

Public Document Pack

Date of meeting Tuesday, 26th February, 2019
Time 6.30 pm
Venue Astley Room - Castle House
Contact Geoff Durham



**NEWCASTLE
UNDER LYME**
BOROUGH COUNCIL

Castle House
Barracks Road
Newcastle-under-Lyme
Staffordshire
ST5 1BL

Planning Committee

SUPPLEMENTARY AGENDA

PART 1 – OPEN AGENDA

- | | |
|--|-----------------|
| 5a APPLICATION FOR MAJOR DEVELOPMENT – CROFT FARM, STONE ROAD, HILL CHORLTON. DAVID JAMES DEVELOPMENTS LIMITED. 18/00507/OUT | (Pages 3 - 4) |
| 5b APPLICATION FOR MAJOR DEVELOPMENT – CROFT FARM, STONE ROAD, HILL CHORLTON. DAVID JAMES DEVELOPMENTS LIMITED. 18/00507/OUT | (Pages 5 - 6) |
| 6a APPLICATION FOR MAJOR DEVELOPMENT – NORTH BOUND KEELE MOTORWAY SERVICE AREA. WELCOME BREAK. 18/00537/FUL | (Pages 7 - 8) |
| 12a APPLICATION FOR MINOR DEVELOPMENT - 8-10 HIGH STREET, NEWCASTLE. PRACTICAL CONSTRUCTION LIMITED. 18/00774/FUL | (Pages 9 - 10) |
| 14a APPLICATION FOR MINOR DEVELOPMENT - SITE AT LOOMER ROAD, CHESTERTON. MR HU (HHL DEVELOPMENT LTD). 18/00967/FUL | (Pages 11 - 12) |
| 15a APPLICATION FOR OTHER DEVELOPMENT – LAND ADJACENT TO A525, KEELE GOLF COURSE, KEELE ROAD, KEELE. NEWCASTLE BOROUGH COUNCIL. 19/00010/DEEM3 | (Pages 13 - 14) |
| 16a APPLICATION FOR OTHER DEVELOPMENT - LAND OFF TALKE ROAD, NORTH OF PARKHOUSE ROUNDABOUT (ADJACENT BREWERS FAYRE). NEWCASTLE BOROUGH COUNCIL. 19/00012/DEEM3 | (Pages 15 - 16) |

16b APPLICATION FOR OTHER DEVELOPMENT - LAND OFF TALKE ROAD, NORTH OF PARKHOUSE ROUNDABOUT (ADJACENT BREWERS FAYRE). NEWCASTLE BOROUGH COUNCIL. 19/00012/DEEM3 (Pages 17 - 18)

17a LAND AT DODDLESPool, BETLEY. 17/00186/207C2 – ENFORCEMENT UPDATE (Pages 19 - 20)

22a MAKING OF THE LOGGERHEADS NEIGHBOURHOOD PLAN (Pages 21 - 22)

URGENT BUSINESS

24 REPORT ON DECISION RECEIVED WITH RESPECT TO AN APPEAL AGAINST THE COUNCIL'S DECISION TO REFUSE TO GRANT PLANNING PERMISSION FOR CHANGE OF USE OF A COMMUNAL AREA INTO A ONE BEDROOM SELF CONTAINED FLAT AT 1 WADE COURT, MARKET STREET, KIDSGROVE - 18/00393/FUL AND THE SEEKING OF CONTRIBUTIONS TOWARDS PUBLIC OPEN SPACE FOR DEVELOPMENTS OF TEN UNITS AND UNDER **(Pages 23 - 48)**

The report is considered urgent due to timeliness and costings issues.

Members: Councillors S. Burgess, Mrs J Cooper, A. Fear (Chair), H. Maxfield, P. Northcott, S. Pickup, B. Proctor, M. Reddish (Vice-Chair), S Tagg, G White, G Williams and J Williams

Members of the Council: If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

Meeting Quorums :- 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

NOTE: THERE ARE NO FIRE DRILLS PLANNED FOR THIS EVENING SO IF THE FIRE ALARM DOES SOUND, PLEASE LEAVE THE BUILDING IMMEDIATELY THROUGH THE FIRE EXIT DOORS.

ON EXITING THE BUILDING, PLEASE ASSEMBLE AT THE FRONT OF THE BUILDING BY THE STATUE OF QUEEN VICTORIA. DO NOT RE-ENTER THE BUILDING UNTIL ADVISED TO DO SO.

Published 22 February, 2019

FIRST SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
26th February 2019

Agenda item 5

Application Ref. 18/00507/OUT

CROFT FARM, STONE ROAD, HILL CHORLTON

Since the preparation of the report additional material has been received from the applicants and a further representation has been received. The representation interpreting the Highway Authority's comments as requiring the provision of street lighting comments that this would not be appropriate for the area, it would lead to the urbanisation of the hamlet and other environmental impact on the area. Street lighting is not currently present in any part of Hill Chorlton and would not be required for any reason other than this development.

Your Officer is seeking clarification as to whether the Highway Authority are seeking street lighting or seeking the approval of details of any that is to be provided.

With respect to the additional material that the applicant has provided this consists of the Local Green Space audit undertaken by the Qualifying body with respect to the Neighbourhood Plan (and thus forming part of the evidence base for that Plan), and a paper entitled Newcastle Affordable Housing Need. The audit refers various paths including that between the site and Baldwins Gate as important and well used walking routes.

The Affordable Housing Need paper provides extracts from the Affordable Housing SPD (2009) and notes that the SPD identified a shortage of 2 bedroom bungalows with only 13 available and a need (based on the then waiting/transfer list) for this type of accommodation of 172, and provides other extracts from that document. The paper submits that this all shows clear evidence of a requirement for affordable 2 bedroom bungalows, a need that the development at Croft Farm can supply.

The general benefits of providing affordable housing including 2 bedroom bungalows is not disputed, although as the agenda report indicates there is an absence of evidence of a particular need for this type of accommodation in this locality. Your officer considers that such benefits are outweighed by the harm associated with the unsustainable location of the development as detailed in the report.

The recommendation remains one of refusal for the reasons indicated in the report

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Published 26 February, 2019

SECOND SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
26th February 2019

Agenda item 5b

Application Ref. 18/00507/OUT

CROFT FARM, STONE ROAD, HILL CHORLTON

Since the preparation of the main agenda report and the previous supplementary report there have been a number of developments.

As members will be aware they have received an email from the applicant enclosing a statement in support of their application. The agreed procedure of the Committee is that any submissions/ representations from applicants and third parties must be received by the guillotine or deadline that relates to the meeting in question. In this case the guillotine fell at 5pm on Wednesday 20th February and the applicant was informed of this on Friday 15th February. The email from them to the members of the Committee was sent on Friday afternoon. Given that it was received after the guillotine it has not been published on the Council's website and accordingly third parties, including the party speaking as an Objector to the proposal have had no opportunity to consider the document.

Members are advised, as they have been when this situation has previously arisen to set aside the document and to consider the material that was submitted in support of the application prior to the guillotine. It should be noted that the applicants did submit a statement in support of their application on the 13th February that has been available to view as part of the application documents. That previous statement is similar although not identical to that which has been sent to Members and was taken into account by your officers in the preparation of the agenda report.

The agenda report at the end of the Key Issues section that addresses whether affordable housing provision is required did indicate that the Housing Strategy Section had been asked for their comments on the hybrid approach proposed by the applicant – with two affordable units being provided on site and a financial contribution being made for the “remainder” for off-site provision. Housing Strategy have since acknowledged, as did your Officer in the report, that such an approach had been accepted by officers in both the Gateway Avenue and Meadow Way schemes – that approach being confirmed as acceptable by the Inspector in the former case.

As to the size of the financial contribution, this has not been verified by the District Valuer and were the Committee to view the application favourably, contrary to your Officer's recommendation, it would be appropriate to give delegated authority to your Officer to confirm the amount offered is appropriate.

The first supplementary report advised of a representation received from a third party about street lighting. Clarification has been sought, as indicated, from the Highway Authority. Their recommended condition assumes that at reserved matters stage the developer may put forward a layout which the Highway Authority would wish to adopt and part of the adoption requirement would be a system of road lighting within the development.

The recommendation remains one of refusal for the reasons indicated in the report

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FIRST SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
26th February 2019

Agenda item 6a

Application Ref. 18/00537/FUL

NORTHBOUND KEELE MOTORWAY SERVICE AREA

Since the main agenda was published a further consultation response has been received from Highways England. They no longer have any objections to the proposal and recommend that the following conditions be attached to any permission:

- No part of the development hereby permitted shall commence until a Construction Traffic Management Plan has been approved.
- Prior to first use of the HGV Parking and Amenity areas the recommendations within the Stage 1 RSA Design Team Response report should be implemented and approved.

As such, the recommendation is amended as follows;

PERMIT the application subject to conditions relating to the following:

- i. **Standard time limit**
- ii. **Approved plans**
- iii. **Submission, approval and implementation of a detailed surface water drainage scheme**
- iv. **Submission, approval and implementation of an Arboricultural Impact Assessment**
- v. **Retention of all trees that are shown to be retained on the Landscape Concept Plan.**
- vi. **Submission, approval and implementation of tree protection measures.**
- vii. **Submission, approval and implementation of a Tree Protection Plan**
- viii. **Submission, approval and implementation of details of the boundary treatment of the area and other security measures including CCTV.**
- ix. **Submission, approval and implementation of a detailed landscape scheme, which address recommendations of the Ecological Appraisal regarding increasing connectivity and foraging opportunities for bats.**
- x. **Implement the recommendations within the Ecological Appraisal/Reptile Survey regarding biodiversity enhancements**
- xi. **Submission, approval and implementation of a detailed lighting scheme**
- xii. **No part of the development hereby permitted shall commence until a Construction Traffic Management Plan has been approved.**
- xiii. **Prior to first use of the HGV Parking and Amenity areas the recommendations within the Stage 1 RSA Design Team Response report should be implemented and approved.**

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FIRST SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
26th February 2019

Agenda item 12

Application Ref. 18/00774/FUL

8-10 High Street, Newcastle

In the light of the change of policy that is being recommended within the Urgent Business item now published with respect to the seeking of public open space contributions for developments of 10 units or less, it is now considered that to seek a public open space contribution in this case would be contrary to national policy and it is accordingly not recommended. This means that a planning obligation is no longer required.

The recommendation is therefore revised as follows:

PERMIT the application subject to the same conditions that were listed within the agenda report

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FIRST SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
26th February 2019

Agenda item 14

Application Ref. 18/00967/FUL

SITE AT LOOMER ROAD, CHESTERTON

In the light of the change of policy that is being recommended within the Urgent Business item now published with respect to the seeking of public open space contributions for developments of 10 units or less, it is now considered that to seek a public open space contribution in this case would be contrary to national policy and it is accordingly not recommended. This means that a planning obligation is no longer required.

The recommendation is therefore revised as follows:

PERMIT the application subject to the same conditions that were listed within the agenda report

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FIRST SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
26th February 2019

Agenda item 15

Application Ref. 19/00010/DEEM3

LAND ADJACENT TO KEELE GOLF COURSE, KEELE ROAD, KEELE

Since the main agenda was published the comments of **Keele Parish Council** have been received. They object to the advertisement hoarding due to the impact on the approach to the Conservation Area, the implications for highway safety on the bypass, inappropriate development in the Green Belt and that it is no benefit to the residents of the Parish.

As the agenda report indicates the sole considerations that can be taken into account in the determination of applications for advertisement consent are public amenity and public safety. That the hoarding is of no benefit to the residents of the Parish is immaterial to the determination of the application. Similarly the issue of whether a development is appropriate or inappropriate in Green Belt policy terms, as that is not a question of public amenity, carries no weight. The site lies a considerable distance from the two Conservation Areas at Keele – Keele Village and Keele Hall. It will be noted that the Highway Authority for the area have indicated that they have no objections on highway safety grounds to the proposal

Given the above the recommendation of approval contained within the agenda report is maintained.

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FIRST SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
26th February 2019

Agenda item 16

Application Ref. 19/00012/DEEM3

**LAND OFF TALKE ROAD, NORTH OF PARKHOUSE ROUNDABOUT
(ADJACENT BREWERS FAYRE)**

Since the main agenda was published and the receipt of revised plans amending the position of the sign the views of the **Highway Authority** have been received. They raise no objections. The comments of the Landscape Development Section and the Public Rights of Way Unit have not yet been received

Subject to the Landscape Development Section and the Public Right of Way Unit raising no objections which cannot be addressed by appropriate conditions, the application be delegated to the Head of Planning to PERMIT subject to the following conditions in addition to the standard advertisement display conditions:

- i. Approved revised plans**
- ii. Prior approval of details of the design of the bollards**
- iii. Any such conditions as referred to above**

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SECOND SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
26th February 2019

Agenda item 16 b

Application Ref. 19/00012/DEEM3

**LAND OFF TALKE ROAD, NORTH OF PARKHOUSE ROUNDABOUT
(ADJACENT BREWERS FAYRE)**

The comments of the **Landscape Development Section** have now been received. They indicate that the trees on the fence-line to the rear of the proposed hoarding, although not directly affected by the structure, will require to be protected from the works. The periphery of the Root Protection Area and the crown of the largest tree will be very close to the hoarding. Permission should be subject to submission of a Tree Protection Plan, Arboricultural Method Statement and Schedule of Tree Works to BS5837:2012.

To reflect the receipt of these comments the recommendation is accordingly now revised as follows

Subject to Public Right of Way Unit raising no objections which cannot be addressed by appropriate conditions, the application be delegated to the Head of Planning to PERMIT subject to the following conditions in addition to the standard advertisement display conditions:

- i. Approved revised plans**
- ii. Prior approval of details of the design of the bollards**
- iii. Submission, approval and implementation of a Tree Protection Plan, Arboricultural Method Statement and Schedule of Tree Works to BS5837:2012**
- iv. Any such conditions as referred to above**

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Published 26 February, 2019

FIRST SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
26th February 2019

Agenda item 17a

Application Ref. 17/00186/207C2

LAND AT DODDLEPOOL, BETLEY

Since the publication of the main agenda report a formal condition approval application for details required by condition 3 of planning permission reference 18/00299/FUL have been submitted. Appropriate consultation will now be undertaken and consideration will be given to the responses received as well as the acceptability of the information prior to a decision being reached.

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Report to Planning Committee 26th February 2019

Making of Loggerheads Neighbourhood Plan

Recommendation

That the decision to make the Loggerheads Neighbourhood Plan, and its status as part of the Development Plan, be noted

This report relates to the preparation the Loggerheads Neighbourhood Plan (the 'Neighbourhood Plan') which was subject to referendum on 10 January 2019 where it received a majority Yes vote. The Borough Council has now "made" the Neighbourhood Plan in accordance with Section 38A(4) of the Planning and Compulsory Purchase Act 2004.

The Loggerheads Neighbourhood Plan now forms part of the Development Plan and its policies will be given the weight to be accorded to part of the Development Plan when assessing planning applications that affect land covered by the Neighbourhood Plan.

Reasons for Decision:

The Examiner's report recommended modifications the Neighbourhood Plan, considered it met the basic conditions set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990, and was compatible with EU obligations and the Convention of rights and complies with relevant provisions made by or under Sections 38A and 38B of the Planning and Compulsory Act 2004 (as amended).

The referendum held on 10 January 2019 met the requirements of the Localism Act 2011. It was held in the referendum area, consisting of the parish of Loggerheads and posed the question "Do you want Newcastle-under-Lyme Borough Council to use the Neighbourhood Plan for Loggerheads to help it decide planning applications in the neighbourhood area?"

The count took place on 10 January 2019 and greater than 50% of those who voted were in favour of the Neighbourhood Plan being used to help decide planning applications in the neighbourhood area. The results of the referendum were as follows:

Response	Votes	Percent of Total
YES	807	91%
NO	79	8.9%
Turnout	24.9%	

1 ballot paper was returned as "unmarked or void for uncertainty"

Your Officer has assessed that the Neighbourhood Plan including its preparation does not breach, and would not otherwise be incompatible, with, any EU obligation or any of the Convention Rights (within the meaning of the Human Rights Act 1998). In accordance with Section 38A(4) of the Planning and Compulsory Purchase Act 2004 the Council had to therefore "make" the Neighbourhood Plan. This decision was made by the Head of Planning in consultation with the Leader of the Council, in accordance with a previous resolution of

Cabinet setting out to whom authority is delegated in relation to the various stages of a Neighbourhood Plan

Background

1. The Loggerheads Neighbourhood Plan Area is situated in the southern part of the Borough and comprises the parish area of Loggerheads. The preparation of the Neighbourhood Plan began in 2015 and the neighbourhood area was designated on 16 September 2015 as an area for the purpose of preparing a neighbourhood plan in accordance with section 61G of the Town and Country Planning Act 1990 (as amended).
2. Between September 2015 and June 2018 the Neighbourhood Plan has been subject to further consultation and engagement with the local community. Consultation is a legal requirement of the neighbourhood planning process and has taken place throughout the preparation of the Neighbourhood Plan with multiple opportunities for the community and interested parties to participate in its development.
3. The final Neighbourhood Plan and its supporting documents were submitted to the Borough Council in May 2018.
4. The Borough Council undertook the required publicity between 8 May 2018 and 19 June 2018. Relevant consultees, residents and other interested parties were provided with information about the submitted Neighbourhood Plan and were given the opportunity to submit comments to the Examiner.
5. The Borough Council appointed Christopher Collison BA (Hons) MBA MRTPI MIED MCMI IHBC as the independent examiner of the Neighbourhood Plan to consider whether it complied with various legislative requirements and met the set of "Basic Conditions".
6. The Examiner's report was received on 6 November 2018. It contained his findings on legal and procedural matters and his assessment of the Neighbourhood Plan against the Basic Conditions and Convention rights. Overall it concluded that the Neighbourhood Plan did comply with the Basic Conditions and other statutory requirements and that, subject to his recommended modifications, it could proceed to a referendum.
7. A referendum was held on 10 January 2019 and 91% of those who voted were in favour of the Neighbourhood Plan being used by the Borough Council to help it decide planning applications in the neighbourhood area.

THE SEEKING OF CONTRIBUTIONS TOWARDS PUBLIC OPEN SPACE FOR DEVELOPMENTS OF 10 UNITS AND UNDER

The Council has received an appeal decision with respect to the an appeal relating to an application (18/00393/FUL) at 1 Wade Court, Kidsgrove

A report on the appeal decision will be provided to a future meeting of the Planning Committee as normal. The appeal decision has potentially significant implications for the Council in respect of

- its policy of seeking public open space (POS) contributions in respect of developments of 10 or less dwellings
- applications that have been considered both by the Planning Committee and your Officer acting under delegated powers, but where a decision notice on them has not yet been issued because obligations by Section 106 agreement or unilateral undertaking have been sought but have not yet been completed/ received
- appeals both received and which may be received in the future where at least one of the grounds for refusal of the application by the Council as the Local Planning Authority (LPA) relates to the seeking of public open space contributions in respect of developments of 10 or less dwellings

In each of the above timeliness of a response to the consequences of the appeal decision is a critical factor. Where obligations are being drafted legal costs are being incurred by applicants. Similarly where viability appraisals are being undertaken costs are also being incurred. The report is brought to the Planning Committee as an item of Urgent Business in view of the above.

Recommendations

- (a) That the appeal decision be noted;**
- (b) That the LPA cease to apply the policy of seeking public open space contributions in respect of developments of 10 or less dwellings, other than in the circumstances expressly stated as possible in the PPG;**
- (c) In the case of each of those (7) applications for 10 dwellings or less which have been determined by the Planning Committee where such a POS contribution has been sought, and the related planning obligation has not yet been secured (and thus no decision notice has been issued), a report should be brought to the Committee at the next meeting so that the Committee can reconsider the position of the LPA;**
- (d) In the case of one single application for 10 dwellings or less which has been determined by the Planning Committee where a POS contribution is being required in the event of the development not being substantially commenced and a subsequent viability appraisal demonstrating that it can be afforded, and the related planning obligation has not yet been secured (and thus no decision notice has been issued), a report should be brought to the Committee at the next meeting so that the Committee can reconsider the position of the LPA;**
- (e) That in the case of those (12) applications for 10 dwellings or less which have been determined by your Officer acting under delegated powers on the basis that planning permission can be granted subject to a Unilateral Undertaking securing a public open space contribution, and that Unilateral Undertaking has not yet been received, your Officer has the authority to issue such permissions without such Unilateral Undertaking; and**
- (f) In any cases involving 10 or less dwellings where in refusing an application a reason for refusal relating to the failure to provide such a contribution has been given and an appeal has been or is now lodged, your officers have delegated authority to (a) withdraw that reason for refusal, (b) not to give any evidence in**

support of that reason for refusal and (c) if it were the sole reason for refusal to invite the submission of a new planning application, so as to avoid an unnecessary appeal

The Appeal Decision of 13th February 2019 now received

The Council has received an appeal decision with respect to an appeal against the decision to refuse to grant planning permission (18/00393/FUL) for the change of current use (communal area) into a 1 bedroom self-contained flat at 1 Wade Court, Market Street, Kidsgrove.

A full report on the appeal decision will be provided to a future meeting of the Planning Committee in due course. The appeal decision letter is attached as Appendix 1. This report is solely concerned with the implications of the decision with respect to the Council's current policy of seeking financial contributions for public open space when considering proposals for developments of 10 dwellings or less - the grounds for the item being Urgent Business.

The Inspector's letter rehearses the Council's policy basis for seeking contributions for public open space, and explores these in the context of the National Planning Policy Framework and the two additional appeals where open space contributions for developments of less than 10 dwellings has been an issue. Members will see in the letter that, in summary, the Inspector has found that these contributions are tariff style and thus the seeking of them is inconsistent with Government policy. This inconsistency takes precedence over the fact that our approach to these contributions is consistent with our own policy documents, including the Core Strategy and the Open Spaces Strategy.

Members will be aware that this is the second appeal where a Planning Inspector has found this to be the case, and as such, it is important for the Council to act to avoid further appeals being found against the Council on this ground.

The seeking of contributions towards public open space for developments of 10 units and under

National Planning Practice Guidance (PPG) indicates that there are specific circumstances where tariff style planning obligations should not be sought from small scale and self-build development. This follows the order of the Court of Appeal dated 13th May 2016 which gave legal effect to a Ministerial Policy that had been set out in a [written ministerial statement](#) of 28th November 2014.

Insofar as the Borough is concerned, having no "designated rural areas" (as defined in the Statement), such tariff-style contributions should not be sought in circumstances involving developments of 10 units or less, which have a maximum combined gross floorspace of no more than 1,000 square metres (gross internal area). This restriction on seeking such planning obligations does not apply to what are termed Rural Exception Sites.

The PPG in addressing the question what are tariff-style contributions states as follows

"Some authorities seek planning obligations contributions to pooled funding pots intended to provide common types of infrastructure for the wider area... For sites where the threshold applies, planning obligations should not be sought to contribute to pooled funding "pots" intended to fund the provision of general infrastructure in the wider area. "

The PPG does indicate that even in the case of developments of 10 or less units some planning obligations may still be required to make a development acceptable in planning terms. It is indicated that authorities can still seek obligations for site specific infrastructure where this is appropriate to make a site acceptable in planning terms. It will be noted that neither Inspector has accepted that a contribution to off-site public open space falls within this category. Finally the Guidance does indicate that LPAs can still seek contributions to fund measures with purpose of facilitating development that would otherwise be unable to proceed

because of regulatory or EU Directive requirements. Again there is no suggestion that the provision of a contribution to off-site public open space provision could be considered to fall within this category

Your planning Officer's position to date has been that public open space contributions are not "tariff style" because they are calculated on a per dwelling basis, and provided they are intended for specific projects which are not funded by pooled pots they could be sought for developments of 10 units or less.

The appeal decisions

As Members will note this is the third appeal decision involving developments of less than 10 dwellings where the issue of a financial contribution towards Public Open Space was a key consideration.

The first, dated 30th January 2018, related to a proposal for 8 Barford Road, 17/00483/FUL, for the proposed demolition of an existing bungalow and construction of three dormer bungalows. The appeal decision is attached as an Appendix 2 to this report. The paragraphs of relevance (to this report) are 26-32. The Inspector in that appeal noted that support for contributions requested by the Council was to be found in Policy CSP5 which refers to the the North Staffordshire Green Space Strategy and any replacement strategy – in this case the Open Space Strategy adopted in March 2017. The Inspector noted there had been a wide consultation exercise, but the document was a non-statutory one in that it did not form part of the approved development plan, but it could be a material consideration in the determination of planning applications, and as a consequence of the very specific details provided of how the money would be spent locally and how it would relate to the development he considered the contribution would meet the statutory tests as set out in the CIL Regulations and that a UU providing financial contribution towards off-site public openspace was required in these particular circumstances. The Inspector raised no issue with the fact that the contribution was for a development of 10 or less dwellings.

As indicated above the Inspector in the Wade Court appeal considered the Barford Road decision to have limited relevance to her decision.

The second appeal decision, dated 22nd June 2018, related to Monument House, Madeley Heath, 17/00483/FUL, and involved the conversion of the ground floor of the property into a two bedroom flat. The appeal decision is appended as Appendix 3 to this report. As indicated above the Inspector in that case considered that the contribution was a tariff style contribution, which the PPG indicates should not be sought on a development of this size. Policy CSP5 supported by the OSS which requires a contribution from any residential development regardless of size was held to be contrary to the PPG, the Inspector noting that one of the key aims of the changes made to the PPG was "to reduce the disproportionate burden of developer contributions on small scale developers". Given this, and in the absence of specific details about how the financial contribution would be spent and how it related to the appeal proposal, the Inspector concluded that the contribution requested would not meet the statutory tests set out in the CIL Regulations and the Framework. The appeal was allowed without a planning obligation.

In providing evidence in support of the decision to refuse the Wade Court application, your Officer sought to address the concerns expressed by the Inspector in the Monument House case which led to that appeal being allowed. Despite more detail of the project that the contribution to be secured from the Wade Court development being set out in the LPA's Statement of Case and evidence that the money could be spent without being pooled with other money the Inspector still concluded that there was conflict with national policy on the seeking of contributions with respect to developments of less than 10 dwellings

It is well recognised that appeal decisions are a material planning consideration and that the decision maker must take them into account. Furthermore in listing examples of those situations where a local planning authority's behaviour may give rise to a substantive award of costs, by reason of their unreasonable behaviour with respect to the substance of the matter under appeal, the PPG cites inter alia

- Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations
- Requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the NPPF on planning conditions and obligations.

The Monument House and Wade Court appeal decisions are a significant material planning consideration in the determination of all applications involving developments of 10 or less dwellings. Following this latest appeal decision the policy of seeking public open space contributions in respect of developments of 10 or less dwellings is considered no longer to be sustainable. Continued application of that policy would put the Council at risk of an award of cost at any subsequent appeal.

Under the Scheme of Delegation it is only the Planning Committee that can authorise the drawing up of Agreements under Section 106 that include planning obligations, but officers are able to take into account and determine applications which are accompanied by a Unilateral Undertaking, provided such decisions are in accordance with the policies of the development plan, local finance considerations and any other material considerations. In a number of cases officers have invited the submission of such Unilateral Undertakings with a view to granting permission upon their completion. Where it is proposed to allow a less than policy compliant contribution the application will have come to the Committee for determination. Any application for Major Development which for residential development means 10 or more dwellings, or where the number to be provided is not known sites with an area of 0.5 ha or more, comes to the Planning Committee for decision regardless.

This report therefore seeks the agreement of the Planning Committee that the Local Planning Authority should **cease to apply the policy of seeking public open space contributions in respect of developments of 10 or less dwellings, other than in the circumstances expressly stated as possible in the PPG**. In making this recommendation it should be noted, however, that in all other respects, the OSS remains a material planning consideration and it should be given appropriate weight in the determination of planning applications where relevant.

Further consequences of a change of policy

The Council's position has been to seek such contributions. In some cases, where evidence of a lack of financial viability for a policy compliant scheme has been established, the Council has asked applicants to enter into a planning obligation to secure a reappraisal of the financial viability of the development should it not be substantially commenced within a certain period of time, and if that appraisal indicates that the scheme can then make such a contribution the making of it

Where no decision notice has yet been issued but the Council has resolved to grant planning permission subject to the prior completion of obligations the Council will, if it changes its policy position, need to consider the application again. As explained above in some cases the original decision to grant planning permission subject to the securing of such obligations will have been made by the Committee, in other cases the decision will have been made by officers acting under delegated powers. Where non-policy compliant contributions have been accepted those decisions will have been made by Committee.

The following action is recommended:-

1. **That in the case of each of those (8) applications for 10 dwellings or less which have been determined by the Planning Committee where such a POS contribution has been sought either immediately or in the event of a subsequent reappraisal, and the related planning obligation has not yet been secured (and thus no decision has yet been issued), a report should be brought to the Committee so that the Committee can reconsider the position of the LPA..** The applications involved are as follows:-

Application	Address	Proposal	Date considered by Planning Committee (agenda item no)
18/00016/FUL	Land adjacent to 16 St.Giles Road, Knutton	4 flats for affordable rent	29 th January 2019 (9)
18/00243/FUL	Former Playground Brutus Road Chesterton	4 semi-detached houses and 1 detached house	29 th January 2019 (9)
18/00441/FUL	Land between 155 and 161 Knutton Lane	2 flats for affordable rent	29 th January 2019 (9)
18/00465/FUL	Land adjacent 45 Moran Road	2 flats for affordable rent	29 th January 2019 (9)
18/00461/FUL	Land adjacent to 25 Arthur Street, Knutton	2 Houses for affordable rent	29 th January 2019 (9)
18/00443/FUL	Land off St Bernards Road, Knutton	8 houses for affordable rent	29 th January 2019 (9)
18/00559/FUL	Land off Sandford Street	10 flats	6 th November 2018 (6)
18/00467/FUL	121-123 High Street, Wolstanton	Change of use of former Co-op Bank to form offices and 4 flats over	6 th November 2018 (10)

There are also two applications on the agenda of this evening's meeting (agenda items 12 and 14) where the current policy has been a significant consideration and the Committee will note the supplementary reports that have now been provided in relation to these two applications, and the revised recommendations given

2. **That in the case of those (12) applications for 10 dwellings or less which have been determined by your Officer acting under delegated powers on the basis that planning permission can be granted subject to a Unilateral Undertaking securing a POS contribution, and that Unilateral undertaking has not yet been submitted, your officers have the authority to issue such permissions without such Unilateral Undertaking being obtained, and to take such an approach in future applications**

3. **That in any cases where in refusing an application for 10 dwellings or less a reason for refusal relating to the failure to provide such a contribution has been given, and an appeal has been or is now lodged, your officers have delegated authority to (a) withdraw that reason for refusal, (b) not to give any evidence in support of that reason for refusal and (c) if it were the sole reason for refusal to invite the submission of a new planning application, so as to avoid an unnecessary appeal**

Appendix 1 – Wade Court Appeal Decision

Appendix 2 – 8 Barford Road Appeal Decision

Appendix 3 – Monument House, Madeley Heath Appeal Decision

Date report prepared: 22nd February 2019

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Appeal Decision

Site visit made on 18 December 2018

by Eileen Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 13 February 2019

Appeal Ref: APP/P3420/W/18/3211831

1 Wade Court, Market Street, Kidsgrove ST7 4BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Peter Phillips of Handyman Maintenance against the decision of Newcastle-Under-Lyme Borough Council.
 - The application Ref 18/00393/FUL dated 2 May 2018 was refused by notice dated 1 September 2018.
 - The development proposed is change of current use (communal area) into a 1 bedroom self contain flat
-

Decision

1. The appeal is allowed and planning permission is granted for change of current use (communal area) into a 1 bedroom self contain flat at 1 Wade Court Market Street, Kidsgrove ST7 4BB in accordance with the terms of the application, Ref 18/P3420/W/, dated 2 May 2018 subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan Ref 00/545LJJ; Proposed Flat Layout Drawing No 0202; Site Plan Drawing No 0201.
 - 3) Demolition or construction works shall take place only between 0700 and 1800 on Monday to Friday, 0700 to 1300 on Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.

Main Issue

2. The main issue is whether the appeal proposal makes adequate provision for public open space in the area.

Reasons

3. The appeal site is a communal area in the centre of a block of sixteen flats in the town centre of Kidsgrove in a sustainable location.
4. The Council has no objection to the conversion of a communal area to a single bedroom flat in principle but considers that a monetary contribution

for open space provision is necessary to make the development acceptable in planning terms.

5. Paragraph 56 of the National Planning Policy Framework (NPPF) and Regulations 122 and 123 of the Community Infrastructure Levy Regulations (CIL) state that planning obligations can only be sought where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
6. The development plan for the appeal site consists of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (the Spatial Strategy), adopted in 2009, and the saved policies of the Newcastle-under-Lyme Local Plan 2011 (the saved Local Plan). This plan was adopted in 2003.
7. Policy IM1 of the saved Local Plan sets out the Council's overarching policy for contributions and states that where a development proposal would require improvements to infrastructure or essential facilities to make it acceptable then the developer will be expected to carry out or contribute to the funding of appropriate works.
8. The Council accepts that Policy C4 of the saved Local Plan is not triggered as it only requires the provision of, or a contribution towards open space, where the development is less than 10 units or more than 0.4 hectares; the appeal proposal is significantly below that criterion.
9. However, Policy CSP10 of the Spatial Strategy "Planning Obligations" states that development should include provision for necessary on-site and offsite community facilities including open space to ensure comprehensive planning and to avoid placing an additional burden on the existing community and area.
10. Paragraph 96 of the NPPF refers to planning policies having robust up to date assessments of the need for open space. The Council believes it has such an assessment. Policy CS5 of the Spatial Strategy does refer to contributions providing a key funding source for new residents through the Urban North Staffordshire Green Space Strategy and any replacement strategies. The Open Space Strategy was adopted by the Councils Cabinet on the 22nd March 2017 (the OSS) as a replacement for the Urban North Staffordshire Green Space Strategy.
11. The Supplementary Planning Document (SPD) for Developer Contributions, September 2007, is not part of the development plan but has been through a consultation process and was intended to provide further guidance on the approach to contributions set out in the Local Plan. It refers to the Policy C4 triggers for requiring an open space contribution but predates the OSS.
12. The OSS states that it is good practice for residential development to provide 0.004 hectares of open space per dwelling and sets out a costs model for calculations. The Council is seeking a contribution rather than the provision of open space. However, there is clear tension between Policy CS5 and CS10 of the Spatial Core Strategy and the OSS and Policy C4 of the saved Local Plan, as they require obligations for all developments regardless of size.

13. The more recent policies are also not in accordance with the Written Ministerial Statement of the 28th November 2014, which was found by the Court of Appeal to represent national planning policy. This has been incorporated into the Planning Practice Guidance¹ and states that tariff style contributions should not be sought for developments of 10 units or less with less than 1000 sq. metres floor space. This represents a material consideration of significant weight.
14. However, the Council considers that the contribution they are seeking is not a tariff style contribution. The contribution would be spent on improvements to paving routes in the area of Weir Grove or Mount Road, which are the nearest points to the open space area off Powy Drive and Medina Way.
15. A tariff style contribution means that contributions are pooled funding pots intended to provide common types of infrastructure for the wider area and calculated on a sum per dwelling basis. The sum here is calculated on a per dwelling basis. Whilst stating that the contribution will not be pooled, the Council also indicates that the sum would not be sufficient to cover improvements to the full extent of paving routes and refers to limited improvements, which also suggest further improvements to these specific routes, again leading to pooling. On the basis of the information before me, this is, therefore, a tariff style payment.
16. The OSS identifies the area generally as being relatively well-provided for in terms of open space, with the quality of space being between good and very good. It further states that Policy C4 is a detailed policy, which endeavours to secure appropriate amounts of new open space, on the other hand, Core Strategy Policy CS10 seeks contributions to a wide range of infrastructure.
17. The methodology used in the OSS is stated to come from the cost model in the 2007 Urban North Staffordshire Green Space Strategy, which drew on the Local Plan policies, notably C4, producing a figure of £4427 plus maintenance of £1152. The figure is then discounted by removing the £512 allocated in the OSS, Table 8, for play due to this being a one bedroomed flat for one adult. However, the wording below the table indicates that the calculation is based on a figure of 2.5 people per dwelling whereas this is a one bedroomed flat. The figure includes a variety of areas such as allotments, parks and gardens and only £602 per dwelling for natural green space. The use of this Table indicates limited correlation between what is necessary as a result of this development and the Council's general requirements for open space provision. The OSS states at paragraph 5.24 that each individual case will need to be looked at carefully before seeking s106 tariff payments.
18. The Council has referred to two recent appeal decisions which relate to the contribution issue. The first of those decisions APP/P3420/W/17/3189223 related to a larger development. However, the payment of a contribution was not in issue, and I cannot be sure of the evidence before that Inspector and this is therefore of limited relevance to the appeal before me.

¹ Paragraph: 031 Reference ID: 23b-031-20161116

19. The second appeal decision APP/P3420/W/18/3195851(Monument Road appeal) does have similarities with the appeal proposal in that the development was small scale being the conversion of a ground floor property into a 2 bedroom flat where the payment of a contribution was in issue.
20. The Inspector in that instance found that the nature of the contribution sought was a tariff style contribution which did not meet the statutory test set out in the CIL Regulations.
21. The Council considers that the information supplied about where the contribution will be spent for this appeal proposal is specific enough to distinguish it from the Monument appeal. However, in the Monument Road appeal, the sum was said to be for a named nearby playing field. The Inspector's concerns related to why the money would be used in a certain way and also the lack of evidence to show that no other money would be used for the proposed work.
22. The Inspector also identified the policy conflict that existed between the Policy C4 of the saved Local Plan, which would not require a financial contribution for the appeal proposal and would be in line with the Ministerial Statement and the later Policy CSP5 which together with CSP10 and the OSS could be considered to require contributions for all developments.
23. I do not, therefore, consider that the detail provided of work to be done overcomes the issues that I have identified and that were also evident in the Monument appeal. I am not satisfied that the financial contribution is not a tariff style payment nor that it would meet the statutory requirements of the CIL Regulations in that the request is necessary. There is also limited evidence before me to indicate that the Council has shown that the sum of £4933 is fairly and reasonably related in scale and kind to a change of use of 42 square metres for one adult.
24. Furthermore, the PPG notes that authorities can still seek obligations below the threshold but only for site specific infrastructure, such as improving access and the provision of adequate street lighting. I consider that such exceptions do not apply here. Therefore, the seeking of a contribution conflicts with Policy C4 of the Local Plan, but can be considered to comply with the general approach to infrastructure set out in Core Strategy Policies CS5 and CS10. It further conflicts with the significant material consideration of the national policy approach set out in the Ministerial Statement and the PPG. Overall, I consider that any conflict with the development plan in this case is outweighed by more recent national policy.
25. In reaching my decision, I have had regard to Policies CSP5 and CSP10 of the Spatial Strategy, Policies C4 and IM1 of the saved Local Plan, the Supplementary Planning Document on Development Contributions, the OSS and the NPPF particularly paragraphs 56 and 96, and the accompanying PPG.

Conditions

26. I have imposed the standard time limit on implementation and the plan condition for certainty. The hours of operation during construction condition

is required to safeguard the residential amenity of occupiers of other flats within Wade Court in accordance with the principles of the Framework. I have amended the wording of the construction condition for clarity.

Conclusion

27. For the reasons given, the appeal is allowed with conditions.

Eileen Griffin

INSPECTOR

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Appeal Decision

Site visit made on 31 January 2018

by A A Phillips BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2018

Appeal Ref: APP/P3420/W/17/3189223

8 Barford Road, Newcastle Under Lyme ST5 3LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Moss against the decision of Newcastle-Under-Lyme Borough Council.
 - The application Ref 17/00483, dated 8 June 2017, was refused by notice dated 26 September 2017.
 - The development proposed is demolition of the existing bungalow and construction of three dormer bungalows.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing bungalow and construction of three dormer bungalows at 8 Barford Road, Newcastle Under Lyme ST5 3LF in accordance with the terms of the application, Ref 17/00483, dated 8 June 2017, subject to the conditions set out in the Schedule to this decision.

Application for costs

2. An application for costs was made by Mr A Moss against Newcastle-Under-Lyme Borough Council. This application is the subject of a separate decision.

Procedural Matter

3. Signed and completed Section 106 Unilateral Undertakings (UU) have been submitted by the appellant. They would secure a financial contribution towards public open space. Further comments have been received by the appellant with regard to the requirements of the UU and the Council have been given an opportunity to respond to those comments. I return to this matter later in this decision.

Main Issues

4. The main issues are:
 - i. the effect on the character and appearance of the area; and
 - ii. the effect on the living conditions of the occupants of neighbouring properties with particular reference to overbearance.

Reasons

5. It has been confirmed that the Council is unable to demonstrate a five year housing supply and as such paragraph 49 of the National Planning Policy Framework (the Framework) applies and development plan policies should not be considered up to date. The consequence of this is that the presumption in favour of sustainable development as set out in paragraph 14 of the Framework applies to the current proposal.
6. The site is within the urban area, close to public transport facilities and there is good access to a range of services and facilities nearby. As such there is no objection in principle to the proposed development and there is a presumption in favour of the proposed development unless there are any adverse impacts which significantly and demonstrably outweigh the benefits of the proposal or specific policies in the Framework indicate that development should be restricted.

Character and appearance

7. The appeal site is currently occupied by a detached dwelling and is approximately 0.2 hectares in size. It is situated within the urban area of Newcastle Under Lyme and adjacent to land designated as Green Belt. Land to the south of the site is known as Bunny Hill which is an open area of countryside with footpaths and public rights of way which is used for informal recreation including dog walking. There are some trees on the site, including some mature specimens along the boundary with the rear gardens of properties on Stockwood Road.
8. The site is situated at the end of a cul de sac and the land slopes downwards towards the rear of the existing houses on Stockwood Road which have steep downward sloping gardens. Properties along Barford Road comprise bungalows which are set back from the road edge by relatively open landscaped gardens. The plot the subject of this appeal appears to be significantly larger than other plots in the area, but it is not highly prominent due to landscaping along the boundary with Bunny Hill and the presence of existing buildings nearby. Nonetheless, as a large area of open garden it makes a positive contribution to the attractive residential area.
9. The proposed properties would be parallel to the boundary which currently separates properties on Barford Road from those on Stockwood Road. Although the plots would have shorter rear gardens than some in the area I do not find there to be uniformity in terms of plot sizes, shapes and sizes in the locality. The overall form of the buildings in a row would replicate the form of development in the vicinity and the properties would be discreetly situated at the head of the cul de sac with adequate spacing between them. The proposal would change the overall layout of properties along Barford Road by elongating the extent of development, but this need not be seen as an unacceptable departure from the established pattern of development.
10. The proposal would continue the suburban pattern of development in the locality and the overall scale, design, massing and location of dwellings on the site is suitable for the surroundings, having regard to the edge of settlement location adjacent to the Green Belt. I do not agree that it would be out of keeping with its immediate surroundings.

11. Although the development would extend the suburban built form towards the edge of the Green Belt and there would be some visibility of the development from surrounding landscape, and in particular from Bunny Hill, it would be mainly seen against existing residential development. As such I do not consider that the proposal would be visually harmful to Bunny Hill and the prevailing character form and character of the area.
12. Following the submission of amended plans during the application process the appellant's Tree Survey and Impact Assessment confirms that as a consequence of the proposal three trees and a tree group would be lost. One of the trees which would be lost is of low quality, another is of moderate to low quality and one category U tree would be lost in the short term as a consequence of the development. Of importance to the loss of trees is the conclusion that as a result of the amendments submitted a mature Scots Pine which has an upright stem and full healthy crown would be retained. Some crown lifting is advised to ensure the long term health and retention of the tree.
13. I am aware that the tree report has been the subject of detailed comments from interested parties. I have carefully considered the nature of the concerns expressed but I have no evidence to suggest that the report and its conclusions are flawed or inaccurate in any way. Furthermore, the quality of landscaping and tree planting along boundary and across site could be improved by a well-considered landscape scheme including shrub and tree planting. I understand that a provisional tree preservation order has been placed on the large Scots Pine which the Council considers to make a valuable contribution to the local landscape. I am not aware that this has yet been confirmed. Given the amendments made to the proposal, the conclusions and recommendations of the Tree Survey and Impact Assessment there is no evidence to suggest that the tree in question would be prejudiced.
14. Therefore, on this issue I conclude that the proposal would not have a harmful effect on the character and appearance of the area and as such would be in accordance with Policy CSP1 of the Newcastle Under Lyme and Stoke On Trent Core Spatial Strategy 2006-2016 (the CS), Saved Policy N12 of the Newcastle Under Lyme Local Plan 2011 Adopted October 2003 (the LP), Policies R3 and R12 of the Newcastle Under Lyme and Stoke On Trent Urban Design Guidance and the Framework. Among other objectives these seek to ensure that new development is well designed to respect the character, identity and local context. Development involving the removal of any visually significant tree, shrub or hedge will be resisted. Where, exceptionally, permission can be given and trees are to be lost through development replacement planting will be required in accordance with a landscaping scheme.

Living conditions

15. The Council's adopted Supplementary Planning Guidance: Space Around Dwellings (the SPG) recognises that the distance between buildings and the treatment of space around them have an important effect on the quality of life for residents. The separation between the proposed property on Plot 3 and the rear of No 63 Stockwood Road is approximately 35.6 metres, between the property on Plot 2 and the rear of No 61 is approximately 39.2 metres and between the Plot 1 and No 57 is approximately 38.9 metres. These separation distances are well in excess of the minimum recommended distance of 24

metres as set out in the SPG taking account of the significant level changes between the proposed development and the rear of the properties along Stockwood Road where an additional 3 metres is advised. I also observed at my site visit that there is extensive landscaping in the rear gardens of properties along Stockwood Road which would also partly screen the proposal from the windows in the rear elevation of those properties.

16. The proposed dwellings would be closer to the shared boundaries with properties on Stockwood Road than some other properties on Barford Road. I also acknowledge that the appeal site is on a considerably higher level than nearby properties on Stockwood Road and as such parts of the new development may be visible from existing. However, given the overall scale and massing of the proposal, the landscaping in the locality and the considerable separation distances I do not consider that the proposal would be unacceptably overbearing. As such the proposal would not be harmful in that regard.
17. In terms of the relationship between the proposal and properties either side, Nos 7 and 9 Barford Road, the proposal has been designed to ensure there is no harmful or significant effect on the outlook from those properties.
18. Therefore, on this issue I conclude that the proposal would not have a harmful effect on the living conditions of the occupants of neighbouring properties with particular reference to overbearance. As such there would be no conflict with Policy R15 of the Newcastle Under Lyme and Stoke On Trent Urban Design Guidance Residential Design Guidance, the SPG and the Framework.

Other matters

19. With reference to land stability I am aware that the site does not fall within an area defined as a Development High Risk Area or within the Abandoned Mines Catalogue. As such a Coal Mining Risk Assessment was not required to be submitted as part of the application. Furthermore, the method of construction of the development would be dealt with by an engineer rather than through the planning process. I do not consider that the development of sloping ground is highly risky as there are many examples of successful developments in the area and elsewhere involving steep ground.
20. Severn Trent Water has raised no objection to the proposal and I am not aware of any particular technical concerns from a drainage point of view, including risks to the existing sewerage infrastructure. As such I can see no reason why it is necessary to impose conditions relating to drainage.
21. I am aware that local residents have questioned the intended use and occupancy of the development. The appellant has stated their intentions and I have no evidence to question this. Also, in terms of material planning considerations I do not find the details of the occupancy to be relevant to the determination of this current appeal. Local residents also appear to be questioning information such as the employment status of the appellant which I do not find material to the current appeal.
22. Local residents also seem to be concerned that the Council Officer and appellant have worked together on this and other applications. Proactive working between parties is encouraged by the Framework and I have no evidence to suggest that the application has been dealt with unsatisfactorily in

this regard nor that the scheme has been dealt with in any other means than in accordance with the development plan and other material considerations. There is no firm evidence of underhand discussions between the appellant and Council officers and in any case such concerns would fall outside the remit of this appeal process.

23. I have no evidence that the details of land ownership are incorrect or that matters relating to land ownership are relevant to the determination of the current appeal. Parties have identified a number of development plan policies which they consider to be particularly relevant to the current proposal. However, some of the policies identified are not specified in the Council's reasons for refusal and as such are not key to the determination of the current appeal. Nonetheless, I find there to be no conflict with the development plan with regard to the Council's spatial principles of targeted development, spatial principles of movement and access or to the Spatial Policy for Newcastle and Kidsgrove Neighbourhoods Area. Neither do I find there to be conflict with Policy H1 of the LP regarding the sustainable location of development or T16 which relates to parking requirements.
24. With reference to concerns about the layout of the proposal I do not find that the density of the proposal is unacceptable given the density of existing residential development in the area. Given the separation distances I have identified above the proposal would not result in overlooking or loss of privacy to a harmful degree or a significant loss of natural light or sunlight. I have noted the concerns regarding the spacing standards around the plots; however, each property would be served by an adequately sized private amenity spaces.
25. I have no evidence that the site is of any particular ecological interest. I have also considered the argument that the grant of planning permission would set a precedent for other similar developments. However, each application and appeal must be determined on its individual merits and a generalised concern of this nature does not justify withholding permission in this case.

Section 106 Planning Obligation

26. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations require that planning obligations should only be sought, and weight attached to their provision, where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
27. There are two signed and completed UUs. They require the appellant to make a financial contribution of £11,158 towards the improvement and maintenance of Guernsey Drive Play Area and/or Wye Road playing fields. It is my understanding that the only difference between the agreements is the timing of the payments; one obligation requires the payment to be made on commencement of development and the second obligation on first occupation.
28. Support for the financial contributions is found in Policy CSP5 of the CS which indicates that developer contributions will be sought to provide key funding to meet the needs of new residents for the delivery of the North Staffordshire Green Space Strategy and any replacement strategies. I understand that the replacement strategy is the Open Space Strategy which was adopted in March 2017. The evidence provided by the Council indicates to me that a wide

consultation exercise was carried out including local interest groups, Parish Councils, elected members and landowner representative groups, among others. Furthermore, there was extensive consultation publicity including on the Council's web site, social media and a press release.

29. However, the document is non-statutory and does not form part of the development plan. Nonetheless, it can be a material consideration in the determination of planning applications. The Open Space Strategy (OSS) is clearly a document which will inform the emerging Joint Local Plan and be part of the evidence base including with reference to development providing financial contributions towards public open space. The financial contribution is therefore justified in order to ensure the development is compliant with the development plan.
30. The Council states that the contribution in this case would be applied to Guernsey Drive Play Area and/or Wye Road Playing Fields. Both are relatively close to the appeal site and could potentially be used by future residents. The overall scale of the payment also appears to be reasonable in relation to the development proposed. Although the OSS is clearly not an SPD nor form part of the development plan it does represent the Council's latest position relating to the provision of open space through development and as such can be a material consideration in the determination of the current proposal, albeit somewhat limited. The requirement for the contribution can be justified by Policy CSP5 of the CS to which I consider the Open Space Strategy adopted in March 2017 can reasonably relate.
31. In addition, as a consequence of the very specific details of how the money would be spent locally and how it would relate to the development the subject of this appeal I consider the contribution would meet the statutory tests as set out in the CIL Regulations and that a UU providing financial contributions towards off-site public open space is required in these particular circumstances.
32. Given the timescales involved in the development process and the fact that any pressure on the open space provision locally would only occur once new residents have taken occupancy of the properties I consider the UU which provides for the financial contribution on the first occupation of the development permitted is the appropriate version to be attached to the permission.

Conditions

33. The Council has suggested a list of conditions which I have considered and where necessary amended in line with national policy and guidance. I have specified the approved plans as this provides certainty and attached a condition relating to external facing materials in the interests of the character and appearance of the area.
34. In the interests of highway safety I have imposed conditions requiring the development to be implemented in accordance with a construction method statement, the parking and turning areas to be provided in accordance with the submitted drawings and constructed of porous bound material and the integral garage for Plot 1 shall be retained for the parking of vehicles and cycles.
35. In the interests of the character and appearance of the area and to ensure satisfactory integration with the surroundings I have attached conditions

relating to landscaping, including tree planting, tree protection measures which shall be retained for the duration of the site works and there shall be no changes in levels other than those shown on the approved plans.

36. To protect the living conditions of future resident of the dwellings permitted I have attached a condition relating to noise levels which must be achieved internally and externally. Furthermore, to protect the living conditions of existing residents conditions restricting the hours of demolition and construction activities and measures relating to piling activities are considered to be reasonable in this case.

Conclusion

37. I have found that the proposal would not be harmful to the character and appearance of the area nor to the living conditions of the occupants of neighbouring residential properties with particular reference to overbearance. Consequently, the benefits of the proposal outweigh any potential harm. Therefore, for the reasons given above and taking into account other matters raised I conclude that the proposal is in accordance with the development plan taken as a whole and that the appeal should be allowed.

Alastair Phillips

INSPECTOR

SCHEDULE

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 5359-002C, 5359-006D, 5359-003E, 5359-005.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) delivery, demolition and construction working hours;
 - v) recorded daily inspections of the highway adjacent to the site access; and
 - vi) wheel washing facilities.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 5) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 5359-002C for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. The parking and turning areas shall be surfaced in porous bound material and shall thereafter be kept available at all times for those purposes.
- 6) The integrated garage hereby permitted for Plot 1 as shown on drawing no. 5359-003E shall be kept available at all times for the parking of motor vehicles and cycles by the occupants of the dwelling and their visitors and for no other purpose. It shall not be converted to living accommodation without the prior express permission of the local planning authority.
- 7) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping including tree planting.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which

within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 8) No development shall commence until tree protection measures have been implemented in accordance with details which shall have been submitted to and approved in writing by the local planning authority. The tree protection measures shall be retained for the duration of the works and shall only be removed once the development is completed.
- 9) There shall be no additional level changes in the site other than those shown on the approved plans unless such details have first been approved in writing by the local planning authority.
- 10) No development shall commence until details of the design measures, supported by an appropriate noise assessment, to be incorporated into the construction of the development hereby approved to ensure the following noise levels shall have been submitted to and approved in writing by the local planning authority. Thereafter the approved details shall be implemented in full prior to the first occupation of the development.

Internal noise levels not to be exceeded in all habitable areas attributable to external noise sources. Where windows need to be kept shut, adequate sound attenuated ventilation provision capable of providing purge ventilation and summer time cooling must also be demonstrated – 35 dBLAeq between 0700 and 2300, 30dBLAeq between 2300 and 0700 and 42dBLAMax between 2300 and 0700.

External noise levels to be achieved in garden areas and terraces – 50 dBLAeq between 0700 and 2300.

- 11) Demolition or construction works, including the movement of demolition or construction traffic entering or leaving the site, shall take place only between hours of 0700 and 1800 on Monday to Friday, between 0700 and 1300 on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 12) The applicant shall notify the local planning authority in writing at least 14 calendar days in advance of any piling work to be undertaken on site to enable the piling activity to be monitored by the authority. The piling program shall also be provided at the same time. Residents of Barford Road and Stockwood Road shall be notified in writing at least 14 days in advance of the commencement of piling operations. Impact piling shall not be undertaken on any part of the site. The piling contractor shall also carry out a vibration assessment of the initial piling solution in accordance with the relevant provisions of BS 5228-2:2009 "Code of practice for noise and vibration control on construction and open sites. Vibration" and also BS 6472-1:2008 "Guide to evaluation of human exposure to vibration in buildings - vibration sources other than blasting". Where the assessment shows a probability of adverse comment, the piling shall cease and appropriate mitigation measures designed to reduce the impact of the vibration from the piling solution shall be identified and implemented. The measures so identified shall be notified to the local planning authority in writing for its approval.

END OF SCHEDULE

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Appeal Decision

Site visit made on 11 June 2018

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2018

Appeal Ref: APP/P3420/W/18/3195851

Monument House, Crewe Road, Madeley Heath, Newcastle under Lyme CW3 9LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Graham Warner against the decision of Newcastle-Under-Lyme Borough Council.
 - The application Ref 17/00838/FUL, dated 13 October 2017, was refused by notice dated 25 January 2018.
 - The development proposed is the conversion of the ground floor of the property into a two bedroom flat.
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Procedural Matter

1. I note the detailed description of development given on the application form. The more succinct description used in the heading above and the formal decision is that used on the decision notice.

Decision

2. The appeal is allowed and planning permission is granted for the conversion of the ground floor of the property into a two bedroom flat at Monument House, Crewe Road, Madeley Heath, Newcastle under Lyme CW3 9LH in accordance with the terms of the application, Ref 17/00838/FUL, dated 13 October 2017, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location and Block Plan Drawing No 1370/1; Proposed Ground Floor Plan Drawing No 1370/2; Proposed First Floor Plan Drawing No 1370/3; Proposed Elevation to Keele Road Drawing No 1370/4; Elevation to Monument Hill Drawing No 1370/5; and Elevation to Back Yard Drawing No 1370/6.
 - 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.

Application for costs

3. An application for costs was made by Mr Graham Warner against Newcastle-Under-Lyme Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue in the appeal is whether a financial contribution is necessary towards public open space provision in the area.

Reasons

5. The appeal property is a two storey vacant building. The first floor has previously been used for residential purposes and it is proposed to convert the ground floor to a 2-bedroom flat. The proposal would not include any outdoor amenity space but there is public open space on Heath Row, within easy walking distance of the building. The Council has not raised any objection to the conversion in principle but considers that a planning obligation making financial contribution towards public open space is necessary to make the development acceptable in planning terms.
6. Paragraph 204 of the *National Planning Policy Framework* (the Framework) and Regulation 122 of the Community Infrastructure Levy Regulations (CIL) require that planning obligations should only be sought when they are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale to the development.
7. Policy CSP10 of the *Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006 – 2026 (adopted October 2009)* (CSS) indicates that developers are required to have regard to the consequences that may arise from development. Proposals should therefore include provision for necessary on-site and off-site infrastructure, community facilities and/or mitigation measures where this is necessary to ensure comprehensive planning and to avoid placing an additional burden on the existing community and area. It states that these may include open spaces, sport and recreation facilities. Saved Policy IM1 of the *Newcastle-under-Lyme Local Plan 2011 (adopted October 2003)* (NLP) states that where a development requires improvements to infrastructure, or essential facilities, to make it acceptable then the developer will be expected to carry out or contribute to the funding of appropriate works.
8. Policy C4 of the NLP only seeks the provision of, or a contribution towards, open space and its maintenance in housing proposals with ten or more dwellings or 0.4ha. The proposal is clearly well below this threshold. Policy CSP5 of the CSS states that open space, sport and leisure assets will be enhanced, maintained and protected by a number of measures including the use of developer contributions to meet the needs of new residents, and help deliver a variety of green space strategies in the area, and any approved revision or replacement strategies.
9. In March 2017 the Council adopted the Open Space Strategy (OSS) as a replacement strategy for the 2007 Urban North Staffordshire Green Space Strategy (GSS). Although not a Supplementary Planning Document, or formally part of the development plan, it is a strategy that relates to Policy CSP5. In addition, the Council's evidence shows that before adoption, the draft

document was subject to an extensive consultation process. The OSS indicates that 0.004 ha of open space should be provided per dwelling irrespective of type or tenure and that the open space will be provided in areas of not less than 0.1ha regardless of development size. This approach conflicts with Policy C4 of the NLP and advice in the *Planning Practice Guidance* (PPG) outlined below.

10. The OSS also provides a cost model for off-site contributions that is an update of the cost model from the GSS. On this basis, the Council have indicated that in this case they are seeking a contribution towards off-site open space of £5,579. This comprises £4,427 for capital development/improvement of open space and £1,152 towards maintenance for 10 years.
11. Notwithstanding the OSS, the PPG makes clear that contributions towards affordable housing and tariff style planning obligations should not be sought from developments of 10 units or less and which have a maximum combined gross floor space of no more than 1,000 sqm. This accords with Policy C4 of the NLP. The PPG states that a tariff style is one where contributions are pooled in funding 'pots' intended to provide common types of infrastructure in the wider area.
12. The Council has indicated that this would be used for the nearby Heath Row playing field and although calculated on a "sum per dwelling" basis it does not meet the definition of a tariff style contribution. I accept that, in the absence of any outdoor amenity space on site, future occupiers may well use this nearby open space.
13. However, I note that the table in in OSS indicates that the funding required per dwelling is for a range of different types of open space, including parks and gardens, amenity green space, natural and semi-natural green space, play spaces, allotments, and outdoor sports. This would suggest that the funding received from each dwelling would be pooled and used towards a variety of different types of open space in an area, and so would be a tariff style contribution.
14. I have not been provided with the precise details of how the money is to be utilised, or any evidence as to why the need for improvement to this local area is such that all the money would be used in this way rather than being split as indicated in the OSS. Moreover, if the funding is only to be used on the one site, it has not been demonstrated how the amount of funding required has been calculated, as the table in the OSS sets out funding calculation for a variety of open space requirements. Whilst the Council have said it would not be contrary to CIL Regulation 123, which restricts the total amount of contributions that can be pooled to any one project, there is no evidence to show that no other money would be utilised for the proposed work, which would have to be the case if it were not to be a tariff style contribution.
15. In the absence of such information, I consider that the financial contribution being sought is a tariff style contribution, which the PPG indicates should not be sought on a development of this size.
16. Bringing these points together: whilst the development plan policies support the need for developments to make adequate provision for open space either on site or through financial contributions for off-site provision, there is a conflict between Policy C4 of the NLP which requires such provision only in

developments of 10 or more dwellings, and Policy CSP5 supported by the recently adopted OSS which requires a contribution from any residential development regardless of size. The latter is also contrary to the PPG. One of the key aims of the changes made to the PPG was to reduce the disproportionate burden of developer contributions on small scale developers.

17. Given this, and in the absence of specific details about how the financial contribution would be spent and how it relates to the appeal proposal, I consider the contribution requested would not meet the statutory tests set out in the CIL Regulations and the Framework. Consequently, I consider that it is not necessary to require a contribution to open space provision in this case.

Other Matters

18. The appellant has raised a number of concerns regarding the Council's handling of the case. These are matters that would need to be taken up with the Council in the first instance, and in determining the appeal I have only had regard to the planning merits of the case.

Conclusion and Conditions

19. For the reasons set out above I conclude the appeal should be allowed.
20. As well as the standard implementation condition, I have imposed a condition specifying the relevant plans as this provides certainty. As the conversion will result in some changes to the exterior of the building, a condition is required to control these in the interests of the character and appearance of the area.

Alison Partington

INSPECTOR