

Planning Committee

20 September 2023



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 proposal seeks authority to enter into a DoV to the Section 106 Agreement.</p> <p>Planning permission was granted at Wheatsheaf Park in Staines-upon-Thames on 12 September 2001 for the "<i>Erection of a new sports, health and club facilities and new stand for use by Staines Town Football Club, following demolition of the existing buildings, with associated parking, to be accessed from Wheatsheaf Lane with the existing access road to be widened</i>".</p> <p>At 'Clause 5.7', the Section 106 Agreement states "<i>That the Football Pitch on the Property together with the associated facilities including those forming the Development shall only be used for games promoted by or involving teams comprised of members of Staines Town Football Club or involving teams with permission of Staines Town Football Club and shall not be used for games promoted by any other organisation</i>".</p> <p>The Local Planning Authority (LPA) understands that Staines Town Football Club (STFC) left the property in early 2022. It is further understood that the original unincorporated football club had become a limited company in 2008 and winding up proceedings began in respect of Staines Town Football Club Limited in October 2022 which means</p>		

	<p>that soon it is likely to cease to exist.</p> <p>The LPA has been approached by the Thames Club Limited who are the freehold owners of the site and wish to amend the Section 106 Agreement through a DoV. This would allow the pitch, stands and associated facilities to be used by sports teams other than STFC without first seeking the permission of STFC, as is currently required by 'Clause 5.7'.</p> <p>It is understood that Brentford Football Club has an interest in using the site for its academy and women's teams. If agreed, a DoV would allow any sports teams to use the pitch, stands and associated facilities without the permission of STFC and would not be limited to Brentford FC. The DoV must be determined on this basis.</p> <p>The applicant's Draft DoV seeks to delete and replace 'Clause 5.7' of the Section 106 Agreement to state "<i>Unless otherwise agreed in writing by the Council, that the pitch shall only be used for the Permitted Uses</i>".</p> <p>The applicant further seeks to insert the definition of "<i>Permitted Uses</i>" to include "<i>(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</i>".</p> <p>A copy of the Draft DoV and the original Section 106 Agreement from 2001 has been included in the appendices for this report, although this is a draft and may be subject to minor alterations prior to completion.</p> <p>The Local Planning Authority has sought independent legal advice from specialist Counsel, and it is understood that it would be possible to agree to modify the Section 106 Agreement through a DoV.</p> <p>From a planning perspective, the proposed modification would not prevent STFC from using the pitch, stands and other facilities in future, although this could also be subject to legislation and agreements outside of the planning process. However, the modification would remove the right of STFC to prevent other sports teams from using the pitch, stands and other facilities, by refusing permission for them to do so.</p>
<p>Recommended Decision</p>	<p>Agree to enter into the DoV for the reasons set out in this Report.</p>

MAIN REPORT

1. Development Plan

1.1 The following policies in the Council's Core Strategy and Policies DPD 2009 are considered relevant to this proposal:

- SP1 (Location of Development).
- SP5 (Meeting Community Needs).
- SP6 (Maintaining and Improving the Environment).
- CO1 (Providing Community Facilities).
- LO1 (Flooding).
- CC2 (Sustainable Travel).
- CC3 (Parking Provision).
- EN1 (Design of New Development)
- EN4 (Provision of Open Space and Sport and Recreation Facilities).

1.2 Also relevant is the National Planning Policy Framework (July 2021)

1.3 On 19 May 2022, the Council agreed that the draft Spelthorne Local Plan 2022 – 2037 be published for public consultation under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). The public consultation for the Pre-Submission Publication version of the Local Plan ended on 21st September 2022 and the local plan was submitted to the Planning Inspectorate on 25th November 2022. An Examination into the Local Plan commenced on 23 June 2023. However, on 6 June 2023, the Council resolved the following: Spelthorne Borough Council formally requests the Planning Inspector to pause the Examination Hearings into the Local Plan for a period of three (3) months to allow time for the new council to understand and review the policies and implications of the Local Plan and after the three month pause the Council will decide what actions may be necessary before the Local Plan examination may proceed. At the meeting of the Council on 19 July 2023, it was agreed that Catriona Riddell & Associates be appointed to provide 'critical friend' support to inform the options for taking the plan process forward. A final report setting out the conclusions from the critical friend review will be referred to the Council on 14 September 2023.

1.4 The following policies of the Pre-Submission Spelthorne Local Plan 2022 – 2037 are of relevance:

- ST1: Presumption in Favour of Sustainable Development.
- ST2: Planning for the Borough.
- E3: Managing Flood Risk.
- E5: Open Space and Recreation.
- EC4 Leisure and Culture.

- 1.5 The NPPF policy states at para 48 that: Local planning authorities may give weight to relevant policies in emerging plans according to:
- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
 - b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
 - c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).
- 1.6 Section 38(6) the Planning and Compulsory Purchase Act 2004 requires applications to be determined in accordance with the development plan (unless material considerations indicate otherwise) and not in accordance with an emerging plan, although emerging policies may be a material consideration.
- 1.7 At this stage, the policies in the Pre-Submission Spelthorne Local Plan carry limited weight in the decision-making process. The adopted policies in the 2009 Core Strategy and Policies DPD carry substantial weight in the determination of this planning application.

2. Relevant Planning History

- 2.1 The site has the following planning history:

01/00018/FUL	Erection of new sports, health and club facilities and new stand for use by Staines Town Football Club, following demolition of existing buildings, with associated parking, to be accessed from Wheatsheaf Lane with the existing access road to be widened.	Granted 12.09.2001
01/00022/FUL	Erection of 3 no. temporary buildings to provide facilities for Staines Town Football Club until the proposed development approved under PA/01/0018 becomes fully operational.	Granted 03.01.2002
02/00763/FUL	Erection of a chiller unit and fence enclosure and brick refuse enclosure.	Granted 11.11.2001
02/00964/FUL	Erection of turnstiles within the site	Granted 11.12.2002
02/00965/FUL	Erection of 4 No. Floodlights to replace 8 existing floodlights to light the football pitch.	Granted 06.12.2002
02/01030/ADV	Display of non-illuminated advertisement.	Granted 17.01.2003

02/01116/RVC	Amendments to condition 26 (hours of opening) of planning permission PA/01/0018 (new sports, health and club facilities and football stand) to permit earlier opening hours.	Granted 08.01.2003
03/00136/FUL	Erection of a chiller unit and fence enclosure and brick refuse enclosure. (Amendment to planning permission 02/00763).	Granted 03.04.2003
03/00635/RVC	Amendment to condition 1 of 02/01116/RVC and condition 26 (both hours of opening conditions) of PA/01/0018 (new sports, health and club facilities and football stand) to permit later opening hours.	Granted 14.08.2003
06/00240/FUL	Amendments to condition 1 (hours of opening) of planning permission PA 02/1116 to permit late opening hours until 00.00hrs on Fridays and Saturdays.	Refused 04.05.2006
07/00299/RVC	Temporary relaxation of condition 1 (hours of opening) of planning permission 02/1116 for a period of 3 years, to enable up to 8 events each year with a later closing time.	Granted 25.05.2007
07/00769/FUL	Amendments to condition 1 (hours of opening) of planning permission PA/02/1116/RVC to permit earlier opening hours from 06.30 hours Monday to Friday.	Granted 06.11.2007
09/00051/FUL	Infill of existing entrance canopy to form new ground and first floor areas and creation of new entrance on ground floor. Some internal alterations to layout and changes to fenestration.	Granted 09.04.2009
10/00215/FUL	Temporary relaxation of condition 1 (hours of opening) of planning permission 02/01116 for a period of 5 years to enable up to 8 events each year with a later closing time.	Granted 27.07.2010
19/00080/RVC	Variation of condition 1 (hours of opening) of planning permission PA/02/01116/FUL and amending 07/00769/FUL to permit earlier opening hours of 6am Monday to Thursday and a temporary relaxation of this condition to allow the hosting of 8 events each	Granted 26.04.2019

year with a later closing time for a temporary period of five years.

3. Description of Current Proposal

Background

- 3.1 The application site is located in Wheatsheaf Lane in Staines-upon-Thames. It is occupied by The Thames Club (TCL), the football pitch and stands, as well as an associated car park and other facilities.
- 3.2 The site is located in the Green Belt and across the 1 in 20 (flood zone 3b) and 1 in 100-year (flood zone 3a) flood event areas.
- 3.3 On 12 September 2001 planning permission was granted under the reference PA/01/0018, for the:
- “Erection of new sports, health and club facilities and new stand for use by Staines Town Football Club, following demolition of existing buildings, with associated parking, to be accessed from Wheatsheaf Lane with the existing access road to be widened”.*
- 3.4 A Section 106 Agreement relating to planning permission PA/01/0018, was also completed on 12 September 2001. The agreement contains a number of planning obligations, including ‘Clause 5.7’ which states:
- “That the Football Pitch on the Property together with the associated facilities forming the Development shall only be used for games promoted by or involving teams comprised of members of Staines Town Football Club or involving teams with permission of Staines Town Football Club and shall not be used for games promoted by any other organisation”.*
- 3.5 A copy of the original Section 106 Agreement has been included in the appendices of this report.

Procedure

- 3.6 Under the provisions of [Section 106A of the Town and Country Planning Act 1990](#), it is possible to modify or discharge a planning obligation by:
- An agreement between the appropriate authority and the person(s) against who the agreement is enforceable; or
 - A formal application to discharge or modify a planning obligation submitted under Section 106A of the Town and Country Planning Act 1990.
- 3.7 There is no right of appeal against an LPA’s refusal to agree to modify a planning obligation where it is not submitted through a formal application. However, in the event that an LPA refused to agree to a modification, TCL could apply for a Judicial Review of the decision making mechanism if it

thought it had been made unlawfully, which might result in the decision being remitted back to the LPA to make correctly.

- 3.8 However, a more likely course of action would be for TCL to submit a formal application to modify the Section 106 Agreement which is possible once an obligation is more than 5 years old. In the event that such a formal application were refused, there would be a right of appeal to the Secretary of State under Section 106B of the Town and Country Planning Act 1990 to be determined by the Planning Inspectorate on planning merits.
- 3.9 In this instance, the applicant has confirmed to the LPA that the Draft Deed of Variation (DoV) has not been submitted through a formal application under Section 106A.
- 3.10 Instead, were the Draft DoV to be agreed, the obligation would be modified through an agreement between the appropriate authority (Spelthorne Borough Council) and the person(s) whom it would be enforceable against (The Thames Club Limited and Barclays Bank PLC).

Proposal

- 3.11 The Draft DoV seeks to delete and replace 'Clause 5.7' from the original Section 106 Agreement. The proposed modification would allow for the pitch and stands to be used by sports teams other than Staines Town Football Club without those teams first obtaining the permission of Staines Town Football Club.
- 3.12 The applicant's proposed replacement 'Clause 5.7' would state:
- "Unless otherwise agreed in writing by the Council, that the Pitch shall only be used for the Permitted Uses".*
- 3.13 The applicant also seeks to insert new definitions into the Section 106 agreement including relevant to 'Clause 5.7':
- "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".*
- 3.14 A copy of the Draft DoV has been included in the appendices for this report.
- 3.15 The applicant has confirmed that Brentford Football Club has an interest in using the pitch and stands for its academy and women's teams matches. However, it should be noted that Brentford Football Club is not party to the Draft DoV; as drafted it would allow any sports teams to use the pitch and stands without first obtaining the permission of Staines Town Football Club.
- 3.16 From a planning perspective proposed modification would not prevent Staines Town Football Club from using the pitch and stands in future, although this

may also be subject to other legislation and agreements outside of the planning regime.

4. Consultations

- 4.1 Under the provisions of Section 106A of the Town and Country Planning Act 1990, where an applicant does not submit a formal application to discharge or modify an obligation, and an agreement is sought between the relevant authority and the person(s) whom the agreement is enforceable against, there is no requirement to notify Statutory Consultees.
- 4.2 The LPA has sought independent counsel opinion, which has been considered and incorporated into this report.

5. Public Consultation

- 5.1 There is no requirement under the provisions of Section 106A where a formal application is not submitted, to give publicity to an agreement to modify or discharge a planning obligation between the relevant authority and the person(s) against whom the agreement is enforceable against. As such, there has been no requirement for the LPA to send neighbour notification letters and no letters have been sent.

6. Planning Issues

- 6.1 In determining whether to agree to the proposed modifications to the Section 106 Agreement 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?

7. Planning/Legal Considerations

- 7.1 A Section 106 Agreement is a means to secure planning obligations. The Planning Practice Guidance (PPG) states:

“What are Planning Obligations?”

Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal.

This can be via a planning agreement entered into under [section 106 of the Town and Country Planning Act 1990](#) by a person with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land without the local planning authority.

Planning obligations run with the land, are legally binding and enforceable. A unilateral undertaking cannot bind the local planning authority because they are not party to it.

Planning obligations are also commonly referred to as ‘section 106’, ‘s106’, as well as ‘developer contributions’ when considered alongside highways contributions and the Community Infrastructure Levy”.

- 7.2 As highlighted above, it is possible to discharge or modify a planning obligation under the provisions of Section 106A of the Town and Country Planning Act 1990. This would be through either an agreement between the relevant authority and the person(s) against whom the obligation is enforceable, or through a formal application to modify or discharge the obligation.
- 7.3 The applicant through the Draft DoV, seeks to modify the obligations agreed in the Section 106 Agreement completed on September 2001, in relation to planning permission PA/01/0018.
- 7.4 This would be an agreement between the relevant authority and the person(s) against whom the obligation is enforceable. The applicant has confirmed that this is not a formal application submitted under Section 106A of the Town and Country Planning Act 1990.
- 7.5 Planning permission PA/01/0018 relates to the:
- “Erection of new sports, health and club facilities and new stand for use by Staines Town Football Club, following demolition of existing buildings with associated parking, to be accessed from Wheatsheaf Lane with existing access road to be widened”.*
- 7.6 The Section 106 Agreement contained a number of planning obligations, including ‘Clause 5.7’, which states:
- “That the football pitch on the Property together with the associated facilities including those forming the development shall only be used for games promoted by Staines Town Football Club or involving teams with the permission of Staines Town Football Club and shall not be used for games promoted by any other organisation”.*
- 7.7 The Draft DoV seeks delete and replace ‘Clause 5.7’ so that it would state:
- “Unless otherwise agreed in writing by the Council, that the Pitch shall only be used for the Permitted Uses”.*
- 7.8 It is also proposed that a new definition would be inserted into the agreement, stating that:
- “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*".

- 7.9 The pitch and stands were previously used by Staines Town Football Club, which played its home matches at the site. It is understood that winding up proceedings commenced against Staines Town Football Club Ltd in October 2022.
- 7.10 The applicant has stated that Staines Town Football Club has abandoned the property. It is also relevant to note that the Land Registry Title Deeds show that the Thames Club became the freeholder and registered owner of the site in July 2008.
- 7.11 On the basis of the information submitted by the applicant, the Local Planning Authority (Spelthorne Borough Council) and the applicant (the Thames Club Limited) could be party to a modification to the planning obligations set out in the Section 106 Agreement through a DoV.
- 7.12 In addition, it would be possible to modify the current obligations through the Draft DoV.
- 7.13 The Council has also been contacted by life members of Staines Town Football Club, which have informed the LPA that they would object to any alterations or modifications to the Section 106 Agreement.
- 7.14 On the basis of the information submitted to the Council, the trustees of Staines Town Football Club would no longer be party to any Deed of Variation. It is understood that the Football Club became a limited company that is no longer successor in title.
- 7.15 It is noted that the development description for planning permission PA/01/0018 includes "*for use by Staines Town Football Club*". However, the wording of the development description does not limit the use of the site to Staines Town Football Club exclusively.
- 7.16 Furthermore, none of the conditions or reasons attached to the decision notice limit the use of the facilities to Staines Town Football Club. As such, it is considered possible for other sports teams to use the site, notwithstanding the planning obligation set out at 'Clause 5.7' of the Section 106 Agreement.
- 7.17 The original planning permission (PA/01/0018) is extant, and the LPA could not insist that the Thames Club submits a new planning application for other sports teams to use the site.
- 7.18 The Planning Committee must therefore consider whether to agree to the Draft DoV. The agreement would allow sports teams other than Staines Football Club to use the pitch and stands without first obtaining the permission of Staines Town Football Club.
- 7.19 In considering whether to agree to the Draft DoV, the following must be considered:

What is the current obligation:

- 7.20 'Clause 5.7' of the current Section 106 Agreement 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:

- 7.21 The obligation restricts the use of the football pitch and associated development to that of teams comprising Staines Town Football Club and other teams where those teams have the permission of Staines Town Football Club.

Is it a useful purpose?

- 7.22 'Clause 5.7' does not prevent teams other than Staines Town Football Club from playing at the site. It instead requires any team using the site to have the permission of Staines Town Football Club before doing so.
- 7.23 On the basis of the information submitted by the applicant, Staines Town Football Club has abandoned the site and winding up proceedings have commenced against Staines Town Football Club Ltd.
- 7.24 The prevention of other sports teams using the site without permission of Staines Town Football Club appears to no longer serve a useful purpose as the Football Club has now abandoned the site.

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

- 7.25 The current Section 106 Agreement allows teams other than Staines Town Football Club to use the pitch, so long as those teams have the permission of Staines Town Football Club.
- 7.26 The proposed deletion and replacement of 'Clause 5.7' would still allow other teams to use the site, although they would no longer require the permission of Staines Town Football Club before doing so, which has now abandoned the site.
- 7.27 Furthermore, the replacement wording of 'Clause 5.7' proposed in the Draft DoV would not prevent Staines Town Football Club or any reincarnation of Staines Town Football Club, from returning to pitch and stands from a planning perspective at a later point. However, it is possible that other legislation/agreements outside of the planning process could prevent this.
- 7.28 At paragraph 93, the NPPF states that to provide social recreational and cultural facilities, planning decisions should plan positively for the provision of use of community facilities such sports venues. Staines Town Football Club has left the site. Agreement to the draft DoV may bring into use a sports venue in the borough that is currently unused.

8. Recommendation

- 8.1 Officers consider that it is possible to modify the obligations set out in the Original Section 106 agreement, through the provisions of Section 106A of the Town and Country Planning Act 1990.
- 8.2 The applicant's Draft Deed of Variation would allow sports teams other than Staines Town Football to use the pitch and stands, without first seeking the permission of Staines Town Football Club.
- 8.3 It is understood that winding up proceedings have commenced against Staines Town Football Club Ltd., which has also abandoned the site. As such, it is considered that 'Clause 5.7' no longer serves its useful purpose and prevents any other teams from using the pitch and stands.
- 8.4 It is therefore recommended that Members agree in principle to vary the Original Section 106 Agreement to remove the existing restrictions on the use of the pitch and stands as outlined in this report by entering into a DoV with TCL.

Appendices: