IN THE MATTER OF:

SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

and

AN APPEAL BY TIDCOMBE HOLDINGS LLP AGAINST MID-DEVON COUNCIL'S REFUSAL OF AN OUTLINE PLANNING APPLICATION FOR 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

PINS Ref: APP/Y1138/W/24/3358001
LPA Ref: 24/00045/MOUT

COSTS REPLY ON BEHALF OF THE APPELLANT

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1. These submissions are made in response to the Council's Costs Response dated 12 June 2025 ("the Costs Response") to the Appellant's Costs Application ("the Costs Application") in this matter. The Appellant seeks to briefly rebut some of the points raised by the Council, however, this response must be read alongside the Appellant's Costs Application and Closing Submissions, which already address a number of the points raised in the Costs Response.

2. It is factually wrong to claim that the Appellant only intimated its intention to make a costs application on the penultimate day of the Inquiry. Mr Kendrick ("MK"), who is the Appellant's planning consultant, had indicated, as early as 17 February 2025, the Appellant's views on making a costs application due to the housing land supply position and the recent HDT results, which rendered the Council's position untenable (see Appendix 1 – email from MK to Mr John Hammond dated 17 February 2025). Therefore, any suggestion that the Appellant had somehow accepted the "strength" of the Council's case in the lead up to the Inquiry is wrong. The Appellant had already raised the issue of costs with the Council months in advance of the Inquiry and the Council chose to maintain its objections to the Proposal.

3. In this scenario, the Appellant was left with no choice but to wait and see what the Council's case was on the planning balance exercise and APA's Proof of Evidence was the document which purported to do this. However, there were clear gaps in this Proof which the Appellant was entitled to and rightly explored in the XX of APA. The result of the XX of APA was the collapse of the Council's position on compliance with the Development Plan and the tilted balance as has already been set out in the Costs Application and the Closing Submissions. It is not incumbent upon the Appellant to raise issues with the substantive matters stated in proofs prior to the Inquiry since that would circumvent the whole objective of an Inquiry – the procedurally correct venue for such issues to be debated is the Inquiry itself. The Appellant in any event is entitled to fully test the Council's case to understand what its position is before making a costs application.

4. The Council's persistent reliance on the Action Plan continues to be unreasonable given that they conceded that the 5YHLS cannot be met in the short-term, nor are they able to provide any date (or even an approximate timescale) as to when and how the 5YHLS requirement will be met. Relying on this to argue that Policy TIV13 is not triggered is unreasonable for the reasons set out in paragraph 9 of the Costs Application. Any assertion that the consideration of Policy TIV13 is "unhelpful" or "tangential" is illogical and symptomatic of the Council's continued untenable approach to this Proposal. The Council's proposition is that the question of whether Policy TIV13 is triggered/released is irrelevant, yet Policy TIV13 is one of the most important policies for determining this appeal (as per APA's Proof of Evidence) as it provides the criteria for understanding what could be acceptable development of the Appeal Site (see paragraph 6 of the Costs Response). The irreconcilable nature of this proposition is evident on its face since Policy TIV13 cannot simultaneously be irrelevant and one of the most important policies in this Appeal. How Policy S14 should be read alongside TIV13 has been explained by the Appellant (see paragraph 72 of the Appellant's Closing Submissions). MK also explained why TIV13 applies notwithstanding the fact that the Appeal Site is not contiguous with the Site identified in TIV13 (see paragraph 63 of the Appellant's Closing Submissions).

5. The Council aver that they were reasonably entitled to argue that the level of harm to designated heritage assets <u>alone</u> are so significant as to warrant a refusal of planning permission. Within the Development Plan framework, such a conclusion would have

been unreasonable given the levels of less than substantial harm accepted by the Council for designated heritage assets since this single harm would have had to have been sufficient to find non-compliance with TIV13(d) and even then that non-compliance must have led to a conclusion that the Proposal does not comply with the Development Plan read as a whole (see paragraphs 11-14 of the Costs Application which further explains this position). Where the tilted balance is engaged, there is no conclusion from the Council as to where the alleged heritage harms (or indeed any other harms) fall within the tilted balance exercise. This is because APA did not carry out the tilted balance exercise at all in his proof. The Council never turned its mind to whether paragraph 215 of the NPPF was met nor how the tilted balance would affect its decision as was evident from APA's XX; had it done so, it would have had to concede that permission should be granted for the reasons set out in paragraph 21 of the Costs Application.

6. For these reasons, read alongside the Costs Application and the Appellant's Closing Submissions, the Appellant respectfully requests that its Costs Application be allowed.

Satnam S Choongh

Chatura Saravanan

No5 Barristers Chambers

Birmingham – London – Bristol

17 June 2025

Appendix I

Oliver Ansell

From: Matthew Kendrick
Sent: 17 February 2025 19:26
To: John Hammond
Cc: James Tizzard; Oliver Ansell
Subject: RE: APP/Y1138/W/24/3358001 Tidcombe Hall
Attachments: RE: APP/Y1138/W/24/3358001 Tidcombe Hall site visit; 772 A5 OA 110225 Statement of Common Ground - Draft v3.docx

Dear John,

Following our conversation earlier see attached which I have tracked changed since the last version was circulated – this is a far as I have got alongside drafting our evidence but hopefully sets out the sort of agreement we need to reach to enable me to concede the 5yr HLS point.

However, I suggest we need to consider a much broader agreement as set out in my attached email to Helen. There has been a significant material consideration since officers and members considered the application last August, namely the council has now failed the Housing Delivery Test (HDT) and an Action plan is required to address this issue. It would be nonsensical for such an action plan not to consider what will happen post July 2025 when the SM puts up MDDC's housing requirement significantly, any action plan would clearly need to look at the release of a contingency site as a first action, when other non-allocated sites are also likely to be required.

The cost guidance clearly sets out that Council's need to keep their case under review and react to changing circumstances during the appeal process, the HDT is a significant overarching change in circumstances and not reviewing and changing the council position in light of this would further undermine the Council's ability to defend our costs claim in due course.

This is a very significant change in circumstances that in my view warrants the Council withdrawing its objection to the scheme and hence agreeing that all RFRs are addressed subject to the signing of the S106. If this is done, I would be advising our clients to withdraw their costs claim against the council and it would also have the added advantage of dramatically reducing the scope of the Inquiry.

I appreciate that Councillors are resistant to the principle of development on this site but the fact of the matter is that the site does form part of an allocation that in light of the HDT failure should be released for development to meet under delivery – furthermore the Local Plan evidence base has plenty of evidence to support our case that agricultural land quality, landscape and heritage impacts were considered, and indeed some negative impacts apportioned to them in testing the Local Plan, but the site was still allocated and the Inspector actually advised the council it should be a 'normal' allocation and not a contingency site.

If you could consider the revised SOCG and my points above with colleagues tomorrow it would be appreciated, we have now started to accrue significant costs including those associated with our appointed Counsel so any agreement to avoid costs needs to be made quickly. To that end if you could call me after your meeting and in advance of the SOCG deadline on Thursday it would be appreciated.

P.S. – The Council's put to the list of conditions would be appreciated also, I've only put a few placeholders in that section so far.

Kind Regards,

Matthew Kendrick
Director
grassroots
PLANNING