

The application is for residential development consisting of 5 no. 2 bed detached bungalows with new accesses.

The site lies within the Urban Area 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 30<sup>th</sup> January 2019 but has been extended by agreement to the 1<sup>st</sup> March by the applicant.**

#### **RECOMMENDATION**

**A. Subject to the applicant first entering into a Section 106 agreement by 29<sup>th</sup> March 2019 to secure a review mechanism of the scheme's ability to make a policy compliant financial contribution of £27,895 (index linked) towards public open space at Loomer Road Play Area, if the development is not substantially commenced within 12 months from the date of the grant of the planning permission, and the payment of such contribution if then found financially viable,**

**PERMIT subject to conditions relating to:-**

- i. Time Limit.**
- ii. Plans.**
- iii. Approved external materials.**
- iv. Detailed hard and soft landscaping provision (including tree planting).**
- v. The provision of parking and access as submitted.**
- vi. The prior approval and implementation of parking surfacing and surface water drainage provision.**
- vii. The prior approval and implementation of a construction method statement.**
- viii. Prior approval of site investigation and any remediation works to deal with contamination.**
- ix. Prior approval and implementation of internal and noise level assessment and mitigation measures.**
- x. Restriction of construction hours.**

**B. Failing completion of the above planning obligation by the date referred to in the above recommendation, that the Head of Planning either refuse the application on the grounds that without the obligation being secured, there would be no provision made to take into account a change in financial circumstances in the event of the development not proceeding promptly and the potential payment of an appropriate policy compliant contribution for offsite open space should financial circumstances then permit; or, if he considers it appropriate, to extend the period of time within which the obligation can be secured.**

#### **Reason for Recommendation**

The site is in a sustainable location where the broad principle of new housing is supported by the Council's Development Plan. There are also benefits of the proposed residential development— namely further boosting local housing supply as well as the related social and economic advantages new housing brings to the area. The overall scale, design and appearance of the scheme is considered to have an appropriate impact to the character of the area subject to agreement of soft and hard landscaping (with tree planting) and external facing materials use details. A satisfactory amount of off street car parking can be provided and there are no harmful impacts arising to neighbouring residential living conditions.

It is accepted, following the obtaining of independent financial advice, that the scheme is not viable if policy compliant financial contributions towards public open space are required and whilst it is recommended that these policy compliant requirements are not sought, given the contribution the development makes to housing supply, particularly to affordable housing and the regeneration of this part of Chesterton, a Section 106 agreement is required to secure a review mechanism should substantial commencement not be achieved promptly.

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

Subject to conditions the proposal is considered to be a sustainable form of development.

**Key Issues**

The application is for the erection of five, two bedroom detached bungalows. The footprint of each bungalow measures approximately 70 square metres. The overall site area for the scheme is around 1200 square metres.

The application is a resubmission of previous application 18/00410/FUL for an identical proposal which was refused by the Council on the basis that without an agreed financial contribution towards public open space provision (or a viability argument for not seeking the contribution being robustly and successfully demonstrated) that the proposal would be contrary to relevant planning policies in the National Planning Policy Framework (the Framework) and the Councils Development Plan.

When refusing the previous application, for the reason set out above, it was concluded that the principle of the proposed residential development was acceptable on this site. The proposal was also considered to be acceptable with regard to design and appearance, residential amenity and highway safety. Acknowledging that the current application is identical to the refused scheme and in the absence of any material change in planning circumstances since that decision, the only consideration at this time is whether it remains that a financial contribution is still appropriate and necessary.

**What financial contributions are appropriate (if any) in order to secure planning permission?**

Paragraph 34 of the Framework states that plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.

Saved NLP 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 residential unit which would be used to upgrade playground

equipment at Loomer Road Play Area which is a 110m walk away. A total contribution of £27,895 for this development.

Both the NLP and the CSS form part of the approved development plan for the area. In this case the CSS is more up to date than the NLP. In addition the application of the Open Space Strategy in the determination of planning application is consistent with paragraph 96 of the Framework 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.

The development applied for is 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 CSS 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 contributions to pooled funding pots intended to fund the provision of general infrastructure in the wider area. The Landscape Development Section have indicated that they propose that the contribution in this case would be applied to improvements to the Moran Road play area which is 160 metres away from application site, so whilst the amount is calculated on a “sum per dwelling” basis it is not considered to 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 Framework advises that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 47 of the Framework states that planning law requires that applications for planning permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

A financial obligation for the amount specified by the Landscape Development meets the tests outlined and is therefore triggered to make the development acceptable in planning terms. However a further issue arises in that a viability argument to such a financial request has been advanced by the applicant.

#### *Viability consideration*

Paragraph 57 of the Framework advises that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular

circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the Plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.

The applicant has submitted an open book financial appraisal to support a case that the development scheme will not be viable if the financial obligation triggered (£27,895) is requested in full, or indeed reduced downwards, by the Council. Planning Practice Guidance advises generally 15-20% of Gross Development Value (GDV) (GDV is the total value of the development once complete) may be considered a suitable return to developers in order to establish the viability of plan policies. Based on the figures supplied by the applicant the scheme without a public open space contribution is only expected to deliver a modest return to the developer of 3.18% once complete, as the proportion of the GDV after all expenditure. An independent review of the applicant's financial assessment has also been undertaken and also concludes that the scheme would not be viable if a financial contribution is requested and only marginally viable without a financial contribution being requested in line with the applicants assertions. The view taken therefore is that a clear cut viability argument has been successfully evidenced by the applicant which carries significant weight.

In conclusion, taking into account the viability issues identified and the overall merits of the scheme which include boosting local housing supply and the related social and economic benefits of encouraging house building to occur in what is a very sustainable location, relative to many others, a financial contribution should not be insisted upon and permission granted subject to the planning conditions indicated in this report.

## 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 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
Policy IM1	Provision of Essential Supporting Infrastructure and Community Facilities

### Other Material Considerations

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

[Planning Practice Guidance](#) (PPG) (July 2018)

#### 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

10/00345/FUL	Demolition of public house and erection of 19 dwellings	Permitted 2010
11/00220/FUL	62 Bedroom Care Home	Permitted 2011
15/00138/OUT	5 detached single storey dwellings	Permitted 2015
15/00921/FUL	Erection of a 6 bedroom bungalow and formation of new accesses and associated car parking	Permitted 2015

#### Views of Consultees

The **Environmental Health Division** object to the scheme in the absence of a submitted noise assessment which demonstrates acceptable residential noise levels can be achieved.

They also recommend in the event of approval the following conditions should be applied

1. Restriction of construction hours to occur between 7am and 6pm Monday to Friday. Between 7am and 1pm on Saturdays. No construction activity on Sundays or Bank Holidays.
2. The prior approval of details which deal with site contamination and the importation of soil.

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

1. The provision of access, parking in accordance with the submitted details.
2. The prior approval and implementation of surfacing materials for the parking areas, and surface water drainage provision.
3. The prior approval and implementation of a Construction Method Statement.

**Landscape Development Section** has no objections subject to:-

1. A planning condition for the prior approval and implementation of a landscaping scheme that includes replacement tree planting.
2. A contribution by the developer for capital development/improvement of offsite 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 will be used to upgrade playground equipment at Loomer Road Play Area which is a 110m walk away.

The County Council as **Minerals Planning Authority** and the Borough Councils **Waste Management Section** both have no objections to the scheme.

#### Representations

None received.

#### Applicant/agent's submission

Application forms and 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/18/00967/FUL>

#### Background Papers

Planning File.  
Planning Documents referred to.

#### Date Report Prepared

8<sup>th</sup> February 2018.