APPEAL REFERENCE: APP/Y1138/W/24/3358001

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LAND AT TIDCOMBE HALL, TIDCOMBE LANE, TIVERTON, DEVON EX16 4EJ

RESPONSE OF MID DEVON DISTRICT COUNCIL
TO AN APPLICATION FOR COSTS

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1 These submissions are made in response to the Appellant's application for a full award of costs ("CA") which was first intimated on 4 June 2025 and articulated belatedly on 5 June 2025.

2 Cutting to the heart of the matter, the Appellant does not contend the original decision to refuse planning permission was unreasonable and resulted in wasted costs. Its complaint is that the Council should have reviewed its case and conceded the appeal ought to be allowed by no later than April 2025 on the basis that:-

(1) By April the Council knew (a) it did not have a 5 year housing land supply; (b) its action plan will not deliver a 5-year supply; and (c) in July 2025 its 5-year supply will fall to 2.1 years. (CA paras 7 and 22).

(2) Mr Aspbury's evidence that TIV13 was not triggered was unreasonable. (CA para 9). Further, had he recognised TIV13 was triggered he could not reasonably contend the scheme failed to comply with paragraph (d) of that policy (CA para 14). The Appellant appears then to contend that compliance with TIV13 would result in the scheme complying with the development plan, read as a whole (CA para 22).

(3) Mr Aspbury failed to understand or apply the tilted balance in NPPF para 11d(i) so that it was impossible to argue reasonably paragraph 11(d)(ii) would be failed.

(CA paras 16-19). Had Mr Aspbury done those things, the Council would have realised the appeal had to be conceded.

3 The starting point is to observe that the Appellant argues the claim for costs was made at the "earliest opportunity" because "the full paucity of the LPA's case was not revealed until the XX of its planning witness". (CA para 1) That statement is made against the background of the parties collaborating on the preparation of 3 statements of common ground, and the Appellant's careful consideration of the Council's evidence for a full 4 weeks between the exchange of proofs and the opening of the inquiry. The fact that the Appellant was unable to detect any weakness in the Council's case sufficient for it to intimate that it intended to make a claim for costs prior to the penultimate day of the inquiry is strong evidence that taken as a whole the Council's decision to refuse planning permission was reasonable and was supported by substantial evidence. Were it otherwise, the Appellant could and should have put the Council on notice that it intended to make a claim. It did not.

4 More particularly, the Council conceded its current and prospective 5-year housing land supply in a statement of common ground well in advance of the commencement of the inquiry. That did not result in the Appellant threatening costs unless the Council reviewed and conceded its case. The reasons for that are obvious. The absence of a 5-year supply is an important material consideration. However, it is not a "silver bullet". Specifically, it is not accepted the action plan will fail to deliver a 5-year supply; on the contrary, that is its purpose. It may not deliver it tomorrow, but it is not required to do that. Consequently, to argue the Council should have conceded its case on that basis is hyperbole. Rather, the swift production of the action plan and its comprehensive and positive sweep was properly weighed in the balance by Mr Aspbury as a factor which tends to reduce the weight placed on the prospective fall in the housing land supply in July 2025 arising from the change in the Standard Method, which occurred after planning permission was refused.

5 In any event, considerable weight and importance must also be afforded to harm caused to designated heritage assets. That consideration applies in cases where less than substantial harm is caused to listed buildings and conservation areas. In the circumstances, for that reason alone, the Council was entitled reasonably to contest the level of harm the scheme would cause to those assets and the undesignated Tidcombe Hall within the framework of the development plan and maintain its opposition to the grant of planning permission.

6 Turning to TIV13, Mr Aspbury was entitled reasonably, and was right to contend, that the policy is not triggered merely because of a shortfall in the 5-year supply; consideration also needs to be given to the efficacy of the action plan required by policy S4. However, as Mr Kendrick expressly agreed, the appeal proposal does not propose to bring forward TIV13; it will deliver a "different site". What is more, the Appellant's opening statement expressly concedes (at para 9) that TIV13 is undeliverable. It follows that the question whether TIV13 should be released or not is irrelevant. The only utility of the policy is that it provides certain criteria to help formulate an acceptable form of development on land that forms part of TIV13, which the appeal scheme manifestly fails to do. Therefore, whether or not the release of policy TIV13 is triggered, the position taken by Mr Aspbury on the point was neither unreasonable nor the cause of any wasted costs. On the contrary, the Appellant's opening statement and Mr Kendrick's express concession the appeal site is not TIV13 illuminates the Appellant's unhelpful focus and waste of inquiry time on a tangential point.

7 Nor is it arguable that Mr Aspbury's evidence the scheme does not comply with the development plan was unreasonable. The Inspector will recall Mr Kendrick's evidence under XX on this point, where he agreed the scheme fell to be determined by reference to a small number of "most important policies". He specifically conceded non-compliance with policy S14, and to the extent he (wrongly) contested compliance with others (eg S9 and DM25) or their relevance (eg TIV13) that indicates the question whether the scheme complies with the development plan is properly contestable.

8 As for the criticism of Mr Aspbury's approach to para 11(d)(i) of the Framework, the obvious point is to repeat that his opinion and the basis upon which he reached it was

readily apparent following the exchange of proofs of evidence, yet the Appellant said nothing. Doubtless that was because the Appellant understood the point emphasised by Mr Aspbury in XX that he adopted Mr Muston's evidence in weighing the benefits of other material considerations relied on by the Appellant with the harm to designated heritage assets. Moreover, any criticism that might be made of Mr Aspbury's evidence in respect of paragraph 215 of the NPPF and the test in NPPF para 11d(i) misses the point that Mr Aspbury was undoubtedly entitled to maintain the appeal proposal falls foul of NPPF para 11d(ii): the considerable weight and importance that must be afforded to even less than substantial harm to heritage assets, coupled with the admitted harm the scheme would cause to the character and appearance of the landscape can reasonably be said to significantly and demonstrably outweigh the benefits of the scheme. That being so, Mr Aspbury's position in respect of para 11d(i) cannot be said to have caused the Appellant to have wasted the costs of the appeal.

9 Thus, standing back from matters, the Appellant's costs application fails to demonstrate the Council refused planning permission unreasonably or that its continuing with the appeal after April 2025 was unreasonable or caused the Appellant to waste costs. This was a hard fought appeal, which commanded substantial public interest arising from the obviously incongruous form of development proposed on what is acknowledged to be an attractive and sensitive site, which requires a difficult balance to be struck with the issue of a sudden, policy driven hike in housing need.

10 Therefore, the Inspector is invited to refuse the application.

TIMOTHY LEADER

Dated 12 June 2025