

AGENDA

Meeting: Western Area Planning Committee
Place: Council Chamber - Council Offices, Bradley Road, Trowbridge
Date: Wednesday 12 January 2011
Time: 6.00 pm

Please direct any enquiries on this Agenda to Marie Gondlach, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713597 or email marie.gondlach@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Ernie Clark	Cllr Christopher Newbury
Cllr Rod Eaton	Cllr Graham Payne
Cllr Peter Fuller (Chairman)	Cllr Stephen Petty
Cllr Mark Griffiths	Cllr Jonathon Seed
Cllr Malcolm Hewson	Cllr Roy While (Vice-Chairman)
Cllr John Knight	

Substitutes:

Cllr Rosemary Brown	Cllr Francis Morland
Cllr Trevor Carbin	Cllr Jeff Osborn
Cllr Andrew Davis	Cllr Fleur de Rhe-Philippe
Cllr Russell Hawker	Cllr Pip Ridout
Cllr Tom James MBE	

AGENDA

Part I

Items to be considered when the meeting is open to the public

1. **Apologies for Absence**

2. **Minutes of the Previous Meeting** (*Pages 1 - 10*)

To approve the minutes of the last meeting held on 8 December 2010 (copy attached.)

3. **Declarations of Interest**

To receive any declarations of personal or prejudicial interests or dispensations granted by the Standards Committee.

4. **Chairman's Announcements**

5. **Public Participation**

Members of the public who wish to speak either in favour or against an application on this agenda are asked to register in person no later than 5.50pm on the day of the meeting.

The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered. The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice.

6. **Planning Applications** (*Pages 11 - 12*)

To consider and determine planning applications in the attached schedule.

6.a W/10/03236/REM (*Pages 13 - 24*)

Application for reserved matters relating to 30 dwellings, garages, roads,

associated works and open space pursuant to outline planning permission 05/00554/OUT - Land Rear Of The Grange Ashton Road Hilperton Wiltshire

6.b W/10/03399/FUL (Pages 25 - 32)

Siting of mobile home for manager's accommodation and tackle/bait shop - Land West Of 28 Fairwood Road Dilton Marsh Wiltshire

7. Planning Appeals Update Report (Pages 33 - 50)

To receive details of appeal decisions and appeals pending (see attached schedule.)

8. Urgent Items

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency

Part II

Item during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

None

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WESTERN AREA PLANNING COMMITTEE

DRAFT MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 8 DECEMBER 2010 IN THE COUNCIL CHAMBER - COUNCIL OFFICES, BRADLEY ROAD, TROWBRIDGE.

Present:

Cllr Rod Eaton, Cllr Peter Fuller (Chairman), Cllr Mark Griffiths, Cllr Malcolm Hewson, Cllr John Knight, Cllr Francis Morland (Substitute), Cllr Christopher Newbury, Cllr Graham Payne, Cllr Stephen Petty, Cllr Jonathon Seed and Cllr Roy While (Vice Chairman)

Also Present:

Cllr Stephen Oldrieve and Cllr Julie Swabey

194. **Apologies for Absence**

Apologies for absence were received from Councillor Ernie Clark (substituted by Councillor Francis Morland).

195. **Minutes of the Previous Meeting**

The minutes of the meeting held on 27 October 2012 were presented.

Resolved:

To approve as a correct record and sign the minutes of the meeting held on 27 October 2010.

196. **Declarations of Interest**

W/10/03031/FUL – Councillors Peter Fuller and John Knight declared a personal interest as members of Trowbridge Town Council, although the application had not been considered by Trowbridge Town Council it had been discussed. They both gave their assurance that they would consider the application on its own merit and with an open mind.

W/10/03031/FUL – Councillor Steve Oldrieve, Unitary Member for Trowbridge Paxcroft, declared a personal interest as a member of the Friends of the Hilperton Gap.

W10/03311/FUL – Councillor Francis Morland declared a personal interest as a member of Dilton Marsh Parish Council, although he had not been present at the meeting where the application was considered by the Parish Council he had commented on the application. He gave his assurance that he would consider the application on its own merit and with an open mind.

W10/03311/FUL – Councillor Jonathon Seed declared a personal interest as the Chairman of the northern half of the County's Operational Flood Working Group as he addressed the issue of flooding. He gave his assurance that he would consider the application on its own merit and with an open mind.

197. **Chairman's Announcements**

The Chairman announced that Application W/10/02695/FUL (Retrospective application for the siting of a catering trailer – Riverside MOT Centre Bradford Road Melksham Wiltshire SN12 8LQ) had been withdrawn by the applicant. Members of the Committee expressed concerns over the length of time elapsed until the committee could consider the application and the fettering of the committee's discretion by Wiltshire Council's scheme of delegation.

The local members requested reassurance that a new application would be submitted rapidly. It was therefore agreed that the Officers would write to the applicant stating that an application would need to be submitted before the end of January 2011 to avoid formal action being taken to remove the unauthorised trailer.

Councillors also received confirmation that the newly submitted application would follow the same process as any application and it would be possible to call it in if felt needed.

198. **Public Participation**

The Chairman welcomed all present. He then explained the rules of public participation and the procedure to be followed at the meeting.

199. **Planning Applications**

The Committee considered the following applications:

199.a W/10/02695/FUL - Retrospective application for siting of a catering trailer - Riverside MOT Centre Bradford Road Melksham Wiltshire SN12 8LQ

This item was withdrawn – see Minutes 197.

199.b W/10/03031/FUL - Application to renew planning permission W/05/00744/FUL to allow time to submit reserved matters pursuant to reference 98/01149/OUT - Land West Of Biss Farm West Ashton Road West Ashton Wiltshire

Public Participation:

1. Mr Ken McCall spoke in objection to the application
2. Mr John Ralph spoke in objection to the application
3. Mr David Hutchison, agent for the applicant, spoke in support of the application
4. Mr Richard Covington, West Ahston Parish Council, spoke in objection to the application

Councillor Steve Oldrieve, Unitary Member for Trowbridge Paxcroft (adjoining Division) expressed his concerns with regards to the application.

Officers introduced the report which sought approval for an extension of time for a previously approved outline development, and drew the Committee's attention to the late list which contained additional comments as well as an amendment to the Planning Officer's comments included in the agenda.

The Highway Officer answered questions from the Committee, including clarification of the conditions agreed in 2005, the sufficiency of the conditions proposed in the agenda, and details of the proposed improvements to highways and crossroads.

During the ensuing debate members of the Committee expressed their concern over the conditions in place with regards to the proposed major road improvements and their sufficiency.

It was therefore

Resolved:

To defer the application to allow officers, in relation to the conditions on highway improvements (including West Ashton Road, A350, Yarnbrook) to request policy responses from the Spatial Planning Team and in respect of highway improvements from specialist highways officers.

199.c W/10/03311/FUL - New dwelling - Land Rear Of 11 And 15 St Marys Lane Dilton Marsh Wiltshire

Public Participation:

1. Mrs Paula Carr spoke in objection to the application
2. Mrs Sheila Kimmins spoke in objection to the application

3. Mr Lindsay Young (applicant) spoke in support of the application

Councillor Julie Swabey, Unitary Member for Ethandune, expressed her concerns with regards to the application.

Officers introduced the report which sought approval, reminded members of the Committee that drainage was not a planning issue and drew their attention to the late list.

A debate ensued during which issues such as the use of porous surfaces, flooding, scale of the development and retention of vegetation and trees were discussed.

Members of the Committee expressed their concern regarding the deadline date for comment given to Dilton Marsh Parish Council with regards to the application and the revised drawings.

Resolved:

That planning permission be GRANTED on or after 15 December 2010 in the event of the Area Development Control Manager being satisfied that no new material objections have been raised by Dilton Marsh Parish Council.

For the following reason(s):

The proposed development would not materially affect the amenities of the neighbours or result in any detrimental impact on the street scene and any planning objections have been overcome by conditions.

Subject to the following condition(s):

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the character and appearance of the area.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C31a.

3. No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include

- * indications of all existing trees and hedgerows on the land;
- * details of any to be retained, together with measures for their protection in the course of development;
- * all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
- * finished levels and contours;
- * hard surfacing materials;

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C31a and C32

4. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C31a and C32

5. Notwithstanding the details required by condition 3, the existing hedge along the frontage of the site shall be retained except where necessary to create the vehicular access into the site and maintained in accordance with details which shall be submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development

West Wiltshire District Plan 1st Alteration 2004 – POLICY: C32

6. No development shall commence on site until details of any screen walls and/or fences have been submitted to and approved in writing by the Local Planning Authority. The screen walls and/or fences shall be erected in accordance with the approved details prior to the occupation of the dwelling hereby permitted and shall be retained and maintained as such at all times thereafter.

REASON: To prevent overlooking & loss of privacy to neighbouring property.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C32 and C38

7. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: U2

8. The development hereby permitted shall not be occupied until the access, parking area and footway have been implemented in a consolidated porous surface (not loose stone or gravel) in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority. The areas shall be maintained as such thereafter.

REASON: In the interests of highway safety.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C31

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted above ground floor level in the rear and side elevations of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C38

10. No development shall commence on site until details of the works for the disposal of sewerage have been submitted to and approved in writing by the

Local Planning Authority. The dwelling shall not be occupied until the approved details have been fully implemented in accordance with the approved details.

REASON: To ensure that the proposal is provided with a satisfactory means of drainage

11. No development shall commence on site until the following details, based on a 1 in 100 year flood flow design standard, have been submitted to and approved in writing by the Local Planning Authority.

- (a) A scheme for the alleviation of flooding
- (b) A detailed programme of proposed drainage works
- (c) The method of accommodating the watercourses near the site

The development shall not be occupied until the works have been completed in accordance with the approved details and programme.

REASON: In the interests of flood prevention.

Informative(s):

1. The developer is advised to contact Wessex Water with regard to the connection to Wessex infrastructure for the disposal of foul flows, surface water flows and water supply, and to ascertain whether there may be any uncharted sewers or water mains within or near to the site

2. In connection with Condition 10, the applicant is advised that the granting of this permission does not confer any rights to a connection to any existing private drainage system within or in the vicinity of the site.

3. The applicant is advised that it is an offence under the Wildlife and Countryside Act 1981 to disturb protected species including Great Crested Newts and nesting birds. In the event of discovering protected species or nesting birds, works should cease immediately and advice sought from a suitably qualified ecologist or Natural England.

199.d W/10/03172/FUL - Demolition of existing rear extension and replacement with two storey extension, general repair and maintenance works to interior and exterior of existing listed building - 12 High Street Steeple Ashton Wiltshire BA14 6EL

Public Participation:

- 1. Mr Borchet (agent for the applicant) spoke in support of the application

Officers introduced the report which sought approval, and explained the implication of the building being Grade II listed.

During the ensuing debate the Committee sought clarification over the proposal.

Resolved

That planning permission be GRANTED

For the following reason(s):

The proposed development conforms to the Development Plan and there are no objections to it on planning grounds.

Subject to the following condition(s):

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and

Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the character and appearance of the area.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C31a.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the north west and south east elevations of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C38

199.e W/10/03173/LBC - Demolition of rear extension and two storey rear extension - 12 High Street Steeple Ashton Wiltshire BA14 6EL

Resolved

That listed building consent be GRANTED

For the following reason(s):

The proposed development conforms to the Development Plan and there are no objections to it on planning grounds

Subject to the following condition(s):

1. The works for which Listed Building Consent is hereby granted shall be begun before the expiration of three years from the date of this consent.

REASON: To comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the character and appearance of the area.

West Wiltshire District Plan 1st Alteration 2004 - POLICIES: C31a and C28

3. No works shall commence on site until details of all new external window joinery have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include depth of reveal, details of heads, sills and lintels, elevations at a scale of not less than 1:10 and horizontal/vertical frame sections (including sections through glazing bars) at not less than 1:2. The works shall be carried out in accordance with the approved details.

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C28
Planning Policy Statement 5: Planning for the Historic Environment

4. The roof lights hereby approved shall be of the 'conservation' type with a single vertical glazing bar and mounted flush with the roof slope.

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C28

Planning Policy Statement 5: Planning for the Historic Environment

5. No works shall commence on site until details of all new or replacement rainwater goods (which shall be of metal construction and finished in black) and their means of fixing to the building have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

West Wiltshire District Plan 1st Alteration 2004 - POLICY: C28
Planning Policy Statement 5: Planning for the Historic Environment

200. **Planning Appeals Update Report**

The Planning Appeals Update Report for October 2010 was received.

Resolved:

To note the Planning Appeals Update Report for October 2010.

201. **Urgent Items**

There were no Urgent Items.

(Duration of meeting: 6.00 - 8.20 pm)

The Officer who has produced these minutes is Marie Gondlach, of Democratic Services, direct line 01225 713597, e-mail marie.gondlach@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

Agenda Item 6

Western Area Planning Committee

12 January 2011

Planning Applications for Determination

Item No.	Application No.	Location	Parish	Unitary Councillor
6.a	W/10/03236/REM	Application for reserved matters relating to 30 dwellings, garages, roads, associated works and open space pursuant to outline planning permission 05/00554/OUT - Land Rear Of The Grange Ashton Road Hilperton Wiltshire	Hilperton	Ernie Clark (Hilperton)
6.b	W/10/03399/FUL	Siting of mobile home for manager's accommodation and tackle/bait shop - Land West Of 28 Fairwood Road Dilton Marsh Wiltshire	Dilton Marsh	Julie Swabey (Ethandune)

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REPORT TO THE WESTERN AREA PLANNING COMMITTEE

Date of Meeting	12.01.2011		
Application Number	W/10/03236/REM		
Site Address	Land Rear Of The Grange Ashton Road Hilperton Wiltshire		
Proposal	Application for reserved matters relating to 30 dwellings, garages, roads, associated works and open space pursuant to outline planning permission 05/00554/OUT		
Applicant	Abbey Developments Ltd		
Town/Parish Council	Hilperton		
Electoral Division	Hilperton	Unitary Member:	Ernie Clark
Grid Ref	387626 158803		
Type of application	Reserved Matters		
Case Officer	Mr James Taylor	01225 770344 Ext 5169 james.taylor@wiltshire.gov.uk	

Reason for the application being considered by Committee

Councillor Ernie Clark has requested that this item be determined by Committee due to:

- * Scale of development
- * Visual impact upon the surrounding area
- * Relationship to adjoining properties
- * Design - bulk, height, general appearance
- * Environmental/highway impact
- * Car parking

“Further to my call-in request of 23rd October, I now specify the issues that concern me. I have also had issues raised with me regarding the ‘enabling’ outline permission which might be taken to the High Court for judicial review. Should this application be allowed to proceed before the ‘legality’ of the outcome, on which it is based, is confirmed?”

1. Purpose of Report

To consider the above application and to recommend that the reserved matters be approved.

Neighbourhood Responses:

Correspondence from 32 addresses has been received, generally objecting to the scheme.

Hilperton Parish Council Response:

Objects.

2. Main Issues

The main issues to consider are:

- * Planning history and context including approval of access;
- * Siting;

- * Design;
- * External appearance; and
- * Landscaping

3. Site Description

The site which is outside, but on the edge of the Hilperton Conservation Area, is located on land to the south of The Grange. It adjoins a public footpath/bridleway on its western boundary with an existing residential development forming part of Paxcroft Mead to the south and east. The Paxcroft Mead development at this point is characterised generally by large detached, 'executive style' dwellings with a low density arrangement.

The site has an area of approximately 1.8 hectares comprising a developable area for housing of approximately 1 hectare, and public open space of approximately 0.8 hectares. The site is open grassland and slopes from the north down to the south of the site. It is enclosed by a mix of hedging and trees.

4. Relevant Planning History

01/01969/OUT - Residential development and associated roads, cycleway and open space – Refused on 01.04.2004 (Appeal dismissed on 22.12.2004)

05/00554/OUT - Residential development and associated roads, cycleway and open space – Permission on 14.04.2008

5. Proposal

This is a reserved matters application pursuant to the extant outline planning permission reference 05/00554/OUT which approved the scheme in principal and also the details of access. The reserved matters for which approval is being sought now are siting, design, external appearance, and landscaping.

The proposal is consistent with the outline approval with the dwellings sited to the south east of the site, adjoining the north-eastern and south-eastern site boundaries, with a swathe of open space provided around the development and forming an 'L' shape to the south-west and north-east.

The proposal has detailed the erection of 30 dwellings including 21 for sale on the open market and 9 as 'affordable housing' to be managed by a registered social landlord. This has been designed as 7 house types which includes; 8x five bedroom, 2.5-storey dwellings; 13x four bedroom, 2-storey dwellings; 4x three bedroom, 2-storey dwellings; and 5x two bedroom, 2-storey dwellings.

The 9 affordable housing units required under the terms of the outline planning permission have been sited in two groups, one at the south east corner of the site as 2 pairs of semi-detached dwellings (4 units) and another in the centre of the site as a pair of semi-detached dwellings and one terrace of 3 properties (5 units). All the market accommodation has been designed as detached dwellings, save for units 16 and 17 which are detached but linked by their garages.

The proposal includes garaging, parking and roads to service the development utilising the already approved access between 70 and 72 Lacock Gardens. There are 78 parking spaces proposed, including garaging and visitor spaces, which has been allocated as between 1 space per dwelling and 4 spaces per dwelling.

Existing trees and hedgerows are shown as being retained on the site boundaries with the exception of those lost in order to provide for the approved access. Additional planting has been detailed in order to try and provide a suitable setting for the development. The proposed cycleway traverses the site from north-east to north-west within the area designated as public open space.

6. Planning Policy

Wiltshire Structure Plan 2016

- DP1 Priorities for Sustainable Development
- DP3 Need for additional housing land
- DP4 Towns and main settlements
- DP7 Housing in towns and main settlements
- HE7 Conservation areas

West Wiltshire District Plan 1st Alteration (2004)

- C17 Conservation Areas
- C31a Design
- C32 Landscaping
- C38 Nuisance
- H1 Further Housing Development Within Towns
- H8a Land South of the Grange, Trowbridge
- H24 New Housing Design
- T11 Cycleways
- U1a Foul Water Disposal
- U2 Surface Water Disposal

Supplementary Planning Document – Residential Design Guide (2005)

Hilperton Village Design Statement (2005)

National Guidance

- PPS1: Delivering Sustainable Development
- PPS3: Housing
- PPS5: Planning for the Historic Environment
- PPS9: Biodiversity and Geological Conservation
- PPG13: Transport
- PPS17: Planning for Open Space, Sport and Recreation
- PPS25: Development and Flood Risk

7. Consultations

Hilperton Parish Council

04.11.2010

Hilperton Parish Council strongly objects to this application for the following reasons:-

- a) The application is contrary to the Inspector's views in a previous appeal decision, regarding density, style and over-development of the site
- b) The scale and mass of the proposed development is not considered acceptable. Reducing the density of the development would allow more parking space and would bring relief to Lacock Gardens
- c) The proposed houses will be incompatible with the design of neighbouring buildings
- d) There will be an unacceptable loss of trees and hedgerows, contrary to the survey of the site
- e) There are insufficient parking spaces and garaging
- f) There will be a loss of important wildlife habitats
- g) There is a very high risk of flooding in the area
- h) The proposed properties will overlook and dominate nearby buildings and cause conflict with the character of the area
- i) The proposed properties will have a poor relationship with nearby buildings
- j) The proposed road system will be inadequate and will prejudice highway safety, and the proposed access will not be suitable

I would also like to add that it is the view of the Parish Council that this site would benefit from a financial contribution from the developer rather than the provision of social housing.

At the planning committee meeting, thirty-two members of the public came to speak against this application. Local residents clearly have strong feelings about this proposal, for very rational reasons, and the Parish Council feels these should be considered carefully.

Highways

No objection subject to conditions.

Libraries and Heritage

No objections.

Education

No comments received.

Environment Agency

No objection.

Drainage Engineer

No comments received.

Wessex Water

No objections.

Wildlife Trust

No comments received.

Natural England

No comment to make.

Council's Ecologist

No objection.

Spatial Plans

No objection.

Housing

No objection.

Tree and Landscape Officer

No objection (subject to satisfactory confirmation of treatment to existing boundaries which are in a very poor condition).

8. Publicity

The application was advertised by site notice, press notice and neighbour notification.

Expiry date: 3 December 2010.

Correspondence from 32 addresses (including 1 from Duncan Hames MP on behalf of one of his constituents) has been received, generally objecting. Additionally a petition with 15 signatures has been submitted. Summary of points raised:

- * Density and number of houses is too high;
- * Local facilities are already stretched/inadequate (including education, employment and leisure);
- * Anti-social behaviour is already a problem in the area;
- * There are other schemes with affordable smaller units negating the need here;
- * Design is out of keeping with the current style and layout of the area;
- * Insufficient parking;
- * Likely that cars will park on-street;
- * Increase in traffic would be dangerous to pedestrians and cyclists;
- * Field is liable to flooding and drainage problems affected existing property;

- * Harm to wildlife with a loss of protected hedgerows;
- * Local opinion does not appear to be taken into account;
- * Affordable housing needs to be relocated (this is not a suitable location for affordable housing);
- * Loss of value to property in Lacock Gardens;
- * Trowbridge is nothing more than a building site;
- * Paxcroft Mead is already too big and overcrowded;
- * 2 & 3 bedroom properties are completely out of keeping;
- * The proposals are cramped;
- * Revised plans do not in any way answer local objections;
- * Accept that building on the land is inevitable, it is important to get the type of development right;
- * Other land in the area could be used as an overspill parking area;
- * Is the current sewer system able to cope?
- * Harm to residential amenity from loss of light and privacy;
- * A further buffer on the eastern and southern boundary should be provided to separate it from existing property and to help drainage;
- * Too many houses leading to undue noise and fumes;
- * Loss of trees should be avoided and creation of a narrower access to the site made;
- * Questions the validity of the outline consent and that a Judicial Review may occur.
- * There is not likely to be the demand for this housing given the limited job opportunities and poor mortgage offers at present;
- * Harm to the setting of The Grange and conservation area;
- * Impact on protected species and in particular bats;
- * Disruption during the construction phase;
- * Area was allocated for low density housing in the Paxcroft Mead Materplan;
- * A further or alternative access in the south west corner would be better;
- * Inadequate consultation and need to consider the “Big Society” agenda;
- * Rear access to plots 16 and 17 is a potential hang out and dangerous;
- * Developer contributions required to the local community;
- * Will there be plans to be build more houses in the future;

9. Planning Considerations

9.1 Planning context and history

This site has been allocated within the local plan for development since 2004 under Policy H8a. This allocated the land in general terms for a developable area of 1 hectare to accommodate circa 35 dwellings (including affordable homes to meet the local need in accordance with Policy H2). A further area of 0.8 hectares was identified for open space.

Prior to the formal allocation of the site and the adoption of this local plan policy, an application in outline form for 30 dwellings was submitted in 2001. This was submitted and considered in light of the emerging 2004 local plan policy and despite an officer recommendation for permission was refused by the Council on the grounds that the cycleway links were not convenient, more than one access to the site should be created for the sake of neighbouring amenity and the concentration and design of affordable housing would fail to create a socially inclusive community. This matter was appealed in 2004 and an inspector dismissed this supporting based the third reason for refusal, but also draw criticism of the standard design types proposed considering that they failed to acknowledge the local vernacular.

Pursuant to the formal adoption of the current local plan’s allocation of the site, and the 2004 dismissed appeal, a further outline planning application was submitted to the local planning authority in 2005. This sought merely to gain approval of the principal and the details of access; indicating the developable area, the open space, the cycleway route and the vehicular access. This was all in accordance with the local plan policy and was granted planning permission in 2008 following the development control manager being satisfied that a legal agreement had been entered into securing developer contributions. These developer contributions included a requirement for provision of affordable housing in accordance with Policy H2 of the West Wiltshire District Plan 1st Alteration (2004), provision of open space, contribution to public transport and contribution to public art.

It is within this context and pursuant to the extant planning permission from 2008 that this application for approval of reserved matters is now being submitted. It is stressed that the principle of the development is established and those matters cannot be reasonably revisited within the scope of this reserved matters application.

9.2 Access

As detailed above the access arrangements are not open for consideration within this application because they have already been approved in 2008 under reference 05/00554/OUT.

Suffice to state that this detailed scheme's access is in accordance with the outline approval. Furthermore it is in accordance within the local plan allocation details and has been an issue considered by a planning inspector in 2004 and found to be unobjectionable.

In addition the highway officers have raised no objection to the scheme following submission of revised plans to address detailed engineer issues on the parking provision. The Council's tree and landscape officer raises no objection to the loss of two trees in order to facilitate the access and there would be a substantial amount of new planting which would more than compensate for this loss.

9.3 Siting

This proposal details the siting of 30 dwellings and all the associated works in connection with this including garages, parking provision access roads and boundary treatments.

The affordable housing provision of 9 units has been split into two groups within the site and is mixed to be 6x semi-detached units and 3x terraced. These units have been sited in the south east corner of the site at the entrance to the development and in the centre of the site. They have dedicated frontage parking of either 1 or two allocated spaces and also have dedicated visitor parking. These properties benefit from their own enclosed private rear gardens.

It is considered positive that the affordable housing units have been split within the site as this is more in keeping with the government objective of mixing development with affordable social housing integrated into development. From the practical perspective of a registered social landlord carrying out maintenance to these properties it is necessary for them to be clustered in small groups and in this case two groups of 4 and 5 units is a suitable approach.

Furthermore it is considered a very positive approach to have some of the affordable houses sited at the entrance to the development. This helps integrate the units into the scheme, so rather than trying to hide or isolate affordable housing, it will be prominent upon entering the development. Indeed siting the second group of units in the heart of the development helps to create a sense of inclusion and integration.

In general terms the units have all been sited to avoid any significant levels of overlooking, both within the development, and to/from those properties which abut the site on the southern and eastern boundaries. Given the relative orientation and siting of the units on the southern boundaries of the site it means that no harm in terms of overbearing or loss of light would occur to those properties in Lacock Gardens. On the eastern boundaries of the site there are 3 existing properties abutting the application site and 6 new properties along this boundary are being proposed. 4 of these units are the relatively modest 2 storey affordable units and these would back onto an existing play area only. The two other units are the largest house type being proposed with a 2.5 storey scale. Despite their scale, given the siting and relative orientations of these units it is not considered that any harm would occur to neighbouring amenity.

There are no houses proposed on the western and northern margins of this site as that remains public open space. Siting the development within the 'developable area' not only means the plans accord with the outline planning permission but also means that any impact on the setting of the conservation area to the north is minimised.

The siting of the development includes the provision of 78 parking and garaging spaces for 30 dwellings. This is well above the maximum requirements of the Council, however it is considered to strike a reasonable balance between policy and local objections over the lack of parking provision. It is noted that several of the largest dwellings are sufficient space for up to 4 vehicles and the smallest

2 bedroom units have 1 space and nearby visitor parking. This is considered to be a reasonable approach and unobjectionable.

9.3 External appearance

In terms of the visual impression of the proposals the scheme has been set out in a contemporary manner. Key visual points in the development have been suitably treated with planting or details on buildings. Buildings have been staggered and have varied design in order to add to the overall interest of the street scenes which will be created. These will broadly be in keeping with the developments of Paxcroft Mead, albeit of a higher density.

It is acknowledged that the developments to the south and east of the site are lower density than is being proposed here. These were allocated in the Paxcroft Mean Masterplan as low density; however this site is not actually part of the Paxcroft Mead allocation and is a separate allocation in the 2004 plan. This site was allocated in the 2004 plan under Policy H8a for 35 dwellings and PPS3 on housing does require an efficient use of land to be made. This scheme has a reduced density of development compared to the site's allocation in the local plan. This is considered to reflect the recent changes to PPS3 which eliminated the minimum housing density requirements. A balance between planning requirements needs to be had in regards to density and it is considered that the provision of 30 dwellings, including 9 affordable units, is a pragmatic approach. Whilst it does not exactly replicate the low density of Lacock Gardens or the purely detached and executive style housing, this proposal meets the objectives of Policy H8a in providing a mixed tenure residential scheme with a variety of housing types to meet the local needs.

The proposals have been submitted with details of materials. These state the use of red/orange multi brick and cream render to the walls and brown profiled concrete tiles and reconstructed grey slate to the roofs. Properties will have reconstructed stone details including sills and keystone heads. Whilst this is not particularly exemplar in quality it is in keeping with the Paxcroft Mead development generally. Furthermore although this is a separately allocated site and not part of the overall Paxcroft development, in reality (largely due to its access point and the open space provision) it relates better to this new housing estate than the older historic development to the north. The external appearance of the development addresses the balance between being in keeping with surrounding development and more recent planning objectives of creating mixed and inclusive communities with affordable housing integrated into developments.

9.4 Design

The built-form of the proposals has a design which is very contemporary. There are 7 different house types being proposed which all are well proportioned and unobjectionable. This scheme has largely detached dwellings which are perfectly in keeping with the executive homes of Lacock Gardens; albeit not exact replicas there is no requirement for them to be as this development will form its own street scene and is not viewed in the context of Lacock Gardens.

It is for this reason that the linked-detached, semi-detached and terraced properties in the proposals are not objectionable. They will not be viewed as part of Lacock Gardens and this scheme will create its own street scene. An objective of new development is that a variety of designs are employed and this scheme will create a range of 7 different housing types over 2 and 2.5 storeys which will create an interesting and varied street scene.

The affordable housing has been better integrated into the proposals compared to the scheme which was dismissed at appeal in 2004 and this offers a variety and interest to the design of the scheme. To this extent the treatment of affordable housing in the proposals, including introducing it at prominent points in the street scene, would create a mixed and interesting street scene.

A inspector's criticism at appeal in 2004 of an earlier scheme was that the local vernacular of Hilperton had not been incorporated into the scheme and that the design quality was very standard. It is acknowledged that this scheme has incorporated the applicant's 'standard' house types to create this new development. However that in itself is not necessarily tantamount to demonstrable harm. The proposals have to be viewed in context including on the ground considerations, policy considerations and wider economic considerations. To create bespoke housing development on this site and in the current economic climate is not considered to be realistic. The context of the development is largely taken from the approach, which by vehicles, would always be via new housing development with

standard house types of the time. The housing development does not relate directly with the historic core of Hilperton, indeed it is intentionally separated from the conservation area by a buffer of open space. It is in this context that the design of the scheme and housing is considered to be acceptable as although of a 'standard' developer type it is well proportioned and suitable to its context.

9.5 Landscaping

The proposals involve the urbanising of what is currently a grass field; this cannot be denied. However approximately 40% of the site would remain as grassland in the public open space.

The proposals would result in the loss of a small amount of hedgerow and 2 large trees to facilitate the approved access to the site; this again cannot be denied. However the proposals would provide a substantial amount of new landscaping to the site with several substantial and large trees being planted, especially on the northern edge of the developable area. In addition the developable area would be separated from the public open space by the provision of a mixed indigenous hedge.

In addition the built form of the 'developable area' has proportionate soft landscaping to create a development that has a sense of maturity and is a desirable place to live. This is generally limited to the open frontages of the proposals, and the private rear gardens have been indicated as lawned gardens with occasional trees. This leaves the rear gardens to be treated as future occupiers see fit, although some will have trees already planted prior to occupation.

The proposals have been commented on by the Council's tree and landscape officer who raises no objection to the details in principal. He has requested some further details in regards to the treatment of the existing boundaries to the application site because these are in a "very poor condition". It is expected that the hedges will need to be cleared of bramble with additional planting to fill in resultant gaps.

Furthermore the Council's ecologist raises no objection; it is noted that the additional landscaping proposed presents good opportunities for new habitat including nesting birds which accords with PPS9 objectives. Further the developer has provide details of bat boxes which will be erected within existing trees to the western boundary. The Council's ecologist has approved these.

9.6 Other matters

Drainage for the site is an issue that has been raised in the public consultation process. A detailed assessment of this matter has been submitted to accompany the application in light of these local concerns. This information would have been a requirement under conditions (such matters are handled under delegated powers to officers though). In light of that information the application has been subject to wider consultation and raised no objection from Wessex Water or the Environment Agency. The details are therefore considered acceptable in this regard.

Wessex Water has confirmed that their infrastructure has sufficient capacity to cope with the proposals.

The recent announcements in regards to the Localism Bill have been given some consideration. This is still at a very early stage and whilst it is quite clear that the government intentions are to devolve power to a local level and reform the planning system, at this time the details of how this will work in practice are unavailable. Moreover there has been no reform in the planning legislation. Therefore it is not considered to be material to the determination of this application. This conclusion should not be read to mean that local views have not been considered in this matter. On the contrary the public consultation is a key part of the planning process and any views are given consideration in light of the planning policy and all other material considerations.

The Hilperton Design Statement makes no explicit reference to the development which should occur on this land. It provides general guidance regarding new development proposals but for the reasons detailed above it is considered that this site relates more to the Paxcroft Mead development than the historic core of the village.

The affordable housing on this site was a matter for consideration at outline stage and is not material at this reserved matters stage. However in more constructive response to points on this, affordable

housing needs to be provided in a variety of locations, including in villages and is not to be limited to town centre locations.

The normal consultations were carried out on this proposal including letters to adjoining property, 2x site notices and an advert in the Wiltshire Times. In additional information on the application has been available on-line. This all accords with the Council's adopted Statement of Community Involvement.

In regards to planning conditions, it is usual practise that conditions are imposed at the outline stage in order to control development. The conditions imposed on the outline approval 05/00554/OUT are therefore still relevant. However it is reasonable to add conditions if they are relevant to the information submitted at reserved matters stage. The highways officer has request conditions and these have been suggested where they are deemed appropriate. One informative on a matter raised by Wessex Water is also considered prudent and an additional one in regards to protected species would also be prudent and helpful. Otherwise no further conditions or informatives are reasonable or necessary.

Finally the issue of a potential judicial review on the extant planning permission has been highlighted. No judicial review has been lodged on this planning permission (05/00554/OUT) and furthermore it is not considered to be a material consideration in the determination of this reserved matters case. The proposals need to be considered on the relevant circumstances pertaining at the time and in this instance there is extant outline permission.

9.7 Conclusion

Whilst it is acknowledged that there are public objections to the scheme it is necessary to limit consideration to the reserved matters only. This is not an application for planning permission; it is merely seeking to gain approval of the outstanding details pursuant to the permission obtained.

The details of siting, external appearance, design and landscaping are all considered to be acceptable for the detailed reasons above. As such this application is recommended for approval.

Recommendation: Approval

For the following reason(s):

The details submitted to satisfy the reserved matters of planning permission reference 05/00554/OUT are satisfactory and the development would result in no harm to any material planning interests.

Subject to the following condition(s):

- 1 No development shall commence on site until details of the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, including the timetable for provision of such works, have been submitted to and approved by the Local Planning Authority. The development shall not be first occupied until the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture have all been constructed and laid out in accordance with the approved details, unless an alternative timetable is agreed in the approved details.

REASON: To ensure that the roads are laid out and constructed in a satisfactory manner.

- 2 The roads, including footpaths and turning spaces, shall be constructed so as to ensure that, before it is occupied, each dwelling has been provided with a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

REASON: To ensure that the development is served by an adequate means of access.

- 3 No part of the development hereby approved shall be first occupied until parking areas shown on the approved plans have been consolidated, surfaced and laid out in accordance with the approved details. These area shall be maintained and remain available for this use at all times thereafter.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

- 4 Any garage doors installed at any time in the garage(s) hereby permitted shall be fitted so that its leading edge does not project forward of the leading wall of that garage.

REASON: In the interests of highway safety and convenience.

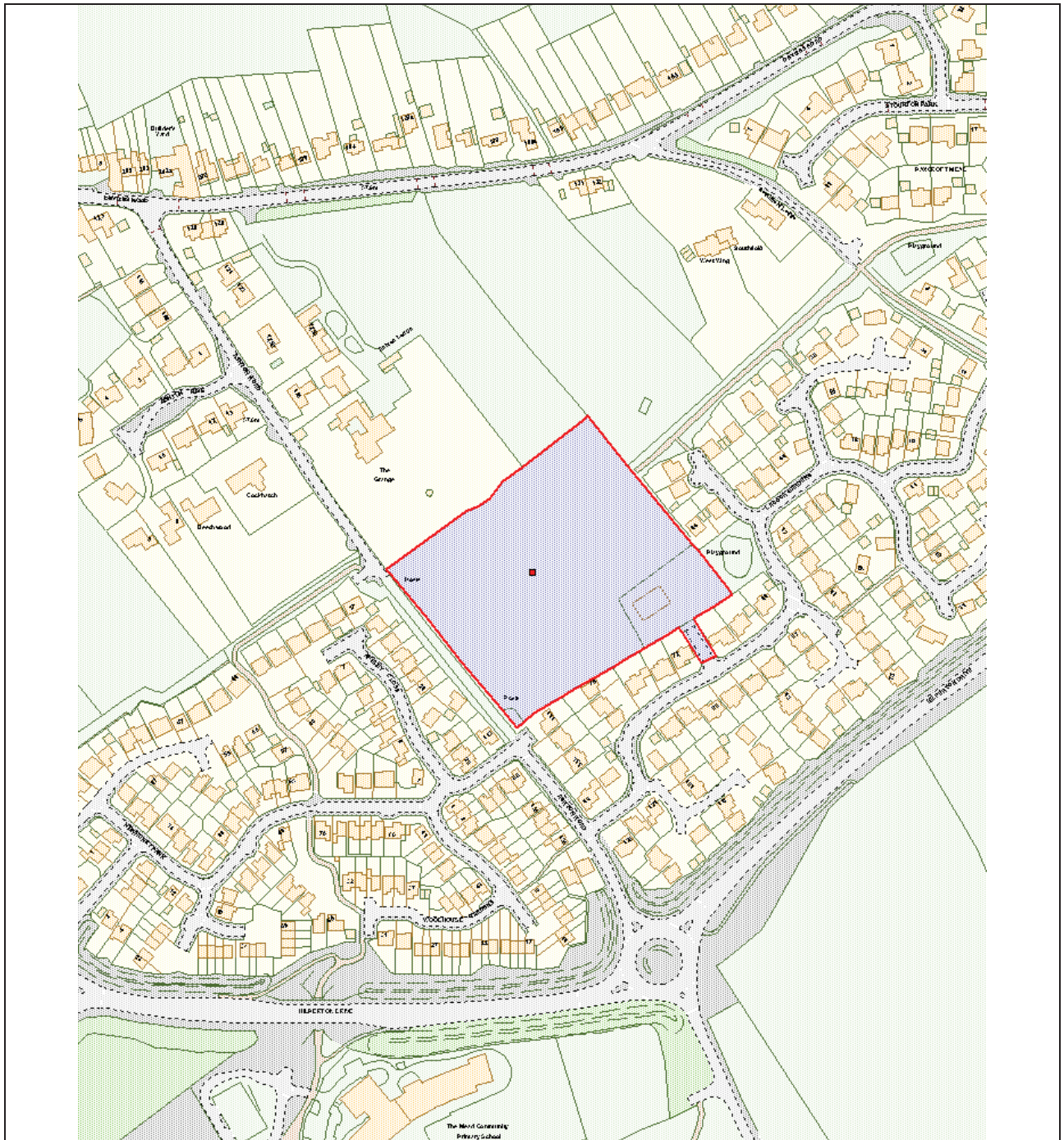
- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), the garage(s) hereby permitted shall not be converted to habitable accommodation.

REASON: To safeguard the amenities and character of the area and in the interest of highway safety.

Informative(s):

- 1 The developer is advised to contact Wessex Water regarding connection to their systems and the potential implications of the Flood and Water Management Act 2010 on their proposals. Wessex Water can be contacted on 01225 526000.
- 2 The developer is advised that the approval of these reserved matters does not absolve them of other statutory requirements under the Wildlife and Countryside Act 1981 in connection with protected species which may be present on the site.

Appendices:	
Background Documents Used in the Preparation of this Report:	



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MSA: 100022961

RELEVANT APPLICATION PLANS

- Drawing : 1378-150 received on 09.10.2010
- Drawing : 1378-152 received on 09.10.2010
- Drawing : 1378-155 received on 09.10.2010
- Drawing : 1378-156 A received on 10.11.2010
- Drawing : 1378-157 A received on 10.11.2010
- Drawing : 1378-159 received on 09.10.2010
- Drawing : 1378-160 received on 09.10.2010
- Drawing : 1378-161 A received on 10.11.2010
- Drawing : 1378-162 received on 10.11.2010
- Drawing : 1378-163 received on 09.10.2010

Drawing : 1378-151 B received on 13.12.2010
Drawing : BAT BOX LOCATION PLAN received on 12.10.2010
Drawing : ABBEY17443-01 received on 12.10.2010
Drawing : 3015/SK01 A received on 09.10.2010
Drawing : ABBEY17443-11 Sheet 1 received on 15.12.2010
Drawing : ABBEY17443-11 Sheet 2 received on 15.12.2010
Drawing : 1378-154 A received on 15.12.2010

REPORT TO THE WESTERN AREA PLANNING COMMITTEE

Date of Meeting	12.01.2011		
Application Number	W/10/03399/FUL		
Site Address	Land West Of 28 Fairwood Road Dilton Marsh Wiltshire		
Proposal	Siting of mobile home for manager's accommodation and tackle/bait shop		
Applicant	Cuckoos Rest Fishing Lakes		
Town/Parish Council	Dilton Marsh		
Electoral Division	Ethandune	Unitary Member:	Julie Swabey
Grid Ref	384645 151421		
Type of application	Full Plan		
Case Officer	Mr Matthew Perks	01225 770344 Ext 5207 matthew.perks@wiltshire.gov.uk	

Reason for the application being considered by Committee

Councillor Swabey has requested that this item is brought to Committee to consider the benefit to the local economy and the need for manager's accommodation close to the fishing lakes.

1. Purpose of Report

To consider the above application and to recommend that planning permission be refused.

Neighbourhood Responses

No neighbour responses were received.

Parish/Town Council Response

The Dilton Marsh Parish Council has no objections.

2. Main Issues

The proposal is for the siting of a mobile home for manager's accommodation and a tackle/bait shop on land to the west of 28 Fairwood Road, Dilton Marsh. The main issues in this case are therefore - whether or not the mobile home would be justified under the advice contained within Annex A of Planning Policy Statement 7 (Sustainable Development in Rural Areas) and Policy H19 of the West Wiltshire District Plan, 2004; and - whether or not the tackle/bait shop is justified in terms of current Development Plan policies.

3. Site Description

The site lies on the western side of Fairwood Road approximately 2000m north of Dilton Marsh by road. Cuckoo's Rests Fishing Lakes was created as a business under permission granted in 1996 (96/00803/FUL). The site measures ±4.0 ha and comprises fishing lakes and ponds. The site is accessed from Fairwood Road and has a consolidated vehicular access and car parking area. The site also has provision for up to five touring caravans.

The application site boundary has been drawn in this application so as to exclude the extended dwelling at No 28 Fairwood Road. The application site for the original fishing lakes application (96/00803/FUL) included that dwelling. Research indicates that the contact address point and telephone number for the business remain at that dwelling, although a separate access has been created.

The mobile home would be located $\pm 5\text{m}$ of the south west of another mobile home which was the subject of a refusal by Committee under Planning Application Reference 09/03641/FUL on 10 March 2010. That application was for retrospective permission and was refused on grounds that the application fell outside of the scope of relevant Policy on new residential accommodation in rural areas including Local Plan and Government policy guidance.

The area on which the unit refused under 09/03642/FUL is located has also been excluded from the current application site. Whilst it is acknowledged that it falls outside of the application site, no indication has been given of what is proposed for the existing mobile unit, which is currently subject to the outcome of enforcement action for its removal. At the time of writing the unit remains in situ. The design of the proposed unit is different from the refused unit and it is therefore accepted that a simple re-location is not proposed.

There is also no indication in the current application of the proposed use of the area on which the refused unit is located, although it too was within the original fishing lakes application site in 1996.

4. Relevant Planning History

96/00803/FUL: Excavation of fishing lake with wildlife conservation area and broadleaf plantations:
Permission: 08.08.1996

09/03641/FUL: Siting of a mobile home: Refused : 10.03.2010

Although not included within the application site it is considered that the refused application 09/03641/FUL has relevance. The reason is that the justification by the agent in that case included an argument that the occupants (the son of the applicant) were employed in the fishing lake enterprise. It has been confirmed that the ownership situation of No 28 and the Fishing Lakes remains as it was at the time that 09/03641/FUL was considered. The current application is again for an employee (unnamed in this instance) to serve the fishing lakes.

5. Proposal

This application is for:

- the siting of a mobile home for manager's accommodation at the Cuckoo's Rest Fishing Lakes. A temporary period of three years is being proposed. Works would include the installation of a septic tank, hard standing under the mobile and the creation of two car parking spaces.; and
- the erection of a timber shed from which tackle and bait would be sold.

The plans specify that the mobile home would be located in its own "curtilage" of some 500m² in extent. The size to the mobile would be 14m x 9.6m (footprint) with a height of 4.3m. It would be a two bedroom/two bathroom unit with separate kitchen, dining room, utility, office and lounge.

The application form indicates that accommodation would be for 1 employee, replacing 1 part-time employee.

The tackle/bait shop would be a wooden shed structure with an overall footprint of 5m x 4m with a pitched roof to a maximum ridge height of 2.6m. It would be located adjacent to the car parking area on the northern boundary of the site.

Supporting documentation includes a needs assessment for a manager's temporary dwelling and an assessment of the financial implications of development of the site. A Design and Access Statement, Flood Risk report and Planning Statement were also submitted.

According to the application documentation, the main economic activity on the site at present is the recreational enterprise served by the existing lakes, which are stocked primarily with coarse fish. Day tickets and season tickets are sold to anglers. No active fish breeding or rearing currently takes place on the unit which is occasionally re-stocked and natural breeding occurs. The lakes are not routinely oxygenated, except in July and August when flotation pumps are used to temporarily stabilise the oxygen supply in the water. The business is open daily from dawn until dusk with no night fishing permitted. Five caravan parking sites are situated between the car parking area and the lakes.

The proposals include the development of activities to provide for on-site rearing of fish in two of the smaller lakes, which would require enhanced equipment (in particular an oxygenation system) which it is argued has implications for a need for full-time management. This need and that of managing extended fishing hours including security and safety considerations as well as visitor needs, form the essential justification for the temporary mobile home for a full-time employee on site.

A financial case for the purposes of Planning Policy Statement 7 criteria is presented in the supporting documentation, but the agent has requested that this remain confidential. The assessment of this PPS7 requirement by the Agricultural Advisor is further discussed below.

6. Planning Policy

Wiltshire Structure Plan 2016

DP15 Development in Open Countryside

West Wiltshire District Plan - 1st Alteration 2004

C1 Development in the countryside

C38 Nuisance

H19 Development in the open countryside

Planning Policy Statement 7 - Sustainable Development in Rural Areas (PPS7)

7. Consultations

Town/ Parish council

The Dilton Marsh Parish Council has no objections.

Highways

The highway officer advises that, provided planners are satisfied that the proposed residential accommodation is justified for its proposed use at this rural location, there is no objection to the proposal, subject to the conditions in relation to the access.

Agricultural Advisor

The Agricultural Advisor states that it is not clear why the existing dwelling on the holding which is owned by the freeholder of the application site cannot provide the accommodation required, and that there is a lack of clarity in aspects of the business plan. The Consultant's full evaluation of the case is discussed in greater detail under the "Planning Considerations" section below.

Environment Agency

No objections but comments on sewage disposal.

8. Publicity

The application was advertised by site notice and neighbour notification.

Expiry date: 03.12.2010

No neighbour comments were received.

9. Planning Considerations

Policy and guidance background

Neither Policy H19 of the West Wiltshire District Plan, nor PPS 7 generally permit the establishment of new dwellings in the countryside without proper justification. Policy H19 states that: "*New Dwellings in the countryside and in settlements without Village Policy Limits will not be permitted unless justified in connection with the essential needs of agriculture or forestry.*" By extension Government Policy in the form of Planning Policy Statement 7 (Sustainable Development in Rural Areas) provides for accommodation serving other rural enterprises, but clear assessment criteria apply. The Agricultural Advisor has focussed in the analysis of the application on the relevant PPS 7 criteria.

The application is made on the basis of enhancements to the fishing lakes business, which would fall under PPS7 criteria in relation to a new activity in the rural area. PPS7 states that if "... a new dwelling is essential to support a new farming activity, whether on a newly-created agricultural unit or an established one, it should normally, for the first three years, be provided by a caravan, a wooden structure which can be easily dismantled, or other temporary accommodation." By extension this would apply to the accommodation for the manager to the "new" fishing lakes enterprise.

Agricultural Advisor assessment and related Policy/Guidance considerations

The Advisor notes that the freehold owner of the fishing lakes is also the occupant of the existing permanent dwelling that is located in very close proximity to the application site.

Research has confirmed that the permanent dwelling at No. 28 was located within the boundary of the site proposed for development of the fishing lakes under the original application 96/00803/FUL. It would therefore have been considered integral to the operation of that enterprise. It has also been confirmed that the current owner of that dwelling, No 28, was the then applicant for 96/00803/FUL and, as indicated by the Advisor, owns the Fishing Lakes business under which name the application has been submitted.

The submitted supporting document "Assessment of the Need for a Manager's Temporary Dwelling" includes proposals for the further development of the fishing lakes, which involves upgraded water treatment equipment for fish breeding as an extension of the activities on site.

The Advisor notes that the planning application for the dwelling is specifically in support of a change to the business which has particular criteria applicable under PPS7. Specific projected changes in activities in order to generate increased income noted by the Advisor include:

- Young carp would be grown on at the site, providing additional stock for the lakes and stock for sale
- The increase in volume of day tickets; and
- Limited night fishing would be allowed.

An important element of the anticipated increased viability of the business would be increased income generated from carp breeding making up 16% of the income. 49% of the projected increase would be derived from day tickets, with night tickets being 20%. 14 % would be derived from "consumables". (Where the applicant has requested that specific figures in relation to the business are not published, percentages are used for the purposes of this report). The projected increase in net additional income (i.e. after subtracting current net income) that would be produced by the promotion and improvements to the site are estimated at 280% of the existing net.

The Advisor acknowledges that, if the proposed enhancements are implemented in accordance with the business proposals, then there will be a requirement for close attention at short notice.

However, where it is noted that the freehold owner of the site also owns and occupies the permanent dwelling, no clear reason has been given to indicate why the existing dwelling cannot be used to meet the functional need.

PPS7 (Paragraph 12 (iv) to Annex A) requires that temporary dwelling should only be permitted, inter alia, where it has been shown that *the functional need could not be fulfilled by another existing*

dwelling on the unit, or any other existing accommodation in the area which is suitable and available for occupation by the workers concerned.

The Advisor notes that the applicant "... is not a person (the applicant is identified in the forms as "Cuckoos Rest Fishing Lakes") and that there is no indication from the submissions of who will carry out the business development. There is thus no clarity of who has the firm intention and ability to develop the enterprise. It is clear that there must be some intent to develop the enterprise, otherwise the application would not exist. The Advisor observes that what is not clear is who has that intention and what ability that person or persons have to develop the enterprise in the manner proposed." This relates to a criterion to be met as set out in PPS7 paragraph 12 (i) of Annex A also has relevance, viz: *clear evidence of a firm intention and ability to develop the enterprise concerned* " must be provided.

In counter-commenting on this the Agent's consultant acknowledges that the dwelling is owned by the owner of Cuckoo's Rest Fishing Lakes, but argues that the dwelling is "...not suitable or available to be occupied by a full-time fisheries manager or indeed his family, nor is it likely to become available in the long term future. The owner runs a nearby engineering business, where he works full time. Neither he nor his wife are employed at the fishing lakes, and they have no intention of so doing in the future. They also have no plans to move from their long-standing family home." On the other hand, it is also noted in the correspondence that it is the owner himself who has the intention and ability to develop the fisheries and will be doing so, although the onus will be on a full-time manager to carry out the development.

The additional comments received by the agent's consultant thus make it clear that it is indeed the owner and occupant of the existing dwelling and the fisheries who will be developing the lake fishing business further, with at some point the unidentified full-time manager carrying out operational activities. Whilst not part of this application it is considered reasonable to pose the question (in the absence of clarity on who the manager would be and what expertise would be available) as to whether or not that manager would be the family member who it was intended to accommodate in the previously refused mobile dwelling. These personal circumstances would not normally constitute planning considerations, but given the lack of clarity on this aspect it is considered to be relevant to the issue of why an alternative solution of providing accommodation either within, or as an annex to, or possibly in a temporary mobile home on the existing domestic curtilage has not been pursued as an alternative.

PPS7 Annex A Par 13 makes it clear that "...The planning authority should make clear the period for which the temporary permission is granted, the fact that the temporary dwelling will have to be removed, and the requirements that will have to be met if a permanent permission is to be granted. Authorities should not normally grant successive extensions to a temporary permission over a period of more than three years, *nor should they normally give temporary permissions in locations where they would not permit a permanent dwelling.*" . The implication is that the LPA must consider the possibility that the granting of the temporary situation will likely lead to a permanent dwelling in the event that the business model is successful and permanency can be justified.

PPS7 further states that it is essential that all applications for planning permission for new occupational dwellings in the countryside are scrutinised thoroughly with the aim of detecting attempts to abuse the concession that the planning system makes for such dwellings. Whilst the justification for the proposal as framed in the supporting documentation is not questioned, it is considered that the history surrounding the unauthorised use immediately to the north of the proposed new unit and the options (if a family member is indeed to be the manager) of adapting the existing extended dwelling and why it has been excluded from the scheme should have been more clearly elucidated. This would enable the LPA to consider whether or not the current proposals have as one underlying factor establishing the principle of a new residential use to overcome the previous refusal on the site immediately adjacent to the unit now being applied for.

If the personal circumstances are as described above, i.e. the dwelling is to accommodate the family member currently occupying the unauthorised mobile home, then the alternative of providing annex housing in the already extended dwelling, or temporary mobile accommodation actually within the existing residential curtilage ($\pm 480\text{m}^2$ of garden space exists to the rear of the dwelling although it is acknowledged that this includes a swimming pool according to records) should have been explored. These options were raised as part of pre-application discussions. In the absence of clarity on this

aspect it is considered that the creation of a new temporary dwelling and curtilage in the open countryside, where the existing dwelling currently serving the whole land unit would effectively become an isolated curtilage not associated with the rural enterprise of which it has been a part since inception, is not justified.

Each case must be treated on its merits and in this instance the dwelling that has served as the accommodation associated with the management and running of the business is effectively being hived off onto its own curtilage that would no longer have a functional association with the business. In the circumstances surrounding this site it is considered reasonable that the LPA would not normally consider (as has been demonstrated by the site history) permitting a permanent dwelling contrary to PPS7 because such temporary arrangements could be made to test the business model without having to extend the confines of the existing residential curtilage.

The PPS7 Paragraph 12 (iv) criterion on why the functional need cannot be met by existing accommodation has thus not been properly addressed. This is considered especially relevant given the ownership situation, where the owner of the lakes has direct and current control over the existing dwelling, including a potential extension to provide an annex or an application for temporary permission for a mobile unit within the existing residential curtilage area.

On the detail of the business plan, Council's Advisor comments that the sale projections are based on occupancy rates for the existing fishing pegs, and that there is no clear indication of how the business would be promoted to achieve the projected tripling in sales from day and night tickets which the plan envisages. The Advisor is of the view that a very substantial increase is envisaged and is of the view that it is essential to have a clear understanding of how that target is to be achieved. Further, where the functional need for the dwelling is primarily justified by the fish rearing element of the enhancements, this comprises some 20% of the projected increase in sales, with 80% coming from increased sales of fishing tickets. Thus, whilst the business plan shows a significant increase in income, there is no clear indication (aside from the introduction of night fishing) of how that tripling of income is to be achieved. Paragraph 12 (iii) of Annex A to PPS7 requires that "...clear evidence that the proposed enterprise has been planned on a sound financial basis..." is provided as part of the justification for a temporary dwelling.

The agent's consultant has highlighted, in additional correspondence in response to this part of the Advisor's opinion, that the plan includes augmentation by income from angling competitions, tuition, corporate days and other events. The sales of refreshments, angling bait and minor tackle items would make a substantial contribution to the projected increased income.

On balance, where more detail on proposed marketing measures have been provided and it has been clarified that the existing owner himself who has the intention and experience to develop the fisheries it is considered that the PPS 7 Paragraph 12 (iii) criteria are met.

In summary, the plan as proposed would generate a requirement to provide close attention in the event of breakdown to the oxygenation system and the Agricultural Advisor accepts that this could justify a full-time employee in the event of implementation. However, there is no clear indication why that requirement cannot be met through the use of the existing dwelling or by an adaptation on the existing residential curtilage to meet that need, especially in the light of the known ownership situation and the absence of clarity on if a family member would be the manager. There remains a degree of doubt on how the proposed marketing exercise would actually translate into a tripling of income but, on balance and given the existing extent of development of the lakes on which the further expansion of the business could be built, it is accepted that the figures projected as additional income would be possible under the strategy proposed. Refusal is therefore recommended only on the grounds of insufficient justification in respect of exploring alternative solutions that would not lead to a change of use to provide an additional residential curtilage in the open countryside. It is considered that the new business model could be tested by providing for the one additional proposed employee within existing (or adaptations to existing) accommodation. Alternatively nearby accommodation possibilities should also have been explored.

Tackle/bait shop

The second element of the proposal, the tackle and bait shop, would be considered a limited retail use. However, seen in the context of its small proposed size and the primary use of the property as fishing lakes it is considered that this aspect of the proposal could have been viewed favourably as an ancillary element subject to conditions in relation to the sale of particular goods. The proposal for the shop would therefore not give rise to a reason for refusal.

Conclusion

In the light of the above considerations, the application is recommended for refusal.

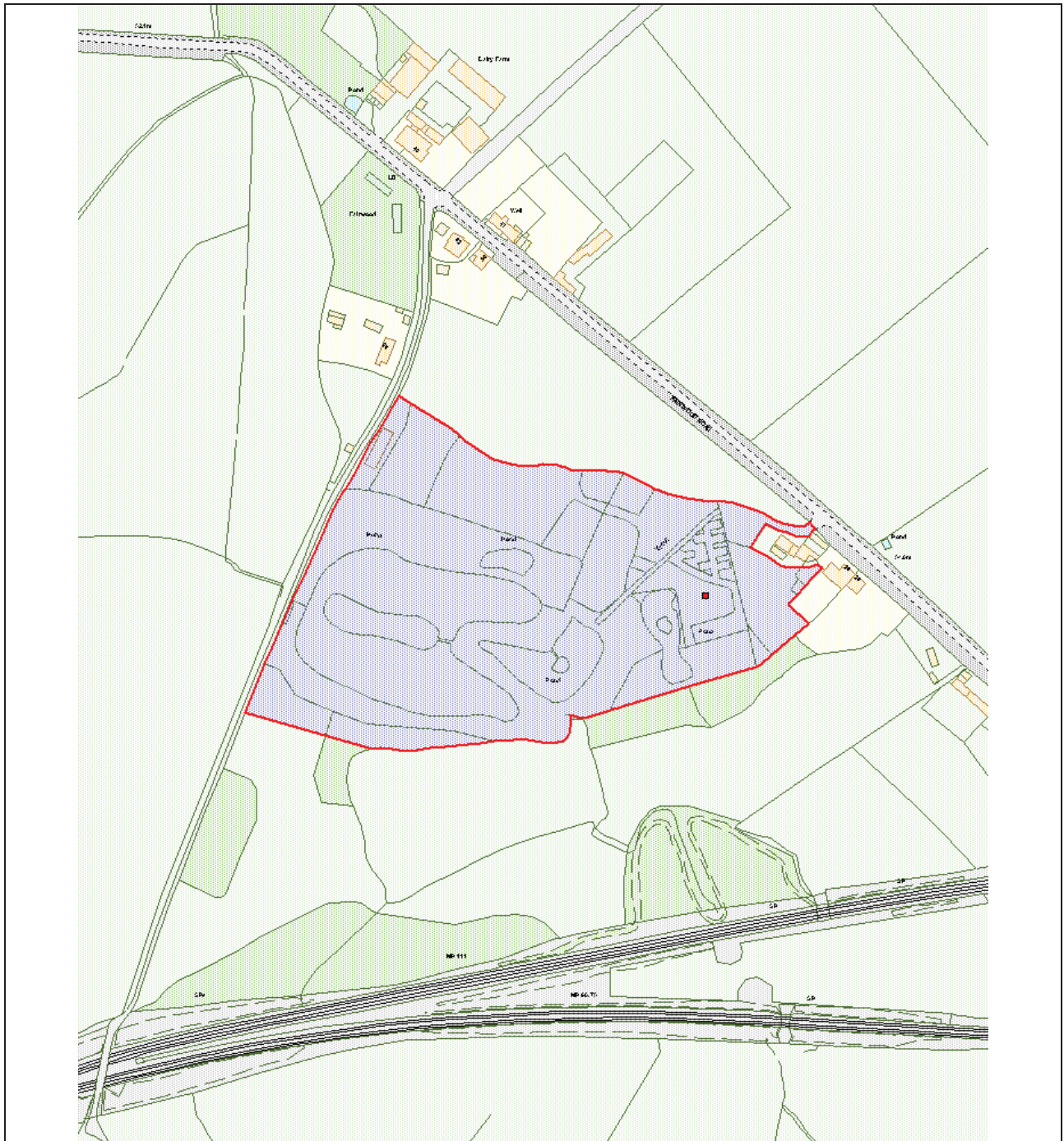
Recommendation: Refusal

For the following reason(s):

- 1 Annex A to Planning Policy Statement 7 (Sustainable Development in Rural Areas) advises that where a new dwelling is proposed to support a new activity or significant change to business practice it must be demonstrated that the functional need could not be fulfilled by another existing dwelling on the unit, or any other existing accommodation in the area which is suitable and available for occupation by the worker concerned. The planning application and the supporting statements do not provide sufficient information so as make a case as to why the existing dwelling at No 28 Fairwood Road or other some other accommodation in the vicinity cannot meet the accommodation needs. The application therefore fails to meet Criterion (iv) to Paragraph 12 (iv) of Annex A of Planning Policy Statement 7.

- 2 The dwelling in the open countryside is not fully justified in connection with the essential needs of agriculture or other rural occupation where the planning application and the supporting statements do not provide sufficient information so as make a case as to why the existing dwelling at No 28 Fairwood Road or other some other accommodation in the vicinity cannot meet the accommodation needs. This is contrary to policy H19 West Wiltshire District Plan 1st Alteration 2004.

Appendices:	
Background Documents Used in the Preparation of this Report:	



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Bradley Road Trowbridge Wiltshire BA14 0RD www.wiltshire.gov.uk

MSA: 100022961

RELEVANT APPLICATION PLANS

- Drawing : LOCATION PLAN REV A received on 14.12.2010
- Drawing : LOG CABIN received on 25.10.2010
- Drawing : MEASUREMENTS OF LOG CABIN received on 25.10.2010
- Drawing : MOBILE HOME received on 14.12.2010
- Drawing : EXISTING BLOCK PLAN received on 14.12.2010
- Drawing : PROPOSED BLOCK PLAN received on 14.12.2010

**Wiltshire Council
Western Area Planning Committee**

**Planning Appeals Update Report
November 2010**

New appeals received

Ref. no.	Site	Town/ Parish	Description	Del or Com	Officer recom	Appeal type
W/10/02181/FUL	Land Adjoining Jericho Cottage Leigh Road West Bradford On Avon	Bradford on Avon	Demolition of a pair of dilapidated garages and erection of four garages and extension to access	DEL	REF	WR

Appeal Decisions Received

Ref. No.	Site	Town/ Parish	Description	Del or com	Officer recom	Appeal type	Appeal Decisn
W/10/02166/FUL	Land Rear Of 177 Devizes Road Hilperton	Hilperton	Erection of a single dwelling and associated works and formation of a new access to serve existing dwelling	DEL	REF	WR	WITHDRAWN
W/10/00933/FUL	Adjacent To 81 Whiterow Park Trowbridge	Trowbridge	Erection of detached dwelling	DEL	REF	WR	DISMISSED
W/10/01368/FUL	Old Baptist Chapel Orchard Close Westwood	Westwood	Change of use of art/design studio to a single bedroom residential unit	DEL	NON	WR	ALLOWED
W/10/02318/FUL	Turnpike Cottage 76 South Wraxall	South Wraxall	Two storey extension to the rear of Turnpike Cottage, a proposed new access drive with provisions for parking and a turning area.	DEL	REF	WR (HAS)	DISMISSED

* additional notes on decision below

- I = Inquiry H = Hearing
- Del = Delegated decision

WR = Written Representations
Comm = Committee decision

WR (HAS) = Written Representations (Householder)

❖ **Points of interest arising from decisions**

W/10/00933/FUL - Adjacent To 81 Whiterow Park Trowbridge

The Inspector in dismissing the appeal considered that the proposals would result in a cramped development that would be harmful to the character and appearance of the area and did not respect its spatial characteristics but that it would not be detrimental to neighbouring amenity. However, with regard to parking provision it was her view that there was sufficient off-street and on-street parking in the area and that the proposals would not result in undue pressure on parking in the vicinity.

W/10/01368/FUL - Old Baptist Chapel Orchard Close Westwood

The Inspector allowed the appeal on the basis that although the external amenity space was small it was sufficient for the needs of future occupiers as it included enough storage space for bicycles and refuse as well as space for the occupiers to sit out. She agreed with the Council that the proposals were no more likely to give rise to nuisance from noise and disturbance to neighbours than the existing use. Although the property is in the conservation area since there were no external changes there would be no harm. She considered that one additional one-bedroom house in the area would not generate any greater demand for parking than the existing use of the premises.

W/10/02318/FUL - Turnpike Cottage 76 South Wraxall

The Inspector dismissed the appeal because the proposals would be close to twice the size of the original dwelling and as such represented a disproportionate addition that would harm the openness of the Green Belt. Furthermore, the proposals would fail to respect the simple form of the original cottage and result in significant harm to its character and appearance and would not respect the character of the countryside.

Note

If Members of the Council wish to read any of the Planning Inspectors decision letters, please contact the Planning Office for a copy.

Forthcoming hearing or Inquiries

Ref. no.	Site	Town/ Parish	Description	Appeal type	Venue	Date
W/10/00091/ENF_L	Barn at Manor Farm North Bradley	North Bradley	Land and new dwelling / Land and converted agricultural building	INQ	CC	19.04.2011 & 20.04.2011

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WILTSHIRE COUNCIL

SOUTHERN AREA PLANNING COMMITTEE

12 January 2011

Subject: Appeal by Marston's PLC against a refusal to modify a planning obligation on land at Hackett Place, Hilperton (W/09/01022/FUL)

At the meeting of 24th June, 2009, the Western Area Planning Committee considered an application to discharge obligations within a section 106 agreement dated 6th February 2004 in respect of land at Hackett Place, Hilperton (Item 3 on the planning application list at that meeting).

The committee resolved, contrary to officer recommendation, that clauses 1.5.1, 5.2 and 5.3 of the Section 106 Agreement dated 6th February 2004 should not be discharged for the following reason:

'The clauses still serve a useful purpose, seeking to find a medical use for the site. The applicant has not used all reasonable endeavours to procure the establishment of a medical practice at the site as required by the Section 106 Agreement.'

The minutes of the meeting recorded that the motion not to discharge the clauses of the agreement was carried unanimously.

This decision was consistent with four previous decisions taken by the planning committee of the former West Wiltshire District Council in respect of informal requests to discharge these clauses of the agreement.

An appeal against the refusal was lodged on 26th October 2009 with the appellants requesting that the appeal be heard at a public inquiry. The date for the public inquiry was set for 23rd March 2010.

At an initial meeting to discuss the appeal between the legal section and planning officers, the council's legal section advised that counsel's opinion be sought about the strength of the council's case and evidence to support the two points in the reason for refusal, i.e. that the clauses still served a useful purpose in seeking to find a medical use for the site and that the applicants had failed to use all reasonable endeavours to procure a medical practice at the site. Instructions were sent to counsel on 23rd November 2009.

Counsel's opinion was received on 8th December. On the four key questions asked in the instructions, counsel advised:

- There were no apparent grounds for the council to defend the appeal.

- He saw no chances of success if the council decided to continue to defend the appeal.
- The appellant's evidence was overwhelming in supporting the application and the appeal and the committee's decision to refuse the application was not based on solid evidence. The council would be extremely fortunate to escape a full (and substantial) award of costs if it continued to fight the appeal.
- The council should indicate to the appellant that it would withdraw from the appeal and that a new application would be approved forthwith.

A confidential report was prepared for the WAPC meeting of 6th January 2010 which recommended that:

- the council should not defend the appeal at the forthcoming public inquiry and that the appellants and the Planning Inspectorate be advised accordingly;
- all appropriate steps be taken to limit the council's exposure to claims for cost against the council.

The report could not recommend that the appellants be advised that a new application be submitted and would be approved forthwith. A new application could be submitted but the council could not give any undertaking as to its likely outcome. Such an application would need to go through the full application process before a decision could be made.

However, an option would have been available to vary the S106 Agreement by mutual agreement between the parties resulting in deletion of the clauses in question which would have effectively discharged the obligations. It was decided that this option would not be taken up as it would have been poor practice to take a decision in this way without some form of consultation and neighbour notification process with the local community and further consideration by the planning committee following the completion of that process. In effect this would have been virtually the same as the formal application process and without such a process the council would have been vulnerable to accusations of maladministration.

The report was not considered on 6th January 2010 because the meeting was cancelled due to bad weather and consideration was deferred to the meeting of 27th January. (Agenda item 10 at that meeting). The committee resolved to agree with the recommendation as detailed in the report.

The Planning Inspectorate was notified of the committee's decision on the following day. A copy of a letter was e-mailed to them and a hard copy followed. The e-mail was copied to the appellants' agents.

The committee's decision was discussed with the appellants' agents over the following days and meetings followed between the appellants and their advisors. An informal request to discharge the clauses of the agreement was received on 12th February 2010. The appellants indicated that they were not prepared to withdraw the appeal before this further request to discharge the clauses of the agreement had been agreed

and that they reserved their position to proceed with the appeal and a costs award claim if they considered this appropriate. Similarly they were not prepared to request the appeal be held in abeyance pending the outcome of such an application.

The appellants' position with regard to the public inquiry left the council in a difficult position. The informal application would have to follow the same process as the earlier including consultation with interested parties, neighbour notification and if appropriate reference to this committee for a decision to be taken in open session. To have followed another route – delegation, no or limited consultation and notification - would have gone beyond what was considered to be 'all appropriate steps are taken to limit the council's exposure to claims for cost against the council' and would have left the council open to a charge of maladministration. There was not enough time between the receipt of the appellants' informal request and the public Inquiry for this process to be followed through. Officers had no choice but to advise the appellants' agent that their informal request could not be determined before the Public Inquiry. The appellants did not proceed with their request.

The Public Inquiry went ahead, with the local ward member and parish councillors making the case for the local community before the Inspector. In accordance with the Committee decision of 27th January 2010, the council presented no evidence at the enquiry. The appeal was allowed and the appellants awarded full costs against the council. Copies of both the appeal decision and costs award letters are appended to this report.

The appellants made a costs award claim of £55,137.91p. The appellants' figures were scrutinized by planning officers. The planning officers viewed that the rates for an advocate and various expert witnesses and the time spent preparing their cases were at levels to be expected.

Analysis of the costs details submitted by the appellants indicates that approximately half of the costs claimed were accrued before the council's decision not to defend the appeal. Had the appeal not proceeded beyond this time it would have been in accordance with normal practice for the appellants to claim their costs up to that time and for the council, which had changed its position about the appeal to meet those costs.

By not defending the appeal the council saved itself the costs of employing an advocate and expert witnesses to present the council's case. Based on the costs of a recent public enquiry the council could have expected to pay £8,000 to £10,000 for these people.

Taking all of this into account, in total, the additional cost to the council of this appeal proceeding to the public inquiry was £17,500 to £19,500.

Conclusions

- The advice the council received from counsel was sound. Having read the Inspectors decision letter, I am of the view that the outcome of the appeal and the costs award would have been no different had the council defended the appeal at the enquiry. Indeed, had the council defended the appeal, it is likely that the appellants' side would have invested further time in preparing their case resulting in higher costs.
- Counsel's opinion was sought in good time and his comments were received by the council in 15 days.
- A report was prepared for the first available Western Area Planning Committee but the cancellation of the 6th January committee was unfortunate but unavoidable given the extreme weather conditions that day but cost the council a vital three weeks. This left less than eight weeks between the decision being made not to defend the appeal on 27th January and the opening of the Public Inquiry on 23rd March. As the applicants were unwilling to withdraw or delay the appeal, there was not enough time to properly consider a further request to discharge the clauses of the agreement.
- Had the Public Inquiry not taken place the council would have had to pay the appellants' appeal costs accrued up to the end of January 2010. It is estimated that these would have amounted to about £27,500. Had the council defended the appeal an advocate and expert witness would have cost the council £8,000 to £10,000. This leaves the additional cost to the council of the Public Inquiry going ahead to be £17,500 to £19,500

Recommendation – the report be noted.

Report Author:

Dave Hubbard – Area Development Manager



Appeal Decision

Inquiry held on 23 March 2010
Site visit made on 23 March 2010

by **J O Head BSc(Econ) DipTP MRTPI**

**an Inspector appointed by the Secretary of State
for Communities and Local Government**

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
26 April 2010**

Appeal Ref: APP/Y3940/Q/09/2115524

Land adjacent to Hackett Place, Hilperton, Wiltshire BA14 7GN

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
- The appeal is made by Marston's PLC against the decision of Wiltshire Council.
- The development to which the planning obligation relates is residential development together with a local centre, highway improvements and public open space.
- The planning obligation, dated 6 February 2004, was made between West Wiltshire District Council (1), Marshgate Investments Ltd (2) and Gallagher Estates Ltd and Heron Land Developments Ltd (3).
- The application Ref W/09/01022/FUL, dated 23 March 2009, was refused by notice dated 24 June 2009.
- The application sought to have the planning obligation modified by the discharge of clauses 1.5.1, 5.2 and 5.3.

Decision

1. **I allow the appeal** and determine that the planning obligation, dated 6 February 2004, made between West Wiltshire District Council (1), Marshgate Investments Ltd (2) and Gallagher Estates Ltd and Heron Land Developments Ltd (3), shall have effect subject to the modifications as set out below:
 - (a) The deletion of clause 1.5.1
 - (b) The deletion of clause 5.2
 - (c) The deletion of clause 5.3.

Application for costs

2. At the Inquiry an application for costs was made by Marston's PLC against Wiltshire Council. This application is the subject of a separate Decision.

Background

3. The appellants seek the discharge of 3 of the clauses of the planning obligation, which modifies an earlier S106 Agreement (dated 8 August 1995) requiring the provision of various facilities in connection with the residential development of the land, including facilities at the new Paxcroft Mead village centre. The appeal site (referred to in the obligation as "The Former Public House Site") is a grassed plot located at the junction of Hackett Place and Leap Gate, in the north-western part of the village centre. The centre contains a range of local

facilities including shops, a community centre, nursery and a school (a little to the east). Amongst the shops is a retail pharmacy.

4. The relevant clauses are as follows:
 - Clause 1.5.1 requires the provision of *"a site for a medical centre to include a doctor's surgery with an option for an ancillary retail pharmacy in the location of the Former Public House Site."*
 - Clause 5.2 states that *"The Former Public House Site shall be re-allocated for use as a medical centre (to include a doctor's surgery and possibly an ancillary retail pharmacy operation). Marshgate shall use all reasonable endeavours to procure end users for the Former Public House Site in accordance with such re-allocation to include a doctor's surgery and with an option for an ancillary retail pharmacy."*
 - Clause 5.3 says that *"Marshgate shall use all reasonable endeavours to procure the establishment of a medical practice, and a retail pharmacy where appropriate, for the Former Public House Site."*
5. Marshgate Investments Ltd was the previous owner of the appeal site. It was explained at the inquiry that the appellants (Marston's PLC) now have a long leasehold interest.
6. The original development brief for Paxcroft Mead was published in August 1988. Facilities envisaged for the local centre included, amongst other things, a public house and a "community health facility." The brief indicated that the form of that facility would be decided "following discussion with the Local General Practitioners Association." Outline planning permission was granted for the local centre in 1995, with an associated S106 Agreement confirming that a public house would be provided and land reserved for a doctors/dentists surgery.
7. Subsequently, permission has been granted for the area originally intended for the medical use to be used for additional retail floorspace. As a result, the medical facility was to be provided at the appeal site, there having been little interest in the site from public house operators at that time. The S106 Agreement of 6 February 2004 confirms the intention to provide the medical facility at the appeal site.
8. Since that time, however, the appellants have expressed an interest in operating a public house at the site. Planning permission was granted in April 2006, on appeal, for the erection of a public house with ancillary staff flats, car parking, landscaping and access arrangements. That permission remains extant, and it is common ground that the principle of a public house/restaurant on the site is in accordance with the development plan. No development plan policies are referred to in the Council's decision notice in connection with the appeal proposal.
9. The Council's reason for refusal is that the 3 clauses continue to serve the purpose of seeking to find a medical use for the site and the appellant has not used all reasonable endeavours to procure the establishment of a medical practice as required by the S106 Agreement.
10. The Council did not appear at the inquiry to produce any evidence in support of that decision.

Main issue

11. Having regard to paragraph A20 of Circular 05/2005, the main issue is whether clauses 1.5.1, 5.2 and 5.3 of the S106 Agreement dated 6 February 2004 continue to serve any useful purpose in land-use planning terms. This raises 2 questions: (i) have all reasonable endeavours been made to procure a medical use as required by the Agreement and (ii) is there still a need for the site to be retained for medical purposes?

Reasons

Attempts to procure a medical use

12. The appellants called evidence from Chartered Surveyors¹ retained since July 2006 to market the site on a 999 year lease for medical centre use in accordance with the S106 Agreement. The marketing has been handled from the local office of the firm, which has experience of marketing land in the area for medical uses. Marketing has included advertisements in local newspapers and journals, together with mailing details to applicants of the firm's in-house database, to some 30 other property agents and to all doctors, dentists and chiropractors in Wiltshire, along the M4 from Bristol to Reading, north to Gloucester and south to Blandford Forum. The site has also been advertised on a number of websites, including the Council's Commercial Property Register. A board has been displayed at the site continuously apart from periods when it became damaged or was vandalised, and was in place at the time of my site visit.
13. A list of all responses received for each year from 2006 to 2009, all of which were followed up, was presented in evidence. However, the appellant's witness, Mr Scragg, of Carter Jonas, stated that no party has been identified who was willing to enter into meaningful dialogue with a view to acquiring the site for medical use. From the evidence given, no uses of a medical nature were ruled out during marketing. In addition to GPs' practices I note that inquiries from developers, private clinics, pharmacies, and veterinary surgeons were all responded to, without success.
14. Some criticisms of the marketing were raised at the inquiry by interested persons. However, as to the length of time during which marketing has taken place, a period in excess of 3 years should, in my experience, be sufficient to indicate with some certainty the level of interest in the site. Although I have not been directed to any policy requirements in that regard, the Council's Area Development Manager, in response to my question at the inquiry, stated that a "rule of thumb" of 12 months is usually adopted by the Council's officers in cases where marketing is an issue. The potential market for the site is quite a specialised one and there will, in my view, be diminishing value in continued extensive advertising once the availability of the site has become well known to relevant agents and the medical community.
15. The appellant's witness also explained that it is not appropriate to advertise in medical journals that do not have a property advertising section, and that the existence of a pharmacy in one of the retail units in the local centre restricts the viability of the site for a medical practice rather than makes it more viable,

¹ Carter Jonas LLP

since rental income from a pharmacy will be important to the overall income of a medical centre.

16. On the basis of the submitted evidence, which was not challenged by the Council, I have no reason to believe that the marketing of the site has been anything other than thorough and genuine and that it has been undertaken for an appropriate length of time. Accordingly, I conclude that "all reasonable endeavours" have been made to procure a medical use of the site as required by clauses 5.2 & 5.3 of the S106 Agreement.

Need to retain the site for medical use

17. As to the need for the site to be retained for medical use, the intention in the original development brief for Paxcroft Mead was for a "community health facility," although that term is not defined. The description of the intended facility appears to have changed over time, the S106 Agreement dated 8 August 1995 referring to "a doctors/Dentist's surgery" and the approved plans of November 2000 showing land reserved for "a doctor's surgery." In the 6 February 2004 Agreement, the subject of this appeal, the facility is described as a "medical centre, to include a doctor's surgery with an option for an ancillary retail pharmacy."
18. In my view, these various descriptions all imply a General Practitioners' surgery and associated facilities to serve the needs of local residents, rather than a privately operated clinic or specialised medical use, which would draw clients from further afield and would not necessarily meet local needs. It is hard to see how a veterinary practice, which is clearly not a doctor's surgery, would meet the requirements of the Agreement.
19. It is an important material consideration that the Wiltshire NHS Primary Care Trust has, on 6 separate occasions between 2003 and 2009, stated that it has no interest in developing a healthcare facility at the appeal site. Letters from the Trust and its predecessors state that there is no funding for or intention to build a doctors' practice on the site and that it is, in any event, too small for that purpose. An email of 12 June 2006 from the Trust says that Trowbridge is "adequately doctored" and that no NHS funding would be granted for any private proposals at the site. Following a review of facilities in Trowbridge, planning permission has been granted (on 23 February 2010) for a new primary care centre and surgery extension² on land to the north-east of Trowbridge Hospital. That should assist in addressing the capacity issues at the 4 existing GP surgeries, mentioned in the October 2009 Core Strategy Consultation Document which was referred to at the inquiry. The Primary Care Trust confirmed (on 14 September 2009) that the appeal site is "too small and in the wrong location" to provide such a facility.
20. Given that consistent response from the Primary Care Trust I consider it unlikely that there will, in the foreseeable future, be any realistic chance of an NHS community healthcare facility being developed at the appeal site. Private clinics or "fringe" medical uses at the site would not, in my view, meet the original intention of providing a medical facility to serve the local community of Paxcroft Mead. Part of that requirement has now already been met in the

² referred to at the inquiry as a "polyclinic"

provision of a retail pharmacy in the local centre shopping parade. If NHS doctors provision is to be made in the locality in the future, it seems clear from the Primary Care Trust's response that a larger site would need to be set aside, and that this would need to be done in consultation with the Trust to take account of its requirements.

21. In all the circumstances, it seems to me that the continued reservation of the appeal site for the purposes mentioned in the S106 Agreement would serve only to prevent the implementation of the permitted scheme for a public house, which is in line with development plan policy. In that regard, I give some weight to the new S106 Unilateral Undertaking submitted as part of the Statement of Common Ground, in which, in the event of the appeal being allowed, the appellant covenants not to use the site for any purpose other than Classes A3 (Restaurants & Cafes) or A4 (Drinking Establishments). This would ensure that, in the absence of a medical centre, the site would be used beneficially for the provision of a community facility that was envisaged in the original development brief.

Conclusion

22. I find that no useful purpose in land-use planning terms would be served by retaining clauses 1.5.1, 5.2 and 5.3 of the S106 Agreement dated 6 February 2004. Accordingly, the appeal is successful and the clauses are deleted.

John Head

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr A Tait QC

Instructed by Mr D Proctor of RPS Planning & Development Ltd

He called:

Mr D Proctor DipTP MRTPI
Mr C Scragg FRICS

RPS Planning & Development Ltd
Carter Jonas LLP

INTERESTED PERSONS:

Mr E Clark
Ms R Hawkes

Councillor for Hilperton Division, Wiltshire Council
Paxcroft Mead Community Forum (116 responses to poll relating to the appeal proposal)

The Local Planning Authority was represented at the inquiry by Mr P Taylor, Solicitor for the Council and Mr D Hubbard, Area Development Manager (West), but called no witnesses and gave no evidence. Mr Taylor responded, on behalf of the Council, to the appellant's application for an award of costs.

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Copy of e-mail from C Shimmin-Vincent dated 2 February 2010
- 2 Complete copy of the S106 Agreement dated 6 February 2004
- 3 Planning permission for primary care centre and extension to existing surgery adjacent to Trowbridge Hospital (23 Feb 2010)
- 4 Letter of notification of inquiry and list of those notified
- 5 Core Strategy consultation document
- 6 Signed addendum to Statement of Common Ground
- 7 Mr Clark's statement
- 8 Ms Hawkes's statement

PLANS

- A Plan showing location of medical practices in the surrounding area



Costs Decision

Inquiry held on 23 March 2010
Site visit made on 23 March 2010

by **J O Head** BSc(Econ) DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
26 April 2010

Costs application in relation to Appeal Ref: APP/Y3940/Q/09/2115524 Land adjacent to Hackett Place, Hilperton, Wiltshire BA14 7GN

- The application is made under the Town and Country Planning Act 1990, sections 106B, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Marston's PLC for a full award of costs against Wiltshire Council.
- The inquiry was in connection with an appeal against the refusal of the Council to modify a planning obligation dated 6 February 2004, made between West Wiltshire District Council (1), Marshgate Investments Ltd (2) and Gallagher Estates Ltd and Heron Land Investments (3), by the discharge of clauses 1.5.1, 5.2 and 5.3 of the obligation.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Marston's PLC

1. On behalf of the applicant, Mr Tait submitted a written application for an award of costs. This is on the grounds that the Council has behaved unreasonably by refusing to discharge the relevant clauses, failing to substantiate that refusal by producing evidence and failing to take the course open to it to avoid the appeal.
 2. Additionally, at the inquiry, Mr Tait drew attention to paragraphs A2 and A3 of Circular 03/2009, which refer to behaviour that can delay or frustrate the efficient resolution of outstanding matters and advise that all those involved in the appeal process should behave in an acceptable way and follow good practice, in terms of the quality of the case.
 3. Mr Tait said that Mr Clark, speaking for himself at the inquiry, was aware of no new facts in the period 2009-2010 relevant to the decision process. It is, therefore, quite clear that there should never have been a refusal in the first place. Paragraph 6 of the written application refers to the course suggested by the Council's officers. There has been a fundamental misunderstanding of the purpose of holding public inquiries. It is entirely unreasonable for the Council not to take the steps suggested by its officers. That compounds the original unreasonableness.
 4. Furthermore, Mr Tait submitted that although the Council provided early evidence of its intention not to give evidence and this has saved the Council cost, it has not saved the applicant anything because witnesses still had to be called. In his opinion, a full award of costs is therefore justified in as clear a case as can be envisaged, putting an end to a long and sorry history.
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The Response by Wiltshire Council

5. In response, Mr Taylor said that the Council accepts that it is in some difficulty here. However, paragraph B56 of Circular 03/2009 puts an obligation on the Council to keep its position under review. It says that the Inspectorate's case officer and the appellant should be notified immediately if it is concluded that the reasons for refusal cannot be supported. This is what happened here. The officers referred the matter back to the Planning Committee and they instructed not to continue with the reasons for refusal. The Circular guidance was followed and attention is drawn to the last section of paragraph B56.
6. As to what happened subsequently, Mr Taylor said that the Council was aware of public and press interest and that people expected an inquiry to be held on the date fixed. The appellant decided to proceed. The Council thought that to agree to discharge the clauses by letter would not be appropriate. The appellants did not indicate that they would be prepared to postpone the inquiry to enable the Council to publicise and consult interested persons before reaching a decision. The Council has acted appropriately to minimise costs.

Applicant's Reply

7. In reply, Mr Tait said that the inquiry would not have proceeded if the Members had agreed with their officers' recommendation. The procedure was not "fast-tracking" but a legitimate procedure under S106A(1). If the appeal had been withdrawn it is likely that the proposal would have been refused again.
8. As to paragraph B56, Mr Tait submitted that it can well operate for individual reasons in a multi-reason refusal, but that is nothing like these circumstances. The applicant was bound to call its witnesses. There were no savings. The behaviour of the Council in February and March is an additional point. Costs are justified anyway. The expression of interest from the public is not enough to justify putting the applicant to the expense of an inquiry.

Conclusions

9. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. Paragraph B56 of Circular 03/2009 says that planning authorities can minimise the risk of an award of costs by notifying the Inspectorate and the appellant immediately if any reasons for refusal are not to be supported. By letter and e-mail on 28 January 2010 the Council gave such a notification, stating that "the Council will not be defending the appeal and will not be presenting evidence at the inquiry." This should have been sufficient to result in a cancellation of the inquiry, which would have minimised any unnecessary work and wasted expense for both the Council and the applicant.
11. Paragraph A15 of Annex A to Circular 05/2005 *Planning Obligations* explains that S106A(1) of the Town & Country Planning Act 1990 provides that a planning obligation may be modified by agreement between the authority and the person or persons against whom it is enforceable and that the Secretary of State considers the variation of obligations by agreement to be preferable to

the formal application and appeal procedures. Following the Council's notification of 28 January, I consider that it would have been entirely reasonable for the applicant to expect that the clauses in dispute would, by mutual agreement under S106A(1), be deleted from the obligation. However, on 9 March 2010 the Council declined this course of action, on the grounds that it would deny third parties the right to be heard by an Inspector.

12. In the absence of any guarantee that the clauses would be discharged, it seems to me that the applicant had no alternative but to attend the inquiry and present evidence. I consider that the lack of any evidence given by the Council at that inquiry to substantiate its reason for refusal amounts clearly to unreasonable behaviour, contrary to the advice at paragraph B16 of Circular 03/2009. Some third parties attended the inquiry and made brief statements, but nothing new arose from this. Paragraph B22 of Circular 03/2009 advises that planning authorities will be at risk of an award of costs for unsubstantiated objections where they rely on local opposition from third parties, through representations and attendance at an inquiry, to support the decision.
13. I agree with the applicant that it is not a function of the appeal process to hold public inquiries into proposals where the authority considers that its decision cannot be defended and proposes to present no evidence, yet declines to follow the procedure open to it to resolve the outstanding matters. Having regard to the advice at paragraph A2 of Circular 03/2009, such behaviour is not a proper use of the right of appeal and should be discouraged by the costs regime.
14. Although the Council's early notification that it would not be defending the reason for refusal is in compliance with the spirit of the Circular, I consider that the subsequent failure to resolve the outstanding matters (leading to the necessity of a public inquiry), the failure to present any evidence at that inquiry and the reliance on third party objections all amount to unreasonable behaviour. That unreasonable behaviour has caused the applicant to incur the unnecessary expense of contesting the Council's decision at the inquiry. Accordingly, I conclude that a full award of costs is justified.

Formal Decision and Costs Order

15. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Wiltshire Council shall pay to Marston's PLC the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
16. The applicant is now invited to submit to Wiltshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

John Head

INSPECTOR

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