



To:
All members of the
Planning Committee

Please reply to:
Contact: Melis Owen
Service: Committee Services
Direct line: 01784 446449
E-mail: m.owen@spelthorne.gov.uk
Date: 20 September 2023

Supplementary Agenda

Planning Committee - Wednesday, 20 September 2023

Dear Councillor

I enclose the following items which were received following the submission of documents from the life members of Staines Town Football Club and revised plan from the applicant.

4. Planning application - 01/00018/FUL, Wheatsheaf Park, Wheatsheaf Lane, Staines-upon-Thames TW18 2PD 3 - 20

Ward

Riverside & Laleham

Proposal

To enter into a Deed of Variation (DoV) to the Agreement dated 12 September 2001 made under Section 106 of the Town and Country Planning Act 1990, relating to Land at Staines Town Football Club, Wheatsheaf Lane, Staines, Middlesex, under Planning Application PA/01/0018 ('the section 106 Agreement').

Recommendation

Agree to enter into the DoV for the reasons set out in this Report.

Yours sincerely

Melis Owen
Corporate Governance
Spelthorne Borough Council, Council Offices, Knowle Green

Staines-upon-Thames TW18 1XB

www.spelthorne.gov.uk customer.services@spelthorne.gov.uk telephone 01784 451499

To the members of the Planning Committee

Councillors:

M. Gibson (Chair)
D. Geraci (Vice-Chair)
C. Bateson
S.N. Beatty
M. Beecher
M. Buck

T. Burrell
R. Chandler
D. Clarke
S.A. Dunn
K. Howkins
M. Lee

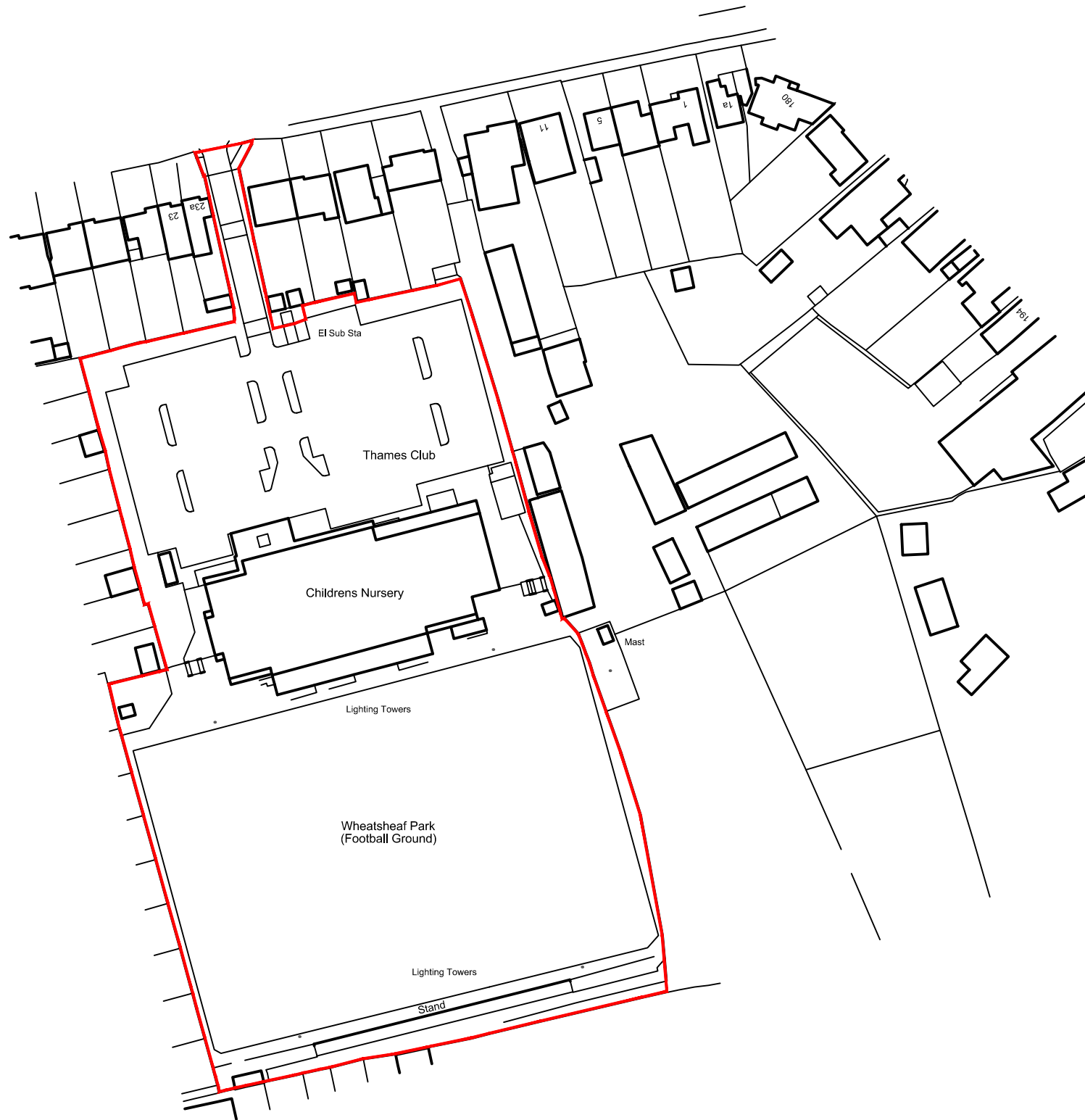
A. Mathur
L. E. Nichols
K. Rutherford
H.R.D. Williams

NOTES

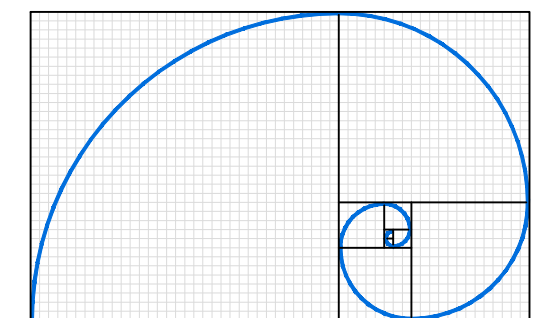
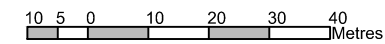
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REVISION

REV	DESCRIPTION	DATE	BY	CKD



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The Barons : 46 Church Street : Reigate : Surrey : RH2 0AJ
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PROJECT

**THE THAMES CLUB
WHEATSHEAF LANE
STAINES**

DRAWING

PROPERTY PLAN

Agenda Item 4

DRAWN	CKD	DATE	SCALE	DMM	DRG No	REVISION
DMM	DMM	Sept 2023	1:1250 @ A3		6438 L 007	-

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NOTES

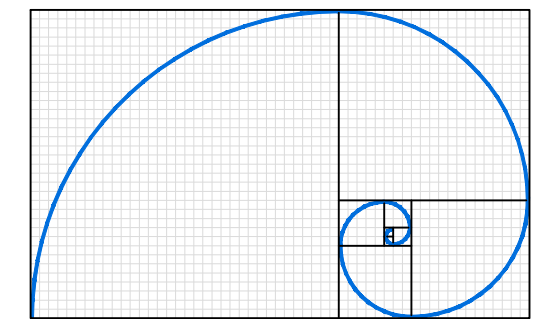
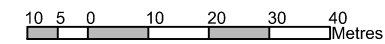
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REVISION

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PROJECT

**THE THAMES CLUB
WHEATSHEAF LANE
STAINES**

DRAWING

SITE PLAN

DRAWN	DMM	DRG No	REVISION
CKD	DMM	6438 L 005	A
DATE	June 2023		
SCALE	1:1250 @ A3		

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THE THAMES CLUB LIMITED

and

BARCLAYS BANK PLC

and

SPELTHORNE BOROUGH COUNCIL

Deed of Variation

In respect of a Section 106 Agreement dated 12 September 2001
relating to land at Wheatsheaf Lane, Staines, Middlesex

Contents

1	General Provisions	<u>12</u>
2	Statutory Provisions	2
3	Legal Effect	2
4	Variations of the Principal Agreement	2
5	Agreements and Declarations	2
	Schedule 1 – Plans/ Drawings	3
	Schedule 2 - Variations of the Principal Agreement	4
	Execution page	6

This Deed of Variation

Dated

2023

Between:

- (1) **THE THAMES CLUB LIMITED** (company registration number 6574957) of 6th Floor, St. Magnus House, 3 Lower Thames Street, London EC3R 6HD (the **Owner**); and
- (2) **BARCLAYS BANK PLC** (company registration number 1026167) whose registered office is at 1 Churchill Place, London E14 5HP (the **Mortgagee**); and
- (3) **SPELTHORNE BOROUGH COUNCIL** of Council Offices, Knowle Green, Staines-upon-Thames, Surrey TW18 1XB (the **Council**).

Recitals

- (A) This Deed is supplemental to, and varies, the Principal Agreement.
- (B) The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated.
- (C) The Owner is the freehold owner of the Property which is registered with title absolute at HM Land Registry under title numbers [SY384083](#) and [SY884329](#).
- (D) The Mortgagee has the benefit of a legal charge dated 26 October 2020 in respect of [that part of](#) the Property which is registered at HM Land Registry under title number SY384083.
- (E) On 12 September 2001, the Principal Agreement was completed.
- (F) The Principal Agreement includes restrictions about the use of the Football Pitch and associated facilities on the Property.
- (G) In the interests of the proper planning of the area, the Council and the Owner have agreed to amend these restrictions in the manner set out in this Deed.

Operative Provisions

1 General Provisions

- 1.1 Unless the context otherwise requires, and save as set out below, the expressions defined in this Deed shall have the same meaning as ascribed to them in the Principal Agreement:

Deed means this deed of variation;

Principal Agreement the deed of agreement dated 12 September 2001 entered into between: (1) The Trustees of Staines Town Football Club; (2) the Council; (3) Wheatsheaf Park (Staines) Limited; and (4) the Owner pursuant to (amongst other enabling powers) Section 106 of the 1990 Act;

- 1.2 The Principal Agreement shall from the date of this Deed take effect and be read and construed as varied by this Deed.
- 1.3 Save as varied by this Deed, the covenants, rights, obligations and conditions contained in the Principal Agreement shall continue in full force and effect.

1.4 In the event of any inconsistency or ambiguity in respect of the intentions and obligations of the parties to this Deed arising under this Deed and/or the Principal Agreement, then the provisions of this Deed will prevail.

2 **Statutory Provisions**

2.1 This Deed is made pursuant to Sections 106 and 106A of the 1990 Act (and is a planning obligation for the purposes of those Sections), Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2000 and all other enabling powers.

2.2 This Deed is enforceable by (and against) the Council in accordance with Sections 106 and 106A of the 1990 Act.

3 **Legal Effect**

3.1 This Deed shall come into full force and effect upon the date of this Deed.

4 **Variations of the Principal Agreement**

4.1 The parties to this Deed agree that the Principal Agreement shall be varied as set out in Schedule 2 to this Deed.

5 **Agreements and Declarations**

5.1 If any provision of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed to be affected or impaired.

5.2 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

5.3 The Owner agrees to pay the reasonable legal costs that are properly incurred by the Council in negotiating and completing this Deed on or prior to the date of completion of the Deed.

5.4 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such by the Council.

5.5 This Deed shall be governed by and construed in accordance with the laws of England.

Schedule 1 – Plans/Drawings

Drawing number 6438 L 005 [Rev A](#) (the Pitch)

[Drawing number 6438 L 007 \(the Property\)](#)

Schedule 2 - Variation of the Principal Agreement

1 **New and Replacement Definitions**

1.1 The definition of 'The Property' at Clause 3.10 of the Principal Agreement shall be deleted and replaced with the following:

'3.10 The Property means all that property at Wheatsheaf Lane, Staines, Middlesex as edged red on the Plan and registered at HM Land Registry with title absolute under title numbers SY384083 and SY884329 as shown edged in red on drawing number 6438 L 007 as appended to this Agreement'

1.11.2 The following definition shall be inserted as a new Clause 3.11 of the Principal Agreement:

'3.11 **Mortgagee** means Barclays Bank PLC (company registration number 1026167) of 1 Churchill Place, London E14 5HP'

1.21.3 The following definition shall be inserted as a new Clause 3.12 of the Principal Agreement:

'3.12 **Permitted Uses** means any of the following:

- (a) use for any sports matches and/or sports training; and/or
- (b) any use falling within use class F2(c) of the Use Classes Order; and/or
- (c) such other community or public use that may be agreed in writing by the Council from time to time'.

1.31.4 The following definition shall be inserted as a new Clause 3.13 of the Principal Agreement:

'3.13 **Pitch** means all that that land (which forms part of the Property) as shown edged in red on drawing number 6438 L 005 Rev A as appended to at Schedule 1 of this Agreement.'

1.41.5 The following definition shall be inserted as a new Clause 3.14 of the Principal Agreement:

'3.14 **Use Classes Order** means the Town and Country Planning (Use Classes) Order 1987 (as amended from time to time).'

2 **Drawings**

2.1 The drawing appended to the Principal Agreement shall be deleted and replaced with dDrawing numbers 6438 L 005 Rev A and 6438 L 007 shall be inserted as a new Schedule 1 of the Agreement.

3 **Pitch**

3.1 Clause 5.7 of the Principal Agreement shall be deleted and replaced with the following:

'Unless otherwise agreed in writing by the Council in accordance with clause 3.12(c) of this Schedule, the Pitch shall only be used for the Permitted Uses.'

4 **Mortgagee Protection**

4.1 The following clause shall be inserted as a new clause 6.7 of the Principal Agreement:

'The obligations in this Agreement shall not be enforceable against any mortgagee or chargee of the whole or any part of the Site from time to time (including, for the avoidance of any doubt, the Mortgagee) or any person deriving title from such mortgagee or chargee unless and until any such mortgagee or chargee takes possession of the Property (or any part of it to which such obligation relates) in which case it shall be liable as if it were a successor in title to the owner of the relevant part of the Property PROVIDED THAT neither any mortgagee nor chargee nor person deriving title from such mortgagee or chargee shall be liable for any breach of the obligations contained in this Agreement unless committed at a time when that person is in possession of the Property (or any part of the Property to which such obligation relates).'

Execution page

Deed of Variation

In **witness** of which this Deed has been executed by the parties as a **deed** and **delivered** on the date set out at the beginning of this Deed.

Executed as a Deed by)
The Thames Club Limited)
acting by a director in the presence)
of:

sign here:

Director

print name: _____

In the presence of:

Witness signature:

Witness sign here: _____

Witness name:

print name: _____

Witness address:

Witness occupation:

Executed as a Deed by)
Barclays Bank PLC)
acting by:)

sign here: _____

Authorised signatory

print name: _____

Executed as a Deed by affixing the)
common seal of)
Spelthorne Borough Council)
in the presence of:

(affix seal)

sign here: _____

Authorised signatory

print name: _____

Planning Committee

20 September 2023



Supplementary Report

Application No.	01/00018/FUL
Site Address	Wheatsheaf Park, Wheatsheaf Lane, Staines-upon-Thames, TW18 2PD
Applicant	Thames Club Limited
Proposal	To enter into a Deed of Variation (DoV) to the Agreement dated 12 September 2001 made under Section 106 of the Town and Country Planning Act 1990, relating to Land at Staines Town Football Club, Wheatsheaf Lane, Staines, Middlesex, under Planning Application PA/01/0018 ('the Section 106 Agreement').
Case Officer	Matthew Churchill
Ward	Riverside & Laleham
Called-in	In accordance with the Planning Committee's Terms of Reference as set out in the Constitution, the Planning Development Manager has decided, after consultation with the Chairman of the Planning Committee, this DoV should be submitted to the Planning Committee for determination.

Application Dates	Valid: N/A	Expiry: N/A	Target: N/A
Executive Summary	<p>This is a supplementary report following the submission of further information from the life members of Staines Town Football Club. This should be read alongside the officer's original report to Planning Committee.</p> <p>Following a meeting between officers and the life members of Staines Town Football Club on 14 September 2023, the LPA offered the life members the opportunity to submit information to demonstrate that Staines Town Football Club exists as a separate entity to Staines Town Football Club Ltd., which is in liquidation.</p> <p>It is not a function of the planning regime to determine whether Staines Town Football Club exists as a separate entity to Staines Town Football Club Ltd. However, members must consider whether in the event that Staines Town Football Club is a separate entity, 'Clause 5.7' contained within the Original Section 106 Agreement would still serve a 'useful purpose'.</p> <p>The information submitted to the LPA suggests that Staines Town Football Club may still exist as a separate entity to Staines Town Ltd.,</p>		

	<p>although the position remains unclear and cannot be confirmed through the planning regime.</p> <p>However, in any event, Staines Town Football Club has left the site irrespective of whether or not it forms part of the limited company. The Football Club no longer has an interest in the land and would not be party to the Draft DoV.</p> <p>Officers therefore consider that 'Clause 5.7', which prevents matches taking place at the site not involving or promoted by Staines Town Football Club, or which do not have the permission of Staines Town Football Club, no longer serves a 'useful purpose'.</p> <p>Separately, the applicant has also approached the LPA with a revised site plan for the draft DoV, which includes an area of land to the east of the site. As this reflects the layout of the pitch observed in historic aerial photographs, it is recommended that this plan is accepted as part of the agreement.</p>
<p>Recommended Decision</p>	<p>Agree to enter into the DoV for the reasons set out in this Report.</p>

MAIN REPORT

1. Background & Introduction

- 1.1 This is a supplementary report that should be read alongside the original officer's report, following the submission of information from the life members of Staines Town Football Club.
- 1.2 Separately, the applicant has also approached the LPA with a revised plan which incorporates an area of additional land to the east of the site into the pitch area.

2. Planning Issues

In determining whether to agree to the proposed modifications to the Section 106 Agreement as set out in the Draft DoV, the following matters should be considered:

- What is the purpose of the current obligation?
- What purposes does it fulfil?
- Is it a useful purpose?
- Would the obligation serve that purpose equally well if it had effect subject to the proposed modification?

3. Planning Considerations

- 3.1 Staines Town Football Club is the current beneficiary of 'Clause 5.7' contained within the original Section 106 Agreement, which formed part of planning permission PA/01/0018.
- 3.2 Officers understand that the original unincorporated association known as Staines Town Football Club transferred all of its assets into Staines Town Football Club Limited in June 2008. This has not been disputed.
- 3.3 Officers are also aware that winding up proceedings commenced against Staines Town Football Club Ltd. in October 2022, meaning that it is soon likely to cease to exist.
- 3.4 The Companies House Website currently lists Staines Town Football Club Ltd.'s Company Status as being in 'Liquidation', although it is understood that the company has not yet been dissolved.
- 3.5 A meeting was held between the LPA and the life members of Staines Town Football Club on 14 September 2023. Following the meeting, the life members were offered the opportunity to submit documents to the LPA to demonstrate that Staines Town Football Club exists separately from Staines Town Football Club Ltd.

- 3.6 The life members have submitted documents which they say show Staines Town Football Club's other activities, including through teams representing Staines Town Strollers, Staines Town Veterans, Staines Town Juniors, and supporters' clubs.
- 3.7 Further information has also been submitted in the form of AGM minutes for Staines Town Football Club from 2022, an invoice from 2023 appearing to confirm Staines Town FC's affiliation to the Middlesex FA, bank account details and matchday programmes.
- 3.8 A newspaper article dated 23 June 2023 has also been received, which details that a match recently took place between Staines Town and a team from Portsmouth.
- 3.9 Confirmation of whether Staines Town Football Club is a separate entity to Staines Town Football Club Ltd. is not a function of the planning regime.
- 3.10 However, on the basis of the information submitted, officers are of the view that Staines Town Football Club may still exist as a separate entity to the limited company, though this is far from clearly demonstrated.
- 3.11 Notwithstanding this, and in any event, it is not disputed that Staines Town Football Club has left the site and no longer plays any matches on the pitch.
- 3.12 Moreover, on the basis of the information submitted to LPA, the sub-lease of the site to Staines Town Football Club Ltd. has been forfeited, and neither the Staines Town Football Club (in the event that it exists as a separate entity), nor Staines Town Football Club Ltd. would be a party to the Draft DoV.
- 3.13 Members must therefore consider:

What is the purpose of the current obligation?

- 3.14 'Clause 5.7' currently restricts the use of the football pitch and associated facilities to games promoted by and used for teams comprising of members of Staines Town football Club or involving teams with the permission of Staines Town Football Club.

What purpose does it fulfil?:

- 3.15 The obligation restricts the use of the football pitch and associated development to that of teams comprising or promoted by Staines Town Football Club and other teams that have the permission of Staines Town Football Club.

Is it a useful purpose?

- 3.16 'Clause 5.7' does not prevent teams other than Staines Town Football Club from playing on the pitch, or matches not involving Staines Town Football Club from being played at the site.

- 3.17 The Clause instead requires teams playing matches not involving Staines Town Football Club, to receive Staines Town Football Club's permission before doing so.
- 3.18 Even if Staines Town Football Club exists as a separate entity to Staines Town Football Club Ltd., as has been suggested by the life members, the Football Club has nevertheless left the site, does not play its matches on the pitch, and does not hold any interest in the land.
- 3.19 From a planning perspective, the deletion of 'Clause 5.7' would not prevent Staines Town Football Club from using the pitch. It would instead remove the right of Staines Town Football Club to prevent other sports teams from doing so.
- 3.20 As a matter of judgment, in officers' view, the prevention of other teams from using the pitch, when Staines Town Football Club no longer plays any matches at the site and no longer has any interest in the land, means that Clause 5.7 no longer serves a useful purpose.

Would the obligation serve that purpose equally well if it had effect subject to the proposed modification?

- 3.21 The current Section 106 Agreement allows for matches not involving Staines Town Football Club to be played at the site, so long as the teams involved in those matches have the permission of Staines Town Football Club.
- 3.22 The proposed deletion and replacement of 'Clause 5.7' would still allow for matches not involving Staines Town Football Club to take place at the site, although the permission of Staines Town Football Club, which has now left the site, would no longer be required.

Pitch Boundary Alteration

- 3.23 The applicant has also separately approached officers with a revised plan for the pitch. This has been included in the appendices of this report and includes an area of land to the east of the site that falls within the applicant's ownership. This has also resulted in some changes to the Draft DoV, and the introduction of an overall site plan, which have also been included in the appendices for this report.
- 3.24 The plan is slightly larger than the extent of the boundary in the original Section 106 agreement and is located within the Green Belt. However, the plan more accurately reflects the boundary of the site observed in historic aerial photographs dating back to 2008. It is therefore recommended that this plan is accepted.

4. Recommendation

- 4.1 As detailed in the original officer report, it is recommended that Members agree in principle to vary to Original Section 106 Agreement to remove existing restriction on the use of the pitched and stands as outlined in this report by entering into a DoV with the Thames Club Limited.

Appendices:

- Draft Deed of Variation
- Plan of the pitch.
- Plan of the site.