

The above application was for full planning permission for the demolition of existing buildings on the site, and the erection of 99 dwellings, access, parking and amenity space. The application was refused by the Council on 21st August 2017, following its consideration by the Planning Committee at its meeting on the 15th August. An appeal against that decision has now been submitted to the Planning Inspectorate.

RECOMMENDATIONS

That the Committee confirms:

- 1) that it wishes officers to now write to the appellant to confirm that the obligations referred to in the recommendation that was provided to the Planning Committee on 15th August are required by the Local Planning Authority, with the exception of the financial contribution to the provision of off-site affordable housing which shall, whilst still representing 9% of the housing and required, be recalculated**
- 2) that in preparing the Council's Statement of Case, officers include reference to these above requirements;**
- 3) that in agreeing the required Statement of Common Ground officers take into account this resolution**
- 4) that should the appellant seek before the appeal is determined to enter into a Section 106 agreement with the Council containing such obligations, officers have the appropriate authority to enter into such an agreement.**

Reason for report

The application was refused planning permission on 21st August 2017. An appeal has been submitted to the Planning Inspectorate but it has not yet been accepted as a valid appeal. This report is solely concerned with the issue of planning obligations.

Background

The Planning Authority refused planning permission for this application on the 21st August for the following reasons:

- 1. The proposed development would have both direct and indirect impacts on the irreplaceable Chorlton Moss Local Wildlife Site. The location of the balancing pond in the Moss would result in the loss of part of the Local Wildlife Site and the development would have an adverse impact on the potential future restoration of the habitat to active bog. The development would thereby be contrary to saved Policy N3 of the Newcastle-under-Lyme Local Plan 2011, Policy CSP4 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 and the aims and objectives of the National Planning Policy Framework (2012) (the NPPF).*
- 2. The adverse impact of the development upon the Chorlton Moss Local Wildlife Site significantly and demonstrably outweighs any benefits of the development when assessed against the policies of the National Planning Policy Framework (2012) taken as a whole and the proposal therefore represents an unsustainable development.*

Subsequent to the issuing of the decision notice the Local Planning Authority wrote to the applicant's agent drawing attention to the fact that the Planning Committee had resolved that explicit reference should be made in the decision notice to the development being contrary to paragraph 118 of the NPPF.

The recommendation before the Planning Committee (with respect to application 16/01101/FUL) was that planning permission be granted subject to the applicant entering into a Section 106 obligation to secure the following:

- i. A contribution of £436,706 towards the provision of education facilities at Baldwin's Gate Primary School and Madeley High School
- ii. Provision of 16% of the dwellings as affordable units
- iii. A financial contribution of £334,650 towards the off-site provision of the equivalent of 9% of the number of dwellings as affordable units
- iv. A financial contribution of £291,357 towards off-site public open space improvement and maintenance
- v. A travel plan monitoring fee of £6,430
- vi. A Management agreement for the restoration and long-term maintenance of part of the Chorlton Moss LWS
- vii. A Management agreement for the long-term maintenance of the open space on the site

The report to the Committee on the application advised that obligations listed above were considered necessary because without such matters being secured the development would fail to secure appropriate provision for required education facilities, an appropriate level of affordable housing, the provision and management of public open space both on and off site, appropriate management of the Local Wildlife Site, and measures to ensure that the development achieves sustainable development outcomes.

The decision notice of the Local Planning Authority, drawn up on the basis of the resolution of the Planning Committee of the 15th August, makes no express reference to these obligations, which at the time of the decision of the Committee were not "on the table".

An appeal has now been lodged against the Council's decision and in the appeal documents submitted to the Planning Inspectorate, it is indicated that the appellant does intend to submit a planning obligation with respect to the appeal. Within their Statement of Case the appellant indicates that "a signed Unilateral Undertaking will be issued to the Inspector" and their Draft Statement of Common Ground (which has not yet been agreed to) states "The Appellant and Council are working jointly on a Section 106 agreement to address affordable housing, open space, education, travel plan monitoring, and the Chorlton Moss Management Plan".

The decision of the Planning Authority has been made with respect to 16/01101/FUL, the decision notice has been issued, and is now the subject of the appeal. There is no suggestion that the Council either can or should add to its grounds of refusal of the application. It is however appropriate and timely to make the Local Planning Authority's position in this appeal with respect to planning obligations absolutely clear. Whilst the Council cannot be made to enter into planning obligations, these can be put to the Inquiry by means of what is called a Unilateral Undertaking and it is expected of it as the LPA that it will respond to and comment upon any such Undertaking.

One of the examples given in national guidance of behaviour by Local Planning Authorities (which can be a basis for a 'substantive award of costs against that LPA) is requiring that an appellant enter into a planning obligation that does not accord with the law, or relevant national policy in the National Planning Policy Framework, on planning obligations.

Whilst confirmation has not yet been received of the appeal, copy of notice of the appeal was given to the Local Planning Authority on 18th December, and the Planning Inspectorate have since been in correspondence with your officers regarding the procedure by which the appeal is to be determined. The Planning Inspectorate have since confirmed that subject to satisfactory validation (of the appeal) they intend to handle it by way of an inquiry. The Council is accordingly already on notice that there is to be an appeal against its decision, and it needs to determine its position now.

A further planning application (17/01024/FUL) has now been submitted for 97 dwellings and will come before the Planning Committee for its consideration in due course.

It is appropriate to note that consultation responses (on that application) are still awaited in a number of cases but with respect to contribution (i) the Education Authority have advised your officer that they intend, as before, to seek a contribution towards primary school and secondary school provision (on the basis that the schools in question continue to be projected to be full for the foreseeable future) and at the same rate (per place) as they did previously. Similarly with respect to item (v) the Highway Authority are again seeking the same contribution of £6,430 towards travel plan monitoring costs.

The Landscape Development Section have however indicated they will be requesting a contribution by the developer for capital development/improvement of offsite open space of £4,427 per dwelling in addition to £1,152 per dwelling for 60% of maintenance costs for 10 years making a total contribution of £5,579 per dwelling. They say this would be used for improvements to the open space and play facilities at Whitmore Village Hall (as was the case when they commented upon the previous application).

The public open space contribution of £291,357 recommended by your Officer in August 2017 was for the sum of £2,943 per dwelling reflecting the amount sought in February 2017 by the Landscape Development Section (which was based upon the figures contained within the North Staffordshire Green Space Strategy). In March 2019 the Council adopted the Newcastle-under-Lyme Open Space Strategy, which contains inter alia higher per dwelling figures. As with any such change there is always a transition period particularly where applicants are relying upon advice given to them at pre-application stage or when consultees have already provided their views. It was considered in this case appropriate to seek the figure sought by the Landscape Development Section.

Whilst the Planning Committee in refusing the application came to no express decision in August (on what if any contributions would be appropriate), for the Council now to seek the higher public open space rate per dwelling, in the absence of any change in circumstances since August, does not to your Officer appear reasonable and is accordingly not being recommended. In the normal course of affairs, had the Committee in refusing an application resolved that without an obligation securing a specific contribution the development would have been unacceptable, then it is the case for that contribution which would advanced at any subsequent appeal.

Comments have yet to be received (on the new application) from the Housing Strategy section of the Council but there is no reason to consider that the Council should not continue to seek affordable housing from the development comprising 25% of the development. The split recommended (16% on site and 9% in the form of a financial contribution to enable offsite provision) follows that found acceptable by the Inspector in the Baldwin's Gate, Gateway Avenue appeal, and there has been no change since then that your Officer can identify.

As to the quantum of the off-site contribution, it is some time since the calculation (as to the amount) was undertaken (by the District Valuer in May 2017) and it is considered appropriate to revisit that amount. That will require the co-operation of the applicant and resources.

The obligation concerning the Management agreement for the long-term maintenance of the open space on the site remains appropriate and therefore should be sought.

With respect to the obligation to secure the Management agreement for the restoration and long-term maintenance of part of the Chorlton Moss LWS., this could be advanced anyway by the appellant and no doubt will. No useful purpose would be served by the Council seeking to oppose such an obligation and indeed it is necessary to secure the offered Management agreement.

It is considered that all of the above obligations would meet the statutory and policy tests for obligations and would be lawful.

Date report prepared: 22nd January 2018