

The above application was for planning permission for the demolition of existing buildings, 1 replacement farmhouse, erection of 11 bungalows, access, parking and amenity space at Croft Farm, Hill Chorlton. The application was refused by the Planning Authority on 26<sup>th</sup> February 2019 (the decision notice being issued on the 1<sup>st</sup> March ) and an appeal was then lodged against that decision on 21<sup>st</sup> March.

**RECOMMENDATION**

That the decisions of your Officer taken on 5<sup>th</sup> July under the Matters of Urgency provisions, following consultation with the Chair, that:

- the Council should agree to enter into a Section 106 agreement that secures 25% affordable housing on the appeal site, should the appeal be allowed;
- the Council enter into an agreement that secures, in the alternative, one affordable dwelling on site and a payment of £12,000 (for offsite affordable housing provision), should the appeal be allowed, and that its position in such negotiations be that the agreement include a financial reappraisal mechanism in the event of the development not being 'substantially commenced' within 18 months of the grant of the outline planning permission;
- if the appellant refused to include such reappraisal mechanism the Council still be prepared to enter into the agreement; and
- officers had authority in commenting upon any agreements that may be submitted by the appellant to the Planning Inspectorate to put the case to the Inspector for the inclusion of a financial reappraisal mechanism;

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 26<sup>th</sup> February 2019 an application (18/00507/OUT) for the demolition of existing buildings, the erection of 1 replacement farmhouse and 11 bungalows, access, parking and amenity space at Croft Farm, Hill Chorlton.

The decision of the Committee was to refuse the application on the following grounds:

1. *The adverse impacts of the development, namely the reliance on the use of private motor vehicles by reason of the site's location, would significantly and demonstrably outweigh any benefits of the development when assessed against the policies of the National Planning Policy Framework (2019) taken as a whole and the proposal therefore represents an unsustainable development.*
2. *The proposed development would be detrimental to the character and form of existing linear development at Hill Chorlton and to the wider landscape contrary to Policies CSP1 and CSP4 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026; saved policies N17 and N21 of the Newcastle-under-Lyme Local Plan 2011, the aims and objectives of the Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document, in particular Section 10, and the aims and objectives of the National Planning Policy Framework (2019).*
3. *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 (2019).*

An appeal was lodged against the decision in March this year and the appellant submitted two draft Section 106 agreements to the Council, asking it to co-operate in the drawing up and completion of such agreements, with the intention of the appellant submitting certified copies of them to the Planning Inspectorate. One draft agreement provided for a policy compliant position (25% affordable housing on site) but the other draft agreement provided for only one affordable unit and a financial contribution of £12,000 towards off-site provision. This is on the basis that the application was accompanied by a viability case and the District Valuer had concluded that the scheme can in financial terms deliver only one affordable unit and a financial contribution of £12,000. The deadline for the appellant's submission of the Section 106(s) to the Planning Inspectorate was 10th July.

The third reason for refusal established that the Local Planning Authority in any subsequent appeal proceedings would seek a contribution that would be in compliance with the Affordable Housing SPD and the SPD on Developer Contributions and to avoid conflict with various policies including CSP6. Whilst an agreement that secures 25% affordable housing on-site is fully in line with the policies referred to, the second alternative agreement that was being proposed cannot be considered to be compliant with the position set out in the Affordable Housing SPD because the contribution being proposed is not of "broadly equivalent value" (but rather takes into account the issue of financial viability (and the advice which the Council obtained from the District Valuer at the time). The SPD on Affordable Housing does allow for the possibility that it may be appropriate in certain situations to allow for a contribution to off-site provision and in this case the LPA's Statement of Case, on the basis of the Gateway Avenue decision, and the subsequent housing needs survey undertaken for the Neighbourhood Plan, had already confirmed that the proposal for some off-site provision is not unacceptable in principle.

The authority, as set out in the Scheme of Delegation, to enter into a Section 106 agreement rests with the Planning Committee (Planning functions part of Appendix 5 to the Constitution). Whilst your Officer had a clear authority from the Committee resolution to enter into the first suggested agreement, he did not for the second given the terms of the Committee resolution.

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.

As always an appellant has two alternatives – to seek to enter into an Agreement with the LPA securing planning obligations (a Section 106 agreement) and to then submit it to the Planning Inspectorate, or to complete and submit a Unilateral Undertaking (that does not require the agreement of the Local Planning Authority). An Inspector may well be prepared to accept such obligations secured by Unilateral Undertaking. In the case of obligations concerning the provision of on-site affordable housing there is good argument that because of the complexity of their provisions which include the giving to the Council of nomination rights they are more appropriately secured in an agreement rather than an undertaking. Furthermore if the LPA is to persuade the appellant to include a financial reappraisal requirement (should the development not have substantially commenced within a defined period) then the best chance of doing that satisfactorily is via cooperating with them in the drawing up and conclusion of an agreement.

In hindsight officers should upon receipt of the appeal have brought a report to the Committee seeking the required authority to enter into such an agreement, but unfortunately that did not happen. Acting on the basis that it was in the public interest for the Council to enter into such an agreement and to do so very promptly, your Officer consulted with the Chairman on the 4<sup>th</sup> July - the next

Planning Committee then being on the 16<sup>th</sup> July (i.e. after the 10<sup>th</sup> July). Following that consultation your Officer made the decisions listed in the above recommendation section of this report.

The Planning Inspectorate subsequently agreed to extend the period for submission of any completed Section 106 agreement(s) to the 30<sup>th</sup> July. Although that date was after the Committee meeting date of 16<sup>th</sup> July, given the considerable amount of time that it takes to prepare a Section 106 agreement with drafts being exchanged between the parties, leaving a decision until 16<sup>th</sup> July date (as to whether or not the Borough Council would be prepared to be party to such an agreement) would have been unrealistic and moreover potentially viewed by the Planning Inspectorate as 'unreasonable'. The Inspector on the 10<sup>th</sup> July advised that despite agreeing to an extension of time he strongly urged both parties to work together and submit the Section 106 agreement as soon as possible, and he considered it appropriate to remind the parties to the appeal that any unreasonable behaviour that results in one party or the other incurring any unnecessary costs during the appeal process could result in an award of costs against them, and that one example of this could be unnecessarily delaying the development.

Following negotiations with the appellant's solicitor a single agreement was drawn up with two Schedules – the First will apply if the Inspector were in allowing the appeal to conclude that full on-site provision of affordable housing is required and the Second will apply if the Inspector were in allowing the appeal to conclude both that some off-site provision is appropriate and that on viability grounds a less than 'broadly equivalent' contribution is appropriate. The Borough Council signed the agreement on 30<sup>th</sup> July and it was submitted to the Planning Inspectorate on that same date. The agreement is available to view on line via the following link  
<https://publicaccess.newcastle-staffs.gov.uk/online-applications/plan/18/00507/OUT>

Members will note that the Second Schedule includes provision for a reappraisal of the development's viability should the development not be substantially commenced within a certain period of time, which could, potentially, lead to a higher offsite affordable housing contribution

It is important to note that the Council's position in the appeal remains that the development should be refused for the reasons indicated in the original decision of the Committee.

At the time of writing the decision of the Planning Inspectorate is awaited, and when received it will be reported to the Committee in the normal manner.

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

31<sup>st</sup> July 2019