

## RECOMMENDATION FOR PLANNING AND DEVELOPMENT COMMITTEE

### APPROVAL

**DATE:** 14 MARCH 2024

**REF:** SK

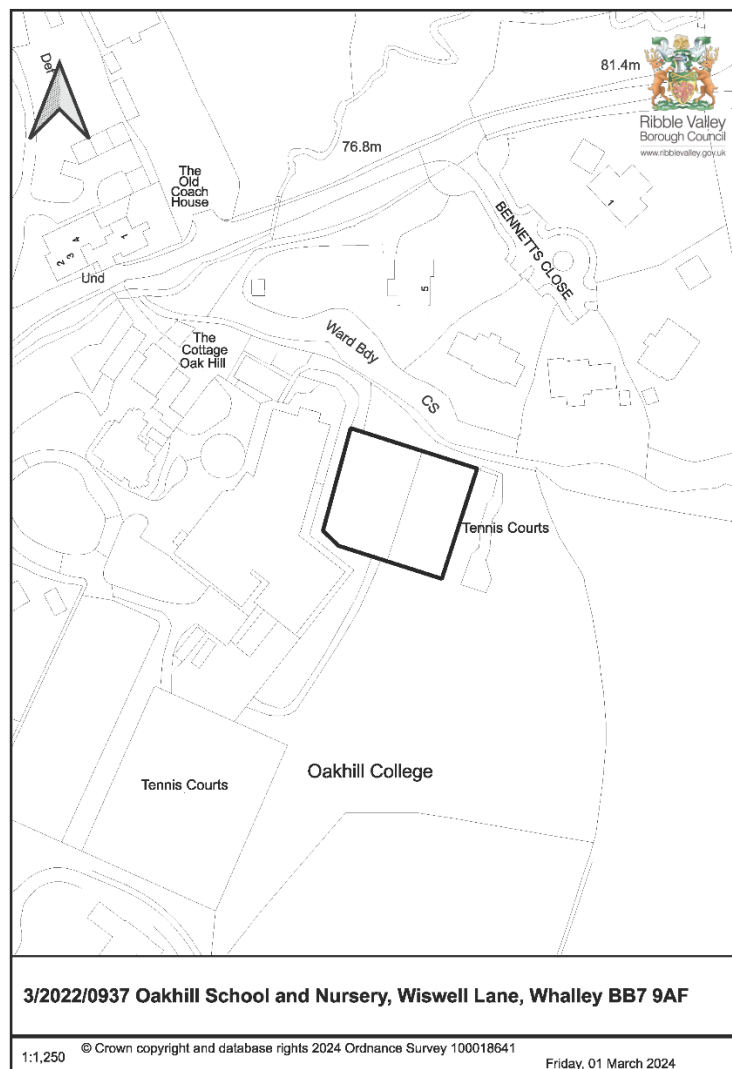
**CHECKED BY:** LH

**APPLICATION REF:** 3/2022/0937

**GRID REF:** SD 373812 436892

### DEVELOPMENT DESCRIPTION:

PROPOSED ERECTION OF REPLACEMENT THREE METRE HIGH PERIMETER FENCE AND INSTALLATION OF EIGHT METRE HIGH BALL STOP NETTING AT OAKHILL SCHOOL AND NURSERY WISWELL LANE WHALLEY BB7 9AF



## **CONSULTEE RESPONSES/ REPRESENTATIONS MADE:**

### **PARISH COUNCIL:**

Whalley parish council have offered the following observation(s):

*Whalley parish Council acknowledges the concerns raised by residents regarding noise pollution. We strongly urge the Planning Authority to utilise all available legislation to effectively address this issue. If deemed suitable, we recommend considering the installation of acoustic fencing as a potential solution.*

### **RVBC ENVIRONMENTAL HEALTH:**

Ribble Valley Environmental Health Team have offered the following observation(s):

*Anecdotally, It has been reported to the environmental health department that the Artificial Grass Pitch (AGP) at Oakhill School was created post development of the houses on Bennetts Close, Whalley.*

*Satellite Imagery from the 22nd April 2015 shows a tarmacked sports area/children's play ground associated with the Nursery/School on the Oakhill site and the development of the new houses on Bennetts Close. Satellite imagery from the 28th June 2018 (the next time dated satellite image) shows the completed housing and also the newly created AGP.*

*It has also been anecdotally reported to the environmental health department by complainants that usage of the tarmacked area outside of school hours changed when the AGP was installed; reportedly, prior to installation, the tarmacked area was predominantly used during school hours, which isn't deemed an issue to local residents, as they state noise during normal school hours is expected.*

*From a planning perspective, it is my understanding that because the previous tarmacked court area was used for sports purposes, the AGP does not need planning permission for 'change of use'. However, I understand the new fencing down the left-hand side of AGP and the new netting around the AGP does. Advertently, the installation of new fencing is part of the creation of the AGP by which the usage outside of school hours has been reported to environmental health as causing a noise problem.*

*As a consequence of complaints made to the environmental health department, in-person noise monitoring has been undertaken by two environmental health officers and an environmental health technical officer as part of a noise investigation. All three officers who have undertaken monitoring mutually agree that the impulsive noise from ball strikes and shouting from users would seriously restrict residents from using the rear gardens of their properties and is therefore detrimental to the amenity.*

*Reviewing the Noise Impact Assessment submitted as part of this application, referenced 51-027-R1-1, 2, the data presented lacks focus on the main noise characteristic of concern from use of the AGP which Environmental Health Officers raised directly to the management of Oakhill. As referenced in the report, it is the environmental health officers' opinions that the noise witnessed by them within the garden of a nearby residential property from use of the AGP is of a level and character to substantially interfere with use and enjoyment of the external amenity area and if the*

*noise continues, unabated, a statutory nuisance will exist and the Council will be duty bound to issue an abatement notice under section 80 of the Environmental Protection Act 1990.*

*The law of nuisance requires no particular level of noise to be proven to have occurred in order for a nuisance to exist. In *Murdock v Glacier Metal Co Ltd* [1998] Env. L.R. 732 the Court held that whether or not exceedance of the WHO guideline for a good sleep at night was exceeded was not determinative of the issue. The test to be applied was:*

*“whether according to the standards of the average person and taking into account the character of the neighbourhood the noise was sufficiently serious to constitute a nuisance”.*

*The Courts have also held that noise which is below the background level is nevertheless capable of constituting a nuisance: *Godfrey v Conwy County Borough Council* [2001] Env. L.R. 38.*

*In this case Mr Godfrey owned a building used for music practice. Following complaints from neighbours, an abatement notice was served by Conwy County Borough Council on the basis that the noise was a statutory nuisance under section 79(1)(g) of the Environmental Protection Act 1990. The noise emanating from the building was not higher than ambient levels but the drums and bass could be heard strongly and the inspector considered this to be annoying in that it was out of place, repetitive and of long duration. Mr Godfrey appealed to the High Court. The Court ruled that the correct test for a statutory nuisance was the common law test of unreasonable interference with the enjoyment of property. It could not be contended that noise above ambient levels must be demonstrated before statutory nuisance could exist: noise could be a nuisance if it was out of place and intrusive. The appeal was dismissed.*

*In *Lewisham LBC v Hall* [2003] Env. L.R. 4 the Court held that it was not necessary to produce sound level readings in order to demonstrate that a nuisance had occurred. The evidence of experienced environmental health officers as to the quality and effect of the noise can be sufficient to establish a nuisance.*

*Within the submitted noise report, reference is made to the World Health Organisation Guidelines and Sports England guidance. Neither of these provide guideline levels for LAmax values for outside amenity areas, which is the focus of the noise issue. Using only average sound levels, can hide problematic impulsive sound levels (as in this case).*

*“The sudden onset of a sound is defined as an impulse”, because the noise from balls striking the fence and shouting is sudden, loud, and unexpected, it has a tendency to startle the listener; “sound with prominent impulses has been shown to be more annoying than continuous types of sound with the same equivalent sound pressure level” (Bsi 2014).*

*The only reporting of LAmax values within the submitted noise assessment is the single daily figure of the 10th Highest Maximum Noise Level from pitch use between 10:00 – 22:00. Given impulsive noise is the main finding of concern, the lack of investigation into this inadequate.*

*I acknowledge that the report predicts that LAmax levels from use of the AGP will not exceed the ‘outside bedrooms’ value of 60dB, however, this value relates to a time period over 8-hours between 23:00 – 07:00 and refers to sleep disturbance within a bedroom of a dwelling, therefore it is irrelevant to this case.*

*It is the opinion of the RVBC Environmental Health Team that the best outcome in the planning phase is to strike a balance between neighbours being able to use the external areas of their*

*properties without unreasonable noise interference and the school being able to use the AGP for community use outside normal school hours.*

The response from the RVBC Environmental Health Team further states, that should consent be granted, they would request the imposition of a condition that restricts the use of AGP pitch to that of 08:00hrs to 18:30hrs Monday – Friday, with no weekend usage permitted.

In the absence of the imposition of such a condition the Environmental Health team consider that the proposal would result in direct conflict with national planning Policy, which seeks to protect residential amenity and the living conditions of existing/future residential occupiers.

## **ADDITIONAL REPRESENTATIONS:**

Three letters of representation have been received objecting to the proposed development on the following grounds:

- Increase in noise and disturbance from the existing Artificial Grass Pitch
- Increase in noise and disturbance resultant from ‘ball-strikes’ on the fencing
- Existing activities preclude the ability for nearby occupiers to enjoy the use of their garden areas
- Light pollution

### **1. Introduction**

- 1.1 The application is being brought to Committee following a call-in request from Councillor Ged Mirfin which was issued at the time whereby he was a Ward Councillor, with issues relating to noise pollution and the adequacy of acoustic fencing stated as the planning reasons for the call-in.

### **2. Site Description and Surrounding Area**

- 2.1 The application relates to the Artificial Grass Pitch (AGP) associated with Oakhill School and Nursery located off Wiswell lane, Whalley. The pitch is located towards the north-eastern extents of the Oakhill Site, being located within the defined settlement limits of Whalley. The site to which the application relates benefits from a DMB4 ‘Existing Open Space Provision’ designation.
- 2.2 The application site is bounded to the west by buildings associated with the Oakhill Complex, with the site being bounded to the north by existing tree coverage and residential dwellings associated with ‘Bennetts Close’. To the south of the site are playing fields associated with Oakhill with areas of tree-coverage and greenfield land being located to the east.

### **3. Proposed Development for which consent is sought**

- 3.1 The application seeks consent for the erection/installation of replacement three-metre-high perimeter fence and associated ball-stop netting around the perimeter of the existing Artificial Grass Pitch associated with Oakhill School and Nursery.
- 3.2 The submitted details state that consent is sought for the following:

- *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. 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.*
- *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.*

#### 4. **Relevant Planning History**

No recent planning history directly relevant to the determination of the current application.

#### 5. **Relevant Policies**

##### **Ribble Valley Core Strategy**

Key Statement DS1: Development Strategy

Key Statement DS2: Sustainable Development

Key Statement EC2: Development of Retail, Shops and Community Facilities

Key Statement DMI2: Transport Considerations

Policy DMG1: General Considerations

Policy DMG2: Strategic Considerations

Policy DMG3: Transport & Mobility

Policy DME1: Protecting Trees & Woodland

Policy DME2: Landscape & Townscape Protection

Policy DME3: Site and Species Protection and Conservation

Policy DMB1: Supporting Business Growth and the Local Economy

Policy DMB4: Open Space Provision

National Planning Policy Framework (NPPF)

#### 6. **Assessment of Proposed Development**

##### 6.1 **Principle of Development:**

6.1.1 The proposal seeks consent for the replacement of existing steel wire mesh 'rebound' fencing and high-level ball stop netting to serve an existing Artificial Grass Pitch that is open for use by the wider community, within the site benefiting from a DMB4 designation. As such, Key Statement EC2 and Policy DMB4 are primarily, but not solely, engaged in respect of assessing the acceptability of the principle of the development and its alignment or potential conflict with the aims and objectives of the Ribble Valley Core Strategy.

6.1.2 In this respect Key Statement EC2 states that 'proposals that have an adverse upon existing community facilities would only be permitted as an exception where the proposed development would bring defined and demonstrable benefits'.

- 6.1.3 In respect of the DMB4 designation of the application site, in that it is considered to be existing 'Open Space Provision', Policy DMB4 states:

*The borough council will refuse development proposals which involve the loss of existing public open space, including private playing fields which are in recreational use. In exceptional circumstances and following a robust assessment where the loss of a site is justifiable because of the social and economic benefits a proposed development would bring to the community, consent may be granted where replacement facilities are provided, or where existing facilities elsewhere in the vicinity are substantially upgraded. These must be readily accessible and convenient to users of the former open space areas.*

*It is important to protect existing recreational areas from development. Within defined settlements public recreational land will be identified on the proposals map.*

- 6.1.4 Taking account of the above, the proposal seeks the replacement of existing infrastructure provision associated with an existing use, as such there would be no resultant adverse impact upon the 'existing community facilities' nor would the proposed development result in 'the loss of existing public open space' (including private playing fields which are in recreational use).
- 6.1.5 In this respect, notwithstanding other development management considerations, it is considered that the principle of the development raises no significant measurable direct conflict with aims and objectives of both Key Statement EC2 and Policy DMB4 of the Ribble Valley Core Strategy.

## 6.2 Impact(s) upon Residential Amenity

- 6.2.1 Given the proposal seeks the replacement of existing 'perimeter fencing' and 'ball-stop' netting, within close-proximity to existing nearby residential receptors, consideration must be given in respect as to whether the proposed replacement infrastructure will result in any undue impacts upon nearby residential amenities by virtue of overbearing impact, a loss of light, loss of privacy, detriment to outlook or a diminishing of the sense of residential amenity currently experienced by existing nearby occupiers by virtue of excessive unacceptable levels of noise or disturbance.
- 6.2.2 In this respect Policy DMG1 of the Ribble Valley Core Strategy is engaged which requires that development proposals must take 'account of the effects on existing amenities' and should not 'adversely affect the amenities of the surrounding area'.
- 6.2.3 In respect of the above, members will note that the Local Planning Authority is aware of a number of noise complaints having been received by RVBC Environmental Health Team from nearby residential occupiers in respect of the use of the Artificial Grass Pitch. Specifically, these complaints relate to noise, excessive shouting, light pollution and 'impulse' noise pollution resultant from 'ball-strikes' to the existing perimeter fencing associated with the activities undertaken on the land.

- 6.2.4 However, members will additionally note that the application does not seek consent nor retrospective consent for the use of the land as an Artificial Grass Pitch (AGP). With the use of the land for such purposes, in isolation and at the point of the operational use commencing, not constituting a change of use of the land for which planning permission would be required.
- 6.2.5 As such, regardless of the proposed perimeter fencing provision, the current use as an AGP could continue indefinitely without the ability for the local planning authority to impose any controlling mechanism(s) on the use of the land. Nor could the local planning authority limit or restrict the current activities undertaken on the land unless such uses, in the future, involved the introduction of a use or uses which would constitute a material change of use.
- 6.2.6 In this respect, consideration must be given therefore solely to the provision of the replacement perimeter fencing and ball-stop netting, and as to whether the introduction of such replacement provision(s), would result in any increased adverse impacts upon residential amenity over and above that of the existing situation.
- 6.2.7 The submitted details propose the installation of perimeter steel-mesh fencing (at a height of 3m) around the perimeter of the AGP, with 'ball-stop' netting being mounted above and on top of the mesh-fencing, resulting in the hybrid arrangement benefitting from a cumulative height of 8m.
- 6.2.8 It is noted that RVBC Environmental Health Team, in light of noise complaints, recommend the imposition of a condition that would limit the use of the AGP to that of 08:00hrs to 18:30hrs Monday to Friday, with no weekend usage being permitted. However, the imposition of such a condition would fall outside of and go beyond the remit of the current application insofar that the application does not relate to the 'use of the land'. As such, for assessment purposes, the remit of the assessment within the current application is limited to that of an assessment and as to whether the proposed fencing provision(s) would result in additional harm over and above that of the existing situation or whether such provision would result in excessive levels of unacceptable noise pollution, particularly in relation to 'impulse' noise events resultant from 'ball-strikes' upon the fencing.
- 6.2.9 In this respect, the proposal seeks to replace existing fencing provision(s) with products that are considered to be of a higher specification, with the submitted supporting information stating the installation of the replacement fencing arrangements will include the following:
1. *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.*

6.2.10 Whilst no specific technical information is available in respect of the noise emitted from the proposed fencing as a result of intermittent ball-strikes, the installation of a higher specification product, along with the measures outlined above is likely to result in overall 'betterment' in respect of noise emission(s) or at worse a 'neutral' impact when taking account of current noise emitted as a result of the current fencing.

6.2.11 In support of the application the applicant has commissioned a Noise Impact Assessment (November 2023) with the report stating that:

*'This is a very strong indication that noise impact from the AGP is not considered adverse, especially considering the context. Here, matches are restricted to between 17:30 and 20:30 during the week and no matches at weekends. Subjectively this is considered an over mitigation and, considering the outcome of the assessment, is unwarranted.*

*Indeed, the operation of the AGP does not exceed widely acceptable external and internal noise levels in accordance with BS 8233 and WHO Guidelines.*

*A further point to note is existing school noise and outdoor area usage by the pupils between 08:00 and 15:00 ranges between 59.5 and 67.4 dB. As such, the resultant noise from the pitch at the measurement position is no louder than that already resultant from typical school noise, i.e. children playing outside. Indeed, the highest pitch noise is lower than the highest school source noise level. This is extremely important when considering context and the nature of the noise. Raised voices and use of the pitches already takes place as part of the school operations during the day. As such, the use of the pitches does not resultant in a new noise source nor one of higher intensity'.*

6.2.12 With the Noise Impact Assessment, in respect of the proposed mesh fencing, further stating that *'the replacement of the green mesh fencing to be replaced with a lower noise fence with resilient fixtures to lessen impact sounds. Were this to be approved and installed, this would further reduce noise levels at the receptors bringing noise levels comfortably below the criterion further'.*

6.1.13 As such and in respect of the above matters, it is not considered that the provision of the replacement 'mesh-fencing' and associated ball-stop netting (nor associated intermittent 'impulse' noise events resultant from 'ball-strikes'), would be of a



measurable and quantifiable level of detriment to existing residential amenities that would warrant the refusal to grant planning permission on these grounds.

- 6.1.14 Taking account of the above matters, the proposal does not raise any significant measurable direct conflict with Policy DMG1 of the Ribble Valley Core Strategy which seeks to protect existing and future residential amenities from undue negative impacts.

### 6.3 Visual Amenity/External Appearance

- 6.3.1 The proposed hybrid fencing will be read largely in context with the existing Oakhill School and associated playing fields/buildings and will be read as being infrastructures serving and being part of the wider open space associated with the school, as such the introduction of the fencing arrangement is unlikely to be read as being an anomalous, discordant or unsympathetic addition.
- 6.3.2 It is noted that the hybrid-fencing arrangement will be afforded some limited views within the context of the wider area, however given the level of visual permeability inherent to the fencing provision(s), in particular the high-level ball stop netting, it is not considered that their presence would result in any undue significant measurable impact(s) upon the character or visual amenities of the area.
- 6.3.3 As such and taking account of the above, the proposal does not raise any significant direct conflicts with Policy DMG1 insofar that there will be no measurable significant harm to the visual amenities of the area resultant from the proposed development.

### 6.4 Landscape and Ecology:

- 6.4.1 No implications resultant from the proposal nor any measurable conflict(s) with Key Statement EN4, nor Policies DME1, DME2 or DME3 of the Ribble Valley Core Strategy.

### 6.5 Highway Safety and Accessibility:

- 6.5.1 The submitted details do not propose alterations to the highway, internal site configuration nor development that would affect existing car-parking provision or vehicular manoeuvring provision.
- 6.5.2 As such and taking account of the above, the proposed development results in no significant measurable direct conflict(s) with Policies DMG1 nor DMG3 of the Ribble Valley Core Strategy, which seek to ensure the continued safe operation of the highways network and that adequate vehicular-parking and pedestrian infrastructure provision is provided/maintained to serve existing and proposed development.

## 7. Observations/Consideration of Matters Raised/Conclusion

- 7.1 For the reasons outlined above it is considered that the principle of the development raises no significant measurable direct conflict with aims and objectives of both Key Statement EC2 and Policy DMB4 of the Ribble Valley Core Strategy.

- 7.2 It is further considered that the proposal does not raise any significant direct conflicts with Policy DMG1 of the Ribble Valley Core Strategy insofar that there will be no measurable significant harm to the residential amenities of neighbouring properties or the visual amenities of the area resultant from the proposed development when taking account of the existing situation regarding the lawful use of the pitch and the presence of existing fencing.

RECOMMENDATION: That the application be APPROVED subject to the following condition(s):

1. The development hereby approved must be begun not later than the expiration of three years beginning with the date of this permission.

REASON: Required to be imposed by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in complete accordance with the proposals as detailed on the following drawings/submitted information:

Site Location Plans: OS/S/3G003

Proposed Plan and Fencing Elevations: OS/S/3G003

'Dulok Rebound' (Double Wire Panel System)

Ball Stop Netting Details (Polypropylene Mesh)

REASON: For the avoidance of doubt and to clarify which plans are relevant to the consent hereby approved.

## BACKGROUND PAPERS

[https://webportal.ribblevalley.gov.uk/site/scripts/planx\\_details.php?appNumber=3%2F2022%20937](https://webportal.ribblevalley.gov.uk/site/scripts/planx_details.php?appNumber=3%2F2022%20937)