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| Meeting: | Development Control Committee |
| Date: | 9th November 2005 |
| Subject: | Variation of S106 Agreement, Heathfield School |
| Responsible Officers: | Group Manager, Planning & Development Services |
| Contact Officer: | Tim Wood |
| Portfolio Holder: | Planning, Development and Housing |
| Key Decision: | No |

Section 1 : Summary

This report refers to a request for variation of the S106 agreement relating to the use of the premises out of school hours.

Consideration of this report was deferred at the meeting on 27th July 2005 pending public consultation.

Decision Required

Recommendation (for decision by the Development Control Committee):

Refuse the request to vary the S106 Agreement as applied for.

Reason: The proposed hours of use and numbers of users would give rise to increased disturbance and general activity and would detract from the amenities of the occupiers of neighbouring residential properties.

Reason for Report

To determine the request to vary the S106 Agreement

Benefits

N/A

Cost of Proposals

N/A.

Risks

None

Implications if recommendations rejected

The user of the premises will continue in accordance with the requirements of the existing S106 agreement.

Section 2 : Report

2.1. Brief History

Planning permission for the construction of a new swimming pool and sports hall at Heathfield School was granted by the Council in November 1998 (WEST/666/97/FUL). The report to Committee is appended. It was resolved to grant planning permission subject to a legal agreement to restrict the use of the sports hall and swimming pool in the following ways:

1. The swimming pool and sports hall shall not be used outside the following hours:
Monday – Friday 9.00am – 9.00pm
Saturday – 9.00am – 12.00 noon
Sunday – 10.00am – 1.00pm
2. Without the prior written consent of the Local Planning Authority the swimming pool and sports hall shall not be used other than by the staff and pupils of the school within the following hours:
Monday – Friday – 8.30am – 4.30pm
3. Without the prior written consent of the Local Planning Authority the swimming pool and sports hall shall not be used other than by the staff and pupils of the school and parents of pupils of the school within the following hours:
Monday – Friday – 4.30pm – 9.00pm
Saturday – 9.00am – 12.00 noon
Sunday – 10.00am – 1.00pm
4. Within the hours in paragraph 3 no more than 40 adults in aggregate (staff and parents with children) may use the swimming pool and sports hall at any one time without the prior written consent of the Local Planning Authority.

5. Within the hours in paragraph 3 the swimming pool and sports hall shall not be used when any part of the remainder of the site school building is being used for purposes attracting other visitors to the site.
6. The swimming pool and sports hall shall not be let out to any other body or organisation without the prior written consent of the Local Planning Authority.

The S.106 Agreement was completed on 12th November 1998. The primary purpose of the S.106 Agreement was to restrict the use of the swimming pool and sports hall outside of normal school hours in the interest of the amenities of neighbouring residents. In particular residents had indicated that they suffer considerable disruption and noise nuisance from cars arriving at the school when children are picked up and set down.

On 12th April 2001 a request was then made by the Girls Day School Trust to vary the S.106 Agreement relating to the use of the school to allow the Kings Trust Sports Camps (a registered charity) the use of the sports hall and swimming pool between 09.15 and 16.30 hours during the following dates:

2nd – 5th April 2002
5th – 9th August 2002
12th – 16th August 2002
19th – 23rd August 2002

On 5th July 2001, the Development Control Committee agreed to permit the activity camps at the school on the days specified. The sports camp events took place on those days.

The Trust again wrote to the Council on 15th May 2002 stating that it hoped that a similar camp could be held in 2003 either run by the Kings Trust or by another operator. Additionally, they would let the facilities to third parties (such as swimming clubs) outside school hours in term time, and also make facilities available all day on Saturdays and from Mondays to Saturdays during the school holidays. On 11th December 2002, the Development Control Committee considered this report and agreed to permit the activity camps and additional hours of use at the school on the days specified in 2003. This authority expired on the 30th June 2004. This was once again renewed on 27th July 2005.

A further request to vary the Agreement was made in June 2004, as follows:

- i) allow the continued use of the facilities by third parties outside school hours between the hours of 16.30 and 21.00 on weekdays during term time, 09.00 and 21.00 weekdays during school holidays and between 09.00 hours and 18.00 hours on any Saturday, and for 1 year.
- ii) allow the additional use of the facilities by third parties between 09.00 hours and 18.00 hours on any Sunday, and

- iii) vary the maximum number of users (as set out in Clause 4.3 of the Second Schedule to the Agreement) from 40 to 60.

At the Development Control Committee on 26th July 2004 concern was expressed regarding the potential impact of additional activity on neighbouring residents, and only part i) of the proposed variations was allowed, for a one year period only.

2.2 Proposed Further Variations to S106 Agreement

The changes now proposed are scheduled below:

1. No part of the Land outside the parts edged with a bold black line on the Plan shall be development by the construction of any new buildings, structures, roadways, pathways or car parking spaces. The Land always to remain open land free of any new built or other development.

Proposed: No change.

2. The two "Horsa" huts located on the south western corner of the site shall be removed no later than 5 years from the date of the commencement of the development.

Proposed: Remove as this requirement has been complied with.

3. The number of pupils attending the school shall not exceed 700 at any one time.

Proposed: No change

4. The swimming pool and sports hall shall not be used outside the following hours:

| | |
|-----------------|------------------|
| Monday – Friday | 8.30am – 9.00pm |
| Saturday | 9.00am – 12.00pm |
| Sunday | 10.00am – 1.00pm |

Proposed: Amend the hours to:

| | |
|-----------------|------------------|
| Monday – Friday | 8.00am – 9.00pm |
| Saturday | 8.00am – 7.00pm |
| Sunday | 10.00am – 4.00pm |

- 4.1 Without the prior written consent of the Local Planning Authority the swimming pool and sports hall shall not be used other than by the staff and pupils of the school within the following hours:

| | |
|-----------------|-----------------|
| Monday – Friday | 8.30am – 4.30pm |
|-----------------|-----------------|

Proposed: Amend the opening hour on Monday to Friday inclusive to 8.00am.
Add 'during term time' after 'used'.

4.2 Without the prior written consent of the Local Planning Authority the swimming pool and sports hall shall not be used other than by staff and pupils of the school and parents of pupils of the school within the following hours:

| | |
|-----------------|------------------|
| Monday – Friday | 4.30pm – 9.00pm |
| Saturday | 9.00am – 12 noon |
| Sunday | 10.00 – 1.00pm |

Proposed: Delete this sub-clause as the hours of operation are controlled by clause 4.

4.3 Within the hours in Clause 4.2 no more than 40 adults in aggregate (staff and parents with children) may use the swimming pool and sports hall at any one time without the prior written consent of the Local Planning Authority.

Proposed: Delete and substitute the following words:-

Within the hours of operation no more than 60 adults in aggregate may use the swimming pool and sports hall at any one time without the prior written consent of the Local Planning Authority.

4.4 Within the hours on clause 4.2 the swimming pool and sports hall shall not be used when any part of the remainder of the school building is being used for purposes attracting other visitors to the site.

Proposed: Delete and substitute the following words:

Within the following hours the swimming pool and sports hall shall not be used when any part of the remainder of the school building is being used for purposes attracting other visitors to the site.

| | |
|-----------------|-----------------|
| Monday – Friday | 4.30pm – 9.00pm |
| Saturday | 8.00am – 7.00pm |
| Sunday | 10.00 – 4.00pm |

4.5 The swimming pool and sports hall shall not be let out to any other body or organisation without the prior written consent of the Local Planning Authority.

Proposed: No change

The School Trust has also submitted a detailed justification for the proposed changes which are summarised as follows:-

- there has been an absence of any formal complaints about the use of the pool or sports hall
- the temporary variation should be made permanent
- the reasoning behind the agreement should be reconsidered taking account of the above and the wider potential benefit of shared use of the facilities
- the control exercised by the school means that use of the facilities does not involve exuberant revellers, late night or 24 hour activity, external speaker systems, piped or amplified music
- the only evidence presented to the Committee of disturbance is that from adults supervising children in the sports camps, not from within the sports hall or pool

It is acknowledged that the expansion in the scope of the use of the facilities would bring about benefits to the wider community.

The use of the facilities would increase marginally in the morning and additionally Monday to Friday 4.30 to 9.00 for general public and from Saturday 12.00pm to 7.00pm and Sundays 1.00pm to 4.00pm. Additionally, at all times outside term time for the general public and for a maximum of 60 adults (40 previously).

However, the removal of restrictions to allow use by the general public, rather than the current groups, could have significant impact on the amenity of neighbouring residents.

A copy of the proposed alterations has been sent to surrounding residents (102 in total). Two letters of objection have been received objecting to the continued and additional use outside school hours, noise, traffic nuisance. A petition from 'Friends of Heathfield Sports Club' has been submitted which contains 189 names from 135 households in support of the proposals.

Despite the wider benefits that may result from the community use of the proposal, it is considered that those additional hours and numbers proposed would result in activity in and around the site which would have a detrimental impact on the amenity of neighbours which would outweigh those benefits.

2.2 Options Considered

Approval or refusal of request

2.3 Consultation

None

2.4 Financial Implications

None

2.5 Legal Implications

The School Trust has applied to vary the original 106 agreement under section 106A (3) of the Town and Country Planning Act 1990 and therefore has a right of appeal to the secretary of state against a refusal by the Committee.

2.6 Equalities Impact

None

Section 3 : Supporting Information/Background Documents

3.1 Planning applications referred to in report.