

## **Committee Report**

**Item No: 8B**

**Reference: DC/23/04007**

**Case Officer: Elizabeth Flood**

**Ward: Long Melford.**

**Ward Member/s: Cllr John Nunn. Cllr Elisabeth Malvisi.**

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## **RECOMMENDATION – APPROVE VARIATION OF CONDITIONS**

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### **Description of Development**

Application under Section 73 of The Town and Country Planning Act for DC/22/01674 for variation of Conditions 1 (Approved plans and documents) & 4 (Additional pieces of play equipment)

### **Location**

Land South Of, Tamage Road, Acton,

**Expiry Date: 24.11.2023**

**Application Type: FUW - Full App Without Compliance of Condition**

**Development Type: Major Small Scale - Dwellings**

**Applicant: Bloor Homes Eastern**

**Parish: Acton**

**Site Area: 3.43**

**Details of Previous Committee / Resolutions and any member site visit:** whilst this application has not previously been discussed by Members, applications DC/19/03126 and DC/22/01674 on this site have been to committee. The background to this is explained at Paragraph 2 “The Proposal.”

**Has a Committee Call In request been received from a Council Member: No**

**Has the application been subject to Pre-Application Advice: No**

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## **PART ONE – REASON FOR REFERENCE TO COMMITTEE**

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The application is referred to committee for the following reason/s:

The application is for a major development of 15+ dwellings.

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## **PART TWO – POLICIES AND CONSULTATION SUMMARY**

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### **Summary of Policies**

CN01 - Design Standards

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CLASSIFICATION: Official

CN06 - Listed Buildings - Alteration/Ext/COU  
CS01 - Applying the presumption in Favour of Sustainable Development in Babergh  
CS02 - Settlement Pattern Policy  
CS03 - Strategy for Growth and Development  
CS11 - Core and Hinterland Villages  
CS15 - Implementing Sustainable Development  
TP15 - Parking Standards - New Development

### **Joint Local Plan (JLP)**

Policy LP28 - Services and Facilities Within the Community  
Policy LP32 - Developer Contributions and Planning Obligations

**Note: An update as to the status of the draft JLP and weight to be attached to the Plan at the time of committee consideration will be given in Tabled Papers as appropriate**

### **Neighbourhood Plan Status**

This application site is within a Neighbourhood Plan Area.

The Neighbourhood Plan is currently at:- Stage 1: Designated neighbourhood area

Accordingly, the Neighbourhood Plan has no weight:

### **Consultations and Representations**

During the course of the application Consultation and Representations from third parties have been received. These are summarised below.

#### **A: Summary of Consultations**

Place Service – Landscape - The variation of condition is to provide gym equipment as part of a gym trail/walk. The proposal is to install one item of equipment adjacent to the existing play area at Tamage Road development. We expect a gym trail to consist of a series of gym equipment items placed at one location, or if placed as a linear corridor, in close proximity of each other. The proposed gym trail consists of equipment placed in isolation with each other over a walking route through a mix of green areas, residential areas, roads and narrow paths. As such, we consider that the gym trail as proposed will not provide with the intended health and wellbeing benefits of gym trails. Furthermore, the proposed one item of equipment within the public open space at Tamage Road development is out of context and not appropriate and therefore we cannot be supportive of this application.

If additional play equipment is required as compensation, natural play elements could be included within the POS to the south-west of the development, subject to LPA Public Realm officer recommendations.

### **Town/Parish Council**

Acton Parish Council supports the application

Cllr John Nunn: No comment

Cllr Elizabeth Malvisi: This application is for a piece of gym equipment to complete the residents ambition of a Gym Trail. The parish council have approved the equipment and location and in keeping with enabling communities to have a bigger say in what happens in their community I fully support this addition to Acton Village Gym Trail.

## **B: Representations**

At the time of writing this report one letters/emails/online comments have been received. This is considered to be an objection to the proposal.

- The village asked Bloor to provide, in compensation, a Multi-Use Games Area.
- The proposal is for a far less onerous single piece of adult gym equipment,
- The location of the adult gym equipment in the open POS where the ground is composed of clay and flint is a major health and safety issue not only to children but to youth and adults as well,
- Single piece of equipment stuck all on its own out of sight

## **PLANNING HISTORY**

<b>REF:</b> DC/19/03126	Planning Application - Erection of 100 dwellings, vehicular access, open space and associated infrastructure.	<b>DECISION:</b> GTD 30.07.2020
<b>REF:</b> DC/22/01674	Application under S73 of The Town and Country Planning Act 1990 relating to DC/19/03126 for the variation of Condition 2 (List of Approved Drawings), Condition 4 (soft landscaping) and Condition 16 (drainage/ foul).	<b>DECISION:</b> GTD 25.10.2022
<b>REF:</b> DC/23/00237	Discharge of Conditions Application for DC/22/01674 - Condition 3 (SUDS Management and Monitoring)	<b>DECISION:</b> GTD 20.02.2023
<b>REF:</b> DC/23/00764	Application under Section 73 of The Town and Country Planning Act for DC/22/01674 for variation of Conditions 1 (Approved plans and documents) & 4 (Additional pieces of play equipment)	<b>DECISION:</b> WTH

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## **PART THREE – ASSESSMENT OF APPLICATION**

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### **1.0 The Site and Surroundings**

- 1.1. The site a recently completed housing estate, surrounded on all sides by roads. To the North East of the site is Tamage Road and beyond this a 1970s housing estate. Vicarage Lane borders the site on two sides, to the South and East. To the West of the site is Sudbury Road which provides access from Acton to Sudbury via Newman's Green

- 1.2. The access road into the site is opposite 40 Tamage Road. On the western side of the site access is a large area of public open space, which includes a small children's play area surrounded by fencing and a SUDS basin which is fenced off with a knee-high fence. The children's play area and surrounding landscaped area rises above the road and surrounding houses and the land then slopes down to the SUDS basin.

## **2.0 The Proposal**

- 2.1 Planning application DC/19/03126 was for the erection of 100 dwellings, vehicular access, open space, and associated infrastructure at Tamage Road, Acton. This development has now been built out and the developer has left the site.

- 2.2 During the construction of the development, it became apparent that the SUDs basin was not built in accordance with the plans, and an enforcement case was opened. The conclusion of the enforcement action was DC/22/01674: Application under S73 of The Town and Country Planning Act 1990 relating to DC/19/03126 for the variation of Condition 2 (List of Approved Drawings), Condition 4 (soft landscaping) and Condition 16 (drainage/ foul). This application, which was approved by Planning Committee, agreed to an alternative design of SUDs basin, which would include some areas of permanent water and a longer slope down to the basin than was originally approved. The result of these design changes was that the SUDs basin was required to be fenced off from the surrounding public open space by knee rail fencing. The development, therefore, lost 1.92ha of public open space.

- 2.3 In order to compensate for this loss of public open space the Council negotiated an improvement in the play area, with the introduction of four additional pieces of play equipment: a roundabout, a play tower with slide, a vertical climbing net and a horizontal climbing net. To ensure that the play equipment was installed condition 4 of DC/22/01674 stated that:

*Within 3 months of the date of this planning permission, details of the four additional pieces of play equipment as shown on drawing no. EA124-LS-007A shall be submitted to and approved in writing by the Local Planning Authority. The play equipment will be fully installed and made available for use within 3 months of written discharge of this condition, unless otherwise agreed in writing by the Local Planning Authority by separate discharge of condition and thereafter retained.*

*Reason: To ensure the installation of additional play equipment in the interests of neighbouring amenity*

Members agreed to this condition, and the application was approved on 25<sup>th</sup> October 2022, giving until the 25<sup>th</sup> January 2023 to supply the information regarding the play equipment. The developer failed to comply with this condition and is therefore in breach.

- 2.4 The developer has now submitted the current planning application which is to vary condition 1 and 4 of DC/22/01674 - instead of providing the four pieces of play equipment, it is now proposed to provide a single piece of fitness equipment on the site, a static bike, which would be suitable for adults.

- 2.5 The piece of fitness equipment is proposed to be part of a fitness trail which would provide two additional pieces of fitness equipment, one on land to the east of Cobblers Way (within the ownership of Babergh District Council) and one on the playing field to the north of the High Street (within the ownership of Acton Parish Council). The fitness trail is included within Acton Parish

Council's 2023 Action Plan. The Parish Council has confirmed that they would provide another piece of the fitness equipment on the playing field, creating a total of four pieces of equipment.

- 2.6 The developer has agreed to enter into an agreement under section 111 of the Local Government Act which would require them to provide the two additional pieces of fitness equipment as part of the fitness trail (the piece of fitness equipment on Tamage Road would be subject to a condition). A section 111 agreement can be used in place of a s.106 agreement to deal with matters outside the development. Section 111 of the Local Government Act states that a local authority shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions. A s.111 agreement does not constitute a planning obligation and is harder to enforce than a s.106 agreement as it does not directly relate to the land where the off site development is taking place. The long-term maintenance of the fitness trail would be the responsibility of Acton Parish Council (who would lease the Cobblers Way land from Babergh District Council).
- 2.7 Both the Landscape Officer and the Public Realm Team (separately to this planning application) have expressed concern regarding the use of the fitness trail. Best practice is for pieces of outdoor gym equipment to be placed close to each other, as experience shows that this results in more frequent use of the equipment. As part of the lease agreement to Acton Parish Council, the Parish Council would need to monitor the use of the equipment and relocate if it wasn't being used.
- 2.8 While there are misgivings regarding the set-up of the fitness trail, it is recognised that it is included within the Acton Parish Council's Action Plan and subject to a signed s.111 agreement, the additional pieces of gym equipment on the fitness trail are considered to be a material consideration in the determination of this planning application.
- 2.9 Table showing equipment originally agreed and the current proposal by the developer.

	Original proposal	Current proposal on site	Current proposal Off site
No. pieces of equipment	4 Roundabout Tower slide Vertical climbing frame Horizontal climbing frame	1 Static bike	2 No details provided
Age range	3-11 approx	adult	adult
Approximate cost to developer	£22,000	£4,500	£9,000

### 3.0 **The Principle Of Development**

- 3.1. Paragraph 135 of the NPPF states that:

*Local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).*

3.2 The conclusion of the Committee Report for DC/22/01 stated:

*The proposed changes to the levels of the landscaped area and resulting changes to the SUDS basin have, to an extent, diminished the quality of the scheme. In addition, the introduction of the fence around the SUDS basin has removed this area from the public open space, detrimentally impacting on the opportunities for residents to use the land for recreation and play.*

*Refusing the Section 73 application and requiring the developer to revert to the original plans would have significant consequences for the occupiers of the new development. 90% of the dwellings on the development have been sold and a significant number of households are now occupying the site, including the houses closest to the SUDS basin. Approximately 30 to 40 lorries would be required to remove the additional soil, which would need to share the access with the existing residents and the play area would need to be temporarily removed and reinstated.*

*The LPA has therefore negotiated with the Developer to provide a compensatory improvement to the retained public open space in the form of additional play equipment. The current play area is a LAP with three small pieces of equipment suitable for toddlers. Adding four pieces of adventurous play equipment would elevate the play area to a LEAP and provide play opportunities for older children who potentially would have used the SUDS basin for adventurous play. While there will be residents who would have used the SUDS basin for recreation who will not use play equipment (for example, dog walkers); it is considered that, overall, the additional play equipment is a pragmatic solution to the loss of quality of the overall design of the landscaped area.*

3.3 The replacement of the four pieces of play equipment with a single piece of adult fitness equipment is considered to diminish the quality of the overall development. The additional play equipment would have elevated the existing LAP (Local Area of Play) to a LEAP (Local Equipped Area of Play) and allowed a wider age of children to use the play area. It would have provided an asset to the wider community; currently Acton has one play area off Lambert Drive, which is approximately 420 metres from the Tamage Road development (on a mainly off road route). This play area is well equipped and has CIL funding to be further improved, but a second LEAP would allow further interest and play options for the children within the village.

3.4 The single piece of fitness equipment would provide a resource for adults/teenagers within the development but as a single piece of equipment its use would be limited. Combined with the other pieces of equipment as part of the fitness trail, its use would be greater, and it would provide a facility for the wider community.

#### **4.0 Impact On Residential Amenity**

4.1. Environmental Health commented on the previous identical application, which was withdrawn stating that, a single piece of fitness equipment is unlikely to cause significant noise.

4.2 There is anecdotal evidence (from the Parish Council) that the occupiers of the neighbouring properties would not welcome the previously proposed additional play equipment; however, no letters of support for the proposed change to the relevant condition have been received.

4.3 The additional play equipment would have been likely to encourage more children to the public open space than the fitness equipment, which may have created more noise, but the site is already a play area, with play equipment and the additional equipment could have been placed at least 20 metres from the nearest residential property in line with the guidance in the BDC Open Space, Sports and Recreation Strategy (2010) - although this may have required the play equipment to be placed on the area where there are underground water storage crates which may have caused

maintenance difficulties in the future. On balance there would have been benefits in terms of convenience of the location for future occupiers etc of the original scheme which balanced against any noise impacts which would have been foreseeable by purchasers. As an amenity in its own right the original scheme was a positive attribute of good site design.

- 4.4 Neither the additional play equipment, nor the proposed fitness equipment are, therefore, considered to be detrimental to neighbouring amenity.

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## **PART FOUR – CONCLUSION**

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### **5.0 Planning Balance and Conclusion**

- 5.1 Planning legislation states that regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts; the determination must be made in accordance with the plan unless material considerations indicate otherwise (Section 38(6)). At the time of writing the development plan comprised the Core Strategy and saved Local Plan policies. The emerging Joint Local Plan is likely to have changed status and an update on the status and weight of the relevant development plan will be provided as an update. In this case the planning balance relates to compliance with paragraph 135 of the NPPF and other material considerations only and any change in the development plan does not impact on this decision. The NPPF is a material consideration and in some rare circumstances off site facilities can also be considered a material consideration.
- 5.2 The delivery of the fitness trail, which is included within Acton Parish Council's 2023 Action Plan, and for which there has been support given from the Parish Council and the Ward Councillor is considered to be a material consideration for this planning application.
- 5.3 The LPA is supportive of the Parish Council's ambition for a fitness trail and whilst the application will result in a reduction in the quality of the package of residential development of this site, contrary to paragraph 135 of the NPPF and to the detriment to the occupiers of the development, the fitness trail would benefit the wider community and provide recreational equipment for adults and teenagers, who are not currently provided for within the village.
- 5.4 In these circumstances, the wider public benefit in the provision of the fitness trail is a material consideration which outweighs paragraph 135 of the NPPF.
- 5.5 As a word of caution - Section 111 is a long established statutory provision which allows councils to undertake actions which may not be expressly authorised by the relevant legislation, in this case the planning acts, but which are incidental to, conducive to or facilitate some statutory function of the council. An agreement under section 111 is a contract, usually a deed under seal, so the council could enforce it by legal proceedings as it could any other contract. However, unlike a section 106 agreement, the agreement would not run with the land, binding subsequent landowners. It follows that, generally speaking, a section 111 agreement provides less security for the public interest than a section 106 agreement and so less weight should be attached to it as a material consideration.

## **RECOMMENDATION**

[Subject to securing the proposed Section 111 agreement on terms to the satisfaction of the Chief Planning Officer]: That the application under Section 73 of The Town and Country Planning Act for DC/22/01674 for variation of Conditions 1 (Approved plans and documents) & 4 (Additional pieces of play equipment) is APPROVED for the following reasons:-

The provision of the fitness trail is a material consideration which outweighs paragraph 135 of the NPPF.