

The above application was for the approval of reserved matters relating to internal access arrangements, layout, scale, appearance and landscaping in respect of a residential development of 60 dwellings at land off Watermills Road, Chesterton. The application followed the granting at appeal of an outline planning permission in January 2015 for residential development of up to 65 dwellings (Ref. 13/00974/OUT). The application was refused by the Planning Authority on 14<sup>th</sup> August 2018 (the decision notice being issued on the 17<sup>th</sup> August 2018) and an appeal was then lodged against that decision in late January .

**RECOMMENDATION**

That the decision of your Officer taken under the Matters of Urgency provisions, following consultation with the Chair, that:

- The Council should express the view to the Planning Inspectorate that it would be contrary to the principle of fairness established by the Wheatcroft judgement for the Inspector to determine the appeal on the basis of the revised plans; and
- The Council's Statement of Case should indicate that if the appeal is determined on the basis of the amended scheme, given that the amended plans directly address the reasons that the Planning Committee gave for the refusal of the application and that the revisions do not result in the introduction of any new issues or concerns, that it wishes to offer no evidence in support of the original grounds of refusal and it would not oppose the granting of the reserved matters application subject to appropriate conditions.

**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 by your Officer following consultation with the Chairman. The basis for the decision is explained in the report below.

**The decisions made and why.**

As Members may recall, the Planning Committee refused at its meeting on the 14<sup>th</sup> August 2018 an application (18/00017/REM) for the approval of reserved matters relating to internal access arrangements, layout, scale, appearance and landscaping in respect of a residential development of 60 dwellings at land off Watermills Road, Chesterton. The decision of the Committee was to refuse the application on the following grounds:

- 1) *The proposed development would, by virtue of the scale and design of the bund and acoustic fence and the inward-facing dwellings fronting Watermills Road, have a significant adverse impact on the character and appearance of the area. The proposed development is therefore contrary to policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, the guidance set out in the Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document (2010) and the requirements and policies of the revised National Planning Policy Framework 2018, in particular the criteria set out in the section Achieving Well designed spaces.*
- 2) *The footpath proposed through the site, by virtue of it being enclosed and not overlooked, would be unsafe and unattractive to users being likely to be prone to anti-social behaviour. The proposed development is therefore contrary to policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, the guidance set out in the Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document (2010) and the requirements and policies of the revised National Planning Policy Framework 2018, in particular the criteria set out in the sections Promoting healthy and safe communities and Achieving Well designed spaces.*

An appeal was lodged against the Council's decision which is being determined via the Written Representations procedure. In their Statement of Case the appellants have asked the Inspector to consider not the proposals which were considered by the Planning Committee but revised plans which show a development of 63 units. The plans differ in that they now provide no mound at the front of the site, the houses are brought forward and they are no longer inward facing, and the internal footpath has been re-designed.

The Inspector will expect and require the LPA in the Council's Statement of its case to express a view on whether or not they should determine the application on the basis of the revised plans or those which the LPA considered. The principles of whether or not appeal decisions should be decided on the basis of the original submission or later revised proposals are set out in what is termed the Wheatcroft Judgement and the Inspector will make their decision on the basis of those principles. In the Wheatcroft Judgement the High Court established that "the main, but not the only criterion on which...judgement should be exercised is whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation."

The facts in this case are as follows –

- The difference between the two schemes is undoubtedly material and is certainly not "trivial".
- Publicity was given by the Council to the original application by means of a site notice and press advertisement in accordance with both the Council's Statement of Community Involvement and the related statutory requirements, giving third parties an opportunity to submit representations by a date which passed before the LPA determined the application.
- The revised scheme submitted to the Planning Inspectorate proposes a greater amount of development (63 as opposed to 60 units).
- The site has no residential neighbours in the immediate vicinity. It is relevant to note that there is a bund between Audley Road and the western part of the site, although the easterly part of the site is visible from properties on the north eastern side of Audley Road across the junction with Watermills Road and the lower land on either side of it.
- The site is directly opposite the Ibstock brickworks.
- Wardells, acting on behalf of Ibstocks prior to the determination of the application, submitted a letter of representation to the Borough Council requesting that the noise assessment be revised to consider the potential impact of the noise from the adjacent industrial premises on the proposed development and requesting that the applicant also demonstrate that the development complies with all parts of paragraph 123 of the then NPPF including the third bullet point of that paragraph which stated that planning decisions should "recognise that development will often create some noise and existing businesses wanting to develop in continuance of their businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established". This paragraph has since been replaced by paragraph 182 in the revised NPPF. They are clearly a party with an interest in the determination of the appeal.
- The appellants had not indicated in their Statement of Case or in any other correspondence to the Planning Inspectorate that the Council has been copied into that they have taken any steps to inform other parties of the change in the proposals, for example by the display of a public notice on site and in the press and by writing to such third parties, so that such third parties have the opportunity to refer to such changes in any comments which they may wish to make to the Planning Inspectorate.
- The proscribed notification sent out by the Borough Council about the appeal to interested third parties made no mention of the submission of revised proposals. That notification was sent to Ibstocks but at the time of preparing its Statement of Case, it was unknown to the Council whether Ibstocks or their agents had become aware that the Planning Inspector is being asked to consider proposals that are different from those which were considered and refused by the Borough Council.

Given that the Council was made aware of the proposed substitution of plans when the appeal was lodged in January, it could not say in May that it would be prejudiced were the Inspector to take account of the revised proposals. However, it was considered that the LPA had no alternative but to draw the above facts to the attention of the Planning Inspector and to express the view to the

Inspector that having regard to the Wheatcroft Judgement the development is so changed that to grant it would deprive those who should have been consulted (most particularly Ibstocks) of the opportunity of such consultation, and accordingly it would be contrary to the principle of fairness established by the Wheatcroft judgement for the Inspector to determine the appeal on the basis of the revised plans.

The Council's Statement of Case, which had to be submitted by the 17th May, also had to deal with the potential scenario that the Inspector decides to determine the appeal on the basis of the amended plans. It was the view of your Officers that:

- a. The amended plans directly address the reasons that the Planning Committee gave for the refusal of the application;
- b. That the revisions do not result in the introduction of any new issues or concerns; and therefore that
- c. The Council's Statement of Case should indicate that if the appeal is determined on the basis of the amended scheme it wishes to offer no evidence in support of the original grounds of refusal and it would not oppose the granting of the reserved matters application, subject to appropriate conditions (detailed in the Statement of Case).

The decisions that had to be made before the 17th May were ones that were 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.

The Council's Statement of Case was required to be submitted by 17<sup>th</sup> May and your Officer consulted with the Chairman on the 14<sup>th</sup> May - the next Planning Committee then being on the 21<sup>st</sup> May (i.e. after the 17<sup>th</sup> May).

The action that has been taken is reported to the Planning Committee as required. The Planning Inspectorate's decision on the appeal and on a related costs application by the Council are now awaited and will be reported in the normal manner to the Committee when received.

Date report prepared: 5th June 2019