

The Application seeks to remove condition 14 of planning permission 17/00324/FUL for the construction of 22 affordable dwellings. Condition 14 as worded in the decision notice is as follows:

Within 9 months of the date of this decision an odour abatement system to the kitchen ventilation system of the hot food takeaway adjoining the site on Lower Ash Road shall have been installed in accordance with full and precise details that have been submitted to and approved in writing by the Local Planning Authority beforehand. The system shall be designed to operate in full accordance with the approved details before any of the dwellings hereby permitted are occupied and shall thereafter be maintained in accordance with the approved details. The kitchen ventilation system shall be regularly maintained to ensure its continued operation and the cooking process shall cease to operate if at any time the extraction equipment.

The reason given for the condition within the decision notice was “*In the absence of the provision of a suitable odour abatement system to the kitchen ventilation system of the hot food takeaway adjoining the site on Lower Ash Road there is a high impact risk that odour arising from that premises will adversely affect the living conditions of the occupiers of the development and without such an odour abatement system the residential development is not appropriate for this location.*”

The 13 week period for this application expires on 5th September 2018.

RECOMMENDATION

PERMIT the removal of condition 14 of 17/00324/FUL subject to all the conditions on that permission that remain relevant now that the development has been completed.

Reason for Recommendation

It is considered, on the basis of evidence that has been provided and absence of complaint, that the condition cannot now be considered to meet the tests on the use of conditions as set out in the NPPF. As such the condition should be removed.

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

This is now considered to be a sustainable form of development in compliance with the provisions of the National Planning Policy Framework.

Key Issues

Full planning permission was granted in 2016 for the construction of 22 affordable dwellings, reference 14/00767/FUL. A condition of that permission required the provision of an odour abatement system to the kitchen ventilation system of the hot food takeaway adjoining the site on Lower Ash Road in accordance with details agreed beforehand and prior to the commencement of the development. The condition was imposed in the interests of residential amenity. That condition was subsequently varied, in response to application reference 16/00326/FUL, so that the requirement to provide the odour abatement system was prior to occupation of any of the dwellings within the development rather than prior to the commencement of the development. That amended requirement was subsequently imposed on a later permission 16/00724/FUL which was implemented.

In 2017 a further application, reference 17/00324/FUL, was submitted which sought approval for the removal of the condition. At that time it was concluded that even though some of the development was occupied and no odour complaints had been received, it was still highly likely that the occupants of the residential development would experience issues of odour nuisance from the hot food takeaway. In light of that Committee resolved that the requirement to provide an odour abatement system should remain. The condition was varied, however, so that it required that the odour

abatement system had to be provided within 9 months of the date of decision, rather than prior to first occupation. Such a time frame was considered necessary to give the developer the opportunity to commission and install a suitable odour abatement system without the residents having an unreasonably long period over which odour nuisance arises. In addition this time period would give the developer an opportunity to gather some 'evidence' of a lack of odour nuisance and apply again for the removal of the condition requiring the provision of the odour abatement system if they considered that such evidence demonstrated that there is no need for such a system.

In support of the current application the applicant, the developer, has provided copies of the responses to a questionnaire that was sent to the occupants of the residential development built on this site. The questionnaire asked how long had they been a resident of the property; whether they had experienced an odour nuisance arising from the hot food takeaway; and whether they had had cause to complain to the Borough Council about the odour. Responses have been provided from 11 addresses within the development. The responders have not all answered all of the questions. The responses received are as follows:

- Of those that gave an indication as to how long they have lived at the property 7 said either 1 year or June 2017; 1 said July 2017; 1 said September 2017 and 1 said 3 months (i.e. 10 out of the 11 responses answered this question)
- All 11 indicated that they had not experienced odour nuisance.
- 5 indicated they had not complained to the Borough Council, the remainder did not respond.

In addition the applicant has submitted records indicating that the entire system of exhaust and ducting were cleaned in January this year and that they should be cleaned every 12 months. This appears to be an insurance requirement.

The Environmental Health Division who have previously strongly argued for the need for such odour extraction system, having taken into consideration the supporting information provided and in recognition that no complaints have been received, have raised no objection to the removal of the condition. In light of this it is considered that it cannot now be concluded that the condition remains necessary, relevant to the development that has been permitted and reasonable in all other respects. As such the imposition of the condition does not comply with the tests set out in the current and draft NPPF and should therefore be removed.

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](#)

None relevant

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

None relevant

Other Material Considerations include:

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

[Draft revised National Planning Policy Framework](#)

[Planning Practice Guidance](#) (March 2014) including guidance on the use of conditions

DEFRA "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems. (2005)

Relevant Planning History

14/0767/FUL Permit – construction of 22 affordable dwellings on the site of the former Woodshutts Inn. Condition 15 of that permission relating to the requirement to provide odour abatement equipment at the adjoining property was varied under application reference 16/00326/FUL and subsequently condition 24 of that permission relating to the provision of affordable housing was varied under application reference 16/00724/FUL. Subsequently a further application was submitted seeking the removal of the same condition (now number 14), under reference 17/00324/FUL. The removal of the condition was not accepted but it was varied as set out above.

Views of Consultees

The **Environmental Health Division** advises that on the basis of the information supplied and having reviewed their records they do not object to this application.

The views of **Kidsgrove Town Council** have been sought, but as they haven't responded by the due date it is assumed that they have no comments to make.

Representations

None received.

Applicant's/Agent's submission

The application is supported by

- Records of the cleaning undertaken on the existing extraction system at the premises.
- Responses to a questionnaire sent to residents of the development regarding smells that may have been experienced from the takeaway.

All are available for inspection at the Guildhall and on the website that can be accessed by following this link <http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/18/00418/FUL>

Background papers

Planning files referred to
Planning Documents referred to

Date report prepared

2nd July 2018