



Ref: **MM** MM-Other,  
MM-01,MM-39, MM-42,  
MM-43, MM-44, MM-45  
**SA** MM-44

(For official use only)

## Consultation on Draft Main Modifications to the Local Plan Review 2013 - 2033

### Form for representations

Please return by 17 February 2020 (5pm).

When making a representation you must include your name and full postal address, otherwise your comments cannot be registered. Addresses will only be used to inform people about the new plan and other planning matters.

This form has two parts –

Part A – Your Details

Part B – Your representation(s). Please fill in a separate Part B for each representation.

Data Protection Act. Please note that this information on this form will be entered onto a database and the paper copies retained on file. The information will be used for the purposes of Town and Country Planning and may be viewed by any person for such purposes. To find out more on how we use your personal information, please see our Privacy Notice <https://www.middevon.gov.uk/PNRepresentations>

The Local Plan Review Main Modifications and associated information can be seen on the Council's website at [www.middevon.gov.uk/LPRMainMods](http://www.middevon.gov.uk/LPRMainMods)

If you require this information in another language or format, please contact us on 01884 255255 or email [customerfirst@middevon.gov.uk](mailto:customerfirst@middevon.gov.uk)

## Part A

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*\* If an agent is appointed, please complete only The Title, Name and Organisation boxes below but complete the full contact details of the agent in 2*

## Part B – Please use a separate sheet for each representation

### 3. Name or organisation:

4. To which Main Modification consultation document does this representation relate? Please tick one box only (please use a separate sheet for each document you are commenting on)

Schedule of Proposed Main Modifications	√
Sustainability Appraisal Addendum	
Habitats Regulations Assessment (HRA) Addendum	
Equality Impact Assessment (EqIA) Addendum	
Schedule of Additional Modifications	

5. Please indicate the schedule reference (e.g. MM01) in the above document and the Policy number (e.g. DM1) to which your representation relates (please use a separate sheet for each schedule reference you are commenting on):

Reference Code

See below
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Policy

SP2 / J27
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*Please note that this consultation invites comments on modifications only, and not the wider unchanged content of the Local Plan Review.*

The Local Plan Review 2013 – 2033 is required to be assessed against the tests set out in paragraph 182 of the 2012 version of the National Planning Policy Framework to establish whether it is ‘sound’ and complies with legal requirements:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities, where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with National Policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the National Planning Policy Framework.

6. Do you consider the Local Plan Review to be:

6.(1) Legally compliant

Yes

No  NO

6.(2) Sound

6 (2.1) Positively Prepared

Yes

No  NO

6 (2.2) Justified

Yes

No  NO

6 (2.3) Effective

Yes

No  NO

6 (2.4) Consistent with national policy

Yes

No  NO

7. Please provide your comments below

Introduction

On 5 December 2019, Mr Robert Young (LPR Examination Programme Manager) sent me an email in reply to a request that I had put to him. In his email, he quoted the Inspector as advising me that '*... If you wish to suggest changes to those that are published, or suggest alternatives, then it is best that you do so as part of your response to the consultation*'.

I thank the Inspector for this invitation and now wish to respond accordingly.

Paragraph 6.1 of the Procedural Guide for Local Plan Examinations (June 2019, 4<sup>th</sup> edition, v1) says: '*Any change to the submitted plan that would materially affect one or more of the plan's policies can only be made as a MM recommended by the Inspector. **MMs may be suggested by the LPA, by representors and hearing participants, or by the Inspector. They can range in scope from redrafting parts of an individual policy or of the reasoned justification, to the deletion of whole policies or site allocations and the insertion of new ones***'. [My emphasis].

The guide does not explain how hearing participants such as myself can suggest MMs. I called the Inspectorate to ask how this can be done and was told to ask the programme manager, Mr Young. I did so and he, in turn, passed my request to the Inspector. While I welcome the Inspector's response in that it allows me freedom to suggest alternative changes, I note that he did not answer my specific question. My aim was to suggest alternative MMs and act on paragraph 6.8 of the same guide. This states that '*... the consultation document will include all the proposed MMs, making no distinction between those originally proposed by the LPA and those proposed by the Inspector or others*'. This would have made the consultation more open. That ship appears to have sailed.

Although I understand that any Main Modification that is to change the LPR must be recommended by the Inspector, the consultation has, in this way, been stripped of a process that would have allowed the Inspector to assess popular responses to different MMs beyond those set out in the LPA's consultation documents as they stand. There is now no way of knowing how he might have responded to such additional MMs if they had gone out to consultation as described in 6.8 above. I can inform the Inspector, however, that over 240 people have signed to indicate their support for my attempts on their behalf to prevent development of the Higher Town site. (Data can be supplied if requested).

Residents sought to persuade the Council to raise these issues (below) with the Inspector three months ago, but officers insisted that this either could not or should not be done.

I turn now to make my arguments for a more radical but more fair solution to the problems caused by Policy SP2. I also add comments on Policy J27 at the end.

Mr Martin Peter Drew is adding a supplementary representation that I ask the Inspector to consider. This, amplifies aspects of my arguments below and adds significant new comments.

### **Problems in the LPR not addressed in the published Main Modifications.**

1. **Policy SP2 – overview of my reasons for deleting this policy.** (I will justify these points in due course in section 4).
  - 1.1. The site is under appeal through an Inquiry. **(New information)**.
  - 1.2. Its proposed 60 houses are undeliverable by 2023 using the HELAA model. **(New information)**.
  - 1.3. The LPA's own highway expert acting in the appeal over the SP2 site has stated that 'safe and suitable access cannot be achieved for all users'. **(New information)**.
  - 1.4. The LPA's own officers have found that the access described as the 'most suitable' by the Highway Authority will harm the canal conservation area to such an extent that it cannot be used. **(New information)**.
  - 1.5. The LPA has engaged landscape experts who also believe there will be 'important' landscape impact on the canal conservation area. **(New information)**.
  - 1.6. SP2 requires the loss of 6ha of Grade 2 best quality land when we now know that more than enough housing is to be built at Willand mostly on lower quality land. **(New information)**.
  - 1.7. The LPA fought at appeal to defend a 3% growth at Willand. It believes a 9% growth breaks its distribution strategy and an appeal Inspector has agreed. **(New information)**. The allocation of SP2 means that the number of households in Sampford Peverell will increase by 13%.
  - 1.8. Flood Risk assessment of the site has hit problems and an extra 12 month programme of groundwater monitoring is taking place. This raises the possibility that a SUDS scheme may not be viable. **(New information)**.
  - 1.9. The site was allocated by the application of a 'proximity' test that excluded sites more distant from J27, even though the housing is now described as serving overall need across Mid Devon. This is a **new and unjustifiable contradiction**.
  - 1.10. Finally, as will be shown below, problems with policy J27 mean that the 'objectively assessed need' for housing is no longer reliable, especially the calculations that were belatedly made with the addition of the allocation at Junction 27.
2. Before I set out the reasoning behind these arguments, I will start by **asking for an extra Main Modification to be added to Policy SP2 should it be retained within the Plan.**

- 2.1. This issue is not addressed by any of the MMs published for consultation.
  - 2.2. It concerns criterion SP2c that currently refers to the need to respect the setting and character of just one conservation area, (the Sampford Peverell village conservation area).
3. New information means that the Inspector should revisit this issue. **I ask him to recommend to the LPA that the wording SP2 (c) should be amended to require ‘...landscaping and design which respects both the village conservation area and the Grand Western Canal Conservation Area’.**
- 3.1. In his post-hearings advice note of October 2018 (ID08), the Inspector expressed his judgement that *‘...I am content that the Council’s conclusion that development of the site proposed for allocation could take place with very little or no harmful impact on the setting or the significance of the Grand Western Canal Conservation Area is not an unreasonable one.’*
  - 3.2. **NPPF 158 and 169 on plan-making say LPAs should ensure their plans are based on up to date evidence on environmental matters, including heritage assets.** I ask the Inspector to bear this in mind as he reads my comments below.
  - 3.3. With his remarks in ID08, quoted above, the Inspector has accepted the LPA’s account of why it has never recorded any assessment of any potential harm that development on the SP2 site may cause to the setting or significance of any part of the Grand Western Canal Conservation Area (GWCCA).
  - 3.4. No such assessment was recorded either in the LPA’s Sustainability Appraisal or in its supplementary but separate Historic Environment Appraisal. It should be noted that the Inspector accepted the LPA’s conclusion without ever taking up an invitation to visit the property that occupies the part of the GWCCA that is closest to the SP2 site.
  - 3.5. At the February 2019 hearings, I asked the LPA to clarify its position: did officers believe there would be ‘very little harm’ or ‘no harm’? The LPA’s Head of Forward Planning clearly informed the Inspector that the basis for the decision not to record any assessment of any harm was the LPA’s belief that there would be *‘no harm’* to the setting or significance of designated heritage asset. It should be noted that, like the Inspector, neither the Head of Forward Planning nor any other LPA officer involved in the Local Plan Review, has ever visited the property within the GWCCA where the that the SP2 is at its closest to the conservation area.
  - 3.6. The Head of Forward Planning’s verbal declaration of ‘no harm’ must carry as much weight as, for example, the verbal statement by the Highways Authority that there was no need to improve the A361 junction before work can begin on SP2.
  - 3.7. Since then, a Freedom of Information request to MDDC (Ref EIR06403) has changed the picture. The request arose from application 17/01359/MOUT. This seeks to develop the SP2 site and LPA officers have described it as complying with all the main aspects of SP2 as it will be worded after adjustment for the proposed MMs. The

application has now gone to appeal.

- 3.8. The FOI response was published in September 2019 but the key content was written two years earlier on 3 October 2017. It takes the form of an email from the LPA case officer to the conservation officer and the Highway Authority. In the email, the case officer confirmed that he had proposed to the applicant a change of location for the main access to the SP2 site. Crucially he says that this had been done to ‘... *reduce the impact on the street scene/Heritage (GWC Conservation area)*’.
- 3.9. This is clear, written evidence that the LPA’s own planning officers and conservation officer recognize that development at the SP2 site may cause sufficient harm to the GWCCA for a proposed main access to be moved.
- 3.10. To be clear, the access that was found to be unworkable was the same that the Local Highways Authority had told the LPA was ‘*achievable*’ and ‘*most suitable*’ for the SP2 site. This had been explained to Members at the Council Meeting on 1 December 2016 when SP2 was confirmed as an allocation. On the audio recording of the meeting, the Head of Planning and Regeneration tells Members (at 1:14:15) that ... “*In terms of constraints to delivery, [the SHLAA assessment for the Higher Town site] does indeed record that there may be no safe points of access, but importantly ‘to be confirmed’. And we have subsequently held further discussions with the Highway Authority in order to substantiate the position over suitability in terms of transport and highway access. The advice that we have received is that **the most suitable point for highway access to the site is from the south, from Turnpike, that it is suitable, deliverable and that there are no highway impediments to the site coming forward ...***” (Ends 1:15:00).
- 3.11. The applicant made the recommended change of main access. This shows that the projected harm to the canal conservation officer was a significant matter. We have here clear, written evidence from the LPA’s own planning team that development at SP2 with the main access recommended by the LHA and officers when the site was allocated would cause at least some harm to the setting or significance of a designated heritage asset. This cannot be dismissed as an application-specific issue. It concerns the site access that the LHA found to be ‘most suitable’ for resolving the issue that had led to doubts about the sustainability of the site.
- 3.12. More recently, the case officer for the same application informed the Planning Committee on 31 July 2019 that the main access was changed following a site visit, discussions with the applicant and advice from conservation officers concerning the impact the original access may have on hedgerows and ‘*the conservation area*’. (The audio has these remarks at 2:1:50). It was not specified which conservation area he was referring to and this led to the Freedom of Information request. The FOI response made it clear that the concern was particularly over the canal conservation area.
- 3.13. It cannot be argued that this problem of harm to the GWCCA was resolved by moving the main access. Even with a new main access hundreds of yards from the

original location, the case officer's report still recorded that '*... It is the view of the Conservation Officer that there will be less than substantial harm to the listed building, conservation areas [plural] and the unlisted historic assets*'. The Conservation officer judged that an outline application will cause the same level of harm to the Grand Western Canal Conservation Area as to the village conservation area. But one is mentioned in the current wording of SP2 and the other is not.

- 3.14. The LPA employed independent landscape experts in 2018 to review the applicant's own Landscape Visual Impact Appraisal of the SP2 site. They found that development on the SP2 site would result in '*... increased urbanization to the character of views [from the canal conservation area] resulting in a localised Moderate landscape effect*' on a 180m stretch of the canal conservation area to the south of the site. The visual effect is also found to be Moderate. These are the predicted effects after 15 years, with mitigation.
- 3.15. The report applies the following definition of Moderate landscape effects: '*The proposed development is out of proportion with the scale, landform and pattern of the landscape, and/or damages quality or characteristic features*'.
- 3.16. It also accepts this definition of Moderate visual effects: '*The proposed development causes noticeable deterioration in the existing view*'.
- 3.17. As part of its appeal preparation, the LPA has also employed another landscape consultant in November 2019 to consider the possible impact of this application that the case officer has described as compliant with SP2. [The relevant report is *DWP\_Landscape\_191224 V4 Higher Town Landscape Statement*]. Within its conclusions at paragraph 34, it states that '*...Our own judgement is that important adverse effects are predicted for receptors using the Canal towpath and on the landscape setting of the Canal*'. Clearly this is not a formal heritage assessment, but it makes it extremely difficult for the LPA to sustain its view that development at the SP2 site will cause 'no harm' to the setting or significance of the Grand Western Canal.
- 3.18. I understand that the Inspector presiding over this examination must not become involved in the separate issue of the appeal that is taking place over proposed development at the site. I do not ask him to make any judgement on that specific matter. But if he allows Policy SP2 to remain in the LPR proposals, without any mitigation being required for potential harm to the canal conservation area, the Inspector must be sure that this is consistent with the **new information** in the form of findings of **an LPA case officer, an LPA conservation officer and two different sets of landscape experts engaged by the LPA first in 2018 and then in 2019. All these have found there to be harm either to the setting of the canal conservation area or to its landscape character.**
- 3.19. Equally, the LPA itself will need to be able to justify its declared position that there will be 'no harm' to the significance or setting of the canal conservation area and that it has therefore never needed to record any assessment of harm within the



Sustainability Appraisal.

- 3.20. It may help to note the 2012 NPPF glossary provides this definition:  
*'Significance (for heritage policy): The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting'*.
- 3.21. These judgements about harm to the setting or significance of the canal conservation area are all new information for the Inspector to consider. If the policy is adopted within the plan in its current wording, the LPA will need to be sure that it has complied with legal requirements concerning designated heritage assets that are to be accorded special attention.
- 3.22. I now mention a point that is **not** new information but that demands some new information to be made public. Over three years ago, a consultation meeting was held at the Sampford Peverell Village Hall. Its purpose was to allow local people to discuss the Local Plan Review proposals that had been published in January 2017. One objector asked the then Head of Forward Planning to explain what was signified by the certain red lines on the policy map. He pointed directly to the red lines that surround the property just south of the south-eastern boundary of the SP2 site. The officer replied that the lines showed the village conservation area. But they do not. They represent a northward loop made by the canal conservation area at that point. The officer failed to identify correctly the boundaries of a conservation area just 50m from the SP2 site. The objector who raised the question about the red lines has made a Statutory Declaration (dated 26 March 2018). It sets out these events simply and clearly. He has sent a copy with a consultation response to the LPA and he has raised the matter at LPR hearings in September 2018. Others raised the matter again at the hearings in February 2019. Despite these direct requests for a response, at no point has the LPA given any sort of acknowledgement of the existence of the sworn statement let alone offered a comment on its implications. The LPA cannot avoid its responsibilities in this very serious matter. Local residents look to the Inspector to prompt a response from the LPA. They also ask him to be sure to express his own views on this matter and how he has used the evidence of the Statutory Declaration to inform his own conclusions about the LPA's assessment of potential harm to the canal conservation area. We trust that he will address this matter directly in his own final report.
- 3.23. I return to the substantive question of how Policy SP2 does or does not need to address harm to GWCCA. Crucially, any harm is significant in the case of a conservation area or even its setting.
- 3.24. In the case of *Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council & Others* [2014] EWCA Civ 137, the court found that *'[The Inspector] appears to have treated the less than substantial harm to the setting of the listed buildings ... as*

*a less than substantial objection to the grant of planning permission.*' While the context of SP2 concerns a Local Plan Review examination rather than an application or appeal, I think there is a direct parallel here with the 'Barnwell' case.

- 3.25. In his post-hearings advice note ID08, the Inspector has drawn no distinction between *'very little or no harmful impact'*. I was surprised at the February hearings where he asked me why I wanted the LPA to distinguish between these two. But a distinction surely needs to be drawn. If there is **any harm** to a conservation area the LPA is bound by the Planning (Listed Building and Conservation Areas) Act, 1990 s.72 to pay special attention in the exercise of its planning functions *'... to the desirability of preserving or enhancing the character or appearance of that area'*. While s.72 does not specify that settings of conservation areas have statutory protection, the courts have decided that they do effectively share the same rights as those of listed buildings where setting is always protected.
- 3.26. S.72 of the Act refers to 'preserving'. The Inspector in this LPR examination has rightly insisted in his comments on DM2 (MM47) that he takes 'preserve' to mean to 'cause no harm to'. The wording of his letter ID08, accepts that there may be at least some harm to the GWCCA from development at SP2.
- 3.27. *South Lakeland DC v Secretary of State for the Environment* [1992] 2 A.C. 141 established this definition of 'preserve' as meaning 'do no harm'. It also found that, where there is any harm to a conservation area, *'... there will be a strong presumption against the grant of planning permission'*. By implication, harm to a conservation area is not a matter that can be lightly set aside in plan-making.
- 3.28. Similarly, NPPF 132 requires that any harm or loss [to any designated heritage asset] *'... should require clear and convincing justification'*. New evidence now shows that the GWCCA will be harmed by development at SP2. If the policy stays in its current form, it will be **inconsistent with NPPF (2012) 132**.
- 3.29. In ED06, the LPA has argued that it did assess potential harm to the GWCCA and that readers can infer from the absence of any recorded assessment in its findings that *'... the authority does not think that there is a material effect'*. Relying on inference when the 1990 Act calls for special attention and NPPF 132 calls for clear and convincing justification of any harm is questionable. To maintain the same stance when we now have clear written evidence of a material effect is unsustainable.
- 3.30. **As currently worded, Policy SP2c does not fulfill the LPA's statutory duty to pay special attention to preserving the character or appearance of a conservation area.** It adopts this position even though its own officers now have convincing evidence that it can no longer be claimed that there will be 'no harm'. To keep the current wording is **inconsistent with NPPF 158 and 169 on plan-making. These say LPAs should ensure their plans are based on up to date evidence on environmental matters, including heritage assets.** Regardless of their past actions and assertions on this matter, there is now up to date evidence from the LPA's own

officers that development on the SP2 site will cause harmful impact to the significance of the conservation area or its setting. **I ask the Inspector and the LPA to act on this powerful new, up to date evidence of harm. This should, at the every least, result in a re-wording of SP2c.** If the Policy is to be retained, 2c should be changed to read '*... Landscaping and design which respect the setting and character of the area, conservation areas and listed building*'. (ie an 's' should be added to 'conservation area').

- 3.31. NPPF 154 states (in part) that '*... Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan*'. LPA decision makers reading policy SP2 would have no way of knowing from the Local Plan that the setting of a designated heritage asset would be harmed by development on the site. Similarly, an applicant would not be guided to provide for its preservation or mitigation.
- 3.32. This is proven by the failure of the current application 17/01359. The applicant failed to make any assessment of harm to the canal conservation area in his Hearing Statement for the first examination hearings. (These can be found at <https://www.middevon.gov.uk/residents/planning-policy/local-plan-review-examination/preliminary-hearings-september-2018/> listed among the files from Harcourt-Kerr 6790). Those were written c.May 2017 and included a Heritage Statement, a Design and Access Statement and a concise Landscape Visual Impact Appraisal. None considered the potential for harm to the canal conservation area as they all took their lead from the current proposed wording of SP2c.
- 3.33. **The 2012 National Planning Policies Framework paragraph 129** requires that *Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.*
- 3.34. The LPA's own LPR is, in its way, a planning 'proposal'. We have evidence that if Policy SP2 does not specifically require an assessment to be made of potential impact on the canal conservation area and mitigation for any such harm, then would-be developers will follow the LPA's own lead and believe that no recorded assessment or mitigation are necessary. As currently worded, SP2 gives no clear indication to the decision maker that the setting and significance a designated heritage asset will, on the basis of the most up-to-date evidence, be harmed to some degree by development on the site.
- 3.35. It follows that **policy SP2 also fails to comply with NPPF 154**. This says (in part) that '*... Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.*

**4. I now consider other ‘new information’ that, when taken with the comments above, should lead to policy SP2 being deleted from the Plan in order to render it ‘sound’.**

4.1. Further to matters concerning heritage assets (discussed above), **new information on housing supply shows that the 60 houses at SP2 are no longer needed.** This, in turn, means that the **loss of best quality agricultural land to allow for development at SP2 cannot be justified.** The LPA’s document ED21 shows its latest data on housing supply calculations for the LPR. It stands at over 6 years’ supply. (In fact, recent appeal Inspectors have accepted that the supply, when calculated in the context created by the 2019 NPPF, stands at 7.58 years. See APP/Y1138/W/19/3232381 at Bampton in Mid Devon – paragraph 19).

4.2. The HLS of over 6 years excludes the extra 83 houses to be built at Willand as a result of an appeal. The Willand appeal decision was issued after ED21 was created. The LPA has stated that these 83 dwellings will be added to ‘commitments’ in the 2018-23 five year phase of the plan. The 83 extra houses more than cover the 60 that were allocated to SP2 to meet the need generated by the addition of policy J27. There is, therefore, no need for the SP2 allocation.

4.3. In fact there is no justification for the 60 houses at SP2 to be built because the land at Willand, where the additional 83 houses will be added, is described in the SA as mainly Grade 3 quality. But SP2 is best quality, Grade 2 agricultural land. To make matters worse, the topography and surrounding settlement character at SP2 means that over 6ha of Grade 2 agricultural land would be lost to achieve just 60 houses. The argument about Grade 2 land is not new to the Inspector but the new information about extra housing at Willand means that the loss of the highest quality land should be reconsidered.

4.4. NPPF 112 makes clear that ‘... *Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality*’. (My emphasis). The use of the land is no longer necessary and it is clearly both possible and preferable not to build on it now that the need has been met elsewhere. If SP2 is retained, despite the sufficient supply of housing on poorer quality land, the LPR is **non-compliant with NPPF 112.**

4.5. It should not be forgotten that there is still an alternative viable site within the village at Mountain Oak. This has been assessed within the Sustainability Appraisal process. Access arrangements (widths) into this site have been improved. The speed limit on the road past the site has been changed from 40mph to 30mph. There is new street lighting all the way from the site into the village. There is also a fully lit footway from the site down to Tiverton Parkway station which is much closer to this site than it is to SP2. There are no highway safety issues associated with Mountain Oak. A separate

consultation response from one of the landowners addresses these points.

- 4.6. The LPA's defence of the Willand appeal adds further new information that the Inspector should consider. Document ED21 helpfully quantifies what the LPA does and does not accept as proportionate growth for a village. It ***provides important new information about the levels of growth that are consistent with its distribution strategy.***
- 4.7. On page 10 it records that '*... Planning application reference 18/00175/MOUT was refused on 9th October 2018 for 125 dwellings at Meadow Park, Silver Street, Willand as being out of scale and size to the settlement and available facilities in the settlement. It is therefore inconsistent with the Local Plan's strategy for the distribution of development*'. The appeal Inspector found no fault with the argument that 125 dwellings would be inconsistent with the distribution strategy in the LPR. But the 42 dwellings that were originally allocated in policy Wi1 and defended by the LPA represent an increase of 3% on Willand's households from 2011.
- 4.8. The 125 dwellings that it says will break its distribution strategy would represent an increase of 9% at Willand. But the 70 houses to be added to Sampford Peverell by policies SP1 and Sp2 combined make an increase of 13%. The LPA has argued that 9% growth at Wi1 would break its strategy for distribution (and an Inspector accepts this) but at the same Policy SP2 would allow a 13% growth at Sampford Peverell to be proportionate and acceptable. This new information provides us, for the first time, with quantitative information on the LPA's understanding of what its distribution strategy requires. The new information reveals that allowing 13% growth at Sampford Peverell while seeking to defend a 3% growth at Willand (a significantly larger settlement) is inconsistent. And the appeal Inspector agreed in principle with the LPA's defence of a 3% growth at Willand.
- 4.9. The question of what is appropriate growth at Sampford Peverell is affected by the Inspector's recommendation that the tie between Policies SP2 and J27 be cut. Policy S2 in the LPR says that settlements other than Tiverton, Cullompton and Crediton '*... will have more limited development which meets local needs*'. S14 says that Sampford Peverell (among other listed villages) will have '*... limited development which enhances community vitality or meets a local social or economic need*'. The LPA knew that allocating 60 houses without any local need arising from development at J27 would create an internal inconsistency in the LPR. The Inspector's decision to cut the tie to J27 overrides the LPA's reasoning and introduces exactly the internal inconsistency that the LPA sought to avoid.
- 4.10. **My final point on Policy SP2 is that the allocation was based on an unfair and unjustifiable allocation process.** The Inspector himself has provided **new information** that needs to be fed back into his examination of the Plan.
- 4.11. In ID12 he says that the extra housing provided by SP2 is to meet the 'overall need'. The LPA applied a criterion of proximity when it drew up its shortlist of

reasonable alternatives to meet extra housing need following the allocation in policy J27. This criterion is repeatedly stated as being part of the process in the 2018 Sustainability Appraisal Update.

**4.12.** As the Inspector has now decided that the housing at SP2 is to meet 'overall need', then the 'proximity' criterion used in the allocation process was clearly not justifiable. The sixty houses could have been allocated at one or more locations in Mid Devon with no proximity to Junction 27. That strategy would have been a much more 'reasonable alternative' given that the housing was for 'overall need'.

**4.13.** If SP2 is to remain in the LPR, **one solution would be to re-run the allocation process**, this time identifying reasonable alternatives from across Mid Devon since the housing is to meet district-wide need. The same may be true for TIV16. This process would take many months and would create a huge amount of expense and work.

**4.14.** There is **another solution** that tackles the fact that SP2 has been found to be 'unsound' and needs attention. Given all the inadequacies of the policy set out above, a simpler and more just solution (assuming the Inspector judges this to be a sound approach that follows due process) is to **cut SP2 from the plan**. This would remove the unsound policy and still leave sufficient housing in the first five years while protecting 6ha of highest quality agricultural land as NPPF requires in these circumstances. Indeed, the housing at Wi1, as part of the enlarged scheme permitted at appeal, is much more likely to be built out by March 2023 than that at SP2. It is even within the 'proximity' zone originally set for additional allocations arising from the J27 allocation, should that still be deemed relevant.

## **5. In summary on SP2: (Repeated from above)**

- The site is under appeal through an Inquiry. **(New information)**.
- Its proposed 60 houses are undeliverable by 2023 using the HELAA model. **(New information)**.
- The LPA's own highway expert acting in the appeal over the SP2 site has stated that 'safe and suitable access cannot be achieved for all users'. **(New information)**.
- The LPA's own officers have found that the access described as the 'most suitable' by the Highway Authority will harm the canal conservation area to such an extent that it cannot be used. **(New information)**.
- The LPA has engaged landscape experts who also believe there will be 'important' landscape impact on the canal conservation area. **(New information)**.
- SP2 requires the loss of 6ha of Grade 2 best quality land when we now know that more than enough housing is to be built at Willand mostly on lower quality land. **(New information)**.
- The LPA fought at appeal to defend a 3% growth at Willand. It believes a 9% growth breaks its distribution strategy and an appeal Inspector has agreed. **(New information)**. The allocation of SP2 means that the number of households in

Sampford Peverell will increase by 13%.

- Flood Risk assessment of the site has hit problems and an extra 12 month programme of groundwater monitoring is taking place. This raises the possibility that a SUDS scheme may not be viable. **(New information)**.
- The site was allocated by the application of a 'proximity' test that excluded sites more distant from J27, even though the housing is now described as serving overall need across Mid Devon. This is a **new and unjustifiable contradiction**.
- Finally, as will be shown below, problems with policy J27 mean that the 'objectively assessed need' for housing is no longer reliable, especially the calculations that were belatedly made with the addition of the allocation at Junction 27.

6. It follows that policy SP2 is not based on objectively assessed requirements (ie **not positively prepared**). It is not the most appropriate strategy as Willand now offers more houses in the right location on lower quality land (**not justified**). It is not deliverable in the time allocated (**not effective**). It also fails to follow the requirements of statute and the NPPF in many important respects, notably its failure to seek to preserve or mitigate harmful impact on the canal conservation area and the findings of highway experts that safe access for all cannot be provided (**not consistent with national policy**). If it is not deleted from the LPR, I believe the policy will not be legally compliant.

## 7. Policy J27

7.1. The Inspector commented in ID12 that '*... I am however content that while the policy [J27] 'makes provision' for various elements, it does not rule out a scheme that takes a different format and in particular, a less ambitious scheme that might not require the Outlet Shopping Village*'.

7.2. NPPF 182 requires the LPR to be '*... Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements*'.

7.3. The Objectively Assessed Housing Need that the Inspector accepts in the opening lines of ID12 is based partly on a detailed report on the additional housing need generated by an allocation at J27 for a policy with the specific scheme as set out in the draft policy J27. The Inspector is prepared to accept that the phrase '*makes provision for*' is enough for the listed elements of the scheme to be dropped. He specifically contemplates, for example, a scheme that '*...might not require the Outlet Shopping Village*'. The policy as worded allows 6ha for a shopping village. This alone must represent a very significant number of jobs. **The flexibility that the Inspector allows to policy J27 means the OAN figure for housing can no longer be justified. Allocations, including SP2, that were belatedly made in the light of the additional housing, supposedly needed for a development as set out in the policy J27, are**

**not based on a valid OAN. It follows that the LPR has not been positively prepared.**

- 7.4. If the Inspector wishes to open the way for a less 'inflexible' version of Policy J27, the policy's wording must be changed to that effect. How is a potential developer to know that a 'less ambitious' or significantly different development of the J27 site is acceptable? Those in the Hearings and those who have read these examination papers may know his interpretation, but those who have not been party to the process are prejudiced.
- 7.5. NPPF 182 requires that the LPR is to be '**Justified** – *the plan should be the most appropriate strategy, when considered against the reasonable alternatives*'. But **policy J27 fails to comply with NPPF 182 as it clearly is not 'the most appropriate strategy'**. **The Inspector has said as much in his statement in ID12 but he has not recommended Main Modifications to amend the policy accordingly.**
- 7.6. NPPF 154 states (in part) that '*... Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan*'. Decision makers reading Policy J27 would have no way of knowing from the Local Plan itself that its provisions can be flexed as the Inspector has suggested. Equally, if the Inspector's blessing for a 'flexible' interpretation of this policy is known and applied, then decision makers may believe they can do the same with other policies. **Policy J27 fails to comply with NPPF 154 and so is not consistent with policies in the National Planning Policies Framework.**

(Continue on a separate sheet if necessary)

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Forward Planning  
Mid Devon District Council  
Phoenix House  
Phoenix Lane  
Tiverton EX16 6PP

or email to [planningconsultations@middevon.gov.uk](mailto:planningconsultations@middevon.gov.uk)



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## **Consultation on Draft Main Modifications to the Local Plan Review 2013 - 2033**

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## Part A

	1. Personal Details*	2. Agent Details (if applicable)
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First Name	Jamie	
Last Name	Byrom	
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Post Code	EX16 7TA	
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E-mail Address	████████████████████	

*\* If an agent is appointed, please complete only The Title, Name and Organisation boxes below but complete the full contact details of the agent in 2*

## Part B – Please use a separate sheet for each representation

### 3. Name or organisation:

4. To which Main Modification consultation document does this representation relate? Please tick one box only (please use a separate sheet for each document you are commenting on)

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Habitats Regulations Assessment (HRA) Addendum	
Equality Impact Assessment (EqIA) Addendum	
Schedule of Additional Modifications	

5. Please indicate the schedule reference (e.g. MM01) in the above document and the Policy number (e.g. DM1) to which your representation relates (please use a separate sheet for each schedule reference you are commenting on):

Reference Code  Policy

*Please note that this consultation invites comments on modifications only, and not the wider unchanged content of the Local Plan Review.*

The Local Plan Review 2013 – 2033 is required to be assessed against the tests set out in paragraph 182 of the 2012 version of the National Planning Policy Framework to establish whether it is ‘sound’ and complies with legal requirements:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities, where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with National Policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the National Planning Policy Framework.

6. Do you consider the Local Plan Review to be:

6.(1) Legally compliant      Yes       No

- 6.(2) Sound

6 (2.1) Positively Prepared	Yes	<input type="checkbox"/>	No	<input type="checkbox" value="NO"/>
6 (2.2) Justified	Yes	<input type="checkbox"/>	No	<input type="checkbox" value="NO"/>
6 (2.3) Effective	Yes	<input type="checkbox"/>	No	<input type="checkbox" value="NO"/>
6 (2.4) Consistent with national policy	Yes	<input type="checkbox"/>	No	<input type="checkbox" value="NO"/>

7. Please provide your comments below

As part of my response, I will comment directly on individual MMs as proposed in the documentation published with this consultation.

I will, however, also submit a response that calls for wider and deeper changes. I understand that these should, in theory, be discounted as irrelevant but they are submitted on the basis of the email sent to me by Mr Robert Young on 5 December 2019. In it he quoted the Inspector as advising me that '*... If you wish to suggest changes to those that are published, or suggest alternatives, then it is best that you do so as part of your response to the consultation*'.

**MM01 – This proposes that the first year of building at SP2 starts in April 2020 and that the build-out will be completed by the end of March 2023. The site is not deliverable in that time span.**

Planning Practice Guidance (paragraph 007 Ref ID: 68-007-20190722) says that '*... In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions*'. [My emphasis]. The rest of this section of PPG is also very pertinent to this Main Modification and I hope the Inspector will bear it in mind, but I will only quote the sentence above. I respectfully ask the Inspector to consider what I believe to be 'robust, up to date evidence' set out below and ask him to take it into account when assessing the proposal to bring policy SP2 forward in the proposed housing trajectory.

Outline application 17/01359 to develop the SP2 site was refused by the LPA's own Planning Committee on 31 July 2019. It is now subject to an appeal by Inquiry. The Inquiry is not scheduled to open until late April 2020 and will not close until May 2020. The start of the first building year (as shown in the revised schedule in MM01) will have come and gone even before the Inquiry takes place.

The LPA says that its calculations of deliverability are based on the HELAA model with market conditions. That model (Appendix 2 in document HOU 09) expects sites without permission at the start of the five year phase to 'commence in Year 3'. A site for 60 houses such as SP2 should deliver a maximum of 12 dwellings in 2020-21. But SP2 starts the year as a site still without outline permission.

Its status as a site subject to appeal must not be ignored. In its document ED21, paragraph 1.10, the LPA considered a site at Willand. The Inspector had suggested this site might be

expanded to provide more housing in the early years of the new plan. The LPA argued successfully that '*... pending the outcome of the appeal, the site [Willand] is not a reasonable alternative*' (for providing housing early in the trajectory). Planning Practice Guidance 007 Ref ID: 68-007-20190722 lists evidence that may be used when assessing the deliverability of a site. It includes 'current planning status'. The status of the SP2 site is that outline permission to develop there has been refused and is at appeal. **This is new information** not known to the Inspector or the LPA when the schedule shown in the table was set out in June 2019. If SP2 is still seen as a reasonable alternative for providing housing delivery in the early years of the new plan, the inconsistency with the Willand site and PPG will need careful justification.

The LPA has attempted to reassure the Inspector about delivery at SP2 in its document ED22, page 50. It comments on SP2 saying that '*... It is understood that there is market interest in developing the site*'. No evidence is given to support this statement - and this is an evidence-based exercise. The same Planning Practice Guidance referred to above sets out another sign of deliverability as being '*... a written agreement between the local authority and the site developer(s) which confirms the developer's delivery intentions*'. The outline planning application has been submitted by a land promoter and since there is no developer for SP2 no such evidence exists. **No developer has formally agreed to develop the site.** None is likely to enter such an agreement until the site has gained outline planning permission and extra tests set by the Local Lead Flood Authority (discussed below) have been satisfied. And, of course, there is no guarantee that the appeal will be upheld. Should it be dismissed, developers are likely to be wary of taking on such a site. I respectfully suggest that the Inspector should set aside the LPA's unsupported assertion about 'market interest' and be guided by the known fact that the site has no outline planning permission (let alone full permission) for development as it enters what should be its first year of building work according to the HELAA model.

Even if the appeal were to be upheld (and the LPA is vigorously defending its decision to refuse) a condition set by the County Flood Risk team already requires that the applicant must complete an additional set of groundwater monitoring before permission to develop the land can be confirmed. The reason for extra monitoring is that the applicant's initial programme of tests could not be satisfactorily completed and, in the words of the Flood Risk and Drainage Strategy Report, one test pit 'effectively failed'. The extra monitoring must run until September 2020. Only once the outcome of those tests is known and viability has been confirmed by the LLFA can any development begin on site. But it is not certain site's suitability will be approved.

If it assumed that the appeal is upheld and the results of the groundwater monitoring present no problems, the earliest date for the site to be progressed would be late September 2020. By then it will be five months behind the HELAA schedule. A developer would still need to be 'signed up', reserved matters must be designed, proposed and approved, a significant

programme of archaeological work will be needed as a result of preliminary investigations in September 2019, and significant off-site works relating to access must be completed. Only then could onsite work begin.

A respected national planning consultancy, Lichfields, has undertaken research into how long it takes to develop large housing sites [see: <https://lichfields.uk/blog/2018/october/29/driving-housing-delivery-from-large-sites/>]. For sites of less than 99 units it concludes that *“the “planning to delivery” period, that is, the period from the approval of the first application for the development of dwellings and the completion of the first dwelling*’ is 1.7 years. Even if it were to be assumed that outline planning permission was granted in the summer of 2020 this independent and evidence based analysis would suggest that the first completion on SP2 would not be delivered until early 2022.

In the light of the above, it will clearly be impossible to begin the development in April 2020. Taking all these factors into account it would be surprising if on-site work could begin before April 2021. That will be one year behind the HELAA schedule. **There is no ‘realistic prospect’ (NPPF 47, footnote 11) that the site will be ‘delivered’ in the terms set out by the LPA** on page 5 of ED21. That is where the LPA assures the Inspector that the 60houses at SP2 are *‘... anticipated to fully built out [sic] within the initial five year period’*. (As the plan runs from 2013-33, the true ‘initial five year period’ has of course passed). The Inspector will recall that 12 houses were expected to appear at SP2 in 2022/23 under the original schedule – and given all of the above factors, even this might be optimistic. Bringing the site forward to start in April 2020 would, in theory, gain at most 48 dwellings in the ‘new’ first period. But even that is unattainable as I have tried to show. **The SP2 site as shown in the table in MM1 is undeliverable in the time frame set out in the revised schedule. This means that the Local Plan Review fails to comply with NPPF (2012) 47 and footnote 11.**

(Continue on a separate sheet if necessary)

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## Part A

	1. Personal Details*	2. Agent Details (if applicable)
Title	Mr	
First Name	Jamie	
Last Name	Byrom	
Job Title (where relevant)		
Organisation (where relevant)		
Address 1	16 Paultet	
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Line 3		
Line 4		
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Telephone	██████████	
E-mail Address	████████████████████	

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## Part B – Please use a separate sheet for each representation

### 3. Name or organisation:

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6. Do you consider the Local Plan Review to be:

6.(1) Legally compliant

Yes

No

6.(2) Sound

6 (2.1) Positively Prepared

Yes

No

6 (2.2) Justified

Yes

No

6 (2.3) Effective

Yes

No

6 (2.4) Consistent with national policy

Yes

No

7. Please provide your comments below

**MM39** – This concerns Policy J27. It proposes amended wording for Para3.184d. There is a typographical error in line 1 ('neds' should read 'needs'). Much more importantly, the wording proposed is factually incorrect. It claims that the policy makes provision for green infrastructure. It does not. **Policy J27 should be reworded to include the requirement for green infrastructure, otherwise it will be non-compliant with NPPF (2012) 114, 151 and LPR policy DM26.**

(Continue on a separate sheet if necessary)



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## Part A

	1. Personal Details*	2. Agent Details (if applicable)
Title	Mr	
First Name	Jamie	
Last Name	Byrom	
Job Title (where relevant)		
Organisation (where relevant)		
Address 1	16 Paultet	
Line 2	Sampford Peverell	
Line 3		
Line 4		
Post Code	EX16 7TA	
Telephone	██████████	
E-mail Address	████████████████████	

*\* If an agent is appointed, please complete only The Title, Name and Organisation boxes below but complete the full contact details of the agent in 2*

## Part B – Please use a separate sheet for each representation

### 3. Name or organisation:

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6. Do you consider the Local Plan Review to be:

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Yes

No

6.(2) Sound

6 (2.1) Positively Prepared

Yes

No

6 (2.2) Justified

Yes

No

6 (2.3) Effective

Yes

No

6 (2.4) Consistent with national policy

Yes

No

7. Please provide your comments below

**MM42** – This proposes to cut the tie to Policy J27, but no valid reason based on the NPPF has been given. The Inspector merely says that the tie ‘serves no purpose’.

I understand that it will be convenient to ‘free’ the site for earlier development. This would allow an aspect of the plan that genuinely is unsound (lack of housing supply in the early years) to be addressed. But that does not mean that the tie itself is ‘unsound’. I trust the reason why this proposed ‘tie’ is thought to make the policy unsound will be made clear in the Inspector’s Report and that the requirement to cut the tie is itself based in planning law and policy.

The tie was democratically imposed by the Council in December 2016. It went out of its way to do this through an amendment to the proposed policy wording that had already been agreed by Cabinet. It added the tie with its own very clear purpose in mind: it sought, on behalf of local people, to avoid a situation where sixty dwellings might be built at Sampford Peverell without the development at Junction 27 actually going ahead. Councillors were conscious that this eventuality might be seen as contrary to the rationale they had given by officers. That rationale is explained in great detail in the 2018 Sustainability Appraisal Update, clearly basing the allocation on the need for additional housing created by the allocation of policy J27.

Without careful justification rooted in planning law, the cutting of a tie that was democratically imposed by the Council might be seen as reaching beyond the Inspector’s remit.

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## Part A

	1. Personal Details*	2. Agent Details (if applicable)
Title	Mr	
First Name	Jamie	
Last Name	Byrom	
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Line 4		
Post Code	EX16 7TA	
Telephone	██████████	
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6. Do you consider the Local Plan Review to be:

6.(1) Legally compliant

Yes

No

6.(2) Sound

6 (2.1) Positively Prepared

Yes

No

6 (2.2) Justified

Yes

No

6 (2.3) Effective

Yes

No

6 (2.4) Consistent with national policy

Yes

No

7. Please provide your comments below

**MM43** – This proposes to cut the criterion that would delay building at SP2 until work begins on A361 slip roads near the village. I accept that the Highways Authority has said that these A361 works will not now be funded. I do not accept that the case has been made that they are not necessary. The decision is purely about funding. However, I also accept that the new information provided verbally by the Highway Authority at the February hearings changes the context and that the criterion must be deleted. The LPR must respect new information and be amended accordingly.

Paragraph 3.224c is not entirely about the A361 link and the proposal to delete it entirely cannot be justified. **The following sentence from paragraph 3.224c should be retained: ‘The site is required to meet additional housing need arising from the allocation at Junction 27 of the M5 motorway’.** This is evidenced many times in the SA 2018 Update (Document SA02). Pages 40 to 59 of that document are solely concerned with showing how ‘reasonable alternatives’ were apparently considered ‘... to meet increased housing need due to J27 employment opportunities’. [My emphasis]. The sentence is factually true.

Even if the formal tie referred to in MM42 must be cut, there is no reason to lose this objectively established statement that is based on evidence and arguments set out in the Sustainability Appraisal. There can be no good reason to cut it this sentence. It bears no relation to the A361 ‘tie’. No reason has been given for it to be cut. The sentence, in itself, is not unsound. It accurately reflects the outcome of the SA site allocation process and provides the reasoned justification of the policy that is legally required.

It is easy to forget that the addition of this allocation at SP2 was itself a modification of the original 2015 LPR. Its addition needs to be justified and this sentence provides that justification. NPPF 182 says that the Local Plan Review must be ‘... *Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence*’. The sentence justifies the allocation. Without it, the allocation will be at odds with other policies in the LPR such as S2 and S14. **If the MM is accepted as proposed, the policy will not be shown to be justified as it will be inconsistent with the reasoning set out in the 2018 SA Update (SA 02, eg pp 40-59).**

(Continue on a separate sheet if necessary)



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## **Consultation on Draft Main Modifications to the Local Plan Review 2013 - 2033**

### **Form for representations**

Please return by 17 February 2020 (5pm).

When making a representation you must include your name and full postal address, otherwise your comments cannot be registered. Addresses will only be used to inform people about the new plan and other planning matters.

This form has two parts –

Part A – Your Details

Part B – Your representation(s). Please fill in a separate Part B for each representation.

Data Protection Act. Please note that this information on this form will be entered onto a database and the paper copies retained on file. The information will be used for the purposes of Town and Country Planning and may be viewed by any person for such purposes. To find out more on how we use your personal information, please see our Privacy Notice <https://www.middevon.gov.uk/PNRepresentations>

The Local Plan Review Main Modifications and associated information can be seen on the Council's website at [www.middevon.gov.uk/LPRMainMods](http://www.middevon.gov.uk/LPRMainMods)

If you require this information in another language or format, please contact us on 01884 255255 or email [customerfirst@middevon.gov.uk](mailto:customerfirst@middevon.gov.uk)

## Part A

	1. Personal Details*	2. Agent Details (if applicable)
Title	Mr	
First Name	Jamie	
Last Name	Byrom	
Job Title (where relevant)		
Organisation (where relevant)		
Address 1	16 Paultet	
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Line 3		
Line 4		
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Telephone	██████████	
E-mail Address	████████████████████	

*\* If an agent is appointed, please complete only The Title, Name and Organisation boxes below but complete the full contact details of the agent in 2*

## Part B – Please use a separate sheet for each representation

### 3. Name or organisation:

4. To which Main Modification consultation document does this representation relate? Please tick one box only (please use a separate sheet for each document you are commenting on)

Schedule of Proposed Main Modifications	√
Sustainability Appraisal Addendum	
Habitats Regulations Assessment (HRA) Addendum	
Equality Impact Assessment (EqIA) Addendum	
Schedule of Additional Modifications	

5. Please indicate the schedule reference (e.g. MM01) in the above document and the Policy number (e.g. DM1) to which your representation relates (please use a separate sheet for each schedule reference you are commenting on):

Reference Code

Policy

*Please note that this consultation invites comments on modifications only, and not the wider unchanged content of the Local Plan Review.*

The Local Plan Review 2013 – 2033 is required to be assessed against the tests set out in paragraph 182 of the 2012 version of the National Planning Policy Framework to establish whether it is ‘sound’ and complies with legal requirements:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities, where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with National Policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the National Planning Policy Framework.

6. Do you consider the Local Plan Review to be:

6.(1) Legally compliant

Yes

No

6.(2) Sound

6 (2.1) Positively Prepared

Yes

No

6 (2.2) Justified

Yes

No

6 (2.3) Effective

Yes

No

6 (2.4) Consistent with national policy

Yes

No

7. Please provide your comments below

**MM44** – This proposes to add the new criterion that there must be *‘improved access to the village for pedestrians and cyclists.’*

While I understand that the NPPF requires all new access arrangements to be ‘safe’, I note that proposed new wording in MM24, MM38 and MM48 all use the word ‘safe’ about access arrangements. This is inconsistent with the proposed criterion for SP2.

Doubt over safe access is a central issue in the LPA’s current refusal of the application to develop the SP2 site. The LPA has engaged a highways consultant to argue its case at appeal. That expert has stated that ‘safe and suitable access cannot be achieved for all users’. [The relevant report is *PBA\_Highways\_800.0017POE2 Higher Town Sampford Peverell - Proof of Evidence (bound)*]. I understand that the Inspector presiding over this examination must not become involved in the separate issue of the appeal taking place over proposed development at the site. I do not ask him to make any judgement on that specific matter. But I do ask him to note that, if he allows Policy SP2 to remain in the LPA proposals, he does so in the knowledge that the LPA has engaged a highways expert who is arguing on its behalf that safe and suitable access to the site cannot be achieved for all users. At the very least, I respectfully suggest, the Inspector should do all he can to signal that there must be no compromise over pedestrian safety in Policy SP2.

**This new evidence from an expert highways consultant acting for the LPA** shows that the original Sustainability Appraisals were right to call Turnpike ‘a dangerous road for pedestrians’. Faced with this clear challenge, there must be no ambiguity about the required standard and the wording should be brought into line with that used elsewhere in these MMs. The least that can be done is to **amend the new criterion to read as follows: ‘*provision of safe and suitable access to the village for pedestrians and cyclists*’.**

The LUC SA Addendum says of MM44 that: *‘The additional reference to pedestrian and cycle access will reinforce the already positive (+2) effect identified in relation to SA objective C (climate change). The previously neutral (0) effect on SA objective H (health and wellbeing) is increased to a minor positive (+1) effect as a result of the additional reference to active travel’.* All the evidence given above makes a mockery of this logic, but if the score is to be amended to +1, only my suggested revised wording would justify such a change. In the absence of the word ‘safe’, LUC’s recommended alteration should not be allowed.

There can be no reason for resisting this proposed change. **This new wording (above) would make the policy more consistent with NPPF 32 which explicitly requires that all decisions must take account of whether safe and suitable access for all people can be**



**achieved.** The purpose of policies is to *'...provide a clear indication of how a decision maker should react to a development proposal should be included in the plan'*. (NPPF 2012, 154).

(Continue on a separate sheet if necessary)



Ref:  (For official use only)
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First Name	Jamie	
Last Name	Byrom	
Job Title (where relevant)		
Organisation (where relevant)		
Address 1	16 Paultet	
Line 2	Sampford Peverell	
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Post Code	EX16 7TA	
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6 (2.4) Consistent with national policy

Yes

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7. Please provide your comments below

**MM45** – This proposes to increase the extent of Green Infrastructure. It was proposed as a result of the February 2017 consultation and is very much welcomed. A further additional modification is required as a logical consequence. **The Policy map should be amended so that the village's settlement boundary no longer contains the Green Infrastructure. The line should enclose only the southern part of the SP2 site where development is to be allowed.** If this is not done, then there are legitimate grounds for doubting the LPA's commitment to keeping the highest land on the site undeveloped as was always the intention from the very first SHLAA assessment in 2013.

The first ever draft Policy map for Sampford Peverell showed the entire SP2 site shaded as if proposed for development. This was put before the Cabinet in September 2016. (I will gladly provide a copy should it be thought necessary).

It was logical at that stage to extend the village settlement boundary to take in the entire SP2 site. But the eventual allocation of January 2017 was different. By that time, it had been decided to write into the plan (and to show on the policy map) a criterion that 2ha of the highest land must remain undeveloped. That commitment was reinforced through the February 2017 consultation that led to the inclusion of this MM as first set out in document SD14. That document includes the revised wording and policy map that increases the Green Infrastructure on the highest land to 2.5ha. Since the policy's clearly declared rationale in paragraph 3.224a is that this GI should remain undeveloped, it is only right that the settlement boundary should move accordingly and follow the line of that portion of SP2 that is allocated for housing. This will reinforce and make unambiguous the protection that the policy affords to that highest land: it is not to be developed.

The Planning Inspectorate has recently published its *Report on the Examination of the Wiltshire Housing Site Allocations Plan*, (reference PINS/Y3940/429/13) [see: <http://www.wiltshire.gov.uk/whsap-final-examiners-report.pdf>]. The Inspector identified the third main issue in that case to be '*Are the proposed settlement boundaries justified, effective and consistent with national policy?*'

Wiltshire's approach, in its topic paper 1, followed a review of good practice which looked at the approach of Councils across the country. In that context, at paragraph 140 the Inspector said: '*The purpose of the settlement boundary is to illustrate the extent of the built form of the settlement. Allocations have been excluded at this stage. This is not an unreasonable approach. Allocations on the edge of settlements will inevitably include land which does not form part of the development. Examples of this might be areas of public open space or landscape buffers. To include the whole of an allocation in advance of it coming forward would*

*potentially include areas that would not normally be considered suitable for development under WCS policy. Over time, this could have the unintended consequence of establishing a principle in favour of development on land that was intended to act as mitigation for development delivered through the allocation. As settlement boundaries are subject to regular review, it is appropriate to wait until development is underway or complete to be able to fully ascertain where the extent of the built form lies' [My emphasis].*

I acknowledge that Mid Devon has taken a different approach and seeks to include housing allocations within settlement boundaries as part of the Local Plan Review, and I take no issue with that approach in principle. However the settlement boundary that is currently proposed to the west of Sampford Peverell, which includes all of the GI, flies in the face of the Inspector's approach in Wiltshire. By definition the GI at SP2 has been identified because it comprises the highest land which is unsuitable to be developed because of the effect on the wider landscape and designated heritage assets. Yet, by including the GI within the settlement boundary, the inevitable consequence is that it would establish a principle in favour of housing development on the GI within the settlement boundary. Whilst it is acknowledged that the current proposal, now being considered at appeal, is not before the examining Inspector, it is a fact that it does not even include all of the GI within the red line boundary and hence much of the GI would be retained in private ownership rather than being delivered as public open space or similar.

I understand that the policies map is not defined in legislation as a development plan document and that the Inspector has no powers to recommend MMs directly to the revised policy map with MM45. However the examining Inspector in Wiltshire was only able to conclude that he was '*satisfied that the proposed settlement boundaries are justified, effective and consistent with national policy*' after making the observations that I have quoted in full above. It would appear to follow that **Mid Devon's approach of including the GI within the settlement boundary is neither justified, effective or consistent with national policy.**

Even if the Inspector finds that he is unable to recommend an MM to the policy map, **I ask the Inspector to suggest to the LPA it should give serious consideration to this proposed additional modification.** It is unlikely that many respondents will grasp the distinction between requesting a Main Modification and requesting an Additional Modification. Should the Inspector find himself receiving responses that are more properly treated as additional modifications, I ask that he ensures that they are passed back to the LPA for consideration.

(Continue on a separate sheet if necessary)