

Local Government Ombudsman
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19 May 2026
Our ref: HJV/TAB/M05657-0002

Direct: 01392209594
Secretary: 01392 667682

CC: SHDC Monitoring Officer (email only)

Dear Ombudsman

**LG Ombudsman Complaint: Development at Barrack Road Modbury
Local Planning Authority: South Hams District Council
Planning Application Reference: 4116/24/OPA**

Introduction

We act on behalf of Modbury Parish Council ("MPC"), which represents the residents of Modbury Parish.

This complaint concerns alleged maladministration by South Hams District Council ("SHDC") in the exercise of its development management and planning functions in relation to an outline planning application submitted by Bloor Homes Development for the construction of 75 dwellings (application reference: 4116/24/OPA).

This application was considered by the SHDC Development Management Committee on 15 January 2026. The Committee resolved to grant outline planning permission, subject to the prior completion of a section 106 agreement to secure mitigation to make the development acceptable in planning terms.

Summary complaint

MPC asserts that significant procedural failures occurred both prior to and during the Committee meeting. These failures affected the integrity of the Committee's decision-making process and prejudiced proper consideration of matters central to the application, including highway access, impacts and safety, and the legal status of the Modbury Neighbourhood Plan ("MNP"). These failures undermine public confidence in SHDC's discharge of its statutory functions as the local planning authority for the area in which the development is situated.



Members of Law
Society Panels for
Children
Family Law
Clinical Negligence

Had proper internal processes and practices been appropriately applied, MPC contends that determination of the application would have been deferred or adjourned, pending further investigation and clarification of both legal and technical matters. Furthermore, it is likely that the development proposal would not have been approved – at least not without material amendments, including additional mitigation measures to address technical concerns raised by MPC and members of the public.

Timing of complaint

MPC is lodging this complaint to the Ombudsman after resolution to grant but before the grant of planning permission, in the hope that SHDC will review its position and proactively address the concerns raised in this complaint.

In any event, MPC is asking the Ombudsman to provide its view on SHDC's conduct, and guidance on how SHDC's internal processes and practices might be improved so that this kind of deeply unsatisfactory situation could be avoided in the future.

Finally, MPC is looking for SHDC to publicly acknowledge shortcomings in its handling of this development proposal.

The full suite remedies requested is set out at the end of this complaint.

MPC reserves its position in relation to judicially reviewing SHDC's grant of planning permission, in the event SHDC does not seize the opportunity to proactively remedy the concerns set out in this complaint. However, the very purpose of this complaint is to avoid the need for judicial review and the associated cost to the public purse, as well as to improve SHDC's internal processes and practice to achieve better democratic accountability, going forward. For these reasons, MPC considers that the Ombudsman is the right complaints authority and the timing of the complaint is appropriate, notwithstanding the availability of alternative legal remedies following grant of planning permission.

Grounds of complaint

The complaint is advanced on the following grounds:

1. **Incorrect advice concerning the status of MNP**
SHDC provided incorrect and/or misleading advice to MPC regarding the continuing validity and protected status of the MNP.
2. **Failure to communicate material information in connection with the status of the MNP in a timely manner**
SHDC failed to provide timely notice to MPC, consultees, stakeholders, and residents that the legal status of the MNP had been called into question in a Counsel's opinion obtained by the developer (and accepted by SHDC).
3. **Misapplication and/or minimisation of relevant policies in the MNP**
SHDC failed properly to apply or give appropriate weight to policies within the MNP relating to highway access, impacts and safety.

4. **Failure to provide appropriate highways expertise at Committee**
In circumstances where highway access, impacts and safety constituted one of the principal controversial issues, SHDC failed to ensure attendance at Committee by a highways officer capable of answering technical questions raised by Committee members and objectors.
5. **Improper officer advice during Committee proceedings**
SHDC's planning officers overstepped their role as expert adviser, and stepped into the role of scheme advocate, by discouraging refusal of the application and declining to defend such a refusal at planning appeal.
6. **Substantive unsoundness of the decision-making process**
The final resolution to grant permission was substantively unsound (even if not, strictly, unconstitutional) given the voting imbalance and unusually high number of abstentions within the Committee.
7. **Failure to properly respond to MPC's complaint or to engage with MPC and residents following Committee**
SHDC failed to engage meaningfully through its own complaints procedure. A public meeting convened by MPC in March 2026 highlighted continuing community concerns, but both SHDC and the developer declined to attend and have not responded to the circulated Minutes.

Background to Modbury Parish

Modbury is a small rural parish centred around an historic market town within South Hams. The parish has a population exceeding 2,100 residents and more than 900 dwellings. The town contains a range of local businesses and community facilities, including a primary school; a health centre serving the wider area; recreational and sports facilities; and a village hall. Public transport is limited to the Number 3 bus service connecting the town to Plymouth and Kingsbridge, with services ceasing in the early evening.

The Modbury Neighbourhood Plan (2022-2033)

Following referendum in December 2022, the MNP was adopted on 30 March 2023, following approximately eight years of community consultation and development. The MNP consequently forms part of the local development plan, pursuant to section 38(3A) of the Planning and Compulsory Purchase Act 2004.

Legal Status and Function of Neighbourhood Plans

Under paragraph 14 of the National Planning Policy Framework (December 2024), neighbourhood plans like MNP are afforded an elevated or "protected" status in planning decision-making, on the following terms:

*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).

Paragraph 11d applies to this development proposal, as SHDC cannot demonstrate a five-year supply of deliverable housing sites.

The MNP is less than 5 years old. MPC was therefore operating on the assumption (encouraged by advice received from SHDC – see below) that any conflict with the MNC would significantly and demonstrably outweigh the benefits of this development proposal, and it objected to the development on this basis. A copy of MPC's objection is attached at **Appendix 1** (in two parts as the application was amended and reconsulted upon).

Material Change in Planning Circumstances

In December 2024, alongside the version of the NPPF cited above, the Government published revised national housing targets, including a revised identified housing requirement for SHDC. MPC sought reassurance from SHDC that the MNP retained its "protected status", despite these national planning changes. In March 2025, an NPPF briefing meeting was held by SHDC and a senior liaison officer at SHDC reassured MPC in writing that the MPC would continue to have this protected status. A copy of this correspondence is attached at **Appendix 2** (see top of second page, which clearly refers to the MPC).

MPC was not informed that, in July 2025, SHDC received a legal opinion from King's Counsel (commissioned by the developer) asserting that the MNP no longer benefited from protected status, inter alia, because it did not contain policies or allocations to meet SHDC's identified housing requirement. This opinion was published on the online register in July (alongside all the other application documents) but not flagged to MPC in any way before Planning Committee in January 2026.

Failure to Obtain Independent Advice and to Provide a Timely Update to Stakeholders of the Material Change in Planning Circumstances

Despite the obvious significance of this legal opinion:

- MPC was not notified;
- residents were not informed;
- neighbouring parish councils were not informed; and
- many Committee members themselves appeared unaware of the issue until the January 2026 Committee meeting.

SHDC's internal legal digest of this opinion (obtained on 11 August 2025) was published on SHDC's online register on 4 February 2026 i.e. after the Committee meeting. A copy of this advice (contained in e-mail correspondence between SHDC officers) is attached at **Appendix 3**. This material information was withheld from the public domain, for approximately eight months.

A screenshot of SHDC's online planning register¹ is provided below, to confirm this chronology:

<input type="checkbox"/>	Consultation Response - Internal	04/02/2026	Legal Advice	(0kb)	-
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The implications extended far beyond the present application. MPC submits that SHDC should have promptly shared the developer's legal opinion - or at least a summary of that opinion and SHDC's understanding of the practical consequences of the opinion - to MPC and other affected stakeholders to enable:

- independent legal advice to be obtained;
- informed participation in the planning process; and
- proactive and timely consideration of the implications for this application and future applications.

Instead, SHDC appears only to have consulted on the developer's legal opinion internally *and* failed to notify MPC and other affected stakeholders in a timely manner.

MPC is concerned that SHDC only consulted with its own legal department, despite that same department having previously been instrumental in advising MPC that the MNP remained protected despite the national policy changes in December 2024. MPC submits that it would have been far preferable for SHDC to obtain independent legal advice before changing its position. At the very least, the developer's legal opinion (or a summary of the same) should have been shared with MPC and other affected stakeholders well before Planning committee, to allow such interested parties to obtain their own advice and review their objections to the development in light of this new information.

Continued Relevance of Neighbourhood Plan Policies

Even if the protected status of the MNP is undermined by recent changes in national policy, the policies within the MNP remain important material considerations. However, MPC considers that these policies were either disregarded or approached too superficially and consequently afforded insufficient weight during the Committee's deliberations.

In particular:

- **Policy MNP11** concerning community infrastructure and highway impacts; and
- **Policy MNP12** concerning safe pedestrian and cycle access

were not, in MPC's view, properly applied, despite being directly relevant to the issues before the Committee.

¹ Source: [Planning application: 4116/24/OPA - Planning Page for DEF | South Hams District Council](#) (verified 19 May 2026)

Copies of these policies are attached at **Appendix 4**. In summary:

- **Policy MNP11** provides that new development should not “worsen traffic congestion or adversely affect highway safety or traffic flow.”
- **Policy MNP12** requires developments to, “improve safe pedestrian and cycle access to all facilities particularly between the town and the recreation ground.”

These policies are particularly relevant to the next ground of complaint, which concerns SHDC’s cursory treatment of highway access, impacts and safety issues in relation to the proposed development.

Context is Key

MPC appreciates that the Ombudsman’s role is not to adjudicate on the planning merits of the development proposal. Nevertheless, MPC wishes to explain its concerns regarding the ‘highway elements’ of the development proposal (broadly conceived), as this context helps explain why the absence of an expert highway officer at Committee was so concerning, as was the superficial manner in which the above MNP policies were considered by officers advising Committee.

Location

The existing estate currently comprises approximately 132 dwellings and relies on a single access and exit point via Lanveoc Way onto the A379, the principal route between Plymouth and Kingsbridge.

Traffic and Congestion

MPC and residents contend that adding 75 additional dwellings using the same constrained access point onto the A379 would inevitably worsen congestion and highway safety, contrary to Policies MNP11 and MNP12.

Unsafe Pedestrian and Cycle Access

The proposed pedestrian and cycle route currently exits onto an unlit narrow country previously identified as hazardous.

Residents have raised longstanding concerns regarding:

- the location of the junction on a blind bend;
- previous traffic accidents at the site;
- narrow estate roads with significant on-street parking;
- pedestrian safety, particularly for children;
- failure to provide adequate highway lighting, or other mitigation to address the above concerns.

Construction period impacts

Residents have also raised concerns about the impact of prolonged construction traffic over the anticipated three-year build period. Amongst other concerns, residents remain concerned that construction vehicles will be unable safely to navigate the estate roads without mounting pavements and damaging verges.

Failure consider alternatives

Residents and MPC also identified a potential alternative construction access route from the opposite side of the estate, closer to the proposed development site. This option appears not to have been meaningfully explored by the developer or SHDC.

Defects in developer's highway impact assessments

The highway impact report submitted by the developer addressed only the principal access point and did not adequately address:

- through-traffic impacts;
- internal estate circulation;
- pedestrian safety within the estate; or
- construction traffic impacts.

In MPC's opinion, it did not adequately address the concerns raised by MPC or residents, outlined above.

Principal controversial issue

It is clear from the concerns outlined above, that the suitability and safety of site access arrangements and the highway impacts of the development constituted one of the principal controversial issues relating to the application.

The Ombudsman is also asked to note that many of these concerns were shared by SHDC's technical advisor on highway matters i.e. Devon County Council ("DCC"), as the relevant Local Highway Authority for the area in which the development is located.

DCC originally objected to the application. DCC's original objections are attached at **Appendix 5** (two parts). MPC acknowledges that DCC withdrew its objections in relation to the requirement for certain 278 highway works before Planning Committee. DCC's pre-Committee consultation response is attached at **Appendix 6**. However, this response does not substantively address the concerns raised by MPC and residents, outlined above. It is also not clear whether DCC withdrew its objection in full.

This context makes it abundantly clear that the highways element of this development proposal was complex and controversial and Committee members would have benefited from expert officer guidance to help them navigate these issues. This is consistent with guidance issued by National Highways which, whilst not directly relevant to this planning

application, helps illustrate the circumstances in which expert officer attendance is particularly beneficial. We have therefore summarised it below.

National Highways Guidance

Although the A379 is not part of the Strategic Road Network (which is the road network that falls within National Highways' jurisdiction) it is an important sub-regional route and provides resilience to the M5. MPC therefore considers National Highways guidance² regarding officer attendance at planning committees to be relevant and helpful to the Ombudsman consideration of this ground of complaint. That guidance identifies the importance of highways officer attendance where proposals may involve:

- adverse safety impacts;
- increased queuing;
- significant access issues; or
- material impacts on traffic flow.

The present application plainly engaged at least some of these concerns, as outlined above.

Absence of Expert Highway Officer at Committee

In these circumstances, it is very surprising that the highway officer consulted on the development proposal before Committee was not present at the meeting between the developer and SHDC to discuss the section 278 highway works originally requested by DCC (refer to the DCC e-mail consultation response at **Appendix 6**); and further, that this officer (or any other technically competent DCC representative) did not attend the Committee meeting.

This absence of expert representation prejudiced the Committee's ability to properly scrutinise the application. Committee members raised a number of technical questions concerning:

- road safety;
- estate capacity;
- construction traffic;
- pedestrian safety; and
- suitability of the proposed access arrangements.

An video link to the Committee meeting is available here [South Hams Development Management Committee - 15th January 2026](#) to allow the Ombudsman to satisfy themselves of this fact.

Those questions could not be answered without an appropriately qualified highways professional, and members were repeatedly referred back to the written officer report. One planning officer speculated that estate roads are "sometimes overengineered" to

² See: [Planning and the strategic road network in England - National Highways](#) (link verified 19 May 2026)

accommodate future traffic increases but could not confirm whether that applied in this case. A councillor expressly stated during proceedings that they wished to challenge aspects of the highways report submitted by the developer but was again referred only to the officer report.

MPC submits that, in these circumstances, SHDC's approach to legitimate concerns about the highway elements of this development proposal raised by MPC, residents and members is wholly unsatisfactory and undermines the public confidence in the planning system. Whilst lack of expert representation at Committee might not be strictly unlawful, it is certainly procedurally suboptimal, and SHDC should have exercised its discretion to defer the meeting to allow for DCC officer attendance.

Officer Conduct During Debate

During debate on a proposed refusal motion, the SHDC case officer summarised councillors' concerns regarding highway access and safety but stated that officers disagreed with those concerns and advised that councillors supporting refusal would need to "personally defend" the decision at appeal because officers would not do so.

While planning officers are entitled to advise members regarding appeal risks, MPC submits that such advice must be:

- balanced
- objective; and
- accompanied by a proper explanation of relevant planning considerations.

The comments made by the case officer risked discouraging members from exercising independent planning judgment.

SHDC's approach is wholly unsatisfactory, because highway access, impacts and safety concerns can constitute lawful and sustainable grounds for refusal where development would adversely affect pedestrians, cyclists, or the surrounding road network. MPC notes that SHDC has recently refused another comparable planning application at close proximity to the development site³ on highway-related grounds of refusal, yet this was not brought to members' attention (even if only to distinguish the facts of that case, from those in play here).

The Local Government Association's guidance document *Probity in Planning*⁴ provides that where members are minded to depart from officer recommendations:

- detailed planning reasons should be formulated;
- officers should have opportunity to consider those reasons; and
- where concerns exist regarding validity of reasons, the matter should be deferred or adjourned for further consideration.

³ SHDC reference 0384/23/OPA – where reason for refusal no. 2 states, "The proposed development is likely to generate an increase in pedestrian traffic on a highway lacking adequate footways with consequent additional danger to all users of the road..."

⁴ [34.2 Probity in Planning 04.pdf](#)

No such opportunity was afforded in this case. In the round, it would appear to MPC that the case officer in this case overstepped their role as expert and neutral advisor, to scheme advocate.

Nature of the Vote

The Development Management Committee comprised 12 members. At the meeting:

- 3 members were absent;
- 2 members voted in favour;
- 2 members voted against; and
- 5 members abstained.

The application ultimately passed only by virtue of the Chair's casting vote. MPC submits that such a substantial level of abstention raises serious concerns regarding whether members considered themselves sufficiently informed to reach a confident decision.

A lack of sufficient information or technical understanding is a common reason for abstention from voting. If that was the case here, it further supports MPC's position that the decision-making process was unsound in substance even if not strictly unconstitutional.⁵

What Should Have Happened, Had SHDC Followed Proper Procedure and Practices

In summary, MPC submits that the Committee meeting should have been adjourned or deferred given:

- uncertainty regarding the status of the MNP;
- unresolved technical concerns concerning highway access, impacts and safety;
- absence of highways expertise to help resolve those concerns; and
- a motion to refuse the application, where members should have been afforded the opportunity to formulate their reasons for refusal.

Failure Properly to Respond to Complaints

Following the Committee decision, MPC received substantial complaints from residents concerning:

- procedural failings;
- highway safety;
- construction impacts; and
- public confidence in the planning process.

⁵ MPC acknowledges that SHDC's Constitution allows matters to be decided by a simple majority of those Councillors voting and present in the room. However, given the number of abstentions (combined with absentees), this does not instil confidence in democratic decision making in circumstances outlined in this letter.

MPC subsequently:

- wrote formally to the Chair of Planning and Committee members on 11 February 2026 (**Appendix 7**);
- submitted complaints through SHDC's formal complaints procedure (online); and
- obtained legal advice from Tozers Solicitors.

Although a response was received from the Chair of Planning (**Appendix 8**):

- MPC notes that no response has been received through the formal complaints process; and
- MPC considers that the Chair's reply failed adequately to address the concerns raised.

Public Meeting with Residents

On 20 March 2026, MPC convened a public meeting at the request of residents to discuss ongoing concerns regarding:

- highway safety;
- construction impacts;
- traffic flow; and
- the integrity of the planning process.

Both SHDC and the developer were invited to attend but declined.

Minutes of the meeting were subsequently circulated to both parties, but no response has been received. The Minutes are attached at **Appendix 9**.

Conclusion

MPC submits that the evidence outlined above demonstrates multiple procedural failures by SHDC, including:

1. incorrect advice concerning the status of MNP;
2. failure to communicate material information in connection with the status of the MNP in a timely manner;
3. misapplication and/or minimisation of relevant policies in the MNP;
4. failure to provide appropriate highways expertise at Committee;
5. improper officer advice during Committee proceedings;
6. substantive unsoundness of the final decision-making process;
7. failure to properly respond to MPC's complaint or to engage with MPC and residents following Committee.

Collectively, these failings undermine confidence in the integrity and fairness of the planning process.

Requested Remedies

To restore public confidence and address the procedural failures identified above, MPC respectfully requests that the Ombudsman considers recommending:

1. That the decision to grant outline planning permission be set aside and the application reconsidered through a fresh Committee process.
2. In any event, that SHDC arrange a formal meeting, prior to grant of planning permission, involving:
 - Committee members;
 - DCC highways representatives; and
 - local residentsto address the outstanding concerns regarding highway access, impacts and safety and the application of the relevant MNP policies.
3. If SHDC grants permission for the proposed development, that the section 106 agreement be revisited in light of the outputs of this meeting and strengthened to address, inter alia:
 - construction period traffic impacts;
 - highway safety at Lanveoc Way and Barracks Road, including pedestrian and cyclist protection measures; and
 - any other matters discussed at the meeting, which help make the development acceptable in planning terms and meet the legal tests for section 106 planning obligations.
4. That SHDC commissions an independent legal review into the status and treatment of the MNP and other Neighbourhood Plans in its administrative area, and issues consistent guidance to Parishes and other affected stakeholders, going forward.
5. That SHDC formally acknowledge that its decision-making process in connection with this application fell below the standards expected of a transparent and accountable local planning authority.

Alternative to Litigation

As noted above, MPC recognises that it can apply to judicially review SHDC's decision-making following grant of planning permission. However, judicial review is time consuming, resource intensive and disproportionately costly on the public purpose.

MPC's preference is for SHDC voluntarily to take the corrective steps outlined above to:

- improve democratic accountability;
- restore public confidence; and
- ensure that future planning decisions are taken through a procedurally fair process.

In summary, with the help of the Ombudsman, MPC is seeking a constructive and practical resolution aimed at avoiding similar procedural failings and community grievances in future cases.

Yours faithfully

The signature is handwritten in black ink, appearing to read 'Hanna Virta'. It is written in a cursive style with a horizontal line above the first few letters.

Contact:

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