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## Appeal Decision

Inquiry held on 26, 27, 28 November & 6 December 2024

Site visit made on 29 November 2024

**by Sarah Housden BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27/01/2025

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**Appeal Ref: APP/Y1138/W/22/3313401**

**Land at Hartnolls Farm, Tiverton, Devon, EX16 4PZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
  - The appeal is made by Waddeton Park Ltd against Mid Devon District Council.
  - The application Ref is 21/01576/MOUT.
  - The development proposed is outline planning application 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).
  - This decision supersedes that issued on 20 October 2023. That decision on the appeal was quashed by order of the High Court.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appeal seeks outline planning permission with all matters except access reserved for later approval. The Site Location Plan (Drawing No. DE425-001) and Access Strategy (Drawing No. 48582/5501/SK02 Revision H) fall to be determined as part of this appeal.
3. The Framework Plan (Drawing No. DE\_425\_SK11 Revision D), which accompanied the application, shows the position of the access road off Post Hill, the broad location of the proposed housing and employment areas and areas of open space and planting. I have treated this plan as an indication of how the site could be developed, were the appeal to succeed.
4. The appeal was made in December 2022, against the Council's non-determination of the planning application within the prescribed period. The Council has provided an officer report which was scheduled to be considered in January 2023, which sets out six putative reasons for refusal (RfR). In summary, these relate to the site's location outside the settlement limit, the absence of archaeological information, the adverse effect on landscape character, the absence of details in relation to biodiversity net gain and infrastructure and the potential for an adverse impact on Tiverton town centre.

5. In the run up to the first inquiry, the Council continued to review its case and the putative RfRs. Following the receipt of further information from the appellant, the agreement of relevant planning conditions and the submission of the Unilateral Undertaking (UU), the Council no longer sought to defend RfRs 2, 3, 4, 5 and 6. That position has not changed, and RfR 1 relating to the site's location and the conflict with the development plan remains as the principal matter of dispute between the parties in this case.
6. The previous Inspector dismissed the appeal. The legal challenge was brought in relation to six grounds. It was quashed<sup>1</sup> and remitted for redetermination on the basis of Grounds 4(b) – (d) which dealt with the previous Inspector's conclusions on the link road/secondary access to the Tiverton Eastern Urban Extension (TEUE). As set out in the Consent Order, the parties reserved their respective positions with regard to Grounds 1 – 3 (Policies S1, S2 and S14 of the Mid Devon Local Plan 2013 – 2033 adopted 2020) (the LP) and Ground 5 (the overall planning balance), since they were not the subject of a final judgement.
7. Although matters unaffected by the Court's decision may not need to be re-visited, in this case the matters of dispute between the parties include the interpretation of policies in the LP which is a matter of law. Therefore, the interpretation of Policies S1, S2 and S14 are material to my re-determination of the appeal.
8. A Further Additional Statement of Common Ground (SoCG) was submitted before the opening of this inquiry. It supplements the SoCGs agreed before the first inquiry and records those matters which continue to remain agreed, and those which are agreed in the context of this inquiry. An additional SoCG between Mid Devon District Council, Westcountry Land and Devon County Council was also submitted before this inquiry which I return to later in the decision.
9. The UU dated 26 September 2023 was completed following the first inquiry and it is before me as part of this re-determination appeal. I am satisfied that the UU has been properly executed and I deal with its obligations later in the decision.
10. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. The main parties were invited to comment on whether or not this has any implications for the appeal and I have taken account of the comments from the appellant and the Council in coming to my decision.
11. The appeal was accompanied by an Environmental Statement, as required by Regulation 5(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
12. I made an unaccompanied site visit to view the appeal site from surrounding roads and Public Rights of Way on 25 November 2024. In addition, I carried out an accompanied site visit during the inquiry on 29 November 2024.
13. In this decision I have referred to the core documents (CD) and the redetermination inquiry documents (RID) only where necessary in the interests of clarity.

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<sup>1</sup> Ref AC-2023-LON-003510 dated 5 June 2024

## **Background and Main Issue**

14. The previous Inspector concluded that a five year supply of deliverable housing sites (5YHLS) could be demonstrated and it is now common ground between the main parties that there is a 5.22 year supply of land for housing for the 5 year period 2022 – 2027. There is nothing in the evidence which would lead me to a contrary view. This represents a material change in circumstances from the previous inquiry. The appellant continues to dispute whether there is a reasonable prospect that some sites allocated in the LP can be delivered beyond 2027 to the end of the Plan period in 2033, a matter which I deal with below.
15. LP Policies S3 and S4 were referred to in the Council's putative RfR 1, but it is common ground between the parties that there would be no conflict with those policies and I have therefore referred to them only in so far as they are relevant to my assessment of the appeal development.
16. At the inquiry, the weight to be given to the material considerations in the planning balance in this case, including the provision of a secondary access road to Area B of the TEUE, and the implications for the appeal, was identified as a second main issue. For the purposes of this decision, I have dealt with the material considerations as part of the overall planning balance.
17. Set within this context, the main issue in this case is whether or not the appeal proposal would be in a suitable location having regard to the policies for the location of development in the LP, including in particular Policies S1, S2 and S14.

## **Reasons**

18. The appeal site covers approximately 3.9 hectares and comprises parcels of agricultural land which are located to the north, west and south of Hartnoll Business Centre (BC). Although within Halberton parish, the site is in close proximity to the eastern edge of Tiverton along Blundells Road/Post Hill. Manley Lane forms the western boundary of the appeal site and the eastern edge of the TEUE allocation.
19. LP Policies TIV1 – TIV5 set out the TEUE allocation which includes up to 1830 dwellings and 30,000 square metres of commercial floorspace. The site is being developed in two parts, Area A and Area B. The TEUE Masterplan Supplementary Planning Document (SPD) (CD14) covers the entire allocation and was adopted in 2014. Masterplan SPDs for Area B were published in 2019 (CD13) and 2020 (CD13a) and whilst not formally adopted by the Council, they are a material consideration in the determination of this appeal.
20. The appeal site is outside the Tiverton settlement limit on the LP policies map, which runs along Manley Lane and around the cluster of properties at the Post Hill/Manley Lane junction.
21. Policy S1 (Sustainable development priorities) states that all development is expected to support the creation of sustainable communities and sets out thirteen strategic priorities that will deliver the LP's vision and address the key issues for Mid Devon. The disagreement between the main parties in relation to Policy S1 relates to its interpretation and application as a whole, and also specifically to paragraph (a) which seeks 'a development focus at Tiverton, Cullompton and Crediton as the District's most sustainable settlements'.

22. Based on a plain reading, the function of the word 'all' in the second sentence of Policy S1 is to ensure that the policy is applied in the assessment of all development, not that all development must contribute to all thirteen sustainable development priorities. It follows that I agree with the appellant's interpretation of this aspect of Policy S1, and that my conclusion differs from that of the previous Inspector<sup>2</sup>, but I have come to it based on a natural reading of the words in accordance with the Tesco judgement<sup>3</sup>. Indeed, by the end of the inquiry, the Council accepted that the thirteen priorities in Policy S1 are to be satisfied only to the extent that they are relevant to the proposal being considered<sup>4</sup>.
23. In my view, the appeal scheme would make a positive contribution to the priorities in Policy S1 paragraphs b, d, e, g, i, j, l and m, and would not conflict with those in paragraphs c, f, h and k.
24. In the context of this appeal for new housing and employment development however, Policy S1 paragraph (a) which seeks a development focus at Tiverton, Cullompton and Crediton is a key priority and consideration. The Council considers that the word 'at' means that sites should be within the Tiverton settlement limit. The appellant considers that the word 'at' should be interpreted in a less prescriptive manner, and that sites outside of, but in proximity to the settlement limit could fall to be considered as being 'at' Tiverton and that the appeal proposal would comply with paragraph (a).
25. Policy S1 is a strategic policy and, read in isolation, paragraph (a) is not determinative of how a development's location will be assessed in relation to the settlement limits on the policies map. The proposed development would be in close proximity to Tiverton, and it is common ground between the parties that it would accord with the underlying objective of paragraph (a) to focus development where facilities are accessible and the need to use the private car is minimised. At the inquiry, the Council accepted that the appeal site's location would not undermine or significantly harm the paragraph (a) priority for a development focus 'at' Tiverton.
26. However, the development plan must be read as a whole. Policy S2 sets out the amount and distribution of development across the Plan period, with development to be concentrated at Tiverton, Cullompton and Crediton, with the largest proportion of residential development at Cullompton. The explanatory text states that central to Policy S2 is the role of Cullompton in meeting the District's long term development needs and that this is a departure from the previous LP strategy which focused the majority of development in Tiverton. As articulated through the explanatory text to Policies S2 and S10, Tiverton is expected to expand through the TEUE and a number of smaller allocated sites within the Tiverton settlement limit.
27. Set within the overall context that development outside the settlements defined in Policies S10 – S13 will preserve, and where possible, enhance, the character, appearance and biodiversity of the countryside whilst promoting rural diversification, Policy S14 permits certain development categories in the countryside listed in paragraphs (a) – (f). The explanatory text states that development in the countryside is defined by land outside the settlement limits of the main towns which include Tiverton.

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<sup>2</sup> CD86 paragraph 36

<sup>3</sup> Tesco Stores Limited v Dundee City Council [2012] UKSC 13

<sup>4</sup> RID13 Council's Closing Submissions paragraph 48

28. Based on a plain reading of the policy and the evidence presented to the inquiry, my conclusion is that the overall objective of Policy S14 is to new restrict development outside the settlement limits, whilst permitting the categories listed in criteria (a) – (f) through the relevant development management policies. That interpretation is consistent with the overall objective of Policies S1 and S2 to focus development in the most sustainable locations. It follows that I do not agree with the appellant's interpretation that provided the first sentence of Policy S14 is met, other types of development in the countryside would be acceptable in principle.
29. Policies DM17 (Rural Shopping) and DM18 (Rural employment development) acknowledge that there may be a degree of adverse impact to the character and appearance of the countryside which does present a degree of tension with the opening requirement of Policy S14. As acknowledged in the Tesco judgement, policies can pull in different directions, but that does not undermine the overall objective of Policy S14.
30. It is common ground that the extension to the BC would accord with Policies S14 paragraph (b) and DM18. The proposed access road would also accord with Policy S14 paragraph (e). However, as a sizeable employment and housing mixed-use development outside the Tiverton settlement limit, the appeal scheme as a whole would not fall within any of the development categories listed in Policy S14 that would be permitted in the countryside.
31. That the contingency site identified in Policy TIV13 is outside the Tiverton settlement limit does not affect my conclusion on this issue as it is a contingency to be used in circumstances where the LP strategy and the approach to restricting development to the settlement limits has failed to deliver the housing required by the LP to date.
32. The appeal site is outside, but in proximity to, the Tiverton Neighbourhood Plan Area. To the extent that Policy T1 of the Tiverton Neighbourhood Plan permits development outside of the Tiverton settlement boundary where it would preserve or enhance the character or appearance of the area, it is in general conformity with LP Policy S14. My interpretation of Policy S14 is that it seeks to restrict development outside the settlement limits whilst permitting the development categories in paragraphs (a) to (f), and based on a plain reading, NP Policy T1 has the same overall objective. To the extent that the NP is a material consideration in my assessment of the main issue, it does not alter my interpretation of the LP policies most relevant to the determination of the appeal.
33. For the reasons set out above, my conclusion is that the location of the appeal development would not significantly undermine the development focus 'at' Tiverton in Policy S1 paragraph (a). However, there would be conflict with Policies S2 and S14, which, taken together, emphasise the role of Cullompton as central to delivering the Policy S2 strategy, direct new development to within settlement limits and restrict development within the countryside to certain types, in order to deliver sustainable development over the Plan period. The conflict with the development plan, read as a whole, confers very significant weight against the appeal scheme.



## **Other Matters**

### *Landscape and settlement character*

34. The appeal site is located within the Lowlands Plain Character Area (CA) in the Mid Devon Landscape Character Assessment, an area primarily managed as arable farmland with medium to large scale fields divided by hedgerows and hedgebanks. The appellant's Landscape and Visual Assessment (LVA) concludes that the CA has a low susceptibility to change and that the landscape character sensitivity is medium-low. Due to changed views for recreational receptors using the Public Right of Way on the Grand Western canal towpath, the LVA concludes that the south-eastern corner of the site is the most visually sensitive.
35. As set out in the LVA, there would be a change to the landscape character and appearance of the site from the presence of built development where none existed previously, and the development would be more visually prominent for some receptors. However, the housing and employment areas would be seen largely in the context of the existing buildings at the BC, the future TEUE development and the existing dwellings fronting Post Hill.
36. The dwellings and employment units that would be located on the area to the north of the proposed access road would be more open to view from Post Hill, but they would be seen in the context of the frontage development on Post Hill and Manley Lane, and the existing BC buildings. The proposed open space and planting belt along the southern boundary of the appeal site and between the housing and employment areas would integrate with the hedgerow boundaries which are a characteristic feature of the Lowlands Plain CA. The LVA's conclusion that, subject to satisfactory landscaping and detailing the overall effect could be neutral, is a reasonable one.
37. There would be sufficient separation distance between the appeal development and the main built up area of Halberton village so that there would be no perception of coalescence between Tiverton and Halberton and their separate identities and distinctive landscape setting would not be harmed.
38. Whilst landscaping is a reserved matter, the proposal has been subject to EIA and had the appeal been allowed, I am satisfied that a condition would have been necessary and reasonable to secure the scale and broad layout of the housing and employment areas in accordance with the Framework Plan, together with details of a suitable and effective landscaping scheme to be submitted at the reserved matters stage.
39. Subject to such a condition, the proposal would not be harmful to the landscape character of the area and would not conflict with Policies S1 paragraph (k) and S14 in so far as they seek to safeguard visual quality and to preserve the character and appearance of the countryside.

### *Heritage assets*

40. Matters relating to the investigation and recording of archaeological remains are set out in the Archaeology SoCG and had the appeal been allowed, a condition would have been necessary to secure the further investigation and recording of archaeological non-designated heritage assets.

41. The Grand Western Canal Conservation Area is located approximately 500 metres to the south of the site and contains a series of Grade 2 listed bridges and a listed milestone. I have had regard to my statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA and of preserving the setting of the listed structures.
42. I concur with the finding of the appellant's Historic Environment Assessment that subject to suitable layout and landscaping at the reserved matters stage, the parameters for which could be secured by a condition, the development would preserve the character and appearance of the Conservation Area. Furthermore, there would be no harm to the special architectural and historic interest, and thereby the significance, of the listed structures.
43. As such, the proposal would accord with Policies S1 paragraph (m) and DM25 which seek to conserve and enhance the historic environment.

#### *Highways and transport*

44. The appellant's Transport Assessment (TA), as clarified by the Technical Note<sup>5</sup>, sets out the access arrangements that would be determined as part of the appeal. A new priority 'T' junction onto Post Hill would be located approximately 90 metres to the east of the existing Hartnoll BC access road which would be stopped up. The existing layby to the east of the BC junction would be re-located.
45. The Highway Authority has no objections to the proposed highway arrangements and there is no dispute between the parties that the proposed access would be safe and suitable and that the residual cumulative impacts on the road network would not be severe. It is also agreed that the access road to Area B, crossing Manley Lane, would be safe and suitable, including for the volume of traffic that would be generated by the TEUE. The Framework Plan indicates a network of streets with suitable walking and cycling opportunities to connect to the facilities in the TEUE and the road layout would be consistent with the TEUE road hierarchy on the Movement Plan in the adopted and draft Masterplan SPDs.
46. The highway evidence submitted to this inquiry includes an update to the traffic flows on Post Hill compared with the 2021 traffic flows on which the TA was based. Overall, traffic flows have reduced in both directions and in both peak hours by approximately 17- 20%, largely due to the completion of the new junction onto the A361. On this basis, the TA represents a robust assessment of the impact of the proposal on the highway network.
47. Halberton Parish Council has commented on the potential for increased traffic in Halberton, however the TA found that the Willand Road/High St junction would continue to operate within capacity, and that the residual impact on the surrounding road network would not be severe.
48. Overall, subject to the imposition of necessary conditions as recommended by the Highway Authority, the proposed access and highway arrangements would be acceptable.

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<sup>5</sup> CD54 Technical Note Response to Devon County Council's comments

### *Tiverton Town Centre*

49. Had the appeal been allowed, I am satisfied that a condition could have been imposed to limit the floorspace of any retail, leisure and office uses within the BC extension to 500 square metres gross, to accord with the provisions of Policy DM15 which seeks to protect the vitality and viability of Tiverton town centre.

## **Material Considerations**

### *Employment*

50. The weight to be given to the economic benefit of the proposed BC extension was one of the grounds of challenge of the previous appeal decision, albeit that the matter did not go forward to judgement. It remains a matter of difference between the parties, and I have therefore made an assessment of the weight that it attracts in the overall planning balance.
51. The proposed employment area could support approximately 400 jobs and would support the expansion of existing businesses at Hartnoll BC. The District's employment development has been focussed within the more rural areas rather than the three main towns, which does not accord with the spatial strategy set out in Policies S1 and S2, and the proposal would help to address this. The Council's economic development team supports the employment element of the appeal scheme.
52. Although there have been delays in the development of allocated employment sites in the Tiverton area, there is no overall District wide shortage of employment land. Further, there is an employment allocation which will accommodate approximately 30,000 square metres at the TEUE. Whilst that may cater for a different type of employment use to the appeal scheme, it forms part of the planned delivery of the Policy TIV1 allocation and will contribute to employment land supply to meet localised need in Tiverton.
53. Based on the above, I conclude that the BC extension attracts moderate weight in the overall planning balance.

### *Meeting housing need*

54. The appeal scheme would provide for up to 150 dwellings, of which 5% would be for custom/self-build and 30% would be affordable and this would be secured through the UU. This would meet the requirements of Policy S3, would accord with the guidance in the Meeting Housing Needs SPD and would contribute to meeting the diverse housing needs of Mid Devon. The evidence points to a shortfall in the delivery of affordable housing over the Plan period.
55. The Framework continues to emphasise the importance of new housing development to increase housing delivery across the country, in support of the Government's target for 370,000 new homes each year. The delivery of market, affordable and custom/self build housing is a benefit to which I attribute significant weight.



### *Housing delivery over the Plan period*

56. Policy S3 sets out a housing requirement of 7,860 dwellings over the Plan period, of which 2,358 are to be delivered at Tiverton, 3,930 at Cullompton and 786 each at Crediton and the Rural areas.
57. The appellant challenges the Council's delivery timescales for the North West Cullompton Urban Extension, East Cullompton (Culm Garden Village) and of the TEUE. It is argued that the appeal scheme would help to address a likely shortfall in the delivery of housing from 2027 – 2033, beyond the current 5 year supply period.
58. The Council has provided an update in respect of live planning applications for the Cullompton sites. Whilst most are in outline, the timescales for reserved matters applications and rates for delivery are based on the Housing and Employment Land Availability Assessment methodology (CD27) and historical evidence of delivery.
59. A funding package via Homes England's Infrastructure Delivery Fund has been secured for the delivery of the Cullompton Town Centre Relief Road (CTCRR), which is required to release Phase 2 of the Urban Extension and 500 dwellings at East Cullompton. That is a material change in circumstances since the last inquiry. There are governance arrangements in place to secure the delivery of the CTCRR in accordance with an agreed timescale. Further funding is required for improvements to the M5 Junction 28 upon which the delivery of 1250 homes at East Cullompton is dependent. However, a strategic outline business case is under consideration by the Department for Transport.
60. Turning to the TEUE, evidence to this inquiry indicates that the reserved matters application<sup>6</sup> for 122 dwellings on Area A will be determined early this year, leaving 414 dwellings with outline planning permission. Condition 4 of that permission requires the submission of the reserved matters no later than 10 years from 12 June 2017, and there is nothing which would lead me to conclude that that is an unrealistic timescale for that process.
61. Any slippage or under delivery of housing against the trajectory, including in Cullompton where it is contingent on the highway infrastructure works outlined above, is a matter for the Council to monitor, review and address in the light of updates to the housing delivery data, through the preparation of an Action Plan which is required in response to Mid Devon's latest Housing Delivery Test Result<sup>7</sup> and as part of the Local Plan review.
62. The updated Framework will require the Council to use the new standard method as a mandatory starting point for the calculation of local housing need and the housing requirement from July 2025. In the case of Mid Devon, that represents an increase from 393 to 572 dwellings per year. That is a matter for the Council to address at that point, and the appeal is being determined based on the current housing requirement and the land supply position in the evidence before me.
63. For these reasons, it has not been demonstrated that the appeal scheme is necessary to address any under delivery of housing delivery over the Plan period

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<sup>6</sup> Reference 23/00394/MARM

<sup>7</sup> RID15 Council's Note on implications of the National Planning Policy Framework update.

and in these circumstances, this consideration attracts very limited weight in the overall planning balance.

*TEUE Secondary access*

64. The adopted Masterplan SPD (CD14) envisages that access to TEUE Area B would be secured through the delivery of a primary road in conjunction with the development of Area A. A secondary means of access for Area B has been a long standing objective of the Council, and options have been assessed through consultation on the draft Area B Masterplan SPDs. It would facilitate the delivery of housing on Area B without having to wait for the development of the main spine road from Area A, as well as creating a through route for buses to Post Hill, thereby supporting travel by public transport.
65. The appeal scheme's access road off Post Hill would be aligned to serve the proposed housing and employment areas, terminating on Manley Lane at the eastern edge of Area B. This would enable a connection to be made into Area B. At the inquiry, the Council accepted that the secondary access envisaged in the draft SPDs would be beyond the Tiverton settlement limit.
66. The Area B Masterplan SPDs do not, however, envisage further development to the east of Manley Lane to secure the secondary access. Whilst a 2017 Cabinet report indicates that there is a 'ransom' situation in respect of continuing the access through Area A, into Area B, there is no updated evidence before me to confirm that, nor that it represents an impediment to the delivery of Area B. The continuation of the spine road through Area A as part of any reserved matters permissions for development on that area are within the Council's control, and there are 8 years remaining within the Plan period to secure that.
67. The Council is considering an alternative option for a secondary access to Area B (the Westcountry Land proposal) in conjunction with the site promoter and as set out in the SoCG (CD87). The acceptability and highway safety implications of that proposed arrangement are matters that will be resolved through further consultation on the Area B Masterplan SPD which was underway at the time of the inquiry, and any subsequent planning application. It is not a matter on which I can comment further as part of this appeal.
68. Drawing matters together, my conclusion is that there is still time within the Plan period for access to Area B to be resolved, whether through Area A or an alternative arrangement. In that context, I afford the provision of a secondary access to the TEUE limited weight as a benefit of the scheme.

*Link to anaerobic digester (AD)*

69. Whilst the appeal scheme is in outline, the appellant's Energy Feasibility Report and Update make reasonable assumptions about the likely scale and type of employment uses in the BC extension to estimate its energy consumption. The reports indicate that 100% of the BC extension's annual thermal consumption could be met by the available heat from the AD. At peak times, approximately 75% of thermal demand could be met, with the balance being supplied by thermal storage and/or heat pumps which could be incorporated into the detailed design of the buildings within the BC extension. The AD could meet 100% of the BC extension's electricity demand.

70. Evidence to the inquiry<sup>8</sup> indicates that the Council is investigating breaches of conditions related to various permissions for the AD plant, and concerns have also been expressed by Halberton Parish Council about the operation of the plant. Those are matters for the Council and outside the scope of this decision. For the avoidance of doubt, my assessment is based on the appellant's reports which are based on the AD plant operating within its permitted limits.
71. The link from the AD to the BC extension would support the transition to low carbon sources of energy which accords with Policy S1 paragraph (j). The estimated saving of 281 tonnes of CO<sub>2</sub> emissions set out in the appellant's report would contribute to addressing the Council's declared climate emergency. The connection would, however, serve only the BC extension. My conclusion is that the AD link attracts moderate weight in the overall planning balance.

*Biodiversity net gain (BNG)*

72. Policy DM26 requires major development to incorporate green infrastructure that will result in a net gain in biodiversity. Based on the DEFRA Biodiversity Metric 3.1, the appellant's BNG Assessment indicates that the proposals set out in the Framework Plan will provide a +26.42% net gain in biodiversity for habitats and a +7.04% net gain in biodiversity for hedgerows on the site, above the statutory requirement. This could be secured through appropriate planning conditions. I attribute significant weight to the BNG aspect of the scheme.

**S106 UU**

73. I have assessed the obligations in the s106 UU against the tests set out in the Framework, the Planning Practice Guidance and Regulation 122 of the CIL Regulations 2010 (as amended). The conclusions of the previous Inspector are also a material consideration in my assessment of the obligations against these tests.
74. The UU secures obligations in relation to affordable housing, self-build and custom housing, open space management, a transport infrastructure strategy, NHS funding gap and primary healthcare facilities, section 106 monitoring, early years, primary, special needs and secondary education provision, waste and recycling, sustainable travel and a Travel Plan.
75. The request for payments in relation to the transport infrastructure strategy, the NHS funding gap, secondary education and waste and recycling were withdrawn by Devon County Council and the NHS Foundation Trust prior to or at the last inquiry. The previous Inspector concluded that, as allowed by Clauses 5.1 and 5.2 of the UU, had the appeal been allowed, these provisions would have been struck from the UU. There has been no change in the respective positions of the County Council and the NHS Foundation Trust in relation to these matters at this inquiry, and therefore I see no reason to take a contrary view.
76. The justification for the other education contributions sought was set out by the Council at the last inquiry and the position has not changed. The obligations include a contribution of £806 per dwelling towards the provision of a serviced site for a new primary school. The TEUE primary school site has not yet been purchased and existing schools with capacity are beyond the two mile catchment which the

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<sup>8</sup> CD96 Red Linhay Enforcement Update

County Council advises for safe access from the appeal site. The contribution is based on a BCIS index and is proportionate to the child yield from the scheme. This meets the requirement of Policy S1 paragraph (b).

77. Of the remaining contributions unaffected by the blue pencil clause, affordable and custom/self-build housing is required by Policy S3 and the management of open space is necessary to make the development acceptable in planning terms. The contribution to primary healthcare facilities would relate to the development of a new branch surgery as part of the TEUE, or should this not proceed, the reconfiguration of the Clare House, Castle Place and Sampford Peverell surgeries. This is necessary to accord with Policies S1 and TIV15 which seek to ensure adequate infrastructure for new development and healthcare facilities in Tiverton.
78. A Travel Plan is necessary to support sustainable transport modes, and to accord with Policy S1 paragraph (e). The monitoring fee of £10,227 reflects the Council's standard fee for monitoring the obligations.
79. For the reasons outlined above, I am satisfied that the obligations unaffected by the blue pencil clause meet the tests in the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.

### **Planning Balance and Conclusion**

80. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations, which include the Framework, indicate otherwise. As a 5YHLS can be demonstrated, the tilted balance is not engaged and the appeal falls to be determined within a 'normal' planning balance.
81. Significant weight in favour is given to the delivery of market, self/custom build and affordable dwellings to meet different housing needs in the community and moderate weight is given to the economic benefits. Significant weight is given to the biodiversity benefits. The connection to the AD plant and the secondary access to the TEUE each attract moderate weight in favour. Very limited weight is attributed to the contribution to housing delivery over the Plan period. The UU and lack of harm to character and appearance are neutral in the overall balance.
82. Set against these benefits, the proposal would be contrary to the strategy for the location of development in the LP, read as a whole. It would not align with the role of Cullompton as central to the delivery of Policy S2 and would be contrary to the provisions of Policy S14 which seeks to locate new development within the settlement limits, whilst permitting certain development types in the countryside none of which apply in this case. This conflict is of sufficient importance and weight that the proposal is contrary to the development plan, taken as a whole. In the circumstances of this appeal, my conclusion is that the material considerations do not outweigh the conflict with the development plan.

83. For the reasons outlined above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Sarah Housden*

INSPECTOR



## APPEARANCES

### FOR THE APPELLANT:

Mr Williams of Counsel	
He called:	
Mr N Thorne, BSc (Hons) MSc MCIHT MTPS	Transport Planning Director, Rappor
Mr D Seaton, BA (Hons) MRTPI	Managing Director, PCL Planning

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Buckley Thomson of Counsel	
She called:	
Mr A Aspbury, BA MRTPI	Director, Aspbury Planning Limited
Mr A Beecham BSc	Principal Housing Enabling and Forward Planning Officer

### INTERESTED PARTIES:

Mr N Govier	Halberton Parish Council
Mr J Dodge	Westcountry Land

## RE-DETERMINATION INQUIRY DOCUMENTS (RID)

- 1 Letter 24.10.24 Mr Neil, Scrub Daddy
- 2 Letter 29.10.24 Mr Brookman, Back to Earth
- 3 Letter received 7.11.24 C and D Edwards
- 4 Letter 15.11.24 Mr Phillips, Bespoke Fitness and Nutrition
- 5 Appellant's opening statement
- 6 Council's opening statement
- 7 Statement by Halberton Parish Council
- 8 Statement by Mr J Dodge, Westcountry Land
- 9 Further comments and appeal decision reference 3334670 submitted by Halberton Parish Council 26.11.24
- 10 Emails dated 3.7.24 and 4.7.24 between Mr L Sly and Ms C McCombe, submitted by the appellant
- 11 Further comments and appeal decision reference 3313381 submitted by Halberton Parish Council 27.11.24
- 12 Draft condition to deal with development parameters in relation to the Environmental Statement, agreed by the parties and submitted by the Council
- 13 Council's Closing Submissions
- 14 Appellant's Closing Submissions
- 15 Council note on implications of the updated NPPF for 3313401 dated 19.12.24
- 16 Appellant's letter dated 23.12.24 on the implications of the updated NPPF