

**LAND AT ASHFIELDS NEW ROAD, NEWCASTLE**  
**JESSUP BROTHERS LIMITED**

**15/00699/FUL**

The Committee resolved, at the meeting of 13<sup>th</sup> October 2015, to grant full planning permission for a development of 42 residential units made up of five pairs of semi-detached, two bedroom dwellings; a block of 10 one bedroom flats; and a further block of 22 one bedroom flats, provided the applicant entered into by 6<sup>th</sup> November 2015 a Section 106 obligation requiring a financial contribution of £106,358 for the enhancement and maintenance of the open space at the Greenway enhancement/improvements and maintenance.

Following the Committee meeting the applicant has informed the authority that such a level of contributions would make the scheme unviable. Following the receipt of a Development Viability Appraisal of the development prepared on behalf of the applicant and the confirmation that they would pay for an independent appraisal, the District Valuer was instructed and draft report has been very recently been received but is being revised in light of further information regarding costs received from the applicant.

## **RECOMMENDATIONS**

Subject to the District Valuer confirming that the scheme cannot, at present, support any financial contributions :-

A) Subject to the applicant entering into a Section 106 obligation by 27<sup>th</sup> February 2016 requiring the review of the financial assessment of the scheme, if there is no substantial commencement within a year of the grant of planning permission, and a contribution then being made to public open space if the scheme is evaluated at that time to be able to support such a contribution,

PERMIT, subject to conditions relating to the following: -

1. Standard Time limit for commencement of development
2. Approval of materials
3. Implementation of landscaping scheme
4. Trees on northern boundary to be retained and tree protection measures to be agreed and implemented.
5. Contaminated land
6. Construction Method Statement, to address environmental and highway matters, including details of methods to prevent mud and debris on the highway and dust mitigation measures.
7. Implementation of noise mitigation measures to achieve appropriate noise levels.
8. Construction hours.
9. Approval of waste storage and collection arrangements.
10. Submission, approval and implementation of a detailed surface water drainage scheme.
11. Provision of access, parking and turning areas prior to occupation
12. Provision of landscaping and bollards on highway land adjoining turning circle on Ashfields New Road.
13. Prior approval of a scheme for the provision of a scheme with the tenure indicated in the appraisal. The scheme shall include the timing of the construction for the affordable housing, arrangements to ensure that such provision is affordable for both initial and subsequent occupiers and the occupancy criteria to be used for determining the identity prospective and successive occupiers of such units and the means by which such occupancy will be enforce.

A) Should the obligation referred to above not be secured by the 27<sup>th</sup> February 2016, that the Head of Planning be given delegated authority to refuse the application on the grounds that without such an obligation there would not be an appropriate mechanism to allow for changed financial circumstances, and in such circumstances the potential provision of policy compliant contributions towards public open space; or, if he considers it appropriate, to extend the period of time within which such an obligation can be secured

## **Reason for Recommendation**

This application has been undetermined for a period of approximately 36 weeks (at the time this report was prepared) so it was considered that the matter should be reported to the earliest possible meeting of Planning Committee. Whilst a draft report of the District Valuer has now been received, she has been considering comments upon that report, and is expected to provide her final report before the Committee. A further advance supplementary report will therefore be necessary.

## **KEY ISSUES**

The proposed residential development comprising 42 dwellings was considered acceptable by the Planning Committee in October 2015, however it was considered necessary to seek a planning obligation to secure of a contribution of £106,358 for the enhancement and maintenance of the open space at the Greenway – to meet the additional demands on open space generated by the development.

Your Officer remains satisfied that such obligations would comply both with Section 122 of the CIL Regulations, and Regulation 123 that stipulates that a planning obligation may not constitute a reason for granting planning permission if it provides funding in respect of a specific infrastructure project or a type of infrastructure and, if five or more obligations providing funding for that project or type of infrastructure have already been entered into since 6 April 2010. There have not been any other obligations entered into since then that secure a contribution towards the Greenway.

It is acknowledged that in some circumstances an applicant may believe that what is being asked for by the Council will render a development unviable. The Developer Contributions SPD, adopted by the Borough Council in September 2007, has a section on the issue of "viability".

The Council's position is that in such circumstances, for the Council to be persuaded to reduce its requirements, the onus is upon the applicant to justify why and how special circumstances apply.

The applicant in this case has submitted financial information to substantiate their claim that a policy compliant scheme would be unviable. The information submitted has been sent by your officers to the District Valuer (DV), an independent third party who has the skills and experience required to assess financial information in connection with development proposals, for further advice.

The NPPF states that pursuing sustainable development requires careful attention to viability and costs in both plan-making **and** decision-taking. In relation to 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 landowner and willing developer to enable the development to be deliverable. The guidance goes on to state that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, where appropriate, be sufficiently flexible to prevent planned development being stalled.

It is understood that the District Valuer is likely to advise that the proposed residential development is not financially viable, if the open space contribution is insisted upon.

On the positive side there is the undoubted contribution that the development would make to housing availability which is acknowledged to be in short supply. The site does nothing to enhance the appearance of the area and its redevelopment will be beneficial to the area.

The indication is that if the Council were to pursue any contribution, the development would simply not happen and accordingly no contribution would be received and much needed housing development would not take place. The LPA is being encouraged to boost the supply of housing and whilst the case for this particular development is not based upon the lack of a 5 year supply of deliverable housing sites (the principle being in accordance with policy in both the CSS and the NLP), encouraging this undeniably sustainable development (which could form part of that supply) is a proper material consideration. Your Officer's view is that provided the case for a reduction in the required contributions is established with evidence verified by the District Valuer, there are sufficient circumstances here to justify accepting the development without the contribution that a policy-compliant scheme would require.

Market conditions and thus viability, can change. In other cases where viability has been an issue the LPA has considered it quite reasonable and necessary to require the independent financial assessment of the scheme to be reviewed if the planning consent has not substantially commenced within one year of the assessment, and upward only alterations then made to the contributions if the scheme is then evaluated to be able to support higher contributions. The applicant has suggested that an alternative to this is to impose a time limit requiring that development commences in 18 months of the decision rather than the standard 3 years. Whilst this would encourage the prompt commencement of development, it would not necessarily ensure that it is substantially commenced. A material commencement of development for the purposes of the time limit condition would involve very little development (for example the marking out of access or the construction of the footings to one of the plots) and this would not be viewed as substantial commencement. On this basis it remains your officer's opinion that a reappraisal would need to be secured via a Section 106 agreement.

## **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 (CSS)

Policy SP1: Spatial Principles of Targeted Regeneration  
Policy SP3: Spatial Principles of Movement and Access  
Policy ASP5: Newcastle and Kidsgrove Urban Neighbourhoods Area Spatial Policy  
Policy CSP1: Design Quality  
Policy CSP3: Sustainability and Climate Change  
Policy CSP5: Open Space/Sport/Recreation  
Policy CSP6: Affordable Housing  
Policy CSP10: Planning Obligations

#### Newcastle-under-Lyme Local Plan 2011 (NLP)

Policy H1: Residential development: Sustainable location and protection of the countryside  
Policy H4: Housing Development and Retention of Parking Facilities.  
Policy T16: Development – General Parking Requirements  
Policy C4: Open Space in New Housing Areas

### **Other material considerations include:**

#### National Planning Policy and guidance

National Planning Policy Framework (March 2012)

Planning Practice Guidance (March 2014)

#### Supplementary Planning Guidance/Documents (SPGs/SPDs)

Developer Contributions SPD (September 2007)  
Affordable Housing SPD (2009)  
Space Around Dwellings SPG (July 2004)  
Newcastle-under-Lyme and Stoke-on-Trent Urban Design SPD (2010)

#### Waste Management and Recycling Planning Practice Guidance Note (January 2011)

#### Relevant Planning History

Outline planning permission for a new college, sports facilities, superstore, petrol filling station, offices, housing, parking, landscaping and associated engineering works was issued in 2007 (06/01180/OUT) including this current application site. The outline permission identified this for residential development with an indication that the site could accommodate up to 56 units, however the time period within which a reserved matters application can be submitted has now lapsed.

Reserved matters approval was granted in 2007 for the new College and Sports Hall and in 2009 for the superstore (08/00865/REM).

#### Views of Consultees

No further consultations have been undertaken.

#### Representations

No further publicity has been undertaken and no representations were received when the application was publicised when initially received.

Applicant/agent's submission

A Development Viability Appraisal undertaken. Details of the application but not of the appraisal, which contains confidential information, are available to view on the Council's website

**Background Papers**

Planning Policy documents referred to  
Planning files referred to

**Date report prepared**

20<sup>th</sup> January 2016