



Appeal Decision

Inquiry held on 20-22 May and 3-5 June 2025

Site visit made on 23 May 2025

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 24th June 2025

Appeal Ref: APP/Y1138/W/24/3358001

Land at Tidcombe Hall, Tiverton

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Tidcombe Holdings LLP against the decision of Mid Devon District Council.
- The application Ref is 24/00045/MOUT.
- The development proposed is an outline application, with all matters reserved bar the main point of access and its associated works, for the conversion of Tidcombe Hall and outbuildings and the erection of dwellings to provide up to 100 dwellings in total, provision of community growing areas, public open space, associated infrastructure and ancillary works.

Decision

1. The appeal is allowed and planning permission is granted for the conversion of Tidcombe Hall and outbuildings and the erection of dwellings to provide up to 100 dwellings in total, provision of community growing areas, public open space, associated infrastructure and ancillary works with all matters reserved bar the main point of access and its associated works at Land at Tidcombe Hall, Tiverton in accordance with the terms of the application, Ref 24/00045/MOUT, subject to the 29 conditions in the attached schedule.

Application for costs

2. At the Inquiry, an application for costs was made by Tidcombe Holdings LLP against Mid Devon District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The planning application was made in outline with all matters reserved except for access. Approval is only sought at this stage for the access point onto Tidcombe Lane, the details of which are shown on a specific plan (ref PHL-102 Rev B). All other matters relating to access, including internal circulation, would be determined at the reserved matters stage. I have had regard to the illustrative layout plan (ref 230301 L 02 02 J), but consider that all details shown are indicative only, apart from the access point.
4. In addition to the accompanied site visit on 23 May 2025, I viewed the site and the surrounding area from public viewpoints on several occasions before and during the Inquiry. This included travelling along the length of the Grand Western Canal towpath from Tiverton to Manley Bridge, observing the start of the school day at Tidcombe Primary School, viewing Tidcombe Fen Site of Scientific Interest (SSSI) from Tidcombe Lane, and looking at longer distance views from Warnicombe Plantation and Knightshayes Court.

5. A completed and executed Section 106 agreement (S106) dated 19 June 2025 was submitted shortly after the Inquiry closed. This is assessed below.

Main Issues

6. The main issues are as follows:
 - (a) whether the proposed development would be in a suitable location having regard to the development plan for Tiverton;
 - (b) the effect of the proposed development on the character and appearance of the surrounding area;
 - (c) the effect of the proposed development on the significance and setting of the Grand Western Canal Conservation Area, the Grade II listed buildings known as Tidcombe Farm and Tidcombe Bridge, and the non-designated heritage asset known as Tidcombe Hall;
 - (d) whether the proposed development would make adequate provision for affordable housing and other infrastructure requirements; and
 - (e) the overall planning balance, having regard to any relevant material considerations including any proposed benefits.

Reasons

The suitability of the location

7. Policy S1(a) of the adopted Mid Devon Local Plan 2013-2033 (LP) focuses development at Tiverton, Cullompton and Crediton as the district's most sustainable settlements. LP Policy S2 states that development will be concentrated at these three settlements to a scale and mix appropriate to their infrastructure, economies, characters and constraints. The policy sets an approximate target of 2,358 new homes for Tiverton out of a minimum 7,860 new homes for the district across the plan period. The supporting text notes that the LP spatial strategy shifts the focus of development from Tiverton to Cullompton due to the increased scarcity of available and suitable land in Tiverton.
8. LP Policy S10 notes that Tiverton will continue to develop in a balanced way as a medium sized market town, to maintain its status as the largest urban area in Mid Devon, and improve access to housing, employment and services. A settlement limit boundary for Tiverton is shown on the adopted Policies Map and includes the emerging development known as the Eastern Urban Extension (EUE) for around 1,500 dwellings. LP Policy S14 states that development outside defined settlements will preserve and enhance the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural economy. The policy also sets out several criteria for suitable countryside development.
9. Policy T1 of the made Tiverton Neighbourhood Plan 2020-2033 (TNP) states that development will be focussed within the LP settlement boundary. Proposals outside the settlement boundary will not be supported unless they relate to one of five criteria including (i) they are in accordance with LP policies on the countryside.
10. The aim of LP Policy S4 is to monitor housing delivery against the annual target set out in LP Policy S3. The final paragraph states that if cumulative completions since 2013 fall below the expected completions total by over two years' worth of

the annual target, or a five year supply of deliverable sites cannot be demonstrated, the Council will first work proactively to bring forward allocations or outstanding planning consents. If this step is insufficient, the second step states that an identified contingency site will then be permitted to boost housing supply.

11. LP Policy TIV13 is known as the Tidcombe Hall contingency site for residential development to be released in accordance with LP Policy S4 subject to five criteria including (a) which specifies 100 dwellings with 28% affordable housing. The remaining criteria relate to highway, design and heritage matters. The contingency site as shown on the Policies Map adjoins the settlement edge of Tiverton to the east of Tidcombe Lane and to the south of the Grand Western Canal. The site area incorporates Tidcombe Hall and its immediate grounds enclosed by walls and mature trees, along with two agricultural fields to the south (hereafter referred to as the western and eastern fields).
12. The appeal site area is not identical to the TIV13 contingency site but there is a large degree of overlap. It does not include the western field next to Tidcombe Lane but does include the eastern field and the buildings and grounds at Tidcombe Hall. In addition, the appeal site includes a small field to east of the hall between the eastern field and the canal (hereafter referred to as the north-eastern field).
13. Neither the appeal site or the contingency site is within the Tiverton settlement boundary and so both sites fall within the countryside as defined by the LP. None of the criteria in LP Policy S14 are applicable to the proposed development and so there would be conflict with this policy as well as TNP Policy T1. However, it is necessary to read the development plan as a whole and have regard to whether the provisions in LP Policies S4 and TIV13 are engaged.
14. While the Council was able to demonstrate a five year housing land supply at the time of determining the application which has led to this appeal, planning decisions should be made on the latest available figures. It is common ground between the parties that the Council cannot currently demonstrate a five year housing land supply, which stands at 4.79 years. This is due to reduce further in July 2025 when the LP becomes more than five years old and the standard method applies, with the figure forecast to be around 2.1 years. The latest Housing Delivery Test (HDT) result from December 2024 stands at 86% and requires an action plan. The final paragraph of LP Policy S4 is therefore engaged, but the parties disagree as whether the first step has been fully implemented and deemed to be insufficient.
15. The Council's inability to demonstrate a five year housing land supply has been known about since its Statement of Case was submitted in late February 2025, while the HDT result has fallen below 100% for the first time too. The Council only published an HDT Action Plan in April 2025 setting out a variety of actions to improve housing delivery. There is potential logic in the argument that time should be allowed for these actions to take effect before moving on from the first step. However, LP Policy S4 sets out no specific time frame and many of the actions are long term such as a new LP. Moreover, the Action Plan does not demonstrate how the actions would deliver the necessary level of housing now or from July 2025 onwards. Therefore, the first step is insufficient based on the evidence before me.
16. This does not mean under the second step that a contingency site should be automatically released. TIV13 is the only contingency site in the LP and development here should meet the various policy criteria. Additionally, the appeal

site is not the same site area. Nevertheless, the inclusion of TIV13 as potentially suitable site in the LP and the degree of overlap between the appeal and contingency sites is an important material consideration here.

17. In conclusion, the proposed development would not be in a suitable location having regard to the development plan given the conflict with LP Policy S14 and TNP Policy T1. It would also not fully accord with LP Policies S4 and TIV13 as the site area is not the same as the contingency site. However, the policy conflict is tempered by the proximity of the development to Tiverton and the general accordance with LP Policies S1(a), S2 and S10 which seek to direct and concentrate development in the district's most sustainable settlements. It is also tempered by the lack of a five year housing land supply.

Character and appearance

The existing context

18. Tiverton is situated in a valley landscape with the River Exe running broadly north-south, and the River Lowman and the Grand Western Canal running broadly east-west. This gives the town a distinctive green and enclosed setting with higher ground to the north, west and south, and the sense of travelling along the valley bottom from the east towards the settlement.
19. As noted above, the appeal site contains both agricultural fields and the buildings and gardens comprising Tidcombe Hall. The hall, gardens and north-east field are on relatively flat ground by the canal, with an area of pasture to the north of the hall immediately next to the canal and outside the red line boundary. The ground rises to the south through the eastern field within the site towards Warnicombe Lane. Further south of the red line boundary, the land becomes increasingly steep up Newte's Hill to Warnicombe Plantation. Existing sporadic housing just to the south of the boundary on the north side of Warnicombe Lane sits noticeably higher than the site itself. To the east of the site lies Tidcombe Farmhouse and a patchwork of fields and woodland between the canal and Warnicombe Lane.
20. Tidcombe Lane and the canal form clear boundary edges in this part of Tiverton, with late 20th century suburban housing to the west and north of the site. This housing continues west along both sides of the canal towards the town centre and partly extends up the hill to the south. The housing also continues east along the north side of the canal to a point just beyond Tidcombe Farmhouse. Long sections of close boarded fencing enclose gardens next to the towpath. A public footpath travels along the towpath from the town into the countryside beyond the site. The canal is also used for horse-drawn barge trips from April to October.
21. A large bend in the canal as it travels past Tidcombe Hall allows a wide range of users of the towpath and the canal to have an evolving view of the site depending on gaps in planting and the seasonal variations. This includes views of the main hall building as well as the garden wall, various outbuildings, and mature trees. The area of pasture provides a green foreground to the site from the towpath, and it is also possible here to glimpse the land rising to Warnicombe Plantation behind the site. Despite the background noises from traffic and properties, this section of the canal and towpath is also a rather tranquil location.
22. From Tidcombe Lane as it crosses Tidcombe Bridge, it is possible to see the hall and the pasture as an area of green space next to the canal. By the existing hall

entrance onto the lane, only the immediate buildings, gates and walls are visible within the site. Further south from a layby on the eastern side of the lane, the site is largely hidden by the rising ground of the western field.

23. The eastern field within the site is visible along the first part of Warnicombe Lane from Newte's Hill in gaps between the existing housing. The hall is screened by mature vegetation on the northern boundary of the western field, but there are still glimpses particularly in winter months based on the photographic evidence. From the higher vantage point of Warnicombe Plantation, it is possible to see the eastern and north-eastern fields with the hall more obscured by planting, with the north-east field the most prominent due to the topography. In both locations, there are views of hills and open countryside to the north, but also the urban edge of Tiverton and emerging housing at the EUE development.
24. Looking south from Knightshayes Court to the north of Tiverton, there is a view of the site from the footpath around the edge of the woodland that surrounds the estate. Tidcombe Hall is visible in the distance, along with the western field outside the site boundary. Trees around the hall largely screen views of the remaining site. The late 20th century suburban development to the west of Tidcombe Lane is clearly visible on the lower slopes of the hill that rises to the south.
25. In summary, the existing site forms part of the valley landscape on the eastern side of Tiverton. It marks the edge between urban and rural and its open, tranquil and green qualities make a positive contribution to the character and appearance of the area including the setting of the town. These qualities can be best appreciated from the canal and towpath to the north of the site but also from Tidcombe Lane near Tidcombe Bridge and briefly on Warnicombe Lane. The proximity of suburban development is nevertheless apparent, particularly in mid to longer distance views to the south and north, but also from the towpath past the site due to close boarded fencing along the rear boundary of existing properties.

The effect of the proposed development on character and appearance

26. The proposed development seeks up to 100 dwellings across the site. The illustrative layout plan indicates most of the housing would be situated on the eastern field. Some housing would be in existing and new buildings either side of Tidcombe Hall, with the hall converted for residential use. The plan also shows the primary access route traveling past the south elevation of the hall before turning south-east into the eastern field. One corner of the north-east field would accommodate part of the access route, but otherwise this area would be public open space with additional planting, paths and attenuation basins. Existing boundary trees and hedgerows would be retained and enhanced.
27. While all matters are reserved apart from the main point of access, any housing within the eastern field on the scale envisaged would change its character from an open field to a suburban residential development with street lighting and vehicular movements. Likewise, any housing within the currently undeveloped gardens to the east of the house, along with the subdivision of the existing hall and outbuildings, would further diminish the open, green and tranquil qualities of the site. An area of public open space in the north-east field would also diminish the rural character of this field.
28. The parties have agreed a condition limiting the height of any new building to 10 metres from the existing ground to its ridge to reflect the modelling work carried

out in the photomontages. Nevertheless, housing would likely be taller than the walls surrounding the hall and its garden and would also likely be situated on land rising to the south in the eastern field.

29. From the towpath to the north, it would be possible to see new housing to the east of the hall and on the eastern field depending on the gaps in existing planting and seasonal variation. However, the area of pasture would remain along with the public open space proposed for the north-east field, which combined would provide a significant buffer to this housing from the canal. Additional planting in the north-east field would help to soften views further. Even where the views are most open from the towpath directly to the north, the siting of new buildings in a courtyard arrangement away from the east side of the hall would ensure that the hall retains its primacy in the view. While the canal is slightly nearer to the site than the towpath, users of the barge would be lower down on the water. Thus, they would experience no worse effects and would also enjoy the screening effects of foliage in the warmer months when the barge operates.
30. From Tidcombe Bridge, it would be possible to see some new development around the hall but if new dwellings are sited away from the east side of the hall and the existing outbuildings on the west side largely retained, this would not have a significant effect on views particularly if planting is enhanced. The site access would be widened to accommodate a new vehicular junction onto Tidcombe Lane which might provide more views of built development than at present. However, the existing access would be narrowed to a footway and additional planting would be possible to help mitigate effects. Glimpses of development in the eastern field might occur further south on Tidcombe Lane but would be largely screened by the rising ground of the western field.
31. At Warnicombe Lane, new housing in the eastern field below the existing housing would be obvious given the current undeveloped state of the land resulting in an urbanisation of the view north. However, this would be mitigated over time by boundary planting. Additionally, while Warnicombe Lane appears to be popular with non-motorised users, it is not a designated cycle route or public right of way and has no pavement. Furthermore, the views of the site from the lane are limited to a few gaps in planting and built form, and the existing and emerging built form of eastern Tiverton is also evident.
32. Higher up near Warnicombe Plantation, changes to the north-east field would be the most noticeable, but if this is used for public open space as intended, this would not be a significant difference in the view. Some housing would be visible on the eastern field, but the distance, topography and potential for mitigation would limit greatly any visual effects. From Knightshayes Court, any new housing would be barely perceptible due to the distance and vegetation screening.
33. Historic maps indicate there was a footpath across the western and eastern fields between Newte's Hill and Tidcombe Farmhouse in the late 19th century¹. However, this footpath disappears from the map evidence by the 1930s² and is not shown on current OS mapping submitted with this appeal. While the public are apparently allowed to cross the fields to avoid the narrow and steep carriageway at Newte's Hill, this is not obvious on the ground or in any of the map evidence before me. Therefore, while there would be clear views of development on the eastern field for

¹ See for example Plan E04 in Dr Oakley's proof of evidence

² See for example Map 5 in Mr Muston's proof of evidence

anyone using this route, little weight should be afforded to any effects given that public accessibility is unclear. Even if such accessibility could be demonstrated, mitigation planting would help to soften the visual effects

34. The development proposes the same number of houses as envisaged as LP Policy TIV13 but excludes the western field and avoids any built form in the north-east field. While there is a risk of an overly dense development on the eastern field, it will depend on the specific layout, scale and landscaping arrangements, all of which are within the Council's control at the reserved matters stage. Moreover, the western field is more prominent in longer distance views such as from Knightshayes Court. Housing here would be more obvious and potentially harmful, noting the concerns of Historic England at the application stage.
35. The use of the eastern field only for most of the housing would create an isolated or island development detached from the existing edge of Tiverton. While this is odd in terms of landscape character, there would be limited perceptions of housing in this field from the views assessed above. A significant buffer would remain along the canal towpath, while topography, vegetation and distance would help to mitigate views from Tidcombe Lane, Warnicombe Lane and Plantation, and Knightshayes Court. The development around Tidcombe Hall itself can also be sympathetically designed, scaled and sited to not have significant landscape or visual effects. Any proposal to develop more housing on any adjoining land would have to be assessed on its own merits.

Conclusion on character and appearance

36. Concluding on this main issue, the proposed development would have a moderate adverse effect on the character and appearance of the area. Consequently, there would be conflict with LP Policies S9(e) and S14 which, amongst other things, seek to preserve and enhance the distinctive qualities of Mid Devon's natural landscape and the character and appearance of the countryside.
37. LP Policy S1 is referenced in the third reason for refusal relating to this main issue. However, only parts (h) and (k) appear relevant to character and appearance. Good sustainable design that respects local character, heritage and surroundings, as required by part (h), can be achieved at the reserved matters stage. Part (k) refers to protecting and enhancing valued landscapes, which are not applicable to this case, and providing accessible green infrastructure and preventing significant harm to visual quality which this development would achieve. Thus, there would be no conflict with LP Policy S1 for this main issue.

Heritage assets

Policy and statutory context

38. LP Policies S1(m) and S9(g) require the historic environment to be conserved and enhanced through the protection of heritage assets. LP Policy DM1(c) seeks high quality design that makes a positive contribution to local character including heritage assets and their setting. LP Policy DM25(a) sets a presumption in favour of preserving or enhancing all designated heritage assets and their settings, with part (d) requiring less than substantial harm to the significance of a designated heritage asset to be weighed against the public benefits of the proposal, including securing its optimal viable use. LP Policy TIV13(d), insofar as it is relevant,

requires “design and landscaping which protects the setting of the Grand Western Canal, Tidcombe Hall and Conservation Areas” (sic).

39. This policy approach is consistent with the National Planning Policy Framework (NPPF) at paragraph 212 which places great weight on the conservation of designated heritage assets, irrespective of the extent of any harm, and paragraph 213 which requires clear and convincing justification for any harm. NPPF paragraph 215 sets out the same test as LP Policy DM25(d).
40. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that special regard should be given to the desirability of preserving a listed building or its setting, while Section 72(1) of the same Act states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. Case law³ sets out that considerable importance and weight should be given to any harm to such heritage assets and that there is a strong presumption against granting planning permission in these circumstances.

Grand Western Canal Conservation Area

41. The conservation area encompasses the remaining operational section of the Grand Western Canal, which was built in the early 19th century to provide a link between Tiverton and Taunton. The conservation area covers several miles of canal from Tiverton to Lowdells and has a broadly linear boundary. It contains over 30 listed buildings (including bridges, cottages and limekilns), one scheduled monument, and many non-designated heritage assets. The survival of the canal as route for transportation purposes, along with many related canalside features, contributes greatly to the special architectural and historic interest of the conservation area and its significance.
42. The conservation area’s setting also contributes to its significance. Beyond the settlement edge of Tiverton, the canal passes through a largely rural landscape and the village of Sampford Peverell. The greenery and openness of the countryside is a positive feature in terms of setting. Although the section of canal from its starting point in Tiverton through to the appeal site predominantly comprises late 20th century housing estates, this is offset by trees and other planting along the canal and towpath such that the urban setting does not detract from the conservation area’s significance.
43. The buildings and gardens at Tidcombe Hall, the pasture to the north, and much of the north-east field are located within the conservation area as one of a few larger tracts of land within the otherwise linear boundary. Tidcombe Bridge which crosses the canal is located a short distance to the west. The bend in the canal appears to have been intentional to avoid the hall and its grounds. The consequence of this feature is that the hall is set back from the canal as a tall and prominent building with attractive green pasture in the foreground that can be seen to a greater or lesser extent moving along the canal and towpath. Although the north-east field is an ordinary piece of farmland with no obvious historical connection to the hall, it nevertheless provides an additional buffer between the hall and canal. Therefore, this part of the conservation area makes a positive contribution to its character and appearance as well as its significance.

³ *Barnwell Manor v East Northamptonshire DC* [2014] EWCA Civ 137

44. The housing estates to the north and west of the canal at Tidcombe Hall are not readily apparent from the towpath or canal or from within the hall and its grounds due to the changes in ground levels, the height of dwellings, and mature planting. However, there are gates and close boarded fencing along the rear boundary of properties immediately adjoining the towpath, which presents a hard urban edge and setting to the north. It is possible to look across the conservation area from the canal and towpath to the fields and hills to the south of Tidcombe Hall. While such views are glimpses rather than panoramas, this nevertheless provides a rural setting to the conservation area in this location.
45. Based on the illustrative layout, the proposed development would largely avoid siting new housing within the conservation area except for courtyard dwellings to the east of the hall within the walled enclosure. As noted above, these can be sensitively designed and sited to avoid detracting from the hall's prominent position. The hall and outbuildings, which lie empty and have been subject to neglect and vandalism, would be restored and converted to residential. This is discussed in more detail below but would represent an enhancement to the conservation area if executed sympathetically. Similarly, a reduction in traffic flows across Tidcombe Bridge would enhance the conservation area.
46. The existing access past the hall would be utilised and extended into the eastern field, with only a small section passing through the conservation area in the north-east field. This field would be used for public open space and drainage purposes which, in combination with the retained pasture, would maintain a significant buffer of green space between the hall and the canal. The alterations to the access onto Tidcombe Lane would result in the loss of some historic fabric within the boundary wall, but this would have a minor negative effect on the conservation area. The opening up of the access would diminish the enclosed and private nature of the hall, but landscaping would help to reduce any adverse effects.
47. There would likely be many houses sited in the eastern field to the south of the conservation area which would reduce the green and rural setting in this location. However, views of these houses from within the conservation area, particularly from the canal and towpath, are likely to be limited due to intervening vegetation and the buffer provided by the pasture and north-east field. It should still be possible to see higher ground behind the eastern field up to Warnicombe Plantation, which would help to maintain the sense of the countryside surrounding the conservation area.
48. In summary, the proposed development would have both positive and negative effects on the conservation area. Weighing up the benefits from restoring Tidcombe Hall and gardens (and traffic reduction on Tidcombe Bridge) against the changes to the site access and the introduction of housing within the eastern field, the overall outcome would be a low level of less than substantial harm to the significance of the conservation area. Nevertheless, both the harms and the benefits should be considered in the heritage and planning balances to follow.

Tidcombe Hall

49. Tidcombe Hall was built around the turn of the 19th century and was used as the local rectory. Documentary evidence submitted with the appeal shows that the hall once had an extensive estate to the north and south. The western field to the south of the hall is now mostly screened by mature planting, but it appears to have

once formed open parkland. The hall and its estate were put up for sale in 1896 and again in 1915 and 1925. It was used for healthcare purposes from circa 1945 onwards and was bought by Marie Curie Cancer Care in the 1960s. It has been used as a care home but currently stands empty.

50. As noted above, the hall is a large and prominent building next to the canal with a lower range to one side. The building has white painted render and a slate roof with dormer windows and surviving chimney stacks. The loggia on the front elevation was removed some time in the 1980s or 1990s and the building underwent extensive alterations including an unsightly metal fire escape on the rear elevation. Internally, the building appears to have retained principal reception spaces on the ground floor as well as staircases and other architectural features throughout⁴. There are multiple openings for windows and doors on the front and rear elevations, but any remaining timber frames are in a poor condition and the openings themselves are boarded up. There is evidence of graffiti and vandalism too, and the hall and its gardens are in a rundown state.
51. The hall was listed Grade II in 1972, but then delisted in 1999 due to the extent of alterations that had taken place in the latter part of the 20th century. However, due to its historic interest as a large private residence outside Tiverton and the surviving architectural details, I agree with the parties that it is a non-designated heritage asset. The surrounding outbuildings and gardens, enclosed by walls and mature trees, complement the hall as part of its historic estate.
52. The appellant has provided a Statement of Intent outlining how the hall and its gardens and outbuildings could be restored and converted into residential use. This includes the removal of modern alterations, the reinstatement of lost features such as the loggia, and the retention and addition of planting. While the principles are high-level, it would be possible to secure sympathetic works via suitably worded conditions tied to the overall proposal. Therefore, the development would have a positive direct effect on Tidcombe Hall and its surrounding gardens and outbuildings.
53. There would also be negative indirect effects similar to the conservation area, through changes to the access and the development of new housing units, but this can be mitigated through sensitive siting, design and landscaping. The absence of housing on the western field would also maintain a semblance of the open parkland to the south of the hall, even though it is today largely screened and the field is in arable use. There would be an increase in traffic movements past the front of the hall to access housing on the eastern field. However, there would have been a degree of traffic movements associated with the previous healthcare uses, while the access route would provide greater public visibility and appreciation of the hall as a heritage asset.
54. As with the conservation area, there is a mix of positive and negative effects to weigh in the balance. Given that the restoration works would directly benefit the hall and bring it back into use, I consider that this benefit would cancel out any harm caused from development within the hall's surroundings. Therefore, the proposal would have an overall neutral effect on the significance of Tidcombe Hall as a non-designated heritage asset.

⁴ This is based on a report and photographs from November 2018 as it was not possible to view the building interior on site

Tidcombe Farmhouse

55. Tidcombe Farmhouse is a Grade II listed building that dates from around the 16th century as a two storey rendered stone rubble dwelling. While the external appearance of the building is modest, there are several important internal features including an oak ceiling, fireplaces, and panelled doors. It therefore has special architectural and historic interest as a high status Devon farmhouse, which also contributes positively to its significance. Two storey extensions have been added to the north elevation of the building in the past 20 years.
56. The farmhouse remains part of a working farm with multiple modern buildings and barns located to the east and south-east. A paddock is located to the north, while a private garden is to the south. The north-east field associated with the appeal proposal adjoins the paddock to the north, while the eastern field adjoins the paddock, farmhouse and garden to the west. Mature planting along the eastern boundary of the eastern field provides a reasonable level of screening for the garden. However, the recent removal of conifers immediately to the west of the farmhouse means that there is now much greater intervisibility between the appeal site and the farmhouse and its garden.
57. The farmhouse is best appreciated from its garden rather than the wider farmyard due to modern buildings and additions. There are limited views of the farmhouse from public locations, with only glimpses of the north elevation from the canal and its towpath which mostly comprise the modern extensions. The farmhouse is hidden from Warnicombe Lane to the south, and so the remaining views are private ones from within the site. Nevertheless, the lack of public visibility does not diminish the rural surroundings of the listed building. Documentary evidence indicates that the eastern field was once in the same ownership as the farmhouse and so there was also a functional relationship between the two. Thus, the wider countryside setting makes a positive contribution to the significance and special interest of the listed building.
58. The proposed development would change the eastern field from agricultural to a residential housing estate with housing likely sited in cul-de-sacs off a central access road. This would remove the historic functional relationship between the farmhouse and the field, while views to and from the farmhouse would incorporate modern housing. However, the farmhouse is set back from the boundary by a few metres, while the illustrative layout plan indicates that a landscape buffer could be provided along the eastern side of the field. This would help to mitigate the visual effects of the development from the farmhouse and its garden through screening.
59. Restricting the housing to the opposite side of the eastern field and/or utilising the western field if it was available would provide further mitigation, but not avoid the reduction in the countryside setting of the farmhouse. The exact size and form of any landscape buffer, and the design and layout of housing, is for the reserved matters stage. Nevertheless, even based on the illustrative layout, the harm caused to the significance of the farmhouse would be less than substantial and no greater than moderate in magnitude due to the ability to provide mitigation screening and the fact that no direct changes would occur to the farmhouse.

Tidcombe Bridge

60. Tidcombe Bridge is listed Grade II and was built at the same time as the Grand Western Canal. It is constructed from ashlar with a single span arch over the canal

and walls along the road carriageway. Its special architectural and historic interest and significance is informed by its association with the canal and its structural details. Current traffic use is relatively light and despite the lack of pavement it is pleasant to walk or cycle across. From the bridge, one can see across to Tidcombe Hall and the pasture next to the canal as well as the 20th century housing estates in the other direction.

61. The proposed development would be largely screened from the bridge and so would have no adverse effect on its special interest or significance. However, Devon County Council as the local highway authority have identified a need to reduce traffic flows over the bridge in anticipation of increase vehicular movements arising from the EUE development. This could involve a Traffic Regulation Order (TRO) to ban most motor vehicles, or physical works within the carriageway to deter people from using the bridge.
62. The merits of a condition to achieve this traffic outcome are discussed below. However, limiting vehicular movements over the bridge would represent a small heritage benefit to the bridge as a listed building as well as to the special interest of the conservation area.

Conclusion on heritage assets

63. The proposed development would result an overall neutral effect on the significance on Tidcombe Hall as a non-designated heritage asset with restoration works representing a benefit to the hall and the conservation area. There would also be a small benefit to Tidcombe Bridge if traffic levels are reduced. However, there would be a low level of less than substantial harm to the significance of the conservation area and a moderate level of less than substantial harm to the significance of Tidcombe Farmhouse as a listed building.
64. Consequently, the special interest of both heritage assets would not be preserved. This would be contrary to LP Policies S1(m), S9(g), DM1(c) and TIV13(d). Nevertheless, it is necessary to consider the balance in LP Policy DM25(d) and NPPF paragraph 215 to reach an overall conclusion on this issue. This will be addressed as part of the planning balance section below.

Infrastructure

65. The S106 agreement sets out several planning obligations. The Off Site Park, Sports, Recreation and Teenage Facilities Contribution obligation would provide a sum of money for new or improved play facilities in the district. The Council's Open Space and Play Area Strategy sets out the level of contributions. The Council has identified provision at Amory Park and the Grand Western Canal Country Park for sports, access, and interpretation purposes. Therefore, the contribution would accord with LP Policy S5 which seeks the off-site provision of park, sport and recreation ground, and teenage facilities for this size of development.
66. The Healthcare Contribution obligation would provide a sum of money for additional, expanded or improved healthcare facilities administered by the NHS Devon Integrated Care Board. The existing doctors' surgeries in Tiverton are at capacity and are looking to reconfigure their premises. Thus, the contribution would accord with LP Policy S1(i) which promotes healthy communities and the delivery of relevant services and facilities and Policy TIV15(h) which requires the provision of healthcare facilities.

67. The Highways Contribution obligation would comprise a Bus Services Contribution of £30,000 to improve bus provision serving the development and a A361 Post Hill Junction Scheme Contribution of £3,131 per dwelling towards the completion of this scheme. This would therefore accord with LP Policy S1(e) which promotes sustainable transport by delivering appropriate infrastructure and reducing car travel and Policy DM3 which seeks safe access to the transport network.
68. The Affordable Housing obligation would ensure that 30% of the residential units are affordable as a mix of shared ownership and social rented. This would accord with LP Policies S3(b) and TIV13(a) which seek 28% affordable housing for major development schemes in Tiverton and TNP Policy T2 which requires development to meet local housing needs.
69. The Custom and Self Build Housing obligation would ensure the provision and marketing of five custom and self-build plots within the development. This would accord with LP Policy S3(d) which seeks for sites of 20 dwellings or more at least 5% of serviced dwellings plots for sale to self-builders.
70. Finally, the Public Open Space obligation requires the provision of on-site public open space and a management plan for its long-term maintenance. This would accord with LP Policy S5 which seeks on-site provision of play space, amenity/natural green space and allotments for this size of development.
71. Given the policy requirements, I am satisfied that all the above obligations 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 would accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and NPPF paragraph 58. Therefore, I can take all the obligations into account as part of my decision.
72. Interested parties have noted that there are current constraints on other local infrastructure such as dentists and schools. At the application stage, Devon County Council as the local education authority noted that local primary schools have capacity for the likely number of pupils generated by the development but sought a contribution towards additional secondary education provision at Tiverton High School. However, at the appeal stage, the County Council has confirmed that the forecasts now indicate sufficient secondary school capacity and so no contribution is required. No other statutory consultee has made a request for a specific contribution or obligation, and I have little evidence to indicate that the development needs to make provision towards anything else.
73. Concluding on this main issue, the proposed development would make adequate provision for affordable housing and other infrastructure requirements and so would accord with LP Policies S1(e) and (i), S3(b) and (d), S5, S8, TIV13(a) and DM3 which seek the provision of necessary infrastructure.

Other matters

Tiverton Canal Company

74. The Tiverton Canal Company has carried out horse-drawn barge trips along the canal for the past 50 years and is one of the last companies to do so in the country. Between 1 April and 31 October there are one or two trips per day up to 6 days a week, typically lasting between 1.5 and 2.5 hours although longer trips are

possible. Depending on the duration, the trips travel from the wharf in Tiverton past the site into the countryside as far as Warnicombe Bridge or East Manley. The company also provides boat hire facilities and operates a floating canalside bar and beer garden at the wharf.

75. The barge is on the National Register of Historic Vessels as an intact historic vessel known as the Iona. It is not a designated heritage asset though and is excluded from Historic England's Designation Selection Guide on Ships and Boats because it remains a mobile vessel. It would also not meet the NPPF definition of a heritage asset for similar reasons. However, the canal company and the barge trips are evidently an important heritage and tourist attraction for Tiverton and the wider area with educational and economic benefits.
76. The proximity of late 20th century housing development to the canal between the wharf and the site is offset by trees and other planting along the towpath and canal banks. Thus, this section of the canal is pleasant to travel along and has the character and appearance of a recreational park. The site marks the transition into the countryside where buildings decrease and there is greater tranquillity. However, the development would be set back from the canal and screened by existing and proposed planting such that it would have little adverse effect on the atmosphere for travellers on the barge. Depending on the length of the trip, there would remain a significant stretch of countryside beyond the site. Noise and other disturbances that might arise from the construction phase would be temporary, while the new housing would be further away from the canal than existing housing.
77. The effect of new development on an existing business is a relevant planning consideration. It would be unfortunate if the canal company decided to cease operations if this development is built. However, this would not be an inevitable outcome for the reasons set out in the previous paragraph. This is because there would continue to be an attractive route along the canal from Tiverton to the countryside. From the evidence before me, I thus conclude that the development would have an acceptable effect on the Tiverton Canal Company. For similar reasons, the development would not diminish the health and wellbeing benefits that people get from using the canal and its towpath.

Flood risk and drainage

78. The canal has been subject to flooding further to the east with a significant breach at Halberton in 2012. However, the surface water drainage strategy for this development would ensure that rainfall runs into swales and attenuation basins before entering culverts under the canal. Given that the existing site has limited permeability due to its underlying geology, this design would represent an improvement on existing run-off rates and remove pollutants from the existing agricultural use entering watercourses. The design would also prevent run-off onto the highway and ensure that foul water drainage is kept separate.
79. The use of a management company to oversee the drainage system is common to many new developments and there is no reason why such an approach would not work here. The risk of a canal breach and flooding of properties on lower ground to the north is therefore low. Subject to the submission of further details which can be secured by condition, the development would have an acceptable effect on flood risk and drainage.

Ecology

80. The existing agricultural fields have limited ecological value. The most important features are boundary trees and hedgerows which would be largely retained while additional planting and ponds are proposed to provide biodiversity net gain of 4.73% for habitats and 10.24% for hedgerows. The improved quality of surface water run-off would have a positive effect on the status of Tidcombe Fen SSSI and suitable measures can be secured by condition.
81. Licences from Natural England would be required for conversion works to Tidcombe Hall and any hedgerow removal due to the presence of bats and dormice. It may also be needed for badgers depending on updated survey work. Having regard to the three derogation tests, the proposal could be in the overriding public interest due to the need for housing and there are no satisfactory alternatives given the lack of a 5 year supply. Subject to appropriately worded conditions, suitable mitigation and compensation can be secured. Thus, there is a reasonable prospect of Natural England granting licences for this development. Other species such as nesting birds, reptiles and hedgehogs can be addressed via management plans secured by condition. The various measures would also ensure little adverse effect on nearby county wildlife sites such as Snakes Wood and the local nature reserve of the canal itself. Therefore, the development would have an acceptable effect on ecology.

Highways

82. The appellant's transport assessment does not indicate any capacity issues with the existing road network that would be materially affected by the traffic generated by the development. LP Policy TIV13(b) requires vehicular access onto Canal Hill, but this road does not join the site even if the western field was available. The local highway authority has not objected to the proposed access point or required a secondary emergency access as set out in the supporting text to LP Policy TIV13 at paragraph 3.51. There is scope at the reserved matters stage to ensure sufficient on-site parking to avoid overspill parking on neighbouring streets.
83. Works to Tidcombe Lane around the site entrance would improve pedestrian safety with additional pavement provision and a separate access route into the site. The new access arrangements are unlikely to create significant noise or pollution for existing residents. Tidcombe Lane is busy at peak hours, including around school drop off and pick up times due to the number of children travelling by car, but there is little evidence that it is bad at other times of day. There is no current need to restrict traffic from the development using the bridge and construction vehicles can be controlled by condition. Future occupants would be able to cycle into Tiverton via residential streets or use the nearby bus stops.
84. The local highway authority's request to close Tidcombe Bridge to most vehicular traffic would address a projected increase in movements to and from the EUE over the narrow bridge. It would also improve existing pedestrian use of the bridge including trips to the primary school. The closure is not necessary to make the development acceptable but would represent a benefit. However, the closure could lead to residents either side of the bridge having to travel significantly further than at present. The closure also requires a TRO to be confirmed, which is not guaranteed as it is subject to a separate process and public consultation. Thus, it may not be reasonable for a condition to make specific reference to a TRO.

85. An alternative approach would be undertaking physical works to the carriageway around the bridge to discourage through traffic. This would achieve similar benefits to a TRO by making the bridge safer for all and enhancing this listed structure. Such works would not need a TRO and can be secured by a negatively worded condition. Given that the LHA are responsible for the highway, there is a reasonable prospect of such works being agreed and implemented within the time-limit imposed by the permission.
86. Having regard to the above, I am satisfied that the development would have an acceptable effect on highway matters.

Agricultural land

87. The development would result in the loss of grade 2 and 3a best and most versatile agricultural land across the north-east and eastern fields. However, this loss is inevitable if the TIV13 contingency site is brought forward for development in line with the LP. Moreover, most of the grade 2 land would not be built on based on the illustrative layout plan which would follow the approach advocated in NPPF footnote 65 to avoid higher quality land where necessary. Therefore, the loss of agricultural land carries no more than minor weight against the proposal.

Planning balance

88. The parties disagree on the most important policies for determining this appeal. However, I consider they comprise LP Policies S1, S2, S3, S4, S9, S10 and S14 as they represent relevant strategic policies, along with LP Policy DM25 as it contains the detailed approach to heritage assets. TNP Policies T1 and T2 follow LP Policies S14 and S3 respectively, while LP Policy DM1 reflects the strategic policies, so these are not most important policies for this appeal. LP Policy TIV13, while relevant as a material consideration, is not directly applicable given the differing site areas and so is not a most important policy either.
89. The lack of a five year housing land supply triggers NPPF paragraph 11(d). This states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, planning permission should be granted unless one of two exceptions applies.
90. The first in NPPF paragraph 11(d)(i) is whether the application of NPPF policies that protect areas or assets of particular importance, including those relating to designated heritage assets, provide a strong reason for refusing the development. The second in NPPF paragraph 11(d)(ii) is whether the adverse impact of granting permission would significantly and demonstrably outweigh the benefits when assessed against the NPPF taken as a whole with particular regard to key policies.

Adverse impacts

91. The proposed development would not be in a suitable location having regard to the development plan for Tiverton and would conflict with LP Policy S14 and TNP Policy T1. However, the proximity of the development to Tiverton and the compliance with LP Policies S1(a), S2 and S10, along with the triggering of NPPF paragraph 11(d) means that I only give moderate weight to the adverse impacts and policy conflicts here.
92. The development would have a moderate adverse effect on the character and appearance of the area. It would cause less than substantial harm to the

significance of the Grand Western Canal Conservation Area and the listed Tidcombe Farmhouse to a low and moderate extent respectively. There would also be a minor adverse effect in terms of the loss of best and most versatile agricultural land. There would be conflict with LP Policies S1(m), S9(e) and (g), S14 and DM1(c), although given the extent of adverse effects, I afford these conflicts no more than moderate weight.

Benefits

93. The delivery of up to 100 houses can be afforded significant weight having regard to the Council's housing land supply and delivery positions. As set out in the S106 agreement, 30% of the overall housing would be affordable homes which is more than the 28% required at LP Policies S3 and TIV13(a). Over 1,000 people are waiting on the Council's register for affordable housing and the affordability ratio is above the national average for England and Wales. 124 affordable dwellings are needed per year in Mid Devon, but the net delivery has averaged 45 dwellings per year only. Therefore, significant weight can also be afforded to the delivery of affordable housing as part of this development.
94. The heritage benefits referenced above are associated with works to Tidcombe Hall and reducing traffic using Tidcombe Bridge. They can be secured by condition and should be weighed in the balance despite the need to also weigh heritage harms. Moderate weight can be afforded to the Tidcombe Hall benefits and minor weight to the Tidcombe Bridge benefits.
95. The development is not required to meet the statutory 10% biodiversity net gain as the application was submitted before February 2024. The proposal can achieve the stated increases in habitat and hedgerow units, but at little over 4% and 10% respectively, this benefit carries limited weight.
96. Between 240 and 310 jobs are estimated to be created from the construction of the development. There would also be wider investment in local services and businesses once the housing is occupied. The financial contributions secured by the S106 agreement and increases in Council Tax and New Homes Bonus are essentially to mitigate the effects of the development. Nevertheless, moderate weight can be afforded to the overall economic benefits.
97. The accessibility of the site to Tiverton is not disputed, but this is a general outcome of a housing development in this location and so should be afforded very little weight. The reduction in NO2 emissions along Tidcombe Lane has been modelled on the basis that there would be a TRO closing Tidcombe Bridge to most motor vehicles. However, as set out above, the TRO is not guaranteed, and no modelling has been carried out of any other highway interventions. Even with the TRO in place, the air quality effects along the lane are estimated to be negligible or slight beneficial. Therefore, I afford very little weight to this benefit.

The heritage balance

98. In line with NPPF paragraph 215 and LP Policy DM25(d), it is necessary to weigh the moderate and low levels of less than substantial harm to the significance of the conservation area and the listed Tidcombe Farmhouse against the public benefits. All the above benefits can be regarded as public ones. Those relating to housing delivery alone are significant and sufficient to outweigh the harm to significance notwithstanding the considerable importance and weight I have given to that harm.

While NPPF paragraph 212 indicates that great weight should be afforded to the conservation of designated heritage assets, there is clear and convincing justification for the harm to these assets as required by NPPF paragraph 213.

99. I have already found there would be a neutral effect on the significance of Tidcombe Hall as a non-designated heritage asset and a small beneficial effect on the significance of Tidcombe Bridge. The proposed development would also have an acceptable effect on the significance and setting of the conservation area and the listed Tidcombe Farmhouse. Therefore, despite the conflict with LP Policies S1(m), S9(g), DM1(c) and TIV13(d), the proposal would accord with LP Policy DM25 and NPPF paragraphs 212, 213 and 215, which would outweigh the policy conflict.
100. Having regard to NPPF paragraph 11(d)(i), the application of NPPF policies relating to designated heritage assets does not provide a strong reason for refusing the development proposed. While the heritage balance has been passed, it is nevertheless necessary to include the moderate and low level harms to heritage assets in the planning balance. This includes consideration of NPPF paragraph 11(d)(ii).

The overall planning balance

101. The proposed development would provide benefits that carry significant weight in terms of the delivery of market and affordable housing. There would also be improvements to Tidcombe Hall and economic benefits that carry moderate weight, and minor benefits to Tidcombe Bridge and biodiversity net gain. The adverse impacts in terms of locational suitability, character and appearance, and designated heritage assets, and the associated policy conflicts, carry no more than moderate weight, while the loss of agricultural land is only afforded minor weight.
102. The adverse impacts of the development would not significantly and demonstrably outweigh the benefits when assessed against the NPPF policies taken as whole, including those which promote sustainable locations and the provision of affordable homes. Consequently, the presumption in favour of sustainable development would apply in line with NPPF paragraph 11(d). Therefore, despite the conflict with LP Policies S1(m), S9(e) and (g), S14, DM1 and TIV13(d) and TNP Policy T1, there are sufficient material considerations to indicate that planning permission should be granted in this instance. While the Inspectors dealing with the Hartnoll Farm appeal⁵ came to a different overall conclusion, I have assessed this appeal on the evidence and circumstances before me.

Conditions

103. Condition 1 is necessary to specify the plans to which this decision relates. Although not a formal plan, requiring broad accordance with the illustrative masterplan is necessary because the assessment of effects has been strongly influenced by this layout. Conditions 2 to 4 are necessary to clarify the reserved matters still to be approved as well as set out the timeframe for applications to be submitted and the development implemented. The time frame is shorter than the standard amount to encourage the earlier delivery of housing. Condition 5 is necessary to secure improvements to Tidcombe Hall as a heritage asset.

⁵ APP/Y1138/W/22/3313401

104. Conditions 6 to 21 are pre-commencement conditions as they concern matters that need to be agreed and/or provided before works begin on site. Condition 6 is necessary to ensure that details of internal access and circulation routes are established, as the plans specified in Condition 1 only relate to the access point onto Tidcombe Lane. Conditions 7 and 8 are necessary to safeguard archaeology and existing trees within the site.
105. Conditions 9 to 11 are necessary to ensure adequate surface water drainage provision and to avoid adverse effects on Tidcombe Fen SSSI. Condition 12 is necessary to address any land contamination issues. Condition 13 is necessary to ensure appropriate waste management from the outset of development. Condition 14 is necessary in the interests of public health and highway safety as well as avoiding adverse effects on the Country Park and the SSSI. Conditions 15 to 20, along with 25 and 26, are necessary to safeguard protected species and habitats at both the construction and operational stages.
106. Condition 21 concerns the off-site works to Tidcombe Bridge. Given my concerns regarding the reasonableness of requiring a TRO to be agreed and implemented, I have removed these elements from this condition. Instead, the condition simply requires a scheme to be agreed to reduce traffic travelling over the bridge. This condition is necessary in the interests of highway safety and to enhance the significance of the bridge as a listed building. Only the local planning authority can be responsible for discharging planning conditions, but the condition requires them to consult with the local highway authority on any submitted scheme. The local highway authority could still decide to implement a TRO, but this can be pursued separately outside of the planning process.
107. Condition 22 is necessary in the interests of sustainable travel and air quality. Given it relates to the operational stage of the development, this condition does not have to be pre-commencement. Conditions 23 and 24 are necessary in the interests of highway safety. Conditions 27 and 28 are necessary in the interests of safeguarding the character and appearance of the area by restricting building heights and dwelling numbers. Condition 29 is necessary to ensure that works to Tidcombe Hall are implemented by a specific trigger point.

Conclusion

108. For the above reasons, and having had regard to all matters raised, I conclude that the appeal should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR

Appearances

For the Appellant:

Satnam Choongh and Chatura Saravanan, Counsel, instructed by Grassroots Planning.

They called:

Chris Yalden BSc (Hons) MICE IEng
Partner and Technical Director, AWP Exeter (Drainage)

Alex Woznicko CEng MICE MCIHT
Senior Partner, AWP Exeter (Highways)

Dr Matt Cowley MSc PhD CEnv MCIEEM
Director, EAD Ecology

Wendy Lancaster PGDipLA PGDipUD CMLI FRSA
Technical Director, Tyler Grange Group Ltd

Dr Edward Oakley BA (Hons) MA PhD MCIfA
Associate, The Environmental Dimension Partnership Ltd

Matthew Kendrick BA (Hons) MSc MRTPI
Director, Grassroots Planning Ltd

Rebecca Stanton
Associate, Thrings LLP

For the Local Planning Authority:

Timothy Leader, Counsel, instructed by Deborah Sharpley, Mid Devon District Council.

He called:

Jane Fowles BA (Hons) Dip LA (Hons) MAUD CMLI
Managing Director, Novell Tullett

Thomas Muston BA (Hons) MSc
Conservation Officer, Mid Devon District Council

Antony Aspbury BA MRTPI
Director, Aspbury Planning Limited

Helen Govier
Principal Planning Officer, Mid Devon District Council

Francis Robinson
Solicitor, Mid Devon District Council

Interested Parties who spoke during the Inquiry:

Nick Govier Local resident

Jeremy Salter Tiverton Civic Society

Victoria Pugh	Local resident
Goff Welchman	Local resident
Cllr Les Cruwys	Mid Devon District Council and Grand Western Canal Joint Advisory Committee
Cllr Stephen Bush	Tiverton Town Council
Barbara Downs	Local resident
Linda Hall	Local resident

Inquiry Documents:

ID1:	Appellant's Opening Statement
ID2:	Council's Opening Statement
ID3:	Statement from Nick Govier
ID4:	Statement from Jeremy Salter
ID5:	Statement from Victoria Pugh
ID6:	Statement from Goff Welchman
ID7:	Statement from Cllr Les Cruwys
ID8a:	Statement from Barbara Downs
ID8b:	Photographs of the Grand Western Canal
ID9:	Statement from Linda Hall
ID10:	Email from Devon Wildlife Trust dated 19 May 2025
ID11a:	Letter dated 9 December 2019 from Ministry of Housing, Communities and Local Government regarding Environmental Impact Assessment
ID11b:	Letter dated 2 April 2020 from Ministry of Housing, Communities and Local Government regarding Environmental Impact Assessment
ID12:	Environmental Impact Assessment Screening Direction dated 2 April 2020
ID13:	Photographs of Marina Way and the horse drawn barge
ID14:	Leaflets on Tiverton Canal Company and the Grand Western Canal Country Park
ID15:	Note on the Grand Western Canal barge trips
ID16:	Email dated 23 May 2025 containing an email dated 13 May 2025 from the Tiverton Canal Company
ID17:	<i>Croft v Devon County Council</i> [2025] EHC 881 (Admin)
ID18:	Draft Schedule of Conditions

ID19:	Draft Section 106 agreement
ID20:	<i>Hopkins Homes Ltd v SSCLG</i> [2017] UKSC 37
ID21:	Closing Statement from Goff Welchman
ID22:	Closing Statement from Victoria Pugh
ID23:	Council's Closing Submissions
ID24:	Appellant's Closing Submissions
ID25:	Appellant's Costs Application
ID26:	Council's response to the Costs Application
ID27:	Appellant's final comments on the Costs Application

Other documents submitted after the Inquiry closed

1. Final schedule of conditions
2. Newspaper article about a recent award for the Grand Western Canal Country Park
3. Completed and executed Section 106 agreement dated 19 June 2025

Schedule of Conditions (29)

Time limits, plans and reserved matters

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 230301 L 01 01 and PHL-102 Rev B.

The development shall also come forward in broad accordance with the illustrative masterplan 230301 L 02 02 Rev J.
- 2) Before development begins, details of the appearance, landscaping, layout, and scale ("the reserved matters"), including materials, hard and soft landscaping details, detailed drawings, existing and proposed ground levels, finished floor levels, and existing and proposed cross sectional drawings to an appropriate scale, shall be submitted to and approved in writing by the local planning authority and the development shall be carried out as approved.
- 3) Application(s) for approval of the Reserved Matters shall be made to the local planning authority before the expiration of eighteen months from the date of this permission.
- 4) The first and subsequent phases of development hereby permitted shall begin either before the expiration of four years from the date of this permission or before the expiration of one years from the date of approval of the last Reserved Matters which have been approved, whichever is the later.
- 5) The first reserved matters submission pursuant to condition 2 shall include the following additional information relating to the works to Tidcombe Hall and its existing garden grounds: details of conversion of the Hall and outbuildings (including floor plans, details of all elevations, existing retained and new openings, laying out of any private amenity space together with parking arrangements), external materials, boundary treatments, existing and proposed ground levels, finished floor levels, sections through the site indicating the relationship of the development with its surroundings and a timetable for the delivery of these works. These details should be broadly in accordance with the submitted Statement of Intent dated April 2025 and referenced 230301 R 02 B.

Pre-commencement condition - access

- 6) No development shall commence until plans and particulars of the accessibility within the site, including circulation routes and how these fit into the surrounding access network, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Pre-commencement condition – archaeology

- 7) No development shall take place until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme. The development shall not be occupied until (i) the post investigation assessment has been completed in accordance with the approved WSI and (ii) that the provision made for analysis, publication and dissemination of results, and archive deposition,

has been confirmed to and approved in writing by the local planning authority.

Pre-commencement condition – trees

- 8) Prior to commencement of development, a scheme for protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the local planning authority. The submitted details shall include:
- (i) Location and installation of services/ utilities/ drainage.
 - (ii) Methods of demolition within the root protection area (RPA), as defined in BS 5837:2012, of the retained trees.
 - (iii) Details of construction within the RPA or that may impact on the retained trees.
 - (iv) A full specification for the installation of boundary treatment works.
 - (v) A full specification for the construction of parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using a no-dig specification. Details shall include relevant sections through them.
 - (vi) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.
 - (vii) Tree protection during construction indicated on a TPP and construction and construction activities clearly identified as prohibited in this area.
 - (viii) Details of site access, temporary parking, on-site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well as concrete mixing and use of fires.
 - (ix) Arboricultural supervision and inspection by a suitably qualified tree specialist.
 - (x) Reporting of inspection and supervision.

The development shall only be carried out in accordance with the approved details.

Pre-commencement conditions – drainage and contamination

- 9) Prior to, or as part of the Reserved Matters, the following information shall be submitted to and approved in writing by the local planning authority:
- (i) A detailed drainage design in accordance with the Flood Risk Assessment.
 - (ii) Detailed proposals for the management of surface water and silt run-off from the site during construction of the development hereby permitted.
 - (iii) Proposals for the adoption and maintenance of the permanent surface water drainage system.
 - (iv) A plan indicating how exceedance flows will be safely managed at the site.

No building hereby permitted shall be occupied until the works have been approved and implemented in accordance with the details under (i)-(iv) above.

- 10) No development shall take place until a long-term monitoring and maintenance plan in respect of the Sustainable Drainage System (SuDS), both during and post construction (water quality and management regime), including a timetable of monitoring, has been submitted to and approved in writing by the local planning authority. This should also include details of the options for contingency action should the monitoring indicate inadequate quality of water leaving the SuDS system and entering the Tidcombe Lane Fen Site of Special Scientific Interest. Any necessary contingency measures shall be carried out in accordance with the details in the approved plan. On completion of the monitoring specified in the plan a final report demonstrating that all long-term remediation works have been carried out and confirming that remedial targets have been achieved shall be submitted to and approved in writing by the local planning authority.
- 11) Prior to commencement of development, details of best practice measures for pollution prevention and control shall be submitted to and approved in writing by the local planning authority. The approved measures must be implemented during construction to ensure there is no risk of contamination or increase in nutrient or sediment load of surface water runoff into existing ditches and water courses.
- 12) Development must not commence until parts 1 to 2 below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until part 4 has been complied with in relation to that contamination.

Part 1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be 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 should be submitted to and approved in writing by 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 should be submitted to and approved in writing by the local planning authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination.
- (ii) 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.
- (iii) 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.

Part 2. Submission of Remediation Scheme

Where identified as necessary as a result of the findings of the investigation above, 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 must be prepared and 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.

Part 3. Implementation of Approved Remediation Scheme

The remediation scheme must be carried out in accordance with the details approved pursuant to part 2 above, specifically the agreed timetable of works unless otherwise agreed in writing by the local planning authority. 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 submitted to and approved in writing by the local planning authority.

Part 4. Reporting of Unexpected Contamination

If contamination is found at any time during the approved development works that was not previously identified, the findings must be reported in writing immediately to the local planning authority. A new investigation and risk assessment must be undertaken in accordance with the requirements of part 1 above and where remediation is necessary a new remediation scheme must be prepared in accordance with the requirements of part 2. This scheme must be submitted to and approved in writing by the local planning authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which should be submitted to and approved in writing by the local planning authority in accordance with part 3.

Part 5. Long Term Monitoring and Maintenance

Where identified as necessary, a monitoring and maintenance scheme to include monitoring the long term effectiveness of the proposed remediation over a period to be agreed with the local planning authority, and the provision of reports on the same must be prepared, both of which should be submitted to and approved in writing by the local planning authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced and submitted to the local planning authority.

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

Pre-commencement conditions – waste and construction

- 13) Prior to commencement of development, an updated site waste management plan shall be submitted to and approved in writing by the local planning authority. This statement shall include all information outlined in the waste audit template provided in Devon County Council's Waste Management and Infrastructure Supplementary Planning Document. The following points shall be addressed in the statement:
- (i) The amount of construction, demolition and excavation waste in tonnes, set out by the type of material.
 - (ii) Identify targets for the re-use, recycling and recovery for each waste type from during construction, demolition and excavation, and corrective measures if failure to meet targets occurs.
 - (iii) The predicted annual amount of waste (in tonnes) that will be generated once the development is occupied.
 - (iv) Identify the main types of waste generated when development is occupied.
 - (v) The details of the waste disposal methods likely to be used; including the name and location of the waste disposal site.
- The development shall be carried out in accordance with the approved statement.
- 14) Prior to commencement of the development hereby approved, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the local planning authority. In respect to the protection of residential amenity and the local environment, the CEMP shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise, vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development and manage heavy/large goods vehicle access to the site. It shall include details of the hours of operation and measures employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways. The following details shall also be included in respect of highway safety:
- (i) the timetable of the works;
 - (ii) daily hours of construction;
 - (iii) any road closure;
 - (iv) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6:00pm Mondays to Fridays inclusive; 9:00am to 1:00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays;
 - (v) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;

- (vi) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
- (vii) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the county highway for loading or unloading purposes, unless prior written agreement has been given by the local planning authority;
- (viii) hours during which no construction traffic will be present at the site;
- (ix) the means of enclosure of the site during construction works;
- (x) details of proposals to promote car sharing amongst construction staff to limit construction staff vehicles parking off-site;
- (xi) details of wheel washing facilities and obligations;
- (xii) The proposed route of all construction traffic exceeding 7.5 tonnes;
- (xiii) Details of the amount and location of construction worker parking; and
- (xiv) Photographic evidence of the condition of adjacent public highway prior to commencement of any work.

The development shall be carried out in accordance with the approved details and shall be adhered to at all times.

Pre-commencement conditions - ecology

- 15) Prior to commencement of the development hereby approved, a Lighting Strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall minimise impacts from lighting associated with pre-construction, construction and operational activities and shall include, but not be limited to, design, siting, illumination-type and hours of use of any external lighting, including security lighting. The lighting strategy shall be designed to take account of biodiversity, residential amenity and light pollution in accordance with the recommendations detailed within the Ecological Impact Assessment report dated November 2023 (ref 2301129_P893_EcIA_Final01) and demonstrate how the current best practice (BCT/ILP, 2023) guidance has been implemented. No external lighting shall be installed except in accordance with the approved details.
- 16) Prior to the commencement of the development hereby approved, the bat Hibernation Surveys results shall be submitted to and approved in writing by the local planning authority. In the event the Hibernation Surveys' findings confirm the presence of a lesser horseshoe bat hibernation roost within the underground parking area, a detailed replacement underground lesser horseshoe bat hibernation roosts area strategy, in conjunction with an amended Ecological Impact Assessment report, shall be included in the bats Hibernation Survey report required by this condition in accordance with the recommendations for the mitigation, compensation and enhancement for bats set out within the Ecological Impact Assessment report dated November 2023 (ref 2301129_P893_EcIA_Final01). The development shall be carried out strictly in accordance with the approved details and shall thereafter be retained and maintained in perpetuity.

- 17) Prior to the commencement of development hereby approved, a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the local planning authority. The LEMP shall be based on the submitted Ecological Impact Assessment report dated November 2023 (ref 2301129_P893_EclA_Final01). It shall include, but not be limited to, the location and design of biodiversity features, including the newly planted and enhanced hedgerow planting, maintaining functional 'habitat corridors', the creation of the wildflower meadow, native scrub, broadleaved woodland and orchard planting, and wetland and other features to be shown clearly on the submitted plans, and the enhancement of the existing broadleaved woodland. The content of the LEMP shall also include the following:

- (i) Description and evaluation of features to be managed;
- (ii) Ecological trends and constraints on site that might influence management;
- (iii) Aims and objectives of management;
- (iv) Appropriate management options for achieving aims and objectives;
- (v) Prescriptions for management actions;
- (vi) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a minimum 10-year period);
- (vii) Details of the body or organization responsible for implementation of the plan;
- (viii) Ongoing monitoring and remedial measures;
- (ix) Long-term objectives and targets (as required by submitted Defra Metric Calculation) to deliver the specified net gains in biodiversity.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives in line with the submitted Ecological Impact Assessment report (ref 2301129_P893_EclA_Final01).

The LEMP shall cover a minimum period of 30 years with monitoring reports to be submitted to the local planning authority during years 5, 10, 20 and 30 from the commencement of development, unless otherwise agreed, demonstrating how the biodiversity net gain is progressing towards achieving its objectives and any rectifying measures needed.

The development shall be carried out in accordance with the approved LEMP.

- 18) Prior to the commencement of the development hereby approved (including ground works), a Construction and Ecological Management Plan (CECoMP) shall be submitted to and approved in writing by the local planning authority. The CECoMP shall be based on the submitted Ecological Impact Assessment report dated November 2023 (ref 2301129_P893_EclA_Final01). The

CECoMP shall include, but not be limited to, detailed measures for the protection of habitat and species during the pre-construction and construction phases. The content of the CECoMP shall also include the following:

- (i) Risk assessment of potentially damaging construction activities, to include an invasive species management plan to prevent the spread of non-native plant species during the works. This is to include a pre-construction check a minimum of 6 weeks prior to commencement of works;
- (ii) Identification of "biodiversity protection zones";
- (iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- (iv) The location and timing of sensitive works to avoid harm to biodiversity features;
- (v) The times during construction when specialist ecologists need to be present on site to oversee works;
- (vi) Responsible persons and lines of communication, including reporting compliance of actions to the local planning authority;
- (vii) The role and responsibilities on site of an ecological clerk of works (ECoW), including any licence requirements;
- (viii) Use of protective fences, exclusion barriers and warning signs to ensure the protection of priority and other habitats on site;
- (ix) Mitigation, compensation and enhancement measures for insect/bees, reptiles and amphibians, including a Reptile Mitigation Strategy (the strategy shall include, but not be limited to, details of the proposed translocation of reptiles and amphibians from the site to a reptile receptor site and the location of reptile receptors), birds, hazel dormice, badger, bats, and hedgehog.

The approved CECoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details

- 19) No development shall take place until a Biodiversity Gain Plan (BGP) has been submitted to and approved in writing by the Local Planning Authority as part of the submission of the first Reserved Matters application.

The BGP must include:

- (i) revised biodiversity net gain calculations;
- (ii) information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat and any other habitat;
- (iii) the pre-development biodiversity value of the onsite habitat; and
- (iv) the post-development biodiversity value of the onsite habitat which should be at least 4.73% for Habitat units and 10.24% for hedgerow units.

The approved measures shall be implemented as approved and maintained as agreed.

- 20) No more than one month prior to the commencement of the development hereby permitted, including any clearance works on site, a repeat survey for the presence of badgers on the site and surrounding suitable habitat, with associated mitigation and compensation measures, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved mitigation and compensation measures.

Pre-commencement conditions – highways

- 21) No development hereby approved shall commence until a scheme to reduce traffic travelling over Tidcombe Bridge has been submitted to and agreed in writing by the local planning authority (in consultation with the local highway authority). All works agreed in that scheme shall be undertaken to the satisfaction of the local planning authority (in consultation with the local highway authority) in accordance with a timetable that forms part of the agreed scheme.

Other highways conditions

- 22) No above ground development shall take place until a Low Emissions Strategy of the operational development has been submitted to and approved in writing by the local planning authority. Details of secure cycle/scooter storage and a Travel Plan will form part of the overall Low Emissions Strategy. The development shall be implemented in accordance with the approved details.
- 23) In accordance with details that shall previously have been submitted to and approved in writing by the local planning authority, provision shall be made within the site for the disposal of surface water so that none drains onto any county highway.
- 24) 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, car parking and street furniture shall be constructed and laid out in accordance with details to be submitted to and approved in writing by the local planning authority 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.

Other ecological conditions

- 25) The development hereby permitted shall be carried out strictly in accordance with the recommendations detailed in the Ecological Impact Assessment report dated November 2023 (ref 2301129_P893_EcIA_Final01) covering avoidance of harm to bats and hazel dormice, mitigation, compensation and ecological enhancement. The proposed ecological mitigation and enhancement measures shall be guided by the above report and be further informed by measures required under licence from Natural England and shall be carried out prior to the development hereby approved first being brought into use and shall thereafter be retained and maintained in perpetuity. Within two weeks following implementation of the report's recommendations, a written record prepared by the consultant ecologist shall be submitted to the local planning authority to include records of compliance monitoring,

supervised habitat removal, and photographs of the installed ecological mitigation, compensation and enhancement measures.

- 26) No vegetation clearance on site shall take place during the bird nesting season (01 March to 31 August, inclusive) unless written confirmation from a suitably qualified ecologist has been obtained that the clearance of the site would not disturb nesting birds in accordance with the recommendations detailed within the Ecological Impact Assessment report dated November 2023 (ref 2301129_P893_EclA_Final01). A record of any works required to clear the site during the bird nesting season shall be kept and made available upon the local planning authority's request.

Restrictions on the development

- 27) No development on the site, with the exception of the conversion works to Tidcombe Hall, shall exceed 10m in height to the building ridge from existing ground level.
- 28) No more than 100 dwellings shall be provided via new build or conversion on the site pursuant to this planning permission.
- 29) The conversion of Tidcombe Hall and its associated outbuildings, as detailed on plans submitted and approved pursuant to condition 5, shall be implemented in full prior to the occupation of 75% of the new building dwellings hereby approved.



Costs Decision

Inquiry held on 20-22 May and 3-5 June 2025

Site visit made on 23 May 2025

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 24th June 2025

Costs application in relation to Appeal Ref: APP/Y1138/W/24/3358001

Land at Tidcombe Hall, Tiverton

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Tidcombe Holdings LLP for a full award of costs against Mid Devon District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for an outline application, with all matters reserved bar the main point of access and its associated works, for the conversion of Tidcombe Hall and outbuildings and the erection of dwellings to provide up to 100 dwellings in total, provision of community growing areas, public open space, associated infrastructure and ancillary works.

Decision

1. The application for an award of costs is partially allowed in the terms set out below.

The submissions and responses by the parties

2. The costs application was made in writing on the final sitting day of the Inquiry. It was not possible to receive the Council's response on this day. Therefore, it was agreed that the Council's response and any final comments from the applicant could be provided in writing within a specified timeframe. The Council's response was received on 16 June 2025 and the applicant's final comments were submitted on 17 June 2025.

Reasons

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG states that awards against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The applicant contends that the Council has behaved unreasonably on substantive grounds on two alternative bases.
4. The first alternative relates to development plan compliance and the change in circumstances regarding housing land supply. The applicant argues that by April 2025 at the latest, the Council was aware that it could not demonstrate a five year supply and should have accepted that LP Policy TIV13 was triggered via Policy S4 as its recently published Housing Action Plan was insufficient to resolve the deficit. At that point, the applicant contends that the Council should have conceded its case and thus avoided the expense of the Inquiry process.

5. It was unrealistic for the Council to argue that one should wait and see if the Action Plan resolved the supply position, particularly when LP Policy S4 sets no timeframe and the Action Plan itself gives little comfort on resolving the deficit. However, even if the Council had accepted that LP Policy TIV13 was triggered, it was still necessary to first consider whether the criteria in that policy were met before permitting development. Criterion (d) simply refers to protecting the setting of heritage assets and neither it nor the supporting text specify an acceptable level of harm. Therefore, it was not unreasonable for the Council to find conflict with criterion (d). It will be seen from my decision that I identified conflict here too. On the applicant's first alternative, unreasonable behaviour leading to unnecessary or wasted expense in the appeal process has not been demonstrated.
6. The second alternative relates to compliance with the National Planning Policy Framework (NPPF) and specifically the application of paragraph 11(d). The applicant contends that the Council failed to carry out the balance in NPPF paragraph 215 ('the heritage balance') to weigh the harms to designated heritage assets against the public benefits. Instead, the applicant argues the Council went straight from identifying heritage harm to applying NPPF paragraph 11(d)(i) to find that there was a strong reason for refusing the development on heritage grounds.
7. It is apparent that the Council did not clearly set out the heritage balance anywhere in its case to this Inquiry and it was absent from the proof of evidence of the Council's planning witness. Under cross-examination, the Council's planning witness conceded that it had not been carried out. When pressed on the matter, he accepted that the heritage balance was passed, meaning the public benefits of the proposed development outweighed the harm to the designated heritage assets.
8. The outcome of this heritage balance means that there was no strong reason for refusing the development proposed having regard to NPPF policies relating to designated heritage assets. However, the witness' concession at the Inquiry did not automatically mean that the Council should have withdrawn its entire case. Although NPPF paragraph 11(d)(i) was not applicable, it remained necessary to consider the balance under 11(d)(ii). At that point, the harms to designated heritage assets needed to be reconsidered alongside any other harms to see whether they significantly and demonstrably outweighed the benefits. It is conceivable that the 11(d)(ii) balance could have led to the proposed development being refused permission based on the weight afforded to the various harms and policy conflicts.
9. Nevertheless, while considerable importance and weight should be afforded to any heritage harm, the Council accepted that significant weight should be afforded to the delivery of housing in this case (as set out in the planning proof of evidence). Along with other public benefits, this was enough to outweigh the moderate and low levels of less than substantial harm to designated heritage assets and pass the heritage balance as the concession at cross-examination revealed. Therefore, the Council should not have been defending the second reason for refusal which states that the heritage balance was not passed.
10. The two parties were not far apart in terms of the amount of harm afforded to the conservation area and the listed farmhouse and afforded similar weight to the housing delivery benefits. If the Council had accepted earlier that the heritage balance was passed, heritage matters would not have been contested as a potentially determinative main issue and would not have needed formal evidence and cross-examination at the Inquiry. Therefore, by not carrying out the heritage

balance in a prompt and timely manner, the Council exhibited unreasonable behaviour which has led to unnecessary and wasted expense in the appeal process.

11. The points made by the parties about the notification and timing of the costs application are noted, but the relative late submission of the application does not invalidate its contents and the Council was afforded sufficient time to respond in writing. While the applicant could have responded to the Council's planning proof of evidence before the Inquiry, perhaps in the form of a rebuttal proof, they were not obliged to do so and were entitled to test the Council's case at the Inquiry itself.
12. Although a full award of costs is not justified, I conclude unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of contesting the second reason for refusal and a partial award of costs is therefore warranted.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mid Devon District Council shall pay to Tidcombe Holdings LLP, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Mid Devon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Tom Gilbert-Wooldridge

INSPECTOR