

# CHARLIE HOPKINS

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Mr Ed Freeman  
Planning Department  
East Devon District Council  
Knowle  
Sidmouth  
EX10 8HL

Our Ref:CVH/GPC

1 July 2014

Dear Mr Freeman,

**RE: PLANNING APPLICATION REF. NO. 13/2744/MOUT – Land West of Hayne Lane, Honiton.**

I am instructed by Gittisham Parish Council (GPC) to comment on the planning application referred to above and consider the Officer's Report previously produced for consideration for the Development Management Committee (DMC).

### **Summary of objection:**

- The application is not in accordance with the Development Plan (adopted East Devon Local Plan 2006-2011), specifically Policies EN1, D1, TA1, TA3 and TA7.
- The application is contrary to, and conflicts with a number of core principles and policies set out in the National Planning Policy Framework (NPPF).
- There are not sufficient material considerations in favour of the development so as to outweigh the provisions of the Development Plan.

- The adverse impacts of permitting the proposed development would significantly and demonstrably outweigh the benefits.

## **Introduction.**

The Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 require that planning applications be determined in accordance with the statutory Development Plan (DP) unless material considerations indicate otherwise. For the purposes of this current application the DP comprises the East Devon Local Plan 2006-2011(LP).

The National Planning Policy Framework (NPPF) is clearly a material consideration, particularly where relevant policies are regarded as out-of-date (see para 49 NPPF). Relevant policies refer to the supply of housing, so in the context of this application Local Plan policies S3 and S5 cannot be regarded as up-to-date. Notwithstanding this, and the effect of para 14 of the NPPF (which explains that where relevant policies are out-of-date permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when set against other policies in the NPPF), planning permission should be refused where proposals conflict with saved policies in the Local Plan which are not out-of-date or where proposals significantly and demonstrably conflict with NPPF policies and principles.

This approach has been supported by Inspectors at a number of appeals within the District over recent months, such as Feniton, Seaton, Tipton St John and Newton Poppleford, notwithstanding the District wide lack of a 5 year housing land supply.

Given this, significant weight should be afforded to the NPPF in respect of this current application together with other relevant policies in the LP.

The emerging Local Plan, having been referred back to the Council by the Local Plan Inspector following the Examination in Public, should be regarded as still at a relatively early stage and should be afforded little, if any, weight as a material

consideration.

**The principle of the proposed development.**

The applicants and, to an extent, the Officer's Report (OR), appear to give significant weight to the fact that the development site has been proposed for allocation as a reserve site in the emerging Local Plan. Such weight is misplaced.

As stated above, the proposed allocation is still subject to a significant number of unresolved objections. Following the EiP the Inspector has asked the Council to provide further, more up-to-date evidence, and it is now unlikely that the new Local Plan will be finally adopted until sometime in 2015.

The wording of the proposed allocation is itself subject to a number of preconditions being met, Draft Strategy 23 stating that the Hayne Lane site "...will only be released for housing development if monitoring and future projections indicate (after the completion of the 2011 to 2016 phase of the plan) that there is likely to be a shortage of deliverable housing land in the plan period."

Furthermore, the explanatory text to Strategy 23 for Honiton makes clear that Honiton is only identified as a focus for "modest housing growth" over the plan period 2016-2026, as it has already been "the focus for a large proportion of the District's recent housing provision, with the population more than doubling between 1970 and 2012", and notes that this "population expansion has not been accompanied by an increase in community facilities and there is a shortage of open space, sports pitches and community facilities." (New East Devon Local Plan 2006-2026 para. 11.2)

Draft Strategy 23 itself states that "Honiton's aspiration is to remain compact enough to minimise car travel and not to extend into a ribbon development." There is a clear tension between this aspiration and that of the development of the proposed reserve site at Hayne Lane, particularly in respect of minimising car travel (see below).

In addition, the proposed allocation (and this planning application) should also be assessed in the overall context of the New Plan.

Although the OR lists what it considers to be relevant policies from the New Local Plan, there are a significant number of relevant policies not considered. These include:

Strategy 2 (Scale and Distribution of Residential Development)

Strategy 3 (Sustainable Development) – this seeks to ensure that development conserves and enhances the environment, maximising the use of previously developed land, uses natural resources prudently, including reducing carbon dioxide emissions, and promoting social wellbeing through providing facilities to meet people’s needs.

Strategy 4 (Balanced Communities) – securing employment provision so as to reduce the need for commuting – “where housing is proposed we will require new job provision”, and securing social and community facilities.

Strategy 5 (Environment) – “All development proposals will contribute to the delivery of sustainable development, ensure conservation and enhancement of natural, historic and built environmental assets.”

Strategy 5B (Sustainable Transport) – “Development proposals should contribute to the objectives of promoting and securing sustainable modes of travel and transport”, and “Development will need to be of a form, incorporate proposals for and be at locations where it will encourage and allow for efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, low and ultra low emission vehicles, car sharing and public transport.”

Strategy 6 (Development within Built-Up Area Boundaries) – the Proposals Map for Honiton makes clear that the Hayne Lane site lies beyond the proposed BUAB, and therefore, even in the New Plan, the development proposal lies in open countryside.

Strategy 7 (Development in the Countryside) – “Development in the countryside will only be permitted where it is in accordance with a specific Local Plan policy that explicitly permits such development and where it will not harm the distinctive

landscape, amenity and environmental qualities within which it is located, including: land form and patterns of settlement....features which contribute to the local landscape character....a view from a public place which forms part of the distinctive character of the area”.

Strategy 46 (Landscape Conservation and Enhancement and AONBs) – “When considering development in or affecting AONBs, great weight will be given to conserving and enhancing their natural beauty and development will only be permitted where it can be shown that it cannot be reasonably accommodated elsewhere outside the AONB.”

Given the potential conflicts between the proposed allocation of the site with these draft policies in the New Plan, and the need for internal consistency between policies in a Plan, it is surprising, to say the least, that the Hayne Lane site remains as a proposed allocation.

When set against this overall context it is highly questionable whether the principle of the proposed development is established, contrary to the view taken in the OR.

EDDC regard the present application as a Departure from the statutory DP. As a consequence planning permission can only be granted in circumstances where there are sufficient material considerations in favour of the proposed development so as to outweigh the provisions of the DP.

### **Local Plan Policies.**

#### **Area of Outstanding Natural Beauty – East Devon Local Plan 2006 (EDLP) Saved Policy EN1**

Protection of land designated as AONB is set out in the National Planning Policy Framework (NPPF), and Saved Policy EN1 of the East Devon Local Plan 2006 (EDLP).

Surprisingly, the OR makes no reference to this Policy. The application site is closely adjacent to the East Devon AONB to the south, and is also visible from various

vantage points within the Blackdown Hills AONB to the north.

Policy EN1 states that “Development will only be permitted within or adjacent to the East Devon AONB or the Blackdown Hills AONB where the proposal conserves or enhances the landscape character of the area...and complies with policies on development in the countryside and affordable housing, or it can be demonstrated that the development is in the national interest and that there are no alternative sites available elsewhere....Development proposals adjacent close to or clearly visible from the AONBs will only be permitted where they will not damage the natural beauty or otherwise threaten public enjoyment of the AONB.”

Para 115 of the NPPF advises that “great weight should be given to conserving landscape and scenic beauty” in AONBs. Whilst it is accepted that the site is outside the AONBs it is clear that the public enjoyment of the AONBs can be adversely affected by inappropriate development visible from such.

The previous DMC did not have the benefit of any comments from either the Council’s Landscape Officer, nor comments from the Blackdown Hills and East Devon AONB Partnerships.

At the time of writing, only the Blackdown Hills AONB has provided a consultation response, dated 26 June 2014. Significantly, it describes the development site as sensitive, and that expansive views from the AONB are sensitive to development in the surrounding area. It concludes that the proposed development will “adversely affect the balance of the visual relationship between Honiton and the two surrounding AONBs.” This conclusion bears out the analysis of visual impact set out below, and is one to which significant weight should be attached, given the government’s stated policy in respect of AONBs.

The application site is classified by the East Devon and Blackdown Hills AONB and East Devon District Landscape Character Assessment and Management Guidelines 2008 (LCA) as Landscape Character Type (LCT) 3A, Upper Farmed and Wooded Slopes, characterised as a “well treed pastoral farmland”, “small to medium sized fields with irregular boundaries”, a “dispersed settlement pattern”, “winding, narrow

lanes”, and is described as having “little 20<sup>th</sup> century development”.

The Management Guidelines for LCT 3A encourage the enhancement of field boundaries, the enhancement and restoration of field patterns, the conservation and enhancement of semi-natural habitats and woodland and the conservation and enhancement of settlements.

The developers have produced a Landscape and Visual Impact Assessment (LVIA) to accompany the planning application.

The LVIA makes reference to Policy EN1 at para 3.3.4 (although fails to accurately quote the full policy) and refers to the AONBs in para 6.2.1. It is noteworthy however that the LVIA fails to regard the AONBs and the users thereof as “Visually Sensitive Receptors (see para 6.4 et seq), and compounds this error by failing to fully assess views from a number of important, publicly accessible viewpoints from the AONBs, such as St Cyre’s Hill to the north east and Roundball Hill to the south east.

It cannot be doubted that the Landscape Character of the application site will be wholly transformed by the proposed development, constituting a major urban extension into what is classified as LCT 3A, with the characteristics set out above, and would harmfully alter the character of the area by replacing open countryside with built environment. Furthermore, this development conflicts with the Management Guidelines for this landscape type, failing to conserve or enhance any of the characteristics set out above.

The policy requirements of EN1, namely that the landscape character of the area should be conserved or enhanced, are therefore not met, the proposed development will cause harm to the AONBs and is in conflict with this Local Plan Policy.

#### **Saved Policy D1 – Design and local Distinctiveness.**

Saved policy D1 states that “Proposals will only be permitted where they...reinforce the key characteristics and special qualities of the area in which the development is proposed”, and that inter alia, such developments “Do not adversely affect...Important landscape characteristics and prominent topographical features”

No reference to this Policy is made in the LVIA whatsoever, and it is therefore understandable that the OR also fails to address the policy implications of D1.

As set out above, the landscape character of the area of the proposed development is type LCT 3A, Upper Farmed and Wooded Slopes. The site lies in open countryside beyond a clearly defined urban edge formed by Hayne Lane itself to the east of the site, bounded by the Exeter-Waterloo railway line and A30 trunk road to the north. The only element of built environment to the west of Hayne Lane is Hayne Farm, which is typical of settlement within LCT 3A.

The proposed development represents a significant urban intrusion into the land to the west of Hayne Lane, which cannot possibly “reinforce the key characteristics and special qualities of the area” as is required for compliance with Policy D1.

In addition, hard and soft landscaping as proposed to mitigate impacts of the scheme will adversely affect the existing important landscape characteristics and prominent topographical features of the area (as described in LCT3 above), thus conflicting with the objectives of Policy D1.

The LVIA accepts that there “would be noticeable changes to the character of LCT 3A in close proximity to the site” (LVIA para 9.1.14), but seeks to downplay its significance over a 10 year period, and also describing the landscape type LCT 3A as “relatively ordinary, moderately valued characteristics.....that are reasonably tolerant of the proposed change (para 9.1.14). Such value judgements are simply not relevant to the policy constraints imposed by D1, and do not establish policy compliance.

### **TA1 (Accessibility of New Development)**

LP Policy TR1 requires new development to be located so as to be accessible by pedestrians, cyclists and public transport, with the overarching policy requirement of minimising the need to travel by car.

The explanatory text to TA1 (LP para 11.12) describes the promotion of development in the “most sustainable locations” as one of the key means by which the Council

can positively influence travel and movement patterns, and that such locations “will be where people can make realistic and viable alternative choices to the use of the private car.”

The text further requires the production of a transport assessment (TA) for major developments that will generate significant amounts of travel (see Policy TA3), and states that the TA will illustrate accessibility by all modes of transport and the likely modal split of journeys (para 11.12)

The OR sets out distances from the site entrance to various amenities in Honiton, taken from the TA Table 5.1, page 18. The OR concludes uncritically and simply on the basis of this table, that the site “lies in a sustainable location” and that “sole reliance on the private motor vehicle would not be required by occupants of the development to access these services.”

The OR appears to have failed to draw the DMC’s attention to the only hard evidence of actual modal shares contained in the TA, namely table 3.4 at page 13. This sets out data derived from the most recent census in 2011. The table shows that for St Michael’s Ward a total of 74.8% of journeys to work are made by private car.

No similar data is provided for modes of travel to access services or amenities, such as schools and shops, which constitutes a significant shortcoming in the evidence available in order to be able to assess the sustainability of the site in locational terms.

Given that St Michael’s Ward is closer to Honiton town centre than the site of the proposed development, close to 75% of journeys to work by private car is hardly indicative of a sustainable location.

The failure of the TA to provide any basic data on modal splits of journeys to and from the site is compounded further by the absence in the framework Travel Plan of any targets to promote modal splits, as is customary, and as is required by Policy TA3.

For example, there is no attempt made to calculate or project what percentages of residents of the new development would be likely to use the railway for travelling to work, what percentage would use public transport, cycle or walk. It is simply asserted that, given the IHT Guidance, residents could access a range of services and facilities lying within a 2 kilometre radius of the site entrance.

The IHT Guidance is now 14 years out-of-date, and is a relatively unsophisticated approach to journey analysis, as is walk or cycle time, failing to factor in such influences as distance-decay effects and topography. 400 metres is most commonly cited as a standard distance for walking to public transport, whereas an alternative accessibility methodology, PTAL, used in London, has a cut-off of 640m for walking to a bus stop, and 960 for rail, beyond which only insignificant numbers would be prepared to walk. Even though such distance-decay is implicit in the IHT Guidance (distinguishing between “desirable”, “acceptable” and “preferred maximum”), there is no distance-decay effect taken into account.

Outside large towns and cities the standard approach to measuring accessibility is to use data on stops and services to produce different gradations of access by public transport, often defined as access to the nearest significant employment and shopping services.

There is now standard software available to local authorities (Accession), which uses the Department for Transport public transport database (NAPTAN). The principle is to reflect what really matters to the user in terms of sustainable transport, walk plus wait times and the availability of service when needed (e.g. for work or evening use).

By way of illustration, Transport for Greater Manchester uses the Greater Manchester Accessibility Levels (GMAL), which is included in “Transport for Sustainable Communities: a guide for Developers” dated March 2013. It states at page 13;

“As a rule of thumb, 400 metres (about 5 minutes’ walk) is often taken as the distance people are prepared to walk to a bus stop. In general, people are prepared to walk further to rail or Metrolink services: up to 800 metres or more. In terms of assessing the accessibility of a new development, however, distance criteria are an

oversimplification because they take no account of factors such as where services go to, how frequent or reliable they are or whether they are likely to endure in the future.”

When set in this context, the conclusion in the OR that the proposed development site lies in a “sustainable location” is unsupported by any reliable evidence.

### **Promoting sustainable transport – NPPF.**

Although the adopted LP pre-dates the NPPF, these policy requirements are, if anything, reinforced by the NPPF. One of the core principles set out in para 17 is the need to “actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are, or can be made sustainable.”

Para 29 of the NPPF states that the transport system needs to be balanced in favour of sustainable transport modes, “giving people a real choice about how they travel.”

The core principle is further reflected in para 34 of the NPPF, which requires that “decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised”.

In summary, the proposed development conflicts with adopted Local Plan Policy TA1, and paras 29 and 34 of the NPPF.

Para 32 of the NPPF states that all developments that generate significant amounts of movement should be supported by a Transport Assessment. A TA has been produced for this scheme, which would appear to be an acceptance on the part of the applicants that the proposed development will generate significant movement.

Similarly, para 36 of the NPPF states that a key tool to facilitate sustainable transport modes will be a Travel Plan which will be required for all developments which generate significant amounts of movement. A framework TP is set out in chapter 8 of the TA.

As stated above, the Travel Plan contains no targets for modal shifts from the private car to more sustainable modes of transport, and is, on the face of it, in conflict with Policy TA3 and paras 32 and 36 of the NPPF.

However, Para 32 (3<sup>rd</sup> bullet point) of the NPPF also states that: “Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”

This advice is to be interpreted within the overall context of the 3<sup>rd</sup> bullet point which refers to improvements within the transport network. Whilst it is accepted that with the improvements to the Turk’s Head junction residual cumulative impacts will not be severe, adverse impacts arising from increased traffic can be taken into account in the overall planning balance.

This interpretation has been supported very recently by the Secretary of State and his Inspector in the Pinewood Studios Appeal (APP/N0410/A/13/2199037), where he found that a doubling of the number of employees over a 15 year period would “give rise to a substantial increase in journeys reliant on the private car” and “that this would be a negative outcome of the proposal, and a matter to be drawn into the overall balance of benefit and harm.” In addition, although there was no evidence that the impacts would reach the “severe” threshold, “the addition to local congestion and rat-running would be a moderate harm that falls to be taken into the overall balance.” (Secretary of State CLG Decision Letter 18 June 2014)

#### **Other relevant NPPF Policies.**

The development site lies wholly within the Parish of Gittisham and is in open countryside outside the adopted and proposed BUAB. It is arguably a rural area, albeit on the edge of Honiton. A such paras 54 and 55 of the NPPF are relevant which state that housing development should be tailored to meet local needs, and be located where it will enhance or maintain the vitality of rural communities. No local need has been established for this proposed development, as is evidenced by the fact that, put at its highest, the site is proposed as a reserve allocation in the

emerging New Plan.

The NPPF advises that there are three dimensions to sustainable development, an economic role, a social role and an environmental role (NPPF para 7).

The OR simply states that the building of 300 houses would support the local economy and local businesses, whereas the applicants provide no attempt at quantifying the benefits arising from this dimension. There is no evidence of the number of jobs to be created during the construction phase, no indication as to where residents would be likely to find employment (or what adverse impacts on out-commuting would arise), or any analysis of the local jobs market and whether there is a need for housing of this scale at this specific location at this particular time.

As regards the social role, the OR refers to the benefits of the provision of 40% affordable housing, together with the provision of allotments. It is common knowledge that throughout the District there have been numerous examples of the 40% affordable housing element being significantly diluted due to problems of the viability of delivering such a level of affordable housing. Although the need for allotment space in Honiton is acknowledged, the provision appears to be aimed at residents of the new development and there will be no overall gain for the wider community.

Set against these purported benefits are the observations from the explanatory text to the New Plan referred to above, which notes that past population growth has not been accompanied by an increase in community facilities, open space, sports pitches and other community facilities. The addition of 300 new dwellings will simply serve to increase pressure on existing facilities to the detriment of the town, thus not fulfilling a positive social role as required by the NPPF, where emphasis is placed on “accessible local services that reflect the community’s needs and support its health, social and cultural well-being.”

In this context, the proposed development site is remote from services and facilities, the nearest schools are over 2 kilometres away, as are the health centre, dental practice, hospital and town centre. The nearest convenience store is a round trip of

over 1.5 kilometres, and all of these distances are measured from the site entrance, and do not provide an accurate measure of accessibility ( see TA Table 5.1 page 18). The nearest sports centre and swimming pool is located at the Community College, as are sports pitches, nearly 3 kilometres away, and the newly opened Beehive Community Centre is some 2.5 kilometres away.

In short, all the evidence, or lack thereof, indicates that the proposed development will be heavily car-dependent, thus clearly conflicting with key principles of sustainable development.

With reference to the environmental role of sustainable development, the likely overall increase in car journeys resulting from the proposed development conflicts with the NPPF's aim of minimising pollution, and building on previously undeveloped countryside also conflicts with core planning principles set out in para 17 of the NPPF, of conserving and enhancing the natural environment and encouraging the effective use of land by using land that has been previously developed.

The environmental role of sustainable development also embraces the need to use natural resources prudently (NPPF para 7). The site is categorised as being Best and Most Versatile agricultural land (BMV). Para 112 of the NPPF advises that the loss of such land should be "demonstrated to be necessary" and that land of poorer quality should be preferred for significant development. No such need has been established in this case, which should also weigh against this proposal.

On balance, in terms of the three dimensions of sustainable development, it is clear that the limited benefits arising from the proposed development are significantly and demonstrably outweighed by the adverse impacts.

## **Conclusions.**

- The application is not in accordance with the Development Plan (adopted East Devon Local Plan 2006-2011), specifically Policies EN1, D1, TA1, TA3.
- The application is contrary to, and conflicts with a number of core principles and policies set out in the National Planning policy Framework (NPPF).

- There are not sufficient material considerations in favour of the development so as to outweigh the provisions of the Development Plan.
- The adverse impacts of permitting the proposed development would significantly and demonstrably outweigh the benefits.

Finally, it should be observed that although some fears were expressed at both the DMC and PIC of the ability of the Council to defend any refusal of planning permission at any subsequent appeal, in the light of the analysis above, it is considered that a refusal on the grounds set out above would be eminently defensible, particularly in the light of the recent Inspector's decisions at the Feniton appeals (APP/U1105/A/2191905 etc).

Charlie Hopkins MA (Oxon) PG Dip Law

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