

This application seeks to vary condition 2 of reserved matters approval 19/00623/REM relating to internal access arrangements, layout, scale, appearance and landscaping in respect of a residential development of 133 dwellings.

The site measures 4.99 hectares and is located to the south-east of Walley's Quarry landfill site. The site is within the Newcastle Neighbourhood as designated on the Local Development Framework Proposals Map and is within the urban area. Trees within the site are protected by Tree Preservation Orders Nos. 2 and 85.

The 13 week period for the determination of this application expired on 16th September 2021 and the agreed extension to that date of 4th February 2022 has also expired.

RECOMMENDATION

REFUSE for the following reasons:

- 1. The position of the footpath within the Root Protection Area of visually significant and protected trees would result in harm to, and potentially the loss of, the trees thereby adversely affecting the visual appearance of the area contrary to saved policies N12 and N17 of the Newcastle-under-Lyme Local Plan 2011, Policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy, and the aims and objectives of the National Planning Policy Framework.**
- 2. The location of the Locally Equipped Area for Play is unacceptable due to the public safety risk arising from its position at a lower level than the adjoining carriageway, the inadequacy of the safety barrier and the frequency of vehicles breaching the barrier and as such the proposal is contrary to the aims and objectives of the National Planning Policy Framework.**

Reason for Recommendation

The relocation of the pump station, the alterations to the levels and the proposed amendments to the architectural are acceptable. However, the proposed re-routeing of the footpath within the Root Protection Area of protected trees would adversely affect those trees and the visual appearance of the area. In addition, the position of the Locally Equipped Area for Play raises highway safety concerns.

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

The applicant has been given additional time but to date the concerns have not been addressed. As such the proposal is not considered to be a sustainable form of development.

Key Issues

This application seeks, under section 73 of the Town and Country Planning Act 1990, to vary a condition of reserved matters approval 19/00623/REM relating to internal access arrangements, layout, scale, appearance and landscaping in respect of a residential development of 133 dwellings.

In deciding a section 73 application the Authority must only consider the condition that is the subject of that application, it is not a complete reconsideration of the development/original application.

Where an application under section 73 is granted, a new planning permission is issued that sits alongside the original permission, which remains intact and un-amended. In granting permission under section 73 the local planning authority may impose new conditions, provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. For the purpose of clarity,

decision notices for the grant of planning permission under section 73 should set out all of the conditions on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect.

The variation sought relates to condition 2, which lists the approved drawings, and involves the following:

- Relocation of the pump station north eastwards from the approved location and re-routeing of the approved footpath through the linear open space to the north of the site.
- Relocation of the locally equipped play area (LEAP) to the southern area of public open space.
- Amendment of the architectural detailing on all approved house types from artificial stone heads and cills to slip tile cills and brick heads.
- Amendment of proposed finished floor levels.

The proposed amendments to the architectural detailing on the dwellings do not result in a significant change in the appearance of these dwellings and such changes are considered to be acceptable. The other changes will be considered in more detail below.

Amendment to proposed finished floor levels

The proposed changes to the finished floor levels show an increase across the site compared to the approved plans. In some parts the changes are relatively limited but are more significant in other parts where the difference is around 1m.

The layout and levels as proposed within this development do not raise any issues of residential amenity for the occupants of this development in respect of overbearing impact and loss of light. In addition there would be no discernible difference in appearance.

A section plan has been submitted showing the bund and acoustic fence and its relationship to proposed dwellings adjoining it. It demonstrates that the bund will still be effective as an acoustic barrier with the revised levels.

As such there are no objections to this change to the proposal

Relocation of pump station and LEAP

The submission sets out that the pump station has been moved north eastwards of its approved location within the linear open space, to the north of the site, to ensure that it meets Severn Trent Water size specification whilst avoiding impacting on retained TPO trees within the site. Such a change requires the re-routeing of the approved footpath through this space. The LEAP has been moved to an area of public open space, to the south of the site adjoining the Keele Road roundabout, to accommodate these changes.

The Landscape Development Section (LDS) has raised objections regarding the impact of these elements of the proposal on the Root Protection Area of retained and protected trees. Following discussions with the LDS it has been agreed that the pump station does not encroach within the Root Protection Area (RPA) of retained trees and as such there are no objections to this aspect of the current application. A stretch of the footpath through this linear open space as now proposed, does however lie within the RPA of protected trees and is unacceptable due to the harm to protected and visually significant trees. Below ground tank storage of surface water also encroaches into the RPA but such details are not for approval in this application as they are the subject of a separate conditions approval application.

The Landscape Development Section has expressed concerns about the position of the LEAP on the RPA of trees. The LEAP, as indicated above, is not to be located near to trees but is now proposed in the area of public open space, to the south of the site, adjoining the Keele Road roundabout. This location of the LEAP is considered to be unacceptable from a public safety viewpoint. This part of the site is at a lower level than the adjoining carriageway and vehicles frequently breach the barrier and

crash into this area. The layout of the site included the open space in this location in recognition of that. The introduction of a LEAP in this area is not appropriate, therefore.

Other matters

A number of matters have been raised in representations received on the application.

The developer has commenced development with the benefit of a reserved matters application. The pump station, LEAP and re-routed footpath have not been installed. Any deviations from the approved plans, therefore, relate to changes to levels and external appearance of the properties which are not considered to be unacceptable.

The drainage details, other than the position of the pump station, are not for consideration in this application as set out above. The relevant consultations have been undertaken on the condition approval applications.

The development as approved does not include a cycle path. An acoustic fence is required on the top of the bund along the northern boundary of the site and this application does not change that requirement.

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 CSP1: Design Quality
Policy CSP4: Natural Assets
Policy CSP5: Open Space/Sport/Recreation

Newcastle-under-Lyme Local Plan (NLP) 2011

Policy N12: Development and the Protection of Trees
Policy N17: Landscape Character – General Considerations
Policy C4: Open Space in New Housing Areas

Other Material Considerations include:

National Planning Policy

National Planning Policy Framework (NPPF) (2021)

Planning Practice Guidance (March 2014)

Relevant Planning History

19/00623/REM	Reserved Matters application (appearance, landscaping, layout and scale) for residential development comprising 133 dwellings, public open space and associated works pursuant to outline consent 14/00948/OUT - Approved
15/01085/OUT	Residential development of up to 138 dwellings with details of access and proposed landscape bund (resubmission of planning application 14/00948/OUT) – Refused.
14/00948/OUT	Residential development of up to 138 dwellings – Refused but subsequently allowed on appeal

Views of Consultees

The **Environment Agency** state that they objected to residential development at this location when responding to the consultation in respect of 14/00948/OUT as it is located within 50m of a currently permitted non-hazardous landfill site which they regulate and which is known to be producing landfill gas. They considered that it represents an unacceptable risk to the proposed development and recommended that the application should be refused. These views remain. As the original proposal was granted planning permission at appeal against their advice they have no comments to make regarding the application.

The **Highway Authority** has no objections

The **Landscape Development Section** have the following concerns:

- The revised location of the playground equipment is not supported as it appears to be within the root protection area of retained and protected trees.
- The footpath, where within the RPA of retained trees and on previously unsurfaced ground, is not supported.
- Information concerning the impact of the installation of proposed services upon retained and protected trees has not been supported. They do not support current proposals that show new service connections within the RPAs of retained trees.
- Not all of the retained and protected trees are shown on the drawings provided. Retention and protection of trees should be made clear on all drawing layouts.

They request that the developer considers this proposal (revised layout, footpath and services installation) with his arboricultural consultant, and that adjustments be made to this layout to avoid RPAs.

All works within the RPAs of retained trees will require an Arboricultural Impact Assessment in accordance with BS5837:2012.

Representations

A representation has been received from the Thistleberry Residents' Association, the contents of which are summarised below:

- Although the plans have yet to be approved work appears to have already begun and it is surprising that more planning control and supervision has not taken place given the sensitivity of this site.
- The increase in size of the underground tanks is questioned and the ability of existing drainage and sewerage infrastructure to cope with the increase needs to be assessed. The lack of consultation with Severn Trent Water and Red Industries (owner of the adjoining landfill site) is questioned. The question as to whether the water pumping on this site is to replace the water pumping activity currently undertaken by the Coal Authority in relation to its managed mines upstream of the housing site and the landfill site is also questioned.
- Large amounts of soil that is being moved on site appears to be being used to build up the boundary with Cemetery Road and the field site to reduce the level difference and for a bund which will act as a buffer between the housing site and the landfill site. Such work should not be close to or damage the container lining of the landfill site particularly given that the play area is to be placed in the vicinity of the bund.
- The play area appears very close to the landfill boundary and the emissions might make the play area less than safe for children.
- It is of concern that this is an application for full planning permission given that important details seem to be missing.
- There is no sign of a cycle path on the plan.
- It is understood that the original application included an acoustic fence but this appears to have been downgraded to something else in this application.
- As this is an application for full planning permission it would appear that it is an oversight of the developer to have not entered into pre-consultation discussions with the TRA.
- It would be an unsafe decision to approve the application unless all concerns have been addressed.

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/21/00616/FUL>

Background papers

Planning files referred to

Planning Documents referred to

Date report prepared

10th March 2022