

**APPLICATION NO:** 12/2440N

**LOCATION:** Queens Drive, Nantwich

**PROPOSAL:** Outline Application – Proposed Residential Development

**UPDATE:** 3<sup>rd</sup> December 2012

### **DEVELOPERS REPRESENTATIONS**

A letter has been received from the developer making the following additional representations:

- The Rope Lane appeal decision is now a materials consideration.
- Also draw attention to the Secretary of State Appeal Decision - Ridgeway Farm, Swindon approving 700 dwellings
- On prematurity, the Decision Letter<sup>3</sup> states:
  - *The Secretary of State agrees with the Inspector's reasoning and*

*conclusions on prematurity, as set out in IR356-359, IR400 and IR404.*

*Like the Inspector, the Secretary of State has taken into account the level of local concern regarding the proposed development (IR359). However, he agrees that the weight to be given to objections on prematurity grounds is not so great as to indicate that this, alone, should result in a refusal of planning permission.*

- The Inspector<sup>4</sup> cites NPPF §49 when concluding that policies for the supply of housing cannot be considered up to date where a five year land supply cannot be demonstrated. This of course is the same approach taken by the Inspector in the Shavington Decision.
- Finally, it should be noted the Swindon decision was made against considerable local opposition. By contrast, as reported in the Committee report, the Council have received 2 written objections to the Nantwich proposal.

The letter goes on to comment on each reason for refusal as follows:

### **Reason 1**

It is noted that the proposed Reason 1 cites "*capacity problems*". This is well below the threshold set within NPPF paragraph 33 which clearly states:

*Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*

In the absence of demonstrable evidence of severe residual cumulative impacts, it is unclear on what basis the Council will defend a conclusion that "capacity problems" outweigh (the common ground that there is) a clear presumption in favour.

Further, this reason for refusal does not even appear to be supported by the Highways Authority, who state in their Update Report6:

*The junction at the signal junction High Street / Waterlode / Welsh Row has capacity issues and a number of different models have been tested to improve the situation but although the capacity issue can reasonably be mitigated there is safety concern with the operation of the junction in respect pedestrians crossing the junction.*

Given that the Council accept the capacity issue can reasonably be mitigated, the Council is unable to demonstrate that the residual cumulative impacts of development are severe and this proposed reason for refusal should be withdrawn.

## **Reason 2**

This reason alleges:

*...the proposal will cause danger to highway safety associated with the operation of the High Street / Waterlode / Welsh Row signal junction, particularly in respect pedestrians crossing the junction. Danger to Highways Safety*

It is noted that neither the Highways comments or the Officer Appraisal on highways matters in the Committee Report sets out any detail what the general "danger to highway safety" at this junction is.

Given this lack of evidence, it is difficult to understand how it can be concluded this outweighs the presumption in favour.

### *Safety Concern with Pedestrian Crossing*

Further, the Committee Report (as quoted above7) simply states:

*...there is safety concern with the operation of the junction in respect pedestrians crossing the junction.*

There is no further detail of what this 'safety concern' is, nor evidence that there is no possibility of mitigation through the imposition of conditions or s106 obligation.

Pedestrian facilities are provided on all 4 arms of the junction, with the crossing marked on the road and tactile paving provided on the pavements. Refuges are also provided on the Waterlode crossings.

Video of the traffic surveys indicated that the 'all-red pedestrian' stage (when all traffic is stopped) occurred less than 10 times in each of the peak hours. More significantly, the video showed that the majority of pedestrians felt safe enough to cross either without activating the crossing at all, or (having pressed the crossing button) felt safe enough to cross before the all-red pedestrian stage occurred.

The submitted TA analyses 5 years of personal injury accident data. These show no records of accidents involving pedestrians at this crossing. The applicants, have only been made aware of is an alleged safety 'concern'. Yet the proposed reason for refusal suggests this un-evidenced concern is sufficient to outweigh the presumption in favour. It is not considered that this reason is defensible at an inquiry

### **Reason 3**

This reason for refusal essentially alleges the site is unsustainable due to poor accessibility. It is noted that when this matter was first due to be determined at Committee in September, despite considering at length the sustainability of the site, Officers did not recommend refusal on the grounds of poor accessibility. Without wishing to be facetious, neither the location of the site nor the amenities have changed since the matter was first reported to Committee. Yet the conclusion of this section has. By way of comparison:

- Both Committee Reports undertake the same analysis, assessing the sites accessibility against the NWDA toolkit.
- Both conclude that the proposal meets the minimum standards of accessibility to all but five facilities, and that for these five, all are *“still within a reasonable distance of those specified and are therefore accessible to the proposed development.”*
- The September Committee Report fairly concluded:
  - *In summary, whilst the site does not comply with all of the standards advised by the NWDA toolkit, as stated previously, these are just guidelines and are not part of the development plan. Owing to its position on the edge of Nantwich, there are some amenities that are not within the ideal standards set within the toolkit and will not be as close to the development as existing dwellings which are more centrally positioned. Indeed this is not untypical for suburban dwellings. However, all of the services and amenities listed are accommodated within Nantwich and are accessible to the proposed development on foot, by bus or bike and therefore **it is considered that this small scale site is sustainable.***
- Whilst the latest Committee Report repeats most of this, it omits the final sentence, instead noting:
  - *However, the Strategic Highways Manager has commented that the accessibility of the site is considered poor in that it considered that most workday trips will be car based and there should be improvements made*

*to improve sustainability of the site. It is possible to improve the non-car*

*mode accessibility and discussions have been undertaken to improve public transport access, although no improvements have been agreed to date.*

There is no explanation as to why the previous conclusion that the site was sustainable (reached after following the measured analytical approach favoured by CEC) has been superseded by a comment made by a statutory consultee.

Further, in discussions with Janet Mills (CEC Transport Policy Officer) between 27th September 2012 and 12th October 2012, Gladman offered to double the frequency of the No. 53 bus to make it a half hourly service. The outcome was that the current No. 53 service was poorly used and that a new housing scheme would need to be far larger to attract the numbers to make a bus viable. The proposal was therefore not pursued.

It is therefore almost certain that the 'harm' alleged in the reason for refusal (that *"most workday trips will be car based"*) will occur wherever development is located in the town. To overcome this proposed reason for refusal would require most workday journeys *not* to be car based, requiring a modal shift only achieved in cities with extensive public transport provision.

Further, neither the reported analysis of accessibility sustainability, the highways comments nor the Officer Appraisal make reference to the Interim Travel Plan submitted with the application (as required by NPPF §36). The successful implementation of a travel plan is a key tool to ensure sustainable transport choices are considered by new residents. Given there are no criticisms of the submitted Travel Plan, it must be considered that its measures will further enhance the sustainability of this site.

In summary, the proposed reason for refusal alleges the site is unsustainable on accessibility grounds despite:

- Noting the Clitheroe Appeal decision finding that: *"accessibility is but one element of sustainable development; it is not synonymous with it. There are many other components of sustainability other than accessibility."*
- Conducting an analysis using CEC's preferred method which evidences that all facilities listed within the NWDA Toolkit are *"accessible to the proposed development."*
- The offer made by Gladman to double the frequency of bus services having not been pursued.
- The Council considering this small scale site as sustainable, since all amenities are accessible by bus foot or bike.

Lastly, the application is considerably better located in terms of the services and facilities than the Rope Lane site in Shavington which the Inspector considered was sustainable. With respect, in the light of the above, the committee are asked to reflect on whether this proposed reason for refusal is defensible at Inquiry.

#### **Reason 4**

The Council's witness at the recent Shavington Inquiry accepted that Policy NE2 must be considered out-of-date in the terms of NPPF paragraphs 49 and 14, a point which was key to the Inspector's decision.

The Inspector in the Shavington decision was also very clear that the current stage of the Council's Core Strategy is not sufficiently advanced to override the presumption in favour due to lack of 5 year housing land supply.

It must also be noted that the draft of Borough Development Strategy will be presented to the SPB the day after the decision on this appeal is taken. It is of course open to the SPB or Cabinet to vote to change this draft Strategy prior to it being consulted on in early 2013. Following this, further changes may be made prior to submission or at examination. It is also unknown at this stage what level of support or objection to this Draft Strategy will be received and as a result (pursuant to NPPF paragraph 216) what degree of weight can be given to this document.

In short, the Inspector in the Shavington Decision was crystal clear that given the lack of a 5 year land supply, the Council do not have up to date housing land supply policies. In this context, the emerging Core Strategy (whilst a material consideration) can have only limited weight. Further, the mere identification of the Council's preferred locations for strategic allocations in the draft Strategy does not change the fact it cannot demonstrate a 5 year housing land supply today.

Indeed, if increased weight was to be given to the draft Strategy, it would only make the situation worse given the evidenced increase in the Borough's housing need.

As discussed above, this week the Secretary of State allowed a large scale housing proposal in Swindon, where the Councils' Core Strategies were more advanced than the Council's draft Local Plan. The Secretary of State, when considering his own policy, did not regard those proposals as premature.

In the light of the Shavington Appeal decision, the clear guidance on prematurity contained within the General Principles Document and clear guidance on weight to be given to emerging policy in NPPF, the developer would again ask committee to reflect on whether this proposed reason for refusal is defensible at Inquiry.

## **Conclusion**

As I have previously discussed with you, it is difficult not to characterise the conduct of Officers during the consideration of this matter as either seeking a reason to refuse it, or find reasons to delay its determination.

Not raising concerns related to design or density during the 13 week period and then seeking to refuse an *outline* application on design grounds, and then later deciding that what was previously reported to Members to be a small scale sustainable site is now concluded to have poor accessibility and to be of a scale which undermines the Core

Strategy process, are both far from the approach required by the NPPF of *“looking for solutions rather than problems.”*

### **ADDITIONAL OBJECTION**

An objection on design grounds has been received from a member of the public making the following comments:

- Question the suitability of the site as it is open countryside, with 3 boundaries opening onto open countryside and proximity to a registered parkland landscape – which whilst screened by trees should be a factor in considering the impact on that registered landscape and should therefore be driving the need for high quality design.
- As an accredited Building for Life assessor query the BfL self-assessment. A score of 18 would put this in an award-winning category, which this masterplan certainly is not.
- Question why it had not been to a design review panel (in accordance with the NPPF).
- Question why Cheshire West and Chester would be interested in managing the landscape component of the scheme as stated in the D&A Statement and feel this is inappropriate.
- Question why it was only aspiring to Code for Sustainable Homes Level 3.
- Question the need/desirability for a convenience store as this would have a negative impact on the Spar Shop off Queens Drive.
- Question the traffic/access arrangements with comments about Marsh Lane and Welsh Row junctions.

### **RECOMMENDATION**

**As per main report**