

EXTENSION TO HARTNOLLS BUSINESS CENTRE

STATEMENT OF CASE

PREPARED FOR WADDETON PARK LTD

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Contents

1. Introduction	Page No. 3
2. Site Location and Description	Page No. 4
3. The Proposal	Page No. 5
4. The Development Plan	Page No. 7
5. Other Material Considerations	Page No. 14
6. Consultation Responses	Page No. 18
7. Planning Balance and Conclusions	Page No. 19

1. Introduction

- 1.1 This appeal is submitted by PCL Planning Ltd, on behalf of Waddeton Park Limited in support of an outline planning permission for the extension to the existing business park, residential development of up to 150 dwellings and associated open space and infrastructure.
- 1.2 This statement is submitted in support of proposed development and provides an assessment of the proposals.
- 1.3 This statement should be read in conjunction with the supporting information submitted with the proposal.

2. Site Location and Description

- 2.1 The site is located approximately 1.2km to the east of Tiverton and approximately 1.0km to the west of Halberton. It comprises approximately 12.71ha of pastoral land that wraps around the existing Hartnoll Business Centre (HBC), and is bordered by Post Hill to the north and Manley Lane to the west.
- 2.2 The site consists of a number of irregular large pastoral fields with generally well-defined hedgerow boundaries including occasional hedgerow trees. At the lowest point of the site, along the southern edge, is the Ailsa Brook, which forms a defensible boundary to the site before further open agricultural land to the south rising up to the Country Park of the Grand Western Canal. The site abuts the eastern boundary of the Tiverton Eastern Urban Extension (EUE) area.
- 2.3 Some 250 metres to the east of the site is an anaerobic digestion (AD) plant within the same ownership as HBC. It is proposed that the AD Plant will provide combined Heat and Power (CHP) to the business park extension.

3. The Proposal

3.1 The description of the proposed development is:

"Phased outline planning application for the extension to the existing business park for up to 3.9ha of employment land and up to 150 residential dwellings with associated open space and infrastructure (with means of access to be determined only)."

3.2 The proposal is submitted in outline, with means of access to the site to be determined only. The layout, scale, appearance and landscaping of the site are reserved matters for future consideration.

3.3 Access to the site is proposed via Post Hill, which runs along a predominantly east-west alignment connecting Tiverton to Willand.

3.4 The illustrative site layout demonstrates how the proposed development could be satisfactorily accommodated on site. The plan illustrates how a mixed use scheme comprising an extension to the business park and new residential development, with a range of housing types, could be arranged, set in a network of multi-functional green corridors accessible to both new residents and the wider community. The proposed green open spaces across the site would accommodate a variety of uses and activities including informal recreation, dog walking, surface water attenuation, permeable woodland and children's play.

3.5 The reason that the appeal proposals are presented as a mixed use development is that the intent is to forward fund:

- (a) the infrastructure necessary to connect the new employment space to the existing CHP facility
- (b) the Tiverton (EUE) link road across the application site to the boundary with the EUE

from the receipt from the sale of the residential element of the site. The appellant will commit to this via a S106 obligation with both infrastructure

items being provided by trigger points set out in the S106 undertaking. The scale of the likely residential receipt, and the likely cost of the infrastructure is broadly commensurate with the infrastructure costs identified above, so the residential development is simply facilitating infrastructure that will:

- assist delivery of the EUE (and without such assistance there is no clear way to deliver the link road)
- provide new employment floorspace with its' energy needs met from a sustainable/renewable resource.

4. The Development Plan

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications and appeals to be determined in accordance with the provisions of the Development Plan (DP) unless material considerations indicate otherwise. The DP relevant to the determination of this appeal comprises the Mid Devon Local Plan 2013-2033.

4.2 It is well established that slavish compliance 'to the letter' of each and every DP policy is not required for a development to be judged "in accordance with the development plan" for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004. In assessing compliance with the DP, the determination of the Supreme Court in *Tesco Stores Ltd v Dundee City Council* ([2012] UKSC 13) is important. In that case Lord Reed held (at paragraph 19):

"Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another."

4.3 It is also notable that Lord Hope reiterated (at paragraph 34) that it was "untenable" to say that "if there was a breach of any one policy in a development plan a proposed development could not be said to be "in accordance with the plan". In his view, in the context of considering whether a proposal is in accordance with the development plan as a whole:

"the relative importance of a given policy to the overall objectives of the development plan was essentially a matter for the judgment of the local planning authority [or, on appeal, for the Secretary of State] and that a legalistic approach to the interpretation of development plan policies was to be avoided." (para 34) (PCL parenthesised words)

Compliance with the DP

- 4.4 It is the applicant's submission that the proposal accords with the DP read as a whole. The reason for this conclusion is explained below.

Mid Devon Local Plan 2013-2033

- 4.5 The Mid Devon Local Plan (MDLP) supports sustainable economic success.
- 4.6 Policy S2 sets out an approach to the amount and distribution of development. It is notable that the policy provides for a *minimum* of 147,000 square metres of commercial floorspace, with development concentrated at Tiverton, Cullompton and Crediton, to a scale and mix appropriate to their individual infrastructures, economies, characters and constraints.
- 4.7 The approach of the plan recognises that:

"Very large employment sites can be more difficult to deliver due to high infrastructure costs, and there is an identified shortage of small-scale employment sites. Development Management policies allow for small-scale employment and other commercial development in suitable locations. These sites can come forward according to market demand and a land allocation will not always be necessary. However, the towns are usually the most sustainable locations for planned employment growth, where there is an existing local population and access to services. Commercial development is expected to be delivered through a combination of site allocations and windfall developments elsewhere." (paragraph 2.44)

- 4.8 Policy S6 (Employment) The employment needs of the community will be met through the development of 147,000 square metres of commercial floorspace comprising a range of employment-generating uses, including:
- a) Offices, industry, storage and distribution (B1-B8);
 - b) Retail, tourism and leisure (A1-A5, C1, D2 and relevant sui generis uses);
 - c) Development for healthcare, education and public facilities (C2-C2a, D1); and

d) Other forms of sustainable employment-generating uses.

4.9 In terms of facilitating windfall commercial development Policy DM18 sets out that:

"In countryside locations, planning permission will be granted for new-build employment development or expansion of existing businesses, provided that the development is of an appropriate use and scale for its location. Proposals must demonstrate that:

a) The development would not lead to an unacceptable impact on the local road network;

b) There would not be an unacceptable adverse impact to the character and appearance of the countryside; and

c) There are insufficient suitable sites or premises in the immediate area to meet the needs of the proposal.

The Council recognises the importance of retaining and providing rural employment opportunities outside settlement limits as a means of ensuring a diverse and healthy rural economy. There is a range of employment activities, particularly those associated with tourism, recreation and rural diversification that can be accommodated in countryside locations, without any adverse effects upon the character of Mid Devon's rural areas or existing development. It is important that the various indirect consequences of employment development such as security fencing, lighting, advertising material, open storage and vehicle parking and manoeuvring provisions do not harm the visual environment. It is also important that development outside settlement limits only occurs where there are insufficient alternatives available otherwise such development would not be sustainable. The policy is not intended to relate to large scale strategic development which would be contrary to Policy S2." (our underlining)

4.10 Paragraph 4.57 of the plan clarifies that policy DM18 refers to new-build developments and expansion of existing businesses.

4.11 It is acknowledged that the application site lies adjacent to, but outside the defined development limit for Tiverton. Thus the site lies within the countryside. However, policy DM18 makes specific provision for new build employment development and expansion of existing businesses i.e. such supply is a specific component of the DP provision for employment floorspace over and above that allocated for development by policies S2 and S6. The supporting text of those policies recognises that the towns are the most appropriate locations for employment growth.

4.12 Having regard to the evidence presented in the accompanying Employment Report, it is concluded that the allocated site(s) fail to make sufficient provision for both the expansion needs of current occupiers of HBC and the relocation aspirations of other employers who have expressed interest in moving to HBC (due to the longer term delivery timescales for the EUE and the different type of floorspace that will be brought forward, in due course, by that development), and for the town of Tiverton generally.

4.13 The appellant will also demonstrate that the Council are highly likely to fail to deliver the quantum of the employment space provided for, at Tiverton, in the DP (with particular regard to provision at the EUE) and that the consented lower quantum is unlikely to come forward for a significant time period.

4.14 However, it should also be noted that the quantum of provision made by policies S2 and S6 is a minima (not a maximum). These policies also enshrine a concentration of growth at the main towns (of which Tiverton is the largest); so approval of this proposal would not breach either of those policies.

4.15 The question of compliance with DM18 turns on whether the proposal breaches the 3 caveats set out in that policy, namely that:

- "a) The development would not lead to an unacceptable impact on the local road network;*
- b) There would not be an unacceptable adverse impact to the character and appearance of the countryside; and*
- c) There are insufficient suitable sites or premises in the immediate area to meet the needs of the proposal."*

4.16 This proposal has been carefully considered from this perspective and the accompanying documents demonstrate that:

- (a) There will not be an unacceptable impact on the local road network (see Transport Assessment)
- (b) There will not be an unacceptable impact on the character and appearance of the countryside (see LVIA)

- (c) There are not sufficient suitable site or premises to meet the needs that the proposal will satisfy (see Employment Report)

4.17 We therefore conclude that since the proposal is located adjacent to the defined edge of the largest town in the district then the development is of an appropriate use and scale for its location.

4.18 We therefore conclude that, on balance, the proposal can be considered to accord with the employment supply provisions of the DP.

4.19 Policy S9 (Environment) seeks to minimise the impact of development on climate change through. It seeks to achieve this through:

" a) High quality sustainable design which reinforces the character and distinctiveness of Mid Devon's historic built environment, mitigates and adapts to climate change and creates attractive places; b) The efficient use and conservation of natural resources of land, water and energy, minimising pollution and preserving the quality and productivity of the best and most versatile agricultural land wherever possible;.... d) Renewable energy development in locations where there is an acceptable local impact, including visual, on nearby residents, landscape character and wildlife, balanced with the wider sustainability benefits of renewable energy;"

"New development will be located, designed and constructed in ways that reinforce local distinctiveness, respond to climate change and provide positive solutions for protecting and enhancing environmental assets." (paragraph 2.56)

4.20 This proposal, and its' unique opportunity to provide for low-carbon energy use for both the proposal and the 'retro-fit' of the existing HBC (without the need to develop new renewable energy infrastructure) is therefore plainly compliant with policy S9.

Policy DM2 (renewable and low carbon energy)

4.21 This policy seeks to secure the benefits of renewable and low carbon energy development. The policy states that:

"Proposals will be permitted where they do not have significant adverse impacts on the character, amenity and visual quality of the area, including cumulative impacts of such developments within the parish or adjoining parishes. Proposals must demonstrate that impacts are or can be made acceptable in relation to:

- a) Landscape character and the character and setting of heritage assets;*
- b) Environmental amenity of nearby properties and the wider locality;*
- c) Quality and productivity of the best and most versatile agricultural land (grades 1, 2 and 3a); and*
- d) Biodiversity (avoiding habitat fragmentation)."*

4.22 The supporting text explains that:

"Policy DM2 seeks to maximise renewable and low carbon energy while ensuring that adverse impacts are addressed satisfactorily, including cumulative impacts. Examples of development considered under this policy include hydropower, solar installations, and energy systems associated with other development such as combined heat and power (CHP) or district heating....." (paragraph 4.6)

4.23 In this case, since the low carbon infrastructure already exists in a nearby location there are no significant impacts that arise in delivering the acknowledged benefits that this policy seeks to secure. We therefore conclude that the proposal complies with this policy.

4.24 Therefore, we conclude that the proposal complies with the employment and renewable energy provisions of the DP.

4.25 There is also an element of housing provided and this is necessary in order to provide the funding for both the CHP expansion and reinforcement, and to fund the provision of a section of the link road that will serve the EUE and enable that area to be served by a bus through-route. The housing provision will contribute to the Council's supply of new homes and will infill and area between the EUE and the existing bund that defines the boundary to the existing business park. This bund will be extended southwards to protect residential amenity, and this is preferable to extending the business park further westwards (towards the EUE).

4.26 Therefore, having considered those policies relevant to the consideration of this proposal, we conclude that it is in accordance with the DP, read as a whole.

5. Other Material Considerations

National Planning Policy Framework (July 2021)

5.1 The Framework sets out the Government's planning principles and policies for England and how these are expected to be applied. It is noted that the publication of the revised Framework post-dates the adoption of the MDLP.

5.2 Paragraph 11 of the Framework states that:

"11. Plans and decisions should apply a presumption in favour of sustainable development.....

*For **decision-taking** this means:*

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date(7), granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed(6); or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

5.3 The applicant submits that the proposal accords with the DP when read as a whole and therefore considers that the proposal should be approved without delay.

5.4 However, if that is not accepted the applicant considers that there are a number of important material considerations the point towards a grant of permission. In summary those material considerations are:

5.5 Paragraphs 81-85 of the Framework (July 2021) set out the Government's policy on building a strong, competitive economy.

"Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future." (paragraph 81); and:

"Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements.....The use of.....sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist." (paragraph 85)

5.6 We consider that, for the reasons that we have set out when considering compliance with the DP, that the proposal is also consistent with this policy.

5.7 Paragraphs 153 -158 deal with planning for climate change and point towards supporting making effective use of low carbon development. In particular Government policy is that new development should be planned for such that it:

"can help to reduce greenhouse gas emissions, such as through its location, orientation and design." (paragraph 154, b)

5.8 The Framework (July 2021) is therefore an important material consideration that points towards the grant of permission for the proposal.

Emerging SPD

5.9 The application site adjoins the allocated Tiverton Eastern Urban Extension (EUE). The Council has recently consulted (27 February to 23rd April 2020) upon Area B of the Tiverton EUE i.e. that part of the EUE that adjoins the application site.

5.10 Whilst that SPD doesn't make any direct reference to the application site it does identify a new spine road that is intended to provide for the provision of access through the EUE including, in particular, the ability for the EUE to be served via bus linkage. Bus services have been proven to work best

when provided along through-routes (since this assists with the speed and regularity of the service) rather than routes that have to 'retrace their steps' (as happens with large cul-de-sacs). Thus, the provision of a significant section of this link (at the eastern end) will assist occupiers of the EUE to make more sustainable transport choices. Also the delivery of an eastern link to the boundary of the EUE will assist with the deliverability of the EUE since it will be enable it to be accessed from two locations, thus enabling expedient delivery.

Green Energy Provision

5.11 Again, for the reasons set out in the 'DP compliance' section of this statement (and explained more fully in the accompanying CarbonPlan report) we consider that the provision of new employment floorspace in a sustainable manner is unique within Mid Devon i.e. this cannot be provided at another location in such a sustainable manner because:

- The CHP system already exists (and it utilises locally sourced fuel)
- The location accords with the employment concentration strategy set out in the DP
- The location of the existing (oversubscribed) business park means that there is an ability to connect the CHP system to the proposed business park extension (and to make an electrical connection for the existing business park)

5.12 Thus, providing a truly sustainable business park serving Tiverton and Mid Devon. This is an important material consideration that points towards the grant of permission.

Meeting Employment Needs

5.13 The accompanying employment report demonstrates both a quantitative and qualitative lack of supply of employment floorspace. The proposal provides an opportunity to meet identified needs in a sustainable manner without parallel across the plan area.

- 5.14 It should be noted that the type of employment space that will be provided in this location is of a different nature to that that will come forward within the EUE in due course. That floorspace is likely to comprise A class and B1 uses i.e. those uses that can mix 'cheek by jowl' with residential uses. The application site provides an opportunity to meet the needs of a broader scope of business uses that can be accommodated within the EUE (due to the landscaped bunding that will separate the employment area from the residential area), whilst also being suitable to accommodate B1 uses, particularly on the more visible parts of the site (i.e. on the Post Hill frontage).
- 5.15 The application also provides an opportunity to meet employment needs earlier in the plan period than may become available via the EUE. This is important bearing in mind the conclusions of the employment report (that demonstrates current unmet needs, in particular for the scope of uses likely to be provided on this site).
- 5.16 We therefore conclude that this is an important material consideration that points towards the grant of permission.

6. Consultation Responses

- 6.1 We have carefully considered the consultation responses received and, having regard to the use of appropriate conditionality (via both S106 and the application of conditions).
- 6.2 The appellant notes the requests for funding. The appellant considers that some of these requests are not compliant with CIL regulation 122 and therefore intends to make appropriate S106 provision in the alternative and, where necessary, to present appropriate evidence to demonstrate the reasons for the appellant's conclusions about non-compliance with CIL regulation 122.

7. Planning Balance and Conclusions

7.1 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act (2004), the appeal proposals should be determined in accordance with the development plan (DP) unless other material considerations indicate otherwise.

7.2 Case Law requires the DP to be read as a whole. The application proposals are considered to accord with the DP, read as a whole.

7.3 If the proposal is not considered to accord with the DP then it is material that:

- There is a clear and pressing need for employment development of this nature to be brought forward at the earliest opportunity to meet identified demands.
- The proposal represents a unique opportunity to meet these needs at a sustainable location, in a sustainable manner.
- The proposal would make a strong contribution towards Mid Devon's climate change and carbon reduction objectives.
- By delivering a section of the link road that will enable the EUE to be served via a 'through route' bus service, and delivering this section of link road to the boundary of the EUE this proposal will facilitate the early and sustainable delivery of the EUE.
- There are no significant impacts which would outweigh the clear social, economic, and environmental benefits of the development.

7.4 In light of the above, it is respectfully requested that this appeal be approved.