

Development Management Report

Responsible Officer: Tim Rogers

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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

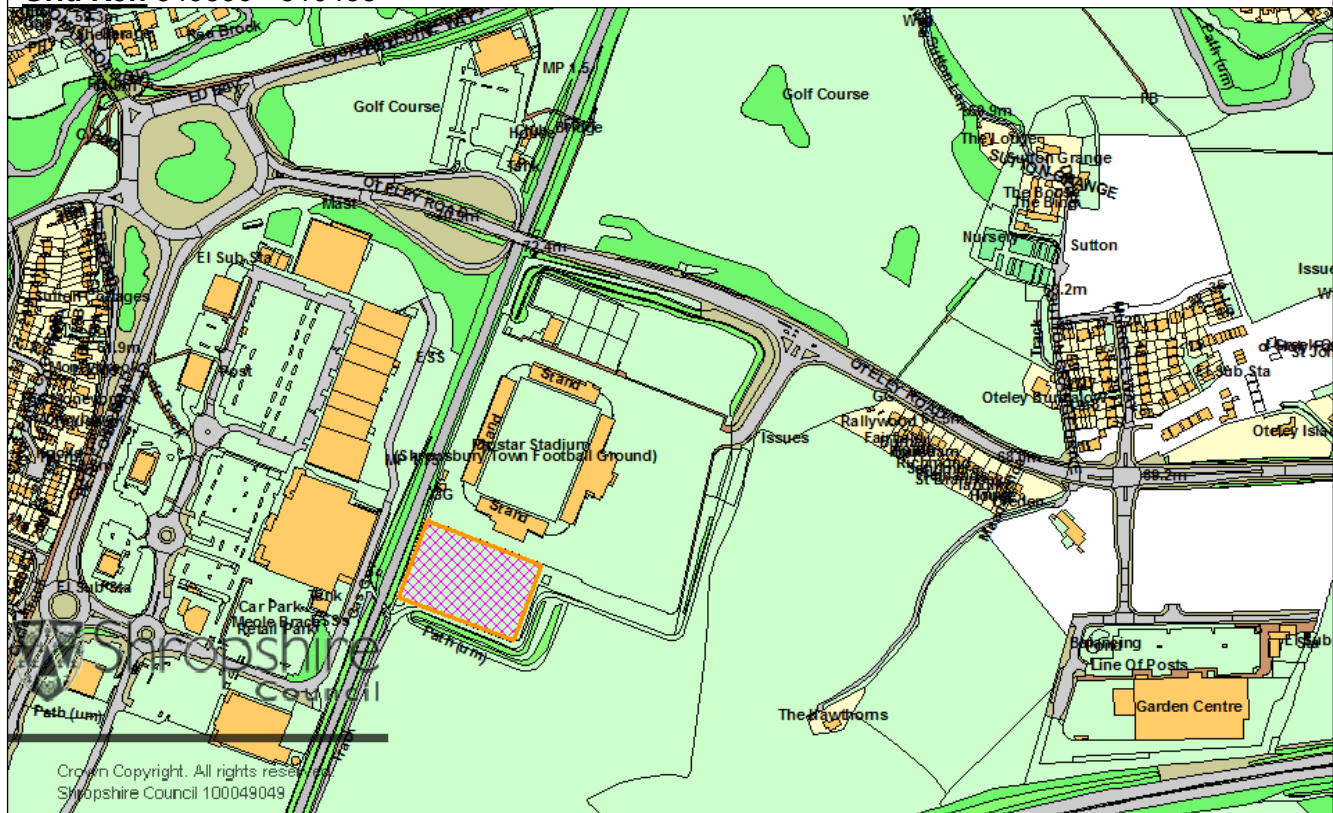
Site Address: Land At Oteley Road Shrewsbury Shropshire

Applicant: Shrewsbury Town Football Club Ltd

Case Officer: Karen Townend

email: planningdmne@shropshire.gov.uk

Grid Ref: 349590 - 310458



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Recommendation:- Grant delegated powers to the Area Planning Manager to draw up a new legal agreement in consultation with the Head of Legal and Democratic Services 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 and a financial contribution of £65,000.

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 meetings on the 24th November 2016 and 16th February 2017. Members deferred the determination of the application in February to allow Sport England an opportunity to comment on the additional information provided by the agent and also for a report to be provided back to members regarding the terms of the Section 106 legal agreement. Members' concern was about the net loss of a sports pitch when considered against paragraph 74 of the National Planning Policy Framework (NPPF). The November and January reports are attached in full for information.
- 1.2 This report provides the detail of additional information submitted by the agent following the February meeting, consultation comments received to date and details of the draft heads of terms for the new S106 agreement.
- 1.3 For clarity the issue is the net loss of sports pitch. Who uses which piece of land for what is not relevant to the matter of loss of a pitch. In NPPF paragraph 74 terms all land which is used for sport is considered to be sport pitches, regardless of who uses it. The descriptions in the previous reports focused on use rather than location, as such this report will from here on consider the three pitches which are involved in the applications as:
- "front pitch": the existing community pitch at the front of the Oteley Road site and the site of the proposed Lidl store;
 - "rear pitch": the existing training pitch at the rear of the Oteley Road site which is to become the community pitch; and
 - "off-site pitch": the pitch(es) at Sundorne Road
- This should hopefully help members define the three pitches by location and as three pitches rather than by existing or proposed use and hopefully make discussing the matter easier.
- 1.4 Members will need to make a decision on each of the applications. This report relates to the application to vary the S106 agreement attached to the planning permission for the construction of the football stadium and associated developments. The S106 agreement defines the location of the community pitch and what facilities are to be provided. As both are to be amended the S106 will need to be varied.

2.0 ADDITIONAL INFORMATION FROM APPLICANT – February

- 2.1 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 statement also detailed the work carried out at the off-site pitch (drainage and ground works) to enable it to be used all year round; details of Shrewsbury Town in The Community (STinC), their charitable trust status, the management of STinC, the work they have been doing and their aims. The details of the information submitted in February is provided in full in the report at appendix 2.

3.0 **CONSULTATION RESPONSES – February**

The following comments have been received since the publication of the February committee meeting which are in response to the information received in February.

- 3.1 **Sport England** – I have received consultations for additional information relating to the ground conditions at Sundorne Castle Training Ground submitted in support of the above applications. I have not raised any objections to these applications. I hope that this additional information (together with some sort of planning statement) will be submitted by the applicant as part of planning application ref. 16/00181/FUL. Sport England have an outstanding statutory planning objection to this application ref. 16/00181/FUL and it is my understanding that the additional information will form part of the applicant's justification and mitigation for the loss of playing field at Oteley Road.

The additional information consists of a technical report outlining works that David Saltman has recommended are undertaken at Shrewsbury Town FC's Sundorne Training Ground and a soil analysis of the Sundorne Training Ground. The information submitted does not outline that these recommended works have been undertaken and it is not clear how this information supports this application. Furthermore Sport England has not raised an objection to these variations of condition applications.

It is my understanding that further information will be submitted which will clearly outline the proposed mitigation for the loss of the playing field to locate the proposed Lidl supermarket and also to move the community use from that area of playing field to the first team training pitch. Until that time I have no further comments to make and Sport England's objection to application ref. 16/00181/FUL remains.

- 3.2 **Shropshire Playing Fields Association** – Thanks for the up-date reference this application, I have read the additional report included (22nd February 2017) but can-not see the relevance to the application being tabled.

At the planning meeting last week I made a request for an independent quality assessment to be made of the community pitch being considered for development and a quality assessment of the current training ground site being offered as a replacement at the Oteley Road Site, so that members could form an opinion as to whether the new playing field being offered was equivalent or better than the current playing field. (Particularly in light of the comment made by Councillor Moseley regard the poor condition of the pitch being offered as a replacement pitch for community use.) I believe her comments relate to the STFC online newsletter of 1 December 2016:

"Pleasingly, we can report that the pitches are draining well, as is the stadium pitch. Unfortunately, the same cannot be said of our training pitch behind the south stand,

which started to resemble a duck pond on Monday. The squad battled with the elements for a good while, before calling it a day."

The Sundorne Castle playing field, as my understanding has it, will in the future have exclusive use for meeting the needs of the teams playing at the football club with no community usage being offered, so clearly has no relevance to this application or indeed the request I made at the meeting.

There would to my mind seem to be one or two solutions or options to this issue which are not being tabled, but which I would be happy to discuss further with any party who wishes to listen.

4.0 ADDITIONAL INFORMATION FROM AGENT – April

- 4.1 Since the February meeting the agent has been in discussion with the football club, Lidl, Sport England and officers of the Council. A revised supporting statement has recently been submitted which will be attached to all three applications (the two for the football club 16/04201/VAR & 16/03786/VAR106 and the Lidl application 16/00181/FUL). The statement is appended to this report so that members have all of the information before them.
- 4.2 The statement includes technical reports on all three pitches and the mitigation proposals from the applicant. The technical reports advise on the ground conditions of all three pitches and what works are required, or in the case of the off-site pitch were required. The front pitch is to be lost for the development of the Lidl food store.
- 4.3 The rear pitch already has a drainage system but the applicant accepts that a secondary drainage system would improve the surface water run-off, a matter raised by Councillor Moseley at the February meeting, and has agreed to provide the secondary drainage at the end of this football season. The applicant has also agreed to provide changing facilities adjacent to the rear pitch, either within the existing stadium building converting existing office space into two 15sqm changing areas with 3 showers and a toilet each and a referees room with shower and toilet, or within a new modular building adjacent to the STinC building. Both the drainage upgrades and the changing facilities can be required as part of the S106.
- 4.4 The off-site pitch has been upgraded in accordance with the recommendations of the ground conditions report. The works include installing drainage, improvements to the surfacing, provision of car parking and construction of a building providing changing facilities, kitchen, dining room, gym, physiotherapy room, laundry room, boot room and staff offices. All of these works have been carried out.
- 4.5 SPFA have commented that the off-site pitch is not available for the community and therefore is not relevant. However, this is confusing user with pitch provision. The issue is the loss of a sports pitch. At no time, and the agent has confirmed in the latest statement, has anyone proposed the removal of the community pitch use from the S106. The application relates to three pitches one of which is to be lost and the improvements to the other two are being put forward as mitigation. The rear pitch will become the new community pitch and the most recent statement has confirmed that this will be available for hire by the community for 57 hours a week in the evenings and at weekends. The statement also advises that the rear pitch is

larger than the front pitch and as such is big enough to be subdivided into three pitches and therefore could be used by three different users at any one time.

- 4.6 In addition to physical improvements to the rear pitch and off-site pitch the applicant has now also offered a financial contribution of £65,000 to be paid to the Council to be spent on sport and recreation within the local area. The figure has been proposed by the club as a figure which was raised by Sport England early in the application process as the estimated cost of replacing a pitch.

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 were detailed in the February report but are repeated here for ease of reference.

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.”*

- 5.1.2 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.

- 5.1.3 The construction of a Lidl food store on the front pitch will result in the loss of sports pitch. Both national and local policies allow for the loss of sports pitches. Shropshire Playing Fields Association have commented that there has not been an assessment to show the land is surplus to requirement, however this is not a requirement unless “surplus to requirements” is the case being put forward by the applicant. With regard to the Lidl store and the two applications by the football club the case being put forward is for “replacement provision”. The replacement is not in the form of a new sports pitch but in the form of improvements to existing pitches.

5.2 Improvement proposals

- 5.2.1 It is acknowledged that 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 rear pitch and the off-site pitch and also, since the January meeting, the proposal now includes the offer of a financial contribution to be paid to the Council to be made available for enhancement to other sports pitches in the area.

- 5.2.2 The enhancement works are detailed above in section 4 of this report. At the time

of writing this report the supporting statement has been sent to Sport England and SPFA for comment, any responses received before the meeting will be provided to members either in writing or verbally.

- 5.2.3 Notwithstanding any comments which may be received it is officer's opinion that the additional enhancements and the financial contribution now proposed by the applicant provide improvements to the rear pitch, off-site pitch and opportunities to improve other sports facilities in the area to be considered as equivalent or better provision in terms of quantity and quality in a suitable location to the front pitch which is to be lost for the construction of the Lidl food store. With regard to the financial contribution offered officers can confirm that this is the figure quoted by Sport England in their comment of the 19th April 2016 on the Lidl application as the cost of replacing the natural turf pitch, excluding the cost of the land. It is a definable figure with clear linkage to the loss of the pitch, as such it is considered to be a reasonable and appropriate figure which is reasonably related to the development. The overall package now proposed and clearly set out in the new supporting statement is considered by officers to mitigate the loss of the pitch and therefore meet the requirements of paragraph 74 of the NPPF and policy CS6 of the Shropshire Core Strategy.
- 5.2.4 Members may wish to defer making a decision on these applications again until consultation comments are received. This is a decision which only members can make. However, the applications have been delayed twice already and the latest offer from Lidl and the football club has been increased to include all of the information and improvements suggested by Sport England and to include a financial contribution towards other sports facilities.
- 5.2.5 It is therefore officer's opinion that a decision now needs to be made on this application. There is a risk that Sport England and SPFA may still object, there is still a loss of a sports pitch, however the final decision rests with the Council. Sport England and SPFA are consultees, members are free to make a decision on the planning application based on the overall planning merits and consideration of the improvements and financial contribution.
- 5.3 **Section 106 heads of terms**
- 5.3.1 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.
- 5.3.2 It is officers' opinion that the provision of the additional facilities and the financial contribution detailed in section 5.2 above would meet the tests of the CIL Regulations. Without additional facilities at the rear pitch and off-site pitch and the financial contribution the loss of the front 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 and officers consider it is fairly and reasonably related in scale and kind.

- 5.3.3 Officers also consider that the legal agreement should also include a financial contribution as a fall-back position if the applicant does not provide the improvements to the rear pitch proposed. 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.
- 5.3.4 The existing section 106 agreement will be amended so that it will secure:
- Financial contribution of £65,000 payable to the Council to be used to provide either new sports facilities or enhance existing sports facilities within the area
 - The provision of 2no 15sqm changing rooms each with 3 showers and a toilet and the provision of a referee room with a shower and toilet all to Sport England specification
 - The provision of the secondary drainage as recommended in the Summary Report on STFC training pitch by Dave Saltman dated 15th March 2017
 - Maintenance of pitches and marking out by the club
 - Community use of the rear pitch as detailed in the April 2017 supporting statement on behalf of the applicant.
 - In addition, main stadium to be available for community matches such as Shropshire Schools finals, Shropshire FA Senior Cup final and Amateur Cup finals.
- 5.3.5 It will also, as the previous S106 did, require the community sports facilities to be available for the Shropshire Football Association and adults and children in the community at rates comparable to the Council rates. The community facilities will become:
- the 6 five-a-side pitches and 1 seven-a-side pitch (as existing);
 - the new community pitch (the rear pitch);
 - the existing changing facilities at the Prostar facilities and the new changing facilities as detailed above;
 - space indoor for activities such as table tennis or aerobics (which the club have confirmed is available within the stadium building);
 - car parking using the existing car park except when there is a first team match or major event, such as a music event in the stadium;
 - refreshment facilities within the stadium and data connection.
- As now, the community facilities will be closed when a first team football match is playing.
- 5.3.6 The ongoing maintenance including cleaning, security and insurances of all the community facilities will be the responsibility of the football club. It is proposed to rent the land to STinC on a long term lease and for STinC to manage the pitch and bookings. However, the club have confirmed they will maintain the pitch and will be responsible for marking it out as pitches, managing the drainage of the site and correcting any damage. Ultimately the club will be the party entering into the legal agreement and are the land owner and it would be the club that the Council would seek to take enforcement action against.
- 5.3.7 Members have previously raised concerns that the Council have not sought to take

enforcement action against the club to require them to provide the community pitch on the front pitch. An argument could be made that the pitch was provided, there is a grassed area of land, but not necessarily made available for use. To prevent this from happening again and to give the Council more detail to enforce over it is also recommended that the new S106 agreement includes details of the on-going maintenance. This will need to include maintaining the ground and the marking out of pitches to a useable condition. This listed in the heads of terms above.

- 5.3.8 As noted above officers are also recommending that the new S106 agreement includes a financial penalty should the new changing facilities and drainage improvements not be provided to a suitable standard at the rear pitch. This would set a standard within the S106 agreement which the applicant would need to meet and give the Council a point where the non-compliance with such a condition could be clearly understood and therefore enforced.
- 5.3.9 Subject to these matters being dealt with in the S106 agreement, the precise wording of which will be drafted by the Council Solicitor, it is officers view that the new S106 agreement would secure the community pitch, enhancement, financial contribution and on-going maintenance.

6.0 CONCLUSION

- 6.1 The additional enhancements carried out and proposed to the existing pitches to be retained, the pitch at the rear of the Oteley Road site and the pitch at Sundorne Road, and the financial contribution of £65,000 now proposed by the applicant provide improvements to existing sports pitches and opportunities to improve other sports facilities in the area. This is considered to mitigate for the loss of the pitch at the front of the Oteley Road site and is considered to be better provision in terms of quality to the front pitch which is to be lost for the construction of the Lidl food store. As such it is officer's opinion that the proposals meet the requirements of paragraph 74 of the NPPF and policy CS6 of the Shropshire Core Strategy.
- 6.2 Therefore, this current application for variation of the S106 agreement to allow the relocation of the community pitch is acceptable to enable the continued provision of community facilities within the club site and the proposal accords with National and Local policies, the Shropshire Core Strategy and SAMDev in providing sports facilities to the community.

10. Background

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)
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Cabinet Member (Portfolio Holder) Cllr M. Price
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Local Member Cllr Jon Tandy Cllr Ted Clarke Cllr Jane Mackenzie
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<p>Appendices</p> <p>APPENDIX 1 – Committee report 16th February 2017</p> <p>APPENDIX 2 – Committee report 24th November 2016</p> <p>APPENDIX 3 – Shrewsbury Town Football Club – Supporting Statement. (Also relevant to Agenda Items 6 & 7)</p>
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APPENDIX 1 – REPORT 16th February 2017**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.

APPENDIX 2 – COMMITTEE REPORT 24th 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.