



Report of the Chief Planning Officer

PLANS PANEL SOUTH AND WEST

Date: 3rd April 2014

Subject: APPLICATION 13/00868/OT- Outline application for residential development and retail store at Victoria Road, Headingley

APPLICANT	DATE VALID	TARGET DATE
Chartford Homes And Holbeck Land	12.03.2013	11.06.2013

Electoral Wards Affected:

Headingley and Hyde Park & Woodhouse

yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

Members are asked to consider the contents of this report and the advice contained within the confidential report provided, and in the light of this Members are asked to re-assess their resolution of the 5th December 2013 South and West Plans Panel that the officer recommendation to approve be not accepted and the application be refused.

Officers continue to recommend that that the application be deferred and delegated for approval to the Chief Planning Officer subject to the conditions specified in the Report to Panel from Chief Planning Officer of the 10th October 2013 and subject to the completion of a Legal Agreement within 3 months of the date of resolution of Panel as updated below:

1. 5% affordable housing contribution (on site 100% Sub Market or an off-site contribution to go towards bringing vacant properties back into family use in the Headingley/Hyde Park area),
2. On site Greenspace provision and maintenance.
3. Off site Greenspace contribution for children's equipped play equipment- £19,950.14.
4. Residential MetroCard Scheme A – Bus Only. £11,088.00.

5. **Contribution towards improving and enhancing sports facilities in the locality £26,777.00**
6. **Local employment scheme.**

In addition to the above required Section 106 Package the applicant has offered a voluntary contribution of £23,223.00 to contribute towards providing sport equipment in the locality. This contribution does not form part of the determination of this application.

Members are also recommended to request that in light of this report the Director of City Development be asked to bring forward proposals for the creation of an area of public open space on the site of the former Royal Park Primary School to connect into the existing public open space adjoining the for primary school for the benefit and enjoyment of the local community in consultation with local ward members and community groups.

1.0 INTRODUCTION

Members will recall that at the Plans Panel South and West meeting of the 5th December 2013 the Panel voted not to accept the Officer recommendation to approve the application but resolved to refuse on the grounds that the loss of the site would be detrimental to health, that the development was contrary to policy N6 of the adopted Revised Unitary Development Plan (RUDP), paragraphs 69 to 74 of the NPPF, the Health and Social Care Act and the aims and objectives of the emerging Core Strategy in that it relates to promoting Health considerations. Officers have spent considerable time considering this resolution and have also gained a further legal opinion on the suggested reasons for refusal from Vincent Fraser QC.

- 1.2 Discussions have been held with ward members for both Headingley and Hyde Park & Woodhouse wards in relation to the desire to improve public open space facilities in the locality. The importance of providing access to outdoor recreation and sports facilities is recognised in order to improve the health and well being of the local community. In seeking to provide these facilities the Council is exercising the duty placed upon it by Section 12 of the Health and Social Care Act 2012. The former Royal Park Primary School which is currently being demolished presents an opportunity to create a new area of public open space. The former primary school site adjoins an existing area of public open space and it would be possible to link a new area of public open space to this existing site. Members are advised to request that the Director of City Development bring forward plans and proposals, in conjunction with ward member and the local community to enable this scheme. There are Section 106 monies available within the wards that can help deliver this project.

Further representations received since the Panel Report of the 5th December 2013 was presented to Panel

- 1.3 The applicant has submitted written representations to rebut the claims made by some members of Panel and Councillor Walshaw that the local residents had public access to the land and buildings either authorised or unauthorised. The applicant

has sought to clarify the position regarding the claims of use of the field by members of the public. The 2metre high palisade fencing was erected in the mid 1990s. The applicant states “Former Heads, Bursars and Staff confirm that for security and insurance reasons access to the field without agreement was strictly prohibited. There is evidence of trespass by use of a mattress against the palisade fence followed by damage to property with records of individuals being chased off. Before the introduction of the palisade fence illegal dog walking resulted in staff and pupils clearing dog waste before matches and competitions.

- 1.4 The School allowed Kings Camp, a private operator to use the field as a summer holiday camp principally for children attending the Leeds Grammar School and the Leeds Girls High School. There was a daily charge for attending the camp and during consultation local residents have confirmed that local children did not attend. Following closure The Kings Camp has relocated with the School to Alwoodley”.
- 1.5 With regards to the now redundant pool; Former LGHS staff have confirmed that the School assisted a request from a group of Asian Women to use the pool on certain evenings as they were unable to use public pools at Westgate (now demolished) and Kirkstall due to reasons of privacy. The School assisted further by covering over two top windows to ensure complete privacy. A toddler’s private swimming club did access the pool predominantly for siblings of pupils at the school. This club has been relocated to the Schools facilities at Alwoodley”.
- 1.6 The applicants have additionally expressed a wish to voluntarily contribute a further £23,223.00 towards sports equipment to be spent in the locality, possibly on the proposals to create an area of public open space on the site of the former Royal Park Primary School. This contribution is in addition to the already committed £26,777.00 for sport equipment as set out in the December 5th Chief Officer Panel Report. The £26,777.00 contribution is required as part of the original recommendation as detailed in the Panel report of the 5th December 2013. This extra contribution, the applicants have confirmed is not put forward in order to justify the development in planning terms, but that it is intended to voluntarily make provision for funding for sports proposal in accordance with the recommendations from Sport England. Officers are also of the view that such a contribution is not necessary to address any planning consequences associated with the development and accordingly the provision of such a contribution should not be taken into account when it comes to determining the planning application.
- 1.7 The Hyde Park Olympic Legacy (HPOL) group has also written to add further representations. They are concerned that the report of the Chief Planning Officer of the 10th October and 5th December respectively has not filled in the boxes on the front pages of the reports describing Specific Implications For: “Equality and Diversity”, “Community Cohesion” and “Narrowing the Gap”. The HPOL consider that “It seems to us that the loss of a playing field and modern sports centre to the community in the Hyde Park area of Leeds would have a hugely deleterious effect on all of the above and that these three boxes should all have a “yes” placed in them”.
- 1.8 The letter goes on to raise concerns about paragraph 11.2 of the report of the Chief Planning Officer dated 10th October 2013 as they disagree that the impact upon the South Asian local population from the proposed development would have a ‘limited impact’ as referred to in the report. The HPOL state “It seems clear to us that the reverse is true and that the loss of the only playing field and sports centre in this vicinity would have a considerable, deleterious effect on the local population which contains a number of ethnic minorities”.

- 1.9 The HPOL conclude in their letter that “The fact that a “yes” has not been placed in the “Specific Implications For” boxes on the first page of your reports implies that no proper account has been taken of these factors and that, therefore, there must be some doubt as to the validity of the conclusions reached”.

Comments on proposed reasons for refusal

- 2.0 By way of background Members will recall the main school site of the LGHS was the subject of a planning appeal in 2011. That appeal considered a number of issues including a central element of the Council’s case that the loss of the tennis courts allocated as N6 Protected Playing Pitches conflict with policy N6. The inspector rejected this argument. He concluded that the last five words of sub-paragraph (i) were critical; the tennis courts were part of the school and had never been open to the public; the former LGHS is now part of Grammar School at Leeds GSAL where the facilities were an improvement over those at the LGHS and consequently there had been a demonstrable net gain to overall pitch quality and provision so that the requirements of policy N6 had been satisfied. He arrived at a similar conclusion with respect to paragraph 10 of PPG 17 on the basis that the tennis courts were not of public value as a sports or recreational facility because there was no public access to them. Furthermore he found that there was in any event no reasonable likelihood of the tennis courts being acquired for use by the public so that even if there had been a case with respect to policy N6 or PPG 17 it would not have been appropriate to refuse permission on those grounds.
- 2.1 Members took the view at the meeting of the 5th December 2013 that a distinction can be drawn between the main site and the Victoria Road site on the basis that there has been community use of the Victoria Road site. There appears to be some dispute as to precisely what community use has occurred at the Victoria Road site and whether it has been relocated. The issue is considered from paragraph 10.5 of the Panel report where it is stated that –
- i) There had been limited formal use of the facilities and most of the community groups who used them and still operate have relocated to new facilities.
 - ii) That there are formal community access arrangements to use the facilities at Alwoodley Gates which is an improvement over the situation at Victoria Road where the limited community use was essentially ad hoc and not regulated by any formal agreement although these facilities are not readily available to residents in the locality of Victoria Road because of the distance involved.
- 2.3 The matter was further considered in the Report of the Director of City Development as a result of the listing of the Victoria Road site as an Asset of Community Value. It appears from the Report that there was a limited amount of formal community use of the facilities which was suggested to amount to no more than 4 hours per week. In addition informal use was identified. The Director of City Development concluded that informal use did take place on a regular basis over a prolonged period of time but that this was without the consent of the senior management of the school, although possibly with the knowledge of local ground staff. One of the members of the public said that she had spoken to the groundsman and been told that it was alright for the public to use the land as long as they left if asked. The impression

gained from the submitted evidence by the local community representations is that use essentially consisted of informal play by children. Given the further representations submitted by the applicant post December Panel to rebut the informal community use of the playing fields it is likely that at any appeal there is a risk that the extent of community use could be found to be less than outlined here.

- 2.3 Sport England was re-consulted on this information and it advised that it did not consider that there is sufficient robust new evidence to change its position which had been outlined in its original consultation response of the 25th April 2013. It particularly drew attention to the top of the fourth page of the letter. Sport England stated "The applicant still maintains that there was never any formal open community access to the playing field and sports hall at the Victoria road site, e.g. it was not open fully to the public regularly at evenings and weekends. What some members of public describe outside this appears to be informal access, either by trespass or perhaps ad hoc use enabled by relaxed caretaking. Given this was not formal and secured community use Sport England cannot give weight to this in considering E4". The relevant passages explain that Sport England only deals with formal sports provision and that informal and insecure provision is not something to which it can give any weight when considering applications such as at Victoria Road.
- 2.4 The Director of Public Health and Public Health England have also been re-consulted in light of the views expressed by the Director of City Development that the extent of informal use of the site could lead the community to consider the site was a community asset. The Director of Public Health and Public Health England responded that the availability of sports facilities and exercise are important for public health and that the Victoria Road site is in a residential area with residents living with greater socio-economic disadvantage than the average for Leeds. However, they stated that they have neither the remit nor the capacity to become involved in the detail of planning applications. Furthermore with respect to section 12 of the Health and Social Care Act 2012 they advised that whilst this is relevant to planning decisions it does not alter the requirement to determine planning applications in accordance with the development plan unless material considerations (including the NPPF) indicate otherwise.

Non-compliance with policy N6

- 2.5 The Revised Leeds Unitary Development Plan (RLUDP) is an "old style" development plan (i.e. it was not produced under the 2004 Act). Paragraph 215 of NPPF provides that due weight should be given to relevant policies in such plans according to their degree of consistency with the NPPF; the closer the policies in the plan to policies in the NPPF the greater the weight that they may be given. On an appeal any inspector will apply the NPPF and accordingly will adopt this approach. Whilst the NPPF does not alter the statutory requirement to determine applications in accordance with the development plan, unless material considerations indicate otherwise, the NPPF can affect the weight given to policies in the development plan. In practical terms it can be expected that any inspector would determine an appeal on the basis of the policies in paragraphs 69 to 74 of NPPF and if it were concluded that policy N6 goes beyond the requirements of those paragraphs it is unlikely to be given much weight.
- 2.6 Officers would advise Members that it is likely an inspector on appeal would take the same approach to the interpretation of UDP policy N6 as the 2011 Inspector. In other words he can be expected to apply the policy by considering what use was made of the site by the public and whether that has been provided for elsewhere.

- 2.7 It appears from the evidence that any formal public use of the site was limited. Some at least of the formal public use is now accommodated at other locations and in so far as it has relocated to GSAL those facilities are superior. In the circumstances it is likely that an inspector can be expected to conclude that with respect to any formal public use the requirements of policy N6 have been satisfied.
- 2.8 That leaves the informal public use. The impression obtained from the evidence to date is that this use arose either from trespassing or because the groundsman tolerated it on the basis that if requested the public left the land although this is contested by the applicant. Furthermore the use appears to have involved casual play by children. Whilst the casual play may have involved team games such as football it does not appear to have involved any degree of organisation. Furthermore it would appear that the use would have been limited to the open area rather than the buildings. A key test at appeal would be whether there is any realistic prospect of that use continuing in the future. On this issue there is a very clear finding from the Director of City Development that it is not realistic to expect the site to be brought back into community use in the next five years. This view is further reinforced by the applicants confirmation that they are contractual obligated with the landowner. In the light of this finding and on the basis of the previous appeal decision any refusal of planning permission on the basis of UDP policy N6 could be likely to be overturned on appeal.

Non-compliance with paragraphs 69 to 74 NPPF

- 2.9 Paragraph 69 NPPF emphasises the important role the planning system can play in creating healthy communities. Promoting social objectives such as healthy lifestyles is a material planning consideration. Planning decisions should guard against the unnecessary loss of valued facilities. Paragraph 73 recognises that access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities and gives advice in this regard about plan-making. The relevant development control policy is paragraph 74 which provides –

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

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

- 2.10 NPPF paragraph 74 is widely drawn so as to apply to sport and recreational buildings as well as to land. Accordingly, unlike policy N6, there is no question as to whether it could apply to all of the site. However, NPPF was not intended to bring about a change in the substance of planning policy generally and it can be noted in any event that there are considerable similarities between paragraph 74 of NPPF and paragraphs 10 and 15 of the previous PPG 17. In practical terms an inspector on appeal can be expected to approach paragraph 74 NPPF in the same manner as the 2011 Inspector approached PPG 17.

- 2.11 The absence of any reasonable likelihood of the land being acquired for recreational uses was one of the reasons the previous inspector rejected the arguments based

upon PPG 17 in the 2011 appeal. A similar approach can be expected with respect to the Victoria Road site and the application of NPPF. For the reasons already considered it appears at present that there is no realistic prospect of the land being acquired or used for recreational purposes in the future and accordingly a refusal of permission on the basis of NPPF paragraphs 69 to 74 is unlikely to succeed on appeal.

- 2.12 Furthermore there is a strong prospect that a similar approach would be taken to the weight to be given to informal use of the land when considering paragraph 74 of NPPF. It is therefore likely that an inspector would not attach any real significance to the informal use of the land and accordingly would conclude that paragraph 74 was satisfied in the circumstances of this case.

Health and Social Care Act 2012

- 2.13 Section 12 of the Health and Social Care Act 2012 inserts a new section 2B into the National Health Service Act 2006. The new section provides that each local authority must take such steps as it considers appropriate for improving the health of the people in its area. The steps that may be taken include providing information and advice, services or facilities for promoting healthy living or preventing and treating illness, providing financial incentives, providing assistance to help individuals to minimise risks to health, providing training, and making available the services of any person or any facilities. It can be seen that none of the steps identified apply directly to the determination of planning applications.

- 2.14 Given that the section states that the steps that may be taken “include” those identified steps, that list of steps would not normally be considered to be definitive or to exclude other appropriate steps for improving the health of the people of the area. However, there is nothing in the section to suggest that it requires the Council to take a different approach to determining planning applications, or even provides justification for a different approach. As set out above promoting healthy lifestyles is already recognised as a material planning consideration and in the circumstances Officers do not consider that section 12 of the Health and Social Care Act 2012 materially alters the position.

- 2.15 Essentially the Council must still determine the application in accordance with the requirements of the planning legislation. Coincidentally the Act became law on the same day as NPPF was published (27th March 2012). Officers do not consider that the Act supercedes or qualifies in any material respect the proper approach set out in NPPF and discussed above. In particular Officers do not consider that the Act provides any way around the difficulties already identified arising from (a) the absence of any realistic proposals for securing future public use of the site and (b) the limited informal nature of the use relied upon.

Core Strategy

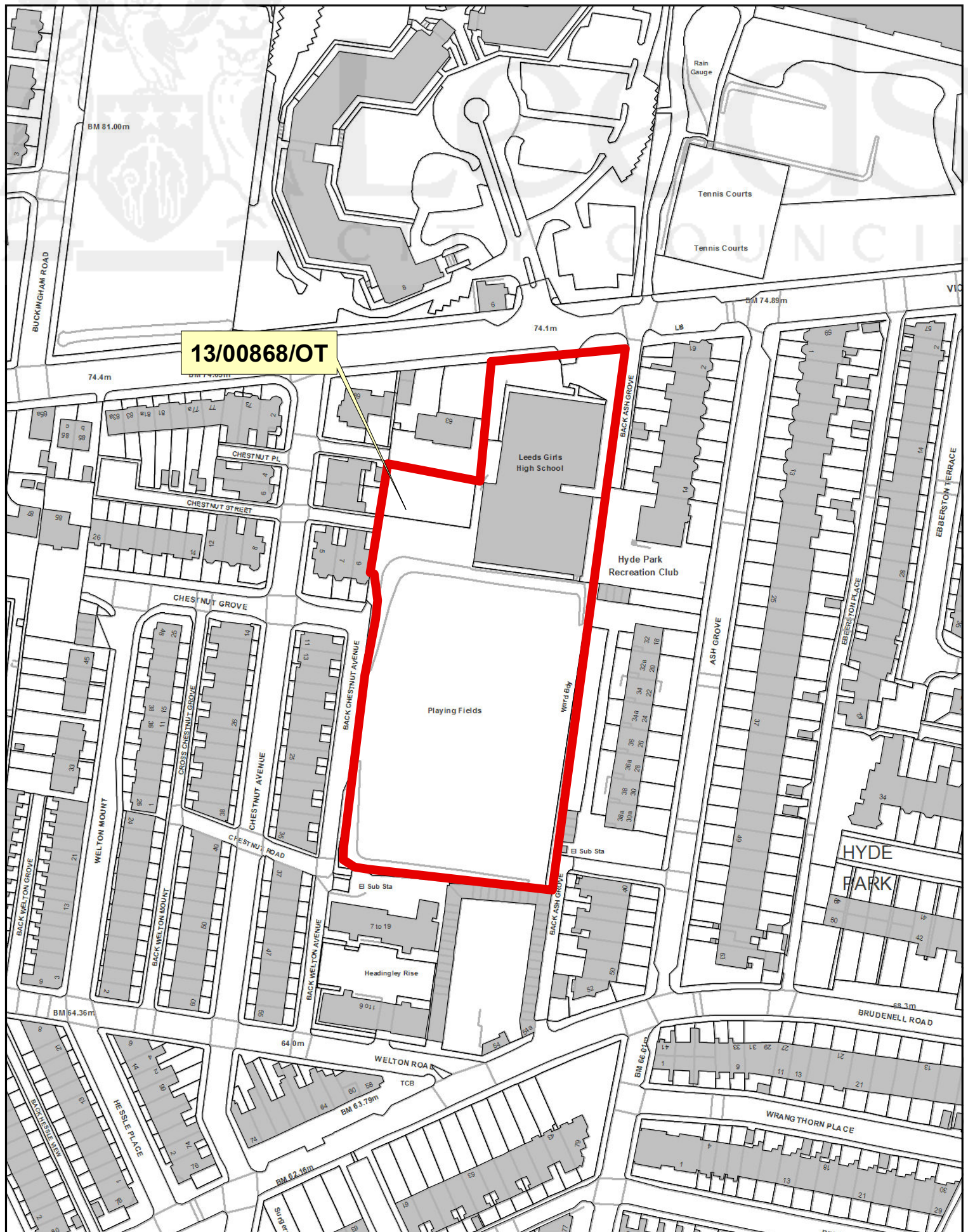
- 2.16 The Panel suggested that the emerging Core Strategy could be used to assist in refusing the application. The Inspector’s main modifications were published on the 13th March 2014 for six weeks public consultation. Officers consider significant weight can now be attached to the Draft Core Strategy as amended by the main modifications. The emerging Core Strategy at page 97 states “In areas of deficiency, the priority is provision of new greenspace and improved green links to existing greenspace”. The application scheme includes the creation of a new area of public open space on site. The application in the S106 package makes a contribution towards improving greenspace and sports equipment in the locality. There is an opportunity to use the monies secured through the Section 106 Agreement to assist in the delivery of a greenspace scheme in the locality.

- 2.17 Officers have explored Panels suggestion to use the emerging Core Strategy and do not consider the Core Strategy provides anything further to support a reason for refusal given the assessment carried out in this report and set out in paragraph 8.17 of the Panel Report of the 5th December 2013. The draft Core Strategy submitted for examination in October 2013 was updated to ensure it reflects the requirements of the Health and Social Care Act 2012.
- 2.18 Response to additional representations raised. The Hyde Park Olympic Legacy are concerned that the report of the Chief Planning Officer of the 10th October and 5th December respectively has not filled in the boxes on the front pages of the reports describing Specific Implications For: “Equality and Diversity”, “Community Cohesion” and “Narrowing the Gap”. It is clear that the planning application and the redevelopment of the site means a great deal to the local community. The Council recognize the sensitivities around the application and has spent considerable time examining the matters raised by all parties. The findings of the Panel reports of the 10th October and 5th December clearly identify the material planning considerations along with the sensitivities associated with the application proposals. Although the application has generated significant local interest as the site is private land with very limited public access officers consider the redevelopment of the site would have a neutral impact on matters of ‘community cohesion’, ‘equality and diversity’ and the aim to ‘Narrow the Gap’.

Conclusion

- 2.19 The applicants have additionally expressed a wish to voluntarily contribute a further £23,223.00 towards sports equipment to be spent in the locality, possibly on the proposals to create an area of public open space on the site of the former Royal Park Primary School. This contribution is in addition to the already committed £26,777.00 for sport equipment as set out in the December 5th Chief Officer Panel Report. This extra contribution, the applicants have confirmed is not put forward in order to justify the development in planning terms, but that it is intended to voluntarily make provision for funding for sports proposal in accordance with the recommendations from Sport England. Officers are also of the view that such a contribution is not necessary to address any planning consequences associated with the development and consequently the provision of such a contribution should not be taken into account when it comes to determining the planning application. However, it would be possible to incorporate a mechanism within the legal agreement to ensure that the contribution was delivered.
- 2.20 Members may be aware that the demolition of the former Royal Park Primary School site has commenced. The Council is promoting this site to be brought forward to create a new area of public open space that can be linked to the existing greenspace adjoining the primary school site. There is Section 106 money available both in Headingley ward and Hyde Park & Woodhouse ward that could be used to deliver a new area of public open space. The detail of what this open space would look like and how it would be laid out is a matter for the local community in combination with ward councilors and the Councils Parks and Countryside section to draw up. Delivering new public open space can be seen as an example of the Council carrying out its duty placed upon it by section 12 of the Health and Social Care Act 2012 .
- 2.21 In light of the unchanged position that Sport England, Public Health England and the Director of Public Health have adopted, Officers consider there are no new significant material planning considerations that result in a change to the

recommendation of this application as outlined in the October and December 2013 Panel Reports. The suggested reasons for refusal requested by Panel have been explored in detail and legal advice has been sought. Members are asked to consider the content of this report and confidential advice provided and if minded, to re-assess the original recommendation of the December 2013 Panel report attached at appendix 1.



SOUTH AND WEST PLANS PANEL

