

REPORT TO THE STRATEGIC PLANNING COMMITTEE

Date of Meeting	Wednesday 12 th February 2014
Application Number	E/2013/0083/OUT
Site Address	Land at Coate Bridge, Adjacent to Windsor Drive, Devizes, Wilts
Proposal	Outline planning application for residential development of up to 350 dwellings, local centre of up to 700sqm of class A1 retail use, open space, access roads, cycleway, footpaths, landscaping and associated engineering works
Applicant	Mactaggart and Mickel Homes Ltd.
Town/Parish Council	ROUNDWAY, DEVIZES
Grid Ref	401970 162313
Type of application	Outline Planning – Now Appealed
Case Officer	Jemma Boustead/Mike Wilmott

1. Purpose of report

This application was previously refused planning permission by the Council at the Strategic Planning Committee on 25th September 2013. The applicants have subsequently lodged an appeal against this decision and a Public Inquiry is scheduled to take place week commencing 7th April 2014.

The Council has until 25th February 2014 to submit its evidence to the Inspector to defend the reasons for refusal. However, as the Inspector has to take account of the situation at the time of the Inquiry, not at the time of the original decision, he must take into account any material changes to the planning context that have been made since the original decision.

In this case, The Inspector holding the separate inquiry into the Wiltshire Core Strategy has written to the Council calling into question some of the assumptions that the original decision to refuse the application was based upon. These letters, and the Council's response, significantly change the context in which this appeal will be considered. It is therefore necessary for the Strategic Planning Committee to consider this material change in circumstances and to decide whether, in the light of these changes, the Council's decision to refuse the application can still be defended.

The full report prepared at the time of the Strategic Planning Committee considering this application in September 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) Implications of the changed circumstances arising from the Inspector's letters

3. Original reasons for refusal

The application was refused on 29th September 2013 for the following reasons:

1. *The site lies outside the Limits of development defined for Devizes in the Kennet Local Plan 2011. In this location, new development is restricted to that which is of benefit to the rural economy or the social well-being of the community. The Council does not consider that a housing development of this scale would support the rural economy or benefit the social well-being of the rural economy. The proposal would therefore conflict with policy NR6 of the KLP*
2. *The Draft Wiltshire Core Strategy, through CP2 requires development outside of the Limits of Development for Devizes to be identified through community-led planning policy documents including neighbourhood plans, or a subsequent development plan document which identifies specific sites for development. This site has not been identified through this process and it would therefore conflict with policy CP2 if planning permission were to be granted*
3. *The Council is satisfied that there is no overriding need to bring forward this site outside the Limits of Development for residential development at this stage as it is satisfied that there is adequate land available to meet the Government requirement expressed in the NPPF for a 5 year land supply*
4. *The site includes within its boundaries potential heritage assets with archaeological interest, including a number of earthworks recorded on the Historic Environment Record. The Council considers that in these circumstances, and in accordance with paragraph 128 of the NPPF, an archaeological field evaluation is required to properly inform the Council of the impact of the development on archaeological remains. No such evaluation has been undertaken on the site and the proposal is therefore considered to be premature as the Council is unable to assess properly the impact on any potential archaeological heritage asset on the site*

The first, second and third reasons for refusal are the main issues for the appeal as it is expected that the fourth reason for refusal will be satisfied following the submission of an appropriate archaeological field evaluation.

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 5 yr 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.
- Where relevant policies in a development plan are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

Kennet Local Plan 2011

The KLP was adopted in 2004 and constitutes the statutory development plan. Policy NR6 is a relevant policy in this plan referred to in the reasons for refusal.

Policy NR6 of the KLP seeks to direct development to the most sustainable locations within East Wiltshire and states that: *'In the interests of promoting sustainable development and the protection of the countryside, development will be restricted to locations within the Limits of Development defined for the towns and villages'*. This approach to settlement planning by defining limits of development 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 stated in his letter of December 2nd 2013 that *'some of these were adopted some years ago, for example the Kennet Local Plan (2004), and it cannot be argued with great strength that the settlement boundaries contained therein are up to date for the purposes of the Core Strategy period'*. 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 2nd 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 (23rd December 2013) responding to the proposals of the Council.

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 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 latest 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, Devizes 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. Devizes does have a Neighbourhood Planning Group that is working on producing just such a Neighbourhood Plan. However, in a debate in Parliament in January, the Planning Minister, Nick Boles, has made it clear that these can only be given any significant weight in the decision making process when the plan has completed its consultation stage. The Devizes NP has yet to reach this milestone. The Council has committed to undertake a review of settlement boundaries through a Site Allocations Development Plan Document (DPD), but this is in the very earliest stages of preparation, and is anticipated to be adopted by July 2015.

Core policy 12 identifies the level of housing growth appropriate for Devizes and does not identify a specific strategic housing site to provide for growth. The housing requirement for Devizes is likely to increase as a result of the Inspectors letter, which identifies an increase in the housing requirement for Wiltshire.

5) Implications of the changed circumstances arising from the Inspector's Letters.

Refusal Reason 1

- 1. The site lies outside the Limits of development defined for Devizes in the Kennet Local Plan 2011. In this location, new development is restricted to that which is of benefit to the rural economy or the social well-being of the community. The Council does not consider that a housing development of this scale would support the rural economy or benefit the social well-being of the rural economy. The proposal would therefore conflict with policy NR6 of the KLP*

The first reason for refusal reflected the failure of the proposal to comply with the adopted

development plan by virtue of the fact that the proposed site is located outside the Limits of Development and is therefore contrary to the provisions of Policy NR6 of the adopted Kennet Local Plan 2011.

The Inspector's letter of 2nd December undermines the position the Council took on this issue in September. By stating in specific reference to the Kennet Local Plan of 2004 that '*it cannot be argued with great strength that the settlement boundaries contained therein are up to date*' the Inspector has effectively stated that the policy is out of date. This means that it then has to be considered in the light of the NPPF policy that states that where the development plan is out of date, *planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (paragraph 14)*. There were no site specific reasons that justified refusal of the application when the application was determined in September 2013.

The only local plan policy relied upon in the first reason for refusal is Policy NR6 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 NR6 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 in the light of the Core Strategy Inspector's comments, Policy NR6 of the adopted plan, which restricts development outside of the Limits of Development, cannot be afforded any significant weight in relation to this site and this appeal and that this ground for refusal can no longer be substantiated.

Refusal Reason 2

The Draft Wiltshire Core Strategy, through CP2 requires development outside of the Limits of Development for Devizes to be identified through community-led planning policy documents including neighbourhood plans, or a subsequent development plan document which identifies specific sites for development. This site has not been identified through this process and it would therefore conflict with policy CP2 if planning permission were to be granted

The second reason for refusal relates to the proposed site not being identified through community-led planning policy documents or development plan documents as it lies outside of the defined limits of development. The weakness of the limits of development has been dealt with above, and in the context of the Inspector's letter, significant weight currently cannot be given to policy CP2 meaning that the Council cannot at this stage rely on this reason for refusal. With regard to community-led planning, it is important to note that a neighbourhood plan for the Devizes area is currently being developed. A steering group has been formed with the specific aim to identify sites for new housing at Devizes in the most suitable and sustainable location(s) to meet the housing requirement of the Core Strategy for Devizes. The plan is being developed for the administrative areas of Devizes Town and the

neighbouring parishes of Roundway and Bishops Cannings. However, as noted above, the Planning Minister, Nick Boles, has made it clear that Neighbourhood Plans can only be given any significant weight in the decision making process when the plan has completed its consultation stage. The Devizes NP has yet to reach this milestone, so at this stage, a Planning Inspector on appeal will not be able to give it any significant weight. This means that this reason for refusal cannot be defended in this appeal.

Refusal Reason 3

The Council is satisfied that there is no overriding need to bring forward this site outside the Limits of Development for residential development at this stage as it is satisfied that there is adequate land available to meet the Government requirement expressed in the NPPF for a 5 year land supply

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 Inspectors suggestions in his letter of 2 December (ie an increase of 5,000 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 currently 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 re-examining 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 are currently unable to say with confidence that the requirement in paragraph 47 of NPPF to maintain a 5 year housing supply (together with a 5% buffer) is being met. In the East Housing Market area within which Devizes lies, the settlement is identified in the draft Core Strategy as a market town with the ability to support sustainable patterns of living, and so it can be expected that some of the increase in housing numbers agreed by the Council will have to take place in Devizes. In these circumstances, the Council can no longer justify this reason for refusal in connection with the current appeal.

6. Other matters

The changed circumstances introduced by the Core Strategy Inspector's letters are 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 are to be considered favourably unless significant and demonstrable adverse impacts can be identified. As the original report to the committee demonstrates, statutory consultees in relation to the main impacts of this development (highways; drainage; landscape; air quality etc) are satisfied with the proposed development. Subject to the satisfactory resolution of a Section 106 Agreement and an

archaeological field evaluation being submitted there are no overriding constraints to the proposed development. Developing the site will help housing delivery in Wiltshire and strengthen the existing land supply, which will in turn help protect the County from unsustainable development in other locations in the future.

The Council has little option but to consider its approach to this appeal in accordance with the circumstances that prevail now in relation to the Core Strategy and with regard to site specific considerations. Any change from the position adopted by the Council in September 2013 will not set a precedent for all future appeals and major applications currently being considered by the Council as each will be considered on their individual merits in a changing context and with regard to local circumstances.

6. Conclusion

The Inspector's Letters in relation to the Wiltshire Core Strategy significantly change the context in which this appeal will be considered. The reasons for refusal put forward by the Council in September 2013 are demonstrably undermined by the Inspector's conclusion that the settlement boundaries contained in the Kennet Local Plan are not up to date and by the increase in housing numbers of 5,000. In all fairness, this is not a situation that could have been foreseen when the original decision to refuse this application was made, but it will be the context in which the Inspector handling this appeal in April will write his report.

In these changed circumstances, officers now consider that as the reasons for refusal can no longer be justified, this appeal cannot be defended. It is therefore considered appropriate for the Council to inform the Inspector and the appellants that as a result of these changes, the Council will provide no evidence at the forthcoming Public Inquiry, provided that the archaeological field evaluation is undertaken and its findings are properly taken into account, and that a Section 106 Legal Agreement is completed to agree the matters set out in the original committee report.

It is important to note that a fresh application was submitted to Wiltshire Council on 13th January 2014 by the appellants and is currently under consideration. However the submissions of case by Wiltshire Council for the Public Inquiry are due to be submitted to the Planning Inspectorate before the Planning Application can be considered at a future Strategic Planning Committee and therefore a resolution on the upcoming Inquiry is required now.

Recommendation

It is recommended that in the light of the changed circumstances, the Council inform the Inspector that it no longer wishes to pursue reasons 1-3 put forward in the original decision, and will only pursue reason 4 if that matter is not satisfactorily resolved before the public inquiry.

APPENDICES

Appendix 1 – Strategic Committee Report – September 2013

Appendix 2 – Wiltshire Core Strategy Inspector's Letters & Council Reply