

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

SUMMARY 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. Introduction

- 1.1 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.

2. Scope of the Council's Case

- 2.1 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.
- 2.2 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).
- 2.3 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.
- 2.4 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."

- 2.5 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.

2.6 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."

2.7 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.

2.8 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.

2.9 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 4.1 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.

3. Planning Balance and Conclusion

3.1 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).

3.2 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.

3.3 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)

3.4 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.

3.5 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

3.6 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

3.7 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)

3.8 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.

- 3.9 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.
- 3.10 There are significant and evidential problems with the delivery of the major allocations at Cullompton due to infrastructure constraints (see HPoE)
- 3.11 There are similar problems at the TEUE (see HPoE)
- 3.12 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).
- 3.13 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.
- 3.14 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.