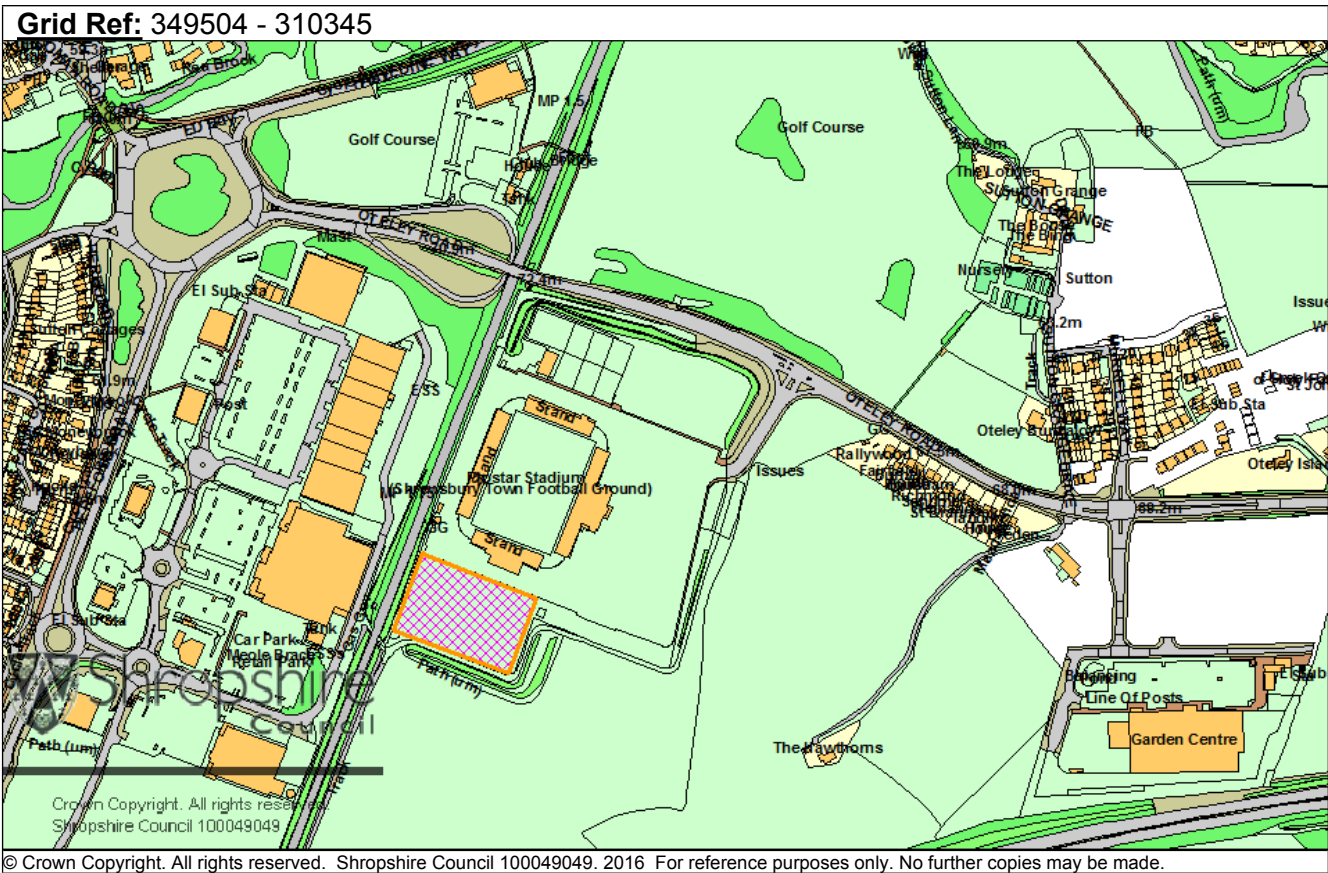


Development Management Report

Responsible Officer: Tim Rogers
 Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 16/04201/VAR	Parish:	Shrewsbury Town Council
Proposal: Variation of condition 2 attached to Ref:14/00587/VAR dated 17/03/2016 relocate community football pitch.		
Site Address: Greenhous Meadow Oteley Road Shrewsbury SY2 6ST		
Applicant: Shrewsbury Town Football Club		
Case Officer: Karen Townend	email: planningdmne@shropshire.gov.uk	



Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

- 1.1 This application seeks consent to vary condition 2 on the original planning permission for the new football stadium on Oteley Road. Condition 2 approves a set of drawings and the current application seeks to alter the location of the community pitch. No other changes are proposed, only the position of the community pitch.
- 1.2 Planning permission was granted on the 4th September 2003 for the erection of a new football stadium, training pitch, community pitch, five-a-side pitches, changing facilities, car parking and associated works. The consent was subject to a number of conditions and a S106 legal agreement. Condition 2 was approved as follows:
“The development hereby approved shall only be carried out in complete accordance with the submitted and approved plans reference 1.03 (proposed site layout), 1.01 rev B, 2.01 rev C, 2.02 rev E, 2.03 rev E, 3.01 rev B, 3.02 rev C, 3.03 rev C, 3.04 rev B, 4.01 rev B and 4.02 rev C received on 11th February 2002, 1.02 rev K received on 5th July 2002 and 02381-L65 piper and 1.03 (site sections) received on the 19th June 2002, unless otherwise agreed in writing with the Local Planning Authority.
Reason: For the avoidance of doubt and to enable the Local Planning Authority to control the development in detail.”
- 1.3 Other conditions required the submission of materials, landscaping, security fencing, lighting, archaeology, drainage, access and contamination information and also controlled the use of the site and the facilities. The current application seeks consent to vary condition 2 to vary the approved layout plan. Condition 19 has previously been varied to allow for non-sporting events to take place at the site. All of the other conditions on the original consent will remain valid and enforceable. The current proposal will not alter the need for the community pitch to be used for sports facilities or alter the five-a-side pitches at all.
- 1.4 A plan has been submitted with the application which shows the proposed position of the replacement community pitch. The proposed site is currently used as the club training pitch and as such is already constructed as a usable pitch. The proposed variation and the loss of the training pitch will be considered in detail in the report.
- 1.5 In addition to varying the approved plans the applicant will also need to enter into a deed of variation to vary the S106 agreement secured on the original planning permission. The agreement secured the provision of all of the community facilities at the site, including the community pitch to which this application relates. A request to vary the S106 has been received by the Council and a separate report is provided to this committee to deal with that matter. This application is required because of a separate planning application for the erection of a Lidl food store on the existing community pitch site. This is also being dealt with as a separate application with a separate report.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 Shrewsbury Town Football Club and the associated sports facilities lie within the Shrewsbury development boundary and within an area which although is currently edge of urban area will become part of the urban area after the construction of the Shrewsbury South Sustainable Urban Extension (SUE).
- 2.2 The land is south of Oteley Road with Meole Brace golf course on the opposite side of the road and residential areas beyond. Over the SAMDev plan period the football club land will become encompassed into the SUE which is an allocated urban extension to the town to include around 900 houses, 22ha of employment land, retail and commercial uses and infrastructure. The SUE will mean that the character of the area will change significantly.
- 2.3 Access to the site is off Oteley Road using the existing traffic light junction which leads to a mini roundabout within the football club. The community pitch is currently to the west of the access road, north of the stadium car park and is 1.07 hectares of relatively flat grassed land with a grassed embankment running around the two external edges of the site, the east and north boundaries, with the fencing on the top.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 Councillor Tandy has requested that the application be determined by committee and the Town Council have raised concerns which the Chair and Vice Chair, in discussion with the Area Planning Manager, agreed are material planning considerations which merit debate at committee. Therefore, in accordance with the adopted scheme of delegation the matter is to be considered at committee.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee Comments

- 4.1.1 **Town Council – Object.** The Town Council has many concerns about this application and the other recent applications linked to it. Whilst there are a number of applications attempting to remove the obligation on the part of the football club to provide community football facilities, not one application provides any definitive detail on how the relocation of facilities elsewhere within the site will provide community value in terms of hours of use, ease and affordability of booking, promotion and marketing of the site etc. Members feel that the relocation of facilities to the rear of the site will only go to making community football provision even less accessible. The applicant or his agent should be invited to explain how this will work to the Planning Committee.
- 4.1.2 **Open Space** – No comments received
- 4.1.3 **Network Rail** – No objection.

Netting

The applicant must provide suitable ball proof mesh netting for the football pitches. The application must provide details of the netting to the Asset Protection Engineers to ensure that the netting is installed without placing any load bearing weight upon Network Rail land, and to ensure that the pole foundations do not

undermine or encroach upon Network Rail land. The netting should be 5m in height to prevent all potential sports equipment i.e. footballs from over-sailing the railway boundary and falling into the path of trains. The applicant must consider the foundations of the netting which could undermine or destabilise Network Rail's land. Equally, netting erected on land next to the operational railway could topple over in high winds and fall onto Network Rail's land, onto the path of trains or onto safety critical equipment (e.g. signals, telecoms cabinets) if above the level of the railway.

Excavations/earthworks

All excavations/ earthworks carried out in the vicinity of Network Rail's property/ structures must be designed and executed such that no interference with the integrity of that property/ structure can occur. If temporary compounds are to be located adjacent to the operational railway, these should be included in a method statement for approval by Network Rail. Prior to commencement of works, full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence should be submitted for approval of the Local Planning Authority acting in consultation with the railway undertaker and the works shall only be carried out in accordance with the approved details. Where development may affect the railway, consultation with the Asset Protection Engineer should be undertaken.

Lighting

Any lighting associated with the development (including vehicle lights) must not interfere with the sighting of signalling apparatus and/or train drivers vision on approaching trains. The location and colour of lights must not give rise to the potential for confusion with the signalling arrangements on the railway.

Drainage

All surface water drainage should be directed away from Network Rail's land to the public mains system. Soakaways are not acceptable where the following apply:

- Where excavations which could undermine Network Rail's structural support zone or adversely affect the bearing capacity of the ground
- Where there is any risk of accidents or other acts leading to potential pollution of Network Rail's property/infrastructure
- Where the works could adversely affect the water table in the vicinity of
- Network Rail's structures or earthworks.

In order to mitigate the risks detailed above, the Developer should contact the Network Rail's Asset Protection Wales Team well in advance of mobilising on site or commencing any works. The initial point of contact is: assetprotectionwales@networkrail.co.uk. The department will provide all necessary Engineering support subject to a Basic Asset Protection Agreement.

4.2 **Public Comments**

4.2.1 7 letters of representation have been received raising the following concerns:

- Should not allow relocation for commercial gain
- S106 and covenants restricting use will need to be amended
- Proposed site is smaller than existing site

- Results in loss of sports facilities when more are needed
- Could result in the loss of the Power League facilities

5.0 THE MAIN ISSUES

- Policy & principle of development
- Amendment to layout
- Control of use
- Other matters

6.0 OFFICER APPRAISAL

6.1 Policy & principle of development

- 6.1.1 Planning permission was granted in 2003 and the development has been completed and the football club and some of the community facilities have been in operation for a number of years. The principle of the use of this site for sporting facilities has been accepted and is encouraged by all parties.
- 6.1.2 The current application seeks to vary the position of the community pitch from the northeast corner of the overall site to the south west corner. For clarity the application is only seeking to relocate the community pitch. The five-a-side pitches, also known as the Power League facilities, do not form part of the current application. They have been included in the information submitted to show that they have been provided. However, these facilities will continue to be provided, in their current position, as required by the conditions of the planning consent and the S106 agreement.
- 6.1.3 The principle of providing a community pitch within the overall club site is considered by officers to be acceptable. It is not for the Council to prevent commercial gain if the community use can continue to be provided. The key issues are whether the proposed site is an appropriate site, the knock on effect of the removal of the training facility from the club site and the means of managing and ensuring the new community pitch is made available to the community.
- ### 6.2 Amendment to layout
- 6.2.1 As noted above the existing community pitch is in the northeast corner of the club site. The land is laid to grass and although there has been questions raised (on the Lidl application) about whether it has been used or allowed to be used as a community pitch, it is technically available for such uses and could be used as such. The site is now also subject to a separate planning application for the erection of a Lidl food store and as such the club are seeking to relocate the community pitch to allow for the food store to be erected.
- 6.2.2 The proposed position for the new community pitch is in the southwest corner of the club site. Officers have measured the two pitches and can confirm that the proposed pitch is marginally larger than the existing pitch. The proposed pitch is currently used as the club training pitch and as such is already laid out as a grassed football pitch and enclosed in fencing. The proposed relocation of the community pitch would therefore not require any construction works to be carried out. The agent has confirmed that the fencing, drainage and surfacing has been carried out and would meet the requirements detailed in the response from Network

Rail. As such the proposed pitch is considered to be appropriate in terms of surfacing etc.

- 6.2.3 It is located on the rear edge of the club car park, adjacent to the Shrewsbury Town in the Community (STC) building. It is therefore separate from the five-a-side pitches which will remain at the front of the site; however officers are generally in support of the location given that it remains within the club site and is adjacent to the STC building. As the club are proposing to hand over management of the community pitch to STC officers consider that this location is acceptable. It is equally as accessible by car, foot or bicycle, is not significantly further from nearby residential areas and is no more or less visible from public vantage points than the current site which is enclosed with a bund.
- 6.2.4 The Football Club have confirmed that the club now train off-site on privately owned land. The existing training pitch is therefore not required by the club and can be made available for the relocation of the community pitch. The existing training pitch is not a public facility and furthermore it is not being "lost". The training pitch has been relocated off-site and therefore the community pitch can be relocated within the site.
- 6.2.5 As such officers consider that the proposed relocation and therefore changes to the approved layout of the club site are considered to be acceptable. The scheme as now proposed will provide a more usable community pitch in terms of the surface finish and proximity to the STC facilities whilst remaining equally accessible.
- 6.3 **Control of use**
- 6.3.1 The primary objections from the community and the Town Council relate to management of the community pitch and ensuring that it, and the five-a-side pitches, continue to be available for community use. The original planning permission required the community facilities (community pitch, five-a-side pitches and changing block) to be provided and used for sports related activities. The S106 agreement (which was varied in 2007) defined the community sports facilities and set out a statement of the objectives for the use, management and pricing of the community sports facilities. (The S106 also dealt with other matters such as highway works, traffic management, car parking, however none of these matters are relevant to the current application.)
- 6.3.2 Schedule 2 of the S106 required the owners of the land (STFC) to provide the community sports facilities and make them available to Shropshire Football Association and adults and children in the community at large at a charge comparable to the charges levied by the Council. The S106 included a plan showing the location of the facilities. Schedule 3 of the S106 detailed the statement on the community facilities. This was a statement from STFC of what was to be provided for the community facilities. The requirement was for an all weather area to be divided into six five-a-side multi sport pitches; a grassed children's football pitch; a grassed full size community pitch; a changing block; car parking (except when a first team match is playing) and space for indoor sports. Schedule 3 also included details of when the facilities would be available and the charges, both of which were to be comparable to the Council sports facilities.

- 6.3.3 A statement has been provided with the current application which advises that the required facilities have all been provided. The five-a-side pitches are known as the Power League facility and the changing block and indoor sports provision is adjacent to these pitches. The children's pitch and full sized pitch are the subject of this application. Car parking is provided within the club site on the main car park as required.
- 6.3.4 The proposal is to relocate the community pitch and to transfer the management of the pitch to Shrewsbury Town in the Community (STC). The current five-a-side pitches and other facilities are managed by STC and the proposal to include the community pitch in their control will improve their facilities and also enable more control over use and management.
- 6.3.5 To ensure the continued availability of the community pitch (five-a-side pitches and other facilities) the applicant will need to enter into a deed of variation to vary the S106. A draft agreement has been drawn up by the Council Solicitor and agreed by the applicant's solicitor. The agreement requires the new community pitch to be provided within 3 months of the date of the decision or prior to commencement of the construction of the Lidl food store, whichever is the sooner.
- 6.3.6 The deed of variation does not vary the requirement to provide the six five-a-side pitches, the indoor facilities, changing block or car parking. It continues to require the provision of a community pitch and to make it available for the community but also allows the club to make the main stadium available for the community. As such the deed of variation seeks to amend the position of the community pitch but continues to require it to be provided. It is therefore considered by officers that, subject to the applicants entering into the deed of variation, that this will secure the community facility for the long term and does not diminish the community facilities required in the original planning consent.
- 6.4 **Other matters**
- 6.4.1 The objection relating to the proposed site being smaller than the proposed site has been dealt with above. The proposed site is marginally larger than the existing community pitch. The five-a-side pitches (Power League) are not to be altered as part of the current application and will continue to be required by the conditions on the decision notice and the requirements of the legal agreement.
- 6.4.2 Other objections comment that the proposal will result in loss of sports facilities when more are needed. It is acknowledged by officers that new housing developments and the growth of Shrewsbury will result in the growing requirement for sports facilities and open space. However, every new housing development is required by policy MD3 of the SAMDev to provide open space and the use of the open space is then determined by the relevant parish and town council or the developer (depending on who takes on long term management of the open space). As such, although it would be good to provide more open space and recreation uses as part of the current application, it can not be required. The original consent required the provision of community facilities, including the community pitch. The training pitch was not a community facility and as such, as noted previously in this report, providing the community pitch is provided the applicant will have met their duty under the conditions and the S106 agreement. It will be for other

developments to provide for the growing needs of the town.

7.0 CONCLUSION

7.1 It is considered that the proposed amendments to the layout are acceptable and enable the continued provision of a community pitch within the club site. It is therefore considered that, subject to the variation of the S106 agreement, the proposal accords with National and Local policies, the Shropshire Core Strategy and SAMDev in providing sports facilities to the community.

7.2 In arriving at this decision the Council has used its best endeavours to work with the applicants in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry.

The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number

of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

9.0 FINANCIAL IMPLICATIONS

9.1 There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. Background

Relevant Planning Policies

NPPF

CS1 - Strategic Approach

CS2 - Shrewsbury Development Strategy

CS6 - Sustainable Design and Development Principles

CS7 - Communications and Transport

MD1 - Scale and Distribution of Development

MD2 - Sustainable Design

Settlement: S16 - Shrewsbury

Relevant planning history:

16/03786/VAR106 Variation of Section 106 Legal Obligation pursuant to SA/02/0278/F **PCO**

16/00181/FUL Proposed erection of retail store, associated car parking and servicing facilities, site access and associated works **PCO**

14/00587/VAR Variation of Condition Nos. 19 and 23 (restrictions of use) attached to Planning Permission 02/0278/F to permit no more than 6 no. non-football events at the stadium during any one year; to permit the use of the stadium for international matches without having to seek prior approval of the Council; variation of the S106 Planning Obligation to increase in the number of car parking spaces and reduction in coach parking **GRANT** 17th March 2016

11/00199/FUL Application for temporary use (5th June - 18th June 2011) of football stadium for operations to facilitate the preparation/staging and de-rigging of a music concert **GRANT** 23rd March 2011

SA/05/0257/VAR Variation of condition No. 6 attached to Planning Permission Reference 02/0278/F, to allow for the deferment of the children's pitch and five-a-side-pitches to read as follows: 'The community pitch and temporary changing building shall be completed and fully operational before the first beneficial occupation of the stadium. The children's pitch, five-a-side pitches and the permanent changing buildings to be completed and fully operational within 5 years of the first beneficial occupation of the stadium.' **REFUSE** 29th April 2005

SA/02/0278/F Erection of a new football stadium, construction of training pitch, community pitch, childrens pitch, 6 no. five-a-side pitches, changing facilities, formation of car parking, taxi rank/bus stop layby, and new access and associated engineering and other works. **GRANT** 4th September 2003

11. Additional Information

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Cabinet Member (Portfolio Holder)
Cllr M. Price

Local Member
Cllr Jon Tandy
Cllr Ted Clarke
Cllr Jane Mackenzie

Appendices
APPENDIX 1 - Conditions

APPENDIX 1**Conditions****CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT**

1. The stadium and other facilities, which are the training pitch, community pitch, the six 5-a-side pitches and changing block, shall only be used for sport related activities unless in accordance with the agreed 6 non-sport related events per calendar year (which are subject to the additional conditions attached). Other exceptions shall be the use of the function and hospitality rooms and the use of the stadium for the Shrewsbury Town Football Club Christmas Concert (as set out in the letter from Alaska dated 20th September 2002).

Reason: To protect amenities of occupiers of nearby residential properties.

2. The use of the Stadium for sport-related activities shall be for Shrewsbury Town Football Club and England International Football matches only and for no other Club or body without the prior written approval of the Local Planning Authority.

Reason: To avoid an unacceptable level of use of the Stadium and to minimise disturbance to nearby residents.

3. External music events and/or use of amplified equipment shall finish no later than 23:00.

Reason: To protect the health and wellbeing of nearby residents.

4. At non music events no external amplified equipment shall be used after 22:00.

Reason: To protect the health and wellbeing of nearby residents.

5. Noise levels shall not exceed 65dB(A) when measured 1 metre from the façade of any noise sensitive premise over a 15 minute period.

Reason: To protect the health and wellbeing of nearby residents.

6. Activities carried out in preparation for any music event including sound checks shall be carried out between the hours of 08:00-20:00.

Reason: To protect the health, wellbeing and amenity of nearby residents

7. A noise management plan shall be submitted to the Local Planning Authority no less than 4 weeks prior to a music event for approval in writing. The noise management plan shall include details of the layout and orientation of any equipment being assembled on external areas (including staging, speakers and amplifiers), sound equipment to be used, persons or organisations responsible for the sound systems including full contact details for any office and for staff on site, methods employed to minimise noise, arrangements for sound checks, noise monitoring and reporting, contact details for complaints to be directed to at the time of the event. Monitoring shall occur at all events where necessary and the frequency and location of monitoring will be specified in the noise management plan and shall include a map of monitoring locations.

Reason: To protect the health, wellbeing and amenity for local residents.

8. External non-sport related events shall not occur on more than 2 calendar days in any 7 day period and no more than 2 consecutive days shall be used for such external events unless prior approval has been granted by the Local Planning Authority.

Reason: To protect the health, wellbeing and amenity of nearby residents and residential areas.

9. There shall be no discharge of foul or contaminated drainage from the site into either groundwater or any surface waters, whether direct or via soakaways

Reason: To prevent pollution of the water environment.

10. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of interconnected tanks or vessels plus 10%. All filling points, associated pipework, vents, gauges and sight glasses must be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank/vessels overflow pipe outlets shall be detailed to discharge downwards into the bund.

Reason: To prevent pollution of the water environment.

11. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstanding shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

Reason: To prevent pollution of the water environment.

12. There shall be no raised ground levels or structures within the recognised floodplain of the Money Brook, unless as part of an agreed flood storage compensation scheme in conjunction with the approved surface water control measures.

Reason: To ensure that there will be no increased risk of flooding to other land/properties due to impedance of flood flows and/or reduction of flood storage capacity and to ensure acceptable operation of any surface water storage facility.

13. The community pitch shall be provided to the south of the stadium as shown outlined in yellow in the submitted plan. The five-a-side pitches and changing block shall be permanently retained in the position as provided under the original planning consent, to the north of the stadium.

Reason: To ensure these community facilities are provided and available for public use.

14. The community pitches and 6 no. 5-a-side pitches shall not be used between the hours of 22:30 and 0800 hours Monday to Sundays.

Reason: To protect the amenities of the occupiers of nearby residential properties.

15. The floodlighting of the community pitches and 6 no. 5-a-side pitches shall be switched off between the hours of 22:30 - 0800 hours.

Reason: In the interests of amenities of neighbouring properties.

16. The sight lines provided at the road access shall be retained in accordance with the agreed details and the area in front of the sight lines shall not be included in any plot or other subdivision of the site. No other access, either vehicular or pedestrian, shall be formed.

Reason: In the interests of road safety.

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