

CABINET

9TH JULY 2020

REPORT OF HEAD OF PLANNING, ECONOMY AND REGENERATION

MID DEVON LOCAL PLAN REVIEW ADOPTION

Cabinet Member(s): Councillor Graeme Barnell, Cabinet Member for Planning and Economic Regeneration

Responsible Officer: Mrs Jenny Clifford, Head of Planning, Economy and Regeneration

Reason for Report: To present the Inspector's Report into, and recommend the adoption of, the Mid Devon Local Plan Review 2013 – 2033 including main modifications and additional (minor) modifications

RECOMMENDATION:

That Cabinet

1 notes the Inspector's Report at Appendix 3; and 2 recommends to Council that:

- (a) The Council adopts the Mid Devon Local Plan Review 2013 – 2033 (Appendix 1), under Regulations 26 and 35 of the Town and Country (Local Planning)(England) Regulations 2012, including main modifications pursuant to section 23 of the Planning and Compulsory Purchase Act 2004 confirmed by the Inspector in his report (Appendix 3), and the Council's additional (minor) modifications (Appendix 4).**
- (b) The Council adopts the Mid Devon Local Plan Review 2013 – 2033 Policies Map (Appendix 2) together with any changes needed to this through the Inspector's main modifications in his report (Appendix 3) including Plan MM35 (Appendix 9), Plan MM45 (Appendix 10) and the Council's additional (minor) modifications (Appendix 4) as described in Section 6 to this report.**
- (c) The Council notes that, in accordance with Regulations 26 and 35 of the Town and Country (Local Planning)(England) Regulations 2012 the following documents will be published on the Council's website, and will be made available for inspection, free of charge at the Council's Phoenix House office during its opening times and in local libraries in Mid Devon once this becomes possible following a relaxation of restrictions of movement and public gatherings currently in place due to the Covid-19 pandemic:**
 - (i) Mid Devon Local Plan Review 2013 – 2033**

- (ii) **Mid Devon Local Plan Review 2013 – 2033 Adoption Statement (Appendix 5); and**
 - (iii) **Sustainability Appraisal Report (Appendix 6) and Sustainability Appraisal Post-Adoption Statement (Appendix 7).**
- (d) **The Council notes that the Adoption Statement (Appendix 5) is sent to the Secretary of State and to any person who has asked to be notified of the adoption of the Mid Devon Local Plan Review 2013-2033.**
- (e) **The Council approves the Sustainability Appraisal Report (Appendix 6) and the Sustainability Appraisal Post-Adoption Statement (Appendix 7).**
- (f) **Delegated authority is given to the Head of Planning, Economy and Regeneration in consultation with the Cabinet Member for Planning and Economic Regeneration to make any typographical, grammatical, graphical and presentational changes to the Mid Devon Local Plan Review 2013 – 2033 (e.g. paragraph and table numbers) and its Policies Map to finalise the plan before it is published, including any changes that are necessary to the Policies Map to reflect the Devon Minerals and Waste Plans.**

Financial Implications: No direct implications. However securing an up to date development plan is vital to support wider economic and housing development. It will be an important part of the framework that will enable Community Infrastructure Levy and the effective operation of s106 obligations. There is funding provision for the publication of the adopted Mid Devon Local Plan Review (hereafter referred to as the “Local Plan Review”).

Legal Implications: Regulation 4 (amendment of Regulation 10A) of the Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017, exercises the powers of the Planning and Compulsory Purchase Act 2004 and the Neighbourhood Planning Act 2017, and places a requirement for a review of the Local Plan to be completed every five years starting from the date of the adoption of the Local Plan. Once adopted the Local Plan Review will carry full weight in the determination of planning applications and will replace the Mid Devon Core Strategy (July 2007), the Local Plan Part 2 (Allocations and Infrastructure DPD)(October 2010) and Local Plan Part 3 (Development Management Policies)(November 2013).

Any person aggrieved by a decision to adopt a development plan document (local plan) may apply to the High Court on the grounds that the decision was not within the powers of the Council or that a procedural requirement has not been complied with – the application has to be made within 6 weeks of adoption.

Risk Assessment: The Inspector examining the Local Plan Review has made clear in his report where main modifications are necessary in order for the plan to be made sound, and without which the plan will be unsound. A decision not to approve all of

the Inspector's main modifications will mean that the Council will not be able to adopt the Local Plan Review as without these main modifications the Local Plan Review will be unsound and not capable of being adopted. A decision to not adopt the Local Plan Review with the Inspector's main modifications would leave the Council with an existing local plan that is out of date and which at appeal has already been found in part to be inconsistent with the NPPF. As a consequence the district would remain more vulnerable to speculative planning applications promoting development in locations that the Council has not identified for sustainable growth. Non adoption would also mean that the economic benefits of planning for sustainable growth would not be realised and the Council's negotiation position in terms of the provision of important infrastructure and affordable housing would be weakened. A decision to not approve the Local Plan Review with the Inspector's main modifications would potentially harm the Council's reputation as a plan making authority and negate the effort and investment in plan making since 2013.

As the Legal Implications make clear, there is a statutory right to challenge the adoption of a local plan on certain grounds, including procedural, and it is therefore essential that the Council gets the process of adoption correct.

Budget and Policy Framework: The adoption of the Local Plan Review forms the final stage that will complete this round of plan making. Councils are required to keep development plans up to date with a cycle of plan review and updates a minimum of every five years. Budget provision is made for this statutory function with the use of earmarked reserves. The Policy Framework consists of both statutory documents that have to be adopted or approved by the Council as well as locally determined policies and strategies that form an integral part of the decision making process and their subsequent implementation. Once adopted the Local Plan Review will be added to the Council's policy framework.

Equality Impact Assessment: The Local Plan Review has been screened through Equalities Impact Assessment. The Equalities Impact Assessment 2017 has been updated through an Addendum with the assessment of the impact of the main modifications (which are now recommended by the Inspector) in terms of the five policy areas and the protected characteristics identified in the Equalities Impact Assessment. Whilst the Inspector has satisfied himself with regards to his own assessment of the Public Sector Equality Duty (s.149 of the Equality Act 2010), the Council must also make its own final assessment at the time of a decision on adoption of the Local Plan Review.

Relationship to Corporate Plan: Expediting the Local Plan Review is a key corporate priority. The Local Plan Review will form the legal basis for determining planning proposals, once it has been adopted, and as a vehicle to realise a range of corporate priorities.

Impact on Climate Change: The Local Plan Review has been prepared within a legal framework and national planning policy that has at its heart the principle of sustainable development and policies to help address climate change through the development and use of land.

1.0 Introduction/Background

Submission of the Local Plan Review

- 1.1 The Mid Devon Local Plan Review Submission Version (incorporating proposed modifications), hereafter referred to as the “Local Plan Review”, was submitted on 31st March 2017 to the Planning Inspectorate for its examination. This was in accordance with the decision of the Council at its meeting on 1st December 2016 at which Council adopted the recommendations of the preceding Cabinet meeting held on 21st November 2016. The submitted Local Plan Review included a land allocation at Junction 27 and associated housing sites, these having previously also been considered at meetings of Cabinet and Council on 15th September 2016 and 22nd September 2016 respectively. These decisions were reaffirmed by the Council on 21st February 2018 (Minute 116).
- 1.2 Mr Paul Griffiths BSc (Hons) BArch IHBC, was appointed by the Secretary of State as the Inspector to undertake the examination.
- 1.3 The appointed Inspector was charged with assessing whether the submitted Local Plan Review is ‘sound’ under the 2012 National Planning Policy Framework (NPPF) through transitional arrangements provided in paragraph 214 of the 2019 NPPF. The tests of soundness are as follows:

Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;

Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;

Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and

Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.

Examination

- 1.4 A detailed explanation of the examination was reported to the Cabinet at its meeting on 21st November 2019 (item 86) and subsequent meeting of the Council on 4th December 2019 (item 99). For the sake of brevity this is summarised, and brought up to date, as follows:
- 1.5 Preliminary hearings were held on the 20th and 21st September 2018 specifically in relation to Policy J27, Policy SP2 Higher Town, Sampford Peverell and Policy TIV16 Blundells School, Tiverton allocations. The

Inspector subsequently issued his letter to the Council dated 29th October 2018, in which he made preliminary conclusions in relation to these allocations.

- 1.6 Main hearings were held on the 14th, 15th, 19th and 20th February 2019 at which he invited the Council and participants to respond to 49 questions.
- 1.7 The Inspector issued his post hearing advice note on 21st May 2019 in which he made further preliminary conclusions and indicated where he considered main modifications would be needed to the Local Plan Review in order for it to be found sound. The Inspector invited the Council to undertake further work to address his concerns in respect of certain policies, including the housing trajectory in the early years of the plan, where remedies would be needed to maintain a five-year supply of deliverable housing sites.
- 1.8 In accordance with delegated authority through the Council's approval of Minute 41 on 29th August 2018, officers prepared and agreed with the Cabinet Member for Planning and Economic Regeneration a Draft Housing Land Supply Update June 2019 (Examination document reference ED20) and a Sustainability Appraisal Implications Report (ED21).
- 1.9 The Inspector invited participants at hearings related to housing land supply and Policy SP2 Higher Town, Sampford Peverell and Policy CU21 Land at Colebrook, Cullompton to comment on the Draft Housing Land Supply Update June 2019 and Sustainability Appraisal Implications Report. Ten representations were received from the hearing participants (ED23) and the Inspector invited the Council to comment on these representations (ED22). Officers submitted a response to comments received to the Draft Housing Land Supply Update June 2019 and Sustainability Appraisal Implications Report to the Planning Inspectorate on 6th September 2019.
- 1.10 The Inspector contacted the Council on 27th September 2019 and advised that he has "*carefully considered the material contained in ED20, ED21, ED22 and ED23 and has no further questions at this stage. On that basis, the Inspector is content for the Council to publish its draft Main Modifications for consultation as soon as it is ready to do so.*"
- 1.11 Officers prepared a schedule of Proposed Main Modifications to the Local Plan Review guided by the Inspector's advice in his post hearings advice note. This included proposed main modifications to the housing trajectory that have previously been published and consulted on with relevant participants at the hearings.
- 1.12 Officers also prepared, for the sake of completeness and transparency, a schedule of additional (minor) modifications to the Local Plan Review. These additional modifications are 'minor' since they are factual and grammatical corrections and do not materially affect the plan's policies or go to the heart of the plan.
- 1.13 Consultant LUC undertook an assessment of the proposed Main Modifications to the Local Plan Review for the purpose of the Sustainability Appraisal. This

is since the Planning and Compulsory Purchase Act 2004 and Environmental Assessment of Plans and Programmes Regulations (2004) (“The SEA Regulations”) place a legal requirement for the Local Plan Review to be supported by a sustainability appraisal (SA). This legal requirement is an important element of testing the “soundness” of local plans that is required by National Planning Policy Framework paragraph 182. Consultant LUC also screened the proposed Main Modifications for the purpose of Habitat Regulations Assessment.

- 1.14 The Equalities Impact Assessment 2017 was updated following the proposed Main Modifications.
- 1.15 On 4th December 2019 the Council approved proposed Main Modifications for the purpose of public consultation, together with additional (minor) modifications, addendum to the Sustainability Appraisal, addendum to the Habitat Regulations Assessment and addendum to the Equalities Impact Assessment.
- 1.16 On 5th December 2019 the Council wrote to the Planning Inspectorate (**Appendix 8**) and formally requested that the Inspector, under section 20(7)(c) of the Planning and Compulsory Purchase Act 2004, recommend main modifications to the Local Plan Review in order for it to be made sound and legally compliant.
- 1.17 Public consultation on the Council’s proposed Main Modifications, additional (minor) modifications, addendum to the Sustainability Appraisal, addendum to the Habitat Regulations Assessment and addendum to the Equalities Impact Assessment took place over a 6 week period from 6th January to 17th February 2020.
- 1.18 75 consultation responses were received. With the exception of the Schedule of Additional (Minor) Modifications and consultation responses received on these (which are not before the Inspector for consideration), the schedule of proposed Main Modifications to the Local Plan Review, the addenda to the Sustainability Appraisal, Habitat Regulations Assessment, and the Equalities Impact Assessment 2017, and the consultation responses received on these were submitted to the Planning Inspectorate on 28th February 2020, so that they could be considered together with all previously submitted documentation and documents that have formed part of the examination and its hearings. The Council’s proposed Main Modifications were submitted to the Planning Inspectorate without prejudice to the Inspector’s final conclusions.

2.0 The Inspector’s Report

- 2.1 The Inspector’s report on the examination of the Local Plan Review was received on 26th June 2020 (see **Appendix 3**). This has been published as required and is available for inspection on the Council’s website. Receipt of the Inspector’s report marks the completion of the examination.
- 2.2 The Inspector’s report states the Local Plan Review has a number of deficiencies in respect of soundness (for reasons set out in his report) which

mean that he recommends non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act.

- 2.3 However, the Council has requested that the Inspector recommends main modifications to make the Local Plan Review sound and capable of adoption.
- 2.4 **The Inspector has concluded the Local Plan Review provides an appropriate basis for the planning of the District provided that a number of main modifications are made to it to make the Plan sound and capable of adoption. With the inclusion of the Inspector's recommended main modifications the Local Plan Review satisfies the requirements of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended) and meets the criteria for soundness in the NPPF (2012).**
- 2.5 **The Inspector has also concluded that he is satisfied that where necessary the Council has engaged constructively, actively and on an ongoing basis in the preparation of the Local Plan Review and the Duty to Cooperate has therefore been met.**
- 2.6 **In terms of legal compliance, the Inspector has stated: the Local Plan Review has been prepared in accordance with the Council's Local Development Scheme; consultation on the Local Plan Review and main modifications was carried out in compliance with the Council's Statement of Community Involvement; the Sustainability Appraisal has been carried out and is adequate and the conclusions reached in the Sustainability Appraisal in relation to sites are reasonable ones; that an appropriate assessment has been undertaken through the March 2015 Habitat Regulations Assessment and Addenda of August and December 2016. The Inspector has stated the Local Plan Review complies with all other relevant legal requirements, including in the Planning and Compulsory Purchase Act 2004 (as amended) and the Town and Country Planning (Local Planning) (England) Regulations 2012.**
- 2.7 The Inspector's report sets out where 55 main modifications are needed to the Local Plan Review (see **Appendix 3**, pages 28 to 45). The main modifications all concern matters that were discussed at the examination hearings and which were subject to public consultation, together with the addenda to the Sustainability Appraisal (SA), Habitat Regulations Assessment (HRA), and the Equalities Impact Assessment.
- 2.8 In some cases, where these relate to the provisions for Gypsies and Travellers, and Junction 27 the Inspector has incorporated a slight amendment to the detailed wording (shown in red in his report in **Appendix 3**) of the main modification and / or added consequential modifications where these are necessary for consistency or clarity:
- In the Local Plan Review Policy DM7 Traveller Sites and paragraph 2.31 the Inspector has replaced the words "more favourable" with the word "acceptable" in terms of the outcome sought for off-site provision of pitches for Gypsies and Travellers on housing allocations. He has also made clear

that where pitches are provided off-site on housing allocations these will be counted against the affordable housing targets for that site.

- In Policy J27 Land at Junction 27 of the M5 Motorway, the Inspector has qualified that any planning application which includes a 'designer outlet shopping centre' should be accompanied by a full Retail and Leisure Impact Assessment by adding the words "to ensure that any potential adverse impacts identified are addressed and mitigated".

The Inspector has stated that none of the amendments to the detailed wording of the main modifications significantly alters the content of the modifications as published for consultation or undermines the participatory processes and Sustainability Appraisal that has been undertaken.

2.9 In summary the Inspector's main modifications are as follows:

- Main modifications to establish a proper link between the development of housing and related infrastructure and to provide for a trajectory that should ensure a rolling five-year supply of deliverable housing sites;
- A group of main modifications necessary to allow the Plan to properly provide for the needs of Gypsies and Travellers and Travelling Show-People;
- Main modifications to ensure the major development proposed at Junction 27 of the M5 is brought forward in an acceptable way;
- Main modifications to deal with constraints relating to the allocation under Policy SP2 (Higher Town, Sampford Peverell); and
- Various main modifications to ensure that development management policies are effective and consistent with national policy.

2.10 Where the Inspector's report recommends that main modifications are needed to the Local Plan Review the Council must make those recommended main modifications if it wishes to adopt the plan. The report is not binding on the Council, but the Council may not adopt an unsound plan.

3.0 Sustainability Appraisal and Strategic Environmental Assessment

3.1 During the preparation of the Local Plan Review the Council has been required by law (Planning and Compulsory Purchase Act 2004 and Environmental Assessment of Plans and Programmes Regulations ["the SEA Regulations]) to carry out a Sustainability Appraisal (SA) and a Strategic Environmental Assessment (SEA) of the plan as it developed. This legal requirement is an important element of testing the "soundness" of local plans that is required by National Planning Policy Framework 2012 paragraph 182. Both the SA and SEA requirements were met through a single integrated process (referred to as SA), the method and findings of which were described

in a number of SA reports published alongside the different versions of the Local Plan Review during its development.

- 3.2 The SA (incorporating SEA) of the Local Plan Review was commenced by Council with the publishing of the SA Scoping Report in July 2013. Iterative stages of the SA were then published by the Council in 2014 SA Interim Report, 2015 SA Proposed Submission Consultation Report, 2017 SA Update, 2018 SA Update following an independent review of the 2017 SA Update, 2019 SA Implications in relation to the Council's proposed draft Main Modifications in relation to the housing trajectory and the remedies suggested by the Inspector and 2019 SA Addendum. All of the above documents, with the exception of the 2019 SA Addendum, were produced in-house by the Council. Officers have also prepared the Sustainability Appraisal Post-Adoption Statement (**Appendix 7**) ready for publication. The Independent Review of the 2017 SA Update which led to the 2018 further SA Update was undertaken by consultant LUC. LUC also completed the 2019 SA Addendum which presents an appraisal of Proposed Main Modifications consulted upon and considers their implications for the SA findings report previously.
- 3.3 The Inspector's report sets out amended detailed wording and/or consequential modifications where necessary, which have followed the consultation on main modifications and the SA Addendum (2019). The Inspector clearly notes that none of the amendments significantly alter the content of the modifications as published for consultation or undermines the participatory processes and SA that has been undertaken. Officers have expressly considered whether, in light of the Inspector's report and the appraisals previously undertaken, the SA as a whole remains adequate – officers advise that it is still adequate. This is set out in the Sustainability Appraisal Post-Adoption Statement (**Appendix 7**).
- 3.4 This report recommends to Council that the Sustainability Appraisal Report (**Appendix 6**) (comprising the totality of the documents described in paragraphs 3.2 and 3.3 above taken together) and the Sustainability Appraisal Post-Adoption Statement (**Appendix 7**) are approved.

4.0 Habitat Regulations Assessment

- 4.1 The Local Plan Review has been subject to a Habitat Regulations Assessment that has been undertaken by consultant LUC. This has included a report (March 2015), an addendum (August 2016) and the J27 Appropriate Assessment Report (December 2016). Consultant LUC also screened the proposed Main Modifications for the purpose of Habitat Regulations Assessment. The Inspector's slight amendments to the main modifications do not alter the findings of the Habitat Regulations Assessment and as such no need has been identified for the Habitat Regulations Assessment to be updated.

5.0 Equalities Impact Assessment

- 5.1 The plan has been subject to an Equalities Impact Assessment (EqIA) in 2017, and an Addendum in 2019 which was necessary following the Council's

proposed Main Modifications. The Inspector considered the EqIA as part of the examination process. In his report the Inspector commented that:

“141. I have had due regard to the aims expressed in S149(1) of the Equality Act 2010. This has included my consideration of several matters during the examination including the provision of sites to meet the needs of Gypsies and Travellers and Travelling Show-People, amongst other things.”

- 5.2 The EqIA has been kept under review throughout the local plan review examination and following the receipt of the Inspector’s report. Officers are of the view that there is nothing arising from the Inspector’s report, including in relation Gypsies, Travellers and Travelling Show-People, which fundamentally alters the findings of that assessment or which gives rise to any concerns with regard to the Public Sector Equality Duty in section 149 of the Equality Act 2010. Where the Inspector has recommended main modifications to the Local Plan Review these are likely to have probable overall neutral or positive impacts on those persons with protected characteristics.

6.0 Policies Map

- 6.1 The Council must maintain an adopted Policies Map which illustrates geographically the application of policies in the Local Plan Review. A comprehensive set of maps that together make up the Policies Map for the Local Plan Review was submitted to the Planning Inspectorate in March 2017 for examination. **Appendix 2** includes links to each of these maps.

- 6.2 The Inspector has made clear the Policies Map is not defined in statute as a development plan document and so he does not have the power to recommend main modifications to it. However, two of the published main modifications to the Plan’s policies require further corresponding changes to be made to the Policies Map. These further changes to the Policies Map were published for consultation alongside the main modifications (as Plan MM35 which relates to the Cullompton Map, and Plan MM45 which relates to the Sampford Peverell map).

- 6.3 When the Local Plan Review is adopted, in order to comply with the legislation and give effect to the Local Plan Review’s policies, the Council will need to update the submitted Policies Map to include all the changes proposed, incorporating any necessary amendments that the Inspector has identified in his report (**Appendix 3**), including Plan MM35 (**Appendix 9**) and Plan MM45 (**Appendix 10**), and also through the Council’s additional (minor) modifications that were consulted on and which are published in **Appendix 4**.

- 6.4 The Policies Map that was submitted for examination will be updated through the Main Modifications and the Additional (Minor) Modifications as follows:

Main modifications:

- Update the Cullompton Map with Plan MM35 to show the settlement limit around the site allocation CU21 Land at Colebrook (**Appendix 9**).

- Replace the Sampford Peverell Map with Plan MM45 to show the site allocation SP2 Higher Town, Sampford Peverell (**Appendix 10**).

Additional (minor) modifications:

- Update the Sampford Peverell map with additional (minor) modification AM 86 by placing the policy code SP2 on the map
- Update the Tiverton Map with additional (minor) modification AM83 to replace the Policy code AL/TIV/9 with TIV16.
- Update the Bow Map with additional (minor) modification AM84 to extend the settlement limit to include BO2.
- Update the Uffculme Map with additional (minor) modification AM85 to place the Policy code UF1 on the map and the settlement limit to include UF1 proposal.

6.5 The Policies Map will also need to be updated to reflect the Devon Minerals and Waste Plans where necessary.

7.0 Conclusions, recommendations and next steps

7.1 The Inspector has found the Mid Devon Local Plan Review 2013–2033 to be sound, subject to main modifications and additional minor modifications.

7.2 The Cabinet is requested to recommend the adoption of the Mid Devon Local Plan Review 2013–2033 to Council, together with the further recommendations appearing at the front of this report.

7.3 If the Council resolves to adopt the Mid Devon Local Plan Review 2013–2033, this then becomes the Council's adopted local plan and the previous plan is superseded. The required steps which follow adoption will be carried out, as set out in the report.

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Circulation of the Report: Cabinet Members

List of Background Papers:

Local Plan Review examination library including submission documents, evidence base, hearing statements and examination documents, including Inspector's post hearings advice note(s):

<https://www.middevon.gov.uk/residents/planning-policy/local-plan-review-examination/>

Appendices:

- Appendix 1:** Mid Devon Local Plan Review 2013 – 2033, including the Inspector’s Main Modifications, and the Council’s additional (minor) modifications
- Appendix 2:** Mid Devon Local Plan Review 2013 – 2033 Policies Map with any changes needed to this through main modifications and additional (minor) modifications
- Appendix 3:** Inspector’s Report on the examination of the Mid Devon Local Plan Review
- Appendix 4:** The Council’s schedule of additional (minor) modifications
- Appendix 5:** Mid Devon Local Plan Review 2013 – 2033 Adoption Statement
- Appendix 6:** Sustainability Appraisal Report
- Appendix 7:** Sustainability Appraisal Post-Adoption Statement
- Appendix 8:** Council’s request for the Inspector to recommend main modifications
- Appendix 9:** Plan MM35 CU21 Land at Colebrook Lane, Cullompton
- Appendix 10:** Plan MM45 SP2 Higher Town, Sampford Peverell