

## PLANNING APPLICATION NUMBER: P11/0270

Type of approval sought	Full Planning Permission
Ward	HALESOWEN NORTH
Applicant	Mr James Knight
Location:	<b>GREENHILL YOUTH CENTRE, 221A, LONG LANE, HALESOWEN, B62 9JT</b>
Proposal	<b>REMOVAL OF CONDITION 1 OF PLANNING APPROVAL P05/1997 WHICH STATES 'THE FORMAL RECREATIONAL USE OF THE SITE ON A SUNDAY SHALL ONLY TAKE PLACE BETWEEN THE FOLLOWING HOURS:- 0930 TO 1300 OR 1330 TO 1630 HOURS. FOR THE AVOIDANCE OF DOUBT THE USE SHALL BE UNRESTRICTED ON OTHER DAYS'</b>
Recommendation Summary:	<b>APPROVE</b>

### SITE AND SURROUNDINGS

1. The site measures 2.3 hectares and comprises a playing field with two marked out sports pitches. The site is surrounded by houses on three sides to the north, west and south. To the eastern boundary of the site there is a vehicular access and car parking area, a youth centre building, changing rooms, as well as residential properties, a vacant church with associated vicarage and employment uses.
  
2. The playing field is positioned at a higher level than the associated car park, youth centre and changing rooms located to the east of the playfield field.
  
3. Vehicular access to the site is provided between the vacant church and no. 225 Long Lane. This access road leads to an area of off street parking associated with the application site and youth centre.
  
4. There is a public right of way immediately abutting the northern boundary of the site connecting Greenhill Road and Long Lane. This footpath is fenced off from the application site.

## PROPOSAL

5. The proposal seeks the removal of condition 1 attached to planning application P05/1997. The condition 1 reads as follows:

The formal recreational use of the site on a Sunday shall only take place between the following hours: - 0930 to 1300 or 1330 to 1630 hours. For the avoidance of doubt, the use shall be unrestricted on other days.

Reason 1.

To safeguard the amenity of residents living near to the site in accordance with policy DD4 of the Unitary Development Plan.

6. The applicant has stated that the current condition is unworkable since they have more demand for the use of the pitches than the restrictive conditions allows. The application seeks to remove the condition in its entirety thereby resulting in no time limit being placed upon the use the site on a Sundays. However, the applicant has indicated that the anticipated use for the playing of sport on a Sunday would be between 0930 and 1630 on a Sunday.

## HISTORY

APPLICATION No.	PROPOSAL	DECISION	DATE
ED/51/21	Purchase of land for educational purposes.	Approved	09/07/51
87/50857	Construction of playing fields with alterations to building to provide changing accommodation.	Approved with conditions	09/07/87
P05/0815	Certificate of lawful use for youth and community activities.	Not granted	13/07/05
P05/1997	Change of use of playing fields to youth and community playing fields (retrospective).	Approved with conditions	20/12/05

7. The application was advertised by way of neighbour notification letters being sent to the occupiers of 90 properties that back onto the site. The latest date for comments was the 29<sup>th</sup> March 2011. Six letters have been received objecting to the proposals. A petition signed by twenty-four residents raising objection has also been received and two letters have been received which support the proposals. One person who has signed the petition against the development has also sent in an individual letter of objection, making the total number of those objecting to the scheme as twenty-nine out of ninety properties which were consulted. Those objecting raised the following considerations:

- Increase in traffic and lack of parking.
- The use of the playing fields may change and become more of a nuisance to local residents in terms of noise.
- The removal of the condition would 'drive a coach and horses through reasons 1...and is contrary to Policy DD4 of the Unitary Development Plan.'
- A planning permission should only be modified in very exceptional circumstances such as where a planning permission has been granted in a way that is improper and invalid. The removal of the condition cannot be classed as exceptional circumstances.
- The applicant should have stated on their application the reasons why they wanted the condition removed and the times during which the site would be in use. The application is therefore invalid.
- If the proposal is to remove condition 1 without any other considerations then the situation will revert to pre 2005 conditions when Leasowes do not have planning permission to rent the field to anyone and will revert to school use only.
- It is not possible to request the removal of condition 1 which refers to Sunday use without referring to use on the other six days.
- It is unclear as to why it is considered that the current condition cannot be enforced.

- The playing fields were not in use for 10 years prior to 2005. This is supported by the refusal of an application for a Certificate of Lawfulness in 2005 (P05/0815). The playing field was not used at all between 1998 and 2000 and only used on few occasions between 1995 and 1998. It is acknowledged that the site was used for after school matches up until April 2001 but there was no formal use during the evenings, weekends and bank holidays.
- The comments received from the Head of Environmental Health and Trading Standards only takes into account the impact upon amenity of organised matches on a Sunday and ignores everything else.
- The application should be refused and consideration should be given to restrictions on evening use and Saturday use and the use of the field should not be allowed on Bank Holidays, Sundays and Mondays and strictly enforced. Further conditions should be attached to require the provision of a good quality perimeter fence and its subsequent maintenance.

8. The two letters of support state that:

- The site should continue to be available for community use even on Sundays since the site is the home venue of Perrywoods Junior Football Academy.
- Welcome that all controls will be removed from the use of the playing field so that it can be used to its full potential for the community and school use. Would support the use of floodlights so that the playing field can be used in the winter evenings.
- One supporter points out that they have lived in Greenhill Road for many years and never had a problem or any trouble from the use of the playing field.

## OTHER CONSULTATION

9. Head of Environmental Health and Trading Standards: No adverse comments to the removal of condition 1 attached to P05/1997.

## RELEVANT PLANNING POLICY

### Regional Planning Guidance

10. The High Court Decision on 10<sup>th</sup> November 2010 in respect of the challenge by Cala Homes (South) Ltd (2010 EWHC 2866) quashed the Government's decision on 6<sup>th</sup> July 2010 to revoke the Regional Strategies. As a consequence the West Midlands Regional Spatial Strategy forms an ongoing part of the development plan.
11. The Chief Planner at the Department for Communities and Local Government wrote to all local authorities setting out that the Secretary of State expected them, and the Planning Inspectorate, to have regard to his letter of 27<sup>th</sup> May 2010, announcing his intention to abolish the Regional Strategies, as a material consideration in planning decisions.
12. However as the Regional Strategy still forms part of the development plan until it is abolished the following policies are considered relevant to the material consideration of this planning application:
  - QE3 Creating a high quality built environment for all

### The Community Strategy 2010-13

#### Saved Unitary Development Plan Policies

- DD4 Development in Residential Areas
- EP7 Noise Pollution
- LR5 Playing Fields

#### Supplementary Planning Documents

- Parks and green Space Strategy (PPG17 Audit) June 2009

### Key Issues

- Principle
- Noise and Disturbance
- Traffic and Parking
- Response to Petition

### Principle

13. The application site previously housed Greenhill Middle School built at some time after 1924 and demolished during the late 1980's. The County Series OS Map 1937-1948 shows the position of the school buildings within the site and the associated playing fields (set out below). The vehicular access to the school was via 225 Long Lane and the church. This remains as the main vehicular access into the playing field site.



14. Following the demolition of the Middle School buildings in the late 1980's, a planning application was submitted and approved (87/50857) for the construction of playing fields on the whole of the site and for alterations to an existing building on the site to provide changing accommodation (now the youth centre and changing rooms).

15. The approved scheme for the creation of the playing fields was implemented and was subject to three conditions. These conditions related to commencement within 5 years from the date of the granting of planning permission, development being built in accordance with the approved plans and the approval and subsequent implementation of a landscape and tree planting scheme. No conditions were attached to the permission to restrict the times of use of the playing fields, those who could use the playing fields, or the nature of particular sports to be played on the playing fields.

16. The officer report accompanying planning application 87/50857 stated that:

‘The surrounding properties have long gardens and it is not considered that they will be significantly affected by the development.

Some parking provision for both cars and coaches will be provided within the site with access via the main entrance off Long Lane.’

17. The approved drawings showed the laying out of three pitches for use by football and hockey, the provision of a cricket pitch and cricket nets and various locations for field events to be undertaken. The implemented scheme is less intensive with the creation of two sports pitches and no cricket pitch/nets.

18. During the 1980’s and early 1990’s the playing fields were used by education, with the site being let to community groups from 1992. Given that the site previously housed Greenhill Middle school, a view was taken by the Local Planning Authority that there was a change of use of the land since the site changed from being used as playing fields associated with an educational use (D1), to the use of the playing fields for community use (D2). The certificate of Existing Lawful Use for youth and community activities under P05/0815 was not granted because evidence submitted could not prove uninterrupted community use for the preceding 10 year period. This resulted in the submission of and subsequent approval of planning application P05/1997 which approved use of the playing fields by youth and the community.

19. In realistic terms, whilst the type of group that the site was used by had changed from pure school use to dual education and community/sports use, since both Leasowes School and Youth Services now use the site, the physical use of the whole of the site as a playing field has been established since the late 1980's. There have been playing fields associated with school use within the site from the 1920's through to when the school was demolished. In this regard, it is useful to be mindful of the definition of a playing field.
20. The Town and Country Planning (General Development Procedure) (Amendment) Order 1996 (SI 1996/1817) provides a definition of a playing field and playing pitch stating that:  
  
'(1) 'playing field' means the whole of a site which encompasses at least one playing pitch;  
  
(ii) 'playing pitch' means a delineated area which, together with any run-off area, is of 0.4 hectares or more, and which is used for association football, American football, rugby, cricket, hockey, lacrosse, rounders, baseball, softball, Australian football, Gaelic football, shinty, hurling, polo or cycle polo.'
21. Land owned by a local authority which falls within this definition includes parkland, open space used for informal recreation, or land leased to sports clubs, as well as playing fields used by schools, colleges and other educational institutions.
22. A 'playing field' is defined at Section 77 (7) of the Schools Standards and Frameworks Act 1998 ('the Act') as 'land in the open air which is provided for the purposes of physical education or recreation...'
23. During the 1990's many Local Authorities were disposing of former educational playing fields to realise development potential. This resulted in changes to legislation by government to ensure their protection with a presumption against the need to change the current pattern of playing field provision by disposal or change of use.



Local authorities and schools were first required to investigate and exhaust other means of funding before considering the sale of playing fields.

24. It is against this background that the site would have been safeguarded and changed from land managed and controlled by education, to land available for community use still managed and controlled by education, thereby seeking to retain the availability of the playing fields as a community resource.
25. The importance of the retention of playing fields and their use is supported by Policy LR5 of the Adopted Dudley Unitary Development Plan, the Council Strategy 2010-13 and the Adopted Parks and Green Space Strategy (PPG17 Audit) June 2009. Policy LR5 specifically stated that the loss of any playing field will be resisted and that their improvement and upgrading will be encouraged, including local standards for public access.
27. The Council Strategy sets out the Borough's priorities and objectives under six themes, of which health and well-being is one. The strategy seeks to tackle the problem of obesity through encouraging the better use of our green spaces by people taking part in physical activity and it is recognised that people have health conditions that could be improved by better diet and more exercise.
28. The Adopted Parks and Green Space Strategy (PPG17) makes similar references to the importance of ensuring the supply of good quality green spaces and facilities for outdoor sport and recreation in the Borough to help promote healthier lifestyles and to tackle rising obesity levels and related health conditions such as coronary heart disease, stroke, certain cancers and diabetes.
29. In order to tackle these issues, the Parks and green Space Strategy (PPG17 Audit) June 2009 seeks to encourage the use of parks and green spaces for a wide range of physical activities in order to improve the health and well-being of residents and to reduce the incidence of childhood obesity. It also states, that where it is practical to do so and where resources allow, that existing; new or refurbished school sports

facilities should have community access (e.g. dual use) outside school operating hours in order to help encourage healthy lifestyles within the local population.

30. In short, in realistic terms, despite a change in who the site has been let too, the physical use of the whole of the site as a playing field has been established since the late 1980's. Policy LR5, the Adopted Parks and Green Space Strategy (PPG17 Audit) and the Council's Community Strategy support the retention and community use of playing fields for sports use to help tackle the rise in childhood obesity and to encourage healthier lifestyles within the Borough. To restrict the use of the application site for the playing of sport on a Sunday would limit its use and restrict its potential as a community facility that provides an opportunity to develop sporting activities for young people as well as participation by adults thereby failing to meet Corporate objectives seeking to increase participation in sport in the interests of developing healthier lifestyles.

#### Noise and Disturbance

31. The original planning application that approved the redevelopment of the site as playing fields did not seek to restrict the hours of use or type of sport played. It was considered that the length of the gardens associated with dwellings on Greenhill Road would be sufficient to protect the residential amenity of the occupiers of these dwellings from the playing of sport on the site.
32. In terms of the 2005 planning application (P05/1997) for the change of use of the playing fields to youth and community playing fields this did seek to restrict the amount of play on a Sunday. It should be noted that the original condition recommended by Environmental Protection was intended to control football matches only on Sundays to ensure that residents would benefit from not having competitive matches being played all day, with the resultant noise disturbance. No concerns were raised with respect to the potential impacts of other sports.
33. At the time of the consideration of the 2005 planning application, there was no clear definition of the difference between playing fields and playing fields for youth and community use. The resultant condition (condition 1) that was attached to P05/1997

controls 'formal recreational use' but the relationship between this use and 'youth and community use' is unclear and no distinction was made between the playing of competitive football and other sports in the condition.

34. Officers have considered options to improve the wording of the current condition but have concluded that any changes would be unenforceable. The applicant has suggested an alteration to give permission for matches to be played throughout the main part of Sunday (0930 to 1630).
35. Environmental Protection have no evidence to suggest that the playing of organised matches since permission was granted in 2005 has led to an actual loss of amenity, although the recorded complaints held by Development Control about the breach of the condition 1, during the lunchtime break period, confirm that such matches have taken place on a regular basis. The football pitches were in use for over 10 years before the 2005 permission and no complaints about noise disturbance have been received by Environmental Protection in 15 years.
36. On this basis it would be difficult to justify the refusal of this application to remove restrictions on the use of the field on Sundays (removal of condition 1) to prevent loss of amenity from noise disturbance. Pressure to fully utilise community facilities for outdoor activities has grown in recent years and the removal of restrictions to encourage such activity would be regarded by many as benefit to the wider community. In this regard, the removal of condition 1 would be in accordance with Policies DD4 and EP7 of the Adopted Dudley Unitary Development Plan (2005).

#### Traffic and Parking

37. The existing access off Long Lane was designed and used by Greenhill Middle School up until the 1980's. The resultant change of use of the site to playing fields for dual educational and community use would be less intensive than the original use in which the site was designed for. Access into the site is sufficiently wide enough for the passing of two vehicles and there is space within the site for the parking of vehicles. It is not considered that removing condition 1 to allow the unrestricted use of the playing field on a Sundays would result in a significant increase in traffic using the

site to warrant the refusal of planning permission, given that the previous use of the site was as a school. The relaxation of this condition would not have a detrimental impact upon highway safety with sufficient on site parking being available to meet the needs of the development thereby being in accordance with Policy DD4 of the Adopted Dudley Unitary Development Plan (2005).

#### Response to Petition

38. The petition received raised a number of issues, of which the main elements have been summarised above. The removal of condition 1 would not mean that the use of the site reverts back to its pre 2005 planning permission status. The site would still have valid planning permission for the use of the playing field as youth and community playing fields falling within Class D2 (Assembly and Leisure) and the use of the site would be required to ensure the continued compliance with all conditions attached to this planning permission including condition 2, which relates to the maintenance of the perimeter fencing around the site (P05/1997). The removal of condition 1 would mean that the use of the site on a Sunday would be unrestricted in terms of the hours of use. This would be the same as all of the other days of the week.
39. The applicant has stated on their planning application form that the reason for seeking the removal of condition 1 was since the condition was unworkable. Subsequent clarification has been provided whereby the applicant has confirmed that they would be seeking to use the playing field on a Sunday between 0930 and 1630. The reason for the increase in use on a Sunday is since there is an excess demand for the use of the pitches that cannot be accommodated within the current hours of use imposed upon the use of the site on a Sunday. An email was sent to a local resident confirming these points.
40. The objectors state that the refusal of the Certificate of Lawfulness application in 2005 (P05/0815) demonstrates that the playing field had not been in continuous use as a playing field for 10 years. The certificate of lawfulness was seeking to demonstrate that there had not been a change of use of the site from when it was playing fields used by education and playing fields used by the community and youth groups. The evidence submitted in support of the application was inadequate to

demonstrate this point. There was no dispute regarding that the site contained a playing field but it was considered that there had been a material change of use of the land when the site transferred from being a playing field within the curtilage of a school to a playing field used by community and youth groups.

41. The objectors are critical of the comments received from the Head of Environmental Health and Trading Standards in that it only takes into account the impact upon amenity of organised matches on a Sunday and ignores everything else. The current application merely seeks to delete condition 1 attached to planning permission P05/1997 and therefore the Local Planning Authority can only reasonably assess the potential consequences of the relaxation of this condition.
42. The petition requests that further consideration is given to restrict the hours of use of the playing field on days in addition to Sundays. The application is seeking to delete condition 1 and not to add further conditions onto the approved planning permission. It would only be reasonable to add further restrictions on the hours of use of the playing field if the Local Planning Authority did not support the relaxation of condition 1 and considered that there were amenity concerns with respect to the unrestricted use of the playing fields on other days. In view of the large size of the site that contains a significant buffer between the edges of the playing pitches and the rear of residents gardens and that no objection is raised by the Head of Trading Standards and Environmental Health to the removal of condition 1 on amenity grounds, further restrictions on the use of the site is not considered appropriate.

## CONCLUSION

43. In realistic terms, despite a change in who the site has been let too, the physical use of the whole of the site as a playing field has been established since the late 1980's. Policy LR5, the Adopted Parks and Green Space Strategy (PPG17 Audit) and the Council's Community Strategy support the retention and community use of playing fields for sports use to help tackle the rise in childhood obesity and to encourage healthier lifestyles within the Borough. To restrict the use of the application site for the playing of sport on a Sunday would limit its use and restrict its potential as a

community facility that provides an opportunity to develop sporting activities for young people as well as participation by adults thereby failing to meet Corporate objectives seeking to increase participation in sport in the interests of developing healthier lifestyles.

44. There is no evidence to suggest that the playing of organised matches since permission was granted in 2005 has led to actual loss of amenity, although the recorded complaints held by Development Control confirm that such matches have taken place on a regular basis. The football pitches were in use for over 10 years before the 2005 permission and no complaints about noise disturbance have been received by Environmental Protection in 15 years.
45. On this basis it would be difficult to justify refusal of an application to remove restrictions on use of the field on Sundays (removal of condition 1) to prevent loss of amenity from noise disturbance. Pressure to fully utilise community facilities for outdoor activities has grown in recent years and the removal of restrictions to encourage such activity would be of benefit to the wider community.
46. The relaxation of this condition would not have a detrimental impact upon highway safety with sufficient on site parking being available to meet the needs of the development.

## RECOMMENDATION

47. It is recommended that the application be approved.

### Reason for approval

In realistic terms, despite a change in who the site has been let too, the physical use of the whole of the site as a playing field has been established since the late 1980's. Policy LR5, the Adopted Parks and Green Space Strategy (PPG17 Audit) and the Council's Community Strategy support the retention and community use of playing fields for sports use to help tackle the rise in childhood obesity and to encourage healthier lifestyles within the Borough. To restrict the use of the application site for the playing of sport on a Sunday

would limit its use and restrict its potential as a community facility that provides an opportunity to develop sporting activities for young people as well as participation by adults thereby failing to meet Corporate objectives seeking to increase participation in sport in the interests of developing healthier lifestyles.

There is no evidence to suggest that the playing of organised matches since permission was granted in 2005 has led to actual loss of amenity, although the recorded complaints held by Development Control confirm that such matches have taken place on a regular basis. The football pitches were in use for over 10 years before the 2005 permission and no complaints about noise disturbance have been received by Environmental Protection in 15 years.

On this basis it would be difficult to justify refusal of an application to remove restrictions on use of the field on Sundays (removal of condition 1) to prevent loss of amenity from noise disturbance. Pressure to fully utilise community facilities for outdoor activities has grown in recent years and the removal of restrictions to encourage such activity would be of benefit to the wider community.

The relaxation of this condition would not have a detrimental impact upon highway safety with sufficient on site parking being available to meet the needs of the development.

The decision to grant planning permission has been taken with regard to the policies and proposals in the adopted Black Country Joint Core Strategy (2011), the saved UDP (2005) and to all other relevant material considerations.

The above is intended as a summary of the reasons for the grant of planning permission. For further detail on the decision please see the application report.

## Conditions and/or reasons:

### Reason for approval

In realistic terms, despite a change in who the site has been let too, the physical use of the whole of the site as a playing field has been established since the late 1980's. Policy LR5, the Adopted Parks and Green Space Strategy (PPG17 Audit) and the Council's Community Strategy support the retention and community use of playing fields for sports use to help tackle the rise in childhood obesity and to encourage healthier lifestyles within the Borough. To restrict the use of the application site for the playing of sport on a Sunday would limit its use and restrict its potential as a community facility that provides an opportunity to develop sporting activities for young people as well as participation by adults thereby failing to meet Community Strategy objectives of seeking to increase participation in sport in the interests of developing healthier lifestyles.

There is no evidence to suggest that the playing of organised matches since permission was granted in 2005 has led to actual loss of amenity, although the recorded complaints held by Development Control confirm that such matches have taken place on a regular basis. The football pitches were in use for over 10 years before the 2005 permission and no complaints about noise disturbance have been received by Environmental Protection in 15 years.

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The relaxation of this condition would not have a detrimental impact upon highway safety with sufficient on site parking being available to meet the needs of the development.

The decision to grant planning permission has been taken with regard to the policies and proposals in the adopted Black Country Joint Core Strategy (2011), the saved UDP (2005) and to all other relevant material considerations.

The above is intended as a summary of the reasons for the grant of planning permission. For further detail on the decision please see the application report.

### Note to Applicant

Please note that whilst this permission approves the deletion of condition 1 attached to planning permission P05/1997 that all the conditions still need to be complied with in respect of that planning permission.



