

APPEAL BY WADDETON PARK LTD AGAINST MID DEVON
DISTRICT COUNCIL'S DECISION TO REFUSE PLANNING
PERMISSION

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

LAND AT HARTNOLLS FARM, TIVERTON

PROOF OF EVIDENCE OF DAVID SEATON
PLANNING

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



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1. Qualifications and Experience

- 1.1 My name is David Seaton. I am a Chartered Town Planner and I have been practising in the profession since 1987. I spent some 12 years in Local Government in development control, plan making and finally running a regeneration team. I left the public sector to join Midas Homes Limited (MHL) originally as a Strategic Land Manager. During my time at MHL I was appointed Planning & Development Director and I spent three years on the board of the company with full responsibility for procurement and delivery of sites through to the production team. I was also a member of the team that undertook the due diligence exercise for the acquisitions of Knapp New Homes and Linden Homes during this period. I left MHL at the end of April 2008 to found PCL Planning Ltd. MHL subsequently rebranded to become Linden Homes.
- 1.2 During my time with MHL I assisted in building and maintaining a business that delivered some 500 units per annum in the south west, including the delivery of a significant amount of affordable housing and numerous award-winning schemes. During this period, I represented the housebuilding industry on the steering group of the South West Regional Housing Board (SWRHB). I represented the SWRHB at the round table sessions during the Barker Review.
- 1.3 PCL Planning Ltd act for a wide range of clients across the south west. We have given evidence at a number of significant inquiries and examinations across the region.
- 1.4 The opinion given in this proof has been prepared, and is given, in accordance with the guidance of my professional institution the Royal Town Planning Institute (the RTPI). I confirm that the opinions expressed are my true and professional opinions.

2. Introduction

- 2.1 The appeal proposals are for a mixed use development.
- 2.2 The proposal is submitted in outline, with means of access to the site to be determined only (Drg No 48582/5501/SK02 Rev H). The layout, scale, appearance and landscaping of the site are reserved matters for future consideration. The parameters for the reserved matters are established on the Land Use Parameter Plan (CD41), and also set out in section 4 of the Design and Access Statement.
- 2.3 Access to the site is proposed via Post Hill, which runs along a predominantly east-west alignment connecting Tiverton to Willand.
- 2.4 The illustrative site layout (Framework Plan, Drg No. DE_425_SK11 Rev D) demonstrates how the proposed development could be satisfactorily accommodated on site. The plan illustrates how a mixed use scheme comprising an extension to the business park and new residential development, with a range of housing types, could be arranged, set in a network of multi-functional green corridors accessible to both new residents and the wider community. The proposed green open spaces across the site would accommodate a variety of uses and activities including informal recreation, dog walking, surface water attenuation, permeable woodland and children's play.
- 2.5 This PoE summarises the limited scope of the Council's case and sets out the case for the appellant. It draws upon evidence that I present in my Housing PoE in relation to both 5YHLS and the Council's trajectory over the balance of the plan period (up to 2033) with particular relevance to the deliverability issues that are affecting the Tiverton Eastern Urban Extension (TEUE) (and to a lesser extent the New Settlement at Cullompton). Finally, in relation to drawing conclusions about the weight to be accorded to housing supply matters I also consider affordable/affordability matters in a further PoE that I draw upon to support my conclusions in this PoE.

3. Scope of the Council's Case

- 3.1 Despite originally advancing six putative reasons for refusal, the Council's case now boils down to a single point: an "in-principle" objection to the residential element of the appeal proposal.
- 3.2 The Council accepts that the employment element of the appeal proposal complies with relevant policies in the MDLP, and there is no in principle objection to this part of the appeal proposal (SoCG, para 7.1). They also accept that, subject to appropriate landscape mitigation, both the employment and residential elements of the appeal proposal can be delivered without harming the landscape character or appearance of the area (SoCG, paras 7.3-7.10).
- 3.3 The Council does not contend that the appeal proposals would give rise to any material harm to acknowledged planning interests (such as ecological, heritage, flood risk etc). Nor does their objection to the residential element of the appeal proposal stem from a concern that it would be unsustainable in locational terms. No such allegation has been made in the Officer Report [OR], Decision Notice [DN], or Statement of Case [SoC]. The objection to the residential element is "in principle" because it is advanced purely on the basis that the appeal site falls outside the settlement boundary of Tiverton, and this (the Council says) is contrary to the development plan.

Putative reasons for refusal

- 3.4 Article 35(1)(b) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that decision notices must "*state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision*".
- 3.5 The Council originally advanced six putative reasons for refusal. These are set out in the Statement of Common Ground (SoCG) at paragraph 3.5. Five

of the six reasons for refusal have fallen away or will be addressed by planning obligations in the unilateral undertaking. In short:

- 3.6 **Reason 2** – concerned the potential for adverse impact on the landscape character of the area. This was based on a misreading of the submitted Landscape and Visual Assessment (LVA). The Council now accepts, in accordance with the conclusions of the LVA, that the appeal proposals would not adversely harm landscape character (SoCG, para 7.4) and would have an overall neutral visual effect (SoCG, para 7.10). They no longer seek to rely on reason for refusal 2 (SoCG, para 7.5). Appendix A to this PoE sets out my colleague, Andy Williams', clarifications in relation to the LVA.
- 3.7 **Reason 3** – related to biodiversity net gain (BNG). The Council accepts that the submitted BNG calculation (using Biodiversity Metric 3.1) demonstrates that the appeal proposal would result in a biodiversity net gain, which can be secured by condition. Accordingly, the Council no longer seeks to rely on reason for refusal 3 (SoCG, paras 7.12-7.13).
- 3.8 **Reason 4** – concerns planning obligations. The Appellant disputes whether a number of the requested obligations meet the CIL Regulation 122 tests. The basis for this is set out in two position statements which have been issued to the Council (one concerning the NHS obligation, and the second concerning the remaining obligations in dispute). Whilst the Appellant will continue to work with the Council to see if the issues can be narrowed, this is likely to be a matter of dispute at the Inquiry (SoCG, para 9.3). However, a unilateral undertaking has been offered which secures the planning obligations if the Inspector were to conclude that they meet the CIL Regulation 122 tests. Accordingly, reason for refusal 4 can no longer constitute a reason for refusing permission.
- 3.9 **Reason 5** - related to town centre impacts. The Council now accepts that this can be addressed by a condition restricting the amount of leisure floorspace to a maximum of 500 square meters (SoCG, para 7.17). Accordingly, the Council no longer seeks to rely on reason for refusal 5 (SoCG, paras 7.12-7.13).

3.10 **Reason 6** - concerns buried heritage assets. For the reasons set out in the Response to the Council's Putative RfR (paras 7.1-7.9), and further explained in my colleague, Mr Cox's PoE, the Appellant maintained, and continues to maintain, that the assessment work which it had undertaken prior to determination – which included field evaluation – was sufficient in the context of this case. However, in order to narrow the issues in dispute, the Appellant implemented a programme of further evaluation of the archaeological interests of the application site, by trial trenching, in accordance with a WSI submitted to and approved by the Devon County Council Senior Historic Environment Officer ("HEO").

3.11 Having observed some of the trial trenching, and in light of an interim reported provided to him on 31 July 2023, the HEO confirmed that he has withdrawn his objection to the appeal scheme, subject to further archaeological mitigation works which may be secured by condition.

3.12 The supplemental SoCG (Archaeology), and Mr Cox's PoE (with final trenching report attached as an appendix thereto) provide clarification that, subject to the imposition of a suitable condition, a reason for refusal on the grounds of a detrimental impact upon archaeology cannot be sustained.

3.13 The only remaining putative RfR is RfR 1 which states:

"By reason of the site's location, which is defined as countryside, on Grade 1 BMV agricultural land, beyond a settlement boundary identified within strategic policies S10-S13 of the adopted Local Plan, and because the Local Planning Authority can demonstrate an up-to-date housing 5 year land supply, the proposed development of 150 dwellings is contrary to Policies S1, S2, S3, S4 & S14 of the Mid Devon Local Plan 2013-2033 and guidance within the National Planning Policy Framework."

3.14 The Council have since accepted that, when making their decision, they mis-informed themselves about the status of the agricultural land use classification of the appeal site. The application site is a mixture of Grade 2 and 3a BMV agricultural land. (see SoCG, para 7.2) I will return to this matter when I consider the planning balance in due course.

3.15 The Council's SoC (at paragraph 3.1) in accordance with article 35(1), correctly does not seek to add to the scope of the Council's case merely recording that:

"The LPA will argue that it maintains a robust current 5 year supply of deliverable housing land. The LPA will demonstrate that it currently has a housing land supply of 5.44 years."

3.16 It can be seen, therefore, that the Council's case boils down to an "in principle" objection to the residential element of the appeal proposal solely on the basis that it falls outside of the settlement boundary of Tiverton.

3.17 Furthermore the Council's case is expressly predicated on them being able to demonstrate a 5-year supply of deliverable housing land. No case is advanced that permission ought to be refused if the Inspector concludes otherwise.

3.18 I dispute that the Council can demonstrate a 5-year supply of deliverable housing land. In my opinion the supply of deliverable housing land is 4.09 years. My evidence on this matter is set out in my Housing Supply PoE. However, it is important to note that the Appellant's case is not contingent on demonstrating a lack of a 5-year supply of deliverable housing land. In my view, the appeal proposals meet the section 38(6) test, such that planning permission should be granted, whether or not a five-year supply can be demonstrated.

4. Merits of the Appeal Proposals

- 4.1 Before responding to the Council's "in principle" case, it is important to outline (a) why this site is plainly appropriate for a mixed employment and residential scheme and (b) the many benefits that this appeal proposal would bring.

Appropriate location for a mixed-use scheme

- 4.2 The suitability of the site for a mix of residential and employment development in land-use terms is obvious. The site lies immediately to the east of the TEUE, an allocation in the Mid Devon Local Plan (MDLP) which includes up to 1830 dwellings and at least 30,000 square meters of commercial floorspace. To the west, the site is bounded by, and wraps around, the Hartnoll Business Centre (HBC), a long standing and successful employment site. As a result of these existing and committed uses which 'hem in' the appeal site, it is common ground that, notwithstanding that it is a greenfield site in a countryside location, development of the site for a mix of employment and residential uses would not adversely harm the landscape character of the area.
- 4.3 The residential element of the appeal proposals simply infills between dwellings that are served from Manley Lane and the existing bund that forms the boundary of HBC.
- 4.4 A mixed-use development on the appeal site not only makes obvious sense in land-use terms, the principle of permitting such a development in this location – when it is acknowledged by the Council that there would be no actual harm arising from the proposal – is also consistent with the policies of the MDLP.

Benefits of the Appeal Proposals

Provision of employment land

4.5 It is common ground that the proposals are in accordance with the relevant employment policies of the DP (see SoCG, paragraph 7.19).

4.6 The importance of this benefit should not be underestimated. As the Council recognise (see EDO comments on page 33 of the OR and, paragraphs 1.18 and 1.19 on page 37 of the OR):

"There is a delay in allocated sites coming forward for commercial development, particularly in the Tiverton area, leading to a possible short-medium term shortage of commercial land for relocation and indigenous business expansion. We are aware of pent-up demand following the easing of Covid restrictions" (OR, paragraph 1.18, page 37)

4.7 And that this has led to a breach of the spatial strategy of the DP:

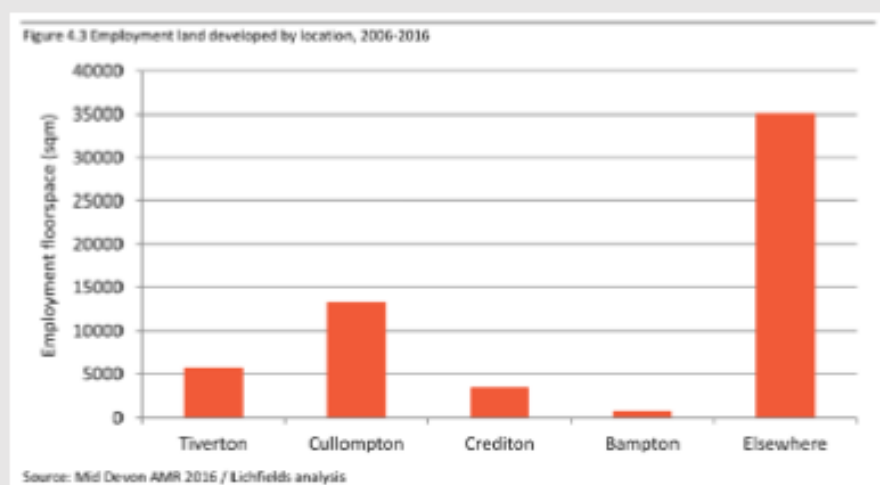
"Forward Planning Officers have confirmed that historically there have been delays in allocated sites coming forward with many windfall/rural employment sites having been approved to satisfy the strategic needs of the LP e.g. Hitchcocks Business Park." (OR, paragraph 1.19, page 37)

4.8 Hitchcocks Business Park is located to the north of Willand. Willand is not a strategic settlement. As the graph that was included as figure 4 in the submitted Employment Report (dated July 2020) clearly shows that lack of employment development in accordance with DP strategy (there is no strategy that says deliver the majority of new employment floorspace 'elsewhere'). For ease of reference I reproduce the 'Location' section of the Employment Report below:

Location

- 3.11 For this growth to be delivered in a sustainable manner it's important that sites are brought forward in the right locations.
- 3.12 The ELR identified that despite being the largest settlement, and the administrative centre of Mid Devon, Tiverton accommodated less than 10% of new B Class floorspace between 2006 and 2016.
- 3.13 In fact, figure 4 below (figure 4.3 of the ELR) highlights that the delivery of employment in the rural areas far outstrips that in the four defined centres in the first decade of the plan period. Without large scale delivery in the (not particularly sustainably located) rural locations, delivery of employment land over the last decade would have been dire.

Figure 4 – Employment Land Supply



- 3.14 This pattern of development is not consistent with a sustainable pattern of growth that reduces the need to travel. It appears that a lack of supply at sustainable locations has forced development to less suitable rural locations. The most sustainable pattern of growth (and that which would meet the expresses needs of most businesses looking for B-class land) would be to provide suitable B-class land at Tiverton.
- 3.15 It's therefore unsurprising that the ELR identified consistent responses in connection to where employment land is required in the future, with Tiverton being recognised as the most appropriate location for employment land provision.

Provision of housing, including affordable housing

- 4.9 At the heart of national planning policy is the objective to significantly boost the supply of homes (NPPF, para 60). Yet, as is widely reported, the Government is not forecast to meet its target of delivering the 300,000 net new homes per year by the mid 2020s (see for instance, the conclusions of the Levelling Up, Housing and Communities Committee in their report on *Reforms to national planning policy* published on 14 July 2023, CD61). Therefore, even if the Council were meeting its own housing targets, the provision of housing would constitute a benefit.
- 4.10 However, in my opinion the Council are in a 'state of denial' in relation to housing land supply in its area.
- 4.11 In relation to 5YHLS I consider that the Council have taken an unduly optimistic view in relation to some sites/matters and have disregarded the need for clear evidence when coming to their conclusion in relation to 5YHLS. I have set out my reasons in the Housing PoE.
- 4.12 However, the extent of that 'misplaced optimism' is extremely significant when it comes to years 6-11 of their housing trajectory. It is already agreed that a plan failure situation will occur in relation to the TEUE (see my HPoE), but, in my opinion it is already obvious that the scale of the failure to deliver at the TEUE will be considerably greater than the Council currently acknowledge. Again this is explained in the Housing PoE.
- 4.13 The delivery of housing in Mid-Devon generally, and at Tiverton specifically, is therefore a benefit which should be afforded significant weight.
- 4.14 Furthermore, as is explained in the Affordable Housing Proof, the Council is failing, by a wide margin, to meet even the anticipated rate of affordable housing delivery established in the Local Plan (which is lower than the actual identified annual need for affordable housing). Accordingly, the provision of new affordable homes should also be considered to be a benefit which is afforded significant weight.

Connection to existing Anaerobic Digester/use of renewable energy

4.15 It is also common ground that the connection to the existing Anaerobic Digester at Hartnoll Farm in order to provide both heat and power to the employment element of the appeal proposals accords with policy DM2 of the DP (see SoCG, paragraphs 7.25).

4.16 The Council's Economic Development Officers were very supportive of this element of the proposal, stating that:

"The proposal to provide the commercial development with a low carbon energy supply from an existing anaerobic digester, will create the first local carbon energy commercial development in the district and could be an exemplar for other schemes, potentially attracting green businesses into the area" (OR, para 5.4)

4.17 The Council had previously misadvised themselves in relation to the implications of constraints on the planning permission for the AD Plant, which meant that whilst they treated the connection as a benefit only limited weight was afforded to this factor (OR, paras 5.6-5.7 and 11.5). As explained in the Appellant's Response to the Council's Putative RFR (ARtRfR, paras 8.6-8.11 (CD5)), the Council's concerns were misplaced. This has now been agreed through the SoCG (see SoCG, paras 7.20-7.24). There is, therefore, no basis on which to reduce the weight to be given to the proposal, which Council Officers acknowledge is "a unique proposal for MDCC to provide a highly sustainable, joined-up development" (OR, para 5.4)

Provision of Link Road to the EUE

4.18 It is agreed that the provision of the link road that, as well as serving the appeal site, will also serve to provide a through route to the TEUE. It will thereby unlocking 'Area B' of that site which is in different ownership to the consented part of the TEUE and which is unlikely to benefit from a suitable road access to that area for a considerable period of time (see HPoE, para ??).

4.19 The Council also agree (see OR) that the proposed link road provision is a benefit that will assist both the delivery of Area B of the TEUE and the public transport provision for the whole TEUE:

"There is a recognised access issue on the eastern side of the EUE, due to land ownership and phasing, which will impact the development in the medium to long term. It is generally agreed that providing an eastern access as early on in the life of the EUE would be expedient to ensure the timely delivery of the EUE as envisaged within the local plan." (OR, paragraph 4.9, page 43)

4.20 The importance of these benefits is not to be underestimated. In my opinion it is the only way that the Council give themselves a 'fighting chance' of any significant delivery from 'Area B' during the DP period (up to 2033). And a plan failure, of that scale (possibly/probably in excess of circa 500 units) from the most sustainable settlement in the plan area, is a very serious matter. My reading of the OR convinces me that whilst this matter was 'touched upon' it was not given the prominence nor depth of consideration that it merits and, as a result, the weight to be accorded to the appeal proposals was significantly underplayed.

Residential element facilitates both the connection to the AD and provision of the Link Road

4.21 The receipt from the sale of the residential element of the site will forward fund:

- (a) the infrastructure necessary to connect the new employment space to the existing Anaerobic Digester (AD) at Red Linhay Farm,

- (b) the link road across the application site to Manley Lane (connecting with the EUE).

4.22 The scale of the likely residential receipt, and the likely cost of the infrastructure is broadly commensurate with the infrastructure costs identified above (please see appendices 8, 9 and 10 to ARtRfR, CD5).

4.23 Thus, the residential development is facilitating infrastructure that will:

- assist delivery of the EUE (and without such assistance there is no clear way to deliver the link road), as well as making the EUE more accessible for substantiable modes of transport by providing the infrastructure to enable a bus serving the TEUE to operate a 'through route' and not an internal loop.
- provide new employment floorspace with its energy needs (both heat and electricity) met from a sustainable/renewable resource.

Biodiversity Net Gain

4.24 BNG in excess of 10% will be delivered, and can be secured by condition (SoCG, para 7.12-7.13)

5. The Appellant's Case

- 5.1 The Council's 'in principle' objection to the residential element of the appeal proposals is, in my view, misguided. There is no proper basis to advance such an objection and, even if there was, the Council have plainly failed to balance that against the many benefits of the appeal scheme. Indeed, I consider that there are four *alternative* ways in which the Inspector could find in favour of the proposed development:
- 5.2 First, that the appeal proposal is in complete compliance with the applicable policies of the MDLP, including policies S1, S2, S3, S4 and S14 (i.e. those referred to in Reason 1). This is the Appellant's primary case.
- 5.3 Second, even if there is a breach of policy S14, given the technicality of that breach, and the importance of the policies with which the appeal proposal is consistent, there is compliance with the development plan as a whole.
- 5.4 Third, even if there is considered to be a breach of the development plan, as (on the Appellant's case) the Council cannot demonstrate a five-year supply of deliverable housing land national policy would support the grant of planning permission, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. This is plainly not the case. This is a material consideration which outweighs the breach of the development plan.
- 5.5 Fourth, even if there is considered to be a breach of the development plan, and even if (contrary to the Appellant's case) the Council could demonstrate a five-year supply of deliverable housing land, the benefits of the proposal outweigh that breach (even without applying the 'tilted balance').

A. Compliance with the Development Plan

- 5.6 Reason for refusal 1 alleges that "by reason of the site's location" and "because the Local Planning Authority can demonstrate an up-to-date 5 year land supply" the residential element of the appeal scheme is contrary to Policies S1, S2, S3, S4 and S14 of the MDLP.
- 5.7 I do not accept that the appeal proposals breach these policies, regardless of whether a 5 year land supply can be demonstrated. Addressing them in turn:
- 5.8 **Policy S1: Sustainable development priorities** – neither the OR nor the Council's Statement of Case begins to explain how the appeal proposal is in conflict with Policy S1. Indeed, the appeal proposals would actively support achievement of strategic objectives that the policy establishes. In particular (and without being exhaustive), the appeal proposal would: be consistent with a "development focus at Tiverton..." being one of Mid-Devon's "most sustainable settlements" (Priority A); further "the creation of new enterprise [and] economic regeneration" (Priority B); assist with the delivery of a "wide choice of high quality homes" (Priority G); be of "good sustainable design that respects local character..." (Priority H); help to meet "the challenge of climate change" by "increasing use of renewable and low carbon energy" (Priority J); and provide "a net gain in biodiversity" (Priority I).
- 5.9 **Policy S2: Amount and distribution of development and Policy S3: Meeting Housing Needs** – The OR suggests that the appeal proposal is contrary to these policies because the Council can demonstrate a five-year housing land supply (OR, para 1.3). This is misconceived. The requirements established by S2&S3 are a *minimum*, and do not set a cap on housing provision. So there can be no in principle objection if these requirements are exceeded (and, in any event, whether they would be over the plan period appears unlikely).

- 5.10 **Policy S4: Ensuring housing delivery** – Again, neither the OR nor the Council’s Statement of Case explain how this policy is said to be breached. It is a monitoring and contingency policy, which does not preclude windfall residential development coming forwards.
- 5.11 **Policy S14: Countryside** - The key policy that the Council appear to rely upon in support of their in principle objection is policy S14 (Countryside). However, Policy S14 is not a “classic” preclusive settlement boundary policy. It does not establish an in-principle objection to particular forms of development outside of settlements. Rather its principal objective is to ensure that *“development outside of settlements...preserve[s] and where possible enhance[s] the character, appearance and biodiversity of the countryside”*.
- 5.12 Development which would not cause any material harm to any of those interests is consistent with Policy S14. It is only where a development would cause material harm to those these interests that it would then be necessary to demonstrate compliance with one of the DM policies: this being an exception to the general principle established by Policy S14 that the character, appearance and biodiversity of the countryside should be preserved. So, for instance, DM17 (Rural shopping) and DM18 (Rural employment) both permit certain types of development in the countryside even if they would cause an *“adverse impact to the character and appearance of the countryside”* so long as that adverse impact is not *“unacceptable”* .
- 5.13 The Council now accept that the appeal proposals would not give rise to any material harm to landscape character (SoCG, para 7.4); would have a neutral overall visual effect (SoCG, paras 7.9-7.10); and would result in a biodiversity net gain (SoCG, paras 7.12-7.13). It follows that the appeal proposal is in compliance with (indeed, furthers the objectives of) Policy S14.

5.14 Thus, on a proper interpretation of the DP policies referred to by the Council in reason for refusal 1 there is no basis for an in-principle objection to the appeal proposals

5.15 Therefore, in my opinion, the proposal is in compliance with the DP and permission should be granted in accordance with the provisions of s.38(6) and NPPF 11(c).

B. Compliance with Development Plan read as a whole

5.16 Even if this approach to Policy S14 is not accepted, any breach of this policy is wholly technical and should be given limited weight. This is because:

- there is no material harm to the interests which the policy seeks to protect;
- it only applies to the residential (facilitating) element of the appeal proposals;
- residential development at Tiverton is consistent with spatial strategy of plan;

5.17 That limited breach has to be weighed against the policies with which the appeal proposals do comply, and the objectives of the plan which the appeal proposal would further. These include:

5.18 The OR records (CD1, page 18) that the Council considered the appeal proposals against the following policies (OR extract set out overleaf for ease)

DEVELOPMENT PLAN POLICIES

Mid Devon Local Plan Review 2013 – 2033

S1 Sustainable development priorities
S2 Amount and distribution of development
S3 Meeting housing needs
S4 Ensuring housing delivery
S5 Public open space
S6 Employment
S8 Infrastructure
S9 Environment
S10 Tiverton
S14 Countryside

TIV1 Eastern Urban Extension
TIV2 Eastern Urban Extension Transport Provision
TIV3 Eastern Urban Extension Environmental Protection and Green Infrastructure

DM1 High quality design
DM2 Renewable and low carbon energy
DM3 Transport and air quality
DM4 Pollution
DM5 Parking
DM25 Development affecting heritage assets
DM26 Green infrastructure in major development

National Planning Policy Framework

National Planning Practice Guidance

As the site is within the Parish of Halberton the Tiverton Neighbourhood Plan is not a material planning consideration in the determination of this application.

However, the following has been considered for purposes of context and completeness:

- Tiverton Neighbourhood Plan,
- TEUE Masterplan 2018,
- TEUE Design Guide 2016,
- Meeting Housing Needs SPD,
- Meeting housing Needs SPD,
- Open Space SPD,
- EDNA / Employment Land Monitoring review

5.19 Of these policies referenced in the OR the Council now only allege a breach of policies S1, S2, S3, S4 and S14 of the DP (an allegation that I disagree with for the reasons summarised above). It is also common ground that the appeal proposals are compliant with policy DM18. This is particularly important, as is compliance with policies S2, S3, S4, S6, S10, TIV1, TIV2 and DM2 (for the reasons that I set out in this PoE). In my opinion without the appeal proposals progress towards the plan objectives that these policies seek to deliver will be substantively diminished.

5.20 It is therefore my opinion that the appeal proposals do accord with the DP read as whole (having regard to the legal precedent of the Supreme Court in *Tesco Stores Ltd v Dundee City Council* ([2012] UKSC 13)). It strikes me that this case gives rise to a similar set of circumstances that Lord Reed was referring to when pointing out (at paragraph 19) that:

"Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another."

5.21 It is also notable that Lord Hope reiterated (at paragraph 34) that it was "untenable" to say that "if there was a breach of any one policy in a development plan a proposed development could not be said to be "in accordance with the plan". In his view, in the context of considering whether a proposal is in accordance with the development plan as a whole:

"the relative importance of a given policy to the overall objectives of the development plan was essentially a matter for the judgment of the local planning authority [or, on appeal, for the Secretary of State] and that a legalistic approach to the interpretation of development plan policies was to be avoided." (para 34) (PCL parenthesised words)

5.22 Therefore, read as a whole, there is compliance with the DP and permission should be granted applying s.38(6) and NPPF 11(c).

5.23 By way of example. the approach of the Supreme Court was taken on board by Inspector Boniface when considering an appeal at Broad Piece, Soham (21/3282449, when he concluded that the proposal in question was in compliance with the development plan overall, despite in conflict with policy which 'strictly controlled' development in the countryside.. In particular, at paragraphs 40-43, you will see that the Inspector concluded that:

"Despite a conflict with one important but out of date policy, I have found overwhelming compliance with other relevant policies of the development plan. Overall, I find that that he appeal proposals would be in accordance with the development plan taken as a whole and material considerations indicate firmly in favour of the proposal." (paragraph 43, page 8).

5.24 I now turn to consider the matter of 5YHLS to the decision making process.

C. Breach of the Development Plan, with a lack of 5YHLS

5.25 If this submission is not accepted, and the Inspector concludes that there is a breach of the development plan overall, it is necessary to apply the s.38(6) test and ask whether material considerations in favour of the development justify the grant of permission.

5.26 As the Council cannot demonstrate a deliverable 5YHLS (for the reasons set out in my Housing Supply PoE), as a matter of national policy planning permission should be granted unless the adverse impacts of the appeal proposals not significantly and demonstrably outweigh their benefits (NPPF, para 11(d)).

5.27 In this case, as explained above, the benefits of the appeal proposal are many and varied. Applying the titled balance, the "in principle" breach of the Development Plan as argued for by the Council comes nowhere near to significantly and demonstrably outweighing the benefits of the appeal proposals.

5.28 Therefore, this is a material consideration which outweighs breach of the development plan – applying s.38(6) test. Indeed, as I have previously noted, RfR 1 is predicated on the Council demonstrating a 5 year housing land supply. They do not advance a case, even in the alternative, that permission should be refused for a development which causes no demonstrable harm in circumstances where there is not a five year supply.

D. Breach of the Development Plan, with a lack of 5YHLS

5.29 Finally, even if there is a breach of the Development Plan and the Council can (contrary to the Appellant's case) demonstrate a deliverable 5YHLS the benefits of the appeal proposals are still sufficient to constitute a mat con which any breach of development plan.

5.30 I say this because the appeal proposals will: deliver employment provision where there is an agreed need in the area; deliver of housing, including much needed affordable housing; provide a link road which will assist with the delivery of the EUE; use renewable energy to power and heat the employment land; and result in a demonstrable net gain in biodiversity. These benefits will be realised without any demonstrable harm to acknowledged interests; on a site which is plainly appropriate for the mixed of uses proposed; and in a manner which is consistent with the many of the strategic priorities in the MDLP, including the “development focus” at Tiverton. These material considerations considerably outweigh any harm as a result of any “in principle” breach of the development plan as argued for by the Council.

6. Issues raised by Third Parties

6.1 I have read the objections raised by third parties, including those of Halberton Parish Council. The matters raised are, in my opinion, either covered by the submission of documents since the Council issued their putative RfR, and/or by the evidence set out in this PoE.

7. Planning Balance and Conclusion

7.1 In my opinion this is a straightforward case of being cognisant of the Supreme Court's precedent (and in particular Lord Reed's words of wisdom) and reading the DP as a whole. If that is followed then it leads to an inexorable conclusion that the appeal proposals accord with the DP read as a whole (as it must be).

7.2 This is, in large part, agreed by the Council. Their objection to the appeal proposals is a technical point (regarding policy S14 as a 'blanket ban' when it is not) that is also reliant upon an over optimistic consideration of housing deliverability that fails to accord with Government policy on the matter, nor the normal practice of Inspectors.

7.3 Whatever is made of the 4 paths to a decision that I have set out in this PoE it must be accepted that when the Council considered the appeal proposals and produced their putative RfR, they incorrectly calculated into their 'planning balance' a significant number of factual errors (irrespective of, in my opinion, incorrectly interpreting the DP). Those (agreed) errors that need to be weighed correctly in the planning balance are:

- Not Grade 1 agricultural land (RfR 1, SoCG paragraph 7.2)
- No landscape harm (RfR 2, SoCG paragraphs 7.3-7.10)
- Delivery of BNG (RfR 3, SoCG paragraphs 7.12-7.13) (RfR 4, SoCG paragraph 8.0)r
- Provision of Affordable Housing (RfR 4, SoCG paragraph 8.0)
- Provision of custom build housing (RfR 4, SoCG paragraph 8.0)
- Renewable Energy provision to new employment floorspace (SoCG, paragraphs 7.20-7.25)
- No detrimental impact upon Tiverton town centre (RfR 5, SoCG paragraphs 7.16-7.18)

7.4 Further, if my analysis of the Council's 5YHLS position is more accurate than the position put forward by the Council, then the provision of market housing needs to be accorded significant weight.

7.5 This is in addition to the following (agreed) benefits of the appeal proposals that were correctly accepted as benefits by the Council in the OR:

- The employment provision
- the provision of the link road to unlock Area B of the TEUE in accordance with the provisions of the DP

7.6 In the table set out below I set out what, in my opinion, are the benefits of the appeal proposals and identify the weight that should be accorded to them.

Benefit	Weight
Employment Provision	Very Significant
Renewable Energy linkage	Significant
BNG	Significant
Link Road to TEUE	Very significant
Housing (including affordable and custom build)	Very significant

7.7 Set against these benefits the errors that the Council incorrectly gave regard to when considering the appeal proposals need to be disapplied. Those errors are:

- No loss of BMV agricultural land
- No landscape harm
- No detrimental impact on Tiverton town centre
- Lack of provision of housing (Market, affordable and custom build – see OR, paragraph 11.1, page 48)

7.8 In my opinion there is incorrect and confused reasoning summarised in paragraph 11.1-11.6 of the OR (page 48-49) where benefits are either not applied, or not weighted correctly. When this balance is corrected it is my

opinion that, irrespective of a determination of accordance with compliance with the DP read as a whole, these benefits point towards a decision to allow the appeal.

7.9 Furthermore, in relation to matters of compliance with/delivering the strategy of the DP the Council have wholly underestimated the importance of the appeal proposals.

7.10 There are significant and evidential problems with the delivery of the major allocations at Cullompton due to infrastructure constraints (see HPoE)

7.11 There are similar problems at the TEUE (see HPoE)

7.12 There is a real danger that lack of delivery at these key locations will simply lead to the grant of permissions at disparate locations (as has clearly happened with employment provision).

7.13 The grant of permission of the appeal proposals assists in protecting, and delivering against the strategic objectives of the DP, hence my conclusion that the appeal proposals are in accordance with the plan read as a whole.

7.14 Bearing in mind the absence of any material harm I consider the appellant case to be overwhelming and I respectfully suggest that the appeal proposals are allowed.

Appendix A

WADDETON PARK LTD – HARTNOLLS FARM, TIVERTON

CLARIFICATION STATEMENT – 31 JULY 2023

1. INTRODUCTION

- 1.1. This clarification statement is in response to the submitted Landscape and Visual Appraisal (LVA) and aims to assist the planning inquiry should queries in regard to the LVA be raised.

2. CLARIFICATIONS

- 2.1. Four clarifications are made in respect of the LVA, as follows:
 1. The landscape baseline assessment contained within the LVA was carried out prior to, and without knowledge of, the now implemented expansion to the Moon Self Storage Area within Hartnolls Farm.
 2. The proposed development was not identified (when the LVA was prepared) as EIA development. As such, a formal LVIA process, including detailed scoping and co-ordination as a chapter of an Environmental Statement was not required and hence at the time of its preparation it was titled as an 'LVA'. However, this document follows a methodology (as appended to the submitted LVA) that is in full accordance with the Guidelines for Landscape and Visual Impact Assessment 3rd Edition (LI and IEMA 2013) which refers to the role of appraisals as following the same process as LVIA – see GLVIA3 paragraphs 1.3, 1.11, 1.13, 1.18 and the summary notes on good practice at page 9 of GLVIA3. For the avoidance of doubt, if a formal LVIA process was followed no material difference to the judgements made in the LVA would have resulted.
 3. The LVA states it assesses up to 120 homes. This is a typo and should read up to 150 homes – the development framework prepared at the time of the LVA was unchanged from that submitted, which identified 3.6 hectares of net developable area for residential land use. The LVA was undertaken on the basis of up to 150 homes being proposed and based on the submitted Framework Plan (DE_425_SK11 Rev D) and had regard to the Design and Access Statement and relevant Figures contained within it (such as the Land Use Parameter Plan).
 4. The canal breach hatch shown on the determined Framework Plan (DE_425_SK11 Rev D) is a drainage and flooding related constraint – see 3.2 of the DAS and Figures 11/12.

Andrew Williams
Director, Define