



Report to the Secretary of State for Communities and Local Government

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**an Inspector appointed by the Secretary of State
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Date: 29 April 2009

Town and Country Planning Act 1990

Kennet District Council

(now known as Wiltshire Council)

Appeal by

LEDA Properties Ltd

Bureau West, Horton Road, Devizes, Wiltshire SN10 2JJ

Inquiry opened on 24 March 2009

Bureau West, Horton Road, Devizes, Wiltshire SN10 2JJ

File Ref: APP/E3905/A/08/2090652

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Bureau West, Horton Road, Devizes, Wiltshire SN10 2JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by LEDA Properties Ltd against the decision of Kennet District Council, now known as Wiltshire Council.
- The application Ref K/58682/O, dated 28 March 2008, was refused by notice dated 25 July 2008.
- The development proposed is erection of 172 dwellings, a care home of 2000 sq m, 875 sq m of light industrial floor space and 1330 sq m of offices.

Summary of Recommendation: The appeal be allowed

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1. Procedural Matters

- 1.1 The inquiry opened on 24 March 2009 and sat for 3 days before closing on 26 March 2009.
- 1.2 On the afternoon of 25 March, I made an accompanied visit to the site and the surrounding area, including a public footpath to the east of the site.
- 1.3 The application was submitted in outline form with all matters of detail, except access, reserved for later consideration. The application plans and documents are listed in Appendices B and C (**Documents APP1 to APP10 and Plans APP A and APP B**).
- 1.4 The application was refused by a delegated decision (**Document POE9, Appendix 1**). The 6 reasons for refusal are summarised as follows:
 1. *The proposal would result in the loss of a Protected Strategic Employment Site to the detriment of local employment opportunities and contrary to the objectives of creating balanced communities and self-containment within settlements.*
 2. *The application fails to adequately demonstrate that the scale of development envisaged can be accommodated on the site without harming the character and appearance of the wider area.*
 3. *The application contains insufficient information to enable a full and proper assessment of the impact of traffic generated by the proposed development on the road network within and around Devizes.*
 4. *The Flood Risk Assessment accompanying the application provides insufficient information to properly assess the adequacy of the proposed surface water drainage arrangements.*
 5. *The wildlife reports accompanying the application are out of date.*
 6. *The application fails to provide any mechanism to ensure the provision of affordable housing, open space/recreation areas, education facilities, community facilities, highway improvements and water supply made necessary by the development.*
- 1.5 Subsequent to the submission of the appeal, the appellant has provided an Ecology Survey Update (**Document INQ3**).
- 1.6 At the inquiry a S106 Unilateral Undertaking was submitted by the appellant, which would secure a contribution of £13,320 towards the cost of upgrading and/or improving existing off-site adult sports facilities and/or sports pitches in the Bishops Cannings area, as agreed with the Council (**Document INQ7**).
- 1.7 At the inquiry, the appellant submitted a S106 Agreement that has been executed by the appellant company, Kennet District Council and Wiltshire County Council. It provides for financial contributions of £191,220 towards the maintenance of amenity areas, £45,000 towards the cost of new community facilities or improvement of existing community facilities in the Bishops Cannings area, £350,000 towards highway works, £5,000 towards any Traffic Regulation Order, £8,375 towards the widening of the footway/cycleway, £150,000 towards public transport and £499,664 towards the cost of the provision and enhancement of education infrastructure in the locality of the site (**Document INQ11**). Following the close of the inquiry, the appellant has submitted a S106 Unilateral Undertaking that provides for an additional sum of

£11,356 towards education infrastructure, which is an adjustment to take account of the change in the level of affordable housing provision agreed during the course of the inquiry (**Document INQ18**).

2. The Site and Surroundings

- 2.1 The appeal site is about 5.72 ha and includes a group of large warehouse and office buildings, and a smaller gatehouse building, set within relatively level open grassland with a paved car parking area, and surrounded by a security fence. It also includes a row of mature poplar trees and other semi-mature trees between the security fence and the adjacent road, together with groups of trees within the security fence. It was formerly used as a Ministry of Defence processing systems administration centre and has been vacant since 1999.
- 2.2 The site is located to the north east of Devizes town centre, within the limits of development shown on the Proposals Map. It fronts, and is accessed from, the south side of Horton Road, near to its junction with the A361. Adjacent to its east boundary is a County Council highways depot, which abuts an open field with a public footpath along its east side from Horton Road to the nearby Kennet and Avon canal. To the west is residential development, including Ferozeshah Road and, more recently constructed, Hopgood Close. The southern boundary of the site abuts an open field, and the south east corner of the site is bounded by Lay Wood. Although the Council has suggested that the wood is an SNCI, at the inquiry it accepted that it is not designated. On the opposite side of Horton Road is vacant land, beyond which lies the A361 and Hopton Industrial Estate.
- 2.3 The North Wessex Downs AONB is located about 0.6 km to the east of the site, and is slightly further away from the north and south of the site.

3. Planning Policy

- 3.1 The Development Plan includes the Regional Planning Guidance for the South West (RRS10), the Wiltshire and Swindon Structure Plan 2016 (**Document SCG3**) and the saved policies from the Kennet Local Plan 2011 (**Document SCG4**). The Secretary of State has published proposed changes to the revised RSS10. A letter, dated 24 March 2009, (**Document INQ12**) indicates that she intends to issue the final RSS at the end of June 2009.
- 3.2 In terms of employment, saved LP Policy ED7 is most relevant. It seeks to protect Strategic Employment Sites from forms of development other than use class B. SP Policy DP1 establishes 6 priorities in the pursuit of sustainable development. Priority 1 is to meet local needs for jobs, services and affordable and special needs housing in all settlements. Priority 3 is to minimise the need to travel. These reflect Strategic Objectives I. and II. given in para 1.14 of the LP. These objectives seek to make the three main settlements in the District, which include Devizes, self contained; and develop balanced communities.
- 3.3 With regard to character and appearance, saved LP Policy PD1 expects new development to have a high standard of design. Amongst the considerations to achieve this are the scale, height, massing and density of development, and the relationship to townscape and landscape context.
- 3.4 LP Policy HC28 sets a target for providing additional affordable homes. LP Policy HC29 defines affordable housing, and LP Policy HC30 requires

negotiations to achieve a 30% subsidised affordable housing contribution and a 20% low cost market housing contribution on appropriate unforeseen housing sites.

- 3.5 SP Policy DP2 requires the provision of infrastructure, services and amenities made necessary by new development. LP Policy HC34 is regarding recreation provision on large housing sites. LP Policy H37 seeks to ensure that education needs of the population of new development can be met. LP Policy HC42 is regarding the provision of additional social and community needs. LP Policy AT10 seeks contributions from new development to ensure access via alternatives to the car.

4. Planning History

- 4.1 There are no previous planning applications relating to the appeal site.
- 4.2 The appeal site has been designated as a 'Protected Strategic Employment Site' on the Inset Plan and included in Policy ED7 in the LP, adopted in April 2004, following the Inspector's report on the LP inquiry, which includes references to the site (**Document INQ6**).

5. The Proposal

- 5.1 The proposal would include a care home of 2000 sq m, 875 sq m of light industrial floor space and 1330 sq m of offices, together with the erection of 172 dwellings. Although the net residential density is shown as 40dph on the Illustrative Master plan (**Plan APP A**), both parties have agreed that it would be about 46dph (**Para 6.1 ii in Document SCG0**), after allowance has been made for the retention of about 0.57 ha of existing block planting. The residential area includes about 0.49 ha of public open space. The maximum height of the proposed buildings would be 12m for the care home, and the dwellings would be a maximum of 3 storeys high (**Plan APP B**).
- 5.2 The Illustrative Master plan (**Plan APP A**) indicates that 30% of the dwellings would be affordable housing for rent and 20% would be low cost market housing. The appellant confirmed at the inquiry that this provision has been changed to 40% of the dwellings as affordable housing for social rent.
- 5.3 The existing access to the site would be stopped up and a new main access to the development, together with an emergency access, would be provided. Details of the accesses are shown on Drawing No L121/47 Rev A (**Appendix A to Document SCG13**).

6. Other Agreed Matters

- 6.1 Following refusal of the application, PFA Consulting commissioned Mouchel on behalf of the appellant to carry out traffic modelling work using the Devizes Traffic Model to assess the impact of the proposal. The resulting report concludes that the proposal would not cause any negative impact to the operation of the local highway network and no detrimental effects would be caused to journey times across the network. Based on this, Wiltshire County Council has withdrawn its objection, subject to highway capacity improvements detailed on Drawing No L121/47 Rev A or No L121/48 Rev A, and a contribution towards their cost (**Documents SCG13 and INQ2**).

- 6.2 Planning conditions and S106 Obligations will provide the mechanism to ensure that the provision of essential infrastructure, services and amenities made necessary by the development will be provided. In terms of highway improvements, £8,375 is agreed as a fall back contribution in the event that land in the control of Kennet District Council is not dedicated as public highway, £5,000 towards the necessary Traffic Regulation Orders, £150,000 towards public transport, and £350,000 towards highway works (**Documents SCG13 and INQ2**). The justification for the contributions towards off-site infrastructure and public transport are provided by Wiltshire County Council as the Highway Authority (**Appendix 7 of Document POE4**).
- 6.3 The justification for the contribution towards the provision of education infrastructure arising from the proposal is given in the Statement of Case of Wiltshire County Council (**Appendix 6 of Document POE4**) and a letter from Wiltshire Council (**Document INQ18**). The justification for contributions towards sport and recreation facilities is given by the Council's Environment & Leisure Services Officer (**Appendix 5 of Document POE4**). The contributions to community facilities are based on the Supplementary Planning Guidance: Community Benefits from Planning (**Document SCG11**).
- 6.4 The Council can demonstrate a 5.9 year supply of housing land (**Para 6.1 i in Document SCG0**).

7. The Case for LEDA Properties Ltd

Introduction

- 7.1 The appeal site has been vacant for about 10 years and has not been taken up after marketing. The current buildings on the site are derelict and outdated and fall below the 30% site coverage criterion for employment floor space. It is set apart from the principal employment areas of Devizes and has less prominence and market profile, which is limiting on demand (**Document POE5**). It is also close to a residential area.
- 7.2 The proposal is for a truly mixed use development involving market housing, affordable housing at 40% subsidised for rent, a care home, light industrial, and class B1 offices, producing as many as 130 to 160 direct jobs (**paras 6.14 and 6.15 of Document POE5**). The highways, flood risk and ecological concerns have been resolved. Contributions to infrastructure have been resolved. The Council accepts the proposed provision of 40% subsidised for rent affordable housing by means of a condition.

Employment

- 7.3 The Council's reliance on LP Policy ED7 (**Document SCG4**) is based upon an interpretation of the Policy that cannot be sustained. The Policy is entitled 'Protected Strategic Employment Sites' and therefore the whole of the Policy should deal with such sites. The Council's interpretation is contrary to the approach adopted by the Inspector in the Kverneland appeal decisions (**Appendix 4 of Document POE9**), of which that site is shown hatched as ED7 on the Inset Map, as is the appeal site. That Inspector recognised that the 3 criteria in the third paragraph of LP Policy ED7 are relevant to designated strategic employment sites (paras 13-17). The Council did not make any reference to its changed approach to that interpretation until the final morning of the inquiry.

- 7.4 The criteria are the general policies of the LP; the contribution the existing site makes to the range and diversity of employment sites in each settlement; and the demand for the type of employment site the subject of the application. Mr White of the Council accepted under cross examination the appellant's analysis of them.
- 7.5 With regard to self-containment, the Inspector in the Kverneland appeals suggested that the provision of new dwellings that offered a choice in terms of size and affordability would be likely to provide opportunities for workers to choose to live near to their place of work (para 19), as is the case in this appeal. Also, the provision of affordable housing would assist in reducing commuting as the occupants would have to be resident in the District. Conversely, he suggested that where the location of more jobs in Devizes was not balanced by a commensurate provision of additional housing, the trend towards additional in-commuting would be exacerbated, contrary to the objective of self-containment (para 20).
- 7.6 The Functional Analysis of Settlements by Tym & Partners (**Appendix 5 of Document POE9**), which is based on the 2001 census, supports the views of the Inspector in the Kverneland appeals. The SP states that the best opportunities for self-containment are Salisbury, Trowbridge and Chippenham (**para 4.10 of Document SCG3**). The 'Tym' Analysis indicates that the percentage of residents aged 16 to 74 in employment that live and work in the area of Devizes is 58%, which makes it 22nd out of the 82 settlements tested (Chart 4, p20); Devizes employs 6,806 out of 8,783 total trips to work ie 77% (p26); and it is neither a main net in-commuting nor a main net out-commuting settlement (**para 7.57 of Document POE8**).
- 7.7 The Council has not provided any details to support its views that the situation has changed since the census or regarding work/live patterns of new residents.
- 7.8 Should there be any conflict with LP Policy ED7 then there are compelling reasons for allowing the appeal on a previously developed site within the limits of development now, even if it meant that greenfield land might be required for employment at some uncertain time in the future. Material considerations in favour of the proposal relate to employment provision and housing.
- 7.9 With regard to employment, there is no substantive dispute that there is sufficient land in Kennet. A significant consideration in this regard is Atkins' Report on its Economic Study of Kennet District (**Document SCG7B**), commissioned by the Council in response, in part, to the refusal of the Inspector to accept the Council's arguments in the Kverneland appeals. In para I.20 of Appendix I (**Document SCG7C**) it states that providing additional speculatively built floor space is more likely to create an overprovision than to encourage new occupiers.
- 7.10 The assessment of Mr Ward that there is 800,000 sq m of floor space available in the market area (**paras 4.1, 4.2 & 4.4 Document POE5**) was not disputed. Also, there would be an efficiency increase in the use of employment land as there is a move away from industrial uses. This is supported by the 'Atkins' Report, which predicts a loss of 293 manufacturing jobs in the District (**Table 4.3 on p4-14 of Document SCG7B**), and Mr Ward translates the floor space vacated by these jobs into 524 office jobs (**para 4.6 of Document POE5**).

- 7.11 The supply of employment land in the District (**paras 2.21-2.22 of Document POE1 and Documents SCG8A & B**) shows an increase in completed floor space in 2006/7; more than half of new floor space is on greenfield land; the supply increased with permission for 13 ha of employment development at Castledown Park, Tidworth; there have been very few losses of employment land stock on strategic sites to non-class B uses; and employment sites have been developed at an annual rate of 2.44 ha, below the anticipated 2.75 ha in the SP. Based on the Monitoring Report (**Document POE8A**), the availability of employment land in Devizes on established allocated sites is almost 8 ha at Nursteed Road, the Police Headquarters London Road, and Hopton Park, without including the appeal site.
- 7.12 The amount of available employment land in Devizes is therefore not insignificant, given that the buoyant period over the last 10 years has ended. Also, from April 06 to April 07 just over 8,300 sq m of new floor space was built in Kennet (**para 1 of Document SCG8A**), and 7.35 ha was completed at Hopton Park, equating to about 0.74 ha per annum over 10 years (**para 5.2 of Document INQ4**). Speculative development is highly unlikely in the current market, and the latent demand has been satisfied at Hopton Park. The 'Atkins' Report states that Devizes attracts predominantly local businesses and there are no current significant unsatisfied requirements (**paras 1.12 and 1.18 in Appendix 1 of Document SCG7C**). The proposal would go towards meeting the requirements of the agreed trend towards small premises.
- 7.13 With regard to the development of the site for employment, there has been an extensive marketing campaign over a six year period up to 2004 (**Appendix 1 of POE5 and POE6**). Also, the 2 development appraisals undertaken by Miss Rowe for the Council (**Document POE2**) are flawed. The 15,000 sq m of floor space for the developments would not fit on the site with 2 storeys (**Plan INQ A**), and they would be wholly unacceptable. Mr Ward's check of the appraisals (**Document INQ4**) shows that they do not work. This relates to demolition costs, reductions due to net floor space as compared to gross floor space, underestimating build costs that should be from the usual source of the RICS Building Cost Information Service, and not allowing for empty rates liability. This produces a negative site value of over £2 million for Appraisal 2. The Council has only challenged the demolition costs.
- 7.14 The above shows that an employment only development will not work at present. Also, it is not needed or even desirable in terms of employment land supply, and would result in missing the opportunity for a far greater range of benefits.
- 7.15 Mixed use development is encouraged by PPS1 and draft PPS4. Also, despite classifying the appeal site as a Strategic Employment Site, the 'Atkins' Report states in Table H.3 (**Document SCG7C**), regarding the future role of the site: 'Site provides scope for new employment development or mixed use development retaining an employment function'. The proposal would comply with this role. The Council resolved to accept the contents and recommendations of the 'Atkins' Report for the purposes of providing the evidence base for consultation and developing the economic content of the Core Strategy (**Appendix 2 of Document POE9**). The Core Strategy has been delayed and is not likely to be adopted before 2011 (**Appendix B of Document SCG5**).

- 7.16 The appeal site does not match up well with Atkins criteria for a Strategic Employment Site (**Table 6.2, p6.10-p6.11 of Document SCG7B**). In particular, the site cannot sensibly be considered to form part of an established area of existing industrial, warehousing or office-based activity. In market terms it is located away from Hopton Park and it is also on a minor road compared to the A361, which is adjacent to Hopton Park. Moreover, Devizes is not a strategic settlement, and the appeal site has been treated differently from other strategic sites assessed in the 2006 Monitoring Report (**Document INQ10**).
- 7.17 The SHLAA has identified the appeal site as a Priority 1 site for 49 dwellings and that only 25% of Priority 1 sites are on previously developed land (**Appendix 8 of Document POE9**). The proposal shows that this number of dwellings can be far exceeded on the appeal site, which is previously developed land. Devizes performs very badly in terms of residential density, with the SHLAA giving the average density achieved on large site completions in Kennet between 2001 and 2006 as 22dph (**para 5.36 of Appendix 8 of Document POE9**), and the 2008 Monitoring Report states that the national minimum housing densities of 30dph are not being achieved in sufficient quantities (**para 2.27 of Document SCG9C**).
- 7.18 With regard to housing, the Council has based its position on the adequacy of housing land supply solely on meeting the 5 year housing land requirement, but has accepted that it is not a ceiling (**Document SCG0**). It has failed to take account of advice in PPS3 para 55 regarding the periods of 6-10 years and 11-15 years. Also, the Housing Green Paper advises that the 5 year supply is not a maximum but is only the starting point (**para 7.51 of Document POE8**).
- 7.19 The Secretary of State has increased the housing provision in the draft RSS, and expects an early review of the RSS to establish scope for higher levels of growth in the context of Government Guidance (**Appendix 9 of Document POE9**). The housing figures are still short of the DCLG 2003 Household Formation Predictions (**para 6.50 of Document POE8**). Therefore, the housing element alone is a very strong reason in support of the proposal.
- 7.20 In addition, the need for affordable housing is very significant and urgent. It is put at no less than 454 units per annum across the District with approximately 110 in Devizes, in the 2005 Housing Needs Survey (**Document INQ9**). The proposal would make a significant contribution to that requirement. Even if 40% was achieved from all the outstanding permissions for 1345 dwellings, which would be highly unlikely, that would only yield a total of about 538 units.

Character and Appearance

- 7.21 In terms of the second reason for refusal, it is not accepted that the Council's concerns are well-founded but nonetheless they could be addressed through reserved matters approval. The Council could point to no harm to the surrounding area or to any development control standards.
- 7.22 The Council accepted that adequate landscaping could be provided and the care home could be relocated to a more acceptable location, on the basis of the 'Negotiating' illustrative Master plan (**Plan INQ B**). The original illustrative Master plan (**Plan APP A**) locates the care home, with its pitched roof, behind the County Council's depot.

- 7.23 The Council's concern about the cramped nature of the proposal appears to be based upon the agreed numerical density of 46dph without having proper regard to whether a satisfactory development of that density could be achieved. A reliance on density figures only is contrary to para 50 of PPS3. The densities of housing development to the west do not support the Council's arguments, as their lower densities of 22dph and 35dph are not good examples of urban design, certainly in terms of their relationship with the countryside where there is a hard edge (**Document POE4, Appendix 3**). The proposal would fall within the draft RSS range of 30-50dph and would help to meet the aim of an average 40dph, given the low densities that have been achieved in Kennet and Devizes (**Document SCG2**). The number of units proposed would be achieved in a satisfactory manner. There is no objection to the density on sustainability grounds.
- 7.24 There is opportunity for new and replacement planting on the frontage which would be needed to replace the poplars. The access location has been agreed with the Council and no evidence has been brought that an alternative location would be used for employment development on the site. What is shown on the illustrative Master plan (**Plan APP A**) is superior to most of the existing landscaping in that part of Devizes and would be more than sufficient to mitigate views from the east. The Council's proposal through Miss Rowe (**Document POE2**) would cover the site with employment units (**Plan INQ A**).

Other Matters

- 7.25 The concerns expressed by the Parish Council at the inquiry would be largely satisfied by the terms of the Unilateral Undertaking and S106 Agreement. The footpath that has been requested would be outside the control of the appellant. The concerns expressed by Mr Hunt-Grubbe have been addressed by the evidence presented at the inquiry (given above).
- 7.26 With regard to the written representations in response to the application, there is nothing incompatible between the care home and the County Council depot uses. Appropriate design measures, such as noise mitigation at the care home and the closest dwellings, if necessary, and landscaping, would make the relationship satisfactory. The proposed development based on the illustrative Master plan would not infringe the daylight and sunlight code in respect of its relationship to existing properties in Ferozeshah Road because of the separation distances between proposed and existing dwellings. The layout would have no material effect on the single existing dwelling that has been omitted from the plan (**Document POE8**).

Conclusion

- 7.27 The proposal would provide a real opportunity to turn the derelict appeal site that has been vacant for 10 years into a well landscaped, well designed mixed-use site contributing to the need for market housing and affordable housing, together with the opportunity for up to 100 jobs from class B development and 30-60 jobs for the care home.

8. The Case for Kennet District Council

Introduction

- 8.1 Reasons for refusal 3, 4 and 5 regarding highways, flood risk and wildlife have been addressed. The S106 Unilateral Undertakings and Agreement will ensure that the requirements of the Highway Authority regarding highways and transportation, and the County Council regarding contributions to education, would be met. They will also secure the provision of agreed contributions towards sport and recreation and community and social needs.
- 8.2 With regard to affordable housing, based on the definition in Annex B to PPS3, the requirement given in LP Policy HC30 has been revised to 30% social rented and 20% intermediate to exclude market housing. However, the appellant's revised proposal to provide 40% affordable housing is acceptable, as it fits with the up-to-date needs assessment for Devizes. An appropriate condition to secure this provision has been agreed with the appellant. Therefore, reason for refusal 6 has been addressed.
- 8.3 The outstanding reasons for refusal relate to the loss of an employment site, protected by LP Policy ED7 and SP Policy DP1; and the impact of the scale of the development on the character and appearance of the area, contrary to LP Policy PD1.

Employment

- 8.4 In terms of employment, the appeal site is within the limits of development for Devizes shown on Inset Map 1 (**Document SCG4**), and is identified as a 'Protected Strategic Employment Site' to which LP Policy ED7 applies. The first paragraph of this Policy applies to the site. It protects such sites for class B employment uses and other employment generating uses, such as a class C2 care home in the approach adopted by draft PPS4, subject to strict compliance with LP policies PD1, ED17 and ED25, and the application of a sequential approach.
- 8.5 The second and third paragraphs of LP Policy ED7 do not apply to the appeal site. They refer to 'existing employment sites' and there is no indication that these are identified on the Inset Maps. The Inset Maps show protected strategic employment sites horizontally hatched orange and annotated 'ED7' and the limits of development annotated with policy references that include 'ED7'. There are no sites hatched orange in any of the town centres on the Inset Maps. Reading the Policy as a whole, it is plain that the first paragraph applies to the identified sites, hatched horizontal orange, the third paragraph to existing employment sites, not specifically identified, that fall within the limit of development, and the second paragraph to those in the town centres.
- 8.6 The 2006 Employment Land Supply Statement (**Document INQ16**) does not assist in the interpretation of Policy ED7. The thresholds for 'strategic sites' in the summary under 'Loss of Employment Land' are expressly for monitoring purposes.
- 8.7 The Inspector in the Kverneland appeal decisions (**Appendix 4 to Document POE9**) does not seem to have applied the above interpretation, perhaps because it was not argued. He gave the now outdated paragraph 42a of PPG3 importance which led him to conclude that the applications for mixed

development and housing should be considered favourably. In any event, there is no reason to follow what is obviously a misinterpretation of the Policy. A mixed use proposal on the appeal site such as the appeal scheme, which is plainly house-led, is contrary to Policy ED7.

- 8.8 SP Policy DP1 priorities 1 and 3 are the criteria that together will deliver the drive for balanced communities and self-containment, identified in SP para 3.12 (**Document SCG3**) and elsewhere. The SP seeks, as far as Devizes is concerned, to maximise self-containment (**para 4.43 in Document SCG3**). There remains scope for Devizes to do better for its residents, even though the appellant has argued that, compared to other settlements, it performs well in a ranking of self-containment based on analysis of the 2001 census data. The LP sought to strike the right balance between housing and employment land when it was adopted in April 2004 and the appeal site is identified/protected as a site that is 'strategic' in that balance.
- 8.9 The Employment Land Supply Statement (**Document SCG8A**) identifies that there is adequate land allocated in the District to meet the SP requirement to 2016 (para 2.1); Devizes has been the main focus for new employment development since 1991 (para 2.6); the supply of employment land in Devizes is diminishing (para 2.7); and some employment land has been lost to housing (para 1.5). The Wiltshire Council AMR (**Document SCG6**) identifies that Kennet is exceeding the annualised SP target for the delivery of new dwellings. Together with windfall sites, Devizes has more houses than anticipated in the balance established by the LP. Therefore, the self-containment issue militates against the grant of permission.
- 8.10 The contents and recommendations of the 'Atkins' Report (**Document SCG7B**) have been accepted in a committee resolution 'for the purposes of providing the evidence base for stakeholder consultation and developing the economic content of the Core Strategy'. The report identifies the appeal site as one of the best sites most appropriate to accommodating a class B use employment function (para 5.50), but the most appropriate course may be mixed use with employment as a considerable proportion (para 5.51), in order for the market to bring forward realistic development (para 5.55).
- 8.11 The 'Atkins' Report indicates that, unless a developer can show that viability is a restricting factor, the appeal site should be developed for employment. Also, in the event that mixed use is considered acceptable, it should still retain a significant employment function. It is for the developer to show, with evidence, that employment use is not viable, and what enabling development is necessary to make a development viable ie where the 'tipping point' is. The Council has not resolved to allocate the appeal site for mixed use, or even advance it as a preferred option in the LDD.
- 8.12 The appellant has sought to rely on the 'Atkins' Report to support the proposal but has failed to lead evidence on viability, and the appeal scheme is not employment-led. The appellant accepts that the major component is housing (**para 6.7 of Document POE8**), and only 14% by land on the illustrative Master plan is dedicated to class B uses and 10.6% to the care home element.
- 8.13 The Council's viability evidence from Miss Rowe (**Document POE2**) establishes a positive residual land value for solely employment use of the site. Advice from agents to the landowner gives a freehold value on the market of £2 million

or £3 million (**p9 and p73 of Document POE5**). Also, Miss Rowe explained that if the site is not viable then neither would be Hopton Park, which has been successfully developed.

- 8.14 The appellant has suggested that the appeal site is not attractive to the market, based on its marketing. It was offered to the market from late 1999 to spring 2004 when more attractive opportunities were available, including at Hopton Park. That is no longer the case, and Hopton Park is now substantially complete.
- 8.15 The need for a 'step change' in housing delivery is a material consideration, but should not be afforded such weight so as to outweigh the development plan objections to the appeal proposal. Devizes is not a priority for housing growth in the Secretary of State's proposed changes to the draft RSS (**Documents SCG1 and 2**), and the Housing Land Supply Statement (**Document SCG9C**) shows that SP and draft RSS targets for housing are being met. The AMR shows in paras 4.3.7 to 4.3.12 (**Document SCG6**) that there is no pressing urgency to permit further housing in Kennet.
- 8.16 There is an admitted unmet need for affordable housing and LP Policy HC28 sets a target that is not being met and is substantially below the need identified in the Housing Needs Survey 2005. However, in addition to the Devizes Wharf/Northgate and Devizes Hospital site (**Table on p15 of Document POE1**) the 5 year supply includes 1304 dwellings from outstanding permissions that will include a substantial proportion of affordable housing.
- 8.17 The conclusion on the first reason for refusal is that there is a compelling need to retain the appeal site as a 'Strategic Employment Site' under LP Policy ED7 and there is no evidence that the mix of uses proposed maximises the employment land contribution, nor that the need for housing generally, and affordable housing in particular, is such as to indicate otherwise.

Character and Appearance

- 8.18 In terms of the second reason for refusal, the proposed access points would cut through the mature tree belts on the northern side of the site which would be likely to cause significant root damage with the possibility of inducing 'windthrow'. Within these tree belts are black poplars which only have a limited lifespan and their ultimate removal would open up views into the site. To the east, apart from the County Council highways depot, the land is open. Insufficient space would be left along the eastern boundary to introduce an effective landscape buffer to mitigate the effect of the proposal and soften the edge of development (**Document POE3**).
- 8.19 With regard to the scale of the development, the appeal site is in an area where the SHLAA (**Appendix 8 to Document POE9**) indicates that 40dph is an appropriate density. It is on the edge of the limits of development, in an area properly regarded as a transition between the urban area and the open countryside, near to an AONB.
- 8.20 The Design and Access Statement (**Document APP2**) advanced the view that an overall density of 40dph is appropriate, but it has been agreed that the Master plan illustrates a density of 46dph (**Document SCG0**). Allowing for suitable boundary treatment, the 172 dwellings would be at a density of 48dph. Based on this, and analysing the character of the transition suburban area close

to an AONB, the amount of development proposed would be inappropriate for the location. The appellant has therefore failed to demonstrate on the illustrated details that the proposed development could be accommodated on the site without harming the character and appearance of the wider area.

Conclusion

- 8.21 In conclusion, the proper resolution of the first and second reasons for refusal should lead to dismissal of the appeal based on the development plan. There are no other material considerations of sufficient weight to overcome this obstacle.

9. Other Representations

Mr Clark for Bishops Cannings Parish Council

- 9.1 The community impact would be dealt with satisfactorily by the S106 Agreement. In terms of open space, a contribution should be provided towards a project for a formal sports pitch to address the changing demographics of the Parish. Also, a footpath and cycleway link is required to the canal towpath from the residential development adjacent to the appeal site, which would provide an amenity to that estate and could be extended back to the appeal site.

Written Representations

- 9.2 **Mr Hunt-Grubbe** of Eastwell Manor, Devizes (***Document INQ13***) objects on the grounds that Devizes has already expanded over 30% in only fifteen years and can take no more without seriously changing its historic character. A requirement should be included in any permission to purchase and bring the Assize Courts into full repair and community use. Also, more houses cannot be justified on traffic grounds, as a survey by Mouchel Parkman predicted dire traffic conditions in the town by 2016 and total gridlock by 2026 if planned development were to go ahead.
- 9.3 **Wiltshire County Council** objected to the planning application in terms of the relationship between the proposed care home and its highways depot. The effect of noise from the depot on the occupants of the care home could restrict the operations at that depot.
- 9.4 **Jo Minnaar** of 31 Ferozeshah Road objected to the planning application on the grounds that it showed an incorrect layout of houses in Ferozeshah Road, and there would be loss of daylight and privacy to their property, resulting in a loss of value.

10. Conditions and Obligations

- 10.1 Should the Secretary of State be minded to grant permission, it should be noted that the Unilateral Undertakings (***Documents INQ7 and INQ18***) and S106 Agreement (***Document INQ11***) should take effect. Also, I consider that the conditions set out in Appendix E of this report be imposed. They are based on the conditions suggested by the Council should the appeal be allowed (***Documents INQ1 and INQ15***) which were discussed at the inquiry.
- 10.2 Conditions regarding reserved matters approval and the standard timescales have been included. Conditions to secure the provision of a minimum level of employment space and a maximum level of housing; and a programme for

phasing, including any on-site road works, are necessary to secure a mixed development in the interests of maintaining balanced communities and self-containment in Devizes. Restrictions on the phasing programme suggested by the Council are not reasonable as they could harm the economic viability of the development.

- 10.3 Conditions regarding landscaping, the retention of trees and landscape management are necessary in the interests of visual amenity. Conditions regarding boundary treatment and floor slab levels are necessary to safeguard visual and residential amenity. A condition to secure renewable energy is in the interests of climate change, and to accord with the Council's Interim Policy **(Document INQ17)**.
- 10.4 A condition regarding drainage is to prevent an increase in the risk of flooding and address the 4th reason for refusal. A condition requiring a water efficiency scheme is in the interests of sustainability. A condition requiring a Construction Environmental Management Plan, including measures to address the storage of oil and chemicals, is necessary to prevent pollution of the water environment.
- 10.5 A condition to secure measures for the conservation of bats and barn owls is necessary to safeguard protected wildlife species and ensure that the 5th reason for refusal is addressed. A condition to secure the access arrangements, including the closure of the existing access, and highway improvements are in the interests of highway safety and to address the 3rd reason for refusal. A condition regarding the provision of access, turning and parking areas is necessary for highway safety and residential amenity reasons. A condition to secure a Green Travel Plan is necessary to reduce vehicular traffic and promote sustainability.
- 10.6 A condition to secure an affordable housing contribution is necessary to ensure that the housing provision would be acceptable and the proposal would accord with LP Policy HC30 **(Document INQ15)**.
- 10.7 At the inquiry, the Council accepted that its suggested condition regarding materials is unnecessary, as that matter would be dealt with under appearance as a reserved matter. A condition restricting the height of the development is unnecessary, as the scale parameters of the buildings are given on the application plan **(Plan APP B)** and scale is a reserved matter. A condition to secure the provision of play space is not necessary, as that would be covered by the Unilateral Undertaking and S106 Agreement.

11. Conclusions

The numbers in square brackets refer back to earlier paragraph numbers which are relevant to my conclusions.

Main Considerations

- 11.1 The Council has confirmed that it no longer wishes to pursue its 3rd reason for refusal, as agreement has been reached between the appellant and the County Council regarding the impact of traffic generated by the proposed development on the road network within and around Devizes. Based on the evidence provided, the S106 Agreement and an appropriate condition would secure the necessary highway infrastructure to ensure that the 3rd reason for refusal would be adequately addressed. **[1.7, 6.1, 6.2, 7.2, 8.1, 10.5]**
- 11.2 The Environment Agency in its letter, dated 2 June 2008, did not object to the proposal, subject to suggested planning conditions. However, the Council's Drainage Department objected on the grounds of downstream flooding and the vulnerability of the canal syphon, causing an increased risk of flooding. This has been resolved by a condition. I am satisfied that the imposition of this condition would ensure that the 4th reason for refusal would be addressed. **[7.2, 8.1, 10.4]**
- 11.3 The Council confirmed at the inquiry that the appellant's Ecology Survey Update would address its concerns in its 5th reason for refusal. I have been given no reason to doubt that sufficient information has been provided regarding the impact of the proposal on wildlife to ensure that this matter could be dealt with by an appropriate planning condition. **[1.5, 7.2, 8.1, 10.5]**
- 11.4 With regard to the 6th reason for refusal, at the inquiry the Council accepted that the 40% social rented affordable housing proposed by the appellant would satisfy its requirements. I am satisfied that such a provision would be justified in order to meet the need for affordable housing in the area, and that the percentage would accord with the requirements under LP Policy HC30. This provision can be secured by an appropriate condition. **[5.2, 7.2, 8.2, 10.6]**
- 11.5 In terms of the open space/recreation areas, education facilities, community facilities and highway improvements, the contributions were agreed by the appellant, Council and County Council prior to the inquiry. A Unilateral Undertaking and a S106 Agreement have been submitted to secure them. The education contribution has been adjusted by a second Unilateral Undertaking which has been submitted following the close of the inquiry, based on the formula set out by Wiltshire County Council in its Statement of Case, dated February 2009. Therefore, the Unilateral Undertakings and S106 Agreement would address the 6th reason for refusal and would ensure compliance with SP Policy DP2 and LP policies HC34, HC37, HC42 and AT10. **[1.6, 1.7, 6.3, 7.2, 8.1, 10.1]**
- 11.6 Based on the above, the remaining main considerations in this appeal are:
- i) *The effect of the proposal on local employment needs, having regard to LP Policy ED7 and the objectives of creating balanced communities and self-containment within settlements.*
 - ii) *The effect of the proposal on the character and appearance of the surrounding area.*

Employment

- 11.7 The appeal site is a long established employment site, but has been vacant since 1999. It has therefore not been making a contribution to the local economy since then. It was first designated as a 'Protected Strategic Employment Site' in the latest LP, adopted in April 2004, and at the time of the public LP inquiry, the Inspector took the view that it has significant value, in planning terms, in its existing use, and is large enough to be regarded as 'strategic'. **[2.1, 4.2]**
- 11.8 LP Policy ED7 is entitled 'Protected Strategic Employment Sites' and the appeal site is hatched as such a site on the Inset Map. The Policy also appears to cover sites that are not hatched on the Inset Maps, as ED7 is shown on the Maps against the boundary for the limits of development. These include 'existing employment sites' within the town centres and service centres, which are dealt with in the second paragraph of the Policy, and 'existing employment sites' elsewhere within the limits of development, which are dealt with in the third paragraph of the Policy. **[3.2, 7.3, 8.5]**
- 11.9 I am satisfied that only the first paragraph of Policy ED7 applies to the appeal site, as if the larger sites shown hatched were included within the third paragraph the criteria in the first paragraph would be undermined, and such sites would not be offered the protection from other forms of development intended by the Policy. This reflects the aims of the Policy, given in para 3.17 of the LP, and the views of the Inspector in his report on the public LP Inquiry. Although the Inspector in the Kverneland appeals took a different view with regard to the interpretation of Policy ED7 when permitting non-class B development on a similarly designated employment site in Devizes, the decision letter indicates that the arguments regarding the interpretation were not considered by that Inspector. **[4.2, 7.3, 8.4, 8.6, 8.7]**
- 11.10 The care home would be an acceptable non-class B employment generating use on the site and would provide between 30 and 60 jobs. The Council has accepted this, and that its inclusion on the site would comply with LP Policy ED7. The proposed housing would fail to comply with that Policy, as the first paragraph that refers to sites that contribute to the strategic supply of employment land within the District, identified on the Inset Maps, does not include non-employment uses. **[7.27, 8.4, 8.7]**
- 11.11 I have considered below the other material considerations that have been put forward by the appellant. Although these include an examination of the criteria in the third paragraph of LP Policy ED7, the effect that the proposal would have on the LP objectives of creating balanced communities and self-containment within settlements are also matters covered by SP Policy DP1. **[3.2, 7.4]**
- 11.12 In relation to SP Policy DP1, Devizes appears to perform well compared to other settlements with regard to self-containment, as evidenced by the 'Tym' analysis of the 2001 census data. The Council has not provided any more up-to-date analysis to counter these findings. Whilst it is not possible to predict with any certainty what the effect of the proposal would be on the level of self-containment within Devizes, the evidence suggests to me that it would be more beneficial than if the site were retained for employment use only. **[3.2, 7.5, 7.6, 7.7, 8.8]**

- 11.13 The LP is getting towards the end of its plan period. Government guidance in the form of PPS3 was published in 2006 and post dates the LP. In paragraph 44 it suggests a range of incentives or interventions to help ensure that previously developed land is developed in line with the trajectories, which include considering whether sites that are currently allocated for industrial or commercial use could be more appropriately re-allocated for housing development. A review of employment sites has been undertaken for the Council by Atkins, in its Economic Study, and the Council has resolved to use its contents and recommendations to develop the economic content of the Core Strategy. The Core Strategy is not scheduled to be adopted until August 2011. By that time, the appeal site could have been vacant for over 12 years. **[7.15, 8.10]**
- 11.14 The Employment Land Supply Statement 2007 identifies that there is adequate land allocated in the District to meet the SP requirement to 2016. The appellant has identified a number of available allocated sites within Devizes that would be capable of providing about 8 ha of employment land, which include about 2 ha remaining on the nearby Hopton Park. Whilst the appeal site is identified in the 'Atkins' report as one of the 'best' sites to accommodate a class B use employment function to meet future requirements to and beyond 2016, the report also indicates that the appropriate course for developing it may be through a mixture of uses of which employment is a considerable proportion. It suggests that a proportion of residential could be included to make development more viable. **[7.9, 7.10, 7.11, 7.12, 8.9, 8.10, 8.11]**
- 11.15 No percentage is given in the 'Atkins' Report as to what proportion of residential development would be acceptable on the site. Also, the Council has not provided any up-to date evidence to show that there would be a shortage of employment land in Devizes should the appeal site not be available fully for employment use.
- 11.16 The site has been extensively marketed for employment use over a 6 year period, which has been unsuccessful in finding a suitable developer. I have been given no reason to believe that future marketing for such a use, even with the completion of the nearby Hopton Park development, would be any more successful. The existing buildings are out-of-date and derelict and would be unattractive for re-use. Also, they do not make the best use of the whole area of the site. Therefore, replacement buildings would be likely to be required before the site could make a significant contribution towards employment. **[7.1, 7.13]**
- 11.17 Although the 'Atkins' Report retains the appeal site as a 'Strategic Employment Site' in its proposals, the current area of coverage of the site by built development is relatively low. Its location adjacent to residential development and the open countryside would restrict the scale and type of employment development that would be acceptable on it, in terms of the effect on visual and residential amenity. Also, it is separated from other employment sites and is not accessed directly off a main road, as is the case with some of the other identified strategic employment sites. As such, its attractiveness and economic value as a class B employment site would be reduced. **[7.1, 7.16, 8.10]**
- 11.18 The Council's evidence that sought to demonstrate the economic viability of class B employment use on the site is in my view unreliable, and the appellant has shown that a negative residual value appears to be a more accurate

reflection of the Council's appraisals. Therefore, based on the evidence provided, I am satisfied that the appellant has demonstrated that use of the site for class B employment only would be unattractive. As such, the site would be unlikely to make a contribution to employment in Devizes in the foreseeable future. **[7.13, 7.14, 7.16, 8.13, 8.14]**

11.19 With regard to the use of the site for mixed development, the draft PPS4 supports such uses, but as that document is at consultation stage I have given it limited weight. The Council has not contested the appellant's estimated level of 100 class B jobs that could be provided by the proposed development. Whilst only about 14% of the site area would be used for such development, this number of jobs would make a significant contribution to the local economy. Furthermore, the proposal would be able to cater for smaller scale office development, which the appellant has shown to be in greater demand. **[7.12, 7.15, 8.12]**

11.20 In terms of housing, PPS3 was designed to give a step change in delivery. Whilst the Council has demonstrated a 5 year supply against SP and draft RSS requirements, they should not be a ceiling. Furthermore, the Council has identified very few sites that could deliver housing to meet the requirements in the following 6 to 10 and 11 to 15 year periods. **[6.4, 7.18, 7.19, 8.15]**

11.21 PPS3 calls for local planning authorities to carry out SHLAAs in order to provide comprehensive assessments of all sites available for housing and the information should also identify a 10 year supply of housing land (para 55). The SHLAA for the Districts of Kennet, North Wiltshire and West Wiltshire, published in March 2008, identifies a large potential supply of 55 sites in Priority 1, which have minimal constraints and are deliverable within the first 5 year period. The appeal site has been identified as a Priority 1 site, with a capacity for 49 dwellings, and is one of the 25% of those sites on previously developed land. **[7.17]**

11.22 The appeal proposal would provide additional housing on previously developed land which would balance its employment provision. Also, the affordable housing element represents a strong argument in its favour. The Council has accepted that there is a need for affordable housing in the District, including in Devizes. This need would not be met by existing allocations, even if they were to provide 40% affordable housing in each case, as would the appeal proposal. The proposal would result in up to 69 social rented affordable dwellings, secured by condition, which would go some way towards meeting the annual requirement of 110 affordable dwellings in Devizes. Furthermore, their take-up would be more likely to be from those working in Devizes, as they would be for people within the District. This should assist in restricting the amount of in-commuting. **[7.20, 8.16]**

11.23 In conclusion on this issue, on balance the harm that the proposal would cause, due to the resulting loss of employment land and conflict with LP Policy ED7, is outweighed by the benefits that it would provide to the objectives of creating balanced communities and self-containment within settlements. This would be achieved by the resulting increased likelihood that the site would be developed for some employment use, and the contribution that the development would make in meeting the long term housing requirements in the area and the need for affordable housing.

Character and Appearance

11.24 The appeal site is located on the edge of the built development within Devizes. It is particularly visible from the east along Horton Road and a public footpath between Horton Road and the canal. The surrounding area is characterised by open countryside to the east and south of the site, woodland, in the form of Lay Wood, to the south east, and residential development to the west. On the opposite side of Horton Road is an area of vacant land that separates it from the A361 and Hopton Park and Hopton Industrial Estate beyond that to the north. **[2.1, 2.2]**

11.25 The views into the site from the AONB are too distant to be significantly harmed by the proposed development on the site, particularly as those views also include the development at Hopton Park and Hopton Industrial Estate, together with other development near to the appeal site. At the inquiry the Council accepted that the more important views are those closer to the site from the east. **[1.2, 2.3]**

11.26 The appeal site is partly separated from the open fields to the east by the highways depot, which includes large utilitarian storage buildings. At the site visit I observed that these buildings are clearly visible from the east, as are the large warehouse buildings on the appeal site that are set behind them. They give the development boundary a hard edge. The existing trees on the site are insufficient along that boundary to result in any significant softening of its appearance. **[8.18]**

11.27 At the inquiry, the Council accepted that the 'Negotiating' Illustrative Master plan provided by the appellant to address the Council's concerns demonstrated that the proposed buildings could be sited to ensure that their effect on views from the east would be mitigated. I am satisfied that the layout shown on this plan would enable a satisfactory landscaping band to be provided to supplement the existing landscaping along that boundary and ensure that the edge of development would be softened. Also, the care home would be sited near to the adjacent woodland and its proposed 3 storey height would therefore be set against a green backdrop, which would adequately mitigate its impact on the views from the adjacent countryside. **[7.21, 7.22, 8.19, 8.20]**

11.28 With regard to the frontage of the development along Horton Road, a wide band of landscaping would be retained, that would include most of the existing poplars. Whilst 2 would be removed for the proposed access and another one would be removed for the emergency access, I have been given insufficient evidence to show that this would cause any harm due to 'windthrow'. Also, the other trees that would be lost due to the accesses are of insufficient size to cause any significant harm, particularly as the proposal could supplement the planting along that landscape buffer. As such, any future loss of the poplar trees would be mitigated by new planting, as a reserved matter. **[7.24, 8.18]**

11.29 Turning to the density of the development, the appellant accepted at the inquiry that it would be at a net density of 46dph. The 'Negotiating' Illustrative Master plan indicates that this would allow sufficient land to provide landscaping along the east boundary to adequately mitigate the effects of the development. The Council has been unable to point to any harm that the density proposed would cause to the character and appearance of the area that could not be overcome by the layout shown on this plan. **[7.23, 8.19, 8.20]**

- 11.30 The original Illustrative Master plan shows that the 172 dwellings could be accommodated on the site to include garden space and recreation areas, as well as meet the standards for residential amenity. Whilst the density would be higher than those of the adjacent residential developments, which are given as 22dph and 35dph, the SHLAA recommends that densities of 40dph should be achieved. The proposal would assist in meeting this average density, and make efficient use of a previously developed site. **[7.23, 8.20]**
- 11.31 I conclude on this issue that the proposal would not have an adverse effect on the character and appearance of the surrounding area. Also, it would accord with LP Policy PD1 in this respect.

Other Matters

- 11.32 With regard to the Parish Council's request for contributions towards local infrastructure, they have not been supported by sufficient evidence to substantiate them in terms of Circular 05/2005: *Planning Obligations*. In terms of the amenity concerns, the layout shown on the Illustrative Master plan demonstrates that the care home and dwellings would be sufficient distances from the County Council highways depot and existing dwellings to ensure that the living conditions of residents in both the existing and proposed accommodation would be acceptable. With respect to traffic, the County Council is satisfied that the recent traffic modelling carried out on behalf of the appellant demonstrates that the proposal would not have a significant effect. **[6.1, 7.25, 7.26, 9.2, 9.3, 9.4]**

Overall Conclusions

- 11.33 I have found that the proposal would fail to accord with LP Policy ED7. However, the LP is near to the end of its plan period and, since its adoption, the appeal site has been vacant and other policies, guidance and reports have been published. These indicate that the reasons for protecting the whole of the appeal site for employment use, as required by that Policy, are no longer sustainable.
- 11.34 The appeal proposal would not only provide employment on the site but would also contribute to meeting the housing targets and the need for affordable housing. The illustrative plans show that the proposed development would not cause any material harm to the character and appearance of the surrounding area. Therefore, I consider that the benefits of the proposal outweigh any harm that it might cause to local employment needs. Also, it would accord with SP Policy DP1 and LP Policy PD1.
- 11.35 For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

12. Recommendation

- 12.1 I recommend that the appeal be allowed, and planning permission granted subject to the conditions set out in Appendix E.

M J Whitehead

INSPECTOR

Appendix A

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hugh Richards	Of Counsel, instructed by Head of Legal Services, Kennet District Council
He called	
Mr Edgar White MA	Head of Forward Planning and Transportation, Kennet District Council
DipTP(Dist) MRTPI	
Miss Jenny Rowe MSc	Senior Surveyor, Dreweatt Neate, Park House, 1 Park Road, Trowbridge BA14 8AQ
MRICS	
Mr Will Harley	Landscape and Countryside Officer, Kennet District Council
BSc(Hons) CMLI	
Mr Andrew Guest	Northern Area Team Leader, Kennet District Council
BA(Hons) DipTP MRTPI	

FOR THE APPELLANT:

Mr Stephen Morgan	Of Counsel, instructed by Graham Warren, Graham Warren Ltd
He called	
Mr Simon Ward BSc	Head of Research, Vail Williams LLP, Mendians House, Ocean Village, Southampton SO14 3TJ
MRICS	
Ms Frances Russell MLI	Associate Environmental Planning, RPS PLC, Suites 55 and 58 Cherry Orchard East, Kembrey Park, Swindon SN2 8UQ
Mr Graham Warren MA	Graham Warren Ltd, Batts Farmhouse, Hinton Parva, Nr Swindon, Wiltshire SN4 0DW
FRICS MRTPI	

INTERESTED PERSONS:

Mr Eric Clark	Bishops Cannings Parish Council, 3 The Island, Horton, Nr Devizes SN10 3LY
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Appendix B

DOCUMENTS

APPLICATION DOCUMENTS

APP1	Planning Statement
APP2	Design and Access Statement
APP3	Landscape and Visual Impact Assessment
APP4	Tree Survey and Arboricultural Assessment
APP5	Transport Assessment
APP6	Flood Risk Assessment
APP7	Phase 1 Habitat and Scoping Survey
APP8	Reptile Survey
APP9	Bat Survey
APP10	Follow up Bat Survey

STATEMENTS OF COMMON GROUND DOCUMENTS

SCG0	Statement of Common Ground
SCG1	Extracts from Draft Revised RSS for the South West incorporating the Secretary of State's proposed changes- for public consultation, July 2008
SCG2	Extracts from Draft Revised RSS for the South West incorporating the Secretary of State's proposed changes- for public consultation, July 2008
SCG3	Wiltshire and Swindon Structure Plan 2016
SCG4	Kennet Local Plan 2011
SCG5	Wiltshire Local Development Scheme January 2009
SCG6	Wiltshire Council Annual Monitoring Report 2007/08
SCG7A	Economic Study of Kennet District August 2006 Executive Summary by Atkins
SCG7B	Economic Study of Kennet District August 2006 Final Report by Atkins
SCG7C	Economic Study of Kennet District August 2006 Technical Appendices by Atkins
SCG8A	Kennet District Council LDF Monitoring Reports: Employment Land Supply Statements April 2007
SCG8B	Kennet District Council LDF Monitoring Reports: Employment Land Supply Statement Technical Appendices April 2007
SCG9A	Kennet District Council LDF Monitoring Reports: Housing Land Supply Statements April 2007
SCG9B	Kennet District Council LDF Monitoring Reports: Housing Land Supply Statement Technical Appendices April 2007
SCG9C	Kennet District Council LDF Monitoring Reports: Housing Land Supply Statements April 2008
SCG9D	Kennet District Council LDF Monitoring Reports: Housing Land Supply Statement Technical Appendices April 2008
SCG10	Kennet Local Plan Supplementary Planning Guidance: Devizes Strategic Development Brief March 2004
SCG11	Kennet Local Plan Supplementary Planning Guidance: Community Benefits from Planning March 2005
SCG 12	Kennet Landscape Conservation Strategy May 2005: Appendix Two Landscape Character Assessment
SCG13	Statement of Common Ground on Highways Matters

PROOFS OF EVIDENCE

POE1	Proof and Appendix 1 to Proof of Mr Edgar White
POE2	Proof and Appendices 1 and 2 to Proof of Miss Jenny Rowe
POE3	Proof of Mr Will Harley
POE4	Proof and Appendices 1 to 7 to Proof of Mr Andrew Guest
POE5	Proof and Appendix 1 to Proof of Mr Simon Ward
POE6	Addendum to Appendix 1 to Proof of Mr Simon Ward
POE7	Proof and Appendices 1 to 4 to Proof of Ms Frances Russell
POE8	Proof of Mr Graham Warren
POE9	Appendices 1 to 9 to Proof of Mr Graham Warren

DOCUMENTS SUBMITTED FOLLOWING THE OPENING OF THE INQUIRY

INQ1	Suggested conditions, submitted by the Council on 24 March
INQ2	Signed Statement of Common Ground on Highways Matters, submitted by the appellant on 24 March
INQ3	Ecology Survey Update, 2008, submitted by the appellant on 24 March
INQ4	Mr Ward's reply to Miss Rowe's Proof of Evidence, submitted by the appellant on 24 March
INQ5	Draft copy of S106 Agreement, submitted by the appellant on 24 March
INQ6	Extract from the Inspector's Report into the Replacement Kennet District Local Plan, 9 April 2003, submitted by the Council on 24 March
INQ7	Signed copy of Unilateral Undertaking, submitted by the appellant on 25 March
INQ8	Extract from the Secretary of State's report on proposed changes to the RSS for the South West, submitted by the Council on 25 March
INQ9	Extract from Kennet District Council Housing Needs Survey, 2005, submitted by the Council on 25 March
INQ10	Appendix 5: Strategic Employment Sites in Devizes of Kennet District Council Monitoring Report- Employment Land Supply Statement, April 2006, submitted by the appellant on 25 March
INQ11	Copy of engrossed S106 Agreement, submitted by the appellant on 25 March
INQ12	Copy of letter from the Government Office for the South West, dated 24 March 2009, regarding the issue of final RSS, submitted by the Council on 26 March
INQ13	Letter, dated 26 March 2009, from Robert Hunt-Grubbe, Eastwell Manor, Potterne, Devizes SN10 5QG, received on 26 March
INQ14	Extracts from Kennet District Council Monitoring Report- Employment Land Supply Statement, April 2006, submitted by the Council on 26 March
INQ15	Suggested Condition regarding Affordable Housing Provision, submitted by the Council on 26 March
INQ16	Kennet District Council Monitoring Report- Employment Land Supply Statement, April 2006, submitted by the Council on 26 March
INQ17	Copy of e-mail and Kennet District Council Committee Report regarding Sustainable Development: Interim Policy for Adoption, submitted by the Council on 26 March
INQ18	Letter from Graham Warren Ltd, dated 7 April 2009, and attached copy of letter from Wiltshire Council and Unilateral Undertaking, received from the appellant on 9 April

Appendix C

PLANS

APPLICATION PLANS

- APP A Illustrative Master plan No VE.05.03 D, dated March 2007
- APP B Scale Parameters plan No VE:05:05, dated 17 April 2008

PLANS SUBMITTED AT THE INQUIRY

- INQ A Plan No 601-01, Testing Layout (B1, B2 & B8 Land Uses), dated 20 March 2009, submitted by the appellant on 24 March
- INQ B 'Negotiating' Illustrative Master plan No VE.05.03 E, dated March 2009, submitted by the appellant on 25 March
- INQ C Proposals Map for Local Plan 2001, submitted by the Council on 25 March

Appendix D

ABBREVIATIONS

m	metres
km	Kilometres
sq m	Square metres
dph	Dwellings per hectare
ha	Hectares
AMR	Annual Monitoring Report
AONB	Area of Outstanding Natural Beauty
Class B/C2	B/C2 classes of the Schedule to the Town and Country Planning (Uses Classes) Order 1987 (as amended)
Draft PPS4	Consultation Paper on a new Planning Policy Statement 4: <i>Planning for Sustainable Economic Development</i>
LDD	Local Development Document
LDF	Local Development Framework
LP	Local Plan
PPG3	Planning Policy Guidance Note 3: <i>Housing</i>
PPS1	Planning Policy Statement 1: <i>Delivering Sustainable Development</i>
PPS3	Planning Policy Statement 3: <i>Housing</i>
RSS	Regional Spatial Strategy
S106	Section 106 of the Town and Country Planning Act 1990 (as amended)
SHLAA	Strategic Housing Land Availability Assessment
SNCI	Site of Nature Conservation Interest
SP	Structure Plan

Appendix E

CONDITIONS

- 1 Details of the appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2 Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3 The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4 The details of the layout of the development hereby permitted shall include at least 875 sq m of light industrial floor space, at least 1,330 sq m of office floor space, a care home of at least 2,000 sq m, and no more than 172 dwellings.
- 5 No development shall take place until a programme for the phasing of the development has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved programme.
- 6 All soft landscaping comprised in the approved details of landscaping for any particular phase of the development as referred to in the programme for the phasing of development shall be carried out in the first planting and seeding seasons following the occupation of the first building in that particular phase of the development or the completion of that phase of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation. All hard landscaping in any particular phase of the development shall also be carried out in accordance with the approved details prior to the occupation of any part of that phase of the development or the completion of that phase of the development, whichever is the sooner.
- 7 In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 3 years from the first occupation of the building or completion of the development, whichever is earlier.
 - i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 5837(2005) 'Trees in Relation to Construction'.
 - ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
 - iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes

of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written approval of the local planning authority.

- 8 A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all boundary landscape treatment shall be submitted to and approved in writing by the local planning authority prior to the occupation of any phase of the development. The landscape management plan shall be implemented as approved and shall take immediate effect after the first occupation of any building forming part of any phase of the development.
- 9 No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected for all phases of the development (as referred to in the programme for the phasing for the development). The approved boundary treatments for each phase of the development shall be completed in accordance with the plan prior to the first occupation of the first building in that phase.
- 10 No development shall take place until full details of how on-site renewable energy will be provided for the development to reduce CO₂ emissions from energy use by owners/occupiers of the buildings by 10% have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11 The drainage arrangements for the development hereby permitted shall be as specified in the PFA Consulting Flood Risk Assessment, dated April 2007, subject to the 2 road gullies at the entrance to the site being disconnected from the Hopgood Close drainage system.
- 12 No development shall take place until a scheme for water efficiency has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 13 No development shall take place until a Construction Environmental Management Plan incorporating pollution prevention measures has been submitted to and approved in writing by the local planning authority. These measures shall include for all oil and chemical facilities required during construction phases to be sited in bunded areas for the duration of the construction. The capacity of the bunds shall be at least 10% greater than the capacity of the largest storage tank within the bunded area and hydraulically inter-linked tanks shall be regarded as a single tank. There shall be no working connections outside the bunded areas. The plan shall be implemented as approved.
- 14 No development, including clearance/demolition work shall take place until there has been submitted to and approved in writing by the local planning authority a mitigation strategy for the conservation of bats and barn owls, in accordance with the recommendations of the RPS 'Ecology Survey Update 2008', issued 10 October 2008. Development shall be carried out in accordance with the approved strategy.

- 15 No development shall be take place until the ground floor slab levels for all buildings on the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved levels.
- 16 No part of the development shall be occupied until the existing access to the site from Horton Road is closed, and the kerblines, the footway/cycleway and highway improvements on Horton Road, and the main vehicular access to the site from Horton Road are completed in accordance with Drawing No L121/47 Rev A or L121/48 Rev A and the emergency vehicular access and pedestrian access are completed in accordance with Drawing No VE:05:03:D.
- 17 No building hereby permitted shall be occupied until the access, turning area and parking spaces serving that building have been provided in accordance with details that shall first be submitted to and approved in writing by the local planning authority. The access, turning area and parking spaces shall be retained for those purposes thereafter.
- 18 No building hereby permitted shall be occupied until a Green Travel Plan has been submitted to and approved in writing by the local planning authority. The Green Travel Plan shall include details of implementation and monitoring and shall be implemented in accordance with the approved details. The results of the implementation and monitoring and any changes to the plan arising from those results shall be made available to the local planning authority when requested in writing by the local planning authority.
- 19 The development shall not take place until a scheme for the provision of affordable housing as part of the development to comprise solely social rented housing has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of PPS3 or any future guidance that replaces it. The scheme shall include:
 - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of the total number of housing units;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider;
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.