

IN THE MATTER OF:

SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

and

**AN APPEAL BY TIDCOMBE HOLDINGS LLP ARISING FROM THE
REFUSAL OF AN OUTLINE PLANNING APPLICATION 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 AT TIDCOMBE
HALL, TIDCOMBE LANE, TIVERTON, DEVON, EX16 4EJ**

LPA Ref: 24/00045/MOUT

Appeal Ref: APP.Y1138/W/24/3358001

**Where a submission relies on an answer given by a witness in evidence it is based on counsel's best recollection of what was said and the inspector is respectfully asked to check his note.*

CLOSING STATEMENT ON BEHALF OF THE APPELLANT

1. This is an appeal by Tidcombe Holdings LLP against Mid-Devon District Council's ("the Council") refusal of an outline application for the erection of 100 dwellings to include the conversion of Tidcombe Hall and outbuildings, provision of community growing area, public open space, associated infrastructure and ancillary works with all matters reserved save for access.
2. There are four main issues to be determined in this Inquiry:
 - a. Whether the proposed development would be in a suitable location having regard to Mid-Devon Local Plan 2013-2033 ("the Development Plan (or "DP)").
 - b. The effect of the Proposal on the character and appearance of the surrounding area.

- c. The effect of the Proposal on the significance and setting of the Grand Western Canal Conservation Area (“the CA”), the Grade II listed Tidcombe Farmhouse and Tidcombe Bridge, and the non-designated heritage asset known as Tidcombe Hall.
 - d. The overall planning balance, having regard to any relevant material considerations.
- 3. During Day 1 of the inquiry, a number of miscellaneous issues were raised by interested parties which were dealt with by the Appellant’s experts and we will address these issues first before turning to the substantive main issues between the parties.

Other issues

Drainage

- 4. The Interested Parties had various concerns as to how the Proposal will adversely impact flooding around the Grand Western Canal (“the Canal”) and if climate change impacts were considered. CY¹ explained why the Proposal will in fact reduce the risks of flooding of the Canal (from the current levels)² by use of the SuDS system proposed. Further, this system has been designed to account for the worst-case climate change scenario (i.e. with 45% increased rainfall levels)³. Importantly, the surface-run off from the Proposal is not designed to run into the Canal but rather it will run a meter below the Canal and through a culvert⁴. We have worked with Mr Mark Baker, the Canal Manager, and Devon County Council (i.e. the Highways Authority) to identify the main concerns and the Proposal has been designed such that it will ensure sufficient space is available to maintain the operational regime that is currently conducted for the maintenance of the Canal⁵. Therefore, the Proposal has

¹ Chris Yalden – Appellant’s Drainage Expert

² This is because the tests conducted on Site indicated that the ground at the Site is particularly impermeable which results in higher rates of run off the existing site. The negative impacts of this run off is further exacerbated by the current agricultural use of the Site where fertilisers and other contaminants are at risk of being washed down into the stream – CY XiC

³ CY XiC

⁴ Ibid – CY also confirmed that the foul water system is designed to operate separately to the surface water system

⁵ Ibid

been designed to be sustainable in flooding terms and to reduce the impacts of climate change to a level lower than what would be experienced by the Canal were the Proposal not to go ahead.

Ecology

5. There is no objection from the Council on ecology grounds. MC⁶ confirmed that the Site itself does not include any irreplaceable habitats and has “low to moderate” ecological value⁷. As part of the Proposal, the NE field⁸ is designed to contain the attenuation ponds and swales and this will be accompanied with landscape planting, orchards, tree planting, ponds and hedgerow planting. He confirmed that when the RMAs are submitted there will be a detailed landscape plan produced which would provide maintenance measures which would retain the habitats etc⁹. The Proposal further offers an opportunity to improve the quality of water run-off into the nearby SSSI as the agricultural use would cease and Natural England have confirmed that they have no objections to the Proposal with regards to impacts to the SSSI¹⁰. With regards to points raised by the Interested Parties on behalf of the Local Wildlife Trust, MC confirmed that it was more than likely that the Council had consulted with LWT (given the scale of the scheme) and so they would have had the opportunity to formally raise objections/concerns as part of the application for the Proposal. The fact that they did not do this demonstrates that they had no objection, and certainly no objection that they were prepared to have tested at this Inquiry.¹¹

Highways

6. DCC have not raised any highways issues in this Appeal. In collaboration with DCC, the Appellant offers to apply for a TRO which will remove vehicular traffic (except buses) from Tidcombe Lane and the objective of this is to make the lane safer for pedestrians (especially school children accessing Tidcombe

⁶ Dr Matt Cowley – the Appellant’s Ecology Expert

⁷ MC in XiC

⁸ North Eastern field where SuDS and public open space are proposed

⁹ MC in XiC

¹⁰ MC in XiC

¹¹ MC in Re-X

Primary School) and cyclists and to avoid the significant increase in traffic from the TEUE development which is taking place further North¹².

7. The Council and the Appellant have been in discussions for many weeks, including during the Inquiry, regarding Condition 12 (Off-site Highway Works). This is a pre-commencement condition which stipulates that no development should proceed unless the TRO has been approved by DCC. This is clearly a benefit of the Proposal in terms of highways and heritage impacts (which is discussed further in the sections below) and the Council have confirmed that they have no highway objections, regardless of whether the TRO is granted. However, the Council now argue that: (a) no weight should be given to these benefits since there is no guarantee that the TRO would be approved and (b) a condition, such as Condition 12, is unlawful because it would be unreasonable.
8. The first complaint is a moot point since Condition 12 is a pre-commencement condition and so, if the TRO is not granted, then the Proposal will not go ahead. This means neither the limited harms nor the numerous benefits of the Proposal will be realised, as there will be no development. In carrying out the planning balance exercise, every Inspector proceeds on the basis that the development proposed will take place since otherwise there will be no balancing exercise to conduct, therefore, any benefits arising from the TRO must be given due weight. The case of *Croft*¹³ does not demonstrate anything more than that there is always a possibility that a TRO (which is contemplated at the planning application stage) might not be granted, but this eventuality is accounted for by Condition 12.
9. The second complaint is also unfounded since it is not unreasonable to impose a negatively worded condition (i.e. one that prevents development coming forward) which may be dependent on approval being secured from a third party – this is explicitly recognised in the PPG¹⁴.
10. The Appellant accepts that there is a chance that the TRO may not be approved given that it requires consent through a separate regime with

¹² MK in XiC and XX

¹³ *R (on the application of Croft) v Devon County Council* [2025] EWHC 881 Admin

¹⁴ See [39]-[41] of Circular 11/95: "Use of Conditions in Planning Permissions"

assessment to be carried out by DCC (who are currently in support of this TRO), but the question is not whether the TRO will be granted with certainty but rather whether there are “reasonable prospects” that the TRO will be granted and clearly there are reasonable prospects here since otherwise numerous traffic issues are likely to arise as a result of upcoming new development¹⁵.

11. For the avoidance of doubt, our position is not that Condition 12 is necessary such that planning permission should not be granted without it, rather it is necessary for the benefits to be realised and it provides sufficient flexibility in its current wording such that even if the TRO is not successful the objectives of reducing traffic can be met via an alternative scheme.

Landscape

Role of heritage assets in landscape assessment

12. The objections on landscape for this Proposal were best described by the Council in their Opening: there are no landscape objections per se¹⁶. This position was confirmed in the cross-examination of MK¹⁷ when it was put to him that the “real” or the “sole” issue between the parties is heritage (when one accepts the premise that Tiverton is a sustainable location). As was evident from the cross-examination of JF¹⁸, what the Council have are heritage objections masquerading under the title of landscape. This is best demonstrated by the fact that JF accepted in her cross-examination that of her 20 page POE¹⁹, the landscape assessment only begins at page 15²⁰.

13. As WL²¹ explains, landscape effects are assessed by first identifying what the landscape receptors are, then assessing the sensitivity of the receptor, the magnitude of change and finally the significance of effect, which is a function of the magnitude of change and the sensitivity of the receptor – this is the

¹⁵ MK XiC

¹⁶ Additional points from opening

¹⁷ Matthew Kendrick – Appellant’s planning expert

¹⁸ Jane Fowles – Council’s landscape witness

¹⁹ Proof of Evidence

²⁰ JF XX

²¹ Wendy Lancaster – Appellant’s landscape expert

GLVIA methodology²². Although the Council suggested that too much importance should not be placed on GLVIA, this professional guidance is put in place for landscape experts to follow and abide by to ensure that professionalism and objectivity is brought into a subject that can otherwise easily collapse into wholly subjective, vague and generalised assertions.

14. Heritage assets do play a role in the assessment of landscape impacts: they are accounted for in the assessment of the value of an identified landscape receptor. They are, however, only one factor to be considered in assessing landscape value²³. The Council's assessment failed to recognise this critical point.²⁴ Instead, the Council's landscape evidence overlaps and intrudes into an assessment of heritage impacts, despite JF confirming that she is not qualified to speak on heritage assets or their settings²⁵.

Identifying landscape impacts

15. A comparison table of landscape effects ("the Landscape Table")²⁶ was prepared and agreed by the two landscape experts. WL is not bound by the views of Tapestry (who prepared the original LVIA); indeed she is duty bound to say if she disagrees. As part of the Landscape SoCG²⁷, it was agreed between the parties that a new table would be prepared which sets out the judgements of WL and any disagreements between the parties. The Landscape Table does exactly this²⁸.
16. JF was taken through the various items set out in the "Receptors" column of the Landscape Table and she agreed the following conclusions²⁹:
 - a. LC3 (Local Townscape Character): irrelevant

²² Fig 5.1 of GLVIA 3rd edition – p.71, CD 3.3

²³ WL in XiC

²⁴ JF XX – confirmed that nowhere in her POE is there a recognition of this role

²⁵ JF XX

²⁶ CD 9.10

²⁷ Statement of Common Ground – SoCG3

²⁸ See [3.4] of Landscape SCG – SoCG3

²⁹ JF XX

- b. LVI and LV2 (Site and Setting Landscape Values): not landscape receptors in their own right but form part of the assessment of sensitivity under LC1 and LC2
 - c. LFI (Tidcombe Hall and its Setting) and Little Tidcombe Farmhouse: not landscape receptors in their own right but form part of the assessment of value under sensitivity of LC1 and LC2
 - d. LF2 (Topography, Geology and Soils), LF3 (Blue Infrastructure), LF4 (Trees and Vegetation): these are elements of assessment of value of LC1 and LC2 and fall within the wider landscape character assessment
 - e. LNR (Grand Western Canal Local Nature Reserve): this is an ecological designation and only goes towards value of the landscape receptors LC1 and LC2.
17. Therefore, as per the GLVIA guidance and JF's concessions, the only remaining valid landscape receptors for the Inspector to consider are: LC1 (Character of the wider landscape of the valley), LC2 (Character of the Site), and LDI (Character of the GWC Landscape).
18. On LC1, both parties agree that the effect at Yr 1 and Yr 15 would be negligible.³⁰
19. On LC2, WL concluded that the effects will be "Major-moderate adverse" at Yr 1 whereas the Council view the effects as being a "Major adverse"³¹ - a half a step difference. At Yr 15, the Appellant's view is that the effects would reduce to "Moderate adverse" due to landscaping mitigation measures having been implemented and having matured with time.³² The Council allege that it will remain "Major adverse" even at Yr 15³³, since the character of the Site would have changed. This approach is contrary to normal practice and leads to the perverse conclusion that landscaping measures should be dispensed with because they serve no purpose.

³⁰ CD9.10 – Row 1

³¹ CD9.10 – Row 2

³² Ibid

³³ JF XX

20. In cross-examination, it was suggested to WL that the character of the Proposal does not match that to the west of Tidcombe Lane and that this was an adverse aspect of the Proposal. However, as WL explained, the existing built form to the west of Tidcombe Lane is not a good precedent as it has the characteristics of a dense post-war development.³⁴ Moreover, as the evidence shows, impact on townscape was assessed as positive by Tapestry and JF did not disagree with this assessment – she merely said it was not relevant.
21. On LDI, both parties agreed that the impacts will be “Moderate adverse” at Yr 1, and, we say, that the effects will be “Minor-negligible adverse” at Yr 15 given that the mitigation measures would have been implemented and the NE field of the Site should have developed into a functioning public-open space by this time. The Council provided no assessment of impact at Yr 15 but they posit that it would be “impossible” to mitigate the Proposal’s impacts to the Canal since the character of the land (i.e. the NE field) will experience ‘fundamental’ change. The Council’s position is patently unreasonable: it objects to the provision of publicly accessible parkland, despite the fact that a country park exists to the north-east of the appeal site, to the north of the GWC (WL para. 2.12). Its objection appeared to be based on the risk of hearing children playing, dogs being walked and other noises associated with residential use (which themselves will only be further afield on the SE³⁵ field). This is despite the fact that there is already a housing estate adjoining the canal immediately to its north. This is indicative of an ‘all change is bad’ mindset, and should be firmly rejected.
22. Like all other witnesses at the inquiry on both sides, JF agreed that the Inspector must consider only the proposal that is before him, and if the landscape and visual impacts are acceptable, such impacts cannot found a reason for refusal. She further agreed that she had not assessed a scheme that would include the WF, or carried out any comparative assessment of the appeal scheme with a scheme that includes the WF³⁶. Moreover, the evidence shows that JF’s ‘key’ objection was breach of the settlement boundary,

³⁴ WL XX

³⁵ South Eastern field where the bulk of the housing is proposed

³⁶ JF in XX

something that would occur regardless of whether the WF was available to be developed.³⁷

Identifying visual impacts

23. The Council, in their own assessment, agree that the visual impacts of the Proposal are “extremely localised”.³⁸ Therefore, regardless of disagreements about impacts from individual viewpoints, fundamentally, the parties are aligned in their opinion as to the overall visual impacts of the Proposal. They are “extremely localised”.
24. Turning to assessment of individual viewpoints, some preliminary points need to be mentioned. First, JF accepted that the characterisation of major/moderate effects as “significant” visual effects is incorrect as per the GLVIA guidance since that type of characterisation is only applicable to EIA development and this is not an EIA development³⁹. Further, the GLVIA specifically stipulates that “moderate” effects should not be automatically deemed to be “significant” but rather where it is so, a justification needs to be provided in the methodology or the receptor assessment.⁴⁰ JF confirmed that she produces no such justification⁴¹.
25. Second, it was suggested to WL that the Proposal would be more sensitive to the landscape if development was kept off the higher ground to the south. However, this principle does not apply to the Appeal Site since the gradient of the Appeal Site is less steep than the land south of Warnicombe Lane, therefore, as WL explained, bringing the Proposal a few metres further north will not make any material difference⁴².
26. Third, there was some discussion at the Inquiry as to the accuracy of the AVRs produced by the Appellant – although the Council’s position seemed to change when they accepted that they are not alleging that the AVRs are inaccurate but rather they are simply seeking to “probe” the Appellant’s evidence.

³⁷ JF in XX

³⁸ JF in XX

³⁹ JF in XX

⁴⁰ JF in XX

⁴¹ JF in XX

⁴² WL in XX

Nevertheless, for the avoidance of doubt, MK clarified that the AVR images have been developed by specialists in AVR Imaging. The methodology used to prepare the AVRs has already been produced to this Inquiry⁴³. The data input for preparing the AVRs have been taken from the Design and Access Statement submitted with the planning application and, as MK explained, the slab levels used for the input will vary for each plot depending on land characteristics etc.

27. Looking then to the Landscape Table, the parties are agreed that, out of the 8 identified and assessed visual receptor groups, 3 of them will have minor adverse or negligible effects⁴⁴ and one of them was assessed only by the Appellant and found to have minor negligible effects at Yr 15⁴⁵. Therefore, the disagreement between the parties can be narrowed down to 4 visual receptor groups.
28. Starting with VPI0, the Appellant's expert has assessed this view as having a negligible effect at Yr 15, whereas the Council contend that this will suffer a moderate-adverse effect. JF accepted that the parties agree that the sensitivity of the receptor is medium, therefore, the change in the final assessment of significance must stem from the magnitude of change assessed at Yr 15, yet the magnitude of effects at Yr 15 is not assessed at all by the Council⁴⁶. Further, JF accepted that it is a minor filtered element in a view from where you already see the settlement of Tiverton, thus the Proposal does not change the view by introducing settlement into a view that currently has no view of settlement.⁴⁷ It is difficult to comprehend how the Council conclude that this is a moderate adverse effect at Yr 15, without an assessment of the magnitude of effects and accepting that the Proposal does not introduce discordant elements into the view.
29. For VPI5-18, it was clarified with JF that WL has assessed this as one receptor group due to the transient experience of a walker along this footpath and JF has assessed these viewpoints individually. WL assesses the effects at Yr 15 as

⁴³ Appendix 4 of WL POE

⁴⁴ VPI2, 13 and 20 – CD 9.3

⁴⁵ VP 21 – CD 9.3

⁴⁶ CD 9.10 – Landscape Table

⁴⁷ JF in XX

being minor adverse and JF assesses the effects as being minor adverse for VP16, 17 and 18 and as major-adverse for VP15. Therefore, the difference between the parties is only at VP15.

30. Looking closer at VP15⁴⁸, JF accepted that the Proposal would be almost entirely screened and one would only get “glimpsed views” of it between the trees in Yr 15⁴⁹. This is due to the parkland proposed on the NE field. Notwithstanding, JF contended that the effect on VP15 would be “major-adverse” due to the “visual enclosure” created by the planting of trees in the parkland⁵⁰ which negatively impacts the glimpsed views one can currently get into the fields beyond and therefore this is a major-adverse impact. So, the Council’s case is that, despite the fact that currently one can only get glimpsed views into the fields beyond the tree line at VP15, and despite the fact that at Yr 15 one will only get glimpsed views of the Proposal through a new parkland proposed – the visual impact is nevertheless “major adverse”. This viewpoint is only one brief moment in the walking experience along the towpath⁵¹ and hence why the VP15-18 was assessed as one receptor group by WL.
31. Turning to VP19, JF accepted that the new housing will not be visible from this viewpoint and that the refurbishment of Tidcombe Hall is an improvement to this view⁵². However, the argument is that the effect will nevertheless be “major adverse” because of the new access being provided. Tidcombe Hall already has two gateways - the new vehicular access being proposed by the Appellant is a widening of one of the gateways using the same materials. The proposed access way is in keeping with other “modern and wide” gateways to newer housing on Tidcombe Lane⁵³. The Appellant accepts that there will be a change but it will be a “tidying up” of the current state of this access point⁵⁴.
32. As to VP24⁵⁵, there is no footpath on Warnicombe Lane and the receptor is not in a designated landscape – therefore the sensitivity of VP24 is limited at

⁴⁸ P.100 at Landscape WL POE Volume 2

⁴⁹ JF in XX

⁵⁰ JF in XX

⁵¹ Accepted by JF in XX

⁵² JF in XX

⁵³ WL in XiC

⁵⁴ Ibid

⁵⁵ This is more or less the same as the Council’s VP A and B

“medium-low”⁵⁶. JF accepted that one can see the settlement of Tiverton from this view and one can also appreciate that the settlement is growing⁵⁷ and this is especially so given that the TEUE is set to fill the greenfield site in the background to the Appeal Site with more housing. This Proposal then cannot be one which introduces “discordant” views into the countryside since the Proposal is for more housing. Just because a greenfield site is being proposed for development, it is not axiomatic that this will result in discordant views (as the Council allege) since this will depend on the context of the views which the Council have failed to consider this⁵⁸. Having considered that context, WL concluded that the visual impact on VP24 is “minor adverse” at Yr 15 but the Council, having failed to consider the context of the views, maintain that it must be between “major” and “moderate” adverse⁵⁹.

Barge

33. There was much said by the Interested Parties as to potential impacts on the viability of the horse-drawn barge at Tiverton (“the Barge”) and the impacts it will have on the local tourism industry. Hearsay is difficult to probe, and the Barge operator never appeared and could not be questioned.
34. As regards the substance of the point, the Barge offers routes of varying lengths with their most popular routes being the 1.5 hour trip, which goes up to Warnicombe Bridge and the 2.5 hour trip, which goes as far as East Manley⁶⁰. Therefore, the elements of the Site closest to the Canal (i.e. Tidcombe Hall and the NE field, which is set to be parkland and open space) will form a limited part of the trips. In any event, the majority of the housing will be set much further back from the canal (i.e. it is on the SE field) and so it is highly questionable to what extent any added urbanising effects from the proposed residential use will be felt by the Barge users, especially when there is already a housing estate immediately adjoining the north of the Canal⁶¹.

⁵⁶ WL POE Appendix 7 p.133

⁵⁷ JF in XX

⁵⁸ JF in XX where she accepted that in her view any development on greenfield land will result in discordant views

⁵⁹ CD 9.10

⁶⁰ ID15

⁶¹ WL in response to Interested Parties’ questions

35. Thirdly, as WL explained, in landscape terms, the impacts that may be felt are even lower than the receptor group assessed in relation to the Canal since the Barge users will be at a much lower height than walkers along the canal towpath.⁶² Fourthly, the visualisations provided are winter visualisations and even in winter the views of the site are negligible. The barge does not run in the winter.

Heritage

36. The three heritage assets which are relevant for this Appeal are the Grand Western Canal Conservation Area (“the CA”), Tidcombe Farmhouse and Tidcombe Hall. The former two being designated heritage assets and the latter being a non-designated heritage asset.
37. The parties are in agreement that the level of harm to both the CA and Tidcombe Farmhouse is within the bracket of “less than substantial”⁶³. As to Tidcombe Hall, TM clarified in his XiC that his assessment is that there is a level of harm that is “beyond the low level”⁶⁴ and the Appellant’s view is that the Proposal, not only does not harm the Hall, but it improves it due to the enhancements that are going to be offered.

Grand Western Canal Conservation Area

38. Both parties are more or less aligned on the envisaged harm to the CA – it is at the low end of “less than substantial harm” (albeit they differ as to how one gets to the level of harm). Our case is that the only harm which arises is from the changes proposed to the entrance of Tidcombe Hall because, following Historic England’s guidance, harm only arises where significance of the asset is damaged⁶⁵.
39. The NE Field and Tidcombe Hall and its grounds lie within the CA. Starting with the NE Field, it does not contribute to the significance of the CA since, as EO⁶⁶ explained, this particular field is no different to any of the other fields

⁶² WL in XiC

⁶³ Table EDP3.I of EO POE p.29

⁶⁴ TM XX

⁶⁵ EO XX

⁶⁶ Dr Edward Oakley – Appellant’s heritage expert

along the length of the entirety of the canal⁶⁷. To contribute to the significance of a heritage asset there must be a link to the historic and architectural interest of the canal but the rural fields here (including the NE field) relate only to the modern enjoyment of the canal, rather than some historic or architectural interest. Indeed, the canal itself was an economic endeavour to bring growth and development into Tiverton, including along the length of the canal⁶⁸. Therefore, the loss of the NE field as an agricultural field is first and foremost not a harm. Notwithstanding this, in any event, the NE field is proposed to be a parkland and public open space (not housing). Turning to Tidcombe Hall and its grounds, this does make a positive contribution to the CA since it is a prominent landmark that overlooks the canal, however, it is currently in a state of disrepair with broken and boarded up windows etc., thereby ultimately making a negative contribution to the CA itself. The Proposal offers significant enhancements to Tidcombe Hall and its grounds, which are set out in detail in Statement of Intent⁶⁹ and these enhancements will make a positive contribution to the CA. Indeed, the Council accept that “great weight” should be given to these enhancements⁷⁰. The Proposal however does envisage widening of the second access to the Hall and the change to this historic entrance is accepted to be a harm. However, it is a harm which is “very small and localised” especially when considered against the size of the CA itself⁷¹. The Council argue that converting the Hall and its outbuildings into housing will have a detrimental “urbanising effect” on the CA in that it will lead to light and noise pollution from residents using the access road and their private gardens⁷². This is because, the Council allege, that the current conditions of the CA are that of “open historic grounds” – what they fail to recognise is the housing estate immediately north of the canal.

40. The SE field lies within the setting of the CA. As EO explained, the setting of a heritage asset must be defined by reference to the Historic England Guidance⁷³

⁶⁷ EO in XiC

⁶⁸ See para 3.14 and 3.14 of EO POE and EO in XiC

⁶⁹ Appendix A of MK POE

⁷⁰ TM in XX and Para 212 of the NPPF

⁷¹ See para 3.52 of EO POE

⁷² TM in XX

⁷³ EO in XiC

and the setting is only important insofar as it contributes to the significance of the heritage asset. Similar to the reasoning on the NE field, the SE field has no relation to the architectural or historic interest of the Canal – it simply stands as a parcel of greenfield land, of which glimpsed views exist along the Canal⁷⁴. The Historic England Guidance is clear in distinguishing between general/incidental views and views for heritage reasons and this is not a view which contributes to the significance of the asset⁷⁵.

41. The Proposal offers the opportunity to implement a TRO to stop traffic on Tidcombe Bridge, or an alternative scheme that will significantly reduce the traffic. Preventing , or at least reducing traffic from the Tidcombe Bridge will be a benefit to the CA, as TM conceded⁷⁶.
42. Therefore, given all the benefits offered and the limited harms from the Proposal, the level of harm, at most, is at the lowest level of “less than substantial harm”. It is not possible to get to a ‘no harm’ scenario, and indeed in adopting Policy TIV13, the Council envisaged some harm.⁷⁷ TM conceded that any housing (however small) on the SE field will be harmful⁷⁸. However, the Proposal has been designed with extreme care to ensure that the benefits can be realised and the level of harm minimised to the lowest level possible.

Tidcombe Hall

43. The significance of Tidcombe Hall lies in its architectural and historic interest and, in this case, this is predominantly within the fabric of the building itself⁷⁹ as accepted by TM⁸⁰. The setting of Tidcombe Hall includes its grounds, the parcel of land to the north of the hall, the field directly to the south of the hall, and the NE and SE fields. The impacts on setting are only relevant in so far as that setting makes a positive contribution to the asset itself.

⁷⁴ Para 3.45-3.46 of EO POE and EO in XiC

⁷⁵ Para 11 of the Historic England Guidance GPA 3

⁷⁶ TM in XX

⁷⁷ See para 4.21 of EO POE

⁷⁸ TM in XX

⁷⁹ EO in XiC

⁸⁰ TM in XX (TM – Thomas Muston – Council’s heritage expert)

44. Starting with the hall itself, as mentioned above, the Proposal seeks to provide significant enhancements to the fabric of Tidcombe Hall as a building. The Hall is currently in a dilapidated state and subject to various forms of anti-social behaviour requiring monitoring with CCTV and the employment of a security company⁸¹. Similarly, enhancements are proposed as part of the wider renovation of the grounds of the Tidcombe Hall and the grounds provide a positive contribution to the hall, albeit it is currently in a state of disrepair with works done to the outbuildings in the past which are detrimental⁸². Therefore, as accepted by the Council, this is a benefit to Tidcombe Hall that must be given great weight as per the NPPF. The Inspector may form the view that the works to the entrance of the second access is harmful to the Hall, but we say that even on that basis, taking into account all the benefits proposed, there is a net positive benefit to the Hall. The Council allege that the introduction of the access road to the setting of the Hall is a harm. As EO explained, the access to be widened builds on the existing secondary access of the Hall, which would have likely been subject to more traffic as this would have historically played a servicing access role⁸³. Tidcombe Hall was most recently a care home, therefore, it would have in its time been subject to regular traffic of visitors and servicing vehicles⁸⁴.
45. Turning to the parcel of land to the north of the Hall, this is a parcel that does contribute to the significance of Tidcombe Hall since it was formerly associated with the hall⁸⁵. As EO explains, there is historic evidence of views into the southern field being deliberately designed to appear in this manner, therefore, this field also provides a positive contribution to Tidcombe Hall⁸⁶. The Proposal does not involve development of any form on either of these parcels of land.
46. As to the NE and SE fields, these do not positively contribute to the historic significance of the Hall since these parcels of land are unrelated to Tidcombe Hall which is demonstrated by the historic evidence of the Tithe Map⁸⁷ and the

⁸¹ Para 5.6 of MK POE

⁸² EO in XiC

⁸³ EO in XiC

⁸⁴ EO in XX

⁸⁵ EO in XiC

⁸⁶ Para 3.104-107 of EO POE

⁸⁷ Proof Plan EO3 of EO Proof

Conveyance map of the Glebe lands⁸⁸. In any event, NE field is proposed to remain as public open space and parkland with a minor portion of the access road in this area, and the SE field, which is proposed to contain the housing, is well-screened by extensive planting to the south of the Hall⁸⁹. Therefore, there is no harm being caused to a setting which positively contributes to the significance of the Hall.

47. Even if the Inspector were to agree with the Council that there is some harm to the setting of the Hall as a result of works on the access roads/entrance, this nevertheless should be given less weight since effects on the fabric of the building are the primary consideration given that the key significance of the Hall lies in the fabric of the building itself. Therefore, given the benefit of renovating the Hall, this must still at least be in the no harm category, if not the benefit category⁹⁰. Therefore, the Council's position that, despite accepting that there are benefits to the building of the Hall itself and there being only harm (allegedly) to the setting, this amounts to a level of harm "beyond"⁹¹ a low level is plainly incomprehensible.
48. The Council take the view that there has been a "missed opportunity"⁹² in this Proposal since the WF has not been utilised to move housing development further away from Tidcombe Farmhouse (harms to Tidcombe Farmhouse will be discussed in the next section). First, TM confirmed that an opportunity can only be missed if it was on the table and, in this case, the WF was simply not available for development at all due to ownership constraints⁹³. Second, TM also conceded that were housing to be provided on the WF (or at least some of it spread on the WF), the urbanising effects, which the Council claim are harmful, will remain⁹⁴. Third, there would be an increased level of harm to the setting of the Hall due to the likely historic relationship between the two⁹⁵ and Historic England have alluded to their concerns of building on the WF with

⁸⁸ Appendix EO3 of EO Proof

⁸⁹ Proof Plan EO7 of EO Proof (masterplan)

⁹⁰ EO in XiC

⁹¹ TM in XX

⁹² TM in XiC

⁹³ TM in XX accepted this and this is common ground

⁹⁴ TM in XX

⁹⁵ See para 4.18 EO POE

regards to views from Knightshayes Park⁹⁶. Finally, Policy TIV13 itself recognises that the southwestern corner of the allocation is “more prominent”⁹⁷. Therefore, the Council cannot sustain the position that spreading development on to the WF will in some material way improve any heritage harms, especially where no one, including the Council, have carried out some comparative assessment of an alternative proposal.

Tidcombe Farmhouse

49. This is a Grade II Listed 16th century farmhouse with some 18th century additions. As the Council accepts, its significance is derived primarily from the fabric of the building itself and the reason for its listing is the special interest in its structure⁹⁸. Ergo, unless the Appellant physically changes the structure of the Farmhouse then it will be difficult to affect it and this was accepted by TM⁹⁹. It is common ground that the Farmhouse itself will not be changed in any manner. Therefore, one is only left with the setting and whether there is any setting that makes a positive contribution to the architectural or historic interest in the Farmhouse and whether the Proposal affects this in a detrimental manner.
50. The setting of Tidcombe Farmhouse includes its curtilage gardens to the north and south of the Farmhouse, which makes a positive contribution due to it being the historically related curtilage from which the significance of the house can be appreciated. A basic contribution is made by the field to west (i.e. the SE Field) due to its historic relationship as an associated farmland with the Farmhouse. Finally, positive contribution is made by the NE Field and the NE tip of the SE Field.
51. First, the curtilage gardens will not themselves be changed as a result of the Proposal. Second, although housing is being proposed on the SE field, TM confirmed that the space shown on the masterplan for buffering is far wider than the space that was formerly occupied by one row of “old leylandii”. The photographs show how effective even the one row of planting was. Third, the

⁹⁶ See para 5.5 of WL POE

⁹⁷ CD1.1b, Para 3.48 – Policy TIV13

⁹⁸ TM in XX and para 4.4 of TM POE

⁹⁹ TM in XX

contributing factor of the SE field to the heritage interest of the Farmhouse is its agricultural link, and so, by developing this field (with any number of housing or by moving the Proposal a few meters west) will result in harm. Fourth, the most appreciated views of Tidcombe Farmhouse are from the north canal path – even this at best only provides glimpsed views. The Proposal seeks to maintain the NE Field as a parkland and public open space and this is in keeping with the historic character of the area immediately to the north of Tidcombe Farmhouse¹⁰⁰.

52. Although both parties are agreed on the assessment that the harm falls within the “less than substantial harm” category, considering all of the above, the level of harm to Tidcombe Farmhouse must be at its low end¹⁰¹ rather than “moderate” as the Council allege.

Conclusion on heritage harms

53. The heritage harms to the designated assets (i.e the CA and Tidcombe Farmhouse) are at the low end of less than substantial harm. As for the non-designated asset of Tidcombe Hall, there will be a benefit due to the significant enhancements that are being offered to the Hall in bringing it out of disrepair, preventing anti-social behaviour, and making it more accessible and safe to be appreciated by the wider public. This Proposal has plainly been designed in a sensitive manner to ensure that heritage harms are minimised and potential benefits are able to be realised. This against the backdrop of a policy decision taken to identify the site as a contingency site in full recognition that there would be some harm to the setting of heritage assets.

Planning balance

54. It is a well-established principle of planning decision-making that the development plan is the starting point and decisions must be made in accordance with the development plan policies unless material considerations

¹⁰⁰ Proof Plan EO4 of EO POE

¹⁰¹ EO XiC

indicate otherwise¹⁰². This Proposal complies with the Development Plan as is, read as a whole.

Compliance with the Development Plan

55. The most important policies for determining this Proposal are: S1, S2, S3, S4, S10, S14, TIV13 and DM25 of the Development Plan and T1 and T2 of the Neighbourhood Plan.
56. Both parties agree that there is no conflict with Policy S1 since the Proposal is based at Tiverton (one of the most sustainable settlements) and it is located in a “strategically sustainable” location¹⁰³.
57. Policy S2 deals with the minimum requirements for housing which the Council are expected to meet in the Mid-Devon area and a significant portion of it is allocated to Tiverton. As a matter of law, and as TA¹⁰⁴ agreed, in interpreting local plan policies, one must have regard first and foremost to the actual wording of the policy; one should not use explanatory text or observations from Inspector’s Reports to read into the policy that which is not there, unless there is some ambiguity in the wording of the policy itself¹⁰⁵. There is no ambiguity in the wording of policy S2. Policy S2 clearly states that:
- “Development will be concentrated at Tiverton, Cullompton and Crediton, to a scale and mix appropriate to their individual infrastructures, economies, characters and constraints.”*
58. As TA accepted, there is nothing in the wording of the Policy that suggests that the focus of development should solely be at Cullompton rather than Tiverton, or that Tiverton is somehow unsuitable for further development in light of availability at Cullompton¹⁰⁶. Indeed, it says the opposite. Some 2000+ dwellings were targeted to be delivered in Tiverton (as per Policy S2) as a minimum¹⁰⁷ and TA accepted that the Proposal is appropriate in scale and mix to the

¹⁰² S.38(6) of the Planning and Compulsory Purchase Act and s.70(2) of the Town and Country Planning Act 1990

¹⁰³ TA in XiC

¹⁰⁴ Anthony Aspbury – Council’s planning expert

¹⁰⁵ TA in XX

¹⁰⁶ TA in XX

¹⁰⁷ See Policy S2 and TA in XX

individual characteristics of Tiverton¹⁰⁸. Further, it is accepted that Tiverton is currently suffering from a 437 dwelling shortfall from meeting its targeted completions¹⁰⁹, which demonstrates that not only is the Proposal suitable and appropriate to Tiverton, but it is needed in Tiverton due to the chronic shortfall in housing which has compounded during the plan period. Therefore, on what basis the Council allege that the Proposal is somehow in conflict with Policy S2 is entirely unclear. The Proposal is in compliance with Policy S2 and it will actively help address up to almost 25% of the 437 dwelling shortfall.

59. It is agreed that the Proposal will comply with Policy S3 given it is exceeding the affordable housing requirement set out therein and is helping meet the identified housing needs¹¹⁰.
60. It is common ground that there are 2 triggers in Policy S4 which lead to the consideration of a 2-staged response to housing failures. It is also common ground that both those triggers are met such that the 2-staged response now needs to be considered. The first stage requires the Council to “*work proactively to bring forward allocations or outstanding consents*” but the second stage needs to be considered only “*if this is insufficient to deliver the necessary level of housing*”. This second stage is the release of the identified contingency site. Where the parties differ is that the Council say that we are still at Stage 1 since their recent Action Plan has set out measures to address the shortfall and these measures must be allowed time to be implemented.
61. There are two problems with this position. First, several of the measures set out in the Action Plan are “long-term” and “intangible”¹¹¹. Second, on the Council’s own case, the measures set out in the Action Plan are not sufficient

¹⁰⁸ TA in XX

¹⁰⁹ See para 4.29 of MK POE

¹¹⁰ See para 7.8 of MK POE

¹¹¹ MK in XiC. Some examples of the measures are provided. Action 1 states that “*The Council will continue to work with strategic partners to develop a future strategic housing pipeline for Devon and Torbay in conjunction with Homes England.*” Action 5 states: *The Council will seek to review its pre-application advice approach and Planning Performance Agreement structure to secure ring fenced resources to prioritise work on housing applications.* Action 6 states: *The Council will continue to determine planning applications for new housing in accordance with policies of the adopted local plan, neighbourhood plans which are ‘made’ and adopted Devon waste and minerals local plans, unless material considerations indicate otherwise.* Action 9 states: *The Council continue to advise and support Neighbourhood Plan Groups on the requirements to meet housing need through planning policies and site allocations.*

to address the current failure to meet 5YHLS and certainly not sufficient for the position that is looming over this Appeal of the drop in HLS in July 2025 when the standard method kicks in¹¹². Nevertheless, the Council argue that we should all be optimistic and hope that the 5YHLS problems will somehow be addressed at some indeterminate date in the future – an assertion that is not supported by a shred of evidence. In fact, evidence which is in front of this Inquiry, and which MK referred to, is the Lichfield's report¹¹³, and he explained how the average timescale for completions demonstrates that the Council is nowhere near set to meet the 5YHLS problem in the short or the long term¹¹⁴.

62. Therefore, if the Council have produced an Action Plan, in an attempt to work proactively to bring forward allocations and outstanding consents, and that Action Plan shows that a 5YHLS position cannot be met in the short-term and is entirely silent as to when a 5YHLS position will be reached, if at all, then, following the plan-led approach (i.e. Policy S4) one must look to the release of the contingency site.
63. There was some debate as to whether the Proposal is indeed the contingency site identified in Policy TIV13. As MK explained, the predominant portion of the Proposal is within the red-line boundary of the TIV13 contingency site¹¹⁵. All the housing and built development (except a small portion of the access road) is proposed to be situated within the TIV13 site¹¹⁶. Therefore, any argument that somehow this Proposal is not the contingency site is plainly wrong. It is not the entirety of the contingency site, but there is nothing in the policy that requires this.
64. TIV13, on the Council's own case, it is not only a relevant policy but one of the "most important" policies for determining this Proposal¹¹⁷. This is notwithstanding that the Proposal site is not contiguous with the site identified

¹¹² TA in XX

¹¹³ CD8.15

¹¹⁴ MK in XiC

¹¹⁵ MK in XX

¹¹⁶ See Masterplan

¹¹⁷ See Para 4.3 of TA POE

in Policy TIV13 for the reasons already mentioned. Therefore, any assertion that TIV13 is somehow not relevant to the Proposal is unfounded.

65. It became evident in cross-examination that the only conflict with Policy TIV13, which the Council allege, is criterion (d). The Council accept that there is no requirement either in the wording of the policy or in the explanatory text (bearing in mind the limitations of the explanatory text) demanding the entirety of the TIV13 site to come forward for development. Indeed, such a requirement in such policies would be practically problematic for developers and local authorities since site constraints and issues (such as drainage) often only come to light at the point of a more detailed assessment¹¹⁸. In fact, the explanatory text in Policy TIV13 recognises that the south-western corner of the parcel of land (i.e. parts of the land on the WF) is the “most prominent” highlighting the constraints of this part of contingency site. Therefore, not bringing forward development on the WF is not in any way, shape, or form a breach of Policy TIV13, as TA accepted¹¹⁹.

66. Criterion (d) of TIV3 requires the Proposal to ensure that it has:

“Design and landscaping which protects the setting of the Grand Western Canal, Tidcombe Hall and Conservation Areas”

67. Although there was much speculation as to how harms could have been reduced if the WF was brought forward, TA accepted that neither TM, JF nor himself, have carried out an assessment as to harms that could arise from developing the WF since there is no such proposal available¹²⁰. Indeed, TA accepted that, the Inspector should not refuse permission for this Proposal on the basis of some other possible variation of harms and benefits that could arise from a proposal that does not exist¹²¹. It is trite law to regurgitate that it is unlawful for a decision-maker to take into consideration an alternative proposal (not subject to a planning application) unless there are exceptional circumstances and, even in such circumstances, it is not a material consideration if this alternative is vague, inchoate, or there is no real possibility

¹¹⁸ MK in XiC

¹¹⁹ TA in XX

¹²⁰ TA in XX

¹²¹ TA in XX

of the alternative coming forward. There is no real possibility that a proposal with the WF will come forward because the WF is not available for development – this ownership issue is agreed between the parties¹²². Therefore, any case that the Council is trying to make as possibilities of harm being reduced if the WF was available is plainly irrelevant in law.

68. The landscape impacts of the Proposal have already been described above. The parties agree that the landscape impacts are highly localised in that the impact on the wider landscape is “negligible”¹²³ and the impacts on the site itself are inevitable given that it is a greenfield development proposal. In any event, we say that those impacts at Site level are “moderate” at best once the mitigation measures are in place¹²⁴ and we say that the impact on the CA will be minor-negligible at Yr 15. Indeed, the adoption of Policy TIV13 envisaged a level of harm to landscape in and around this area as is evident from the Sustainability Appraisal which accompanied the adoption of TIV13¹²⁵.
69. The heritage impacts have also already been described and, similar to landscape, some heritage harm was envisaged at the time of the adoption of Policy TIV13.¹²⁶ On the Council’s own case, there will be less than substantial harm to the two designated heritage assets (not to forget Tidcombe Farmhouse is not mentioned in TIV13). In addition to this, we say that Tidcombe Hall will in fact benefit from the Proposal but the Council say there will be harm, and the reasons as to why this position is untenable have already been set out¹²⁷. TA also accepted that TIV13 does not require “no harm” or a “benefit” to accrue in terms of the landscape and heritage¹²⁸ and indeed that would be illogical given the evidence base that formed the proposal for adoption of Policy TIV13¹²⁹.
70. Therefore, accepting that Policy TIV13 did envisage some level of harm in terms of landscape and heritage, and accepting that Policy TIV13 does not

¹²² See Section 5.0 of the Main SoCG

¹²³ CD 9.10

¹²⁴ Ibid

¹²⁵ See para 7.8 and 7.9 of WL POE

¹²⁶ See para 4.21 of EO POE

¹²⁷ TM in XX and TA in XX

¹²⁸ TA in XX

¹²⁹ See para 7.8 and 7.9 of WL POE and para 4.21 of EO POE

require “no harm” to occur, then localised landscape impacts and less than substantial heritage harm at the lower end of the scale for designated assets (plus benefits for a non-designated asset) cannot amount to a breach of criterion (d) of Policy TIV13. For those reasons, the Proposal does comply with criterion (d) of Policy TIV13, thereby achieving compliance with Policy TIV13.

71. TA accepted that, if the TIV13 criteria are met, then the Proposal would be in compliance with the Development Plan¹³⁰ since other Development Plan policies (S9 and S10) relate to landscape and heritage impacts and these must be read together with TIV13, given TIV13 is the site specific policy for this Proposal. So, if the TIV13 criteria on landscape and heritage are met, then policies S9 and S10 are not breached. This was accepted by the Council¹³¹.
72. As for Policy S14, there was some debate as to whether and how Policy S14 and TIV13 can be read together. The same principle applies to Policy S14 as to other development plan policies (i.e. they must be read together and as a whole). To interpret and apply Policy S14 in a manner where, if a proposal meets Policy TIV13 criteria, it nevertheless would be in conflict of Policy S14, and therefore should be refused permission, would be the equivalent of the Development Plan shooting itself in the foot. Policy TIV13 has clearly been adopted alongside Policy S14 and, although Policy S14 restricts development to within the settlement boundary, Policy TIV13 is a clear plan-led exception to Policy S14 in the event that the housing levels are not sufficient. That is the most sensible interpretation of Policy S14. Therefore, there is no conflict with Policy S14.
73. Looking at Policy DMI, the Council have not identified this as one the “most important” policies for determining this Proposal¹³², notwithstanding, there is compliance with this policy due to well-designed nature of the Proposal and specifically with Policy DMI (c) which relates to heritage impacts¹³³.

¹³⁰ TA in XX

¹³¹ TA in XX

¹³² See para 4.3 of TA POE

¹³³ See para 7.17 to 7.19 of MK POE

74. TA accepts that Policy DM25 is a reflection of paragraph 215 of the NPPF in that it requires heritage harms to be assessed against public benefits¹³⁴. Therefore, if paragraph 215 of the NPPF is passed, then the Proposal must be in compliance with Policy DM25¹³⁵. TA conceded that paragraph 215 of the NPPF is met and that the heritage harms are outweighed by the public benefits¹³⁶.
75. Turning then to the Neighbourhood Plan, as TA rightly accepted, the Neighbourhood Plan was adopted after the Development Plan and one of the conditions for the successful adoption of it is its conformity with the Development Plan. Policy T1 seeks to keep development within the settlement boundaries of Tiverton but, as already explained, if the Policy S4 test is met and TIV13 is engaged and then TIV13 is met, then there cannot be conflict with Policy T1 of the Neighbourhood Plan since this policy must conform with the Development Plan policies – this was accepted by the Council¹³⁷. No conflict with Policy T2 is alleged with respect to the Proposal.
76. Taking all of the above into consideration, we say that the Proposal is in compliance with the Development Plan policies and thus, applying the statutory tests under s.38(6) of PCPA 2004 and s.70(2) of TCPA 1990, planning permission should be granted in accordance with the Development Plan.
77. However, if the Inspector forms the view that the Proposal does conflict with the Development Plan read as a whole, then one needs to look at whether other material considerations apply which tip the balance in favour of granting planning permission and one of those material consideration is the NPPF and, namely, the tilted balance under paragraph 11(d).

Compliance with the NPPF

78. The tilted balance is engaged when the Council is unable to demonstrate a 5YHLS as is the case here. The effect of this two-fold: (1) the “most important” policies are deemed out-of-date automatically (regardless of the degree of their

¹³⁴ TA in XX

¹³⁵ TA in XX

¹³⁶ TA in XX

¹³⁷ TA in XX

compliance to the NPPF) and (2) planning permission should be granted unless the exceptions under 11(d)(i) or (ii) apply.

79. Staring with the first implication, the most important policies for this Appeal have already been set out above. For the avoidance of doubt, we say that the Proposal complies with all the most important policies, however, to the extent that there is any conflict with any of those policies, it is for the Inspector to decide what weight to give within the planning balance for conflict with out-of-date policies. However, in the Supreme Court case of *Suffolk Coastal*¹³⁸, Lord Gill observed that “[i]f a planning authority that was in default of the requirement of five years of supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated. The purpose of paragraph 49 is to indicate a way in which the lack of a five years of supply of sites can be put right. It is reasonable for the guidance to suggest that in such cases the development plan policies for the supply of housing, however recent they may be, should not be considered as being up to date.”
80. Therefore, to the extent there is any conflict with the most important policies, which we say there is not, that conflict should not be given full weight since to do so would frustrate the objectives of the NPPF. As such, TA was wrong to suggest that Policy S14 is not out-of-date – this is precisely the result that ensues if we apply paragraph 11 and footnote 8 of the NPPF. So that was an error in interpreting national planning policy. He was also wrong in law to suggest that the weight should not be affected¹³⁹. Countryside policies, such as Policy S14, are exactly the kind of policies which are often found to restrict development and housing coming forward and, paragraph 11 is designed to ensure that this conflict can be overcome in order to deliver the housing necessary.
81. Looking at Paragraph 11(d)(i), the Council’s position, until yesterday, was that the tilted balance under paragraph 11 is disengaged due to heritage harms providing a “strong reason” for refusal. However, TA in cross-examination conceded that in fact the only harms that are relevant for the purposes of

¹³⁸ See [83] of the *Suffolk Coastal v Hopkins Homes and Others* [2017] UKSC 37

¹³⁹ TA in XX

11(d)(i) are the heritage harms to the designated assets (i.e. not Tidcombe Hall) and these harms are outweighed by public benefits as per paragraph 215 of the NPPF¹⁴⁰. Therefore, the Council accept now that the heritage harms do not amount to a “strong reason” for refusal such that the tilted balance is disengaged under paragraph 11(d)(i) of the NPPF.

82. This then leaves us with paragraph 11(d)(ii): planning permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole but “*having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and provided affordable homes, individually or in combination*”.
83. It is an important to observe here that this is a new phrase added to the tilted balance under paragraph 11(d)(ii) as part of the new NPPF 2024. Therefore, the Government has added a focus to the tilted balance exercise in directing attention to the specific policies in the NPPF (as set out in Footnote 9 of the NPPF), albeit the assessment still needs to be conducted against the whole of the NPPF. We turn then to how the balancing exercise of benefits vs harms is done but the only assessment of this tilted balance exercise is that provided by the Appellant; the Council’s evidence is silent on this front given their original position that the tilted balance under paragraph 11(d)(ii) was simply not engaged.

Benefits vs harms

84. Both parties agree more or less agree that significant weight should be given to the provision of housing¹⁴¹ since the Council has failed to meet its housing targets and the situation is only set to worsen, and that too significantly, within a matter of weeks. On the Council’s calculations, which formed the basis of the Development Plan, in Tiverton alone, a total of 605 dwellings need to be delivered by 2033¹⁴². Comparing the forecast completions under the Development Plan against the actual completions recorded, the cumulative

¹⁴⁰ TA in XX

¹⁴¹ MK accords “substantial” which is a step short of the top end of his scale and TA accords “significant” weight and that is the top end of his scale as he confirmed in XX

¹⁴² See para 4.28 of MK POE

shortfall from the Development Plan period is a negative 437 dwellings for Tiverton. This is without taking into account the new standard method calculations which will increase the housing need by 46% across the district in a matter of weeks (July 2025)¹⁴³. The Council is already failing to meet the minimum requirement allocated for Tiverton in the Development Plan and it is set to fail abysmally next month when the standard method becomes applicable. Therefore, it is no surprise that this must be given significant weight.

85. Affordable housing is a benefit in its own right¹⁴⁴ and should be provided very significant weight. There are currently more than a 1000 people on the Home Choice Register for Mid Devon waiting for an affordable home¹⁴⁵. There is a need for 124 affordable dwellings per annum and the net delivery has been mere 45 dwellings per year: a shortfall of 79 affordable dwellings per year¹⁴⁶. On this trajectory, it would take at least 16 years to house those people on the register, on the assumption that the register will not grow (which is highly unlikely)¹⁴⁷. Although the planning system is geared to give local residents and homeowners a voice in the planning application system, what it does not do is make sufficient provision for those 1000+ people to have a say in proposals—the people who are not at the Inquiry are those who will ultimately end up living in the houses. Whilst the affordability ratio in 1997 may have been 4, the ratio as of 2022 for Mid Devon is 10.96¹⁴⁸. Therefore, affordable housing must be given the very top of scale weight and both parties are in agreement of this.
86. The heritage benefits that would arise from the Proposal, both to Tidcombe Hall and by extension the CA has been explained already and moderate weight should be attached to these benefits¹⁴⁹. As was conceded by the Council, given that the Proposal is not subject to the statutory minimum provision of 10% BNG, its provision of more than 10% BNG is a benefit to which moderate weight should be afforded (as per both parties)¹⁵⁰. The number of jobs that

¹⁴³ See Para 4.31 of MK POE

¹⁴⁴ MK in XiC

¹⁴⁵ See para 4.43 of MK POE

¹⁴⁶ See para 4.42 to 4.45 of MK POE

¹⁴⁷ See para 4.44 of MK POE

¹⁴⁸ See Fig 6 of MK POE

¹⁴⁹ See Table 5 of MK POE

¹⁵⁰ Ibid and TA in XX

would be created from the construction of dwellings (estimated to be between 240 and 310 jobs)¹⁵¹ should be given moderate weight.

87. In addition to the above, delivery of housing in a sustainable location, reductions from NO2 from the proposed road closure/reduction in traffic, the wider economic benefits from new residents, and financial contributions made to support the infrastructure for the Proposal should each be given minor weight¹⁵².
88. Turning then to harms, only three have been identified, heritage, landscape and loss of BMV. Given the limited extent of the heritage and landscape harms already set out above, moderate and minor weight should be given to those harms respectively¹⁵³. As to the loss of BMV land, there is some very limited loss of BMV land but this is inevitable given the recognition of the site as per Policy TIV13. In any event, to meet just the current level of housing needs, some BMV will have to be released given the rural location of Mid-Devon¹⁵⁴. A pictorial representation of how the benefits so significantly outweigh the harms of the Proposal is demonstrated at Table 6 of MK's POE. It follows from the above that the harms come nowhere near outweighing the benefits of the Proposal, let alone significantly and demonstrably.

Conclusion

89. For the reasons set out above, the Inspector is respectfully invited to grant planning permission for the Proposal.

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¹⁵¹ See para 5.11 of MK POE and Table 5 of MK POE

¹⁵² Table 5 of MK POE

¹⁵³ Table 6 of MK POE

¹⁵⁴ MK in XiC

Abbreviations

CY – Chris Yalden

MC – Dr Matt Cowley

DCC – Devon County Council

EO – Dr Edward Oakley

JF – Jane Fowles

MK – Matthew Kendrick

NE – North-eastern

POE – Proof of Evidence

RMA – Reserved Matters Application

RE-X – Re-examination

SE – South-eastern

TA – Anthony Aspbury

TEUE – Tiverton Urban Extension

TM – Thomas Muston

VP – viewpoint

WL – Wendy Lancaster

WF – Western Field (immediately south of Tidcombe Hall)

XiC – examination in chief

XX – cross-examination