

# Public Document Pack

<b>Date of meeting</b>	<b>Tuesday, 5th February, 2013</b>
<b>Time</b>	<b>7.00 pm</b>
<b>Venue</b>	<b>Council Chamber. Civic Offices, Merrial Street, Newcastle Under Lyme, Staffordshire ST5 2AG</b>
<b>Contact</b>	Peter Whalan

## Planning Committee

# AGENDA

## PART 1– OPEN AGENDA

- |    |  |                        |
|----|--|------------------------|
| 1  | <b>Apologies for Absence</b>   |                        |
| 2  | <b>DECLARATIONS OF INTEREST</b>  |                        |
|    | To receive Declarations of Interest from Members on items included on the agenda.  |                        |
| 3  | <b>MINUTES OF PREVIOUS MEETING</b>   | <b>(Pages 1 - 4)</b>   |
|    | To receive the minutes of the previous meeting held on 2 January 2013.   |                        |
| 4  | <b>Application for Major Development - AHH Pharmaceuticals, West Avenue, Butt Lane. AHH Pharmaceuticals. 12/00652/FUL &amp; 13/00013/207C2</b>   | <b>(Pages 5 - 12)</b>  |
| 5  | <b>Application for Minor Development - Exchange House, Cross Heath, Newcastle. Mr Kulvinder Kandola. 12/00788/FUL</b>  | <b>(Pages 13 - 20)</b> |
| 6  | <b>Charging for Pre-application Planning Advice</b>  | <b>(Pages 21 - 32)</b> |
| 7  | <b>Report on Open Enforcement Cases</b>  | <b>(Pages 33 - 34)</b> |
| 8  | <b>Application for Financial Assistance (Historic Buildings Grants) From the Conservation and Heritage Fund - Mow House Farmhouse, Church Lane, Mow Cop</b>  | <b>(Pages 35 - 36)</b> |
| 9  | <b>Town and Country Planning Act 2012. Town and Country Planning (Trees) Regulations 1999. Tree Preservation Order No 146 (2012). 61-63 High Street, Alsagers Bank, Stoke-on-Trent, Staffs ST7 8BQ</b> | <b>(Pages 37 - 38)</b> |
| 10 | <b>URGENT BUSINESS</b>   |                        |
|    | To consider any business which is urgent within the meaning of Section 100B(4) of the Local Government Act, 1972   |                        |
| 11 | <b>DISCLOSURE OF EXEMPT INFORMATION</b>  |                        |

To resolve that the public be excluded from the meeting during consideration of the following item(s) because it is likely that there will be a disclosure of exempt information as defined in paragraphs 1, 2 and 6 in Part 1 of Schedule 12A of the Local Government Act 1972.

**12      Update on Enforcement Cases Where Enforcement Has Been      (Pages 39 - 40)  
         Authorised**

**Members:**      Councillors Miss Baker, Boden, Cairns, Clarke (Vice-Chair), Fear (Chair),  
                         Hambleton, Mrs Hambleton, Howells, Jones, Matthews, Miss Reddish,  
                         Stringer, Studd, Sweeney, Williams and Mrs Williams

<p><b>'Members of the Council: If you identify any personal training / development requirements from the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Committee Clerk at the close of the meeting'</b></p>
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Officers will be in attendance prior to the meeting for informal discussions on agenda items.

## **PLANNING COMMITTEE**

**Wednesday 2 January 2013**

**Present:-** Councillor Andrew Fear – in the Chair

Councillors Miss Baker, Boden, Cairns, Clarke, Hambleton,  
Mrs Hambleton, Jones, Matthews, Miss Reddish, Stringer,  
Studd, Sweeney, Williams and Mrs Williams

**1. APOLOGIES FOR ABSENCE**

An apology for absence was received from Councillor Howells.

**2. DECLARATIONS OF INTEREST**

Councillors Cairns, Mrs Hambleton and J Williams declared an interest in planning application 12/00637/FUL (Members of the Aspire Board)

**3. MINUTES OF PREVIOUS MEETINGS**

**Resolved:-** That the minutes of the meetings of this committee held on 13 November and 4 December 2012 be approved as correct records.

**4. APPLICATION FOR MAJOR DEVELOPMENT - PARKHOUSE INTERCHANGE (FORMER CHRISTIAN SALVESEN), PARKHOUSE. FRIAR'S HOUSE INVESTMENTS LIMITED. 12/00610/FUL**

**Resolved:-** (a) That subject to the applicant first entering into a Section 106 Obligation by 23 January 2013 to secure a contribution of £16,591 towards the Newcastle (Urban) Transport and Development Strategy, the application be permitted in outline subject to the under-mentioned conditions:-

- (i) Standard time limit condition.
- (ii) Approved plans/drawings and documents.
- (iii) Approval of all external facing and roofing materials.
- (iv) Landscape scheme to include replacement tree planting.
- (v) Protection of retained trees and replacement measures in accordance with BS5837:2012..
- (vi) Provision of oil and fuel interceptors to the surface water drainage system.
- (vii) Provision of bound surface to the parking, turning and servicing areas.
- (viii) Demarcation of the parking spaces.
- (ix) External lighting to be designed to prevent light spillage on the public highway.
- (x) Provision of internal directional signage.
- (xi) Provision of a cycle shelter.
- (xii) Mitigation measures for the noise generating plant.
- (xiii) Measures to prevent noise emitted from the building.
- (xiv) Installation of the external lighting.
- (xv) Details of boundary treatments.
- (xvi) Development to be carried out in accordance with the submitted waste material storage and collection arrangements.
- (xvii) Contaminated land conditions.

- (xviii) Prior submission and approval of HGV Movement Management Plan.
- (xix) External noise mitigation measures to the office and training facilities.

(b) That should the matters referred to in (a) above not be secured by 23 January 2013, the Head of Planning and Development be given delegated authority to refuse the application on the grounds that without such matters being secured the development would fail to secure measures to ensure that the development achieved sustainable development outcomes or, if he considers it appropriate, to extend the period of time within which the obligation can be secured.

**5. APPLICATION FOR MAJOR DEVELOPMENT - MIDLAND HOUSE, LONDON ROAD, CHESTERTON. REGENESIS. 12/00118/OUT**

**Resolved:-** That the application be refused on the grounds that with the developer being unwilling to make a financial contribution towards off-site public open space provision, the development would not be acceptable in planning terms and would not be a sustainable form of development, as it would fail to meet the needs of the new residents and would not comply with relevant policies within the development plan on this matter, and there are no material considerations which outweigh this conflict.

**6. APPLICATION FOR MINOR DEVELOPMENT - LAND ADJACENT 92-98 HARRISEAHEAD LANE, HARRISEAHEAD. ASPIRE HOUSING. 12/00637/FUL**

**Resolved:-** That permission be granted subject to the under-mentioned conditions:-

- (i) Standard time limit condition.
- (ii) Approved plans.
- (iii) Development not to be brought into use until the parking area is provided in accordance with the approved plans.
- (iv) Prior approval of surfacing materials-grasscrete.

**7. APPLICATION FOR MINOR DEVELOPMENT - BARN AT REAR OF SANDFIELD HOUSE, BAR HILL, MADELEY. DR D HODGKINSON. 12/00694/FUL**

**Resolved:-** That the application be refused for the following reasons:-

- (i) The proposal is sited in an unsustainable location away from higher level services, employment and public transport links.
- (ii) The proposal would result in development that would permanently harm the open countryside character of the area by the introduction of incongruous features.

**8. APPLICATION FOR MINOR DEVELOPMENT - ALWYN, NANTWICH ROAD, AUDLEY. MR D BIRKIN. 12/00210/FUL**

**Resolved:-** That permission be granted subject to the under-mentioned conditions:-

- (i) Standard time limit condition.
- (ii) Approved plans.
- (iii) Removal of permitted development rights relating to extensions and alterations to the dwelling.
- (iv) Prior approval of materials.
- (v) Prior approval of existing and proposed floor levels.

- (vi) Prior approval of materials for the front boundary wall.
- (vii) Prior approval of landscaping plan.
- (viii) No top soil to be imported until it has been tested for contamination.
- (ix) Reporting of any unexpected contamination if any is found.
- (x) Completion of access prior to use of the development.
- (xi) Closure of the redundant access prior to the use of the development.
- (xii) Surfacing of the driveway in a bound and porous material for a minimum distance of 6 metres back from the site boundary, prior to the development being brought into use.

**9. APPLICATION FOR MINOR DEVELOPMENT - ALLENDALE HOUSE, MILEHOUSE LANE, NEWCASTLE. MS M ANDERSON. 12/00710/FUL**

**Resolved:** (a) That permission be granted subject to the under-mentioned conditions:-

- (i) Standard time limit condition.
- (ii) Approved plans/drawings and documents.
- (iii) Approval of all external facing to the proposed retaining walls and surfacing materials.
- (iv) The proposed car parking area to be fully implemented and available for use prior to the development being brought into use.
- (v) Approval of drainage/surfacing materials/delineation of parking spaces.
- (vi) Approval of details of one-way system and its implementation.
- (vii) Accesses to remain ungated.
- (viii) The existing Kings Avenue to remain available until the revised parking arrangements are made available.
- (ix) Approval of construction method statement.

(b) That the applicant be advised that the local planning authority is willing to discharge the Section 52 Agreement subject to the implementation and the making available of the revised parking arrangements at Allendale House as referred to in condition (iv) above.

**10. PLANNING PERFORMANCE AND THE PLANNING GUARANTEE**

Consideration was given to a report inviting the committee to comment on a consultation being undertaken by the Government on Planning Performance and the Planning Guarantee.

**Resolved:-** That the Head of Planning and Development, in consultation with the Chair and Vice-Chair, prepare and submit formal responses to the questions posed by the Government in its consultation document on the basis of the views outlined in the officer's report to committee.

**11. WORKING IN A POSITIVE AND PRO-ACTIVE MANNER WITH APPLICANTS**

Consideration was given to a report advising of a new requirement under the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2012 for decision notices for approval or refusal of planning permission to include a statement explaining how, in dealing with the application, the local planning authority have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application.

**Resolved:-** (a) That in making a decision which is broadly in line with the officer's recommendation Members agree the contents of the statement.

(b) That Members draw to the Case Officers attention any concerns that they have with an application coming to the Committee for determination as early as possible having received notice of the application in the weekly list so that potential solutions to the concerns are sought with the applicant in line with the requirements of the National Planning Policy Framework (NPPF).

(c) That full advantage be taken of the use of conditions in planning permissions to make developments acceptable.

(d) That when a proposal to refuse to grant planning permission is made at the Committee contrary to the officer's recommendation advice be sought as to the most appropriate way to meet the requirement that decision taking is done in a positive and proactive way.

(e) That the Head of Planning and Development in consultation with the Chair and Vice-Chair keeps under review how existing Committee procedures, including the guillotine on late representations, submissions and public speaking are affecting the Council's ability to work in a positive and proactive manner to achieve sustainable development and, if he considers it necessary, to submit a further report to Committee for consideration.

**12. APPEAL DECISION - THE LODGE, RED HALL LANE, HALMER END. MR ALAN BROWN**

It was reported that an appeal against the Council's decision to refuse planning permission for the above development had been dismissed by the Planning Inspectorate.

**Resolved:-** That the decision be noted.

**13. APPEAL DECISION - BROADLANDS, HEATH RISE, WHITMORE HEATH. MR N RAFFERTY**

It was reported that an appeal against the Council's decision to refuse to grant planning permission for the variation of a condition attached to planning permission 09/00455/FUL as indicated above had been allowed by the Planning Inspectorate.

**Resolved:-** That the decision be noted.

**14. APPEAL DECISION - 43 LONDON ROAD, CHESTERTON. MR N FELSTEAD**

It was reported that an appeal against the Council's decision to refuse to grant planning permission for the above development had been allowed by the Planning Inspectorate,

**Resolved:-** That the decision and the officers comments on it be noted.

**A FEAR  
Chair**

AAH PHARMACEUTICALS, WEST AVENUE, BUTT LANE  
AAH PHARMACEUTICALS. 12/00652/FUL & 13/00013/207C2

**The Application** is for full planning permission to retain the use of the site as an industrial warehouse and distribution centre without complying with condition 16 of planning permission 05/00313/FUL which granted full planning permission for an industrial warehouse and distribution centre. Condition 16 places restrictions on the hours that delivery and collection vehicles can access and leave the site and is worded as follows:-

*Delivery and collection vehicles shall not access or leave the site between the hours of 2300 and 0700 hours other than for a period of 3 months from the commencement of operations at the premises, a date which shall be agreed with the Local Planning Authority beforehand, during which period no more than 12 HGV movements per hour shall take place between the hours of 0500 and 0700 hours.*

The site lies within the urban area as defined on the Local Development Framework Proposals Map.

**The statutory determination period for this application expires on 14 February 2013.**

## **RECOMMENDATION**

**PERMIT subject to the following conditions:-**

- (i) **The impact of noise associated with operations from the site shall be controlled in accordance with procedures contained in the approved Environmental Noise Management and Control Scheme, prepared by Advance Environmental and dated 18 December 2009, for a temporary period of 6 months from the date of this decision. At the end of the above 6 month period no delivery and collection vehicles shall access or leave the site between 2300 hours and 0700 hours on any day, unless consent has been obtained in the interim for continued access to and from the site by delivery and collection vehicles during these hours.**
- (ii) **Within one month of the date of this permission the method of assessing noise impact, should be submitted for approval, and that the agreed assessment should then be undertaken and submitted to the LPA within five months from the date of this permission.**

## **Reason for Recommendation**

The site is located close to residential properties and there is the potential that delivery and collection vehicles in the night-time period would result in loss of amenity due to noise disturbance associated with activities on site and vehicle movements at the Linley Road/West Avenue junction. In the absence of a Noise Assessment that demonstrates that the HGV movements do or do not cause an unacceptable loss of residential amenity it is not considered that either a recommendation of refusal or open ended approval can be advanced. As such it is recommended that a further temporary consent be granted that allows the business to operate between 2300 and 0700 hrs to enable a Noise Impact Assessment to be undertaken.

## **Proposed Statement as to How the Local Planning Authority Has Worked With the Applicant in a Positive and Proactive Manner in Dealing With This Application**

The applicant's agent has been advised of the issues of concern arising from the application and given the opportunity to provide evidence in the form of a Noise Impact Assessment during the consideration of the application, but such evidence has not been provided. The temporary consent provides the opportunity for the applicant to demonstrate that HGV movements during the night-time period would not result in an unacceptable loss of residential amenity in recognition of the support that the National Planning Policy Framework gives to existing businesses.

## **Policies and Proposals in the Approved Development Plan Relevant to This Decision:-**

West Midlands Regional Spatial Strategy 2008 (WMRSS)

Policy QE3: Creating a high quality built environment for all

Staffordshire and Stoke-on-Trent Structure Plan 1996 – 2011 (SSSP)

Policy D2: The design and environmental quality of development

Policy E7: Existing industries

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (adopted 2009) (CSS)

Policy SP2 – Spatial Principles of Economic Development

Policy ASP5 – Newcastle and Kidsgrove Urban Neighbourhoods Area Spatial Policy

Newcastle-under-Lyme Local Plan 2011

Nil

**Other Material Considerations include:**

**National Planning Policy**

National Planning Policy Framework (March 2012)

Planning for Growth – Ministerial Statement March 2011

Circular 11/95 The use of conditions in planning permissions

**Relevant Planning History**

The planning permission to which this application relates was issued in 2007 (05/00313/FUL). A subsequent application (10/00012/FUL) for the variation of condition 16 of that permission which allowed delivery and collection vehicles to access the site at all times was permitted for a temporary period of 12 months from the date of the permission, 19 March 2010, after which time no delivery and collection vehicles should access or leave the site between 2300 hours and 0700 hours on any day.

**Views of Consultees**

**Kidsgrove Town Council** have been consulted and having not responded by the due date must be assumed to have no observations to make on this proposal.

The **Environmental Health Division** objects to the application indicating that a noise impact assessment is required to assess the likely impact of HGV movements during the night on the residents of Linley Road and Linley Hall and that noise mitigation measures/management measures are identified in order to safeguard existing residential amenity.

**Representations**

Nine letters of objection, including letters from Joan Walley MP, Cllr Kyle Robinson and Cllr Silvia Burgess, have been received raising the following concerns:-

- The reasons for placing the condition on the application still stand. Safeguards, in the form of the strict time restrictions are required to avoid disturbance to residents.
- Noise, vibration and headlights from lorries exiting from West Avenue result in sleep disturbance.
- The company is currently breaching the condition.
- Concern that vehicle movements could increase.
- Assessment required of the impact of this proposal on the existing highway conditions and the risks posed in light of extra traffic on the road from the new housing estate.

**Applicant/Agent's Submission**

A supporting letter has been submitted the main points of which are summarised below:



- The site is within an established employment area and the use is entirely appropriate. The applicant employs a number of local people and is wholly sustainable.
- The assessment during the period when condition 16 was varied (as approved by application 10/00012/FUL) concluded that the Noise Management and Control Scheme was entirely successful and accordingly it is wholly appropriate that the application is granted. To require an additional Noise Impact Report is entirely disproportionate.

In addition a report entitled "Assessment of the Potential Environmental Noise Impact from the Operation of a Warehouse and Distribution Centre by AAH Pharmaceuticals Ltd" has been submitted which was prepared in connection with application 10/00012/FUL.

Further correspondence has been received which confirms the following;

- Since opening in 2006 the site has had vehicle movements in the period 2300 -0700hrs
- Typically there are around 10 delivery vehicles arriving between 0500-0700hrs.
- Typically nine vehicles depart between 0500- 0715 hrs and 14 returning between 2300-0700hrs.
- The vehicle movements up until six months ago were greater.
- 24hr operation to service the company's current customers is essential, as order and supply patterns force them to dispatch mostly during the evening. This is not likely to reduce in future, more likely traffic movements would increase.
- They are unaware of any complaints made directly to site or otherwise and therefore no local monitoring has been found to be essential.
- Approximately 3 years ago the site had an unannounced visit from an Environmental Health Officer who indicated that some noise monitoring would be undertaken and they would be advised if there was a problem, no further contact was made.
- Linley Road has always been a main arterial link between A34, A50 and A500 the main routes through Stoke. The company is located on a busy industrial estate with many vehicle movements outside of their own. Linley Road is also the most popular "escape" route in the event of a problem on the M6 between J15, 16 and 17 which arise frequently.

All documents are available to view at the Guildhall, Kidsgrove Service Centre and on [www.newcastle-staffs.gov.uk/planning/aaahpharmaceutical](http://www.newcastle-staffs.gov.uk/planning/aaahpharmaceutical)

### **Key Issues**

This is an application to remove a condition of planning permission 05/00313/FUL. The Authority has a number of options. If it considers that the original condition should remain it should refuse the application, and if it considers that an amended condition is appropriate then it should approve the application subject to the amended condition, or permit without a replacement condition.

At the time that planning permission for the proposed AAH warehouse and distribution centre was considered the issue of residential amenity was addressed. Particular consideration was given to night time activities associated with the development and an Acoustic Survey was requested. The submitted information provided calculations of the likely noise levels during the night at the nearest residential properties and this report concluded that without the introduction of appropriate mitigation the proposal was likely to result in complaints from the occupiers of these dwellings. These conclusions, however, were based upon noise prediction modelling and no noise monitoring had been undertaken.

In view of this, condition 16 was imposed to enable the company to operate at in the early morning for a three month period to allow monitoring to take place. At the end of the three month period the condition prohibited delivery and collection vehicles accessing and leaving the site between 2300 and 0700 hours.

The effect of a refusal of this application would therefore be that no delivery and collection vehicles could access or leave the site between the hours of 2300 and 0700 hours without being in breach of planning control.

In 2010 an application (10/00012/FUL) was received which sought to vary condition 16 by removing the hours restrictions and replacing them with a requirement that the operations from the site should be controlled in accordance with procedures contained in an Environmental Noise Management and Control Scheme submitted with that application, which set out procedures to be followed in the event of complaint. The

application was also supported by a Noise Impact Assessment with measured noise levels from two properties and concluded that there was a marginal likelihood of complaints due to noise from the activities at the site.

The variation to the condition sought by the applicant at that time was accepted by the Local Planning Authority but only for a temporary 12 month period (19 March 2010 to 18 March 2011) after which no delivery and collection vehicles should be accessing or leaving the site between 2300 hours and 0700 hours on any day.

It is now known that the company has not operated in accordance with condition 16 since the site opened (which the applicant indicates was 2006). Notwithstanding this the Council had not received any complaint about operations at the site or in relation to disturbance from vehicles movements associated with the company on the highway network before the application was submitted. In addition the applicant has indicated that they have no record of complaints being received at the site either.

However the representations received from residents of Linley Road indicate that the delivery and collection vehicles associated with the business and using the West Avenue/ Linley Road junction are causing sleep disturbance. Such concerns have been expressed by residents to the Environmental Health Division when they have been investigating noise from other activities and sources in the locality and for this reason a Noise Impact Assessment has been requested to enable the impact of the noise from vehicles at the West Avenue/Linley Road junction to enable a proper consideration of this issue. The applicant, however, has not been in a position to provide the Assessment as requested but has stressed the importance of a 24 hour operation to the business. Your officer is therefore not able to recommend removal of the condition.

Whilst the concerns of the residents are noted, in the absence of an Assessment that demonstrates that noise arising from the vehicle movements directly associated with the business is causing unacceptable loss of amenity there is insufficient evidence to support a refusal of the application on the grounds of impact on residential amenity, or indeed the taking of enforcement action. In addition the importance of supporting existing business in the interests of the economy as set out of the national and local policy must be recognised. For these reasons it is considered that a further temporary consent that enables the business to receive and make deliveries between 2300 and 0700 hrs is recommended for a six month period.

In an attempt to avoid the same situation arising again a condition is recommended that requires the applicant to submit for approval the method of assessing noise impact, within one month of the date of the permission, and that the agreed assessment should then be undertaken within five months of the date of the decision. This would enable a further application to remove or vary condition 16 of planning permission 05/00313/FUL to be submitted with the assessment results before the temporary consent expires.

Representations received express concern about the impact of the proposal on occupiers of the new residential development off West Avenue. The concern expressed by the Environmental Health Division relates to the use of the junction of West Avenue and Linley Road by HGVs, as set out above. This is a considerable distance from these properties and as such will not give rise to disturbance to the occupiers. The delivery and collection vehicles from AAH are prevented from travelling along Old Butt Lane to Congleton Road by a Traffic Regulation Order and as such they will not pass the new development. It is therefore considered that no material disturbance would arise as a consequence of early morning vehicle movements as proposed. In addition it is not considered that the proposal will give rise to highway safety concerns for the occupiers of this residential development as the development in question involved the construction of a new roundabout which was designed to provide a turning facility for traffic generated by the employment uses on West Avenue and as such has the capacity to accommodate any additional traffic associated with this application.

If members resolve, contrary to the recommendation given, to refuse the application the question then arises as to whether or not it would be expedient to take enforcement action with respect to the current breach of planning control, and the Committee may wish to consider that issue at the same meeting. This is addressed below.

**The issue of whether it is expedient to take enforcement action, and the nature of that action**

Firstly the LPA must be satisfied that it has sufficient evidence of the breach so that the expediency of serving a notice can be explored. The evidence available is the indication from the applicant that vehicles movements have been taking place in the period 2300-0700 hrs since 2006 and they give an indication of the number of

vehicle movements involved. In addition the representations received on the planning application indicate movements in the night-time period. Finally an officer has observed vehicle movements before 0700 hours on one day. It is considered that is sufficient evidence to enable the LPA to consider the issue of expediency.

Whilst there is evidence that the condition is not being complied with, there is no substantive scientific evidence to demonstrate that the vehicle movements associated with this development are causing sleep disturbance (in the context of other “background” noise) such as to justify the taking of enforcement action. If the Council takes enforcement action it will have to demonstrate such harm, but it cannot do so at present. Your Officer’s first recommendation accordingly would be to defer any decision on enforcement to allow an assessment to be undertaken.

In deciding whether it is expedient to take enforcement action, the Local Planning Authority (LPA) is required to have regard to the provisions of the approved development plan for the area and to any other material considerations. Guidance on the process to be followed is provided within Circular 10/97. The report above refers to all the relevant provisions of the development plan and to other material considerations.

If the Committee’s decision were to refuse the application and also to resolve to take enforcement action, the Committee could specify if it wishes the form of enforcement action, what ‘steps’ are required by the Company to be taken and critically by when.

With respect to the **type of enforcement action** the normal position in such resolutions is to leave that decision to the Head of Central Services, but given the potential implications of taking action in this case – with respect to the jobs of the employees of the firm involved - your officers would ask that members make clear their wishes in this respect.

There are essentially two choices – the service of either a Breach of Condition Notice or alternatively of an Enforcement Notice with respect to the failure to comply with condition. An Enforcement Notice is subject to a right of appeal to the Planning Inspectorate and in the course of such an appeal the appellant can advance a number of different grounds of appeal, as well as asking for the merits of the matter to be considered. Members should note that prosecution for non-compliance with an Enforcement Notice is a fine in the Magistrates Court of up to £20,000 and a much larger fine in the Crown Court. In determining the level of the fine the Court will have regard to the financial benefit accrued from the offence.

There is no right of appeal to the Secretary of State against a Breach of Condition Notice, but the validity of such a Notice, or the validity of the LPA’s decision to serve it, may be challenged by application to the High Court for judicial review. Members should note that the potential fine for failure to comply with a Breach of Condition Notice is up to £1,000 – a much lower figure.

Whilst in no way seeking to minimise the importance of residential amenity (the issue in this case) your Officer has to observe that the breach of planning control here has, it would now appear, been quite a longstanding one (the firm indicating that there has been a breach of the condition since 2006) and there is no immediate public safety or similar matter which requires urgent action to be taken by the Local Planning Authority.

The applicants will it should be noted have a right to appeal against the refusal of their planning application. If they exercise this right of appeal there is then the potentially overlapping jurisdiction of the courts in dealing with prosecutions of a contravention of a Breach of Condition Notice and that of the Secretary of State in determining an appeal to discharge the same condition.

On the basis of the above your officers’ view is that the Council should proceed, if the Committee agrees to take enforcement action, to use an Enforcement Notice, rather than a Breach of Condition Notice.

Insofar as the **required steps** are concerned, the Local Planning Authority can only at most require the condition to be complied with. It can however choose to ‘underenforce’ if it so wishes. If for example the Committee were of the view that vehicle movements at some part of the period between 2300 hrs and 0700 hrs would be acceptable, or perhaps that there is no objection to vehicles entering the site as opposed to leaving it, the Committee would need to indicate this now, as this could still be taken into account in the framing of the Notice.

The most critical decision is what **period for compliance** is to be sought. There is little doubt that complying with this condition would appear to have significant implications for the Company concerned. As indicated in

the applicant's/agent's submission above the Company have indicated that 24hr operation to service the Company's current customers is essential, as order and supply patterns force them to pick and dispatch most of their volumes during the evening. The Company have not to date indicated what they consider the consequences of an Enforcement Notice would be, and their comments are being sought. Given the potentially significant implications for the Company of this restriction, a significant period of time – say 12 months – would in your Officer's view be appropriate, so that the Company could make appropriate alternative arrangements.

Members should note that a period of not less than 28 days beginning with the date of service of the Notice can be specified as the compliance period within a Breach of Condition Notice although there the discretion to extend that by whatever further period the LPA may consider appropriate. An Enforcement Notice does not take effect until after 28 days from the date it is served (within which period an appeal can be lodged and the Notice is then held in abeyance until that appeal is determined).

Any decision to take enforcement action would need to be justified and this justification or reason for action would in turn need to appear on the face of the Enforcement Notice. Any resolution to take enforcement action would need to make this reason clear.

**Background Papers**

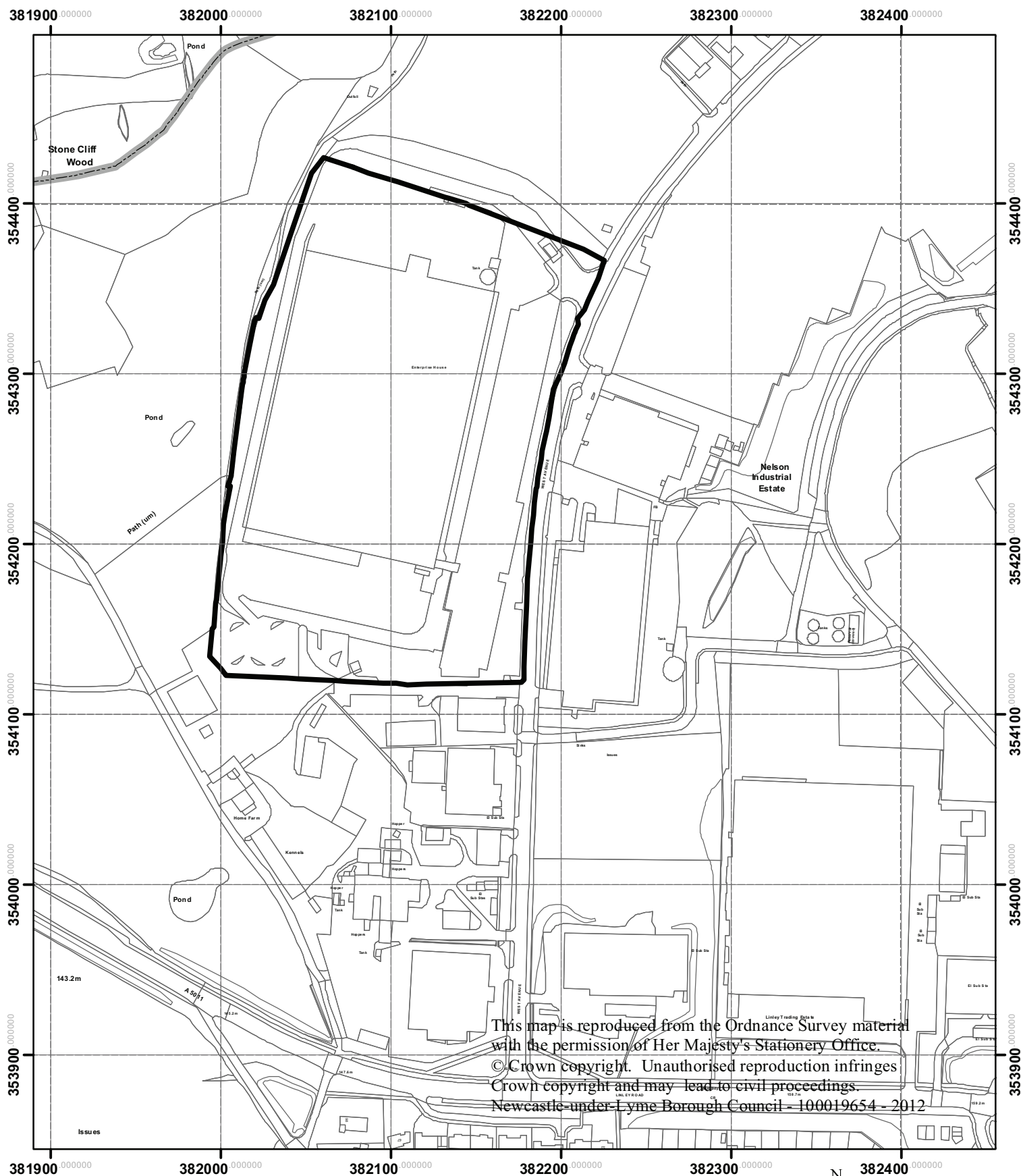
Planning file

Planning documents referred to

**Date Report Prepared**

24 January 2013

12/652/FUL



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EXCHANGE HOUSE CROSS HEATH NEWCASTLE UNDER LYME  
MR KULVINDER KANDOLA. 12/00788/FUL

**The Application** is for full permission for the change of use from combined Class D1 (non- residential institution) and Class A1 (shops) use to a Pizza Hut Delivery Store falling within Class A5 (hot food takeaway) together with a new external facade.

The site is within the urban area of Newcastle as defined on the Local Development Framework Proposals Map.

The application has been called to Committee by two Councillors for decision due to residents' concerns about over-intensification of takeaways on the A34, and that there should be more varied businesses. Residents feel takeaways are not helping to promote healthy eating in an area where health and well being are causing concern. Residents have concerns over traffic: - whether there is enough parking on the site, there are both a café and takeaway on the corner of Wilton Street, opposite – vehicles may park opposite them; – Heavy Goods Vehicles exiting DK Motorcycles around the corner use Wilton Street as an exit.

The statutory 8 week period for the determination of this application expires on 6<sup>th</sup> February 2013.

## **RECOMMENDATION**

**Permit subject to conditions relating to the following matters:-**

- (i) **Standard Time limit.**
- (ii) **Approved plans/drawings/documents.**
- (iii) **Hours of use restricted to 9am to 12pm on Monday to Saturday, and 9am to 11.30pm on Sundays and bank holidays.**
- (iv) **No deliveries or waste collection before 7am and after 11pm on any day.**
- (v) **Prior approval of fume extraction system, implementation prior to use commencing and maintenance thereafter.**
- (vi) **External motors to refrigerated vehicles to be turned off before vehicles delivering to the restaurant turn into Wilton Street and not started until they have left Wilton Street.**
- (vii) **Prior approval of refrigeration and air conditioning plant.**
- (viii) **Prior approval of grease and food traps.**
- (ix) **Prior approval of refuse storage and collection arrangements.**
- (x) **Prior approval of arrangements for the collection and disposal of litter resulting from the use.**
- (xi) **Prior approval of parking and turning of vehicles and provision before use commences.**

## **Reason for Recommendation**

Subject to conditions, it is not considered that there would be any significant adverse impact on residential amenity. It is not considered that highway danger would arise and as such an objection could be sustained on the grounds of impact on highway safety. It is considered that the proposal will not result in any visual harm. The proposal accords with Policies D1, D2 and T13 of the Staffordshire and Stoke-on-Trent Structure Plan 1996 – 2011 and T14 of the Newcastle-under-Lyme Local Plan 2011, and the aims and objectives of the National Planning Policy Framework 2012.

## **Statement as to How the Local Planning Authority Has Worked With the Applicant in a Positive and Proactive Manner in Dealing With This Application**

This is considered to be a sustainable form of development and so complies with the provisions of the National Planning Policy Framework.

## **Policies and Proposals in the Approved Development Plan Relevant to This Decision:-**

West Midlands Regional Spatial Strategy 2008 (RSS)

Nil

### Staffordshire and Stoke-on-Trent Structure Plan 1996-2011

Policy D1: Sustainable Forms of Development  
Policy D2: The Design and Environmental Quality of Development  
Policy T12: Strategic Highway Network  
Policy T13: Local Roads

### Newcastle under Lyme and Stoke on Trent Core Spatial Strategy 2006 – 2026 adopted 2009 (CSS)

Strategic Aim 5: To foster and diversify the employment base  
Strategic Aim 7: To help Newcastle Town Centre to continue to thrive  
Policy SP1: Spatial Principles of Targeted Regeneration  
Policy SP2: Spatial Principles of Economic Development  
Policy SP3: Spatial Principles of Movement and Access  
Policy ASP5: Newcastle and Kidsgrove Urban Neighbourhood Area Spatial Policy  
Policy CSP1: Design Quality

### Newcastle under Lyme Local Plan 2011

Policy T14: Development and the Highway Network  
Policy T16: Development – General Parking Requirements

### **Other Material Considerations Include:**

#### **National Planning Policy**

National Planning Policy Framework (NPPF) (2012)

#### **Supplementary Planning Guidance/Documents (SPGs/SPDs)**

Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance SPD (Nov 2010)  
Hot Food Takeaways (February 1996)

Waste Management and Recycling Planning Practice Guidance Note (January 2011)

#### **The Secretary of State's Announcement of His intention to abolish RSS**

The Secretary of State has made it clear that it is the Government's intention to revoke RSSs and the Localism Act 2011, which includes powers to give effect to that intention, received Royal Assent on 15 November 2011. However, pending the making of a revocation order in accordance with the new Act, the RSS remains part of the statutory development plan. Nevertheless, the intention to revoke the RSS and the enactment are material considerations.

#### **Relevant Planning History**

2001	01/00094/COU	Permit - conversion of sub station to offices
2012	12/00190/COU	Permit - change of use to pre-school nursery

#### **Views of Consultees**

The **Environmental Health Division** has no objections to this application subject to conditions on the following:

- works of demolition and construction;
- dust mitigation measures;
- external motors to refrigerated vehicles to be turned off before vehicles delivering to the restaurant turn into Wilton Street and not started until they have left Wilton Street.
- hours of use and deliveries;
- Waste collection;
- fume extraction;



- air cooling/air extraction equipment;
- prevention of food and grease debris from entering the drainage system;
- refuse storage, waste collections; and litter disposal and collection arrangements

The **Highway Authority** has no objections subject to a condition being included that no development should be commenced until details of the parking and turning of vehicles within the curtilage of the site have been submitted to and approved in writing by the Local Planning Authority.

The views of the **Police Architectural Liaison Officer** have been sought and any comments received will be reported.

### **Representations**

Seven letters of objection have been received raising the following concerns:

- Amount of noise, people etc that the proposed use will attract.
- Anti-social behaviour.
- Already problems with smells from KFC and the proposal will increase odours.
- There is no need for more takeaways.
- Public Health and obesity.
- Attract rats and other vermin.
- Parking will take place in nearby streets causing extra problems as very little parking at the site.
- Increase in traffic resulting in danger to pedestrians.
- Danger to A34 traffic from vehicles entering and leaving the site.
- KFC has lead to an increase in litter and antisocial behaviour which will get worse as a result of the proposal.

### **Applicant/Agent's Submission**

A Design and Access Statement has been submitted the main points of which are set out below:

- The building will remain as present but with a new external facade.
- The layout will have a customer waiting area within the building.
- Signage and external cladding will be to Pizza Hut corporate image.
- 10 parking spaces will be provided, with additional space for delivery vehicles and refuse vehicles.

This document is available for inspection at the Guildhall and on [www.newcastle-staffs.gov.uk/planning/exchangehouse](http://www.newcastle-staffs.gov.uk/planning/exchangehouse)

### **Key Issues**

Full planning permission is sought for a change of use of the premises from a combined Class D1 (non-residential institution) and Class A1 (shops) use to a Pizza Hut Delivery Store falling within Class A5 (hot food takeaway) together with a new external facade. The property is within the urban area of Newcastle as defined on the Local Development Framework Proposals Map.

The key issues to be considered in the determination of this application are the following:

- Is the principle of the change of use acceptable?
- Would the proposal cause harm to the occupiers of neighbouring properties?
- Would the proposal be detrimental to highway safety?
- Are the external alterations to the property acceptable in appearance?

#### **Is the principle of the change of use acceptable?**

The site is situated around 600m north of the town centre. It is a single storey freestanding detached building with a parking area and is located on the A34 Liverpool Road but takes its access from Wilton Street. The A34, Liverpool Road, is characterised by a mixture of uses including a number of commercial uses further

along its frontage, within 100m of the site, including shops, takeaways and motor-car services, interspersed with some residential. There is a residential area to the rear.

Supplementary Planning Guidance on Hot Food Takeaways gives advice on the suitability of this type of use in different areas. As indicated above, the property is within a mixed commercial and residential area and in considering the advice in the SPG it is considered that the site falls within Category C2 of that Guidance – with predominantly residential use within 100m of the proposed site but where further groups of commercial uses would be encountered in most directions within 100m. Within Category C2 areas hot food takeaways are not ruled out. Only within Category A (primarily residential) areas does Guidance normally prohibit hot food takeaways.

Other factors which the SPG takes into account are traffic and parking, and cooking odours (which are considered below), and cumulative effect and the impact that this has on amenity (again considered below) and effect on the character of the area.

The building is close to but is not within a group of commercial properties and as such is in a location which is not covered by policy which seek to retain retail uses to protect the range of goods and services offered in the locality. In view of this the introduction of a further hot food takeaway would in principle be acceptable in land use terms.

Whilst the health issues arising from a hot food takeaway is a material planning consideration in the absence of planning policy that address this concern a refusal on this basis, as suggested in representations, could not be sustained at appeal.

#### Would the proposal cause harm to the occupiers of neighbouring properties?

The application is for a Pizza Hut Delivery Store. The proposal involves the preparation of hot food for delivery and collection and as such has the potential to cause nuisance from noise, odours and anti-social behaviour.

Whilst there are residential properties in the vicinity of the site the issue of noise can be addressed through the imposition of conditions. The adopted SPG on Hot Food Takeaways allows for closing times of midnight on Monday to Saturday, and 11.30 on Sundays. It would be reasonable and justified to impose a condition restricting the hours of opening in accordance with this adopted guidance, notwithstanding that the application seeks longer hours of opening (2am on Sunday-Friday and 4am on Saturday).

The operation of an extraction system to address cooking odours could be secured by condition and as such a refusal on this ground could not be sustained.

It is recognised that hot food takeaways in a locality can lead to customers lingering, however substantive evidence must be provided to demonstrate that the proposed use would lead to a material increase in anti-social behaviour to justify a refusal on this basis.

It is considered that by conditioning opening hours in accordance with Supplementary Planning Guidance on Hot Food Takeaways there will be no material adverse effect to the living conditions of nearby residents that would justify the refusal of the application even when the cumulative impact of a number of such uses on Liverpool Road are taken into consideration.

#### Would the proposal be detrimental to highway safety?

Policy T14 of the Local Plan states that development that would significantly harm the safety and efficient use of the highway network should not be permitted. The A34 Liverpool Road is part of the Strategic Highway Network where the maintenance of the free flow of traffic would be an important objective (although not the sole one).

The Highway Authority has raised no objections to the proposal. The development would use an existing entrance onto a side road and provides ten parking spaces on site. The existing uses of the building would generate a demand for parking and any additional parking requirements of the proposed use over and above that generated by the existing lawful use would not be to the extent where obstruction or danger to other

highway uses would occur. As such and in light of the recommendation of the Highway Authority it is considered that the proposal would not be detrimental to highway safety.

Are the alterations to property visually acceptable?

The building would be clad on all the sides open to public view. As it stands this is a comparatively small utility building built in brick with a roof in three double pitched sections. The development would cover the existing exterior open to public view with an external new metal clad façade system. The cladding (and the signs it would carry which would require advertisement consent) is represented as being more in keeping with the Pizza Hut corporate image. It would have no reference to the locality but with the variety of design and materials that exist in the surrounding buildings this will have no material effect on the built character of the area.

It is considered that in the existing circumstances the appearance would be acceptable. Any external extraction flue which is required and is visible will require further planning permission.

**Background Papers**

Planning File

Development Plan

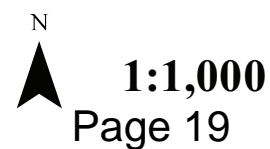
National Planning guidance/statements

**Date Report Prepared**

21 January 2013

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## **CHARGING FOR PRE-APPLICATION PLANNING ADVICE**

### **Purpose of the Report**

This report invites the Planning Committee to comment on proposals to be considered by Cabinet at its meeting on 6 February on the introduction of charging for planning advice by the Council, and the means by which this could be done.

### **RECOMMENDATIONS**

- (a) That the Planning Committee recommend to Cabinet that it agrees to the proposal that the Council will no longer provide “free” informal written advice as to whether or not planning permission is required for development proposals;**
- (b) That the Planning Committee recommends to Cabinet that it agrees to the proposed introduction of charging of fees for pre-application advice, as set out in the report and;**
- (c) That the Planning Committee agree to the proposal that the Head of Planning and Development report back after 6 months on the implementation of these changes, the feedback received and the impact of them.**

### **Reasons for Recommendations**

The introduction of charges for pre-application advice is permitted under Section 93 of Local Government Act and a number of local authorities have already introduced charges for this purpose. Introduction of charges for pre application planning advice presents an opportunity to recoup some of the costs associated with undertaking pre-application discussions with potential applicants for planning permission, and to offset some of the costs of the planning process. This report has been prepared in the context of a significant reduction in planning fee income, and a study, financed by the West Midlands Improvement and Efficiency Project, commissioned from the accountancy firm Deloitte, comparing the Council's fees and charges with those made by a range of other local authorities. This work identified some activities where no charge is made but could be charged for, and the report to Cabinet on 16 January 2013 on Scale of Fees and Charges identified charging for pre-application advice as feasible for implementation in 2013/14, and advised that a report on this would be submitted to 6 February 2013 Cabinet meeting.

### **1. Background**

- 1.1 Many local authorities offer pre-planning application guidance, seeing it as a key part of delivering a good planning service.**
- 1.2 The National Planning Policy Framework states:-**

*“Early engagement has a significant potential to improve the effectiveness of the planning system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.*

*Local Planning Authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. They cannot require that a developer engages with them before submitting a planning application, but they should encourage take of any pre-application services they do offer. They should also, where they think this would be beneficial, encourage any applicants who are not already required to do so by law to engage with the local community before submitting their applications.*

*The more issues that can be resolved at pre-application state, the greater the benefits.....This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs”*

- 1.3 In addition to giving such guidance, local planning authorities are also regularly asked to confirm in writing whether proposals require permission – particularly, but not exclusively, with respect to householder developments. For the purposes of this report these are called consent enquiries. With recent and anticipated changes in the scope of both commercial and domestic permitted development rights an increase in such enquiries can be anticipated.
- 1.4 An increasing number of Councils now charge for pre-application advice. The Secretary of State has gone on record to say that Councils should consider charging for services as a way of helping to deliver quality services in a climate of budgetary restraint. Some also charge for consent enquiries, or alternatively they decline to provide a written opinion in those situation where there is a formal alternative available – the submission of a formal application under Section 192 of the Town and Country Planning Act 1990 (as amended) for a Certificate of lawfulness of a proposed development.

## **2. Issues**

- 2.1 Many local authorities, including this Council, devote considerable time and effort to offering pre-application planning advice, and see it as a key part of delivering a good planning service.
- 2.2 Pre-application planning advice is where prospective applicants (or their agents) seek advice and guidance before submitting a planning application. As already indicated the practice is strongly encouraged so that issues that would arise during the application process are identified and dealt with and the application is submitted in the “best” form possible.
- 2.3 Pre-application advice is advantageous both to applicants and to the Council in that it:
  - provides an opportunity to suggest that an application should not be submitted if the proposal is wholly unacceptable;
  - enables officers to influence the proposal to provide a better development – particularly in terms of design and layout;
  - allows discussion regarding the information required to accompany an application and draft legal requirements and;
  - allows liaison with other departments to bring out any conflicting views and issues.
- 2.4 The Council’s own Statement of Community Involvement (adopted in August 2006) refers to the importance of pre-application consultations, including with both statutory and non-statutory consultees and community and voluntary groups in the identification of issues early in the process “to avoid rushing the application into a forced decision which may later languish in an overburdened appeals procedure”.
- 2.5 Some forms of pre-application guidance are essentially non-interactive – for example the provision of leaflets at the Service Centres and content on the Council’s website. Providing ready access to Supplementary Planning Documents and Local Development Documents can be viewed as a form of pre-application advice. This is not the subject of this report, but it is important to consider any charging proposals in the context of the full extent of guidance which is available, including for example content of the Planning Portal website.



- 2.6 It is the more interactive aspect of pre-application guidance which is the consideration here – the holdings of meetings both within the Civic Offices and on site, the giving of advice over the telephone, and all written forms of communication.
- 2.7 The Table below gives an indication of the volume of enquiries being received by the Planning Service each year over the last 6 years. Although the Service has changed its procedures during this period and improved the “capturing” and recording of such enquiries it would appear that the recent trend is one of a gradually increasing number of enquiries.

<b>Year</b>	<b>Number of Enquiries Received</b>
2007/08	1061
2008/09	948
2009/10	786
2010/11	895
2011/12	944
2012/13 (predicted outturn)	1153

- 2.8 These enquiries concern a very wide range of matters, ranging from relatively simple enquiries to enquiries concerning significant development proposals.
- 2.9 Enquiries are classified according to their development type. In brief proposals for Major development are, in the case of residential proposals, proposals for 10 or more units or, where numbers are not known a site area of 0.5 hectares (1.23 acres) or more. With respect to all other uses Major developments are those with a floorspace of more than 1,000 m<sup>2</sup> (10,764 ft<sup>2</sup>), or where the site area is 1 hectare (2.47 acres) or more. Minor developments are those which are neither Major development nor householder developments nor changes of use. The category Other development includes ‘Changes of Use’, ‘Householder developments’ and other types of applications such as advertisement consent and listed building consent.
- 2.10 The Council operates a Development Team approach which involves those enquiries that are concerned with Major development being brought before a Development Team of officers from both within the Authority and from the Highway Authority. Developers can make presentations to the Development Team. A parallel approach is taken to member involvement with pre-application enquiries for Major development being brought before the Strategic Planning Consultative Group.
- 2.11 Of the 860 enquiries received in 2011/12 where information on the development type of the enquiry was obtained, 29 (3.3%) concerned ‘Major development’, 272 (31.6%) concerned ‘Minor development’ and 559 (65%) concerned ‘Other development’. Householder developments, which fall within the ‘Other development’ category, accounted for 403 (47% of the enquiries).
- 2.12 In terms of performance the % of pre-application enquiries answered by the Service within 15 working days has been 72.2% (09/10), 70.2% (10/11) & 70.5% (11/12) against a current local target of 85% within the Service Plan. Performance against this indicator is reported on a half yearly basis to the Planning Committee. The most recent report provided on 4 December 2012 indicated that performance for the first half of 2012/13 had been 69% and that it was not anticipated that the local target would be met. Members commented that it might be inappropriate to have a single target given the range of types of enquiries considered under this single indicator.
- 2.13 The Council’s records do not expressly distinguish between the giving of officer opinion on the prospects of planning permission and the giving of an opinion on whether consent

(normally planning permission but including listed building consent, conservation area consent and advertisement consent) would be required. However it has been estimated that in 2011/12 for those 927 for which this information has been kept, 367 (39.6%) were enquiries about whether consent was required for a particular proposal, 463 (49.6%) sought officer's opinions on the merit of proposals, whilst the remainder 97 (10.5%) sought information on both aspects. In practice because the existence of permitted development rights is such an important consideration in negotiations concerning householder developments, a greater proportion than 10% in practice deal with both issues of merit and whether consent is required.

- 2.14 There is limited information as to the costs of the provision of such guidance. The Service has participated in two recent Benchmarking exercises. In 2011 this exercise, based on time sheeting within the Authority suggested that the staff costs alone within the Planning Service of the provision of "pre-application" advice was of the order of £46,000, and a more recent similar exercise in November/December 2012 has indicated that the annual staff costs alone, again within the Planning Service, of the provision of "pre-application guidance" is £45,700 and for the provision to customers of "permitted development opinion" £2,300.

### **Responding to enquiries about consent is required**

- 2.15 The greatest proportion of these types of enquires are concerned with householder development, although this is likely to change as a result of the increased availability of permitted development rights in other areas. If the Council were to take the position that it would no longer provide free written advice and instead require persons seeking a formal view to submit applications for a certificate of lawfulness (where they can), these applications attract a fee which is half that of a planning application for the same proposal. In the case of householder developments such applications (for certificates of lawfulness) currently require a fee of £86. In other cases it could be considerably more.
- 2.16 However dealing with a formal application for a certificate does, almost certainly, "cost" more than dealing with an informal enquiry; how much more is very difficult to estimate. In the case of informal enquiries the tasks are the logging of the enquiry, appropriate research, and the preparation of a response. In the case of applications for certificates of lawfulness the tasks include logging and validating the application, appropriate research, consultation with Legal Services, the preparation by the case officer of a report, its clearance by a more senior officer and the dispatch of the decision. Information obtained from the 2011 PAS benchmarking exercises undertaken within the Planning Service suggests that to achieve cost recovery the average fee for an application for a certificate of lawfulness would have to have been of the order of £369, based upon an estimate that each would require 8 hours of work. This figure was confirmed by a subsequent limited time recording exercise. However it needs to be remembered that such applications almost certainly were concerned with more marginal, problematic and thus time consuming cases
- 2.17 The following Table indicates the number of applications received for each of the last 6 years

<b>Year</b>	<b>No of Valid Application for Certificates of Lawfulness Received</b>
2007/08	3
2008/09	7
2009/10	8
2010/11	7
2011/12	4
2012/13 (predicted outturn)	20

- 2.18 Whilst the recent increase in the number of applications for Certificates of lawfulness of proposed development is of note, those authorities which decline to provide “free” informal written opinion on whether planning permission is required for a proposed development generally receive greater numbers of applications (for certificates of lawfulness of proposed development). Lichfield for example received 61 applications, whilst South Staffordshire received approximately 80. However this is not always the case – Stafford Borough for example only received 21 such applications in 2011/12 and they are expecting to reach a similar total in 2012/13.
- 2.19 There are other considerations here. An informal opinion contained within a letter from an officer of the Council whilst it carries significant weight is not the same as a certificate of lawfulness. In a recent case where an owner had proceeded to undertake work on the basis of an incorrect view contained within such an opinion, the Council paid compensation of several thousands of pounds to the party concerned. There is accordingly a risk associated with the provision of informal opinion.
- 2.20 Although not the equivalent in law to a planning permission, a certificate of lawfulness does indicate that, unless any relevant factor has changed since the application date specified, in the application, it would be lawful to proceed with the proposals. It follows that it is therefore that it is vital to ensure that the terms of a certificate are precise and there is no room for doubt about what is lawful at a particular date. The only basis upon which such Certificates may be revoked is where on the application a statement was made, or document used, which was false in any material particular; or any material information was withheld from the Local Planning Authority. An error of judgement by the Local Planning Authority is not a cause for revocation of a certificate – hence the different internal procedures involved in the determination of applications for certificates of lawfulness.
- 2.21 In terms of additional income generation it is extremely difficult to predict the number of additional certificate applications that might be received. Working on the assumption (informed by the experience of other local planning authorities) that only 15% of the previous enquiries for informal opinions would translate into additional applications for certificates of lawfulness, such a measure might lead to additional fee income of the order of £5,500. There would be the additional work involved (of dealing with certificate applications as opposed to informal enquiries) but there would also be likely to be a corresponding reduction in the number of enquiries, once the Council's position became known.

#### **Responding to requests for officer opinion**

- 2.22 As already stated the provision of pre-application guidance is well recognised as one aspect of a quality planning service, is strongly encouraged in national guidance, and is of benefit both to applicants and to the Local Planning Authority.
- 2.23 Whilst there are no figures available for this Council, it is apparent that a not insignificant proportion of the requests for advice are of a speculative nature. For example when a property is on the market, particularly when it is for auction, it is not uncommon for the Service to receive a number of requests for advice, most of which, by reason of the circumstance will not lead to the submission of a planning application. However it would be wrong to treat all enquiries which do not lead to applications as “speculative” - no application may be subsequently submitted as a direct result of the discouraging advice given. That must be to the advantage of the Local Planning Authority. Most importantly when an application is submitted, the fee for the application is for considering the application itself, rather than the cost of any pre-application discussions. Indeed national research indicates that planning application fees still fall well short of achieving cost recovery.

- 2.24 Under Section 93 of the Local Government Act 2003, a general power was introduced for local authorities to charge for discretionary activities – those services that a local authority has the power to provide, but is not obliged to do so. In the case of planning services, this could include charging for tasks outside the scope of nationally –set fees, such as offering pre-application advice. Local authorities are therefore allowed to recover at least some of the costs incurred before an application is submitted, although the income must not exceed the cost of providing the service, as set out in government guidance. With the passing of the Localism Act in 2011 the additional general power of competence has been introduced.
- 2.25 This Council's Charging Policy includes its Charging Principles – a copy of which was provided as Appendix B to the report of the Executive Director – Resource and Support Service to Cabinet on 16 January on Scale of Fees and Charges. The principles include that charges should be made for services whenever the Council has a power or duty to do, and that there will be an initial presumption that charges to be made for the provision of a service will be set at a level intended to recover the cost of providing the service.
- 2.26 The introduction of pre-application fees potentially means greater income for the Authority and also means that the charges for these services is put onto the customer directly, rather than Council tax payers. However despite these arguments in favour of introducing fees, a number of questions also need to be considered:-
- Would the introduction of charges in this area deter potential applicants from seeking that advice?
  - Would less pre-application discussions resulted in undiscussed and unacceptable proposals, leading to more refusals and appeals as a result?
  - Would the proposal result in a drop in customer satisfaction levels in the service overall?
  - Would an applicant, having paid for pre-application discussion, be inclined to expect greater certainty and a quicker decision, and would they, therefore, be more aggrieved if their application is refused and ;
  - How does the introduction of pre-application charging “fit” with the decision of Cabinet to seek to aspire to obtain the Local Enterprise Planning Charter Mark?
- 2.28 An indication of the impact of charging can be obtained from the experience of other Local Planning Authorities.

### **The experience of other Local Planning Authorities**

- 2.29 The experience of other Authorities who have brought in charging for pre-application advice is documented in a report published in June 2009 by the Planning Advisory Service entitled 'A material world – charging for pre-application planning advice'. A copy of this report is available within the Members room and via the following link <http://www.newcastle-staffs.gov.uk/planning/ppa> .
- 2.30 The findings of that report include that
- only a few authorities at that time charged for pre-application advice but more were considering it;
  - the main reasons given for charging were to help improve service delivery and ensure better quality application submissions;
  - most authorities that charged claimed that it helped filter out speculative and poorly thought out development proposals;
  - no authority interviewed charged for householder development and most also exempted development affecting small business premises and;

- those that charged said that the principle was broadly accepted by developers and their agents, albeit often with some initial opposition.
- 2.31 Most authorities that have introduced the charge have indicated that as a consequence they have seen a significant reduction in the number of enquiries, most particularly those of a “speculative” nature.
- 2.32 Some authorities charge for pre application planning advice, others do not. There is no national list of those Councils who charge and those who do not. In Stoke on Trent and Staffordshire officers can confirm that South Staffordshire District Council and Staffordshire Moorlands District Council charge, the other Councils do not. The neighbouring unitary authorities of Cheshire East and Shropshire charge. A Table has been produced in an Appendix which provides Members with an appreciation of the comparative scale of charges in the said Authorities.
- 2.33 If charging were to be introduced it is important that the charge is easy to calculate and to collect and that it reflects the different levels of complexity and time taken to give the advice. Most authorities adopt a practice where developers submit a written request for a meeting or advice and the fee for such is paid in advance of the meeting taking place or the response being given. There would be some additional administrative costs associated with the collection of such fees – the more complicated the charging structure the greater the costs would be likely to be.
- 2.34 There are numerous alternative ways of structuring charging proposals.
- 2.35 Key decisions include the following:-
- (a) Should all types of enquiries attract a charge or is it appropriate to exempt certain types of enquiries?**
- 2.36 The group of enquiries most commonly exempted from charging regimes are householder developments. However there is no particular logic to this and enquiries have confirmed that a number of those authorities who charge do now charge for advice on householder development, whilst others do not. In the case of South Staffordshire they originally exempted enquiries from residents of the District for householder developments, but this led to significant problems including less use of agents and poorer quality submissions, and they have now decided to charge for all groups.
- (b) Could and should the charges reflect the objective of full cost recovery?**
- 2.37 Whilst the Charging Principles advocate such an approach, there are significant difficulties in identifying the true cost of the provision of the service concerned, despite the Service’s participation in a number of benchmarking and fee setting exercises. Even within broad types of enquiries there will be significant variations in the actual time spent.
- 2.38 More importantly there is a real concern that if the charges were to be set at full cost recovery levels their adverse impact would be very considerable. It is suggested that the Council should rather, at least for the present, be seeking what would be a reasonable contribution towards the costs of the provision of this service.
4. **The Proposal**
- 4.1 It is proposed as follows:-

(1) That the Council ceases as from 1 April 2013 to respond to requests for “free” written advice as to whether proposals require planning permission.

(2) That the following fees are introduced (per case) as from 1 April 2013:-

- **£400 for ‘large scale Major developments’** (for residential developments of over 200 dwellings or, when the number of dwellings is not known, a site area of 4 ha. or more; and for non-residential developments of over 10,000 m<sup>2</sup> of floorspace or, when the floorspace is not known, a site area of 2 ha. or more).
- **£200 for ‘small scale Major developments’** (for residential developments of between 10 and 200 dwellings, or when the number of dwellings is not known, a site area of between 0.5 ha. and 4 ha; and for non-residential developments of between 1,000 and 10,000 m<sup>2</sup> floorspace or, when the floorspace is not known, a site area between 1 ha. and 2 ha.).
- **£60 for ‘Minor’ developments** (for residential developments of between 1 and 9 dwellings or, when the number of dwellings is not known, a site area of less than 0.5 ha., and for non- residential developments of under 1,000m<sup>2</sup> floorspace or, when the floorspace is not known, a site area of less than 1 ha).
- **£20 for ‘householder development’.**
- **£30 for all ‘Other development’**, excluding householder developments but including changes of use, advertisements, prior approval proposals, and listed building proposals.

4.2 One option that Members may wish to consider as a variation to the suggested charging schedule set out above is whether such charges should be levied in the case of all meetings and written correspondence, or whether it might be appropriate, perhaps solely in relation to householder development, to allow without charge the provision of say one half hour meeting per case, but to charge in the event of any further meeting or if written confirmation of the advice given is sought. However it should be acknowledged that there are clear benefits to both parties in the provision of written advice. Additionally such an arrangement would not recognise that costs are incurred by the Council not only in the holding of the meeting but equally in the preparation for it. Whilst they are difficult to quantify there would be income consequences from such an exemption – it could be expected that the majority of householder development enquiries would not be the subject of a charge if this option was proceeded with. In this context Members may wish to consider how the proposals outlined above compare with the charging regimes within the nearby/neighbouring authorities (set out in the Appendix)

4.3 In terms of estimating the potential income that may result from such proposals as already indicated it is envisaged that proposal (1) above would be likely to result in an increased planning fee income of the order of £5,500.

4.4 If the above charges were to be introduced, on the basis that the number of enquiries for pre-application advice will reduce significantly – to say 250 and assuming the development types of these enquiries are of the same proportions as they are at present, this gives the following figures

‘Large scale Major development’	1 x £400 = £400
‘Small scale Major development’	12 x £200 = £2,400
‘Minor development’	100 x £60 = £6,000
‘Householder Development’	84 x £20 = £1,680
‘All Other development’	51 x £30 = £1,530

- 4.5 It is in practice more likely that the number of enquiries for Major development would be unlikely to be significantly affected by the decision to charge but the above calculation gives an indication of the scale of the additional fee income which might be forthcoming were the fees to be set at the above rates. Recognising the width of the band of proposals that fall within the 'small scale Major development' category (it ranges from 10 dwellings up to 199) it might well be appropriate to add in an additional fee category, and further consideration is being given to this aspect.
- 4.6 On the basis of the above calculation an additional fee income of £12,010 per annum might be generated from the introduction of such proposals.
- 4.7 Combined the two proposals it is estimated would bring an additional fee income of £17,510 in 2013/14. For budget planning purposes it might be prudent to assume an income level of say £15,000.

5. **Reasons for Preferred Solution**

- 5.1 The proposals are modest measures which are expressly designed only to achieve a contribution towards the costs of service provision. On the basis of the experience of other Local Planning Authorities they are considered to be practical

6. **Background Papers**

ODPM publication ; "General Power for Best Value Authorities to Charge for discretionary Services – Guidance on the power to in the Local Government Act "  
Newcastle Borough Council Charging Policy  
Planning Advisory Service Publication – "A material world – charging for pre-application planning advice"

**Date Report Prepared**

25 January 2013

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**CHARGING ARRANGEMENTS IN OTHER STAFFORDSHIRE AUTHORITIES WHICH CHARGE AND THE CHARGING NEIGHBOURING UNITARY AUTHORITIES, COMPARED WITH THE NEWCASTLE PROPOSAL**

Development Type	South Staffordshire District Council*	Staffordshire Moorland District Council**	Cheshire East Council ***	Shropshire Council ****	Newcastle
Large Scale Majors (200+ dwellings, 10,000m <sup>2</sup> non-residential)	£240	£1000 for a meeting and written advice or £500 for written advice only or £250 for desk based assessment	£2000 for the first meeting and £1000 for each meeting thereafter (Development Team Service)	£1750	£400
Small Scale Majors of 50 – 199 dwellings, 1000- 9999 m <sup>2</sup> non-residential	£240	£1000 for a meeting and written advice or £500 for written advice only or £250 for desk based assessment	£2000 for the first meeting and £1000 for each meeting thereafter (Development Team Service)	£1000	£200
Small Scale Majors 10 -50 dwellings	£240	£750 for a meeting and written advice or £250 for written advice only or £250 for desk based assessment		£1000	£200
20 to 50 dwellings			£2000 for the first meeting and £1000 for each meeting thereafter (Development Team Service)		£200
Between 6 and 19 dwellings, or between 500-1999 m <sup>2</sup> non-residential f			£700 per meeting plus £150 for each additional officer involved		
Minor Development (incl 1-9 dwellings or under 1,000 m <sup>2</sup> non-residential	£120	£500 for a meeting and written advice or £250 for written advice only/desk based assessment		£500	£60
Minor Operations, including 2-5 dwellings, non residential schemes up to 500 m <sup>2</sup> , and other 'Minor Development' and 'Other Development' types	(£120)		£200 per meeting (plus £150 for each additional officer involved)		
Replacement Dwellings	(£120)	£500 for a meeting and written advice or £250 for written advice only/desk based assessment	£335 per meeting/letter		£60
Single Dwellings	(£120)			£200	£60
Changes of Use				£200	(£30)
'Other Development', except for Householders	£60	No charge (subject to confirmation)	£200 per meeting/letter		£30
Householders	£30	No charge	£100 per letter	£80	£20

All fees are inclusive of VAT

\* SSDC exempt from the requirement to pay – registered disabled persons, local community groups, Parish Councils and Works to a Listed building or in a Conservation Area where no planning application is required

\*\*SMDC do charge to confirm whether a householder proposal would be permitted development. Queries that can be answered briefly and succinctly are free off charge, but those requiring consultation, discussion, meeting or analysis are subject to the fee regime

\*\*\*CEC offer a free 30 minute meeting service with a duty officer who will not have undertaken any preparation for the meeting

\*\*\*\* SC do not charge for works to a listed building or for conservation area consent (where there is no requirement for planning permission)

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## **REPORT ON OPEN ENFORCEMENT CASES**

### **Purpose of the Report**

To inform Members of the current situation regarding the enforcement caseload.

### **Recommendations**

- (a) That the report be received.
- (b) That a further update be provided alongside the next quarterly monitoring report on cases where enforcement action has been authorised.

### **1. Background**

- 1.1 In accordance with previous Committee decisions, the format of this report shows existing and previous enforcement cases. The Table included in this report shows the total number of outstanding cases in one format (shown below). The publication of the report has been delayed by 2 weeks due to the Enforcement Officer's sickness absence.
- 1.2 Since the preparation of the last report on 14 September 2012 a further 54 new cases have been reported and overall 31 cases have been closed this Quarter. The net figure as of 21 January 2013 therefore stands at 180 open cases (23 more than last quarter, mainly due to the Enforcement Officer's absence and work on existing complex enforcement cases). This follows a reduction by 30 in the number of open cases over the previous Quarter. Progress continues to be made on older cases however. In 2012 20 more cases were received compared to 2011. The number of total open cases remains less than in previous years. It is envisaged, on the basis of previous experience, that the total number of open cases will again reduce providing staffing arrangements are maintained, and the rate of new cases does not increase further.

### **2. Conclusions**

- 2.1 It remains inevitable that some cases in the 'backlog' will remain open for some time because of their complexity.
- 2.2 Progress continues to be made in tackling older cases and there is still a significant body of work being undertaken behind the scenes, which has lead to progress in several complex cases. Officers' enforcement workload is regularly reviewed to ensure continuity and case progression, and will continue to be undertaken.
- 2.3 The Council's Planning Enforcement Officer continues to assist Planning Officers where possible by providing updates to their enforcement caseload and to seek to progress either the taking of enforcement action or their closure. This has also resulted in the submission of several additional planning applications, albeit that some have been refused and Officers are in the process of preparing several 'new' reports on whether or not it is expedient, having regard to the provisions of the development plan and any other material considerations, to take enforcement action. In 2012 some 14 expediency reports were cleared under delegated powers and a further 3 such reports came before the Planning Committee. This compares with the 2011 figures of 18 and none respectively. The total number of cases open remains below 200 cases (180 at the time of report preparation).

### **4. Current Outstanding Enforcement Cases**

- 4.1 The Table below shows the current statistics in comparison to the previous Quarter based on the position up to and including 21 January 2013.

#### ***Current Enforcement Status***

<b>Year</b>	<b>Total</b>	<b>Open</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>BOC</b>	<b>L</b>	<b>M</b>	<b>H</b>
2013	10	9	-	7	2	-	-	-	-

2012	224	85	13	57	11	4	-	-	-
2011	204	19	2	12	5	-	-	-	-
2010	206	10	2	6	2	-	-	-	-
2009	233	17	-	11	3	1	-	1	1
2008	276	13	-	-	-	-	3	10	-
2007	353	6	-	-	-	-	1	4	1
2006	280	9	-	-	-	-	2	4	3
2005	227	2	-	-	-	-	-	-	2
2004	252	3	-	-	-	-	1	1	1
2003	244	1	-	-	-	-	-	1	-
2002	247	5	-	-	-	-	-	2	3
2001	204	1	-	-	-	-	-	1	-
2000	219	-	-	-	-	-	-	-	-
1999	177	-	-	-	-	-	-	-	-
1998	217	-	-	-	-	-	-	-	-
1997	263	-	-	-	-	-	-	-	-

*Open Cases*      **180**  
*(inc Backlog)*

*Previous Quarter*      157

Note for Table – C categories represent the categories agreed by the Planning Committee in February 2009; BOC indicates that the case concerns a Breach of Condition, whilst L, M and H represent Low, Medium and High priorities respectively allocated to the pre-February 2009 cases

Officers will continue to make progress in tackling the previous backlog, whilst maintaining a manageable reservoir of new/existing cases at a sustainable level. A number of the above cases have associated pending planning applications awaiting determination (7 as of 21 January 2013).

**Date Report Prepared**  
21 January 2013

## **APPLICATION FOR FINANCIAL ASSISTANCE (HISTORIC BUILDINGS GRANTS) FROM THE CONSERVATION AND HERITAGE FUND**

**Mow House Farmhouse, Church Lane, Mow Cop, (Ref: 12/13004/HBG)**

### **Purpose of Report**

To consider an application for financial assistance towards the cost of the repair of the above building of special architectural and historic interest.

### **Recommendation**

**That the Planning Committee approve a grant of £2,100 for Mow House Farmhouse, Church Lane, Mow Cop, subject to the appropriate standard conditions.**

Mow House Farmhouse is an 18th Century farmhouse with some 20th Century alterations. These included the replacement of some windows, but with timber in an appropriate style, gutters were incrementally changed to plastic and the lower part of the staircase handrails removed. Subsequently an owner in about 2005 began to make some other changes of which some are the subject of an Enforcement Notice, principally the alteration of the windows again but with an inappropriate style and finish. The Enforcement Notice (reference 06/00027/207) and the progress made in meeting its requirements has been the subject of reports to the Planning Committee in October 2012 and January 2013 (the Quarterly reports on cases where enforcement action has been authorised). The other issues remain and a new owner plans to deal with all of these outstanding issues and make the house habitable. They are replacing the unauthorised windows referred to in the Enforcement Notice at their own cost.

New owners are applying for a grant towards the cost of reinstating the lost staircase in oak, dealing with the woodworm in the upper floor roof joists, replacing all rainwater goods with cast iron and repairing the 18th Century original windows on the second (attic floor).

The cost of the work including VAT is £10,495 of which all is eligible work. As the house is a Grade II Listed Building, the work is eligible for a grant of £2,100, 20% of the cost.

### **Financial Implications**

There is sufficient funding to meet this grant application with approximately £64,000 in the fund, which allows for commitments.

### **Conclusions**

This grant application meets all the Council's criteria for the repair and restoration of the heritage asset. Any views of the Conservation Advisory Working Party will be reported to the Planning Committee.

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# Agenda Item 9

## **TOWN & COUNTRY PLANNING ACT 2012**

## **TOWN & COUNTRY PLANNING (TREES) REGULATIONS 1999**

## **TREE PRESERVATION ORDER NO.146 (2012)**

## **61/63 HIGH STREET, ALSAGERS BANK, STOKE-ON-TRENT, STAFFS ST7 8BQ**

**Submitted by:**            **Head of Operations**

### **Purpose**

To advise members that the above order was made using delegated powers on 26 September 2012, and to seek approval for the Order to be confirmed as made.

### **Recommendation**

**That Tree Preservation Order No 146 (2012), 61/63 High Street, Alsagers Bank, be confirmed as made and that the owners of the tree be informed accordingly.**

### **1        Background**

- 1.1        The Order protects a single beech tree within the grounds of 61/63 High Street, Alsagers Bank.
- 1.2        The Order was made to safeguard the longer term visual amenity that the tree provides arising from concerns that it would be felled as part of a proposed development after a planning application was made to extend number 61 High Street and replace number 63 with a new dwelling (planning application number 12/00471/FUL.

### **2.        Issues**

- 2.1        The beech tree stands within the front garden of the property adjacent to the High Street (B5367) in the north-western corner of the plot. It is an early-mature single specimen, clearly visible from the main road. The tree is a prominent feature along the road corridor and provides an important contribution to the area. There are few other trees of a comparable high standing along this part of the B5367. The loss of the tree would have a detrimental affect on the visual amenity, not only of the site but also of the locality.
- 2.2        A planning application was submitted in August 2012 for the erection of a new dwelling on the parcel of land and to extend the current number 61. This included removal of the beech tree to make room for the proposed development, resulting in concern that the tree would be lost.
- 3.3        Your officers inspected the beech tree and carried out a TPO assessment, finding it worthy of protection. It is considered to be in good health, visually significant and an amenity to the locality, with the prospect of continuing to provide this for many years. The Order was made and served on 26 September 2012 in order to protect the long term well-being of the tree. No representations were received.
- 3.4        Following the making of the TPO, the layout of the proposed scheme was revised so as to enable the tree to be retained as part of the development. Subsequent to this the planning application was permitted on 21 December 2012, subject to:
  - Submission of an Arboricultural Method Statement and a Site Monitoring Schedule for site works around the tree.
  - The recommendations of the approved Tree Survey being fully implemented with respect to the tree during
  - Construction works to protect the tree.
  - Submission for approval of works proposed to the crown of the tree.
  - No dig' within the Root Protection Area of the tree.
- 3.5        Your officers are of the opinion that making the Order will ensure the preservation of the tree in an appropriate form whether or not the development takes place, and for the construction period and

beyond, the beech trees longer-term visual amenity is best secured by the making of a Tree Preservation Order. Your officers are of the opinion that the tree, is generally healthy at present and is of sufficient amenity value to merit the making of a Tree Preservation Order. It is considered to be an appropriate species for the locality and to provide public amenity value due to its form and visibility from adjacent public locations. The making of the Order will not prevent the owner from carrying out good management of the tree, it will give the Council the opportunity to control the works and prevent unnecessary felling or lopping. The owner will be able to apply for permission to carry out maintenance work to the tree and if in the future, the tree does deteriorate in condition the owner will be able to apply for permission to carry out work which is necessary to safely manage the tree.



By virtue of paragraph(s) 1, 2, 6 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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