

**APPEAL BY THE SOCIETY of MERCHANT VENTURERS: LAND EAST of QUAKERS  
WALK, ROUNDWAY, DEVIZES - DEVELOPMENT of CARE VILLAGE - PLANNING  
APPLICATION REFERENCE E/2011/1139/OUT**

**1.00 Purpose of Report**

1.01 To advise members of the receipt of an appeal against the decision to refuse planning permission for a care village at Quakers Walk; to update members of a change in circumstances since the planning application was refused by the Council – namely the publication by the Government of the National Planning Policy Framework; and to outline the options now open to the Council in dealing with the appeal.

**2.00 Background**

2.01 Members will recall that the Eastern Area Planning Committee on 15<sup>th</sup> March 2012 resolved to refuse planning permission for the development of a care village on land east of Quakers Walk. The application was refused permission against the recommendation of officers for the following reasons:

*1) The application includes insufficient evidence to demonstrate that there will be no conflict between the care village and adjacent land uses at Devizes Sports Club and the police helicopter landing pad, in particular in relation to noise. As such, the proposal is contrary to policy PD1 of the Kennet Local Plan 2011;*

*2) The local planning authority is not satisfied that the proposal will not have an adverse impact on existing congestion levels on London road, by virtue of the fact that the scheme has not been tested using the Devizes Traffic Model. As such, the proposal is contrary to policy PD1 of the Kennet Local Plan 2011.*

*3) The proposal may lead to an over-supply of extra care accommodation in the Devizes Community Area, and it is unclear how the scheme fits into the Council's Wiltshire Older People's Accommodation Strategy. The proposal therefore fails to contribute to a balanced, mixed tenure community, contrary to the Council's objectives as set out in the Kennet Local Plan 2011 and emerging Wiltshire Core Strategy.*

2.02 On April 3<sup>rd</sup>, the Council received notice from the applicants that an appeal has been lodged against this decision. The appellants have requested that the matter be dealt with at a hearing. The Council is currently awaiting confirmation from the Planning Inspectorate about the procedure and timing of the appeal.

**3.00 Changes in Circumstances**

3.01 Since the decision was made by the Council, the Government has published its National Planning Policy Framework (NPPF). This replaces the previous planning policy statements (PPS) that the Council took into account when determining this application (PPS1; 3; 9). It also replaces the draft NPPF to which only limited weight could be given at the time. The Planning Inspector will no longer have regard to any of these and will instead have regard to the NPPF, the policies of the development plan, and any other material considerations.

The NPPF introduces a presumption in favour of sustainable development, defined as

having economic, social and environmental dimensions. The emphasis is on making decisions in accordance with the development plan, by approving development proposals that accord with the development plan without delay. The economic dimension requires decision makers to put significant weight on the need to support economic growth to meet the housing, business and other development needs of an area. The focus is on making development happen in the right place at the right time. The social role emphasises the need to support healthy communities by providing a supply of housing required to meet the needs of present and future generations by creating a high quality environment, whilst the environmental role aims to protect and enhance the natural, built and historic environment, with protection for designated areas such as areas of outstanding natural beauty, historic assets and land with environmental designations.

**4.00 Options open to the Council**

4.01 The Council cannot reverse its earlier decision on this application as it has already determined it. The decision making power on this application now rests with the Secretary of State through a Planning Inspector. The appeal will proceed unless the appellant withdraws it. The Council can proceed with the appeal and if it does so, will be expected to produce substantive evidence to justify its decision.

4.02 However, the Council can decide to withdraw its objections to the scheme at any time. In such circumstances, the appeal will still proceed and third parties will be able to attend, but the length and cost of the appeal can be reduced. It is important if this action is to be followed that such a decision is made as early as possible to avoid the appellants in unnecessary costs in providing evidence to challenge the Council's grounds for refusal.

4.03 In addition to the publication of the NPPF, it is also relevant to examine the Council's recent experience of costs awards against it by Planning Inspectors. Although no costs have been awarded against decisions made by the Eastern Area Planning Committee, the Western Area Planning Committee has recently had two costs awards against it where the Planning Inspector found that the Council's reasons for refusal had no substantial evidence to back up the reasons for refusal that it put forward and that this failure amounted to unreasonable behaviour by preventing development that in the light of national and local planning policies should have been permitted. These decisions were at Semington and Slag Lane Westbury. A copy of the costs decision on the Semington appeal is attached as an appendix to this agenda to illustrate how Inspectors address this issue.

4.04 Officers have examined the reasons put forward by the Council for refusing the application.

4.05 *1) The application includes insufficient evidence to demonstrate that there will be no conflict between the care village and adjacent land uses at Devizes Sports Club and the police helicopter landing pad, in particular in relation to noise. As such, the proposal is contrary to policy PD1 of the Kennet Local Plan 2011*

4.06 The problem with this reason is that at appeal, the Council will have to produce substantial evidence to demonstrate that there will be unacceptable noise impacts arising from the police helicopter and sports club, and that any these issues cannot be mitigated by suitably worded planning conditions. The Council has no such substantial evidence and none was raised in the representation reported at the planning committee. There was no objection to the application from the Council's Environmental Health on noise grounds and the Council will have to explain to an Inspector why it is now considers it unacceptable to allow new properties to be built outside of the buffer zone around the

helicopter landing pad when it has already allowed new houses on the existing recently constructed Quakers Walk development to be built even closer than the properties now proposed. The proximity to the sports club is not unusual and there is no policy in the Local Plan that establishes a buffer zone around the sports club for noise reasons. In these circumstances, it is difficult to see how the Council will be able to produce substantial evidence to justify to an Inspector that this reason for refusal.

4.07 *2) The local planning authority is not satisfied that the proposal will not have an adverse impact on existing congestion levels on London road, by virtue of the fact that the scheme has not been tested using the Devizes Traffic Model. As such, the proposal is contrary to policy PD1 of the Kennet Local Plan 2011.*

4.08 At any appeal, the Planning Inspector will be looking for the Council to produce substantial evidence to demonstrate that the development will have an adverse impact on existing congestion levels on London Road. It is difficult to see where this will come from. The appellants produced a properly researched Transport Assessment with their application that was found to be acceptable by the Council's highway officers. The Council's highway officers concluded that this assessment *'has followed the required methods and parameters set out in the scoping study required by the highway authority. The traffic impact on London Road will be around 2% as a worst case which is acceptable'*. Furthermore, officers directly addressed the issue of the Devizes traffic model and concluded that it was *'not necessary'* to test it against this model as the assessment already undertaken was acceptable. The Council will therefore be unable to rely on its own officers for evidence to back up the reason for refusal and as matters stand, has no reliable evidence to demonstrate that there will be an adverse impact on existing congestion levels.

4.09 *3) The proposal may lead to an over-supply of extra care accommodation in the Devizes Community Area, and it is unclear how the scheme fits into the Council's Wiltshire Older People's Accommodation Strategy. The proposal therefore fails to contribute to a balanced, mixed tenure community, contrary to the Council's objectives as set out in the Kennet Local Plan 2011 and emerging Wiltshire Core Strategy.*

4.10 The Council's Planning Officers have discussed this reason for refusal with the Council's relevant service director. He has confirmed that there is no evidence that he is able to bring forward to justify the assertion that the proposal will lead to an over-supply of extra-care accommodation in the Devizes Community Area. The Strategy identifies that there will be a need for extra care housing and nursing/dementia care in the area.

5.00 **Conclusion:**

5.01 Since the Council made its decision on this application, the NPPF has been published. This will be given significant weight by a Planning Inspector on appeal and introduces the presumption in favour of sustainable development and makes it clear that the planning system has an economic role to play in addition to its social and environmental role. This site is located within the Limits of Development in the adopted Kennet Local Plan and it is likely that this will be seen as a sustainable location for a development of this nature, in line with the NPPF.

5.02 The reasons put forward by the Council for refusing the application cannot be supported with substantive evidence. In these circumstances, officers believe that the Council leaves itself open to an award of costs for unreasonable behaviour in delaying development that should otherwise have been approved.

- 5.03 The Council cannot re-determine the application. However, it does have the option to advise the Inspector that in the light of the changed circumstances brought about by the NPPF, and on further consideration of the evidence to support its reasons for refusal, it no longer wishes to pursue these reasons. Whilst this may not remove the risk of a costs award, by giving early notice, it will both reduce the Council's own expenses and those of the appellant who will no longer have to expend significant additional resources to produce evidence to counter the council's reasons for refusal.
- 5.04 It is therefore RECOMMENDED that the Council advise the Planning Inspector that in the light of the changed circumstances brought about by the NPPF and a review of the reasons put forward, it no longer wishes to pursue the reasons put forward for refusing the application.

**MIKE WILMOTT**  
**AREA DEVELOPMENT MANAGER**