

Committee Date	1st July 2021	Agenda Item:
Address	Flamingo Park Sidcup Bypass Road Chislehurst BR7 6HL	
Application number	20/02880/FULL4	Officer: Claire Brew
Ward	Chislehurst	
Proposal (Summary)	Section 106A application to amend the terms of the legal agreement attached to planning permission ref 17/04478/FULL1	
Applicant	Agent	
C/O Agent	Matthew Blythin DHA Planning	
Reason for referral to committee	Original application was determined at committee	Councillor call-in No

RECOMMENDATION	APPROVAL SUBJECT TO LEGAL AGREEMENT
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Summary

<p>KEY DESIGNATIONS</p> <ul style="list-style-type: none"> • Conservation Area: Chislehurst • Biggin Hill Safeguarding Area • Green Belt • London City Airport Safeguarding • Sites of Interest for Nat. Conservation • Smoke Control
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1. SUMMARY OF KEY REASONS FOR RECOMMENDATION

- The proposed amendments to the original legal agreement would give rise to some risk in that some of the residential development could be built-out and occupied and the football grounds remain incomplete
- At the same time the proposed amendments would help to provide some assurance that a Registered Provider will be willing to take-on the enabling residential development, releasing funds for the

construction of the stadium and football grounds and delivering some much needed affordable housing.

1. LOCATION

- 1.1 The 7.5 hectare (75,000sqm) site is located on the A20 Sidcup Bypass, which is part of the Transport for London Road Network (TLRN). The A20 is also the boundary between the Boroughs of Bromley and Bexley and a major arterial route linking London to Kent.
- 1.2 The site is bounded to the north and east by the A20, to the south Kemnal Park Cemetery and Kemnal Road to the west, which is a private access road providing pedestrian access only. There is a gated pedestrian access to the site off Kemnal Road.
- 1.3 The site forms part of the Green Belt and is partly designated a Site of Interest for Nature Conservation (SINC). It is bordered to the south by the Chislehurst Conservation Area. The trees bordering the site to the south are included within a blanket Tree Preservation Order (TPO). The site also lies within an area of archaeological interest and is within Flood Zone 1.
- 1.4 The site represents the northern tip of a 'green wedge' that extends south to Chislehurst Common, much of which is designated Conservation Area. The surrounding areas are characterised by a mix of residential development on the opposite side of the A20, falling within the London Borough of Bexley to the north and the London Borough of Bromley to the east. Further open space lies to the south and to the west of the site is World of Golf.
- 1.5 The site can be divided into three main areas: eastern grass fields, a hard surface of tarmac and gravel at the centre and western grass fields. There are several buildings which have the benefit of planning permission and/or lawful uses: the pavilion building, most recently used as a nightclub and containing 2 flats (1338m²); the smaller single storey pavilion – former bowling green pavilion (232 m²); the brick building (old groundsman's WC & tea room) (13m²) and the old rugby posts store (41m²).
- 1.6 Historically, the site has also been used for fun fairs and boot fairs under temporary use permitted development.
- 1.7 The site was once a popular sports ground with 4 pitches and good ancillary facilities used by a number of football teams, however, it has been allowed to fall into a poor state of repair and historically there have been a number of unauthorised uses operating from the site including a van hire business, container storage, double glazing business, motor vehicle parking and scaffolding companies.

- 1.8 The site now benefits from planning permission for the existing nightclub building and other buildings and structures to be removed and the site to be re-developed with a new football ground comprising clubhouse and stands (max height approx. 8.4m) with floodlit artificial playing pitch, external grass sports pitches.
- 1.9 Along with the Football Ground and playing fields, permission was also granted for the construction and 42 no. dwellings (26x3 bed two storey terraced dwellings, 12x2 bed flats and 4x1 bed flats set within 4 two storey blocks) to be provided as enabling development, with associated access, parking and landscaping (application ref.17/04478/FULL1). The dwellings as approved comprise 5 affordable rented properties and 37 shared ownership.

2. PROPOSAL

- 2.1 Planning permission ref.17/04478/FULL1 was subject to S106 legal agreement which included clauses to specifically preclude the site from being developed with housing (which is inappropriate development in the Green Belt) without the football grounds and the playing fields ever coming forward.
- 2.2 Specifically, the original legal agreement included:
- The requirement for a scheme for the construction of the Football Ground, including a timetable for the building works and the phasing of the building works with the Residential Development to be submitted to the Council and approved by it (para 1.2)
 - A prescribed phasing approach which restricted the Residential Development progressing at a faster rate than the Football Ground (para 1.3)
 - A requirement for the development to be constructed in accordance with the scheme submitted to the Council under clauses 1.2 and 1.3 and for works not to proceed to a subsequent phase until all works in the preceding phase have been completed and certified as completed by the Council (para 1.4)
 - A clause restricting occupation of the 18th dwelling until the Football Ground and Playing Fields have been constructed and are ready for use (para 5.1).
- 2.3 However, since securing planning consent the applicant has experienced difficulty securing a Registered Provider (RP) to deliver the residential development. The applicant states that they have been able to secure interest from three RP's, however, each have advised of their reservation in the wording within the S106, Schedule 1 clause 5.1, relating to restricted occupation of the 18th dwelling until the Football Ground and Playing Fields have been constructed and are ready for use.
- 2.4 They state that each interested RP party has advised that they are keen to enter into Contract, however such a restrictive S106 clause

will cause an issue with their Board when seeking approval prior to entering into contract to deliver the affordable dwellings on the site.

2.5 It is to this end that the applicant is proposing a number of alterations to the legal agreement as follows:

- Clause 1.1 shall be amended to insert the following definition:

“Ready for Use” means available for use and constructed to an operational standard to the satisfaction of the football league in which Cray Wanderers Football Club’s senior first team are competing at that time, and confirmed as such in writing to the Council by that league.

- Deletion of para 1.2 (requirement for a phasing scheme to be submitted and approved) given that clauses 1.3 and 1.4 will provide the necessary fundamental safeguard, and that phasing is also covered off by condition
- Deletion of the phasing clause (para 1.3) and replacement with the following alternative wording:

1.3 To not construct the Residential Development beyond damp proof course until the Football Ground has been constructed up to damp proof course

- A new paragraph 1.4 of Schedule 1 shall be inserted as follows:

1.4 To not construct the Residential Development beyond waterproof shell until the Football Ground has been constructed up to waterproof shell

- Paragraph 1.4 of Schedule 1 shall be deleted and replaced with the following words:

1.4 The Development shall be constructed in accordance with paragraphs 1.3 and 1.4 of Schedule 1 and works shall not proceed beyond those works set out in such paragraphs until the Council has certified in writing that those works are completed (such certification not to be unreasonably withheld or delayed)

- Paragraph 1.5 of Schedule 1 shall be deleted and replaced by the following:

5.1 Not to Occupy the 23rd Dwelling (unless agreed otherwise in writing with the Council) until the Football Ground and Fields have been constructed and are Ready for Use

3. RELEVANT PLANNING HISTORY

3.1 17/04478/FULL1: Demolition of existing nightclub building and other buildings and structures and removal of existing hardstanding and

construction of new football ground comprising clubhouse and stands (max height approx. 8.4m) with floodlit artificial playing pitch, external grass sports pitches and 42 no. dwellings (26x3 bed two storey terraced dwellings, 12x2 bed flats and 4x1 bed flats set within 4 two storey blocks) with associated access, parking and landscaping -

PERMISSION SUBJECT TO LEGAL AGREEMENT granted on 5.7.2019

4. CONSULTATION SUMMARY

4.1 Legal Commentary is included in the Assessment section of the report.

5. POLICIES AND GUIDANCE

5.1 National Policy Framework 2019

5.2 NPPG

5.3 The London Plan (March 2021) relevant policies:

Policy H1	Increasing housing supply
Policy H2	Small sites
Policy H4	Delivering affordable housing
Policy H6	Affordable housing tenure
Policy S5	Sports and recreation facilities

5.5 Mayor Supplementary Guidance:

- Homes for Londoners (2017)

5.6 Bromley Local Plan (2019) relevant policies:

- 1 Housing Supply
- 2 Affordable Housing
- 125 Delivery and Implementation of the Local Plan
- 58 Outdoor Sport, Recreation and Play

5.7 Bromley Supplementary Guidance:

- Affordable Housing (2008) and subsequent addendums

6. Assessment

Proposed phasing

6.1 The original legal agreement attached to planning permission ref.17/04478/FULL1 was worded in such a way as to ensure that the football grounds and playing fields were fully built-out before the housing development could be completed and occupied. It included an

occupation restriction to prevent the 18th dwelling from being occupied until the football ground and playing fields are constructed and ready for use and a requirement for the development to be carried out in 3 specific phases:

1. Phase 1 The construction up to damp proof course of the foundations of all the buildings and structures comprised in the Football Ground and in the Residential Development
2. Phase 2 The provision of roofs and waterproof shall for all the building and structures comprised in the Football Ground and in the Residential Development
3. Phase 3 the internal fit out and external landscaping of all the buildings and structures comprised in the Football Ground and in the Residential Development

6.2 However, the applicant has highlighted that this inadvertently prohibits the development and delivery of the stadium at a *faster* pace than the residential and precludes any potential to phase the residential development, as would be standard practice and feasibly necessary for any RP. Further, it is not considered necessary to prevent the stadium 'getting ahead' of the residential, given that it the residential which is the enabling development and therefore the more problematic in Green Belt terms.

6.3 While the amendments to the wording of the legal agreement, as proposed, would prevent the residential development from getting ahead of the football ground works up to a certain point (up to waterproof shell), if the Council has certified in writing that those works are completed then there is potential for the works to then proceed beyond waterproof shell. There is a risk that the houses could then be completed before the football grounds are completed.

Residential Occupation

6.4 The residential development layout is such that it will need to come forward in two phases, each comprising one cul-de-sac. Therefore, one phase will comprise 20 dwellings and the other 22. The applicant has been in discussions with PA Housing who have been reviewing their proposed phasing and at present, it is considered more likely that the 20 unit cul de sac will comprise the first phase.

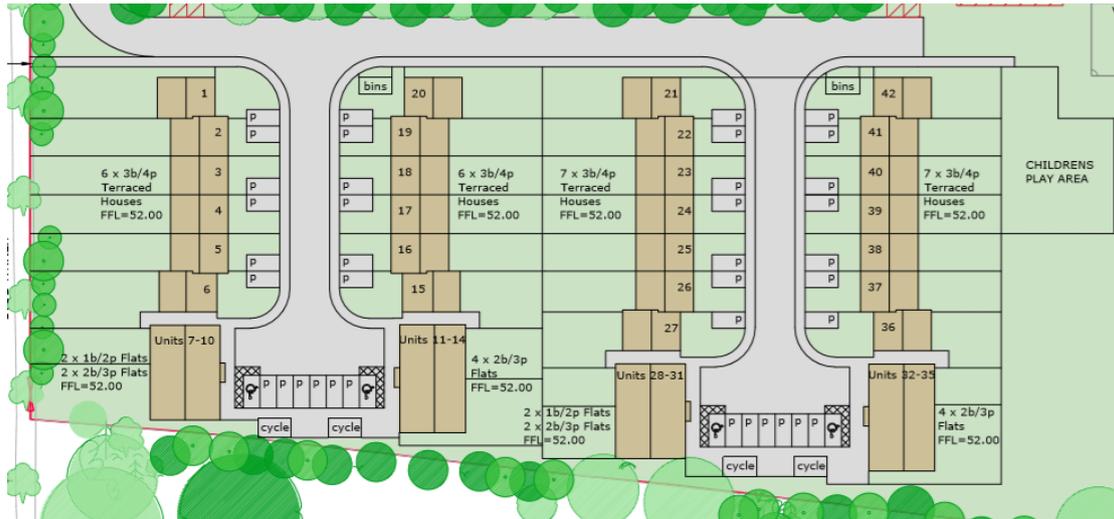


Fig 1: approved layout for the residential development (application 17/04478/FULL1)

- 6.5 The applicant proposes to amend the occupation restriction from the 18th dwelling as currently set out in the S106, to the 23rd dwelling. This would mean that the 23rd dwelling could not be occupied until the Football Ground and Fields have been constructed and are Ready for Use. As a result, the RP could fully build-out and occupy the first phase (20 units of residential) before the football grounds are constructed and are ready for use.
- 6.6 While this would reduce the level of risk for the RP of building-out units which they are then unable to occupy it would leave an element of risk for the Council in that one phase of the residential could be fully built-out and occupied and the stadium never progressed beyond waterproof shell.

Affordable Housing

- 6.7 The applicant is keen for the affordable rented units to be delivered early in the first phase and accordingly a revised accommodation schedule is proposed in place of the one currently appended to the s106 to reflect this. No change to the tenure split as approved is proposed and as approved, the rented units remain the same in terms of the numbers of flats and houses. The proposed amended accommodation schedule for Phase 1 seeks to allocate units 6-10 as the affordable rented units, with the remainder shared ownership.

7. Conclusion

- 7.1 The 42 affordable residential units approved as part of the original application were identified as enabling development to fund development costs for the football grounds, including the acquisition of the land.
- 7.2 By amending the phasing requirements and lifting the occupation restriction there is a risk that one phase of the residential could be fully

built-out and occupied and the stadium never completed, resulting in inappropriate housing development in the Green Belt.

- 7.3 However, with the occupation restrictions no longer in effect there is greater likelihood of a Registered Provider being secured and, with that, essential funds being released helping to fund the stadium and football grounds.
- 7.4 Notwithstanding the risk highlighted, given the current position of Bromley's Five Year Housing Land Supply (FYHLS), where it has been acknowledged that there is a significant undersupply, the provision of affordable housing units at this site, including affordable rented units which would be delivered in the first phase, is seen as a significant benefit weighing in favour of the amendments being approved.
- 7.5 Accordingly, it is recommended that the deed of variation is agreed, in principle, with the final wording to be agreed through discussions between the Council's and the applicant's legal representatives.

RECOMMENDATION APPROVAL SUBJECT TO LEGAL AGREEMENT