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APPEAL BY WADDETON PARK LIMITED

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

LAND AT HARTNOLLS FARM, TIVERTON

REBUTTAL OF THE PROOF OF EVIDENCE

OF DAVID SEATON

BY

ANTONY ASPBURY BA MRTPI

(ON BEHALF OF MID DEVON DC

NOVEMBER 2024

1.0 INTRODUCTION

1.1 This Rebuttal Statement has been prepared in response to the 'Additional Proof of Evidence of David Seaton' (DS) on behalf of the Appellant, dated October 2024. It seeks to address certain statements by Mr Seaton which the Council disputes that require attention now and it is not intended to be a full response to the whole Statement.

2.0 ITEMISED REBUTTAL COMMENTS

2.1 DS 2.4 i.:

The Council recognises that the phrase "in principle" has been used in various documents, including in SoCGs as a convenient form of 'shorthand' to characterise the basis of its objection to the Appeal Proposals, but has been consistently clear that this does not lessen the significance and weight to be accorded to its fundamental policy-based objection. In his PoE, however, DS uses the term "in principle" (with the qualification "solely") in an effort to diminish the significance of the Council's objection. Irrespective of the subjective use of the terminology by him, the Council does not agree that this is a minor or marginal consideration. As is clear from my evidence (8.2 of my Supplementary Proof amongst others), the harm arises from a material conflict with the development strategy at the heart of Local Plan and it is not merely 'technical' or of abstract effect because it undermines the overall sustainable settlement-concentration objective expressed in a carefully-crafted and tested (through the Plan-making process) set of clearly inter-related and complementary set of strategic policies. See also IDL 44.

2.2 DS 2.4 iii)

DS' proof contains a consistent misdirection, illustrated there, in seeking to disaggregate the separate elements of the mixed use proposal and emphasize their separate/individual benefits. As paragraph 3.1 of the Additional SoCG (October 2024) states, "*the Appeal Proposal is promoted as a single integrated mixed-use development and should be considered and determined on that basis.*" Mr Seaton relies on this precise characterisation elsewhere in his evidence.

Thus, although it is the market housing element that is specifically in conflict with DP policy, this element is self-evidently a major development in its own right in terms of scale and one upon which, as Seaton makes clear elsewhere, the rest of the scheme and the alleged benefits (employment, renewable energy [and indeed, the proposed TEUE access]) fundamentally depends for funding and delivery. This is, therefore, demonstrably a market housing-***led*** scheme and it must be strongly suspected that the ***other*** land use elements have therefore been consciously 'bolted on' to it in an attempt to mitigate/dilute the clear development plan policy presumption against market housing in this case.

2.3 DS 2.4 iv.

The Council disputes this assertion. In the last Inquiry I said that the remaining 12 criteria in S1 after S1 (a) were either complied with, or (mostly) were not relevant. See also IDL 34..

2.4 DS 2.4 v.

The Council disputes this statement. My acceptance of this claim in XX was heavily qualified and, particularly, I emphasized that the commentary in question needs to be read in the context of the rest of the Policy and the clear purpose thereof and of the other strategic policies. See also IDL 39 which reflects my own response in respect of Policy 14. It is a fundamentally wrong and misleading approach to the interpretation of planning policies to highlight only ***parts*** of them – individual sentences or even clauses - and attempt to import a meaning to them in isolation, merely because read in that way it supports a particular case or argument. In practice, this is self-serving 'cherry-picking'. Such an approach is compounded by an attempt, in the case of Policy S1, to identify a hypothetical 'underlying/express objective' which does not bear critical examination when the policy is read ***precisely***, in its *entirety* and in the ***context*** of the consciously interrelated and complementary suite of strategic policies set out in the LP. At the nub of this is interpretation of what "at" means in the context of the LP strategy to focus/concentrate major development in the main identified towns, including Tiverton.

The Council says that, taking all the relevant strategic policies read together, it is clear that "at" is intended to mean specifically within the defined settlement boundaries of the towns, which have been consciously drafted to include development allocations and not just existing development and to establish where the 'countryside' begins. If they were not precisely determinative of the locational qualification "at", there would be no logic, purpose or need for them (See IDL 40). That was and continues to be the Council's case and it was endorsed by the previous Inspector (IDL 35 and 37). In contrast, DS seeks to argue that 'focus'/'concentration' at the towns and, thus, achieving his inferred 'underlying purpose' of Policies S1 and S2, can be interpreted – loosely - to be on the edge of or otherwise proximate to the town, whilst ignoring the settlement boundary. Applying this justification undermines the key locational strategy and objective of achieving sustainable development in the LP and risks widespread unrestricted urban sprawl because the same argument could be used with equal force for ***any*** site in a comparable location/relationship to the urban area. Thus, the Appeal Site is neither unique nor distinguishable from other land immediately beyond the settlement boundary elsewhere.

2.5 DS 2.5

This is an incorrect, misleading, oversimplification of the Council's case in a further attempt to diminish it. See my rebuttal comment on 2/4 v. above.

2.6 DS 3.4/3.5 – 'Quashing Matters'

The statements in these paragraphs are clearly wrong and a palpable misdirection. The Court quashed the previous decision on the basis of part of one ground illustrated in the consent order between the parties. The Court did not, therefore, address the Appellant's other grounds. There is no basis for claiming that the Court found that the Inspector had misdirected himself generally/on other specific matters. Although the previous decision clearly cannot be determinative and the current Inspector will undertake her own fresh assessment of the evidence, the findings of the previous Inspector outside the narrow grounds on which the Court found that he had erred, remain legitimate planning judgements and material considerations in this case.

2.7 DS 3.82 to 3.90 inclusive.

This assessment is now out-of-date. The Council is currently in a consultation process for an updated Area B Masterplan SPD, with a decision expected to be made by the Cabinet on 12 November 2024, shortly before the opening of the Inquiry. Mr Beecham or I will be in a position to update the Inspector on the latest position at the Inquiry. In the meantime, the Cabinet Report proposes a Stage 1 Public Consultation between 24 November 2024 and 10 January 2025; and a Stage 2 Consultation in May/June 2025 with adoption of the Masterplan in August 2025, when previous versions – to which Mr. Seaton's PoE alludes - will self-evidently be superseded. In the meantime, I am instructed that, amongst other things, the Masterplan provides a new point of access from Post Hill including changed prioritisation of traffic and this is in accordance with the latest WCL proposals (see WC/MDDC/DCC SoCG). Accordingly, no provision is needed, anticipated or made for access through the Appeal Site.

2.8 DS 3.98 to 3.102 inclusive. Connection to the Red Linhay Farm AD

The Council remains of the view that this connection is a potential benefit if it were to be provided. However, recent developments, including an enforcement issue, have resulted in the Council having significant, wide-ranging and currently unresolved concerns about whether the Red Linhay Farm AD is operating within its permitted capacity. It is also concerned about apparently inaccurate technical information provided recently. These matters have been addressed in recent correspondence between the parties. In the circumstances, whilst the Council does not wish to resile from previous agreements on this matter, at the present time, and absent necessary reassurance from the Appellant, it remains the Council's case that the Appeal Proposals are likely to necessitate the use of unlawfully generated output given that that, on the basis of technical advice obtained by the Council, the energy needs of the proposals require more than can be provided via a 500kW system operating within its consented limits. Accordingly, and having regard to the Appellant's own latest technical information/evidence that the AD cannot supply ***all*** of even the Business Park Extension's energy needs, the ***moderate weight*** I have attached to this proposal to date must now be seen as an 'at best' scenario. Because of the ongoing dialogue between the parties, The Council will update its position on this issue, including in relation to enforcement matters at the Inquiry.

2.9 DS Proof Section 4 – 'Issues Raised by Third Parties'.

Mr Beecham and I have made clear in our supplementary evidence that, notwithstanding the SoCG with WCL, the Council is not relying exclusively on the WCL proposal to ensure delivery of Area B of the TEUE within the Plan Period. However, it is clear from the SocG that there is at least now a reasonable likelihood of that scheme being delivered in a timely fashion in the foreseeable future and within the Local Plan Period. It is not my role to defend the WCL proposal and I do not seek to do so. Moreover, since the WCL proposals are not before this Inquiry, I see little benefit to the Inspector in an extended debate in respect of them, particularly the detailed access arrangements, though that is ultimately a matter for the Inspector. I have, however, read and noted the Appellant's detailed technical criticisms of it, including the evidence of Mr Neil Thorne, albeit I believe these were drafted before the Appellant had seen the SoCG between WCL, MDDC and DCC. I am in no position professionally to comment on Mr Thorne's evidence, including the Appellant's SoCG with Devon CC as Highway Authority, other than to observe that the Council has never challenged that the Appellant's link road proposals are technically acceptable/compliant and apparently deliverable. The Council's case remains that, whilst it is a ***potential*** benefit, it is not actually ***needed*** to deliver the TEUE Area B any sooner than any other potential access solution, and specifically before the end of the Local Plan Period, and should therefore attract little/no weight, therefore.

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