

Public Document Pack

Date of meeting Thursday, 24th May, 2018
Time 7.00 pm
Venue Council Chamber, Civic Offices, Merrial Street, Newcastle-under-Lyme, Staffordshire, ST5 2AG
Contact Geoff Durham



**NEWCASTLE
UNDER LYME**
BOROUGH COUNCIL

Civic Offices
Merrial Street
Newcastle-under-Lyme
Staffordshire
ST5 2AG

Planning Committee

SECOND SUUPPLEMENTARY AGENDA

PART 1 – OPEN AGENDA

- 6b APPLICATION FOR MAJOR DEVELOPMENT – LODGE FARM, NEWCASTLE ROAD, TALKE. MISS R LARGE. 18/00062/FUL (Pages 3 - 4)
- 7a APPLICATION FOR MINOR DEVELOPMENT – 1 INGLEWOOD DRIVE, PORTHILL. MR R AASHT. 18/00162/FUL (Pages 5 - 6)
- 12a LAND OFF MEADOW WAY, BALDWIN'S GATE. BELLWAY HOMES LTD (WEST MIDLANDS).16/01101/FUL (Pages 7 - 8)

This item is considered urgent due to timescales involved.

Members: Councillors Burgess, Fear, Heesom, Northcott, Panter, Proctor (Chair), Reddish, Spence (Vice-Chair), Sweeney, S Tagg, G White, G Williams, J Williams and Wright

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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COUNCIL CHAMBER: FIRE EXITS ARE AT THE REAR OF THE CHAMBER AT BOTH SIDES AND THIS IS THE SAME FOR OCCUPANTS OF THE PUBLIC GALLERY.

COMMITTEE ROOMS: EXIT VIA THE WAY YOU ARRIVED AT THE MEETING OR AT THE FAR END OF THE COUNCIL CHAMBER.

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SECOND SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE

24th May 2018

Agenda item 6

Application ref. 18/00062/FUL

Lodge Farm, Newcastle Road, Talke

Since the preparation of the main agenda report and also following publication of a First Supplementary Report the views of the **Coal Authority** have now been received on the Historical Coal Mining Risk Assessment Report submitted by the applicant.

The **Coal Authority** maintains their objection to the scheme. They initially objected to this planning application on the basis that without a Coal Mining Risk Assessment Report (Risk Assessment), or equivalent, the risks to human safety arising from historical coal mining cannot be properly understood or properly safeguarded against.

They comment that the applicants submitted Risk Assessment has acknowledged the presence of recorded shallow coal workings, together with three recorded mine entries. The Coal Authority records indicate that two of the recorded mine entries have treatment details (capped by National Coal Board in 1979), however there is no record of such treatment details for the remaining third mine entry and there could be some deviation, by several metres, from the current plotted position. As a result the Coal Authority are seeking further investigatory information for one of the mine entries to be undertaken by an appropriately qualified person, and are maintaining their objection to the application in the meantime.

Your Officer's views

It is a requirement of the National Planning Policy Framework, paragraphs 120-121 that the applicant demonstrates to the satisfaction of the Planning Authority, where land is affected by land stability issues including from mining, that the application site is suitable for its new use and the development is safe.

The proposed manege is potentially over or within the influencing distance of the particular mine entry of concern. The Coal Authority as a result would expect the mine entry to be fully remediated (filled and capped). They also advise that alternatively if that is not possible, once the exact location of the mine entry is known, the manege would potentially need to be repositioned and the mine entry securely fenced off in order to prevent public access (on grounds of public safety) within that specific part of the site. The latter approach outlined would require a fresh planning application for the agreement of any revised plans significantly different to those considered.

The applicants submitted Risk Assessment does give a review of existing sources of geological, historical and mining information, the Report author considers that there are significant risks to the site users, primarily the three recorded mine entries. The Report author considers that based on this particular proposal, shallow mine workings recorded at 25m and 27m depth would only pose a low risk to the stables and outdoor equine end-use and considers that the migratory measures identified within the Report are appropriate for this particular proposal.

Taking into account the views of the Coal Authority there are grounds for refusal however the view of your Officer is that a planning condition requiring further technical investigations and appropriate mitigation could overcome the risks posed to public safety.

Such a condition would require consultation with the Coal Authority for its successful release as well as there being a separate permit system for the applicant to apply for with the Coal Authority directly.

The RECOMMENDATION be altered to the following:-

A. That subject to there being no objections from Kidsgrove Town Council by 12th June, which cannot be addressed by appropriate conditions, delegated Authority be given to the Head of Planning to :-

PERMIT the application subject to conditions relating to:-

- 1. Time limit.**
- 2. Plans.**
- 3. Materials.**
- 4. Tree protection measures.**
- 5. Approval of a landscaping scheme.**
- 6. External lighting levels.**
- 7. Provision for the storage and disposal of stable waste.**
- 8. Horse boxes, trailers and vehicles associated with the use of the site for a stables and manege shall not be moved on the shared access driveway between the hours of 10.00pm and 08.00 on any day.**
- 9. Provision of the submitted parking and turning area and its retention for the lifetime of the development.**
- 10. The development shall be restricted to a maximum of 9 horses.**
- 11. The proposed manege shall only be used by horses which are stabled at the site.**
- 12. Any conditions recommended by the Coal Authority or otherwise to deal with historical coal mining risk.**

B. In the event of objections being received from Kidsgrove Town Council by the 12th June, which cannot be addressed by appropriate conditions, the application be referred back to the Planning Committee for reconsideration.

ADVANCED SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
24th May 2018

Agenda item 7

Application ref. 18/00162/FUL

Inglewood Drive, Porthill

Since the preparation of the main agenda report an independent viability appraisal has been undertaken and submitted in order to further examine the viability argument posed by the applicant.

The report has been prepared on the basis that the applicant considers the public open space contribution requirements requested by the Council will render the scheme unviable. Presently it is recommended the development should be refused unless a Section 106 contribution is entered into by the developer for £4,933 for each of the three additional dwellings proposed a total contribution of £14,799 for the scheme as a whole.

The money requested would be used for improvements to surfacing in the park by Bradwell Lodge which is a 250 metre walk from the site.

The viability assessment report makes a number of key assumptions in relation to sale values and other factors. Based on these assumptions the report concludes:-

- A developer profit of £7,231 (2%) with no financial contribution paid.
- A loss of £13,479 (-3%) for should a slightly higher contribution than the £14,799 referred to above.

Your officers comments

The viability appraisal report received has been undertaken by an independent qualified surveyor. The viability report does conclude that the scheme with no contribution would not be viable (ie provide a reasonable rate of return). The scheme is described as one that has a very low rate of return or indeed a loss, and the understanding is that the developer given the already sizeable commitment in the purchase of the land and building are willing to undertake the development at a nominal profit.

There are however some important concerns about the methodology of the appraisal and your Officer wishes to take these matters up with the party that has undertaken the appraisal. However it is likely that the conclusion will still be the same – that allowing for a reasonable level of profit this development will not be able to provide the policy compliant contributions. For this reason, if members are content with the principle of allowing less or nil contributions on the grounds of viability, a delegated authority is sought as indicated below in the recommendation section.

A factor which could potentially improve viability would be to defer payment of the contribution to say 6 months following commencement of the works of conversion. Similar flexibility has been given in some other cases, albeit they have involved the construction of dwellings, although members need to be mindful that the Developer Contributions SPD does say that the needs and impacts arising from development should be addressed before they arrive, and thus early payment is normally sought.

If members are not content to give such delegated authority the recommended alternative would be to defer a decision on the application. The Council's SPD on Developer Contributions does indicate that

Paragraph 173 of the National Planning Policy Framework (the Framework) indicates pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. 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 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 evidence received for this planning application to substantiate the applicant's claim, that the Council's requirements render the scheme unviable, needs to be read in the context of National Planning Policy Framework as indicated above and also in the context of an identified housing land delivery shortfall. If a scheme is unviable it will not proceed and there will be no contribution to the supply of housing in a location where there is an insufficient supply. This is a material consideration. .

The RECOMMENDATION on this application is now amended to read as follows

A).That the Head of Planning has delegated authority to explore with the party who has undertaken the appraisal certain assumptions within it and

- 1) providing he is satisfied that the development cannot at present reasonably provide any financial public open space contribution toward and up to that required by policy (£14,799), and**
- 2) subject to the prior completion of a planning obligation, within a period to be set by the Head of Planning, securing a reappraisal of the viability of the scheme, in the event of there being no substantial commencement of the development within 12 months of the grant of planning permission, and the making of such a contribution should that appraisal demonstrate it is financially viable**

the application be granted, subject to the prior completion of a planning obligation securing a reappraisal of the viability of the scheme, in the event of there being no substantial commencement of the development within 12 months of the grant of planning permission, and the making of such a contribution should that appraisal demonstrate it is financially viable

PERMIT subject to conditions relating to:-

- 1. Time limit.**
- 2. Plans.**
- 3. Materials.**
- 4. Cycle parking and storage.**
- 5. Parking and turning area provision.**

B) Should the Head of Planning not conclude the development cannot at present reasonably provide any financial public open space contribution toward and up to that required by policy (£14,799), the application be refused for the reason indicated in the Main agenda report

C) Should the period referred to in recommendation (A) above (for completion of the planning obligation) expire without such obligation having been secured that the Head of Planning have delegated authority to refuse the application on the grounds that it fails to secure an appropriate reappraisal/payment in the event of changed circumstances; or if he considers it appropriate to extend the period

LAND OFF MEADOW WAY, BALDWIN'S GATE
BELLWAY HOMES LTD (WEST MIDLANDS)

16/01101/FUL

The above application was for full planning permission for the demolition of existing buildings on the site, and the erection of 99 dwellings, access, parking and amenity space. The application was refused by the Council on 21st August 2017, following its consideration by the Planning Committee at its meeting on the 15th August. An appeal against that decision has been made and is due to be considered at a Public Local Inquiry that is due to open on the 3rd July and is expected to last for 4 days.

Proofs of evidence of the professional witnesses of principal parties to the appeal, the Local Planning Authority and Bellway, have to be prepared and submitted by the 5th June.

The appellant has recently informed the Council of its intention to ask the Inspector to substitute the plans and documents that were the subject of the original application (the First Scheme) with those that were considered as part of the revised planning application (reference 17/01024/FUL (the Second Scheme)). The Council's position in respect of the consideration of the Second Scheme at the appeal needs to be determined now

This report is brought to the Committee as an item of Urgent Business in view of the above timeline

RECOMMENDATION

That the Inspector be informed that the Borough Council has no objections to him considering the Second Scheme rather than the First Scheme, and that the Borough Council's case in respect of that Second Scheme be based upon the decision of the Planning Committee of the 24th April to refuse application 17/01024/FUL and the grounds of that refusal

Reason for report

To inform Committee of the intention of Bellway to ask the Inspector at the forthcoming appeal to consider proposals that differ from those that were considered and refused by the Borough Council when it determined application 16/01101/FUL

To seek Committee's consent for the Local Planning Authority to indicate to the Inspector that it has no objections to the Inspector considering the Second Scheme rather than the First Scheme

Background

The appellant has recently informed the Council of its intention to ask the Inspector to substitute the plans and documents that were the subject of the original application (the First Scheme) with those that were considered as part of the revised planning application (reference 17/01024/FUL (the Second Scheme)).

Details of the First Scheme are available to view via the following link

<https://publicaccess.newcastle-staffs.gov.uk/online-applications/plan/16/01101/FUL>

Details of the Second Scheme are available to view via the following link

<https://publicaccess.newcastle-staffs.gov.uk/online-applications/plan/17/01024/FUL>

At the Inquiry the Inspector will decide whether or not he is prepared to determine the appeal on the basis of the revised proposals or whether he will determine it on the basis of the First Scheme. In coming to this decision he will consider whether any party would be materially prejudiced were to agree to the appellants's request. There is established case law on this issue and such an amendment is called a "Wheatcroft" amendment after that judgement. The Borough Council will be asked by the Inspector for its views on which plans should be considered. The appellant has given the

Borough Council reasonable notice of its intentions, and furthermore arrangements are now in hand for notifications to go out to all interested parties, site and press notices to be displayed, providing third parties with the opportunity to either make comments, modify or add to the comments that they have made in respect of the Second Scheme and to comment on the appropriateness of the Inspector agreeing to consider the Second Scheme. A particular point in this case is that the Borough Council has had the opportunity to consider the Second Scheme – in its determination of planning application 17/01024/FUL, its view on it (that it should not be granted planning permission are settled) and comments from third parties and consultees were invited on that application, and can and will be provided to the Inspector.

For the above reasons it is not considered that to oppose the substitution would be a tenable position for the Borough Council to take and in the circumstances your Officer would recommend that the Inspector be advised that the Borough Council has no objections to him considering the revised proposals

Date report prepared: 24th May 2018