

Appendix 3 - SHDC Advice (Published After Committee in 2026)

From: Peter Whitehead (Peter.Whitehead@swdevon.gov.uk) on behalf of Peter Whitehead

Sent on: 04 February 2026 10:57:03

To: Development Management (South Hams & West Devon) (Development.Management@swdevon.gov.uk)

Subject: FW: 4116/24/OPA Bloor Homes land at Barrack Road Modbury

From: David Fairbairn <David.Fairbairn@swdevon.gov.uk>

Sent: 11 August 2025 16:53

To: Phil Baker <Phil.Baker@swdevon.gov.uk>

Cc: Patrick Whymer <Patrick.Whymer@swdevon.gov.uk>; Peter Whitehead <Peter.Whitehead@swdevon.gov.uk>

Subject: RE: 4116/24/OPA Bloor Homes land at Barrack Road Modbury

Hi Phil,

Thank you for your instructions. I think I suggested that we had a conversation when I returned from leave, but for whatever reason that did not happen, and you have now been away on leave. I hope you had a good break btw.

I agree that Mr Templeman is wrong when he says:

The development plan policies that are out of date include those policies within the Modbury Neighbourhood Plan. I accept that the Modbury Neighbourhood Plan contains policies and allocations to meet "*its identified housing requirement*" (NPPF para. 14b), but those policies and allocations relate to the housing requirement as set out in the adopted JLP, which both parties accept is no longer up to date given the December 2024 publication of the NPPF. The purpose and effect of NPPF para. 11(d) is therefore to remove all the policies that stand in the way of granting permission.

The final sentence is too broad a statement and a misunderstanding of paragraphs 11 and 14. Indeed, it is entirely contrary to what the Government's intention to provide greater protection for neighbourhood plans and re-tilting the balance back towards decisions being plan-led.

He is also wrong to make the concession in the second sentence. I appreciate that the concession was supportive of the position that you had taken, but in my view that is not the correct position.

It is agreed by all that paragraph 14 requires both the criteria a) and b) to be met. On a proper analysis of the Modbury Neighbourhood Plan provisions, while it satisfies the criteria that it became part of the development plan five years or less before the date on which the decision is made, no housing requirement for Modbury has been set. A housing requirement is derived from the housing figure for the neighbourhood area set out in the relevant strategic policies, an indicative figure provided by the local planning authority, or exceptionally determined by the neighbourhood planning body (PPG Paragraph: 097 Reference ID: 41-097-20190509). Neither the JLP generally nor Policy TTV24 specifically set out a housing requirement for Modbury or indeed the other smaller towns and key villages. I am not aware that a housing requirement was or has been requested by the Parish Council nor that the Parish Council determined one. What can certainly be said is that the MNP itself does not refer to one.

However, even if it were to be accepted that a housing requirement had been set, for example the 172 estimated new homes on the three strategic sites, the neighbourhood plan itself does not contain policies and allocations to meet that identified housing requirement. PPG Paragraph: 097 Reference ID: 41-097-20190509 makes it clear that strategic site allocations in other development plan documents cannot be relied upon for the purposes of paragraph 14. Even if that were not expressly said, Policy MNP1 refers to the TTV24 allocations as being included for information only. Also, while the supporting text to Policy MNP3 might refer to specific sites before dismissing them, the policy itself sets out only general principles. In the circumstances, paragraph 14 does not apply.

In the circumstances of the housing policies of the development plan being out-of-date, the shift in focus moves to the other material considerations, the starting point being the presumption in favour of sustainable development. So, planning permission is to be granted unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework [and the development plan] taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination." While this involves understanding the meaning of those policies (a legal test), their application involves a planning judgment being made by the decisionmaker. Given the substantial shortfall in housing numbers and therefore housing land supply, it would be unreasonable suggest that the neighbourhood plan policies constraining housing development to that within the settlement boundary, significantly and demonstrably outweighed the benefits of the proposed development such that sufficient weight could be given to them as to outweigh the presumption in favour of granting planning permission.

If you still want me to seek the views of counsel, I can do so, but as you will appreciate in view of my conclusions I agree with the opinion provided by Sarah Reid KC, albeit mine is considerably shorter.

Kind regards

DF

David Fairbairn BSc(Hons) MA Solicitor | Head of Legal Services and Monitoring Officer
South Hams District Council | West Devon Borough Council
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From: Phil Baker <Phil.Baker@swdevon.gov.uk>
Sent: 17 June 2025 09:25
To: David Fairbairn <David.Fairbairn@swdevon.gov.uk>
Subject: FW: 4116/24/OPA Bloor Homes land at Barrack Road Modbury

Hi David,
The email chain below considers the relationship between paras 11(d) and para 14, which seeks to provide additional protection for neighbourhood plans that accord with certain criteria.

The critical consideration is para 14(b), which reads:

1. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided the following apply:
 - a) the neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and
 - b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement (see paragraphs 69-70).

The agent for Bloor is suggesting that because the JLP is out of date on the basis of our housing supply position, that any local 'requirement' figure applied to an NP area cannot be considered to comply with para b. Whereas my view is that the intent of para 14 is to provide protection for NP areas despite the local plan being considered out of date, and that the local housing requirement for an NP area, even if derived from an out of date housing supply figure.

Given that a housing requirement figure can only be identified through a plan-making process, para 14 cannot be expected to only apply to local plans that have identified a housing requirement based on the new standard method – otherwise para 14 couldn't be used to provide protection for proactive NPs for at least 3 years whilst local plans are prepared with the new standard method as the basis for identifying a housing requirement.

We are suggesting that because Modbury NP reasserts the delivery of the strategic JLP sites, it is considered to contain policies and allocations to meet its identified housing requirement. As such, the Bloor site is beyond the edge of settlement and the appropriate 'countryside' policy in the NP applies – and against which the proposal clearly conflicts.

Bit of a ramble, may actually be easier to summarise it in person! If you don't have any time between now and Thursday, don't worry, we can pick it up on your return.

Kind regards

Phil

From: Peter Whitehead <Peter.Whitehead@swdevon.gov.uk>
Sent: 02 June 2025 16:12
To: Phil Baker <Phil.Baker@swdevon.gov.uk>
Subject: FW: 4116/24/OPA Bloor Homes land at Barrack Road Modbury

Hi Phil

I've met with Bloor Homes and appraised them of consultation responses on this one – including yours. They have now replied re the interpretation of 11(d) in the circumstances here with the Modbury NP. Could you review and advise please?

KR

Peter

From: Dan Templeton [REDACTED]
Sent: 02 June 2025 15:49
To: Peter Whitehead <Peter.Whitehead@swdevon.gov.uk>
Subject: RE: 4116/24/OPA Bloor Homes land at Barrack Road Modbury

[REDACTED]
External Message: This Message has originated outside your organization.

Dear Peter,

Further to our Teams meeting on 23 May, I have now had the opportunity to consider Phil Baker's e-mail (below) further and to reflect on the points that he makes. Having done so, I consider that Phil has misunderstood the significance of NPPF para. 11(d) and misapplied it.

Phil rightly acknowledges that the Council cannot demonstrate that it has a 5-year supply of housing land and that para. 11(d) is engaged. This confirms that "*where there are no relevant development plan policies, or the policies which are the most important for determining the application, are out of date*" that permission should be granted unless:

- (i) the Framework policies that protect areas or assets of particular importance provide a strong reason for refusal [the application site does not fall within any such area]; or
- (ii) the adverse impacts of doing so would demonstrably outweigh the benefits.

It is the first (and operative) part of para. 11(d) that is of most significance. In this case, as it is agreed that there is no 5-year supply, the development plan policies are out of date. The development plan policies that are out of date include those policies within the Modbury Neighbourhood Plan. I accept that the Modbury Neighbourhood Plan contains policies and allocations to meet "*its identified housing requirement*" (NPPF para. 14b), but those policies and allocations relate to the housing requirement as set out in the adopted JLP, which both parties accept is no longer up to date given the December 2024 publication of the NPPF. The purpose and effect of NPPF para. 11(d) is therefore to remove all the policies that stand in the way of granting permission.

It is therefore a circuitous argument to then seek to rely on the policies of the Modbury Neighbourhood Plan to resist the application.

In other words, the lack of a five-year housing land supply does not just trigger the application of the tilted balance, it also automatically renders the most important policies for determining the application out-of-date, which includes all policies that could potentially listed in a reason for refusal, including those within the Neighbourhood Plan.

On the basis of this interpretation, it seems clear to me that the application should be being considered positively by your Strategic Planning colleagues.

I should be grateful if you would share this with Phil, so that he has the opportunity to reflect and amend his position.

Many thanks and regards,

Dan.

Dan Templeton MRTPI
Consultant

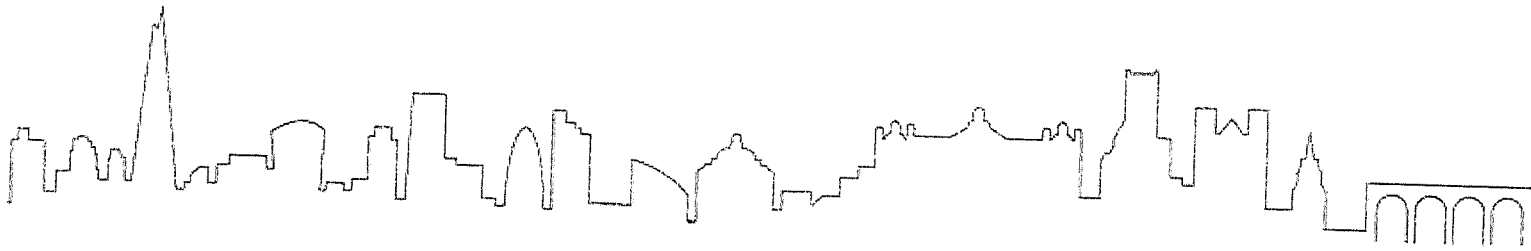
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From: Peter Whitehead <Peter.Whitehead@swdevon.gov.uk>

Sent: 12 May 2025 14:32

To: Development Management (South Hams & West Devon) <Development.Management@swdevon.gov.uk>

Subject: FW: 4116/24/OPA Bloor Homes land at Barrack Road Modbury

Consultation response from Strategic Planning. Please add email below to file. Public.

From: Phil Baker

Sent: 09 May 2025 09:26

To: Peter Whitehead

Subject: RE: 4116/24/OPA Bloor Homes land at Barrack Road Modbury

Good morning Peter,

With regard to above application, I would like to offer the following comments on behalf of the Strategic Planning Team:

It is acknowledged that following the publication of the new National Planning Policy Framework (NPPF) and method for calculation housing need in December 2024, that South Hams District Council can no longer demonstrate a 5 year supply of housing land. Our current land supply is calculated to be 2.53 years.

As such, paragraph 11(d) of the NPPF is applied, and the 'tilted balance' will apply in most circumstances. However, as para 12 states, the adopted development plan remains the starting point for decision making, and adopted policies should still be applied with significant weight insofar that they align with the relevant paragraphs in the new NPPF (as per para 232).

In addition, and of particular relevance to this application, paragraph 14 is engaged as there is an adopted neighbourhood plan in place for Modbury. There are two requirements within para 14 that must be satisfied before a decision taker is directed to act in a certain manner. Requirement a) applies to NPs that are 'five years old or less before the date on which the decision is made.' Modbury NP was adopted in 2023.

Requirement b) applies to NPs that 'contain policies and allocations to meet its identified housing requirement'. The Modbury NP housing requirement is considered and dealt with through positive allocations in the Plymouth and South West Devon Joint Local Plan (JLP), as is appropriate given Modbury's status as one of the more sustainable settlements in the District. Note that this is not the same as requiring the NP to allocate additional sites to meet the new housing need figure (which is unconstrained), but simply the identified housing requirement figure (which reflects constraints) in the adopted JLP. The NP identifies the JLP allocation policies as locations for strategic growth, and has proactively drawn a settlement boundary around these sites, reaffirming the status of the sites as the preferred route to deliver the identified housing requirement for Modbury. As such, it is considered that the Modbury NP also meets requirement 14(b) of the NPPF.

Having met both requirements, the first part of para 14 is engaged, which states that

14. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits

In summary, this requires the decision taker to refuse the application under the requirement of para 11(d), regardless of the status of the adopted local plan, if there is identified conflict with adopted NP policies.

Given that this proposal site is on unallocated land, and is outside the adopted settlement boundary, policy MNP1(2) applies. This requires that:

'2. Outside the settlement boundary development will be tightly controlled and only supported where it will meet the proven need for affordable housing for local people (as provided for by JLP policies TTV26 and TTV27 or where it is essential in

order to meet agricultural, forestry or other small-scale needs which cannot be met elsewhere. The plan also aims to control the scale, density and character of development so that it is in keeping with the locality and remains geared to meet local housing needs)"

JLP policies TTV26 apply to development in the countryside, and require applications for new homes to be justified by an occupational need tied to an agricultural occupation. Policy TTV27 is an exception site policy that requires no more than 40% open market housing. Whilst this proposal is an outline application, there has been no information provided to show that either policy can be satisfied. As such, the proposal fails to accord with NP policy MNP1(2).

Failure to meet this key policy in the NP can be considered to trigger the assumption that the adverse impact of the proposal is likely to be 'significantly and demonstrably outweigh the benefits' as stated in para 14.

This takes us back to para 11(d)ii, in which development proposals should be granted permission unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits". As such, there is no imperative for the local planning authority to grant permission for this scheme, despite our 5 year housing land supply position, given the clear identification of conflict with para 14.

As such, it is recommended that the proposal should be refused, in accordance with the specific requirements of the NPPF.

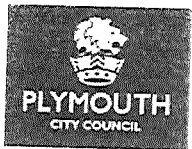
Kind regards

Phil

Phil Baker MA(Hons) MRTPI | (Interim) Head of Strategic Planning
For **South Hams District Council** and **West Devon Borough Council**

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Plymouth and South West Devon Joint Local Plan

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