

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

21/00834/FUL & 21/00835/FUL

These applications seek to vary conditions 7 (Ref. 21/00834/FUL) and 20 (Ref. 21/00835/FUL) of planning permission 21/00327/FUL. Planning permission 21/00327/FUL varied a number of conditions of 17/01001/FUL which granted consent for the erection of 22 houses and bungalows with associated access roads and drainage. The applications seek to vary 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 these applications expires on 22nd November 2021.

RECOMMENDATIONS

21/00834/FUL

The Head of Planning be given the delegated authority to determine the application after 17th September subject to any comments that are received from Loggerheads Parish Council, the Highway Authority and interested parties not raising any matters that have not been addressed within the report or that cannot be overcome through the imposition of conditions, PERMIT the variation of condition 7 of 21/00327/FUL so that it reads as follows:

The development shall not be occupied until visibility splays have been provided at the site accesses in accordance with details that have been first submitted to and approved in writing by the Local Planning Authority. The visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 600mm above the adjacent carriageway level.

And subject to any other conditions attached to planning permission 21/00327/FUL that remain relevant at this time.

21/00835/FUL

The Head of Planning be given the delegated authority to determine the application after 17th September subject to any comments that are received from Loggerheads Parish Council, the Highway Authority and interested parties not raising any matters that have not been addressed within the report or that cannot be overcome through the imposition of conditions, PERMIT the variation of condition 20 of 21/00327/FUL so that it reads as follows:

No above ground works shall commence until a detailed surface water drainage design has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The design must be in accordance with the overall strategy and key design parameters set out in the Flood Risk Assessment (ELLUC Project Number LE022 Revision F2 dated 13th June 2018). The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

And subject to any other conditions attached to planning permission 21/00327/FUL that remain relevant at this time.

Reason for Recommendations

For both applications, there is no justification for requiring the submission of details prior to the commencement of development. Subject to the imposition of any conditions of 21/00327/FUL that remain relevant at this time, the proposals are 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 applications

The proposals are 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

These applications seek to vary conditions 7 (Ref. 21/00834/FUL) and 20 (Ref. 21/00835/FUL) of planning permission 21/00327/FUL. Planning permission 21/00327/FUL varied a number of conditions of 17/01001/FUL which granted consent for the erection of 22 houses and bungalows with associated access roads and drainage. The applications seek to vary 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.

Application 21/00834/FUL

Condition 7 as worded in the decision notice states as follows:

The development shall not commence until details of the visibility splays at the site accesses have been first submitted to and approved in writing by the Local Planning Authority. The visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 600mm above the adjacent carriageway level and be provided in accordance with the approved plan prior to first occupation.

The reason given for the condition within the decision notice was:

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 "The development shall not commence..." is revised to "The development shall not be occupied..."

Whilst the comments of the Highway Authority have not yet been received, it is not considered necessary for details of the visibility splays to be provided prior to the commencement of development. Provided that the details are agreed and the visibility splays are provided in accordance with the approved details prior to first occupation of the scheme, 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 7 as follows:

The development shall not be occupied until visibility splays have been provided at the site accesses in accordance with details that have been first submitted to and approved in writing by the Local Planning Authority. The visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 600mm above the adjacent carriageway level.

Application 21/00835/FUL

Condition 20 states as follows:

No development shall take place until a detailed surface water drainage design has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The design must be in accordance with the overall strategy and key design parameters set out in the Flood Risk Assessment (ELLUC Project Number LE022 Revision F2 dated 13th June 2018). The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

The reason given for the condition within the decision notice was:

To prevent the increased risk of flooding 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 take place...' is revised to "No above ground works shall commence..."

Whilst the comments of Staffs County Council Flood Authority have not yet been received, it is not considered necessary for details of the surface water drainage design to be provided prior to the commencement of development. Provided that the details are agreed and the scheme is implemented in accordance with the approved details prior to completion of the scheme, then it is considered that there would be no increased risk of flooding.

Therefore, it is considered appropriate to vary the wording of Condition 20 as follows:

No above ground works shall commence until a detailed surface water drainage design has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The design must be in accordance with the overall strategy and key design parameters set out in the Flood Risk Assessment (ELLUC Project Number LE022 Revision F2 dated 13th June 2018). The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

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.

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 these decisions:-

[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

21/00393/FUL	Erection of 22 dwellings and associated infrastructure	Pending consideration
21/00327/FUL	Application for variation of condition 5, 6, 9, 17, 18 and 19 of planning permission 17/01001/FUL to remove prior to commencement of development aspect of each condition	Approved
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

21/00834/FUL

The comments of the **Highway Authority** and **Loggerheads Parish Council** are awaited.

21/00835/FUL

The comments of Staffordshire County Council as the **Lead Local Flood Authority** and **Loggerheads Parish Council** are awaited.

Representations

None received to date.

Applicant's/Agent's submission

The application plans are available for inspection via the following links:

<http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/21/0834/FUL>

<http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/21/0835/FUL>

Background papers

Planning files referred to

Planning Documents referred to

Date report prepared

1st September 2021