

The application was for outline planning permission for the erection of up to 128 dwellings at Tagedale Quarry, Loggerheads. The application was refused by the Planning Authority on the 12th January 2016 and that decision is now the subject of an appeal which will be determined following the holding of a Public Local Inquiry.

RECOMMENDATIONS

That the Committee confirms:

- 1) that it wishes officers to now write to the appellant to confirm that the obligations referred to in the recommendation that was provided to the Planning Committee on 5th January 2016 are required by the Local Planning Authority with an amendment to the education contribution referred to in point (ii) to be for both primary and secondary education places (the policy compliant requirement being for £530,545 in total rather than the original figure of £513,923); and that the Authority would wish to also see a financial contribution of £3,000 towards the preparation and monitoring of a Travel Plan for St Mary's CE Primary School, Mucklestone;
- 2) that in preparing the Council's Statement of Case officers, or the Council's agents, include reference to these above requirements;
- 3) that should the appellant seek before the appeal is determined to enter into a Section 106 agreement with the Council containing such obligations, officers have the appropriate authority to enter into such an agreement; and
- 4) that, for the avoidance of any doubt, your officers have authority to agree a Statement of Common Ground.

Reason for report

The application was refused planning permission on the 12th January 2016. An appeal has been lodged against the Council's decision and an Inquiry is scheduled for January 2017. This report is solely concerned with the issue of planning obligations and the completion of a Statement of Common Ground.

Background

The Planning Authority refused planning permission for this application on the 12th January 2016 for the following reason:

The development of this site would constitute unsustainable development by reason of its location in relation to the built-up area of Loggerheads and its lack of accessibility to key services and facilities, including the catchment Primary School St. Mary's Mucklestone Church of England (Voluntary Aided) Primary School, there being no suitable and safe footpath access to that school from the development. The proposed development would result in a high level of private car use having regard to its location and limited bus services and therefore would be contrary to the requirements and guidance of the National Planning Policy Framework (2012).

The recommendation before the Planning Committee was that planning permission be granted subject to the applicant first entering into Section 106 obligations to secure the following:-

- i. A management agreement for the long-term maintenance of the open space on the site
- ii. A contribution of £513,923 towards education provision ((on the basis that the development as built is for the full 128 units and of the type indicated) or such other sum as determined by the Head of Planning as appropriate on the basis of policy), towards the provision of education places at St. Mary's CE Primary School, Mucklestone
- iii. Provision of 25% of the dwellings as affordable units
- iv. A contribution of £6,300 towards travel plan monitoring

The decision notice of the Local Planning Authority, drawn up on the basis of the resolution of the Planning Committee of the 5th January, makes no express reference to these obligations, which at the time of the decision of the Committee were not "on the table".

An appeal has now been lodged against the Council's decision and a Public Inquiry is to take place in January 2017. It can be expected that the appellant will wish to prepare planning obligations for consideration by the Inspector.

A very similar application for up to 128 dwellings on this site was subsequently refused on 26th May 2016 (Ref. 16/00202/OUT). That application was refused for the following reasons which included the lack of "on the table" obligations:

1. *The development of this site would constitute unsustainable development by reason of its location in relation to the built-up area of Loggerheads and its lack of accessibility to key services and facilities, including the catchment Primary School St. Mary's Mucklestone Church of England (Voluntary Aided) Primary School, there being no suitable and safe footpath access to that school from the development. The proposed development would result in a high level of private car use having regard to its location and limited bus services and therefore would be contrary to the requirements and guidance of the National Planning Policy Framework (2012).*
2. *In the absence of a planning obligation securing appropriate arrangements for the long term maintenance and management of the public open space within the development which is an essential component of creating sustainable communities, as referred to in the Urban North Staffordshire Green Space Strategy (2007), the development is unacceptable. For this reason the proposal is contrary to Policies CSP1, CSP5 and CSP10 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, saved Policy C4 of the Newcastle-under-Lyme Local Plan 2011 and the aims and objectives of the National Planning Policy Framework (2012).*
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 secondary and primary education places as referred to in the Staffordshire County Council Education Planning Obligations Policy (November 2003, as subsequently updated) and the Newcastle-under-Lyme Borough Council Supplementary Planning Document on Development Contributions (2007). For this reason the proposal would fail to provide a sustainable form of development and would be contrary to Policy CSP10 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, saved Policy IM1 of the Newcastle-under-Lyme*

Local Plan 2011, and the aims and objectives of the National Planning Policy Framework (2012).

4. *In the absence of a secured planning obligation the development fails to provide 25% of the total number of dwellings as affordable dwellings on site which is required to provide a balanced and well-functioning housing market, as referred to in the Newcastle-under-Lyme Borough Council Affordable Housing Supplementary Planning Document (2009) and the Newcastle-under-Lyme Borough Council Supplementary Planning Document on Development Contributions (2007). The proposal would thus be contrary to Policies CSP6 and CSP10 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, and the aims and objectives of the National Planning Policy Framework (2012).*
5. *In the absence of a secured planning obligation the development fails to make an appropriate contribution towards the monitoring of a Travel Plan for the residential development and towards the preparation and monitoring of a Travel Plan for St. Mary's Mucklestone Church of England (Voluntary Aided) Primary School which seek to promote the most sustainable modes of travel as referred to in the Newcastle-under-Lyme Borough Council Supplementary Planning Document on Developer Contributions (2007). For this reason the proposal would fail to provide a sustainable form of development and would be contrary to Policies SP3 and CSP10 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, and the aims and objectives of the National Planning Policy Framework (2012).*

Given that this more recent application was virtually identical to the appeal scheme, there is no reason to suggest that it would not any longer be appropriate to seek the obligations referred to in the original recommendation to the Committee, subject to the additional requirement for a contribution towards the preparation and monitoring of a Travel Plan for the School, and a slightly higher educational contribution (all as advised to the Committee at its meeting in May).

The decision of the Authority has been made with respect to 15/00015/OUT, the decision notice has been issued, and is now the subject of the appeal. There is no suggestion that the Council either can or should add to its grounds of refusal of the application. However, your officers would submit that it is appropriate and timely to make the Local Planning Authority's position with respect to planning obligations absolutely clear.

It is also anticipated that the appellant will wish to request the Borough Council, and other parties including the County Council, to enter into an agreement under Section 106 that would become operative should the appeal be allowed - there being limitations in the use of obligations by unilateral undertakings as it is arguable that they cannot impose requirements or obligations upon any person other than the signing party. The obligations that were sought in this case should be secured by agreement rather than by unilateral undertaking. Agreeing to enter into an Agreement will not undermine the Council's position with respect to the principle of the development- that it is unacceptable.

As part of the appeal process associated with a Public Inquiry the applicant will be required, by the Planning Inspectorate, to seek to agree with the Local Planning Authority, what is termed a Statement of Common Ground – in order to enable the Inspector to identify points of agreement and disagreement between the principal parties. This is standard practice and any failure to engage in this process could be seen as unreasonable behaviour.