

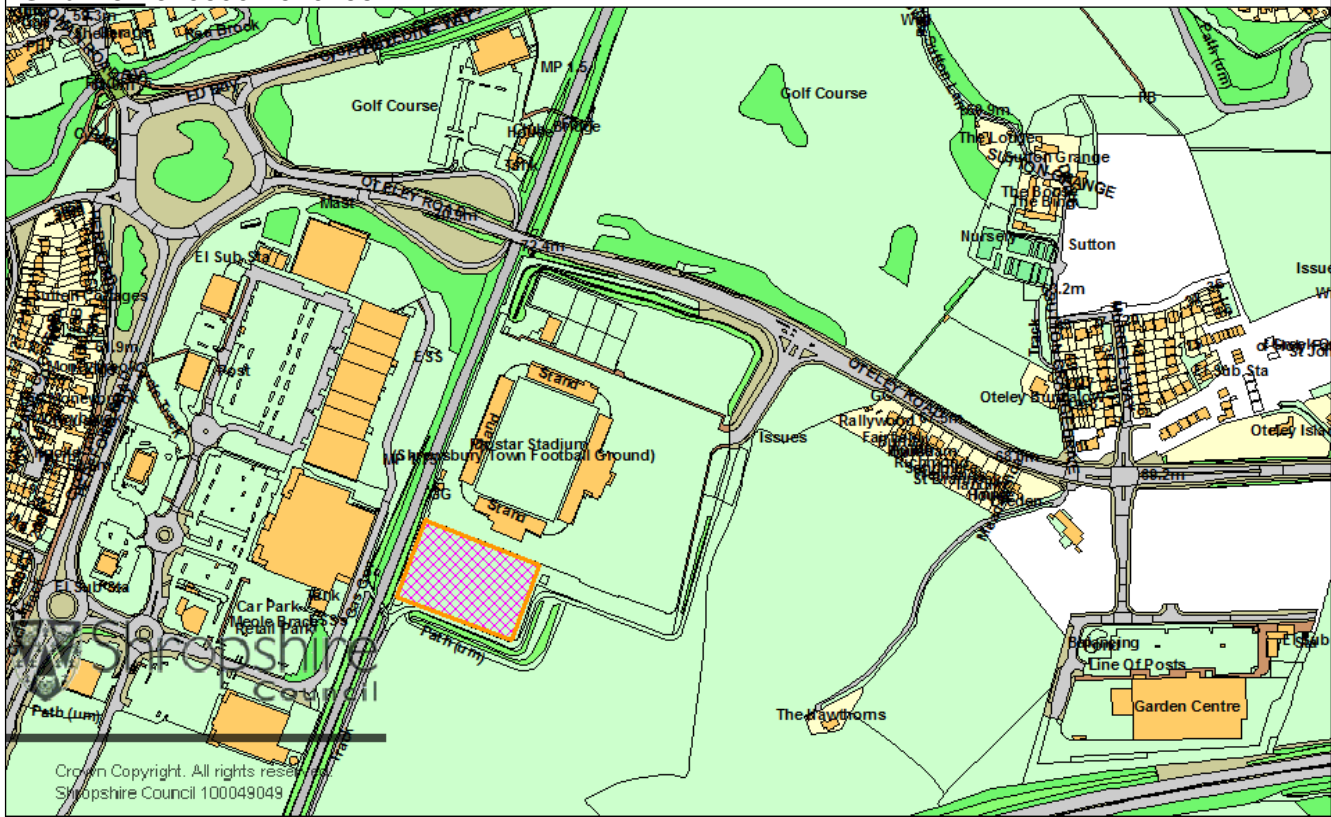
Development Management Report

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

Summary of Application

Application Number: 16/03786/VAR106	Parish:	Shrewsbury Town Council
Proposal: Variation of Section 106 Legal Obligation pursuant to SA/02/0278/F		
Site Address: Land At Oteley Road Shrewsbury Shropshire		
Applicant: Shrewsbury Town Football Club Ltd		
Case Officer: Karen Townend	email: planningdmne@shropshire.gov.uk	

Grid Ref: 349590 - 310458



Recommendation:- Grant delegated powers to the Area Planning Manager to draw up a new legal agreement to vary the previous agreement in regard to the position of the training pitch and community pitch and also to provide additional facilities at the new community pitch, subject to no further objections being received from Sport England.

REPORT

1.0 THE PROPOSAL

1.1 The proposal to vary the S106 agreement which is attached to the planning permission for the football stadium was previously considered by the Central Planning Committee at its meeting on the 24th November 2016. Members deferred the determination of the proposal as they were concerned about the net loss of a sports pitch when considered against paragraph 74 of the National Planning Policy Framework (NPPF). The November report is attached in full for information, however the only issue for consideration is the matter of the loss of sports provision.

1.2 This report provides more information regarding paragraph 74, the applicant's additional information submitted following the November meeting and any consultation comments received as a result of the additional information.

2.0 POLICY

2.1 Paragraph 74 of the NPPF states:

“Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- *An assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
- *The loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- *The development is for alternative sports and recreational provision the needs for which clearly outweigh the loss.”*

2.2 Policy CS6 of the Shropshire Core Strategy requires all development to contribute to the achievement of local standards for the provision and quality of open space, sport and recreational facilities. Proposals resulting in the loss of existing facilities will be resisted unless provision is made for equivalent or improved provision, or it can be clearly demonstrated that the existing facility is not viable over the long term. Paragraph 4.58 of the explanatory text advises that the standards are set out in the Shropshire Open Space, Sport and Recreation study.

3.0 ADDITIONAL INFORMATION FROM APPLICANT

3.1 Following the November committee meeting the agent submitted a statement detailing the existing pitches at the club site which are the stadium pitch, the training pitch, 6 x five-a-side pitches and 1 x seven-a-side pitch (Powerleague facilities). The land proposed for the new food store was designated as a community pitch but the agent has commented that it is not flat, has no drainage

and is not of a standard suitable for matches. The statement also advises that for the last 3 years the community has been allowed to use the main stadium pitch and provides full details of the matches.

- 3.2 The main purpose of the submitted statement is to provide detail of the work carried out to the sports facilities on Newport Road, near Sundorne. The club has owned this land since 1996 and it has been used solely by STFC for pre-season training as the ground is not suitable for use in the winter months.
- 3.3 Since May 2016 the club has invested in the land installing drainage, reconstructing the pitches, working sand into the ground and levelling the land and the additional information details the monies spent on undertaking this work. The intention of the information submitted is to show that the land is now improved and can be used all year round as the training pitch for Shrewsbury Football Club.
- 3.4 In addition to information relating to the pitches on Oteley Road and the works undertaken to the pitches at Newport Road the statement submitted also provides more detailed information on Shrewsbury Town in The Community (STinC), their charitable trust status, the management of STinC, the work they have been doing and their aim. The information provides a list of groups and organisations that STinC work with in providing sports, not just football.
- 3.5 The statement also comments that the proposed community pitch (relocated to the existing training pitch) would provide for 4 local teams to play football and for other sports to be provided for in the summer months in close proximity to the STinC hub building. STinC could also seek funding for upgrading the pitch to a 4G pitch and for providing changing facilities adjacent to the pitch. The statement provides quotes of support from the Premier League, Nic Laurens (Councillor for Meole), Shrewsbury Town Supporters Parliament, Shropshire FA, Shropshire Schools & Colleges FA, STinC.

4.0 CONSULTATION RESPONSES

The following comments have been received following the receipt of additional information:

- 4.1 **Sport England** – Sport England objected to planning application (ref. 16/00181/FUL) as insufficient information has been provided in relation to the mitigation for the loss of playing field. Despite this statutory objection, Shropshire Council's Planning Committee resolved to approve the application subject to a legal agreement relating to community use of Shrewsbury Town's training pitch. This resolution has, in effect, approved the principle of the loss of the existing community pitch subject to the approval of a legal agreement.

The FA has provided further comments:

1. The site where Lidl is planned for was used as a community pitch as recently as 2007, reasons for no more recent use are down to the fact that it has not been maintained for this type of use.

a. Use of the main pitch being classed as community is subjective – the school finals take place once a year with an average of 5 games (max of 10 games as per

the lease agreement) for Shropshire CFA Cup finals – it is agreed that this is a great offer but it does not afford regular community use of the pitch which is the key debate here.

b. The FA'S Pitch Improvement Programme could have suggested ways to improve the pitch without the need for expensive drainage.

2. The new Shrewsbury Town FC training ground is existing playing field land that has been improved. There is no net gain in playing field area or any community use from.

3. There is no such surface as 4G, so I presume they mean 3G rubber crumb

4. We would need to see the full detailed business plan from Shrewsbury Town in the Community to assess the long term sustainability of the pitch.

a. Changing rooms would be essential to permit full use of the adult football pitch, grass or 3G.

5. The Usage plan is very generic and only indicates available slots with no potential club or community users noted.

a. Community use noted between the hours of 9am and 5pm is unlikely to materialise based on other Football Foundation funded facilities that are not on an education site.

b. 100 hours of use is ambitious – through the Football Foundation and with a facility based on a school site we push for 85 hours of which 36 are for community use outside of school hours and this is not always achieved.

6. Premier league support is based on seeing more detail.

7. There is a 3G facility on site which is a commercial 5 a-side facility, it has 6 x 5v5 pens and 1 x 7v7 pen which is not big enough for affiliated match play due to no run-off areas – is there an upgrade project here to support along with the grass pitch being transferred for the community department to run? Obviously discussions would be needed here to see if viable and if the current tenant would be open to this in some capacity.

Sport England maintain their objection to this application as we are still unable to assess the suitability of the proposed mitigation from the information submitted. If a 3G pitch is being proposed as mitigation, evidence is required to support the need/demand in this location in order to ensure that the facility is sustainable; the submitted Usage Plan does not provide the necessary detail (see FA comments above) and I am not aware of this specific location for a 3G pitch being supported by any relevant strategy. Furthermore it is not clear how the 3G pitch will be funded in its entirety; the level of funding from the applicant and other sources is not clear. If the Section 106 does not cover the entire cost of the 3G pitch how will the shortfall in funding be met? The absence of a clear strategic need for a 3G pitch in this location will restrict potential funding from Sport England. Changing facilities will also be required and it is not clear how these will be funded.

Without the type of information listed above Sport England are unable to assess

whether or not the 3G pitch is sustainable and deliverable or whether the applicant's financial contribution is an acceptable form of mitigation for the loss of playing field. In order to make an assessment against Policy Exception E4 I need to weigh up the benefits to sport of the proposed mitigation (in this case the partial or full provision of a 3G pitch) against the loss of playing field. As there is insufficient information in relation to the proposed mitigation I am unable to make that assessment.

Sport England did not object to the two variation of condition applications as these applications in themselves did not permit the loss of playing field land. The applications seek to transfer the community use from one area of playing field to another. In this case the community use transferred from the training pitch which is a better quality pitch than the existing community pitch.

It is my understanding that Shrewsbury Town FC's training ground is located on a former sports ground which was purchased by the Chairman of STFC 20 years ago. The supporting information submitted by the applicant indicates that investment was made into the site in 2016 to improve pitch quality as drainage of the pitches was poor. From historic aerial photos it appears that the site was laid out for training use in 2010 (see image below). Although improvements to pitch quality may have been made since this time, new playing field has not been created.



From the 2010 image it appears that the site was laid out with pitches suitable for training purposes. It is not entirely clear whether the improvements works were necessary to resolve issues created by lack of maintenance or fundamental issues with the site. The additional capacity of the playing field resulting in the improvements works is also not known. Given this missing information an assessment against Policy Exception E4 cannot be made, although clearly no new playing field has been created.

- 4.2 **Shropshire Playing Fields Association** – Shropshire Playing Fields Association do not believe the correspondence received since the matter was deferred at the planning meeting in November has made any attempt to resolve the key issue related to the proposed loss of one community sports pitch.

Rather their attempts to demonstrate the role of the Shrewsbury Town community sports trust in this matter only heightens the need to retain all three sports pitches discussed in their correspondence and for them to make all three pitches

accessible for community use, this need is supported by Shropshire Councils 'Playing Pitch' Assessment which identifies Meole Brace as having a shortage of playing fields in the ward.

Shropshire Playing Fields Association are still very disturbed and dismayed at the comment made on page 21 of the planning and retail statement which states; 'It is the case that the application site has never been marked out or used as a sport or recreational facility and its use as such is only implied through a legal agreement that the council has previously advised will not be enforced'.

Despite our request at the planning meeting that this site should be marked out immediately and community allowed access to it immediately this has not happened. This poses the question that if the application to vary the community pitch agreement is supported, what assurances are there that anything more will be done given the lack of enforcement suggested in the applicant's statement requiring them to do so, and lack of any such positive actions to-date.

Reading through the additional correspondence provided on the 15th December 2016 a lot of rhetoric is given to the activity of the Shrewsbury Town Community Trust which is to be commended, however it should be noted that none of this activity took place on any one of the three sports pitches being discussed as part of this application, therefore their activity is we believe not relevant to this application.

Shropshire Playing Fields Association believe NPPF paragraphs 73 and 74 clearly provide the solution to this application and should be strictly adhered to; The policy clearly states an open space needs assessment is necessary in order to guide on the need for such pitches; As part of any such assessment the 'quality' of the pitch, is a critical issues that we feel should be subjected to an independent technical quality assessment, it is clear to the casual eye that some of the comments made in the additional correspondence are at least misleading where it states: 'The land earmarked for community use has no drainage, isn't flat and isn't of a standard to play matches and is therefore dangerous'. Shropshire Playing Fields Association believe that some of these claims are incorrect and should be substantiated by an independent pitch assessor, perhaps at the direction of Sport England. This process would provide the necessary evidence to ensure an equivalent or better facility has been provided if the application were ever to be agreed. We also believe the elements concerning 'accessibility' and 'availability' are critical factors, both of which would have been dealt with as part of an open space needs assessment.

For this application to move forward Shropshire Playing Fields Association believe there needs to be a change of approach from the applicant and suggest that one way forward is a long term lease be agreed on the alternate proposed site between STFC and STCT plus a large cash settlement as mitigation for the loss of a playing field. That would ensure sufficient funds were available to enable the community trust to proceed developing the current training pitch with the purchase of a floodlit 4G all-weather pitch with appropriate changing rooms and social area, with arrangements put in place to enable them to become responsible for its management and maintenance.

At present it is not clear how the 4G pitch will be funded in its entirety; indeed at present there is no indication the football club would contribute anything towards the cost of any such pitch or its running costs. Without such a contribution it is unlikely a 4G pitch would be feasible, sustainable or deliverable, and therefore we believe until such a business case is put forward should not be a consideration when determining this application.

We recommend that the applicant provides further information relating to their proposed financial contribution and the proposed demand/usage plans/business case showing sustainability for any such proposed 4G pitch as outlined in the applicants correspondence submitted.

Shropshire Playing Fields position on this proposal is to maintain our objection.

5.0 OFFICER APPRAISAL

5.1 Loss of pitch

- 5.1.1 The policies within paragraph 74 of the NPPF and CS6 of the Core Strategy are detailed in section 2 above. Members deferred the consideration of this proposal, and the associated application to vary the approved plans on the approved football club permission, on the basis of a concern over loss of sports pitch. Both national and local policies allow for the loss of sports pitch, providing that there is either an assessment to show the land is surplus to requirements; there is replacement provision; or the development is for alternative sports use.
- 5.1.2 The construction of a Lidl food store on the existing community pitch and the associated relocation of the community pitch and training pitch will result in the loss of sports pitch. Officers do not agree with Sport England's comment that the granting of consent for the Lidl store has allowed the loss of the pitch. The Lidl application site is subject to a S106 agreement and this runs with the land, as such unless the S106 agreement is varied the land is still required to be a community pitch regardless of whether there is consent for other development on it. This report deals with the proposal to vary the existing S106 agreement to enable the construction of the Lidl food store on the land currently identified in the S106 as community pitch. Officers advise that the existing S106 agreement should only be varied if replacement facilities meet the requirements of adopted policy.
- 5.1.3 The agent initially put forward an argument that the replacement community pitch and the subsequent replacement training pitch are better than the existing pitches in both cases. Following the objection from Sport England the agent has also confirmed that the club are also willing to enter into a S106 agreement to secure the provision of changing facilities at the new community pitch. Whether this is therefore acceptable to justify the loss of a sports pitch is considered in the following sections of the report and will take into account the comments from Sport England and Shropshire Playing Fields Association (SPFA).
- 5.1.4 SPFA has also commented that the information provided actually shows a need for more pitches rather than less. However, as noted in the previous report the S106 requirement is for the provision of one community pitch. The Council cannot

require the football club to provide more pitches because of increased demand, the increased demand will have to be provided for by other developments.

5.2 Replacement pitch proposals

- 5.2.1 The proposals put forward by the agent are not for any new pitches to be provided to replace the pitch to be lost to development. Their proposals relate to enhancements proposed to the existing training pitch, to be used as the new community pitch, and also to the new training pitch.
- 5.2.2 The submitted detail suggests how the new community pitch will be used and that funding could be sought to change the pitch to a 3G pitch. The most recent information from the agent also confirms that the club is willing to ensure the provision of changing facilities at the new community pitch. The suggestion is that the proposal could allow for increased use by the community assisted by the management of the new community pitch by STinC.
- 5.2.3 Within the Sport England objection detailed above the FA has provided comments. These include concerns over the business plan from STinC and that the suggested level of community use is ambitious. The response comments that on a school site they seek 36 hours of community use which is not always achieved.
- 5.2.4 Sport England has questioned the need for the pitch to be upgraded to 3G or who will fund the upgrade. They have commented that the potential of Sport England funding would be restricted without a strategic need for a 3G pitch. The FA also advised that the use of the community pitch would require changing rooms.
- 5.2.5 Following receipt of the Sport England objection the agent has provided further comment which advises that STinC have had initial meetings with the Football Foundation and Shropshire FA and have identified possible local partners and users. The new community pitch would not be used exclusively by STinC with community partners having access at peak times. The agent has also confirmed that funding has been ring-fenced from charitable reserves for the construction of an extension to the existing STinC Hub building to provide changing rooms and that the existing changing rooms at the Power League could be utilised if needed. The agent has confirmed that the club are willing to have the provision of changing facilities included into a new S106 agreement.
- 5.2.6 A S106 agreement is a planning obligation sought to assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. These tests are set out as statutory tests in the Community Infrastructure Levy Regulations 2010 and as policy tests in the National Planning Policy Framework.
- 5.2.7 It is officer's opinion that the provision of additional facilities, to include changing rooms, but could also include other facilities, would meet the tests of the CIL Regulations. Without additional facilities at the new community pitch the loss of the

existing community pitch is not mitigated by better provision and therefore fails to comply with adopted policies. The provision of facilities is clearly directly related to the proposal to relocate the community pitch and training pitch and officers consider it is fairly and reasonably related in scale and kind.

- 5.2.8 The detail of what will be provided will need to be secured through a new S106 legal agreement. Officers also consider that the legal agreement should include a financial contribution as a fall-back position. Such a contribution would need to be equivalent to the cost of providing the additional facilities on site and would allow the Council to provide other sports facilities elsewhere in the town should the applicant not provide the on-site facilities within an appropriate time period or to an agreed standard. The finer details of the legal agreement would need to be worked up between the Council's Solicitors and the applicant's Solicitor.
- 5.2.9 Sport England has commented, as too have SPFA, on a potential financial contribution. There is currently no proposal of a financial contribution. The agent's latest comments advise that the source of funding for any upgrade is of no relevance to the planning issues and is a matter for the club. However, it is officer's opinion that Sport England and SPFA were seeking a financial contribution and other works to mitigate the loss of the sports pitch which results from the approval of the Lidl store. This can be ensured through the financial contribution fall-back suggested above.
- 5.2.10 This latest information received from the agent does not clearly overcome the objections from Sport England and as such further information and assurances are required. The agent has confirmed that the club would be willing to enter into a new legal agreement to secure the provision of changing facilities at the new community pitch. The detail of the S106 has not been drawn up, furthermore Sport England, SPFA and other interested parties will need to be reconsulted on the receipt of the additional information. As such the recommendation reflects this and seeks delegated powers to approve the proposed variation of the existing legal agreement to deal with the repositioning of the pitches and also to enable the additional enhancements required to mitigate the loss of the sports pitch for the construction of the Lidl food store. It would be on the basis of further information (see the report relating to the variation of the approved plans), and the commitment to provide changing facilities at the new community pitch that the Council could reasonably conclude that the pitch lost for the construction of the Lidl food store would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location and therefore meet the requirements of paragraph 74 of the NPPF and policy CS6 of the Shropshire Core Strategy.
- 5.3 **Other matters**
- 5.3.1 SPFA have also commented on the lack of enforcement of the community pitch and questioned why the pitch has not been marked out since the November committee meeting as they requested. The matter of enforcing the requirements of the S106 on the football club is a matter for the Council. At this time officers consider it would be unreasonable to enforce this part of the S106 and require the existing community pitch to be marked out on the basis that there are current planning applications seeking to remove this use from the land. Until such time as these

current applications are determined any enforcement is on hold. Should members refuse the current proposal the Council will reconsider enforcement proceedings.

6.0 CONCLUSION

- 6.1 The conclusion of the previous report to members advised that, in officer's opinion, the variation of the S106 agreement to allow for the relocation of the community pitch within the football club site was acceptable as the proposal would enable the continued provision of sports facilities. However, following additional information and comments from Sport England and Shropshire Playing Fields Association officers' view of the proposal has altered.
- 6.2 The variation of the agreement would result in the loss of sports land which is not, at present, mitigated by replacement land of an equivalent or better provision in terms of quantity and quality in a suitable location. Without further information and a commitment to provide additional facilities at the new community pitch the proposal would not comply with the adopted policies or national planning policy framework.
- 6.3 As such, as noted at the beginning of this report the recommendation has changed to request delegated powers to the Area Planning Manager to draw up a new legal agreement to vary the previous agreement in regard to the position of the training pitch and community pitch and also to provide additional facilities at the new community pitch, subject to no further objections being received from Sport England.

10. Background

Relevant planning history:

16/04201/VAR Variation of condition 2 attached to Ref:14/00587/VAR dated 17/03/2016 relocate community football pitch **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

APPENDIX 1 – COMMITTEE REPORT NOVEMBER 2016

1.0 THE PROPOSAL

1.1 This report relates to a request by Shrewsbury Town Football Club under section 106A of the Town and Country Planning Act 1990 to enter into a deed of variation to a Section 106 agreement attached to planning permission reference SA/02/0278/F approved on the 4th September 2003 for the 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. The variation requested seeks to amend the position of the community pitch and amend who is responsible for managing the community pitch.

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 (as detailed at 4.2.3) 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 **Shrewsbury Town Council** – Members recalled the reasoning for covenants attached to this area to allow for recreational public use; these related to the agreement to remove similar covenants at the old Gay Meadow site which were placed on the site as part of the Gay family bequest of the land. Members noted that since the football ground has been at this location, there has never been any

active promotion of the greenspace at the front of the site, which has never been laid out as a football pitch with goals.

Members queried how the removal of the recreational space as outlined in red (which included the prostar pitches in blue) could be mitigated by an already established pitch to the rear of the site. Members would wish to see times that this pitch would be truly made accessible for public use, particularly given its current use as the club training pitch.

If this application is recommended for approval, members respectfully ask that it is considered by the Central Planning Committee.

4.2 **Public Comments**

4.2.1 2 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**

- Background & Principle of Development
- Affordable Housing Contribution

6.0 **OFFICER APPRAISAL**

6.1 **Policy & Principle of Development**

6.1.1 Planning permission for the development was granted on the 4th September 2003 and the development was completed and the club is operational. The consent was subject to a Section 106 Legal Agreement (previously varied in 2007) which 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 enquiry.)

6.1.2 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.

- 6.1.3 A statement has been provided with the request to vary the S106 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.
- 6.1.4 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.
- 6.1.5 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 and as such officers are recommending that the deed of variation is allowed.

7.0 CONCLUSION

- 7.1 The approved development was for a new football club, community facilities and associated works which have all been provided as required. The requested deed of variation to the S106 relates to the position and management of the community pitch. The deed of variation will ensure the community pitch will continue to be available for community uses and as such does not significantly alter from the previous planning permission.
- 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 6 weeks after the grounds to make the claim first arose 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.