

# Public Document Pack

**Date of meeting** Tuesday, 19th June, 2018  
**Time** 7.00 pm  
**Venue** Council Chamber, Civic Offices, Merrial Street, Newcastle-under-Lyme, Staffordshire, ST5 2AG  
**Contact** Geoff Durham



**NEWCASTLE  
UNDER LYME**  
**BOROUGH COUNCIL**

Civic Offices  
Merrial Street  
Newcastle-under-Lyme  
Staffordshire  
ST5 2AG

## Planning Committee

### AGENDA

#### PART 1 – OPEN AGENDA

- 1 APOLOGIES
- 2 DECLARATIONS OF INTEREST  
To receive Declarations of Interest from Members on items included on the agenda.
- 3 MINUTES OF PREVIOUS MEETING(S) (Pages 3 - 8)  
To consider the minutes of the previous meeting(s).
- 4 APPLICATION FOR MAJOR DEVELOPMENT - LAND ADJACENT TO ROWLEY HOUSE, MOSS LANE, MADELEY. PRIME DEVELOPERS (CREWE) LTD. 17/01004/REM (Pages 9 - 20)
- 5 APPLICATION FOR MAJOR DEVELOPMENT - LAND AT NEW ROAD, MADELEY. HILBRE HOMES. 18/00225/REM (Pages 21 - 30)
- 6 APPLICATION FOR MINOR DEVELOPMENT - LODGE FARM, NEWCASTLE ROAD, TALKE. MS R LARGE. 18/00062/FUL (Pages 31 - 34)
- 7 APPLICATION FOR OTHER DEVELOPMENT - LAND ADJACENT TO 1, 3 AND 5 HAMPTON COURT. MR NATHAN COOK. 18/00284/FUL (Pages 35 - 40)
- 8 APPEAL DECISION - LAND NORTH OF MUCKLESTONE WOOD LANE, LOGGERHEADS. 17/00450/FUL (Pages 41 - 42)
- 9 TREE PRESERVATION ORDER - LAND OPPOSITE THE OLD SWAN, MADELEY HEATH. TPO 192 (Pages 43 - 52)
- 10 URGENT BUSINESS

*Working to be a co-operative council*

To consider any business which is urgent within the meaning of Section 100B(4) of the Local Government Act, 1972

**Members:** Councillors Burgess, Cooper, Fear (Chair), Maxfield, Northcott, Pickup, Proctor, Reddish (Vice-Chair), Spence, S Tagg, G Williams and J Williams

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

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

**FIELD\_TITLE**

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

**NOTE:** THERE ARE NO FIRE DRILLS PLANNED FOR THIS EVENING SO IF THE FIRE ALARM DOES SOUND, PLEASE LEAVE THE BUILDING IMMEDIATELY FOLLOWING THE FIRE EXIT SIGNS. PLEASE **DO NOT** USE THE LIFTS.

**COUNCIL CHAMBER:** FIRE EXITS ARE AT THE REAR OF THE CHAMBER AT BOTH SIDES AND THIS IS THE SAME FOR OCCUPANTS OF THE PUBLIC GALLERY.

**COMMITTEE ROOMS:** EXIT VIA THE WAY YOU ARRIVED AT THE MEETING OR AT THE FAR END OF THE COUNCIL CHAMBER.

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**PLANNING COMMITTEE**

Thursday, 24th May, 2018  
Time of Commencement: 7.00 pm

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

Councillors Burgess, Jennifer Cooper, Maxfield, Northcott, Pickup, Reddish, S Tagg, G Williams and J Williams

Officers Becky Allen - Landscape Manager, Guy Benson, Nick Bromley, Trevor Vernon - Solicitor, Julie Plant and Darren Walters

1. **APOLOGIES**

Apologies were received from Councillors Proctor and Spence.

2. **DECLARATIONS OF INTEREST**

Councillor Northcott declared a personal interest in application 16/01101/FUL. The landowner is known to him.

3. **MINUTES OF PREVIOUS MEETING(S)**

**Resolved:** That the minutes of the meeting held on 24 April, 2018 be agreed as a correct record.

4. **APPLICATION FOR MINOR DEVELOPMENT - LAND AT WEDGWOOD AVENUE, WESTLANDS. MR R WHALLEY. 18/00167/REM**

(The Chair advised that the report referred to at Item 8 on the agenda would be brought forward to be dealt with as the next item of business.)

*Proposed by Councillor Reddish and seconded by Councillor Tagg*

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

The means of access onto Emery Avenue results in an adverse impact on highway safety.

5. **APPLICATION FOR MAJOR DEVELOPMENT - FORMER ENJOY CAR LIFE SHOWROOM AND GARAGE, BLACKFRIARS ROAD, NEWCASTLE. THE DONNA LOUISE TRUST. 18/00179/FUL**

**Resolved:** That the application be approved, subject to the undermentioned conditions:

- (i) Time Limit
- (ii) Approved Plans

- (iii) Hours of deliveries
- (iv) Prior approval of any air conditioning / refrigeration units
- (v) Parking and turning areas provided prior to first use
- (vi) Restriction of goods sold at the premises to bulky goods only

**6. APPLICATION FOR MAJOR DEVELOPMENT - ORME CENTRE, ORME ROAD, NEWCASTLE. ABODE RESIDENCIES. 18/00090/FUL & 18/00086/LBC**

**Resolved: A)** That with respect to the application for listed building consent 18/00086/LBC:

- (i) Time limit for commencement of development
- (ii) Approved plans
- (iii) Details and materials for the making good of the main building following the demolition of extensions
- (iv) Method statement for repair and consolidation of stonework
- (v) Further details of internal doors and window architraves where alterations are being made
- (vi) Details of repair work to existing windows and details including samples of proposed new windows
- (vii) Details of any secondary glazing systems
- (viii) Details of suspended ceilings system
- (ix) Details of the mezzanine floor
- (x) Details of the treatment of internal corridors and internal windows/fanlights
- (xi) Details of drainage requirements to service the en-suites
- (xii) Details of all other proposed external materials
- (xiii) Any repointing to be in lime mortar

**Resolved: B)** That with respect to the planning application 18/00090/FUL

- i. Subject to the applicant entering into a planning obligation by 29th June 2018 that preserves the Council's position in respect of obligations secured prior to the grant of permission 16/00796/OUT, PERMIT the variation of condition 5 to list the revised plans and subject to the imposition of all other conditions attached to planning permission 16/00796/OUT that remain relevant at this time and additional conditions relating to air quality and kitchen equipment.
- ii. Failing completion by the date referred to in the above resolution (i) of the above

planning obligation, that the Head of Planning be given delegated authority to either refuse the planning application on the grounds that in the absence of a secured planning obligation account would not be able to be taken of a change in market conditions; or, if he considers it appropriate, to extend the period of time within which such obligations can be secured.

(At this point in the proceedings, there was a five minute adjournment to enable Members of the Committee to read supplementary papers published on 24<sup>th</sup> May 2018).

**7. APPLICATION FOR MAJOR DEVELOPMENT - LODGE FARM, NEWCASTLE ROAD, TALKE. MISS R LARGE. 18/00062/FUL**

**Resolved: A)** That subject to there being no objections from Kidsgrove Town Council by 12th June, which cannot be addressed by appropriate conditions, delegated Authority be given to the Head of Planning to :-

PERMIT the application subject to the undermentioned conditions:

- (i) Time limit.
- (ii) Plans.
- (iii) Materials.
- (iv) Tree protection measures.
- (v) Approval of a landscaping scheme.
- (vi) External lighting levels.
- (vii) Provision for the storage and disposal of stable waste.
- (viii) Horse boxes, trailers and vehicles associated with the use of the site for a stables and manege shall not be moved on the shared access driveway between the hours of 10.00pm and 08.00 on any day.
- (ix) Provision of the submitted parking and turning area and its retention for the lifetime of the development.
- (x) The development shall be restricted to a maximum of 9 horses.
- (xi) The proposed manege shall only be used by horses which are stabled at the site.
- (xii) Any conditions recommended by the Coal Authority or otherwise to deal with historical coal mining risk.

**Resolved: B)** That, In the event of objections being received from Kidsgrove Town Council by the 12<sup>th</sup> June, which cannot be addressed by appropriate conditions, the application be referred back to the Planning Committee for reconsideration.

8. **APPLICATION FOR MINOR DEVELOPMENT - 1 INGLEWOOD DRIVE, PORTHILL. MR R AASHT. 18/00162/FUL**

**Resolved: A)** That the Head of Planning be given delegated authority to explore with the party who has undertaken the appraisal certain assumptions within it and

- (I) providing he is satisfied that the development cannot at present reasonably provide any financial public open space contribution toward and up to that required by policy (£14,799), and
- (II) subject to the prior completion of a planning obligation, within a period to be set by the Head of Planning, securing a reappraisal of the viability of the scheme, in the event of there being no substantial commencement of the development within 12 months of the grant of planning permission , and the making of such a contribution should that appraisal demonstrate it is financially viable

the application be permitted, subject to the prior completion of a planning obligation securing a reappraisal of the viability of the scheme, in the event of there being no substantial commencement of the development within 12 months of the grant of planning permission, and the making of such a contribution should that appraisal demonstrate it is financially viable

PERMIT subject to conditions relating to:-

- (i) Time Limit.
- (ii) Plans.
- (iii) Materials.
- (iv) Cycle parking and storage.
- (v) Parking and turning area provision.

**Resolved: B)** Should the Head of Planning conclude the development can at present reasonably provide a financial public open space contribution towards and up to that required by policy (£14,799), the application be refused on the ground that without an appropriate secured financial contribution relating to public open space the additional demands upon open space arising from the additional dwellings as proposed would not be suitably addressed. As such the development would be contrary to policies on the provision of open space for residential development, contrary to Policies CSP5 and CSP10 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, saved Policies C4 and IM1 of the Newcastle-under-Lyme Local Plan 2011, Newcastle under Lyme Borough Council Supplementary Planning Document on Development Contributions (2007), the Newcastle-under-Lyme Open Space Strategy (March 2017), and the aims and objectives of the National Planning Policy Framework (2012).

**Resolved: C)** Should the period referred to in Resolution A) above (for completion of the planning obligation) expire without such obligation having been secured that the Head of Planning have delegated authority to refuse

the application on the grounds that it fails to secure an appropriate reappraisal/payment in the event of changed circumstances; or if he considers it appropriate to extend the period.

**9. PLANNING COMMITTEE SITE VISIT DATES 2018-19**

**Resolved:** That the list of dates for possible Planning Committee site visits be approved, subject to a minor amendment to the start time for Saturday site visits from 9.15am to 9.00am.

**10. START TIME OF PLANNING COMMITTEE MEETINGS FOR 2018/19**

**Resolved:** That the commencement time for Planning Committees during the 2018/19 Municipal Year be 7pm with a facility for the Chair to bring the starting time forward to 6.30pm if he considers the likely length of the agenda makes it appropriate to do so.

**11. APPEAL DECISION - THE OLD STABLES AND TAWNEY COTTAGE, BARTHOMLEY ROAD, KNOWLE END, AUDLEY. 17/01590/FUL**

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

**12. URGENT BUSINESS**

There was one item of urgent business. Land off Meadow Way was considered urgent due to timescales involved.

**LAND OFF MEADOW WAY, BALDWIN'S GATE BELLWAY HOMES LTD (WEST MIDLANDS) 16/01101/FUL**

**Resolved:** That the Inspector be informed that the Borough Council has no objections to him considering the Second Scheme rather than the First Scheme, and that the Borough Council's case in respect of that Second Scheme be based upon the decision of the Planning Committee of the 24<sup>th</sup> April to refuse application 17/01024/FUL and the grounds of that refusal

**COUNCILLOR FEAR  
Chair**

Meeting concluded at 8.15 pm

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**LAND ADJACENT TO ROWLEY HOUSE, MOSS LANE, MADELEY  
PRIME DEVELOPERS (CREWE) LTD**

**17/01004/REM**

The application is for the approval of reserved matters relating to internal access arrangements, layout, scale, appearance and landscaping in respect of a residential development of 42 dwellings.

This application follows the granting of an outline planning permission in April 2015 for residential development of up to 42 dwellings (13/00990/OUT). Details of access from the highway network were approved as part of the outline consent.

The application site lies on the western side of Moss Lane and, except for its access point onto Moss Lane, outside the village envelope of Madeley and within the open countryside and an Area of Landscape Enhancement as indicated on the Local Development Framework Proposals Map. The site area is approximately 1.65 hectares. There are trees subject of a Tree Preservation Order (TPO) on and adjoining the site.

**The 13 week period for the determination of this application expired on 3<sup>rd</sup> April but the applicant has agreed an extension to the statutory period until 21<sup>st</sup> June 2018.**

**RECOMMENDATION**

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

- 1. Development to be carried out in accordance with the approved plans unless otherwise required by condition of the permission.**
- 2. Prior approval of precise details of the following, and implementation of the approved details:**
  - Existing and proposed levels, and finished floor levels of the dwellings.**
  - All external facing materials and hard surfacing materials.**
  - Boundary treatment taking into consideration the comments of the Crime Prevention Design Advisor.**
- 3. Revised Tree Protection Plan**
- 4. Detailed Arboricultural Method Statement**

**Reason for Recommendation**

The principle of the use of the site for residential development has been established with the granting of the outline planning permission. The design and layout of the proposal is considered acceptable in accordance with the aims and objectives of the National Planning Policy Framework and the Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document. There would be no material adverse impact upon highway safety or residential amenity as a consequence of the internal layout. There are no other material considerations which would justify a refusal of this reserved matters submission.

**Statement as to how the Local Planning Authority has worked in a positive and proactive manner in dealing with the planning application**

Amendments have been sought from the applicant and obtained and the proposal is considered now to be a sustainable form of development in compliance with the provisions of the National Planning Policy Framework.

**Key Issues**

1.1 The application is for the approval of reserved matters relating to internal access arrangements, layout, scale, appearance and landscaping in respect of a residential development of 42 dwellings. The principle of the residential development of the site has been established by the granting of outline planning permission 13/00990/OUT for up to 42 dwellings in April 2015. Details of the access from the

highway network were approved as part of the outline consent and a non-material amendment to the position of the access was subsequently approved in July 2015 (13/00990/NMA).

1.2 The outline consent for the site was granted subject to a condition that required the submission of a revised Design and Access Statement that takes into account the recommendations of Urban Vision to be submitted as part of any reserved matters applications for the site. Such a Design and Access Statement has been included as part of the application.

1.3 Discussions have been ongoing between the applicant and Staffordshire County Council Flood Risk Team (LLFA) during the application process. Additional information has been provided by the applicant in response to the comments of the LLFA and further information is expected. To date, however, the LLFA has not been able to confirm that the proposed layout is compatible with an acceptable drainage strategy and it cannot be guaranteed that they will have done so by the date of the Committee despite the applicant's endeavours to resolve this issue. It should be noted, however, that the absence of such confirmation from the LLFA that the layout is compatible with an acceptable drainage strategy does not prevent a decision being reached on this reserved matters application. Whilst drainage details need to be agreed to satisfy condition 26 of the outline planning permission they are not required to be submitted as part of the determination of this application for reserved matters. It will be necessary, however, for the applicant to seek approval of any revisions to the layout if permitted should it be necessary to make amendments to that layout to accommodate a suitable drainage scheme.

1.4 It should be noted that one of the recommendations of Urban Vision was that a comprehensive sustainable drainage solution should be provided to deal with the tendency of the site to retain standing water, including the provision of a central feature with amenity and biodiversity benefits. The information submitted does acknowledge this recommendation however the applicant argues that a central water feature is not necessary and would conflict with the design concept. If it is accepted by the LLFA that such a water feature is not a necessary component of a drainage strategy for this development it is not considered that the absence of such a feature would justify refusal of the application, notwithstanding the recommendation of Urban Vision.

1.5 The Key issues now for consideration, taking into consideration the above, are:-

- Is the proposal acceptable in terms of its design and impact on the form and character of the area, including impact on trees within and adjoining the site?
- Would there be any material adverse impact on residential amenity?
- Is the internal road layout and parking provision acceptable in highway safety terms?
- Is the affordable housing layout acceptable?

2.0 Is the proposal acceptable in terms of its design and impact on the form and character of the area, including impact on trees within and adjoining the site?

2.1 The current NPPF at paragraph 56 indicates that the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. At paragraph 64 it states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. The draft NPPF, at section 12, also sets out policy which aims to achieve well-designed places.

2.2 Policy CSP1 of the Core Spatial Strategy (CSS) lists a series of criteria against which proposals are to be judged including contributing positively to an area's identity in terms of scale, density, layout and use of materials. This policy is considered to be consistent with the NPPF.

2.3 Section 7 of the adopted Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document (2010) provides residential design guidance. R3 of that document states that new development must relate well to its surroundings. It should not ignore the existing environment but should respond to and enhance it.

2.4 Section 10.1 of the SPD indicates that the aims for development within, or to extend, existing rural settlements are

- a. *To respond to the unique character and setting of each settlement*
- b. *Development should celebrate what is distinct and positive in terms of rural characteristics and topography in each location*
- c. *Generally to locate new development within village envelopes where possible and to minimise the impact on the existing landscape character*

It goes on to state that new development in the rural area should respond to the typical forms of buildings in the village or locality.

2.5 RE2 of that document states that new development associated with existing villages should retain, enhance and incorporate some of the existing features and characteristics of the settlement pattern, wherever possible.

2.6 RE5 states that new development in the rural area should respond to the typical forms of buildings in the village or locality. RE6 states that elevations of new buildings must be well composed, well-proportioned and well detailed. At RE7 it states new buildings should respond to the materials, details and colours that may be distinctive to a locality.

2.7 The proposed layout comprises 28 detached dwellings (14 four and 14 five bed); 12 semi-detached dwellings (4 three bed and 8 two bed); and a pair of 2 bed semi-detached bungalows. The dwellings are predominantly two storeys, although there are a number of dwellings with three storey front elevations and two storey rear elevations (14 in total) all with pitched roofs and gable and bay window features. The two bungalows are single storey with similar design details to the dwellings. The dwellings predominantly front onto a looped access route through the site with just six dwellings accessed off short private drives. The parking spaces are located at the front of the houses resulting in limited opportunity for landscaping.

2.8 The site is largely to the rear of existing dwellings on Moss Lane and The Bridle Path and has only a relatively narrow site frontage onto Moss Lane. As a consequence the nearest dwelling to Moss Lane is more than 40m from Moss Lane beyond the first stretch of the access which is set within a landscaped area containing existing trees, including a TPO protected Sycamore. Whilst the design and layout of the proposed dwellings are more suburban than is ideal in this village location it could not be argued that it is not harmful to the appearance of the village given that it will not be prominent in views from any public vantage point.

2.9 Overall it is considered that the house types and design as proposed are acceptable and in accordance with condition 5 of the outline planning permission which specifies that the development shall include a range of house types including bungalows.

2.10 One of the recommendations of Urban Vision was that good connectivity with the village centre should be secured and a good quality environment setting for all dwellings in the development, including the affordable houses, with the more urban forms of development nearest to the village and the lower density parts nearest to the open countryside. The outline planning permission was granted with one point of access onto Moss Lane and there are no opportunities to provide any further pedestrian routes from the site. The density of the layout is consistent across the site and the affordable houses are integrated into the layout and as such have the same quality of environment as the remainder of the proposed houses. This recommendation of Urban Vision has only been complied with in part, therefore, but the development is nevertheless acceptable.

2.11 There are a number of protected trees that are located within and adjoining the site. The access as approved does encroach into the root protection area (RPA) of a protected Sycamore and it was initially proposed within this application that this tree should be removed. The removal of the tree is not, however, considered acceptable or necessary provided the construction methodology for the construction of the access, as previously agreed, is implemented. In light of this the applicant has now confirmed that the tree will be retained and has repositioned parking spaces that would have been in the RPA of that tree so that is no longer the case. The Landscape Development Section (LDS) has confirmed that this is acceptable.

4.12 A further three protected Oak trees are located close to the boundary of the site to the rear of properties on The Bridle Path. In response to concerns expressed by the LDS the development has been amended so that no levels changes are proposed in the RPAs of such trees. In addition the concerns initially expressed by the LDS about the proximity of the siting of two of the proposed dwellings to a tree has been addressed by a reconfiguration of the layout removing a dwelling from the north east corner where TPO 3 (as named on the submitted layout plan) is located providing a greater separation distance from the tree. LDS have confirmed that this is acceptable.

### 3.0 Would there be any material adverse impact on residential amenity?

3.1 Paragraph 17 of the current NPPF lists a set of core land-use planning principles that should underpin decision-taking, one of which states that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Similar policy is set out at paragraph 126 of the draft revised NPPF.

3.2 Supplementary Planning Guidance (SPG) Space Around Dwellings provides guidance on development including the need for privacy, daylight standards, and environmental considerations.

3.3 A number of the proposed dwellings (six in total) back onto the rear of properties on The Bridle Path and a further two are either "side on" or angled towards such existing properties.

3.4 The guidance set out in the SPG indicates that the minimum separation distance where rear elevations containing principal windows, as defined in the SPG, face each other is 21m. This separation distance is exceeded even when rear extensions on properties on The Bridle Path, which are not shown on the plans, are taken into consideration.

3.5 The guidance set out in the SPG which applies where principal windows do not directly overlook each other, but are not otherwise obscured, where dwellings are angled indicates that the 21m distance may be reduced to 17m. This is achieved taking into consideration rear extensions not shown on the plan.

3.6 Where principal windows face the wall of a two storeys dwelling that contains no windows or obscure glazed windows then the required separation distance as set out in the SPG is 13.5m and this is more than achieved in respect of the proposed dwelling that has a side elevation facing the rear elevation of dwellings on The Bridle Path.

3.7 Greater separation distances are achieved between the proposed dwellings and the adjoining properties on Moss Lane and this relationship is also acceptable.

3.8 In conclusion the layout achieves an acceptable relationship between the proposed dwellings and suitable private garden space.

### 4.0 Is the internal road layout and parking provision acceptable in highway safety terms?

4.1 The means of access to the site was determined at outline stage, with vehicular access provided off Moss Lane. The principle of a development of this scale in terms of its impact upon the highway network has therefore been agreed.

4.2 The level of parking spaces proposed has been increased in response to concerns expressed by the Highway Authority. All the four and five bed dwellings now have three parking spaces with the remainder having two. Such a level of parking is considered to be acceptable.

4.3 Further information has also been submitted demonstrating that a refuse lorry can manoeuvre within the proposed access roads and that the visibility splays and radii at a junction within the development are of adequate dimensions which the Highway Authority has confirmed is acceptable. In addition a storage area has been provided in the revised layout where waste and recycling receptacles can be stored on collection days for those dwellings that are served off a private drive to address the concerns expressed by Waste Management.

4.4 Overall there proposal does not raise any highway safety issues and is acceptable in this regard.

5.0 Is the affordable housing layout acceptable?

5.1 A Section 106 planning obligation that was entered into when outline planning permission was granted requires the provision of affordable housing within this development. The proposal includes the provision of 11 affordable houses, which is 25% of the total number of dwellings proposed and as such accords with policy. The 11 dwellings which have been identified as being affordable are one 3 bed semi, all 8 two bed semis, and the two bungalows.

Whilst the views of Housing Strategy have not been received in writing it has been confirmed verbally that the locations, number and type of the dwellings that are proposed to be affordable houses are acceptable to them.

## APPENDIX

### **Policies and proposals in the approved development plan relevant to this decision:-**

#### [Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy \(CSS\) 2006-2026](#)

Policy CSP1: Design Quality  
Policy CSP3: Sustainability and Climate Change  
Policy CSP4: Natural Assets  
Policy CSP5: Open Space/Sport/Recreation  
Policy CSP6: Affordable Housing

#### [Newcastle-under-Lyme Local Plan \(NLP\) 2011](#)

Policy T16: Development – General Parking Requirements  
Policy N12: Development and the Protection of Trees  
Policy N17: Landscape Character – General Considerations  
Policy N20: Areas of Landscape Enhancement  
Policy C4: Open Space in New Housing Areas

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

[National Planning Policy](#)

[National Planning Policy Framework](#) (March 2012)

[Planning Practice Guidance](#) (March 2014)

[Draft revised National Planning Policy Framework](#)

[Supplementary Planning Guidance/Documents](#)

[Affordable Housing SPD](#) (2009)

[Space Around Dwellings SPG](#) (SAD) (July 2004)

[Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document](#) (2010)

#### Relevant Planning History

13/00990/OUT	Residential development of up to 42 dwellings including means of access – Permitted.
13/00990/NMA	Slight variation in the approved access for both horizontal alignment and method of construction to pass TPO trees - Permitted

#### Views of Consultees

The **Highway Authority**, following consideration of additional information, has no objections subject to conditions relating to the following:

- No occupation until access from Moss Lane is completed, and internal site roads, parking and turning areas provided.
- No commencement until details of surfacing materials for the private driveways, parking and turning areas and means of surface water drainage for such areas have been approved and implemented.
- Prior approval of a Construction Method Statement.

The **Environmental Health Division** has no comments to make and requests that the applicant is reminded of the conditions on the outline planning permission.

Staffordshire County Council as the **Rights of Way Authority** states that no Public Rights of Way cross the application site and that no application has been received to add or modify the Definitive Map of Public Rights of Way which affects the land in question.

The **Education Authority** states that a Section 106 Agreement was signed when the outline application was granted, and the education contribution amount and terms should be calculated in line with this.

The **Crime Prevention Design Advisor** says that the proposed layout has much to commend it as follows:

- Single access/egress point and no through route is ideal in terms of crime prevention. The self-contained development should enable a strong sense of community to form.
- The position of the properties is very sound. The properties are outward facing and a certain proportion will have rear gardens backing onto each other or existing properties. The properties that will be closest to Bower End Lane will be protected to some extent by the existing hedgerow/undergrowth and the drop in levels. Natural surveillance throughout the site should be good.

The most vulnerable portion of the site is likely to be the corner where the SUDS is proposed. Appropriate measures should be put in place to substantially reinforce the site boundary to prevent unwanted intrusion into the site at this point. The plots with side gardens should have their boundary treatments inset slightly and hedge planting added externally to reinforce these boundaries.

It is noted that the parking provision does not appear overly generous, notably only two parking spaces for both four and five-bedroom houses, which make up the bulk of the site. Along with an absence of visitor parking, this could result in on-street parking and possibly a rather congested site. On occasion, parking issues can result in ill-feeling between residents and conflict arising.

The **Landscape Development Section** initially objected to the application but in response to the revised plans the LDS has confirmed that they have no objections subject to a revised Tree Protection Plan and detail Arboricultural Method Statement being conditioned.

**Madeley Parish Council** objects on the following grounds:

- The amount of 5 and 4 bedroom houses is disproportionately higher than affordable houses and bungalows, namely 28 of the 42 houses and with only 2 bungalows stated.
- The larger 4 bedroom and 5 bedroom houses are planned along the boundary with properties on The Bridle Path and given the size and height of these this will cause a disruption to the outlook of the already existing properties on The Bridle Path. In particular plot number 29 and plots 23 to 28.
- Tree screening, the developers are still vague about what trees might be planted and where. Given the proximity of The Bridle Path and other existing dwellings it is important the detail is given and found to be the most effective to mitigate the effects of the development.
- Sewage and surface water disposal - there still remains considerable concern over the ability to effectively remove both the above given the nature and flow of the ground and standing water/drainage issues. This needs to be effectively mitigated to a professional's satisfaction by the developer and proposer. It is relevant that the proposed development area was part of "The Moss" in medieval times and not used as agricultural or settlement land.
- The development is outside of the village envelope.
- It objects to the use of the Greenfield site when there are Brownfield sites in neighbouring Stoke-on-Trent that have been identified as part of the joint plan with that authority.
- The Council would question the proven need for such housing in this semi rural area.
- The Council would question the need to construct yet more four and five bed roomed "executive" homes and is disappointed at the low numbers of planned two bed roomed semi detached properties (8) and only two 2-bedroomed bungalows.

- The site is totally unsuitable as regards ground conditions. The area is boggy and will be prone to flooding. The suggestion that the new occupants of the properties would be expected to maintain the drainage system themselves is impracticable and will cause long term flooding problems in the area.

Whilst recognising that outline permission has already been granted, Madeley Parish Council still have grave concerns re the lack of sustainability for such a major development in Madeley i.e. Increase in traffic on already narrow country roads also causing an increase in air pollution in the locale, and capacity in the local schools, and health providers.

The **Waste Management Section**, in response to the revised plans, welcomes the loop design of the development on safety grounds. The addition of the bin store should assist in deterring residents from these properties being tempted to leave their containers out between collections, and thus should improve the appearance of the location and prevent complaints. It is noted that the use of the bin store as the method of storage for these properties is to be incorporated into the deeds for these properties, hopefully making use of the store easy to maintain.

**Network Rail** indicate that the initial holding objection has been withdrawn subject to a condition being included requiring agreement of the design and location of the proposed attenuation pond which will avoid water infiltration draining towards the direction of the railway and that it doesn't affect the stability of the cutting.

**Staffordshire County Council Flood Risk Team** states that they are not able to confirm that the proposed layout is compatible with an acceptable drainage strategy as there are a number of outstanding issues.

The views of **United Utilities** and the **Housing Strategy Section** have been sought but no response has been received and as such it is assumed that they have no comment on the proposal.

#### Representations

70 letters of objection, including one from **Cllr Simon White** and one from **Cllr Gary White**, have been received raising concerns regarding the following:

- When outline planning permission was granted it was agreed that the properties built alongside The Bridle Path would be bungalows which is not the case in this submission.
- The five bedroom, 3 floor houses are too tall and do not fit into the local area.
- The dwellings adjoin The Bridle Path will result in loss of privacy and light.
- The outlook from rear of the dwellings on The Bridle Path will be adversely affected by development that is out of keeping with this rural village.
- The relationship of the dwelling on plot 29 and dwellings on The Bridle Path is not acceptable, given that it is a 3 storey dwelling, and will result in the loss of sunlight.
- Only two bungalows are proposed.
- The submission is vague about what tree planting is to take place
- The site is prone to flooding and given that the street drains from Moss Lane and Bower End Lane deposition onto the site it makes the proposed build too risky without an appropriate and revised SUDS plan in place.
- The submitted amended plans result in more parking and less garden increasing issues with surface water runoff
- Two sewage pumping stations are needed but only one is shown on the plan.
- The doctor's surgery is already at capacity and does not have any room for extra patients or extra car parking resulting in parking on The Bridle Path and traffic problems.
- It is an unsustainable location for new dwellings due to lack of employment opportunities and lack of capacity in local schools.
- The proposed development was originally passed on the grounds that it would provide affordable housing, however given the number of 4 and 5 bedroom dwellings that are proposed this is clearly not the case.
- There are land instability issues.
- Only one access could present problems in an emergency.



- The development is going to cause dust, pollen and will raise air pollution levels which is potentially damaging to health.
- The site is an ideal environment for newts.
- There remains inaccuracies on the plans as extensions of adjoining properties are not shown, boundaries at the rear of The Bridle Path are not correct and the position of trees are not correctly shown.

Further comments relate to the issue of the principle of this development which is not a consideration in the determination of this application.

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

The application is accompanied by a Design and Access Statement, Flood Risk Assessment and Arboricultural Report.

All of the application documents are available for inspection at the Guildhall and on <http://publicaccess.newcastle-staffs.gov.uk/online-applications/plan/17/01004/REM>

#### **Background papers**

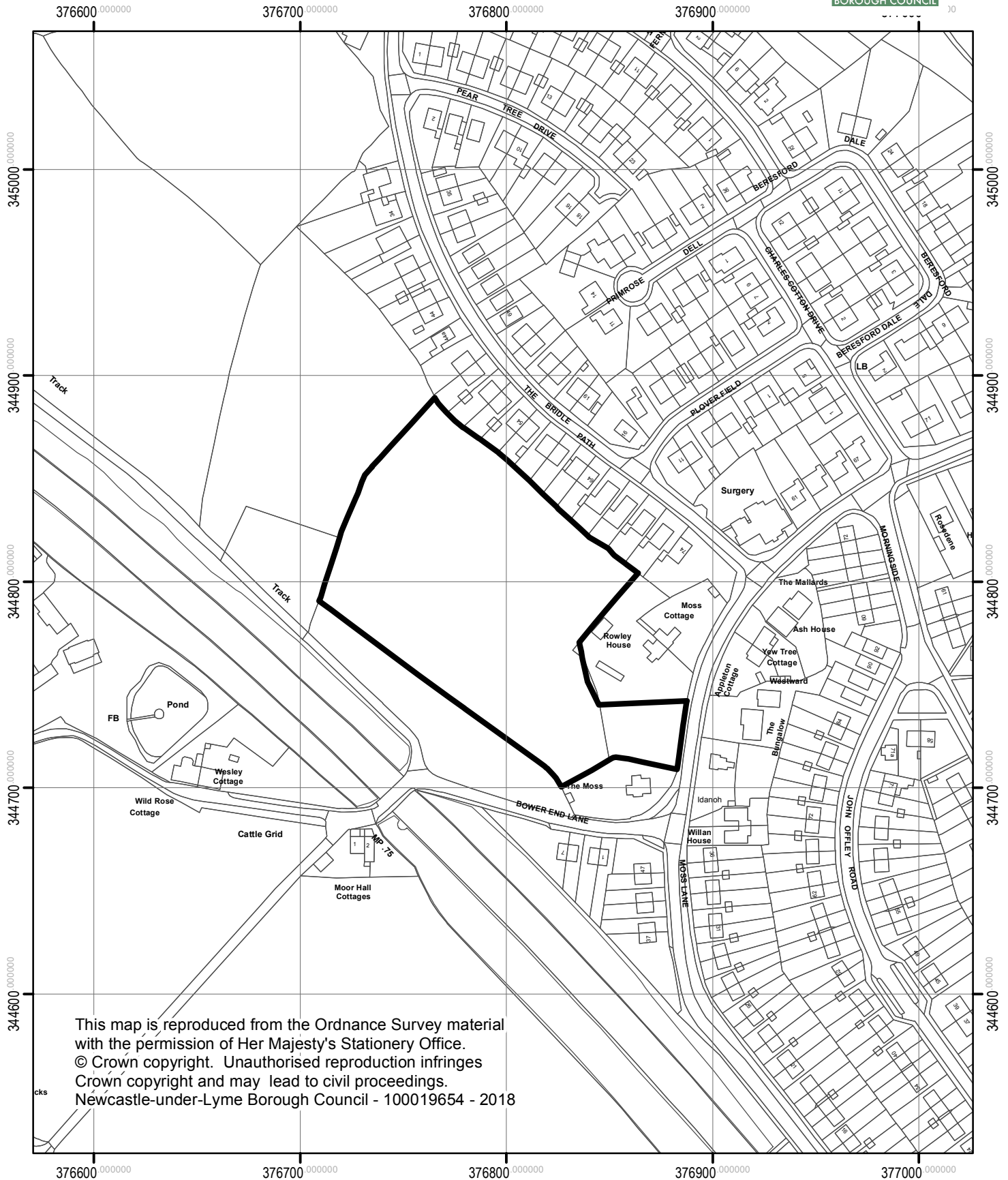
Planning files referred to  
Planning Documents referred to

#### **Date report prepared**

4<sup>th</sup> June 2018

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17/01004/REM  
Land Adjacent To Rowley House  
Moss Lane, Madeley.



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**LAND AT NEW ROAD, MADELEY**  
**HILBRE HOMES**

**18/00225/REM**

The application is for the approval of reserved matters relating to internal access arrangements, layout, scale, appearance and landscaping in respect of a residential development of 32 dwellings.

This application for the approval of reserved matters follows the granting of an outline planning permission in April 2015 for residential development of up to 32 dwellings (14/00930/OUT). Details of access from the highway network were approved as part of the outline consent.

The application site lies on the western side of New Road which is a C classified road, outside the village envelope of Madeley and within the open countryside and on land designated as an Area of Landscape Enhancement as indicated on the Local Development Framework Proposals Map. The site does not lie within the North Staffordshire Green Belt. The site area is approximately 1.1 hectares.

Trees bordering the site are the subject of Tree Preservation Order no.3.

**The 13 week period for the determination of this application expires on the 20<sup>th</sup> June 2018.**

**RECOMMENDATIONS**

**Refuse** for the following reason:-

1. The proposed development by virtue of its design and layout is likely to result in the loss of visually significant and protected trees, which is a fundamental characteristic of this site, which would not enhance the character and quality of the landscape and area in general. It would therefore not be a sustainable form of development of the site and would accordingly be contrary to policies N12, N17 and N20 of the Newcastle-under-Lyme Local Plan 2011, policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, along with policies in the Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document and the requirements and guidance of the National Planning Policy Framework 2012.

**Reason for Recommendation**

Whilst the proposed development for 32 dwellings provides an acceptable level of off street car parking, pedestrian connectivity and relationship with neighbouring properties, the applicant has failed to demonstrate that an acceptable layout can be achieved that would not result in the loss of visually significant and protected trees. The loss of trees would be to the detriment of the character and quality of the landscape and visual amenity of the area.

**Statement as to how the Local Planning Authority has worked in a positive and proactive manner in dealing with the planning application**

The applicant has been given a number of opportunities to address concerns of the proposals however they have been unable to overcome the principle concern with the scheme proposed.

**Key Issues**

1.1 The Application is for the approval of reserved matters relating to internal access arrangements, layout, scale, appearance and landscaping in respect of a residential development of 32 dwellings. The principle of the residential development of the site has been established by the granting of outline planning permission 14/00930/OUT in April 2015. Details of the access from the highway network were approved as part of the outline consent.

1.2 The key issues for consideration now are:-

- Is the proposal acceptable in terms of its design and impact on the form and character of the area, including impact on protected trees within and adjoining the site?
- Would there be any material adverse impact on residential amenity?
- Is the internal road layout, pedestrian connectivity and parking provision acceptable in highway safety terms?
- Sustainable development considerations, and
- Is the affordable housing layout acceptable?

2.0 Is the proposal acceptable in terms of its design and impact on the form and character of the area, including impact on protected trees within and adjoining the site?

2.1 The current NPPF at paragraph 56 indicates that the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. At paragraph 64 it states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. The draft revised NPPF, at section 12, also sets out policy which aims to achieve well-designed places.

2.2 Policy CSP1 of the Core Spatial Strategy (CSS) lists a series of criteria against which proposals are to be judged including contributing positively to an area's identity in terms of scale, density, layout and use of materials. This policy is considered to be consistent with the NPPF.

2.3 Section 7 of the adopted Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document (2010) provides residential design guidance. R3 of Section 7 of that document states that new development must relate well to its surroundings. It should not ignore the existing environment but should respond to and enhance it.

2.4 Section 10.1 of the SPD indicates that the aims for development within, or to extend, existing rural settlements are:-

- To respond to the unique character and setting of each settlement
- Development should celebrate what is distinct and positive in terms of rural characteristics and topography in each location
- Generally to locate new development within village envelopes where possible and to minimise the impact on the existing landscape character

It goes on to state that new development in the rural area should respond to the typical forms of buildings in the village or locality.

2.5 Section 10.5 of the Urban Design SPD referring to new development in the rural area indicates (RE1) that new development in the rural area should retain and enhance features that contribute to the landscape character and ecological diversity of the area, including trees and at RE3 that development must respond to and should not harm the setting of the village in the landscape.

2.6 R14 states that developments must provide an appropriate balance of variety and consistency.

2.7 The key characteristics of the site are its edge of village location, which slopes from north to south, and the natural hedgerows and mature trees on the site boundaries. The trees are covered by a TPO and are proposed (within the application) to be retained as part of the development.

2.8 The layout of the scheme is similar to the indicative site layout presented during the outline planning application with houses fronting New Road. Streetscene plans have been submitted with this application, in particular the streetscene for New Road (Streetscene C) demonstrates that an attractive frontage could be achieved (with a range of attractive house types) if it can be shown that the existing hedgerows and mature trees can be retained and supplemented with new tree planting.

2.9 The proposal responds well to the topography of the land, but the scale of plots 1-12 (on the southern part of the site) and the relationship with existing properties on Woodside will be assessed in section 3 of this report.

2.10 The Council's Landscape Development Section (LDS) has objected to the application on the grounds that the proposed layout and disposition of the dwellings would result in harm and likely loss of a number of trees covered by the TPO. This objection primarily relates to the location of proposed hard surfacing within root protection areas and shading of rear gardens which could result in tree resentment from future occupiers of the dwellings (ie an unsustainable relationship). The applicant has submitted information and amended plans in an attempt to address the concerns of LDS but have been unable to overcome their objections.

2.11 As discussed, a fundamental characteristic of this edge of village location are the natural hedgerows and mature trees on the site boundaries that would need to be retained and supplemented by additional landscaping before a development of this nature could be considered acceptable. There are however significant concerns regarding the impact of hard surfacing on the protected trees due to ground levels and how trees can be protected during construction. There are also concerns about possible tree resentment issues due to the trees causing shading to rear gardens, in particular to plots 16, 19 and 21. Therefore, whilst the design of the dwellings are considered acceptable the layout is likely to result in significant harm and loss to visually significant and protected trees and your officers consider that the loss of these trees would not enhance the character and quality of the landscape and visual amenity of the area – this would be contrary to saved policies N12, N17 and N20 of the Local Plan, policy CSP1 of the CSS, along with the requirements and guidance of the Urban Design SPD and the National Planning Policy Framework.

### 3.0 Would there be any material adverse impact on residential amenity?

3.1 Paragraph 17 of the NPPF lists a set of core land-use planning principles that should underpin decision-taking, one of which states that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

3.2 The Council's Supplementary Planning Guidance (SPG) - Space Around Dwelling provides more detailed guidance on privacy and daylight standards including separation distances between proposed dwellings and new development in relation to existing dwellings.

3.3 As discussed, the layout proposed is similar to the indicative site layout presented during the outline planning application. It was acknowledged in the determination of the outline application that the relationship between proposed dwellings towards the southern boundary of the site and existing properties on the neighbouring Woodside would be a fundamental consideration of any reserved matters application due to the topography of the site with properties on Woodside being at a lower ground level.

3.4 The proposed scheme has six detached properties and a block of six flats adjacent to the southern boundary of the site. These would be split level properties with the front elevations appearing as two storey properties and the rear elevations (facing that boundary) being three storey.

3.5 The rear elevations of the proposed dwellings would have principal windows that would face towards the rear elevations of properties on Woodside which are also likely to have principal windows. The Council's SPG advises that at least 21 metres should be maintained between dwellings where the facing walls contain windows of principal rooms. However, the SPG also advises that where one or both facing dwellings are over two storeys high the distance between principal windows will be 21m plus an additional set back of 3 metres for each additional storey. Any difference in ground levels should also be taken into consideration.

3.6 The application is supported by ground level details and site sections which show the separation distances and the difference in ground levels. The separation distances between proposed and existing dwellings varies from 21 to 25 metres. Amended plans have also been received which change the internal layouts of the houses on plots 1 and 2 so that no principal windows are now located above the second storey on the rear elevation. The internal layouts for the houses on plots 3-6 also show no principal windows above the second storey on each of the rear elevations of the

proposed dwellings. Therefore, the separation distances between principal windows of the proposed and existing properties should be 21 metres, subject to the difference in ground levels also being considered.

3.7 The submitted site sections show the ground levels and the relationship between proposed and existing properties. In particular, the relationship of the proposed first floor principal windows of plots 1 and 2 and the existing principal windows at ground floor of existing properties at 2 & 4 Woodside need to be considered. It is acknowledged that there would be some loss of privacy to the existing properties on Woodside due to the relationship between proposed first floor windows and the existing ground floor windows of properties on Woodside, owing to a difference in ground levels between them. However, the applicant has submitted cross sections which show the separation distances, along with the ground levels differences between the dwellings and on this basis it is not considered that the resultant relationship would be so severe that the living conditions and residential amenity levels, in terms of privacy, loss of light or overbearing impact, of properties on Woodside would be significantly harmed to the extent that a reason for refusal could be justified.

3.8 In respect of the block of six flats, which are again on of a split level design and would have principal windows at first and second floor, they would not directly face principal windows of neighbouring properties.

3.9 The application has demonstrated that the proposed scheme for 32 dwellings can achieve acceptable residential amenity levels for future occupiers of the dwellings and maintain an acceptable level of living conditions for existing neighbouring properties. Boundary treatments and soft landscaping would also help to secure acceptable privacy levels which could be secured by conditions.

#### 4.0 Is the internal road layout, pedestrian connectivity and parking provision acceptable in highway safety terms?

4.1 The details of the access onto New Road was accepted as part of the outline consent but the internal access arrangement, disposition of buildings and car parking provision is now for approval.

4.2 NLP policy T16 states that development which provides significantly less parking than the maximum specified levels will not be permitted if this would create or aggravate a local on-street parking or traffic problem. The NPPF advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe. In March 2015 the Secretary of State gave a statement on maximum parking standards indicating that the government is keen to ensure that there is adequate parking provision both in new residential developments and around town centres and high streets. LPAs have also been encouraged not to set maximum limits on the amount of parking either.

4.3 The Highways Authority has raised no objections to the application subject to conditions. In doing so they accept the proposed parking levels but on the basis that garages are retained for parking of a vehicle with the applicant confirming the internal dimensions of the garages that would be large enough for a vehicle to park comfortably. Conditions are requested by the Highway Authority regarding road and driveway gradients, surfacing, surface water drainage, minimum driveway lengths and the dwellings not being occupied until the access, internal roads, private drives and parking areas have been provided in accordance with the approved details.

4.4 A pedestrian link in the form of a crossing point of New Road is proposed outside of plots 29 and 30 which would provide a link from the development to the footpath on the east side of New Road which would provide connectivity to the village centre. It would have been preferable for a footpath to be proposed on the western side of New Road which could link to the existing footway near to Woodside. But it is acknowledged that trees and ground levels/ gradients may have made this more problematic and the proposed pedestrian link is accepted. Although concerns have been raised by other parties about the location of the crossing, the Highway Authority do not share such concerns. The link should be provided before plots 20, 21, 22, 23, 28, 29 and 30 are occupied and this can be secured via condition.



4.5 Subject to the above conditions the proposed development is unlikely to lead to significant highway safety implications and an acceptable level of off street car parking is proposed. The development would therefore meet the guidance and requirements of the NPPF.

#### 5.0 Sustainable development considerations

5.1 Policy CSP3 of the CSS indicates that development which positively addresses the impacts of climate change and delivers a sustainable approach will be encouraged.

5.2 Paragraph 93 of the NPPF also recognises that “Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimensions of sustainable development”.

5.3 The outline permission secured a sustainable drainage strategy and the reserved matters submission reflects this with the LLFA raising no objections.

5.4 Environmental Health and the Parish Council both encourage the provision of facilities within the development for the charging of electric vehicles for each plot and shared parking areas. EHD indicate that this can easily be achieved by installing appropriate cabling and ducting during the build process. This will help facilitate the installation of EV charging facilities by the future occupiers. The applicant has confirmed that they will provide the necessary infrastructure and this is to be encouraged. However there is at present no specific Local Planning policy requirement for this type of provision in residential developments (that is a matter than can and indeed should be addressed within the emerging Joint Local Plan) or specific reason to single out this particular development, so it would be inappropriate to require such provision by condition. The provision of SuDS and the pedestrian link to the development are positive sustainable development features to be taken into account.

#### 6.0 Is the affordable housing layout acceptable?

6.1 A Section 106 planning obligation, entered into when outline planning permission was granted, requires the provision of affordable housing within this development. The proposal includes the provision of 8 affordable units, which is 25% of the total number of dwellings proposed and as such accords with policy. The 8 units comprise of 6 flats and 2 three bedroom houses.

6.2 Whilst the views of Housing Strategy have not been received in writing it has been verbally confirmed that the locations, number and type of the dwellings that are proposed to be affordable houses are acceptable to them.

## APPENDIX

### **Policies and proposals in the approved development plan relevant to this decision:-**

#### [Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy \(CSS\) 2006-2026](#)

Policy CSP1: Design Quality  
Policy CSP3: Sustainability and Climate Change  
Policy CSP4: Natural Assets  
Policy CSP5: Open Space/Sport/Recreation  
Policy CSP6: Affordable Housing

#### [Newcastle-under-Lyme Local Plan \(NLP\) 2011](#)

Policy T16: Development – General Parking Requirements  
Policy N12: Development and the Protection of Trees  
Policy N17: Landscape Character – General Considerations  
Policy N20: Areas of Landscape Enhancement  
Policy C4: Open Space in New Housing Areas

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

#### National Planning Policy

#### [National Planning Policy Framework](#) (March 2012)

#### [Planning Practice Guidance](#) (March 2014)

#### [Draft revised National Planning Policy Framework](#)

#### Supplementary Planning Guidance/Documents

#### [Affordable Housing SPD](#) (2009)

#### [Space Around Dwellings SPG](#) (SAD) (July 2004)

#### [Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document](#) (2010)

#### Relevant Planning History

14/00930/OUT Outline planning application for the erection of up to 32 dwellings (including details of access) Permit

#### Views of Consultees

**Madeley Parish Council (MPC)** objects on the following grounds;

- The development is outside of the village envelope,
- Whether there is a need for four bedroomed “executive” homes,
- New Road and Heighley Castle Way already struggle to cope with the volume of traffic at peak times: it is narrow and has several blind bends,
- Notes the financial contribution towards education places but questions, in the case of The Meadows Primary School, where additional buildings could be sited,
- There are still issues with the capacity of local health provision to take on more patients,
- The pedestrian crossing is too close to the busy Heighley Castle Way/ Junction where vehicles frequently “rat run” and break speed limits,
- Level of parking is not to Local Plan standards, and
- Electric car charging points should be installed to encourage a more environmentally friendly approach to vehicle transport.

The **Highways Authority** in consideration of additional information, has no objections subject to conditions relating to the following:

- No occupation until access from New Road is completed, and internal site roads, parking and private drives provided,
- Submission and approval of access gradient, surfacing details and surface water drainage of private drives, parking and turning areas,
- The garages retained for the parking of motor vehicles and cycles,
- The private drives shall have a minimum length of 6m,
- The private drives shall have a gradient not exceeding 1:10 for a minimum distance of 5m.

The **Environmental Health Division** offers detailed advice on information required to satisfy conditions of the outline planning permission. They also recommend the provision of vehicle charging facilities for all plots.

**United Utilities (UU)** advises that they have previously commented on the Outline Application (Planning Ref: 14/00930/OUT to which the above application relates

The **Landscape Development Section** in consideration of additional information maintains their objection on the following grounds;

- Proposals for surfacing exceed the 20% permissible of existing unsurfaced ground (BS5837:2012 para 7.4.2.3),
- The applicant intends to install surfacing that traverses sloping ground within Root Protection Areas, which would not be possible without earthworks and/or retaining structures,
- The retention of protected trees in the long term is likely to be compromised due to pressure for removal/pruning from future occupiers, due to screening/overshadowing/nuisance effects, and real/perceived concerns about the safety of tall trees in the wind,
- Pruning to important retained trees to reduce shading into rear gardens for future occupiers would not be supported,
- There should be no encroachment of retaining walls into RPAs.

**Waste Management Section**, in consideration of additional information, now have no objections.

**Crime Prevention Design Advisor** says that in general the layout appears well conceived with good natural surveillance. Building on the strong layout, the applicant is advised that from the viewpoint of Staffordshire Police and undoubtedly for the long-term benefit of the future residents, it would be highly desirable for the properties to meet the minimum physical security standards contained within the Secured by Design Homes 2016 document.

**Staffordshire County Council Flood Risk Team (LLFA)** have no objections on the basis that the submitted drainage plan and layout appears to be consistent with the details submitted with the outline planning permission. However, further details and supporting calculations for discharge of the drainage are still required.

**Natural England (NE)** advises that they have no comments to make on this application.

The **Education Authority** states that a Section 106 Agreement was signed when the outline application was granted, and the education contribution amount and terms should be calculated in line with this.

The **Mineral and Waste Planning Authority** indicate that they have no comments on this application as the site is not within or near to any permitted waste management facility; and is exempt from the requirements of Policy 3 – Mineral Safeguarding in the Minerals Local Plan for Staffordshire 2015 – 2030 (site is within the village boundary).

The views of the **Environment Agency** and the **Housing Strategy Section** have been sought but no response has been received and as such it is assumed that they have no comment on the proposal.

## Representations

3 letters of objection have been received including one from Madeley Conservation Group. -

**Madeley Conservation Group** specifically raises the following concerns;

- Site is outside of the village envelope,
- Brownfield land is not given priority,
- Removing one of the last white land sites so little room for future needs,
- There is no proven need for new housing in Madeley,
- Awkward extension to the village would harm the open countryside,
- The development is not sustainable – use of private cars to access services,
- The adjacent roads are not wide enough and future residents will use the same rat run to avoid Monument junction,
- The houses are all four bed with token two bed apartments that offer limited design benefits,
- Further investigations regarding drainage and land stability are required, and
- Highways matter and danger should be considered again,

**Other representations** received raise the following objections;

- The pedestrian crossing is an unsuitable and dangerous location for cars and pedestrians near to a junction,
- The plans do not appear to account for the significant elevation of the land resulting in loss of privacy and light to neighbouring properties,
- Potential for flooding at the bottom of the south boundary of the site,
- Construction traffic will come through the village which has unsuitable roads,
- Loss of green rural countryside, potential harm to protected large trees and hedgerows, and loss of the wildlife we see using this site, including herons, bats, owls, shrews, garden birds,
- Added pressure upon an already over-stretched and struggling GP practice,
- Increased demand upon local schools, particularly the Meadows Primary School,
- Concerns about noise disturbance and vibration during the development of the site, and
- Additional traffic using Heighley Castle Way as a 'rat run' to access the A531.

## Applicant's/Agent's submission

The application is accompanied by a Design and Access Statement

All of the application documents are available for inspection at the Guildhall and on <http://publicaccess.newcastle-staffs.gov.uk/online-applications/plan/18/00225/REM>

## Background papers

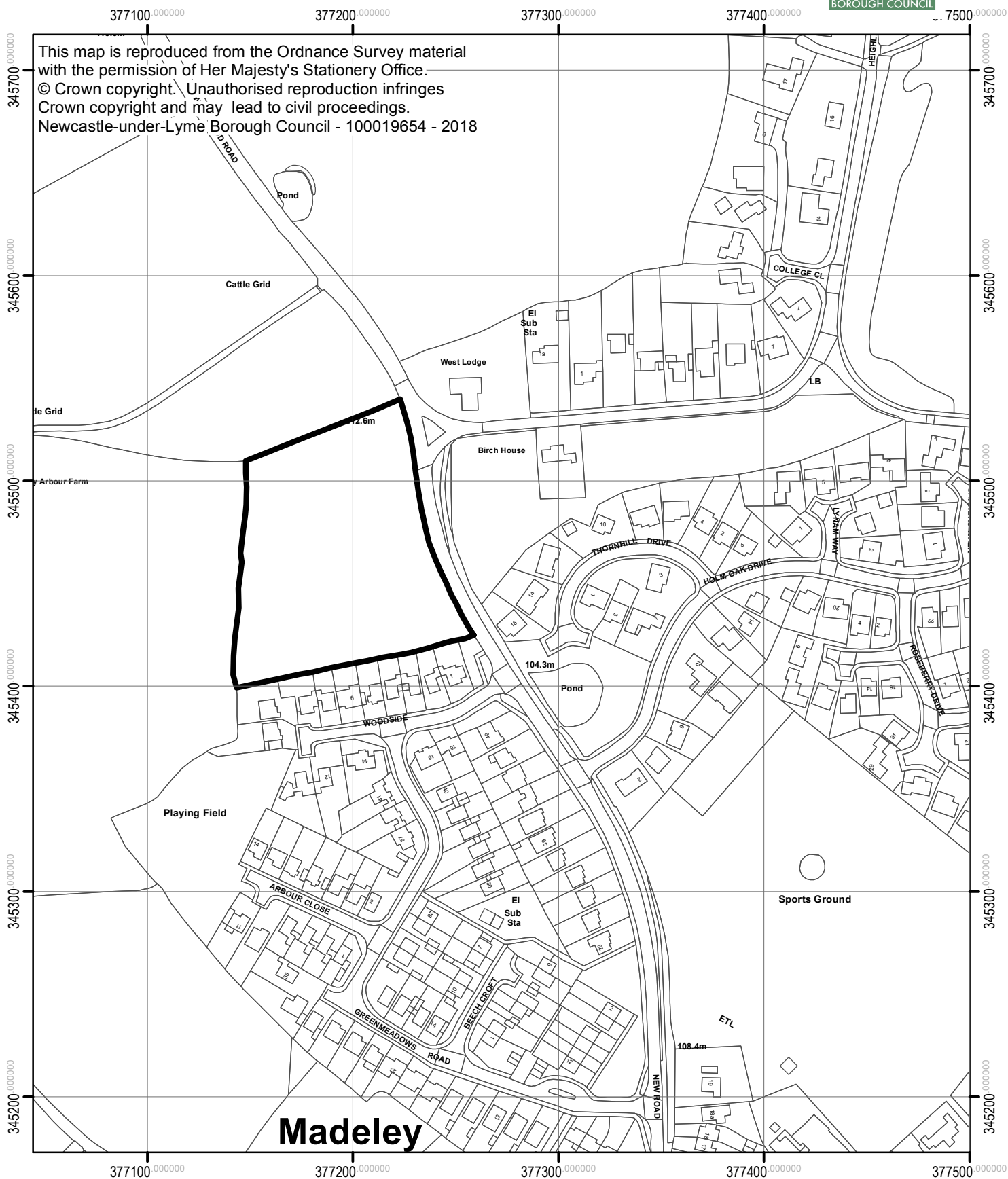
Planning files referred to

Planning Documents referred to

## Date report prepared

4<sup>th</sup> June 2018

# 18/00225/REM Land Off New Road Madeley



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**LODGE FARM, NEWCASTLE ROAD, TALKE**  
**MS R LARGE**

**18/00062/FUL**

The application is for full planning permission for the construction of a 30m by 55m manege and new stable block building for commercial use and the change of use of other land from agriculture to the keeping of horses. The stable block building is 'L' shaped measuring 37.9m in length along the longest wing, 25.5m in length along the shortest wind and 7.3m deep along both wings.

The applicant proposes that the manege is to be open for use 7am until 7pm. The application site area involved measures 1.28 hectares.

The application site is located within the Green Belt and an Area of Landscape Restoration as indicated on the Local Development Framework Proposals Map.

This is a holding report following the resolution of Planning Committee, on 24<sup>th</sup> May, to give the Head of Service delegated authority to permit the application subject to conditions subject to no objections being received from Kidsgrove Town Council by 12<sup>th</sup> June, which cannot be addressed by appropriate conditions. The resolution also included that in the event of objections being received from Kidsgrove Town Council by the 12<sup>th</sup> June, which cannot be addressed by appropriate conditions, the application is referred back to the Planning Committee for reconsideration. No comments from the Town Council have yet been received.

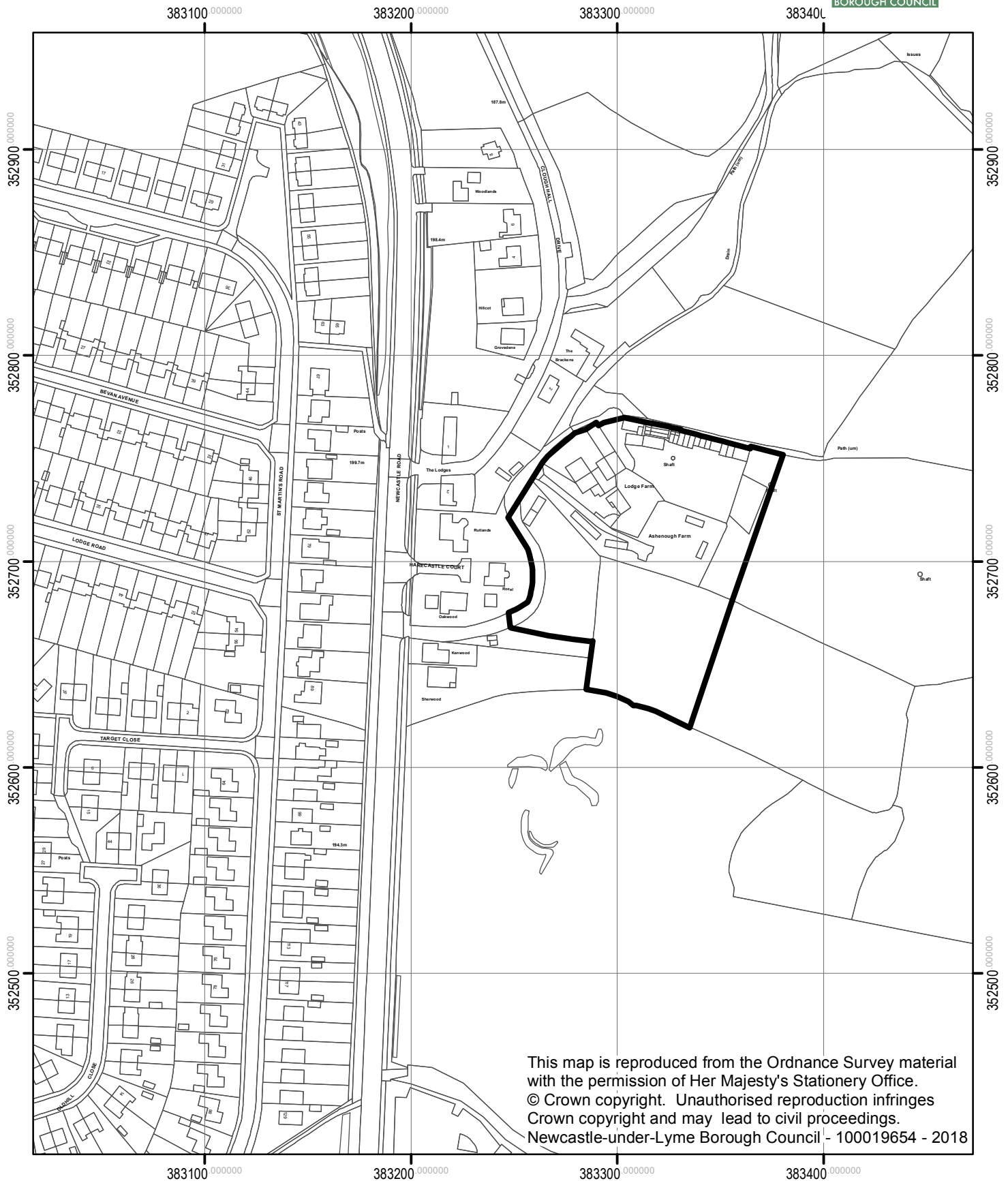
A further report will follow should Kidsgrove Town Council submit objections by 12<sup>th</sup> June which can't be addressed by appropriate conditions.

**The 13 week period for the determination of this application, 27<sup>th</sup> April, and the agreed extension of time to the statutory determination period, 28<sup>th</sup> May 2018, have both expired.**

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18/00062/FUL  
Lodge Farm, Newcastle Road, Talke.



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**LAND ADJACENT TO 1, 3 AND 5 HAMPTON COURT**  
**MR NATHAN COOK**

**18/00284/FUL**

The application is for retention of the use of land as residential garden and the retention of fencing already erected which encloses that land.

The site lies within the Urban Neighbourhood of Newcastle under Lyme as defined on the Local Development Framework Proposals Map.

The application has been called in to the Planning Committee due to public concerns.

**The 8 week period for the determination of this application expired on the 4<sup>th</sup> June but has been extended by agreement of the applicant to the 22<sup>nd</sup> June 2018.**

**RECOMMENDATION**

**PERMIT subject to a condition that lists the approved plans.**

**Reason for Recommendation**

The development does not conflict with the Development Plan or with the National Planning Policy Framework. It does not encroach upon or adversely affect the enjoyment of a public right of way to which Part 3 of the Wildlife and Countryside Act 1981 (i.e. which is on the definitive map). In addition it does not result in any significant harm to the visual appearance of the area. In the absence of any other material planning considerations it is considered that the development is acceptable and should be permitted.

**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 application has been received following the report of a breach of planning control. No amendments, alterations or additional information have been requested following a previous withdrawn application. The proposal is considered now to be a sustainable form of development in compliance with the provisions of the National Planning Policy Framework.

**Key Issues**

The application is for the retention of the use of land as residential garden and retention of fencing that has already been erected which encloses that land. The line of fencing as erected spans approximately 50 metres in length and ranges in height from 1.5 metres to 2.2 metres owing to ground level changes. In effect the proposal seeks to regularise the unauthorised extension of the gardens of properties 1, 3 and 5 Hampton Court.

The site lies within the Urban Neighbourhood of Newcastle under Lyme as defined on the Local Development Framework Proposals Map. There are protected trees in the vicinity but none are affected by the proposal.

The key issue to consider is whether or not there is any harm to public amenity arising from the proposal which will be addressed below following relevant background information.

**Background to the application**

Complaints were received last year alleging that land in the Council's ownership had been incorporated into gardens of numbers 1, 3 and 5 Hampton Court. Investigations, which included the taking of measurements, subsequently established that in respect of one of the properties the allegation was correct but that in respect of the other two properties no land in the Council's ownership was involved.

Following such investigations and associated discussions with the Council's Property Team the fence has now been reinstated in a position that no longer, as far as the Property Team are concerned, encloses Council land.

This application follows an application received in early January which was the subject of a number of representations and was 'called in' for determination by the Planning Committee. However, during the course of the application it became clear that the applicant had not completed the appropriate Certificate of Ownership and had not notified relevant landowners (where known) as required by legislation. The applicant chose to withdraw that application in February. Such issues have been addressed in the current application.

The measurements that the Council's Property Team have taken and its conclusion that no Council land is enclosed within the gardens of these properties have been challenged by, and remain in dispute with, Thistleberry Residents Association (TRA) who has submitted an independent survey plan to contest that conclusion. The Council's Property Team have taken into account the information within the independent survey plan but have revised their conclusion which remains that there is no encroachment onto, or loss of, Council land arising from the development.

*Whether or not there is any harm to public amenity?*

There are two elements to be considered; whether the development affects the enjoyment of a right of way; and whether any adverse visual impact arises from it.

Policy CSP1 Newcastle under Lyme and Stoke on Trent Core Spatial Strategy requires development to respect the character of the area and the way it functions. The current National Planning Policy Framework (the Framework), at paragraph 58, states that both policies and decisions should aim to ensure that developments will, amongst other things, function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development. Paragraph 75 of the Framework also states that planning policies should protect and enhance public rights of way and access. The new draft Framework also reflects this approach.

Within a few metres of the rear boundary of 1, 3 and 5 Hampton Court there is a useable pathway which is not affected by the proposal. Public representation does, however, refer to the presence of a further historic route referred to as "the trackway" that they say is immediately adjacent to the boundary of those properties. Other representations indicate that there has never been such a route. As such reports of the presence of "the trackway" and its historic use are somewhat.

The TRA have submitted to the County Council an application under the Wildlife and Countryside Act to have "the trackway" declared a Public Right of Way and it is their view that part of the claimed public right of way has been encroached upon by this development. That application remains undetermined and as such, as confirmed by the Public Rights of Way Officer of the County Council, "the trackway" is not on the Definitive Map of Public Rights of Way. It therefore cannot be concluded that the development, which is the subject of this application, encroaches upon and thereby adversely affects the enjoyment of a public right of way to which Part 3 of the Wildlife and Countryside Act 1981 (i.e. which is on the definitive map).

Whilst it is acknowledged that the development may affect a right of way that exists at common law, or by virtue of a presumed dedication under Section 31 of the Highways Act 1980 this in itself would not form the basis upon which planning permission could be refused.

The erection of the fence line in its revised position has probably reduced the amount of hedgerow in the locality by a small degree but its visual appearance is not out of keeping with the wider area when viewed in the context of the Hampton Court residential development and substantial remaining greenery. No trees have been lost. Overall there is no visual harm arising from the appearance of the fence or any other significant public detriment triggered by the proposal.

## APPENDIX

### Policies and Proposals in the Approved Development Plan relevant to this decision:-

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

Policy SP1	Spatial principles of Targeted Regeneration
Policy SP3	Spatial principles of Movement and Access
Policy ASP5	Newcastle and Kidsgrove Urban Neighbourhoods Area Spatial Policy
Policy CSP1	Design Quality
Policy CSP3	Sustainability and Climate Change

Newcastle-under-Lyme Local Plan 2011 (NLP)

Nil.

### Other Material Considerations

National Planning Policy Framework (March 2012)

Draft National Planning Policy Framework (March 2018)

Planning Practice Guidance (March 2014)

Supplementary Planning Documents/Guidance

Space Around Dwellings SPG (SAD) (July 2004)

Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance SPD

Planning History

17/01043/FUL	Retention of change of use of open space to residential garden	Withdrawn	2017
06/00109/FUL	Demolition of former dwellings and erection of 8 new houses and associated site works	Refused	2006
06/00458/FUL	Demolition of former dwellings and erection of 8 new houses and associated site works	Permitted	2006

Views of Consultees

**Landscape Development Section** has no objections provided that the fence follows the correct boundary line between the Borough Councils land and that of the Hampton Court development.

The **Public Rights of Way Officer** (Staffordshire County Council) comments that the County Council's Definitive Map of Public Rights of Way shows that no Public Rights of Way cross the proposed application site. However, the County Council has received an application under Section 53 of the Wildlife and Countryside Act 1981 to add or modify the Definitive Map of Public Rights of Way, which affects the land in question. It should be noted, however, that this does not also preclude the possibility of the existence of a right of way at common law, or by virtue of a presumed dedication under Section 31 of the Highways Act 1980. It may, therefore, be necessary to make further local enquiries and seek legal advice in respect of any physically evident route affecting the development.

Representations

A total of 17 representations have been received objecting to the application including correspondence from **Thistleberry Residents Association**. The comments made include:-

- That the land subject to change of use is in Council or public ownership.
- It is wrong for land in public ownership to be used for unauthorised private gain without challenge, and accepting the proposal would send the wrong message.
- There are potential conflicts of interest arising from a decision on the proposal.
- That there is a historical public trackway (or public right of way) which is affected by the proposal and which has been regularly used for a considerable number of years.
- A request was made, in 2007, to the County Council to record the trackway on the definitive footpaths map, however the County have as yet to respond that that request.
- Hedgerow has been removed.
- The application documents contain inaccurate and misleading information.

Some 6 letters in support of the application make further points:-

- A previous resident of Hampton Court for 10 years until last year states there was no path adjacent to the properties boundary with the Thistleberry Parkway during the time residing at the address and the entire length of the boundary was made up of over grown bushes and nettles.
- That there is a path a few metres from the boundaries of Hampton Court but not a useable trackway. The area has been overgrown for many years.
- A trackway (reinstated or otherwise) immediately adjacent to the boundary is not a good idea as it would increase the risk of antisocial behaviour that would affect those residents and was subject to historical local engagement as the reason not to pursue that idea.

#### Applicant/agent's submission

Additional supporting information has been submitted as well as application forms and indicative plans have been submitted. The application documents are available for inspection at the Guildhall and via the following link

<http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/18/00284/FUL>

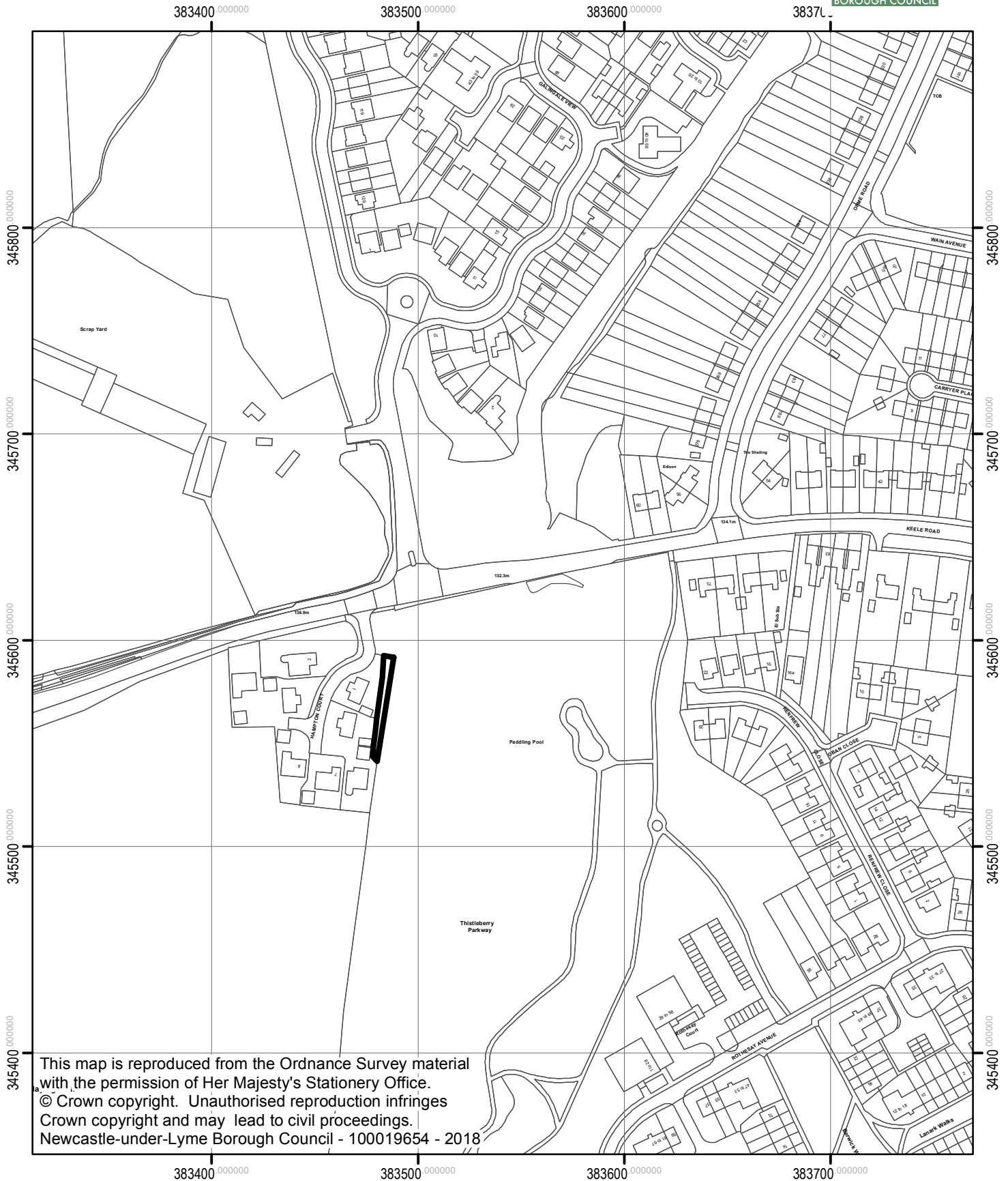
#### **Background Papers**

Planning File  
Planning Documents referred to

#### **Date Report Prepared**

6<sup>th</sup> June 2018.

**18/00284/FUL**  
**Land Adjacent To 1, 3 And 5 Hampton Court**  
**Newcastle**



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**APPEAL BY MR C BUTTERS AGAINST THE DECISION OF THE BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR THE ERECTION OF A 4 BEDROOM DWELLING WITH DOUBLE GARAGE AND IMPROVED ACCESS AT LAND NORTH OF MUCKLESTONE WOOD LANE, LOGGERHEADS**

<b><u>Application Number</u></b>	<b>17/00450/FUL</b>
<b><u>LPA's Decision</u></b>	<b>Refused under delegated authority 20<sup>th</sup> October 2017</b>
<b><u>Appeal Decision</u></b>	<b>Appeal dismissed</b>
<b><u>Date of Appeal Decision</u></b>	<b>22<sup>nd</sup> May 2018</b>

## **The Appeal Decision**

The Inspector identified the main issue to be the effect of the proposed development on the character and appearance of the area.

In dismissing the appeal the Inspector made the following comments:-

- There is a distinct difference in character between the two sides of Mucklestone Wood Lane with the open countryside and woodland on one side and the built up settlement on the other side.
- The proposal would be visible and prominent from the lane particularly from the eastern side of the appeal site. It would introduce a form of built residential development into a part of the immediate countryside where there is none at present. Despite the proposed use of wood cladding, its low dormer bungalow design, the presence of existing trees and proposed landscaping, the proposed dwelling would appear as an incongruous form of development in this countryside location.
- The driveway and domestic garden would exacerbate the impact of the proposed dwelling and garage on the landscape. The proposed development would erode the clear distinction between the different characters of each side of the lane and although only one house, would have the effect of breaking the well-formed settlement boundary on this part of the lane.
- The Inspector who determined an appeal for two houses on the site in 2015 found that the proposal before her would have an adverse effect on the semi-rural character and appearance of the area. Similar concerns are raised in relation to the current proposal for a single dwelling, notwithstanding the appellant's landscape and visual impact assessment and the appellant's attempts to address the Inspector's concerns through a redesign and reduction in scale of the scheme.
- The parties are not in agreement about the historical status of the small ruined building towards the rear of the site. However, whether it was a dwelling or an agricultural building, it is substantially collapsed and significantly overgrown and therefore has blended into the landscape and cannot be classed as previously developed land. In any event, its presence does not reduce the harm to the character and appearance of the area.
- The dwelling would be of sustainable design and construction and would be within walking distance of Loggerheads and moderate weight is attached to these benefits. The proposal would also have a benefit of removing the anti-social behaviour issues experienced on the site but limited weight is attached to this.
- The proposal would make only a small contribution to housing land supply and so this benefit is afforded limited weight. The proposal would bring other benefits but the harm to the character and appearance of the area would significantly and demonstrably outweigh the benefits and as such the presumption in favour of sustainable development does not apply.
- The proposed development would cause significant harm to the character and appearance of the area and would be contrary to Policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy which seeks to secure good design that respects the character of the landscape. It would also be contrary to

guidance set out in R12 of the Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance which seeks to ensure that residential development contributes towards improving the character and quality of the area.

**Recommendation**

That the appeal decision be noted.

## **Confirmation of Tree Preservation Order**

### **LAND OPPOSITE THE OLD SWAN, MADELEY HEATH.**

#### **Tree Preservation Order No.192 (2017)**

Town & Country Planning Act 1990

Town & Country Planning (Tree Protection) (England) Regulations 2012

**The Order** protects an area of woodland situated to the south side of Crewe Road, Madeley Heath, opposite The Old Swan. The Order was made to safeguard the longer term visual amenity that the trees provide after information was received that trees could be unnecessarily felled, and a request was received as to the status of the woodland. It is considered that the loss of trees from the site would compromise the visual amenity that the woodland provides to the area.

The Order was made using delegated powers on 22 December 2017. Approval is sought for the Order to be confirmed as made.

**The 6 month period for this Order expires on 22 June 2018.**

## **RECOMMENDATION**

That Tree Preservation Order No 192 (2017), land opposite the Old Swan, Madeley Heath, be confirmed and that the owners of the site be informed accordingly.

## **Reasons for Recommendation**

Your officers are of the opinion that the longer-term visual amenity of the trees is best secured by the making of a Tree Preservation Order. Your officers are of the opinion that the trees are generally healthy at present and of sufficient amenity value to merit the making of a Tree Preservation Order. They are considered to be generally of appropriate species for the locality, visually important, and provide a high public amenity due to their form and visibility from public locations. The making of the Order will not prevent the owner from carrying out good management of the trees and it will give the Council the opportunity to control the works and prevent unnecessary cutting down, lopping, topping, uprooting, wilful damage or wilful destruction. The owner will be able to apply for permission to carry out maintenance work to the trees which is necessary to safely manage the woodland.

## **Representations**

Letters and signatures of support representing six neighbouring properties have been received.

Objections have been received from two neighbouring properties.

The first objection is from a property that borders the woodland. The land of this property falls down towards the trees and branches from them need to be periodically pruned back to enable access for a ride-on mower. The objectors also consider that the owner has shown excellent stewardship managing, caring and maintaining the wood, and that they have a good relationship with him. Concern is also raised that the wood contains a large

number of over-mature poplars that are in danger of falling, especially when affected by flooding, which occurs periodically.

The making of the Order will not prevent carrying out good management of the trees and it will be possible to apply for permission to carry out maintenance work to the trees which is necessary. Pruning back for access and the removal of problematic trees would normally be acceptable.

The second objection, also from a neighbouring property raises many issues as follows:

- 1a Your covering letter to this Order states that it is a "Regulation 3" Notice. Regulation 3 of the Regulations to which you refer makes no reference to any notices. It prescribes the appropriate form of Order. This is most confusing. As to the requisite notice under Regulation 5, you will be aware that this must specify the date by which any objection or representation must be received by the authority making the Order. Your letter purports to specify a period, of 28 days, rather than a date, as is required, and insofar as it does purport to specify a date it is a date that has already passed (being 19 January 2017). Your Notice does not meet the requirements of the Regulations and is invalid.

The intention of the accompanying letter is to inform the recipient of the Tree Preservation Order under Regulation 5 and gives notice of the Tree Preservation Order which is in accordance with Regulation 3; which is the reason for the use of the word 'notice' in the heading. This is in accordance with the recommendations of The Act, and standard practice based on government guidance.

The typographical error on the letter with regard to the year was noted and the Order was served again to clarify the time available to comment, and a further period given to allow for further comment.

- 1b It appears that you have not taken any steps to ascertain the identity of the landowner of the relevant woodland. That person is not me, or anyone else upon whom you have served the Order thus far. As you will be aware, you are required to serve the Order upon all persons with an interest in the land and to give them adequate time to make representations. The landowner has told me that no correspondence has been received from you on this matter.

Your officers have taken all reasonable steps to identify the owner of the woodland. The Land Registry confirms that the land is not registered, as is the objectors house and the adjoining fields. It appears that the objector knows the identity of the landowner but has declined to confirm this.

- 1c Please send me a copy of the delegated report by which the Executive Director - Operational Services resolved to make this TPO. The reasons given in your letter and in the Order are wholly inadequate. They do not address many of the principles of decision making set out in your constitution at article 13 that you are required to consider, and in particular there is no consideration of the landowner's Article 8 or A1P1 rights or of the proportionality of making such a Draconian Order. The reasons given do not begin to explain why a Woodland Order is appropriate. They refer only to the existing trees.

The reasons for making the Order are given in this report. The Tree Preservation Order Regulations stipulate four ways to specify a Tree Preservation Order. The making of a Woodland Order is the only form appropriate for these trees.

- 1d Please also send me a copy of the Head of Business Improvement, Central Services and Partnerships' decision that the Order is not a document required to be made under seal. I note that any documents not required to be made under seal but that are necessary to any "legal procedure", of which this is surely one, must be signed by certain specified officers in your authority. They do not include the Executive Director - Operational Services.

The Executive Director (Operational Services) has signed the Provisional Tree Preservation Order in accordance with the Council's Scheme of Delegation which can be viewed by the objector on the Council's website.

- 1e You will be aware that under the 2014 Regulations the written record of the Executive Director's decision to make the TPO must be produced as soon as reasonably practicable, must contain specified information, and must be made available on your website together with any background papers. To my knowledge none of these matters have occurred.

As required, a copy of the Provisional Tree Preservation Order has been, and remains, available for inspection by appointment during office hours at the Council's Knutton Lane Depot. The information for Confirming the Order is contained in this report which will be available on the Council's website.

Without prejudice to the above points, I object to the Order (in its entirety) for the following reasons.

- 1f The woodland has been in the same ownership for over 40 years and throughout that period has been properly and responsibly managed and maintained as a valuable amenity facility. There are no grounds whatsoever for believing that this will change. There is unlikely to be any positive value in the trees as a commercial forestry prospect. There are no prospects for developing the land. In short there is no reason to believe that there is any commercial imperative to fell the woodland, or that there is any prospect of any change to the existing management practices on the site. These are fundamental material considerations that you have wholly ignored.

Ownership of the land has not been confirmed. Information received indicates that trees could be inappropriately felled, and receipt of a tree status enquiry suggests that no work has been carried out on the trees for a significant time and could now be impending. This gives rise to concern for the trees future.

- 1g The reasoning in the Order that the loss or disfigurement of the woodland would have a detrimental effect on the visual amenity of the area appears to be based on a threat that does not exist. You are required to evaluate alternatives to, and the proportionality of, making any TPO and you have supplied no evidence that you have done so. You do not say why it is expedient to make the Order (or why, if it is expedient, that also warrants exercising your discretion to make it).

When the Order was first served the Statement of Reasons did not include the information received regarding possible inappropriate tree felling or the tree status enquiry request. This was included when the Order was served again.

- 1h You have identified that it is the well-being of the existing trees that needs protection, and yet you have made a Woodland Order. You have not explained the necessity for or the proportionality of this. If it is the existing trees you are seeking to protect then that would not merit the far more onerous imposition of a Woodland Order, which protects trees that do not yet even exist.

The Tree Preservation Order Regulations stipulate four ways to specify a Tree Preservation Order. The making of a Woodland Order is the only form appropriate for these trees.

- 1i The Parish Council have expressed concerns that some of the trees adjoining the highway are overgrown and are hanging across the highway. This has been confirmed by a specialist tree surgeon, and the removal of fewer than six of the trees adjoining the highway (all Category U) is recommended on this basis. The purpose of my 'tree status' enquiry was to establish the conditions necessary to obtaining a felling licence. There is no intention to destroy or disfigure the amenity value of the woodland. I am sending a copy of this letter to the Parish Council so that they are aware of my inability to conform to their wishes that remedial works are carried out.

Your officers are not of the view that the trees are currently under good management. There are several trees that are in need of attention and there appears to be no evidence that work has recently been carried out to maintain the woodland in good order. It is noted that the Parish Council has expressed concerns with regard to trees adjacent to the highway, however the making of the Order will not prevent the owner from carrying out appropriate work.

- 1j Additionally, you will have appreciated from your site inspection that a number of the poplar trees on the site are over-mature and all are of a non-native variety and will need to be felled in due course as part of proper responsible woodland management in order to allow new trees to flourish. As you will be aware, such proper woodland management may take place under felling licences granted by the Forestry Commission notwithstanding the existence of a TPO. Otherwise, confirmation of the TPO would be likely to carry a real risk of stifling such proper woodland management because of the disinclination to seek consent.

The making of the Order will not prevent the owner from carrying out appropriate woodland management.

- 1k In summary, the absence of adequate reasons for making the Order means that it is unlawful. The accompanying Notice is invalid. The Order is an unwarranted and completely disproportionate response to my 'tree status' enquiry. There is no present intention to carry out works to any trees except to those presenting a risk to highway users. The imposition of a TPO is an unwarranted interference with the continued proper and responsible management of the woodland as has been done for decades. At no point until I made a 'tree status' enquiry have you considered this woodland to be worthy of protection.

My 'tree status' enquiry was made in the furtherance of my responsible approach to soundly managing the woodland, and it is unconscionable that you have responded to it in this way. My 'tree status' enquiry is not evidence of any risk to the trees that Government policy expects to exist before it becomes expedient for you to make a TPO (I refer you to paragraph: 0L0 Reference ID: 36-010-20140306 of the Planning Practice Guidance).

The third party information received combined with receipt of the tree status enquiry and unconfirmed ownership provides sufficient doubt and gives rise to concern for the trees future. The subsequent tree assessment confirms that the woodland is worthy of a TPO. The making of the Order will not prevent the owner from carrying out appropriate woodland management.

- 11 If this way of responding to such responsible enquiries becomes public knowledge then I hardly see how this is going to further your obligations to consider the protection of trees in the exercise of your planning functions. People will simply act first, and ask afterwards.

The initial concern for the trees arose from information received from a third party and the tree status enquiry was in addition to this.

A second letter was subsequently received from the same objector raising issues as follows:

- 2a There were a number of points raised in my letter of 8 January that I am afraid have not been satisfactorily addressed. The first issue is that it appears, from what you are now telling me, that there has been no actual decision to make the TPO. It seems that the Executive Director has merely applied his signature to the TPO itself. However, deciding to make an Order and actually making an Order are not the same thing. I did draw your attention to the 2014 Openness etc. Regulations. Those Regulations require a record of any delegated decision, where people's rights are affected, as they obviously are in this case, to be made available on the Council's website. They also require anyone making a delegated decision of the nature described in the Regulations to consider any alternative options and to record their consideration of these.

Your officers have carried out a TPO assessment and the provisional Order has been made in accordance with the TCPA Regulations to enable a decision to be made by the Planning Committee.

- 2b The Regulations also require that background papers are made available. You say in your letter that you have taken account of some "information received in confidence" which you have not "explicitly" included in your reasons for making the TPO. However, where a decision is being made with regard to exempt information, the public are entitled to know that that is the case, and the reason for the claimed exemption. Whilst I readily accept that the source of your claimed information may wish to withhold his or her identity and that there may be good public policy reasons for allowing that, I do not understand why there would be any good reason to withhold the information itself. Which paragraph of Schedule 12A to the 1972 Act applies to it? I am particularly disconcerted by your statement that you "will ensure these facts are made clear". What facts, and made clear to whom? If you are making facts clear to the Committee who will decide whether or not to confirm the TPO then how do you suggest it gives me or the landowner (or any adjoining neighbours) a fair hearing if you do not also disclose those facts to the public with an opportunity to comment? Surely objectors to a TPO are entitled to know and respond to the case against them. This approach flies in the face of the transparency to be expected of a local authority carrying out its statutory functions.

The reasons for making the TPO are included in the Statement of Reasons. Objections have been recorded in this report which will be available on the Council's website.

- 2c As to your "reasonable steps" to ascertain the identity of the landowner, I do not consider that you have made adequate enquiries merely by undertaking a Land Registry search and then making assumptions as to ownership upon learning that the land is unregistered. I would refer you to the relevant provisions of Part XV of the 1990 Act, and am surprised your legal advisors appear not already to have done so. If, as I

believe, reasonable enquiries have not been made to ascertain the identity of the landowner then that must cast further doubt over the validity of the process.

Your officers have carried out all means reasonably available, which are supported by the council's legal advisor, to identify the owner, who is believed to be known to the objector. The objector has declined to confirm this. In accordance with the Regulations a notice has been posted adjacent to the site giving details of the TPO.

2d Your observations (if they are your own observations) in regard to the management of the woodland are noted but not accepted. In any case your observations appear to have led you to conclude that the copse consists of trees in need of attention. A TPO does not promote good management in this way. It merely prohibits unauthorised topping, lopping or felling. You ought to be aware, if you are not already, that the area is regularly subjected to inundation as a result of poor maintenance of the culvert beneath the M6 to the west by the Highways Agency (now Highways England) and is the subject of extensive correspondence with them over many years in our efforts to preserve the copse.

This flooding is a persistent and recurrent problem and the periods of inundation, sometimes coupled with high winds, have caused multiple losses of trees, mainly poplars; some healthy, some diseased, but generally those in the later stages of life. We have experienced floods of in excess of 3m deep lasting for weeks on end. These circumstances are not in the landowner's (or my) control and I trust that Highways England's attention has been drawn to the existence of the TPO.

The making of the TPO will not hinder good management and appropriate maintenance being carried out. The Highways Agency have been informed of the TPO.

2e In summary I am disappointed by your response to the serious issues I raised in my letter of 8 January concerning the validity of the Order and the accompanying Notice. I do not intend to repeat any of that here, but I had anticipated that the Council might find it rather more edifying to withdraw the Order before taking a view about whether to start again. Instead, by revealing that you have had regard to information that you do not intend to allow me to see or to respond to, you are compounding your errors.

I appreciate that your own position is expressed after having taken legal advice. Unfortunately I consider that the Council's misapprehension as to its legal obligations in this case amounts to maladministration, and I would ask that your Corporate Complaints officer is asked to look into it and to communicate to me the outcome of his or her deliberations. Meanwhile I consider that it would be incautious of the Council to proceed to consider the question of confirmation of the TPO without allowing me some time to consider that outcome, as well as the material that you intend to draw to the attention of the Committee.

Your officers have carried out the procedures in line with the Town and Country Planning Regulations. An assessment has been carried out, a Provisional Order made and representations reported to the Planning Committee for a decision to be made. The objector's complaint was referred to the Council's corporate complaints procedure and has been dealt with to conclusion separately via this route.

A third letter was subsequently received from the same objector raising the following issue:

3a The only point I would add to my previous correspondence with you, and to my daughter's correspondence with your Complaints Department, is that you have still not



effected proper service on the landowner of the woodland. I have seen your notice attached to the pole opposite the woodland, on the pavement by the Old Swan. However there is nothing affixed; conspicuously or otherwise, to any object on the land itself. The requirements of section 329 TCPA 1990 (or of section 233 of the LGA 1972, for that matter) are therefore still not met and you are unable to confirm the order.

The notice was posted opposite the site as it was considered that the absence of a roadside footpath on the site side on such a busy road would make access to view it dangerous. A plan was included on the notice showing the location and boundary of the site.

A letter from this objector has also been received by the Councils Customer Relations with reference to a Stage 2 complaint, and has been responded to separately under this process.

### **Issues**

The woodland is situated to the south side of Crewe Road, Madeley Heath, opposite The Old Swan. It is clearly visible from Crewe Road (Swan Bank) and is a significant feature. It provides an important contribution to the area.

In November 2017 information was received in confidence by your officers that trees could be unnecessarily felled within the woodland. Subsequently on 7 December an enquiry was made to the Council as to the status of the trees. These two things combined gave rise to sufficient concern that trees could be inappropriately felled,

Your officers inspected the woodland and carried out a TPO assessment. It is considered to be in reasonable health and visually significant, and an important feature of the Swan Bank road corridor. It is an amenity to the locality, with the prospect of continuing to provide this for many years.

It is considered that inappropriate felling of trees would be likely to have a detrimental effect on the visual amenity, not only of the site but also to the locality. The Order was made and served on 22<sup>nd</sup> December 2017 in order to protect the long term well-being of the trees.

Letters of objection to the TPO raised issues relating to the Statement of Reasons and the date by which objections should be received. In order to clarify these, the Order was served again on 27th April 2018 making these points clear and allowing time for further comments.

The concerns of the neighbours have been considered and it is the view of your officers that the risk is sufficient to justify making a TPO. The making of the Order will not prevent the owner from carrying out good management of the trees and it will give the Council the opportunity to control the works and prevent unnecessary cutting down, lopping, topping, uprooting, wilful damage or wilful destruction.

### **Date report prepared**

6 June 2018

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Dave Adams  
Executive Director Operational Services  
Civic Offices, Merrial Street  
Newcastle, Staffordshire. ST5 2AG

TITLE:  
**Land opposite  
The Old Swan  
Madeley Heath**

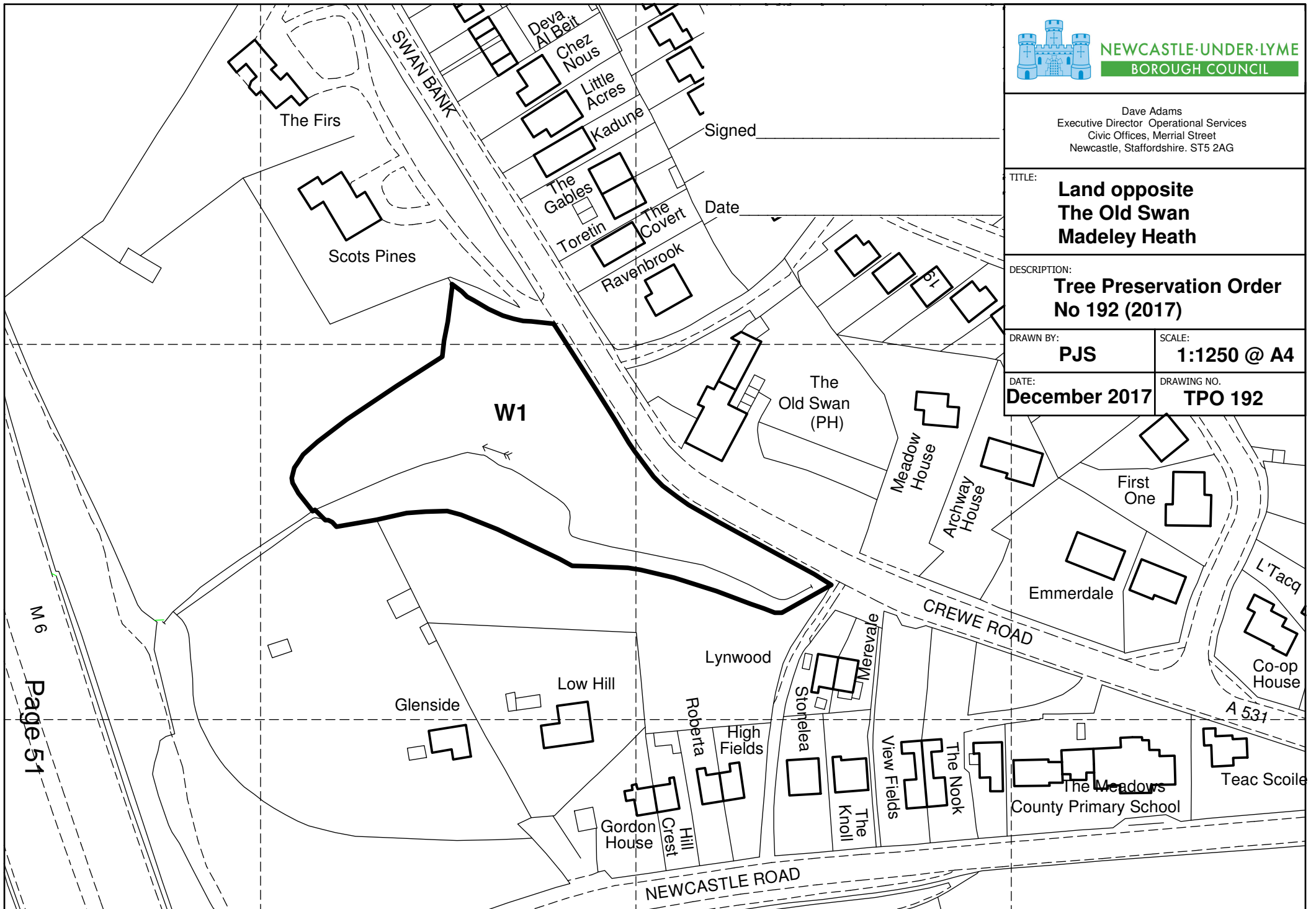
DESCRIPTION:  
**Tree Preservation Order  
No 192 (2017)**

DRAWN BY:  
**PJS**

SCALE:  
**1:1250 @ A4**

DATE:  
**December 2017**

DRAWING NO.  
**TPO 192**



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