

**OPENING SUBMISSIONS
ON BEHALF OF
MID DEVON DISTRICT COUNCIL**

**IN THE MATTER OF AN APPEAL BY
WADDETON PARK LIMITED**

LAND AT HARTNOLL FARM, TIVERTON, DEVON, EX16 4PZ

LPA REF: 21/01576/MOUT

PINS REF: APP/Y1138/W/22/3313401

**PROPOSAL FOR OUTLINE PLANNING PERMISSION 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)**

SEPTEMBER 2023

Introduction

1. This appeal arises from the non-determination by Mid Devon District Council ('the Council') of outline planning application 21/01576/MOUT, for the proposed 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) ('the proposed development') on land at Hartnoll Farm, Tiverton, Devon, EX16 4PZ ('the site'). A description of the site¹, and of the appeal proposal², is set out in the Main SoCG.
2. Following the lodging of the appeal in December 2022, but prior to its validation, the Council issued six putative reasons for refusal ('RFR')³ following consideration by the planning committee on 18th January 2023⁴ as to the decision the Council would've made had an appeal not been lodged.
3. Of those RFR, a number have since fallen away, the Council having reasonably continued to review its case post the submission of the Appeal, as it should do, and having received further information, as part of sensible on-going case management.
4. Though the Council requested additional details during the lifetime of the application so that a full assessment of the scheme could be made⁵, such information, with the exception an Environmental Statement, was not provided⁶. This included the submission of biodiversity net gain ('BNG') details to ensure compliance with LP Policy DM26, which fed into RFR3; a Town Centre Impact Assessment (as the proposed development exceeded the 500sqm of retail, office and leisure as per DM15), which fed into RFR5; and that there had not been an intrusive field evaluation to allow understanding of the significance of the heritage assets present⁷, which fed into RFR6.

¹ Page 4, Main SoCG – **CD6**

² Page 5, Main SoCG – **CD6**

³ **CD2** – Decision Notice issued 19th January 2023

⁴ As referenced at paragraph 1.9, Council's SoC – **CD3**. The Officer's Report ('OR') dated 10TH January 2023 is at **CD1**.

⁵ See paragraph 1.5, Council's SoC - **CD3**

⁶ Paragraph 1.6, Council's SoC - **CD3**.

⁷ See pages 26-28 summary of Devon County Historic Environment Team consultee responses recorded in the OR – **CD1**. See also paragraphs 3.6-3.7, page 41, OR report at **CD1**.

5. The Appellant submitted a BNG assessment with their response to the RFR such that the Council could agree that the BNG for the development can be secured through appropriate planning conditions and, accordingly, confirm that they no longer seek to rely on RFR3⁸. The Council was able to reflect upon the Appellant's response to RFR5 and agree that the matter was capable of resolution via the imposition of a suitable condition limiting the amount of leisure floorspace to a maximum of 500sqm avoiding detrimental impact upon Tiverton town centre⁹. The Appellant also submitted a written scheme of investigation ('WSI') with their response to the RFRs¹⁰ and implemented a programme of further evaluation of the archaeological interests of the site by trial trenching on 28th July 2023 to the satisfaction of Stephen Reed, Officer at DCC. This enabled DCC to withdraw their archaeological objection, and the Council to no longer rely upon RFR6 subject to conditions¹¹. Though the parties still disagree as to the need for such evaluation¹², there is no longer a dispute. The Appellant's provision of an agricultural land report with its response to RFRs¹³ also enabled the Council to agree that the application site is Grade 2 and 3a BMV agricultural land, not Grade 1, and to confirm that they do not object on the basis of the loss of agricultural land¹⁴.

6. The Council also properly, and appropriately, reviewed its position in respect of RFR2 concerning harm to landscape character concluding that subject to appropriate landscape mitigation (secured by way of condition), the proposed commercial and residential development would not adversely harm landscape character and that it no longer seeks to rely on RFR 2¹⁵. RFR4 has been further narrowed upon the Council being able to clarify with DCC that they do not seek a contribution in respect of transport infrastructure and no longer seek a contribution in respect of waste; though an education contribution is still sought.

⁸ Paragraphs 7.12-7.13, Main SoCG – **CD6**. See Appendix 5 of **CD5** (Response to RFR).

⁹ Paragraph 7.16-7.17, Main SoCG – **CD6**

¹⁰ Appendix 6 to **CD5**.

¹¹ See the Archaeology SoCG – **CD7**.

¹² As set out in the PoE of Peter Cox with which Mr. Reed and the Council disagree.

¹³ Appendix 3 to **CD3**.

¹⁴ Paragraph 7.2, Main SoCG – **CD6**. This relates to part of RFR1.

¹⁵ Paragraph 7.4-7.5, Main SoCG – **CD6**. Though there are some matters of disagreement between Mr. Williams and Mr. Aspbury as to the possible justification for the location of the settlement boundary, the Council will not seek to XX Mr. Williams on his PoE as the Council do not make a landscape case. XX is not considered required for the Inspector to come to a view on any remaining discreet points.

7. Ultimately, after reasonable ongoing case management and reflection the remaining issues which relate to RFR1 and RFR4 are:
 1. Whether or not the Council has a 5-year housing land supply,
 2. Whether or not the location of the proposed development is acceptable having regard to adopted national and local policies, and
 3. Whether or not there is sufficient infrastructure to support the appeal scheme.

Whether or not the Council has a 5-year housing land supply

8. The parties have managed to further narrow the issues between them prior to the opening of this inquiry and the Inspector is referred to the Housing SoCG and agreed roundtable agenda. The 5YS requirement is now agreed to be 2,493 applying a 5% buffer¹⁶. The dispute between the parties relates to a relatively small number of sites whose deliverability status is disputed, a disagreement in respect of windfall allowance¹⁷, and delivery over the plan period including from the TEUE.
9. The Council is clear that it has a robust 5YS of **5.41** years as opposed to the Appellant's contended 4.23 years¹⁸.
10. There are 6 sites remaining in dispute in respect of which the Council maintains it has clear evidence, as will be further evidenced and explored by Arron Beecham during the roundtable on the topic later today. There is every reason to expect that windfall completions will continue to provide a reliable source of supply; the approach having been endorsed by the Exeter Housing Market Area HELAA expert panel and there being no convincing evidence to the contrary¹⁹.
11. The Appellant makes much of perceived delivery issues associated with strategic allocations including the Tiverton Eastern Urban Extension (TEUE), the North West Cullompton Urban Extension and East Cullompton / Culm Garden Village

¹⁶ Table 2, Housing SoCG agrees the 3,128

¹⁷ Paragraph 3.5 and Table 1, Housing SoCG. Disputed sites being TIV10 – Roundhill; TIV9 – Howden Court; TIV1-5 TEUE; Creedy Bridge (CRE5 Pedlerspool); Alexandra Lodge and TIV16 – Blundell's School

¹⁸ Table 3, Housing SoCG. .

¹⁹ Paragraph 6.22, PoE of Arron Beecham; Paragraph 4.4, Rebuttal of Arron Beecham.

(Deliverability over the residual DP period), which are not accepted. Only a small component of such allocations is included within the 5YS²⁰ and it is the Council's case that there is no shortfall in 5YS; the evidence is robust. And there is no requirement to deliver the entire local plan strategy in a five-year period; the Council has the lifetime of the plan period as a whole²¹. The requirement for sites 6-10 and 11-15 is to identify a supply of 'developable' sites as opposed to the more onerous 'deliverable' requirement. That test is plainly met. The appeal proposals are not *necessary for the planned delivery from the EUE to occur* and insufficient evidence that the appeal site, which it is the Appellant's case to suggest would assist in addressing a perceived shortfall in 5YS to deliver the plan strategy, is any more deliverable²².

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

12. Evidence will be given on behalf of the Council by Mr. Tony Aspbury, an independent planning expert who is clear that in his view the location of the proposed development is not acceptable having regard to adopted national and local policies²³. RFR1 is sound and sustainable in itself as a stand-alone reason for withholding Planning Permission²⁴.

13. That is because section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions be made in accordance with the Development Plan, unless material considerations indicate otherwise. For the purposes of this decision that is the Mid Devon Local Plan 2013-2033²⁵, the policies of most relevance being agreed between the parties²⁶ but including a number of spatial strategy policies S1-S4 and S14. Those policies, together with S10-S13, are up-to-date and seek to promote a plan-led approach to site selection. They do not support the appeal proposals²⁷ which plainly conflict with those policies and the Development Plan as a whole.

²⁰ Paragraph 2.2, Rebuttal of Arron Beecham

²¹ Paragraph 2.3, Rebuttal of Arron Beecham

²² Paragraph 2.4, Rebuttal of Arron Beecham. The appeal proposal is made in outline, therefore in accordance with the definition of 'deliverable' should only be considered deliverable where there is clear evidence that housing completions will begin on site within 5 years. No such clear evidence is available.

²³ Paragraph S24.2, Summary PoE of AA

²⁴ Paragraph R2.14.2, Rebuttal of AA

²⁵ CD12

²⁶ Paragraph 5.2, Main SoCG – CD6.

²⁷ See paragraph 4.7, PoE of AA

14. Though described as an in-principle breach, it is more than merely ‘technical’²⁸. The settlement boundaries and distinction between land within them and that outside them is clearly intended to be clear-cut and determinative and not fluid or permeable²⁹. The fact that the AS lies immediately to the east of the TEUE is not an objective, site-specific, spatial planning justification for its development³⁰. There is no need for the boundary to flex. For it to do so would notably harm the overall ‘integrity’ and effectiveness of the Local Plan undermining the plan-making process³¹. As Mr. Aspbury will suggest, it would create a precedent for other proposals outside the settlement boundary³².
15. The Government’s policy aim of significantly boosting the supply of housing does not mean delivering housing anywhere or anyhow. Whether or not the Council has a 5YS³³, and the Council maintains that it has, it remains that the harm which would arise from the appeal proposals is such that this appeal should be dismissed.

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

16. The Council has fairly reconsidered initial requests for contributions in respect of transport and waste, as detailed above. It remains the Council’s case that DCC’s request for an education contribution is CIL compliant as detailed in the CIL Compliance Statement produced by Mr. Aspbury on the Council’s behalf. DCC will provide representations at the relevant roundtable session to support their request.

Planning Balance

17. The starting point is the Development Plan. The NPPF is a material consideration and sets out a presumption in favour of sustainable development at paragraph 11. The Appellant contends that the tilted balance at paragraph 11 d ii) applies and that the most important policies for determining this appeal are out of date by virtue of footnote 8 and the Council’s alleged lack of 5YS.

²⁸ Paragraph R2.13.10, Rebuttal of AA

²⁹ See paragraph 4.8, PoE of AA

³⁰ Paragraph R2.4.2, Rebuttal of AA

³¹ See paragraph 4.8, PoE of AA and Paragraph R3.2 of the Rebuttal of AA

³² Paragraph R2.14.5, Rebuttal of AA

³³ Paragraph R3.2, Rebuttal of AA

18. The Council disagrees. However, even if it cannot demonstrate a 5YS, triggering the tilted balance, paragraph 12 of the NPPF is clear that the Framework does not change the primacy of the Development Plan, which is not displaced. The policies most important to determining this appeal are not automatically given no or limited weight; due weight should still be applied in accordance with their consistency with the NPPF, a matter for the Inspector.
19. There are a number of benefits to the appeal proposal which Mr. Aspbury acknowledges, including the delivery of market and affordable housing, albeit he differs in respect of weight. However, these would not be of sufficient weight to outweigh the tangible harm that the development would occasion³⁴.
20. The Appellant relies heavily on their assertion that the appeal proposals are needed to “unlock Area B of the TEUE” by the provision of a link road³⁵ and assert that “it is already agreed that a plan failure situation will occur in relation to the TEUE”³⁶; but that is not correct. The Council has the plan period to deliver the TEUE which it considers will still occur, and there is insufficient evidence that the Appellant’s link road is needed to save the day. There is still good time in the plan period for the original Area A estate road to provide access to Area B and there is now at least one other option for delivering an eastern access to the EUE as an alternative to that previously envisaged³⁷.
21. Whether through a straightforward section 38(6) planning balance or the application of the tilted balance, the identified policy harm and conflict cannot be overcome by any benefits or other material considerations and does tip “*significantly and demonstrably*” against the proposed development such that the appeal should be dismissed.

12TH SEPTEMBER

**LEANNE BUCKLEY-THOMSON
NO5 CHAMBERS, LONDON**

³⁴ Paragraph R.2.13.16, Rebuttal of AA

³⁵ Paragraph 7.5, PoE of David Seaton

³⁶ Paragraph 4.12, PoE of David Seaton

³⁷ Paragraph R2.11.2, Rebuttal of AA. See also letter of 8th September 2023 from Westcountry Land.