

The Application seeks to vary condition 15 of planning permission 14/00767/FUL for the construction of 22 affordable dwellings. Condition 15 as worded in the decision notice is as follows:

*No development shall commence until an odour abatement system to the kitchen ventilation system of the hot food takeaway adjoining the site on Lower Ash Road has been installed in accordance with full and precise details that have been submitted to and approved in writing by the Local Planning Authority beforehand. The system shall be designed to operate in full accordance with the approved details before any of the dwellings hereby permitted are occupied and shall thereafter be maintained in accordance with the approved details. The kitchen ventilation system shall be regularly maintained to ensure its continued operation and the cooking process shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the Local Planning Authority.*

The reason given for the condition within the decision notice was “*in the interest of residential amenity.*”

The varied wording of condition 15 as proposed in this submission is to require that the odour abatement system is installed prior to the occupation of the dwellings rather than prior to the commencement of development as currently specified.

The site, of approximately 0.5 hectares in extent, is within the Kidsgrove Neighbourhood and Urban Area on the Local Development Framework Proposals Map.

**The 13 week period for this application expires on 24<sup>th</sup> August 2016.**

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## **RECOMMENDATION**

- (a) Subject to the applicant entering into a S106 obligation by no later than 12<sup>th</sup> August 2016, that preserves the Council's position in respect of obligations secured prior to the grant of permission 14/00767/FUL, including a financial reassessment being required if substantial commencement of the development is not achieved by 24<sup>th</sup> March 2017, and if capable of being supported education and public open space contributions, PERMIT the variation of condition 15 so that it reads as follows:

*Prior to the first occupation of the dwellings an odour abatement system to the kitchen ventilation system of the hot food takeaway adjoining the site on Lower Ash Road has been installed in accordance with full and precise details that have been submitted to and approved in writing by the Local Planning Authority beforehand. The system shall be designed to operate in full accordance with the approved details before any of the dwellings hereby permitted are occupied and shall thereafter be maintained in accordance with the approved details. The kitchen ventilation system shall be regularly maintained to ensure its continued operation and the cooking process shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the Local Planning Authority.*

and subject to the imposition of all other conditions attached to planning permission 14/00767/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.

- (b) Should the obligations referred to in (a) above not be secured by 12<sup>th</sup> August 2016 that the Head of Planning be given delegated authority to refuse the application on the grounds that without such obligations there would not be an appropriate mechanism to allow for improved financial circumstances to be taken into account (in the event of the development not promptly proceeding), and in such circumstances the potential provision of policy compliant contributions towards education and 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**

Whilst the variation of the condition as proposed will not secure the installation of the required odour abatement system as early as condition 15 currently requires it should still ensure that it is in place prior to occupation of the dwellings. As such the amenity concerns will be addressed before any resident is adversely affected.

The effect of a grant of approval is to create a new planning permission. The previous permission was only granted following the entering into of a Section 106 agreement securing a review of the financial viability of the scheme to provide policy compliant contributions to education and public open space (should the development not proceed within a certain time) and if then viable the payment of such contributions. That agreement however referred only to that earlier permission. Because a new permission would be granted the same approach is again required. Subject to this and the imposition of the same conditions as were imposed on 14/00767/FUL it is not considered that there are any adverse impacts of the development that would significantly and demonstrably outweigh the benefits and accordingly permission should be granted.

## **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 earlier this year for the construction of 22 affordable dwellings. The application seeks to vary condition 15 of that permission.

In deciding the application the Authority must only consider the condition in question and cannot reconsider the application.

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.

There is an existing fish and chip shop directly adjoining the application site which currently does not have a suitable extraction system. As such at the time that the application for the proposed development on the site was determined, there were concerns that odours and noise from the existing ventilation system could adversely affect the living conditions of the residents of the proposed development. The condition sought to address this by requiring the installation of an odour extraction system at the premises prior to the commencement of development.

Conditions, according to national planning policy, should only be imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects.

Aspire Housing have planning permission to undertake alterations to the group of buildings where the fish and chip shop is located (16-26 Lower Ash Road) and wish to install the odour extraction system at the same time as such permitted alterations are to be carried out. The commencement of these alterations is not programmed to commence, however, until after the commencement of the planning permission for the 22 dwellings and as such the odour extraction system will not be installed prior to the commencement of the housing development as the condition currently requires.

The applicant/developer of the permitted affordable dwellings, Aspire Housing, own and control the building within which the fish and chip shop, run under the terms of a tenancy, is located and the applicant indicates that agreement on the installation of the odour extraction system between the landlord and tenant is expected soon. In such circumstances the risk of the odour extraction system not being installed before occupation of the residential development is limited and as such it is considered that the variation of the condition as applied for (installation prior to occupation) can be supported in this case.

## **APPENDIX**

### **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

None relevant

Newcastle-under-Lyme Local Plan (NLP) 2011

None relevant

### **Other Material Considerations include:**

National Planning Policy Framework (NPPF) (2012)

Planning Practice Guidance (PPG) (2014) including guidance on the use of conditions

#### Relevant Planning History

14/0767/FUL Permit – construction of 22 affordable dwellings on the site of the former Woodshutts Inn.

15/00582/FUL Permit – alterations to an existing building including re-roofing, new gable feature roofs, replacement windows and new access stair at 16-26 Lower Ash Road.

#### Views of Consultees

The **Environmental Health Division** has no objections.

#### Representations

None received.

#### Applicant's/Agent's submission

The application form and location plan 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/16/00326/FUL>

#### Background papers

Planning files referred to

Planning Documents referred to

#### Date report prepared

4<sup>th</sup> July 2016