

## **PLANNING STATEMENT**

**In support of a:**

**Section 73 application for the variation of conditions  
attached to planning permission SMD/2014/0471**

November 2017



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## **1.0 INTRODUCTION**

- 1.1 Moule & Co are instructed by Mr Steve Swann of Wrekin Housing Trust to produce a planning statement in support of the resubmission of a Section 73 application to Staffordshire Moorlands District Council, for the variation of conditions following the grant of the following planning permission:

*"Variation of conditions 2 (approved plans), 6 (approved glazing), 11 (access plans), 12 (highway access), 13 (highway rectification works), 15 (revised access details) and 18 (planting plan) attached to planning permission SMD/2014/0471."*

## **2.0 RELEVANT HISTORY**

- 2.1 A previous Section 73 application was made in 2016, validated with the reference SMD/2016/0400 and with the same description as above. Even though the applicants and LPA had worked closely together, and the Planning Officer had made a recommendation of approval, Planning Committee resolved to refuse the application at their Development Committee dated 6<sup>th</sup> October 2016. The committee report is also submitted with this application for quick reference.

- 2.2 The actual decision notice was not issued until over 100 days later 20<sup>th</sup> January 2017, the singular reason for refusing the s73 application being on highways grounds:

*"1) The application proposes access to the site via Meadow Drive. This is a short residential cul-de-sac this is frequently used by other highway users such as those dropping their children off at local schools and by people working in the nearby town centre wishing to avoid parking charges. It is considered that the proposed development would have an adverse effect on highway safety by contributing further to the poor traffic flow and severe congestion in the area. This would in turn result in a real and significant hazard to people/children and other highway users thereby resulting in the provision of an unsafe access. As such the proposal would be contrary to policy T1 of the adopted Core Strategy and guidance contained within the National Planning Policy Framework."*

- 2.3 It is important to note that contained within the decision notice is a note that confirms the Council had no issues relating to any of the other amendments:

*"The Council has no objections to the other amendments proposed to the scheme other than those relating to the access arrangements."*

- 2.4 The refusal was subsequently appealed – reference APP/B3438/W/17/3168607, a copy of the appeal decision is submitted with this application for reference, and is discussed further within this document.

- 2.5 In paragraph 8 of the appeal decision, the Inspector confirms that the Council only has objections relating to the revised access arrangements and this was the main issue that would be dealt with. However, the Inspector also had concerns that the existing signed Section 106 agreement dated February 2015 (from the previous application) had not yet

had a deed of variation in place that would satisfactory ensure the development would be for affordable rented housing, and could not be enforced.

- 2.6 Therefore, the Inspector considered both issues in her decision. Whilst the highways and access arrangements were found to be acceptable (discussed in further detail below), the Inspector found that without a suitable signed deed of variation in place that the existing Section 106 agreement was unenforceable, therefore the appeal was dismissed for this reason alone.

### 3.0 THIS APPLICATION

- 3.1 Within the previous application that was determined on 20<sup>th</sup> January 2017, the Council (SMD/2016/0400) agreed that they had no objections to any of the scheme arrangements other than highways.
- 3.2 The appeal (decision issued on 7<sup>th</sup> June 2017 by The Planning Inspectorate) considered the highways issue in careful detail and found that removing / varying the conditions would not have an adverse effect on highway safety.
- 3.3 Consequently, **all** the original issues (with the exception of the s106 planning obligation) have been dealt with and found to be satisfactory through either the previous application or the appeal.
- 3.4 It is necessary to remember however that although it was only the highways / access issue that had to be considered at appeal, because the previous s73 application was refused and the appeal dismissed (due to the s106 issues), then all of the proposed amendments must be reapplied for afresh within this application.
- 3.5 The principle of residential development on this site is well established, sections 7 & 8 of the Planning Officers committee report for 6<sup>th</sup> October 2016 set out that only the question of conditions and their application can be revisited, not the principle of the development.

*"7.1 Section 73 of the Town & Country Planning Act 1990 provides that any application may be made for planning permission without complying with conditions applied to a previous permission. It states that local authorities may decide whether to grant permission subject to differing conditions (this can include imposing new conditions), remove the conditions altogether or refuse to alter the conditions. Thus, it is possible to apply for conditions to be struck out, or for their modification or relaxation. This makes it clear in considering such an application a Local Planning Authority may only consider the question of conditions and not revisit the principle of the development.*

*7.2 Therefore, only the acceptability of the proposal in the context of the reasons for the imposition of the conditions falls to be considered in the determination of the current application. However, in terms of decision making, a Section 73 application should be treated just like any other application, and due regard should be paid to the Development Plan and any other material considerations.*

*8.1 Having considered the merits of the proposal against prevailing planning policy, the application is considered to accord with the key themes set out in the National Planning Policy Framework in contributing towards the delivery of housing in a sustainable location. The principle of residential development on the site is well established and there has been no material change in adopted development plan policy which would lead to a different conclusion with regards to this proposal being reached. The proposed variations to the design of the new build part of the scheme and the conversion of the existing building are considered to be acceptable and would have not adversely impact on the overall character and appearance of the development or the wider surrounding area. The revised access arrangements, which propose using Meadow Drive, is the preferred option for the Local Highway Authority who fully endorse the proposal."*

- 3.6 In planning terms however, it is not considered that there are any additional or different planning principles that would apply to an application submitted now, over and above the previous one heard at Planning Committee 12 months ago in relation to either the principle (which is not in question) or the s73 at hand.
- 3.7 The outstanding issue relating to the deed of variation to the s106 agreement is being discussed between the Council and their legal representatives and the applicant. This can be dealt with and concluded alongside the resubmission of this s73 application. Consequently, all the original issues have been dealt with and found to be satisfactory through either the previous application or the appeal. So, whilst procedurally this application needs to be made afresh, it is sincerely hoped the Council will work with the applicants to ensure there are no loose ends and the application can be approved without delay.
- 3.8 Whilst we do not propose to provide lengthy planning justification for this resubmitted section 73 application, in the interests of completeness we cover the principle points in brief below.

#### **4.0 SITE DESCRIPTION AND DEVELOPMENT PROPOSAL**

- 4.1 The site is a roughly 'L' shaped parcel of land to the south/rear of Bank Street in Cheadle. Dwellings fronting Meadow Drive are located to the west with dwellings fronting The Avenue to the south. To the east are a number of listed buildings, including the St Giles' R.C Church (Grade I), St Giles R.C School (Grade II) and a dwelling fronting Bank Street (Grade II). The site is located within the Cheadle Town Development Boundary, close to the town centre. A small section of the northern part of the site (the Bank Street fronting buildings) is positioned within the Cheadle Conservation Area. The site consists predominantly of redundant allotment land, together with the existing building 5-7 Bank Street. Access to the site is currently through an archway connecting directly with Bank Street.
- 4.2 The amendments to the previously approved scheme that were sought can be broadly grouped in to three categories:- amendments to the new build properties and their

general arrangement; amendments to the conversion of 5-7 Bank Street; and a revised access to serve the development off Meadow Drive rather than Bank Street.

- 4.3 The only element that the LPA raised objection to, was the revised access arrangements off Meadow Drive. As such, we will briefly focus on this element of the proposed development.

## **5.0 THE KEY POINTS OF THE PLANNING INSPECTORS DECISION**

- 5.1 Paragraphs 15 – 25 of the Planning Inspectors report cover the issues relating to Highway Safety.
- 5.2 The Inspector confirms at paragraph 16 that the Council have already agreed that Meadow Drive is technically capable of servicing the development but has maintained its objection to the proposal due to the likely increase in traffic.
- 5.3 The applicant had already provided a full technical 'Transport Statement' to the previous s73 application, the Inspector also having access to the same. Again as the Inspector points out at paragraph 17, the Transport Statement uses industry standard TRICS data to calculate the additional number of trips per day. The Council did not previously challenge or question this data provided so therefore we must, as the Inspector did, conclude that the Council agree with these calculations. Indeed, the Council also confirmed through their own independent 'Highway Statement' that additional traffic generation would be limited.
- 5.4 The Inspector considered all matters in front of her and concluded at paragraphs 24 & 25:

**24** *"I have considered the concerns of the Council and local residents carefully. However, the evidence before me shows that the development would be unlikely to generate significant levels of traffic. There are no technical reasons why the proposed alternative access would be unacceptable or that local roads could not accommodate the likely increase in traffic. Overall, it has not been demonstrated that safe and suitable access to the site cannot be achieved via Meadow Drive. Moreover, the Framework states that development should only be refused on transport grounds where the residual cumulative impacts of development are severe. Although there is some evidence of congestion and conflict between highway users at school drop off time, it has not been demonstrated that the impacts of the development would be severe.*

**25** *To conclude on this issue, I find that removing / varying the conditions would not have a material adverse effect on highway safety. The development would comply with Policy T1 of Core Strategy which, amongst other things seeks to ensure that all new development is located with the local highway network can satisfactorily accommodate traffic generated by the development."*

- 5.5 Furthermore, the Inspector considered whether the Council had acted unreasonably in refusing the application based on these grounds, and concluded they had. In the costs decision the Inspector set out at paragraph 7:

*"...the Council has not advanced any technical reasons why the proposed alternative access would be unacceptable, or demonstrated that the local road network could not accommodate the increase in traffic"*

- 5.6 At paragraph 8:

*"If the Council had taken into account the evidence before it, the required deed of variation in relation to the section 106 planning obligation could have been agreed and permission granted in a timely manner. As it stands, the Council has delayed development which should have been permitted."*

- 5.7 Furthermore, this additional application should not have been necessary. Nevertheless, whilst this is a frustrating position, the applicant is hopeful the Council will process this resubmission efficiently and now approve without additional delay.

## 6.0 CONCLUSION

- 6.1 The s.73 application for amendments to the previously approved scheme for 42 no. dwellings was recommended for approval by the LPA's professional planning officers. The planning officer's committee report confirms that the proposals would accord with the key themes set out in the NPPF in contributing towards the delivery of housing in a sustainable location. Furthermore, that the revised access arrangements, with access sought from Meadow Drive as opposed to Bank Street as previously approved, is the preferred option for the Local Highway Authority who fully endorse the proposal. It is highly frustrating that the Planning Committee sought to refuse the application on unfounded grounds.
- 6.2 As a result, these revised arrangements were considered at appeal and the Inspector agreed that the revised arrangements were technically sound and acceptable, furthermore costs were awarded against the Council for their earlier decision. The appeal had to be dismissed however as the Inspector found the planning obligation to be unenforceable and required the deed of variation to be put into place.
- 6.3 The position is now that a resubmission is required for the deed of variation to be resolved. At this point having assessed the principle of the variation of the conditions through the s73 application, we submit that whilst procedurally a full s73 application must proceed, **none** of the principle of planning should be reconsidered at this point and it only leaves the deed of variation issue to be dealt with.
- 6.4 We appeal to the Council to deal with this resubmission as quickly as possible to bring this matter to a satisfactory conclusion so this development can commence, and deliver much needed affordable dwellings in Cheadle.