

**Planning Consultation (DPD)**

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**From:** Sarah Griffiths (L&Q Estates) [REDACTED]  
**Sent:** 14 February 2020 17:02  
**To:** Planning Consultation (DPD)  
**Subject:** Local Plan Review Proposed Main Modifications Consultation  
**Attachments:** GALA - Representations to Local Plan Review Councils Response to Inspector July.pdf; 18\_00177\_FULL-Decision\_Notice-1443440 Access Decision Notice.pdf; 3214685 appeal decision.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Rep

Dear Sirs,

We write to acknowledge the changes proposed through the above consultation. However, our concerns previously made through the Examination (including the last consultation to the Council's Response to ID12, attached again for convenience) and the Inspector's significant concerns still remain unaddressed.

We don't intend to re-write our representations as our points regarding housing land supply still remain, therefore we re-submit the attached previous response again. The key points include that:-

- There still remains significant holes in the evidence base;
- There is an absence of details regarding elements of supply;
- Sites within the Plan fail to meet the definition of deliverability;
- The housing trajectory remains unrealistic with regards to the North West and East Cullompton allocations in relation to lead in times and delivery rates.

Furthermore, the Plan needs to be updated to reflect the outline planning permission for 125 dwellings on land off Meadow Park, Willand (Appeal Ref: APP/Y1138/W/18/3214685, decision attached for convenience) and the associated full planning permission for access (LPA Ref: 18/00177/FULL, decision notice attached). The Plan should be amended through the increased allocation of WI1 to at least include the extent of these planning permissions. However, as set out in our previous representations, we consider the allocation should be increased further to the full extent of the land that we have been promoting through this Plan process, for up to 259 dwellings.

Kind Regards

Sarah Griffiths

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# **Representations to Mid Devon Local Plan Review: Council's Response to ID12**

Representations on behalf of Gallagher Estates  
Ltd

August 2019



**Turley**

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**Our reference**

GALA3002

August 2019

# 1. Introduction and Background

- 1.1 These representations have been prepared on behalf of our client, Gallagher Estates Ltd ("Gallagher Estates").
- 1.2 Gallagher Estates has interests within Mid Devon, specifically at Willand, which includes the currently proposed allocation W11 (Land east of M5, Willand) which is currently identified for 42 dwellings within the Draft Local Plan. Gallagher Estates land interest at Willand represents a sustainable and deliverable opportunity for accommodating additional residential development over the existing proposed allocation, that is realistically capable of making a contribution to the Council's housing land supply.
- 1.3 Representations were previously submitted on behalf of Gallagher Estates to the Proposed Submission Local Plan in April 2015 and the Proposed Main Modifications in February 2017.
- 1.4 Main hearings on the Local Plan Review took place in February 2019. Ahead of these hearings, the Council published a Housing Land Supply Update (dated January 2019). The document was submitted with little time for review ahead of the examination hearing sessions.
- 1.5 At the examination hearing sessions, numerous participants (including Turley on behalf of Gallagher Estates) stated orally that the January 2019 Housing Land Supply Update:
  - (a) Did not provide sufficient evidence of deliverability in relation to numerous sources of supply;
  - (b) Included questionable and optimistic delivery assumptions in relation to key sites without justification;
  - (c) Did not provide a sufficiently justified basis for the Inspector to determine that the Council could demonstrate a five year housing land supply, which was agreed to affect the soundness of the Plan;
- 1.6 It was therefore requested that a comprehensive update of the Housing Land Supply Paper was provided by the Council to address the concerns of the participants, who would have opportunity to comment in due course.
- 1.7 Subsequently, the Inspector issued a post-hearings advice note (ID12). These representations provide a written response in respect of the Council's draft Housing Land Supply Update (ED20: June 2019) ("the Council's HLS Update") that was prepared in response to ID12.
- 1.8 We submit that the MDDC response does not get anywhere near to adequately addressing the Inspector's "significant concern" to satisfactorily demonstrate that a five year supply will be demonstrable through the 1-5 and 5-10 year periods following adoption of the LP Review. The Council has provided a very limited level of detail in the HLS update report, particularly in respect of the 'commitments' element of supply

despite this element of the trajectory accounting for over 70% of the deliverable housing in this part of the plan period. The Council provides a review of only four sites that are included in the housing supply trajectory we consider a full review is required in order to satisfactory address our concerns on five year supply and supply over the plan period as a whole.

- 1.9 We do not consider that the Council have been reasonable in its assumptions with regards to lead in times and delivery rates over the plan period. The Inspector required a realistic and robust trajectory to be provided which, as we will explain, is still absent from the Council's HLS Update.
- 1.10 Part of our client's site at Willand is proposed to be allocated for 42 dwellings but further land is available. We consider that the Council needs to identify additional land to provide an adequate level of certainty that the housing needs of the District can be met. Site WI1 can be extended and, when including the wider area under our client's control, is capable of delivering up to 259 dwellings.
- 1.11 The January 2019 HLS Update claims the Council can demonstrate a five year housing land supply in a number of scenarios. The June 2019 Update continues to claim this, however, we have significant concerns with some of the assumptions employed in this publication, and consider that with due scrutiny the misrepresented strength of the Council's five year supply could cause a fundamental soundness issue in the Plan. Insufficient evidence has been prepared to address the concerns raised by the Inspector that the Council will find it *'difficult or impossible to show a five-year supply of deliverable housing sites'*.
- 1.12 **Accordingly, we request that the Council produce another update to the published housing land supply position, properly taking into account the comments of the participants (including comments made in this representation) and incorporating realistic delivery assumptions based on robust evidence throughout the trajectory, as requested by the Inspector.**
- 1.13 **In addition, to ensure sufficient levels of flexibility and to ensure a five year housing land supply is maintained, it is our view that the Council should take up the Inspector's suggestion to consider extending existing allocations to accommodate more dwellings, such as the Policy WI1 site.**
- 1.14 The remaining sections of this report are structured as follows:
  - Section 2 considers the general assumptions made with regards to lead in times, delivery rates and the methodology applied by the Council, it also includes a review of government and industry guidance on housing trajectories;
  - Section 3 considers specific sites and claimed sources of supply and refers back to the findings in section 2; and
  - Section 4 provides conclusions and recommendations.

## 2. Setting Realistic Delivery Assumptions

- 2.1 As directed by the Inspector, realistic delivery assumptions should be adopted when setting out the anticipated trajectory of housing supply as part of the Local Plan Review. We consider this logically separates into two elements:
- Lead in times – how long it takes realistically for development to commence and housing completions to be delivered from sites which stand with differing planning statuses and infrastructure burdens;
  - Delivery rates – assumptions in relation to how many completions can be achieved over time on a site given its size and nature, and market competition and absorption.

### Lead In Times

- 2.2 There is very little detailed information from the Council regarding lead in times for the majority of sites within its housing trajectory. We are particularly concerned that there is insufficient evidence for the ‘commitments’ element of supply given that this makes up such a large proportion of their overall supply within the plan period. In addition, we assume, in the absence of the detail being provided, that a significant part of the ‘commitments’ source are made up of small sites and without knowing the detail we are not in any position to understand whether the lead in times applied to these sites are accurate.
- 2.3 The assumptions on the supply claimed within the publication are based upon the Council’s ‘HELAA model’ which appears to be based on a small evidence base of just three relatively small sites (74 to 259 dwellings total) which the Council claim to have applied throughout their trajectory. We do not consider this is a robust model given the small sample.
- 2.4 Specific consideration is also required for large outline planning permissions (over 500 units), particularly when they form a central part of a Council’s spatial strategy, where they would be expected to be submitted in outline, and where they require significant infrastructure delivery. Notably long lead in times can often be seen from proposals of this nature, and the Council’s ‘HELAA model’ is not fit for use in realistically assessing the deliverability of sites of this scale and nature given that it is based on limited evidence of smaller sites.
- 2.5 To deliver strategic scale schemes of this nature there are numerous, and complex steps and barriers to be undertaken and overcome. These stages vary depending on the nature of the site, and method of promotion/acquisition. Broadly however the process can include, but is sometimes not limited to:

Table 1: Stages towards completions

Stage
Allocation in Development Plan

Site acquisition
EIA Scoping and Screening
Preparation of Outline planning application including collation of evidence base, survey data, development of masterplan
Public consultation
Achieving a resolution to grant planning permission
Completion of Section 106 to achieve outline planning permission
Overcoming period of legal challenge
The disposal of the phases to suitable developers (if required) and the agreement and exchange of contracts, including securing relevant insurances, finance and legals
Undertaking survey works and preparation of information for submission to discharge conditions
Discharge and agreement of pre-commencement conditions
Discharge of S106 obligations
Design, approval and completion of preparatory site works
Completion of infrastructure works
Public consultation and preparation of reserved matters
Submission and determination of reserved matters
Discharge of further pre-commencement conditions
Preparatory site works
Construction of homes
Discharge and fulfilment of pre-occupation conditions and requirements
Homes completed and occupied

- 2.6 It is widely acknowledged that due to their complexity, the lead in times for delivery of large residential sites can be substantial.
- 2.7 We have undertaken a literature review of recent industry research associated to the issue of lead in times for schemes of scale. The sources and conclusions for relevant site sizes are summarised below, and relevant extracts can be provided.

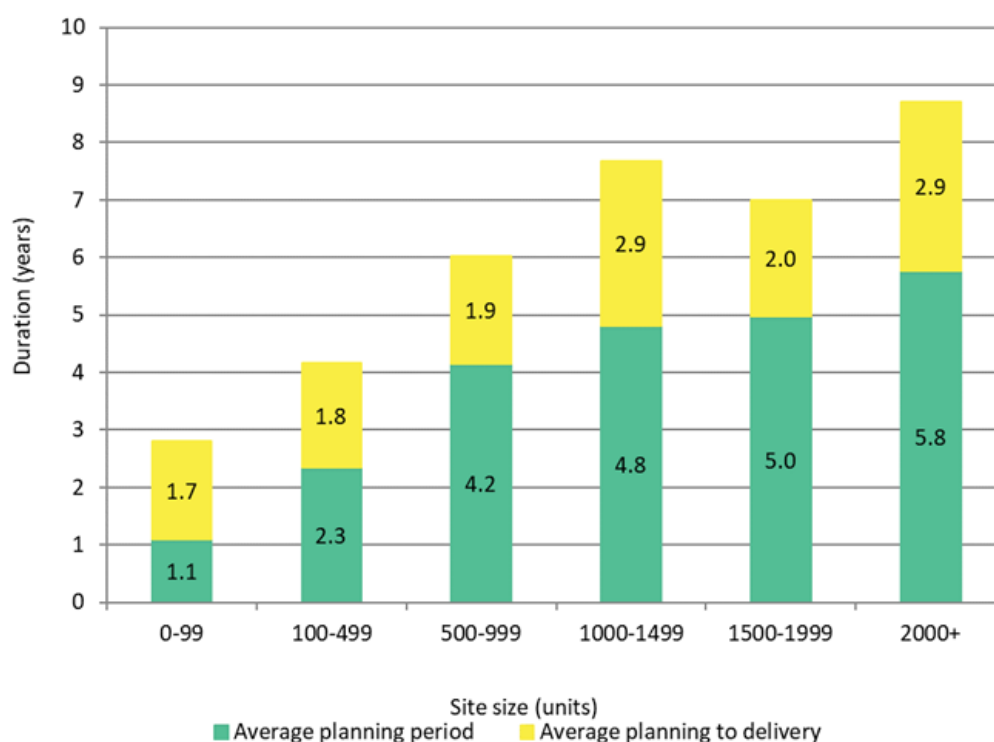
**Table 2: Assessments of large sites delivery**

Report	Author	Site Size	Lead In Time
A Report into the Delivery of Urban Extensions	Hourigan Connolly (2014)	500 + units	<b>8 years</b> from preparation of outline to completions
Urban Extensions	Savills (2014)	500 + units	<b>5 years</b> from submission of



Assessment of Delivery Rates			outline to commencement of first phase
Start to Finish	NLP (2016)	500 + units	<b>5.3 to 6.9 years</b> from submission to first housing delivery
Role of Land Pipelines in Housebuilding	Barratt (2017)	150 homes or more	<b>5.8 years</b> from acquisition to completions

- 2.8 A recent update to Lichfields' 'Start to Finish' report<sup>1</sup> referenced in the above table was published in October 2018. This included more up to date data, and additional sites in the study, and found the following lead in times for a range of site sizes:



- 2.9 The conclusion is very clear. The lead in times for housing completions delivered on strategic scale residential sites is significant in any case. In some cases however, as is relevant to this LPA, the process can become more complex and the lead in times can be even more substantial than those set out above when there are specific issues to resolve; like those in Cullompton where work is required to improve the strategic highways network, which is out of the control of the Applicants and/or developers
- 2.10 We turn to consider the specific timings for the delivery of TCRR in Cullompton later in this report, however given all of the above evidence; we consider that a realistic lead in

<sup>1</sup> Lichfields Blog Post 29 Oct 2018, available at: <https://lichfields.uk/blog/2018/october/29/driving-housing-delivery-from-large-sites/>

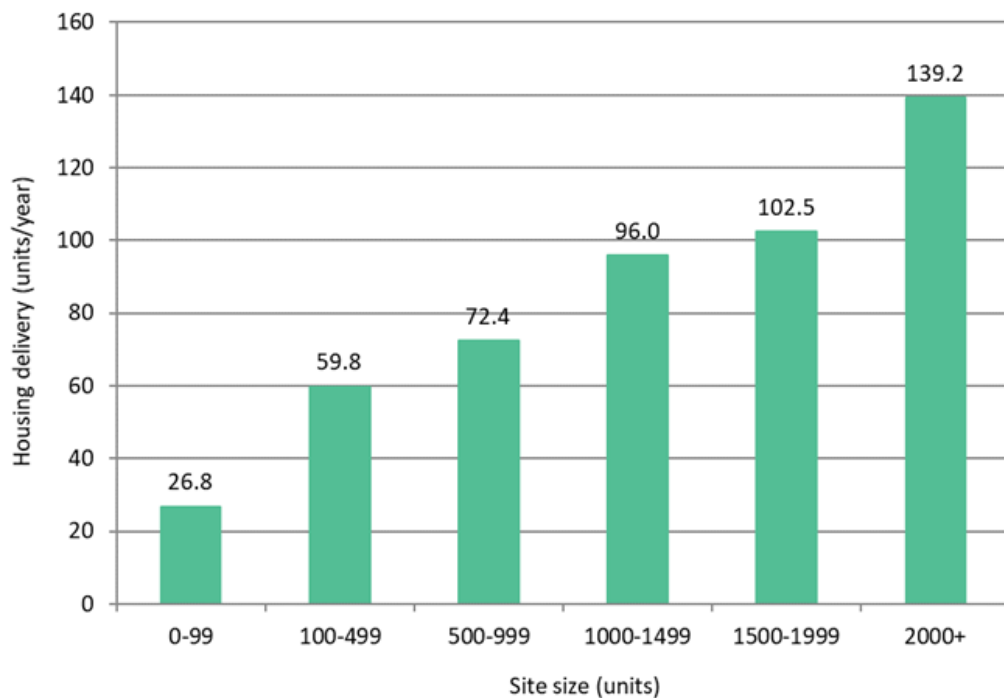
time from the submission of an outline planning application to seeing dwelling completions on a site larger than 500 units should be **a minimum of 6 years**.

### **Delivery Rates**

- 2.11 For larger sites, average annual delivery rates also need to be considered specifically. In November 2016, Lichfields produced a report which includes an assessment of the average delivery rates from large housing sites across the UK. This looked at 70 large sites which provides a reasonable sample upon which to draw assumptions in relation to delivery rates for large sites.
- 2.12 The following average delivery rates for greenfield sites were identified within that Report:
- On sites of 500 – 999 dwellings, the average annual delivery rate was **86 dwellings per annum**;
  - On sites of 1,000 to 1,499 dwellings, the average annual delivery rate was **122 dwellings per annum**;
  - On sites of 1,500 to 1,999 dwellings, the average annual delivery rate was **142 dwellings per annum**; and
  - On sites of 2,000 or more dwellings, the average annual delivery rate was **171 dwellings per annum**.
- 2.13 We note the Council have limited experience in the Authority area of the delivery of large sites, or any more reliable dataset to rely on in this regard. The Lichfield's study takes into account delivery rates of the Cranbrook new settlement recently delivered in Devon.
- 2.14 The Report also considers the proportion by which delivery rates increase as the site size increases. At page 14 the Report concludes that, on average, a site of 2,000 or more dwellings does not deliver four times more dwellings than a site delivering between 50 and 499 dwellings. Despite being four times the size, it was found that a site of 2,000 or more dwellings on average only delivers 2.5 times more housing. The number of sales outlets does not always increase in direct proportion to the site size and market absorption rates are also a factor to consider. Overall it is clear that the number of outlets will not be a fixed multiplier in relation to the delivery of homes.
- 2.15 The October 2018 update to Lichfields' 'Start to Finish' report<sup>2</sup>, included more up to date data, and additional sites in the study. This report found the following delivery rates on the range of site sizes:

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<sup>2</sup> Lichfields Blog Post 29 Oct 2018, available at: <https://lichfields.uk/blog/2018/october/29/driving-housing-delivery-from-large-sites/>



- 2.16 This more up to date evidence actually points towards lower delivery rates than the November 2016 Report, the results of which were reported above.

### Market Absorption

- 2.17 In addition to Lichfields' work in 2016, average build rates and market absorption has been further considered in the recent Independent Review of Build Out Rates by Sir Oliver Letwin in 2018.
- 2.18 Paragraph 3.4 of the Draft Analysis (June 2018) confirmed that there is a clear negative relationship between the size of the site and the percentage of the site built out each year, reflecting the findings of the Lichfield's Report two years earlier.
- 2.19 The Final Report of the Letwin Review, published in October 2018, principally found that:
- The median percentage of the site built out each year on average through the build out period on 15 large sites was 6.5%; and
  - The homogeneity of the types and tenures of the homes on offer on these sites, and the limits on the rate at which the market will absorb such homogenous products, are the fundamental drivers of the slow rate of build out.
- 2.20 Mid Devon's Local Plan Review (LPR) seeks to plan for numerous large housing schemes to come 'on stream' and start delivering at a similar point in time during the plan period – notably at Cullompton. At the point that all of these sites are anticipated to deliver, there is potential for the market absorption concerns raised by Letwin to materialise. The findings of the Letwin report are generalised and likely to be even more applicable in a weaker, rural market. It is partly due to the 'Letwin effect' that we

consider a reasonable amount of caution should be applied to the delivery from the large allocations which form the basis of the Council's spatial strategy.

### **The 2019 NPPF Definition of Deliverable**

2.21 Although the LPR will need to be examined against the policies of the original NPPF (March 2012), it is an important consideration to note that the revised NPPF will be the policy framework against which the Council's five year housing land supply will be tested in applications (and likely appeals) immediately following the adoption of the Plan.

2.22 The February 2019 NPPF glossary includes a revised definition of 'deliverable', as follows:

*"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:*

*a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).*

*b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."*

2.23 The NPPF, updated in July 2018 and again in February 2019, shifts the burden of proof that a site is deliverable onto the Local Planning Authority, and raises the bar for what can be considered deliverable, namely that this needs to include 'clear evidence'.

2.24 The July 2019 PPG states the following in relation to what constitutes 'clear evidence':

*"What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking?*

*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. Annex 2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:*

- *have outline planning permission for major development;*
- *are allocated in a development plan;*
- *have a grant of permission in principle; or*

- *are identified on a brownfield register.*

*Such evidence, to demonstrate deliverability, may include:*

- *current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;*
- *firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers’ delivery intentions and anticipated start and build-out rates;*
- *firm progress with site assessment work; or*
- *clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.*

*Plan-makers can use the Housing and Economic Land Availability Assessment in demonstrating the deliverability of sites.”*

*Paragraph: 007 Reference ID: 68-007-20190722*

- 2.25 The 2019 NPPF definition of deliverable and its correct interpretation has been considered by Inspectors in multiple recent appeal decisions which we consider are highly relevant to the assessment of housing land supply in this case. We have included relevant extracts of these decisions at **Appendix 1** which are referred back to throughout this report:

- Land at East Side of Green Road, Woolpit, Suffolk (APP/W3520/W/18/3194926);
- Entech House, London Road, Woolmer Green (APP/C1950/W/17/3190821);
- Longdene House, Hedgehog Lane, Haslemere (APP/R3650/W/16/3165974); and
- Land off Colchester Road, Bures Hamlet, Essex (APP/Z1510/W/18/3207509).

- 2.26 It is clear that, within these appeals, Inspectors have taken a very strict view in respect of what constitutes a deliverable site and the clear evidence that is required. This is clearly relevant given that, immediately upon adoption, the Council will need to be able to defend its supply position against the 2019 NPPF definition of a deliverable site.

- 2.27 Considering the NPPF definition of deliverable and accompanying guidance, the following principles are established from the recent case law:

- The onus is on the LPA to demonstrate ‘clear evidence’ (Woolpit, Haslemere);

- Clear evidence (such as a detailed planning permission or signed S106) received post the end of the monitoring period (in this case 31<sup>st</sup> March 2018) should be discounted (Woolpit, Haslemere, Bures Hamlet);
- Emerging allocations should not be considered deliverable unless clear evidence is presented, the onus being on the LPA to do so (Woolmer, Haslemere);
- The findings of the St Modwen judgment on sites being ‘capable of delivery’ in the five year period are superseded by the revised NPPF definition of deliverable (Woolpit and Woolmer); and
- Sites with a resolution to grant Planning Permission should not automatically be considered deliverable (Bures Hamlet).

2.28 The revised NPPF is a material consideration for decision taking from the day of its publication, and replaces the policies of the first NPPF (March 2012).

### **Developable and 6-10 Year Supply**

2.29 The July 2019 PPG on Housing Land Supply also includes guidance on the consideration of 6-10 year supply and what constitutes a developable site. This is highly relevant to this representation given the LPR Inspectors concern over MDDC 5-10 year supply.

#### *“Is it essential to identify specific developable sites or broad locations for housing growth, beyond 5 years?”*

*As set out in the National Planning Policy Framework, local planning authorities should identify a supply of specific, developable sites or broad locations for growth for years 6-10 and, where possible, for years 11-15. Local plans and spatial development strategies may be able to satisfy the tests of soundness where they have not been able to identify specific sites or broad locations for growth in years 11-15. However, if longer-term sites are to be included, for example as part of a stepped requirement, then plan-makers will need to demonstrate that there is a reasonable prospect that they are likely to come forward within the timescale envisaged.”*

*Paragraph: 019 Reference ID: 68-019-20190722 Revision date: 22 July 2019*

#### *“How can plan-making authorities demonstrate there is a reasonable prospect that housing sites are ‘developable’?”*

*Annex 2 of the National Planning Policy Framework defines what constitutes a developable site. In demonstrating that there is a ‘reasonable prospect’ plan-makers can use evidence such as (but not exclusively):*

- *written commitment or agreement that relevant funding is likely to come forward within the timescale indicated, such as an award of grant funding;*
- *written evidence of agreement between the local planning authority and the site developer(s) which confirms the developers’ delivery intentions and anticipated start and build-out rates;*

- likely buildout rates based on sites with similar characteristics; and
- current planning status - for example, a larger scale site with only outline permission where there is supporting evidence that the site is suitable and available, may indicate development could be completed within the next 6-10 years.

*A pragmatic approach is appropriate when demonstrating the intended phasing of sites. For example, for sites which are considered developable within 6-10 years, the authority may need to provide a greater degree of certainty than those in years 11-15 or beyond. When producing annual updates of the housing land supply trajectory, authorities can use these to provide greater certainty about the delivery of sites initially considered to be developable, and those identified over a longer time span.*

*Further guidance is provided in the plan-making chapter about how authorities can demonstrate that strategic matters can be delivered within a particular timescale. Plan-makers can use the Housing and Economic Land Availability Assessment in demonstrating the developability of sites."*

Paragraph: 020 Reference ID: 68-020-20190722

## Buffer

- 2.30 The Council's Core Strategy was adopted in 2007 and examined prior to the National Planning Policy Framework (March 2012).
- 2.31 As shown in Table 3 below, the Council have already accumulated a shortfall of 235 dwellings against the Local Plan Review requirement by failing to meet the target delivery figure in four out of the five years elapsed in the plan period to date (within the June 2019 update).

**Table 33: Delivery Against Requirement in to date in Plan Period**

Year	Completions	Local Plan Review Annual Requirement	Performance against the requirement	Cumulative Performance against requirement
2013/14	320	393	-73	-73
2014/15	316	393	-77	-150
2015/16	288	393	-105	-255
2016/17	304	393	-89	-344
2017/18	502	393	109	-235

- 2.32 The Council have in the year 2017/18 seen completions in excess of the Local Plan Review requirement. However, importantly, this single year of higher delivery is not sufficient to make up for the shortfall accumulated to date and the Council has

cumulatively under delivered against the housing requirement before the LPR has reached adoption.

- 2.33 In addition to the completions in Table 3 above. The Council have historically persistently under delivered against its adopted Core Strategy housing requirements.
- 2.34 Paragraph 73 of the NPPF (February 2019) states that the supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of 20% where there has been significant under delivery of housing over the previous three years. From the publication of the Housing Delivery Test (HDT) (November 2018), Paragraph 73 will be measured against the HDT, where this indicates that delivery was below 85% of the housing requirement.
- 2.35 The HDT measurement for 2018 at Mid Devon is 135% and therefore a 5% buffer applies. However the HDT is not assessed against the emerging LPR annual housing requirement, which, as set out above, the Council have already failed to deliver against in four out of the five years to date.

### **Sedgefield vs. Liverpool**

- 2.36 The Council's updated supply (June 2019) provides calculations of five year housing land supply. They have based this on four scenarios for the initial five year period (2018/19 – 2022/23), as follows:
- 'Sedgefield' approach (shortfall delivered over the initial 5 year period) with 20% buffer: 5.30 years supply;
  - 'Sedgefield' approach (shortfall delivered over the initial 5 year period) with 5% buffer: 6.06 years supply;
  - 'Liverpool' approach (shortfall delivered over plan period) with 20% buffer: 5.71 years supply; and
  - 'Liverpool' approach (shortfall delivered over plan period) with 5% buffer: 6.53 years supply.
- 2.37 The Council set out in its response that they consider that the most appropriate approach is to apply a 5% buffer and the 'Liverpool' approach. This runs contrary to the PPG's clear recommendation for dealing with previous undersupply where the advice is that:
- 'The level of deficit or shortfall will need to be calculated from the base date of the adopted plan and should be added to the plan requirements for the next 5 year period (the Sedgefield approach) then the appropriate buffer should be applied.'* (Paragraph: 031, Reference ID: 68-031-20190722, 22 July 2019).
- 2.38 We consider the Council should employ the 'Sedgefield' approach in the calculation of 5 year housing land supply for the following key reasons:



- The use of the Liverpool approach to dealing with under-supply is contrary to the PPG's recommended approach.
- Mid Devon has already fallen short of its housing delivery requirements since the start of the plan period overall, in four out of five monitoring years.
- There is a danger that by not seeking to deal with previous undersupply in the short term, that undersupply will continue to be carried forward, with the potential that it will never be dealt with or will continue to worsen. This is compounded by our concerns in the delayed delivery of key strategic allocations set out in Section 3.

2.39 Overall, and as set out in the next section, the Council's response to the Inspector provides very little change between existing assumptions (January 2019 update) and new (June 2019 update), and importantly insufficient additional information has been provided to support the Council's claims for the deliverability of sites over the plan period. The Council provide a review of only four sites that are included in the housing supply trajectory and do not provide any further review of sites within their June 2019 update, against what was suggested by the Inspector. Furthermore, as considered in turn in Section 3 below, the position relating to the four sites has changed since this June 2019 update and new information relating to those sites is available which has implications on the trajectories.

### 3. Site Specific Assessments

- 3.1 This Section of the report focuses on the site specific assessments provided by the Council. This is comprised of the four large sites for which the Council has provided a review, being; North West Cullompton; East Cullompton; Land at Colebrook, Cullompton; and Higher Town, Sampford Peverell.

#### **The Council's Evidence**

- 3.2 The Council's updated Housing Land Supply was published in June 2019 to respond to the Inspector's Post Hearing Advice Note (ID12). Within this note, the Council set out the following changes/updates to the housing trajectory:
- The first year that the East Cullompton allocation (CU7-CU12) is expected to deliver housing has been put back a year to 2023/24. This is based on a 'precautionary approach' which sees the latest delivery of the TCRR by the end of 2023. This ensures that no part of the trajectory in the first five year period is dependent on completion of the TCRR.
  - The site at Higher Town, Sampford Peverell (Policy SP2) is now expected to fully build out within the initial five year period. This reflects the Council's intention to make 'Main Modifications' to Policy SP2 in accordance with the Inspector's advice; these modifications would remove conditions restricting the delivery of the site until later in the plan period.
  - The site 'Land at Colebrook' (Policy CU21) is expected to partially build out within the first five years and is now an allocation rather than a 'contingency' site.
  - No change is proposed to the housing trajectory for the North West Cullompton allocation, however clarification is provided to explain previous site delivery assumptions and how the delivery of the later phase (750 dwellings) takes account of the cautious assumption over the timeframe for delivery of the TCRR for local plan trajectory purposes. It is claimed that an initial phase of 600 dwellings at NW Cullompton can be completed before the TCRR, but will be expected to make financial contributions towards it.
- 3.3 In addition to this, the Council set out that for the purposes of the Local Plan Review's Housing Trajectory, it is assumed that the TCRR will be completed by the end of 2023. This timetable has not been clearly evidenced and is considered unrealistic given the constraints facing the project and the time it will take to deliver.
- 3.4 The Council have had the opportunity to consider the Inspector's comments and are required to provide a realistic and detailed housing trajectory to address the concerns regarding five year supply. In our view, this request has not been adequately met. Insufficient detail has been provided regarding large elements of the supply, unrealistic deliverability assumptions and lead in times have been applied. Fundamentally, no certainty has been provided that the Council will be able to demonstrate a five year

supply on adoption of the plan, nor that the identified housing need over the plan period can realistically be delivered.

- 3.5 From the limited additional information that has been made available it has not been possible to review much of the detail in the Council's claimed supply. A key issue is the 'Commitments' the Council identify and the continued lack of information regarding the components of this source of supply. We have significant concerns regarding the lack of clarity and detail provided for these sites, particularly given they comprise a significant proportion (over 70%) of the anticipated delivery the Council rely upon to show that a five year housing land supply can be demonstrated in the 2018/19-2022/23 period.

### **Town Centre Relief Road**

- 3.6 We have concerns regarding the assumptions that have been made with regard to the timing and deliverability of the key infrastructure required to support the delivery of major components of the Council's housing commitments. In the Council's HLS Update it is assumed that the TCRR will be completed by the end of 2023. They have presented no evidence to support this assumption.
- 3.7 The ability to deliver the TCRR is so fundamentally linked to housing delivery that the Council needs to demonstrate beyond doubt that the TCRR can be delivered within their claimed timescales. Notwithstanding the progression of HIF funding, our view remains that there are significant obstacles to the delivery of the TCRR which means the Council's timescales are unrealistic and possibly unachievable. These obstacles include: land acquisition (which may necessitate CPO), surveys and mitigation provision, obtaining all necessary consents and the construction programme.
- 3.8 Gallagher Estates previous representations to the LPR were accompanied by a note produced by Jubb (January 2019) considering the provision of infrastructure at Cullompton. The note is reattached to this representation at **Appendix 2**.
- 3.9 The Jubb note demonstrates that there are numerous constraints to be overcome in the delivery of the TCRR. Since this note was prepared, a Cabinet meeting in May 2019 heard that a planning application is expected to be submitted to the Council in August 2019, before which the County Council will hold a further public consultation.
- 3.10 The TCRR was granted HIF funding in May 2019, funding is available for the TCRR until 31 March 2021. The draft agreements (referenced in the May 2019 Cabinet report) are to include the start and completion dates for the infrastructure. A further meeting in July 2019 stated that consideration was given to the time limitations set by Homes England for the TCRR and whether negotiations could take place to alter the milestones. There are no further updates or information to specify the milestones for the TCRR, our view is that the delivery of this road is still subject to an extensive number of technical and practical constraints that could affect the timescales for construction and completion. It remains our view that the lack of clarity regarding this infrastructure will be likely to have an impact on the overall housing trajectory for the Local Plan Review.

- 3.11 This section of the report now considers the four sites for which some detail has been provided in the updated position statement.

### **North West Cullompton**

- 3.12 The Council rely on first delivery of homes in the 2020/21 monitoring year from the three applications submitted at NW Cullompton, including:
- Full planning application for 200 dwellings (17/01178/MFUL) submitted by Persimmon Homes at West of Willand Road;
  - Outline planning application for 200 dwellings (17/01346/MOUT) submitted by PM Asset Management at North of Tiverton Road; and
  - Outline planning application for 200 dwellings (17/01170/MOUT) submitted by Codex land PCC Land Promotion at North of Rull Lane.
- 3.13 This is considered unrealistic, and contrary to the NPPF definition of a 'deliverable' site, given primarily that none of the schemes are approved and are pending the signing of a Section 106, and do not even have a resolution to grant permission subject to the resolution of issues around the Section 106s. There are numerous planning stages to overcome before delivery, and there is an infrastructure burden required to be delivered prior to delivery of homes. This site cannot be relied upon to deliver homes in the immediate five year period.
- 3.14 All three planning applications went to Committee on 17 April 2019 and the S106 matters were discussed. It was resolved that the applications were deferred subject to amended recommendations relating to the S106 package including:

#### *Amended recommendations:*

- *Off-site highway works: improvements to J28 of the M5, pedestrian footway and crossing in Willand Road, traffic calming in Saxon Way, Plantagenet Drive and Norman Drive and footpath extension in Millennium Way to link to bus stops.*
- *That delegated authority be granted to the Head of Planning, Economy and Regeneration in consultation with the Chair and Vice Chair of Planning Committee and Ward Members to negotiate and enter into a fall-back position in the S106 agreements that seeks to prioritise and apportion S106 requirements in the event that one or more of the planning applications in question do not come forward for development.*

#### *Additional recommendation:*

- *That the S106 in respect of application 17/01178/MFUL also secure the provision of the community orchard, health garden and other public open space together with its long term management and maintenance.*

- 3.15 There has been no further update regarding the above issues progression of the S106 Agreements and progression of the Section 106 agreements, let alone when the applications will be taken back to planning committee for a resolution.
- 3.16 We do not agree with the Council's short lead in times for North West Cullompton outlined above. Our view is supported by the Council's own evidence in relation to the Tiverton EUE. Area B of the Tiverton EUE is not anticipated to yield first completions until 2026/27. When compared to this site, the proposed trajectory for the delivery of the 'remainder' at NW Cullompton is for dwellings to first be completed in 2024/25 despite the first three applications at NW Cullompton having permission and the fact that there are known issues with their immediate deliverability.
- 3.17 We suggest that it is more logical, and reasonable, that the remainder parts of NW Cullompton will come forward later than Area B at the Tiverton EUE i.e. after 2026/27.
- 3.18 In any case it is important to note that, as the only other comparable scale development in the District, the lead in time for strategic development at Tiverton has been substantial. A full application was submitted for the Cloverleaf road and junctions improvements in July 2014 and approved in October 2014. The first outline application for development was submitted concurrently in December 2013 and approved in September 2015. First completions are subsequently anticipated in the next monitoring year (2020/21), resulting in a 6 year lead in time to development - corroborating the evidence presented in previous sections of this report and, arguably, highlighting the overly ambitious lead in times anticipated by the Council in its latest trajectory.
- 3.19 The Cullompton applications were submitted in 2017, and applying the above lead in time would result in delivery at the earliest in 2023, later than anticipated by the Council. This is not taking into account the complexity of the proposals and known impediments to delivery such as substantial infrastructure works and viability issues.
- 3.20 The Council does not mention the further delay in their evidence to the Inspector and the trajectory has not made any adjustments since the January 2019 update. The deferral of the resolution to grant at the April committee meeting provides evidence that there has been further delay in the delivery of this development.
- 3.21 Even if the current planning applications are approved promptly, we also have concerns with the delivery rates predicted for the site. Both the full application and outline applications are anticipated to deliver concurrently, despite the need to progress reserved matters for the outline applications. As set out in section 2 of this report, we have considered the findings of Lichfield's report, which assessed national average delivery rates on large sites. The Council is therefore unlikely to exceed 122 dwellings per annum.
- 3.22 In section 2, we set out the definition of deliverability which is defined in the NPPF glossary. In our view, this site would fail the 2019 NPPF definition of deliverability due to the site not currently having planning permission. In addition to this, there is no clear evidence that housing completions will begin on site within five years.
- 3.23 Although planning applications have been submitted, they are still pending determination, and there is uncertainty as to when these will be granted. We consider

that insufficient evidence has been presented to give any certainty that it is reasonable to anticipate delivery on these sites within the five year period. It is clear that the lead in times assumed are ambitious and no detail has been made available to show that these sites have a realistic capability of contributing to housing supply on adoption of the plan.

### **East Cullompton**

- 3.24 The Council's update in its response to the Inspector has pushed this site out of their 5 year supply and set completions for the first phase in 2023/24. The Inspector stated that the first 500 dwellings of this site must await the completion of the TCRR. Beyond that first 500 dwellings, the allocation to the east of Cullompton will require strategic intervention to facilitate further development, which may take the form of a new J28a on the M5.
- 3.25 There have been no planning applications or EIA Scoping or Screening submitted on the site to date. The assumptions that the Council have set are unrealistic given the sites planning status and the nature of how development will come forward on this site. We have concerns with the total annual average delivery rates relied on for a site of this scale having regard to the evidence, and consideration of market absorption. With the allocations of both NW Cullompton and East Cullompton, the Council's trajectory would assume that approximately 200 – 300 dwellings per annum will be delivered within Cullompton. We consider that the Council have set unrealistic delivery rates.
- 3.26 As set out in section 2 of this report, we have considered the findings of Lichfield's report, which assessed national average delivery rates on large sites. The Council has identified a delivery rate of 200 units per annum from the site. This is considered to be unrealistic, not least when compared to the Lichfields November 2016 Report which found that on average only 142 dwellings were delivered on sites of this scale. On the basis of 200 units per annum, the Council anticipates 1400 dwellings over a 7-year period, so when adjusted to a more realistic delivery rate this has serious implications for the overall delivery that can be reasonably anticipated from this site in the plan period. On that basis, the upper end of the Council's 200-300 range is entirely unrealistic.
- 3.27 In addition to this, in section 2, we set out the definition of deliverability which is defined in the NPPF glossary. In our view, this site would fail the 2019 NPPF definition of deliverability initially due to the site not currently having planning permission. Notwithstanding this there is no robust evidence to support the suggested trajectory.
- 3.28 The Council have had the opportunity to prepare additional information to support their assumptions regarding site delivery and, aside from conceding that the start date for completions on this site should be pushed back they have provided no justification to support the unrealistic levels of delivery per annum for this site, nor any evidence that more than the initial 500 units dependant on the TCRR can realistically be relied upon over the plan period.
- 3.29 Section 2 sets out the average lead in times, this is based on Lichfields 'Start to Finish', which considers that a realistic lead in time from the submission of an outline planning application to seeing dwelling completions on a site larger than 500 units should be a

minimum of 6 years. Even if an outline planning application was submitted on the site in the next couple of months, using these lead in times, we would suggest the first new homes will not be seen on this site until at least 2024/25.

- 3.30 The May 2019 Cabinet (referenced previously) sets out the housing trajectory for NW Cullompton, East Cullompton and Colebrook. The housing trajectory within this report states the following: *'note that only the first 500 homes at East Cullompton have been included as these will be unlocked by the relief road. The remainder of homes at East Cullompton will require a further, more substantial motorway junction upgrade'*. The Council subsequently removed the remainder of the East Cullompton allocation from the trajectory that it presented within the Cabinet report.
- 3.31 As there is currently no planning application submitted, the realistic lead in times for a site this large should be a minimum of 6 years. Given the lack of reasonable evidence our assessment is that it would be more reasonable to assume delivery for the site will start no earlier than 2027/28 and no more than 500 units should be relied upon over the plan period.

#### **Land at Colebrook, Cullompton**

- 3.32 The Council have included this site in its evidence and suggest that this site is not dependent upon additional highways infrastructure. The evidence from the Council does not mention the delay of the application for this site. An outline planning application for 105 dwellings was submitted by Taylor Wimpey in January 2019 (19/00118/MOUT) and recommended for approval by officers, however, the application was deferred at Committee in June 2019 for further discussions between Officers and the Agent to consider the possibility of a permanent vehicular access route from Colebrook Lane to the site.
- 3.33 Correspondence on the Councils website suggests that the application was to go to Committee on 31 July and an extension of time for work on the S106 to 31 August 2019. The planning application did not go to Committee on 31 July, causing further delay in the determination of the application and delivery of the development.
- 3.34 The Council have not applied unrealistic delivery rates to this particular site; however, the lead in time for this application is overly optimistic given the current status of the application as outline, with no planning permission. Delivery from this site in the next monitoring year is not considered a reasonable assumption.
- 3.35 In our view, this site would fail the 2019 NPPF definition of deliverability due to the site not currently having planning permission. No clear evidence has been presented to suggest that housing completions will begin on site within five years.
- 3.36 A planning application is pending for this site and, therefore, we are not necessarily suggesting that the site will not deliver over the plan period. However, we do question whether it is reasonable to assume any significant contribution to the five year housing land supply from this site on adoption of the plan. The Council have been asked to present evidence specifically to address concerns around five year supply and no such evidence has been made available regarding the immediate deliverability of this site which we consider needs to be pushed back by at least 2 years in the trajectory.

## **Higher Town, Sampford Peverell**

- 3.37 An outline application was submitted by Place Land LLP in September 2017 for 60 dwellings (17/01359/MOUT). The Council's evidence omits any mention of the 'implications report' that was submitted when Members were minded to refuse the application on 3 grounds when it previously went to Committee in June 2018.
- 3.38 The application went to Committee again on 31 July 2019 with a recommendation for approval subject to a S106 agreement. However, the planning application was refused by Members at Committee on 31 July 2019 for the 3 grounds that were raised at the June 2018 Committee meeting, these are listed below:
- (i) The proposed outline application for 60 dwellings on this prominent site will have significant adverse visual impact on the surrounding landscape character and appearance.
  - (ii) The site is not considered to be a sustainable location for this scale of housing development due to poor pedestrian access. 60 dwellings would be a significant increase in the population of the village, which has little employment and which would result in an unsustainable pattern of car-based commuting.
  - (iii) The introduction of the substandard pedestrian footway at Sampford Peverell and the associated crossing points are considered to be unacceptable and unsafe. The introduction of 60 dwellings on this site will create a substantial increase in the numbers of cars which will need to access Sampford Peverell.
- 3.39 This recent refusal of planning permission is, therefore, clear evidence of considerable uncertainty around the delivery of this site. Delivery from this site cannot be relied upon at this time, and certainly it would not, in our view, be reasonable to suggest that this site can contribute towards the five year housing land supply for the authority area on adoption of the plan.

### **The 'Commitments' Source**

- 3.40 The Council include an element of 'Commitments' for each settlement which are:
- Tiverton – 1,275 dwellings in the plan period;
  - Cullompton – 252 dwellings in the plan period;
  - Crediton – 295 dwellings in the plan period;
  - Rural Sites – 796 dwellings in the plan period.
- 3.41 This source equates to 2,618 dwellings total in the plan period or 28% of total plan period supply. Importantly, it also represents 71% of the deliverable supply in the current five year period. There is no breakdown of sites that comprise this source of



supply. There is, therefore, insufficient evidence to make a clear judgement on the soundness of this element of the Council's spatial strategy.

- 3.42 The following table sets out the Council's Commitments per year of the plan period which are from 2018/19 to 2027/28.

	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2027/28	Overall Total
Tiverton	107	149	136	143	135	108	100	100	100	100	97	1275
Cullompton	91	71	53	25	12							252
Crediton	103	99	54	29	10							295
Rural	273	242	255	26								796
Overall Total	574	561	498	223	157	108	100	100	100	100	97	2,618

- 3.43 The Council provide a complete lack of justification or clear evidence for the inclusion of these dwellings in the five year, and plan period supply.
- 3.44 No confidence can be applied to the Council's assumptions in relation to 'commitments' owing to the complete lack of detail presented.
- 3.45 Given the importance of the 'commitment' element to the trajectory, particularly within the five year period, we have previously requested further information about the components of this portion of the council's supply. In our view, it is essential that the Council provides this information to support, or otherwise, their claims that this part of the supply meets the relevant tests.
- 3.46 Until the Inspector and participants are provided with evidence and justification for what makes up this source of supply, we consider it should be removed from the Council's supply.

## 4. Conclusions

- 4.1 In conclusion, there remain significant concerns with the Council's evidence and the justification provided for whether MDDC can demonstrate a five year supply of housing in the 1-5 year or 6-10 year periods.
- 4.2 The Council's Housing Supply Update has failed to address the concerns of the participants and Inspector and there remain still significant holes in the evidence base.
- 4.3 It has not be possible to make any detailed assessment of the Council's housing supply position, given the very limited level of detail provided for a significant proportion of the supply between 2018/19-2022/23. There is no breakdown of the 'commitments' element of supply despite this element of the trajectory accounting for over 70% of the deliverable housing in this part of the plan period.
- 4.4 The four sites that the Council have provided within their response to the Inspector fail the 2019 NPPF definition of deliverability due to none of the sites currently having planning permission and no clear evidence that they will begin on site within five years.
- 4.5 We request that the Council produce another update to the published housing land supply position, properly taking into account the comments of the participants (including comments made in this representation) and incorporating realistic delivery assumptions throughout the trajectory, as requested by the Inspector. These include for the avoidance of doubt:
- Reflecting a realistic lead in time for the allocations reliant on the Cullompton TCRR (particularly NW and E Cullompton);
  - Amending the average annual delivery rates at NW and E Cullompton to reflect a more realistic and achievable rate based on the evidence submitted on delivery rates and market absorption;
  - Setting out clear evidence on the deliverability on other sources of supply and sites in the Council's trajectory which is currently entirely absent (particularly major sites and the 'commitments' source);
  - Considering the implications of the revised NPPF definition of 'deliverable' and the housing land supply position following the adoption of the LPR.
- 4.6 We support the Spatial Strategy in principle, however it is of vital importance to properly consider the Council's true housing land supply position on the best available and more realistic delivery assumptions. As acknowledged by the Inspector in the post-hearings note (ID12) there are implications and fundamental amendments required to the draft LPR if the Council is found by the Inspector to be in deficit of the five year supply (our emphasis added):
- (i) *"Bringing forward other allocated sites that are currently restricted in terms of timing with no good reason, the Policy SP2 site for example; and/or*

- (ii) *Bringing forward the contingency sites; and/or*
- (iii) *Extending existing allocations to accommodate more dwellings **(the Policy WI1 site for example)** or increasing densities to allow for more dwellings on allocated sites that are less constrained; and/or*
- (iv) *Allocating a new, large site not constrained by the link road (or motorway junctions) that can come on stream quickly and bolster supply in the early years of the Plan while infrastructure is provided elsewhere.”*

- 4.7 Our client, as the promotor of Site WI1 which is specifically referenced as an example in point (iii), would clearly support that response as being appropriate and necessary to address the significant concerns on the Council’s supply. The allocated element of the site together with the further land our client controls is capable of accommodating up to 259 new homes. The wider site is suitable, available and deliverable and can make a valuable contribution to the Council’s housing land supply.
- 4.8 We are of the view that there is a considerable lack of evidence available to make a clear judgement as to whether the Council will be able to demonstrate a 5 year supply of housing, on adoption of the Local Plan Review. We also consider that, based on the unrealistic assumptions made with regard to lead in times and delivery rates, and the ambiguity over delivery of key infrastructure, there is uncertainty as to whether the sites identified are capable to delivering the quantum of housing required over the plan period.
- 4.9 Overall, we consider that the Council needs to review its housing land supply position as requested by the Inspector and incorporating realistic delivery assumptions throughout the trajectory including the robust evidence required where sites do not have full planning permission and are claimed to be delivering units within the five year period. Further allocation of land at Site WI1 would go some way to address these identified problems and the evident lack of deliverable housing land supply within Mid-Devon.

## **Appendix 1: Extracts of Decisions**

**Land at East Side of Green Road, Woolpit, Suffolk (Appeal reference: 3194926)**

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## Appeal Decision

Inquiry held on 31 July, 1, 30 and 31 August 2018

Site visit made on 2 August 2018

**by Harold Stephens BA MPhil DipTP MRTPI FRSA**

**an Inspector appointed by the Secretary of State**

**Decision date: 28<sup>th</sup> September 2018**

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**Appeal Ref: APP/W3520/W/18/3194926**

**Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Landex Ltd against the decision of Mid Suffolk District Council.
  - The application Ref 2112/16, dated 2 May 2016, was refused by notice dated 6 September 2017.
  - The development proposed is the erection of 49 dwellings (including 17 affordable dwellings) and construction of a new access.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 49 dwellings (including 17 affordable dwellings) and construction of a new access at Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF in accordance with the terms of the application, Ref 2112/16, dated 2 May 2016, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

### Procedural Matters

2. The application was supported by a number of reports and technical information including a Design and Access Statement (DAS), a Planning Statement, a Revised Transport Assessment, a Planning Statement, a Contamination Report Part 1 and Part 2, an Ecology Report and Skylark Survey, a Flood Risk Assessment, a Foul and Surface Water Drainage Strategy, an Archaeological Report and a Landscape and Visual Appraisal.
3. At the Inquiry, a S106 Unilateral Planning Obligation was submitted by the Appellant.<sup>1</sup> This addresses all of the matters sought by the District and County Council in connection with the provision of community and other services arising from the development. The Planning Obligation is signed and dated 29 August 2018 and is a material consideration in this case. A Community Infrastructure Compliance Statement has been submitted by Suffolk County Council (SCC).<sup>2</sup> I return to the Planning Obligation later in this decision.
4. In addition, the Appellant submitted an Agreement with Flagship Housing Group Limited, conditional upon planning permission being granted, to enter into a Deed of Easement<sup>3</sup> to secure pedestrian and cycle access to the north

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<sup>1</sup> APP8

<sup>2</sup> INQ5

<sup>3</sup> APP7

less than substantial harm to Priory Cottage and this harm should be weighed against the public benefits of the proposals.

61. The public benefits of the appeal proposals comprise:

- An increase in the provision of housing numbers at a time of pressing need (see my conclusion on the following main issue)
- An increase in choice and type of homes
- 35% affordable housing provision
- Employment opportunities during the construction phase
- Residents would be likely to use the local shops and services within Woolpit making a positive contribution to their vitality and viability
- Provision of 0.5 ha of community open space with green infrastructure features – delivering high quality green spaces available to all
- Footpath improvements to the village centre and the wider countryside
- Highway works in the village centre would deliver benefits to the Listed Buildings and the Conservation Area.

62. In accordance with the test set out in paragraph 196 of the NPPF 2018, I find that the clear public benefits of the proposal would outweigh the less than substantial harm to the significance of a designated heritage asset.

### ***Third Issue - Housing Land Supply (HLS)***

63. It is common ground that the Council's strategic policy for housing numbers is more than five years old and has not been reviewed. Accordingly, paragraph 73 of the NPPF 2018 indicates that the Council's housing land supply is to be assessed against the standard method for calculating local housing need. The Council's local housing need is 585 dwellings per annum (dpa) and a 20% buffer is to be applied. This amounts to 3,510 dwellings for the next five years, or 702 dpa. The difference between the parties is solely down to supply.

64. No under supply/previous under delivery is taken into account when using the standard method. Therefore, no 'backlog' of unmet need should be taken into account when calculating the Council's housing land supply position.

65. The NPPF 2018 provides specific guidance in relation to the calculation of the five years supply but specifically with regard to qualifying sites, the Glossary definition of 'Deliverable' in Annex 2 goes further than its predecessor. Small sites and those with detailed permission should be considered deliverable until permission expires unless there is clear evidence that they will not be delivered. Sites with outline permission, or those sites that have been allocated, should only be considered deliverable where there is clear evidence that housing completions will begin on sites within five years. The onus is on the LPA to provide that clear evidence for outline planning permissions and allocated sites.

66. The Council relies upon the same sites in its supply as were contained in its

Annual Monitoring Report (AMR) dated 11 July 2018. The only new site referred to at the Inquiry was that known as Land on the West of Barton Road, Thurston which was missed out of the AMR in error and for which planning permission was granted on 5 July 2018. The Council has carried out a sense check of the supply against the terms of the NPPF 2018 and referred to events that have occurred after the base date of the AMR.

67. In my view the definition of 'deliverable' in the Glossary to the NPPF 2018 does not relate to or include sites that were not the subject of an allocation but had a resolution to grant within the period assessed within the AMR. The relevant period is 1 April 2017 to 31 March 2018.<sup>11</sup> There is therefore a clear cut-off date within the AMR, which is 31 March 2018. The Council's supply of deliverable sites should only include sites that fall within the definition of deliverable at the end of the period of assessment i.e. 31 March 2018. Sites that have received planning permission after the cut-off date but prior to the publication of the AMR have therefore been erroneously included within the Council's supply. The inclusion of sites beyond the cut-off date skews the data by overinflating the supply without a corresponding adjustment of need. Indeed that is why there is a clear cut-off date set out in the AMR. Moreover, the site West of Barton Road, Thurston, should be removed from the supply as its permission postdates the cut-off for the relevant period of assessment.
68. Sites with outline planning permission make up a very large proportion of the Council's claimed supply. The onus is on the Council to provide the clear evidence that each of these sites would start to provide housing completions within 5 years. I accept that there was clear evidence of what was necessary on one site provided in Mr Robert's evidence<sup>12</sup> and so the 200 dwellings in respect of that site should be added to the Appellant's supply calculations. As for the other 1,244 dwellings with outline permission, the Council has not even come close to discharging the burden to provide the clear evidence that is needed for it to be able to rely upon those sites.
69. The up-dated PPG on Housing and economic land availability assessment sets out guidance on what constitutes 'deliverable sites' and covers the evidence that a site with outline planning permission is expected to have in support of its inclusion in the supply. The PPG places great weight on the adequacy and sufficiency of consultation with those responsible for delivering dwellings. It is noteworthy that in this case, the Council has failed to adequately demonstrate it has done so. An assessment of the Council's AMR against the updated PPG reveals that the AMR falls substantially short of producing the evidence that a LPA is expected to produce.<sup>13</sup>
70. Furthermore, the Council has had to provide additional information to demonstrate that sites are deliverable as and when it has surfaced throughout the weeks and months following the publication of the AMR in an attempt at retrospective justification. It is wholly inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published. The site at Union Road, Onehouse is one amongst others, which was only an allocation at the time the AMR was published. Although planning permission was granted 17 August 2018<sup>14</sup> it does not alter

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<sup>11</sup> Paragraph 1.1 of the Annual Monitoring Report

<sup>12</sup> Mr Robert's POE A4 Build out rates for Chilton Leys

<sup>13</sup> See paragraphs 36 (ID:3-036-20180913); 047 (ID:3-047-20180913) and 048 (ID3-048-20180913)

<sup>14</sup> LPA4



the fact that the site was only subject to an allocation at the cut-off date but the Council did not have any clear evidence that it would provide housing within 5 years.

71. Paragraph 73 of the NPPF 2018 requires the Council's housing supply to be made up of 'specific sites'. The Council was presented with three opportunities to demonstrate that the figure of 858 dwellings recorded in its trajectory table for small sites is robust. Firstly, on production of the AMR. Secondly, the Appellant asked for a list of sites on 30 July 2018 and was supplied with a list of 561 planning permissions, which the Council said made up its 858 dwellings. In this list there was insufficient evidence to either accept or challenge this figure, although a number of defects quickly became apparent to the Appellant. The Council was asked to provide more information but failed to do so. Finally, the Council indicated that it was going to submit a final rebuttal proof of evidence on HLS but it did not do so.
72. The Council argues that the St Modwen case<sup>15</sup> continues to provide sensible guidance on the context, as applied to NPPF 2018 and claims that it can demonstrate a 5 year HLS of 5.39 years. However, I cannot accept that the 858 is a robust figure. I agree that it would be a time consuming exercise for the Appellant to review 561 planning permissions. This is an exercise which the Council should have done before it produced its AMR. The Appellant has completed a partial review and from the evidence that is before me it appears that there are at least 108 defective planning permissions within the list of 561 permissions<sup>16</sup> but does not know by what number one should discount the figure of 858. As the NPPF 2018 carries a presumption that small sites are deliverable until there is clear evidence that they will not be delivered, the 858 has been left in the Appellant's HLS calculation but I consider it is likely to be an overestimate.
73. Drawing all of these threads together I consider that the Appellant's assessment of supply, set out in Mr Short's rebuttal proof of evidence, is the more realistic taking into account the St Modwen judgment. The only change is that the site West of Barton Road, Thurston should now be removed from the supply. This leaves the Council's HLS at 3.4 years. If the small sites problem is taken into account, it is highly likely that the Council's HLS is less than 3.4 years. I conclude on the third issue, therefore that the Council cannot demonstrate a five year supply of deliverable housing sites.

## **Other Matters**

74. I have taken into account all other matters raised including the representations from the Woolpit Parish Council, the Suffolk Preservation Society, the landscape assessment of Woolpit by Alison Farmer Associates and other interested persons. I have also taken into account the various appeal decisions submitted by the main parties. The proposed development has generated a significant amount of public interest and many of the representations which have been submitted relate to the impact on the local highway network or the heritage impact which I have dealt with under the main issues.

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<sup>15</sup> St Modwen Developments Ltd v SSCLG et al [2017] EWCA Civ 1643 paragraph 35

<sup>16</sup> APP6

**Entech House, London Road, Woolmer Green  
(Appeal reference: 3190821)**

## Appeal Decision

Inquiry Held on 18 September 2018

Site visit made on 24 September 2018

**by S R G Baird BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26<sup>th</sup> October 2018**

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**Appeal Ref: APP/C1950/W/17/3190821**

**Entech House, London Road, Woolmer Green SG3 6JE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Taylor Wimpey North Thames against the decision of Welwyn Hatfield Borough Council.
  - The application Ref 6/2017/0848/MAJ, dated 21 April 2017, was refused by notice dated 14 September 2017.
  - The development proposed is the erection of 72 new dwellings, retail and commercial units, with associated landscaping, parking and infrastructure.
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### Preliminary Matters

1. Following receipt of closing statements, an agreed list of planning conditions and a S106 Unilateral Undertaking (UU), the inquiry was closed in writing on 2 October 2018. The UU contains obligations regarding: affordable housing, fire hydrants; play facilities; a Framework Travel Plan and financial contributions relating to bins, ecology, education, community facilities and monitoring.
2. The decision notice contains 4 reasons for refusal (RfR). Following the receipt of further information and the UU, RfRs 3 and 4 relating to flood risk and infrastructure were not pursued by the lpa.

### Decision

3. The appeal is allowed and planning permission is granted for the erection of 72 new dwellings, retail and commercial units, with associated landscaping, parking and infrastructure at Entech House, London Road, Woolmer Green SG3 6JE in accordance with the terms of the application, Ref. 6/2017/0848/MAJ, dated 21 April 2017, subject to the conditions set out in the Schedule to this decision.

### Background to Main Issues

4. The local planning authority (lpa) accepts that the proposal does not conflict with the development plan<sup>1</sup> when read as a whole. The outstanding RfRs assert conflict with the emerging Welwyn Hatfield Borough Local Plan (eLP) submitted for examination in May 2017. The lpa acknowledges that whilst the 2018 Framework<sup>2</sup> indicates that policies contained in the 2012 Framework will apply for the purposes of examining plans submitted on or before 24 January

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<sup>1</sup> Welwyn Hatfield District Plan 2005.

<sup>2</sup> Annex 1: Implementation.

### Issue 3 – Housing Land Supply (HLS)

22. The development plan is older than 5 years and the default position for calculating the 5-year HLS is against local housing need using the standard method (Framework paragraph 73). The lpa bases its HLS on the eLP target of 12,000 dwellings referring to Framework paragraphs 60 and 214. Paragraph 60 says that in determining the minimum number of homes needed, strategic policies should be informed by a local need assessment using the standard method unless exceptional circumstances justify an alternative approach. The lpa submits that in light of: the local plan transitional arrangements; the uplift in dwelling numbers has yet to be determined; the potential for an early adjustment to the standard method and the advanced nature of the eLP, it has a "*justified alternative approach*".
23. The lpa's concern that using the 2012 Framework to examine a local plan and the Framework to decide applications/appeals, could place it in a position where, based solely on the method for calculating need, very different results could obtain the week before and the week after adoption of a local plan is, in my view, misplaced. Such a position will not have escaped the authors of the Framework when the transitional arrangements were put in place. If it were a justified concern similar transitional arrangements would have been put in place for determining planning applications/appeals. They have not and, in any event, the conflict the lpa suggests would be addressed by applying Framework paragraph 48.
24. As to the uplift in housing numbers, the identification that the existing housing target is unsound is a clear indication that the existing approach is flawed. Whilst the Government has indicated that it will consider revisions to the standard method, there is no indication when those revisions, if any, will be introduced. Thus, until changes are made, the current system applies. Here the eLP is not at an advanced stage; indeed it is nowhere near the stage in the lpa's example.
25. Framework paragraph 60 applies to the production of strategic policies and not the determination of individual proposals. Moreover, even if it can be argued that it should apply in determining applications/appeals the use of an alternative approach is only justified in "*...exceptional circumstances...*" Here, adopting a base figure identified as unsound is no justification to set aside the Framework requirement to assess local need using the standard method and nowhere near the high bar of exceptional circumstances.
26. I consider that the standard method for assessing local need based on the September 2018 Household projections with the addition of an appropriate buffer should be used for identifying the housing requirement. The Housing Delivery Test is not yet in play and based on the evidence before me, it is appropriate to apply a 5% buffer.
27. Adopting the above position, the lpa calculates the HLS position as some 5.71-years and the appellant at some 1.74-years. The significant discrepancy turns on a fundamental difference between the lpa and the appellant as to which sites should be included within the 5-year supply. In particular the dispute relates to allocated sites within the eLP particularly Green Belt releases and those with outline planning permission.

28. In setting the context for the supply side of the equation, the lpa refers to the 2012 Framework and Footnote 11. This said that to be considered deliverable sites should: be available now; be a suitable location for development now; be achievable with a reasonable prospect that housing will be delivered within 5 years and that the development of the site is viable. In that context, disputes over the 5-year HLS generally revolved around the distinction between what is deliverable and what will be delivered. This distinction was settled by the Court of Appeal with the St Modwen Developments judgement<sup>9</sup> which, amongst other things, said, "*The assessment of housing land supply does not require certainty that housing sites will actually be developed within that period. The planning process cannot deal in such certainties.*" Thus, for a site to be deliverable it should be capable of being delivered not that it will be delivered. To conclude that a site was not deliverable it was the objector who had to provide clear evidence that there was a no realistic prospect that the site would come forward within 5 years.
29. The lpa submits that, as the Framework retains, largely intact, the definition of deliverable set out in Footnote 11 to the 2012 Framework as the essential test, the decision of the Court of Appeal remains the authoritative definition of deliverable. The appellant submits that the requirement now as set out by the Framework is that the emphasis is now on delivery and that it is for the lpa to provide clear evidence that completions will begin on site in 5 years.
30. Annex 2 of the Framework and updated PPG provides specific guidance on which sites should be included within the 5-year supply. This guidance goes significantly further than the 2012 Framework. Whilst the Framework definition largely repeats the wording of Footnote 11, this now appears to be an overarching reference to be read in the context of the paragraph as a whole. The paragraph goes on to identify 2, closed lists of sites that constitute the 5-year supply. The second closed list refers to sites: with outline planning permission; with permission in principle; allocated in the development plan or identified on a brownfield register. Whilst such sites can be included within the 5-year HLS, there is no presumption of deliverability and it is for the lpa to justify their inclusion with clear evidence that housing completions will begin on-site within 5 years. The PPG provides a non-exhaustive list of examples of the type of evidence that can be used to justify the inclusion of such sites within the 5-year supply.
31. The bulk of the lpa's 5-year supply consists of: (1) sites with outline permission (871 units); (2) sites allocated in the eLP (269 units); (3) sites in the Green Belt allocated in the eLP (1,671 units) and (4) sites awaiting planning permission (440). The addition the Category 4 sites is only part of the equation and for a land supply position to be considered robust it should include losses through demolitions and lapsed permissions. I am not clear that a full exercise has been carried out and I consider this figure should be treated with caution. Thus, for the purposes of determining whether the lpa can demonstrate a 5-year HLS, I have concentrated on Categories 1, 2 and 3 as cumulatively they constitute the bulk of the asserted HLS (2,811 units).
32. The Category 1 sites, feature in the second of the closed lists and are capable of being included in the HLS, subject to being supported by clear evidence from the lpa. The lpa had the opportunity in its evidence and during a round

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<sup>9</sup> St Modwen Developments Ltd and (1) Secretary of State for Communities and Local Government (20 East Riding of Yorkshire Council and Save our Ferriby Action Group [2016] EWHC 968 (Admin)).

table session on the disputed sites to provide the clear evidence required to justify their inclusion in the HLS. Indeed following the presentation of the lpa's evidence and the round table session, I permitted the lpa to provide a note seeking to explain delivery during the 5-years on one site, Broadwater Road West. Moreover, I had the opportunity to examine the lpa's data sheets for the disputed sites on which it drew its evidence. Taken together, whether the approach to these sites adopts the lpa's "capable of being delivered test" or the appellant's "will be delivered" test, I consider the information from these sources falls well short of the clear evidence required by the Framework to justify inclusion of these sites within the HLS.

33. Sites within emerging local plans (Category 2 and 3 sites) are specifically excluded from the second of the closed lists. This is on the basis that it is for the local plan examination to assess these allocations in the round. In that forum, unlike a S78 inquiry, the EI has contributions from all of the relevant stakeholders. This is particularly so for Green Belt releases given the scale of the releases envisaged and the importance that the Framework attaches to the ongoing protection of the Green Belt. Given the Framework as it now stands, I consider that as a matter of principle the Category 2 and 3 sites do not fall within the definition of available and offer a suitable location for development now. Moreover, given that this eLP is not at an advanced stage and the significance of the work the lpa is required to undertake to attempt to meet its objectively assessed need it cannot be said, that there would be a realistic prospect that housing will be delivered on these sites within 5-years.
34. I conclude that the lpa cannot show a 5-year supply of deliverable housing sites and that the scale of its supply falls considerably well short of 5 years.

#### S106 Unilateral Undertaking

35. In response to requests from the lpa and the County Council (CC), the UU contains obligations to cover: the provision and retention of Affordable Housing; the provision, laying-out and arrangements for the management of the play space; the provision of fire hydrants and the submission of a Framework Travel Plan. The UU also provides for financial contributions of £7,004 for refuse and recycling bins; £9,500 for ecology works; £186,240 for secondary education provision; £12,672 for library provision and £35,528 for youth services.
36. These obligations are derived from a Planning Obligations Supplementary Planning Document February 2012 produced by the lpa, the CC's Planning Obligations Guidance – Toolkit for Hertfordshire 2008 and Hertfordshire's Travel Plan Guidance for Business and Residential Development. The lpa and the CC confirmed that none of the obligations would conflict with the provisions of CIL Regulation 123 regarding pooled contributions for infrastructure. The above obligations comply with Framework and CIL Regulations and I have taken them into account in coming to my decision.
37. The UU includes obligations to pay a monitoring fee of £5,000 to the lpa and to pay a Travel Plan Evaluation and Support Contribution of £6,000 to the CC. There is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggests that an authority could or should claim monitoring fees as part of a planning obligation. Monitoring and administration are one of the

**Longdene House, Hedgehog Lane, Haslemere  
(Appeal reference: 3165974)**



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## Appeal Decision

Inquiry Held on 9-12 October and 19 November 2018

Site visit made on 19 November 2018

**by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI**

**an Inspector appointed by the Secretary of State for Housing Communities and Local Government**

**Decision date: 10<sup>th</sup> January 2019**

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**Appeal Ref: APP/R3650/W/16/3165974**

**Longdene House, Hedgehog Lane, Haslemere GU27 2PH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline and full planning permission.
  - The appeal is made by Monkhill Ltd against the decision of Waverley Borough Council.
  - The application Ref. WA/2016/1226, dated 6 May 2016, was refused by notice dated 20 September 2016.
  - The application is for "...redevelopment to provide up to 29 dwellings (net increase of 27 dwellings); demolition of 2 existing semi-detached dwellings, glasshouses and outbuildings; landscaping and highway works including alterations and extension to the existing access to Hedgehog Lane. Within this hybrid planning application: Outline planning permission (with Layout, Scale and Appearance reserved and Access and Landscaping for approval) is sought for the erection of up to 28 new dwellings (Class C3), including extension and alterations to existing access from Hedgehog Lane, demolition of 2 existing semi-detached dwellings, glasshouses and outbuildings; and associated landscaping; and Full planning permission is sought for the change of use and refurbishment of Longdene House from office (Class B1a) to residential (Class C3) to provide a new dwelling."
  - This decision supersedes that issued on 4 September 2017. That decision on the appeal was quashed by order of the High Court.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. All the appeal documentation from the quashed decision was submitted as part of the documentation for my Inquiry. I have taken into account the submissions and judgments about the relevance of the previous Inspector's decision. The appellant's view is that it should be the starting point for the assessment of any supplementary evidence. However, there is case law that the quashed decision should be treated as if it has not been made and is incapable of ever having had any legal effect. I have, therefore, considered the matter afresh and determined the appeal on its merits, having regard to the evidence submitted to my Inquiry. Nevertheless, where the unchallenged reasoned conclusions of the previous Inspector's decision are capable of being material considerations, by reason of the way the witnesses at my Inquiry were questioned about these matters, or otherwise, and I have come to a different view from the previous Inspector on those points, I have set out my reasoning for doing so.



36. It seems to me that the many constraints on the local network, which were apparent at my accompanied and unaccompanied site visits, serve to keep vehicle speeds low, and encourage drivers to adopt a cautious approach. I see no reason why this should be any different with residential development of the appeal site. Taking into account all the evidence adduced at the Inquiry, and from my site visits, I do not consider that the proposal would be likely to result in an unacceptable adverse effect on highway safety. Available routes to the town centre and railway station are not so dangerous that they would render the location unsuitable for further residential development.
37. Local apprehension about risks to vulnerable road users is understandable, but I do not consider that any resultant harm to highway safety should weigh significantly against the proposal. I find no conflict with LPP1 Policy ST1. Residual cumulative impacts on the road network would not be severe, and any increased risk to highway safety would fall far short of an unacceptable impact that would, in accordance with the *Framework*, justify preventing the development on highway grounds.

#### *Housing supply*

38. WBC updated its 5 year supply using a 1 April 2018 base date to demonstrate a 5.8 years' supply, with a 5% buffer as was applied by the Local Plan Inspector. The appellant disputes this and considers that with a 5% buffer there is only 3.37 years' supply.<sup>9</sup> I note that Inspectors in other appeals have recently found a 5 years' supply, largely on the basis of maintaining the Local Plan Inspector's conclusions. However, the provisions of the revised *Framework* make it more difficult to place such reliance on the Local Plan Inspector's finding that WBC could demonstrate a 5 year supply of deliverable housing sites.
39. I share some of the appellant's concerns about the implications of changes in the *Framework* to the definition of 'deliverable' in assessing housing land supply, along with the requirement for 'clear evidence' required by the *Guidance*. The onus is on WBC, for sites with outline permission or allocated in a development plan, to provide clear evidence to demonstrate that housing completions will begin on site within 5 years. I am not convinced that the evidence adduced by WBC is sufficient to demonstrate deliverability for all the sites with outline planning permission. However, I do not discount sites where reserved matters applications were subsequently submitted, but which were shown to be deliverable at the base date by reason of progress made towards the submission of an application or with site assessment work.
40. Urban and Rural LAA sites could potentially contribute to supply provided that there was clear evidence that completions will begin on site within 5 years. However, I consider that WBC's submissions about the deliverability of these sites falls short of the clear evidence now required. Many of the Rural LAA sites are located in the Countryside beyond the Green Belt, or in the Green Belt, the AGLV or the AONB. There is no clear evidence about the deliverability of these sites, particularly where progress on eLLP2 has been deferred.
41. Footnote 39 of the *Framework* provides that from November 2018 significant under delivery would be measured against the Housing Delivery Test (HDT).

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<sup>9</sup> ID15 Table 2 indicates that this is based on deleting from WBC's total supply of 5,287 units the following: 1,159 units from outline permissions, 487 units from Urban LAA sites and 574 units from Rural LAA sites.

However, the HDT assessments have not yet been published, and paragraph 215 of the *Framework* states that the test will apply from the day following the publication of its results. I do not consider that it would be appropriate in advance of the publication of the HDT assessment to require a 20% buffer. ID15 Table 3 indicates that, with a 5% buffer, if the outline consents alone were deleted there would be 4.5 years' supply, and if the outline consents were included but both Urban and Rural LAA sites deleted there would be 4.6 years' supply. On the evidence before me, I find that the housing land supply here would be between 3.37 years and 4.6 years. There is not enough information about individual sites for me to assess where within this range the current supply falls. Nevertheless, this is a significant shortfall.

42. The additional dwellings from the proposed development would make a significant contribution to the supply of housing in Haslemere. The provision of 10 affordable dwellings would be particularly important in providing for local needs and would comply with LPP1 Policy AHN1. Given the housing land supply situation and the degree of shortfall, these are benefits which should be given significant weight in the planning balance.

#### *Other matters*

43. The appeal site lies within 5 km of the Wealden Heaths Special Protection Area (SPA). The scheme does not propose any mitigation for any adverse impact on the SPA. Natural England (NE) considers, given the size and scale of the proposal that it would not lead to a likely significant effect upon the integrity of the SPA, either alone or in combination. Accordingly, NE does not consider it necessary for an Appropriate Assessment (AA) to be undertaken. I note that an AA was completed by WBC in determining a duplicate application for the appeal site (Application Ref.WA/2018/0151), and that NE was happy with the outcome of that assessment.<sup>10</sup> However, I am satisfied on the evidence before this Inquiry that the proposal, alone or in combination, is not likely to have a significant effect on the interest features of the SPA.<sup>11</sup> It is not, therefore, necessary to undertake an AA. WBC now concurs with this finding.
44. The proposal would provide employment during construction and future residents would contribute to the local economy. The proposed landscaping and ecological enhancements would be beneficial for wildlife, and so the scheme would gain some support from LPP1 Policy NE1. These are benefits which should be given moderate weight in the planning balance.
45. I have taken into account all the other matters raised in the evidence, including the appellant's submission that some development of AONB land will inevitably be required to meet LPP1 requirements for housing in Haslemere. But this is a matter for eLPP2, and I do not consider that it should be a decisive consideration in determining this appeal. The fact that work on eLPP2 has been deferred does not, in my view, alter this finding. Similarly, it is not very helpful in deciding the appeal on its planning merits to draw comparisons with other possible housing sites in the wider locality. It is not possible in this section 78 appeal to consider all the relevant matters, along with the views of interested parties, on the different sites likely to be required to meet the housing requirement in Haslemere. Neither these, nor any of the other matters raised, are sufficient to outweigh my conclusions on the main issues, which have led to my decision on this appeal.

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<sup>10</sup> This duplicate application was refused in August 2018 against officer recommendation for approval.

<sup>11</sup> ID16.

**Land off Colchester Road, Bures Hamlet, Essex  
(Appeal reference: 3207509)**



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## Appeal Decision

Inquiry Held on 12-15 and 19-20 February 2019

Site visit made on 21 February 2019

**by Robert Mellor BSc (Est Man) DipTRP DipDesBEnv DMS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27<sup>th</sup> March 2019**

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**Appeal Ref: APP/Z1510/W/18/3207509**

**Land off Colchester Road, Bures Hamlet, Essex**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Ltd against the decision of Braintree District Council.
  - The application Ref 17/02291/OUT, dated 21 December 2017, was refused by notice dated 26 June 2018.
  - The development proposed is for the erection of up to 98 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Colchester Road.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application is in outline and all matters are reserved for subsequent determination apart from the principle of the development and the means of access.

### Main Issues

3. Having regard to the provisions of the development plan and to other material considerations, including national policy, I consider the main issues to be:
  - What effect the development would have on the landscape character and appearance of the area.
  - What effect it would have on the significance of heritage assets.
  - Whether adequate provision would be secured for affordable housing and for necessary infrastructure to support the development.
  - What effect the development would have on biodiversity including whether any likely significant effect on the Blackwater Special Protection Area/RAMSAR site would require that an Appropriate Assessment be made of such impacts before determining the appeal.
  - Whether there is a 5-year supply of housing land in Braintree District.

## Housing Land Supply

52. Although not a provision of the development plan, national policy at paragraph 73 of the Framework (2019) provides that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their local housing need where the adopted strategic policies are more than 5 years old [as here].
53. At the date when the application was determined in June 2018, the Council accepted that it was unable to demonstrate that it had the minimum 5-year supply of housing land required by the Framework (2012). Shortly afterwards in July 2018 the Government published the updated Framework (2018) which, amongst other changes, modified how the housing requirement should be calculated. Changes to the supporting Planning Practice Guidance were then published in September 2018 in respect both of the housing requirement calculation and the evidence sought to demonstrate the available supply.
54. In January 2019 the Council published an Annual Monitoring Report with a base date of 31 March 2018 and which claimed that the Council could demonstrate a housing land supply in excess of 5 years. This was based on a local housing need requirement using the recommended standard method and derived from the latest 2016 household projections.
55. Following a Technical Consultation the Government has made further relevant changes to the Framework and to the PPG. These were published during the Inquiry in February 2019. Amongst other things these changes provide that the 2014 household projections should be used when calculating the standard method and that alternative approaches to calculating housing need should only be considered at the policy-making stage and not in decision-making.
56. When calculated in line with the latest policy and guidance (and the results of the Housing Delivery Test - also published in February 2019), the Council continues to maintain that it has a supply in excess of 5 years. The Framework provides that there should be an annual assessment of supply. The PPG at paragraph 3-038 also allows that for applications and appeals it is only necessary to demonstrate supply once a year. The Council does not yet have up-to-date strategic policies on which an Annual Position Statement would be based. It therefore relies instead on the Annual Monitoring Report (AMR) published in January 2019.
57. The Appellant challenges the Council's supply figures as set out in the AMR. The main area of disagreement concerns the treatment of outline planning permissions for major development in the calculation of supply. Also at issue is whether sites subject only to a resolution to grant planning permission at the base date should be included (as for example where the grant of planning permission depends upon the completion of a Section 106 planning obligation).
58. Based on the 2014 household projections, and with an agreed 5% buffer, both main parties now agree that the local housing need at 31 March 2018 over 5 years is for 4,457 dwellings. The Council estimates the supply at 4,834 dwellings (5.42 Years) to include 2,247 dwellings on sites with outline permission at the base date, 200 at 'growth locations' and 267 at 'other sites'.
59. The Appellant has offered 2 alternative calculations. What is described as a 'strict' interpretation would result in a supply of 2,977 dwellings (3.34 years).

This excludes the above supply at the growth locations and other sites and reduces the supply on sites with outline permission to 857 dwellings, mainly due to a claimed lack of clear evidence that these would have been deliverable at the base date of 31 March 2018. In the alternative the Appellant has also calculated supply based on what is described as a '*benevolent*' approach which would result in a supply figure of 3,968 dwellings (4.45 years). In that case the supply from sites with outline permission at the base date would be 1,613 dwellings.

60. My attention has been drawn to how these matters have been addressed in other appeal decisions, albeit that they pre-dated the latest Government policy and guidance. In particular, in the Woolmer decision<sup>1</sup> the Inspector opined that the definition of 'deliverable' in the Glossary of the Framework 2018 is a closed list. If so, whilst the definition is set out in the first sentence, a closed list would mean that only the types of housing sites listed in the second and third sentences of the definition could qualify as deliverable. The Framework 2019 has slightly modified and restructured the definition but the changes do not provide additional confirmation that the list is closed.
61. The Council has drawn attention to the Salford decision<sup>2</sup> by the Secretary of State where sites with a resolution to grant permission subject to a Section 106 agreement had been included in the housing supply and the Secretary of State had made no criticism of that approach. However, as the supply in that case was agreed to be far in excess of 5 years it made no difference to the principal issues and it does not appear that the Secretary of State gave active consideration to that matter. I therefore accord it little weight.
62. In the Woolpit decision<sup>3</sup> the Inspector concluded that all permissions issued after the base date should be excluded on the basis that its consideration would also require a review and extension of the period over which housing need is to be assessed. I disagree on that latter point. It is not necessary to adjust the housing need period if the assessment of supply only concerns that which is expected to be delivered within the original 5-year period. However, I agree that new planning permissions after the base date should be excluded and that would include permissions subject to a resolution to grant subject to a Section 106 obligation. Uncertainty about when such an obligation would be completed could put back a potential start date by months or even years. Information about significant new supply from such sources after the base date but before the annual assessment might nevertheless be material when considering the weight to be accorded to an identified shortfall in supply.
63. In respect of information received after the base date about the progress of sites with outline permission at the base date, I consider that this information should be included in the AMR in order to provide the necessary '*clear evidence*' of whether and when housing will be delivered. An example could be that a site with outline planning permission at the base date had subsequently been the subject of an application for full permission for a similar development in preference to a reserved matters application. That can occur when some amendment to the scheme had meant that whilst housing delivery was still expected a reserved matters application was not appropriate. That an

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<sup>1</sup> Appeal Ref APP/C1950/W/17/3190821

<sup>2</sup> Document ID20

<sup>3</sup> Appeal Ref APP/W3520/W/18/3194926



essentially similar development was now being advanced by a different route should not to my mind preclude the site from inclusion in the base date supply.

64. The March 2018 base date of the Council's AMR preceded its publication by more than 9 months. However, a base date close to the beginning/end of the financial year is widely accepted as a suitable annual monitoring period. It is entirely reasonable that the base date is not updated to a new date for each application or appeal, as confirmed by the PPG. Reasons for the delay in preparing and publishing the report here include that the Framework was significantly modified 4 months after the monitoring period in July 2018 to include a new standard method to assess the housing requirement and a revised definition of deliverable sites for inclusion in the supply. Also, the PPG guidance about how to assess need and supply was only issued 6 months after the monitoring period in September 2018. It can be expected that subsequent reports using current guidance would be compiled and issued closer to the annual base date.
65. The Framework definition of deliverable sites provides that in some cases (including outline permissions for major sites and also for development plan allocations where there is as yet no planning permission) there should be clear evidence that housing completions will begin on site within five years. To establish the site's contribution to the housing supply there would also logically need to be an assessment of the amount of housing expected to be delivered within that five-year period.
66. Where there is to be reliance on an annual assessment then that clear evidence should logically be included in that published assessment or at least published alongside it. That would qualify as publicly available in an accessible format as the PPG requires. It would accord with guidance in PPG Paragraph 3-048 which applies to all forms of annual review including, but not limited to, annual position statements. That is not to say that there should be publication of every email or every note of a meeting or telephone conversation. The information can be provided in summary form but there needs to be some means of identifying the basis for the conclusion reached.
67. The information published here in the AMR is minimal and it relies heavily on unsupported assertions that a site will be delivered. That does not amount to clear evidence. In most cases it does not include the additional information that was introduced only in oral evidence at the inquiry such as: the date when a reserved matters submission was made or anticipated; when a S106 obligation was completed; why a full planning application and not a reserved matters application was submitted on a site that already had outline permission; the source of an estimate of a delivery rate; any assumptions and yardsticks that were applied where direct information was in doubt or missing; or other information of the type suggested in PPG paragraph 3-036. Information of that type could be readily summarised and published, possibly in a tabular form.
68. Overall, and having heard the Council's oral evidence about progress on sites which is said to have informed its conclusions in the AMR, I consider that the Appellant's 'strict' approach unreasonably excludes many sites where it is very probable that there will be significant delivery of housing within the 5-year period. On the other hand, the Council has over-estimated the rate at which some sites may be developed and progress on some sites remains unclear even

when taking into account the Council's additional oral evidence of what has occurred since March 2018. Sites that were subject only to a resolution to grant permission at the base date should be excluded.

69. I consequently do not consider that the Council has demonstrated in the AMR with clear evidence that it has a 5-year housing supply. Whilst there is insufficient evidence to make a precise assessment, the likelihood is that the supply is closer to the Appellant's 'benevolent' approach which concludes that there is a 4.45-year supply. That represents a shortfall, albeit not a severe one. The weight to be attached to the shortfall may also be reduced in that there is some evidence of factors which will increase supply such as the issuing of permissions for developments that were only subject to resolutions to permit at the AMR base date. There is also at least one permission issued on a major site after the base date where development has already commenced on site. It is also material that the eLP examination is advancing and that the adopted plan can be expected both to redefine the housing requirement and to make provision to address it.

### **Other Matters**

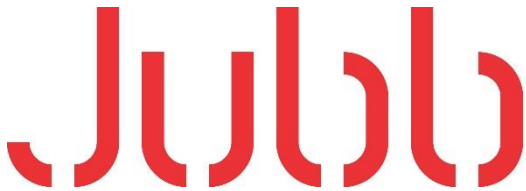
70. I have taken into account all other matters raised in representations. In particular I consider that the location and dimensions of the access junction would be adequately safe. Although not clearly specified in the Section 106 agreement, the advance provision of dropped kerbs at junctions and raised kerbs at the bus stop could be the subject of a condition to facilitate disabled access.
71. For a small rural village, the accessibility by public transport is unusually good and there is a range of services and facilities within walking or cycling distance. The limited parking at the station would be likely to encourage rail users to walk or cycle to the station.
72. However, neither these nor the other matters raised outweigh my conclusions on the main issues.

### **The Planning Balance and Conclusions**

73. I conclude above that the proposal would contravene adopted development policies for the control of development in the countryside outside development boundaries. There would also be conflict with policies to protect the character and appearance of the area and specifically with CS Policy CS8 in respect of the landscape and visual effects. That conflict here outweighs compliance with some other development plan policies such that there would therefore be overall conflict with the development plan.
74. However, the apparent lack of a deliverable 5-year housing supply means that at least some of the other most important development plan policies for determining the application are out of date inasmuch as they would not provide for a sufficient supply. In particular the CS Policy CS5 and RLP Policy RLP2 development boundary is out of date as there is a lack of evidence that sufficient housing to meet the identified local housing need could be provided within the adopted boundaries. Limited weight can yet be accorded to the emerging Local Plan and its development boundaries which are not yet part of the development plan which may change prior to adoption. That and the supply shortfall necessarily triggers the application of paragraph 11 of the



## **Appendix 2: Jubb Note**



Title: Cullompton Highway Infrastructure Representation  
for Local Plan Review Examination

Date: January 2019

## 1.0 Introduction

- 1.1.1 Jubb have been commissioned by Gallagher Estates Ltd to provide further transport and highways advice in relation to the Local Plan Review Examination, based predominantly on the requirement in a proposed housing allocation (known as "Land east of M5") to the south of the existing urban area of Willand. As part of this commission Jubb have been requested to provide transport and highways representation for consideration at the Local Plan Review Examination.
- 1.1.2 This note provides further consideration in relation to the proposals for housing delivery within the Cullompton area. In particular, this note considers the identified housing allocations at North West Cullompton and East Cullompton (also known as Culm Garden village).
- 1.1.3 The note provides further detail in relation to the infrastructure required to deliver those proposals as set out in the "Local Plan Review 2013 – 2033 Proposed Submission" document published in January 2017. The note provides evidence to demonstrate that the timescales for provision of infrastructure required to deliver this housing are still yet to be finalised and that there are still a significant number of technical and practical barriers to resolve before further clarity can be provided on this. This therefore presents significant risk in terms of the housing trajectory of the Local Plan.
- 1.1.4 The structure of this note is therefore as follows:
- Section 2 Provides detail of the allocations within Cullompton as set out in the Local Plan Review
  - Section 3 Outlines potential highway improvements that have been identified by MDDC to enable some of this housing to come forward initially prior to the introduction of major strategic improvements which are also discussed
  - Section 4 Details potential technical issues that may affect the delivery timescales of the highway improvements, which include the requirement for further technical studies and land acquisition
  - Section 5 Provides details of the costs of these highway improvements and the identified sources of funding
- 1.1.5 In addition, Section 6 of this briefing note provides a summary and appropriate conclusion.

## 2.0 Cullompton Allocated Sites

- 2.1.1 The key allocations within Cullompton as set out in the Local Plan Review are the North West Cullompton site (Policy CU1-CU6) and the East Cullompton site (Policy CU7-CU12). The locations of these allocations are set out in the Cullompton Local Plan policy map (Examination Reference SD02).
- 2.1.2 It is proposed within the Local Plan Review document that these sites would provide the majority of housing at Cullompton during the plan period (i.e. 1,350 at North West Cullompton and 1,750 dwellings at East Cullompton), with only limited housing allocation proposed elsewhere within the Local Plan at Knowle Lane (30 dwellings) and Ware Park & Footlands (38 dwellings).
- 2.1.3 It is noted that for both the North West Cullompton and East Cullompton sites the Local Plan defines the requirement to mitigate traffic impacts at M5 Junction 28 to minimise any potential subsequent knock on impact (i.e. as a result of queuing traffic from this junction) on the town centre itself. This is emphasised in paragraph 3.94 that states:

*"...Devon County Council queue length monitoring at junction 28 of the M5 motorway indicates congestion at the AM peak. The development will need to mitigate its impact upon the junction's capacity through implementation of an improvement scheme either to the existing junction or in the form of more extensive junction improvement works involving a second overbridge required in connection with development east of Cullompton under policy CU7"*

- 2.1.4 Potential highway schemes to mitigate congestion at Junction 28 are in the process of being developed by MDDC. These highway schemes are discussed in more detail below.
- 2.1.5 It should be noted that these schemes are still in the early stages of development and therefore there is a lack of certainty in terms of design, funding and timescales. This is a key risk given the number of dwellings that are reliant on the implementation of this infrastructure that make up a large proportion of the homes that are proposed to be delivered within the plan period.

## 3.0 Identified Highway Improvements

- 3.1.1 MDDC's long term aspiration is to introduce an additional M5 motorway junction (i.e. Junction 28A) to the south of the existing Junction 28. It is also proposed that this motorway junction would include a link from the B3181 to the west of the Junction 28 that would link with the new junction and Duke Street to the south. The proposal would therefore not only offer an additional access to the motorway, which would reduce the impact on approach to Junction 28, but would also provide an alternative route that would bypass the town and link with areas to the south of Cullompton and east of the M5. A proposed initial general arrangement proposal has been developed by WSP / Parsons Brinckerhoff on behalf of MDDC (Examination Document Reference SSE18).
- 3.1.2 Notwithstanding the above, it is evident, if this scheme were to be implemented, that there would be significant further design, technical study and consultation required before it even meets the stage of a formal application. Furthermore, more importantly, this proposal would require significant capital investment to introduce, with initial estimates within MDDC's Draft Infrastructure Plan (dated December 2016) placing these costs at £50-£55 million. At this stage, it is understood that suitable sources of funding are not yet available for this scheme to cover these costs.

- 3.1.3 Thus, in consideration of the aforementioned constraints, an interim scheme has been developed by MDDC with the aspiration to allow some housing to come forward in the medium term. This interim solution proposes a road connection that would enable a bypass route to be obtained for the town from the north (i.e. in the vicinity M5 Junction 28) to the south at Duke Street. This proposal is referred to as the "Link Road" for the remainder of this note.
- 3.1.4 It is understood that various options have been considered for the alignment of the Link Road which included solutions to the east and west of the motorway. These options were briefly evaluated in a "Route Options Report" which was produced by WSP on behalf of MDDC and Devon County Council (DCC) and published in August 2018. Three key options were then taken forward for further consideration which encompassed two potential routes linking the B3181 with Duke Street on the western side of the M5 (i.e. Option A and B), and proposals for a link that crosses the M5 via an additional overbridge (Option C).
- 3.1.5 A subsequent traffic model was produced to assess the implications in terms of associated improvements to traffic capacity on the local Cullompton network, with the results summarised in a subsequent "Traffic Modelling Report" published in September 2018. This "Traffic Modelling Report" concluded that the potential Link Road options could provide capacity to enable the whole of the North West Cullompton allocation to come forward. In addition, the model also forecasts that the Link Road could enable a first phase of development to come forward at East Cullompton (i.e. 500 dwellings) in addition to this. After this, the report states that a strategic intervention would be required to unlock the remaining dwellings at East Cullompton (i.e. such as the implementation of a new Motorway Junction as previously discussed).
- 3.1.6 It is understood that consultation events were held between the 14 September 2018 and the 6<sup>th</sup> October 2018 to gauge public opinion regarding the potential route options. Since this consultation it is understood that a preferred Link Road route option has been identified by MDDC for further development (i.e. Route Option B). A drawing (Drawing 70047809-Option B P01) showing the broad layout of this route has been produced by WSP on behalf of DCC and MDDC and is included as **Appendix A** of this note.
- 3.1.7 A MDDC cabinet meeting is also being held on the 31st January 2019 to discuss the Link Road. This cabinet meeting is being held to provide agreement that the design of the preferred Link Road option (i.e. Option B) be progressed in more technical detail. Furthermore, agreement would also be sought for £250,000 of S106 money collected for the Link Road project and to undertake a requirement on measures in Cullompton be used to fund this design process.
- 3.1.8 As discussed in section 4 below, whilst an initial proposed layout has been identified, there are still a number of technical studies that need to be undertaken prior to the Link Road design being finalised and it is evident that land will need to be acquired to deliver it. Furthermore, as also discussed in Section 5, funding has yet to be confirmed, which could lead to delay in terms of implementation until this is resolved.

## 4.0 Link Road Further Requirements

- 4.1.1 It is evident that the development of the preferred Link Road options still at an early stage. There are still a number of technical studies that need to be carried out before the route is finalised and a planning application for the Link Road is submitted. In addition, once the route has been finalised and planning consent has been granted there is likely to be further detailed design that would need to be carried out prior to tender and construction. Some of the detailed elements that need further consideration are outlined below.

### Ecology Impacts

- 4.1.2 An initial review of the ecological impacts of the Link Road, as outlined within the aforementioned "Route Options Report", has also concluded that the proposals would have an impact on priority habitats and provides the following statement in this regard:

*"Option B also runs through hedgerows that are species rich with mature well established trees that are identified as adding a significant ecological value to the site. This proposed route also runs through mature mixed woodland that comprises of deciduous and leylandi trees that are used as curtilage between playing fields and screening from the motorway and the railway line*

*There is a tributary of the River Culm that traverses the west boundary and south west section of the site. This stream is heavily lined and shaded by deciduous trees on both banks*

*The wider environment was assessed as high value for bats with a large network of fields, hedgerows and woodland as well as roosting opportunities in nearby structures. The grassland and woodland provided moderate potential for foraging bats with the mature trees having high potential for roosting bats*

*The site was also assessed as having a moderate to high value for birds with the scrub, grassland and woodland providing suitable nesting and feeding opportunities*

*The site location was assessed as having a moderate value for reptiles (the grassland tussocks and scrub fringes) and invertebrates (white clawed crayfish)*

*There was no sign of badgers on site however the overall site was assessed to hold potential for foraging badgers, hedgehogs and the River Culm had the potential to support otter and water voles. The pond on site provided potential for breeding habitat for great crested newts "*

- 4.1.3 The overall impact of the proposals on ecology was therefore classed as Moderate Adverse. Thus, whilst this assessment does not consider any mitigation that would be implemented to address this impact it is evident that further work would need to be undertaken to develop the proposals to minimise these impacts.

### Flood Risk

- 4.1.4 The preferred alignment is located entirely within a Flood Zone 3b classification. These areas have a high probability of flooding and are effectively part of the functional flood plain where water flows or is stored during flood events. As outlined within the report to the MDDC cabinet in relation to the Link Road (dated the 31<sup>st</sup> January 2019) initial flood modelling indicates that increased flood risk is forecast to occur around Tesco and the Long Meadow industrial estate. In this regard the cabinet report makes the following statement:

*"If this is chosen as the preferred option then further work will be required to demonstrate the acceptability of the final detailed design mitigation/compensation for lost floodplain and provision of suitable warning systems and evacuation plans to ensure that road use restrictions and diversion measures can be instigated*

*Compensation and mitigation will also be required from an ecological perspective due to the likely loss of trees hedge lines and floodplain habitat "*

- 4.1.5 The final designs of the Link Road also show an elevated cross section, which is expected given the flood constraints in this area. This would add further potential complication during construction as material would need to be brought in to create this elevated plateau.

- 4.1.6 It is also noted that due to flood constraints the road may require closure after/during periods of high rainfall once in operation. This is outlined in the aforementioned "Route Options Report" which states:

*"As with Option A the whole of the Option B alignment is within flood zone 3b Whilst it would be possible to raise most of the alignment length above flood levels at the tie ins to the existing highway network at Duke Street and Station Road the alignment would need to return to existing highway levels*

*Duke Street at the southern location where Option B is proposed to connect is predicted to flood in the 50% flood scenario which equates to a probability of flooding once every 2 years*

*Station Road at the northern location where Option B is proposed to connect is predicted to flood in the 1% flood scenario which equates to a probability of flooding once in every 100 years*

*Whilst flooding of the proposed connection point on Station Road is predicted infrequently and to a depth of less than 200mm with Duke Street susceptible to frequent flooding with depths over 1m there would be periods when the road would need to be closed*

*Whilst these periods of closure are expected to be short term it would necessitate that advance warning signs and barriers closing the road for these periods are installed as part of the works Similarly there is potential the relief road would be closed in parallel with the M5 motorway and therefore diverted traffic would still need to use the Fore Street This would potentially limit options for regeneration of the town centre "*

- 4.1.7 Thus, it is evident that the need to consider flooding of the road itself would further complicate the Link Road design and have a knock on impact on the future development of the town centre.

### **Third Party Construction Impact**

- 4.1.8 As discussed in the aforementioned "Route Options Report" the proposed alignment will require the demolition of the existing bowling, cricket ground and some of the associated buildings such as the club house and pavilions. In this regard the "Route Options Report" makes the following statement:

*"The Option B alignment would significantly impact Cullompton Cricket Club Cullompton Bowls Club and to a lesser extent Cullompton Rangers Football Club Significant costs associated with compensation and/or mitigation are expected beyond the construction costs and typical land purchase prices Land to relocate the affected sports clubs would be expected to be required "*

- 4.1.9 Consultation would also need to be carried out with the National Rail authority due to the proximity of the alignment to existing railway line to the east. The authority may require that the alignment be moved further west in this instance which could encroach further on the sports facilities to the west. In addition, the drainage impact on the railway line would also need to be assessed and mitigated where appropriate.
- 4.1.10 It is evident that the above third party considerations would need further technical review and consultation, which would take significant time to resolve.

### **Landownership Constraints**

- 4.1.11 As discussed in the aforementioned "Route Options Report" route Option B (i.e. the preferred route) will affect 12 known areas of registered and unregistered land according to the assessed Land Registry information. Details of these areas are included within Appendix F of the "Route Options Report" and is also included within this briefing note as **Appendix B**. Notwithstanding the necessary land compensation required this may result in subsequent further timescale for implementation, particularly, if compulsory purchase powers need to be implemented.

### **Summary**

- 4.1.12 It is evident from the above that there are still a number of practical and technical constraints to address prior to the preferred Link Road being finalised. These constraints could take significant time to resolve prior to the submission of a planning application and any scheme would be subject to further detailed design prior to construction in any case. In this regard, notwithstanding other constraints such as construction timeframes and scheme funding, it is evident that these technical elements would affect the certainty of the delivery of the Link Road in terms of timescale.

## **5.0 Link Road Scheme Costs and Funding**

- 5.1.1 Initial cost estimates for the preferred Link Road scheme (i.e. as set out in **Appendix A**) are outlined within the "Preferred Route Options Report" which was produced by WSP on behalf of MDDC and DCC and was published in January 2019. The report states that the projected cost of the scheme would be £14 million which accounts for construction costs and estimated costs associated with land compensation.
- 5.1.2 The predominant source of funding for the Link Road as identified within the aforementioned "Route Options Report" is the Housing Infrastructure Fund (HIF). A bid has therefore been submitted for £10 million worth of HIF funding to Homes England. It is noted that, whilst a decision may be forthcoming, at the time of writing it is understood that confirmation has yet to be received and timescales may slip in this regard.
- 5.1.3 It is also noted that HIF funding is reliant on the benefits of a scheme being realised by March 2021 and therefore the Link Road would need to be for the most part complete and open for use by vehicles by this date. This represents a substantial risk as the Link Road is still at the consultation stage and therefore a planning application for the proposals has yet to be submitted. Furthermore, there are number of issues in terms of design and land ownership that are briefly discussed in the previous section that would need to be overcome. Thus, notwithstanding the timescales for construction, it is evident that there are number of stages that the proposals would need to go through prior to the design being finalised. It should also be noted that, even in the event that funding is confirmed, it is clear that there would still be a shortfall in funding which at present is calculated at £4 million.

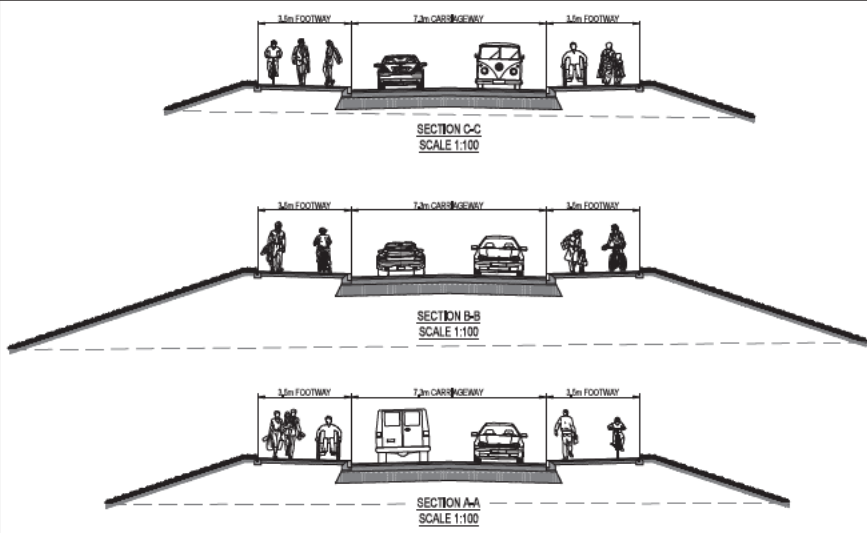
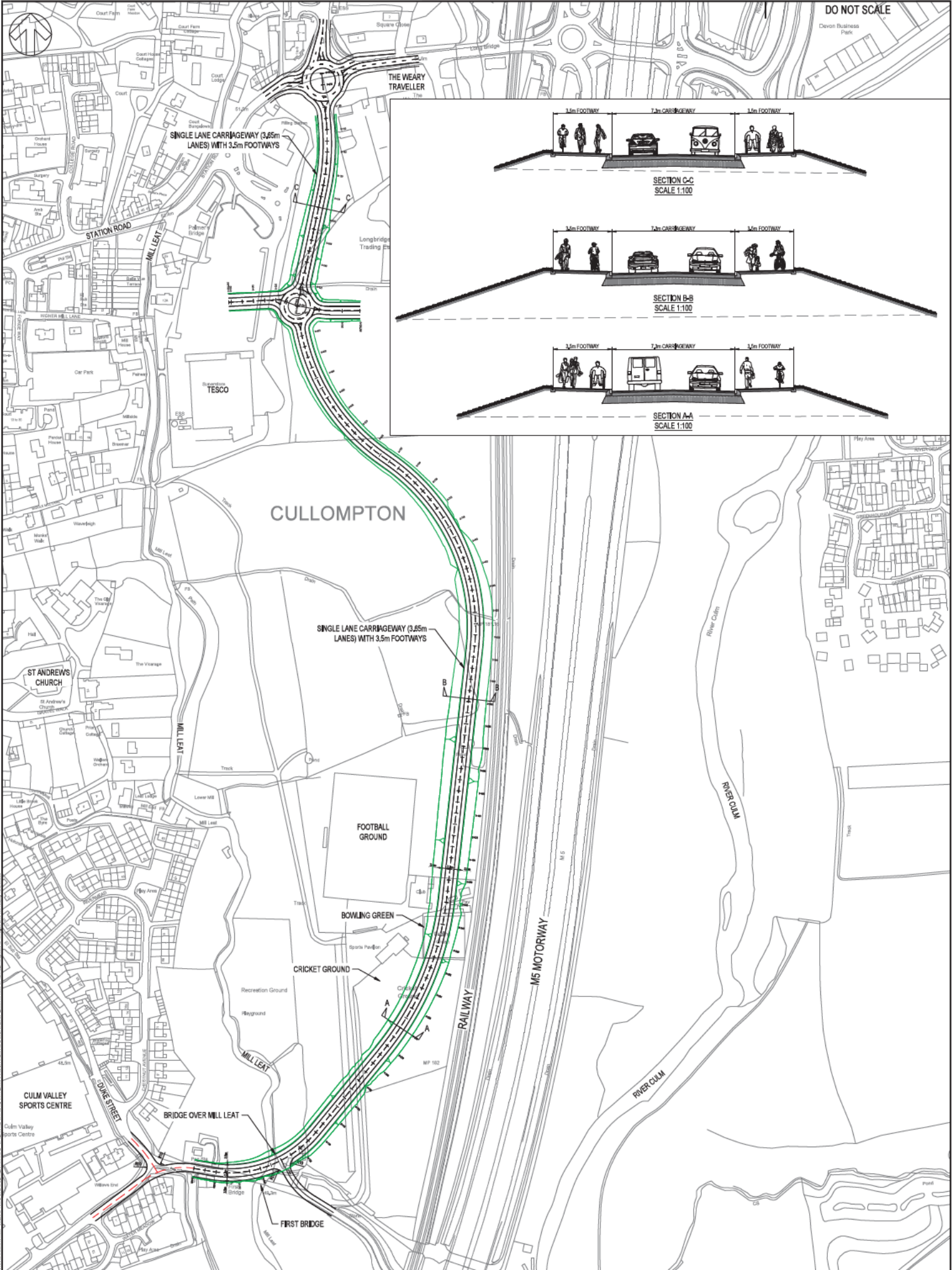
- 5.1.4 Other sources of funding include S106 contributions from developers. As discussed above the traffic modelling associated with the proposed Link Road has shown that the road would provide additional capacity for 1,350 dwellings associated with North West Cullompton and 500 dwellings at Culm Garden Village. It is noted that these schemes are still in the process of agreement with planning applications being brought forward in a piecemeal manner. Thus, there is likely to be a significant time period before these funds become available.
- 5.1.5 It is understood that at present no other sources have been identified. Thus, if the HIF application is not successful this would mean that the only source of funding for the Link Road would be S106 contributions from developments requiring its implementation. On this basis, given that the full £14 million funding requirement would be dependent on the development of North West Cullompton and the first phase of East Cullompton this may bring into question the viability of these housing allocations.

## 6.0 Conclusions

- 6.1.1 It is evident that the total delivery of housing at the identified allocations at North West Cullompton and East Cullompton are reliant on proposals to deliver a Link Road to the east of the town. As discussed above this Link Road proposal is subject to a number of technical and practical constraints that would take a significant time to resolve prior to the submission of a planning application and could therefore affect the subsequent timescales for construction and completion. To date there is no evidence to show how these issues would be resolved and in what timescale.
- 6.1.2 Furthermore, it is also evident that funding for this Link Road is mostly dependent on the delivery of this scheme as per the obligations of the HIF, which requires that the benefits of the scheme are realised by March 2021. On this basis it is likely that the delivery of housing within Cullompton would be held back which would most likely have an impact on housing trajectories within MDDC's Local Plan.
- 6.1.3 It is also noted that traffic modelling reports commissioned by MDDC and DCC have shown that the Link Road would only provide capacity for 1,350 dwellings at North West Cullompton and 500 dwellings at East Cullompton, and after this point more strategic infrastructure improvements would be required. Whilst MDDC's desire in the long term is to introduce a new motorway junction on the M5 to provide the further highway capacity for development at East Cullompton this strategic highway improvement has yet to be developed in detail. Furthermore, no funding has been identified to cover the significant capital investment (previously estimated by MDDC to amount to £50-£55 million) required for this scheme.

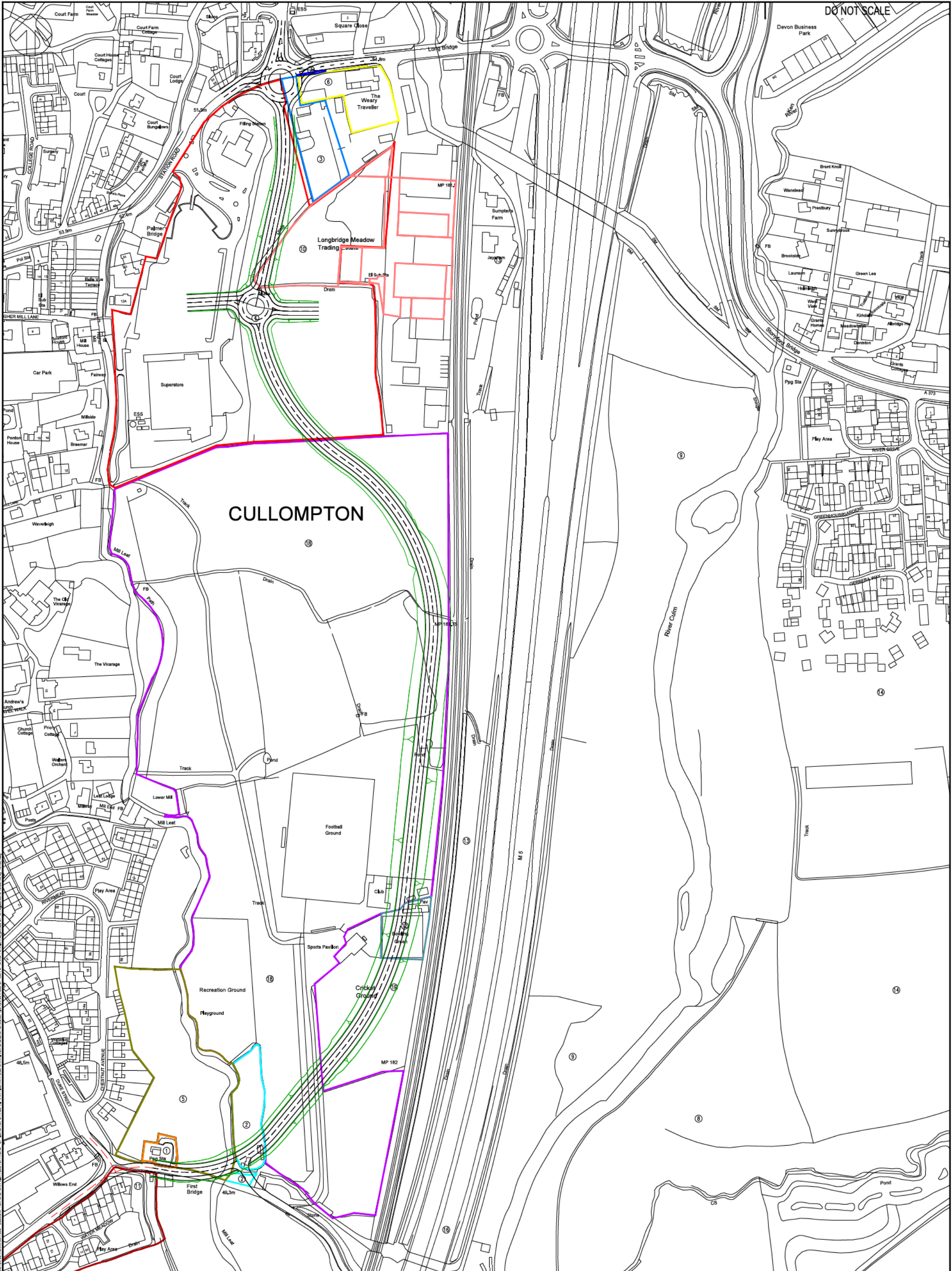


**Appendix A: Preferred Link Road Option (Option B)**



**Appendix B: Land Ownership Constraints of Preferred Link Road Option (Option B)**





REV	DATE	BY	DESCRIPTION	CHK	APP
P01	XX/XX/18	JY	FIRST ISSUE	LT	TD
DRAWING STATUS: I - FOR INFORMATION					

The Forum  
Barnfield Road  
Exeter EX1 1QR, UK  
T+44 (0) 1362 229 700  
F+44 (0) 1362 229 701  
wsp.com

PROJECT: CULLOMPTON TOWN CENTRE RELIEF ROAD - ROUTE OPTIONS REPORT

TITLE: OPTION B - LAND OWNERSHIP PLAN

SCALE @ A1: 1500	CHECKED: AMR	APPROVED: TO
PROJECT No: 70047809	DESIGNED: JY	DRAWN: JY
DATE: 26/06/16		
DRAWING No: 70047809-OPTION B - LAND PLAN		REV: P01
© WSP UK Ltd		

**Turley Office**  
40 Queen Square  
Bristol  
BS1 4QP

T 0117 989 7000

Reference No: 18/00177/FULL  
Parish: Willand 59



**TOWN AND COUNTRY PLANNING ACT 1990**

**APPROVAL OF FULL PLANNING APPLICATION**

**Name and Address of Applicant:**

Gallagher Estates Ltd  
C/o Mr Jonathan Dodd  
Turley  
40 Queen Square  
Bristol  
BS1 4QP

**Name and Address of Agent:**

Date Registered : 26th January 2018

Date of Permission : 6th November 2018

**Proposal:** Creation of new access for residential development

**Location:** Land at NGR 303174 110748 Meadow Park Willand Devon

**Site Vicinity Grid Ref:** 303174/110748

**MID DEVON DISTRICT COUNCIL HEREBY GRANTS FULL PLANNING PERMISSION FOR THE ABOVE DEVELOPMENT**

**Subject to the following conditions:**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.
3. Insofar as it relates to this application, the proposed estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.
4. No development shall take place until a surface water drainage scheme has been submitted to and approved in writing by the County Planning Authority. Unless it is demonstrated that it is unfeasible to do so, the scheme shall use appropriate Sustainable Urban Drainage Systems. The drainage scheme shall be designed so that there is no increase in the rate of surface water runoff from the site resulting from the development and so that storm water flows are attenuated. The development shall be carried out in accordance with the approved scheme.

5. Provision shall be made for the installation and maintenance of a drainage system to ensure that no water from the permitted area flows onto the public right of way.
6. No development shall begin until an Arboricultural Method Statement and Tree Protection Plan, to include engineering details for any areas of no-dig construction, has been submitted to (with or in advance of the first Reserved Matters application) and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details.

#### **REASONS FOR CONDITIONS:**

1. In accordance with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.
2. For the avoidance of doubt and in the interests of proper planning.
3. To ensure that adequate information is available for the proper consideration of the detailed proposals.
4. To protect water quality and minimise flood risk in accordance with Flood Management Act.
5. In the interests of highway safety and safeguarding the local environment.
6. To ensure that the mature trees on site continue to contribute where possible to the character and appearance of the area.

#### **INFORMATIVE NOTE:**

1. Rights of Way

The alignment, width, and condition of public rights of way providing for their safe and convenient use shall remain unaffected by the development unless otherwise agreed in writing by the Public Rights of Way Team.

Nothing in this decision notice shall be taken as granting consent for alterations to public rights of way without the due legal process being followed.

#### **REASON FOR APPROVAL OF PERMISSION/GRANT OF CONSENT**

The application proposes an access from the road known as Meadow Park into land currently allocated in the Local Plan Review for 42 dwellings, but also seeks to provide access for the up to 125 dwellings proposed as part of application 18/00175/MOUT. The Highway Authority has considered the transport assessment and is satisfied with its contents, figures and conclusions subject to seeing the footway width widening to a minimum of 2.0m throughout. The scheme does require the loss of some mature trees but the Local Planning Authority are satisfied that the location of the access is suitable and can be mitigated by additional planting. The criteria of policy WI1 and NPPF is therefore considered to be complied with.



## Statement of Positive Working

In accordance with the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, in determining this application the Local Planning Authority has worked proactively and positively with the applicant to ensure that all relevant planning considerations have been properly resolved.

In accordance with paragraph 69 of the National Planning Policy Framework, the Local Planning Authority has also involved the community in the consideration of this application.

## DEVELOPMENT PLAN POLICIES:

### Mid Devon Core Strategy (Local Plan Part 1)

COR1 - Sustainable Communities

COR9 - Access

COR10 - Strategic Transport Networks

COR11 - Flooding

### Mid Devon Local Plan Part 3 (Development Management Policies)

DM1 - Presumption in favour of sustainable development

DM2 - High quality design

DM6 - Transport and air quality

## Relevant Plans

The plans listed below are those approved. No substitution shall be made.

Plan Type	Reference	Title/Version	Date Received
Site Location Plan	GALA3002_1101		26/01/2018
Block Plan	W15279_A_005		26/01/2018

A copy of the approved plans will be available on Mid Devon's online planning facility.

Website: <http://www.middevon.gov.uk/planning>

**Mrs Jenny Clifford**  
**Head of Planning and Regeneration**

**Date: 6th November 2018**

**THIS DECISION IS NOT A DECISION UNDER BUILDING REGULATIONS AND SEPARATE CONSENT MAY BE REQUIRED. PLEASE CONTACT OUR BUILDING CONTROL DEPARTMENT FOR MORE INFORMATION.**

**Please refer to notes attached**



**NOTE – Failure to adhere to the details of the approved plans or to comply with the above conditions constitutes a contravention of the Town and Country Planning Act, 1990 in respect of which enforcement action may be taken.**

## **TOWN AND COUNTRY PLANNING ACT 1990**

### **Appeals to the Secretary of State**

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice and you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and you want to appeal against your local planning authority's decision on your application, then you must do so within:  
28 days of the date of service of the enforcement notice, or within 6 months [12 weeks in the case of a householder appeal] of the date of this notice, whichever period expires earlier.
- If you want to appeal against the Local Planning Authority's decision then you must do so within 6 months of the date of this notice.
- If this is a decision for a minor commercial application and you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.
- If this is a decision for the display of an advertisement and you want to appeal against your local planning authority's decision then you must do so within 8 weeks of the date of receipt of this notice.
- Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at [www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs).
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

### **Purchase Notices**

- If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council (District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
- In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable is set out in Section 114 of the Town and Country Planning Act 1990.

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## Appeal Decision

Site visit made on 5 August 2019

**by Robert Parker BSc (Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 August 2019**

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**Appeal Ref: APP/Y1138/W/18/3214685**

**Land off Meadow Park, Willand, Devon (NGR 303288 110467)**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gallagher Estates Ltd, Mr Michael Webber & Ms Sally Albright against the decision of Mid Devon District Council.
  - The application Ref 18/00175/MOUT, dated 24 January 2018, was refused by notice dated 9 October 2018.
  - The development proposed is residential development of up to 125 dwellings, with public open space, landscaping and associated infrastructure.
- 

### Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 125 dwellings, with public open space, landscaping and associated infrastructure at Land off Meadow Park, Willand, Devon (NGR 303288 110467) in accordance with the terms of the application, Ref 18/00175/MOUT, dated 24 January 2018, subject to the conditions set out in the attached schedule.

### Procedural Matters

2. The application is submitted in outline with all matters reserved. I have treated the Concept Masterplan as indicative, although I note that planning permission has already been granted for the primary vehicular access off Meadow Park.
3. The parties have produced a Statement of Common Ground (SoCG) which identifies the matters in dispute and those upon which there is agreement. Additionally, two signed unilateral undertakings (UU) were submitted in counterpart form during the appeal process. I shall return to this later.

### Main Issue

4. The main issue is whether residential development of the scale proposed is appropriate, having regard to the development plan strategy for the location of housing, the National Planning Policy Framework (the Framework) and the level of services and facilities that would be available to future occupiers of the scheme.

## Reasons

### *Compliance with development plan policy*

5. The appeal site comprises a 6.4 ha parcel of agricultural land located to the south-west of the built-up area of Willand. In policy terms, the site lies in the countryside, immediately outside of the settlement limit boundary.
6. Of the policies cited on the decision notice, Policy COR 12 of the Mid Devon Core Strategy (2007) (CS) is a useful starting point. This seeks to concentrate development at Tiverton, Cullompton and Cridton, with a limited role for Bampton. The policy states that other settlements will have only very limited development that is required to meet local needs and promote rural regeneration.
7. Although not referenced in the refusal reason, CS Policies COR 17 and COR 18 are also relevant. Policy COR 17 designates Willand as a 'village' where development will be limited to minor proposals within the defined settlement limits and to allocations for: affordable housing meeting a local need; small scale employment and tourism; services and facilities serving the locality; and other very limited development which enhances community vitality or meets a local social or economic need. The settlements within this tier of the hierarchy are recognised within the policy as having some local facilities and employment and access to public transport. Policy COR 18 seeks to strictly control development in the countryside; the categories of permissible development in the countryside include affordable housing for local needs but not market housing.
8. The appeal scheme would include an element of affordable housing, but the scheme is not solely directed at meeting local housing needs. It is therefore reasonable to conclude, having regard to the above policies, that the proposed scheme of 125 dwellings outside of the settlement boundary of Willand would conflict with the development plan strategy for the location of housing. S38(6) of the Act requires that planning applications be determined in accordance with the development plan, unless material considerations indicate otherwise.

### *Housing land supply position*

9. At the point the planning application was determined the Council was unable to demonstrate a five-year supply of deliverable housing sites. However, it now calculates that the District has a 7.58 year supply against an annual need for 357 dwellings per annum, applying the Government's standard method and taking account of the Housing Delivery Test results. This figure is not being contested by the appellant.
10. Notwithstanding the housing supply position, it is common ground that the adopted development plan is out of date and only limited weight can be attached to those of its policies addressing the scale and distribution of housing development, including policies designed to prevent development in the countryside beyond existing settlement boundaries. It is also agreed between the parties that the tilted balance set out within paragraph 11(d)(ii) of the Framework is engaged. This states that where the policies which are most important for determining the application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

### *Emerging policy*

11. As part of its Local Plan Review the Council has allocated part of the site for 42 new dwellings. The emerging plan is still under examination, but the Inspector has not raised any specific concerns regarding the allocation. However, there are remaining concerns regarding the housing trajectory and the authority's ability to sustain a five-year housing land supply in the early years of the plan. I note that one of the options mooted in the Inspector's Post-Hearings Advice Note is to consider increasing the scale of development on existing proposed allocations, with direct reference to the Willand site as an example.
12. Until all objections have been resolved and the Inspector's final report received, the weight that can be attached to the emerging plan is limited. However, the Council's proposal for a site allocation in Willand is a clear recognition that in order to meet its aspirations for housing growth, not all development can take place within the confines of settlements.

### *Services and facilities*

13. The Council acknowledges that Willand is a second tier settlement within Mid Devon following the four main towns of Tiverton, Cullompton, Crediton and Bampton. In this regard, it expects that Willand will contribute to the District's housing land supply over the plan period and that development at Willand is consistent with the current and emerging spatial strategy (reflected in the housing allocation being made in the emerging Local Plan). As such, there is an explicit acceptance within the SoCG that Willand is a sustainable settlement and a sustainable location for further development in Mid Devon.
14. Moreover, it is common ground that Willand contains a range of services and facilities, including shops, petrol filling station, pharmacy, doctor's surgery, village hall, public house, playing fields, pre-school and primary school. A small but well stocked Co-operative supermarket has recently opened on the business and industrial site to the north of the village; this area provides numerous other employment opportunities.
15. No objection is being raised to the proposed development in respect of its general accessibility or location. Whilst the services and facilities in Willand are dispersed, all are within safe walking and cycling distance of the appeal site. Bus stops are located on and close to the boundaries of the site with regular services to Tiverton, Cullompton and Exeter. A dedicated cycle route provides access to Tiverton Parkway station.
16. The reason for refusal references the scheme's likely effects on the long-term sustainability and social cohesion of the local community. This is a nebulous and undefined concept. However, from my reading of the evidence the concerns boil down to the absence of any improvements to infrastructure to offset the increase in population. It is argued that Willand has already accommodated 54 dwellings on 'windfall sites' over the current plan period, together with 35 affordable homes on an exception site. This is in addition to the 42 new dwellings that would be built under the emerging Local Plan allocation.
17. The Council estimates that, when taken with other recent developments, the proposal would lead to an 11 percent increase in population. Put another way, there would be an additional 83 dwellings on top of the 131 dwellings already built during the current plan period or committed in the emerging Local Plan.

Whilst I note the understandable concerns regarding cumulative impacts, there is no substantive evidence before me to demonstrate that existing services and facilities are under pressure, or that they would not have the capacity to accommodate the residents of the proposed development.

18. The appellant has engaged with local community representatives to identify what could be done to mitigate the (unquantified) impact of the proposals. The submitted UU would secure monies towards: the provision of studio facilities at Willand Primary School<sup>1</sup>; the Willand Health and Community Centre project for the fitting out that part of the building to be used for a mixed community use to include memory café, day centre and other community uses<sup>2</sup>; upgrading the Jubilee Field BMX/Skate Park and/or other recreation/teen facilities in the village; and improvements to the frequency of the No.1 bus service. Unlike the obligations relating to open space and equipped children's play within the site, which are principally intended to serve residents of the development, the other planning obligations would benefit the entire community. This needs to be factored into the balance.
19. CS Policy COR 1 sets out the principles for achieving sustainable communities. Amongst other things, this policy is supportive of proposals which enhance the self-sufficiency and vitality of communities, by providing neighbourhoods and settlements with a vibrant mix of flexible and compatible uses, services and community facilities. Notwithstanding the expectations for a lesser quantum of development in Willand within adopted and emerging policy, the proposal would balance a proportionate level of housing growth with modest improvements to services and facilities. Furthermore, there is good availability of sustainable transport options in Willand, which would be further enhanced as part of the appeal scheme. Accordingly, there would be no conflict with CS Policies COR 1 and COR 9 insofar as they seek to reduce the need to travel by car.

#### *Affordable housing*

20. The Council contends that outstanding local housing need has already been addressed by other schemes or commitments in the village, and that the affordable housing offered by the appeal scheme is not required. However, it does not contest figures provided by the appellant which indicate that there is a substantial deficit of affordable housing at a district-wide level; the delivery of up to 44 affordable homes on the site, in line with development plan policy, is accepted within the SoCG to be a benefit of the scheme. Although it is argued that occupiers of the proposed affordable homes would commute out of the settlement, due to their lack of family connections with Willand, it is equally likely that they would find employment locally, use local facilities and integrate into village life. Even if they did choose to travel further afield, there are sustainable transport options to do so.

#### **Unilateral Undertaking**

21. The Council has provided information which demonstrates that the obligations within the UU are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. They are not caught by the pooling

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<sup>1</sup> This project already has planning permission and is awaiting funding; the scheme would provide 100% funding.

<sup>2</sup> The s106 includes provision for the monies to be put to an alternative community facilities project, should this project not proceed.



restrictions and therefore comply with the provisions of Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010.

### **Other Matters**

22. Residents have raised concerns in relation to traffic generation, queuing at nearby motorway junctions and impacts on road safety. However, there is no objection from the Highway Authority, and I note that a previous Inspector found that there would be no harm in connection with a larger proposal of up to 259 dwellings. As such, there are no highway reasons to dismiss the appeal.
23. Whilst I note the comments regarding the impact on local schools, the Education Authority has confirmed that there is currently capacity at the nearest primary and secondary schools for the number of pupils likely to be generated by the proposed development.
24. The appeal site is in Flood Zone 1. The parties are agreed that an acceptable drainage solution can be achieved to ensure that flood risk on the site and elsewhere is managed. The Lead Local Flood Authority raises no objection to the scheme, subject to the imposition of conditions. There is no substantive information to lead me to a different view.
25. The water authority is content for permission to be granted subject to the condition that the development be connected to the public foul or combined sewer. There is no firm evidence to demonstrate that the local sewer network has capacity issues that cannot be overcome.
26. Although there would be a loss of farmland, the appeal site is categorised as sub-grade 3b (moderate quality) and it is therefore not best and most versatile agricultural land. This factor does not weigh against the scheme.
27. The impact of motorway noise is a material consideration, but an acceptable living environment for future residents of the scheme can be created using appropriate noise mitigation measures which can be secured by condition.
28. I have taken account of all other matters raised in representations, including the loss of views, the impact on the rural feel to the village and community dynamic, and issues of precedent, but these do not alter my conclusions on the main issue.

### **Planning Balance**

29. The proposal conflicts with CS Policies COR 12, COR 17 and COR 18. Those policies directly influence the scale and distribution of housing development and therefore they are out of date and attract limited weight. The application falls to be determined against the presumption in favour of sustainable development which is set out in Policy DM1 of Mid Devon Local Plan Part 3: Development Management Policies (2013) (LP3) and the Framework. There is no dispute that the tilted balance should apply.
30. The delivery of 125 new homes would make an important contribution to meeting the Government's stated objective to significantly boost the supply of new homes. The social benefits of providing market and affordable housing attract considerable weight in favour of granting permission, notwithstanding the Council's ability to demonstrate in excess of five years' worth of deliverable housing sites.

31. The Council has drawn my attention to a previous dismissed appeal in relation to a scheme of 259 dwellings on land which incorporated the appeal site. In that decision, the Inspector reduced the weight given to the benefits of housing delivery on the grounds that the scale of the development would unbalance the settlement. However, the current proposals are less than half the size and they put forward an enhanced package of measures to mitigate the impact of the development on local services and facilities and improve those same services and facilities for existing residents. There have also been enhancements to the retail offer since that earlier appeal. Consequently, I have found no conflict with the principles set out in CS Policies COR 1 and COR 9.
32. The proposal would create significant amounts of employment during the construction phase, and it would support the construction industry. Thereafter, residents of the scheme would boost the local labour force and provide extra spending power in the local economy, in addition to generating additional New Homes Bonus and Council Tax revenues. The commercial viability of services such as the public house and supermarket would also be bolstered.
33. Against the above benefits I must balance the adverse impacts. The Council has been unable to persuade me that any material harm would arise from the scheme's impact on local services and facilities. The parties agree that there would be minor localised harm to the landscape, but the level of harm is not significant when considering the location of the site adjacent to the existing urban boundary of Willand and the M5 motorway. This factor is neutral in the overall planning balance. The Council has not raised any other technical issues or concerns which weigh against the proposal.
34. The proposal would conflict with the development plan in relation to the scale of housing provision planned in Willand. The Framework makes clear that the planning system should be genuinely plan-led and therefore this should be treated as harm. However, the adverse impacts in this case do not significantly or demonstrably outweigh the benefits of the scheme. As such, the proposal would constitute sustainable development in the terms of CS Policy COR 1 and the Framework. This is a material consideration of considerable weight which justifies a decision otherwise than in accordance with the development plan.

## **Conditions**

35. Suggested planning conditions were set out in the SoCG. I have considered the conditions having regard to paragraph 55 of the Framework and advice contained in the Planning Practice Guidance. I have adjusted the wording of some conditions to improve precision, and combined others to remove duplication.
36. Given the outline nature of the application, conditions are necessary relating to commencement and the submission of the reserved matters. This is to comply with the requirements of planning legislation. In the interests of certainty, I have added a condition to control the maximum number of dwellings.
37. To prevent flooding, I have attached conditions to require the submission of a temporary surface water drainage management plan for the duration of the construction period, and a Sustainable Urban Drainage scheme which shall be implemented and maintained for the lifetime of the development. A separate condition is needed to ensure that foul water discharge takes place to the public foul or combined sewer.

38. It is important that the construction process takes place without significant detriment to the living conditions of existing residents, the operation of the highway network and the environment. Accordingly, conditions are necessary in relation to the phasing of the scheme and to require the submission of a Construction Management Plan and Waste Audit Statement. To protect the amenity value of mature trees on the site, I have imposed a condition to secure an Arboricultural Method Statement and Tree Protection Plan.
39. The M5 motorway is a potential source of noise nuisance for future occupiers of the development. A condition is therefore necessary to secure a noise mitigation scheme for approval by the local planning authority in consultation with Highways England. The scheme will need to incorporate details of any acoustic fencing and bunding, together with the specification for any planting.
40. To ensure that the development has a satisfactory appearance and makes adequate provision for open space and ecological mitigation and enhancement, conditions are needed to stipulate what should be included in the reserved matters submissions. This includes details of boundary treatments, existing and proposed site levels, finished floor levels and materials, details of all areas of public open space (including a strategy for the management and maintenance thereof) and an ecological management plan.
41. In the interests of highway safety, I have attached a condition to ensure that the access and site compound have been constructed prior to any other development commencing. Conditions are also required to secure the widening of the footway along the B3181 and the completion of relevant highway infrastructure before the occupation of each plot. The proposal would directly affect a public footpath and lead to its increased use. It is therefore reasonable to impose a condition seeking an access scheme to ensure that the development mitigates for its impact on this route.
42. The Council cites LP3 Policy DM8 in relation to a condition on electric vehicle charging points. The suggested condition wording goes beyond the standards set out in the development plan, but this can be justified as part of a package of measures intended to encourage sustainable transport modes.
43. Finally, the suite of contaminated land conditions is justified by the recommendations of the appellant's Geo-Environmental Report which identifies low to moderate contamination risk.

## **Conclusion**

44. For the above reasons, I conclude that the appeal should be allowed.

*Robert Parker*

INSPECTOR



### **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall be limited to a maximum of 125 dwellings.
2. Before any part of the development hereby permitted is begun, detailed drawings of the access, layout, scale and appearance of the buildings, and the landscaping of the site (hereinafter called the Reserved Matters) shall be submitted to and be approved in writing by the local planning authority.
3. Application(s) for approval of all the Reserved Matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
4. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the Reserved Matters which have been approved, whichever is the later.
5. No development shall commence until a Sustainable Urban Drainage Scheme and long term management and maintenance plan have been submitted to and approved in writing by the local planning authority. The Scheme shall be informed by a programme of percolation tests, which shall be carried out in accordance with BRE Digest 365 Soakaway Design (2016), and be in accordance with the principles set out in the Flood Risk Assessment (Report Ref. B15279-FRA-01 v8 dated Jan 2018). The methodology for the percolation tests shall be first agreed in writing by the local planning authority, in consultation with Devon County Council as the Lead Local Flood Authority.

The Sustainable Urban Drainage Scheme shall include a full drainage masterplan and associated drainage calculations together with a timetable for implementation of the scheme. No additional flows shall be accepted into the highways drainage associated with the strategic road network in line with DfT Circular 02/2013 (paragraph 50).

The development shall be constructed, and the Sustainable Urban Drainage Scheme provided, maintained and managed in accordance with the approved details.

6. No development shall commence until a temporary surface water drainage management plan, to demonstrate how surface water runoff generated during the construction phase will be managed for the full construction period, has been submitted to and approved in writing by the local planning authority. The plan must satisfactorily address both the rates and volumes, and quality, of the surface water runoff from the construction site and must also include details of how eroded sediment will be managed to prevent it from entering the permanent surface water drainage management system and include a timetable for the implementation of the management plan. Once approved, the management plan shall be implemented in accordance with the approved details.

7. No development shall commence until an Arboricultural Method Statement and Tree Protection Plan, to include engineering details for any areas of no-dig construction, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in strict accordance with the approved details.
8. No development shall commence on site until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall include, but shall not necessarily be limited to, details of the following:
  - a) parking for vehicles of site personnel, operatives and visitors;
  - b) loading and unloading of plant and materials;
  - c) storage of plant and materials;
  - d) programme of works (including working hours and measures for traffic management);
  - e) provision of any hoarding or temporary fencing;
  - f) measures to control construction noise, the emission of dust and the deposit of materials on the public highway; and
  - g) measures to protect the users of any public rights of way directly affected by the development.

The development shall be carried out strictly in accordance with the approved Construction Management Plan.

9. No development shall commence on site, other than in relation to a, b, c & d of this condition, until:
  - a) The access road into the site has been laid out, kerbed, drained and constructed up to base course level for the first 20 m back from its junction with the public highway;
  - b) The ironwork has been set to base course level and the visibility splays required by this permission laid out;
  - c) The footway on the public highway frontage required by this permission has been constructed up to base course level; and
  - d) A site compound and car park have been constructed to the written satisfaction of the local planning authority.
10. No development shall commence until a noise mitigation scheme has been submitted to and approved in writing by the local planning authority (in consultation with Highways England on behalf of the Secretary of State for Transport). The submitted scheme shall include details of any proposed acoustic fencing and bund, together with a specification for any planting on the western site boundary (including planting for any bund). There shall be no bunding constructed within 3m of the M5 boundary fence.

Development shall be carried out in accordance with the approved details prior to occupation of any part of the development, or in accordance with an alternative timetable to be agreed in writing with the local planning authority.

11. No development shall commence until a scheme for Electric Vehicle Charging Points ("EVCP") has been submitted to and approved in writing by the local planning authority, such scheme to include provision of at least a single EVCP for each dwelling comprised in the development which has a private driveway or garage within its curtilage ("Relevant Dwelling"). The installation of the EVCPs shall be completed in accordance with the approved scheme prior to first occupation of each Relevant Dwelling.
12. No development shall commence until an access scheme has been submitted to and approved in writing by the planning authority, in liaison with the Devon County Council Public Rights of Way Team. Such scheme shall include provision for the design of public rights of way routes and their surfacing, widths, gradients, landscaping and road crossing points. Development shall be carried out in accordance with the approved details.
13. No development shall commence until an investigation and risk assessment (which shall be in addition to any assessment provided with the planning application) has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site – whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:
  - a) a survey of the extent, scale and nature of contamination;
  - b) an assessment of the potential risks to:
    - human health,
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
    - adjoining land,
    - groundwaters and surface waters,
    - ecological systems,
    - archaeological sites and ancient monuments;
  - c) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*'.

14. No development shall commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

15. No development shall commence until the approved remediation scheme has been carried out in accordance with its terms. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and approved in writing by the local planning authority.
16. The development hereby approved shall not be carried out otherwise than in accordance with a phasing programme which shall previously have been submitted to and approved by the local planning authority in writing.
17. No dwelling shall be occupied until the off-site highway improvements to widen the footways along the B3181, shown on drawing number A-012 Rev: P1, have been carried out in accordance with details which shall have been first submitted to and approved in writing by the local planning authority.
18. The occupation of any dwelling in an agreed phase of the development shall not take place until the following works have been carried out:
  - a) The spine road and cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
  - b) The spine road and cul-de-sac footways and footpaths which provide the dwelling with direct pedestrian routes to an existing highway maintainable at public expense have been constructed up to and including base course level;
  - c) The cul-de-sac visibility splays have been laid out to their final level;
  - d) The street lighting for the spine road and cul-de-sac and footpaths has been erected and is operational;
  - e) The car parking and any other vehicular access facility required for the dwelling by this permission has/have been completed;
  - f) The verge and service margin and vehicle crossing on the road frontage of this dwelling have been completed with the highway boundary properly defined; and
  - g) The street nameplates for the spine road and cul-de-sac have been provided and erected.
19. The detailed drawings required to be submitted by Condition 2 shall include the following information: boundary treatments, existing and proposed site levels, finished floor levels and materials, details of all areas of proposed public open space, and an ecological management plan based on the recommendations for ecological mitigation and enhancement contained in the submitted Ecological Appraisal.
20. The first Reserved Matters application to be submitted shall include a strategy for the management and maintenance of all green infrastructure across the application site (including, for the avoidance of doubt, all areas of Public Open Space). The Strategy document shall set out the management, maintenance, access and use arrangements for each area of the site, and a delivery plan identifying a trigger date for the completion of each of the

relevant land parcels. Reserved matters applications for the site shall incorporate the approved details.

21. As part of the Reserved Matters submission(s) referred to in Condition 2, a Waste Audit Statement shall be submitted to and approved in writing by the local planning authority, setting out how the construction and operation of the development will accord with best practice sustainable waste management principles. Construction shall thereafter be carried out in accordance with the agreed scheme.
22. Foul drainage from the development (and no other drainage) shall be connected to the public foul or combined sewer.
23. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 13, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Condition 14, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with Condition 15.

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