

**LAND TO THE NORTH EAST OF ECCLESHALL ROAD, SOUTH EAST OF PINWOOD ROAD
AND NORTH WEST OF LOWER ROAD, HOOK GATE
VERVE SHREWSBURY LTD**

21/00327/FUL

This application seeks to vary conditions 5, 6, 9, 17, 18 and 19 of planning permission 17/01001/FUL which granted consent for the erection of 22 houses and bungalows with associated access roads and drainage. The application seeks to remove the 'prior to commencement of development' aspect of each condition.

The application site lies within the open countryside and an Area of Active Landscape Conservation as indicated on the Local Development Framework Proposals Map. It comprises three fields and is approximately 1.1 hectares in total.

The 13 week period for the determination of this application expires on 29th June 2021.

RECOMMENDATION

PERMIT the variation of conditions 5, 6, 9, 17, 18 and 19 of 17/01001/FUL so that they read as follows:

5. Prior to commencement of above ground works full and precise details of acoustic screening of a minimum height of 1.8 metres and a minimum mass of 20kg/m² to be installed in the locations indicated on the Proposed Barrier Plan received on 11th April 2018 shall be submitted to the Local Planning Authority for its prior approval in writing. Thereafter, the approved details shall be installed in full prior to the relevant plot becoming occupied and shall thereafter be permanently maintained.

6. Prior to installation, full and precise details of the window glazing systems and mechanical ventilation arrangements for plots 1, 2, 11, 19, 21 and 22 shall be submitted to the Local Planning Authority for prior approval. Mechanical ventilation shall enable background purge and summer time cooling with windows shut. Noise from the ventilation system when in operation shall not exceed NR30. It shall be demonstrated that the glazing and ventilation system will achieve a maximum of 35dB(A)Leq, 16 hour 7am to 11pm in living areas and 30dB(A)Leq 8 hour and a maximum of 45dB(A)LAMax between 11pm and 7am.

9. No dwelling shall be occupied until full details of the surfacing materials and the means of surface water drainage for the private driveway, parking and turning areas for that dwelling, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in full accordance with the approved details.

17. Prior to first occupation, full and precise details of the recyclable materials and refuse storage, including designated areas to accommodate sufficient recyclable materials and refuse receptacles to service the development and the collection arrangements for the same have been forwarded to the Local Planning Authority for approval.

Thereafter, the storage arrangements shall be carried out in accordance with the approved scheme.

18. Prior to commencement of above ground works full and precise details of the external facing materials 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.

19. Prior to commencement of above ground works full and precise details of the boundary treatments 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.

And subject to any other conditions attached to planning permission 17/01001/FUL that remain relevant at this time.

Reason for Recommendation

There is no justification for requiring the submission of details prior to the commencement of development. The previous permission was granted following the entering into of a Section 106 agreement and therefore a Deed of Variation is now required. Subject to this and the imposition of any conditions of 17/01001/FUL that remain relevant at this time, the proposal is considered to be acceptable.

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

The proposal is considered to be a sustainable form of development in compliance with the provisions of the National Planning Policy Framework and no amendments were considered necessary.

Key Issues

This application seeks to vary conditions 5, 6, 9, 17, 18 and 19 of planning permission 17/01001/FUL which granted consent for the erection of 22 houses and bungalows with associated access roads and drainage. The application seeks to remove the 'prior to commencement of development' aspect of each condition.

In considering an application to vary or remove a condition, the Authority has to consider only the question of the conditions that are the subject of the application, it is not a complete reconsideration of the application. If the Authority considers that planning permission may be granted subject to different conditions it can do so. If the Authority considers that the conditions should not be varied or removed it should refuse the application.

The Planning Practice Guidance states that care should be taken when considering using pre-commencement conditions that prevent any development authorised by the planning permission from beginning until the condition has been complied with. This includes conditions stating that 'no development shall take place until...' or 'prior to any works starting on site...' Such pre-commencement conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission.

Conditions 5 & 6

Condition 5 as worded in the decision notice states as follows:

Prior to the commencement of development, full and precise details of acoustic screening of a minimum height of 1.8 metres and a minimum mass of 20kg/m² to be installed in the locations indicated on the Proposed Barrier Plan received on 11th April 2018 shall be submitted to the Local Planning Authority for its prior approval in writing. Thereafter, the approved details shall be installed in full prior to the relevant plot becoming occupied and shall thereafter be permanently maintained.

Condition 6 states as follows:

Prior to the commencement of development of plots 1, 2, 11, 19, 21 and 22, full and precise details of the window glazing systems and mechanical ventilation arrangements shall be submitted to the Local Planning Authority for prior approval. Mechanical ventilation shall enable background purge and summer time cooling with windows shut. Noise from the ventilation system when in operation shall not exceed NR30. It shall be demonstrated that the glazing and ventilation system will achieve a maximum of 35dB(A)Leq, 16 hour 7am to 11pm in living areas and 30dB(A)Leq 8 hour and a maximum of 45dB(A)LAMax between 11pm and 7am.

The reason given for both conditions within the decision notice was:

In the interests of residential amenity and to accord with the aims and objectives of the National Planning Policy Framework (2018).

The applicant has requested that in Condition 5 the wording 'Prior to commencement of development...' is revised to "Prior to commencement of above ground works..." and that in Condition 6 the wording "Prior to the commencement of development of plots 1, 2, 11, 19, 21 and 22, full and precise details of the window glazing systems and mechanical ventilation arrangements shall be submitted to..." is revised to "Prior to installation, full and precise details of the window glazing systems and mechanical ventilation arrangements for plots 1, 2, 11, 19, 21 and 22 shall be submitted to ..."

A Noise Assessment submitted with the original application identified the need for a 1.8metre high acoustic screen of a minimum mass of 20kg/m² to ensure that appropriate noise levels are achieved in the rear garden areas which have line of site to Eccleshall Road. It also recommended for plots 1, 2, 11, 19, 21 and 22 that windows will need to be upgraded to a minimum acoustic specification and that because these windows will need to be kept shut in order to achieve appropriate internal noise levels, mechanical ventilation would be required.

No comments have been received from the Environmental Health Division regarding the proposed amendments but it is not considered necessary for details of either the acoustic screening or the window glazing systems and mechanical ventilation arrangements to be submitted prior to the commencement of development. Provided that the details of the acoustic screen are agreed in sufficient time to enable it to be installed prior to occupation of the dwellings and that details of the window glazing and the ventilation arrangements are agreed prior to installation, it is considered that an appropriate level of residential amenity for the occupiers of the dwellings would be ensured.

Therefore, the wording proposed by the applicant for Conditions 5 and 6 is considered appropriate.

Condition 9

Condition 9 states as follows:

No development shall commence until full details of the surfacing materials and the means of surface water drainage for the private driveway, parking and turning areas, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details and be completed prior to the first occupation of the development.

The reason given for the condition was as follows:

In the interests of highway safety and to comply with the aims and objectives of the National Planning Policy Framework (2018).

The applicant has requested that the wording 'No development shall commence...' is revised to "Prior to commencement of drainage works..."

The Highway Authority has no objections to the proposed variation and it is not considered necessary for details of either the surfacing materials or the means of surface water drainage for the private driveways, parking and turning areas to be provided prior to the commencement of development. Provided that the details are agreed and the driveways, parking and turning areas are provided prior to occupation of each dwelling, then it is considered that there would be no adverse impact on highway safety.

Therefore, it is considered appropriate to vary the wording of Condition 9 as follows:

No individual dwelling shall be occupied until full details of the surfacing materials and the means of surface water drainage for the private driveway, parking and turning areas for that dwelling, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in full accordance with the approved details.

Condition 17

Condition 17 states as follows;

No development shall commence until full and precise details of the recyclable materials and refuse storage, including designated areas to accommodate sufficient recyclable materials and refuse receptacles to service the development and the collection arrangements for the same have been forwarded to the Local Planning Authority for approval.

Thereafter, the storage arrangements shall be carried out in accordance with the approved scheme.

The reason given for the condition was as follows:

In the interests of visual amenity and residential amenity in accordance with the requirements of Policy CSP1 of Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006 - 2026 and the aims and objectives of the National Planning Policy Framework (2018).

The applicant has requested that the wording is revised from “No development shall commence...” to “Prior to first occupation...”

Although no comments have been received from the Environmental Health Division, it is not considered necessary for the details of the storage of recyclable materials and refuse to be provided prior to the commencement of development. Provided that the details are agreed so that the storage arrangements can be put in place prior to occupation of the dwellings, then it is considered that there would be no adverse impact on either visual amenity or residential amenity.

Therefore, the wording proposed by the applicant for Condition 17 is considered appropriate.

Condition 18 states as follows:

No development shall commence until full and precise details of the external facing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Condition 19 states as follows:

No development shall commence until full and precise details of the boundary treatments have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

The reason given for Conditions 18 and 19 was as follows:

In the interests of amenity to comply with Policy CSP1 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).

The applicant has requested that the wording of Conditions 18 and 19 is revised from “No development shall commence...” to “Prior to commencement of above ground works...”

There is no justification for requiring the details of external facing materials and boundary treatments to be submitted prior to the commencement of development. Therefore, the wording proposed by the applicant for Conditions 18 and 19 is considered appropriate.

Is a planning obligation required?

In law the consequence of the granting of an application to vary conditions of a planning permission would be the creation of an entirely new planning permission rather than an amendment of the existing one (17/01001/FUL in this case). That previous permission was granted on the 26th October 2018 following the completion of a Section 106 agreement which secured contributions towards public open space and education and a review mechanism of the scheme's ability to make more policy compliant contributions if the development is not substantially commenced within 12 months. In some cases, the applicant is required to enter into a Deed of Variation to the original Section 106 agreement to ensure that the Council's interests are protected. In this instance however, there is a clause within the Section 106 which states that in the event that the Council shall at any time grant a planning permission for a variation of a condition attached to the original planning permission, then references in the S106 to the planning permission shall be deemed to include any such subsequent permissions for variations. On this basis, no planning obligation is now required.

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 ASP6: Rural Area Spatial Policy
Policy CSP1: Design Quality
Policy CSP3: Sustainability and Climate Change
Policy CSP4: Natural Assets
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 N3: Development and Nature Conservation – Protection and Enhancement Measures
Policy N4: Development and Nature Conservation – Use of Local Species
Policy N17: Landscape Character – General Considerations
Policy N18: Areas of Active Landscape Conservation
Policy T16: Development – General Parking Requirements
Policy C4: Open Space in New Housing Areas
Policy IM1: Provision of Essential Supporting Infrastructure and Community Facilities

[Loggerheads Neighbourhood Plan \(LNP\) 2013-2033](#)

Policy LNPP1: Urban Design and Environment
Policy LNPT1: Sustainable Transport

Other Material Considerations include:

National Planning Policy

[National Planning Policy Framework \(NPPF\) \(2019\)](#)

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

Relevant Planning History

17/01001/FUL	Erection of 22 houses and bungalows with associated access roads and drainage	Approved
15/00448/OUT	Erection of up to 16 dwellings	Approved

Views of Consultees

The **Highway Authority** has no objections.

Loggerheads Parish Council states that all conditions should be retained as per original intention.

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

Staffordshire County Council as the **Lead Local Flood Authority** has no objections.

The **Waste Management Section** states that collection services have changed since the planning permission was given, and all new properties need to be able to accommodate external storage space for the containers now in use.

No comments have been received from the **Environmental Health Division** by the due date and therefore it must be assumed that they have no comments to make.

Representations

Two letters of representation have been received. Objection is made on the following grounds:

- The supporting information references expediency of onsite activities as being the justification for the removal of the conditions. This is no justification.
- If no condition is in place regarding acoustic screening, the developer may make no effort to reduce construction noise.
- The land is saturated and so surface drainage on the site will be challenging and expensive. The developer should give clarity on their solution prior to commencement of work to ensure that the drainage is capable of overcoming a major foreseeable complication.
- The planning authority should be informed of the facing materials prior to commencement so they have time for due consideration.
- The hedges are critical to the aesthetics of the development and the wildlife and carbon dioxide reduction. The condition should be retained to ensure that the hedges are retained and not destroyed to save time and money. Details of boundary provisions should be known before work starts so that people have the opportunity to engage with the planning department.

Applicant's/Agent's submission

The application plans are available for inspection via the following link <http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/21/0327/FUL>

Background papers

Planning files referred to

Planning Documents referred to

Date report prepared

12 May 2021