

The application is for the removal of conditions 7 and 8 (tree protection measures and Arboricultural Method Statement) of planning permission 17/00722/FUL for the proposed demolition of existing buildings and the erection of a 4-storey apartment block with parking.

The site lies within the urban area close to Newcastle town centre. The site is adjacent to but not within the Stubbs Walk Conservation Area. The site extends to approximately 0.10 hectares. The site lies within a Live-Work Office Quarter as indicated in the Town Centre Supplementary Planning Document

A tree adjacent to the site is covered by Tree Preservation Order No.16.

**The 13 week period for the determination of this application expires on the 5<sup>th</sup> April 2021.**

### **RECOMMENDATIONS**

**PERMIT the removal of Conditions 7 & 8 of 17/00722/FUL but the following conditions are now necessary to reflect the information submitted;**

- 1. Tree Protection Measures fully implemented and maintained;**
- 2. The recommendations of the Arboricultural Method Statement fully implemented and maintained;**
- 3. Soft and hard landscaping to be fully implemented prior to the occupation of the development;**
- 4. Suitable replacement tree planting if the Lime tree dies within 5 years.**

**and subject to the imposition of all other conditions attached to planning permission 17/00722/FUL that remain relevant at this time.**

### **Reason for Recommendation**

Through the submission of an acceptable Arboricultural Method Statement it has been demonstrated that alternative protection measures to those secured by the conditions can be implemented to protect the Lime tree. Therefore, it has been demonstrated that the development with comply with NLP policy N12 and is in accordance with the guidance and requirements of the NPPF

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

Officers of the LPA have continued to engage with the applicant to resolve all issues and a number of site visits have taken place. This has resulted in acceptable information finally being submitted to address the significant concerns that the works by the applicant have caused.

### **Key Issues**

The application is for the removal of conditions 7 and 8 (tree protection measures and Arboricultural Method Statement) of planning permission 17/00722/FUL for the proposed demolition of existing buildings and the erection of a 4-storey apartment block with parking.

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Conditions 7 and 8 of the planning permission set out that;

7. *Prior to the commencement of the development full and detailed tree protection measures shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.*

*Reason; To protect all protected and visually significant trees in accordance with Policies N12 & B15 of the Newcastle under Lyme Local Plan (2011).*

8. *Prior to the commencement of the development an Arboricultural Method Statement, which shall include details of any utility connections within the root protection areas of retained trees, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.*

*Reason: To protect all protected and visually significant trees in accordance with Policies N12 & B15 of the Newcastle under Lyme Local Plan (2011).*

The effect of a grant of permission upon an application to vary or remove a condition is to create a new planning permission. Accordingly, unless there have been other material changes, such a permission should also make reference to the other conditions of the original planning permission where they remain relevant.

Given the two conditions relate to matters which sought to protect trees on the site, the sole issue in the consideration of this application is whether the removal of the two conditions would result in unacceptable harm and loss of protected and visually significant trees.

The two conditions required information to be submitted prior to works commencing but acceptable information was not received and the development commenced. The development has primarily been constructed, without the applicant complying with conditions 7 & 8. This has compromised the health of the protected and visually significant Lime tree on the site frontage.

Despite the current breach of planning conditions the works have continued on site, against the advice of your officers. However, the applicant has engaged with your officers to resolve the breach.

The applicant has now submitted an Arboricultural Method Statement (AMS) which acknowledges that two welfare cabins are located in the root protection area (RPA) of the Lime tree and further tree protection measures are necessary.

The AMS also sets out that the general site security fencing is erected on the boundary line and this, together with the cabins, prevents plant and machinery entering into the RPA and therefore this is a Construction Exclusion Zone. Woodchip over geotextile has been laid to allow pedestrian access in the RPA. No services have been installed or are proposed to be installed in the RPA.

The application is also supported by soft and hard landscaping plans to supplement the application, these being required to satisfy conditions 9 and 10 of the planning permission.

Following the submission of the latest AMS, the Councils Landscape Development Section (LDS) has now raised no objections to the application.

The breach of the two conditions is a concern and the length of time that it has taken the applicant to provide acceptable information is equally a concern.

The Planning Practice Guidance (PPG) advises that "There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.

Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations."

Paragraph 58 of the National Planning Policy Framework (NPPF) sets out that "Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control."

Whilst there has been a clear breach of conditions 7 and 8, which has put the protected tree at risk, it is acknowledged that acceptable information has now been received. Therefore conditions 7 and 8 can be removed but additional conditions that secure the identified tree protection measures and full compliance with the AMS are necessary. The permission will also need to reflect the soft and hard landscaping plans that have been submitted to support the application. The soft landscaping plan includes replacement tree planting (secured via condition 9) which will need to be implemented prior to the occupation of the development. There is also the need for a condition which secures replacement tree planting should the protected Lime tree die within 5 years.

Subject to the conditions set out above, the proposed amended tree protection measures and AMS are acceptable and the protected and visually significant Lime tree should not be further damaged or die as a result of the proposed development. Therefore, the development is in accordance with NLP policy N12.

## 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 CSP2	Historic Environment
Policy CSP3	Sustainability and Climate Change

#### [Newcastle-under-Lyme Local Plan \(NLP\) 2011](#)

Policy H1	Residential Development: Sustainable Location and Protection of the Countryside
Policy N3	Development and Nature Conservation – Protection and Enhancement Measures
Policy N4	Development and Nature Conservation – Use of Local Species
Policy B10	The requirement to preserve or enhance the character or appearance of a Conservation Area
Policy B14	Development in or Adjoining the Boundary of Conservation Areas
Policy B15	Trees and Landscape in Conservation Area
Policy T16	Development – General Parking Requirements

### **Other Material Considerations include:**

#### National Planning Policy

#### [National Planning Policy Framework](#) (February 2019)

#### [Planning Practice Guidance](#) (March 2014)

#### Supplementary Planning Guidance/Documents

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

#### Relevant Planning History

17/00179/FUL Proposed demolition of existing buildings and the erection of a 4-storey apartment block with parking Permitted (23.06.2017)

17/00722/FUL Variation of condition 2 to substitute the approved plans with revised plans which reduce the footprint, along with slight changes to the internal arrangements, alterations to site levels, revised site layout, and external elevations, of planning permission 17/00179/FUL for proposed demolition of existing buildings and the erection of a 4-storey apartment block with parking Permitted (22.12.2017)

#### Views of Consultees

The **Landscape Development Section** raises no objections.

#### Representations

None received.

#### Applicant's/Agent's submission

The application is accompanied by an Aboricultural Impact Statement, Tree Protection Plan and soft and hard landscaping plans.

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/20/00559/FUL>

Background papers

Planning files referred to  
Planning Documents referred to

Date report prepared

16<sup>th</sup> March 2021