Public Document Pack

Date of meeting	**Tuesday, 1st March, 2016**
Time	**6.30 pm**
Venue	**Council Chamber, Civic Offices, Merrial Street, Newcastle-under-Lyme, Staffordshire, ST5 2AG**
Contact	Geoff Durham

Planning Committee

SUPPLEMENTARY AGENDA

PART 1 – OPEN AGENDA

Members: Councillors Braithwaite, Cooper, Fear, Hambleton, Heesom, Mancey, Northcott, Owen, Pickup, Reddish (Vice-Chair), Simpson, Snell (Chair), Welsh, Williams, Williams and Winfield

PLEASE NOTE: The Council Chamber and Committee Room 1 are fitted with a loop system. In addition, there is a volume button on the base of the microphones. A portable loop system is available for all other rooms. Should you require this service, please contact Member Services during the afternoon prior to the meeting.

Members of the Council: If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

Meeting Quorums :- 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

FIELD_TITLE

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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LAND SOUTH OF WEST AVENUE, WEST OF CHURCH STREET AND CONGLETON ROAD AND NORTH OF LINLEY ROAD, BUTT LANE, KIDSGROVE
TAYLOR WIMPEY (NORTH MIDLANDS) 15/00441/DOAHR

The applicant has made a formal application under Section 106BA of the 1990 Town and Country Planning Act to revise the affordable housing contribution requirement in the planning obligations entered into on the 20th December 2013 by Revelan Ltd, Revelan Properties Ltd, Goldlatch Ltd, Bronzesky Ltd, National Asset Loan Management Ltd, the Borough Council and Staffordshire County Council prior to the grant of outline planning permission (12/00172/OUT) for residential development of up to 172 dwellings, an area of community woodland, public open space and formation of new accesses on the above site.

In response to a subsequent application for approval of reserved matters consent was given for 171 dwellings. The development is underway

The revision sought is a reduction in the level of affordable housing to be provided within the development from 25% (43 units) of the total number of dwellings (171) to just under 16% (27). Other planning obligations contained within the same agreement are unaffected by this application.

The 28 day determination period for this application expired on 19th June 2015. At its meetings on the 5th January and 2nd March the Planning Committee deferred its decision to await the views of the District Valuer

RECOMMENDATION
That the application to modify (reduce) the number of affordable units required by the Section 106 agreement be approved (with social rented dwellings being replaced with affordable rented dwellings), subject to the proviso that 30 (17.5%) affordable housing units be now provided with the affordable rented and shared ownership units being as indicated on the plan submitted by Taylor Wimpey on the 12th February 2016, for a period of 3 years after which the number (and type) would revert to the original affordable housing obligation, such modification only relating to those dwellings completed within that period.

Reason for Recommendation

An appraisal of the extent to which the housing development is able to meet the existing affordable housing planning obligations has been submitted with the application. The District Valuer, instructed by the Council, is in the process of concluding an appraisal including some sensitivity testing. That appraisal has not yet been completed, but it is expected to be in time for its conclusions to be considered and reported to the Planning Committee in a supplementary report.

Key Issues

The applicant has made an application under Section 106BA of the 1990 Town and Country Planning Act to reduce the affordable housing contribution requirement in the planning obligations entered into prior to the grant of the outline planning permission for development of the site (12/00127/OUT)). Section 106BA was introduced by Government through the Growth and Infrastructure Act, 2013 specifically to allow such a request to be made in a case where the applicant considers that the contribution makes the scheme unviable. The applicant's claim is that the affordable housing obligation as currently agreed makes the scheme nonviable in current market conditions and that the only method of bringing this site forward is to reduce the affordable housing contribution to just under 16% of the total number of dwellings – a reduction down from 43 to 27. This request is supported by information relating to the viability of the proposal.

The National Planning Policy Framework paragraph 173 states: 'to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking in account of the

normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.'

The Government publication Section 106 Affordable Housing Requirements Review and Appeal gives guidance on the process for determining applications submitted under s106BA. There is further guidance with the national Planning Practice Guidance (PPG)

Paragraph 10 of the document states that 'The test for viability is that the evidence indicates that the current cost of building out the entire site (at today's prices) is at a level that would enable the developer to sell all the market units on the site (in today's market) at a rate of build out evidenced by the developer, and make a competitive return to a willing developer and a willing landowner'.

No claim as to a lack of viability of the scheme was submitted to the LPA at the time of the outline application

The applicant has submitted a viability assessment (the 'Bridgehouse' appraisal). As at 1st October 2015 some 6 dwellings had been completed. The District Valuer, instructed by the Council, has concluded an appraisal including some sensitivity testing. There have been extensive discussions between the District Valuer and Bridgehouse and your Officer.

One of the matters discussed with the District Valuer has been the appropriate basis upon which to set the Site Value, against which what is termed the Residual Land Value is to be considered. In brief if Residual Land Value is assessed as being less than the Site Value the District Valuer would advise that the development with the current affordable housing requirements would be unviable.

National Planning Practice Guidance advises that central to the consideration of viability is the assessment of Site Value; that Site Value will be an important input into the assessment; and that the most appropriate way to assess land or site value will vary from case to case, but there are common principles which should be reflected and it is stated that, in all cases, Site Value should:-

- Reflect policy requirements and planning obligations….
- Provide a competitive return to willing developers and land owner (including equity resulting from those wanting to build their own homes); and
- Be informed by comparable, market based evidence wherever possible, and that where transacted bids are significantly above the market norm, they should not be used as part of this exercise.

Insofar as the first bullet is concerned the key question is whether account should be taken, in assessing Site Value of a requirement for affordable rented/shared ownership units or for social rented/shared ownership units. In its discussion of Affordable housing the Core Spatial Strategy states in that "the North (Staffordshire) Housing Market Area is expected to deliver a minimum of 500 affordable dwellings per annum" and that "the type and tenure of this affordable provision will be determined on a site by site basis to reflect specific local needs. However in order to create genuinely sustainable mixed communities, an appropriate mix of social rented and intermediate affordable housing will need to be delivered". The Table that then follows sets out broad targets for the overall mix of affordable housing to be delivered within the plan area, and indicates for the Borough 60% Social Rented and 40% Intermediate. The above are the sole references to the term social rented within the CSS.

Policy CSP6 of the CSS refers specifically to affordable Housing but it makes no explicit reference to the type of affordable housing other than in point (7) to state that "within the plan area the affordable housing mix will be negotiated on a site by site basis to reflect the nature of the development and local needs."

The Affordable Housing SPD adopted in January 2009 seeks social rented units, rather than affordable rented. 'Affordable rented units', that is units subject to rent controls that require a rent of no more than 80% of the local housing market rent, as opposed to rents determined through the national rent regime, however became part of the definition of "affordable housing", with the publication of NPPF in March 2012 .

Whilst the Council has not formally applied itself to the implications of the NPPF for the Affordable housing SPD the approach since March 2012 (of the Borough Council) has been to seek as a default social rented units on sites – but where there were justifiable reasons in certain cases, either through economic viability or because the RSL could only make affordable rented work, then we have been pragmatic and either asked for or accepted 'affordable rented units' – where this would retain the affordable housing units and maximise the number of units.

In almost all cases we have achieved (within Section 106 agreements) social rented units rather than units subject to affordable rents. The agreement referred to in this application is a case in point – having been entered into in December 2013 (i.e. after the publication of the NPPF)

However there has been at least two occasions where we have accepted affordable rented units rather than social rented units and in an appeal decision dated 20th January 2015 relating to Land of Watermills Road, Chesterton the Inspector upon hearing objections from the Council to a requirement for affordable rented units (as opposed to social rented units), concluded as follows:-

"*The Unilateral Undertaking makes provision that not less than 25% of the dwellings shall be affordable housing dwellings of which 63% shall be Affordable Rent Dwellings or Discounted Rent Dwellings or Social Rented Dwellings and 37% will be Shared Ownership. At the hearing the Council expressed concern about the type of affordable housing proposed, which they stated, to accord with the SPG, should be predominantly Social rented…….I am satisfied that… whilst the type of affordable housing may not be exactly what the Council would prefer, overall the Undertaking would ensure that the development contributes to the affordable housing needs within the Borough,……".*

This local appeal decision and the NPPF are significant material considerations which need to be taken into account. The NPPF, albeit when referring to existing Local Plans, indicates that due weight should be given to relevant policies according to their degree of consistency with the Framework (the closer the policies in the Framework, the greater the weight that they should be given).

It follows that the SPD and the pre NPPF Core Spatial Strategy can only be given weight insofar as they accord with the NPPF.

Having taken into account current national planning practice guidance (PPG) as well as the guidance on Financial Viability in Planning issued by RICS prior to the PPG, it has been accepted that it is appropriate that account should be taken of the affordable rented basis, in assessing **both** Site Value and the Residual Land Value.

Taking this into account further detailed advice has been received from the District Valuer. The District Valuer has both assessed the information provided by the applicant's consultant critically and independently on the basis of his judgement and experience considering the value and cost assumptions, and he has undertaken, using the services of a Quantity Surveyor, his own appraisal. This indicates that the development would be unviable (i.e. it cannot sustain, by a significant degree, 25% or 43 units of affordable housing). This is so regardless of whether or not account is taken of affordable rented rather than social rented affordable units – indeed taking the latter into account makes the scheme even more unviable according to the District Valuer

Having reached that conclusion the District Valuer has then been asked by the parties to advise on how many affordable units would have to be "lost" to achieve a viable scheme. His advice is 14 (on the basis of a list of the actual properties/plots prepared by your Officer) although he comments that it might be possible to reduce this to 13. The applicant has come forward with an offer that involves the loss of 13 affordable units, and consequently the provision of 30 affordable units (compared with the 27 that was proposed in the application), on the basis of a particular arrangement on site of the affordable rented and shared ownership units. This achieves a 60%/40% split between those two tenures which is in line with the Affordable Housing SPD. A plan indicating the plots and the proposed tenure arrangement will be able for the Committee to view at the Committee.

In conclusion, following extensive and detailed consideration of this matter by the District Valuer, there is substantive evidence that some 13 affordable units will need to be "lost" to achieve a viable scheme here. On the basis of this evidence this proposal is recommended to the Committee for approval.

APPENDIX

Relevant Material Considerations include:

National Planning Policy Framework (NPPF) (2012)
Planning Practice Guidance (PPG) (2014)
DCLG document 'Section 106 Affordable Housing Requirements Review and Appeal' (April 2013)
Developer Contributions Supplementary Planning Documen

Views of Consultees

Kidsgrove Town Council object to the proposed reduction in affordable housing. They note that planning permission was granted on the proviso that 25% of the development was allocated to affordable housing. As there is a paucity of affordable housing in Kidsgrove, a reduction in this case would further prevent local people who are hoping to get on the first rung of the housing ladnder. Recent figures suggest that Taylor Wimpey's order books for new homes, as of May 2015, I s pup 12 pr cent from the same time last year to £1.9 billion. This will equate to millions in profit for the company. The Council has an obligation to its residents to object to what is deemed blatant opportunism by Taylor Wimpey and local residents believe that this action by Taylor Wimpey was premeditated. The Borough Council should set up an interdependent review of the financial viability of the scheme before a final decision is made

Representations received
Two objections have been received, one being from Councillor Kyle Robinson. He indicates that social and affordable housing in the Butt Lane and Clough Hall area is heavily required. His constituents have clear concerns that not enough is being done to ensure developers are providing quality affordable housing in most of their developments. Why did Taylor Wimpey not fully cost the development before they proceeded with the development? The Company has every intention of going ahead and there should be an independent review of whether the development is economically viable with 25% affordable housing included. Reducing the amount of affordable housing to 16% of the development is a disgrace

The other party objects to the reduction - on the grounds that young people and lower income families that have grown up in this area should be able to purchase a home like anyone else, so why should they be penalized because the figures don't add up now, why are the higher cost houses being increased to make up the profits, the permission to build in the area was granted with the 25% agreed and Taylor Wimpey should recoup their costs elsewhere.

Applicant's/Agent's submission

In addition to a statement setting out the basis of the application and a plan identifying the site, the applicant has submitted A Statement by Bridgehouse Property Consultants on the DCLG guidance, their approach and context to scheme viability assessment, competitive returns to a willing land owner and developer, scheme viability assessment and conclusions.

Bridgehouse report that they have been instructed to prepare an independent viability assessment of the extent to which the residential development is able to meet the affordable housing planning obligations contained in the agreement of 20th December 2013.

In its conclusions the Bridgehouse report states as follows

"The viability assessments we have carried out demonstrate, using the methodology and guidance provided by the DCLG, that if the site is required to deliver 25% affordable housing it is unviable. The scheme can only be made viable if the affordable housing is reduced to 27 dwellings.

We believe we have undertaken appropriate and reasonable viability testing – against a prudent benchmark land value – using assumptions that can be justified against current market norms for any speculative development of residential property"

This document are available for inspection at the Guildhall and searching under the application reference number 15/00441/DOAHR on the website page that can be accessed by following this link http://publicaccess.newcastle-staffs.gov.uk/online-applications/

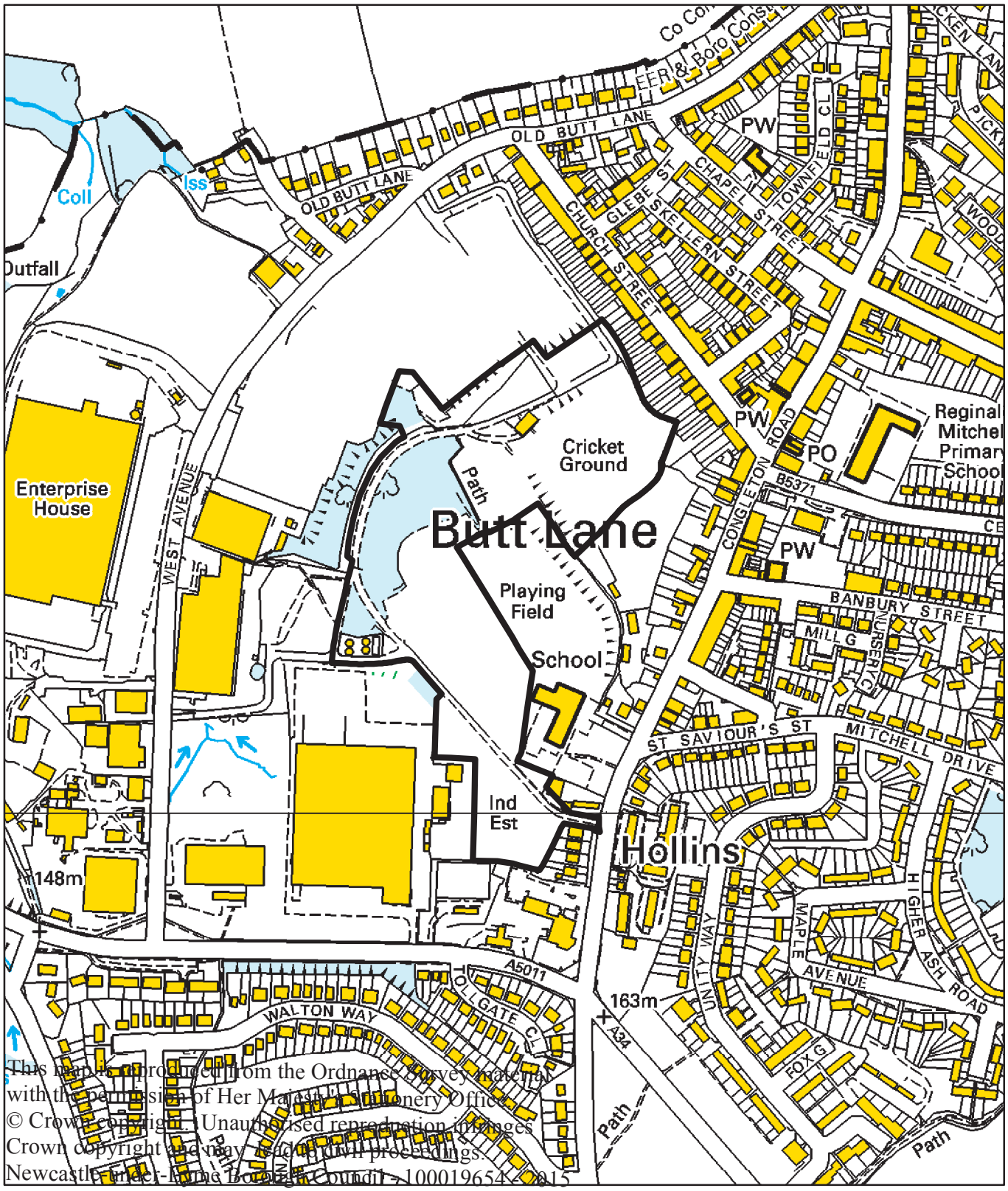
Background papers

Planning files referred to
Planning Documents referred to

Date report prepared

22nd February 2016

Land South Of West Avenue,
West Of Church Street And
Congleton Road, And North Of
Linley Road Butt Lane
15/00441/DOAHR



Newcastle under Lyme Borough Council
Planning & Development Services
Date 01.03.16

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FORMER ST GILES' & ST GEORGE'S PRIMARY SCHOOL, BARRACKS ROAD
STAFFORDSHIRE COUNTY COUNCIL **16/00082/FUL**

The Application seeks to vary condition 4 of planning permission 15/01077/FUL for the demolition of the former school. Condition 4 as worded in the decision notice is as follows:

The demolition of the existing building on the site shall not commence until a contract has been entered into for the construction of a replacement building on the site as shall have been granted planning permission and such construction works shall have commenced within six months of the demolition of the building.

The reason given for the condition within the decision notice was to *protect the character and appearance of the Conservation Area* in accordance with relevant policies and to *take all reasonable steps to ensure that the new development will proceed after the demolition in accordance with paragraph 136 of the National Planning Policy Framework* "

The varied wording of condition 4 as proposed in this submission is as follows:

The demolition of the existing building on the site shall not commence until a contractor has been appointed to carry out the redevelopment works of the replacement building, which shall first have been granted planning permission, and such construction works shall have commenced within six months of the demolition of the building.

The former school is on the Register of Locally Important Buildings and Structures and within the Newcastle Town Centre Conservation Area.

The statutory 8-week period for the determination expires on the 23rd March 2016.

RECOMMENDATION

Permit the variation of condition 4 so that it reads as follows

The demolition of the existing building on the site shall not commence until the steps outlined in the statement by the applicant dated 22nd February 2016 have been undertaken, and the replacement building shall first have been granted planning permission, and such construction works shall have commenced within six months of the demolition of the building.

subject to the imposition of all other conditions attached to planning permission 15/01077/FUL, unless they have already been discharged by the date of issue of the permission in which case the approved details will be referred to.

Reason for Recommendation

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty upon the Local Planning Authority in the exercise of planning functions with respect to any buildings in a Conservation Area to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. The loss of this non-designated heritage asset has already accepted subject to conditions. The suggested wording of condition 4 as indicated in the submitted application does not satisfy the objective of seeking to take all reasonable steps to ensure that the new development will proceed after the demolition. However the applicant has subsequently submitted a statement setting out in detail the steps that it (and its partners) have taken and it is considered that the condition if amended to refer to this statement would constitute the take of all reasonable steps to ensure that the new development will proceed within a reasonable time frame after the loss of the heritage asset.

Statement as to how the Local Planning Authority has worked in a positive and proactive manner in dealing with the planning application

This is considered to be a sustainable form of development and so complies with the provisions of the National Planning Policy Framework.

Key Issues

Full planning permission was granted for the demolition of the building earlier this year subject to a number of conditions. The application seeks to vary condition 4 of the permission.

The Authority cannot reconsider the principle of the demolition of the building in the determination of this application, but it does have the following options:-

- If it considers that the original condition should remain it should refuse the application,
- If it considers that the condition should be varied then it should approve the application subject to the reworded condition or subject to a different condition as it considers appropriate.

The effect of a grant of permission upon an application to vary a condition is to create a new planning permission. Accordingly, unless there have been other material changes, such a permission should also make reference to the other conditions of the original planning permission

The condition as imposed prevents the demolition of the building until a contract has been entered into for the construction of a replacement building that has planning permission. The condition as proposed prevents the demolition of the building until a contractor for those works has been appointed and planning permission has been granted for the replacement building on the site.

Saved NLP policy B11 indicates that consent to demolish a building will not be granted unless a number of criteria are satisfied including that …..
(iii) An enforceable agreement or contract exists to ensure the construction of the replacement building where appropriate.

This is a situation where the construction of a replacement building (on the site) would be appropriate and is required (to protect the character and appearance of the Conservation Area)

As was indicated in the report on the demolition application the approach taken in the more recent NPPF in effect supercedes Local Plan Policy B11.

Paragraph 136 of the National Planning Policy Framework states that Local Planning Authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development (replacing that which is to be lost) will proceed after the loss has occurred.

The wording of the condition as proposed by the applicant does not go as far as require a contract to be entered into for the replacement building as is the current requirement, and would fall short of the required commitment. However the applicant has now submitted a Statement setting out in detail the steps it, or its partners, have or will have taken prior to the commencement of the demolition, and which it considers should be taken into account. Your Officer's view is that the condition indicated in the recommendation section above would, by reference to this Statement, be sufficient and reasonable in this case – reflecting the very substantial financial commitment that the applicant and its partners will have made to the construction of the replacement building at that point.

APPENDIX

Policies and proposals in the approved development plan relevant to this decision:-

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (Adopted 2009) (CSS)

Policy CSP1: Design Quality
Policy CSP2: Historic Environment

Newcastle-under Lyme Local Plan 2011 (NLP)

Policy B3: Other Archaeological Sites
Policy B5: Control of Development Affecting the Setting of a Listed Building
Policy B8: Other Buildings of Historic or Architectural Interest
Policy B9: Prevention of Harm to Conservation Areas
Policy B10: The Requirement to Preserve or Enhance the Character or Appearance of a Conservation Area
Policy B11: Demolition in Conservation Areas
Policy B15: Trees and Landscape in Conservation Areas

Other material considerations include:

National Planning Policy Framework (March 2012)
Planning Practice Guidance (March 2014)

Supplementary Planning Guidance/Documents

Newcastle Town Centre SPD (2009)
Newcastle Town Centre Conservation Area Appraisal and Management Plan (CAAMP) (2008)
Register of Locally Important Buildings and Structures in Newcastle-under-Lyme SPD (2012)

Relevant Planning History

15/01077/FUL. Demolition of former St Giles' and St George's School to facilitate the redevelopment of the site.- approved subject to conditions

Views of Consultees

Historic England request further information as the existing wording of the conditions, and the proposed wording appears extremely similar and as such they are unclear as to the justification for the proposed change.

Representations

Four objections have been received, including one from the Thistleberry Residents Association raising the following concerns:

- Permission for demolition shouldn't have been given in the first place and without wider consultation.
- The time limit for the demolition is far too short which would prevent the process of right to buy should anyone wish to save the school, or take other measures to preserve the building.
- The building should and integrated into plans for the town.
- The amendments is an excuse to go ahead with plans to build the unnecessary and unsuitable Civic Hub in an unsuitable location
- Loss of another historic building

An on-line petition titled 'Save St Giles' & St George's Historic School' has been submitted objecting to the application. The petition was started prior to the submission of this application. At the time this report was prepared it had 1,097 signatures. This petition was reported to a recent meeting of the Council's Cabinet whereat it was resolved to reaffirm the previous decision to dispose of the building

to enable the demolition of the former school building and the implementation of proposals for a new Public Sector hub.

The petition indicates that St Giles' and St George's School is an integral part of the Queen's Gardens conservation area, the borough council want to demolish it and put a modern four storey building in its place to create a 'hub' to contain council offices, face to face council services, library, registry office and police station. It is listed in the Council's own list of important historic buildings and the demolition has been strongly objected to by the national bodies Historic England and The Victorian Society, as well as the local Civic Society. The school provides an attractive backdrop to the Gardens and the listed Queen Victoria statue and is of local historic and aesthetic interest. The petitioners propose that the school is restored, or at least the Queen's Gardens facade and tower incorporated into a new building.

Applicant's/Agent's submission

The requisite application form and plan have been provided which can be viewed at the Guildhall and on the website that can be accessed by following this link http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/16/00082/FUL

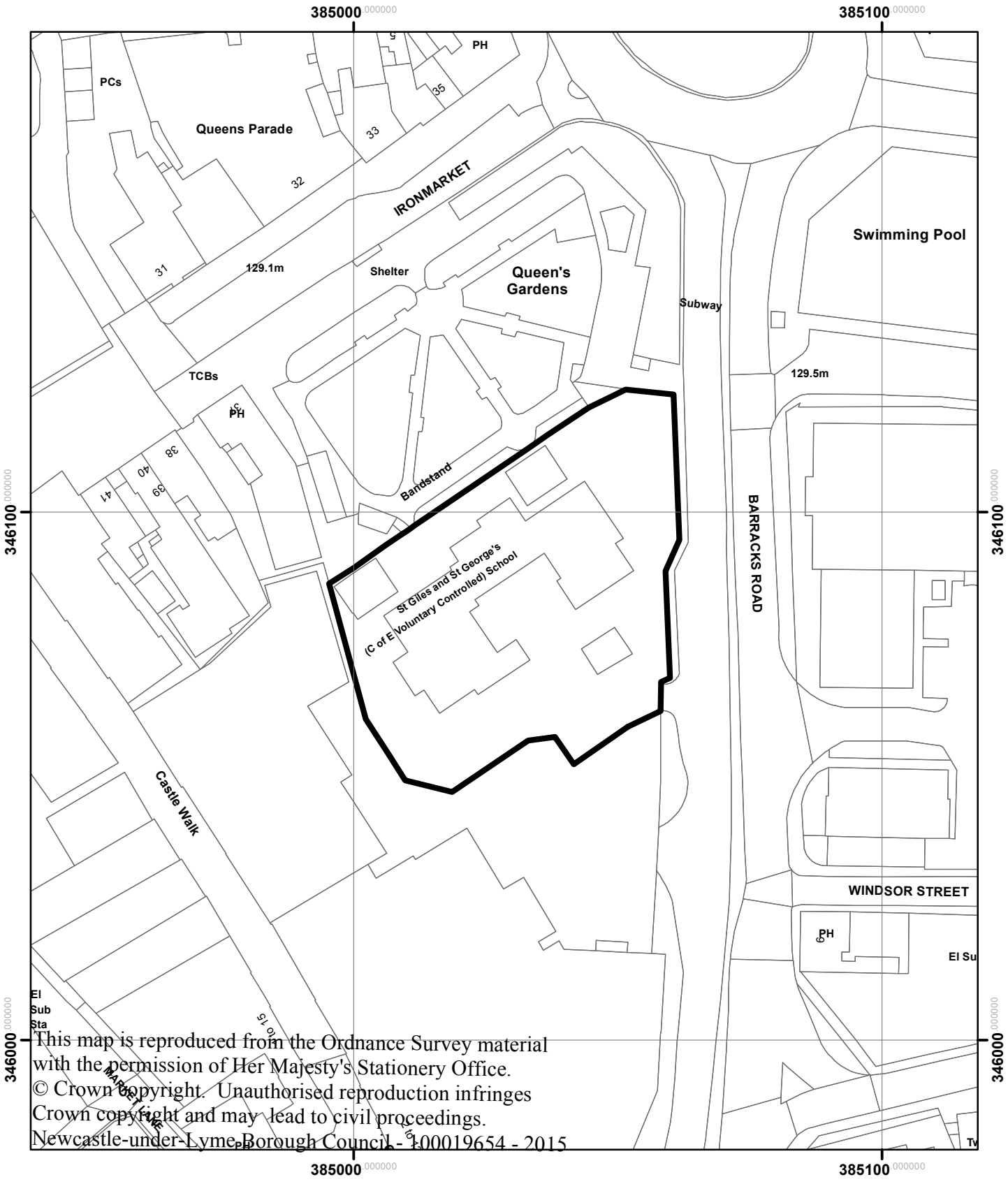
Background papers

Planning files referred to
Planning Documents referred to

Date report prepared

22nd February 2016

Former St Giles And St Georges Primary School, Barracks Road
16/00082/FUL



Newcastle under Lyme Borough Council
Planning & Development Services
Date 01.03.16

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