

APPEAL BY WADDETON PARK LTD

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

LAND AT HARTNOLLS BUSINESS CENTRE

DRAFT STATEMENT OF COMMON GROUND

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).

MARCH 2023

22.06.2023 MDDC changes

26/06/23 Appellant changes

28.06.2023 MDDC changes

30.06.2023 MDDC changes



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1.0 Introduction

- 1.1 This Statement of Common Ground (referred to herein as the "SoCG") has been prepared in accordance with the Planning Inspectorate (PINS) Procedural Guide for Planning Appeals - England (October 2021).

2.0 The Appeal Site

- 2.1 The site is located approximately 1.2km to the east of Tiverton and approximately 1.0km to the west of Halberton. It comprises approximately 12.71ha of pastoral land that wraps around the existing Hartnoll Business Centre (HBC), and is bordered by Post Hill to the north and Manley Lane to the west.
- 2.2 The site consists of a number of irregular large pastoral fields with generally well-defined hedgerow boundaries including occasional hedgerow trees. At the lowest point of the site, along the southern edge, is the Ailsa Brook, which forms a defensible boundary to the site before further open agricultural land to the south rising up to the Country Park of the Grand Western Canal. The western edge of the site abuts the eastern boundary of the Tiverton Eastern Urban Extension (EUE) area.
- 2.3 Some 250 metres to the east of the site is an anaerobic digestion (AD) plant within the same ownership as HBC. It is proposed that the AD Plant will provide combined Heat and Power (CHP) to the business park extension.

3.0 The Proposal

3.1 The description of the proposed development is:

"Phased 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)."

3.2 The proposal is submitted in outline, with means of access to the site to be determined only. The layout, scale, appearance and landscaping of the site are reserved matters for future consideration.

3.3 Access to the site is proposed via Post Hill, which runs along a predominantly east-west alignment connecting Tiverton to Willand.

3.4 The illustrative site layout demonstrates how the proposed development could be 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.

Putative Reasons For Refusal

3.5 The appeal was submitted by the Appellant on 19 December 2022. Notwithstanding the appeal having been submitted, on 10th January 2023 the LPA published a report to the Planning Committee recommending refusal and, following a meeting of the Planning Committee on 18 January 2023 at which members voted to refuse planning permission for the Development, on 19 January 2023 the LPA issued its decision notice setting out its putative reasons for refusal. The putative reasons for refusal set out in the LPA's decision notice dated 19 January 2023 are as follows:

1. *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. ("Reason 1")*

2. *By reason of the adverse harm to landscape character, as outlined in the submitted LVA, which concluded a moderate adverse impact, the proposed development would not preserve or enhance the character and appearance of this countryside location contrary to Policies S1, S9 & S14 of the Mid Devon Local Plan 2013-2033. ("Reason 2")*

3. *By reason of insufficient information to demonstrate a biodiversity net gain, the development is contrary to Policy DM26 (a) of the Mid Devon Local Plan 2013-2033. ("Reason 3")*

4. *No S106 legal agreement to secure affordable housing and custom build units or education, transport infrastructure and waste contributions has been submitted with the application and no viability assessment has been provided to demonstrate that they cannot be provided. Therefore the development is contrary to Policies S1, S3, S9, TIV2, DM1, DM3 & DM4 of the Mid Devon Local Plan 2013-2033. ("Reason 4")*

5. *By reason of a lack of information regarding the submission of a Town Centre / Retail Impact Assessment it is not possible to assess the impacts on Tiverton Town Centre contrary to Policy DM15 of the Mid Devon Local Plan 2013-2033. ("Reason 5")*

6. *By reason of insufficient archaeological investigations it is not known what harm may be caused by the Development to archaeology, contrary to policies S1, S9, DM1, and DM25 of the Mid Devon Local Plan 2013-2033 and guidance within the National Planning Policy Framework. ("Reason 6")*

Application and Appeal documents

3.6 The application was supported by

- Site Location Plan (ref. DE425-001) (for approval)
- Site Access Strategy Plan (ref. 48582/5501/SK02 Rev H) (for approval)
- Illustrative Framework Plan (ref. DE_425_SK11 Rev D) (for information)
- Ecological Appraisal (Engain)
- Employment Report (PCL Planning)
- Energy Feasibility Report (Carbon Plan Engineering)
- Flood Risk Assessment (TeignConsult)
- Historic Environment Desk-Based Assessment (Cotswold Archaeology)

- Geophysics Report (Substrata Limited)
- Phase 1 Desk Study (GeoConsulting Engineering Ltd)
- Design and Access Statement (Define)
- Transport Assessment (Stantec)
- Framework Travel Plan (Stantec)
- Planning Statement (PCL Planning)

Environmental Statement:

- Volume 1 - Non Technical Summary
- Technical Appendix 1.1 - MDDC Scoping opinion
- Technical Appendix 1.1 - Screening Matrix
- Technical Appendix 1.2 - Red Line Boundary Plan
- Technical Appendix 1.3 - Framework Plan - Rev D
- Technical Appendix 10.1 – GroundInvestigationReport-pt1
- Technical Appendix 10.1 – GroundInvestigationReport-pt2
- Technical Appendix 10.1 - GroundInvestigationReport-Pt3
- Technical Appendix 10.1 - GroundInvestigationReport-Pt4
- Technical Appendix 11.1 – LVA
- Technical Appendix 12.1 - Noise vibration impact assessment.
- Technical Appendix 5.1 - Ecological Appraisal
- Technical Appendix 6.1 - Heritage Assessment.
- Technical Appendix 6.2 – Geophysics
- Technical Appendix 7.1 - Transport Assessment-Pt1
- Technical Appendix 7.1 - Transport Assessment-Pt2
- Technical Appendix 7.1 – Travel Plan
- Technical Appendix 8.1 - Flood Risk Assessment
- Volume 2 - Environmental Statement.

3.7 Since the appeal was submitted the following documents have been received by the Council

- A draft SoCG (March 2023)
- A Statement of Case (December 2022)
- A Response to the Council’s Putative reasons for refusal (dated March 2023) with the following appendices:
 - o Appendix 1 - Appeal Decision 3282449 (Soham)

- Appendix 2 - Appeal Decision 3238460 (Great Torrington)
- Appendix 3 - Agricultural Land Report – Kernon Countryside Consultants (March 2023)
- Appendix 4 - Affordable Need Memo –Devon Home Choice 23/03/2023
- Appendix 5 - BNG Report – Engain Ltd (17/02/2023)
- Appendix 6 - WSI Report – AC Archaeology (March 2023)
- Appendix 7 - Transport Note – Stantec (27/03/2023)
- Appendix 8 - Energy Feasibility Report – Carbon Plan Engineering (26/04/21)
- Appendix 9 - Costs Feasibility Report - Carbon Plan Engineering (27/05/22)
- Appendix 10 - KLP Letter dated 27/03/23

4.0 Housing Supply Information

4.1 This matter will be addressed in a supplemental Statement of Common Ground.

5.0 The Development Plan

5.1 For the purposes of s38(6) of the 2004 Act in relation to these appeal proposals, the relevant Development Plan (DP) provisions are found contained within the Mid Devon Local Plan 2013 – 2033.

5.2 The policies of most relevance to this proposal are agreed as follows (policies cited in the putative reasons for refusal in bold):

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

TIV4 Eastern Urban Extension Community Facilities

DM1 High quality design

DM2 Renewable and low carbon energy

DM3 Transport and air quality

DM4 Pollution

DM5 Parking

DM15 Development outside town centres

DM18 Rural employment development

DM25 Development affecting heritage assets

DM26 Green infrastructure in major development

- 5.3 Article 35(1)(b) of the 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"*.

6.0 Other Material Considerations

National Planning Policy Framework (July 2021)

- 6.1 The Framework sets out the Government’s planning principles and policies for England and how these are expected to be applied. It is noted that the publication of the revised Framework post-dates the adoption of the MDLP. The Framework (July 2021) is therefore an important material consideration in the determination of this appeal.

Emerging SPD

- 6.2 The appeal site adjoins the allocated Tiverton Eastern Urban Extension (EUE). The Council has consulted (27 February to 23rd April 2020) upon Area B of the Tiverton EUE i.e. that part of the EUE that adjoins the appeal site.

7.0 Matters of Agreement

Principle of Development

- 7.1 The parties agree that the commercial element of the proposed scheme complies with policies S14(Countryside) and DM18 (Rural employment development). Accordingly, the Council agrees that there is no “in principle” objection to the commercial element of the appeal proposals.

Agricultural Land

- 7.2 The parties agree that the application site is Grade 2 and 3a BMV agricultural land. The LPA no longer maintain that the land is Grade 1 BMV, and do not object to the proposal on the basis of the loss of agricultural land. NE raise no objection to appeal proposals, particularly in relation to the loss of the extent of BMV proposed.

Landscape Matters

7.3 The OR records that:

"Whilst the delivery of new employment space would have a moderate impact on visual effects from receptors, the landscape mitigation outlined could successfully reduce the impacts of the development to ensure that there would be no adverse impacts on the character and appearance of the countryside." (paragraph 2.13, page 40).

7.4 The Council agree that, subject to appropriate landscape mitigation (which can be secured by way of condition), the proposed commercial and residential development would not adversely harm landscape character.

7.5 The Council confirms that, therefore, that it no longer seeks to rely on reason for refusal 2.

7.6 The Council do not dispute the landscape and visual impact of the appeal proposals as set out in the Landscape and Visual Appraisal (LVA) submitted with the planning application.

7.7 The key conclusions of the LVA in respect of likely landscape effects are set out at Table 5.1 (at page 46 of the document), which is reproduced at Inset 1 below.

Inset 1 – Table 5.1 from the LVA (page 46)

TABLE 5.1: SUMMARY OF LANDSCAPE EFFECTS

Landscape Receptors	Value	Susceptibility	Sensitivity	Magnitude of Change	Overall Effect
LCA 3E Lowland Planes	Medium	Low	Medium-Low	Low	Low (neutral)

7.8 This concludes that the proposed scheme (after establishment of the landscape mitigation strategy that precedes this assessment) gives rise to a low and neutral overall landscape effect, because of a low magnitude of change to a landscape that has medium-low sensitivity to the type of change proposed.

7.9 The key conclusions of the LVA in respect of likely visual impacts are set out at Table 5.2 (at page 48 of the document), which is reproduced at Inset 2 below.

Inset 2 – Table 5.2 from the LVA (page 48)

TABLE 5.2: SUMMARY OF VISUAL EFFECTS

Visual Receptors	Value	Susceptibility	Sensitivity	Magnitude of Change	Overall Effect*
Visual receptors using the PRoW along the Great Western Canal towpath	High	Medium	Medium-High	Medium	Medium (neutral)
Motorist travelling west over Tiverton Bridge, along Post Hill	Medium	Medium	Medium	Medium	Medium (neutral)
Residents on the eastern edge of Post Hill	High	Medium-High	Medium-High	Medium	Medium (neutral)
Residents of Windana	High	Medium	Medium-High	Medium	Medium (neutral)
Residents of Red Linhay	High	Medium	Medium-High	Medium	Medium (neutral)
Residents of properties on the ridgeline south of the Site, along Warnicombe Lane	High	Low	Medium	Low-Medium	Low-Medium (neutral)
Users of PRoW Tiverton FP21	Medium	Medium	Medium	Low/Negligible	Low (neutral)

7.10 This concludes that the proposed scheme (after establishment of the landscape mitigation strategy that precedes this assessment) predominantly gives rise to a medium and neutral overall visual effect, because of a typically medium magnitude of change to views that have a medium or medium-high-low sensitivity.

Flood Risk and Surface Water Drainage

7.11 The OR records that:

"The proposed development is considered to be in accordance with Policy DM1 and DM9." (paragraph 6.8, page 45)

Biodiversity and Trees

7.12 The submitted BNG calculation demonstrates compliance with policy DM26. The BNG assessment (Appendix 5 of Appellant's Response to RfR), states:

" 4.2. According to the Biodiversity Metric 3.1 and based on the landscape proposals (Figure 3), the expected BU on-site post-development is 41.70 for habitats and 26.97 for hedgerows which corresponds to a 26.42% and 7.04% net gain respectively. The headline results of the Biodiversity Metric 3.1 Calculation Tool can be found in Appendix 1 and the full metric is supplied separately."

It Is agreed that the biodiversity net gain for the development can be secured through appropriate planning conditions.

7.13 The Council confirms, therefore, that it no longer seeks to rely on reason for refusal 3.

Environmental Health Matters

7.14 The OR records that:

"The proposal, subject to conditions and contribution, is considered to accord with Policies DM3 and DM4" (paragraph 8.7, page 47).

7.15 The appellant questions whether the contribution towards a Household Waste Recycling Centre in the Cullompton Area is CIL regulation 122 compliant and reserves the right to comment on any information that may

be provided by the Council to support such a conclusion.

Potential Impact upon Tiverton Town Centre

- 7.16 The appellant notes the comments provided at paragraph 1.22 (page 37) of the OR. The appellant has no intention of providing uses that are not similar to those provided on the existing business park. This matter is therefore capable of resolution via the imposition of a suitable condition to limit amount of leisure floorspace to a maximum of 500 square metres; thereby ensuring that the appeal proposal cannot have a detrimental impact upon Tiverton town centre.
- 7.17 It is agreed that the imposition of a suitable condition can protect the vitality and viability of Tiverton Town Centre.
- 7.18 The Council confirms, therefore, that it no longer seeks to rely on reason for refusal 5

Employment Use

- 7.19 It is agreed that the employment element of the appeal proposals is compliant with policy DM18 of the DP (See OR 1.18 – 1.20).

Renewable Energy Provision

- 7.20 Paragraph 5.3 of the OR (page 44) recognises that '*The plant does not currently work at full capacity and has excess heat.*' These are two important points.
- 7.21 Unfortunately the OR goes on to state that '*Additional deliveries of feedstock would however be required*' however this need not be the case. As the Council recognise there is currently surplus heat produced that is simply vented to the atmosphere. The first step is to direct that loss to the appeal proposals. Thus full and effective use is made of the existing fuel input (feedstock).

- 7.22 Secondly, the electricity produced is currently exported to the National Grid. The proposal is rather than export this electricity from the site to the Grid instead that it is used to directly (and thus more efficiently) supply the commercial element of the appeal proposals directly.
- 7.23 Thus, variation to the existing CHP consent is only necessary if it is needed to increase capacity based on user demand. It is not necessary to vary the existing permission in order to provide both a heat and electricity service to future tenants of the expanded business park.
- 7.24 The Council agrees that the provision of heat and electricity to the commercial element of the appeal proposals can be secured by planning obligation.
- 7.25 It is therefore agreed that the Renewable Energy Provision accords with policy DM2 of the DP

8.0 S106 Matters

Should the appeal be allowed, the parties agree that the s106 should cover the following matters:

- Affordable housing at 28% by reference to an appropriate tenure and unit size split.
- Provision of 5% of the total number of dwellings to be provided as serviced plots for sale to custom and self-builders.
- Provision of renewable energy from Red Linhay Biodigester (or condition)
- Public Open Space scheme, management and maintenance

9.0 Key Issues in Dispute

- 9.0 Whether the Council can provide effective evidence of an appropriate supply of deliverable residential land, including whether it can establish a five year supply of deliverable housing sites?

- 9.1 Whether, for the purposes of granting outline permission, sufficient information is available to enable a sufficient understanding of the significance of the heritage assets (archaeology) within the appeal site area and whether the impact of the proposed development upon these heritage assets; is a matter that is capable of being addressed by the imposition of an appropriate condition or not?
- 9.2 Whether Policies S1, S2, S4 and S14 establish an 'in principle' objection to the residential element of the appeal proposals by reason of its location in the countryside?
- 9.3 Whether the proposed development is in compliance with the development plan taken as a whole?

S106 Matters in Dispute

- Compliance monitoring fees in accordance with Mid Devon's s106 monitoring charges -
<https://www.middevon.gov.uk/residents/planning/section-106/section-106-monitoring-fees>

The following two contributions are not considered necessary (and, by implication, not directly related to, nor fair and reasonable) in relation to the development. The Council are therefore 'put to proof' on these matters. The appellant will draft the S106 agreement with 'blue letter' clauses in relation to these matters.

- Waste Management and recycling in accordance with LP Policy TIV4(f) - £19,200
- Education contributions in line with Devon County Council Education Infrastructure Plan (Revised) 2016-2033:
 - Special education provision £77,655
 - Primary - £717,263
 - Early years - £37,500

- Education land - £120,661.
- Secondary - £229,488
- DCC legal costs
- Transport infrastructure

10.0 Conditions

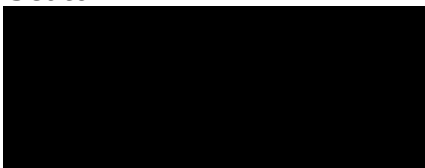
10.1 This matter will be addressed in a supplemental Statement of Common Ground.

Name Tristan Peat

Signed Tristan Peat
.....

Date 03/07/2023
..... On behalf of Mid Devon District Council

Name David Seaton

Signed 

Date30/06/2023..... On behalf of Waddeton Park Ltd