

The application is for the conversion of a single house into four apartments, comprising of 3 one bedroom apartments and 1 two bedroom apartment, with associated parking and landscaping.

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

The 8 week period for the determination of this application expired on 25th April 2018, but has been extended by agreement with the applicant to the 28th May 2018.

RECOMMENDATION

REFUSE for the following reason:-

1. 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).

Reason for Recommendation

The contents of the Councils Open Space Strategy (as a material planning consideration) trigger's a public open space financial contribution for the development. This is in line with the approach taken to other decisions for minor residential development within the Borough, also recently supported at appeal. An application for the development proposed has already been determined by the Council with only the lack of a legal agreement to pay a financial contribution of £19,732 (equating to £4933 per apartment) towards the upgrade of public open space provision as the reason to refuse planning permission. The applicant has submitted the current application with additional financial information which seeks to demonstrate that the public open space contribution required to comply with policy will render the scheme unviable. The validity of that argument is being independently reviewed and the outcome of that review is awaited. A further update will be given taking into account that expected information.

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 validity of viability argument made by the applicant is being independently assessed and when received that will be taken into consideration.

Key Issues

The proposal has already been subject to planning decision under application reference number 17/00850/FUL (under delegated powers). The application was refused on the basis that:-

1. 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).

All matters with respect to the appearance of the scheme, the impact to residential living conditions and highways impacts have previously been found to be acceptable. There has been no material change in planning circumstances that would warrant further consideration of such matters. As such the main issue for consideration in the determination of this application is whether or not it is appropriate for the Council to seek a financial contribution towards public open space and whether, in light of the viability argument put forward by the applicant, such a financial contribution should be secured.

1. Is it still appropriate for the Council to seek a financial contribution towards public open space in light of the viability argument put forward by the applicant?

Saved Local Plan policy C4 (part of the approved development plan) does not support the seeking of a contribution for developments of less than 10 units or less than 0.4 ha. Policy CSP5 of the more recent Core Spatial Strategy (also part of the development plan), indicates that developer contributions will be sought to provide a key funding source to meet the needs of new residents and for the delivery interalia of the Urban North Staffordshire Green Space Strategy and any approved revisions or replacement strategies. There is such a replacement strategy, the Open Space Strategy that was adopted by Cabinet at its meeting on the 22nd March 2017.

The recommendation contained within the Development Strategy of the OSS was that as good practice for residential development 0.004 ha per dwelling of open space should be provided for the total number of dwellings; and that such open space will be provided in areas of not less than 0.1 ha regardless of development size. It goes on to indicate that a cost model for offsite contributions will need to be agreed based upon a Table contained within the OSS that is itself an update of the cost model that was contained within the 2007 Urban North Staffordshire Green Space Strategy.

In this case LDS are not seeking open space on the site itself but instead are requesting a contribution of £5,579 per additional residential unit.

Both the Local Plan and the Core Spatial Strategy form part of the approved development plan for the area. Para 215 of the Framework indicates that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that can be given).

A new draft Framework currently being consulted on by Central Government takes a broadly similar approach to that of the current Framework. Additionally it sets out that where proposals for development accord with all the relevant policies in an up-to-date development plan no viability assessment should be required to accompany the application. Whilst that is acknowledged it is the contents of the existing Framework which carry the most weight in forming a decision on the proposal. And those are the terms now applied.

In this case the CSS is more up to date than the Local Plan. In addition the application of the Open Space Strategy in the determination of planning application is consistent with paragraph 73 of the current Framework (and paragraph 97 of the draft) which indicates that policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. Both the current and draft Framework also sets out that information gained from the assessment should be used to determine what open space, sports and recreational provision is required.

The development applied for is well below the Local Plan (LP) policy C4 trigger threshold and it could be argued that the request is contrary to policy. It is, however, considered that the

contribution accords with the CSP5 of the Core Spatial Strategy which, as indicated above, specifies that developer contributions will be sought in accordance with the Green Space Strategy or any approved or replacement Strategy. As this policy is more up to date and is fully compliant with the Framework it should be given greater weight than LP policy C4.

Any developer contribution to be sought must be both lawful, having regard to the statutory tests set out in Regulation 122 and 123 of the CIL Regulations, and take into account guidance. It must be:-

- Necessary to make the development acceptable in planning terms
- Directly related to the development, and
- Fairly and reasonably related in scale and kind to the development.

It must also comply with national planning practice guidance on the seeking of contributions for small scale developments. Most importantly ministerial policy as set out in a Ministerial Statement of the 28th November 2014, since confirmed by the Court of Appeal in May 2016, indicates that “tariff-style contributions” should not be sought from developments of 10 units or less which have a maximum combined gross floor space of no more than 1,000 square metres. The proposal is such a development.

A tariff style contribution is defined as one where the intention is to require contribution to pooled funding pots intended to fund the provision of general infrastructure in the wider area. The LDS have indicated that the contribution in this case would be applied to Bradwell Lodge, within the Park, which is approximately 250m from application site, so whilst the amount is calculated on a “sum per dwelling” basis it does not meet the definition in the Guidance or Statement of a tariff-style contribution and therefore the guidance does not rule out seeking such contributions in this case.

The current and draft Framework advises that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

The contribution being sought is considered to meet the statutory tests. It is necessary to make the development acceptable in planning terms and directly related to this residential development (it seeks to address the additional demands upon open space which residential development brings) and is fairly and reasonably related in its scale – the Open Space Strategy setting out a detailed methodology to demonstrate how the capital element of the sum (£4,427) is calculated whilst the maintenance element (£1,152) represents 60% of the costs of 10 years maintenance – a figure in line with that sought by other LPAs, according to the Strategy, per residential unit. Having said that these calculations are based upon the provision of family homes and as such an element of the contribution is for play areas. Given that the accommodation proposed will not be occupied by families an adjustment would need to be made to the level of contribution to deduct the element towards play. The OSS details that £512 of the total £4,427 capital element is for play areas and therefore reducing the required sum by that amount as well as a proportionate amount for the maintenance element which equates to £134, the reduced amount would be £4,933 for each of the three additional units proposed.

For the avoidance of doubt it can be confirmed that the obligation would not be contrary to Regulation 123 either.

It is acknowledged by the Councils Supplementary Planning Document on Developer Contributions highlights that in some circumstances an applicant may believe what is being asked for by the Council will render a scheme unviable. Paragraph 173 of the current Framework also states that pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other

requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.

In such circumstances, for the Council to be persuaded to reduce its requirements, the onus is on the applicant to justify how and why special circumstances apply. The applicant has submitted some financial information to make a case that the development will not be viable with such an obligation. The information received is also subject to an independent viability appraisal to further to examine the financial impact of seeking the contribution specified, the outcome of which are awaited. A further report will therefore be provided following receipt and assessment of the independent appraisal information anticipated.

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 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
Policy CSP5	Open space, sport, recreation
Policy CSP10	Planning Obligations

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

Policy H1	Residential development: sustainable location and protection of the countryside
Policy T16	Development – General parking requirements
Policy T18	Development servicing requirements
Policy C4	Open Space in New Housing Areas

Other Material Considerations

National Planning Policy Framework (March 2012)

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

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

[Draft revised National Planning Policy Framework](#)

Supplementary Planning Documents/Guidance

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

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

[Developer contributions SPD \(September 2007\)](#)

Planning History

17/00850/FUL	Conversion of a single house into four apartments, comprising of 3 one bedroom apartments and 1 two bedroom apartment, with associated parking and landscaping	Refused 2017.
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Views of Consultees

The **Environmental Health Division** has no objections subject to a condition restricting hours when construction takes place.

The **Highway Authority** has no objections subject to:-

1. The development hereby permitted shall not be brought into use until the parking and turning areas have been provided in accordance with drawing number 5609-003 A and shall be surfaced in a porous bound material and thereafter retained for the lifetime of the development.
2. Prior to first use of the development, secure (and weatherproof) cycle parking shall be provided in accordance with details to be first submitted to and approved in writing by the Local Planning Authority and shall thereafter be retained and maintained for the life of the development.

Landscape Development Section has no objection to this proposal subject to planning condition requiring approval of landscaping proposals. In addition if the development is approved they request a S106 contribution by the developer for capital development/improvement of off-site open space of £4,427 per dwelling in addition to £1,152 per dwelling for 60% of maintenance costs for 10 years. Total contribution: £5,579 per dwelling. This would be used for improvements to surfacing at Bradwell Lodge (within the park) which is a 250 meter walk from the site.

Representations

4 letters of representation have been received raising the following concerns:-

- Aggravation of parking problems.
- The development will cause access problems for neighbouring residents using the road and at the junction shared with Porthill Bank. As well as residents accessing privately owned garages.
- Vehicles already park on the pavement to the detriment of public safety.
- The road is used as a short cut to Porthill Bank.
- The proposal is out of keeping with the character of the area.

Applicant/agent's submission

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/18/00162/FUL>

Background Papers

Planning File
Planning Documents referred to

Date Report Prepared

8th May 2018.