

The application seeks full planning permission for the erection of 14 dwellings

The site lies within the urban area of Chesterton, as indicated on the Local Development Framework Proposals Map. The site extends to approximately 0.25 hectares

Access is proposed off London Road and the site was previously occupied by the Bennett Arms Public House which was demolished a number of years ago.

This application was reported to Committee initially on the 9<sup>th</sup> October, then on 6<sup>th</sup> November, and then again on the 4<sup>th</sup> December. At that meeting a decision was deferred for a maximum of 3 months to give additional time to the applicant to address the concerns raised by the Lead Local Flood Authority.

**The statutory 13 week determination period for this application expired on the 9<sup>th</sup> August but the applicant has agreed extensions to the statutory determination period to the 15<sup>th</sup> March.**

### **RECOMMENDATION**

**Until revised flood risk information is received and the Lead Local Flood Authority indicate that their current concerns have been addressed, refusal on the following grounds:-**

- 1. The development, without suitable flood risk mitigation measures and SuDS, would lead to the potential for flooding and would not meet sustainable development objectives is therefore contrary to policy CSP3 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 (2018).**
- 2. In the absence of a secured planning obligation there is not an appropriate mechanism to secure a financial contribution of £18,900 towards education places and a review mechanism to allow for the possibility of changed financial circumstances should the development not proceed promptly, and, in such circumstances, the potential provision of a policy compliant financial contribution towards public open space and education places is not achieved. The proposal would thus be contrary to Policies CSP5 and CSP10 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, saved Policies C4 & IM1 of the Newcastle-under-Lyme Local Plan 2011, the Council's Open Space Strategy and the aims and objectives of the National Planning Policy Framework (2018).**

### **Reason for recommendation**

Whilst the principle of new housing development on the site is considered acceptable and the design of the scheme, access and parking arrangements and the impact on residential amenity levels are also considered acceptable, the application has failed to address flood risk concerns and approval of it would be contrary to the NPPF.

It is accepted, following the obtaining of independent financial advice, that a fully policy compliant scheme is not viable and that the scheme can only sustain significantly reduced contributions. The housing development and regeneration benefits of the development are considered to outweigh the harm caused by the additional demand created by the development on education places and public open space in the area. However without completed planning obligations, the contribution that the scheme can make is not secured and there is not an appropriate review mechanism to allow for changed financial circumstances should the development not promptly proceed. Such obligations are not currently "on the table", although there is no reason to consider that the applicant would not enter into such obligations.

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

Officers requested a flood risk assessment to be submitted over 9 months ago and suitable information is still awaited. Without suitable information being submitted the Local Planning Authority has no alternative but to now refuse the application because more than adequate time has been allowed for the applicant to address the flood risk matters.

### **KEY ISSUES**

1.1 The application seeks full planning permission for the erection of 14 dwellings with associated landscape works and car parking.

1.2 The site was previously occupied by the Bennett Arms public house, which was demolished a number of years ago following the granting of planning permission (09/00155/FUL) for the demolition of the Public House and the erection of seven dwellings. It is accepted that a material commencement of this development was achieved at that time but the development was not progressed and the site has remained undeveloped since.

1.3 The main issues for consideration in the determination of this application are accordingly:-

- The principle of residential development
- The design and impact on the character and appearance of the area
- Car parking and highway safety
- Residential amenity matters
- Planning obligation considerations
- Flood risk considerations

### **2.0 The principle of residential development**

2.1. Local and national planning policy seeks to provide new housing development within existing urban development boundaries on previously developed land.

2.2 Saved Newcastle Local Plan (NLP) policy H1 supports new housing in the urban area of Newcastle and Kildsgrove with policy ASP5 of the Core Spatial Strategy (CSS) – the most up-to-date and relevant part of the development plan - setting a requirement for at least 4,800 net additional dwellings in the urban area of Newcastle-under-Lyme by 2026.

2.3 Policy SP1 of the CSS states that new development will be prioritised in favour of previously developed land where it can support sustainable patterns of development and provides access to services and service centres by foot, public transport and cycling. The CSS goes on to state that sustainable transformation can only be achieved if a brownfield site offers the best overall sustainable solution and its development will work to promote key spatial considerations. Priority will be given to developing sites which are well located in relation to existing neighbourhoods, employment, services and infrastructure and also taking into account how the site connects to and impacts positively on the growth of the locality.

2.4 The NPPF seeks to support the Government's objective of significantly boosting the supply of homes. It also sets out that there is a presumption in favour of sustainable development.

2.5 The land is located in the urban area within an area of mixed land use and the principle of housing development on the land has been accepted previously. It is considered to represent a sustainable location for housing development by virtue of its close proximity to services, amenities and employment opportunities.

2.6 The proposed development complies with local and national planning policy guidance. The construction of 14 dwellings would contribute to the area's housing supply and the principle of residential development on this site is considered acceptable.

### **3.0 The design and impact on the character and appearance of the area?**

3.1 Paragraph 124 of the NPPF states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Furthermore, paragraph 127 of the Framework lists 6 criterion, a) – f) with which planning policies and decisions should accord and details, amongst other things, that developments should be visually attractive and sympathetic to local character and history, including the surrounding built environment and landscape setting while not preventing or discouraging appropriate innovation or change.

3.2 The site is within a mixed area and sits on an important approach route into Chesterton.

3.3 The proposal is for a mix of two storey and two and a half storey town houses with six of the proposed dwellings fronting London Road. The access point for the development is also proposed to be off London Road. The remaining houses will be formed by two further blocks within the site with a car parking court arrangement proposed.

3.4 The matter was considered at a Design Review panel and necessary amendments were made to the scheme. The main change has been a more rationalised and simplified design and layout. The application is also supported by a landscape plan which demonstrates that there is some, albeit limited, opportunity to provide soft landscaping to the front of the dwellings that front London Road. The use of appropriate materials and boundary treatments would also ensure an acceptable appearance for the proposed development.

3.5 It is noted that the design and scale of the proposed dwellings would not be similar to the nearest residential properties on Leech Avenue, which have a traditional, uniform semi-detached appearance but the design and appearance of the proposed development would not harm the visual integrity of the streetscene or wider visual amenity of the area. The land has been left undeveloped for a number of years and the proposed development, particularly the buildings that front London Road, would enhance the appearance of this important approach route into Chesterton. The proposal is considered to be in accordance with policy CSP1 of the CSS and the guidance and requirements of the NPPF.

#### 4.0 Residential amenity matters

4.1 Paragraph 127 of the NPPF lists a set of core land-use planning principles that should underpin decision-taking, one of which states that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

4.2 Existing properties that front Leech Avenue have a rear outlook towards the application site. The submitted site layout plan shows the relationship between existing and proposed dwellings with distances specified. In this respect the front elevations of plots 7-10 would face towards the rear elevations of properties on Leech Avenue which are likely to have principal windows at ground floor and first floor. The separation distance specified is 23.4 metres and the Council's SPG – Space around Dwellings advises that where a two storey dwelling faces a dwelling of a similar scale the distance between principal windows should be 21 metres. It is acknowledged that plots 7-10 are two and a half storey in height but the rooms within the roof space are not categorised as having principal windows and the additional 2.4 metre separation distance would help to ensure acceptable amenity levels for the existing occupiers on Leech Avenue. Furthermore, sections plans have been submitted which show that the proposed dwellings would be on a lower finished ground level.

4.3 The Council's SPG indicates that for a three bedroom dwelling a private garden area of 65 square metres should be provided. Plots 4, 5, 7, 10, 12 & 13 all have rear gardens significantly less than the guidance but these areas would still ensure that the future occupiers would have outdoor space to sit out and for children to play. The shortfall of private amenity space for the future occupiers of the plots specified is a concern but there are a number of areas of public open space within walking distance of the site which would, to a certain extent, meet the needs of the occupiers also.

4.4 The Environmental Health Division has advised a number of conditions to protect future occupiers from noise impacts of the nearby industrial estate.

#### 5.0 Car parking and highway safety

5.1 The access to the site would be taken off London Road with off street car parking provision being via a parking court. The proposal provides 22 off street car parking spaces.

5.2 NLP policy T16 states that development which provides significantly less parking than the maximum specified levels will not be permitted if this would create or aggravate a local on-street parking or traffic problem. The NPPF advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. In March 2015 the Secretary of State gave a statement on maximum parking standards indicating that the government is keen to ensure that there is adequate parking provision both in new residential developments and around town centres and high streets. LPAs have also been encouraged not to set maximum limits on the amount of parking either.

5.3 The parking standards identified in the Local Plan indicates that for two or three bedroom dwellings, which are being proposed here, a maximum of two off street car parking spaces should be provided per dwelling. In this instance there are just over 1.5 spaces per dwelling.

5.4 The Highways Authority has raised no objections subject to a number of conditions, in particular the submission and approval of improved access arrangements and a car park management scheme which sets out how the car parking spaces will be allocated.

5.5 Whilst there is a shortfall in terms of the maximum specified car parking levels set out in Local Plan policy T16 the site is situated in a sustainable urban area with a bus stop directly outside the application site. The site is also within walking distance of shops in Chesterton, employment opportunities and education facilities which are in close proximity to the site. Therefore, the proposal would provide opportunities for other modes of travel other than the use of a private motor vehicle. The Highway Authority must be presumed to consider that the development would not result in an unacceptable impact on highway safety.

5.6 Subject to the advised conditions the proposed development is considered unlikely to lead to significant highway safety implications because an acceptable level of off street car parking is proposed and the access position is acceptable. The development would therefore meet the guidance and requirements of the NPPF.

## 6.0 Planning obligation considerations

6.1 The development of 14 houses does not trigger a requirement for affordable housing but a financial contribution of £33,244 towards secondary education places has been requested by the Education Authority who advise that a development of this size could add 3 primary school aged children and 2 secondary school aged children. Whilst Churchfields Primary School is projected to have sufficient space to accommodate the likely demand from pupils generated by the development, Chesterton Community Sports College is projected to be full for the foreseeable future so they advise that such a contribution is required.

6.2 A financial contribution of £78,106 towards the improvement and maintenance of public open space (POS) has also been requested and is required to make the development acceptable. This would make the development policy compliant and 'sustainable'. The contribution towards POS is sought for improvements to playground facilities at Bamber Place which is a 650 metre walk from the site, or Chesterton Park which is a 920m metre walk, or to open space facilities off Sheldon Grove which is immediately adjacent to the site, or Golf Course Walks which is 240 metre walk. It is considered to meet the requirements of Section 122 of the CIL Regulations being necessary to make the development acceptable in planning terms, to be directly related to the development and fairly and reasonably related in scale and kind to the development.

6.3 It is also necessary to consider whether the financial contributions sought comply with Regulation 123 of the CIL Regulations. Regulation 123 stipulates that a planning obligation may not constitute a reason for granting planning permission if it is in respect of a specific infrastructure project or a type of infrastructure and five or more obligations providing for the funding for that project or type of infrastructure have already been entered into since 6 April 2010. Regulation 123 would be complied with in this instance.

6.4 The financial contributions set out above were also requested during the determination of a previous planning application (17/00627/FUL) for a similar development - this application was subsequently withdrawn. At the time the applicant advised your officers that the scheme would be financially unviable with policy compliant financial contributions towards education places and Public Open Space. This resulted in independent advice being obtained from the District Valuer (DVS) who produced a financial viability report in April 2018. That report whilst confirming that a scheme with fully policy-compliant contributions would be financially unviable did indicate that some level of contributions (£18,900) could be afforded by the scheme without making it unviable. Whilst the report is now 10 months old, and no refresh of that report has been obtained, the DV has informally indicated that it is unlikely having regard to the movement since then of construction costs and sale values that the viability position will have materially changed and taking account of the fairly limited scale of development it is considered that it would not be inappropriate to proceed on the basis of the April 2018 appraisal, although as more and more time passes the need to obtain a new appraisal increases.

6.5 The revised NPPF marks a significant change in the approach to be adopted to viability in planning decisions. 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. 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.

6.6 The scheme does provide benefits, which include the redevelopment of a site that has been left undeveloped for a number of years and has had a detrimental impact on the visual amenity of the area. The development would also contribute to housing supply in the Borough and assist in particular in the regeneration of the Chesterton area where there have been a number of “stalled” housing sites in recent years. These benefits are considered to outweigh the harm caused by the additional demand created by the development on the infrastructure of the area that would be the result of reduced financial contributions.

6.7 As indicated it is considered that the scheme can support a financial contribution of £18,900 whilst the policy compliant contributions would be £33,244 towards secondary education places and £78,106 towards the improvement and maintenance of public open space - £111,350 in total. If the Committee are now prepared to accept the case for a less than policy compliant scheme there are a number of options. One could either reduce all of the contributions that are required by the same proportion (83%), or split the available contribution evenly e.g. £9450 to education places and £9450 to POS, or one can ‘ring-fence’ and protect one of the contributions and allow the other to be in this case not obtained at all. The Council has no agreed formal “hierarchy of need” in its Developer Contributions SPD which can be referred to in such cases.

6.8 In this case, your Officer would suggest that the immediate priority is education places and that the available £18,900 should be secured for secondary education places at Chesterton Community Sports College, with no contribution being secured for public open space.

6.9 It has to be acknowledged that market conditions, and thus viability, can change. On this basis it would be quite reasonable and necessary for the Local Planning Authority to require the independent financial assessment of the scheme to be reviewed if the development has not been substantially commenced within say one year of the grant of the permission, and upward only alterations then made to the contributions if the scheme is then evaluated to be able to support higher contributions. This would need to be also secured via the Section 106 agreement and further demonstrates the need to now reach a decision on the application promptly.

## 7.0 Flood Risk Matters

7.1 Paragraph 155 of the NPPF advises that “Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.” It also states in para.165 that “Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate.”

7.2 Policy CSP3 of the CSS also requires all suitable flood mitigation measures to be investigated and where possible incorporated into the development, along with the use of Sustainable Urban Drainage Schemes (SUDS).

7.3 The application was deferred at the 4<sup>th</sup> December Planning Committee for a maximum of 3 months to allow additional time for the applicant to address the concerns raised by the LLFA. A letter from the Chair requesting that the LLFA meet and cooperate with the applicant in resolving the issue was also sent as a method of expediting the discussions. This resulted in the LLFA attending a meeting with the applicant in January but very limited progress has been made in resolving the issues. Therefore, the position remains, as it did in December, that further flood risk investigations and potential mitigation are required and planning permission should not be granted until this further information is received.

7.4 The NPPF does advise that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions but in this instance there are still flood risk concerns and there is still no certainty that these concerns can be addressed without the scheme proposed having to change significantly to address these concerns. Leaving such matters to be dealt with by conditions remains contrary to the precautionary approach advised in the NPPF and policy CSP3 of the Core Spatial Strategy.

7.5 Members will now be aware that acceptable flood risk and sustainable drainage matters have been outstanding since the application was submitted in May 2018 and there is currently no indication that the matters will be resolved in the immediate future.

## **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 CSP6	Affordable Housing
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 C4	Open Space in New Housing Areas

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

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 Guidance/Documents

Developer contributions SPD (September 2007)

Newcastle-under-Lyme Open Space Strategy – adopted March 2017

Space Around Dwellings SPG (SAD) (July 2004)

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

Waste Management and Recycling Planning Practice Guidance Note approved in 2003 and last updated in February 2016

#### Relevant Planning History

Planning permission was granted under planning application reference 09/00155/FUL for the demolition of the existing public house and erection of seven dwellings. The Public House was demolished and construction of at least two of the dwellings commenced but no further work was carried out.

A planning application was also submitted under planning application reference 17/00627/FUL for 14 two and three storey terraced houses in three blocks. That application was subsequently withdrawn by the applicant.

#### Views of Consultees

The **Education Authority** states that the proposed development falls within the catchments of Churchfields Primary School and Chesterton Community Sports College.. The development is scheduled to provide 14 dwellings and a development of this size could add 3 Primary School aged pupils and 2 High School aged pupils. Churchfields Primary School is projected to have sufficient

space to accommodate the likely demand from pupils generated by the development. However, Chesterton Community High School is projected to be full for the foreseeable future. Therefore an Education Contribution for 2 High School places (2 x £16,622 = £33,244.00) is sought.

The **Highway Authority** raises no objections subject to conditions that secure the following;

- submission and approval of revised access details;
- no occupation of the dwellings until the road, parking and turning areas have been provided;
- submission and approval of surfacing, surface water drainage and delineation of car parking spaces;
- submission and approval of car park management scheme;
- existing site access made redundant and the crossing reinstated;
- provision of a sign indicating a private road at the new access;
- the access shall remain ungated; and
- submission and approval of a construction management plan.

The **Environmental Health Division** raises no objections subject to conditions that secure the submission and approval of a Construction and Demolition – Environmental Management Plan, land contamination matters, prior approval of external lighting, design measures to control noise impact levels on future occupiers, and the submission and approval of an assessment of the potential impacts arising from noise from the Holditch Industrial Estate.

They also raise no concerns regarding air quality impacts and no detailed air quality impact assessment has been requested in relation to air quality impacts of the local area upon the development.

The **Landscape Development Section** raises no objections subject to conditions which secure tree protection to retained and overhanging trees and landscaping proposals to be in accordance with the plans provided.

They also request a financial contribution for capital development/improvement of offsite open space of £4,427 in addition to £1,152 (per dwelling) for 60% of maintenance costs for 10 years. Total contribution £5,579 (per dwelling). The money to be used for improvements to the playground facilities at Bamber Place which is a 650 metre walk from the site, or Chesterton Park which is a 920 metre walk, or to open space facilities off Sheldon Grove which is immediately adjacent to the site, or Golf Course Walks which is 240 metre walk.

**Staffordshire County Council Flood Risk Team (LLFA)** advises that planning permission should not be granted because the Surface Water Flood Map indicates that the site is affected by a flow path from the NE and potential ponding in the SW and site access. There is also a culverted watercourse shown to adjacent to the SW site boundary. Further flood risk investigations (additional to the submitted FRA) are required and potential mitigation should be identified. They say that these could be fundamental to the design and layout of the proposed development. They also advise that further information to demonstrate that an acceptable Sustainable Drainage Strategy can be achieved is also requested.

The revised Flood Risk Assessment (FRA) did also not remove their objections. In particular, they say the potential flood risk indicated by the surface water flood map needs to be assessed in relation to the proposed development, with recommendations for mitigation in terms of layout, site and floor levels. They also advise that the proposed development needs to include an appropriate Sustainable urban Drainage Scheme (SuDS) to restrict runoff and provide adequate water quality treatment.

The **Staffordshire Police Crime Prevention Design Advisor (SPCPDA)** welcome the redevelopment of this site which has been an eyesore for a number of years. They raise no objections to the layout but advise that plots 1 and 6 in particular (but also plots 11 and 14) do not show (lockable) gating or fencing to the side of the properties. Other improvements to boundary treatments are also recommended.

The **Waste Management Section** raise no significant objections but require further information on waste collection arrangements.



Comments were also invited from the **Environment Agency, the Housing Strategy Section** and the **Greater Chesterton Locality Action Partnership** and in the absence of any comments from them by the due date it must be assumed that they have no observations to make upon the application.

#### Representations

Nine letters of representation have been received raising the following objections and concerns;

- The public have objected to previous applications,
- The land floods,
- There is Japanese Knotweed on the land,
- Extra air pollution from biomass system,
- Overshadowing, loss of light and privacy to neighbouring properties,
- The existing bus stop is not on the plans and plots 1 - 6 encroach onto the public highway,
- The site is too small for 14 dwellings,
- Increased traffic and congestion on already busy roads,
- Some of the plots have very small gardens which is contrary to policy,
- The houses nearest London road need to be protected from noise,
- How can garden waste bins be emptied?
- It represents overdevelopment of the site and would be overbearing.
- Inadequate parking provision and access arrangements,
- The area is prone to subsidence with some houses on Leech Avenue previously affected

#### Applicant/agent's submission

All of the application documents can be viewed on the Council's website using the following link.

<http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/18/00371/FUL>

#### Background Papers

Planning File

Development Plan

#### Date report prepared

13<sup>th</sup> February 2019