

The Application is for the variation or removal of a number of conditions of an outline consent for commercial business uses (Class B1, B2 and B8) and a small/medium sized A1 retail foodstore at Linley Trading Estate, Linley Road, Talke (Ref. 10/00080/OUT).

The following conditions are to be varied:

- Condition 5 relating to a revised right turn facility and access works
- Condition 18 to allow gross retail floorspace up to 1,384 square metres, and
- Condition 20 to require that at least 80% of the net sales floor space is devoted to the retailing of convenience goods

In addition, it is proposed to remove the following conditions:

- Condition 19 which prevents the retail floorspace from being occupied or operated by Tesco, Sainsbury's, Asda or Morrison's
- Condition 21 which requires that a minimum of 2,434 square metres of floorspace for business, industrial or storage or distribution purposes shall have been completed on the site and made available for letting or sale prior to first occupation of the A1 retail foodstore

The site lies within the Kidsgrove Neighbourhood and Urban Area on the Local Development Framework Proposals Map.

The 13 week period for this application expires on 15th August 2014.

RECOMMENDATION

- a. **That subject to the securing of an obligation by 13th August 2014 requiring the applicant to pay £2,100 travel plan contribution,**
 - **Conditions 5, 18 and 20 of 10/00080/OUT to be varied in the terms outlined in the application and conditions 19 and 21 of 10/00080/OUT to be deleted, and all other conditions of 10/00080/OUT to continue to apply.**
- b. **That should the obligation not be secured within the above period, the Head of Planning and Development be given delegated authority to refuse the application on the grounds that without such a matter being secured the development would fail to contribute to the provision of a sustainable development; unless he considers it appropriate to extend the period for completion of the obligation.**

Reason for Recommendation

Revised access details have been submitted as part of the reserved matters application which is for consideration elsewhere on this agenda (Ref. 14/00363/REM), and given that the Highway Authority is satisfied that the proposed access as shown on Drawing No. SCP/13121/001 is acceptable it is considered that the variation of Condition 5 to reflect the amended site access drawing is appropriate. PPS4 has been superseded by the NPPF and as such, there is no longer a requirement for applications for retail development of this size to be assessed against need or impact. It is not considered therefore that an objection could be sustained to the variation of Conditions 18 and 20 in the form proposed by the applicant and the removal of Condition 19. The Council has recently accepted the principle of the loss of this employment site in resolving to approve a proposal for the residential development and given that this development would provide significant employment opportunities it is not considered that Condition 21 is either necessary or reasonable.

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

The proposal is considered to be a sustainable form of development in compliance with the provisions of the National Planning Policy Framework.

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

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

- Policy SP1: Spatial Principles of Targeted Regeneration (Kidsgrove identified as a “significant urban centre”
Policy SP2: Spatial Principles of Economic Development
Policy SP3: Spatial Principles of Movement and Access
Policy ASP5: Newcastle and Kidsgrove Urban Neighbourhoods Area Spatial Policy

Newcastle-under-Lyme Local Plan (NLP) 2011

- Policy E11: Development of Employment Land for Other Uses
Policy T16: Development - General Parking Requirements

Other Material Considerations include:

National Planning Policy Framework (NPPF) (2012)

National Planning Practice Guidance (NPPG) (2014)

Relevant Planning History

- 10/00080/OUT Outline planning permission for 14 units providing some 8728 square metres of units for commercial business use (Class B1, B2 & B8) and an A1 retail foodstore of some 1,356 square metres Approved
- 13/00625/OUT Outline planning permission for the erection of up to 139 dwellings and associated works Resolution to approve on completion of Section 106 Agreement
- 14/00363/REM Application for approval of reserved matters for commercial business uses (Class B1, B2 and B8) and a small/medium sized A1 retail foodstore - Pending consideration
- 14/00432/FUL Construction of a petrol filling station to include the installation of fuel storage tanks, associated pipework, overhead canopy, forecourt surfacing, pumps and other associated works – Pending consideration

Views of Consultees

The **Highway Authority** has no objections to the proposal.

Kidsgrove Town Council objects to the proposal on the grounds that it would be detrimental to local businesses in Kidsgrove Town Centre and also would increase traffic on an already heavily busy trunk road.

The Council's **Economic Regeneration Section** states that the approval of an out of centre supermarket on this site is justified by the prior provision of small industrial units, i.e. the retail use is an enabling development for the principal use we wish to see on the site. The planning conditions attached to the supermarket were decided by the Planning Inspector and it would therefore undermine his balanced judgement if the conditions are removed. He therefore recommends refusal.

No comments have been received from **Cheshire East Council** and given that the period for comments has expired, it must be assumed that they have no observations to make upon the proposal.

Representations

Three letters of objection have been received including a letter from **Councillor Mike Stubbs** and a letter from **Councillor Kyle Robinson**. Objection is made on the following grounds:

- Increased traffic on Congleton Road which has already reached saturation point
- Linley Road is already heavily congested and this will be exacerbated by the proposal
- Impact on nearby store owners
- No need for another supermarket
- The site should be developed for social housing

Two letters of support has been received stating that a supermarket on this site would be welcomed. More shops are needed in the area. The supermarkets are cheaper and there is more variety than in the local shops.

Applicant's/Agent's submission

The application is accompanied by a Transport Statement, a Planning & Retail Statement and a Market Demand Report which are available for inspection at the Guildhall and on

www.newcastle-staffs.gov.uk/planning/1400362FUL

Key Issues

Outline planning permission was granted in 2011 for commercial business uses (Class B1, B2 and B8) and a small/medium sized A1 retail foodstore at Linley Trading Estate, Linley Road, Talke (Ref. 10/00080/OUT). All matters of detail were reserved for subsequent approval. This application seeks consent to vary or remove a number of the conditions of that consent.

Although objections have been received to the principle of a retail store at the site and to the impact of the development on the highway network, given that the site has outline consent which includes a retail foodstore, it is not possible to consider such matters at this stage.

Paragraph 206 of the NPPF states that planning conditions should be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The NPPG provides further guidance on the use of planning conditions.

Condition 5

Condition 5 states as follows:

Before any part of the proposed development is brought into use the proposed right turn facility and associated vehicle and pedestrian access works shall be completed in accordance with (a) Drawing No. SCP/09203/001 and (b) engineering construction details which shall first have been submitted to and approved in writing by the local planning authority.

The stated reason for condition 5 was highway safety.

An application for approval of the reserved matters pursuant to the outline consent is for consideration elsewhere on this agenda (Ref. 14/00363/REM). Revised access details have been submitted as part of that application and as such, it is proposed to amend this condition to refer to the revised site access drawing SCP/13121/001.

The Highway Authority has considered the reserved matters application and is satisfied that the proposed access as shown on Drawing No. SCP/13121/001 is acceptable. It is considered that the variation of Condition 5 to reflect the amended site access drawing is appropriate therefore.

Conditions 18, 19 and 20

Condition 18 states as follows:

The gross retail floorspace provided under the terms of this decision shall not exceed 1,356 square metres.

The variation sought is to allow up to 1,384 square metres of gross retail floor space.

Condition 19 states as follows:

The retail floor space provided under the terms of this decision shall not be occupied or operated by Tesco, Sainsbury's, Asda or Morrison's (excluding Netto) or any successor in title to such companies.

The applicant has confirmed that they have an in-principle agreement with a 'top four' operator to take the food retail unit. The application therefore seeks to remove this condition.

Condition 20 states as follows:

At least 85% of the net sales floor space shall be devoted to the retailing of convenience goods as defined in appendix A to the "Practice guide on need, impact and the sequential approach", Department for Communities and Local Government, December 2009.

The variation sought is to require at least 80% of the net sales floor space to be devoted to the retailing of convenience goods.

The stated reason for conditions 18, 19 and 20 was to reflect the perceived need and considerations of impact.

At the time of considering the outline planning application, PPS4 required an assessment of impact. PPS4 has since been superseded by the NPPF and Paragraph 26 of the Framework advises that when assessing applications for retail outside of town centres, local planning authorities should only require an impact assessment if the development is over a proportionate, locally set floor space threshold, or 2,500 square metres if there is no locally set threshold. The floor space now proposed is 1,384 square metres, this is considerably below the national threshold and there is no locally set threshold in place. Given that there is no requirement for applications for retail development of this size to be assessed against need or impact as referred to in the reason for these conditions, it is not considered that an objection could be sustained to the variation of Conditions 18 and 20 in the form proposed by the applicant or the removal of Condition 19.

Condition 21

Condition 21 states as follows:

Prior to first occupation of the A1 retail foodstore, a minimum of 2,434 square metres of floorspace for business, industrial or storage or distribution purposes shall have been completed on the site and made available for letting or sale.

The Inspector stated that the reason for Condition 21 was to ensure timely provision of floorspace for business, industrial or storage or distribution purposes.

The application seeks to delete this condition.

The applicant's agent highlights the fact that a recent approval has been granted for residential use of the site (Ref. 13/00625/OUT) with no permanent employment. He also states that the retention of condition 21 would wholly prejudice the delivery of the wider scheme as it does not respond to market signals as advised by the NPPF and NPPG and any such condition would not pass the six tests of the NPPF.

As stated by the applicant's agent, the Council recently accepted the principle of the loss of this employment site in resolving to approve a proposal for the residential development of the site. In support of that application, a Marketing Report was submitted that indicated that it is unlikely that the

site will be developed for employment purposes and the Council concluded that on that basis, an objection could not be sustained to the loss of employment land. The delivery of this site would provide significant employment opportunities both in the commercial business units but also in the retail store and it is not considered that Condition 21 is either necessary or reasonable. On this basis, removal of Condition 21 is considered acceptable.

Section 106 Obligation

Any approval of the current application is in effect the granting of a new outline consent. The previous consent was subject to a Section 106 obligation which required the applicant to pay £75,326 towards NTADS (Newcastle-under-Lyme (urban) Transport and Development Strategy) and £2,100 for a travel plan contribution. The obligation also had a requirement that should the site be occupied or operated by a big four operator within 5 years of the date of the permission, then an additional NTADS sum of £87,185 would be required.

It is necessary to consider whether the requirements of the previous Section 106 are still justified and necessary. The statutory tests in the CIL Regulations which planning obligations must pass require that a planning obligation should be:-

- Necessary to make the development acceptable in planning terms
- Directly related to the development
- Fairly and reasonably related in scale and kind to the development

NTADS finished in April this year and as such it would not be reasonable to secure such a contribution at this time. The travel plan contribution is however considered reasonable.

Background Papers

Planning files referred to
Planning Documents referred to

Date report prepared

2 July 2014