

Our Ref: HB/KN0004/21

30 September 2022

Mrs N Hopkins
Ribble Valley Borough Council
Planning Department
Council Offices
Church Walk
Clitheroe
Lancs
BB7 2RA

Via Planning Portal

Dear Nicola,

**Application for Planning Permission
Oakhill School and Nursery, Wiswell Lane, Whalley
Planning Portal Reference: PP-11583074**

We are instructed by Oakhill School and Nursery to submit to you the enclosed application for planning permission for:

“Erection of replacement 3 metre high perimeter fence and installation of 8 metre high ball stop netting”

The application has been submitted via the planning portal. Along with the planning application form, including land ownership certificate A and the agricultural holdings certificate, the application comprises the following plans and documents:

- Site Location Plan OS/S/3G-001
- Existing Plan & Fencing Elevations OS/S/3G-002
- Proposed Plan & Fencing Elevations OS/S/3G-003
- Product Specification Sheet – CLD Ballstop Netting Sports Fencing
- Product Specification Sheet – CLD Dulock Rebound Sports Fencing

The fee for the planning application is £468.00 which has been paid directly via the planning portal.



Introduction

This application seeks planning permission for replacement fencing, together with the erection of ball stop netting, around an existing playground / sports pitch in the north of the Oakhill School and Nursery site. Planning permission is only required for the fence as there is a small section of new fence down the centre of the site splitting the land and because the height of the ball stop netting exceeds that which would benefit from permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015.

Attention is drawn to the fact that **no** planning permission is sought or required for the use of land as activities being undertaken on the playground / playing pitches are entirely lawful being ancillary to the main use of the site as a school and nursery. Officers will also be aware that planning law enables schools to provide community use of their facilities out of hours (charged or for free) without the need for planning permission. Such a use is ancillary to the main use of the site and does not require planning permission in its own right. This very well established in case law.

It is also important to note that as planning permission is not being sought for the use of the land, conditions cannot be imposed on any subsequent grant of planning permission for the fence and netting that restrict and seek to control the times and hours of operation of the playground / pitch. Such conditions would fundamentally fail the tests for a planning condition as set out in the NPPF and NPPG and would thus not be lawful. Notwithstanding this fact, the land in questions has been used for many years (and in excess of 10 years) for both school and community use, including in the evenings and at the weekend. Such use also significantly pre-dates the housing that now exists directly to the north of the site, which was consented in the full knowledge of the school and its facilities.

Site

The application site is located in the northeast of the defined curtilage and grounds of Oakhill School and Nursery. Specifically, it is located to the east of school buildings used as classrooms, to the north of the sports hall, to the west of school playing fields and open space and to the south of residential properties. It is noteworthy that there is a distance of in excess of 30 metres from the rear elevation of the nearest residential property and the application site and that the uses are separated by mature trees and vegetation.

The site is flat and extends to an area of 1,700 sqm. It is currently used and has always been used as a playground and for playing various sports. Use for sports has always been by both the school itself and by community organisations, both after school and at a weekend.

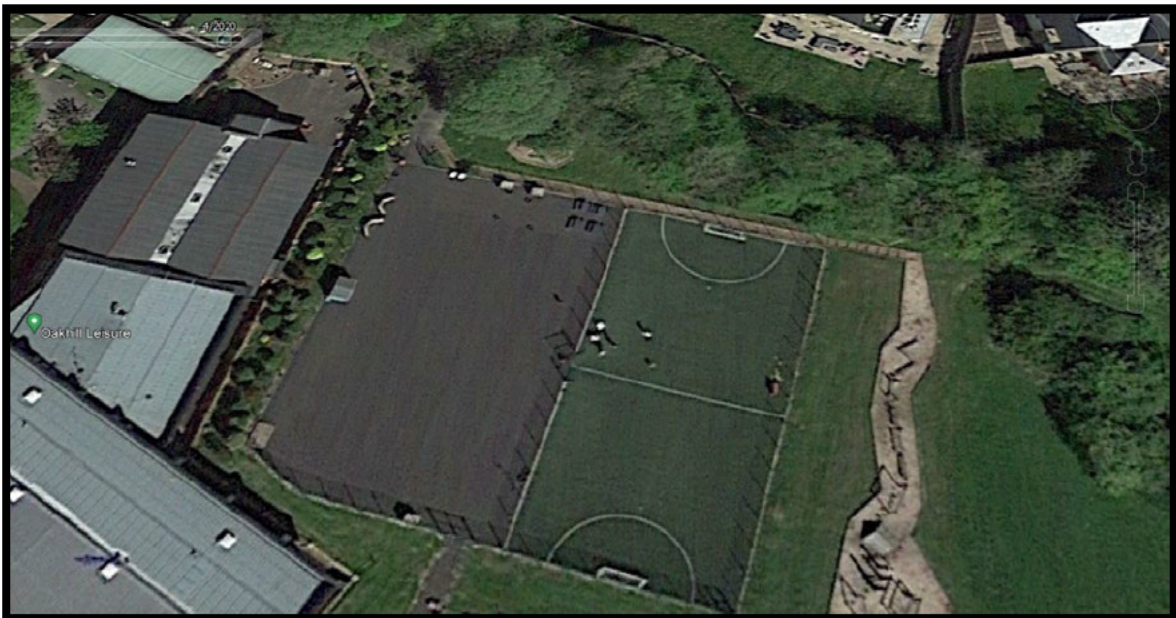
Prior to the alterations made to it in 2018, which included laying an artificial surface (which it was agreed with the Council over 18 months ago was not development and thus does not require planning permission), replacing an existing 3 metre high perimeter boundary fence and installing a dividing fence and installing a 1.2 metre high perimeter kick board and ball stop netting, the site was a tarmac surface marked out for a range of sports and used as a playground and for sports (both by the school and



community organisations). The image below which is a google earth extract illustrates the site as it was prior to the works (image dated April 2015).



When the modifications described above were made to the site in 2018, the area became laid out as per the google earth image below (dated April 2020). It can be seen that the western half of the site remains a tarmac surface and is used as a playground and for sports (the former markings have been burnt off). The eastern half now has an artificial grass surface, which has been laid directly on top of the existing tarmac (which remains in situ and undisturbed beneath) and which is used for playing football and other sports both during playtime and for sports by the school and community groups.



Designations

The site is located within the defined settlement of Whalley and is designated as protected 'Existing Open Space' under Policy DMB4 and Policy OSM1)

The site is not in a conservation area and there are no statutorily listed buildings on the site or in close proximity. The site is not in proximity of any trees that would be impacted by the development.

The site is in flood risk zone 1 and thus at low risk of flooding.

Proposed Development

Planning permission is sought for the following development:

- New 3.0 metre high fencing around the perimeter of the site and north/ south down the centre of the site - it should be noted that the perimeter fence is a like for like replacement of an existing 3.0 metre high fence which had reached the end of its lifespan (see google earth image above). Whilst planning permission is being sought for ease, the perimeter fencing is permitted development under Part 2 'Minor Alterations' Class A of the GDPO which allows like for like replacement of an existing fence. Strictly speaking the only element that requires planning permission is the new section splitting the playground and pitch which at 3 metres in height exceeds permitted development rights.
- New ball stopping netting to 8 metres height – this is proposed around 3 sides of the western playing pitch, namely the north, south and east. The existing netting will be removed and replaced with a new fit for purpose solution.

As has been set out above, planning permission is not required for the use of the land, including its ancillary use by local community groups out of hours or the artificial surface, the laying of which does not constitute development. With regard to the kickboards, at 1.2 metres in height these are permitted development under Part 2 'Minor Operations', Class A of the GDPO and do not require planning permission.

The applicant is aware of concerns and issues of rattling with the existing fencing and netting around the artificial playing pitch. They have therefore sought professional advice from a specialist school and sports fencing supplier on this matter. Based on their advice the following changes will be made to what is currently installed:

- I. The netting and posts that currently envelopes the entire artificial pitch area will be removed and replaced. The current netting is having a detrimental impact on the rigidity of the perimeter posts and the fencing attached to the posts and therefore needs to be removed.



2. The posts along both sides of the length of the playing surface will be reset and the fence panels re-attached in a more secure way with rubber inserts added between the posts and fence panels to address current issues of rattling.
3. The posts and fence panels at the goal ends, which receive the vast majority (approx. 90%) of the ball impact, will be completely removed and replaced with a denser fence panel designed for sports areas and again with rubber inserts to further reduce any rattling
4. The posts, at intervals specified by the professional installers, around the entire perimeter of the artificial pitch, will be extended to a height of 8 metres to allow ball stop netting to be hung vertically. This will not then have any impact on the integrity of the fencing system and will allow the rubber inserts to remain effective whilst ensuring the ball is retained in the playing area and not escaping to neighbouring areas.
5. All new fencing and ball stop netting will be installed by a specialist contractor.

Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that “*if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Act, the determination must be made in accordance with the plan, unless material considerations indicate otherwise*”. Any issues that relates to the use of land is capable of being a material planning consideration, this includes government statement of planning policy.

The development plan applicable to the site is the Ribble Valley Core Strategy (2014). There are a number of policies contained within this document that are relevant to the development proposals and these are considered in turn below.

National Planning Policy Framework (2021)

The aim of the document is to ensure that there is a presumption in favour of sustainable development and that positive solutions are found to ensure economic development is brought forward. Paragraph 11 requires that decision takers “*to approve development proposals that accord with an up-to-date development plan without delay*”. The National Planning Policy Framework (NPPF) sets out the Government’s economic, environmental and social planning policies for England. These policies articulate the Government’s vision of sustainable development, which should be interpreted and applied to meet local aspirations.

The NPPF seeks to ensure that there is a presumption in favour of sustainable development and that positive planning solutions are found to ensure that economic development is brought forward.

Paragraph 11 of the NPPF states that plans, and decisions should apply a presumption in favour of sustainable development, it goes on to state that Local Planning Authorities should approve development proposals that accord with the development plan without delay.



Regarding design, the Framework states that good design is a key part of sustainable development and should contribute positively to making places better for people. Paragraph 130 goes on to state that planning decisions should ensure that developments will function well and add to the overall quality of an area and are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Paragraph 95 refers specifically to schools and states that LPAs should take a proactive, positive and collaborative approach to development that will widen choice in education and “give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications”.

Paragraph 98 supports improving access to high quality open space and opportunities for sport and physical activity which is considered important for the health and wellbeing of communities.

Paragraph 187 which sets out ‘agent of change’ policy makes it clear that “existing businesses and facilities should not have unreasonable restrictions place on them as a result of development permitted after they were established”. It goes on to state that “where the operation of an existing business or community facility would have a significant adverse effect on new development in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development is completed”.

Development Plan

Core Strategy (2014)

- Policy DMG1 General Considerations – requires development to be of a high design standard and by sympathetic to existing land uses in terms of size, style and materials. It also requires development not to adversely impact on the amenities of the surrounding area.
- Policy DMB4 Open Space Provision – states that it is important to protect existing recreational areas from development.

Housing and Economic Development DPD (2019)

- Policy OSI ‘open Space’ – states that the Council will refuse development proposals which involve the loss of existing open space.

Assessment

The planning issues raised by this planning application are extremely limited and relate solely to the design of the fencing and netting and any impact that the fence and netting might have the amenity of adjacent residential occupiers.

To be clear, planning permission is not being sought for the use and activities being carried out on the land which are entirely lawful being ancillary to the use of the site as a school. Therefore, any residential amenity considerations relate solely to the impact and effects of the perimeter fence and



netting and not impacts arising from the use itself. The application cannot therefore be used as a means by which to control use of this area and any such condition would be unlawful.

It is also important to note that the complaints that have been received by the Council regarding the playground and pitch have arisen **only** as a result of residential development being granted planning permission in close proximity of the school (and in particular playgrounds / playing pitches) without proper consideration being given to the potential noise impacts of the school on the proposed housing. Indeed, no Noise Impact Assessment was submitted with the planning application for this residential development and therefore no consideration was given to the need for mitigation, including enhanced glazing standards for windows in the rear elevation of properties facing the school or acoustic boundary fencing in order to protect the future occupants and avoid complaints regarding noise as has now occurred.

Agent of change policy and government guidance contained in paragraph 187 of the NPPF is absolutely clear that it is for the new development to ensure that suitable mitigation is put in place before development is completed to ensure that the operation of existing businesses and community facilities is not adversely affected. It is not for the existing use to be required to curtail their operation or have their activities restricted or for them to be required to introduce measures to mitigate their established activities as a consequence. This is seemingly what is being sought by neighbours in this case.

Turning to the planning issues and specifically the design of the fencing, this is of a high quality and a good design. It thus complies with relevant design policies and is considered entirely acceptable on this site which is not visible from any public vantage point.

With regard to the impacts on adjacent neighbours, this is limited to the visual impact of the fencing and netting and any noise impacts arising from its installation. With regard to the former, there is no detrimental visual impact on neighbours. Whilst the netting is 8 metres in height it is of an open construction and being located in excess of 30 metres from the rear elevation of the closest property and separated by trees and vegetation has little, if any, visual impact being largely obscured. With regard to potential noise as a result of balls hitting the fencing and netting and causing rattling, this will no longer be an issue due to the introduction of dampeners and the method of construction and installation.

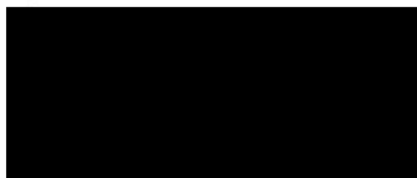
Conclusion

To conclude, the proposed development is considered wholly acceptable and compliant with all relevant policies at both a local and national level. Accordingly, we respectfully request that planning permission is granted to enable matters to be brought to a swift and final conclusion.



If there are any queries or you wish to discuss any matters further, please do not hesitate to contact me.

Yours sincerely,



Helen Binns BA(Hons) MTPL MRTPI
Principal Consultant

