

The above application was for planning permission for the erection of 10 dwellings at land off Woodrow Way, Ashley. The application was refused by the Planning Authority on 6<sup>th</sup> December 2017 (the decision notice being issued on the 8<sup>th</sup> December 2017) and an appeal was then lodged against that decision in July of this year.

**RECOMMENDATION**

That the decision of your Officer taken under the Matters of Urgency provisions, following consultation with the Chair, that the Council should agree to enter into a Section 106 agreement, be noted

**Reason for Recommendation**

The matter was urgent, in the light of the deadline imposed by the Planning Inspectorate, and an immediate decision was required which was then taken following consultation with the Chairman. The basis for the decision is explained in the report below.

**KEY ISSUES**

As Members may recall, the Planning Committee refused at its meeting on the 6<sup>th</sup> December 2017 an application (17/00605/FUL) for the erection of 10 dwellings at land off Woodrow Way, Ashley. The decision of the Committee was to refuse the application on the following grounds:

- *The proposed development, because of its isolated location away from a higher level of services, employment and public transport links, would mean that residents would be dependent on the use of private motor vehicles. The development of this greenfield site would not materially enhance or maintain the viability of a rural community in a significant way and is considered to be an unsustainable form of development. Notwithstanding that the Council cannot demonstrate an up to date 5 year plus 20% supply of deliverable housing sites, there is no presumption in favour of the proposal. For these reasons the proposed development is contrary to the requirements and guidance of the National Planning Policy Framework (2012). It would also create a precedent for the consideration of similar proposals around the village envelope of Ashley.*
- *The adverse impacts of the development, namely the reliance on the use of private motor vehicles and the extension of built development into the open countryside would significantly and demonstrably outweigh 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.*
- *In the absence of a secured planning obligation, the development fails to make an appropriate contribution towards the provision of affordable housing which is required to provide a balanced and well-functioning housing market, as referred to in the Newcastle-under-Lyme Borough Council Affordable Housing Supplementary Planning Document (2009) and the Newcastle-under-Lyme Borough Council Supplementary Planning Document on Development Contributions (2007). The proposal would thus be contrary to Policies CSP6 and CSP10 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, Policy IM1 of the Newcastle-under-Lyme Local Plan 2011, and the aims and objectives of the National Planning Policy Framework (2012).*
- *In the absence of a secured planning obligation and having regard to the likely additional pupils arising from the development and the capacity of existing educational provision in the area, the development fails to make an appropriate contribution towards education provision as referred to in the Staffordshire County Council Education Planning Obligations Policy (November 2003, as subsequently updated) and the Newcastle-under-Lyme Borough Council Supplementary Planning Document on Development Contributions (2007). For this reason the proposal would fail to provide a sustainable form of development and would be contrary to Policy CSP10 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, Policy IM1 of the Newcastle-under-Lyme Local Plan 2011, and the aims and objectives*

*of the National Planning Policy Framework (2012).*

The recommendation to the Committee failed to include a further reason for refusal referring to the lack of an obligation securing the long term maintenance of the public open space on site and therefore the Committee did not, in its decision to refuse the application, refer to a lack of such an obligation being “on the table”.

An appeal was lodged against the Council's decision and in completing and submitting the appeal form in June, the appellant's agent indicated that it was intended to submit a planning obligation with the appeal. In their Statement of Case, in support of their appeal and submitted at the same time, the agents indicated that “in terms of reasons for refusal 3 and 4 that were included in the decision notice as a result of the absence of a mechanism to secure planning obligations, a Section 106 Agreement will be agreed and signed prior to the determination of the appeal which would address these two reasons for refusal”. In late August the appellant's agent submitted a draft Section 106 to the Council with the intention of submitting a certified copy of the obligation to the Planning Inspectorate by an original deadline of 14<sup>th</sup> September. Subsequently an extension to the 28<sup>th</sup> September was given.

Notwithstanding the failure by the Council to include a reason for refusal referring to the lack of an obligation securing the long term maintenance of the public open space on site, the draft Section 106 agreement included an obligation relating to that matter.

The authority to enter into a section 106 agreement rests with the Planning Committee (Planning functions part of Appendix 5 to the Constitution). The decision about whether or not to enter into a Section 106 agreement is thus for the Planning Committee to make. Appendix 4 of the Council's Constitution in the section headed Matters of urgency in the General Instructions Section indicates that in the event of a matter which is not delegated by the Officer Scheme of Delegation requiring action where there is no scheduled meeting where the matter can be considered by the appropriate Committee (and where the matter does not make or change policy), ...an Executive Director ( having consulted with the Leader or a Cabinet Portfolio holder or the Chair of the appropriate Committee (or in their absence the Vice Chair) shall have delegated authority to take such action, and the action taken be shall be reported to the next available meeting of the.....Committee as appropriate.

Acting on the basis that unless the Planning Inspectorate received a planning obligation by the 28<sup>th</sup> September no account would be taken of that obligation and being of the view that it was in the public interest for the Council to enter into such an agreement, your Officer consulted with the Chairman on the 19<sup>th</sup> September - the next Planning Committee then being on the 9<sup>th</sup> October (i.e. after the 28<sup>th</sup> September).

The Planning Inspectorate subsequently agreed to extend the period for submission of a completed Section 106 to the 12<sup>th</sup> October. Although that date was after the Committee meeting date of 9<sup>th</sup> October, given the considerable amount of time that it takes to prepare a Section 106 agreement with drafts being exchanged between the parties (there being three in this case), leaving a decision until 9<sup>th</sup> October date (as to whether or not the Borough Council is prepared to be party to such an agreement) would have been unrealistic and moreover potentially viewed by the Planning Inspectorate as ‘unreasonable’.

The urgency of the decision arose in part due to the late submission by the appellant of the draft Section 106 and in part due to Officers being on annual leave and then having competing priorities on their return to work. There were grounds to consider that it would be desirable, from a public interest perspective, for a decision to be made immediately upon this matter.

First of all the appellant had an alternative (a fall back) which they could pursue, if the decision were not made - the preparation and submission by the 12<sup>th</sup> October to the Planning Inspectorate of a Unilateral Undertaking - this would not tie the recipients of the contributions (the Borough Council and the County Council) to expend the money for any stated purpose and such expenditure would be entirely a matter of their goodwill.

Secondly it was possible that the Inspector might side with the appellants with respect to the reasons for refusal relating to the principle of development, but consider a planning obligation was justified. This would mean that a further application for planning permission would have to be submitted, this

time with a Section 106 obligation, to no public benefit at all (and indeed at a cost to the public purse as such an application could potentially be fee exempt).

Following negotiations with the appellant's solicitor the Borough Council signed the agreement on 10<sup>th</sup> October and it was submitted to the Planning Inspectorate on 11<sup>th</sup> October.

The action taken (the authorising of the signing of the agreement) is reported to the Planning Committee as required.

## 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 CSP10: Planning Obligations

Newcastle-under-Lyme Local Plan 2011 (NLP)

Policy IM1: Planning obligations

### **Other material considerations include:**

National Planning Policy Framework (on planning obligations)

National Planning Practice Guidance (on planning obligations, and on appeals)

### **Supplementary Planning Guidance/Documents**

Developer Contributions SPD (September 2007)

#### Background Papers

Planning file

Planning documents referred to

#### Date report prepared

24<sup>th</sup> October 2018