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Dear Mr Thickett

EXAMINATION OF THE NEW EAST DEVON LOCAL PLAN HOUSING – COMMENTS OF FURTHER SUBMISSIONS

Further to Mrs Coombes e-mail of 4 September 2015, I have considered the material published by the Council and other parties and I respond as follows.

Housing Supply Matters

We are pleased to note that, as suggested in our earlier submission, the Council has updated its analysis of the housing needs to reflect the DCLG's 2012-based household projections rather than continuing to rely on averaging results produced by using the 2008 and 2011-based projections. We note also that this has little effect on the estimate of the number of homes needed. This means that our estimate of the backlog from the period 2006-13 is for all practical purposes unaffected i.e. 3868 homes should be added to the housing requirement for the plan period and the 5-year supply requirement for the first 5 years.

We would reiterate that it is important that the obligation to make good the shortfall during this period – which would unquestionably have existed had the start date of the plan period not been moved – should not be overlooked or avoided as a result to that change.

It is clear that there is no evidence in either the Council's SHMA or the new material that this shortfall has been considered and provided for. That undersupply (identified in our earlier representations) should be added to the housing requirement. Accordingly we conclude that, in our opinion, the plan fails to make appropriate provision for identified housing needs over the plan period.

Further, since that figure is an undersupply of identified growth over the early part of the plan period then, in accordance with guidance, that undersupply should be provided for over the next 5 years, not spread over the plan period. We comment further on this matter later in this letter.

Habitat Regulation Matters

It is plain that the further work undertaken does not substantively change matters in relation to undertaking an HRA. As the Footprint Ecology Report (August 2015, ref PSD2015v) makes clear:

A very significant quantum of SANGS is necessary to provide appropriate mitigation "242ha minimum" (paragraph 9.66).

To be confident in their effectiveness SANGS need to meet certain performance characteristics, such as informal areas for dog walking of at least 3KM and with access provided in perpetuity (paragraph 9.67).

Footprint suggest that:

"The area of particular concern is SANGs provision. Alternative greenspace provision including a SANG near Exmouth is a key element within the mitigation strategy. At present it seems there has been little progress towards establishing any SANG in this area. As SANGs are part of the agreed mitigation, it will be necessary for East Devon District Council to demonstrate how these can be delivered." (paragraph 9.88) my underlining.

The Council suggest that the Killerton Estate is an appropriate location for SANGS. But, there are plainly problems with that site meeting the criteria identified in paragraph 9.67 of the Footprint Report, namely:

- The existing site (including its 26km of permissive footways) is not a new 'alternative greenspace' site. It is already visited by 200,000 visitors per year (paragraph 9.70) it is therefore unclear how this existing site can contribute to the identified need for the new quantum of 242ha.

- The principle identified problem with regard to the Natura 2000 sites is recreational pressure, principally from dog walkers, and since "*dog walkers constitute a relatively small proportion of the people who currently visit both Killerton and Ashclyst*" (paragraph 9.71) then, in its current state, it must be concluded that the existing estate is not a suitable alternative.

Having regard to experience elsewhere (Teignbridge) and the performance criteria for effective SANG, if the Killerton Estate is able to make a contribution to the provision of SANG it is clear that currently tenanted farm land will need to be released from farming in perpetuity.

Proposed Amended Strategy 47 recognises that "*SANGS will need to include substantial open space areas ideally of semi-natural character and should specifically be appealing to dog walkers.*" and "*They can utilise land previously inaccessible to the public or arise from improvements of currently accessible but under-used spaces.*"

The key issue is the lack of certainty about the availability of land to provide SANG upon, both in the short term and in perpetuity. It is noted that the National Trust prospectus (ref:PSD2015x) is "*conditional on negotiations with the agricultural tenants.*" (see pages 12 and 13). There is no evidence of the tenant's willingness to co-operate and it is evident that to meet the performance characteristics for SANG that will preclude many farming practices and have a downward impact upon already hard pressed farm incomes. We therefore conclude that there is no certainty that new SANG will be able to be delivered in a timely manner.

Proposed strategy 47 states that "*The delivery and success of mitigation will be monitored alongside development (specifically new housing development)*". The facts of this matter are that between the end of June 2011 and the end of June 2015 there have been 1,056 new homes completed at Cranbrook and there has been no provision of SANG to date. This is because no SANG was required when that consent was issued (outline permission for 2,900 dwellings [reference: 03/P1900, granted 29 October 2010] whereas the JIA which 'ushered in' the requirement for SANG was introduced on 1/11/2011). There was some informal open space required in accordance with the provisions of policy RE3 of the existing EDLP but the SANG provision is 'over and above' this. There is nothing in that outline consent that requires SANG provision.

It is therefore plain that a significant proportion of development proposed in this plan will not make any contribution towards wider mitigation measures and most importantly SANG provision, and that this places a heavy burden on newly consented and currently proposed development in the west end to deliver SANG mitigation.

We note that the Council are concerned that mitigation is plainly lagging behind housing completions (1,056 completions in the west end to date whilst SANG delivery = nil). Current occupiers behaviour patterns are plainly being formed without SANG being available (and once established behaviour patterns are difficult to change). Hence the Council stating that Strategy 47 *"will provide a policy basis and justification for resisting further development or occupation until effective mitigation is delivered in accordance with past development/occupancy."* The point here is that there is a significant lack of certainty over the successful and timely delivery of SANG (since we have certainty over the lack of timely delivery of SANG). This is responded to by the Council with a throttle on housing delivery (which is necessary to protect the Natura 2000 sites from the harm identified from recreational pressure). Strategy 47 states that *"Work will be undertaken to establish effective trigger points or markers against which to formally assess delivery of mitigation and therefore establish a basis to refuse planning permissions with a first formal review planned for April 2018."* This potential 'throttling' of allocated sites raises fundamental concerns about the plan's effectiveness (and therefore soundness) and is taken as a formal admission of the significant doubt that exists over the timely delivery of necessary SANG.

The responsibility of the decision maker in this matter has recently been clarified in the recent Supreme Court judgement of champion (22/07/2015) which stated, inter alia, that:

"As the court itself indicated in Waddensee the context implies a high standard of investigation. However, As General Kokott said in Waddensee:

'107. ...the necessary certainty cannot be construed as meaning absolute certainty since that is almost impossible to attain. Instead, it is clear from the second sentence of article 6(3) of the Habitats Directive that the competent authorities must take a decision having assessed all the relevant information which is set

out in particular in the appropriate assessment. The conclusion of this assessment is, of necessity, subjective in nature. Therefore, the competent authorities can, from their point of view, be certain that there will be no adverse effects even though, from an objective point of view, there is no absolute certainty.'

In short, no special procedure is prescribed and, whilst a high standard of investigation is demanded, the issue ultimately rests on the judgement of the authority." (paragraph 41, page 20, my underlining)

Sir, in this case, you are that authority. We submit to you that there is unanimity in the evidence before you that the housing development consented and planned, in particular at the West End and Exmouth, will give rise to recreational pressures that will have significant adverse impacts upon the integrity of the Natura 2000 sites. It is this consensus that has led to the requirement for SANG to be provided in a timely manner. It is evidential that this is not currently occurring and it is also evidential that there is no clear, un-caveated, nor unambiguous proposals before you for such provision. Instead you are faced with an 'it'll be all right on the night' approach that fails to deliver any certainty. In our opinion, on the basis of the evidence before you, there remains significant doubt that there will be any timely mitigation. Indeed the council recognise this uncertainty with their own 'throttling' controls proposed within Strategy 47.

Sir, in our opinion, the Council cannot have this point both ways. If you can be confident in the timely delivery of SANG you can be confident about housing delivery – but if you can't be confident about the timely delivery of SANG then the timely delivery of housing must suffer (having regard to the HRA requirements). In our opinion the evidence points conclusively in one way; that there is no certainty in relation to timely delivery if identified necessary mitigation, and therefore the necessary certainty that the law requires, is not before you in this case.

5 Year Residential Land Supply

The first point we wish to raise is that the undersupply point mentioned in the first section of this letter needs to be added to the 5 year requirement.

In terms of assessing delivery against that requirement then the lack of SANG delivery and the proposed 'throttle' mechanism upon the effectiveness of any new consents needs to be reflected in the Council's approach to 5 year housing land supply assessment, and it plainly has not.

Other than that we have little to add to the evidence that was presented and discussed at the hearing session on 08/07/2015 when it was plain that, despite the Council's optimistic assertions to the contrary, a 5 year supply could not be demonstrated. We, and other participants, can do little more that repeat the well-founded concerns that we raised, in particular pointing out that the council persist in:

- Taking an optimistic view of the ability of consented sites to commence development and deliver completions.
- Relying on sites that do not have consent achieving completions within the 5 year period, particularly from strategic allocations that have long lead in times and are controlled by existing developers who are currently producing completions from existing sites.
- Taking an overly optimistic view of the likely rate of windfall completions (without presenting specific evidence on sites as opposed to trend based analysis). The Council need to reflect the fact the 'Sites with acknowledged development potential' are really just forecast windfalls – there is double counting here.

There is nothing in the newly published information that is convincing in rebutting those concerns and therefore we do not consider that the Council can demonstrate a 5 year supply of deliverable residential land

Proposed Housing Distribution

Again, at the hearing session on 08/07/2015 the Council's proposed housing distribution was demonstrated to fail to make suitable provision for objectively assessed needs, in particular in the established market towns and some key villages in the district. It is apparent that the 'indigenous' needs of the district will be largely unmet (including affordable needs).

Further, the newly published information adopts an ambiguous position in relation to the Exmouth Masterplan which is a key component of meeting identified needs for that largest existing settlement in East Devon. It is clear that the masterplanned site is a key component of the strategy to provide appropriate growth for the largest settlement in the district, but it is also plain that there are significant reservations about the ability of that site to deliver as envisaged. It is therefore highly likely that the plan will fail to be effective at ensuring appropriate provision in meeting the identified needs of Exmouth.

Conclusion

The Council's new information is long on 'patter' but short on 'substance'. In relation to the critical matters of delivery of SANG and providing a 5 year supply of deliverable residential land there is significant doubt, in our view far too much doubt, to provide the certainty that the law requires in relation to HRA duties to provide confidence in the timely delivery of new homes.

There is nothing in the latest information which addresses the distribution of development proposed, which has been demonstrated to fail to meet objectively identified needs. This is a plan for meeting Exeter's sub regional proposed growth at the expense of the rest of East Devon and in acknowledged 'starvation' of villages. Whilst those growth needs are important that should not take place at the expense of the indigenous needs of the district/resident population.

For these reasons, it is our opinion that the plan is neither justified, nor effective, and we urge you to find that it fails the test of soundness for the reasons expressed in this letter.

Yours sincerely,

A large black rectangular redaction box covers the signature area. There are some faint, illegible marks above and to the left of the box.

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