

The application is for outline planning permission for residential development up to a maximum of 138 dwellings. Details of the point of vehicular access onto the site have been submitted for approval. Although the application form indicates that approval is being sought of landscaping details, such landscaping details have not been submitted even for the bund (the details provided are said to be illustrative), and it has been put to the applicant that the application should proceed on the basis that it is for outline planning permission, with all reserved matters with the exception of the means of vehicular access into the site (landscaping, appearance, layout, internal access arrangements and scale) reserved for subsequent approval. An indicative layout plan has been submitted for information, as has illustrative details of the bund along part of the north western boundary of the site (where adjacent to the Walley's Quarry landfill site). The submission of this application follows on the refusal in June 2015 of the same proposal, with that decision and the lodging of an appeal against that decision. The drawings submitted with the applications are the same.

The proposed access utilises the existing access to Hamptons Metal Merchants off the access road serving the adjoining existing residential development, known as Milliner's Green, off Keele Road.

The site measures 4.99 hectares and is located to the south-east of Walley's Quarry landfill site. The site is within the Newcastle Neighbourhood as designated on the Local Development Framework Proposals Map and is within the urban area. Trees within the site are protected by Tree Preservation Orders Nos. 2 and 85.

The 13-week period for the determination of this application expires on 2nd March 2015.

RECOMMENDATION

(a) REFUSE for the following reason:-

Odour arising from the adjoining landfill site is highly likely to adversely affect the living conditions of the occupiers of the proposed development and it is not considered that this can be addressed through appropriate mitigation.

(b) That the Committee receive a supplementary report on the application (to be issued prior to the meeting) which, upon consideration of the independent appraisal of the viability of the proposed development undertaken by the District Valuer, provides further recommendations as to viability and whether additional reason/s for refusal are appropriate.

(c) That the Committee also resolve that the Council no longer intends to argue, at the appeal against the decision on application 14/00948/OUT, that the development would unduly restrict or constrain the activities permitted or allocated to be carried out at any waste management facility and the implementation of the Waste Strategy, contrary to local and national policy.

Reason for Recommendation

It is considered that odours arising from the adjoining landfill site will have an unacceptable impact on the living conditions of the occupiers of the proposed development as odours could not be addressed through appropriate mitigation measures.

The development is acceptable with regard to noise, contamination and landfill gas issues can be suitably addressed through mitigation measures that could be the subject of conditions of a planning permission.

The development would result in additional pressure on limited primary school places of the schools whose catchment area it is located in, and would place additional demands on off-site public open

space unless the future maintenance and access to the open space on site is guaranteed. Both could be secured by means of planning obligations.

A planning obligation is also required to secure affordable housing within this development in accordance with policy and a Travel Plan monitoring fee. No obligations, in the form of a unilateral undertaking are “on the table” at the time of writing and indeed the applicant has submitted a viability assessment that indicates that the development would not be viable with such contributions. The viability information that has been provided is currently being reviewed by the District Valuer and any response received will be reported.

Overall it is considered that the adverse impacts arising from granting planning permission (i.e. the odours arising from the adjoining landfill site having an unacceptable impact on the occupiers of this development would outweigh the benefits of the provision of housing land; the benefits to the local economy; the relocation of the existing scrap yard within the site; and the social benefits of providing family and affordable houses (even assuming that the full 25% provision is made which may not be the case) and as such there is no presumption in favour of this development.

In the event of the Committee accepting recommendation (a) it would be appropriate for the Council to make it clear, that on the basis of the information submitted with this application it no longer intends to argue, at the appeal, that the development would unduly restrict or constrain the activities permitted or allocated to be carried out at any waste management facility and the implementation of the Waste Strategy, contrary to local and national policy (the second reason for refusal of the previous application).

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

The Local Planning Authority worked in a positive and proactive manner in dealing with this application and in considering the application, advising of issues of concern and the need to provide additional supporting information, within a reasonable period, however it is considered that the applicant has been unable to overcome the principal concern arising from the proposal.

KEY ISSUES

As indicated above the application is for outline planning permission for up to 138 dwellings. The details of the vehicular access into the site, which is the existing scrapyards access, are submitted for approval at this stage, but all other matters of detail are to be considered at a later date. An indicative layout plan has, however, been submitted in support of the application. This plan shows a circular internal access with a number of cul-de-sacs off that road. A central green/play area is shown and a landscaped bund is shown on the boundary of the site to the adjoining landfill site. A couple of sections through the landscaped bund are provided as part of the application.

This application is a resubmission following the refusal of the proposed development in 2015 for the reasons relating to the following:

1. Odour arising from the adjoining landfill site is highly likely to adversely affect the living conditions of the occupiers of the proposed development and it is not considered that this can be addressed through appropriate mitigation.
2. In the absence of any odour mitigation measures that would suitably address the concerns expressed at 1, the applicant has failed to demonstrate that the development would not unduly restrict or constrain the activities permitted to be carried out at the adjoining waste management facility and the implementation of the Waste Strategy, contrary to policy.
3. In the absence of a secured planning obligation and having regard to the likely additional pupils arising from a development of this scale and the capacity of existing educational provision in the area, the development fails to make an appropriate contribution towards primary school provision.
4. In the absence of a secured planning obligation the development fails to make an appropriate contribution towards the provision of affordable housing which is required to provide a balanced and well-functioning housing market.

5. In the absence of a secured planning obligation the future maintenance and public access to the required public open space to meet the needs of the development has not been secured.

The development was considered to be acceptable in respect of visual impact; highway safety; contamination and landfill gas; and coal mining legacy issues and as planning circumstances have not materially changed it is not considered necessary that such issues be addressed at this time.

The Landscape Development Section has requested additional arboricultural information in response to the current application. In addition concern has been expressed that the landscaped bund is too steep to be enable maintenance by mowing and about its visual impact in the surrounding landscape setting. Such concerns were not expressed in the response to the previous application and were not identified in the decision as issues of concern at this outline stage. As circumstances have not changed since the previous decision it would now be unreasonable to introduce them, particularly as they are matters that could be addressed at reserved matters stage.

The main issues for the Local Planning Authority to address are therefore as follows:-

- Principle of development
- Residential amenity
- Impact of the development on the adjoining landfill site.
- Landscape and trees
- Planning obligations necessary to make the development policy compliant
- An assessment overall of whether or not any adverse impacts of the development significantly and demonstrably outweigh its benefits, when assessed against the policies in the NPPF taken as a whole.

Principle of residential development on this site

The application lies within the urban area and as such policies within the adopted Development Plan support the principle of residential development on the brownfield (currently developed) element of the site. The site, however, is partially a greenfield site and as such the proposal does not fully comply with the Development Plan which seek to target residential development towards brownfield land.

When the previous application was determined the Local Planning Authority was unable to demonstrate a five-year supply of specific, deliverable housing sites (plus an additional buffer of 20%) as required by paragraph 47 of the Planning Policy Framework (NPPF). It remains the case that a five-year supply cannot be demonstrated and indeed the supply position, as reported to the 13th January 2016 Planning Committee, is now worse than it was at the time of the previous application. It is therefore accepted that paragraph 49 of the NPPF applies to this application as follows:

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

The application has therefore to be assessed against the NPPF including paragraph 14 which states:

*“At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.*

...For decision-taking this means (unless material considerations indicate otherwise):

- *...where...relevant policies are out-of-date, granting permission unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *specific policies in this Framework indicate development should be restricted.”*

Consideration will be given to whether there are any adverse impacts arising from granting planning permission that would outweigh the benefits of the provision of housing land under the headings below and a conclusion reached at the end of the report regarding the acceptability of the proposed development in principle.

Residential Amenity

The application is supported by a number of Assessments relating to residential amenity particularly arising from the site's proximity to the adjacent landfill site and it has previously been concluded that issues relating to noise and pests associated with that site are not grounds for refusal. That remains the case. The proposal includes a 5 metre high bund along part of the north western boundary of the application site.

It is known that the landfill site has planning permission until 2042 and that the levels of the fill, as permitted, will exceed the existing land level prior to the final restoration of the site thereby giving rise to amenity issues for a considerable period of time. It is therefore necessary to consider the impact of the landfill site on residential amenity as it is at present and as it will change as ground levels within the landfill site increase as waste is deposited.

The Air Quality Assessment submitted (which was also submitted with the previous application) has concluded that there will be no air quality concerns arising as a consequence of the development. It does acknowledge, however, that when the filling of the adjoining waste site takes place at ground level the impacts are predicted to be potentially significant. It goes on to conclude that the existing tree belt and proposed planted bund indicated on the illustrative layout will partially mitigate the impact of the landfill on the living conditions of the occupants of the development. It highlights that the development does not represent sensitive development any closer than existing development where similar impacts are predicted. In addition there will be ongoing mitigation measures to address odour at the landfill site.

An Odour Survey Report has been submitted in addition to the Air Quality Assessment in support of the current application which provides new information over and above what was received in the previous application in respect of odour recording on four days in 2015.

The application submission indicates that there is a likelihood of periodic odour incidents affecting the application site and that the proposed planted earth bund will only serve to provide a partial form of mitigation. Within the additional Odour Survey Report it indicates that existing properties centred on Galingale View are likely to be at a substantially greater risk of adverse impact than would be future occupants of the application site, but that there is no certainty on the future phasing of tipping activities. It concludes that odours do persist in the areas downwind of the current tipping face, these have not to date been experienced at locations within the application site at levels that would be considered unacceptable or unreasonable given the location of the site. In addition odour conditions at the application site are likely to be considerably better than those currently experienced in the existing residential development to the east.

The applicants' submission as well as the odour modelling undertaken by a consultant employed by the Environmental Health Division (EHD) both forecast that the odour levels will be above the Environment Agency benchmark for unacceptable odour pollution. This indicates that the site is not appropriate for residential development from the perspective of odour due to the operation of the adjacent landfill site. The existence of residential properties (which are the adjoining residential development to the north east of the site referred to in the planning history section below) that will similarly or more affected by the landfill site as those proposed does not justify the introduction of up to a further 138 households that would also be adversely affected. Whilst it is acknowledged that the operators of the landfill site have been addressing, and will continue to address, the odours arising from the development as far as they can, that the EA indicate that it is highly likely that the residents will be affected by odour nuisance should be noted.

It is therefore considered that the applicant has not demonstrated that the residents of the proposed development will have acceptable living conditions and as such the application should be refused

Impact of the development on the adjoining landfill waste site

Policy 2.5 of the recently adopted Waste Local Plan states that the Waste Planning Authority (the County Council) will not support proposals that would unduly restrict or constrain the activities

permitted or allocated to be carried out at any waste management facility, or restrict the future expansion and environmental improvement of existing operational waste management facilities.

Paragraph 120 of the NPPF states that to prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. Paragraph 8 of the National Planning Policy for Waste states that local planning authorities should ensure that the likely impact of proposed, non-waste related development on existing waste management facilities, and on sites and areas allocated for waste management, is acceptable and does not prejudice the implementation of the waste hierarchy and/or the efficient operation of such facilities.

The proximity of the proposed development, for the reasons outlined above, raises issues of residential amenity and it was previously considered to be the case that unless the Authority is satisfied that the development can be made acceptable through amendment or mitigation, which is not the case, it must be concluded that the proposal will prejudice the implementation of the Waste Strategy contrary to local and national policy. However, in light of the comments received it seems that the levels of odours at the new proposed development site are likely to be similar to, or lower than, the levels of odours at the existing residential properties in the local area. As the levels at the proposed site are comparable to those at existing residential areas, it's not clear that the new development would result in additional constraints to the operation of the landfill site, over and above those which already result from the presence of existing residential properties. As such it cannot be demonstrated that the development will be contrary to such policy as the advice received is that the proposed development could prejudice the operation of the landfill site but does not conclude that it would in these circumstances.

Planning obligations to make the development policy-compliant

The development would result in additional pressure on limited primary school places of the school within whose catchment area it is located and in the absence of a financial contribution, that can only be secured by a planning obligation, such adverse impacts would not appear to be appropriately mitigated against. Such an obligation is also required to secure affordable housing.

The applicant has confirmed that it is the intention to provide public open space on the site to meet the needs of the occupiers of the development and as such a contribution to off-site public open space improvements and maintenance, as recommended by the Landscape Development Section, could not be justified. Nonetheless a planning obligation is also within this development and to secure the future maintenance and management of the areas of landscaping and open space within the site.

Additionally a Travel Plan monitoring fee has been sought by the Highway Authority.

It is considered that the contributions that are sought comply with the tests in the CIL Regulations and as such would be lawful.

The applicant has submitted a viability assessment that indicates that the development would not be viable with such contributions. The District Valuer's advice has been sought and it will be necessary to consider the response when received.

Such matters will be addressed in an advance supplementary report.

Do the adverse impacts of the development significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole?

Odours arising from the adjoining landfill site have been identified as being likely to have an unacceptable impact on the occupiers of this development. It is acknowledged that the operators of the landfill site are addressing odours, and will continue to do so as part of their permit, this will not eliminate odours at all times over the considerable operational lifetime of the landfill site. This is a matter of considerable weight and outweigh the benefits of the provision of housing land; the benefits to the local economy; the relocation of the existing scrap yard from the site; and the social benefits of providing family and affordable houses (even assuming that the full 25% provision is made) when assessed against the policies in the NPPF taken as a whole. It is therefore concluded that the

adverse impacts of the development significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

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 T16: Development – General Parking Requirements
Policy C4: Open space in new housing areas.
Policy N12: Development and the Protection of Trees
Policy N17: Landscape Character – General Considerations
Policy IM1: Provision of Essential supporting Infrastructure

Staffordshire and Stoke-on-Trent Joint Waste Local Plan 2010-2026 (JWLP)

Policy 2.5 – The location of development in the vicinity of waste management facilities.

Staffordshire and Stoke-on-Trent Minerals Local Plan 1994-2006 (MLP)

Policy 6 – Mineral Safeguard Areas

Other material considerations include:

Staffordshire Minerals Local Plan 2015-2030 (draft for consultation)

Policy 3 – Safeguarding Minerals of Local and National Importance and Important Infrastructure
National Planning Policy and guidance

National Planning Policy Framework (March 2012)
Planning Practice Guidance (March 2014)
National Planning Policy for Waste (October 2014)
DEFRA Odour Guidance for Local Authorities (2010)

Supplementary Planning Documents/Guidance

Developer Contributions SPD
Affordable Housing SPD
Space around dwellings SPG
Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance SPD

North Staffordshire Green Space Strategy (adopted 2009)

Staffordshire County Council Education Planning Obligations Policy approved in 2003 and updated in 2008/09

Relevant Planning History of the adjoining now developed site to the north-east

99/00341/OUT Outline planning permission granted for residential development – 6 November 2000

02/01107/REM Details of the means of access to the housing development and scrapyards – refused but subsequently allowed on appeal in May 2003

03/00790/REM Details of 280 houses and apartments – appeal lodged against failure of the Local Planning Authority to determine the application within the appropriate period. Council resolution 21 September 2004 that had the appeal not been lodged it would have granted the application subject to various conditions. Appeal allowed 27 July 2005 and costs awarded against the Authority.

Relevant Planning History of the application site

The County Council granted planning permission to relocate the scrap yard on part of the application site to Holditch House, Holditch Road in 2013 (County Council's reference N12/03/2018 W).

The current application is a resubmission of an application for outline planning permission for up to 138 dwellings which was refused in 2015. An appeal has been lodged against the refusal which is to be dealt with by Public Inquiry later this year,

Views of Consultees

The **Environmental Health Division (EHD)** considers that issues of contamination can be addressed through appropriate mitigation that can be secured through conditions. In addition no objections are raised on noise and the impacts from construction grounds subject to conditions that impose controls over the construction activities; approval and implementation of design measures to ensure appropriate noise levels for the occupiers of the dwellings; and approval and implementation of waste collection and storage details.

On the issue of odour the EHD advises that an independent review of the odour information submitted by the applicant along with an odour impact assessment model of odour emissions from the adjoining landfill site has been commissioned. On the basis of the advice received it is apparent that the applicants' odour assessment demonstrates that there will be unacceptable odours on the development site levels which will have a significant adverse impact on amenity. Furthermore by undertaking an odour assessment utilising recognised robust data on odour emissions for typical landfill sites, it would appear that the development site experiences significantly higher concentration of odour than predicted by the applicants' own consultant, particularly when the adjacent landfill site is nearing completion and that odour levels could be between 10 and 20 times those considered acceptable by the Environment Agency. On that basis the EHD objects on odour grounds.

The **Highway Authority** has no objections subject to conditions including prior approval of full details of the access, submission of a Travel Plan and approval of a Construction Management Plan. In addition they advise that a Travel Plan monitoring fee of £6,300 should be secured by S106.

The **Landscape Development Section** indicate that before they can comment additional arboricultural information is required regarding protected trees on the site. In addition the proposed bund is too steep for maintenance by mowing and concerns are expressed about the visual impact on the surrounding area. Concern is also expressed regarding the impact of the mound upon the root protection area of protected trees. Notwithstanding this an appropriate developer contribution is requested for off-site public open space or that appropriate open space and play facilities are provided on site with approved provision for management of such areas. In addition full landscaping proposals are required.

The **County Education Authority** indicates that the development falls within the catchments of Friarswood Primary School/Hassell Community Primary School/St Giles and St George's CofE Academy and NCHS - The Science College. A development of this size could add 29 Primary School aged pupils, 21 High School aged pupils and 4 Sixth Form aged pupils. The Primary Schools are projected to be full for the foreseeable future (the other schools have capacity) as such they request a contribution towards Primary School provision only which amounts to £319,899 (29 x £11,031).

The **Environment Agency** has no objections to the proposed development. They comment that recent works at the adjoining landfill site has reduced odours at the site and has resulted in it being taken off the Site of High Public Interest register. Despite this there will always be a potential for the site

to cause nuisance to nearby developments during its active life. Even with suitable control measures the potential for nuisance will be greatly increased at certain points during the sites lifetime, such as when phases of the site are being filled and during the final restoration when the finished level will rise in view of the proposed development.

The County Council as the **Minerals and Waste Planning Authority** raise no objections to the proposed development subject to the Council being satisfied, having obtained confirmation from its own Environmental Health Officer and the Environment Agency that:

- There would be no unacceptable risks from pollution to any occupant of the proposed development as a result of the proximity to the neighbouring waste management facility; and
- The proposed development would not constrain the continued operation of the neighbouring waste management facility, or the timely restoration of the former quarry.

The **Coal Authority** considers that coal mining legacy potentially poses a risk to the proposed development and that site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues. They recommend a condition requiring approval and implementation of a scheme of investigations and the implementation of any identified mitigation measures.

The **Lead Local Flood Authority** has no objections subject to conditions to secure appropriate design to address surface water run-off.

The **Crime Prevention Design Advisor** has no objection to the construction of housing on the application site. The indicative layout appears to address crime prevention but concern is expressed about the inclusion of parking courts.

The County Council's **Historic Environment Record Officer** indicates that the Historic Environment Record has identified that there is likely to be only limited archaeological potential in this area and therefore no concerns are expressed.

The views of **Waste Management, Housing Strategy, Silverdale Parish Council**, and the **Newcastle South LAP** have been sought but they have not responded by the due date. As such it is assumed that they have no comments on the application.

Representations

Objections have been received from the **Thistleberry Residents Association** (four) one of which is the representation submitted in respect of the previous application. The representations raise the following concerns:-

- The Transport Report incorrectly refers to the A575 and it is unclear how the journey details have been calculated.
- It is unclear whether the workings of the landfill site have been taken into consideration when they reach surface level.
- The use of a swale pond is concerning given issues with such a drainage feature on the adjoining residential development.
- The application should be supported by an Ecological Survey.
- The loss of the greenfield to the development is unacceptable, but residents wish the scrap yard to be removed.
- Comments of consultees suggest the site is less than safe to develop. The application should be refused if the Borough Council can't ensure the site is safe for development.

A letter in support of the application has been received to the development of the brownfield element of the development, but objects to the development on greenfield land to maintain the green barrier between the Borough and the University Science Park. As the application site includes the former Field House farm and buildings there should be provision for an archaeological watching brief.

A further letter has been received from a local resident who is in support of the principle of the development due to the removal of the scrapyard but objects to the current application for the following reasons:

- An Environmental Impact Assessment screening opinion is required due to the size of the site.
- A financial contribution to education should be secured.
- The development could give rise to odour complaints.
- The proposed attenuation pond could create a pathway for the migration of residual contaminants and its provision incompatible with the use of a cover system to deal with the issue of contamination
- Affordable housing should be secured in accordance with policy.
- The submitted Viability Assessment is not adequate and contains errors and does not demonstrate that the development would not be viable if the Council seek to secure appropriate financial contributions and affordable housing.
- The proposed path through to Keele Road would require the removal of a mature hawthorn hedge and it would be better to align this further to the north to provide a cycle link that avoids the narrow path to the west of the existing scrapyard.

Applicant/agent's submission

The application is supported by the following;

- Planning, Design and Access Statement
- Ground Investigation Report
- Noise Impact Assessment
- Odour Survey Report
- Expert Report: Pest and Nuisance potential of proposed residential site.
- Arboricultural Report and Arboricultural Implications Report
- Transport Assessment
- Landscape and Visual Appraisal
- Flood Risk Assessment
- Ecological Scoping Survey
- Statement of Community Engagement
- Viability Assessment

These documents are available for inspection at the Guildhall and on the website that can be accessed by following this link <http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/15/01085/OUT>

Background Papers

Planning Policy documents referred to
Planning files referred to

Date report prepared

18th February 2016