

This application seeks to vary conditions 20 and 21 of planning permission 15/00015/OUT, which granted consent for the erection of up to 128 dwellings, to include the wording "other than that required to undertake remedial works".

The application site lies outside the village envelope of Loggerheads and within the open countryside and a Landscape Maintenance Area as indicated on the Local Development Framework Proposals Map. The site area is approximately 5.83 hectares.

The 13 week period for the determination of this application expires on 3rd September 2021.

RECOMMENDATION

- A. Subject to the applicant entering into a planning obligation by 20th August 2021 that preserves the Council's position in respect of obligations secured prior to the grant of permission 15/00015/OUT,**

PERMIT the variation of conditions 20 and 21 of 15/00015/OUT so that they read as follows:

20. No part of the development hereby permitted (other than that required to undertake remedial works) shall, unless otherwise agreed in writing by the local planning authority, be undertaken unless and until a detailed surface water drainage scheme for the site, including measures to protect groundwater from pollution from infiltration, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development.

21. No part of the development hereby permitted (other than that required to undertake remedial works) shall, unless otherwise agreed in writing by the local planning authority, be undertaken unless and until details of the proposed play facilities and the timing of the provision of the open space and the play facilities have been agreed in writing by the local planning authority. The development shall be undertaken in accordance with the approved details.

And subject to any other conditions attached to planning permission 15/00015/OUT that remain relevant at this time.

- B. Failing completion by the date referred to in the above resolution (A) of the above planning obligation, that the Head of Planning be given delegated authority to either refuse the planning application on the grounds that without such an obligation the development would not achieve appropriate affordable housing, open space, education, and sustainable transport provision; or, if he considers it appropriate, to extend the period of time within which the obligation can be secured.**

Reason for Recommendation

There is no justification for requiring the agreement of a surface water drainage scheme or details of play facilities and the timing of the provision of the open space and the play facilities reason prior to the carrying out of limited development to facilitate remedial works. 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 15/00015/OUT 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 20 and 21 of planning permission 15/00015/OUT, which granted consent for the erection of up to 128 dwellings, to include the wording "other than that required to undertake remedial works".

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 issues raised in representations relate to the merits of the residential development and therefore are not relevant now.

Condition 20 as worded in the decision notice states as follows:

No development shall commence until a detailed surface water drainage scheme for the site, including measures to protect groundwater from pollution from infiltration, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development.

Condition 21 states as follows:

No development shall commence until details of the proposed play facilities and the timing of the provision of the open space and the play facilities have been agreed in writing by the local planning authority. The development shall be undertaken in accordance with the approved details.

The reason given for condition 20 was to control surface water flood risk and in the interests of pollution control and the reason for condition 21, was to ensure satisfactory provision of these facilities to future occupiers of the development.

The applicant has requested that the wording of condition 20 is varied as follows:

No part of the development hereby permitted (other than that required to undertake remedial works) shall, unless otherwise agreed in writing by the local planning authority, be undertaken unless and until a detailed surface water drainage scheme for the site, including measures to protect groundwater from pollution from infiltration, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development.

The proposed variation of condition 21 is as follows:

No part of the development hereby permitted (other than that required to undertake remedial works) shall, unless otherwise agreed in writing by the local planning authority, be undertaken unless and until details of the proposed play facilities and the timing of the provision of the open space and the play facilities have been agreed in writing by the local planning authority. The development shall be undertaken in accordance with the approved details.

The application states that the proposed variation would be consistent with the wording of condition 7 which states:

No part of the development hereby permitted (other than that required to undertake remedial works) shall, unless otherwise agreed in writing by the local planning authority, be undertaken unless and until:

- i. the approved remediation scheme has been completed; and
- ii. a verification report that demonstrates the effectiveness of the remediation carried out has been submitted to and approved in writing by the local planning authority.

There is no justification for requiring the agreement of a surface water drainage scheme or details of play facilities and the timing of the provision of the open space and the play facilities reason prior to the carrying out of limited development to facilitate remedial works. No objections have been raised by consultees and therefore, the wording proposed by the applicant for Conditions 20 and 21 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 (15/00015/OUT in this case). That previous permission was granted on the 22nd March 2017 following the completion of a Section 106 agreement which secured provisions relating to affordable housing, open space, education, and sustainable transport. Subject to the applicant entering into a Deed of Variation to the original Section 106 agreement that ensures the Council's interests would be protected, then the application can be permitted.

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 CSP3: Sustainability and Climate Change
Policy CSP4: Natural Assets
Policy CSP5: Open Space/Sport/Recreation
Policy CSP10: Planning Obligations

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

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

15/00015/OUT Outline planning application for the erection of up to 128 dwellings (including details of access) – Allowed at appeal
16/00202/OUT Outline planning application for the erection of up to 128 dwellings (including details of access) – Refused
20/00201/REM Approval of appearance, landscaping, scale and layout for the erection of up to 128 dwellings as approved under planning application 15/00015/OUT – Approved

Views of Consultees

Loggerheads Parish Council has no objections.

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

Staffordshire County Council as the **Lead Local Flood Authority** has no comments to make.

Representations

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

- Inaccuracies in application form
- Dust impact
- Noise impact on adjacent dog kennels business
- The site can be seen from Rock Lane
- Commencement of construction works at 7.30am is unacceptable
- Impact on wildlife
- Traffic impact
- Impact on trees

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/21/0536/FUL>

Background papers

Planning files referred to
Planning Documents referred to

Date report prepared

8th July 2021