

Planning Committee 5 January 2017

Tabled Paper for Item 2.9 – Lansdowne County Primary School, Gladstone Drive, Sittingbourne

This supplementary advice is provided to Members for additional guidance on the law and regulations on development affecting playing fields or playing pitches.

Paragraph 18 of the Town and Country Planning (Development Management Procedure) Order 2015 prescribes that certain bodies listed in Schedule 4 to the Order are required to be consulted and their views considered by the local planning authority.

Paragraph z of Schedule 4 requires Sport England to be consulted if the proposed development is likely to prejudice the use or, result in the loss of land being used as a playing field or, land which has been used as a playing field at any time in the last 5 years and is allocated as a playing field in the local plan or, any emerging local plan or involves the replacement of a grass surface of a playing pitch on a playing field with an artificial surface.

Paragraph z applies if;

- a) The land affected is now or has been used as a playing field in the last 5 years. This is a question of fact for your planning officer to advise upon or,
- b) is allocated in the current or emerging local plan as playing field. This is not the case. Or
- c) involves the replacement of the grass surface of a playing pitch with an artificial surface. The planning officer will advise if this is a playing pitch at present. The application is to replace the existing grass surface with an artificial surface.

This notification has been carried out and Sport England has objected to the application.

The current Ministerial Circular and Direction is dated 2009 (revoking the previous 1998 Direction) and precedes the Town and Country Planning (Development Management Procedure) Order 2015 so there is scope for error in interpreting the 2009 Circular. The 2009 Circular requires Local Authorities to consult the Secretary of State before granting permission for certain types of development.

Paragraph 7 of the 2009 Circular and Direction states that where “playing field development” is proposed and the land concerned is local authority land or, land of an educational establishment in use as a playing field or, is land of an educational establishment that has been used as a playing field within the last 5 years then, if Sport England have been consulted and objected on specified grounds the local authority is required to consult the Secretary of State before making a decision on the application. This is land of an educational establishment.

Paragraph 9 of the Circular and Direction states that where the Circular and Direction applies the Local Authority shall consult the Secretary of State.

The specified grounds for referral of an objection by Sport England are:

- i) there is a deficiency in playing fields in the area of the local authority concerned (Swale Borough), or
- ii) the development would result in such a deficiency, or
- iii) the development involves the loss of a playing field and any alternative or replacement is not as ‘useful’.

Playing field development is not clearly defined in the current 2015 Order or the 2009 Circular and Direction. The distinction between a playing field and a playing pitch is not clearly made, however, a

playing field can include a number of playing pitches together with ancillary provisions while a playing pitch is laid out for the playing of sport such as a marked out netball court or rugby pitch.

Accordingly, Members are advised that if they consider that the objections from Sport England are made on any of the 3 grounds i), ii) or, iii) then Members must refer the application to the Secretary of State. (and if nothing is heard within 21 days the authority may then determine the application). If Members consider the objection is not made out on any of the 3 grounds, Members may resolve that they wish to approve the application without referring the application to the Secretary of State.

Paragraphs 11 and 12 of the 2009 Circular and Direction provide that if, a reference to the Secretary of State is required then, the authority shall not grant planning permission until 21 days have passed from the date of referral. Alternatively, if the Secretary of State informs the authority that they do not intend to issue a direction following a referral, the authority may determine the application. Accordingly Members are advised that it is better, if minded to make a referral to the Secretary of State, that no decision to grant or refuse permission is made until such time as the 21 day period has expired.

Members are reminded that they are required to take account of the NPPF and in particular paragraph 74. This provides that

- a) building on Open Space should not be undertaken or,
- b) any loss of Open Space would be counterbalanced by equal or better provision or,
- c) the development is for alternative provision of sports or recreational facilities.

Since the land is Open Space, regardless of whether it is a playing field, the interpretation of paragraph 74 is a matter of planning judgement for Members to undertake.

Members are advised to consider the following matters;

- 1) does the proposed development lead to the loss of an existing playing field?
- 2) Is the proposed development on land which has been used as a playing field within the last 5 years and is the land allocated as playing field in a local plan?
- 3) Does the development involve the replacement of an existing grass playing pitch with artificial surface?

If Members answer to any of these first three questions is yes, then Members should consider next whether any of the mandatory grounds for referral of an objection on the part of Sport England set out in paragraph 7 (b) of the 2009 Circular are made out, that is to say;

- i) that there is a deficiency in playing fields in the Swale area
- ii) that the proposed development would cause such deficiency or
- iii) that the proposed development would result in the loss of a playing field and any replacement is not as useful.

If Members consider that none of these grounds of objection are made out then Members are advised that the Circular and Direction does not apply and there is no requirement to refer the matter to the Secretary of State.

However, Members are advised that if they consider that the objections from Sport England are made on any of the 3 grounds i), ii) or, iii) then Members must refer the application to the Secretary of State (and if nothing is heard within 21 days the authority may then determine the application).