

Wigan Council

Report to Planning Committee

4th May 2010

Application No: A/09/73289

Speaking arrangements:

Major development. One speaker against for 4 minutes One speaker in favour for 4 minutes.

Applicant: Greenbank Partnerships Ltd And Wm Morrison Supermarket PLC

Agent: Derek Walker Associates

Development Proposed: Leigh Sports Village Phase III commercial and related works, comprising alterations in the floor space composition and positioning of planning permission A/03/58535 to provide for a food store and ancillary petrol filling station, class A1 - A5 units with one storey of class B1 offices above, construction of a piazza, stand alone single storey A1 - A5 units and car parking in front of the West Stand of Leigh stadium, enhanced access arrangements from Atherleigh Way and related car parking, engineering and landscaping works.

Location: Leigh Sports Village Atherleigh Way Leigh

Ward: Leigh South

Representations

3 letters of support and 6 letters of objection have been received.

Site Description:

The application site is within the Leigh Sports Village complex. The A579 Atherleigh Way forms the western boundary of the application site. To the east is the stadium and associated development at the Sports Village. To the north is the housing estate being constructed by Barratt's, Leigh East Rugby Club and outdoor sports pitches. To the south is the Park Inn Hotel. To the south and east are established residential developments at Marshall Street and Taylors Hole.

To the west of Atherleigh Way lies Pennington Flash Country Park and Atherleigh Way also forms the boundary with the Green Belt.

A public footpath runs adjacent to the southern boundary of the Village which links the residential settlement off St Helens Road and the Sports Village and Pennington Flash Country Park. Vehicular access to the site is off Atherleigh Way and provision has been made for public transport to access the site off Marshall Street.

Proposals:

The scheme comprises the development of a food store (Class A1) of 5,884 square metres gross (3,109 square metres net) floorspace, with a known end user (Morrison's) and its ancillary car parking, petrol filling station and car wash. In addition there will be two blocks of commercial development, the ground floor with a range of uses in the A1 to A5 Use Classes (including small retail units, offices, cafes, restaurants and takeaways) and an upper floor of offices situated at the north-western and south-western corners of the stadium. The development is completed with two small single storey retail units in front of the main entrance to the stadium.

The food store has been designed to reflect the existing palette of materials within the Sports Village, consisting of brick, cladding and glazed elevations. The entrance to the food store is emphasized through the creation of a glazed tower that provides a focus for the building and interest to the roof.

The service yard is situated to the south of the store and is masked from significant public viewpoints by the strong structural landscaping along Atherleigh Way and the location of the hotel which runs along the southern boundary adjacent to Westleigh Brook.

The single and two storey buildings will also incorporate many elements of the palette of materials approved through the original development control strategy agreed at outline stage thereby maintaining the strong quality design prevalent throughout the Village.

The submitted proposal seeks permission to construct an element of alternative commercial development which recovers the debt incurred by the public sector works already built at Leigh Sports Village. It was originally planned to have two three storey office blocks on part of the site subject to this application.

Members will be aware that the S106 agreement attaching to the permission required that the public sector works be completed before the 'enabling development' took place. This approach was ratified in the High Court (Hampson v. Wigan Council and Greenbank Partnerships 2005).

Supplementary Documents

Design and Access Statement
Planning Statement
Retail Assessment
Environmental Statement Update Report
Noise Assessment,
Ecological Assessment
Air Quality Assessment
Transport Assessment
Car Park Management Strategy
Travel Plan
Sustainability Statement

LSV Consultation and PR Statement
Public Access Strategy Update
Statement in response to the White Young Green Retail Assessment

All these documents are available for inspection by the Committee on request in the Department and are available on the website.

Policy Context

UDP Allocation:

C1D Leigh Sports Village, Pennington, Leigh

Relevant Policies/Guidance

National Policy Guidance

PPS1 - Delivering Sustainable Development
PPS4 - Planning for Sustainable Economic Growth
PPG9 - Biodiversity and Geological Conservation
PPG13 - Transport
PPS23 - Planning and Pollution Control
PPS24 - Planning and Noise
PPS25 - Development and Flood Risk

Regional Spatial Strategy to 2021

DP1 - Spatial Principles
DP2 - Promote Sustainable Communities
DP5 - Manage Travel Demand, Reduce the Need to Travel and Increase Accessibility
DP7 - Promote Environmental Quality
DP9 - Reduce Emissions and Adapt to Climate Change
RT2 - Managing Travel Demand
RT9 - Walking and Cycling
EM18 - Decentralised Energy Supply

Replacement Unitary Development Plan Policies

C1D Leigh Sports Village, Pennington, Leigh
S1F Retail and Leisure Development Outside Town Centres and Local Centres
EV1 - Environmental Protection and Enhancement
EV1B - Pollution
EV2 - Nature Conservation
EV2D - Species Protection
EV2E - Trees, Woodlands and Hedgerows
EV3A - Design of New Development
EV3D - Landscaping of Development
EV3H - Public Art
EV4E - Archaeology
A1 - Accessibility

A1A - Transport Assessments
A1B - Travel Plans
A1C - Access for All
A1D - Walking
A1E - Cycling
A1F - Bus Provision - New Development
A1N - Strategic Route Network
A1R - Highway Access - New Development
A1S - Parking in New Development
G1A - Impact of Development on Amenity
GB1 - Green Belt
G1B - Planning Obligations
G1C - Development and Flood Risk

Previous Relevant Decisions:

A/03/ 58531 - Outline Application two office buildings, each 3716 square metres, with access from Atherleigh Way and laying out of 250 no. car parking spaces - Approved with a Section 106 agreement 24.11.2004

A/03/58535 - Outline Application - Mixed use development including 10,000 seat stadium, Wigan and Leigh College, conference and business centre, hotel, 72 no. dwellings units, 45 apartments, student accommodation, commercial, leisure and retail development, 400 metre running track, new pitches, club accommodation, 1160 no. car parking spaces and associated landscaping - Approved with section 106 agreement 24.11.2004

A/05/63203 - Reserved Matters application for infrastructure works for Phase 1 (access roads and car parking for future mixed use development) and clubhouse with car parking for Leigh east Sports Club - Approved 11.03.2005

A/05/63373 - Erection of 3 storey, 600 place sixth form college - Approved 04.05.2005

A/05/63374 - Reserved matters application for design and external appearance of Leigh Harriers clubhouse - Approved 04.05.2005

A/05/63574 - Reserved matters application for landscaping - Approved 02.08.2005

A/06/65922 - Construction of 2 storey sports hall/gymnasium and swimming pool building - Approved 04.04.2006

A/06/67077 - To erect 10,000 seater stadium with ancillary facilities, hospitality and administrative offices, club shops, and ticket facilities, car parking and temporary car park (reserved matters to A/03/58535) - Approved 12.10.2006

A/06/67348 - To erect 145 houses and apartments with associated works and access thereto - Approved 06.03.07

A/06/67369 - Construction of 4 storey 132 bedroom hotel - Approved 8/12/06

The following applications are related as part of the overall scheme, but are not on the main site:

A/03/58533 - Outline Application - DIY retail unit of 7,432 square metres floor area with separate servicing and customer access, 395 car parking spaces, fast food outlet of 255 square metres, parking for health centre and provision of children's play area (siting and means of access included) at Grasmere Street - Approved with Section 106 agreement 24.11.2004.

A/03/59209 - Site to be developed for 6 full size soccer/rugby pitches and laying out of 128 car parking spaces, at Howe Bridge - Approved 22.4.2003

A/06/66791 - To erect 65 houses with associated works at Charles Street - Approved 22.3.2007

A/06/67216 - Outline Application - erection of retail units comprising 8045 square metres of gross floorspace, 1028 square metres garden centre, free standing fast food restaurant (296 square metres), 347 car parking spaces and children's play area (approval sought for siting and means of access) at Grasmere Street - Approved with Section 106 agreement 12.3.2007

A/08/71046 - Reserved matters to outline application A/06/67216 for erection of retail units comprising 8045 square metres of gross floorspace, 1028 square metres garden centre, free standing fast food restaurant, car parking spaces and play area for scale, appearance and landscaping at Grasmere Street - Approved - 30.6.2008

Consultations:

Engineers Highways - No objections in principle

Drainage - No objections in principle

Environmental Protection - No objections in principle subject to conditions in respect of noise mitigation.

United Utilities - No objections

Environment Agency - No objections in principle suggest conditions relating to finished floor levels and surface water regulation

Fire Service - No objections in principle

GMPTE - There is a concern about walking distances from bus routes and suggests a contribution towards public transport provision

Archaeological Unit - Suggest a contribution be sought through a Section 106 agreement for further archaeological work

Ecology Unit - Suggest condition imposed on approval for ecological enhancement

GM Police - No objections

Representations

148 letters have been sent to local residents and businesses in connection with the proposal.

3 letters of support have been received on behalf of the owners of the adjacent hotel and Leigh Harriers Athletic Club, both within the Village. These are firmly of the opinion that the development is vital to the success of the sports village. It is their view that the early delivery of the proposed alternative commercial development is the only means by which they will be able to guarantee the future of their business on the Sports Village site.

There are a number of concerns raised by local residents against the proposal and 6 letters of objection have been received. The grounds of concern are:

- proposal doesn't comply with the provisions of the Development Plan;
- there are concerns about highway safety, congestion and traffic generation;
- the developer has not proven any need for the store;
- the impacts on the town centre;
- there are more central locations;

Assessment

Material Considerations:

Principle of Development - National, Regional and Local Policy Context

Retail Assessment

The Role of Enabling Development

Design of New Development

Access and Parking

Structural Landscaping

Noise and Air Quality

Ecology

Archaeology

Flood Risk

Lighting

Observations on Representations Received

Principle of Development - National, Regional and Local Policy Context

National and Regional Policy Context

The main issues in determining this application are firstly whether the proposal is compliant with national and development plan policy and secondly whether it can be seen as enabling development required to maintain the suite of sporting and educational activities delivered at the sports village.

The proposed development would assist in meeting the four key targets for sustainable development set out at paragraph 4 of PPS1 'Delivering Sustainable Development' in this aspect the proposal has to be viewed in the context of the whole Sports Village which will encourage social cohesion and social inclusion by

enhancing significantly the social, educational and community infrastructure of Leigh, as a development open to all members of the public, and the commercial development will assist local economic growth.

Members will also be aware that PPS4 'Planning for Sustainable Economic Growth' has been published, which sets out national policy that is relevant to the determination of this proposal and carries more weight than local retail policies in the UDP.

This proposal is also consistent with many of the development principles set out in Regional Spatial Strategy. Policy DP2 seeks to promote sustainable communities by, amongst other things, the development of social, educational and recreational infrastructure.

The majority of the village is now built out and consequently the whole site must now be classified as brownfield. The proposal is consistent with the principles of policies DP4 and DP5 which require development to be located so as to reduce the need to travel being a site in close proximity to Leigh Town Centre with good footpath links and a bus service to the town centre.

Local Policy Context

The site is allocated under Policy C1D Leigh Sports Village, Pennington, Leigh for a range of commercial development to be provided in association with the sporting and educational facilities at the Sports Village.

The outline permission allows for all of the use classes now proposed including an unlimited amount of commercial leisure floor space (Class D2) and 2,700 sq.m of Class A3-A5 floor space and 2,499 sq.m of Class A1 retailing on the application site of which 1,700 sq.m may be used for food sales. It is acknowledged however that the elements of retailing in the previous permission were restricted to being sports related, a pharmacy and small convenience store.

UDP Policy C1D is site specific. It remains extant and provides for the allocation of Leigh Sports Village for a comprehensive sports led mixed use including the following uses,

- (i) related commercial uses including leisure, food and drink and retail;
- (ii) a hotel;
- (iii) residential accommodation; and
- (iv) small scale Class B1 business units

provided that it can be demonstrated that they will not individually or cumulatively, harm the vitality and viability of Leigh Town Centre or other centres, and are necessary to support the complete and comprehensive development of the Sports Village.

It is contended by the applicant in their planning statement and other submissions, that the policy is not prescriptive as to whether the retail element is food or non food. It is permissive of retail development.

I take the view that Policy C1D refers to a comprehensive sports-led mixed use development including the stadium, athletics track, pitches for senior amateur rugby league football, outdoor pitches, sports hall, replacement accommodation for Wigan and Leigh College, a replacement primary school and other facilities. The policy goes on to say 'in association with the above the following uses: related commercial uses including leisure, food and drink and retail'.

Other uses are mentioned, but they are not directly relevant to this consideration. In my opinion a supermarket does not appear to be a related commercial use referred to in the policy. However the reasoned justification of the policy does refer to a wider mix of complementary and related activities in order to provide a commercial basis for the development. It says that additional uses will be permitted but only as part of a sports-led mixed use development so far as they are necessary to support that development including commercial leisure and related retail uses such as sports retail, health and fitness, indoor leisure and food and drink uses.

Furthermore the existing Section 106 agreement is worded to allow for retail floor space that would compliment the sports and public sector elements. It specifically sets out the range of goods deemed acceptable which is fundamental to the overall intention of the permission. The Section 106 agreement allows for up to 1,800 square metres net to be used for 'the sale of food and drink, pharmaceutical goods, books and magazines, stationery, the sale and hire of music videos and DVDs and CD-Rom games or as a post office'.

It is now proposed to change the nature of the enabling development at the Sports Village by the substitution of some of the original commercial development (comprising 3 storey office blocks and a public house) with a food store on the Atherleigh Way frontage.

The applicant's view given in the Planning Statement accompanying the application asserts that the policy allows in principle for all the land uses for which planning permission is being sought currently, provided that they are complementary and related to the main Sports Village development. They argue that the proposals will be directly related to the Sports Village by both legal and financial arrangements; they are complementary in that they will attract footfall for the benefit of all occupiers of the Village and will contribute to the ongoing maintenance, servicing (in terms of public access) and running of the Sports Village.

The submission also includes Counsel's opinion on behalf of the applicant regarding policy compliance and the issue of enabling development. Frances Patterson QC has advised that what is now proposed is to change the nature of the enabling development by the substitution of some of the original commercial and retail elements with a food store.

The first consideration is thus whether the proposed new planning application is still consistent with the Development Plan. The Development Plan is the RSS and the Wigan UDP. There is an emerging Local Development Framework, but it is at an early stage of preparation and cannot therefore be given weight.

Miss Patterson states that UDP Policy C1D is site specific and that it remains extant.

She takes the view that it follows from the policy,

"that it is not prescriptive as to whether the retail element is food or non food. It is permissive of retail development. Members considered at the time of the earlier application that the non food retail warehouses were acceptable in their own right. The critical factor as set out also in the reasoned justification to the UDP policy is that the additional uses support the Leigh Sports Village development as far as it is necessary to do so. That is the relationship that the policy refers to. It is right to say that the text goes on to say that the supporting uses will include commercial leisure and related retail uses such as sports retail, health and fitness, indoor leisure and food and drink uses, but the uses set out in the explanatory text are given as examples. They are not meant to be an exhaustive list of what might be within the policy. They expressly contemplate retail use without distinction between non food and food retail, it is clearly open to the decision maker, in those circumstances, to determine that subject to the caveat in the policy and meeting the PPS6 tests, that the food store is within the policy and that the proposal accords with the Development Plan.' Members should note that PPS6 has now been replaced by PPS4.

The issue of how to interpret planning policy must also be considered, and, on this issue Miss Patterson states as follows:

"The applicant argues that the approach of the courts to interpreting planning policy was set out in R v Derbyshire County Council ex p Woods [1971 JPL 958) where the Court of Appeal held that it was for the court to determine as a matter of law what the words are capable of meaning but if in all the circumstances the words are capable of bearing more than one meaning and the LPA adopts and applies a meaning which it is capable as a matter of law as bearing then it will not have gone wrong if a decision maker attaches a meaning to the words that they are not properly capable of meaning he will have made an error of law. That approach has been upheld recently in S Cambridgeshire DC v SSCLG 120081 EWCA Civ 1010 @ 15, R (on the application of Heath and Hampstead Society') v Camden LBC (2008) 1 EWCA Civ 193 where the Court of Appeal emphasised also the importance of the context of the policy under challenge.

Here, the context is to achieve the revitalisation of Leigh through the successful development of the Leigh Sports Village. To achieve that a site specific policy which expressly contemplates retail development as part of the related development to the Sports Village has been included within the UDP. The degree of relationship between the retail proposed as part of the current planning application and the Sports Village is such, as evidenced through the financial appraisals, that what is proposed is clearly within what was contemplated by Policy CID. It is needed as part of the successful development of Leigh Sports Village and the development now proposed is therefore policy compliant.

Further, the fact that the Council took account of the enabling development in 2004 as part of their appraisal of the development then proposed and the fact that the

Court has found that the Council's approach in so doing was lawful gives Greenbank a legitimate expectation that provided any substitute enabling development proposed by them is part of the composite whole Leigh Sports Village development in that it contributes towards the viability of the Leigh Sports Village it will be taken account of as part of an enabling development package. That is clearly the position here where the proposed development is required to reduce the debt burden that Greenbank carries as a result of carrying out the parts of the development for the public sector prior to any private sector works. The development is required also to enhance the viability of the entire development through increased footfall."

It is further argued on behalf of the applicant that, in the absence of any material change in circumstances from 2004 for the Council to refuse to take into account the proposed food store as a material consideration and one that was related to the Leigh Sports Village would be a breach of the legitimate expectation that Greenbank hold.

It is argued on behalf of the applicant therefore that the Council is entitled and should regard the development now proposed as compliant with the Development Plan.

Greenbank sought Miss Patterson's view on two occasions, the latter being to allow her to see the opinion of Miss Ruth Stockley (Counsel) who, as can be seen below has advised the Council on these matters. Miss Patterson's view has remained that the development is in compliance with the Development Plan.

I have taken separate Counsel's opinion and am advised by Miss Stockley as follows:

"Policy is permissive of those various uses identified, subject to the proviso of there being a lack of harm to centres and that the uses are necessary to support the Sports Village development.

In terms of the proposed food store, the only part of the policy that it could potentially fall within is the related commercial uses including leisure, food and drink and retail. Retail is expressly included, and there is no requirement that it be either food or non-food. However, to fall within that part of the policy, the retail use must be related commercial use".

Miss Stockley disagrees with Miss Patterson and advises, as follows:

" the reference to a related commercial use is clearly a reference back to the earlier part of the policy, namely to the sports-led mixed use development including the various elements referred to in that first part of the policy. Thus, in order to have the benefit of the permissive policy, the retail use must be related to the sports-led mixed use development. Further, it seems to me that in order to be related to the sports-led mixed use development, the retail use must have some link or connection with that development in the sense that it retains the focus of the development as being sports-led. Hence, sports retail would clearly fall within that part of the policy. That view is supported by the explanatory text to the policy. Although such text is

not part of the policy itself and cannot add to the meaning of the policy, it is nonetheless appropriate to rely upon it as a means of interpreting the policy. Notably, that explanatory text indicates that the sports elements of the mixed use development form the cornerstone of the development, but that they rely also upon a wider mix of complimentary and related activities in order to provide a commercial basis for the development. It goes on to indicate that such additional uses that will be permitted include related retail uses such as sports retail. The explanatory text does not purport to indicate all the uses that would be permitted by that part of the policy. However, the example it gives of sports retail as being a related retail use assists in indicating that the reference to related commercial uses means that such commercial uses must be related to the sports-led nature of the overall development."

Miss Stockley's advice continues as follows:

"Moreover, in response to the additional matters raised, it is notable that the requirement that the commercial uses be 'related' is only a requirement for the commercial uses and not for the other identified forms of development subject to the permissive policy, such as the hotel or the Class B1 business units. Yet, the provision requiring the development to be necessary to support the complete and comprehensive development of the Sports Village applies to all those permitted forms of development. If the fact that the proposals were enabling development was sufficient to satisfy the requirement that they be 'related commercial uses', which is a pre-requisite in any event by virtue of the proviso, then that term would be entirely otiose. Further, that term would not then serve to add any additional requirements to the permitted commercial uses in contrast to the other forms of permitted development.

Furthermore, if the fact that retail development was enabling development was sufficient to make it 'related' within the meaning of the policy, thereby resulting in that reference adding nothing to the meaning of the policy, then it does not seem to me to make sense that the explanatory text goes on to make express reference to that term and also provides a specific example of the type of development that would amount to a related retail use, namely sports retail. There is no suggestion in that explanatory text to any form of enabling retail development amounting to related retail use. Indeed, the specific reference to sports retail in my view suggests the contrary.

Moreover, on the applicant's suggested interpretation of that part of the policy, any form of retail development of whatever scale and nature would be policy compliant provided that it amounted to enabling development and satisfied the other element of the proviso. As already stated, the fact that it was enabling development would always be a very cogent material consideration. However it does not seem to me that it was intended by the policy that any such form of enabling development of whatever scale would be policy compliant, subject to it not harming the vitality and viability of a town centre".

Subsequently to the above Morrisons sought their own legal opinion on the matter from Mr C Katkowski QC and submitted it to the Local Planning Authority. Mr Katkowski considered both of the legal opinions previously quoted and advised that

in his view Miss Patterson's interpretation of Policy C1D was the better one for the reasons she has given and that her approach seems to him to be the more persuasive and convincing.

However, he does not believe Miss Stockley's advice to be perverse and indeed states that either approach is within the range of reasonable interpretations of the policy. He says that what this means in practical terms is that whichever approach the Council takes whether it be to follow Miss Patterson's or Miss Stockley's advice then in his opinion a legal challenge to either would not be successful.

All the advice set out above have been considered in detail by the Local Planning Authority and the matter has been discussed fully between my planning officers and the Council's in-house legal adviser and Miss Stockley. In addition, the Council's legal adviser has considered the existing planning permissions for the Leigh Sports Village site and the previous High Court proceedings referred to above. For completeness, it must be said that both Miss Patterson and Miss Stockley have been involved with the Leigh Sports Village site since its beginning and both represented their clients in the High Court Proceedings. They are both therefore fully familiar with the background and current position in relation to the site.

Following such consideration the Council's legal adviser prefers the view of Miss Stockley for the following reasons:

The wording of Policy C1D set out previously allocates the site for a comprehensive sports-lead mixed use development to include various elements such as a stadium, athletics track, sports pitches and replacement accommodation for Wigan and Leigh College. In addition, the policy states that in association with that use other specified uses will be permitted provided that it can be demonstrated that they will not individually or cumulatively harm the vitality and viability of Leigh Town Centre or other centres and are necessary to support the complete and comprehensive development of the Sports Village.

One of those specified uses is described as 'related commercial uses including leisure, food and drink and retail'.

The reason why she prefers Miss Stockley's view is because it is her view therefore that development such as that now proposed in order to be compliant with Policy C1D must not only show that it will not harm the vitality and viability of Leigh Town Centre or other centres and be necessary to support the complete and comprehensive development of the Sports Village but in addition to that it must be a 'related commercial use'. The expression 'related' is only a requirement for the commercial uses and not for any of the others mentioned i.e. hotel, residential accommodation and small scale Class B1 business uses. It must therefore have been the intention to take a distinction between the type of commercial uses that would be acceptable and the others that are specified. Indeed, if all that had to be satisfied for a commercial use to be regarded as 'related' was that it would be enabling development then there would be no need at all for the expression 'related'.

As Members will be aware, in the UDP each policy is followed by explanatory text and this is the case with Policy C1D. Although the text is not part of the policy itself it is nonetheless appropriate to consider its content to assist in interpreting the policy. The explanatory text to Policy C1D gives examples of commercial leisure and related retail uses those being sports retail, health and fitness, indoor leisure and food and drink uses. It is accepted that those are examples and not an exhaustive list however they indicate the thinking in terms of the policy.

Miss Patterson refers to the current proposals playing the same role as the non food development that was permitted as part of the original outline planning permission for development and that this was regarded at that time as being policy compliant. It is acknowledged that had the Council previously found that the enabling development in the previous proposal was policy compliant because it was enabling development then it would be inappropriate for the Council to take a different approach at this stage in the absence of a good reason. However, that does not appear to be the case in that firstly at the time of determination of the previous application the relevant UDP policy was different. The current policy was only an emerging policy as the current UDP had not at that time been adopted. Secondly, having considered previous Committee Reports it does not appear that the Council did regard the previous enabling development as being compliant with policy but rather regarded it as a material consideration. The judgment of Mr Justice Richards in the High Court shows that he agreed that the Council had acted properly in placing considerable weight on the enabling development as a material consideration. However, he does not appear to be suggesting that the enabling development nature of the proposals resulted in them being compliant with policy and this was not contended before the Judge by any of the parties.

In conclusion, on the basis of the above it is my view that the proposals being put forward are not compliant with UDP Policy C1D and that this is a view that is not perverse and is one that could be properly supported in the Courts if it were the subject of a legal challenge.

Both Miss Patterson Q.C. and Mr. Katkowski Q.C. agree that the interpretation of planning policy is a matter for the reasonable discretion of the local planning authority.

Retail Assessment

The application is in an out-of-centre location as defined in PPS4 and forms part of the wider Leigh Sports Village. The planning application seeks to vary the parameters of the original outline permission in order to allow for the construction of a 5,884 square metres (gross)/ 3,109 square metres (net) retail store.

Policy EC16 of PPS4 requires that planning applications for main town centre uses that are not in centre and not in accordance with an up to date development plan must be assessed against the following impacts on centres:

- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal;
- the impact of the proposal on town centre vitality and viability, including local consumer choice and the quality of the comparison and convenience retail offer;
- the impact of the proposal on allocated sites being developed in accordance with the development plan;
- in the context of a retail or leisure proposal on in-centre trade/turnover and on trade in the wider area, taking account of current and future consumer expenditure capacity in the catchment area up to five years from the time the application is made, and, where applicable, on the rural economy; and
- any locally important impacts on centres.

Policy EC17 states that when an applicant has not demonstrated compliance with the sequential assessment then an application should be refused. In this regard it would need to be demonstrated that all potential sites have been assessed for their suitability, availability, viability and that no in-centre options are available and that preference is given to edge of centre sites.

UDP Policy S1F states that new shopping and leisure facilities over 500 square metres gross floorspace will only be permitted when:

- (a) the applicant has demonstrated the need for the development (this requirement has now been removed as stated in PPS4);
- (b) the applicant has demonstrated that a sequential approach to site selection has been undertaken within the catchment area, and that there are no suitable sites or buildings in sequentially preferable locations that are viable for the proposed use and available, or likely to become available, within a reasonable period of time;
- (c) the proposal, either by itself or together with recently completed developments or outstanding planning permissions, will not harm the vitality or viability of any town centre or local centre;
- (d) it will not unduly affect the amenity of nearby residents or other uses;
- (e) the site is widely accessible by existing public transport provision, walking and cycling, or such provision can be secured by legal agreement, and has good access from the Strategic Route Network. The development must not have an unacceptable impact on the road network; and
- (f) the site is well related to existing patterns of movement between residential areas and town centres and/or other major retail locations (superstores and retail parks).

In considering the up to date policy in PPS4 it must be recognised that this site is not in a centre and, as discussed above, not in compliance with Policy C1D of the development plan. Therefore the impact of the scheme on Leigh town centre must be assessed. This requires a sequential assessment. The Policy EC17 states that an application should be refused unless it complies with a sequential assessment. In this regard it would need to be demonstrated that all potential sites have been assessed for their suitability, availability and viability, and that no in-centre sites or edge of centre sites are available. Clearly a potential edge of centre site does exist at the former Barlo House site, for which there is a major retail and leisure proposal for consideration also on this agenda, which is recommended for approval.

Therefore there are no more sequentially preferable sites in Leigh than this application site at Leigh Sports Village. (i.e. the sequentially preferable, edge of centre site at Barlo House, Spinning Jenny Way, can come forward to town centre uses leaving this site as then a next sequentially preferable site within the Leigh area).

It must be recognised that the need requirement in UDP Policy S1F has been removed with the publication of PPS4. However it is acknowledged that the proposed development will draw most of its turnover from similar facilities which are identified to be trading above expected levels, and the expected levels of impact are unlikely to affect the continued performance and viability of these stores.

The key test then is the impact on the vitality and viability of Leigh town centre in accordance with Policy EC17 and the impact tests set out in Policy EC16 of PPS4.

The Council has recently had its retail and leisure study updated. This demonstrates that for the period up to and including 2015 (ie. to cover the period required by PPS4) there is sufficient capacity to support the development proposed without significant impact on the vitality and viability of the town centre. It is also necessary to consider the significant benefits (discussed elsewhere in this report) that will flow from a grant of permission.

It is anticipated that the proposal could have some impact on the trading patterns of the proposal at the former Barlos House site. That proposal is edge-of-centre site and will provide demonstrable benefits to the vitality and viability of Leigh town centre. However, that proposal is for a much larger retail development, together with significant leisure uses, and I do not believe that the potential impact of this proposal on that development will be significant to undermine those benefits and certainly not involve justification for resisting this proposal.

In conclusion, in my view, the development of this site along with the Barlo House site will not have a detrimental impact on the health of Leigh town centre or the wider area when considered singularly and cumulatively against the impact indicators in PPS4.

The Role of Enabling Development

It is important to carefully consider the benefits of permitting the proposed development with regard to retrospective enabling development for the suite of sporting and educational activities that have been delivered at the Sports Village. These significant wider material considerations need to be assessed against the schemes failure to comply with retail policy and the provisions of C1D.

Policy EC10 of PPS4 applies to all planning applications for economic development and states that local planning authorities should adopt a positive approach towards such development. It is implicit that where developments will secure sustainable economic growth then these developments should be treated favourably. However, in assessing how proposals could contribute towards sustainable development Policy EC10 identifies five criteria against which the impact of the development should be assessed. These include:

- whether the proposal has been planned to limit carbon dioxide emissions;
- the accessibility of the proposal;
- whether the development secures a high quality of design;
- the impact on the social and physical regeneration of the area;
- the impact on local employment.

Policy EM18 of the Regional Spatial Strategy (RSS) requires that all new non-residential development of more than 1,000 square metres should secure at least 10% of its energy from de-centralised and renewable or low-carbon sources, unless, having regard to the type of development involved and design this would not be feasible or viable. A condition is recommended to require the applicant to accord with the requirements of the policy.

The site is accessible on foot from existing bus corridors and the site is also served by a service linking the site to the town centre via Marshall Street. A Section 106 agreement will be secured to provide for alternative means of access to the site other than by use of the motor car, and to improve footpath links.

The quality of the design is acceptable, complimenting the materials and external appearance of existing buildings at the village.

The sports village development, to which this proposal relates as enabling development, has resulted in the provision of quality sporting and educational facilities for the local community.

The proposed Section 106 agreement will include measures to encourage local employment initiatives.

It follows therefore that there is strong support for the proposal when assessed against Policy EC10.

Policy EC17 states that where no significant adverse impacts have been identified planning applications should be determined by taking account of:

- the positive and negative impacts of the proposal and any other material considerations; and
- the likely cumulative effects of recent permissions, developments under construction and completed developments.

Judgements about the extent and significance of any impacts should be informed by the development plan (where this is up to date), and recent local assessments taking account of the vitality and viability of the town centre will also be relevant.

The importance of the success of the Sports Village to the continued provision of excellent sporting and educational facilities on site and the wider regeneration benefits for the borough as a whole are a matter of public record. It has been established that the development in itself will have limited impact on extant permissions, other developments proposed, and the vitality and viability of the town centre. This is a major flagship regeneration proposal and the retail store is seen as

the only viable option for securing the suite of sporting and educational facilities that have been delivered on the site.

It is also acknowledged that whilst the suite of sporting and educational facilities form the cornerstone of the development they rely upon a wider mix of complimentary and related activities in order to provide a commercial basis for the development. The applicant's planning statement addresses the role of enabling development in the planning system. It indicates that the need for such ancillary development to bring forward major projects of benefit to the community has been acknowledged by the Secretary of State.

As stated in supporting documents, in this case the enabling development will now follow existing development on the site. This is unusual, but the original scheme had enabling development as an underpinning fundamental. Members may recall that the original scheme was for five inter-related planning permissions on four separate sites which were all linked through financial viability/enabling development principles. These were for:

- (1) The erection of two office buildings, together with car parking. The site comprised an area of land subject to this application.
- (2) The erection of a bulky goods (non-food) retail warehouse, together with associated car parking and infrastructure, and a children's play area. The site is bounded by the former Hilton Park.
- (3) The erection of 65 residential units together with open space. The site is bounded by Holden Road.
- (4) The erection of 145 houses and apartments on land adjacent to Atherleigh Way and the Leeds and Liverpool Canal to the north of Leigh East pavilion.
- (5) The laying out of 6 soccer/rugby pitches and 128 car parking spaces at Howe Bridge.

As part of the previous suite of applications the applicant stated that the total funding requirement towards the costs of constructing the sporting and community facilities at Marshall Street was in the order of £43.1million. In order to meet this, they quantified the receipts likely to be brought forward in the event that the package of proposals was granted planning permission.

It was stated to be as follows:

- Capital receipt from the sale of the Leigh Harriers site, Holden Road, for housing development, approximately £1.6 million
- Housing and student apartments on the Marshall Street site, approximately £1.9 million
- Ancillary commercial facilities on the Marshall Street site, approximately £8.0 million, after allowing for construction costs.

- The retail development at Leigh East, adjacent to Hilton Park, approximately £8.4 million
- Business units and hotel at Marshall Street, approximately £3.5 million.

In total, this was estimated to provide about £23.4 million of income to support the project. It still left a significant funding gap of £19.7 million that was to be bridged by grant aid. The applicant states, "the ancillary development is required in its entirety in order to bring forward the Sports Village, the new College and playing field at Howe Bridge."

The planning permissions which were granted accepted the enabling development was necessary and legal agreements were attached to the permissions to ensure the sporting facilities were built within an appropriate timescale. These controls were necessary to ensure that the developer didn't only build the commercial development and then claim the sporting facilities could not be provided. The position is that all the sporting facilities and college have been provided, with only a limited element of commercial development comprising of the hotel and housing. The developer now states that the approved enabling development under the terms of the original consent to be provided on the site is no longer commercially viable due to the recent change in market conditions.

The submitted planning application seeks permission to construct an element of commercial development not previously approved which recovers the debt incurred by the public sector works already built at Leigh Sports Village.

The applicant has provided figures of capital receipts and advises that the public sector works within Leigh Sports Village (including the stadium, sports hall, college, public playing pitches and facilities and club houses for amateur sports teams) have incurred a cost of over £40 million. The cost of servicing the debt runs at £1.4m annually.

Despite an extensive marketing strategy the agent acting in this matter advises that no interest has been realised for the commercial development which has been granted permission and which this proposal seeks to replace. It is therefore contended that the proposed food store is the only major land use for which demand exists.

The Planning Statement advises that the cost of the public sector development to date is approximately £51.9m.

In terms of enabling development, construction is underway or complete in respect of the permitted housing and hotel development at Pennington. The capital receipt from these developments has been £11.9m.

Grant funding has contributed approximately £19.8m towards the cost. The present situation is that the Sports Village is £20.2 m in deficit. The alternative element of enabling development should reduce the debt by a further £11m when construction costs are deducted leaving a debt of approximately £9m. This residual debt is due

to be recouped from the sale of the Grasmere Street site and lease details on the ancillary offices and smaller units at LSV.

The issue of enabling development is a well founded planning principle and details relating to how it should be applied in planning decisions has been tested in the courts on a number of occasions. Perhaps the best known example is the Royal Opera House, Covent Garden. This decision dates from 1989. Westminster City Council were challenged on their decision to grant planning permission for a scheme which included a substantial element of commercial development, the profits from which were to be applied to finance the Opera House's own improvements. Therefore the role of enabling development is a relevant planning consideration and must therefore be taken into account in reaching a decision on the planning application. The weight to be attached is a matter for the decision maker having regard to all relevant evidence.

However, there is no reported case that has been found on retrospective enabling development and Counsel's opinion for the applicant refers to the above case where in the Court of Appeal, Kerr L J found, "Financial constraints on the economic viability of a desirable planning development are unavoidable facts of life in an imperfect world. It would be unreal and contrary to common sense to insist that they must be excluded from the range of considerations which may properly be regarded as material planning considerations." Furthermore, Nichols LJ added, "circumstances vary so widely that it may be unsatisfactory and unwise to attempt to state a formula which is intended to provide a definitive answer in all types of case."

In a recent appeal decision in Salford for a new stadium the Secretary of State considered that a retail element for which quantitative and qualitative need had not been demonstrated meant that the proposal did not fully comply with the development plan. However the Secretary of State accepted that the retail element was vital to secure adequate funding for the proposal, and considered that the scheme must be taken as a whole and despite the conflict with the provisions of the development plan the scheme would bring about substantive benefits to the local economy, to the environment and the community. For those reasons the Secretary of State considered that planning permission should be granted.

In establishing whether the proposal can legitimately be classed as enabling development, the starting point is whether the development is particularly desirable under the terms of Policy C1D, namely the sports facilities which have already been constructed. Therefore, at first sight, there is arguably no development that has not already been built that would be enabled by the current proposals.

Miss Stockley states that

"it is necessary to consider the matter further and not merely take that simplistic approach. As Members are aware, the initial grant of planning permission in 2004 for the Leigh Sports Village itself was given at the same time as planning permission was granted for four other related developments, applications for which were submitted together and considered together by the Council as part of the overall Leigh Sports Village development. That original application for the Leigh Sports Village was submitted on the express basis that it was financially unviable in

the absence of the development contained in the related applications. Those other developments were thus put forward as being enabling development for Leigh Sports Village. The Council duly considered the applications on that basis and granted them on that basis. Moreover, the Council's consideration of those other applications as enabling development was expressly challenged in judicial review proceedings in R. (on the application of Frank Hampson) v. Wigan Metropolitan Borough Council and Greenbank Partnerships Limited [2005] EWHC 1656 (Admin) in which the Court upheld the Council's grant of planning permission on that basis. It is thus clearly established that enabling development was required for the development of Leigh Sports Village and was appropriate.

It is further notable that pursuant to a Section 106 Agreement, the applicant agreed to construct the public sector elements first. That obligation has been duly complied with. It was thus an integral part of the planning permission that the development to be enabled would be constructed prior to the enabling works themselves. Subsequently, it has transpired that market conditions have changed and the enabling development granted planning permission is insufficient to make the overall scheme financially viable. For that reason, revised enabling development proposals have been submitted.

It does not seem to me that the proposals are precluded in principle from amounting to enabling development merely because the development they are to enable has already been carried out. Indeed, given the terms of the Section 106 Agreement, the developer was obliged to undertake the development in that order. That should not affect the subsequent works from being enabling development merely because the development they were to enable has already been carried out.

As enabling development has already been established as being required and appropriate, then provided that evidence is submitted to demonstrate that enabling development is still required for the overall scheme to be financially viable, namely as of the date of the council's consideration of the current proposals, and that the particular proposals can themselves be properly regarded as being enabling development in that they have the requisite functional and financial link with the Leigh Sports Village development, then they can be, and indeed ought to be, assessed as such by Members.

As to those two evidential matters, whether the proposals are required for the overall scheme to be financially viable is a matter of consideration of the financial figures. Financial information has been provided which Members will need to consider to determine whether it is satisfied that in the absence of the proposals the overall scheme is not financially viable. If so, it will also be necessary for Members to determine whether it has been demonstrated that the particular proposals are functionally and financially linked with the overall Leigh Sports Village development so that they are effectively part of a composite development, as required by the leading case of R. v. Westminster City Council, ex parte Monahan [1989] JPL 107. In that regard, it is relevant to note factors such as that the proposals are replacing previous enabling development; that the developers are the same as those for Leigh Sports Village; that the application site is within the site of Leigh Sports Village; that the financial link has been established (assuming that the applicant's financial evidence is accepted); and that the proposals are part of the overall

development. Those factors would appear to support a conclusion that the proposals are enabling development and should be considered as such in the determination of the application".

Having carefully considered this proposition, it is my view that it is an underpinning principle of the grant of permission here that enabling development would contribute to the overall viability of the scheme as a whole. The basis upon which the outline permission was granted was upheld by the Court. There is no stipulation in case law as to when that enabling development has to occur whether before or after the desired development. Provided there is the necessary linkage between the elements, as there is in this instance through the Section 106 agreement, the enabling development is part of the whole and the rationale for the grant of planning permission remains.

As described above the fact that the proposed development can properly be regarded as enabling development in respect of Leigh Sports Village in my view outweighs the conflict with the Development Plan.

Design of New Development

The food store will be situated between the main spine road through the Village and Atherleigh Way along the western boundary. Due to the topography of the site, it will have a ground floor approximately 3 metres below carriageway. It is situated in close proximity to the hotel which also has a boundary with Atherleigh Way.

It will have a maximum height of 14 metres including clock tower whilst the majority of the building extends to 10 metres. The palette of materials will include brickwork and cladding to match existing buildings constructed at the Village. Significant elements of glazing are proposed both within the entrance feature and through the elevations. The clock tower comprises a cladding system finished in dark green.

The petrol filling station is situated towards the site entrance and comprises a modest single story building in brick with canopy over. This and the proposed car wash will be situated to the rear of a lightweight trellis structure incorporating public art which reflects sporting activities and educational facilities at the Sports Village. This boundary will also incorporate hedgerow planting at approximately 700 mm.

On the corner of the North and South stand of the Stadium it is proposed (as at the previous outline stage) to incorporate elements of two storey commercial units within the A1 - A5 and B1(a) Use Classes. These will be of a contemporary design extending to a maximum height of 10 metres and comprising of significant elements of glazing and cladding to external elevations. These will in my opinion compliment the setting and materials used on the main stadium. The proposed buildings are completed by the provision of single storey A1 units extending to approximately 4 metres and also consisting of brick and glazed finish.

The Stadium piazza will be extended across the main access road to form an improved pedestrian link between the stadium and the store entrance.

Car parking areas are proposed adjacent to the north stand of the Stadium, in front of the main stand and proposed commercial buildings and adjacent to the south stand of the Stadium.

The proposed elevations and height of the building have been subject to discussion and I take the view that the siting, design and massing of the food store and petrol filling station along the Atherleigh Way frontage is acceptable. The main Stadium in the centre of the site is approximately 18.5 metres high. The hotel has a maximum height of approximately 16.5 metres. As stated above the proposed store has a maximum height of approximately 14 metres. This is acceptable considering the height of the other buildings to the side and rear.

The College building to the south of the main stadium also has a roof height of approximately 14 metres. It was established at the previous outline stage that the development would change the outward appearance of the site and result in it becoming urbanised when viewed from within the urban area. In this context approval has already been granted for a number of buildings including the stadium as a centre piece surrounded by a number of single, two, three and four storey buildings. This application consists of a number of buildings with roof heights consistent with those already on the site or agreed on the earlier outline consent.

There is a significant tree belt on either side of Atherleigh Way. This provides a satisfactory buffer and visual screen to wider views of the site from the Green Belt. In this context the building will not have a significant effect on the character and appearance of the Green Belt due to the aforementioned change in levels and existing vegetation which is sufficient to limit visual impact from the south on Atherleigh Way and west across Pennington Country Flash into the site. Views along the public footpaths and the golf course running in a northerly direction towards the Twist Lane roundabout are also protected by existing mature vegetation and there are limited views of the proposed buildings when approaching from the north.

Having regard to both the design and green belt policies of the UDP I consider the scheme to be acceptable.

Access and Parking

In order to assess the highway impact of the proposals, the applicant has commissioned Savell Bird & Axon to undertake a full Transport Assessment (TA) for the proposed development. The submitted TA builds upon the previously submitted TA for the formerly approved scheme and provides up to date surveyed traffic flow information.

In total, serving the whole of the LSV site there are approximately 1490 car parking spaces provided for the development; which is within the Council's maximum parking standards as set out in the UDP. The main vehicular access to the site will be via the existing three arm priority controlled roundabout on Atherleigh Way. All traffic accessing the site will enter via this junction. Servicing of all the units shall be from within the site boundary and the supermarket element of the development has its own service yard between the rear of the store and the hotel.

Full capacity assessments of the following junctions were undertaken as part of the TA to fully understand the impacts of the proposed development upon the local highway network:

- Atherleigh Way/Leigh Sports Village Site Access;
- Kirkhall Lane/Atherleigh Way;
- Atherleigh Way/Kirkhall Lane;
- Atherleigh Way/St Helens Road/Lowton St. Mary's Bypass;
- Lowton St. Mary's Bypass/East Lancashire Road;
- Twist Lane/Atherleigh Way/Parsonage Way.

The original scheme included improvements to the Atherleigh Way/Leigh Sports Village site access and this junction was forecast to operate within capacity both with existing and committed floorspace up to and including 2026. However, the junction of Twist Lane/Atherleigh Way/Parsonage Way was forecast to continue to exceed its theoretical capacity once the development traffic was included. In light of the modelling results the applicant has agreed to contribute towards a highway improvement scheme at this junction. All other junctions that have been assessed are forecast to either operate within capacity or the development flows are anticipated to contribute a minimal impact upon the overall existing traffic at junctions.

In addition to on-site improvements such as the repositioning of cycle parking and amendments to disabled parking, Section 106 and 278 Agreements will be entered into to secure further improvements. As part of the Section 106 and 278 Agreements contributions that will be secured include the implementation of a 3m pedestrian footway along the site frontage. This will replace part of the track along the western boundary proposed on the original scheme at ground level within the site. I have discussed this issue with the Highway Engineer and it is deemed as a minor amendment to the original access strategy which showed the path running alongside the embankment to Atherleigh Way approximately 3 metres below carriageway. The revision is deemed to be more secure and will allow the opportunity to extend the footpath network from the main site entrance further south towards the bridge across Westleigh Brook. Further contributions will be provided for highway improvements to the Atherleigh Way/St Helens Road and Twist Lane/Atherleigh Way junctions, a contribution to enhance public transport provision to the site and the implementation of car park Variable Message Signage (VMS) to assist in the efficient circulation in and around the site.

The initial comments from the GMPTE expressed concern about walking distances from existing bus corridors and the lack of a bus service to the site. Members may be aware that £90,000 has been secured through the original S106 agreement for footpath improvements and this includes a 3m wide path linking the site to the Twist Lane roundabout. In addition a contract has been let since January to First North Western to run the 597 (service formerly operated by Jim Stones to Marshall Street) which has now been extended to serve the Sports Village. Further contributions towards public transport will be secured through S106 contributions.

In light of my Highway Engineers reviewing the TA submitted by Savell Bird & Axon and the suggested mitigation measures through the TA and the Section 106 and 278 Agreements there are no traffic, transport or highway safety objections to the proposals. The proposal is therefore acceptable when assessed against the PPG13 RSS policies and the transport policies of the UDP.

Structural Landscaping and boundary treatment

The proposal needs to be assessed against UDP Policy EV3D which requires development to incorporate good quality hard and soft landscaping as an integral part of the proposals to enhance the environment and setting of a new building and help integrate the development into its surroundings. The inclusion of landscaping in development schemes can usefully provide screening, softening, colour, textures and seasonal variations and can break up large wall or parking areas. Hard landscaping can also be effective in introducing attractive textures, colour, patterns and sculptural features into floor areas.

The aim of the landscape proposals is to provide an integrated landscape scheme for the development which is complementary and compatible with the overall strategy of the Sports Village.

The objectives are:

- to protect the visual and landscape quality of the Green Belt and Country Park to the west of the site beyond Atherleigh Way;
- to provide a distinctive and clear entrance to the village;
- to provide a visually prominent framework of large trees within the development that are in scale with and complementary to the stadium and proposed buildings;
- to provide an easy to maintain evergreen and semi-evergreen layout of ground covers to integrate with the overall landscape of the village; and
- create a hard landscape that is easy to maintain and compatible with the landscape strategy of the village.

The importance of the Green Belt and Country Park has been recognised and the proposal includes measures to conserve as much as possible of the existing screen planting along the western boundary of the site. This is the same approach as was taken with the original outline planning application. It is proposed to retain as many trees and shrubs adjacent to Atherleigh Way as possible and enhance the screening effect by the addition of substantial numbers of native trees and shrubs.

A survey of the trees adjacent to Atherleigh Way has revealed that it would be beneficial to carry out thinning and management to the existing stock and supplement the planting with new trees and establish an under-storey which helps in screening the buildings and activities from viewpoints along the road.

It is proposed to create a clear and obvious entrance into the village by the establishment of clipped evergreen hedges and a feature trellis with a significant element of public art near the entrance road. These formal hedges will be maintained at a nominal height of 700mm provide low level screening of much of

the petrol station and car parks from the west. Shrub planting in front of the car wash will screen this building.

A line of large trees will extend along the entrance road to create a visually important feature which will help give the village a unique landscape character in the long term. The proposed planting is designed to be easy to maintain, provide a safe environment and be compatible with the existing landscape to the village. Beds of low ground cover of evergreen and semi-evergreen plants will be established within a generally 'hard' landscape. Screening and barriers will be kept simple by the establishment and maintenance of evergreen hedges.

It is proposed to create a low mound between the hotel premises and the store service yard wall, which is 3m high. This area will be planted with a dense screen of native trees and shrubs but have an evergreen clipped hedge to the side of the hotel car park.

The hard landscape and street furniture will be compatible with that for the village as a whole. The open areas between the buildings are designed to accommodate large numbers of pedestrians in a safe manner. Conservation paving and 'tegula' concrete setts will be laid out in patterns to differentiate between pedestrian, vehicular and joint access areas.

In my opinion the landscaping proposals are compatible with the requirements of Policy EV3D.

Flooding and Drainage

Policy G1C of the UDP states that development will not be permitted which would create an unacceptable increase in the risk of flooding either on-site or elsewhere or adversely affect the water environment as a result of an increase in surface water run-off. The proposals have been the subject of consultation with the Environment Agency and United Utilities.

They both take the view that proposal will be acceptable with the imposition of planning conditions to:

- limiting surface water run-off to the existing greenfield rate;
- set finished floor levels at a minimum 18.850 AOD;
- provide separate foul and surface water drainage and a surface water regulation system; and
- include oil and petrol separators.

These will be controlled by planning condition.

Ecology

The proposal has been assessed by both my ecologist and the Greater Manchester Ecology Unit.

Policy EV2 establishes the Council's commitment to the protection and enhancement of the natural environment and diversity by amongst other things securing new areas of nature conservation interest and enhancing existing ones in considering development proposals. This approach is consistent with the aims of PPS9 Biodiversity and Geological Conservation which states that development proposals provide many opportunities for building-in beneficial biodiversity or geological features as part of good design. It is encouraged that when local planning authorities are considering proposals they should maximise such opportunities in and around developments.

The measures proposed by the applicant include:

- the provision of bat and bird boxes in the woodland along the route of the permissive bridleway at the south of the site;
- the southern triangle (south of the hotel) to be assessed, strimmed and mown in 2010 and subject to further annual cuts in subsequent years with professional supervision;
- cleaning and remediation work to be carried out to the pond adjacent to the footpath which runs along the eastern boundary of the Sports Village site;
- two ponds to be created in Pennington Country Park at an appropriate stage.

I would suggest therefore that there is justification for attaching a condition for a scheme of biodiversity enhancement measures.

Noise

Policy G1A of the UDP seeks to protect existing and proposed land uses from significant adverse noise impacts associated with new development.

The following noise sources have been indentified:

- impact on residential properties and rooms in the hotel;
- noise from activities in the service yard;
- noise associated with plant and machinery;
- noise associated with the petrol filling station and car wash; and
- noise associated with the commercial and retail uses proposed that were identified on the previous approval.

The outline consent at the Sports Village was subject to a number of conditions aimed at restricting noise to an acceptable level for existing and proposed land uses. A noise survey has been submitted and assessed by Environmental Protection Officers.

This provides an analysis of the proposed noise sources and it is considered that the proposal could give rise to some amenity issues which would need to be overcome by the imposition of planning conditions.

Air Quality

The proposal needs to be assessed against UDP Policy EV1B Pollution and the SPD Development and Air Quality. An air quality assessment has been submitted as part of the proposal. Policy EV1B seeks to restrict development that would give rise to unacceptable levels of air pollution or which would have an unacceptable effect on air quality.

The proposal falls within Band 4 within the SPD which is for those developments with a substantial potential impact and could lead to a situation where it would be justifiable to refuse planning permission unless other material considerations indicate otherwise.

A Section 106 agreement is proposed to require a financial contribution to promote bus service provision and footpath improvements. This will compliment existing footpath links from the site to a number of quality bus corridors and the main town centre. In this context, I consider that there is significant justification in this instance for setting aside the requirement for an additional financial contribution for air quality.

Archaeology

The Greater Manchester Archaeology Unit has been consulted and considers that it would be appropriate to secure a contribution through the Section 106 agreement towards a community archaeology project. My officers have discussed the matter with the County Archaeologist and advised that this programme has already been undertaken as part of the outline consent. Rothwells Wood does not form part of the application site and will not be affected by the current proposal.

I would take the view that there is no justification for any further works as part of this application.

Lighting

The submission includes an external lighting assessment which concludes that light spillage will be confined within the site. Consequently in my opinion this shows that no significant amenity issues are raised in this regard and the proposal therefore complies with UDP Policy G1A which seeks to protect proposed and existing land uses from significant adverse impact from amongst other things light spillage.

Observations on Representations Received

3 letters of support have been received on behalf of the owners of the adjacent hotel and Leigh Harriers Athletic Club both within the Village. These are firmly of the opinion that the development is vital to the success of the sports village. It is their view that the early delivery of the proposed alternative commercial development is the only means by which they will be able to guarantee the future of their business on the Sports Village site.

There are a number of concerns raised by local residents against the proposal. The grounds of concern are:

- proposal doesn't comply with the provisions of the Development Plan;
- there are concerns about highway safety, congestion and traffic generation;
- the developer has not proven any need for the store;
- the impacts on the Town Centre;
- there are more central locations;
- not in accordance with the thrust of Policy C1D; and
- flood risk issues

I consider that these issues have been covered in the main body of the report.

Conclusion:

The Planning Statement accompanying the application asserts that the UDP Policy C1D allows in principle for all the land uses for which planning permission is being sought currently, provided that they are complimentary and related to the main Sports Village development. It is argued that the proposals will be directly related to the Sports Village by both legal and financial arrangements; they are complimentary in that they will attract footfall for the benefit of all occupiers of the Village and will contribute to the ongoing maintenance, servicing (in terms of public access) and running of the Sports Village.

The submission also includes Counsel's opinion on behalf of the applicant regarding policy compliance and the issue of enabling development. The first consideration is thus whether the proposed new planning application is still consistent with the Development Plan.

Having carefully considered the opinions of Counsel, it is my view that the proposals being put forward are not compliant with UDP Policy C1D and that this is a view that is not perverse and is one that could be properly supported in the Courts if it were the subject of a legal challenge.

It is important to carefully consider the benefits of permitting the proposed development with regard to retrospective enabling development for the suite of sporting and educational activities that have been delivered at the Sports Village. These significant wider material considerations need to be assessed against the schemes failure to comply with Policy C1D.

The role of enabling development is a relevant planning consideration and must therefore be taken into account in reaching a decision on the planning application. The weight to be attached is a matter for the decision maker having regard to all relevant evidence. The interpretation of planning policy is a matter for the reasonable discretion of the local planning authority.

In establishing whether the proposal can legitimately be classed as enabling development, the starting point is whether the development is particularly desirable under the terms of Policy C1D, namely the sports facilities.

Leigh Sports Village is a major flagship regeneration scheme for Leigh and its successful completion was underpinned by a range of commercial developments both on and off the site. This application relates to an element of alternative enabling development to replace part of the commercial elements approved at Outline Stage.

It is acknowledged that without this cross subsidy funding the suite of sporting and educational facilities would not have been brought forward. The terms of the Section 106 agreement were such that these facilities were delivered early and in order that the commercial elements could not come forward without them the Section 106 agreement was drawn tightly so that there came first.

Having carefully considered this proposition it is my view that it is an underpinning principle of the grant of permission here that enabling development would contribute to the overall viability of the scheme as a whole. The basis upon which the outline permission was granted was upheld by the Court. There is no stipulation in case law as to when that enabling development has to occur whether before or after the desired development. Provided there is the necessary linkage between the elements, as there is in this instance through the S106 agreement, the enabling development is part of the whole and the rationale for the grant of planning permission remains.

Having fully assessed all relevant policy considerations, including the retail assessment and impact on Leigh town centre as required by PPS4, I am satisfied that the proposals are acceptable.

I would therefore recommend that Members be minded to approve the application subject to referral to Government Office North West as required under the terms of the Town and Country Planning (Consultation) (England) Direction 2009 because the proposal is not in accordance with a provision of the Development Plan and the fact that the site is out-of-centre and the applicant entering into a S106 agreement:

- for promotion of the town centre;
- bus service provision;
- footpath improvements;
- off site junction improvements;
- a contribution towards travel plan monitoring; and
- local employment initiatives.

Recommendation

Minded to Approve

1. With the exception of the detailed matters referred to by the conditions of this consent, the development hereby approved shall be carried out in accordance with the details shown on plan reference LSV-PP-RP03 REV C, RP100 Rev A, RP101, RP102 REV A, RP 103, RP 104 RevB, RP 105, RP 106 RevB, RP.01, (PL)01A, (PL)02A (PL)03D, (PL)04A, (PL)05B, (PL)06A, (PL)07B, (PL)08B, (PL)09A, (PL)10, (PL)11, (PL)12B, S236-203 RevC,

S236-206 RevB, S236-207 RevA, S236-204 RevB, S236-205 RevA and S236-208

2. No more than a maximum of 3,109 sq.metres of net sales area shall be provided within the supermarket hereby approved.
3. No development shall be started until an investigation and assessment of the nature and extent of any contamination of the site has been submitted to and approved in writing by the Local Planning Authority. The assessment shall identify any remedial measures required to deal with any hazards identified and such measures shall be implemented before the occupation of any of the buildings hereby permitted.
4. Prior to the commencement of the construction of any building hereby approved provision shall be made on the site for:-
the parking of construction workers vehicles
storage of building materials, equipment and plant, and
placement of site cabins, site offices and storage containers
In accordance with details to be submitted to and approved in writing by the Local Planning Authority before the commencement of the development.
The development shall be carried out only in accordance with the approved details.
5. Before any part of the development hereby approved is commenced, particulars/samples of the materials to be used for the external walls and roof shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed only in accordance with the approved materials.
6. A Travel Plan shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development, or in accordance with a timeframe that has been agreed in writing by the Local Planning Authority. The Travel Plan shall show measures to reduce the need to travel to and from the site by private transport and the timing of such measures. The plan shall be implemented in accordance with the details as approved. The approved travel plan shall be maintained and kept up to date at all times and shall take into account any change in circumstances such as a change to the occupier of the site.
7. Before any part of the development hereby approved is commenced facilities shall be provided in accordance with a detailed scheme previously submitted to and approved in writing by the Local Planning Authority to demonstrate how the wheels of vehicles can be cleaned before leaving the site. The equipment shall be so maintained and used that vehicles leaving the site do not deposit mud or other debris on the highway.
8. The food store, petrol filling station (including car wash/jet wash/ air.vac), other A1, A2, A3, A4, A5 and B1 office uses hereby permitted shall not be open for trade or business except during the following hours: Monday to Sunday 0700 to 2300 hours.
9. Loading/unloading and manoeuvring of goods vehicles (including forklift trucks) at the food store shall not take place except during the following hours, namely: 0700 to 2300 hours on any day.
10. Before the development hereby approved is brought into use all plant and machinery shall be enclosed with sound insulating material in accordance with a scheme previously agreed in writing by the Local Planning Authority.

11. Before the development hereby approved is commenced, a scheme for the extraction of fumes and odours shall be submitted to and approved in writing by the Local Planning Authority and all works which form part of the approved scheme shall be carried out and completed before the development is brought into use.
12. The development hereby permitted shall not be commenced until such time as a scheme for the provision and implementation of a surface water regulation system and details of the method of surface water and foul water drainage from the site has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed, in writing, by the local planning authority
13. Surface water from yard storage areas, vehicle washing areas, loading and unloading areas and any other areas likely to be contaminated by spillage shall be connected to the foul sewer before the use hereby approved is commenced.
14. The site shall be treated in accordance with a landscape scheme to be submitted to and approved in writing by the Local Planning Authority before any part of the development is commenced and all works in accordance with the scheme shall be completed within a period of 24 months from the date on which development in accordance with the permission hereby granted is first commenced, or such longer period as may be agreed by the Local Planning Authority, having regard to planting seasons, such landscape scheme to include the planting of live trees and the treatment of forecourts, paving and boundary fences. All planting shall be maintained for a period of 5 years from the agreed date of planting.
15. Prior to the commencement of any excavation or construction works or the entry of vehicles or plant into the site, all existing trees, shrubs and hedges on and adjacent to the site shall be physically protected from damage by plant, equipment, vehicles, excavation, deposit of excavated material and any other cause. This shall be achieved by the erection of 2.3 m high fencing using vertical and horizontal scaffolding poles, or other stout fencing to Local Authority approval with the uprights driven well into the ground, erected in accordance with BS5837:2005, outside the canopy, in accordance with and appearing on the approved plan. The fencing shall be maintained for the duration of the development operations and no operations whatsoever shall take place within it.
Any trees or hedges removed without consent, which are dying or seriously damaged or becoming seriously diseased within 60 months following completion of the development shall be replaced with trees of such size and species and within such a period as may be agreed by the Local Planning Authority.
16. Prior to the commencement of any operations on the site an Operational Method Statement shall be submitted to and approved in writing by the Local Planning Authority. This shall identify the order in which operations will be undertaken, including tree works, erection of protective fencing, location of site compound and material storage, construction, specific tree protection and special procedures and materials where development is within the sphere of influence of trees. It shall identify all tree works to be to BS3998 by

an approved contractor, all development to BS5837, including erection of protective fencing, and the method of special tree protection. It shall identify a list of contacts during development and include the planning conditions for this consent.

17. No development shall commence until a scheme in the form of a Construction Environmental Management and Phasing Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details for the methods to be employed to control and monitor noise, dust, vibration impacts and other day to day activities during the construction of the store. Any identified mitigation measures shall be implemented to the full written satisfaction of the Local Planning Authority before the construction works are commenced, and shall be maintained for the duration of the construction works.
18. Before the development hereby approved is commenced a car park management strategy shall be agreed in writing with the Local Planning Authority. The development shall not be carried out except in complete accordance with the agreed details.
19. Prior to the use of the development commencing a petrol/oil interceptor shall be installed on the site in accordance with a scheme previously approved in writing by the Local Planning Authority.
20. Before the development hereby approved is commenced, a scheme detailing energy efficiency measures, as set out in the Environmental Statement prepared by SK (UK) Ltd dated August 2009, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented only in full accordance with the approved details.
21. Before the development hereby approved is commenced, a scheme of biodiversity enhancement measures shall be submitted to and approved in writing by the Local Planning Authority. The enhancement measures shall be implemented in accordance with a phasing programme to be included as part of the submitted scheme.
22. Before the development hereby approved is commenced a scheme for the proposed external lighting shall be submitted to and agreed in writing with the Local Planning Authority. The development shall not be carried out except in complete accordance with the agreed details.
23. Before the development hereby approved is commenced, a construction programme shall be submitted to and approved in writing by the Local Planning Authority to include a restriction on construction vehicles visiting the site when main events are taking place at the Sports Village, and the phasing of the provision of the proposed parking areas. The development shall not be carried out except in complete accordance with the agreed details.
24. Surface Water run-off from the site shall be limited to the existing greenfield rate and not exceed 27.6 litres per second.
25. The Finished Floor Levels shall be set at a minimum of 18.85m AOD.
26. The level of noise emitted from the superstore service yard shall not exceed 55dBA LAeq,1h levels measured at the facade of the hotel.

27. The Rating Level (as defined in British Standard 4142: 1997 Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas) shall not exceed the following levels at the Park Inn Hotel and nearest residential properties on Ledgard Avenue):
- Daytime 07:00 to 23:00 LA 90 +3 dB(A)
 - Night-time 23:00 to 07:00 37 dB(A)

Reasons:

1. For the avoidance of doubt, and having regard to Policy EV3A of the replacement Wigan UDP.
2. To protect the vitality and viability of the Town Centre having regard to PPS4 and replacement Wigan UDP Policy S1F.
3. To ensure that any contamination is investigated and treated to the satisfaction of the Local Planning Authority, during the carrying out of the development as required by Policy EV1B of the replacement Wigan UDP.
4. To ensure that construction workers vehicles are not parked on the highway and materials and associated facilities are not detrimental to the amenity of the area, having regard to Policy A1S of the replacement Wigan UDP.
5. To ensure that the external appearance of the buildings is satisfactory, having regard to Policy EV3A of the replacement Wigan UDP.
6. To reduce the need to travel to and from the site by private transport in accordance with replacement Wigan UDP Policy A1B and the council's Travel Plans Supplementary Planning Document and in order to promote sustainable modes of travel to and from the site, and to reduce reliance of the private car.
7. To ensure the cleanliness and safety of the highway and having regard to Policy A1R of the replacement Wigan UDP.
8. To safeguard the amenities of the adjoining premises and the area generally, having regard to Policy G1A of the replacement Wigan UDP.
9. To safeguard the amenities of the adjoining premises and the area generally, having regard to Policy G1A of the replacement Wigan UDP.
10. The insulation of plant and machinery which generate high levels of noise will reduce the impact of the proposal on existing development in the vicinity, in accordance with Policies EV1B and G1A of the replacement Wigan UDP.
11. To safeguard the amenities of the adjoining premises and the area generally, having regard to Policy G1A of the replacement Wigan UDP.
12. To ensure that the site is satisfactorily drained, in accordance with Policy EV3A and G1C of the replacement Wigan UDP.
13. To avoid contamination of the surface water system, in accordance with Policy EV1B of the replacement Wigan UDP.
14. To help to assimilate the proposed development into its surroundings, having regard to Policy EV3D of the replacement Wigan UDP.
15. The existing trees and shrubs represent a visual amenity which the Local Planning Authority consider should be substantially maintained, in accordance with Policy EV2E of the replacement Wigan UDP.
16. The existing trees and shrubs represent a visual amenity which the Local Planning Authority consider should be substantially maintained, in accordance with Policy EV2E of the replacement Wigan UDP.

17. To safeguard the amenities of the adjoining premises and the area generally, having regard to Policy G1A of the replacement Wigan UDP.
18. To ensure safe and effective parking management at all times having regard to replacement Wigan UDP Policies G1A and A1.
19. To avoid contamination of the surface water system, in accordance with Policy EV1B of the replacement Wigan UDP.
20. In accordance with the sustainability requirements of Policy EM18 of the Regional Spatial Strategy for the North West.
21. To provide satisfactory biodiversity enhancement measures having regard to Policy EV2 of the replacement Wigan UDP.
22. To safeguard the amenities of the adjoining premises and the area generally, having regard to Policy G1A of the replacement Wigan UDP.
23. For the safety and convenience of all users of the Village having regard to replacement Wigan UDP Policy G1A.
24. To reduce the risk of flooding to the site and elsewhere to an acceptable level having regard to replacement Wigan UDP Policy G1C.
25. To reduce the risk of flooding to the site and elsewhere to an acceptable level having regard to replacement Wigan UDP Policy G1C.
26. To safeguard the amenities of the adjoining premises and the area generally, having regard to Policy G1A of the replacement Wigan UDP.
27. The predicted level of noise emission from the proposed development would not be acceptable to existing development in the vicinity outside normal working hours, having regard to Policies EV1B and G1A of the replacement Wigan UDP.

Plans Attached to Report

Location Plan

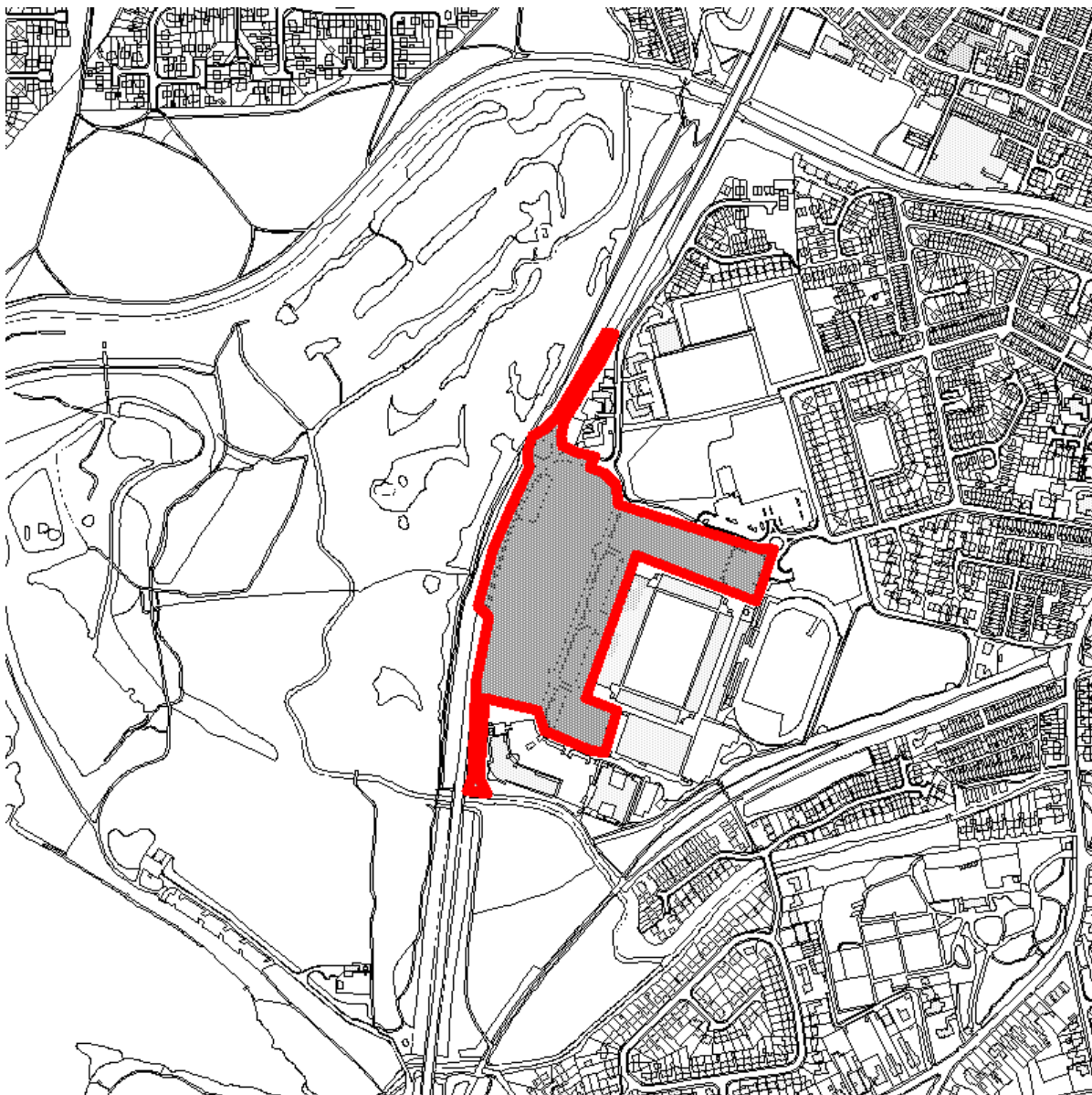
P/GD/A/09/73289

Application No: A/09/73289

Development Proposed: Leigh Sports Village Phase III commercial and related works, comprising alterations in the floor space composition and positioning of planning permission A/03/58535 to provide for a food store and ancillary petrol filling station, class A1 - A5 units with one storey of class B1 offices above, construction of a piazza, stand alone single storey A1 - A5 units and car parking in front of the West Stand of Leigh stadium, enhanced access arrangements from Atherleigh Way and related car parking, engineering and landscaping works.

Location: Leigh Sports Village Atherleigh Way Leigh

Ward: Leigh South



Site Area 

This plan is representative only, to indicate the site in relation to its surroundings.



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