

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

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

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

**LPA REF: 21/01576/MOUT**

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

**PROPOSAL FOR OUTLINE PLANNING PERMISSION FOR  
THE EXTENSION TO THE EXISTING BUSINESS PARK FOR UP TO 3.9HA  
OF EMPLOYMENT LAND AND UP TO 150 RESIDENTIAL DWELLINGS  
WITH ASSOCIATED OPEN SPACE AND INFRASTRUCTURE (WITH  
MEANS OF ACCESS TO BE DETERMINED ONLY)**

**NOVEMBER 2024**

## Introduction

1. This inquiry is a redetermination of an appeal which arose from the non-determination by Mid Devon District Council ('the Council') of outline planning application 21/01576/MOUT, for the proposed extension to the existing business park for up to 3.9ha of employment land and up to 150 residential dwellings with associated open space and infrastructure (with means of access to be determined only) ('the proposed development') on land at Hartnoll Farm, Tiverton, Devon, EX16 4PZ ('the site'). A description of the site<sup>1</sup>, and of the appeal proposal<sup>2</sup>, is set out in the Main SoCG.
2. Following the lodging of the appeal in December 2022, but prior to its validation, the Council issued six putative reasons for refusal ('RFR')<sup>3</sup> of which several fell away as the Council continued to review its case, as it should, post-submission of the Appeal. The remaining issues, which were related to RFR1 and RFR4, were subject to the inquiry which took place on 12-15 September 2023 ("**the First Inquiry**"). Those issues were:
  - a. Whether or not the Council has a 5-year housing land supply,
  - b. Whether or not the location of the proposed development is acceptable having regard to adopted national and local policies, and
  - c. Whether or not there is sufficient infrastructure to support the appeal scheme.

## The First Inquiry

3. The Previous Inspector issued his decision on 20<sup>th</sup> October 2023 dismissing the Appeal. In summary, his conclusions on the above issues were that ("**the 2023 Decision**"):
  - a. The Council could demonstrate a 5YHLS of around 2,603 dwellings: just over 5 years<sup>4</sup>.
  - b. The inclusion of the word "at" within the wording of the Policy S1(a) is consistent with the Council's intention to locate development within the boundaries of the three main settlements identified within the policy (including Tiverton)<sup>5</sup>.
  - c. Policy S1 requires that each of its thirteen limbs are met. The location results in conflict<sup>6</sup>.

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<sup>1</sup> Page 4, Main SoCG – CD6

<sup>2</sup> Page 5, Main SoCG – CD6

<sup>3</sup> CD2 – Decision Notice issued 19<sup>th</sup> January 2023

<sup>4</sup> Paragraphs 28-31 of the Inspector's Decision Letter ("DL") – CD86

<sup>5</sup> Paragraph 35 – CD86

<sup>6</sup> Paragraph 36 – CD86

- d. Policy S2 seeks to concentrate development “at” each of the three principal centres (including Tiverton). The location of the appeal scheme results in conflict<sup>7</sup>.
- e. The requirements in the opening to Policy S14 would be met but the inclusion of 100 market dwellings goes beyond the policy scope. No evidence was presented in support of why a countryside location is preferred<sup>8</sup>.
- f. The employment part of the scheme complies with Policy S14b) with no conflict with Policy DM18. Conflict arises from the size and location of the whole mixed-use scheme in the countryside<sup>9</sup>.
- g. On a common-sense reading, Policies S1, S2 S3, S4 and S14 have a strategic purpose to direct development to within settlement boundaries with only a limited number of exceptions<sup>10</sup>.
- h. Conflict with Policies S1, S2 and S14 is more than a technical matter but goes to the heart of the adopted plan’s settlement strategy<sup>11</sup>.
- i. The Inspector accorded weights to the range of benefits offered, set out below<sup>12</sup>:

*Table 1 – 2023 Decision (Benefits and Weights)*

<b>Benefit</b>	<b>Weight</b>
Affordable Homes	Significant
Market and custom and/or self build homes	Moderate
Employment benefits	Moderate
Link to anaerobic digester	Moderate
BNG provision	Significant

- j. The Inspector considered claimed infrastructure contributions, in particular education and a request from the NHS ICB. He found that both satisfied the requirements of Regulation 122 (it is understood that neither party now seek to move away from this conclusion)<sup>13</sup>.
- k. There was still sufficient time in the plan period for the access to Phase B of the TEUE to be satisfactorily resolved in a way which would not impact on the delivery of the total housing requirement during the life of the plan<sup>14</sup>.

<sup>7</sup> Paragraph 37 – CD86

<sup>8</sup> Paragraph 39 – CD86

<sup>9</sup> Paragraph 41 – CD86

<sup>10</sup> Paragraph 43 – CD86

<sup>11</sup> Paragraph 44 – CD86

<sup>12</sup> Paragraph 46-48 – CD86

<sup>13</sup> Paragraphs 55-70 – CD86

<sup>14</sup> Paragraph 52 – CD86

- l. The evidence from both parties on their suggested alternative access routes to Area B was inconclusive, neither containing sufficient detail to weigh conclusively<sup>15</sup>.
  - m. In terms of landscape, there was no conflict with Policies S1, S9 and S14<sup>16</sup>.
  - n. Any archaeological issues could be dealt with via conditions and there would be no conflict with Policies S1, S2, DM1 and DM25<sup>17</sup>.
  - o. There would be no conflict with Policy DM18 with regards to town centre impacts<sup>18</sup>.
4. Overall, the appeal scheme would be in conflict with three strategic policies (Policies S1, S2 and S14) central to the settlement strategy and essential purpose of the adopted local plan, not outweighed by material considerations. With the Government's support for a plan led approach in mind, the appeal was dismissed<sup>19</sup>.
  5. The Appellant sought statutory review on six grounds<sup>20</sup>. The Appellant, Secretary of State<sup>21</sup> and Council agreed for the 2023 Decision to be quashed and remitted for redetermination on the basis of Grounds 4(b)-(d) which dealt with the Inspector's conclusions on the Link Road only. All other Grounds were disputed by the Secretary of State and Council, including Ground 4(a)<sup>22</sup>.
  6. This Inspector is not bound by the quashed 2023 Decision; however, it is still capable of being a material consideration at this redetermination<sup>23</sup>. The Appellant makes much of the permission given to bring a statutory review under Grounds 1-5; but the threshold for permission is low (that the Grounds are arguable). Permission to bring a ground of challenge by no means indicates or suggests what the High Court's conclusions would have been had the case proceeded to a substantive hearing. Accordingly, though it is agreed that a number of the Inspector's conclusions on the Link Road (as set out in Grounds 4(b)-(d)) should not carry any weight, the rest of the Decision should be a material consideration at this redetermination. The principle of consistency in public decision-making is not limited to the formal decision but also to the reasoning underlying that decision<sup>24</sup>.

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<sup>15</sup> Paragraph 53 – **CD86**

<sup>16</sup> Paragraphs 72-75 – **CD86**

<sup>17</sup> Paragraphs 76-78 – **CD86**

<sup>18</sup> Paragraphs 79-80 – **CD86**

<sup>19</sup> Paragraphs 81-87 of the Inspector's DL

<sup>20</sup> See Schedule to the Consent Order dated 6<sup>th</sup> June 2024, attached to the Council's Addendum Statement of Case – **CD3a**

<sup>21</sup> for Levelling-Up, Housing and Communities. Now the Secretary of State for Housing, Communities and Local Government

<sup>22</sup> It must be noted that Ground 6, which challenged the weight the Inspector attached to the economic benefits of the Proposed Development, was not given permission to proceed for statutory review.

<sup>23</sup> See R (oao Davison) v Elmbridge BC [2019] EWHC (1409) Admin, in particular paragraph 56 – **CD95**

<sup>24</sup> See R (oao Davison) v Elmbridge BC [2019] EWHC (1409) Admin, in particular paragraph 56 – **CD95**

## The Main Issues for Redetermination

7. At the CMC to this matter on 4<sup>th</sup> October 2024 the main issues were set out as follows:
  - a. Whether or not the appeal proposal would be in a suitable location having regard to the policies for the location of development in the Mid Devon Local Plan 2013 – 2033, including in particular Policies S1, S2 and S14.
  - b. The weight to be given to the material considerations in the planning balance in this case, including provision of a secondary access road to Area B of the Tiverton Eastern Urban Extension, and the implications for the appeal.
8. Allied to the benefit to be provided by the provision of housing, though it is now agreed that the Council has a 5YHLS<sup>25</sup> in line with the previous Inspector’s Decision, the Appellant contends that the Council’s projections in relation to housing land supply across the plan period are overly optimistic which is extremely significant in respect of years 6-11 of the trajectory<sup>26</sup>.

## The provision of housing

9. Turning to this issue first, Mr. Beecham will give evidence on behalf of the Council as to how no justifiable argument can be made in respect of delivery failures across the residual plan period. In any event, even were this Inspector to conclude that a delivery failure is probable it is of little consequence to the determination of this appeal.
10. Briefly, much of the Appellant’s case is based on perceived delivery issues associated with strategic allocations including the Tiverton Eastern Urban Extension (‘TEUE’), the Northwest Cullompton Urban Extension and East Cullompton / Culm Garden Village.
11. There is no specific requirement in national policy or guidance to ensure that sites in years 6+ meet the definition of ‘deliverable’ in the NPPF. Instead, the Council must ensure that they are ‘developable’: in a “*suitable location for housing development with a reasonable prospect that they will be available and could be viably developed at the point envisaged*”<sup>27</sup>. Mr. Beecham will explain how this was established through the Local Plan 2013 – 2033

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<sup>25</sup> See paragraph 3.2 of the Further Additional SoCG – **CD6B**. It is agreed that the Council can currently demonstrate a 5year housing land supply (of 5.22 years).

<sup>26</sup> See paragraphs 3.127-3.128

<sup>27</sup> Annex 2 of the NPPF

Examination and ultimately accepted by the Inspector in 2020<sup>28</sup>. Only a small component of such allocations is included within the 5YHLS where the Council has specific evidence of deliverability and site build out is progressing at pace. There is no requirement to deliver the entire local plan strategy, which has been informed by extensive evidence gathering and undergone an independent examination, in a five-year period<sup>29</sup>.

12. Though the draft changes to the NPPF, if brought forward, will likely impact housing figures for local authorities to satisfy no one can predict what suggested changes will survive consultation<sup>30</sup>. That is plainly relevant to the appropriate level of weight to be placed on the draft, which will be dealt with by Mr. Aspbury. The Development Plan and its policies are working effectively so as to demonstrate a 5YHLS, such that proposals which conflict substantially with the objectives and planned strategic growth of the Council should be resisted notwithstanding the draft NPPF changes. It would be wholly inappropriate to try to conjure up a likely 5YHLS figure post any changes which may result from an amended NPPF. As Mr. Beecham will explain, a fresh 5YHLS update would be needed in July 2025 in any event and is a complex and extensive process which requires robust evidence, not speculation<sup>31</sup>.

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

13. Evidence will be given on behalf of the Council by Mr. Tony Aspbury, an independent planning expert who is clear that in his view the location of the proposed development is not acceptable having regard to adopted national and local policies<sup>32</sup>. RFR1 is sound and sustainable in itself as a stand-alone reason for withholding Planning Permission<sup>33</sup>.
14. That is because section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions be made in accordance with the Development Plan, unless material considerations indicate otherwise. For the purposes of this decision that is the Mid Devon Local Plan 2013-2033<sup>34</sup>, the policies of most relevance being agreed between the parties<sup>35</sup> but

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<sup>28</sup> Paragraph 6.1 Rebuttal PoE of Arron Beecham

<sup>29</sup> Paragraph 2.3 Rebuttal PoE of Arron Beecham

<sup>30</sup> See paragraphs 3.1-3.4 Rebuttal PoE of Arron Beecham

<sup>31</sup> See paragraph 3.2 Rebuttal PoE of Arron Beecham

<sup>32</sup> Paragraph S24.2, Summary PoE of Tony Aspbury (previous appeal). Section 5.0 Supplementary PoE of Tony Aspbury.

<sup>33</sup> Paragraph R2.14.2, Rebuttal of Tony Aspbury (previous appeal).

<sup>34</sup> **CD12**

<sup>35</sup> Paragraph 5.2, Main SoCG – **CD6**.

including a number of spatial strategy policies S1-S4 and S14. Those policies, together with S10-S13, are up-to-date and seek to promote a plan-led approach to site selection. They do not support the appeal proposals<sup>36</sup> which plainly conflict with those policies and the Development Plan as a whole.

15. There were lengthy submissions made at the First Inquiry as to the interpretation of Policy S1(a), specifically the words “at Tiverton” and whether conflict with Policy S1(a) would mean that the Proposed Development would be in conflict with the whole of Policy S1. The Previous Inspector found that:

*“35. The inclusion of the word “at” within the wording of the policy S1(a) is consistent with the Council’s intention to locate development within the boundaries of the three main settlements identified within the policy; these include Tiverton.*

*36. The lead sentence included in the Policy S1 in seeking to create sustainable communities requires that each of the thirteen limbs of this policy are met. The location of the appeal scheme beyond the settlement boundary results in a conflict between the policy and the appeal scheme.”*

16. The Council stands by this reasoning and the above conclusions in the 2023 Decision reached by the Previous Inspector following consideration of all of the submissions made on this point. Though his conclusions on the interpretation of Policy S1 formed part of the grounds of challenge advanced by the Appellant, the argument was not tested by the High Court and both the Council and Secretary of State maintained their positions on the point.
17. The conflict with Policy advanced by the Council is not merely ‘technical’<sup>37</sup>; indeed, it goes to the heart of the adopted plan’s settlement strategy as remarked by the Inspector in the First Inquiry<sup>38</sup>. The settlement boundaries and distinction between land within them and that outside them is clearly intended to be clear-cut and determinative and not fluid or permeable<sup>39</sup>. The fact that the Site lies immediately to the east of the TEUE is not an objective, site-specific, spatial planning justification for its development<sup>40</sup>. There is no need for the boundary to flex. For it to do so would notably harm the overall ‘integrity’ and effectiveness of the Local Plan

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<sup>36</sup> See paragraph 4.7, PoE of Tony Aspbury (previous appeal). Section 5.0 Supplementary PoE of Tony Aspbury.

<sup>37</sup> Paragraph R2.13.10, Rebuttal of Tony Aspbury (previous appeal). Paragraph 8.2 Supplementary PoE of Tony Aspbury.

<sup>38</sup> Paragraph 44 – **CD86**

<sup>39</sup> See paragraph 4.8, PoE of Tony Aspbury (previous appeal). Paragraph 4.13 Supplementary PoE of Tony Aspbury.

<sup>40</sup> Paragraph R2.4.2, Rebuttal of Tony Aspbury (previous appeal). Section 5.0 Supplementary PoE of Tony Aspbury.

undermining the plan-making process<sup>41</sup>. As Mr. Aspbury will suggest, it would create a precedent for other proposals outside the settlement boundary<sup>42</sup>.

18. The Government's policy aim of significantly boosting the supply of housing does not mean delivering housing anywhere or anyhow.

## **Planning Balance**

19. The starting point is the Development Plan. The NPPF is a material consideration and sets out a presumption in favour of sustainable development at paragraph 11. The Appellant now accepts that the tilted balance at paragraph 11 d ii) does not apply and that the most important policies for determining this appeal are in date. The primacy of the Development Plan remains. Conflict with policies in the Development Plan, and any other identified harms, must be outweighed by the benefits before permission can be granted to the Proposed Development<sup>43</sup>.
20. There are a number of benefits to the appeal proposal which Mr. Aspbury acknowledges, including the delivery of market and affordable housing, albeit he differs in respect of weight. However, these would not be of sufficient weight to outweigh the tangible harm that the development would occasion<sup>44</sup>.
21. The Appellant argues that the provision of their Link Road is crucial to "unlock" Area B of the TEUE such that it must be considered a benefit of the Proposed Development to which "*very significant*" weight should be given. The Council does not disagree with the Appellant in that the provision of the Link Road can be considered a potential benefit of the Proposed Development. However, the offered Link Road is neither necessary nor crucial for the delivery of the TEUE. Mr. Aspbury will explain the significant progress made by the Council to bring development forward on Area B<sup>45</sup> such that there is evidence to suggest that access issues at Area B can be resolved within the plan period. All the provision of the Link Road does is offer a solution to a problem which already has a working solution.

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<sup>41</sup> See paragraph 4.8, PoE of Tony Aspbury (previous appeal) and Paragraph R3.2 of the Rebuttal of Tony Aspbury (previous appeal). Section 5.0 Supplementary PoE of Tony Aspbury.

<sup>42</sup> Paragraph R2.14.5, Rebuttal of Tony Aspbury (previous appeal).

<sup>43</sup> Paragraph 5.8 of Supplementary PoE of Tony Aspbury.

<sup>44</sup> Paragraph R.2.13.16, Rebuttal of Tony Aspbury (previous appeal). Section 7.0 Supplementary PoE of Tony Aspbury.

<sup>45</sup> Paragraph 4.21 of Supplementary PoE of Tony Aspbury.



22. Through a straightforward application of the planning balance per section 38(6), the identified policy harm and conflict cannot be overcome by any benefits or other material considerations such that the appeal should be dismissed.

**26<sup>th</sup> NOVEMBER 2025**

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