

LAND AT HARTNOLLS FARM, TIVERTON

OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. This appeal concerns a proposal for a mixed-use development consisting primarily of (a) an extension to the existing Hartnoll Farm Business Park for up to 3.9ha of employment land and (b) up to 150 residential dwellings. These primary uses are to be set within generous open space, with there being a roughly even split between land dedicated to employment, residential and open space across the appeal site.¹ Outline permission is sought with all matters reserved, except for access. A new, improved access to Post Hill is to be provided, with the existing access to the Business Park to be closed off.² As the application was considered to constitute EIA development, the parameters will be fixed by reference to the Land Use Parameter Plan.³
2. The units on the extended Business Park will be powered and heated by an existing Anaerobic Digester (“AD”) system located at nearby farm, operated by the owner of the business park. The AD currently generates excess heat which would be utilised by the Business Park. As the Mid Devon District Council (“the Council”) recognise, this would create “the first low carbon commercial development in the district and could be an exemplar for other schemes...”⁴.

¹ See DAS, p40 [CD42]

² Dwg. No 48582/5501/SK02 Rev H [CD39]

³ See DAS, p41, Fig. 13 [CD41]

⁴ See OR, para 5.4 [CD1]

3. In addition, the appeal proposal would provide an access from Post Hill to Area B of the Tiverton Eastern Urban Extension (“TEUE”) site, a secondary access to the TEUE being an acknowledged objective of the Council.⁵ This link road would both assist with the delivery of the TEUE, and allow there to be a continuous route through the TEUE for bus services.

A narrow dispute

4. This appeal is remarkable for what is not in dispute.
5. There is no dispute between the main parties that:
 - a. the extension to the Business Park complies with relevant Local Plan policy, including polices S14 (“countryside”) and DM18 (“rural employment development”) and is acceptable in principle.⁶ The Council acknowledge that the extension will help to meet the employment needs of Tiverton, which has suffered a historic shortfall of employment provision.⁷
 - b. the new access to Post Hill is safe and suitable, with the detailed design having been scrutinised by the officers of both the Council and Highways Authority.⁸
 - c. the application was supported by a Transport Assessment, the conclusions of which are agreed with the Highways Authority, in that there are no significant off-site highways impacts in terms of capacity or congestion.⁹
 - d. the proposed development would not adversely harm the landscape character of the area.¹⁰
 - e. in respect of all relevant viewpoints, the visual effects of the proposed development would be “neutral”¹¹. Subject to appropriate design and

⁵ See emerging TEUE SPD Area B: Masterplan, pp60-62 & OR, para 4.9 [CD1]

⁶ Main SoCG, para 7.1 [CD6]

⁷ See OR, paras 1.18 and 1.20 [CD1]

⁸See OR, paras 4.12-4.13

⁹ See OR, para 4.12

¹⁰ Main SoCG, para 7.4 [CD6]

¹¹ Additional SoCG, para 2, bullet 3

mitigation (which the Council accept is capable of being secured at reserved matters stage) – the overall visual effect could be made to be “neutral”.¹² Neutral effects are, by definition, not adverse.

- f. The co-existence of commercial and residential uses does not give rise to any residential amenity issues. In particular, it is agreed that suitable separation distances, together with appropriate green infrastructure – in the form on an enhanced bund, a green space buffer and a boundary residential road – will protect residents from any noise generated from the business park.¹³
 - g. The proposal is in a sustainable location in transport terms: including by reference to its accessibility to local facilities and the choice of sustainable transport modes that it offers.¹⁴
 - h. The development would not result in the loss of Grade 1 Best and Most Versatile (BMV) agricultural land (contrary to the allegation in the reasons for refusal).¹⁵ The area of Grade 2 and 3a BMV lost is not significant¹⁶ and not objectionable.¹⁷
 - i. The proposal would result in a biodiversity net gain.¹⁸
 - j. There is no objection to the proposal in respect of heritage assets, including non-designated archaeological heritage assets within the appeal site.¹⁹
6. This large measure of agreement has meant that the Council’s case against the development has narrowed considerably. Of the six putative reasons for refusal originally relied upon, the Council now only relies on the first reason, and even

¹² Additional SoCG, para 2, bullet 3

¹³ OR, paras 8.3&8.7 and 9.1-9.4

¹⁴ Additional SoCG, para 2, bullet 5

¹⁵ Main SoCG, para 7.2

¹⁶ OR, para 1.23

¹⁷ Main SoCG, para 7.2

¹⁸

¹⁹ Archaeology SoCG, para 2.5 [CD7]

then they acknowledge that the reference to the loss of Grade 1 BMV in that reason was erroneous.

7. The Council's sole basis for resisting the proposal has boiled down to an "in principle" objection to the residential element of the mixed-use scheme (they have no such concern about the commercial land), based on its location beyond the settlement boundary of Tiverton as defined in the Local Plan.
8. This is not because the Council allege the proposal would cause any actual harm to the landscape character or visual amenity of the countryside. Nor is it because they allege that facilities in Tiverton would be inaccessible to the future residents of the site, or because the proposal fails to offer a genuine choice of transport modes. The Council's case could not be clearer on these issues, having deleted and expressly disavowed those elements of Mr Aspbury's original proof which sought (contrary to the previously agreed position between the parties) to raise such matters.²⁰
9. It is solely because the site lies outside (albeit adjacent to) the settlement boundary of Tiverton, which the Council (erroneously) says axiomatically renders the proposal contrary to the spatial policies of the Local Plan.
10. That is the extent of the Council's remaining objection.

Main Issues²¹

(1) Whether or not the Council can demonstrate a 5-year supply of housing

11. On analysis, the Council plainly has not discharged the burden of demonstrating that it has a 5-year supply of housing. As will be explained in evidence:

²⁰ Additional SoCG, para 2, bullet 1&2. In light of Mr Aspbury's original proof, the Appellant has submitted rebuttal proofs from Mr Williams (Landscape) and Mr Thorne (Transport) on these matters which it invited the inspector to read. However, given the Council's very clear position, it does not intend to use up inquiry time to call them to give evidence.

²¹ By reference to the Inspector's note of 6 September 2023

- a. The Council's case has been a moving feast, with acknowledged errors in of the appropriate net requirement figure²² and an ever-changing deliverable supply figure. For this reason alone the Council's assessment should be treated with caution;
- b. The Council's reliance on windfall delivery does not meet the requisite "compelling evidence" threshold. Omitting this element alone would reduce the Council's deliverable supply to below 5 years;
- c. Most of the sites in dispute are 'category B' sites which require the Council to demonstrate that the is "clear evidence" of deliverability within 5 years. For some of these sites there is no more than mere assertion. For those where there is evidence, that evidence is at best equivocal and at worst points to undeliverability.

12. We reiterate, however, that the Appellant has not and does not promote appeal scheme solely on the basis that there is a lack of a five-year supply of housing. We say the merits of the proposal are self-evident, and justify the grant of permission, regardless of the five-year housing land supply position. In contrast the Council's first - and only remaining - reason for refusal is expressly predicated on them demonstrating a five-year supply.

(2) Whether or not the location of the proposed development is acceptable having regard to adopted national and local policies

13. The suitability of the site in land use terms for a mixed-used residential and employment scheme is obvious. Tiverton is the largest and most sustainable settlement in Mid-Devon. The appeal site lies adjacent to its settlement boundary, immediately to the east of the TEUE, an allocation in the Local Plan which include up to 1830 dwellings and at least 30,000 sqm of commercial floorspace. To the east,

²² It erroneously included Gypsy and Traveller sites in its historic supply figure, something which only came to light following a FOI request made by Mr Seaton. There followed much confusion about how many G&T sites had been included. Even now the Council have not provided the underlying evidence to demonstrate the extent to which the shortfall figure had been overinflated.

the appeal site is bounded by, and wraps around, the Hartnoll Farm Business Park, a long standing and successful business park. To the north is existing residential development along Post Hill.

14. It is predominantly because of the existing and future uses in the vicinity of the appeal site that, notwithstanding the proposals constitute development of a greenfield site, it is common ground between the main parties that there would be no adverse impact on the landscape character or visual amenity of the area. This only serves to underscore the suitability of the location for the proposed development.
15. In terms of **local policy**, the proposal is development “at Tiverton” which is consistent with the spatial strategy advanced in **Policy S1**. Indeed, the proposal will actively assist the achievement of a large number of the “sustainable development priorities” priorities identified in Policy S1, which are needed to deliver the vision of the plan. There is no conflict with **Policy S2** (“amount and distribution of development”), which again directs development inter alia “at Tiverton”, and which sets *minimum* requirement for housing delivery, not a cap. The appeal proposal secures much needed affordable housing, as well as self-build and custom housing, in line with **Policy S3** (“meeting housing needs”).
16. The appeal proposal will preserve the character and appearance of the countryside; enhance biodiversity; and promote the sustainable diversification of the rural economy. This is precisely what **Policy S14** (“countryside”) says “development outside of the settlements....will [do]”. Accordingly, we say, that on a proper interpretation, the proposal accords entirely with this policy. Even if the Inspector were to disagree with the Appellant’s interpretation, and to read into the policy a restriction to pre-ordained uses, any breach would be wholly technical given that the appeal proposal would comply with Policy S14’s stated objectives for the countryside. It would also be limited only to the residential element, it being accepted that the Business Park extension is compliant with Policy S14 and **DM18**.

17. In terms of **national policy**, it is common ground that the site does not form part of a valued landscape (in respect of which the relevant policy objective is to “protect and enhance”²³). The intrinsic character and beauty of the countryside is recognised²⁴ – and indeed preserved - by the appeal scheme.

(3) Whether or not there is sufficient infrastructure to support the appeal scheme

18. As with the primary case, the issues in respect of required planning obligations have narrowed considerably. The Council no longer seek contributions in respect of transport, waste and recycling or secondary education. Several education contributions are sought. The Appellant challenges whether they are compliant with Reg 122 of The Community Infrastructure Levy Regulations 2010 (“CIL Regs”), a matter which will be addressed at the roundtable session. Nevertheless, the unilateral undertaking makes provision for these, subject to a blue-pencil clause.

19. Likewise, the request in terms of NHS funding has narrowed. The Council have confirmed that they do not support the request for such funding. The Royal Devon University Healthcare NHS Foundation Trust have confirmed that they are not seeking the NHS Funding Gap contribution. This leaves the NHS Devon Integrated Care Board who are seeking the GP Provision Contribution and, very belated, late last week submitted a letter in support of this request only. The Appellant challenges whether this contribution in Reg 122 compliant, a matter which will be addressed at the roundtable session. Again, in any event, the unilateral undertaking makes provision for the relevant amount, subject to a blue-pencil clause.

20. Therefore, whatever the Inspector’s conclusion on Reg 122 compliance, the appeal scheme will provide the requisite infrastructure funding.

Benefits

²³ NPPF, para 174(a)

²⁴ NPPF, para 174(b)

21. There is also agreement between the main parties that the appeal scheme would give rise to a number of tangible benefits, which weigh in favour of the proposal. Agreed benefits of the appeal scheme include: the provision of housing, including affordable and custom build housing; the employment provision; the utilisation of a low carbon energy source; and biodiversity net gain.²⁵ The only dispute in respect of these matters is the weight to be given to these benefits.

22. The appellant's case, in summary, is that:

- a. The **employment provision** should be given **very significant weight** where there is an acknowledged historic and continuing shortfall in employment provision in Tiverton; where the proposals would result in circa 400 additional jobs for the area; and where there can be high confidence that the extension will be successful, given the track record of the existing business park.
- b. The **housing provision** (including affordable and custom build housing) should be **very significant weight**, especially given the undisputed evidence of significant affordable housing need in the area; and that – even on the Council's best case – the 5-year supply is marginal
- c. The utilisation of **low carbon energy** should be given **significant weight** having regard to the considerable annual saving in CO2 emissions that would be achieved; the Council's acknowledgment that this would be an "exemplar" low-carbon development; and the urgent need to decarbonise industry, as recognised by the Council's own declaration of a climate emergency.
- d. The **biodiversity net gain** should be given **significant weight**, especially given the net gain is in excess of that which will (but is not yet) required in national legislation.

²⁵ See Aspbury Rebuttal, p14

23. The link road to the TEUE should also be given **very significant weight**. It delivers on a long-held ambition of the Council, which will help to unlock delivery of Area B of the TEUE, as well as providing a through route for sustainable modes of transport. The Council appear to acknowledge that there would be considerable benefits of a secondary access road to Area B. However, they have – remarkably – at the last minute discounted this as a benefit of an appeal scheme because, they say, there is now an alternative option available for the link road. This “alternative” – which has only very recently been introduced - is in an undisclosed location (all we are told is that it is somewhere on the TEUE); with undisclosed landowners; without any detail of the commercial proposal that would accompany it; and is not yet the subject of a planning application (and will not be for up to 12 months). The Appellant will explore in evidence the extent to which this can be treated a realistic alternative, or one that materially reduces the weight to be given to the link road on the appeal site which is (as is not disputed) available now and would provide a safe and efficient access route to appeal B.

Planning Balance

24. As Mr Seaton explains in his evidence²⁶, and as will be expanded on during the inquiry, there are a number of ways in which the planning balance in this case can be struck, all of which lead to the same end: that planning permission ought to be granted for this scheme.

25. This is not surprising. It is a scheme that will provide employment and housing (including affordable housing), for which there is an acknowledged need. It will do so at Tiverton, the District’s most sustainable settlement. And it will do so, without causing any material harm to acknowledged planning interests, and whilst bringing with it tangible and substantial benefits.

²⁶ Seaton Proof, Section 5.

26. Accordingly, the Appellant commends the proposal to the inspector and will request that he grants planning permission, subject to appropriate conditions.²⁷

ROBERT WILLIAMS

CORNERSTONE BARRISTERS

12th September 2023

²⁷ Appropriate conditions are largely agreed between the Appellant and Council: CD9

**LIST OF APPEARANCES FOR
THE APPELLANT**

Robert Williams, of counsel

David Seaton, BA (Hons), MRTPI Managing Director, PCL Planning Ltd - Planning

Clare Mirfin, MA (Cantab). Legal Director Pinsent Masons (s.106 roundtable only)

*Neil Thorne, BSc (Hons) MSc MCILT MCIHT MTPS Transport Planning Director,
Rappor - Transport and Highways

*Andrew Williams BA(Hons) Dip LA Dip UD CMLI, Director, Define - Landscape
and Visual

*Peter Cox, MCIfA Co-Director, AC archaeology Ltd - Archaeology

*Mr Thorne, Mr Williams and Mr Cox have all submitted proofs (or rebuttal proofs)
of evidence. However, following agreement with the Council on these issues, the
Appellant does not intend to call them to give evidence unless requested to do so by
the inspector.