

<b>Date of Meeting</b>	<b>22<sup>nd</sup> January 2014</b>		
<b>Application Number</b>	<b>N12.04038.OUT</b>		
<b>Site Address</b>	<b>Marden Farm, Rookery Park, Calne, SN11 0LH</b>		
<b>Proposal</b>	<b>A Hybrid Application Comprising: A Full Planning Application for a Specialist Dementia Care Facility Comprising of 75 Dementia Care Beds and a 10 Bed Palliative Care Unit with Associated Service Building, Visitor and Staff Parking and Associated Service Access and Landscaping. Outline Proposal for Residential Development Comprising of up to 125 Units with Affordable Housing, Associated Parking, Gardens, Amenity Space and Public Open Space, Community Orchard, Allotments, Ecological Enhancements, Sustainable Drainage and Vehicular Access Off Stockley Lane. All Matters Except for Access Reserved for Future Consideration.</b>		
<b>Applicant</b>	<b>Gleeson Strategic Land and N Notaro Homes Ltd</b>		
<b>Town/Parish Council</b>	<b>Calne TC &amp; Calne Without PC</b>		
<b>Electoral Division</b>	<b>Calne South &amp; Cherhill/Calne Rural</b>	<b>Unitary Member</b>	<b>Councillors Hill and Crisp</b>
<b>Grid Ref</b>	<b>400135 169472</b>		
<b>Type of application</b>	<b>Hybrid</b>		
<b>Case Officer</b>	<b>S T Smith</b>	<b>01249 706 633</b>	<b>Simon.smith@wiltshire.gov.u</b>

## 1. Purpose of report

This application was previously refused planning permission by Strategic Planning Committee on 30<sup>th</sup> July 2013. The applicants have subsequently lodged an appeal and a Public Inquiry is scheduled to take place week commencing 24<sup>th</sup> February 2014.

The Inspectors tenth procedural letter (2<sup>nd</sup> December 2013) to the Wiltshire Core Strategy has changed the context within which this application should be considered and impact upon the reasons for refusal. Strategic Planning Committee should therefore consider the approach to the conduct of this appeal.

The full report prepared at the time of the Strategic Planning Committee considering this application in July 2013, has been appended to this report (**Appendix 1**). It includes a description of the site and the current proposal, the planning history for the site and additional detail on the planning policy context.

This report focuses on the changes in circumstances since the original decision on the

application was made.

## **2. Report summary**

The main issues to be considered with regard to the approach to this appeal are as follows:

- a) Original reasons for refusal
- b) Summary of relevant planning policy
- c) Matters arising from the Inspector's letters
- d) Possible approaches to the appeal

## **3. Original reasons for refusal**

The application was refused on 30<sup>th</sup> July 2013 for the following reasons:

1. *In accordance with paragraph 187 of the National Planning Policy Framework (NPPF), this planning application has been processed in a proactive way. However, due to technical objections or the proposal's failure to comply with the development plan and /or the NPPF as a matter of principle, the local planning authority has had no alternative other than to refuse planning permission. By reason of the proposed development being located in the open countryside, outside of the defined Settlement Framework Boundary, the application would be contrary to the provisions of Policy H4 of the adopted North Wiltshire Local Plan 2011. There are no material considerations in terms of benefits that could be delivered as part of the development, which would be sufficient to outweigh development plan policy.*
2. *The proposal is premature to the progression of Wiltshire's Local Development Framework (LDF) and the Wiltshire Core Strategy document for the area, and prejudicial to the Council's plan-led approach to sustainable development and the phasing of future growth. In accordance with the NPPF there is a deliverable 5 year supply of land for housing in place and there are no other material considerations that outweigh this position. It is also premature in terms of the identification and means of delivery in respect of any infrastructure in step with development to be focused in Calne over the plan period. As such, the balance of considerations is such that planning permission should not be granted having regard to policies CP2 and CP8 of the Draft Wiltshire Core Strategy and guidance in the National Planning Policy Framework, in particular at paragraphs 12,14, 17, 47, 49, 150, 183, 184, 185, 196, 209, 210, 211, 212, 214, 215, 216.*
3. *The proposed development fails to provide or secure adequate provision for affordable and /or extra case housing, public open space, play equipment and footpath connections to the town adjoining school and leisure centre, all of which should take place on the site. In addition, the proposal fails to secure*

*contributions towards education provision in the locality, contributions towards public transport, contributions towards leisure provision, contributions towards improving cemetery capacity, contributions towards waste collection as well as the lack of a scheme or contribution to secure the on-going maintenance of open space and play equipment on the site, all of which should take the form of an off-site financial contribution in lieu of on-site provision. The application is therefore contrary to Policies C2, H5 and CF3 of the adopted North Wiltshire Local Plan 2011.*

The first and second reasons for refusal are the main issues for the appeal as it is expected that the third reason for refusal will be satisfied following the submission of an acceptable s106 unilateral undertaking.

#### **4. Planning Policy**

##### The Planning and Compulsory Purchase Act 2004 (as amended)

The Act requires that applications should be determined in conformity with the extant development plan.

##### National Planning Policy Framework (NPPF)

The NPPF was introduced as a principal material consideration in the determination of planning applications in March 2012. Of particular relevance to the reasons for refusal, the NPPF identifies:

- The need for the Local Planning Authority to maintain a 5yr supply of housing.
- That where a 5yr supply cannot be demonstrated, relevant policies of the development plan should not be considered up to date and planning applications should be considered with a presumption in favour of sustainable development.

##### North Wiltshire Local Plan 2011 (NWLP)

The NWLP was adopted in June 2006 and constitutes the statutory development plan. Policy H4 has been “saved” beyond 2009 by the Secretary of State until it is superseded by a subsequent adopted policy document.

Policy H4 restricts development outside of the settlement boundaries. The direction of policy H4 is considered entirely consistent with National Planning Policy Framework as it defines what is considered sustainable development locally. Indeed, the use of settlement boundaries as part of the development plan for Wiltshire has been confirmed by the Inspector examining the Wiltshire Core Strategy. However, the Inspector has raised concerns over whether the settlement boundaries are up to date. This is discussed below.

## Draft Wiltshire Core Strategy

Upon adoption, the Wiltshire Core Strategy (WCS) will replace many policies and proposals in the NWLP.

The WCS has reached an advanced stage of preparation with the examination hearings having been completed in July 2013. On 2<sup>nd</sup> December 2013, the examining Inspector provided a tenth procedural letter to Wiltshire Council seeking the views of the Council on a number of issues. Wiltshire Council responded identifying how these issues would be addressed and the Inspector has since produced an eleventh procedural letter (23<sup>rd</sup> December 2013) responding to the proposals of the Council. (These are attached at **Appendices 2, 3, 4**)

The submitted WCS introduced a housing requirement for the period from 2006 to 2026 presented by Housing Market Areas. The Inspector examining the Wiltshire Core Strategy has identified in his tenth procedural letter that he considers that the housing requirement for Wiltshire from 2006 to 2026 should be increased. Wiltshire Council has responded proposing to increase the housing requirement from 37,000 homes to 42,000 homes. In his eleventh procedural letter the Inspector identifies that he considers this reasonable.

The spatial strategy (core policy 1 and core policy 2) sets the foundations for how 'sustainable development' is defined and applied in Wiltshire. Within the WCS, Calne is identified as a market town with the ability to support sustainable patterns of living and the potential for significant development where that development enhances services and facilities and promotes better levels of self containment (core policy 1).

Core policy 2, however, is clear in that there is a presumption of sustainable development within defined limits of development and that development of the type proposed outside these limits should be brought forward through a community led planning policy document which identifies specific sites for development. However, the Inspectors tenth procedural letter states, in referring to the settlement boundaries as defined in the adopted Local Plan, that "*...it cannot be argued with great strength that the settlement boundaries contained therein are up-to-date for the purposes of the Core Strategy plan period*". The Council has proposed to undertake a review of boundaries through a subsequent Site Allocations DPD, which is anticipated to be adopted by July 2015, to address this.

Core policy 8 identifies the level of housing growth appropriate for Calne and does not identify a specific strategic housing site to provide for growth. The housing requirement for Calne is likely to increase as a result of the Inspectors tenth procedural letter, which identifies an increase in the housing requirement for Wiltshire.

#### 4. **Matters arising from the Inspector's letters**

##### Refusal Reason 1

The first reason for refusal reflected the proposals failure to comply with the adopted development plan by virtue of the fact that the proposed development is located in the open countryside, outside of the defined Settlement Framework Boundary, and is therefore contrary to the provisions of Policy H4 of the adopted North Wiltshire Local Plan 2011.

The Inspector identifies in his tenth procedural letter that it cannot be argued with great strength that the settlement boundaries proposed in the core strategy are up-to-date although he continues to support the approach to define where sustainable development is appropriate through settlement boundaries. By raising this issue he has by implication questioned the reliability of boundaries where additional housing is required to meet the housing requirement. Additional housing was not required in Calne at the time of the decision but it may be the case now due to the absence of up-to-date evidence to demonstrate a 5 year supply of developable land against the proposed overall increased requirement (see reason for refusal 2). The strength of saved policy H4 as it relates to settlement boundaries is therefore weakened if there are no site specific reasons to refuse planning permission. In Calne no site specific reasons for refusal have been given eg on grounds of landscape impact, ecological impact, access, infrastructure. Given the lack of other constraints on this site, the weight to be attributed to the saved policy H4 will be diminished to some extent. This has repercussions on the first reason for refusal.

Paragraph 14 of the NPPF requires that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted for sustainable development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or where specific policies in this Framework indicate development should be restricted. If the settlement boundary of Calne to which Policy H4 relates is considered to be out of date then paragraph 14 of NPPF will apply unless the development can be demonstrated not to be sustainable development.

The only local plan policy relied upon in the first reason for refusal is Policy H4 and, in the context described above, this cannot now be ascribed significant weight.

Furthermore, the NPPF at paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development where a five year supply of housing cannot be demonstrated. Policy H4 is considered relevant to the supply of housing as it restricts housing supply beyond the Settlement Framework Boundary. The weight to be afforded to the settlement boundary, therefore, also has to be considered in the context of the 5 year land supply (see below).

It is therefore considered that Policy H4 of the adopted plan, which restricts development outside of the Settlement Framework Boundary, cannot be ascribed significant weight.

## Refusal Reason 2

Reason for refusal 2 states that the Council has a 5 year supply of housing land and there are no material considerations to outweigh this consideration. In accordance with the NPPF the Council is expected to maintain a 5 year supply of housing sites. Where a 5 year supply cannot be demonstrated, relevant policies of the development plan should not be considered up to date and planning applications should be considered with a presumption in favour of sustainable development.

The Council has accepted that the overall housing requirement for Wiltshire should increase in line with the Inspector's suggestions in his letter of 2 December (ie an increase to 42,000) which will require the housing requirements for each housing market area to be reviewed. While the Inspector states that the evidence suggests that a 5 year (together with a 5% buffer) could be achieved in Wiltshire at this higher level, work is being undertaken to determine how the increased housing supply will be distributed at the housing market area level and how supply will be met against the proposed new figures. This assessment will include reexamining the land supply taking account of the revised housing requirement and the significant number of large planning applications granted in the last year. Until this assessment is complete officers will be unable to say with any confidence at that stage that the requirement in paragraph 47 of NPPF to maintain a 5 year housing supply (together with a 5% buffer) is currently being met.

Reason for refusal 2 also relates to grounds of prematurity. As to the concerns expressed over prematurity, the indication from the Inspector's letter as to the settlement boundaries and the need to increase the housing requirement mean that, again at this stage, the Council cannot rely on this reason for refusal – at least until a 5 year supply is identified. Similarly it is not felt that Policies CP2 and CP8 can be given significant weight until the housing land supply situation is clarified. The paragraphs relied on from the NPPF in general refer to the housing land supply situation and to the weight to be given to up to date development plan policy. The context in which reliance has been placed on these paragraphs has, therefore, now changed.

## Refusal Reason 3

So far as the issue with respect to infrastructure is concerned an agreement or unilateral undertaking under s106 of the Act has not yet been entered into. However, this reason for refusal could be addressed once a completed agreement has been entered into. Should agreement not be achieved it will be discussed at the appeal.

## **5. Possible approaches to the appeal**

The uncertainty introduced by the core strategy Inspector's letters is an important consideration for this appeal.

Given the uncertainty over the housing requirement at this time and in the wider context of the Government's support for housing growth as set out in the NPPF, planning applications

on unconstrained, sustainable sites should be considered favourably. Notwithstanding the reasons for refusal, the Marden Farm site was acknowledged as being in a sustainable location within the first report to the Strategic Planning Committee. Subject to the satisfactory resolution of a Section 106 Agreement there are no overriding constraints to development. Developing the site will help boost housing delivery in Wiltshire and strengthen the existing land supply, which will in turn help protect the County from unsustainable development in the future.

Once a sufficient five year housing land supply can be demonstrated against the revised housing requirement this interim position will change. At this point once again all applications should be considered in the context of the extant and emerging development plans.

This change in approach to the appeal site could be secured by either agreeing with the appellants to support a resubmitted application or by agreeing that Wiltshire Council do not defend the decision at appeal, providing that costs are not pursued. Alternatively, Wiltshire Council could pursue this appeal but if the appeal is allowed, an award for costs may be granted.

The proposed approach to this appeal has been developed within the circumstances that prevail now in relation to the core strategy and with regard to site specific considerations. It is not intended to set a precedent for all appeals and major applications currently before the Council as each will be considered on their individual merits in a changing context and with regard to local circumstances.

## **6. Conclusion**

The weight to be attributed to the existing reasons for refusal has been significantly affected by the Inspectors procedural letters. In this context, it is considered appropriate for Strategic Planning Committee to consider how Wiltshire Council approaches this appeal.

In this context, officers now consider that this appeal cannot be defended and it is considered appropriate for the Council to offer no evidence at the forthcoming Public Inquiry, other than to work with the appellants to secure satisfactory community infrastructure as set out in the third reason for refusal.

It is recommended that:

The Council offer no defence at the forthcoming appeal and invite the applicant to resubmit the application for reconsideration by the Council, in the context of the recent comments made by the Core Strategy Inspector. In the event of the appellant refusing to resubmit a planning application, the Council would continue to offer no defence at the forthcoming appeal other than to work with the appellants to secure satisfactory community infrastructure as set out in the third reason for refusal.

