

This application seeks to vary condition 16 of planning permission 17/00067/DEEM4, which granted consent for residential development for up to 65 dwellings with associated open space and landscaping.

Condition 16 is worded as follows:

*No development shall commence until full details of the site access as illustrated on drawing no. A091780-P001 rev D have been submitted to and approved in writing by the Local Planning Authority which shall include the following:*

- *A Stage 2 Road Safety Audit:*
- *Amendment to the 30mph speed limit*
- *Details of construction, surface water drainage, and surfacing materials of all internal roads and accesses/turning areas.*
- *A 2m wide footpath from the development along the A53 across the frontage of the adjoining Fire Station and connecting to the existing footpath to the village envelope.*
- *A 2m wide footpath connecting the south-west part of the site to Kestrel Drive.*

*The works shall thereafter be implemented in accordance with the approved details and completed prior to the commencement of the construction of any dwelling.*

The variation sought is the removal of the final bullet point which specifies that a 2m wide footpath connecting the south-west part of the site to Kestrel Drive.

The application site lies outside the village envelope of Loggerheads and within the open countryside and an Area of Active Landscape Conservation as indicated on the Local Development Framework Proposals Map. The site area is approximately 3.65 hectares. The site fronts onto the A53.

**The 13 week period for the determination of this application expires on 4<sup>th</sup> October 2021.**

### **RECOMMENDATION**

**PERMIT the variation of conditions 16 of 17/00067/DEEM4 by omission of the final bullet point requiring a 2m wide footpath connecting the south-west part of the site to Kestrel Drive and subject to any other conditions attached to planning permission 17/00067/DEEM4 that remain relevant at this time.**

### **Reason for Recommendation**

Given the application site does not extend to Kestrel Drive the provision of the required footpath would involve third party land creating difficulties in its formation. A footpath will be provided from the site to the village centre and that is considered to be sufficient to ensure that the occupants of this development can safely and conveniently access the village centre services and facilities on foot.

### **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 condition 16 of planning permission 17/00067/DEEM4, which granted consent for residential development for up to 65 dwellings with associated open space and landscaping.

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 wording of condition 16 is set out above. The reason given for condition 16 is in the interests of highway safety and to meet sustainable development objectives in accordance with the aims and objectives of the National Planning Policy Framework.

The applicant has requested that the wording of condition 16 is varied through the removal of the requirement to provide a 2m wide footpath connecting the south-west part of the site to Kestrel Drive.

The wording of the condition contains an error and should refer to the footpath connecting the south-east part of the site to Kestrel Drive. Therefore even if this requirement of the condition was to be retained this error should be corrected.

It is noted that this footpath was not requested by any consultee. Upon reflection, it is considered that the provision of such a footpath would be problematic as the application site does not extend up to Kestrel Drive and as such the provision of the footpath would require third party land. The condition will still require the provision of a footpath along the A53 frontage to the village centre and that is considered to be sufficient to ensure that the occupants of this development can safely and conveniently access the village centre services and facilities on foot.

The variation of condition 16 as proposed is therefore 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 (17/00067/DEEM4 in this case). That previous permission was granted following the completion of a Section 106 agreement which secured provisions relating to affordable housing; the management of open space provided on site or a financial contribution to provision off site; education; and sustainable transport.

The Section 106 agreement includes a clause which ensures that should an application under Section 73 of the Act in respect of conditions attached to the outline planning permission be granted it will be subject to the terms of that agreement. As such a deed of variation is not required in this case as the Council's position with regard to the obligations set out in the agreement is secured.

### **Reducing Inequalities**

The Equality Act 2010 says public authorities must comply with the public sector equality duty in addition to the duty not to discriminate. The **public sector equality duty** requires **public authorities** to consider or think about how their policies or decisions affect people who are **protected** under the Equality Act. If a public authority hasn't properly considered its public sector equality duty it can be challenged in the courts.

The duty aims to make sure public authorities think about things like discrimination and the needs of people who are disadvantaged or suffer inequality, when they make decisions.

People are protected under the Act if they have protected characteristics. The characteristics that are protected in relation to the public sector equality duty are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race

- Religion or belief
- Sex
- Sexual orientation

When public authorities carry out their functions the Equality Act says they must have due regard or think about the need to:

- Eliminate unlawful discrimination
- Advance equality of opportunity between people who share a protected characteristic and those who don't
- Foster or encourage good relations between people who share a protected characteristic and those who don't

With regard to this proposal and the matters that can be addressed, it is considered that it will not have a differential impact on those with protected characteristics.

## **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 SP3 Spatial Principles of Movement and Access  
Policy CSP10: Planning Obligations

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

Policy IM1: Provision of Essential Supporting Infrastructure and Community Facilities

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

Policy LNPT1: Sustainable Transport

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

[National Planning Policy](#)

[National Planning Policy Framework \(NPPF\) \(2021\)](#)

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

### **Relevant Planning History**

17/00067/DEEM4	for residential development for up to 65 dwellings with associated open space and landscaping - PERMITTED
21/00365/REM	Reserved matters application for the erection of Erection of 60 No. 2, 3, 4 and 5 bedroom, detached, semi-detached and terraced houses with all necessary associated infrastructure – PENDING CONSIDERATION
21/00730/LBC	Listed building consent to reposition existing Mile Post to the rear kerb line of the proposed adopted footpath – PENDING CONSIDERATION

### **Views of Consultees**

The views of the **Highway Authority** and **Loggerheads Parish Council** have been sought. Any comments received will be reported.

### **Representations**

None received to date

### **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/21/00601/FUL>

### **Background papers**

Planning files referred to  
Planning Documents referred to

### **Date report prepared**

29<sup>th</sup> July 2021