



Appeal Decision

Site visit made on 27 October 2023

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 06 December 2023

Appeal Ref: APP/Q1153/W/22/3309313

Land north of A30 Junction, Whiddon Down, Drewsteignton

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made on behalf of JW Mann Ltd. against the decision of West Devon Borough Council ('WDBC').
- The application ref. 2530/19/FUL, dated 27 August 2019, was refused by notice dated 29 April 2022.
- The development proposed is described on the application form as 'a farm shop and ancillary cafe, with supporting secondary areas consisting of storage, WC's, offices and preparatory kitchen space.'

Decision

1. The appeal is dismissed.

Application for costs

2. WDBC's application for an award of costs against the appellant is the subject of a separate decision.

Preliminary matters

Appeal procedure

3. WDBC and various third parties asked that the appeal be dealt with via hearing or inquiry. Notwithstanding the planning history to the site, the information before me alongside my site visit observations is a more than adequate basis upon which to reach a decision. All appeals focus on the materiality and weight of planning matters regardless of how arguments are put. That is true also in respect of the appellant taking umbrage at the 'tone' of WDBC's case. Some points they make are strongly put. However nothing of theirs that I have seen is other than commonplace phraseology in the context of planning appeals.

Planning history

4. This appeal follows two appeals in 2019 and 2020, both related to application ref. 2701/18/FUL. The 2019 appeal was allowed, albeit subsequently quashed (thereby ceasing to have any legal effect, if not potential materiality). The foregoing resulted in a second, or redetermined, appeal decision in 2020.¹ The 2020 appeal was dismissed. There is no indication that it was subject to challenge. Mindful of that history insofar as now relevant,² I have reached a decision on the current scheme in present circumstances.

¹ Ref. APP/Q1153/W/19/3230781, dealt with by way of hearing.

² Taking into account the judgement in *North Wiltshire v Secretary of State* (1993) 65 P. & C.R. 137 cited by the Council, notwithstanding that there has been subsequent litigation on that subject.

5. As opposed to the description of development reproduced above, WDBC refer to the scheme as a resubmission of application ref. 2701/18/FUL. That description is replicated in the appellant's statement of case. WDBC go further in describing the proposal as 'effectively identical...' to earlier iterations. By contrast the appellant is of the view that there is 'significant additional information...'. As in respect of arguments regarding the appeal procedure, the characterisation of the scheme relative to any previous iteration is incidental to its merits. I have had regard to all relevant information.

Policy context

6. Each proposal must be determined in accordance with the development plan unless material considerations indicate otherwise.³ In this instance the development plan includes policies of the Plymouth and South West Devon Joint Local Plan 2014 – 2034 (adopted by WDBC on 26 March 2019, the 'JLP'). I have also had regard to various other material considerations including the National Planning Policy Framework ('NPPF'),⁴ the Planning Practice Guidance ('PPG'), and to the Supplementary Planning Document associated with the JLP (adopted by WDBC on 9 June 2020, the 'SPD').
7. In pursuit of sustainable development, as articulated via JLP policy SPT1, JLP policy SPT2 sets an overall spatial approach to guiding development across constituent authorities' administrative areas. Beneath those overarching policies, policy TTV1 seeks to distribute growth in line with a hierarchy of settlements commensurate with their size and function.
8. Part 4 to TTV1 ('TTV1.4') in summary, and amongst other things, explains how development in the countryside will only be permitted where it accords with the approach in policies SPT1 and SPT2 'including as provided for in policies TTV26 and TTV27'.⁵ Policy TTV2 applies to the Thriving Towns and Villages Area ('TTVA') in which the appeal site falls, making particular reference to the 'specific objectives of rural sustainability' in that context.
9. JLP policy TTV26 governs 'Development in the countryside'. The relationship of the scheme to policy TTV26 was at issue in the 2020 appeal. The appellant's current position as regards the relationship of the scheme to policy TTV26 is multi-faceted and informed by a legal opinion.⁶ I will return to that shortly.
10. WDBC's decision notice also refers to JLP policy DEV15, which accords in-principle support to 'proposals in suitable locations which seek to improve the balance of jobs within the rural areas and diversify the rural economy'. JLP policy DEV16 'Providing retail and town centre uses in appropriate locations' is also therein referenced. Policies DEV20 and DEV23, also cited in WDBC's decision notice, relate respectively to standards of design and landscape character. Inherent in the foregoing is that the JLP seeks to balance countryside and landscape protection with positive economic and social outcomes.

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

⁴ The current version of which was published on 5 September 2023.

⁵ JLP policy TTV27 relating instead to housing.

⁶ Stephen Whale, Landmark Chambers, 24 August 2022.

11. The development plan must be considered as a whole. Development plans often contain policies which pull in different directions, and wording which might legitimately be subject to greater scrutiny if used in a different context (for example in a deed). It is not the function of an appeal to go behind the development plan, or to amount to some form of quasi re-examination of the plan itself. Policies adopted before the current version of the NPPF are not out of date simply by virtue of that fact. Moreover the NPPF does not displace the statutory basis for decision-taking as set out above. Therefore, even if policies were to be deemed out of date, or there is some degree of inconsistency between them and the current version of the NPPF, it remains a matter of judgement as to what weight to accord to them or to any conflict with them.

The nature of the proposal

12. The appellant objects to WDBC's characterisation of the term 'farm shop', as used in this instance, as a 'misnomer'.⁷ The appellant implies that the scheme is for a farm shop in both style and substance. In relation to the latter the appellant has advanced a condition which would specify that no less than '75% of the retail value of goods' shall derive from the Parish of Drewsteignton, in which the site falls, or its neighbouring Parishes. That condition evidently aims towards certain provisions of JLP policy DEV15, criterion 5 ('DEV15.5').⁸
13. The Council, however, have a valid point. DEV15.5 accords in-principle support to 'farm shops' with the aim of diversifying the rural economy. That is conditional, however, on their being 'ancillary to, and on the site of, an existing horticultural business or existing farming operation'. That is not the case here. NPPF paragraph 84.b) supports 'the development and diversification of agricultural and other land-based rural businesses'. The site, and proposal, is effectively standalone rather than related to any existing concern.
14. Moreover the term 'farm shop' has taken on a symbolic meaning divorced from the words themselves. In my view farm shop is not simply a combination of two nouns. 'Farm', an area of its land and its buildings used for growing crops and rearing animals, becomes adjectival and thereby qualifies the noun 'shop', a building or part of a building where goods are sold. In both common usage, and in JLP policy DEV15.5, farm is singular rather than plural. If a shop is not related to a farm, it is in essence simply a shop.
15. Conditioning the origin of produce, as above, may result in some more localised benefits to the scheme than otherwise (i.e. to local producers). That is reflected in the appellant's Planning Retail Policy Assessment ('RPA').⁹ The RPA sets out how an aim of the scheme is to 'provide a route to market for local food producers in the Devon area.' However Devon is larger than Drewsteignton and neighbouring Parishes. The appellant's map of potential suppliers reaches as far as locations by Totnes, Plymouth and at the fringes of Exeter.
16. Consequently, and notwithstanding any practical difficulties in terms of enforceability, whether compliance with such a condition could be achieved

⁷ I have considered legal advice prepared for the appellant by Martin Carter of Kings Chambers of 9 November 2018 which touches upon this matter (albeit at a juncture before the JLP had been adopted in modified form).

⁸ Albeit inexactly, as DEV15.5 looks towards '75 per cent of the goods sold' as opposed to their retail value.

⁹ ID Planning, July 2021, building on their earlier work including a Retail Impact Assessment of June 2019.

here is something of an unanswered question on the evidence before me.¹⁰ Regardless, the proposal is effectively for a shop (and café) irrespective of any intended aesthetic, offer or branding.

Policy TTV26

17. Policy TTV26 comprises three elements, a preamble, part 1 and part 2 (the latter elements 'TTV26.1' and 'TTV26.2'). The preamble explains how the constituent authorities 'will protect the special characteristics and role of the countryside'. TTV26.1 sets out how 'isolated development in the countryside will be avoided and only permitted in exceptional circumstances, such as where it would: ...'. There are thereafter five examples of potentially exceptional circumstances at criteria (i) to (v). TTV26.2 sets out how development proposals should 'where appropriate' achieve certain outcomes (again set out via criteria, in that instance (i) to (vi)).
18. The appellant's position in respect of the proposal's relationship to policy TTV26 is somewhat convoluted. They argue principally that the scheme is in accordance with policy TTV26. That is principally on the basis that, in their view, there are 'exceptional circumstances' for allowing the scheme, namely the various benefits argued to weigh in its favour. That position is, in turn, informed by the legal opinion. Of particular relevance, in the appellant's mind, is that the opinion identifies that the circumstances specified under TTV26.1 criteria (i) to (v) are not exhaustive. That is not revelatory as those criteria are introduced in the policy by the phrase 'such as'.
19. The appellant, however, accords some importance to the construction of TTV26.1. That appears to be with reference to the reasoning of the Inspector who determined the 2020 appeal, who said 'in my judgement the proposal would be in conflict with the provisions of TTV26.1'. That is, however, a tangential argument at best. Factually the scheme does not represent any of the circumstances listed under criteria (i) through (v) to TTV26.1. The scheme therefore benefits from no explicit support from it. Moreover a test of soundness of a local plan is consistency with national policy. There is a notable affinity, albeit some differential phrasing, between TTV26.1 criteria (i) through (v) and NPPF paragraph 80.¹¹
20. NPPF paragraph 80 now sets out how the development of isolated homes in the countryside should be avoided 'unless one or more of the following circumstances apply', a closed list. At the time of the JLP examination the 2012 version of the NPPF applied.¹² Paragraph 55 of the 2012 version of the NPPF set out how new isolated homes in the countryside should be avoided unless there are special circumstances 'such as'. In essence what was once an open list in national policy has become a closed list.¹³ If the current version of the NPPF is to be treated as a material consideration, as it should be, if anything that qualifies the appellant's position above.

¹⁰ Appreciating that definitive arrangements cannot be reached pre-emptively in business decisions and noting that the foregoing condition was touched upon in the previous Inspector's decision (paragraph 20).

¹¹ Noting that criterion d) under NPPF paragraph 80, i.e. the subdivision of an existing residential building, was an amendment to the NPPF post-dating the examination of the JLP.

¹² Albeit that the version published on 19 February 2019 was extant at the time of its adoption in respect of decision-taking.

¹³ That occurred in the 24 July 2018 version, which, as with the 19 February 2019 version, contained transitional arrangements at paragraph 214.

21. Even if the foregoing reasoning is entirely incorrect, and setting aside any earlier position of WDBC, the previous Inspector also addressed TTV26.2 and found conflict there also. The legal opinion aptly describes part 2 to policy TTV26 as something of a 'mixed bag' of criteria 'partly reflected elsewhere in the 2021 NPPF'. The opinion also sets out that, by virtue of being prefaced with 'should, where appropriate' achieve criteria (i) to (vi), TTV26.2 does 'not necessarily apply to all development proposals'. Nevertheless there is no challenge to TTV26.2 in the same manner as in respect of TTV26.1.
22. Where the appellant's argument becomes increasingly convoluted is in stating that the legal opinion does not imply that policy TTV26 is out of date.¹⁴ Paragraph 12 of the legal opinion, however, draws attention to NPPF paragraph 219 which deals with whether existing policies should, or more accurately should not, be considered out-of-date (a problematic phrase given the statutory basis for decision taking). It also identifies what are said to be various inconsistencies between policy TTV26 and the NPPF. That is difficult to contextualise other than an implication that, in whole, part or to some degree, the policy should be considered out of date.
23. There are two principal ways in which the opinion avers that policy TTV26 is inconsistent with the approach in the NPPF. The first is the use of the word 'protect' in its preamble, the second in applying to 'isolated development' as opposed to 'isolated homes' (the latter used in NPPF paragraph 80 and previous iterations). However that the NPPF refers to 'recognising the intrinsic character and beauty of the countryside' at paragraph 174.b) connotes some protection. There is little of substance in that terminological distinction.
24. I accept that TTV26 is cast more broadly than applying to homes specifically. Notwithstanding the points made at paragraph 11 of this decision, the appellant argues that the proposal would comply with TTV26.1 and that it is not out of date. Moreover any debate about compliance with policy TTV26 does not obviate the need to consider policy DEV15 also. It is therefore of no real relevance, other than academically, even were I to find that there is some degree of inconsistency in this regard.
25. The appellant's argument becomes yet more complex in terms of their interpretation of 'exceptional circumstances' as used in TTV26. They say: 'it is considered that the types of development listed are not strange or uncommon forms of development in the countryside... As such, the bar of 'exceptional circumstances' for new development in such locations is not considered to be high'. That position does not, however, reflect that much development in the countryside pre-dates the adoption of the JLP or indeed modern planning.¹⁵
26. Nevertheless, that is to be contrasted with the appellant's view on the interpretation of 'significant adverse impact' impact as used separately in criterion 3 to policy DEV16 and NPPF paragraph 91. In that respect the appellant argues that 'significant' represents 'a high bar'. Those two terms have different policy contexts. Nevertheless to suggest that 'exceptional' is less stringent, or a lower bar, than 'significant' defies logic.

¹⁴ Appellant final comments, paragraph 2.19.

¹⁵ Noting that SPD paragraph 11.44 explains how policy TTV26 sets a 'necessarily high' bar.

Main issues

27. Against the context above the main issues are (i) whether the site is a suitable location for the development proposed, and (ii) the effect of the proposal on character and appearance.

Reasons

Location

28. The appeal site is an irregular parcel of sloping land. The application form says the site amounts to 0.98ha, however that may relate solely to the red-edged land represented on plan no. Drg01, as opposed to the wider holding of which that was once a constituent part (blue-edged). The site falls just north-east of the Whiddon Down junction. That junction connects the A30 and A382. If the site is to be reached via the A30, it must be accessed in part via the apparently unnamed road signed as to Crockernwell and Hittisleigh. That road initially spurs off the tightly-curving sliproad by the A30 eastbound. I understand that the Whiddon Down junction replaced the former Merrymeet Roundabout here in 2006. As remains evident by the condition of the land and nature of vegetation, that process entailed significant earthworks and land re-profiling.
29. With that in mind, representors have indicated that the appeal site was formerly a construction depot for spoil storage. There is also an indication that it was previously used for agricultural research by Rothamstead Research. Whilst the history to the site is somewhat incidental, it is nonetheless relevant in understanding the site and its surroundings. The site evidently remains essentially unchanged relative to the description thereof by the Inspector who determined the 2020 appeal, i.e. a 'verdant, open and agrarian' field.¹⁶ In that respect is it similar to much of the landscape north-eastwards of the A30 characterised, amongst other things, by a mosaic of good-sized irregular fields.
30. The site evidently has greater affinity with its rural surroundings than with the linear engineered form of the A30. There is no dispute that the site falls within the (open) countryside. Similarly, by virtue of the appellant arguing that the proposal complies with TTV26.1, there is no dispute that the site is also within an 'isolated' location (accorded its ordinary definition). Following on from my reasoning in paragraphs 12 to 16 above, it is in that context that a shop, a main town centre use, is proposed.
31. Notwithstanding arguments heard at the 2020 appeal,¹⁷ principally via the RPA, the appellant has undertaken what they deem to be a 'proportionate and flexible' sequential assessment in line with relevant guidance in the PPG.¹⁸ The RPA also responds to JLP policy DEV16, part 3, criterion (ii) ('DEV16.3.ii'). DEV16.3.ii requires that retail development in excess of 250 square metres (gross) in the TTVA is supported by a (retail) impact assessment.
32. Setting aside my reasoning in paragraph 26 above, the appellant explains how 'it is essential to be clear when assessing impact considerations, both the JLP and NPPF test is whether 'significant adverse impact' would arise in relation to

¹⁶ Paragraphs 6, 25 and 26 of the 2020 appeal decision.

¹⁷ Notably in respect of whether the scheme then would have represented 'small scale' development within the terms of NPPF paragraph 89 and whether the scheme would transgress the 250sqm threshold in policy DEV16.3.ii.

¹⁸ PPG Reference ID: 2b-011-20190722.

the investment in and/or the vitality and viability of an existing centre or prejudice the deliverability or investment in a proposed centre'. That is, in large part, a quote from policy DEV16.3.

33. NPPF paragraph 91 sets out, however, that 'where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the considerations in paragraph 90, it should be refused' (my emphasis). That alludes to the distinction, drawn out in the appeal statement of ID Planning who prepared the RPA, between the 'impact test' and the 'sequential test'. Whilst there is some inter-relationship between the two,¹⁹ the former is set out in NPPF paragraph 90 and contains two limbs, a) and b). Those provisions are similar to the final sentence of JLP policy DEV16.3.²⁰
34. The sequential test is articulated in NPPF paragraph 87,²¹ and also referenced in JLP policy DEV16.2. The PPG sets out how the sequential test should be 'proportionate and appropriate for the given proposal',²² and that its operation should recognise 'particular market and locational requirements'.²³ The RPA references the judgements in *Tesco*, *Zurich*, and *Aldergate*,²⁴ along with appeal decisions where the sequential test was of relevance elsewhere.
35. In that context, and as noted earlier, the RPA explains how the intention of the proposal is to be focussed on the 'tourist orientated offer of specialist food products largely sourced from the Devon area'. It is the appellant's position that such an offer, effectively the particular market and locational requirement that the proposal is geared towards, would 'appeal more to those travelling through the area on the A30 on their way to or from other destinations'. The appellant's position is that some 75% of trade would be transient, i.e. relate to those passing via the A30. I will return to that figure subsequently, which is not to be confused with the 75% of sales figure intended to be derived from local produce referenced earlier.
36. The appellant's evidence sets out expressly that the scheme is 'targeted at those travelling along the A30'.²⁵ It is therefore a conundrum that there is no suggestion that the proposal should be assessed as for roadside services. That may be as the primary function of roadside services or facilities is to support the safety and welfare of road users.²⁶ It may be that Government guidance in respect of the Strategic Road Network ('SRN'), of which the A30 is part, sets out that roadside facilities should not be 'destinations in their own right' as might fairly describe the scheme.²⁷

¹⁹ Including that both will, to some extent, be guided by the nature of the development proposed.

²⁰ Noting that NPPF paragraph 90.b) also refers to the impact of a proposal on 'the wider retail catchment (as applicable to the scale and nature of the scheme)'. In that context I note that the RPA has considered a number of locations which are not defined as town centres via the JLP, namely Spreyton, Drewsteignton, South Zeal, Sticklepath, Cheriton Cross/ Cheriton Bishop and Tedburn St. Mary.

²¹ With caveats in paragraphs 88 and 89.

²² Reference ID: 2b-011-20190722.

²³ Reference ID: 2b-012-20190722.

²⁴ *Tesco Stores Ltd v Dundee City Council* (Scotland) [2012] UKSC 13 (21 March 2012), *Zurich Assurance Ltd (t/a Threadneedle Property Investments), R (on the application of) v North Lincolnshire Council & Anor* [2012] EWHC 3708 (Admin) (20 December 2012), *Aldergate Properties Ltd v Mansfield District Council & Anor* [2016] EWHC 1670 (Admin) (08 July 2016).

²⁵ RPA, executive summary.

²⁶ NPPF footnote 44.

²⁷ Strategic Road Network and the delivery of sustainable development, 23 December 2022, paragraph 83.

37. As is common ground between the main parties, however, there is no sequential test requirement to consider alternatives elsewhere around the SRN. In that context the appellant notes how other locations along the SRN would not be sequentially preferable 'being located out of centre'. That appears true of the A30, notwithstanding that it glances the fringes of Okehampton and Exeter. Hypothetically, were the search area expanded to incorporate more distant centres, it would be logical to assume that any potential impact of this scheme in isolation would be very diffuse.
38. Bearing the foregoing in mind, the RPA refers extensively to the primary catchment area ('PCA') of trade draw. That is not a coinage in the PPG. To be clear, on the appellant's evidence the PCA is said to be from the 'local area', based on the zones in which an updated household survey has informed the RPA.²⁸ But the local area is clearly not the primary catchment area for trade.
39. Given the nature of the offer described above, as the appellant forecasts 75% of trade would derive from transient custom, the principal source of trade would be from a significantly larger and more difficult to quantify geography. I have set out above how, looked at in terms of where produce would be drawn from, there is equally no clear justification for a shop here.
40. ID Planning set out that the reason for this location is that other locations 'would not serve the intended more locally based element of the catchment area (residents and staying visitors) around Whiddon Down.' However that does not hold water as the scheme is geared principally towards passing trade. It is not conceived of to serve a principally local catchment.
41. It appears, in short, that the PCA has been defined by virtue of comparative geographic ease rather than being evidence-led. Paraphrasing *Tesco* it might be said to consider an 'artificial world' rather than the 'real world' in which the scheme is intended to exist and operate. As such there is a fundamental flaw in the way in which the sequential approach has been undertaken, and indeed could realistically be undertaken for this particular proposal.
42. In respect of impact, there is no substantive indication that the proposal would have a likely significant (adverse) impact on the two JLP-identified town centres studied of Okehampton and North Tawton.²⁹ The RPA arrives at a summarised predicted impact in respect of Okehampton town centre of a 0.2% reduction in existing convenience goods turnover, and a -1.1% impact in respect of a single shop (Spar) at North Tawton.³⁰ It is not the function of the impact test to avoid healthy market competition.
43. Nevertheless, in respect of the 'wider retail catchment', the term used in NPPF paragraph 90.b), effects are indicated to be more pronounced. The RPA forecasts potential effects in terms of existing convenience goods turnover at 'village' stores at Sticklepath, South Zeal, Cheriton Bishop, and Tedburn St. Mary. Those are given as ranging from a reduction in turnover of 1.2% to 1.8%. The appellant is of the view that those do not amount to significant

²⁸ RPA paragraphs 3.4 and 4.22.

²⁹ In respect of either NPPF paragraph 90.a) or 90.b).

³⁰ RPA table 6 and paragraph 5.148.

adverse impacts, and that no shop closures would occur by virtue of the scheme.³¹ For four principal reasons I disagree.

44. Firstly, operating margins in convenience retail are tight. A reduction in turnover of between 1.2% and 1.8% appears numerically small, but may in actuality be a substantial proportion of profit. Percentages also belie figures; a 1.8% reduction in annual turnover at the Sticklepath Stores amounts to about £10,000.³² Secondly, although the figures above are derived individually, collectively four village stores would be affected by the scheme to some degree. Albeit Cheriton Bishop and Tedburn St. Mary fall outside of WDBC's administrative area, the JLP expressly recognises the value of local shops and services to rural communities,³³ as does NPPF paragraph 84.d).³⁴
45. Thirdly, as noted by Reeves Retail Planning Consultancy Ltd., commissioned by WDBC to review the appellant's retail evidence, the outlook for convenience retail is presently challenging. That is chiefly on account of utility costs and inflation (both in respect of the cost of goods but also their effects on household spending). Fourthly, there is little substantiation for the position that 75% of trade to the proposed development would be transient.
46. The justification for that 75% is said to derive from 'data on traffic flows on the A30... a high flow of traffic along the A30 route with 28,000 vehicle movements a day transiting east and west'.³⁵ Whilst I note that volume of traffic is forecast to increase significantly by 2040, and that undoubtedly a large proportion relates to those travelling through rather than to the nearby area, those are simply figures. They are not reasoned evidence. There is also no consideration that I can see as to whether those assumed to be passing trade are in actuality travelling to or from the study area in the RPA (and therefore also nearby residents or tourists). That is noting that the proposed shop would be a greater size than smaller stores, and therefore likely have a greater offer of goods.³⁶
47. In my view the impact of the proposal on trade in the wider retail catchment may well be significantly adverse in relation to NPPF paragraph 90.b). Even if significant adverse effects were not to result, the likely effects of the proposal nonetheless significantly qualify various benefits of the scheme that the appellant has advanced in favour of there being 'exceptional circumstances' under JLP policy TTV26.1.
48. Whilst I will return to TTV26.1, drawing together my reasoning above, I conclude that the location of the development proposed would conflict with the relevant provisions of JLP policy DEV16.2 and NPPF paragraphs 87 and 90.b). The site is not an 'appropriate location' for the proposal, the terminology used in JLP policy DEV16, the scheme would not accord with JLP policy DEV15.5, and there is no express support for it via JLP policy TTV26.

³¹ ID Planning, statement of case, paragraphs 3.7 and 3.8.

³² RPA, table 6.

³³ Notably at paragraph 6.69 supporting policy DEV18.

³⁴ Notwithstanding there is no 'precautionary' approach expressly in this respect.

³⁵ ID Planning, final comments, paragraph 2.3.

³⁶ Reeves Retail Planning Consultancy Ltd, appeal statement, paragraph 2.12.

Character and appearance

49. Bound up with the overarching approach in the JLP as referenced in paragraph 10 above, JLP policy DEV23 sets out how development will conserve and enhance landscape character, 'avoiding significant and adverse landscape or visual impacts'. In summary, and amongst other things, criteria 1 and 2 to that policy set out how development should respect scenic quality, reinforce local distinctiveness, and conserve and enhance the characteristics of the area. More broadly cast, JLP policy DEV20 nevertheless also sets out how development should contribute positively to landscape.
50. The appeal site does not fall within a protected landscape. There is no suggestion that it merits treatment as part of a 'valued landscape' within the terms of NPPF paragraph 174.a). I acknowledge, as noted by the previous Inspector, that the scheme was not objected to by the Council's landscape officer. I also accept that, at face value, 'conserve and enhance' appears an onerous requirement, in that an absence of harm would not constitute enhancement. Nonetheless, as reasoned above, that the NPPF recognises the intrinsic character and beauty of the countryside inherently connotes a degree of protection. Furthermore, in my view, the character of the countryside results not just from its visibility alone.
51. The proposal would inherently introduce a significant amount of built development in what presently appears essentially open, natural land.³⁷ Notwithstanding the materials, design and somewhat agricultural aesthetic of the scheme, that would intrinsically fail to protect the countryside or landscape as a resource in itself, and visually lessen the consistency of the site with its surroundings. Moreover that, and associated activity the site is designed to attract, would occur in an isolated location without clear visual affinity with other built development, disconnected from any existing use. The previous Inspector reasoned that harm would result to character and appearance.
52. Whilst there is nothing to indicate that there have been noteworthy changes in the area since the previous Inspector's site visit, I would add some further observations in respect of local and landscape character and appearance. Firstly, the character of the landscape or countryside north-eastwards of the A30 here differs notably from that to the south-west. The apparently unnamed road signed as to Crockernwell and Hittisleigh is the sole carriageway served by the A30 (east) slip road. Almost immediately that road becomes rural in context and character. Although two-way, it is without lighting or kerbs and is flanked to varying extents by hedgerows or verges.
53. That abrupt change to a rural context is even more apparent when spurring off that road, glancing the appeal site and heading towards Grade II listed Thornbury Farmhouse and beyond. In that direction the carriageway is single track and more enclosed by hedgebanks, likely reflecting a significant age depth in the landscape. Thornbury Farmhouse, its outbuildings and a small handful of others are the only appreciable building in an otherwise extensive swathe of undeveloped land beside the wooded line of the River Troney.

³⁷ As shown, in particular, on drawing no. 0501 Revision P2.

54. By contrast the Whiddon Down junction connects the A30 to the A382, the latter heading off south-westwards. Shortly after the junction the A382 is lit, hosts various highway signage, and is three lanes wide. One of those lanes leads to what are signed as services, comprising a garage, café, hotel and associated parking. Those services are located comparably close to the A30 as the appeal site as the crow flies. Just beyond the services the A382 joins the A3124 by way of the Whiddon Down Bypass.
55. The A3124 thereafter heads north-westwards, increasingly approaching the A30 before crossing it via a flyover a relatively short distance away. The Bypass evidently exists to enable traffic to move between the A382 and A3124 without needing to pass through the settlement of Whiddon Down, which is itself only fractionally further south-west than the Bypass. In short there is clearly a more staunchly rural nature to the landscape to the north-east of the A30 in this location than to the south-west.
56. Visually that is also true. I accept that the A30 and its surroundings here have been subject to intervention over many years in terms of landscaping, planting and maintenance. Nonetheless when heading eastwards along the A30, on account of the landform and nature of intervening features, I saw that there is greater visibility across the rolling landscape towards the north-east than towards the south and south-west. Topographically the A30 rises towards and through the appeal site, levelling off or declining eastwards beyond the Whiddon Down Junction.
57. Existing services to the south-west are set at a lower level than the appeal site, the latter marking something of a high point in the topography. The appeal site itself, although partially screened by hedges and trees depending on where a view is obtained from, is comparatively visible from the A30 when heading eastwards (including from the A3124 overpass referenced above).
58. The current plans illustrating the scheme include revision C versions of plan nos. WHD_003, WHD_004 and WHD_005. In short it is now proposed that there would be greater tree planting undertaken than previously. Tree planting would be focussed around the edges of the site, tracking alongside existing boundaries down in the topography. The density of tree planting would fade away from existing boundaries, with a scattering towards the rear of the proposed building. Additional tree planning would, to some extent, reduce the visual effects of the scheme. There are also some mature trees by the site and around the skyline here.
59. The appellant's position is that the current proposal 'would not be harmful to the intrinsic character and beauty of the countryside'. That appears founded on the comments of the Council's landscape officer, which relate to observations ostensibly related to 'the overall landscape character'.³⁸ That said, the comments of the Council's landscape officer are nuanced; they also refer to the scheme likely resulting in 'negligible to low/moderate harm to the current landscape character and visual amenity'.
60. However, it cannot rationally be said that there would be no harm to the landscape or local character. The scheme would remain partially visible, the

³⁸ Stated to reproduced in the appellant's statement of case under paragraph 3.48.

appellant explaining how 'rather than 'hide' the proposal it is the intention to assimilate the development into the setting of rising land and mature tree planting to the east.'³⁹ Planting would take some time to mature. Moreover the additional planting proposed would be set lower in the topography than the proposed building itself. As shown on plan no. WHD_004 rev C the finished floor level of the building would be around 96m above ordnance datum ('AOD'). Additional tree planting would fall at around 90 to 95m AOD. Newly-planted trees would therefore need to reach a considerable degree of maturity before providing meaningful screening.

61. Moreover, although there are patches of trees in the landscape, linear stretches and hedgerows or hedgebanks are more characteristic of landscape character (such as along the River Troney and leading to it around watercourses). Furthermore, as reasoned above, north-east of the A30 in this broad location a significant component of the landscape is good-sized irregular undulating fields. In that context the planting proposed would diverge from certain prevailing attributes of landscape character. It cannot realistically be construed as anything other than to further occlude the proposal from view.
62. It would be fair to term the landscape harm that would arise as low, albeit that the previous inspector did not expressly ascribe it a value or weighting. Nevertheless by virtue thereof the proposal would conflict with the relevant provisions of JLP policies DEV20 and DEV23 which seek to ensure development contributes positively towards, or conserves, landscape character, and with NPPF paragraph 174.b).

Other matters

63. The appellant lists 15 benefits of the scheme. I accept that there would be certain economic benefits, in respect of which both the JLP and NPPF offer in-principle support. However many would be qualified for the reasons given in paragraphs 44 to 48 to this decision.⁴⁰ Undertaking the project itself would generate jobs during construction, albeit that in itself is a truism of almost any scheme. That the scheme would generate business rates liability is more a factual observation than beneficial implication; business rates being the corollary of various public sector services provided.
64. It is unclear how the 'spatial location of the proposed development adjacent to a major corridor' and 'support for food with reduced 'food miles'' are argued to be beneficial or substantiated. Those are complex statements. The location of the proposed development is problematic, as reasoned above. It may disadvantage the availability of rural retail provision, and what the appellant terms the associated 'meeting opportunity' for rural residents, as much as it may be beneficial. On the appellant's own evidence some amount of trade from village stores would be diverted to the scheme. That may, in turn entail greater rather than lesser 'food miles' as the appeal site is some distance from any village.

³⁹ Statement of case, paragraph 3.43.

⁴⁰ Those stated as being 'economic benefits to West Devon', which may legitimately extend to supporting tourism considered in an expansive sense, 'employment benefits for those living in the countryside area', 'benefits to local food and producers from display and sale of goods', 'direct employment', 'indirect employment' (the latter two overlapping with construction and maintenance of the facility in itself).

65. The proposal would entail tree and hedgerow planting, with associated 'carbon capture' benefits as the appellant puts it. However much of what is a natural site, and therefore already hosts various plants, would be developed. There is no substantiation before me of the 'net' effect of the scheme in those terms. The appellant contends that the proposal would result in some benefit in terms of 'water table management'. The appellant's Flood Risk Assessment ('FRA') is, however, silent in respect of the water table here or whether it would benefit from better management.⁴¹
66. The 'significant enhancement' suggested by the appellant to habitat for dormice appears to stem from the recommendations in the appellant's Preliminary Ecological Appraisal ('PEA').⁴² However the PEA itself recommends further studies be undertaken, along with mitigation and enhancement thereafter secured in respect of dormice habitat.⁴³ That is, however, in the context of the proposal entailing the proposed removal of hedgerow of potential value to dormice in the first instance. It is unclear whether dormice are present on site, where, and what is proposed by way of loss or enhancement by consequence.
67. Therefore, and even were the proposal acceptable in all other respects, the benefits of the scheme would be qualified, or modest (at best). They fall well short of collectively amounting to circumstances which might be deemed 'exceptional' with reference to the provisions of JLP policy TTV26.1. No other material considerations would outweigh the harm that would result from the scheme by virtue of conflict with relevant provisions of the development plan.

Conclusion

68. For the above reasons, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Tom Bristow

INSPECTOR

⁴¹ JRC consulting engineers, report ref. 1198w001.

⁴² Blackdown Environmental, April 2018.

⁴³ Section 5.3.3.