

The application is for the variation of condition 2 of planning permission 20/01079/FUL which granted planning consent for the construction of 20no. self-contained flats with associated parking on land off Apedale Road, Chesterton. The application is seeking amendments to the site plan and elevation plans.

The site lies within the urban area of Chesterton, as indicated on the Local Development Framework Proposals Map. The site extends to approximately 0.18 hectares.

Access to the site is via an existing vehicle access point off Apedale Road.

**The statutory 8 week determination period for this application expired on the 29<sup>th</sup> June 2023 but the applicant has agreed an extension of time to the statutory determination period to 13<sup>th</sup> October 2023.**

### **RECOMMENDATION**

**PERMIT subject to:**

- **Variation of Condition 2 to list the revised plans**
- **All other conditions of 20/01079/FUL that remain relevant at this time**

### **Reason for recommendation**

The development is located within a highly sustainable urban area whereby the principle of the development has already been considered acceptable. As built, the building deviates from the approved plans which raised concerns relating to design and residential amenity. The applicant has engaged with the Local Planning Authority to find a solution to these concerns, and it is considered that with the installation of appropriate boundary treatments and changes to the size of window openings on the frontage, that the current harm can be successfully mitigated and still deliver a development that is considered to be of appropriate design and offer sufficient residential amenity to future occupants and neighbouring properties.

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

The Authority has requested additional information and amended plans during the consideration of the planning application to address specific concerns in relation to impacts to residential and visual amenity. These amendments are now considered to be appropriate and represent a sustainable form of development in accordance with the objective of the NPPF.

### **KEY ISSUES**

The application is for the variation of condition 2 of planning permission 20/01079/FUL which granted planning consent for the construction of 20no. self-contained flats with associated parking on land off Apedale Road, Chesterton. The application is seeking amendments to the site plan and elevation plans.

The site lies within the urban area of Chesterton and within an Area of Landscape Regeneration, as indicated on the Local Development Framework Proposals Map.

In deciding an application under section 73, the local planning authority must only consider the condition/s that are the subject of the application, it is not a complete re-consideration of the application.

Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and un-amended. A

decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission.

The works in relation to the elevation changes are retrospective as development on the site has commenced, with work now progressing to first floor level. To date this work is not in accordance with the approved plans and so this application is seeking to regularise these works. The proposals also include a new boundary wall/fence to the front elevation and a new boundary fence on the eastern boundary; works to these elements have not yet commenced.

Access to the site remains via a previously existing vehicle access point off Apedale Road.

The principle of the residential development was previously considered acceptable under application reference 20/01079/FUL as were the considerations relating to planning obligations and financial viability, which are not altered by the proposals now being considered.

Therefore the main issues for consideration in the determination of this application are:-

- The design and impact on the character and appearance of the area,
- Residential amenity matters, and
- Car parking and highway safety.

#### Design and Impact on the Character and Appearance of the Area

Paragraph 126 of the National Planning Policy Framework states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

Paragraph 130 of the framework lists 6 criterion, a) – f) with which planning policies and decisions should accord and details, amongst other things, that developments should be visually attractive and sympathetic to local character and history, including the surrounding built environment and landscape setting while not preventing or discouraging appropriate innovation or change.

Policy CSP1 of the adopted Newcastle under Lyme and Stoke on Trent Core Spatial Strategy (CSS) details that new development should be well designed to respect the character, identity and context of the area.

Saved Policy N22 of the Local Plan states that within Areas of Landscape Regeneration the Council will support, subject to other plan policies, proposals that would regenerate the landscape appropriate to its urban or rural location. Where development can be permitted, developers will be expected to use the opportunity provided by the development to make a positive contribution towards landscape regeneration.

The application site is located on Apedale Road which has a mix of different industrial, commercial and residential buildings in close proximity. The grounds of Chesterton Community Sports College are located beyond the southern and western boundaries. Residential bungalows are located to the east of the site.

The footprint, layout and internal arrangement of the building remains unaltered from the previously approved details. The changes being sought in this application are to the elevations and site plan.

The applicant successfully discharged the requisite pre-commencement conditions and made a lawful commencement on site. However, as construction progressed complaints were received in relation to the proposal not according with the approved plans. An enforcement investigation identified that as a result of changes to the ground levels on site, the appearance of the front and east side elevation looks notably different to those approved, with the distance between the ground level and the base of the ground floor windows being increased, which in parts has resulted in large expanses of brickwork, something that is most noticeable from the front elevation, directly on Apedale Road.

The development as built has resulted in the bases of the ground floor, front elevation windows sitting 2m above the adjacent footpath, whereas the plans as approved detailed a distance of 1m. As a result the windows are sited in an elevated position above the street while a large expanse of blank brickwork sits beneath them which has resulted in the development appearing incongruous within the wider street scene and presenting a dominant front elevation that cannot be said to be of high quality design.

In order to address this concern, the applicant has proposed to re-build a more substantial boundary wall than previously agreed across the entire frontage of the site. This would consist of two 2.2m high pillars at either side of the front elevation with the remaining boundary made up of a 0.6m high dwarf wall with 1.2m high wrought iron railings sitting on top. The height of the boundary treatment does assist in screening the additional expanse of brickwork and would help the development assimilate much better within the surrounding street scene, however it is accepted that it does not eradicate the issue entirely. Further liaison with the applicant has also now seen changes to the scale of some of the ground floor window openings by increasing their depth to remove some of the additional brickwork. It is considered that in combination, the boundary treatment and revised window openings would provide a more proportionate appearance to the front elevation, reducing the expanse of brickwork and the appearance of a more balanced frontage.

The change in levels is also noticeable on the east side elevation of the building. Similar to the front elevation, the change to the floor levels has resulted in the base of the windows on this elevation sitting in a higher position above the ground level adjacent to the building. However, in this location the levels slope upwards towards the south eastern corner of the site, and so to some extent the resultant visual implications are less severe given that the additional expanse of brickwork gradually decreases with the sloping levels.

Therefore while a contrast from the approved elevations, on balance there are not considered to be any wider implications on the character and appearance or visual amenity of the area. It is proposed to install a new 2m high fence along the east boundary and its siting is not considered to be harmful to the wider appearance of the area, although full and precise details of its appearance and finish should be secured via condition.

A further implication as a result of the changes to the ground level is that the overall height of the building has increased by 0.9m. Whilst not a minor alteration, given the two storey scale of the building as approved and large gable end feature at the entrance, it is not considered that this change to the height would have negative implications on the visual amenities of the street scene. There is a large variety of building styles and heights within this particular part of Apedale Road and so the increase in height, when viewed in this context would not result in an incongruous addition to the wider street scene.

The remaining elevations of the building remain unaltered from the approved scheme.

A condition should be attached to any permission granted to secure full and precise details of the brickwork, railings and finish to the new boundary wall and the fencing along the eastern boundary.

On balance, it is considered that the updated and amended plans would suitably address concerns relating to design and appearance, allowing the development to comply with the policies of the Development Plan as well as the aims and objectives of the NPPF.

#### Car parking and any highway safety implications

Policy T16 of the Local Plan states that development will not be permitted to provide more parking than the maximum levels specified in the Local Plan Table 3.2. The policy goes on to specify that development which provides significantly less parking than the maximum specified standards will not be permitted if this would create or aggravate a local on street parking or traffic problem. Such a policy is however of limited weight as it not in accordance with the Framework. The Framework indicates at paragraph 108 that maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are

necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport.

The site is located within a highly sustainable urban area in close proximity to the services and amenities of Chesterton, along with schools, employment opportunities and popular areas of open space.

The amendments being sought in this application would not result in any changes to the number of units, bedrooms and associated parking spaces. The previously approved covered cycle parking area is would also remain in place, and so from a parking standards perspective the development is acceptable.

The initial comments from the Highway Authority (HA) recommended the refusal of the scheme on the basis that the revised boundary wall along the frontage would be within the previously approved visibility splay. As a result the applicant has provided additional and updated information that now shows that part of the wall would be re-aligned to sit behind the approved visibility splay.

On that basis updated comments from the HA now detail that this new boundary treatment would not cause any obstruction to sightlines when emerging from the access and so they no longer raise any objections to the proposal.

Conditions should be attached to any permission granted to secure the updated boundary wall details to ensure that these are built behind the visibility splay.

Therefore in light of the above the proposed development would not lead to significant highway or car parking implications and accords with policy T16 of the local plan and the requirements of the NPPF.

#### Impact on residential amenity

Paragraph 130 of the NPPF lists a set of core land-use planning principles that should underpin decision-taking, one of which states that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. It further sets out at paragraph 185 that decisions should also ensure that new development reduces potential adverse impacts resulting from noise and avoid noise giving rise to significant adverse impacts on health and quality of life.

Supplementary Planning Guidance (SPG) Space Around Dwellings provides guidance on new dwellings including the need for privacy, daylight standards, and environmental considerations.

The changes to the elevations and floor levels have resulted in the windows being positioned at a higher level than previously approved and so the implications of this on neighbouring amenity must be considered. On this occasion it is the side facing windows on the east elevation of the building that must be closely considered.

To the east of the application site is a row of bungalows and so windows on the east elevation of the development have an outlook towards the rear gardens and side elevations of these properties. The previously approved scheme was not considered to raise any implications in relation to residential amenity given the relationship between facing windows and neighbouring gardens and so this application can only consider the difference between the scheme as approved and that now presented.

Given the sloping levels in the site along the eastern boundary, the changes to the floor level of the building have resulted in the windows on this east side elevation sitting at varying distances above the ground. The base of the windows serving flats 6 and 7 on the ground floor are all between 1.3m and 1.45m above ground level. However, given that these windows have outlook across front garden spaces and the side elevation of No. 7 Apedale Road (which contains no principal windows) the changes in ground levels raise no implications for residential amenity in relation to these windows specifically.

The two ground floor windows that would be most likely to have implications for the privacy of the neighbouring property of No. 7 Apedale Road would be the bedrooms windows of Flats 8 and 9. In visiting the site your officer has taken a view from these windows as built. Whilst it is accepted that the increased floor level does allow views to skim across the boundary treatment of No. 7 Apedale Road, the views are not considered to be overly intrusive to the extent that would justify refusal. In addition to this, the applicant has submitted amended plans that show the installation of a 2m high boundary treatment along the length of the eastern boundary which, when installed, would screen any views towards this neighbouring property. A condition can be attached to any permission granted to ensure that this fencing is installed prior to the occupation of the development, and maintained for its lifetime. It is therefore considered that on this basis, the privacy and residential amenity of the neighbouring property could be maintained and the amended proposals would not result in a significant loss of amenity that would justify the refusal of the application.

Whilst the total height of the building has increased by 0.9m, which could present an overbearing impact on the neighbouring bungalows to the east, the plans detail that the first floor windows would be positioned to sit adjacent to the side elevation of the dwelling, and so their views would not be directly down and into the private garden, but instead largely across the roofs of the row of properties. Whilst some view may be achieved, given the position of the windows there is not considered to be any further loss of amenity over and above the previously approved scheme when considering the first floor side facing windows.

Subject to conditions, the scheme can provide an acceptable level of amenity for future occupiers and neighbouring properties. The proposed development therefore accords with the guidance and requirements of the NPPF.

### 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 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 SP1: Spatial Principles of Targeted Regeneration  
Policy ASP5: Newcastle and Kidsgrove Urban Neighbourhoods Area Spatial Policy  
Policy CSP1: Design Quality  
Policy CSP3: Sustainability and Climate Change  
Policy CSP5: Open Space/Sport/Recreation

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

Policy H1: Residential Development: Sustainable Location and Protection of the Countryside  
Policy T16: Development – General Parking Requirements  
Policy C4: Open Space in New Housing Areas  
Policy N22: Areas of Landscape Regeneration

### **Other material considerations include:**

[National Planning Policy Framework \(2023\)](#)

[Planning Practice Guidance \(2019, as updated\)](#)

[Supplementary Planning Guidance/Documents](#)

[Space Around Dwellings SPG \(SAD\) \(July 2004\)](#)

[Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document \(2010\)](#)

[Relevant Planning History](#)

20/01079/FUL - Proposed residential development of 20 no. flats – Permitted

[Views of Consultees](#)

The **Highways Authority** raises no objections to the proposal.

[Representations](#)

One representation has been received raising concerns in relation to privacy and the unauthorised nature of the changes that have taken place on site.

[Applicant/agent's submission](#)

All of the application documents can be viewed using the following link;

<https://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/23/00374/FUL>

[Background Papers](#)

Planning File  
Development Plan

[Date report prepared](#)

27<sup>th</sup> September 2023