

DEVELOPMENT MANAGEMENT COMMITTEE REPORT – 9 Nov 2016

Application Number	3/16/1716/FUL
Proposal	Indoor tennis centre incorporating indoor courts, pool, gym and outdoor facilities including outdoor swimming pool, tennis courts and golf range.(previous approval references 3/13/1348/FN and 3/08/1465/FP).
Location	Land West Of Sele Farm Estate, Welwyn Road, Hertford
Applicant	London and Regional Properties
Parish	Hertford CP
Ward	Hertford - Sele

Date of Registration of Application	01 August 2016
Target Determination Date	11 November 2016
Reason for Committee Report	Major planning application
Case Officer	Lisa Page

RECOMMENDATION

That planning permission be **REFUSED** for the reason set out at the end of this report.

1.0 Summary

- 1.1 The site lies within the Metropolitan Green Belt wherein the proposed new buildings and facilities for sport and recreation is inappropriate. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances, which will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
- 1.2 On this site, there is an extant permission for an identical scheme to that now sought and the principle of development for leisure use on this site is therefore established. With regard to the extant permission, it was also considered inappropriate development but that there were very special circumstances to grant permission. These other material considerations related to need; the site's favourable location; its sustainability; its benefit to the local community and the gains to nature conservation. The weight given to these benefits is tempered by the fact that delivery of the use is subject to some uncertainty, given that extant permissions have been in place for the last 15 years.

- 1.3 Officers have again undertaken the Green Belt balancing exercise, and consider that the benefits previously outlined do still exist. Against the benefits is the harm by reason of inappropriateness and harm to openness. There is further harm in that the policy position in relation to the site has changed since the determination of the last permission renewal in December 2013. This is due to the publication of the pre-submission East Herts District Plan, which proposes the site for residential use to provide for the delivery of 300 dwellings by 2022. This proposed allocation is supported by the applicants. The approval of this application then could prejudice the delivery of this proposed housing site and serve to undermine the Councils approach to achieving and delivering a five year housing land supply.
- 1.4 Overall it is considered that the harm by reason of inappropriateness, loss of openness and that this development could serve to undermine the delivery of housing within the advancing District Plan combined is not clearly outweighed by the benefits.

2.0 Site Description

- 2.1 The application site is located on the west side of Hertford, within the Metropolitan Green Belt as currently defined and outside the development boundary for the town, as shown on the attached OS extract. The site is irregular in shape and is some 12 hectares in size. The site appears generally as 'scrubland' and has an artificial ditch and mound running along the whole length of its frontage along Welwyn Road. Some 2.8 hectares of the application site is an identified Wildlife Site containing a species diverse old grassland and scrub.
- 2.2 Immediately to the east is Sele Farm residential area. The site is bounded to the south and west by open fields and to the north west by a wood known as Archers Spring. Immediately to the south of the site is the B1000, Welwyn Road.
- 2.3 Planning permission is sought for the development as outlined within the description. There is an extant planning permission ref: 3/13/1348/FN for an identical scheme to that now sought, which was granted, subject to a S106 unilateral undertaking, on 3rd December 2013. The extant consent being a renewal of an exact replica of that previously approved under ref 3/08/1465/FP.

3.0 Background to Proposal

- 3.1 The application proposes an indoor and outdoor sports complex, comprising the construction of an indoor tennis club, outdoor tennis

courts, outdoor swimming pool and sports facilities, golf driving range, outdoor recreational area, public open space and car park.

- 3.2 The proposed indoor tennis club comprises an L-shaped building some 8450 square metres in size, with the longest dimension of 109 metres and the widest 68 metres. It would have barrel vaulted roofs, be clad in profiled metal sheeting and be a maximum of 10 metres in height with the slab level set 1 metre below the existing natural ground level. The building would accommodate 4 tennis courts, squash and badminton courts, a swimming pool, a fitness gym a restaurant/bar and function suite, a beauty salon and a crèche.
- 3.3 Externally 7 tennis courts, (4 of which would be covered in winter via a bubble covering), a beach volleyball court, a basketball court, outdoor swimming pool and a golf driving range are proposed. The golf driving range would have 24 bays and would be illuminated.
- 3.4 Facilities available to the public would comprise the existing natural ecological area to the north west of the site, known as Archers Springs, and an area to the east of the site between the sports hall and the residential estate, which would be a semi-formal park containing a basketball court, children's playground and 'kick about' pitch.
- 3.5 Vehicular access is proposed from Welwyn Road. A total of 350 car parking spaces are proposed of which 18 would be for disabled persons. Twenty covered cycling spaces are also proposed. Pedestrian accesses from the existing bus terminal point in Bentley Road and the Sele Farm Community Centre are proposed.
- 3.6 As part of the proposals the applicant is again offering via a Legal Agreement, a 'Community Outreach Package', which would enable 350 hours per annum of access to the racquet facilities without cost to non-member sectors of the public identified by the Local Planning Authority (anticipated to include local schools, single parent groups, retirement age groups and other special needs groups), in addition, coaching to school parties will be provided at non-commercial rates. The application also confirms agreement to again secure highway improvement works and a landscape and wildlife management scheme through the Legal Agreement.

4.0 Key Policy Issues

- 4.1 These relate to the relevant policies in the National Planning Policy Framework (NPPF), the pre-submission East Herts District Plan 2016 and the adopted East Herts Local Plan 2007:

Key Issue	NPPF	Local Plan policy	Pre-submission District Plan policy
Principle of Development, Green Belt harm and proposed site allocation	Chapter 9, Chapter 17	GBC1, SD2, LRC2	GBR1, CFLR1, CFLR9
Benefits of the proposals			
Planning balance - whether benefits clearly outweigh harm such that very special circumstances are evident.			

Other relevant issues are referred to in the 'Consideration of Relevant Issues' section below.

5.0 Emerging District Plan

- 5.1 The Council resolved to proceed to the publication of its pre-submission version of the District Plan at the meeting of Council of 22 Sept 2016. By the date of this meeting the Plan will have been published for consultation. The view of the Council is that the Plan has been positively prepared, seeking to ensure significantly increased housing development during the plan period. The weight that can be assigned to the policies in the emerging plan can now be increased, given it has reached a further stage in preparation. There does remain a need to qualify that weight somewhat, given that consultation on the Plan is now taking place and the outcome of that is currently unknown.
- 5.2 This site, less the area identified as the wildlife site, is now proposed to be allocated in the pre-submission District Plan as a site for residential development accommodating 300 new homes. The relevant District Plan policy is HERT3. The landowner has supported this allocation and is engaging with the Council with regard to the forthcoming plan preparation processes. There has been objection to the allocation of the site, and further objection may be forthcoming through the plan consultation period.

6.0 Summary of Consultee Responses

- 6.1 HCC Highway Authority comments that it does not wish to restrict the grant of permission subject to the payment of a £55,000 contribution to sustainable transport and to conditions.
- 6.2 Lead Local Flood Authority comments that it does not wish to restrict the grant of permission subject to conditions for the development to be carried out in accordance with the Flood Risk Assessment and that a detailed surface water drainage scheme should be agreed.
- 6.3 Environment Agency does not raise an objection nor does it seek conditions.
- 6.4 EHDC Engineering Advisor comments that the site is within Flood Zone 1 and is currently permeable. He advises that the Sustainable Urban Drainage System (SUDS) are reasonably good quality to help reduce flood risk, improve water quality and improve biodiversity but the application lacks sufficient details of the size and nature of the SUDS.
- 6.5 EHDC Landscape Advisor comments that there would be no unacceptable impact on trees. In respect of landscape proposal he comments that the publicly accessible land will be a positive enhancement to the area, however a concern is raised with the design and layout for the car parks. He states that the car parks appear urban with no attempt to integrate them with the rural character of the surrounding countryside, wherein a less formal approach with the introduction of trees and indigenous planting would be far more suitable.
- 6.6 Herts Ecology comments that as the Wildlife Site is to remain untouched there is an opportunity to enhance the area and benefit the 'small heath butterfly' that is within vicinity of the site. The ecology advisor requests a condition seeking ecological surveys prior to construction and that mitigation or protective measures be undertaken.
- 6.7 HCC Minerals and Waste comment that it seeks to promote sustainable management of waste. The team comments that the submitted Remediation Strategy refers to importation of soils and it requests to be notified of the quantity of material so that the figure can be included in its Monitoring Report.
- 6.8 EHDC Environmental Health Advisor advises that any permission shall include conditions for contaminated land and remediation.
- 6.9 Herts Fire and Rescue Service comment that it seeks the provision of fire hydrants via a Planning Obligation.

7.0 Town Council Representations

7.1 Hertford Town Council responded with 'no comment' on the application proposals.

8.0 Summary of Other Representations

8.1 The application has been advertised by way of press notice, site notices and neighbour notification. 5 letters of representation have been received objecting and raising the following comments:-

- Area should be saved for dog walkers and children.
- Object due to impact to existing wildlife and plants
- Additional traffic congestion, vehicle noise and pollution
- No need for the facilities
- Facilities will be too expensive for local community

9.0 Planning History

9.1 The following planning history is of relevance to this proposal:-

Ref	Proposal	Decision	Date
3/13/1348/FN	Indoor tennis centre incorporating indoor courts, pool, gym and outdoor facilities including outdoor swimming pool, tennis courts and golf range (Renewal of 3/08/1465/FP)	Grant subject to S106	03.12.13
3/08/1465/FP	Tennis centre incorporating indoor courts, pool, gym and outdoor facilities including outdoor swimming pool, tennis courts and golf range.	Grant subject to S106	10.09.10
3/05/1491/FN	Renewal of 3/99/1945/FN – indoor tennis club, facilities, driving range, carpark, recreational area	Grant subject to S106	20.01.06
3/99/1945/FP	Indoor tennis club and associated facilities.	Called in by the	02.07.01

	Driving range and public carpark; recreational area.	SOS. Grant subject.	
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10.0 **Consideration of Relevant Issues**

Principle of Development, the Green Belt and site allocation

- 10.1 The site currently comprises part of the Green Belt to the west of Hertford. The proposed development has previously been found to represent ‘inappropriate’ development in the Green Belt and consequently it has needed to be considered whether there were any very special circumstances to warrant a decision that overrides the normal presumption against development in Green Belt policy.
- 10.2 The NPPF identifies that the provision of ‘appropriate’ facilities for outdoor sport and recreation need not be inappropriate development, but stipulates that such facilities should preserve the openness of the Green Belt and not conflict with the purposes of including land within it. This would not be the case here as the development replaces undeveloped and open land and would result in substantial encroachment and new built form. Accordingly, the development should continue to be regarded as inappropriate development and should not be allowed except in ‘very special circumstances’. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
- 10.3 The policy position in relation to the site and the Green Belt is unusual, in that, since the renewal of permission in 2013 it has been identified as land to now be released from the Green Belt in the pre-submission District Plan. Through residential development the site will contribute to the Plan’s overall strategy for the delivery of at least 16,390 dwellings by 2033. Policy HERT3 expects the delivery of 300 homes to the north of Welwyn Road (i.e. within the application site) in the first five years of the Plan, i.e. by 2022.
- 10.4 Until the adoption of the Plan, the site remains in the Green Belt and the proposals must accordingly be considered against that policy background. However, if the Plan is finalised in its current form, the development of this site for the purposes now proposed would prejudice the delivery of this site for housing site and would undermine the approach proposed in the Plan to both achieving and delivering a five year housing land supply. This weighs against the proposal.

- 10.5 It is also material to consider the background to the development proposals at this site. Permission was first granted in 2001 for the use now being put forward. It has been renewed a number of times, without commencement. The landowners are now in support of the delivery of the site for housing development. It appears that the likelihood of the leisure use now being proposed actually being delivered, must be diminished and therefore the beneficial weight that can be attached to it has diminished since it was first granted planning permission 15 years ago.

Other harm

Openness

- 10.6 The proposal would result in a significant material loss of openness to the Metropolitan Green Belt. Whilst the site has some established landscaping, a development of this scale would nevertheless materially erode openness and would be harmful to the landscape character of the area.

Benefits of the proposal

- 10.7 The Secretary of State identified 5 factors which contributed towards the existence of very special circumstances in 2001; need; the site's favourable location; its sustainability; its benefit to the local community and the gains to nature conservation. In seeking to renew the grant of permission, the applicant states that the proposal meets a need which is still present.

Need

- 10.8 In June 2011 East Herts published its latest Assessment of Sports Facilities which demonstrated that East Herts is well served by a range of high quality, indoor and outdoor sports facilities. In terms of indoor tennis centres, East Herts has exactly the national and regional average level of provision but is considerably below the provision in Hertfordshire as a whole.
- 10.9 The Sports Facilities Strategy 2007-2016 by Sport England and Active Hertfordshire identifies a deficit of multiple use sporting facilities in the District and acknowledges that the lack of facilities managed by the authority is a significant barrier to implementing community benefits. Although a strategic need has not been identified for additional indoor tennis facilities in Hertford (mainly due to the proximity of the Legends Tennis UK site at Haileybury), Hertford was identified as a priority area

within the district for additional sport hall provision. Overall a need has been identified for an additional 4.2 x four court sport halls and 182 fitness stations in East Hertfordshire over the period up to 2016.

- 10.10 The facilities proposed are to be used principally by members and therefore the level of accessibility and affordability would not be expected to be the same as a local authority facility. However the facilities would be suitable for addressing the needs of at least part of the community and the community outreach programs would open up access to the facilities for other groups. As such, Officers consider that, while need for an indoor tennis centre may not be considered as a determining factor in its own right, there is unmet need for more general and localised sporting facilities in Hertford of which the proposal would also deliver. This weighs in favour of the proposal in the Green Belt balancing exercise, although tempered by the continued non-implementation of previous permissions.

Favourable location

- 10.11 It was acknowledged by the Secretary of State in 2001 that such a scheme would require a minimum of 2.43 hectares of land for core facilities to achieve commercial viability and at that time there were no alternative sites that were either suitable or available. This was equally the case in 2010 when the application was last approved. Since that time, no alternative sites have been identified in the Local Plan and there have been no substantial physical changes on the site itself. The development would secure significant highway, footpath and cycleway enhancements and a contribution towards sustainable transport. The NPPF states 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. As such, the favourable location of the site should still be considered a material consideration to which positive weight can be assigned.

Benefit to the local community

- 10.12 The project would still provide substantial benefit to local people in the package of sports and recreation facilities available, if it were implemented. Sport England support the proposal. It would secure 75% of the land given over to public use, significantly more than at present. Whilst not extensive in hours, the community outreach programme is good in principle and would materially benefit the local community. The employment potential of the development, at some 80-100 full and part time staff, would be significant and is likely to attract local people. Overall it is considered that there would still be a

considerable benefit to the local community resulting from the development which weighs in favour of the proposal.

Ecology and nature conservation

- 10.13 The proposal would replace the existing landscape which is scarred by years of neglect and unauthorised activities. The application, like those preceding it, includes proposals to enhance the existing landscape and includes a detailed Landscape and Wildlife Management Scheme. Subsequent to the Secretary of State's decision, part of the site to the north-west was identified as a Wildlife Site. Previous approvals have been subject to Section 106 obligations to secure the protection and future management of this County Wildlife Site together with providing positive management of the site to optimise its conservation value. Accordingly and in line with relevant policies contained in the NPPF, the development is considered to contribute, conserve and enhance the natural environment.
- 10.14 It is noted that HBRC are satisfied that the Ecological Survey remains valid and that, subject to conditions requiring the provision of further detailed ecology surveys prior to the commencement of development as well as details of any necessary mitigation, the proposal can be renewed. Herts and Middlesex Wildlife Trust are also satisfied that with appropriate management the proposal would not adversely impact upon the ecological interests of the site.
- 10.15 As with the previous proposals, the benefits that will be gained from the landscape management plans and the measures put into place to ensure the long term integrity of the Wildlife Site remain a material consideration that weigh in favour of the proposal.

Other issues

- 10.16 The following factors are considered to have a neutral impact in the Green Belt balancing exercise.

Sustainability

- 10.17 In application 3/08/1465/FP and those preceding it, the sustainability of the site was considered to be a factor that contributed to the very special circumstances of the site. This however was not supported in 3/13/1348/FN. The submitted Sustainability Statement sets out how the development will contribute towards healthy socially integrated communities, sustainable movement patterns, the sustainable use of resources and the creation of a healthy economy and key sustainability

measures include the provision of a range of activities, new bus stops, footpaths and cycleways and a community program which promotes access to the local community.

- 10.18 Whilst Officers accept the report's conclusions, many of these measures would now be a standard requirement of the NPPF, which has at its heart a presumption in favour of sustainable development as a golden thread running through plan making and decision taking. It is therefore considered that many of the sustainability benefits put forward can no longer be considered as a factor contributing towards the very special circumstances of the case.

Layout and design

- 10.19 The layout and design of the development remains identical to the extant scheme and therefore remains acceptable. The buildings are specifically designed for their purpose being large and bulky in their form. As such the visual impact of the overall development would be substantial. However, as before, the degree of impact would be significantly mitigated by the landscaping measures proposed and the slab level being set 1 metre below ground level. On the basis that the physical condition of the site has remained unchanged since the previous grant of permission Officers consider that the visual impact and layout and design of the development remain acceptable.

Highways and traffic

- 10.20 A key objective of the NPPF is to promote sustainable transport and reduce greenhouse gas emissions and congestion. Paragraph 32 seeks to ensure that proposals: offer opportunities for sustainable transport modes, provide safe and suitable access and that any improvements to the highway network effectively limit the significant impacts of the development. It seeks to prevent or refuse development where the cumulative transport impacts are severe.
- 10.21 The application is supported by a Transport Assessment which addresses the impact of the proposals on the surrounding highway network in terms of capacity and concludes that that the local highway network can safely accommodate the predicted development traffic and the provision of footpaths and cycleways will ensure that there is direct access to public transport links and the Sele Farm residential area. In addition it considered that the level of parking proposed is sufficient to meet demand.

- 10.22 The Transport Assessment also assesses trip generation. Modelling was carried out on 3 off site junctions (Welwyn Road/Thieves Lane, Welwyn Road/Windsor Road and Welwyn Road/North Road) as well as the site access using the new traffic data as a basis for scenarios both with and without the development. County Highways comment that, if the development were to go ahead, the updated assessment demonstrates that the junctions would operate with ample spare capacity.
- 10.23 County Highways have advised that in highways terms, the principle of the development, the level of parking and the access arrangements remain acceptable. There does however, remain a need for off-site improvements to the pedestrian linkages to the site and bus stop improvements. In addition a financial contribution is sought toward sustainable transport initiatives. In line with these comments I consider that the amount of traffic being generated from the development would not adversely impact on the surrounding highway network and that the amount of parking proposed is sufficient and in this respect the proposal is acceptable. Subject to the S106 obligations as detailed above the proposal remains acceptable in this regard.

Neighbour amenity

- 10.24 In terms of neighbour amenity, the nearest neighbours to the new building would be the residents on Bentley Road to the east. The car park and building would however be separated from these properties by a 75 metre wide area of public open space and consequently Officers do not consider that the proposal would have a direct harmful impact on their living conditions.
- 10.25 Furthermore, whilst the proposals do include some external lighting this is limited to the car parks, tennis courts and driving range, all of which are a considerable distance from neighbouring residential properties. Finally the applicant's noise impact assessment concludes that noise from both the activities themselves and any plant equipment would not affect the ambient noise profile of the area. In summary Officers are satisfied that the development would not have an undue impact on the amenities of residents in the area.

Contamination

- 10.26 In terms of groundwater contamination, recommendations are made to have further controls relating to the remediation of the site. The application includes a Remediation Strategy although this is now dated and as such a contaminated land condition could be amended to

include a requirement for new scheme to be submitted and agreed by the local planning authority to deal with any unsuspected contamination of land and groundwater.

Flood Risk and Drainage

10.27 In terms of flooding and drainage, the NPPF seeks to direct development away from areas at risk of flooding. The development site is located within Flood Zone 1 and is therefore outside of areas at risk. Nevertheless, a condition, as previously applied and reflecting the agreed Flood Risk Assessment, to provide a detailed surface water drainage scheme as recommended by the Local Lead Flood Authority and the Council's Engineer, could deal with this matter.

Planning Obligations

10.28 The NPPF advises that planning obligations should only be used where it is not possible to address unacceptable impacts through planning conditions and that they meet the following tests:

- Necessary to make the development acceptable;
- Directly related to the development;
- Fairly and reasonably related in scale and kind.

10.29 The NPPF also advises that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and be sufficiently flexible to prevent development being stalled.

10.30 The obligations put forward mirror those previously imposed on a development of an identical nature and therefore can reasonably be adjudged to meet the three tests above. Accordingly, Officers consider that a deed of variation to the previous S106 should be engrossed on the same terms as before if the proposals were to be supported.

11.0 Conclusion

11.1 The site lies within the Metropolitan Green Belt wherein the proposed new buildings and facilities for sport and outdoor recreation comprises inappropriate development. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances, which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. This is a balancing exercise that the decision maker is required to undertake.

- 11.2 In assessing those 'other considerations', there is an extant permission for an identical scheme to that now sought and the principle of development for leisure use on this site has been established therefore. However, the positive weight that is assigned to this is moderated by the fact that a permission has been in place for some 15 years but remains unimplemented. Other harm results from the impact on openness and encroachment in to the Green Belt and the impact that the loss of this site to leisure development would have on the policy objectives of the emerging District Plan.
- 11.3 The benefits of the development remain those that have been identified previously: need; the site's favourable location; its sustainability; its benefit to the local community and the gains to nature conservation.
- 11.4 Officers have undertaken this Green Belt balancing exercise, and, as indicated, consider that the benefits previously outlined do still exist. In undertaken the balancing exercise, however whilst it was considered that the benefits did outweigh the harm when previous permissions were granted, given that there is now added harm in terms of the allocation of the site for residential purposes, it is now felt that the balance is different and that the benefits do not clearly outweigh the harm. Therefore the conclusion is that the development is inappropriate within the Green Belt are there no other material considerations to which such weight can be assigned that the harm to the Green Belt through inappropriateness and other harm is clearly outweighed and therefore that very special circumstances are identified.

Reasons for Refusal

1. The proposal constitutes inappropriate development within the Metropolitan Green Belt and is therefore, by definition, harmful to it. Other harm would also result from a loss of openness to the surrounding area and that this development could serve to undermine the delivery of housing within the pre-submission District Plan. Weight which can be attributed to the positive impacts of the development is not such that the identified harm to the Green Belt and other harm is clearly outweighed. The development would thereby be contrary to policies GBC1 of the East Herts Local Plan Second Review April 2007, policies GBR2 and HERT3 of the Pre-Submission Draft East Herts District Plan and national policy set out in the National Planning Policy Framework

Summary of Reasons for Decision

1. In accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015, East Herts Council has considered, in a positive and proactive manner, whether the planning objections to this proposal could be satisfactorily resolved within the statutory period for determining the application. However, for the reasons set out in this decision notice, the proposal is not considered to achieve an acceptable and sustainable development in accordance with the Development Plan and the National Planning Policy Framework.

KEY DATA**Non-Residential Development**

Use Type	Floorspace (sqm)
D2 Assembly and Leisure	8450 (building) 12 hectares (land)

Non-residential Vehicle Parking Provision

Use type	Standard	Spaces required
D2 Assembly and Leisure	Swimming pool – 1 space per 15m ² gfa	17
	Tennis / badminton court – 4 spaces per court	52
	Fitness centre/sports club – 1 space per 15m ² gfa	185
	Outdoor sports grounds - 50 spaces per hectare	15
	Golf driving range - 1.5 spaces per tee	36
Total required		305
Proposed provision		350