policies relevant to the consideration of the principle of development are S4 and TIV13 of the Local Plan.

Policy S4 sets out that if the Council cannot demonstrate a 5YHLS of deliverable sites, then a contingency site may be released. At para 2.33 it sets out the following;

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*“However, should the Council at any time be unable to demonstrate a five-year housing supply, it will prioritise actions to overcome constraints to the development of permitted or allocated sites. If that is insufficient or will not deal with the issue quickly enough, the Council will permit the development of a contingency site in order to boost short term housing supply. The Council will monitor the level of housing supply through its Authority’s Monitoring Report and instigate an early review of the Local Plan to identify further sites if necessary.”*

The release of a contingency site is the Councils preferred option, but the Local Plan does also set out that other sites will be considered on their merits if a five-year land supply deficit were to be evidenced. The Local Plan only allocates one contingency site across the district, the application site, under TIV13. The application site is therefore the Council’s preferred option for development where a 5YHLS cannot be demonstrated and additional land released to meet this deficit.

In accordance with Section 38 of the Planning Act these development plan policies are the key determining factor relevant to this planning application, irrespective of the recent changes made to the Framework which represent material considerations only. Therefore, it is clearly wrong to set out that the consideration of 5YHLS is irrelevant.

As set out in the accompanying report by Intelligent Land, we set out that the Local Planning Authority cannot demonstrate a 5YHLS with the supply totalling 4.2 years, amounting to an overall shortfall of 401 dwellings. The report also sets out that since the adoption of the Local Plan, the LPA has always had a shortfall in the delivery of housing, with the cumulative shortfall totalling 409 dwellings, when excluding Gypsy and Traveller sites. Table 1 below demonstrated the cumulative shortfall from 2013.

Development Plan	Monitoring period			Plan Requirement	Completions	Annual Surplus/ Shortfall	Cumulative Surplus/ Shortfall
Mid-Devon Local Plan	2013	to	2014	393	320	-73	-73
	2014	to	2015	393	316	-77	-150
	2015	to	2016	393	288	-105	-255
	2016	to	2017	393	304	-89	-344
	2017	to	2018	393	502	109	-235
	2018	to	2019	393	432	39	-196
	2019	to	2020	393	425	32	-164
	2020	to	2021	393	335	-58	-222
	2021	to	2022	393	238	-155	-377
	Total			3,537	3,160	-377	-377
	minus the inclusion of Gypsy and Traveller pitches				3,128	-409	-409

**Table 1. Housing Delivery against Housing Requirement from the Base Date of the Adopted Local Plan, excluding Gypsy and Traveller site completions**

As such it is our opinion that Policy S4 is engaged and the Council should be looking to release a contingency site. As site TIV13 is their preferred method of boosting supply, the application site should clearly be considered to be acceptable in the context of a 5YHLS deficit.

The whole reason for these plan policies being introduced was to address the Local Plan Inspector's concerns that sufficient land supply was to be delivered over the plan period, these policies provided the safeguard against this, thereby allowing the plan to be found sound.

While the council can present a case that they do have a five-year land supply, they should not be disregarding the policy test in respect of 5yr HLS as a matter of principle, because that would be an error in planning law, by disregarding the requirements of section 38 of the Act that directs that the first consideration should be the application of Policies S4 and TIV13.

### Historic England

Historic England have commented on the application in respect of its impact on the Significance of Knightshayes Court and Gardens. They set out that as no photo montages have been provided it is difficult to confirm the likely level of visibility from view 12 which was assessed in the LVIA. They set out that due to the intervening distances Tidcombe Hall forms a small feature in the views from Knightshayes and that subject to the majority of trees and hedgerows being retained, and no development being provided within the field south of Tidcombe Hall, then the housing is unlikely to be significantly visible from the Court. The Conservation Officer also sets out that "due to distance and intervening development I do not consider there to be an adverse impact to the significance of Knightshayes Court and how it is understood".

Nevertheless, we have prepared and submitted alongside this letter, a Type 1 Visualisation from Viewpoint 12 of the LVIA. This demonstrates the extent of the application site, that Tidcombe Hall will remain an identifiable feature within the landscape and the impact of the development is limited, if not negligible. Historic England's advice, along with the visualisation confirms that the eastern field, outside the application boundary, is the more visible from Knightshayes Court and Gardens and the development of the application site itself will not have a significant adverse impact on Knightshayes Court.

### Conservation

Comments made by the MDDC Conservation Officer with regard to the impact on the Grade II Listed Tidcombe Farmhouse, and the non-designated heritage asset Tidcombe Hall, are broadly in agreement with the conclusions made in the Historic Environment Assessment submitted with the application. However, it is highlighted that the comments are made in relation to setting as a whole, whereas our assessment identifies that change will only be to one aspect of setting (part of the setting of the buildings relating to the surrounding agricultural land), with other aspects of setting being preserved including large amounts of open space to the north and the remaining areas of surrounding agricultural land. The proposed masterplan seeks to minimise impact on the surrounding landscapes connected to these buildings, and that the design process at reserved matter stage offers an opportunity to further mitigate these changes through the provision of detailed planting.

However, the comments made by the Conservation Officer with regard to the Grand Western Canal Conservation Area differ from the conclusions reached in our assessment. We agree that the proposed

development will change a small area of the Conservation Area and will also result in change to an element of its setting. However, we have concluded that this will result in no change to the significance of the Conservation Area overall.

Although the land surrounding the Conservation Area contributes to the experience within the Conservation Area, this wider setting does not make any contribution to the significance of the canal itself, which is primarily based on its historic interest as a functional element of an early 19th-century industrial transportation system, which carved through the landscape between associated sites and had very limited functional or other connection with its wider rural agricultural surroundings.

It has not been determined why the Conservation Area includes the land around Tidcombe Hall, where elsewhere it is restricted to the canal, towpath and associated ancillary sites and structures. Regardless, the scheme preserves these green elements with a buffer between the development and the canal, and all built development within the Conservation Area is limited to areas within the existing built environment surrounding Tidcombe Hall itself with very little physical change being proposed. Furthermore, the introduction of further modern housing within the setting of the Conservation Area is not an alien feature and is consistent with the existing modern developments alongside the Conservation Area in the wider Tiverton area, to the north and west of the application site, and the current proposals present a more sympathetic arrangement than these previous developments.

The proposed access will make a minor alteration to the historic entrance to Tidcombe Hall. This has necessitated the removal of trees, but these are on the periphery of the Conservation Area and have been agreed to be removed due to their damage to the wall under a Conservation Area Notice, ref 24/00732/CAT. The removal of these trees and damage caused to the wall changes the experience of the conservation area when viewed from the west in any event and lessens the impact of the proposed access works. The proposals seek to enhance the access and the artists impression demonstrates how this could be delivered in a complimentary way to the conservation area.

The existing entrance to Tidcombe Hall makes no discernible contribution to the significance of the Grand Western Canal in its current state, and as noted above it is unclear why this area is included in the Grand Western Canal Conservation Area. However, it is agreed that a negligible to minor adverse change is anticipated to the significance of Tidcombe Hall via change to its setting, in part as a result of the proposed new access. Opportunities to minimise harm can be explored via material choices, boundary treatments and new planting at the reserved matters stage.

There are also heritage benefits arising from the development; the restoration and long-term conservation of Tidcombe Hall, previously subject to major vandalism, and the provision of public open space that will allow users an appreciation of both the conservation area and Tidcombe Hall. These are both moderate benefits that should be considered in favour of the proposed development.

As such we accept that whilst there is some harm arising from the proposals in regards to heritage assets, we consider the identified harm to be less than that claimed by the Council being less than substantial and negligible to minor at the lowest end of the spectrum of effects. This harm is required to be balanced against the public benefits of the development for which we have done so in para 9.13 of the Planning Statement. As set out even if the harm is identified to be at the scale pertained by the Council, this would be outweighed by the public benefits of the development.

Finally, it needs to be noted that the application site is allocated for residential development and the associated infrastructure such as access under policy TIV13 and found to be acceptable when the Local Plan was adopted. Therefore, impacts on these historic features will have been considered as part of that process and found to be acceptable. The consideration of the planning application should not seek to rewrite these previous agreements reached about the site being an acceptable location for development when allocation TIV13 was formulated.

### Arboriculture

Comments were raised by the MDDC Arboricultural Officer in regard to the loss of trees around the access point proposed and specifically around the impact of the proposal on trees 171 (Lucombe Oak) and 165 (Lime). This focused on the potential loss of the trees, the connected impact on the visual amenity of the area and the impact of the proposed access road on the root protection areas of trees 165 and 171.

Since submitting the application, the roots of two beech trees adjacent to the access have caused damage to, and a partial collapse, of the wall that forms then boundary with the adopted highway. The Council's Highways Department notified the applicant that this posed a hazard to the operation of the Highways and sought rectification of the situation.

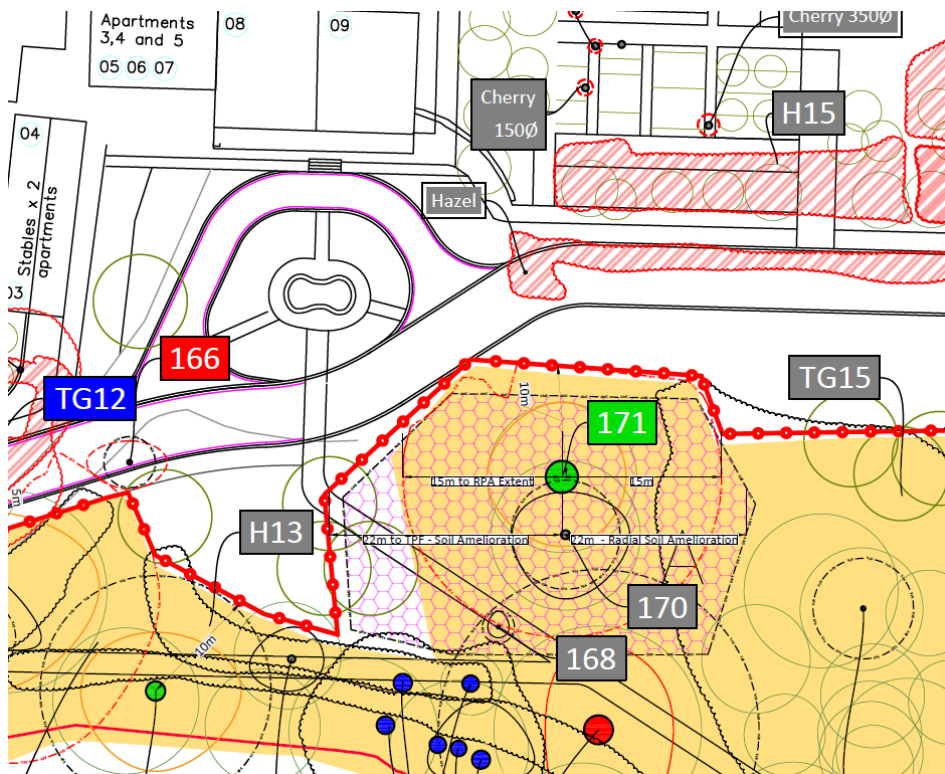
A site visit was undertaken on 19th March 2024 with the MDDC Arboricultural Officer to assess the cause of the damage, and also examined additional trees on site which were confirmed to be diseased. Three lime trees were found to have fungal fruiting bodies around their roots, with one already fallen as a result. The condition of these trees has deteriorated over time and presented a risk if left unmanaged. Further the beech trees presented a structural risk to the wall. It was therefore agreed that the trees should be removed following a conservation area notice approved 20<sup>th</sup> June 2024.

Turning to trees 165 and 171, during the course of the site visit on the 19<sup>th</sup> it was agreed that due to the level difference between the proposed access and tree 165, along with the separating wall, the new access would not have an unacceptable effect on the health and long-term retention of that tree.

For tree 171, the access road passed through the root protection zone (RPZ) for the tree. The MDDC Arboricultural Officer raised concerns over this and asked that trial pits be dug to assess the extent of root spread. These works were carried out on 24<sup>th</sup> May 2024.

The trial pits revealed historic impacts from when the existing tarmac was installed – roots have been previously severed to the south of a wooden kick board present along the edge of the existing drive. Minor fibrous roots were also found along the edge of the existing tarmac which are categorised as insignificant under BS5837 (less than 25mm in diameter).

Following from the trial pits, the RPZ of tree 171 was updated to reflect that found on site. Whilst this demonstrated an improvement from the impact of the access road, we have proposed to amend the road such that it falls entirely outside the RPZ as shown below. The illustrative masterplan has also been updated to reflect this change and is enclosed



A revised Arboricultural Impact Assessment, along with updated Tree Removal and Retention Plans, are submitted to support the revisions made and summarised in this letter. As such we consider the comments raised by the MDDC Arboricultural Officer have been positively addressed in full following verbal agreement reached at the site meeting.

#### Lead Local Flood Authority (LLFA)

The LLFA commented on the information submitted with the application, requiring that the greenfield run-off rate and long-term storage rate be recalculated. They also required justification for only utilising one watercourse to discharge surface water into.

Our flood and drainage consultants, AWP, discussed the comments with the LLFA via email and a follow-on phone call, the outcome of which are summarised below.

The greenfield runoff rates should be recalculated. The long-term storage rate should also be recalculated.

AWP and the LLFA discussed the basis of calculation, and the LLFA needed to review following the call. There has been no further action required and we understand this matter is now addressed.

The applicant should justify the proposals for discharging into one watercourse only. The applicant has acknowledged the watercourse in the northwest of the site, and has also confirmed that this watercourse is at least partly fed by an existing pond. It looks like some of the existing fields drain into this watercourse.

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The reasons for wanting to discharge to the main site drainage system were discussed, as well as the reason for not adjusting the layout. It was agreed that maintaining the current discharge to the eastern culvert and adjusting attenuation volumes in later detailed design would be appropriate, subject to agreement from the Country Park Manager (CPM). Both the LLFA and AWP separately raised this with the CPM, Mark Baker, and AWP have obtained an in principle agreement to the proposed discharge arrangement above.

Following this, the LLFA have lifted their objection as a result of the in principle agreement from CPM without any changes to the FRA being required. We understand there may be specific design requirements that will inform detailed drainage designs in due course, this can be secured via condition.

If possible, the western watercourse should be opened up.

Opportunities to open up the watercourse will be explored during any further detailed drainage design, again to be secured via condition. This approach has been agreed with the LLFA.

## RSPB

The RSPB have commented on the application in relation to the Ecological Impact Assessment submitted and the provision of bird boxes proposed through the site. Their comments request a one-to-one ratio of houses and bird boxes, mentioning that some houses may have more than one box. The total would be 100 bird boxes, and we can confirm the applicant is willing to deliver these, this can also be secured by condition.

## Conclusions

This response seeks to address the consultee comments received during the course of the application. Where consultee comments have been received but raise no objection or clarifications these have not been addressed.

The response sets out clearly why the principle of the development should be accepted in accordance with the development plan and addresses the concerns raised by the Conservation Officer, Arboricultural Officer, LLFA and RSPB.

We therefore consider that whilst there is a negligible to minor harm to heritage assets arising from the development, this is outweighed by the public benefits of the development as set out in the Planning Statement.

We consider this to be the case irrespective of whether the 'tilted balance' or 'flat balance' applies.

For these reasons we consider that the proposals are supported by the development plan and other material considerations and accordingly commend the application to the council for approval. If officers remain of the opinion that the allocated contingency site should not be released to provide much needed open market and affordable housing, we would welcome a meeting with you to narrow the issues as far as possible in advance of an appeal.

Yours sincerely

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