

APPEAL BY WADDETON PARK LTD

APPEAL REFERENCE: APP/Y1138/W/22/3313401

LAND AT HARTNOLLS FARM, TIVERTON

DAVID SEATON

REBUTTAL TO DCC STATEMENT

OUTLINE PLANNING APPEAL 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).

AUGUST 2023



PLANNING

PCL Planning Ltd
13a-15a Old Park Avenue,
Exeter, Devon, EX1 3WD United Kingdom
t: + 44 (0)1392 363812
www.pclplanning.co.uk

1. Rebuttal to DCC Statement

1.1 Before dealing with the Devon County Council (DCC) statement I need to cross-refer to Mr Aspbury's (AA) proof of evidence (PoE). In particular section 9 (page 19). From comments made at paragraph 9.1 it appears that the LPA have undertaken no CIL regulation 122 assessment of DCC's request for funding and that they regard DCC's statement as *'definitive'*. I regard it as no such thing. In my opinion the (undated) DCC statement (received at 6:20 pm on 15/08/2023) fails to advance their requests for funding any further and, in my opinion, fails to prove any necessity for the contributions sought. In my opinion DCC fall foul of the clear explanation that Justice Holgate elaborated at paragraph 142 of his recent *Leicester* judgement (CD21) that:

"The attempt by the Trust to obtain a financial contribution under s.106 therefore depends upon their demonstrating a localised harm."

1.2 In this particular case DCC, similarly, have an obligation to prove necessity i.e. that they must demonstrate a localised harm that will occur if the appeal proposals were to proceed absent of mitigation. They have singularly failed to do this (in relation to both Education and Waste matters).

1.3 In my opinion the 'DCC approach' to both issues can be reasonably categorised in similar vein to the manner in which Justice Holgate assessed the NHS claim advanced in *Leicester* (at paragraph 144 of his judgement):

"The Trust's doctrine approach to the funding issue, as revealed by ground 3 is troubling. It involves a wholly unwarranted interference with the proper discharge by a planning authority of its statutory functions. It has been no more than a smokescreen behind which the Trust has sought to deflect the proper questions posed by HDC."

1.4 The same is true of the DCC approach adopted in this case. In short DCC rely upon a non-statutory 'doctrine' approach and fail to disclose to this examination the data that they rely upon to support their assertions (irrespective of whether those assertions are advanced via consultation response or via an unexamined non-statutory document). I therefore conclude that neither request for funding is CIL Regulation 122 compliant.

- 1.5 To support my conclusions I draw the Inspector's attention to the following points set out in the DCC statement.

Education

Generic

- 1.6 At paragraph 2.1.2 I note that DCC accept that DfE guidance is non-statutory (as is the DCC approach) – and not subject to consultation.
- 1.7 At paragraph 2.1.6 A lack of capacity has not been evidenced. DCC have still not disclosed their forecasts, nor the methodology used to prepare those forecasts (as opposed to assertion and the results of those forecasts). As a result the appellant cannot discern:
- What assumptions DCC have used to create the forecasts?
 - How DCC have modelled any data that they refer to?
- and therefore prevent either the appellant, or the Inspector, coming to a conclusion about the robustness/veracity (or not) of the outcomes of that forecasting exercise.
- 1.8 At paragraph 2.2.1 DCC acknowledge that the appeal site is not an allocated site. As a matter of fact policy TIV 1 does not apply to the appeal site.
- 1.9 There is a confusion at the root of the DCC's approach – they seek to evidence the need for contributions based on an alleged forecast capacity constraint at 2 existing schools (but do not disclose the forecasts that they rely upon). Whereas, evidentially (see my CIL Regulation 122 statement on this matter) there is significant existing capacity.
- 1.10 They then seek to treat the appeal site as though it forms part of the TEUE and that new residents would attend that proposed school.

Primary

1.11 Therefore, this confused thinking feeds into paragraphs 2.3.1-2.3.5 which, bearing in mind:

- the existing identified capacity (which DCC do not refute)
- the lack of disclosure of the forecast relied upon by DCC
- the fact that the appeal site is not part of (but will facilitate delivery from) the TEUE

fails to prove any necessity for a primary contribution.

1.12 I point out that with available capacity of 331 primary places (see CD10, paragraph 4.13, page 8) that when applying a reduction of 34 places to that figure (see final column of Appendix IV to DCC Statement, page 15), that leaves an existing surplus capacity of 297 places.

1.13 School land provision has been secured 14/00881/MOUT (CD63). Quite why DCC failed to secure the site for a nil value is somewhat baffling bearing in mind the provisions of policy TIV4 a) (CD25).

Secondary

1.14 We note that DCC have dropped their request for a secondary contribution (presumably on the basis that they accept my capacity analysis, but without disclosing their forecasts).

1.15 The confused commentary at paragraph 2.4.1-2.4.4 does demonstrate the rather confused and inaccurate thinking that appears to underpin the DCC approach to both primary and secondary provision, i.e. that their forecasting does appear to be based on flawed assumptions i.e. that all children will attend their local school. Such an assumption is flawed because, for example:

- the current Government (choice based) approach allows parents to seek places for children at schools other than their local school

- Numerous children attend private schools (in this particular case Blundells is a local choice but that capacity appears to be excluded from any forecasting that DCC may undertake).
- Some children are educated at home
- Some children attend faith based schools

1.16 Therefore, for numerous reasons, I suspect that any forecasting that DCC have undertaken is fundamentally flawed and significantly over estimates the potential capacity burden of new development. However, without disclosure of the DCC forecasts and methodology, I cannot be definitive on this point, but, in accordance with the provisions of CIL Regulation 122, it is not the Appellant's burden to discharge.

SEN

1.17 At paragraph 2.5.2 I note that DCC have, again, failed to provide the forecasts that they rely upon.

Waste

1.18 At paragraph 3.1.1 of their statement DCC allege undersizing – but in relation to what standard? This appears to be an assertion with no evidence base to underpin it. I also note that it is unlikely to be a pressing matter since there is no solution determined (nor has there been for a considerable period of time). In my opinion DCC are expressing a desire here, not a necessity.

1.19 Also, policy W21 was not referenced in the RfR and that reference to it at this late stage in proceedings is unfair and unreasonable. I reject DCC's assertion that sufficient waste management facilities do not exist. In my opinion the process is clear, i.e absent of the contribution sought by DCC waste will still be collected from new dwellings by MDDC. MDDC can then dispose or recycle that waste how they choose, which can include contracting with DCC (or a private contractor) to recycle that waste. Residents of new dwellings will pay Council Tax, and that tax covers

payment for waste collection and recycling/disposal. In this particular case there is an existing recycling facility at Tiverton, and that will process recyclable collected waste (irrespective of whether that existing facility is improved or not).

1.20 At paragraph 3.1.6 SPD that was not consulted upon is referenced. Again the 'not fit for purpose' allegation is made, without any evidence to support that allegation. I repeat that Waste Recycling facilities are currently open and functional.

1.21 At paragraph 3.2.3 reference is made to a document which is not SPD, nor has it been subject to consultation. I also note that the calculation includes existing dwellings. Bearing in mind that any mitigation would need to be specific to the burden imposed by the appeal proposals I fail to see how this calculation can be relevant. I also fail to see how existing site value (of the existing recycling centre) has been factored into any calculation. Again, without full disclosure from DCC (the document produced by DCC doesn't set out the full methodology, nor does it demonstrate the inputs to the calculation and how it is undertaken). Thus this point can't be taken further at this stage but again, in accordance with the provisions of CIL Regulation 122, it is not the Appellant's burden to discharge and, in my opinion, is another example of a flawed 'doctrine approach'.

Transport

1.22 I simply point out that AA is wrong (in his PoE at paragraph 9.1) to suggest that DCC seek a transport contribution.

Archaeology

1.23 I note that there is now no objection on archaeological grounds.

Monitoring Fee

1.24 I note that DCC confirm that no monitoring fee is sought.

1.25 Since the appellant is proffering a UU there are no legal costs that DCC need to bear.