

APPEAL BY WADDETON PARK LTD

PINS REFERENCE: APP/Y1138/W/22/3313401  
LAND AT HARTNOLL BUSINESS CENTRE

CIL REGULATION 122  
(LACK OF) COMPLIANCE STATEMENT  
(excluding NHS)

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).

JULY 2023



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## 1.0 Introduction

1.1 Regulation 122(2) ("**Reg 122**") of the Community Infrastructure Levy Regulations 2010 (the "**Regulations**") states that a planning obligation may only constitute a reason for granting planning permission if the obligation is:

- a. necessary to make the development acceptable in planning terms;
- b. directly related to the development; and
- c. fairly and reasonably related in scale and kind to the development.

1.2 Reg 122 (2A) states:

*"Paragraph (2) does not apply in relation to a planning obligation which requires a sum to be paid to a local planning authority in respect of the cost of monitoring (including reporting under these Regulations) in relation to the delivery of planning obligations in the authority's area, provided—*

- a. the sum to be paid fairly and reasonably relates in scale and kind to the development; and*
- b. the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development." (my underlining)*

1.3 In terms of legal principles that apply to the application of the above tests the following case law is relevant:

### **Over-arching principle**

1.4 In the case of *R (Welcome Break Group Ltd) v Stroud District Council* [2012] the High Court established that the application of Reg 122 is a matter of planning judgment for the decision-maker.

### **Reg 122(a) – Necessity**

- 1.5 An assessment of whether or not a planning obligation is necessary requires an assessment of what is or is not acceptable in planning terms which is a matter for the decision-maker (case of *Oxfordshire County Council v Secretary of State for Communities and Local Government* [2015]). Whilst the phrase "planning terms" is not defined in the Regulations it was established in the case of *R v Westminster City Council ex parte Monahan* [1990] that a planning purpose was one that was concerned with the development and use of land.

### **NPPF**

- 1.6 Paragraph 57 of the National Planning Policy Framework (NPPF) repeats the regulation 122 tests.

### **Inappropriate use of documents (NPPG)**

- 1.7 The National Planning Policy Guidance (NPPG) sets out further policy and information on the use of planning obligations. In particular it states that:

*"Policies for planning obligations should be set out in plans and examined in public. Policy requirements should be clear so that they can be accurately accounted for in the price paid for land.....It is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these would not be subject to examination.....the decision maker must still ensure that each planning obligation sought meets the statutory tests set out in [regulation 122](#)."* (Reference ID: 23b-004-20190901)

- 1.8 DCC, as a consultee in relation to both Education and Waste Management matters, have made reference to 'S106 approach' documents that are not part of the DP, nor are they SPD. These documents can be afforded no weight in the determination of this appeal and they are contrary to the clear guidance of the Government of this matter (see above). In my opinion they are being used to underpin an approach to seeking S106 contributions that is, having regard to the provisions of CIL Regulation 122, not consistent with the relevant legal framework since it fails to address the requirement for a claimant to evidence the necessity of the contribution sought (I will elaborate on this point in relation to each subject in due course).

## **Location of the appeal site**

- 1.9 It is a matter of fact that the appeal site is located to the east of the Tiverton Eastern Urban Extension (TEUE) that is allocated in the DP. The appeal site is not a component part of the TEUE and it is not subject to those policies of the DP that deal with the TEUE (TIV1-TIV5). In assessing infrastructure matters the Council have made the error of treating the site as though it forms a component part of the TEUE. The appeal proposals are brought forward partly because of the evident lack of timely delivery of the TEUE in relation to the DP period.

## **2.0 Agreed Obligations**

- 2.1 Affordable Housing (but the appellant notes that beyond the simple transfer of the affordable dwellings to an RP there is no ongoing monitoring to be performed by the Council).

## **3.0 Disputed Obligations**

- 3.1 This statement goes on to record the disputed matters in relation to CIL Regulation 122 compliance. In summary those matters are:
- *Education* – the appellant questions not only the basis for the obligation sought by the Council but also the alleged monitoring work associated with that obligation.
  - *Transport* – the appellant questions not only the basis for the obligation sought by the Council but also the alleged monitoring work associated with that obligation.
  - *Waste Management* - the appellant questions not only the basis for the obligation sought by the Council but also the alleged monitoring work associated with that obligation.

- The *NHS Contributions* are also disputed, but these are the subject of a separate position statement.

## **4.0 Analysis of the planning obligations sought**

### **Education**

#### ***General Points***

- 4.1 The appellant notes that the request for funding is predicated upon a forecast that has not been disclosed to the appellant (the appellant questions whether MDDC have been provided with this information or, if not, whether they have requested sight of it?)
- 4.2 The appellant has requested this information (see letter to DCC dated 20/07/23 and subsequent e-mails, attached as appendix 1) and reserves the right to comment upon the forecast if it is, eventually, received.
- 4.3 Notwithstanding this request the appellant has interrogated the published information about existing school capacity in the locality.
- 4.4 Based on the information that has been disclosed in the e-mail exchange (see appendix 1) it appears that DCC may have been counting in forecast needs that may arise from new permissions but that they have not discounted from those permissions any S106 contributions secured from those permissions (but until DCC disclose their evidence base the appellant cannot interrogate this matter further).
- 4.5 In my opinion the DCC approach is fundamentally flawed/unlawful. The e-mail from Mark Andrews (dated 01/08/2023) appears to factor in 'approved but unimplemented housing'. The Council may have, or could have, sought S106 contributions from those permissions so they should not be relevant to the calculation that needs to be performed for these appeal proposals.
- 4.6 Mr Andrews also refers to factoring in 'development within the local plan'. This is a non-specific statement. We know that some development within

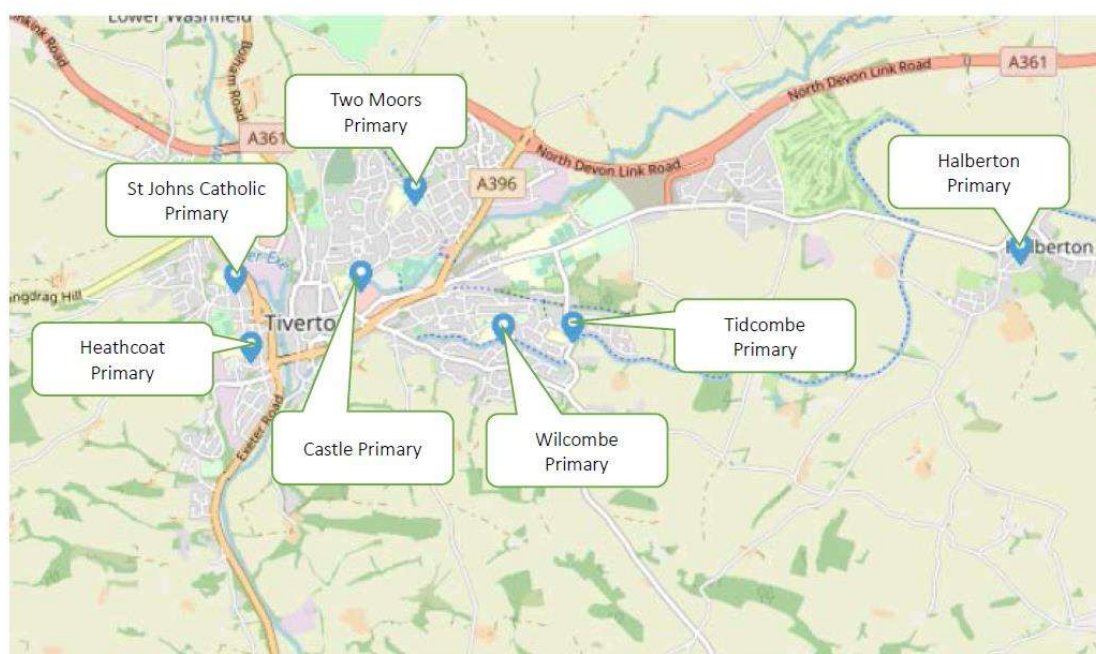
the DP has specific mitigation for impact attached to it (the TEUE for example).

- 4.7 In my opinion such an opaque response to our requests for information falls a long way short of proving necessity; and that is the relevant test that the claimant needs to discharge to the satisfaction of the decision maker. This is particularly true in relation to the subject of Education since government funding for the provision of new school places (based on forecast shortfalls in school capacity) is available to Councils therefore, arguably, there is no necessity for a contribution to increasing capacity to be made.
- 4.8 Bearing in mind the lack of a satisfactory response to the forecasting point from DCC we have carried out an analysis of necessity based on the evidentially demonstrable existing situation.

### ***Current School Capacity***

- 4.9 The map below shows the location of primary schools in the locality.

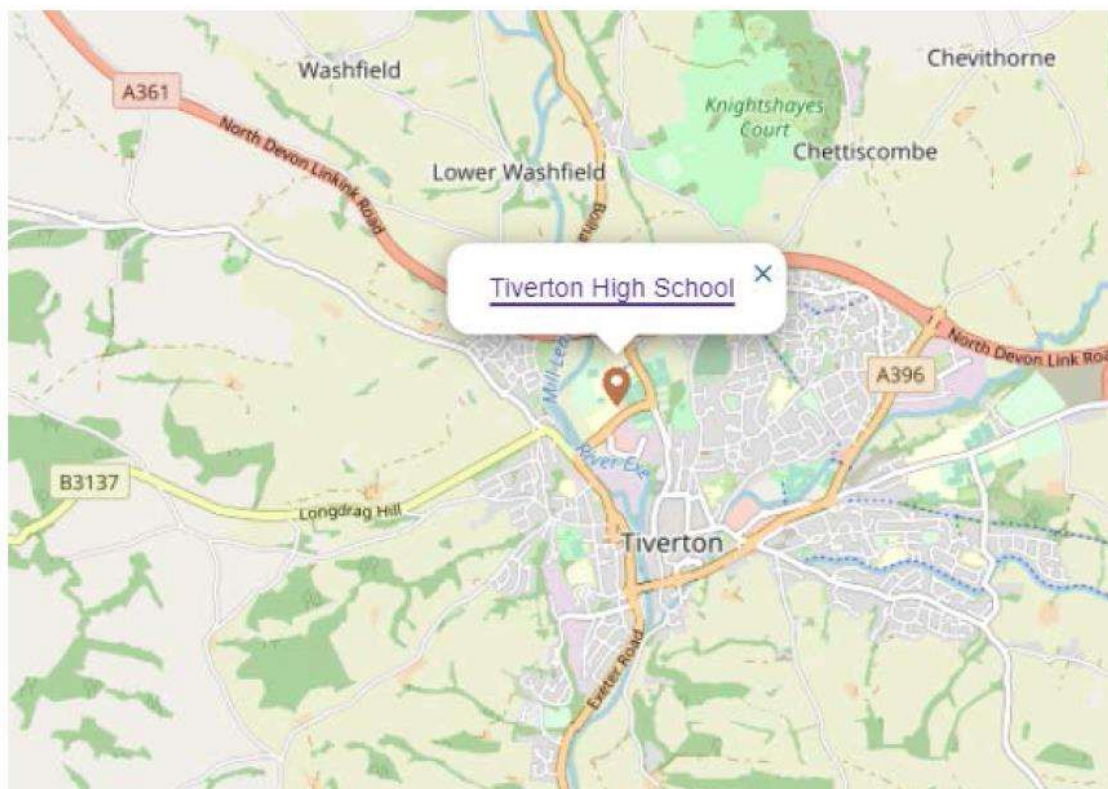
#### *Primary Schools*



## Current School Capacity

4.10 The map below shows the location of secondary schools in the locality.

### Secondary Schools



4.11 The table below summarises the available schools' places for the schools shown on the above maps.

### School Capacity Figures - Year 2021-2022

School Name	School Main Phase	School places	Pupils on role	Primary Capacity	Pupils over capacity	Unfilled Places
Castle Primary School	Primary	420	307	420	0	113
Halberton Primary School	Primary	87	97	87	10	0
Heathcoat Primary School	Primary	412	358	412	0	54
St John's Catholic Primary School	Primary	203	123	203	0	80
Tidcombe Primary School	Primary	194	196	194	2	0
Two Moors Primary School	Primary	420	374	420	0	46
Wilcombe Primary School	Primary	210	172	210	0	38
	<b>Totals</b>	<b>1946</b>	<b>1627</b>	<b>1946</b>	<b>12</b>	<b>331</b>
Tiverton High School	Secondary	1482	1216	0	0	266

Source:

<https://explore-education-statistics.service.gov.uk/find-statistics/school-capacity>

4.12 The information set out above establishes the following clear conclusions.

### **Primary**

- 4.13 As the above map and table demonstrate there is a significant oversupply of primary education capacity that is available to serve occupants of the appeal proposals (331 places).
- 4.14 Based on the available evidence the appellant concludes that this element of the request for funding is NOT compliant with the test set out in CIL Regulation 122 since no necessity for the contribution sought has been demonstrated.

### **Secondary**

- 4.15 Similarly, with respect to secondary provision there is, evidentially, more than sufficient capacity to serve potential occupants of the appeal proposals (226).
- 4.16 Based on the available evidence the appellant concludes that this element of the request for funding is NOT compliant with the test set out in CIL Regulation 122 since no necessity for the contribution sought has been demonstrated.

### **Education Land**

- 4.17 The request for an education land payment appears misconceived. That part of the request refers to '*Previous responses to applications coming forward for the Eastern Urban Extension set out an appropriate value for non-residential land.....*'. Presumably this request is based on treating the appeal site as though it forms part of the TEUE (although, plainly, it is not)? Presumably that land sought is land for the construction of a new primary school to serve the TEUE? If not, where is the land contribution to be spent and to meet what particular identified need (and that must be a necessary need)?



4.18 The S106 agreement associated with the grant of permission for the Chettiscombe Trust (14/00881/MOUT) made provision for a primary school site.

4.19 Based on the available evidence the appellant concludes that this element of the request for funding is NOT compliant with the test set out in CIL Regulation 122 since no necessity for the contribution sought has been demonstrated.

### ***Special Education Provision***

4.20 The appellant questions why this contribution is sought. SEN needs are, wherever possible, met within the normal school population and not in a specialist institutions. The appellant therefore seeks to understand what DCC mean by the use of the terminology 'specific Special Education provision'? Does this relate to some form of teaching support within the general school population, or is it only related to a form of secure/specialist teaching centre? If so what is that facility and what is the existing capacity of it?

4.21 Based on the available evidence the appellant concludes that this element of the request for funding is NOT compliant with the test set out in CIL Regulation 122 since no necessity for the contribution sought has been demonstrated.

### ***Early Years***

4.22 The appellant questions why this contribution is sought. Early Years provision is not a statutory function of an Education Authority and whether parents choose, or not, to send their children to an Early Years facility is a matter of personal choice.

4.23 The basis of which any calculation is performed is therefore unclear. It is clearly not either a safe, nor a reasonable assumption to make that each dwelling will accommodate children that will attend an Early Years facility.

4.24 The basis of Early Years provision is that of private sector providers responding to market needs. The appellant does not understand the mechanism that DCC are suggesting (if there is one) that will use any sum and direct it towards clearly identified shortcomings in existing provision that it is necessary for this particular development proposal to remedy.

4.25 Based on the available evidence the appellant concludes that this element of the request for funding is NOT compliant with the tests set out in CIL Regulation 122 since no necessity for the contribution sought has been demonstrated.

### **Transport**

4.26 The appellant notes that no transport infrastructure request has been raised by the Highway Authority (Devon County Council).

4.27 The funding request appears to have been unilaterally raised by MDDC on a misconceived basis:

- The request refers to a policy that does not apply to the appeal site (the appeal site is not a component part of the TEUE).
- Many of the items listed in the policy are wholly or partially funded by consented developments that have come forward as part of the TEUE (for example 14/00881/MOUT).

4.28 Further, the delivery of the link road represents a significant positive benefit to the TEUE in that it will facilitate, in part, delivery of 'Area B' and that it will allow the TEUE, in whole, to be served by bus services on a 'through route' basis.

4.29 Based on the available evidence the appellant concludes that this element of the request for funding is NOT compliant with the tests set out in CIL

Regulation 122 since no necessity for the contribution sought has been demonstrated.

### **Waste Management**

4.30 Devon County Council have requested a financial contribution towards a new household Waste Recycling Centre in the Cullompton area (via an e-mail dated 16//11/2022). That e-mail does not set out with any clarity how the specific impact of the appeal proposals gives rise to the need for a necessary financial contribution. The appellant has written to DCC to seek clarity (see appendix 2). However, this has not revealed any further information relating to the necessity of the contribution sought.

4.31 The document reference is not to the DP, nor an SPD and can be accorded no weight in the determination of this appeal. The reference to paragraph 1.8 of that document is simply a 'roof tax' reference. This approach is clearly flawed for numerous reasons:

- Firstly it factors in existing as well as new homes.
- Secondly it fails to demonstrate (in any way) any necessity in relation to development *per se*, or these specific appeal proposals.
- Thirdly it fails to explain how any alleged impact relates to the £128 per dwelling contribution sought.
- Fourthly it is again a subject where necessity is difficult to demonstrate since Waste Management is a service funded via Council Tax payments.

4.32 Thus, on the face of it, the pertinence of the contribution sought to waste management at Tiverton appears not to exist.

4.33 The appellant notes DCC request a contribution towards a new facility in the Cullompton area. The appellant considers that a new recycling facility at Cullompton is sought to meet the needs of the allocated urban expansion at Cullompton. The appellant is not aware of any demonstrable problem with waste management capacity in the Tiverton are, particularly any set out in the DP.

- 4.34 The MDDC does make reference to a Energy from Waste plant at Tiverton (paragraph 3.60, page 65) but records that a site within the TEUE has been identified and that it is expected to be fully funded by a private sector waste company.
- 4.35 The appellant reserves the right to comment upon any additional justification that may be presented by DCC.
- 4.36 Based on the available evidence the appellant concludes that this element of the request for funding is NOT compliant with the tests set out in CIL Regulation 122 since no necessity for the contribution sought has been demonstrated.

## 5.0 Monitoring Fee

### 5.1 Reg 122 (2A) states:

*"Paragraph (2) does not apply in relation to a planning obligation which requires a sum to be paid to a local planning authority in respect of the cost of monitoring (including reporting under these Regulations) in relation to the delivery of planning obligations in the authority's area, provided—*

- c. the sum to be paid fairly and reasonably relates in scale and kind to the development; and*
- d. the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development." (our underlining)*

### 5.2 Thus, it is quite clear that any monitoring fee sought by the Council must relate only to:

- the planning obligations that relate to the development
- the cost of that specific monitoring work

### 5.3 The appellant questions, having regard to the particular nature of the planning obligations, what specific monitoring work is actually required to be performed (as opposed to simply the normal procedure for complying with the S106 obligation)?

## **Appendix 1**

Devon County Council has reviewed the application above and in order to make the development acceptable in planning terms, an education contribution to mitigate its impact is requested. The requests are in line with DCC's current Education Infrastructure S106 Approach (February 2020), DfE guidance and the latest pupil data.

The proposed increase of 150 family type dwellings would generate an additional 37.5 primary pupils and 22.5 secondary pupils.

### **Special Education Provision**

It is set out in DCC's Education Infrastructure Plan that approximately 1.5% of the school population require specific Special Education provision. The proposed development is likely to generate a total of 0.9 pupils (0.56 primary, 0.34 secondary) who will require a specialist place. Based on a standard rate of £86,284 per SEN pupil, a total of £77,655 is requested for additional SEN provision that would be required as a result of the development. DCC will not seek additional primary or secondary contributions for SEN pupils and therefore will seek S106 contributions towards the remaining 36.94 primary and 22.16 secondary pupils likely to be generated by the development.

### **Primary Education Provision**

Devon County Council acknowledges the shift in demographics in Tiverton and an increase in the number of spare primary places across the town. Although this application does not form part of the Eastern Urban Extension allocation (Tiv 1-5) which includes the provision of onsite primary facilities, given the applications location, primary pupils generated from this development would be expected to attend the new primary school. Therefore, in accordance with the Department for Education's guidance 'Securing Developer Contributions for Education' the capacity of existing primary schools beyond the statutory walking distance of the site do not need to be taken into account when calculating developer contributions.

Tidcombe Primary School and Halberton Primary School are within the statutory walking distance of the site. Both schools are forecast to be at capacity, therefore Devon County Council will request a contribution for the full 36.94 primary pupils. The contribution sought is £717,263 (based on the DfE new build rate of £19,417 per pupil). This will relate directly to providing education facilities for those living in the development.

### **Early Years**

In addition, a contribution towards Early Years provision is needed to ensure delivery of provision for 2, 3 and 4 year olds. This is calculated as £37,500 (based on £250 per dwelling). This will be used to provide early years provision for pupils likely to be generated by the proposed development.

### **Education Land**

In accordance with the Department for Education Building Bulletin 103 and 104, primary schools of 420 places require a site of 1.8Ha, 43m<sup>2</sup> per pupil. Similar to the primary contribution, a land contribution is requested for 36.94 primary pupils, requiring a pro-rata land requirement for primary of 0.158Ha. In addition, land for nursery provision is calculated at 1.4m<sup>2</sup> per dwelling. As a development of 150 dwellings this is a land requirement for early years of 0.021Ha. In total, this is a land requirement of 0.179Ha. Previous responses to applications coming forward for the Eastern Urban Extension set out an appropriate value for non-residential land in the district as £500,000 per hectares. Applying this to the 0.179Ha requirement indicates that a contribution of £89,500. Noting that £500,000 per hectares

dates from 2013, it is appropriate that indexation is applied to the figure, which would increase it to £120,661.

However, it should be noted that this figure is an estimated price, and that the actual costs will be subject to landowner negotiations. It is expected that the developer of this site shall pay the full cost for this area of land, even if this is more or less than the figure provided here. This reflects the current S.106 agreement for this site.

### **Secondary Education Contributions**

Tiverton High is forecast to have capacity for 54% of all pupils likely to be generated by the proposed development. Therefore, Devon County Council would seek a contribution based on the Tiverton secondary percentage of 46% directly towards additional secondary education infrastructure at Tiverton High School. The contribution sought towards secondary provision would be £229,488 (based on the DfE extension rate of £22,513 per pupil). This would relate directly to providing secondary education facilities for those living in the development.

It should be noted that in accordance with the County Council's Education Infrastructure Plan, education contributions are required from all family type dwellings, including both market and affordable dwellings. Affordable housing generates a need for education facilities and therefore any affordable units to be provided as part of this development should not be discounted from the request for education contributions set out above. Such an approach would be contrary to the County Council's policy and result in unmitigated development impacts.

All contributions would be subject to indexation using BCIS, it should be noted that education infrastructure contributions are based on March 2019 rates and any indexation applied to contributions requested should be applied from this date.

In addition to the contribution figures quoted above, the County Council would wish to recover legal costs incurred as a result of the preparation and completion of the Agreement. Legal costs are not expected to exceed £500.00 where the agreement relates solely to the education contribution. However, if the agreement involves other issues or if the matter becomes protracted, the legal costs are likely to be in excess of this sum.



**Our Ref** DS/SJS/1883  
**Date** 20<sup>th</sup> July 2023



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Topsham  
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Dear Sir/Madam,

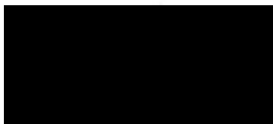
**LAND AT HARTNOLLS FARM**  
**APPLICATION REFERENCE: 21/01576/MOUT**  
**APPEAL REFERENCE: APP/Y1138/W/22/3313401**

With reference to your consultee comments in respect of the above application, we note your request for funding is predicated on a forecast and we request a copy of that forecast in order to interrogate the compliance (or not) of your position in relation to CIL Regulation 122.

Please note that this matter is proceeding to determination via public inquiry, opening on 12<sup>th</sup> September 2023, so your expedient response is necessary.

We look forward to hearing from you.

Kind regards,



David Seaton, BA (Hons) MRTPI  
**For PCL Planning Ltd**



c.c. Mid Devon District Council

## Sarah Smith

---

**From:** Sarah Smith  
**Sent:** 01 August 2023 15:10  
**To:** mark.andrews [REDACTED]  
**Cc:** David Seaton  
**Subject:** FW: LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401  
**Attachments:** 07-20-23 DCC Education.pdf

Tracking:	Recipient	Delivery
	mark.andrews [REDACTED]	
	David Seaton	Delivered: 01/08/2023 15:10

Dear Mr Andrews,

We emailed you on the 20<sup>th</sup> July in respect of the above appeal, but have had no response.

Could you kindly send the requested forecast please, so that we may have the opportunity to review, prior to the public inquiry.

Thank you for your assistance.

Best regards,  
Sarah

13a-15a Old Park Avenue  
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Devon, EX1 3WD  
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**From:** Sarah Smith  
**Sent:** Thursday, July 20, 2023 1:36 PM  
**To:** mark.andrews [REDACTED]  
**Cc:** David Seaton [REDACTED] James Clements [REDACTED]  
**Subject:** LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401

Dear Mr Andrews,

Please find attached a letter from David Seaton in respect of the above appeal.

Best regards,

**Sarah Smith**

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## Sarah Smith

---

**From:** Mark Andrews [REDACTED]  
**Sent:** 01 August 2023 15:17  
**To:** Sarah Smith  
**Cc:** David Seaton  
**Subject:** RE: LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401

Good Afternoon Sarah,

Apologies for the delay. This has been passed onto a colleague who manages development within the Mid Devon area.

I will give this a chase and have our forecast details sent to you.

Many thanks,

Mark

**Mark Andrews (he/him)**  
Climate Change, Environment and Transport  
Devon County Council,  
Room 120, County Hall, Topsham Road  
Exeter, EX2 4QD  
[REDACTED]

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## Sarah Smith

---

**From:** David Seaton  
**Sent:** 02 August 2023 10:45  
**To:** Mark Andrews; Sarah Smith  
**Cc:** tpeat [REDACTED]  
**Subject:** RE: LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401

Mark,

I'm sorry – but since this information needs to be disclosed to the decision maker (The Inspector) it needs to be served on us in hard copy so it can be submitted to the inquiry and examined by the Inspector (with our comments upon that information base).

Such a generalised (Devon wide) reference does not explain how you may have used this information to support your request and doesn't help either the appellant, nor the Inspector, understand the process that you have been through to arrive at your conclusions.

If you are to provide any further justification then please do so expediently in order that the appellant is not prejudiced in preparing for the inquiry.

Kind Regards,

**David Seaton BA (Hons) MRTPI**  
**Managing Director**

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**From:** Mark Andrews [REDACTED]  
**Sent:** Wednesday, August 2, 2023 10:31 AM  
**To:** David Seaton [REDACTED] Sarah Smith [REDACTED]  
**Cc:** tpeat [REDACTED]  
**Subject:** RE: LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401

Hi David,

The forecast module spreadsheet in which our base forecasts are taken can be found here under the pupils forecast section on our website here <https://www.devon.gov.uk/support-schools-settings/administration-and-finance/administration/school-census/>

Many thanks,

Mark

**Mark Andrews (he/him)**  
Climate Change, Environment and Transport  
Devon County Council,  
Room 120, County Hall, Topsham Road  
Exeter, EX2 4QD



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**From:** David Seaton

**Sent:** 02 August 2023 10:18

**To:** Mark Andrews Sarah Smith

**Cc:** [tpeat](#)

**Subject:** RE: LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401

Mark,

Thank you for reply. Unfortunately you have failed to disclose the forecasts requested. The summary information provided is not sufficient for us to interrogate the veracity of the forecast that underpin the request for funding. Please produce the forecasts expediently in order that the appellant can analyse that essential underpinning information.

Kind Regards,

**David Seaton BA (Hons) MRTPI**  
**Managing Director**

**PCL PLANNING LTD**

13a-15a Old Park Avenue  
Exeter  
EX1 3WD  
United Kingdom



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---

**From:** Mark Andrews

**Sent:** Tuesday, August 1, 2023 3:38 PM

**To:** Sarah Smith

**Cc:** David Seaton

**Subject:** RE: LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401

Dear Sarah Smith,

I have been passed on the following information.

Our response dated 13/09/2021 was based on our Section 106 infrastructure approach document published in February 2020 (attached). In December 2021, DCC updated this policy and I have attached this for our latest position on requesting contributions.

### **SEN Contributions**

As per our S106 policy states a development of 150 dwellings or above are subject to SEN contribution requests. This was based on 1.5% of the school population that would require specific SEN provision, in the main delivered through a local special school. It should be noted that in our current policy this percentage has been updated to 2%.\*

### **Primary Education Contributions**

As per our response, Tidcombe Primary School and Halberton Primary School are within the statutory walking distance of the site and were used when analysing potential contribution requests. The following table shows the forecasts for Spring 2026.

School	Net Capacity	Forecast when factoring in approved but unimplemented housing (Spring 2026)	Spare capacity when factoring in approved but unimplemented housing
Tidcombe Primary School	195	168.57	26.43
Halberton Primary School	87	120.50	-33.50

When factoring in pupils expected to be generated by approved development, the local schools have a shortfall of 7.07 pupils and therefore a contribution towards primary education for 100% of the pupils generated by development is sought. These forecasts are based on the 1-4 year old children living within the area.

### **Secondary Education Contributions**

Earlier this month we updated our forecasts with the new Spring 2029 data which show the following;

School	Net Capacity	Forecast when factoring in approved but unimplemented housing (Spring 2029)	Spare capacity when factoring in approved but unimplemented housing
Tiverton High School	1482	1331.50	150.50

We are anticipating an additional 181.95 secondary pupils to come forward from development within the local plan and have allocated this remaining space equally to all developments. Development within the area would therefore be required to pay secondary contributions against 17% of the pupils expected to be generated by development.

We hope this explains our approach when seeking developer contributions for education provision sufficiently.

As this development has not yet been approved, your client is able to request an updated education response based on the most recent forecast as shown above. Please note the increased rates included in the updated S106 Policy would now apply to the updated percentages.

S106 Approach December 2021: Updated Rates

Education infrastructure	Cost per place
Primary New Build	£20,305
Primary Extension	£17,097
Secondary New Build	£24,682
Secondary Extension	£23,540
Post 16 New Build	£24,682
Post 16 Extension	£23,540
SEN New Build	£89,974
SEN extension	£81,274

Many thanks,

Mark

**Mark Andrews (he/him)**

Climate Change, Environment and Transport  
Devon County Council,  
Room 120, County Hall, Topsham Road  
Exeter, EX2 4QD



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## Sarah Smith

---

**From:** Mark Andrews [REDACTED]  
**Sent:** 02 August 2023 16:03  
**To:** David Seaton; Sarah Smith  
**Cc:** tpeat [REDACTED]  
**Subject:** RE: LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401  
**Attachments:** Halberton and Tidcombe Primary School Forecast (Spring 2026) & Tiverton High Forecast (Spring 29).xlsx

Hi David,

I have extracted the data from the online spreadsheet (attached). The current forecasts used are based on the Spring 2026 data (primary) and Spring 2029 data (secondary). These forecast figures are based on the number of children currently living within the designated areas that are expected to attend the local schools.

Many thanks,

Mark

**Mark Andrews (he/him)**

Climate Change, Environment and Transport  
Devon County Council,  
Room 120, County Hall, Topsham Road  
Exeter, EX2 4QD  
[REDACTED]

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## Halberton Primary School

Academic Year	Pre School Data for Academic Year				Full-Time Pupils on Roll (excluding 3 year olds and 10 year olds in Secondary schools)							
	1	2	3	4	4	5	6	7	8	9	10	Total
20/21 (Spring 21)	15	12	10	16	18	12	11	10	14	9	8	82
21/22 (Spring 22)	4	14	15	13	20	18	13	12	9	14	10	96
22/23 (Spring 23)	9	4	14	16	22	20	18	13	12	6	14	105
23/24 (Spring 24)	8	9	4	14	20	22	20	18	13	12	6	111
24/25 (Spring 25)		8	9	4	6	20	22	20	18	13	12	111
25/26 (Spring 26)			8	9	13	6	20	22	20	18	13	112

## Tidcombe Primary School

Academic Year	Pre School Data for Academic Year				Full-Time Pupils on Roll (excluding 3 year olds and 10 year olds in Secondary schools)							
	1	2	3	4	4	5	6	7	8	9	10	Total
20/21 (Spring 21)	20	24	27	26	22	32	28	26	31	27	29	195
21/22 (Spring 22)	20	19	23	30	29	23	31	30	27	28	27	196
22/23 (Spring 23)	31	22	21	29	21	25	17	31	27	27	29	177
23/24 (Spring 24)	29	31	22	21	18	21	25	17	31	27	27	166
24/25 (Spring 25)		29	31	22	18	18	21	25	17	31	27	157
25/26 (Spring 26)			29	31	26	18	18	21	25	17	31	156

Academic Year	Full-Time Pupils on Roll					
	11	12	13	14	15	Total
20/21 (Spring 21)	226	228	260	247	229	1190
21/22 (Spring 22)	270	226	233	253	245	1229
22/23 (Spring 23)	233	262	215	227	246	1183
23/24 (Spring 24)	276	233	262	215	227	1213
24/25 (Spring 25)	242	276	233	262	215	1228
25/26 (Spring 26)	249	242	276	233	262	1262
26/27 (Spring 27)	256	249	242	276	233	1257
27/28 (Spring 28)	228	256	249	242	276	1251
28/29 (Spring 29)	264	228	256	249	242	1239

## Sarah Smith

---

**From:** David Seaton  
**Sent:** 03 August 2023 09:59  
**To:** Mark Andrews; Sarah Smith  
**Cc:** tpeat [REDACTED] Robert Williams; Gerry  
**Subject:** RE: LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401

Thank You Mark,

This information does move matters along but the appellant, and the Inspector, does need to see the methodology and the 'workings out' for this forecast, not just a summary of the result of that exercise. We need to understand what assumptions have been imputed into what calculation and to clearly understand what gives rise to the figures produced – to what extent is it population growth and to what extent is it the development that you have referred to in your earlier e-mails. So we do need more full please.

To assist matters I'll endeavour to release early our CIL Regulation 122 statement that disputes the request for funding that you are putting forward.

Kind Regards,

**David Seaton BA (Hons) MRTPI**  
**Managing Director**

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EX1 3WD  
United Kingdom

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## Sarah Smith

---

**From:** David Seaton  
**Sent:** 07 August 2023 14:55  
**To:** Sarah Smith  
**Subject:** FW: LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401

**David Seaton BA (Hons) MRTPI**  
**Managing Director**

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**From:** David Seaton  
**Sent:** Friday, August 4, 2023 12:22 PM  
**To:** Amber Dopson <Amber.Dopson@devon.gov.uk>  
**Cc:** Mark Andrews [REDACTED] tpeat [REDACTED] Robert Williams <RWilliams [REDACTED]> Charles Banner QC [REDACTED]  
**Subject:** RE: LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401

Dear Ms Dopson,

Thank you for your e-mail. I'm afraid it doesn't take us much further forward – you're still not releasing your forecasts, nor your methodology. Based on the information that you have provided we (and the Inspector) cannot see what (and why) you are doing with the information that you are using.

Ultimately what you choose to disclose is a matter for you. I think all we can now do to assist the inquiry is to release our analysis of the failure to demonstrate necessity to both DCC and MDDC in advance of the PoE deadline.

If you do choose to release any further information I would be grateful if this is done expediently (bearing in mind that the deadline for submission of proofs of evidence is rapidly approaching).

Sarah – please add this latest e-mail exchange to appendix 1 to our CIL Regulation 122 statement (non NHS) – thanks.

Rob – I suggest we review the draft statement over the weekend with a view to releasing to both Council's early next week.

Kind Regards,

**David Seaton BA (Hons) MRTPI**  
**Managing Director**

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---

**From:** Amber Dopson [REDACTED]  
**Sent:** Friday, August 4, 2023 10:32 AM  
**To:** David Seaton [REDACTED]  
**Cc:** Mark Andrews [REDACTED]  
**Subject:** LAND AT HARTNOLLS FARM - APPLICATION REFERENCE: 21/01576/MOUT - APPEAL REFERENCE: APP/Y1138/W/22/3313401

Dear Mr Seaton,

We previously provided information that clearly shows that growth within the area will lead to a shortfall of pupil places at the local primary and secondary schools.

With regards to our methodology, I believe you have received a copy of our Section 106 Infrastructure Approach (2021) and we have also sent a link to our forecasts. The future forecast intake for Reception children is based on the number of 1-4 year old children living within the designated areas who are anticipated to attend the primary school. This also factors in school preference over the last two years. The Secondary forecasts are calculated similarly. These forecasts do not factor in approved but unimplemented housing.

The housing approvals that have been used within our forecast data are detailed within the attached spreadsheet. Our forecast take into account both housing approvals and also the strategic allocations detailed in the current East Devon Local Plan as part of the planned growth. This data shows the number of pupils expected to be generated by each development and details any pupils that would be covered by S106 contribution requests. Additional pupils mitigated with secured S106 are not added to the total of pupils forecast at the school to ensure that there is no double counting.

In accordance with the Education Infrastructure Plan 2016-2033, DCC consider the adopted Local Plan allocations in addition to the forecast spare capacity and already approved but not yet implemented developments. The forecast spare capacity of an area is then shared proportionately between all outstanding development sites allocated in the Local Plan.

Our request is compliant to the CIL regulations in that this request is:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

DCC policy also reflects the Department for Education guidance on securing developer contributions for education <https://www.gov.uk/guidance/planning-obligations>

DCC is always happy to have a further conversation regards any arising viability issues but we do not consider that the education request against this development is non-compliant. Ultimately, it lies with the inspector and the district to decide whether they support this contribution for education provision.

Kind Regards,

Amber

Amber Dopson (*she/her*)  
Senior School Infrastructure and Place Planning Officer  
School Place Planning  
Planning, Transportation and Environment  
Climate Change, Environment and Transport  
Room 120  
County Hall, Topsham Road  
Exeter, EX2 4QD

School Place Planning website: <http://www.devon.gov.uk/strategic-planning-pupil-places>

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## **Appendix 2**



[REDACTED]

---

**From:** Development Control  
**Subject:** FW: Consultation request - 21/01576/MOUT

**From:** Annette Dentith [REDACTED]  
**Sent:** 16 November 2022 13:59  
**To:** Development Control [REDACTED]

[REDACTED]

**Subject:** Consultation request - 21/01576/MOUT

Dear Mid Devon

Thank you for your consultation letter attached. It appears that the last time we were consulted upon this application (previous response attached) we didn't include a request for a contribution towards a new Household Waste Recycling Centre in the Cullompton area. We request this contribution due to the impact that new development has on existing infrastructure and the need therefore to plan and fund replacement sites. The link explains in more detail why we are making this request and shows the catchment area for a new site for the Cullompton/Tiverton/Willand area [Waste management and recycling - Planning \(devon.gov.uk\)](https://www.devon.gov.uk/planning-and-building-control/waste-management-and-recycling). According to paragraph 1.8 of the document we are asking for a contribution of £128 x 150 homes = £19,200.

Kind regards

Annette Dentith  
Principal Waste Manager  
Devon County Council  
Waste Management Department

## Sarah Smith

---

**From:** Annette Dentith [REDACTED]  
**Sent:** 01 August 2023 16:12  
**To:** Sarah Smith  
**Cc:** David Seaton; tpeat [REDACTED]  
**Subject:** RE: Consultation Response - 21/01476/MOUT - Hartnolls Farm, Tiverton

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi

Sorry, but can I ask you to try this link again. [Waste management and recycling - Planning \(devon.gov.uk\)](https://www.devon.gov.uk/waste-management-and-recycling-planning) I can't see why it isn't working? What is the message? My colleague is on leave currently but in the meantime if this doesn't work I can ask our planning team if they have a copy that hasn't been downloaded onto the website.

Kind regards  
Annette

---

**From:** Sarah Smith [REDACTED]  
**Sent:** 01 August 2023 15:30  
**To:** Annette Dentith [REDACTED]  
**Cc:** David Seaton [REDACTED] tpeat [REDACTED]  
**Subject:** Consultation Response - 21/01476/MOUT - Hartnolls Farm, Tiverton

Dear Ms Dentith,

Please find attached a letter in respect of the above planning application/appeal.

Best regards,

**Sarah Smith**

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Devon, EX1 3WD  
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**Our Ref**      **DS/SJS/1883**  
**Date**            **1<sup>st</sup> August 2023**



13a-15a Old Park Avenue  
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Annette Dentith  
Principal Waste Manager  
Devon County Council  
Waste Management Department  
County Hall  
Topsham  
Exeter  
EX2 4QD

Dear Ms Dentith,

**LAND AT HARTNOLLS FARM**  
**APPLICATION REFERENCE: 21/01576/MOUT**  
**APPEAL REFERENCE: APP/Y1138/W/22/3313401**

With reference to your consultee comments in respect of the above application, we note your request for funding is predicated on a forecast provided via a link (Cullompton/Tiverton/Willand area Waste management and recycling – Planning (devon.gov.uk)). The link does not work for us, and we request a copy of that document in order to interrogate the compliance (or not) of your position in relation to CIL Regulation 122.

Please note that this matter is proceeding to determination via public inquiry, opening on 12<sup>th</sup> September 2023, so your expedient response is necessary.

We look forward to hearing from you.

Kind regards,



David Seaton, BA (Hons) MRTPI  
**For PCL Planning Ltd**



c.c.      Mid Devon District Council