

DELEGATED REPORT

Report by Helen Pressley	Date of report: 26/07/2024	Ref: 70827/FUL
Registration: 05/06/2024	LDfC: 02/07/2024	Expiry Date: 31/07/2024
Site Visit: 19/07/2024	Site Notice: N/A	Press Date: N/A
Objections: 0	Con Area: N/A	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: MIOT

Proposal: Variation of condition no. 2 following approval of planning permission 69387: (Formation of car park and erection of boundary fence) - Removal of demarcation of car park lines from proposed site layout

Location: Land off Arley Avenue, rear of 1 Copse Drive & 2 Spinney Drive, Bury, BL9 5HE

Description

The application relates to a vacant plot of land between No. 1 Copse Drive, and 2 Spinney Drive. The land fronts onto Arley Avenue. The front of the site is bounded by railings, with the side and rear boundaries depicted by various styles of timber fencing. The site also comprises of an area of land opposite the site, accessed on via an existing pedestrian footpath and comprises of part of the playing fields currently associated with the former Seedfield School.

Planning permission was granted for the formation of a 14 space car park and erection of boundary fence on the plot of land that directly fronts Arley Avenue. Steps were also proposed on the opposite side of the road from the car park site, accessed from an existing path that leads from Arley Avenue.

The application was granted in association with application 69079 and 69333.

Application submitted refers to a variation of condition no. 2 following approval of planning permission 69387: (Formation of car park and erection of boundary fence) - Removal of demarcation of car park lines from proposed site layout

Relevant Planning History

69387 - Formation of car park and erection of boundary fence; Provision of stairs/steps down to football field - Approve with Conditions 27/06/2023

Publicity

Letters sent to neighbouring properties 11th June 2024. No representations received.

Statutory/Non-Statutory Consultations

Traffic Section - recommend refusal due to potential overspill from car park and impact on highway safety.

Sport England - raises a statutory objection to the application to vary Condition 2 of planning permission 69387 because it is not considered to accord with any of the Exceptions, particularly Exception 2, of their Playing Fields Policy or paragraph 103 of the NPPF.

Pre-start Conditions - Not relevant

Development Plan and Policies

EN1/2	Townscape and Built Design
JP-P7	Sport and Recreation
RT1/1	Protection of Recreation Provision in the Urban Area
RT1/2	Improvement of Recreation Facilities
JP-C5	Streets For All
JP-P1	Sustainable Places
EN7/2	Noise Pollution
SPD11	Parking Standards in Bury
JP-C6	Walking and Cycling
HT2/4	Car Parking and New Development
JP-C8	Transport Requirements of New Development
NPPF	National Planning Policy Framework

Issues and Analysis

The following report includes analysis of the merits of the application against the relevant policies of both the National Planning Policy Framework (NPPF), the adopted Places for Everyone Joint Development Plan Document (PfE) and the saved policies within the adopted Bury Unitary Development Plan (UDP), together with other relevant material planning considerations.

The policies of the UDP that have been used to assess this application are considered to be in accordance with the NPPF and as such are material planning considerations. For simplicity, just the UDP and PfE Policies will be referred to in the report, unless there is a particular matter to highlight arising from the NPPF where it would otherwise be specifically mentioned.

Equality Act 2010: All planning applications are considered in light of the Equality Act 2010 and associated Public Sector Equality Duty, where the Council is required to have due regard for:

The elimination of discrimination, harassment and victimisation;

The advancement of equality of opportunity between persons who share a relevant protected characteristic and person who do not share it;

The fostering of good relations between persons who share a relevant protected characteristic and person who do not share it; which applies to people from the protected equality groups.

Human Rights: All planning applications are considered against the provisions of the Human Rights Act 1998.

Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.

Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, ie peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.

In taking account of the Council policy as set out in the Bury Unitary Development Plan 1997 and all material planning considerations, it is concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in accordance with the law and is justified in the public interest. Any restriction of these rights posed by refusal/ approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

The Crime and Disorder Act 1998 imposes (without prejudice to any other obligation imposed on it) a duty upon the Council to exercise its functions and have due regard to the likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. In so doing and on making planning decisions under the Town and Country Planning Acts, the material Planning considerations shall have due regard to the provisions of the Crime and Disorder Act 1998 and its implications in the exercise of its functions.

Principle (Recreation)

Policy RT1/1 - Protection of Recreation Provision in the Urban Area does not allow development that would result in the loss of existing and proposed public or private recreation facilities. Policy RT1/2 - Improvement of Recreation Facilities states that the Council will give favourable consideration to proposals for the appropriate improvement of existing recreational land and facilities in the Borough. The improvement of existing recreation facilities will allow greater use to be made of them and thus enable a larger demand to be satisfied. Policy JP-P7 seeks to protect and enhance a network of high quality and accessible sports and recreation facilities, supporting greater levels of activity for all ages.

Paragraph 103 of the NPPF considers that existing open space, sports and recreational buildings and land, including playing fields should not be built on unless:

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- b) 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
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

In addition to the above as the proposal relates to a playing field use a consultation with Sport England is a statutory requirement. Sport England's policy is to oppose the granting of planning permission for any development which would lead to the loss of, or would prejudice the use of all/part of a playing field.

The proposal is in part linked to the planning approval for the formation of car parking to enable the use of the nearby playing field for football pitch use (application 69079). Sport England withdrew its earlier objection to the original proposal as amendments were received that dealt with accessibility. The amended information also indicated that in relation to car parking, 14 dedicated spaces, including 1 accessible space on 'appropriate hard surfaced material' would be provided.

The current proposal seeks to vary the nature of the car parking to omit the requirement for marked out spaces and alter the material type.

Sport England considers that the proposal would be against Exception 2 of their Playing Fields Policy which states:

'The proposed development is for ancillary facilities supporting the principal use of the site as a playing field, and does not affect the quantity or quality of playing pitches or otherwise adversely affect their use.'

The original planning application was assessed on this basis.

In assessing whether a proposal meets exception E2, facilities should be of an appropriate scale and comply with relevant Sport England and National Governing Bodies of Sport design guidance. They should also have no impact on the quantity or quality of playing pitches or otherwise adversely affect their use. Sport England has sought the views of the Football Foundation in undertaking the assessment who have commented as follows: -

- Costs of the proposed facility should not be a factor in the appropriateness of

discharging a condition.

- The Playing Field is still included in the Council's Places for Everyone JPA 8 Allocation. Concerns that the facility is proposed to be transferred and written into the lease with club (Covering Statement) and the potential future liabilities associated with the maintenance of the car park leaving the club liable for the car park that does not have a playing field associated with it.

Sport England agrees with the sentiment that costs are not a reason for the lack of compliance with a required planning condition. The LPA also agree that cost is not a material planning consideration. The JPA 8 Allocation within PfE is a separate matter, and the NPPF paragraphs referenced above would still be applicable if this site were to ever come forward for development. The lease with the club is also a separate matter outside of the planning application.

In terms of the omission of formally marked out spaces, this could potentially impact on the number of vehicles that could be reasonably accommodated on the site and thus have a detrimental impact on the use of the football pitch and playing field.

Given the above, Sport England raises a statutory objection to the application to vary Condition 2 of planning permission 69387 because it is not considered to accord with any of the Exceptions, particularly Exception 2, of their Playing Fields Policy or paragraph 103 of the NPPF.

Highways

Policy EN1/2 requires the consideration of the design and appearance of access, parking and service provision. This is further supported by Policy H2/2 that requires proposals to demonstrate adequate car parking provision, access for both vehicles and pedestrians, and provision for public transport and the existence of any public rights of way. Policies JP-C5 and JP-C6 require streets to be well designed and managed to make a significant positive contribution to the quality of place and support high levels of walking, cycling and public transport.

In terms of parking standards UDP Policy HT2/4 requires all applications for development to make adequate provision for their car parking and servicing requirements . Supplementary Planning Document 11 (SPD11) provides parking standards for developments.

In relation to the material type, although this may dictate how the area is marked out, Sport England defers to the Council's Highway Engineers to assess any highway safety implications but would not object providing the materials are appropriate to offer safe surface parking.

The application form only references the removal of the need to require demarcation of parking spaces from the condition however the supporting cover letter references materials and proposes an area of grassguard permeable paving at the entrance to prevent movement of the loose existing angular granular material onto the adopted highway. Whilst this may be a solution for this issue the applicant also states that the use of the granular surface material prevents demarcation of the parking spaces.

Without the demarcation of parking spaces it is considered that the proposal may potentially lead to overspill parking on the adjacent highways to the detriment of highway safety. The use of marshals, or other persons to supervise the parking usage could not be reasonably conditioned. The proposal therefore fails to comply with the policy considerations set out above.

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The proposal would not improve the economic, social and environmental conditions of the area nor does it comply with the development plan and therefore does not comprise sustainable development. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable and it was therefore not possible to approve the application. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

Recommendation: Refuse

Conditions and Reasons:

- 1 The removal of demarcated parking spaces would fail to adequately re-provide lost parking facilities for Seedfield football pitches associated with application 69079 which could impact on the number of vehicles that could be reasonably accommodated on the site. The proposed variation of condition would impact the ancillary facilities supporting the principal use of the playing field and could potentially lead to overspill parking on the adjacent highways to the detriment of highway safety. The proposed variation of condition would therefore be contrary to Policies EN1/2 - Townscape and Built Design, HT2/4 - Car Parking and New Development, JP-C5 - Streets for All, JP-C6 - Walking and Cycling, RT1/1 - Protection of Recreation Provision in the Urban Area, RT1/2, Improvements of Recreation Facilities, JP-P7 - Sport and Recreation of the Development Plan and paragraph 103 of the NPPF.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
HP	26/07/2024	DM	26/07/24