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Friday, 14 January 2022

Dear Member,

Please find attached an Urgent Late Item entitled 'Kilvington Lakes, Kilvington - 20/02420/S73M, which will be considered as Agenda Item No. 12a at the 18 January 2022, Planning Committee.

Yours sincerely

Catharine Saxton
Democratic Services Officer

URGENT REPORT TO PLANNING COMMITTEE – 18 JANUARY 2022

Application No:	20/02420/S73M (Appeal ref: 21/00016/8WEEK)
Appeal Ref:	APP/B3030/W/21/3271892
Proposal:	Application to remove conditions 19 and 20 attached to planning permission 14/02023/FULM and conditions 17 and 18 attached to planning permission 19/01097/FULM (Ref: APP/B3030/W/19/3239439)
Location:	Kilvington Lakes, Kilvington, NG13 9PD
Appellant:	Mr Freddie Reid
Link to appeal file:	21/00016/8WEEK Application to remove conditions 19 and 20 attached to planning permission 14/02023/FULM and conditions 17 and 18 attached to planning permission 19/01097/FULM (Ref: APP/B3030/W/19/3239439) Kilvington Newark On Trent NG13 9PD (newark-sherwooddc.gov.uk)

The purpose of this report is to brief Members on an appeal that has been lodged and to ask Members to ratify the broad statement of case which officers intend to submit. Given the timetable for submission of the Council's case, imposed by The Planning Inspectorate this week, this does not allow for the matter to be brought to the next available Planning Committee and hence why this matter is presented to you as an urgent item.

1.0 Background

1.1 Members may recall an application considered by the Planning Committee (under planning reference **14/02023/FULM**) for:

'Development of 34 self catering holiday units, a 25 bed inn building, watersports building, storehouse and outfitters along with commercial and educational unit, nature trails, cycle trails, pathways and family facilities. Re-routing a public right of way'

This was approved on 9th November 2015. Condition 19 restricted the C3 uses to holiday accommodation only. Condition 20 required the site operator to keep a register of occupiers and Condition 21 prevented occupation by the same person for more than 6 weeks in any calendar year. Phase 1 conditions have been discharged and the permission has been implemented. Some non-material amendments have since been approved one of which (**18/01146/NMA**) has amended the mix of the lodges to 13 x 2 beds and 21 x 3 beds.

1.2 In August 2019, officers (under delegated powers) refused an application (our ref: **19/01097/FULM**) made under section 73 to remove condition 21 of 14/02023/FULM which related to the restriction of a person/s staying on site for more than 6 weeks per year.

However this was subject to an appeal (**APP/B3030/W/19/3239439**) which was allowed with the Inspector concluding that the remaining conditions could adequately restrict occupation of the holiday lodges conducive to its countryside location. The restrictive conditions controlling occupancy were imposed as no. 17 which combines the previous approach and Condition 18 remained as originally imposed:

Condition 17: "Notwithstanding the provisions of Part C, Class C3 "Dwelling Houses" of the Schedule of the Town and Country Planning (Use Classes) Order 2005, (or any order revoking or re-enacting that Order), the premises shall be used for the purpose of holiday accommodation only and for no other purpose, including any other purpose within Class C3 of the Order."

Condition 18: "The site operator shall maintain a register of occupiers for each calendar year, which shall be made available for inspection by the Local Planning Authority, at any time, and a copy of the register shall be supplied to the Local Planning Authority at the end of each calendar year."

- 1.3 In May 2020 pre-application advice (**PREAPP/00101/20**) was sought with regards to a 'full application for use as holiday lodges for residential use and provision of community facilities'. Negative advice was offered on the merits of this proposal and the prospective applicant (now the appellant) was advised to submit a full planning application if they wanted to pursue this.
- 1.4 An application (**20/02453/LDC**) for a 'Certificate of lawfulness for proposed use or development for the use and occupation of the 34 self-catering holiday units as residential accommodation for retired persons aged 50 years old and over' was lodged. Under delegated powers the Council refused to issue the Certificate on 2 February 2021 as it was considered that the proposal would amount to a material change of use and would constitute development such that it would not be lawful and would need planning permission in its own right. Furthermore, the restrictive condition 17 (of LPA ref 19/01097/FULM) which is considered effective and enforceable would be breached. No appeal has been lodged and such an appeal would now be out of time.

2.0 The Proposal at Appeal

- 2.1 Despite the previous advice given, the appellant has lodged an application (ref: 20/02420/S73M) to vary conditions from two separate planning permissions as is set out in the description of development above, one of which is a variation of the original.
- 2.2 The effect of the removal of the conditions would be to allow permanent residential occupation. The application has advanced a draft agreement that seeks to restrict occupation to the over 50's (with no children permanently residing with them) all year round which they say would meet a 'need'. The proposal is advanced in the acknowledgement that the proposal would be contrary to the Development Plan (para.4.46 of the Supporting Statement) but on the basis that this proposal can meet a specific need and quickly and that this outweighs any harm.
- 2.3 The application was lodged with the Council back in December 2020 albeit officers took the view (following legal advice) that the application was invalid, not properly made and that it didn't have the powers to entertain it. This is in line with the National Planning Policy

Guidance (NPPG) which under paragraph 28 (reference ID 22-028-20141017, revision date 17.10.2014) states:

Can a local planning authority decline to accept an application to vary conditions?

A local planning authority may decline to accept an application under section 73 or 73A of the Town and Country Planning Act 1990 if the actual or potential impact of varying the relevant condition(s) would more properly be the subject of an entirely fresh application for full planning permission.

- 2.4 The application was returned to the applicant having not been out to consultation or considered in any way. The appellant then lodged an appeal against non-determination to which public consultation was undertaken. Nevertheless officers raised queries regarding the validity of the application with the Planning Inspectorate (PINS) who whilst not responding directly wrote to both the Council and the appellant on 19th November 2021 declining to determine the appeal and the LPA communicated this to interested parties. However following a successful challenge and the threat of judicial review, PINS reinstated the appeal and confirmed on 11th January 2022 that it would proceed. They have now also clarified that further consultation can take place with comments expected by 10th February 2022. Given this timetable, it is necessary to bring before you an urgent report so that members have the opportunity of making comment on the broad statement of case.
- 2.5 It should be noted that the Council is now estopped from making a decision on the case which now rests with the Planning Inspectorate. However this report gives Members the opportunity of considering what decision it would have reached had decision making been within its gift.
- 2.6 The appellant has requested that the appeal be heard by way of a Hearing albeit officers have suggested that this could be undertaken through the Written Representation route. PINS have yet to confirm the route or suggest a date for a potential hearing.
- 2.7 Officers intend to defend this application rigorously and the case will be presented in two strands;
- (1) First and foremost procedurally the appeal must fail as this application goes beyond the scope of what a variation of condition application (under s.73) can achieve.
 - (2) In case the Inspector disagrees, the second strand will examine the merits of the case and also concludes that this appeal must fail. Skeleton arguments for both are set out below.

3.0 The Submission

3.1 The following documents were submitted with the application/appeal:

- Covering Letter from RPS dated 7.12.2020
- Draft Unilateral Undertaking (unsigned but seeking to restrict occupiers to over 50's and with no dependent children in permanent residence)
- Transport Statement (jgv/20017/TS/No. 1/v1) by Northern Transport Planning Ltd. dated December 2020
- Site Location Plan, drawing ref: 1300-0003-02
- Planning Supporting Statement (version fv) December 2020, by RPS

- Housing Needs Assessment by CB Housing Insights

4.0 Strand One - Procedural Matters

- 4.1 Officers acting under delegated powers have already set out the Council's position to the appellant that removing the restrictive occupancy conditions attached to the permissions would go to the heart of the original permission which was for 'self-catering holiday units' - a matter which goes beyond the scope of the powers of section 73 of the Act.
- 4.2 This opinion rests on whether or not the removal of the conditions would constitute a 'material change of use' within the meaning of 'development' as defined in the relevant Planning Act. There is nothing in statute that sets out what is meant by *material change of use*, it is a matter of fact and degree. However the Council in determining the application for the Certificate of Lawful Use (detailed in the background section) have already come to the decision that the proposal is a MCOU and that planning permission is required in its own right.
- 4.3 Put simply, the application that was originally granted was described "*development of 34 self catering holiday units...*" and in our view the proposal, which would allow for permanent residency, could not be properly described as that. The appeal proposal therefore needs to be considered by a conventional planning application paying the requisite planning fee of £462 per dwelling rather than a planning fee of £234.
- 4.4 This opinion has regard to case law including the *Finney v Welsh Ministers* [2019] EWCA Civ 1868 Judgement and having taken independent legal advice.

5.0 Strand 2 - Merits of Case

- 5.1 Officers do not consider it is necessary or appropriate to consider the merits of this appeal case given that this appeal type is not the correct mechanism to consider this. However it is not clear as to whether PINS would accept this argument and therefore to protect the Council's position I have gone on to do so.

5.2 Public Consultation

- 5.3 Since reinstatement, the appeal has now been advertised as a 'departure' to the development plan and a new site notice has been displayed at the site expiring on 10th February 2022. This approach has now been agreed by PINS to ensure that any decision made is robust.
- 5.4 As part of the appeal process, views of interested parties and consultees have been sought which are set out below, noting not all have yet responded:

Alverton and Kilvington Parish Meeting – No response received to date. The Parish Meeting were querying the validity of the appeal directly with PINS and were waiting for a response before they made comment. No response was received. Officers have made them aware that it is reinstated to enable them to comment if they wish.

NCC Highways Authority – Object - In summary concerns are raised regarding the sustainability of the site and the methodology used, such as (but not limited to) trip rates

that have been used which are based upon retirement flats and care villages. Not all residents over 50 would be retired. There is also an error in the trip rates which if calculated correctly (albeit on not agreed rates) would generate 156 trips and opposed to their claim of 66. This renders the appellants claim of a reduction in trip rates from the holiday accommodation as not representative of the development as it would actually increase the number of vehicles. The application fails to demonstrate that the impact on highway safety would be acceptable.

NCC Lead Local Flood Authority – No observations to make

NSDC Strategic Housing – Comments included within the main appraisal

NHS/Clinical Care Group – Response awaited

NCC Developer Contributions – Response awaited

Fisher German – Object due to effect on oil pipeline

Three comments from interested parties/local residents have been received; 2 in support and 1 objection.

5.5 Policy context

- 5.6 Unlike the original proposal which advanced the site on the basis of a tourist facility, this scheme would allow for permanent residential dwellings which need to be considered under a different policy context. This is set out below. Bolded policies are ones that the scheme would not previously have been considered against.

Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)

Spatial Policy 1 - Settlement Hierarchy

Spatial Policy 2 - Spatial Distribution of Growth

Spatial Policy 3 – Rural Areas

Spatial Policy 5 – Delivering the Strategy

Spatial Policy 6 – Infrastructure for Growth

Spatial Policy 7 - Sustainable Transport

Core Policy 1 – Affordable Housing Provision

Core Policy 2 – Rural Affordable Housing

Core Policy 3 – Housing Mix, Type and Density

Core Policy 6 – Shaping our Employment Profile

Core Policy 7 – Tourism Development

Core Policy 9 -Sustainable Design

Core Policy 10 – Climate Change

Core Policy 12 – Biodiversity and Green Infrastructure

Core Policy 13 – Landscape Character

Allocations & Development Management DPD

DM3 – Developer Contributions and Planning Obligations

DM5 – Design

DM7 – Biodiversity and Green Infrastructure
DM8 – Development in the Open Countryside
DM12 – Presumption in Favour of Sustainable Development

Other Material Considerations

National Planning Policy Framework 2021
NPPG
Landscape Character SPD
Residential Cycle and Car Parking Standards & Design Guide

5.7 Main Issues

5.8 Officers consider the main issues in considering the merits of this case relate to the principle (and sustainability), housing need (including affordable housing) and highway impacts. These are discussed below.

5.9 The Principle

5.10 Whilst it is accepted that holiday lodges and permanent residential dwellings fall within the same C3 (dwellinghouses) Use Class, the way in which the two uses operate constitute a material change of use necessitating assessment against a different policy context and with different impacts that require careful assessment.

5.11 The starting point for decision making is with the Development Plan which is up to date and the Council can robustly demonstrate in excess of the necessary 5 years housing land supply.

5.12 The site lies within the open countryside albeit within the parish of Kilvington. Whereas the holiday lodges originally gained support from tourism policies CP7 and Policy DM8 which allow for appropriate tourism in the rural areas, market housing in the open countryside is strictly controlled and would need to be assessed against policy SP3 and a different part of policy DM8.

5.13 Spatial Policy 3 (Rural Areas) states that the countryside will be protected and that *“Developments not in villages or settlements, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting. Policies to deal with such applications are set out in the Allocations and Development Management DPD.”*

5.14 Policy DM8 (Development in the Open Countryside) is the relevant policy in the Allocations and Development Management DPD. This states that development in the open countryside is strictly controlled and limited to the certain types of development. It goes on to list 12 types of development, tourism being one of them. No. 3 refers to ‘New and replacement dwellings’ and its states *‘Planning permission will only be granted for new dwellings where they are of exceptional quality or innovative nature of design, reflect the highest standards of architecture, significantly enhance their immediate setting and be sensitive to the defining characteristics of the local area...’*

5.15 The proposal which would result in a scheme of 34 permanent residential market dwellings would not meet either policy SP3 nor DM8 and would go against the spatial hierarchy

embedded in Spatial Policies 1 and 2 and against the plan-led system which seeks to locate new market housing in sustainable settlements that have the services to support them.

- 5.16 Kilvington is a small rural settlement (comprising 39 dwellings) that has no facilities for day to day living. Occupiers of the site would likely rely on utilising a private car to meet their day to day needs and there are no public footpaths from the site that would allow occupiers to walk safely from the site to the bus stop in the hamlet which offer irregular and limited public transport which is restricted to the bus service 857 running from Bottesford to Newark on a Wednesday and Friday.
- 5.17 Creating a new community in the open countryside in a location that has no meaningful services which it could support, is contrary to the development plan and indeed the spirit of the Rural Housing section of the NPPF. The proposal is therefore considered to be wholly unsustainable and harmful by definition.
- 5.18 **Housing Need**
- 5.19 The appellant advances a case that the housing need is so great that it is capable of outweighing the harm and tipping the balance to approval. It should be noted that the appellant has not advanced a case that this council has a housing land supply issue. As the Council has in excess of the necessary housing land supply and the development plan is up to date the tilted balance does not apply here.
- 5.20 The change from holiday lodges to permanent homes would require assessment under policies not previously relevant when the scheme was for holiday lodges which supports the Council's case that it would amount to a material change of use.
- 5.21 Core Policy 3 (Housing Mix, Type and Density) is now of relevance. This seeks to secure (normally) an average of 30 dwellings per hectare and housing to meet the districts needs which is namely:
- family housing of 3 bedrooms or more
 - smaller housing of 2 bedrooms or less
 - housing for the elderly and disabled population.
- 5.22 It says 'particular emphasis will be placed on securing smaller houses of 2 bedrooms or less and those for housing the elderly or disabled population' It goes on to say that we will secure an appropriate mix and that will depend upon the local circumstances of the site, the viability of the development and any localised housing need information.
- 5.23 Additionally, Core Policy 1 (Affordable Housing) is also of relevance. This sets out that for developments of 11 units or more, 30% affordable housing provision will be sought. It goes on to say that preference is for on-site provision albeit it is recognised that in some circumstances off-site provision may be more appropriate and sets out when this might be considered. Where viability is an issue applicants are invited to set this out robustly and it would be assessed against Policy DM3 (Developer Contributions and Planning Obligations)
- 5.24 With regards to 'need' it is noted that the scheme that originally obtained approval was for 34 lodges which, following approved amendments, comprised a mix of:

13 x 2 Beds
21 x 3 Beds

The applicant is advancing the proposal on the basis that the lodges would be occupied by persons over 50 years old and with no dependent children permanently living with them which would be secured by a Unilateral Undertaking (UU) under the provisions of s.106. Notwithstanding that this UU is not signed and sealed, this restriction upon occupation would mean that in reality their occupation would be limited to sole occupants or couples. The two and three bedroom lodges are single storey so could assist with providing housing for the elderly or disabled population albeit providing homes that are isolated from services in the open countryside is less than ideal, especially for the occupants who may be more vulnerable.

- 5.25 To demonstrate need, the applicant has provided a Housing Needs Assessment of the Farndon and Fernwood Ward. The Ward boundary is drawn widely with a large geographical area and comprises the settlements of Farndon, Fernwood, Staunton-in-the-Vale, Kilvington and a number of other small rural villages including Alverton, Systerton, Cotham, Thorpe, Hawton and East Stoke none of which are mentioned in the survey.
- 5.26 Applications for exception site development, or that do not conform with policy, must be accompanied by a Housing Needs Assessment (or other source of evidence to illustrate local need). The Council defines local need as identified needs in the individual village, or second, the local area it serves (defined as being in the Parish in which it sits) (Newark and Sherwood Affordable Housing SPD 2013, 4.5 refers).
- 5.27 The evidence submitted in this case is a ward (not parish) level survey. Within it there is reference to six households requiring housing (tenure undefined) in Kilvington (CNB Assessment, 4.5) which does not support the proposed scale of development. The assessment includes data covering larger settlements such as Fernwood and Farndon. Both of these settlements benefit from delivery of market and affordable housing in their own right. The Strategic Housing Officer has advised (and I agree) that there is insufficient detail regarding the need at a parish level to provide evidence of housing need at a planning appeal. The Strategic Housing Officer goes on to state:

The survey provides evidence of need for the over 50's. The data provided at ward level gives evidence of need, (19 households need to 'rightsize') however this evidence is required at a parish level and in greater detail.

To conclude, the only evidence of housing need provided for 34 two and three bedroom homes in the parish of Kilvington is at a ward level. Whilst there is a larger district wide, and indeed national need, for housing, in the terms of CP2 the proposal requires the applicant to have demonstrated housing need at a parish/local level. I acknowledge the reference to 6 households in Kilvington requiring housing and therefore I consider the proposal would overprovide in terms of meeting a local need in this location. The appeal site therefore is not a suitable location for development of this size and type without having further evidence of local need and I recommend that the applicant provide evidence at a local level and to consider the tenure of the proposal in order to meet Council policies.

- 5.28 Whilst a demand/preference for housing is demonstrated across a ward, housing need at a local level (of Kilvington) has not been properly identified. Both the Council's Strategic

Housing Officer and I are of the view that the proposal does not meet a 'local' need and the demand can be addressed at more sustainable locations across the ward.

- 5.29 Put into context, Fernwood (which is c10km from the appeal site) is part of the Sub Regional Centre of the defined 'Newark Urban Area' which is expected to accommodate 60% of the overall district growth over the development plan period as set out in Spatial Policy 2 of the ACS. Farndon whilst falling into the 'Other Villages' category of Spatial Policy 1 is a larger village close to Newark and has a good range of services (including convenience shop, primary school, community halls and public houses and access to frequent public transport) so is a much more sustainable option than Kilvington which has no facilities for day to day living. There are several other small villages within the Ward that aren't even mentioned by name in the HNA and it is considered that it has been heavily and unjustifiably skewed toward Kilvington.
- 5.30 It should be noted that the Council recently published an independent housing needs survey in December 2020 upon which it can draw. This is included at Appendix K. At paragraph 4.21 of this it outlines the main reason for people in older households wanting to move was to live close to the amenities such as doctors and shops which this proposal cannot deliver.
- 5.31 Other pertinent points to draw to your attention are that:
- The survey response rate was 9.5%. The survey acknowledges this is to be a low return (compared to the Council's Arc4 Housing Needs Study response (16.2%).
 - Whilst the survey has been undertaken at a ward level, this does not align with the Council's arc4 Housing Needs Study 2020 housing market areas.
 - The data provided on market housing is considered to be a preference or demand as opposed to housing need, which usually refers to affordable housing.
- 5.32 In conclusion no local need specific to Kivington has been demonstrated as the HNS catchment area is far too wide. At best it could be said that a *preference* for 6 people wanting to remain in Kilvington has been shown but this is no way justifies a departure from policy in my submission.
- 5.33 Affordable Housing**
- 5.34 This scheme for 34 lodges would meet the qualifying criteria for affordable housing as set out in Core Policy 1 of the ACS. In order to meet the policy requirement of 30% of affordable housing, 10 lodges should be secured for genuine affordable housing. This is not advanced (despite the HNA advanced seemingly suggesting that such a need exists) and there is no mechanism to secure this in any event.
- 5.35 In my view the proposal doesn't meet the requirements of Core Policy 2 (Rural Affordable Housing) which allows for small scale rural housing development on land that is in or adjacent to the village known as 'exception sites'. The location is some way from the built area of the settlement, is larger in nature and is therefore contrary to CP2.
- 5.36 As a market housing scheme which fails to offer an appropriate level of affordable housing, this scheme is contrary to policy.

5.37 Highway Impacts

- 5.38 Spatial Policy 7 (Sustainable Transport) sets out a number of expectations for developments, including matters of highway safety.
- 5.39 It is noted that the appellant has submitted a Transport Assessment in an attempt to justify that the proposal would have satisfactory highway impacts. This has been reviewed by Nottinghamshire County Council as Highways Authority (the statutory consultee) who raise objection to the scheme.
- 5.40 In summary this raises concerns regarding the sustainability of the site and the methodology used, such as (but not limited to) trip rates that have been used which are based upon retirement flats and care villages. Clearly not all residents over 50 would be retired and this assumption is flawed. There is also an error in the trip rates which if calculated correctly (albeit on not agreed rates) would generate 156 trips and opposed to their claim of 66. This renders the appellants claim of a reduction in trip rates from the holiday accommodation as not representative of the development as it would actually increase the number of vehicles.
- 5.41 NCC as Highways Authority conclude by stating that that the impact of the development has not been properly considered or demonstrated, due to unagreed trip rates and the subsequent likelihood that the adjacent highway network has not been properly assessed in terms of capacity or safety.
- 5.42 In my view the proposal should be resisted on the basis that the appellant has failed to demonstrate that the scheme would not result in harm to highway safety and would be unsustainable. This would be contrary to Spatial Policy 7 (Sustainable Transport) of the Development Plan.

5.43 Planning Obligations and Infrastructure Requirements

- 5.44 It is necessary to consider whether the UU obligation advanced to restrict occupancy to those over 50 years of age would meet the tests set out in paragraph 57 of the NPPF. This requires planning obligations to only be sought where they meet all of the following tests.
- a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.
- 5.45 The Council does not accept that there is an unmet need for the type of market accommodation proposed for the over 50's nor a more general unmet need. However taking the scheme on face value (i.e. that occupation would be limited to those over 50 with no children in residence), that the Transport Assessment is advanced on the basis that it relies on data for retired persons and that occupation without restriction would allow for family housing, I consider it is necessary if the appellant is to avoid a request for other infrastructure requirements that would likely be required in that instance such as a contribution towards primary education, sports pitches etc.
- 5.46 In terms of health, the Council's SPD sets out that the type and size of developments which may trigger a health contribution. These are

- Residential developments of 65 units are more and/or
- Development which places extra demand on the local health care provision through its operation.

5.47 The Clinical Care Commission Group on behalf of the NHS have been asked to clarify is this is a scheme that would require a contribution as it is consider that it could fall within the second bullet point of the policy. This is particularly because occupants are likely to be advancing in years and may place more of a demand upon existing services. It is not accepted that the demands upon health services would be the same for those people choosing to holiday in the lodges than residing their permanently as has been claimed by the appellant. It would be unlikely that holidaymakers would register with a local GP service even if staying for a prolonged holiday period. Comments from the NHS are awaited and if existing practices are operating at capacity and this proposal would lead to pressure, it may well be that such a contribution should be expected. No contribution has been forthcoming.

5.48 Other Matters

5.49 Officers do not seek to make a case that there would be a change in terms of character and appearance nor upon residential amenity. The appellant indicates that the lodges as approved can be occupied for 12 months throughout the year based on the reworded of the conditions by the Planning Inspector I would suggest it would unlikely for very many lodges to be occupied by holiday makers for prolonged periods of a year and the uses are simply incomparable.

5.50 In terms of character and appearance, it is accepted there would be no physical changes proposed and it is equally accepted that domestic paraphernalia could be controlled under a management agreement for the lodges as suggested by the appellant in paragraph 4.20 of their statement. However how this is secured is difficult as the agreement would be between the site owner/manager and the tenant with the Council not being party to this (nor would it want to be). As there is no s106 agreement to obligate the appellant to enter into such an agreement it would have to be controlled by condition if the Inspector considered it reasonable to do so. This would have its difficulties in terms of enforceability and I am not convinced it would meet the tests of the NPPF.

6.0 Conclusion

6.1 The appeal scheme constitutes a material change of use which goes beyond the scope of an application made under section 73 to vary a condition and requires the description of the development to be changed which goes to the heart of the permission. It is my view that the appeal ought to be rejected for that reason without then moving on to consider its merits.

6.2 In the event that the Inspectorate doesn't accept that argument, Officers have considered the merits of the scheme and find that the proposal would conflict with the development in that 1) it represents an unsustainable form of housing development in the open countryside contrary to SP3, DM8 and the NPPF, 2) fails to adequately demonstrate that it wouldn't harm highway safety and 3) fails to secure contributions towards affordable housing. The impact on health services is currently being established through consultation

with the relevant CCG/NHS Trust. The argument advanced that the proposal would meet a housing need for the over 50's is not accepted. The catchments area does not demonstrate a need of this scale to be provided in Kilvington and any need identified could be provided in other more sustainable locations as the development envisages. This so called 'need' is not capable of outweighing the harm identified in a planning balance. There are no material considerations that indicate a decision should be made to the contrary to the development plan.

7.0 RECOMMENDATION

7.1 That Members endorse the broad statement of case outlined above and provide any comments/observations that they wish to be communicated to the Planning Inspectorate.

8.0 Background Papers

Application case file. See link at top of report.

For further information, please contact Clare Walker on ext 5834.

All submission documents relating to this planning application can be found on the following website www.newark-sherwooddc.gov.uk.

Lisa Hughes
Business Manager – Planning Development