

The Application seeks to vary condition 24 of planning permission 16/00326/FUL. Application 16/00326/FUL related to the variation of 15 (on odour abatement) of planning permission 14/00767/FUL for the construction of 22 affordable dwellings. The granting of the permission, reference 16/00326/FUL resulted in a fresh planning permission for the construction of 22 affordable dwellings and it is this later permission that is currently being implemented.

Condition 24 as worded in the decision notice is as follows:

No development shall commence until a scheme for the provision of affordable housing, in perpetuity, as part of the development has been secured. The affordable housing shall be provided in accordance with the approved scheme, the scheme shall include:

- *The provision of 7 of the dwellings as shared ownership tenure residential units and 15 of the dwellings as affordable rent tenure residential units.*
- *The timing of the construction of the affordable housing.*
- *The arrangements to ensure that such provision is affordable for both initial and subsequent occupiers of the affordable housing; and*
- *The occupancy criteria to be used for determining the identity of prospective and successive occupiers of the affordable housing, and the means by which such occupancy will be enforced.*

The reason given for the condition within the decision notice was “*to ensure adequate provision is made for affordable housing within the development in accordance with policy*”

The varied wording of condition 24 is the removal of the words “in perpetuity.”.

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 15th December 2016.

RECOMMENDATION

PERMIT the variation of condition 24 of 16/00326/FUL so that it reads as follows:

No development shall commence until a scheme for the provision of affordable housing as part of the development has been secured. The affordable housing shall be provided in accordance with the approved scheme, the scheme shall include:

- **The provision of 7 of the dwellings as shared ownership tenure residential units and 15 of the dwellings as affordable rent tenure residential units.**
- **The arrangements to ensure that such provision is affordable for both initial and subsequent occupiers of the affordable housing; and**
- **The occupancy criteria to be used for determining the identity of prospective and successive occupiers of the affordable housing, and the means by which such occupancy will be enforced.**

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.

Reason for Recommendation

As the developer, Aspire Housing, is not able to guarantee that the affordable housing permitted on this site will be retained in perpetuity, due to the Right to Acquire that exists, the condition should be varied by removal of the reference to in perpetuity. In addition it is considered that the requirement for the timing of the construction of the affordable housing is not required given the development is only for affordable housing.

There is no longer a requirement for a Section 106 planning obligation to secure a review of the viability of the scheme as the development has been substantially commenced in accordance with the S106s already entered into.

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, reference 14/00767/FUL. In October further permission was granted, under reference 16/00326/FUL, for the variation of condition 15 of planning permission 14/00767/FUL which granted a fresh permission for the development. The application seeks to vary condition 24 of that later permission.

The wording of Condition 24 is set out in the introduction. The applicant seeks to vary the condition by removal of the words 'in perpetuity'.

In deciding the application the Authority must only consider the condition in question and cannot reconsider the principle of the development already permitted.

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. In addition if the planning permission was subject to a Section 106 planning obligation (S106) that obligation would need to be varied to ensure that it is triggered by the new permission if it is still required.

The applicant, Aspire Housing, indicate that they are unable to guarantee compliance with the condition as they are unable to ensure that the properties will remain affordable in perpetuity. Such a right comes from the Housing (Right to Acquire) Regulations 1997 which indicates that a tenant who satisfies the conditions of section 16(1)(a) and (b) of the Housing Act 1996 has the right to acquire property if the registered social landlord owns the freehold title of the house. Such a right to acquire arises when the tenant has occupied the property for 2 years under an assured tenancy (other than an assured shorthold tenancy or a long tenancy, or under a secure tenancy) and if the house was provided with public money since March 1997 and has remained in the social rented sector.

The registered social landlord can refuse an application for the right to acquire on certain grounds but such grounds do not relate to the means by which the affordable housing has been secured. Aspire Housing could not refuse on the basis that the affordable housing on this site was secured through a condition of a planning permission and the reference to such provision being in perpetuity within condition 25 has no bearing on this right.

It is clear that the developer, Aspire Housing, is unable to ensure that a breach of condition 25 requiring the affordable housing being required in perpetuity, as currently worded, is complied with. In recognition of such a right to acquire it is considered that the condition does not meet the relevant tests as it is not enforceable. The condition therefore should be varied through the omission of the reference to in perpetuity. It is important to note the circumstances of this case – that the affordable housing has not been secured by a planning obligation, and accordingly no precedent is set for the consideration of this issue where affordable housing is being secured by means of a planning obligation.

In retrospect, given that all the houses to be constructed are to be affordable, at least initially, it is also considered that the requirements of the second bullet point of the condition is not required and should also be omitted from the wording of the condition as varied. The request of Housing Strategy regarding that the varied condition should include additional nomination rights is not, however, considered appropriate as there has been no material change in planning circumstances since the condition was initially imposed to justify such an amendment.

Prior to the granting of planning permission for the development the applicant provided evidence that the development would be unviable if financial contributions to education and public open space to comply with policy were secured. This case was accepted, having been independently reviewed by the District Valuer and planning permission was granted without any requirement that the contributions are paid.

In recognition that market conditions and thus viability can change the applicant, however, was required to enter into a S106 that required the independent financial assessment of the scheme to be reviewed if the development had not substantially commenced within one year of the grant of planning permission.

In this case as the development has been substantially commenced, in accordance with the definition that is set out in the S106 within 12 months of the decision (which was 24th March 2016). It follows that a review mechanism is not now required prior to the granting of this application.

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

Policy CSP6: Affordable Housing

Policy CSP10: Planning Obligations

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.

16/00326/FUL Permit - Variation of condition 15 (odour abatement system) of planning permission 14/00767/FUL

Views of Consultees

The **Housing Strategy Section** have no objection to the removal of the words “in perpetuity” from the condition as they agree with rationale provided by the applicant and recognise that the right to buy has been extended to the social housing sector and therefore it becomes difficult to guarantee that such housing remains affordable in perpetuity. A request has been made for an additional cause to ensure that the affordable housing is available for all those in housing need as follows:

“All the affordable housing units should be available and let for occupation to persons nominated from the Council’s Housing Register at the first let and thereafter 75% of the affordable housing units will be let for occupation to persons nominated from the Council’s Housing Register.”

Kidsgrove Town Council were consulted but as they have not responded by the due date it is assumed that they have no comment to make

Representations

None received.

Applicant’s/Agent’s submission

The application form and location plan and supporting information 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/16/00724/FUL>

Background papers

Planning files referred to

Planning Documents referred to

Date report prepared

24th November 2016