

**2 – 4 MARSH PARADE, NEWCASTLE UNDER LYME**  
**MARSH BOX DEVELOPMENTS**

**17/00722/FUL**

Full planning permission was granted for the proposed demolition of existing buildings and the erection of a 4-storey apartment block with parking in June 2017 (Ref. 17/00179/FUL). Prior to the grant of the full planning permission a Section 106 agreement was entered into which secured a review mechanism of the scheme's ability to make a policy compliant contributions to public open space and on-site affordable housing, if the development was not substantially commenced within 12 months from the date of the decision.

A subsequent Section 73 planning application (reference 17/00722/FUL) for the variation of condition 2 of 17/00179/FUL to substitute approved plans with revised plans was then approved in December 2017. A deed of variation to the original Section 106 agreement was completed which referred to the new planning permission and secured the review mechanism should the development not substantially commence within 12 months from the date of the original decision (23 June 2017).

The development has not substantially commenced by the 23 June 2017 and the developer now wishes to seek a further deed of variation to the original Section 106 agreement to allow a further 12 months for substantial commencement of the development to take place. This is an informal request, and there is no appeal can be made by the developer if the Council does not agree to this request.

**RECOMMENDATION**

**That the Committee agree that:-**

- 1. The developer be advised that the Council as the Local Planning Authority is willing to agree to the completion of a Deed of Variation to secure a review mechanism of the scheme's ability to make a policy compliant contribution to public open space and the provision of policy-compliant on-site affordable housing, if the development is not substantially commenced within 12 months, and the payment of such a contribution and the provision of such affordable housing, on proportional basis, if found financially viable,**
- 2. The date by which the Deed of Variation must be completed by is the 9<sup>th</sup> November 2018, or another date agreed by the Head of Planning, if he considers it appropriate.**

**Reason for Recommendation**

Following the receipt of up to date independent advice on the financial viability of the scheme it is concluded that the proposed development is still unable to support policy compliant Section 106 obligations. The scheme is still considered to represent a highly sustainable form of development that would contribute to the delivery of housing supply in the Borough. The site has been vacant for a number of years which does little to enhance the appearance of the area and its redevelopment will be beneficial to the area. A further deed of variation to allow an additional 12 months before a review mechanism is therefore considered necessary and appropriate.

**Key Issues**

The authority to authorise the entering into of a Deed of Variation rests with the Planning Committee. The current Section 106 agreement requires a reappraisal to be undertaken upon substantial commencement where such substantial commencement is not achieved by the 23<sup>rd</sup> June 2018 but the developer has instead asked the authority to agree to a further 12 month period within which substantial commencement can commence with no contributions. This is considered a reasonable request as it provides some certainty for the developer which would not otherwise exist.

The Authority has again sought independent advice from the District Valuer (DVS) who still conclude, as they did in 3 January 2017 (the date of the original financial viability report), that the approved

development is still not viable with a policy compliant financial contribution towards public open space and on site affordable housing provision, if any level of contribution or affordable housing is required.

The new NPPF marks a significant change in the approach to be adopted to viability. It indicates that where up-to-date policies have set out the contributions expected from the development, planning applications that comply with them should be assumed to be viable, and it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. Policies about contributions and the level of affordable housing need however to be realistic and not undermine the deliverability of the Plan. However in the Borough it is not presently the case that up-to-date development plan policies, which have been subject of a viability appraisal at plan-making stage, have set out the contributions expected from development, so the presumption against viability appraisals at application stage does not apply. That will not be the case until the Joint Local Plan is finalised. A further factor to take into account here is that this is not a “new application”. The scheme is still considered to represent a highly sustainable form of development that would contribute to the delivery of housing supply in the Borough. The site has been vacant for a number of years which does little to enhance the appearance of the area and its redevelopment will be beneficial to the area.

On this basis, and given the advice of the District Valuer, it is recommended that a Deed of Variation be secured to allow a further 12 months for the development to substantially commence. If it does not, then a yet further appraisal will be required when it does.

## **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 CSP6: Affordable Housing  
Policy CSP10: Planning Obligations

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

Policy C4 Open Space in New Housing Areas

### **Other Material Considerations**

[National Planning Policy Framework](#) (July 2018)

[Planning Practice Guidance](#) (March 2014, as updated)

[Community Infrastructure Levy Regulations](#) (2010) as amended and related statutory guidance

[Supplementary Planning Documents/Guidance](#)

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

[Affordable Housing SPD](#) (2009)

[Newcastle-under-Lyme Open Space Strategy](#) – adopted March 2017

### **Views of Consultees**

None undertaken

### **Date report prepared**

27 September 2018