

TEWKESBURY BOROUGH COUNCIL

Report to:	Executive Committee
Date of Meeting:	30 August 2017
Subject:	Perrybrook Development, Brockworth
Report of:	Andy Sanders, Community and Economic Development Manager
Corporate Lead:	Annette Roberts, Head of Development Services
Lead Member:	Lead Member for Health and Wellbeing
Number of Appendices:	One

Executive Summary:

The Perrybrook development for up to 1,500 houses was permitted by the Secretary of State in March 2016 following a public inquiry. The development is subject to a Section 106 Agreement and this report recommends proposals to discharge the provisions in respect of an outdoor sports area and proposed changing facility.

Recommendation:

To RESOLVE:

1. (a) That the transfer of the outdoor sports area and (subject to b) below) the changing facilities referred to in the s106 Agreement goes direct from the Developer to Brockworth Community Sports and Recreation Limited, subject to
 - i) the Company's establishing charitable trust status (within the period set out in the s106 Agreement) with the Objects of the charitable trust restricted to the promotion of community participation in sporting and recreational activities for the benefit of the inhabitants of Brockworth and the surrounding areas; and
 - ii) the Council being satisfied in all other regards.
- (b) Notwithstanding the provisions in resolution (a) above, the Head of Development Services in consultation with local Ward Members, the Lead Members for Health and Wellbeing, Finance and Asset Management and Built Environment, the Head of Finance and Asset Management and the Borough Solicitor, may at any time exercise the election under the s106 to receive the changing facilities contribution in lieu of the changing facilities being constructed.
2. In the event of charitable status not being obtained within the period required set out in the S106 agreement that the Council takes the transfer of the outdoor sports area shown on the plan appended to this report and elects to receive the changing facilities contribution.
3. That, subsequent to the transfer of the outdoor sports area to the Council and receipt by the Council of the changing facilities contribution, the Head of Development Services:
 - takes steps to identify an appropriate recipient of the outdoor sports area and the changing facilities contribution.

- **reports back to Executive Committee on the legal status of the proposed recipient, any undervalue implications and any representations received as a result of any statutory notices of the proposed disposal considered necessary.**
- **reports back to Executive Committee on the proposed measures for ensuring that the changing facilities contribution is properly applied.**

Reasons for Recommendation:

To enable the applicant to proceed with reserved matters and commence development on site.

To provide a clear way forward for Brockworth Sports Foundation.

To provide a sustainable option for sport within the Brockworth community.

Resource Implications:

Should the Foundation not meet the conditions in accordance with the Section 106 Agreement, the Council would need to establish alternative management arrangements to take responsibility for the community benefit.

Legal Implications:

Accepting land ownership has implications for the Council in terms of land maintenance and liability to third parties. There is no guarantee at this stage that a third party will accept a transfer at a later date. It would be usual in a transfer to the Council under a s106 Agreement for the Developer to impose strict restrictions on use, which would limit the “pool” of third parties willing to accept a transfer from the Council.

In the event that an onwards transfer is proposed, there are statutory procedures that have to be undertaken and the results considered by the Council when coming to a decision whether or not to proceed with such transfer (e.g. valuation and public notice).

Risk Management Implications:

It is essential to ensure that an appropriate body is in place to manage the facilities to ensure future sustainable local use for the community. Should the Foundation obtain charitable status, this should be achieved; if not, alternative arrangements will need to be put in place by the Council. Officers will offer help and support to the Foundation in order to achieve its aim.

Performance Management Follow-up:

Progress will be reported through the Health and Wellbeing Portfolio and Executive Committee as appropriate.

Environmental Implications:

The report seeks to secure the most effective and secure method of achieving the stated aim of securing the open space, landscape and sports provision within the development.

1.0 INTRODUCTION/BACKGROUND

1.1 The Perrybrook development for up to 1,500 houses was permitted by the Secretary of State on 31 March 2016 following a public inquiry.

1.2 The development is subject to a Section 106 Agreement which contains a number of clauses relating to the provision of on-site and off-site sports and recreational facilities as well as community infrastructure. Within the Section 106 Agreement there are two sets of assets, specifically a changing facility and an outdoor sports area which could

potentially be transferred to the Brockworth Sports Foundation.

2.0 BROCKWORTH SPORTS FOUNDATION

- 2.1** Brockworth Community Sports and Recreation Ltd (commonly known as The Brockworth Sports Foundation) is a company limited by guarantee. The Council has been informed that membership is comprised of Brockworth Rugby Football Club (BRFC) and Brockworth Albion Football Club (BAFC). The Foundation exists to promote community participation in healthy recreation for the benefit of the inhabitants of Brockworth and surrounding areas by promoting and encouraging all sections of the community to participate in sporting and recreational activities. In doing so they provide, manage and develop facilities for sporting and recreational facilities. BRFC own an existing clubhouse which includes changing rooms, function room, bar and car parking, which is located within the Perrybrook site although not within the boundary of the development (see plan at Appendix 1). The Club has access to one main pitch on a lease basis, which is part of the development site, and has access to another adjacent pitch owned by Gloucestershire County Council and leased to Millbrook Academy but this is not within the development site. The clubhouse where BAFC is also based is in average to poor condition with significant works needed to improve the standard of the changing facilities.
- 2.2** Brockworth Community Sports and Recreation Ltd has indicated an intention to become a charity. Charitable status would provide benefits to the Foundation in terms of accessing external funding, as well as having charitable objectives which would focus on the development of sport in the local community. Charitable status would also protect the value of club assets in the continued provision of sporting and leisure facilities for the community.

3.0 CURRENT POSITION

3.1 Changing Facility

- 3.1.1** The Section 106 Agreement provides for either a fitted-out changing facility (suitable for eight rugby and/or football teams) to be constructed by the developer, or a payment of a changing facilities contribution of £685,000 (index linked) to be used by the Council towards the provision of a new eight team sports changing facility on the development site, rebuilding of the clubhouse or other existing sports changing facilities within Brockworth.
- 3.1.2** Under the terms of the Section 106 Agreement, before the 135th dwelling on the site is occupied, the Council has to notify the developer if it wishes to take the contribution for the changing facilities instead of the developer constructing it themselves. If the Council had served this notice, the changing facilities contribution is to be paid prior to the occupation of the 255th dwelling. If the notice has not been served, once the changing facilities have been constructed by the developer, the developer is to offer to transfer the changing facilities to the Brockworth Sports Foundation.

3.2 Outdoor Sports Area

- 3.2.1** The outdoor sports area on the development site comprises 5.14 hectares in size to be used for outdoor sports and formal sports. This includes new sports pitches and the existing BRFC pitch.
- 3.2.2** The laying out of the new sports pitch is to commence prior to the occupation of the 135th dwelling and completed so that the outdoor sports area is ready for its intended use prior to the occupation of the 255th dwelling. Subject to prior written approval of the Council, the developer is then to offer to transfer the outdoor sports area to the Brockworth Sports

Foundation within six months of the completion of the laying out of the new sports pitches. This offer is to include the payment to the Brockworth Sports Foundation of a playing pitches commuted sum (calculated in accordance with rates set out in the Section 106 Agreement).

3.3 Local Representatives

- 3.3.1** Discussions with local Members suggest the need to to retain an element of control and security for the future of the facilities.

3.4 Progression of the Development

- 3.4.1** In order to facilitate the sale of the site for development, the applicant needs to know whether the changing facility is to be constructed or whether the changing facility contribution is to be paid instead. This will also impact on the reserved matters approvals.
- 3.4.2** Whilst Brockworth Sports Foundation is not currently ideally placed to take a transfer of the outdoor sports area nor the commuted sum, as the application for charitable status is not concluded it is anticipated that this will conclude in the near future.
- 3.4.3** On 17 May 2017, the applicant formally offered the outdoor sports area and changing facility to the Council (not currently built) but also indicated that there would be no problem with the Council electing to accept the changing facility contribution of £685,000 (index linked) in place of the changing facility.

4.0 THE WAY FORWARD

- 4.1** In view of the above, the proposal enables the Council to exercise greater control over the situation for the short term in order to achieve a sustainable option for sport within the Brockworth community.
- 4.2** Following the grant of charitable status to the Brockworth Sports Foundation (and subject to following statutory procedures and considering the results when coming to a decision whether or not to proceed with such transfer) the Council could then transfer the outdoor sports area to the Foundation and provide the changing facilities contribution in the form of a grant agreement. A charge would also be put on the outdoor sports area/facilities/existing clubhouse to secure compliance with the grant.

5.0 OTHER OPTIONS CONSIDERED

- 5.1** There are no further options that will satisfy the concerns expressed in Paragraph 3.3.1.

6.0 CONSULTATION

- 6.1** Consultation has been undertaken with local Members and the Foundation.

7.0 RELEVANT COUNCIL POLICIES/STRATEGIES

- 7.1** Health and Wellbeing Framework.

8.0 RELEVANT GOVERNMENT POLICIES

- 8.1** Localism Act 2011.

9.0 RESOURCE IMPLICATIONS (Human/Property)

- 9.1 No additional resources required.
- 10.0 **SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)**
- 10.1 The outdoor sports area and changing facilities will provide sustainable facilities that will ensure that local sports clubs will have a home and also have the ability to attract new members and participation in sport. The clubhouse will also be a focal point for the new community at Perrybrook, as well as help integrate the existing and new communities.
- 11.0 **IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)**
- 11.1 Not applicable.
- 12.0 **RELATED DECISIONS AND ANY OTHER RELEVANT FACTS**
- 12.1 Planning Committee – 19 August 2014.
Decision Letter of the Secretary of State dated 31 March 2016.

Background Papers: Planning Committee 19 August 2014 – Reports and Minutes relating to planning application 12/01256/OUT.

District Obligations Section 106 Agreement dated 15 September 2015.

Contact Officer: Andy Sanders, Community and Economic Development Manager
Tel: 01684 272094 Email: andy.sanders@teWKesbury.gov.uk

Appendices: 1 - Plan showing development site and existing community facilities.