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**Noctorum Field
Noctorum Road
Noctorum
CH43 9UQ**

Planning Statement

March 2023

On behalf of

Birkenhead School

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Executive Summary

This Planning Statement supports the resubmission of an outline planning application for the demolition of the existing pavilion and erection of up to 33 dwellings and associated infrastructure on Noctorum Field, Noctorum Road, Noctorum CH43 9UQ – which is private and unused, owned by the charity – Birkenhead School.

The re-submission of this application sits alongside the Inspectors dismissal of the proposal back in July 2022. At this point in time the Inspector concluded that all other previous concerns and objections have been addressed – including the character and appearance of the locality; adequate provision for affordable housing; safety and accessibility; drainage.

Furthermore, the Council, as the Local Planning Authority, have acknowledged that *‘the proposal site is acceptable ‘in principle’ as a residential proposal in urban location within the urban fabric of Birkenhead, in a predominantly residential area’*. Moreover, the proposals have been found to make more effective use of the land consistent with examples of infill and redeveloped sites found locally. It is considered to be in-keeping with the local area and represent an opportunity to maintain the boundary tree belt, whilst also providing bio-diversity.

The re-submission of this application demonstrates that the Inspector only outstanding reason for dismissal of the appeal has been satisfied and provides absolute clarity as to the acceptability of the necessary mitigation proposed, and the legitimate mechanism of delivering the quantitative and qualitative mitigation works at both Prenton RUFC and Old Parkonians RUFC.

The necessary quantitative and qualitative replacement of playing field to justify the loss of Noctorum Field involves a substantial investment to enhance the facilities at two local rugby clubs (Prenton RUFC and Old Parkonians). The enhance of facilities proposed is entirely compliant with the Council’s Playing Pitch and Outdoor Sports Strategy forward and will be implemented following the grant of planning permission and prior to the development of Noctorum Field.

The enhancements proposed will principally occur at Prenton RUFC who have planning permission, RFU and local councillor support to become a “community hub” (planning approved) for rugby, other sports, and community activities, and already have a waiting list from other clubs wanting to use the increase facilities. The approval of this application, and the connected application for enhancements works at Prenton will significantly enhance the Club’s existing poor quality training area will be enhanced through the creation a new dedicated playing pitch, and additional dedicated training grids. This is achievable through the School’s acquisition of additional land at Prenton RUFC. The proposal will result in a levelled, fully drained, and floodlit rugby pitch created.

Old Parkonians RUFC will benefit from a qualitative improvement comprising of the enhancement of drainage of their 1st XV pitch which will increase its weekly match equivalent use substantially).

These enhanced offerings on sports mitigation are fully deliverable thanks to the agreement of the neighbouring landowner, releasing land for sports development significantly greater than initially submitted. This is demonstrated through the submitted draft S106 Agreement.

Moreover, this proposal will enable the funding of a new sports hall (planning approved) at a local school that will also be available for community use in the evening and at weekends.

It is considered that this proposal can now readily be approved. It is compliant with the adopted Development Plan, the requirements of the National Planning Policy Framework.

1 Introduction

- 1.1 This supporting Planning Statement ('PS') has been prepared by Lambert Smith Hampton ('LSH') on behalf of Birkenhead School ('the Applicant').
- 1.2 Birkenhead School is an established independent charitable school with proud sporting and academic traditions and achievements throughout its 160 years in the community.
- 1.3 The PS has been prepared to support the re-submission of an outline planning application for the demolition of the existing pavilion and erection of up to 33 dwellings and associated infrastructure on Noctorum Field, Noctorum Road, Noctorum CH43 9UQ. The description of development is detailed below, and the proposal remains entirely consistent with the previous.

“The demolition of the existing pavilion and erection of up to 33 dwellings and associated infrastructure. All matters are reserved except for access”

- 1.4 To enable Wirral Council to positively determine this proposal in an efficient and effective manner this application is accompanied by the following:
- Site Location Plan [Ref. 100022432];
 - Existing Site Layout [Ref: none];
 - Indicative Masterplan prepared by LSH [Ref.SK01]; and,
 - Indicative Landscape Masterplan prepared by RSK [Ref: P.662375\01\04\02].
- 1.5 In addition to this Planning Statement, the application is supported by the following technical reports:
- Updated Design and Access Statement, prepared by LSH;
 - Updated Transport Statement (ref: 230228 324200 TS v2.0) prepared by Mode Transport;
 - Arboricultural Assessment prepared by ADAS;
 - Revised Flood Risk Assessment (ref: 680918-R1(01)-FRA). prepared by RSK;
 - Statement of Community Involvement prepared by BECG;
 - RSK (2019) 858293 Birkenhead School, Noctorum Site – Preliminary Ecological Appraisal Rev0
 - RSK Biocensus (2022) 2483303 Noctorum Field Update PEA and PRA Report - Rev01
 - Updated Ecological Walkover Survey (ref: 2485203 – Noctorum Field Ecological Constraints Walkover Report - Rev00); prepared by RSK
 - Preliminary Risk Assessment (Phase 1 Desk Study) prepared by RSK,
 - Bio-Diversity Net Gain Assessment; and
 - Draft Section 106 Agreement (Incorporated as Appendix 4 of this Statement)
 - Designing Out Crime Assessment (September 2021), prepared by Merseyside Police
 - Schedule of Suggested Planning Conditions
 - Statements of support from:
 - Rugby Football Union
 - Prenton Rugby Union Football Club
 - Old Parkonians Rugby Union Football Club
 - CGIs

- CGI Location Map
- Noctorum Field CGI (A)
- Noctorum Field CGI (B)
- Noctorum Field CGI (C)
- Noctorum Field CGI (D)
- Noctorum Field CGI (E)

- 1.6 The revised and previous suite of documents detailed above is consistent with the scope that submitted for the original outline planning application and as agreed prior to submission of that application. Where relevant the supporting technical reports have been updated.
- 1.7 In support of this submission the original Planning Statement, Appellant Statement of Case, the Council's Statement of Case, and the Inspectors Appeal Decision are also attached to enable the positive determination of the application.
- 1.8 The re-submission is being progressed in tandem with a connected application for the proposed quantitative and qualitative mitigation improvement works at Prenton RUFC (PP-11993351). In addition, the outline application will secure qualitative improvements works at Old Parkonians RUFC, which we understand do not comprise engineering works and therefore do not require planning permission. Details of these schemes are outlined later in this Statement.
- 1.9 The proposals are entirely intertwined, with one scheme not being achievable without the others. Therefore, the requirement to deliver the mitigation works will be legally secured through the request S106 Legal Agreement – as set out within the draft submitted in support of this Statement.

2 Background

2.1 The Council will be aware that there is a lengthy and detailed background to the re-submission of this application. For clarity, this section outlines the context required to form a view on the proposed development.

Noctorum Field – Planning Appeal [July 2022]

2.2 The original outline application (LPA Ref: OUT/21/01516) for Noctorum Field was submitted on the 14 July 2021 and was registered and validated by Wirral Council ('the Council') on the 20 July and 30 July 2021, respectively. The standard consultation expiry date expired on the 27 September 2021 and the statutory determination period ceased on the 29 October 2021. The original determination date was 29 October 2021, however, the Appellant subsequently agreed to extend the determination period until the 1 December 2021.

2.3 During the determination period the Applicant repeatedly sought engagement with the Council, with only one post submission meeting with Wirral Council (Kathleen Lawless, Interim Service Lead for Development Management and Building Control) taking place on the 13 December 2021. Following which and upon the expiry of the agreed extended determination deadline the applicant decided, at their December 2021 Governors meeting, to appeal for non-determination.

2.4 This appeal was submitted to the Planning Inspectorate on 2 February 2022 on the basis against non-determination (Appeal Ref: APP/W4325/W/22/3291997). The application was subsequently considered by Wirral Council at Planning Committee on the 17 March 2022, where the Council resolved to refuse the planning application on five grounds.

2.5 The main five reasons for refusal were as follows:

1. the effect of the loss of the existing playing fields with regard to local provision;
2. the effect of the proposal on the character and appearance of the locality;
3. whether or not the proposal would include adequate provision for affordable housing;
4. whether or not the site would provide a safe and accessible form of development.
5. Insufficient evidence relating to the proposed drainage system and retained connectivity for the lifetime of the development and without a functioning outfall the minimum operational standards cannot be met.

2.6 Wirral Council, within their appeal Statement of Case, confirmed [Paragraph 2.46] that following further evidence provided by the applicant's technical team to the LLFA and United Utilities that drainage was no longer an appropriate reason to withhold planning permission, and removed the reason for refusal five.

2.7 The Inspector then found in favour of the applicant on three out of the four other main grounds for refusal that the Council had identified, finding that:

- *'the site could deliver housing development which preserves the existing character of development in the locality'*. The proposal was considered to align with the requirements of Policies HS4 and HS6 of the Unitary Development Plan through the preservation of the existing boundary treatments and found to meet the National Planning Policy Framework ('the Framework') requirement to make efficient use of the land when considering the area's character and setting.
- proposal would include adequate provision for affordable housing. The Inspector confirmed that the on-site provision of up to 7 affordable units would meet the extent of current demand. As the scope of the submitted Unilateral Undertaking would allow for the final make-up and terms of affordable homes to be agreed with the Council, the Inspector concluded that 'the proposal would be consistent with the Framework's objectives of meeting the needs of groups with specific housing requirements ... and would align with Policies HSG2 and HS6 of the UDP and the Framework as they seek on-site affordable housing provision'.
- The site would provide a safe and accessible form of development, noting that the 'proposals would provide for a safe means of access to the public highway network and make adequate provision for accessibility, including to public transport services. It would align with Policy TR1 of the UDP and the aims of the Framework to promote sustainable forms of transport.'

2.8 The Inspector also confirmed that the appellant "*demonstrated that the site could be developed in a manner to preserve existing ecological interests and could provide biodiversity gains*" ... and that any disturbances arising because of construction phase could be mitigated through planning conditions. This is consistent with the statutory consultation advice from MEAS in respect of the original outline planning application which welcomed the biodiversity and ecological benefits of the proposal, as well as the overall design approach for retaining the key boundaries of the site.

2.9 It was concluded that the proposed development would be compliant with the requirements of the Development Plan when considered in the context of these grounds.

2.10 The Inspectors conclusions on these main issues are a material consideration that Wirral Council will need to consider when determining the re-submission of this outline planning application.

2.11 In addition to these matters, the Council's, within their own Appeal Statement of Case, have confirmed that they consider *'the proposal site is acceptable 'in-principle' as a residential proposal in urban location within the urban fabric of Birkenhead, in a predominately residential area'* [LPA Statement of Case – Para 4.1, Page 14]. The suitability of the Site for residential development was validated by the Inspectorate who in the Appeal decision (Paragraph 36) stated:

“I find that the site could deliver housing development which preserves the existing character of development in the locality. It would align with the requirements of Policies HS4 and HS6 of the UDP through the preservation of the existing boundary treatments and meet the Framework’s requirement to make efficient use of the land taking into account the area’s character and setting”

- 2.12 This ‘in-principle’ position is a material consideration that Wirral Council will need to consider when determining the re-submission of this outline planning application.
- 2.13 Despite finding in favour of the appellant in respect of the matters discussed above, the Inspector, in dismissing the appeal found that the adverse impacts arising as a result of the uncertainty surrounding the mechanism for delivery of the proposed quantitative and qualitative mitigation at Prenton RUFC and Old Parkonians RUFC would significantly and demonstrably outweigh the benefits as a result of conflict with the adopted Development Plan (UDP Policy RE6) and the Framework.
- 2.14 This uncertainty related to the need to secure the necessary planning permissions for the respective works and the lack of control over the delivery of the works at Prenton RUFC as a result of third-party land [which at the point in time the applicant had no control over the land]. This position was reached despite the submitted Unilateral Undertaking including reference to the sites and works given that not all those with interests in the land were party to its requirements, thus providing no legal guarantee that the specific mitigation works could be secured.
- 2.15 On this basis the Inspector concluded that this approach failed to meet the tests set out in Paragraph 57 of the Framework. Nor was a condition considered to be a suitable mechanism for facilitating the works (Paragraph 56, the Framework), given the need to secure planning permission for the improvements works.
- 2.16 It is necessary to state that providing a certain and legitimate mechanism for the delivering the quantitative and qualitative mitigation works justifying the loss of Noctorum Field remains the **only outstanding reason** prohibiting a positive determination of the applicants outline residential proposals.

Post Appeal Strategy

- 2.17 As highlighted the re-submission of this application is being progressed in tandem with a connected application for the proposed mitigation improvement works at Prenton RUFC (PP-11993351). In addition to that the proposal will enable the delivery of drainage works at Old Parkonians RUFC, which we understand do not require planning permission. Details of these schemes are outlined later in this Statement.

- 2.18 Through the accompanying draft S106 Agreement, alongside this application demonstrates that these collective works are entirely intertwined. The completion of works at Prenton RUFC and Old Parkonians RUFC will be connected to the delivery of development Noctorum Field. All parties [including the third-party landowner at Prenton RFC) are to be signatories to the S106 Agreement.
- 2.19 This application therefore provides absolute clarity that the connected delivery of the proposals is entwined within the requisite S106 Legal Agreement and demonstrates that the applicant, and all other signatories are committed to facilitating the delivery of the necessary quantitative and qualitative mitigation works.
- 2.20 The S106 Agreement provides a legal and legitimate mechanism that meets the test of Paragraph 57 of the Framework and is represents a legal obligation that is necessary to make the development acceptable in '*planning terms*', is directly related to the development; and is fairly and reasonably related in scale and kind to the development.
- 2.21 This approach directly responds to the Inspectors decision and unequivocally addresses the only outstanding reason for dismissal of the appeal.
- 2.22 On this basis it can be concluded that the development is compliant with the adopted Development Plan - thereby enabling Wirral Council to provide a positive resolution.

Alignment with Wirral Playing Pitch and Outdoor Sports Strategy [July 2021] ('PPOSS')

- 2.23 Notwithstanding the Inspectors position, it is also necessary to highlight that this connected approach directly responds to the conclusion within the Wirral Playing Pitch and Outdoor Sports Strategy [July 2021] ('PPOSS') [to which the Inspector attached considerable weight during the appeal - Paragraph 14] which recognises that both Prenton RUFC and Wirral (Old Parkonians) RUFC have ambitions of improving ancillary provision at their venues.
- 2.24 The connected improvements work fully accord with the Councils aims and objectives of the PPOSS. Therefore, the enabling effective of the proposal will facilitate a sustainable solution for the delivery of much-needed sports investment in the Borough, without the need for public sector financial resources. The alignment with the PPOSS represents a material consideration that is to be given weight in the decision-making progress.
- 2.25 To emphasise the significance of these proposals it is to be noted that they are fully supported by the two receptor clubs and the Rugby Football Union, who have all provide letters of support, which accompany the submission of this application. All of which are identified as key stakeholders within the PPOSS in respect of the aims and objectives for Prenton RUFC and Old Parkonians RUFC.

Sports Hall

- 2.26 Furthermore, the Council will be aware that the applicant was seeking to obtain outline planning permission for the proposed development in conjunction with a full planning application for a new £3.52m Sports Hall at Birkenhead School, Beresford Road campus (LPA Ref: APP/21/01552). An appeal (ref: APP/W4325/W/22/3291438) was submitted in respect of this proposal in parallel with the appeal for Noctorum Fields (as detailed above) again based on non-determination.
- 2.27 The Sports Hall proposal forms an extension to the existing sports hall and represents a significant investment by the applicant. As highlighted in the appeal and it is necessary to emphasise that the two proposals are inextricably linked, with the delivery of the sports facilities being dependent on the capital released from any future sale of Noctorum Field for residential development.
- 2.28 In considering the Sports Hall appeal the Inspector noted that the proposal would:
- *“deliver a number of benefits to the efficient operation of the school’s sporting education aims and improve the wellbeing of its users. It would better meet the broader educational needs since becoming a co-educational mixed school by offering a more inclusive and diverse range of sports and activities.*
 - *would concentrate facilities on the campus to aid logistic demands and improve safeguarding. It would offer greater opportunities for junior and infant aged pupils and assist in teaching continuity during periods of adverse weather. It would provide improved changing facilities and include new teaching opportunities associated with sport education. Furthermore, it could be offered for use by the wider community. These matters would contribute to promoting healthy and safe communities which are an aim of the Framework. In the context of the appeal proposal these are significant benefits of the scheme.”*
- 2.29 In considering the planning balance the Inspector found that
- *“The improvements to the educational offer at the school, the opportunities for physical activity and sport, including to the benefit of the wider community would outweigh the identified harm in the particular circumstances of the case. Accordingly, I find the proposal would comply with the development plan and the Framework when read as a whole.”*
- 2.30 In reaching this conclusion the Inspector allowed the appeal.
- 2.31 Without the benefit of the capital funds from the sale of Noctorum Field the identified improvements to the educational offer at the school, the opportunities for physical activity and wider community benefit are unlikely to be realised. The importance of the land receipt from the sale of Noctorum Fields cannot be overstated in this regard.
- 2.32 In considering the Noctorum Field appeal, the Inspector did highlight the connected nature of the proposals. However, as distinct proposals on separate sites the Inspector considered the

appeals on their own merits. Notwithstanding that, the Inspector did have regard to the sports hall proposal insofar as it was pertinent to the residential proposal.

2.33 In that regard the Inspector found that the sports hall proposal would not provide for a replacement of or address the latent demand for grassed outdoor pitches or the associated loss of the pavilion resulting from the development of Noctorum Field. Therefore, its benefits of were given limited weight against the loss of the sports ground.

2.34 The strategy now proposed provides for mitigation against the loss of Noctorum Field by facilitating improvements at both Prenton RFC and Old Parkonians RFC. Therefore, significant weight is to be given to the re-submission, and the capital receipt arising from the sites future disposal to fund the sports hall proposal and enabling the delivery of the significant benefits that it would provide – as detailed and validated by the Inspector.

Other Matters

2.35 Notwithstanding this applications lengthy and significant background context, and for the avoidance of doubt this application has regard to Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 and is accompanied by this Statement which demonstrates the proposals conformity with the Development Plan, relevant national policy, and guidance, as well as any other material considerations in respect of the only outstanding reasons prohibiting a positive resolution of the applicants outline residential proposals for Noctorum Field.

2.36 Given that the proposal remains entirely consistent with that previously considered all other matters [than those set out in the preceding paragraphs] have been considered in accordance with Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 it can be concluded that the proposal confirms with the Development Plan, relevant national policy, and guidance, as well as any other material considerations. LSH consider that these matters do not need to be revisited during the determination of this re-submission.

2.37 For the avoidance of doubt, however, this application is accompanied by a suite of updated technical evidence which demonstrates that the conclusions reached in respect of Highways, Ecology and Drainage / Flood Risk remain valid and consistent with the preceding, or appropriate mitigation can be implemented to ensure that the proposal remains consistent with the Development Plan. Therefore, reaffirming the context in which the application was considered by the Inspector as accurate and valid.

Wirral Emerging Local Plan

2.38 Since consideration of the original application, and determination of the appeal Wirral Council have submitted the emerging Wirral Local Plan to Secretary of State for independent examination.

- 2.39 Despite this representing an advanced stage [in accordance with Paragraph 48(a)], as the plan is yet to be subject to the scrutiny for soundness and given that there remains unresolved objections to draft policies [including by the applicant to the Council's draft allocation for Noctorum Field as Open Space] it is considered that only limited weight can be given to the policies of the emerging plan [in accordance with Paragraph 48(b)].
- 2.40 This position has been validated by Counsel and is a position that has been made clear to the Council in pre-application correspondence.
- 2.41 On 14 February 2023, the Planning Inspectorate in considering a residential appeal (ref: APP/W4325/W/22/3299658) confirmed this position.
- 2.42 Furthermore, the Councils Appeal Statement of Case demonstrates that the LPA considers ***'the proposal site is acceptable 'in principle' as a residential proposal in urban location within the urban fabric of Birkenhead, in a predominantly residential area'*** [LPA Local Planning Authority's Statement of Case – Para 4.1, Page 14] which emphasises why only limited weight should be attached to the draft policy allocation.

Pre-Application Engagement

Wirral Council

- 2.43 In developing the comprehensive re-submission strategy LSH have sought to engage with Wirral Council. On 04 October 2022, an initial letter was issued summarising our intended strategy for overcoming the Inspector's only outstanding area of concern following the dismissal of the appeal (Ref: APP/W4325/W/22/3291997), as detailed within the Appeal Decision.
- 2.44 The Council, responded to this correspondence on 20 January 2023, stating they did not have sufficient information to consider our approach to addressing the appeal decision and could not comment further. They suggested that the formal pre application route would be the best way of agreeing a position.
- 2.45 In response to this LSH issued further and more detailed correspondence on 30 January. This correspondence again provided an overview of the planning strategy we intend to pursue and clarified that the Council had sufficient information to form a view on the revised strategy and the certainty it provides in the context of the Appeal Decision.
- 2.46 In response to the pre-application suggestion LSH reviewed the scope of pre-application services offered [as set out within the Councils Pre-Application Fee Schedule, March 2022]. Upon review LSH concluded that there was not a suitable, or financially proportionate approach for engaging in respect of the only outstanding matter relating to the acceptability. Without a suitable mechanism in place our client suggested that they would be willing to engage with Officers on a chargeable hourly basis.

2.47 LSH received the formal response from Wirral Council on 21 February 2023. The Council identified that they *'see little merit in discussing the mitigation when they considered that the principle of developing on a 'Local Green Space' is inappropriate – which relates to the draft allocation within the emerging Local Plan'*. The Council referenced an application [OUT/22/01305] ('Grange Road') they had recently refused [10 February 2023], whereby the site is also the subject of a draft Local Green primarily on the grounds of prematurity given that the draft Local Plan has is now submitted for examination, with the Council giving weight to the draft allocation pursuant to Paragraph 48b of the National Planning Policy Framework ('the Framework'). The Council confirmed that *"the same arguments would apply to your proposed development. On that basis I see little merit in discussing the mitigation when it is considered that the principle of developing on a Local Green Space is inappropriate"*.

2.48 After a detailed review of the Grange Road scheme, the Council's position and the weight that is being attached to the respective policies of the emerging draft Local Plan, LSH responded on 06 March 2023 clarifying that the application of these same arguments to the proposed development would be **unjustifiable** and **unreasonable** at this stage for the following reasons:

"Despite the plan having being submitted for examination, and the first block of hearing sessions being announced [on Friday 3 March 2023] the fact of the matter is this, that the Council, in light of the significant unresolved objections to the Plan and specifically those associated with Local Green Space / the site specific allocations, cannot attribute anything other than limited weight until such time that the draft policies and allocations have been examined in accordance with legal and procedural requirements and whether it is sound or not [as required by Paragraph 48b of the Framework]. Furthermore, the weight to be attached has been confirmed by the Inspectorate in dismissing a recent appeal [ref: APP/W4325/W/22/3299658] on 14th February [post-dating the Council decision on the scheme referenced above] which stated that 'It has been brought to my attention that a draft local plan is emerging. However, this has not yet been the subject of an examination in public and therefore currently attracts limited weight. I shall determine the appeal on this basis'. [Paragraph 2]. The recent Inspectors validation is consistent with the Inspectors position on the dismissed appeal for Noctorum Field, which placed limited weight to the emerging local plan.

The proposal before you is categorically not so substantial [or cumulative in effect] that the granting of planning permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that is central to the emerging plan [as per Framework Paragraph 49a]. The significance of the proposal was emphasised by the Inspector, who in dismissing the appeal for Noctorum Field stated that the delivery of the 33 units 'would only make a small contribution'. Moreover, given the weight to

be attributed to the emerging Local Plan Paragraph 48b does not provide the justification for refusal on the grounds of prematurity.”

- 2.49 Despite LSHs best efforts to proactively engage with Wirral Council this has failed to materialise into any meaningful pre-application engagement. It is within this context that the applicant is pursuing the re-submission of the proposed outline planning application for the residential development of Noctorum Field.

Sport England

- 2.50 Given the nature of the proposed development and the lengthy background context LSH and the School have sought to engage again with Sport England prior to re-submission of the application in order to provide absolute clarity over the proposed mitigation and its acceptability.
- 2.51 It is important to note that Sport England has yet to visit the Site despite numerous invitations over almost four years.
- 2.52 LSH and the applicant are currently awaiting a response from Sport England in respect of the enhanced proposed works at Prenton RUFC, which significantly enhances the proposed qualitative and quantitative mitigation.
- 2.53 Moreover, the pre-application correspondence with Sport England confirmed that since the appeal our client has been in active and positive dialogue with the relevant owner of part of the land that is required to deliver the required mitigation at Prenton Rugby Club. Significant progress has been made by the School with Heads of Terms now agreed (subject to planning) for the acquisitions of this land. Upon the grant of planning permission, the Schools will acquire the necessary land at Prenton, with their ownership providing certainty as to the mechanism for the delivery of the improvements works.
- 2.54 On the whole the correspondence confirmed that the draft S106 Legal Agreement proposed and the connected nature of the mitigation proposals at both Prenton RUFC and Old Parkonians is sufficient to satisfy the Inspectors concerns relating to the uncertainty of a legitimate mechanism for ensuring delivery of the requisite mitigation required for the loss of Noctorum Field. Section 5 and 6 of this statement unequivocally demonstrate that the proposal in tandem with the application for Prenton RUFC and works at Old Parkonians is sufficient to meet the exception of Paragraph 99(b) of the Framework.

Concluding Considerations

- 2.55 This section sets out the lengthy and detailed background to the re-submission of this application and confirms:
- All issues considered at the appeal have been resolved with the exception of *‘the effect of the loss of existing playing fields with regard to local provision’* and specifically the

uncertainty surrounding the mechanism for delivery of the necessary mitigation improvements at Prenton RUFC and Old Parkonians RUFC. **This remains the only outstanding reasons preventing a positive determination of the application.**

- That the Inspectors conclusions on the other main issues of the appeal is **a material consideration** that Wirral Council will need to consider when determining the re-submission of this outline planning application.
- That the proposal remains entirely consistent with that previously considered to be in accordance with the adopted Development Plan and other material considerations. **This represents a material consideration in determining this application.**
- This application is submitted in tandem with a standalone full planning application for quantitative and qualitative works at Prenton RUFC and a commitment from the applicant to facilitate the delivery qualitative works at Old Parkonians RUFC – which do not require planning permission. **This represents a material consideration in determining this application.**
- That the necessary quantitative and qualitative mitigation works are sufficient to justify the loss of Noctorum Field **This represents a material consideration in determining this application.**
- The draft S106 Agreement submitted with this application provides absolute clarity regarding the mechanism for delivery of the mitigation works and confirms that all parties (including the current third-party landowner) are signatories of the S106. **This represents a material consideration in determining this application.**
- The enabling effect of this proposal will help to release to capital fund required by the school to development to Sports Hall proposal, approved by the Inspector. **This represents a material consideration in determining this application.**
- That the connected delivery of works at both Prenton RUFC and Old Parkonians RUFC directly responds to the aims and objectives of the PPOSS. Both clubs are supportive of the proposals, alongside the RFU. **This represents a material consideration in determining this application.**
- That the Council has confirmed that the ‘in-principle’ use of Noctorum Field for residential development is acceptable, a point that was validated by the Inspector in considering the Appeal. **This represents a material consideration in determining this application.**

3 The Site and Surroundings

Introduction

- 3.1 The application site comprises the Noctorum Field, Prenton. A Site Location Plan [Ref. 100022432] is provided as part of this application that identifies the proposed development site.

Background and Context

- 3.2 Birkenhead School's charity trustees are proposing to dispose of the underused Noctorum Field. The field has, for decades, only been used approximately once a fortnight during term time for a sports fixture and has now been unused for three years. The charity's resources can be better deployed elsewhere for sports, bursaries, and community involvement. The reason for this is fourfold:
- The Site is located 1.4km to the north west of the main school campus. The travel time between the Site and main school campus makes any use of the Field during the School Day impractical and is having a significant impact on active and effective teaching time at Noctorum Field. As a result, the Site has not been used for curriculum sport and physical education for many years.
 - Curriculum sport and physical education is successfully taught at the McAllester Field and main school campus (where requests for community sports use have also been focussed and accommodated).
 - The existing rugby pitch is undersized measuring 70m in width, 87m from try line to try line with 6.5m in goal areas; and
 - The existing cricket pitch does not meet the boundary length requirements of the England and Wales Cricket Board.
- 3.3 In light of this, the School's trustees have decided to dispose of the Site; the capital generated from its sale would be reinvested in building a new sports hall to accommodate a wider range of co-educational and community sports as well as classrooms/meeting rooms – which benefits from planning permission as detailed in Section 2, Paragraph's 2.26 – 2.31. Any further surplus funds would contribute to "Birkenhead Transforms" – an initiative to fund more means-tested transformational bursaries in perpetuity.
- 3.4 Given that the School is a charity, it has a legal requirement to ensure that it gains maximum value from the Site - to be used primarily to invest in its charitable purpose of educating local children. To achieve a maximum value, it is necessary that the Site gains outline planning permission to enable it to be redeveloped for residential purposes. All research has suggested that this it is a good location for such given that it is a primarily residential area.

- 3.5 Whilst the Site is identified for private recreation and is not publicly accessible, the School proposes to offset the loss of the sports facility by making significant financial contributions to improve existing community and sports facilities in the local area, and these will be available to the wider community, therefore greatly improving public access to sporting facilities.

Planning History

- 3.6 Other than the previous submission of this application our review of the Council's online planning register did not identify any applications of relevance to the proposals.
- 3.7 The Wirral Unitary Development Plan [UDP] Policies Map identifies the Site as being included within wider 'Primarily Residential Area' and designated for 'Sports and Recreation'.

Site Location

- 3.8 The Site is located on the edge of the urban area of Birkenhead, included within the residential suburb of Noctorum. It is approximately 3.1km to the west of Birkenhead town centre, and approximately 3.8km to the east of Greasby. The site is surrounded by a mix of land use including residential, leisure and education. The surrounding residential development is characterised by large two and three storey-detached dwellings.
- 3.9 The Site is bounded:
- To the north by a mature tree belt and the junction of Noctorum Road and Noctorum Lane. Beyond this lies further residential development and the Dundoran Care Home facility;
 - To the east by a mature tree belt and Noctorum Lane. Beyond this lies Wirral Golf Club and further residential development;
 - To the south by a mature tree belt and the curtilage of a dwelling. Beyond this lies further low-density residential development; and,
 - To the west by a mature tree belt and Noctorum Road. Beyond this lies further residential development and the facilities associated with Hillside Primary School.

Site Description

- 3.10 The Site extends to 2.25 ha (gross), is irregular in shape and currently comprises underutilised sports pitches (1 junior cricket, 1 under sized adult rugby) associated with Birkenhead School. The Site has a relatively flat topography. The Site is not located within a Conservation Area, nor are there any listed buildings or other designated or non-designated heritages assets on, or adjacent to it. A Grade II listed building is located 300m to the south of the Site. The Site is located in Flood Zone 1 and is at low risk of flooding. A small part of the Site is identified at low risk of surface water flooding. The site is covered by a Tree

Preservation Order [TPO] (Ref. BK0030A001) which covers the extensive tree coverage along the site boundaries.

- 3.11 Further in consideration of the previous application, the extent of the Noctorum Field playing pitch was confirmed to be 1.64 ha by Sport England (**Appendix 1**).

Access

- 3.12 The Site is adjacent to, and will be accessed from Noctorum Road, which runs to the west, via an existing access point. The access to the Site will remain the same as existing and will remain unaltered as part of the proposals. A secondary / emergency access could also be delivered off Noctorum Lane, which runs to the east of the Site. The indicative masterplan also details an additional point of access to the north of the Site, which would provide access to a single residential development plot.
- 3.13 The Site is well connected to the surrounding area. Noctorum Road run to the east of the Site, providing access to the A5207, which connects to the M53 and the wider strategic road network. Noctorum Lane that runs to the west of the site is unadopted road.
- 3.14 The Site is sustainably located in relation to its proximity to local services and facilities together with education opportunities. It is well served by public transport. A bus service is in operation along Upton Road, which runs to the north of the Site and provides access to Liverpool and West Kirby, together with the other surrounding centres. The nearest bus stop is located 370m to the north of the Site. The table below shows the routes and frequencies of the services, together with the relative bus number and bus stops. A 400-metre walking distance to a bus stop is considered acceptable under guidance within Institute Highway and Transport (IHT, 2000) within residential areas.

Service No.	Route	Bus Stop Location	Operator	Weekday Service Frequency
437	Liverpool – West Kirby	Upton Salacre Lane	Arriva	Every 10 minutes
611	Caughton – Poll Hill	Bidston opposite Noctorum Lane	Selwyn's Travel	Two services a day (School)
621	Newton – Oxton	Noctorum, Upton Station	Selwyn's Travel	Two services a day (School)

- 3.15 The nearest train station is Upton 980m to the west of the Site and is operated by Transport for Wales and provides access to their services.
- 3.16 The Site is in a highly sustainable location and is within walking distance of a range of facilities and services. This includes:

- 1km from a local convenience shop (Tesco Express);
- 1.15km from a local convenience shop (McColl's);
- 1.18km from a restaurant (Georgio's);
- 1.27km from a pharmacy (Claughton Pharmacy);
- 1.27km from a medical centre (Claughton Medical Centre);
- 1.09km from St Bede's Chapel and Community Centre;
- 0.97km from St John's Hospice;
- 0.9km from St James with St Bede Church
- 0.98km from Oxton Cricket Club;
- 1km from Birkenhead Lawn Tennis Club; and,
- 0.3km from Wirral Golf Club.

3.17 The Site is well connected to Birkenhead's town centre 2.15 that provides access to a wider range of shops and facilities. In terms of education opportunities, the Site is within 2km of Birkenhead School, Birkenhead Sixth Form College, Birkenhead High School Academy, Hillside Primary School, Bidston Avenue Primary School, St Anelem's College, Ridgeway High School and Townfield Primary school.

3.18 In summary, the Site is sustainably located in relation to its proximity to existing services and facilities. It is also highly accessible by sustainable modes of transport. Furthermore, the Site is well located to the existing settlement; its redevelopment would represent infill within the urban area.

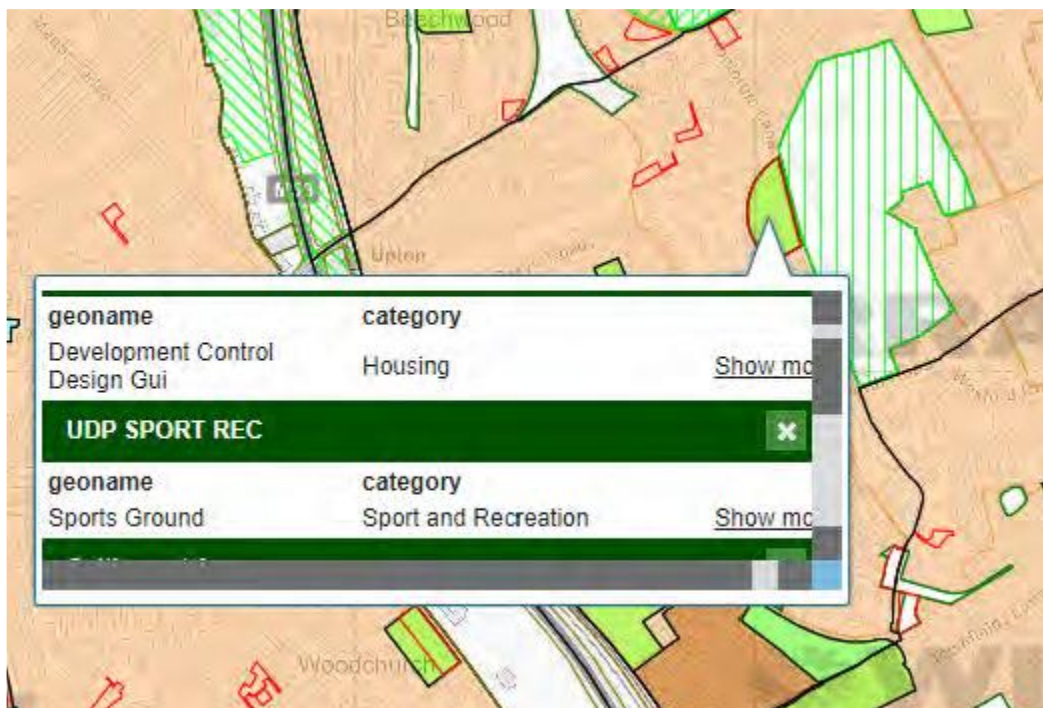


Figure 1 – Extract from the Council's UDP Proposals Map

4 Development Proposals

4.1 For the avoidance of doubt, this application comprises the re-submission of an outline planning application for the demolition of the existing pavilion and erection of up to 33 dwellings and associated infrastructure on Noctorum Field, Noctorum Road, Noctorum CH43 9UQ.

4.2 The proposal remains entirely consistent with the previous, and seeks outline planning permission for:

“The demolition of the existing pavilion and erection of up to 33 dwellings (Use Class C3) and associated infrastructure. All matters are reserved with the exception of access.”

4.3 An overview of the tandem application is being progressed for mitigation/improvement works at Prenton RUFC (ref: PP-11993351). Likewise, the associated drainage works at Old Parkonians RUFC are detailed.

Outline Proposals

Residential Development

4.4 The Site can accommodate up to 33 dwellings at a density of 14.8 dwellings per hectare [dph]. An indicative site layout accompanies this application submission. Details in relation to the scale, massing, design, and layout of the proposed development will be agreed through the submission of a reserved matters application.

4.5 It is envisaged that the proposed development will comprise a mix of two and three storey dwellings. Given the context of the surrounding residential development, it is likely that the dwellings will take the form of large, detached family housing with associated gardens. The housing typologies are to be focussed on 4-to-5-bedroom homes (and possibly 6 bedroom homes). This is appropriate when considered in the context of the surrounding residential development.

4.6 Affordable Housing provision is to be agreed through an appropriate condition (See draft Condition 22 of the ‘Draft Condition Schedule’) or within a section 106 agreement to allow flexibility for the provision to be either located on site or in lieu of off-site provision should it not be possible to secure management by a Registered Provider. This approach fully accords with paragraph 37-39 of the Inspectors Report.

4.7 It is envisaged that the principal access to the Site would be retained via Noctorum Road, which runs to the west. An existing vehicular access is located on the western boundary, adjacent to the sports pavilion. A secondary / single access could be delivered off Noctorum

Road to the north. Parking would be included within the curtilage of the dwellings and would be considered in the context of the Council's parking standards.

Design and Layout

- 4.8 The indicative layout demonstrates how the proposals can be designed to respond to the site's physical context and respect the character or the surrounding environs.
- 4.9 The design principles for the outline proposals have been curated to guide and inform both this outline application but also sought to inform any future reserved matters submission if this application is considered acceptable. The principles have been informed by the site constraints and opportunities and these are set out in more detail in the submitted Revised Design and Access Statement (D&AS). The proposal seeks to respond positively to the local character by creating a new low-density high quality residential environment amongst the setting of the retained trees. The design seeks to protect amenity of the existing properties and access rights to the neighbouring golf course and the culverted watercourse in the south of the application site. The design seeks to retain the special charm of Noctorum Lane, and this will remain as a strong pedestrian friendly thoroughfare for local residents. The design has purposely sought not to create any vehicle access off this important route to retain that special tree lined character. Likewise, the proposal seeks to utilise the existing access into the site and create an efficient network of internal streets, which would meet manual for streets guidance. Lastly, the proposals seek to open up the site to provide open space and formal footpaths around the perimeter of the site to allow improved and safe pedestrian movement into and around the site.
- 4.10 To minimise the impact on the significant biodiversity on the site, the design has sought to retain and protect the vast majority of existing mature tree coverage as this significantly adds to the important character and setting of Noctorum Field. Where existing trees are to be removed to facilitate safe and appropriate access then replacement and qualitative improved tree planting will be provided across the proposal through both garden and specimen trees. This can be dealt with through conditions and through future reserved matters stages.
- 4.11 The indicative masterplan provides a layout that retains the vast majority of the existing tree coverage along the edges of the site. To minimise the impact the proposal shows that the new residential plots will be provided within the centre of the application site. This design approach maximises opportunities for attractive views over the mature retained landscaping around the site edges.
- 4.12 The proposed development plots and their dimensions are efficient to allow perimeter blocks to be curated with active frontages (providing natural surveillance over Noctorum Road and Lane) and private rear gardens with sufficient back-to-back distances to protect existing and future residents' amenity. Varying layouts (3) were considered (see page 15 of the D&AS) and

it was considered that Option 3 was the most appropriate in terms of delivery of the key design principles.

- 4.13 On the southern part of the site, the development plots provide rear gardens adjacent to the existing properties to avoid overlooking and to protect the amenity of existing properties to avoid overlooking and to protect the amenity of existing residents. These plots avoid building private residential development on the culverted watercourse to ensure future access and maintenance.

Scale

- 4.14 The indicative masterplan sets out the maximum parameters of the residential development whereby up to 33 residential plots (max) are set out. The masterplan can be detailed through a future reserved matters application and could subject to the end house builder/developer proposed plan that may involve less than 33 units. We believe that the site could accommodate between 26 and 33 large family residential units with allocated gardens.
- 4.15 We can also confirm that the scale of any future residential properties on the site can be limited to two storeys with a pitched roof construction. This would fully accord with the surrounding built residential vernacular that is mainly two storeys in nature and scale.

Appearance

- 4.16 The appearance of any proposed family homes is not subject to this outline planning, but these will be large mainly detached and semi-detached homes with separate garage blocks. Any future reserved matters application will appropriately deal with the appearance of the proposed homes. The Revised D&AS does provide several reference points of large 4 to 5 bedroom detached homes that could be built at the application site. The buildings are likely to be in traditional red-brick or stone building material, with slate roof material.
- 4.17 In consideration the effect of the proposal on the character and appearance of the locality [Paragraphs 33 – 36] the Inspector concluded that:

“as an almost enclosed site with a singular vehicle access point, the site would remain largely enclosed ... [and] would be more visually contained and effectively “inward-looking”
[Paragraph 33]

*“whilst the development of a greenfield site would inevitable change its character, **subject to the retention and/or enhancement of the boundary tree belt, it would appear as a separate entity in the context of the surrounding development**”* [Paragraph 34]

*“as an enclaved and a clearly distinct phase of development of potentially large houses in ample plots, it would maintain a degree of spaciousness and retain a verdant character through retention of the border trees and additional planting. **It would make more effective use of the land consistent with examples of infill and redeveloped sites found locally.***

Accordingly, I find the proposal would have little adverse effect on the recognised pattern of the surrounding development. The effect on the character and appearance of existing local development would therefore be negligible.” [Paragraph 35]

- 4.18 The position of the Inspector removes any debate relating to the acceptability of the character and appearance of the residential development of Noctorum Field. It is clear that the proposed development of the site is **consistent with the requirement of both the UDP and the Framework and would deliver housing development which preserves the existing character of development in the locality**. It would align with the requirements of Policies HS4 and HS6 of the UDP through the preservation of the existing boundary treatments and meet the Framework’s requirement [Paragraph 124d] to make efficient use of the land considering the area’s character and setting.
- 4.19 Furthermore, the Council recognise the suitability of the Site for residential development. Within their own Statement of Case, they have confirmed that **‘the proposal site is acceptable ‘in principle’ as a residential proposal in urban location within the urban fabric of Birkenhead, in a predominantly residential area’** [LPA Local Planning Authority’s Statement of Case – Para 4.1, Page 14].

Access

- 4.20 The proposed movement and access arrangements of the design principles seek to utilise the existing vehicle and pedestrian access point on Noctorum Road. As set out earlier following consultations with the local residents, we have sought to not provide any vehicle access on to Noctorum Lane so to retain the existing character of the Lane, which is very much a pedestrian friendly environment and thoroughfare for walking. A new pedestrian access point is proposed in the south of the site as an alternative route to the eastern side of Noctorum Road, which has no formal footpath. This footpath addition is proposed in response to concerns raised by residents on pedestrian safety; this footpath will allow pedestrians to navigate around the perimeter of site within the retained tree areas in a safe pedestrian friendly environment.
- 4.21 The proposed layout creates a street network that retains as many of the existing trees along the perimeter of the site as possible and is the most efficient way of retaining the existing character of the site whilst also ensuring that the development can facilitate refuse/recycling and emergency vehicles. It creates a single loop to the south of the site incorporating the retained culvert and the two outward facing facades to the north.
- 4.22 The proposed visibility splays that are required for the two vehicle entrances will require some (33) trees to be removed for highway safety to be increased, However, these will be replaced with a net addition of 39 trees across the application site (72 trees will be replanted across the site) through specimen and mature stock planting.

- 4.23 The proposed street design has been designed to meet Council adoption criteria in the future.
- 4.24 The proposal will seek to provide electric vehicle charging points to each of the proposed residential properties to encourage the transition to more sustainable transport modes by 2030 in line with HM Government mandate and to actively encourage future residents to consider the use of electric vehicles as a means to tackling climate change at the local level.
- 4.25 As one of the main issues for consideration due in the appeal the Inspector considered whether or not the site would provide a safe and accessible form of development at length.
- 4.26 In reaching a position the Inspector concluded that:
- “I am therefore satisfied that access and egress from the stie could be provided without a determination effect on highway safety”* [Paragraph 41]
- 4.27 Consideration of highway safety in this regard considered the visibility of the proposed junction with Noctorum Road, and at the southern and northern extents of the site in conjunction with the proposed pedestrian entrances.
- 4.28 When considering the wider accessibility of the Site the inspector recognised that:
- “although this arrangement would not provide high standards for non-vehicular traffic, it would nevertheless, provide accessibility equivalent to existing residential development in a locality identified as suitable for housing. Moreover, the main parties report that they have also discussed in-highway warning signage of pedestrians and a contribution to streetlight upgrades. The Council has not indicated that such benefits could not be incorporated to enhance road safety. Accordingly, these are measures that could be secured through a Grampian condition providing a benefit to existing users alongside the prospective occupiers of the proposed development.”* [Paragraph 45]
- 4.29 The applicant remains committed to in-highway warning signage of pedestrians and a contribution to streetlight upgrades should it be deemed necessary by the Council. This position is reflected in Condition 5 as detailed within Draft Condition Schedule [submitted in support of this application] which provides an overview of draft schedule of Conditions put forward by the Applicant to mitigate potential impacts and make the development acceptable in planning terms. Draft Condition 5 would require a full scheme of works and timetable for the construction of the new access junction and amendments to the existing highway made necessary by this development, including new carriageway, footways, street lighting, surface water drainage, traffic signs, road markings and tactile paved pedestrian crossings on Noctorum Road. Such works would then need to be implemented prior to occupation of the development.

4.30 Internally within the Site the Inspector recognised that there would be significant opportunity to prioritise the movement of non-vehicle users over vehicle users by design – however noted that this was a matter more pertinent at the detailed layout stage. In doing so it was noted that as an outline planning application, there is little before me to suggest that the scheme would conflict with Policy TR9 of the UDP relating to Requirements for Off-Street Parking.

4.31 On the whole the Inspector considered that:

“... the proposals would provide safe vehicular and pedestrian access from Noctorum Road. It would result in a minor conflict with the Framework’s requirements to prioritise pedestrian movements within the neighbouring area, however, in the context of the existing predominantly residential area, this would be outweighed by potential improvements to the length of Noctorum Lane to the north of the site. This would benefit existing highway users and assist in promoting use of the existing bus services.”

4.32 It was therefore concluded that

*“... the proposals would provide for a safe means of access to the public highway network and make adequate provision for accessibility, including to public transport services. **It would align with Policy TRT1 of the UDP and the aims of the Framework to promote sustainable forms of transport.**”*

4.33 Given that the scheme being pursued remains entirely consistent with that considered by the inspector it is considered that this conclusion remains applicable.

Landscaping

4.34 The landscaping vision and strategy is set out in the Revised D&AS, beyond the key aim to retain the integrity of the tree character and density, the strategy seeks to create a desirable and sought-after place to live and this will be through the enhancement and diversification of the current vegetation and increased and improved access both through and around the application site, including the existing public right of way.

4.35 The only trees to be removed (33 of 124 individual trees and/or 150 tree features) will be those that either are poor in quality or are required to facilitate a safe driver visibility position egress. The technical reports confirm that 19 trees need to be removed without development in a no-development scenario due to being of poor specimens, with 14 trees to be removed to facilitate the proposed development.

4.36 The proposals seek to deliver a ratio of above 1:2 tree replacements, or 72 new trees to be planted. In addition, the applicant is committed to the consideration of a tree management plan prior to any development to provide a positive and on-going tree management strategy to be implemented.

- 4.37 The submitted illustrative landscaping plans provide a formal guide to future development and seeks to retain existing vegetation on the site that acts as a natural screening buffer to the surrounding area. The strategy proposes ornamental planting, hedges, and specimen trees to be located at the entrance to create a sense of arrival as well as celebrating the importance of increased bio-diversity on the site for existing and future generations to enjoy.
- 4.38 Further to the increased and enhanced tree planting, it is proposed that along the main routes around the scheme, garden trees and hedgerows will separate individual residential properties and plots. Additional tree planting in rear gardens is key along the southern boundary to mitigate views from the existing neighbouring properties. Further additional understory planting beneath the retained trees including shrubs, annuals and a wildflower meadow are all proposed to support local bio-diversity. The applicant is happy for these to be conditioned to ensure that the net bio-diversity gain of the scheme satisfies the objectives of the emerging Environment Act.
- 4.39 In relation to the surface materials of the proposal, the landscape strategy seeks to provide rumble strip and textured paving to help slow vehicle movement whilst encouraging shared space. These measures are set out in the indicative masterplan and the indicative planting species schedule.
- 4.40 Whilst not one of the main issues associated with the Appeal, the Inspector highlighted third party concerns relating to the potential effects of development on wildlife using the site and other environmental impacts such as noise, disturbance, and pollution. The Inspector made clear that the site could be developed in a manner to preserve the existing ecological interest and could provide biodiversity gains.
- 4.41 In the context of the sites landscaping strategy, the schedule of draft conditions submitted in support of this application provides an overview of those put forward by the Applicant to mitigate potential impacts and make the development acceptable in planning terms. This includes conditions relating to a Landscape and Bio-Diversity Management Plan, detail relating to Bio-Diversity Net Gain.

Connected Prenton RUFC Mitigation/Improvement Works

- 4.42 The standalone proposals for Prenton RUFC seeks full planning permission for:

“The formation and grading of a turf training and playing pitches, associated piped drainage and the installation of six no. floodlights”

- 4.43 This application will be submitted via the Planning Portal (ref: PP-11993351).

Site Area

- 4.44 The area of land subject at Prenton RUFC subject the mitigation proposal comprises a gross area of 1.78ha, which will create 1.68ha of playing field land. 0.83ha of which comprises the

formation of the new playing pitch – as shown in the ‘Proposed Levels and Layout Plan (ref: 1571/008) – as shown in the ‘Proposed Levels and Layout Plan (ref: 1571/008) (as shown in **Appendix 2**).

4.45 The components of the proposed mitigation at Prenton comprises:

4.46 The dimensions of the proposed playing pitch and run off sizes are as follows:

	Dimensions (m)					
	Pitch & Run-off Size				Overall Area	
	Length	Width	In-goal Area	Run-offs	Length	Width
New Senior Pitch	100.0	65.0	6.0	3.0	118	71
Basic Pitch	6,500 m2					
Pitch with in goal	7,280 m2					
Pitch with in goal and run off	8,307m2					

4.47 Installation of a comprehensive drainage scheme designed to allow for climatic factors, usage levels and enable the Club and other users to gain maximum usage of the pitch.

4.48 The formation of new training grids [Dimensions: 50m by 40m (2,000 sq.m)] to Western side of the playing pitch area. The space could also be utilised as space to u7/8's football pitch and U9/10's football pitch thereby significant enhancing the useable playing area at the Rugby Club.

4.49 The installation of six no. floodlights associated with the formation of the new playing pitch, directly in accordance with the aims and objectives of the club as set out within the PPOSS.

Connected Old Parkonians Mitigation/Improvement Works

4.50 The proposals at Old Parkonians relate to the qualitative drainage improvements works of the clubs existing 1st XV playing pitch – as defined by the red line boundary shown in **Appendix 3**.

4.51 The installation of a comprehensive drainage scheme which has been designed to allow for climatic factors, usage levels and enable the Club and other users to gain maximum usage of the pitch.

4.52 The works proposed represent a direct respond to the Council's PPOSS which seeks to protect, enhance, and provide playing pitches and outdoor sports facilities at the Site. One of the aims and objectives for the Site is to improve pitch quality to eradicate overplay.

5 Planning Policy Context

- 5.1 Section 70(2) of the 1990 Act and Section 38(6) of the 2004 Act states that planning applications should be determined in accordance with the Development Plan unless material considerations indicated otherwise.
- 5.2 This section summarises both national and local planning policy, and other material considerations applicable to an assessment of the only outstanding reasons prohibiting a positive determination of the application as detailed in the preceding sections of the Statement. The entirety accounts for the Inspectors conclusions as detailed within the Appeal Decision.

Development Plan

- 5.3 The Development Plan for the Site comprises 'saved' policies of the Wirral Unitary Development Plan ['UDP'] that was adopted in February 2000 and covered the period 1986 to 2001. Parts of the UDP have been 'saved' under the provisions of the Planning and Compulsory Purchase Act 2004. The policies and proposals of the UDP were initially 'saved', to remain in force for a period of three years. Several policies were then subsequently saved in 2007 for an on-going period.
- 5.4 Whilst it is concluded that the UDP is largely out of date, the Inspector in considering the effect of the loss of the existing playing fields with regard to local provision [the reason for dismissal] did confirm that the relevant UDP Policy relating to the loss is sports pitches '*Policy RE6 (Sports Grounds for Protection from Development)*' could be afforded full weight on account of its consistency with the National Planning Policy Framework.

National Policy

- 5.5 National guidance is provided by the National Planning Policy Framework ['the Framework'] (July 2021), and the National Planning Practice Guidance ['NPPG']. Both are material to the consideration and determination of the planning application.
- 5.6 The Framework sets out that planning policies and decisions should support development.
- 5.7 In the context of existing open space, sports, and recreational buildings, including playing fields the Framework¹ sets out that they should not be built upon unless:
- An assessment has been undertaken which clearly demonstrates that the open space is surplus to requirement; or,

¹National Planning Policy Framework - Paragraph 99

- The loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. that makes efficient use of land.

5.8 The Inspector also refers to policies within the Framework the mechanism for delivery of the proposed playing field improvements works at both Prenton RFC and Old Parkonians failed to satisfy. The relevant policies related to:

- Keeping planning conditions to a minimum and only imposing them where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects².
- Seek planning obligations where they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development³.

Environmental and Technical

5.9 For the avoidance of doubt, the UDP policies relevant to the updated technical evidence (Highways, Ecology and Drainage / Flood Risk) include:

- UDP 'saved' Policy NCO1 (Principles for Nature Conservation);
- UDP 'saved' Policy NC7 (Species Protection);
- UDP 'saved' Policy TRT1 (Provision for Public Transport);
- UDP 'saved' Policy WA2 (Development and Land Drainage);
- UDP 'saved' Policy WA1 (Development and Flood Risk);
- UDP 'saved' Policy WA2 (Development and Land Drainage);
- UDP 'saved' Policy WA4 (Safeguarding Water Resources);
- UDP 'saved' Policy WA5 (Protecting Surface Waters);

Emerging Planning Policy

5.10 LSH are aware that the Council submitted the emerging Wirral Local Plan to the Secretary of State for independent examination, with Inspectors, Mike Worden BA (Hons) Dip TP MRTPI and Tom Bristow BA MSc MRTPI appointed on 17 November 2022 to hold the examination of the Wirral Local Plan 2021 - 2037.

5.11 On 3 March 2023, the Inspectors published guidance to participants on the procedural and administrative arrangements for the hearing sessions as part of the examination of the Wirral Local Plan. The guidance confirmed that examination hearing sessions will take place in two blocks, with the first commencing on Tuesday 18 April 2023. The Inspectors guidance recognises that dates have been set for a major public inquiry into a series of linked planning

² National Planning Policy Framework - Paragraph 56

³ National Planning Policy Framework - Paragraph 57

appeals [Leverhulme Estate] in the Wirral, commencing on 16 May 2023 and lasting up to 26 sitting days.

- 5.12 It is as a consequence of this public inquiry that the Local Plan examination hearings will be held in two blocks, with the second anticipated to commence in September and early October and will likely consist of around 3 weeks of sitting days.
- 5.13 In the context of the imminent commencement of the examination of emerging Wirral Local Plan, LSH have sought Counsel's advice in respect of the weight that is being attached to the respective policies of the emerging draft Local Plan considering the Council's position as set out in Paragraph 2.40.
- 5.14 Despite being submitted for examination, and the first block of hearing sessions announced **only limited weight** can be attributed to policies and allocations until such time that the Plan has been examined in accordance with legal and procedural requirements and the Inspectors has considered whether it is sound or not in light of significant unresolved objections [including by the applicant to the Council's draft allocation for Noctorum Field as Open Space] as required by Paragraph 48b of the Framework.
- 5.15 On 14 February 2023, the Planning Inspectorate in considering a residential appeal (ref: APP/W4325/W/22/3299658) confirmed this position. Therefore, in the context of this application **only limited weight** is given to the relevant policies of the emerging Plan.

Wirral Playing Pitch and Outdoor Sports Strategy [July 2021]

- 5.16 The planning application submitted in July was prepared in the context of the Playing Pitch & Outdoor Sports Strategy & Action Plan ['PPOSS'] [July 2021]. This was prepared by Knight, Kavanagh & Page (KKP).
- 5.17 The PPOSS was approved by the Director of Regeneration and Place and published on the Council website (on 25/11 2021) and noted to be effective from 01/12/2021.
- 5.18 At the time of the original application the 2021 PPOSS was not available to the applicant – however it was available for the planning appeal. Notwithstanding and despite the Local Plan position in considering this application it is necessary to consider the 2021 PPOSS which as highlighted by the Inspector during consideration of the appeal found that as a recent study intended to assist in the formulation of emerging policies, and in the absence of any detailed assessment otherwise, that the PPOSS is entitled to considerable weight as a measure of current and anticipated playing field provision and demand.

Noctorum Field

- 5.19 With regards to Noctorum Field the PPOSS Strategy highlights that this is a disused site that previously provided a senior pitch (rugby) and provided a grass wicket square. The PPOSS Assessment confirms that at the time of preparation that this site was subject to pre-

application inquiry relating to its development by Birkenhead School and noted that discussions regarding potential mitigation are on-going between Sport England, the Council and the School and their agents. The Strategy confirms that this could result in the loss of the provision. This conclusion remains valid on the basis of the re-submission of this application.

5.20 The Site [Ref. Site ID 148] is referenced within the Playing Pitch and Outdoor Sports Strategy [PPOSS] 2021). The PPOSS confirms that the appeal site is “*A disused site that previously provided a senior pitch and grass wicket. Subject development proposals that could result in the loss of the provision*”. The previous iteration of the PPOSS (2016) confirmed that the site comprised four good quality grass wickets, and one standard senior rugby pitch. The 2016 PPOSS confirmed that the appeal site was not in community use.

5.21 The PPOSS Strategy (Appendix 2, page 91, Site ID 148) recommends the following:

“Based on the findings of this PPS, the site is not considered to be surplus to requirements. As such, any permanent loss of the provision and the mitigation options brought forward must align with Framework and Sport England’s Playing Field Policy requirements to provide an equivalent or better quantity and quality replacement”.

5.22 The assessment recommends that the Site is protected and the partner of this should be the school and the RFU and the ECB.

5.23 However, given its disused status the PPOSS Assessment does not consider Noctorum Field in either the site quality ratings or capacity table for rugby pitches in Wirral.

5.24 As highlighted in Section 1, the re-submission of this application is being progressed in tandem with a connected application for mitigation/improvement works at Prenton RUFC (**Ref: PP-11993351**), along with a financial commitment to implement associated drainage works at Old Parkonians RUFC.

5.25 The PPOSS finding in respect of the mitigation/improvement receptor sites is set out below.

Prenton RUFC

5.26 With regards to Prenton RUFC the PPOSS Assessment Report highlights that Prenton RFC is working to convert its training area into a full-size, floodlit senior pitch. Alongside the aspirations for the creation of a new full-size pitch, it is highlighted that Prenton RFC has ambitions to develop the clubhouse at its site into a community hub. To facilitate this, it aspires to improve and extend the changing facilities (including dedicated women and girls changing), expand the social space, and create a kitchen within the clubhouse – which LSH understand will be partially delivered upon implementation of application ref: APP/22/00788.

5.27 Taking into consideration the identified aspirations and limitations the PPOSS confirms that the aims for Prenton Rugby Club will be to protect, enhance and provide playing pitches and

outdoor sports facilities at the Site. In delivering these aims the recommended actions are to as a minimum, sustain pitch quality to ensure no future capacity issues. Support the Club in its aspirations of improving ancillary provision on site. Support Prenton RFC's aspiration to create a floodlit senior pitch in place of its current training area. Ensure maintenance is sufficient to support dual use driving range. In facilitating this, the RFU and the Rugby Club are identified as key partners – however, the PPOSS fails to recognise the important form the applicant will play in delivering the keys aims for the rugby club.

Old Parkonians RUFC

- 5.28 With regards to Old Parkonians RUFC [as referred to in the PPOSS as 'Oxton Parkonians RFC' and with an interest in the 'HM Curphey Memorial Ground'] the PPOSS Assessment Report highlights that *'Oxton Parkonians RFC is saving and fundraising to replace the drainage on the playing pitches at HM Curphey Memorial Ground. The Club indicates that the existing drainage system has degraded in recent years and was originally installed in the 1990s'*. The current facilities are rated as standard quality.
- 5.29 Furthermore, the assessment report notes that *'a pitch at Oxton Parkonians RFC is partially lit on one side and can therefore accommodate its evening training, although this is concentrated in a specific area'*. This pitch is considered to be overplayed due to training demand.
- 5.30 In terms of participation increase the Assessment report highlights that *'Oxton Parkonians RFC aspires to increase participation at all age groups, indicating a desire to add one men's, one colt boys', one youth boys and one mini team'*.
- 5.31 Taking into consideration the identified aspirations and limitations the PPOSS confirms that the aims for Old Parkonians RUFC will be to protect, enhance and provide playing pitches and outdoor sports facilities at the Site. In delivering these aims the recommended actions are to improve pitch quality to eradicate overplay. Support Oxton Parkonians RFC to improve drainage on site. Support the Club to install additional floodlighting on the site to ensure that training demand takes place in a less concentrated area. In facilitating this, the RFU and the Rugby Club are identified as key partners – however, the PPOSS fails to recognise the important form the applicant will play in delivering the keys aims for the rugby club.

Sport England: Towards an Active Nation Strategy 2016-2021

- 5.32 In December 2015, the Government published Sporting Future: A New Strategy for an Active Nation. It sets a bold and ambitious direction for sport policy, which has been widely welcomed. It looks beyond simple participation to how sport changes lives and becomes a force for social good. At its heart are five outcomes: physical wellbeing, mental wellbeing, individual development, social and community development and economic development. This

Active Nation Strategy sets out how Sport England will deliver on the Government's objectives by:

- Focusing more money and resources on tackling inactivity;
- Investing more in children and young people from the age of five to build positive attitudes to sport and activity as the foundations of an active life;
- Helping those who are active now to carry on, but at lower cost to the public purse over time;
- Putting customers at the heart of what Sport England do, responding to how they organise their lives and helping the sector to be more welcoming and inclusive, especially of those groups currently under-represented in sport;
- Helping sport to keep pace with the digital expectations of customers;
- Working nationally where it makes sense to do so (for example on infrastructure and workforce) but encouraging stronger local collaboration to deliver a more joined-up experience of sport and activity for customers;
- Working with a wider range of partners, including the private sector, using expertise and investment to help others align their resources; and,
- Working within the sector to encourage innovation and share best practice particularly through applying the principles and practical learning of behaviour change.

Sport England: Playing Fields Policy

5.33 The Playing Fields Policy was adopted in March 2018 and updated in August 2018 following the changes to the Framework in July 2018. The Playing Fields Policy seeks to assist Sport England in their response to planning applications, which affect playing fields.

5.34 Sport England will generally oppose the grant of planning permission for developments which lead to the loss of, or would prejudice the use of:

- All or any part of a playing fields;
- Land which has been used as a playing field and remains undeveloped; or,
- Land allocated for use as a playing field.

5.35 There are five exceptions to this which are summarised below:

- Exception 1 - A robust and up-to-date assessment has demonstrated, to the satisfaction of Sport England, that there is an excess of playing field provision in the catchment;
- Exception 2 - The proposed development is for ancillary facilities supporting the principal use of the site as a playing field, and does not affect the quantity or quality of playing pitches;
- Exception 3 - The proposed development affects only land incapable of forming part of a playing pitch;

- Exception 4 - The area of playing field to be lost as a result of the proposed development will be replaced, prior to the commencement of development, by a new area of playing field:
 - of equivalent or better quality;
 - of equivalent or greater quantity;
 - in a suitable location; and,
 - Subject to equivalent or better accessibility and management arrangements.
- Exception 5 - The proposed development is for an indoor or outdoor facility for sport, the provision of which would be of sufficient benefit to the development of sport as to outweigh the detriment caused by the loss, or prejudice to the use, of the area of playing field.

Sport England: Uniting the Movement (2021)

5.36 In 2021 Sport England have just set out a new 10-year vision to transform the live and communities through helping grassroots sports and access to physical activity to recover from the coronavirus pandemic through investment in tackling the challenges of the next decade up to 2031. This strategy is also supported by £50 million to be available in 2021 and this is in addition to the £200 million allocated from the National Lottery and the Exchequer Funding that is already being invested in response to the pandemic since March 2020.

5.37 The strategy recognises the need to invest in sport and physical activity to make it a formal part of life for everyone in England. The strategy seeks to get people involved in sport and activity to benefit from the active regardless of background, gender, and postcode. This is seeking to tackle inequality and unlock the advantages of sport and physical activity for everyone. This involves the removal of barriers to sport and activity through the investment by the governing bodies, others sport bodies and local sports clubs, organisations, and community group to increase overall engagement. The strategy has three key objectives:

- Advocating for movement, sport, and physical activity;
- Joining forces on five big issues; and
- Creating the catalyst for changes.

5.38 Sport England recognise the responsibility of advocating for the transformation impact sport and activity can have on people's health and well-being and they will lead on this common purpose and agenda.

5.39 The strategy recognises the five key big challenges that the nation faces, and these include:

- Recover and reinvest to ensure there is a vibrant, relevant, and sustainable network of organisation delivering sport and physical activity that meets the needs of different people;
- Connecting communities by focusing on sport and physical activity and the ability to make a better place to live and bring people together;
- To provide positive experience for children and young people as the foundations for a long and healthy life;

- Strengthening the connections between sport, physical activity, health and well-being so people can feel the benefits of and advocate for an active life; and
 - Creating and protecting the places and spaces that make it easier for people to be active.
- 5.40 The strategy seeks to create the catalyst for change by addressing the above challenges and provide the right conditions for change across the people, organisations, and partnerships to contribute and help shared plans and ideas into action. This will include:
- Effective investment models that create the right kind of investment, timed well, and delivered skilfully to stimulate demand, provide opportunities to get active, enable innovation, encourage collaboration, reduce inequalities, and enable greater sustainability;
 - Realising the power of people and leadership by allowing people to spend their time helping others to be active are our most precious resource and their potential is limitless. They are the key to adopting and achieving the ambitions in this strategy;
 - Applying innovation and digital to reflect the changing times and people's expectation;
 - The application of High-quality data, insight and learning are key to collaborative action and delivering a shared understanding of the opportunities; and
 - Instil good governance and commitment to positive, effective, and safe delivery of opportunities at every level.
- 5.41 To deliver these the Strategy seeks to invest most in those area need to most through well balanced and targeted provision that is proportionate to the need. This will focus on the right blend of national and local action.

Conclusion

- 5.42 In conclusion, this Section details the pertinent considerations of both national and local planning policy, and other material considerations applicable to an assessment of the **only outstanding reasons** [the effect of the loss of the existing playing fields with regard to local provision] prohibiting a positive determination of the application as detailed in the preceding sections of the Statement.
- 5.43 For the avoidance of doubt however updated technical evidence has been produced in respect of Highways, Ecology and Drainage / Flood Risk considerations. The purpose being to demonstrate that the conclusions reached in respect of this technical considerations remain valid and consistent with the preceding, or appropriate mitigation can be implemented to ensure that the proposal remains consistent with the Development Plan. Therefore, demonstrating that the context in which the application was original considered remains accurate and valid.

6 Quantitative and Qualitative Position of Sports Mitigation

6.1 Given the lengthy and detailed background underpinning this application, it is necessary to highlight that the quantitative and qualitative position of the sports mitigation at both Prenton RUFC and Old Parkonians RUFC required to account for the effect of the loss of the existing playing fields at Noctorum Field has been covered in extensive detail previously, which amongst other things is covered in the following documents:

- Previous Planning Statement;
- Appellant's Statement of Case;
- Local Planning Authorities' Statement of Case
- Inspectors Appeal Decision

6.2 The precursor to this is to state that the rationale underpinning the loss of Noctorum Field has been dealt with in the preceding documents detailed above relating to both the planning application and subsequent appeal. The Inspector Appeal Decision accepted that Noctorum Field is '*substantially surplus to the requirements* [of the School]', however, acknowledged that '*in light of the PPOSS findings, there is no dispute between the main parties that a wider demand for pitches exists*' and that '*theoretically, the site could assist in meeting that demand. In the context of the need across the Borough, [the Inspector confirmed] the exception at Paragraph 99 a) of the Framework does not there apply*' [Paragraph 16].

6.3 In light of this conclusion, and for the purposes of considering the re-submission of this application and the due merits of the **only outstanding issue** there is no need to satisfy the requirement of Paragraph 99(a) with regard to an assessment which clearly shows that the open space, buildings, or land to be surplus to requirements.

6.4 The essence of consideration therefore relates solely to the particulars of Paragraph 99 (b) and the exception that justifies the building on playing fields if equivalent or better provision in terms of quantity and quality is provide in a suitable location to replace that lost. A position reflected in the Inspectors consideration of the Appeal from Paragraph's 16 – 29.

Pre-Application Engagement with Sport England

6.5 As highlighted in Section 2, LSH and the School have continued to engage with Sport England (as they have done since 2019) prior to the re-submission of this application and in particular with regards to the conjoining application for mitigation works at Prenton RUFC. The intention of the pre-application engagement has been to provide absolute clarity over the proposed mitigation and its acceptability in the context of the Inspectors only outstanding reason for dismissal.

6.6 The consideration of the quantitative and qualitative position of the sports mitigation at both Prenton RUFC and Old Parkonians RUFC required to account for the effect of the loss of the

existing playing fields Noctorum Field needs to be considered in the context of the context of the following.

Paragraph's 16 – 19 of the Inspectors Appeal Decision Notice [as detailed below] and the quantity and quality position of the proposed mitigation.

“16. The exception at Paragraph 99 b) relates to instances where the loss of playing fields and facilities resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. In support of the proposal, the appellant has provided details of assessments carried out to upgrade areas of the existing facilities at Prenton Rugby Union Football Club and the rugby pitch at the Old Parkonians Club. Additionally, the cricket pitch use has been reverted to the McAllester site where enhancements have been provided to meet the school's needs.

*17. At the Old Parkonians site, it is proposed to improve the existing rugby pitch through enhanced drainage and additional floodlighting. This would prevent overuse accounting for the current ground conditions and restricted usable area under current floodlight conditions. **This qualitative improvement would increase its ability to accommodate more training and match hours. The pitch would also be available to the school.***

*18. At the Prenton site, it is proposed to level a seasonally limited training area and adjacent unused scrubland within the site to provide a new floodlit senior pitch capable of year-round use. This would increase match playing and facilitate outdoor training capacities at the site throughout the year. **Although utilising existing land within the Prenton site, there would effectively be a qualitative and a quantitative enhancement of playing pitch provision here.**”*

- 6.7 The key conclusions reached in respect of the mitigation at both Old Parkonians and Prenton RUFC are highlighted proposed are highlighted in **bold**. The Inspectors did not dispute the quantitative and qualitative enhancements of the mitigation proposed, as confirmed in Paragraphs 17 and 18 above.
- 6.8 Instead, the Inspectors focused upon there being no legitimate mechanism for securing the proposed works in reaching a position on the failure to meet the exception in Paragraph 99b. A position that is reaffirmed in Paragraph 24 which related to the proposed qualitative improvements and states that *‘there is no mechanism to secure them. Accordingly, I find that the exception in Paragraph 99b has not been met’*.
- 6.9 The Inspector's conclusion on failure was not that the proposal failed to mitigate the loss of Noctorum Field in respect of **both** quantitative and qualitative provision.
- 6.10 In fact, it is necessary to highlight that in reaching the position as set out in Paragraph 24 the Inspector referred to and drew on the appellants *‘contention that qualitative enhancement are*

capable of offsetting quantitative losses'. The contention being referred to is **The Queen on the application of Martin John Brommell on Behalf of Mapledurham Playing Fields Action Group v Reading Borough Council & Secretary of State for Education [2018] EQHC 3529** (Admin) Judgement [as set out within Paragraph's 5.14 to 5.19 of the Appellants Statement of Case] in the context of qualitative enhancements being capable of offsetting quantitative losses and Lang J. conclusions. The application of this judgment is set out below.

- 6.11 The context of the Mapledurham Judgement is critical given its application for the interpretation of Paragraph 99(b) and the requirement for equivalent or better provision in terms of quantity and quality when seeking to replace the loss of existing playing fields.
- 6.12 In this respect Counsel (Kings Chambers) advice has been sought and has confirmed that the need to provide both equivalent or better provision in terms of **both** quantity and quality to satisfy the requirement of Paragraph 99(b) is incorrect when account for the aforementioned Judgement of Lang J.
- 6.13 The Judgement related to a case whereby the claimant sought to quash a planning permission on the basis that the local planning authority had misinterpreted paragraph 74 of the Framework (2012 version)⁴. In particular, by its first ground of challenge, the Claimant contended that the Framework required equivalent or better provision in terms of both quantity and quality (see Paragraph 23 of the Judgment below).

"That contention was rejected. Lang J. concluded that:

"...the Claimant's interpretation of paragraph 74 is over-mechanistic. The correct interpretation was provided by Mr Buley, on behalf of the Secretary of State, in his skeleton argument as follows:

'Para 74 requires that, where open space land is to be built upon, the loss will be replaced by "equivalent or better provision". Whether or not the provision is equivalent or better must be judged in terms of both quantity and quality. The word "and" simply makes clear that both quality and quantity are relevant parameters in judging whether provision is "equivalent or better". So, the overall requirement is that the open space land lost must be made up for, and whether or not that requirement is met is a matter of planning judgment, having regard to both the quantity of what is to be provided and the quality, but allowing (in an appropriate case) for one to be set off against the other.'"

⁴ The relevant provision of Paragraph 74 of the Framework (2012), that was the subject of the High Court judgment, was in the same terms as Paragraph 99(b) of the current version of the Framework (2021), and accordingly, the Court's interpretation of paragraph 74 of the Framework (2012) applies with equal force to paragraph 99 (b) of the Framework (2021).

- 6.14 This Judgement clearly confirms that in satisfying the requirement of Paragraph 99 (b) an allowance for one to be set off against the other is to be made. The full extent of the application of this Judgement and policy context was detailed within Paragraph's 5.13 to 5.20 of the Appellants Statement of Case.
- 6.15 In considering Paragraph 99(b) and whether or not the quantitative and qualitative position the loss resulting from the residential development of Noctorum Field has been met through the provision of cricket provision at the School's McAllester Site. The acceptability of the proposals at Prenton RUFC and Old Parkonians is considered later in this section.
- 6.16 Such consideration needs to have regard to the aforementioned Mapledurham Judgement and account for the fact that the word '*and*' in Paragraph 99(b) simply makes clear that both quality and quantity are relevant parameters in judging whether provision is "equivalent or better" and that the overall requirement is that the open space land lost must be made up for, and whether or not that requirement is met is a matter of planning judgment, having regard to both the quantity of what is to be provided and the quality, but allowing (in an appropriate case) for one to be set off against the other.'"

The Quantitative and Qualitative Position

Cricket Provision

- 6.17 The loss of Cricket facilities is not dealt with in the analysis that follows. It is considered that this matter was dealt with in the Inspectors consideration of the Appeal who confirmed that *'the cricket pitch use has been reverted to the McAllester site [owned by the School] where enhancements have been provided to meet the school's needs'* [Paragraph 16].
- 6.18 To mitigate for the loss of the four grass cricket strips (which were not specifically laid) as a result of the proposals, the School has replaced the four full standard cricket strips with new installation at McAllester Field. This ensures that they are replaced by better facilities that meet the English Cricket Board ['ECB'] boundary length requirements and are better located for use by the School.
- 6.19 For the avoidance of doubt the McAllester site is available for community use, unlike Noctorum Field, and as a consequence more cricket pitches are now actually available to the community.
- 6.20 The provision of facilities at McAllester represents a like-for-like quantitative replacement, and a significant enhancement in qualitative provision of cricket pitches.

Prenton Rugby Union Football Club

- 6.21 It is to be noted that in re-engaging with Sport England that they were issued with an earlier iteration of the proposed works (Proposed Layout - Option 1 (ref: 1571/006 Rev P02) at Prenton RUFC, as replicated in **Figure 6.1** below which comprised of 1.38ha of land, a slight increase

on the Prenton Rugby Club – Proposed Pitch Seniors plan (ref: RUG- EWA- ZZ- ZZ- DR- A- 10404 Rev P4) [as shown in **Figure 6.2** below] which comprises an area of 1.35ha and accompanied the original submission, and formed Plan 13 of the Appellant’s Statement of Case.

6.22 The ‘Proposed Layout – Option 1 comprised of the creation of a full-size rugby playing pitch and a proposed additional area of land that could be utilised as additional training space.

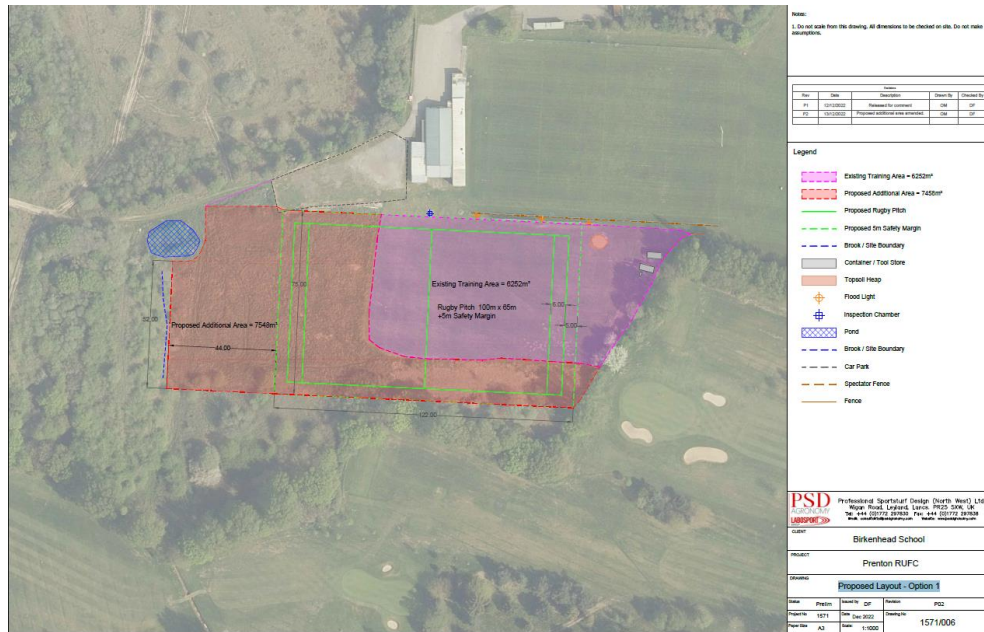


Figure 6.1: Proposed Layout - Option 1 (ref: 1571/006 Rev P02)

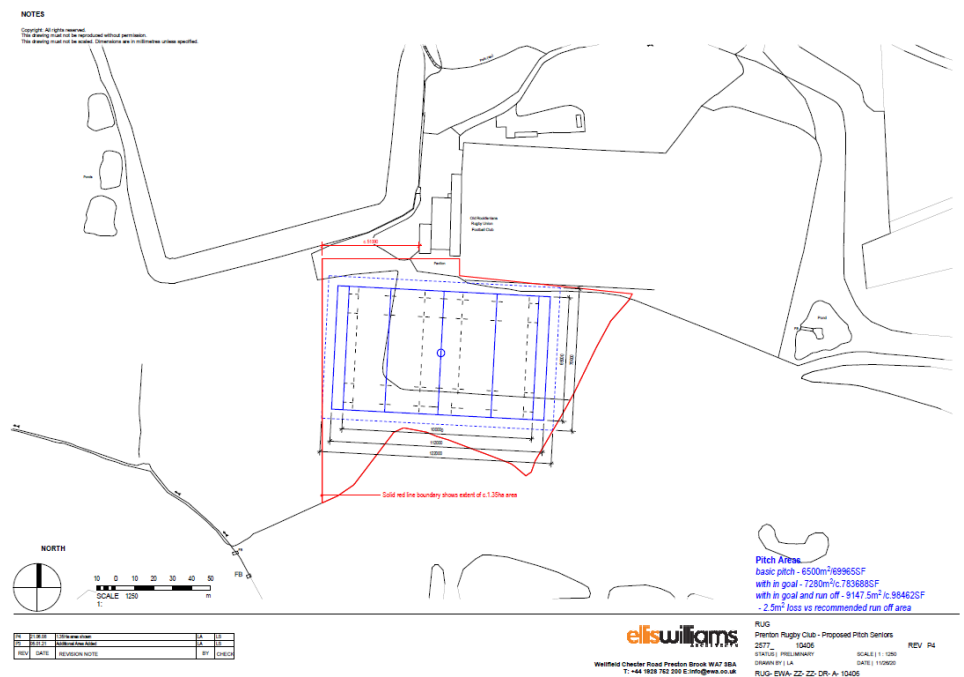


Figure 6.2: Prenton Rugby Club – Proposed Pitch Seniors plan (ref: RUG- EWA- ZZ- ZZ- DR- A- 10404 Rev P4) [Plan 13 of the Appellant’s Statement of Case]

6.23 Since then Sport England have been provided with an updated drawing as shown in **Figure 6.3** below (Proposed Levels and Layout ref: 1571/008 Rev P2) which demonstrates that the area subject to the mitigation works at Prenton [and standalone full planning application] has increased from 1.38ha to 1.78ha [gross], with a net playing field area of 1.68ha, when accounting for the Schools acquisition (subject to planning) of the third-party area of land within the red-line boundary shown.



Figure 6.3: Proposed Levels and Layout ref: 1571/008 Rev P2

6.24 The components of the refreshed proposal for Prenton are detailed in Section 4, but for the avoidance of doubt the land will comprise the regarding of land to form an additional playing pitch [Dimensions: 112m by 65m + 3m safety run off] (a functional playing pitch of 8,307 sq.m) with associated piped drainage, two new training grids [Dimensions: 50m by 40m, creating 4,000 sq.m of useable area] and the installation of floodlights.

6.25 The playing field area now subject to the works has increased by 0.33 ha from 1.35 ha up to 1.68 ha – which is 0.04 ha larger than the agreed position with Sport England [Fiona Pudge] with regards to the quantity of playing field at the Noctorum Field which was 1.64 ha (**Appendix 1**).

6.26 As highlighted, a standalone planning application is now being progressed for the quantitative and qualitative whereby the School and Prenton RUFC are joint applicants. Upon the grant of planning permission, the third-party land will be acquired by the School. On the basis of the Inspector conclusion relating to the need for a legitimate mechanism for secure the mitigation work, the draft S106 HoTs confirms that the works at Prenton are to be delivered prior to the commencement of any works at Noctorum Field.

- 6.27 This provides no uncertainty relating the delivery of the requisite improvement works and the satisfaction of Paragraph 99(b).
- 6.28 Additional feedback from Sport England has been requested in light of the significant enhancements made to the proposals at Prenton RUFC. To date LSH are awaiting a response from Sport England.

Old Parkonians

- 6.29 The proposed improvements work at Old Parkonians remains consistent with that previously proposed in so far as a financial contribution is to be provided to upgrade the drainage of the Clubs 1XV match pitch, as shown in **Figure 6.4** below.
- 6.30 However, as a result of additional cost associated with the Schools acquisition of the additional third-party land at Prenton RUFC the installation of floodlights at Old Parkonians no longer forms a component of the proposals.
- 6.31 Therefore, on the basis of the works proposed it has been concluded that planning permission is not required to facilitate the qualitative drainage improvements works. Therefore, on the basis of the Inspector conclusion relating to the need for a legitimate mechanism for secure the mitigation work, the draft S106 HoTs demonstrates that the works at Old Parkonians are to be delivered prior to the commencement of any works at Noctorum Field.
- 6.32 This provides no uncertainty relating the delivery of the requisite improvement works and the satisfaction of Paragraph 99(b).
- 6.33 The proposed mitigation represents a significant capital investment by the School and demonstrates their commitment to providing a betterment in terms of quantity and quality of provision in a suitable location to account for the replace the loss of playing fields and facilities resulting from the proposed Noctorum Field.

Satisfaction of Paragraph 99(b)

- 6.34 In light of the context set out above, the remainder of this Section demonstrates that the schemes at Prenton RUFC and Old Parkonians RUFC are unequivocally sufficient to replace the loss of playing fields and facilities resulting from the proposed development of Noctorum Field. Collectively they provide a significant betterment of provision in terms of both quantity and quality in a suitable location. Therefore, satisfying the exception at Paragraph 99 (b).

Equivalent or Better Quantitative Provision

- 6.35 As detailed in Appendix 1, the agreed position with Sport England [Fiona Pudge] in respect of the quantity of playing field at the Noctorum Field is 1.64 ha. In the context of Sport England's interpretation of national planning policy and their own playing field policy that replacement is to be directly comparable in terms of the hectarage of land that is to be replaced [a very simplistic interpretation, and in our view one that does not result in the most appropriate

benefits for sports provision], it is pertinent to highlight that as a result of the Schools agreement (subject to planning) to acquire the requisite third-party land the area of land at Prenton comprises 1.78ha [gross], with a net playing field area of 1.68ha, – which is 0.04ha larger than the quantity of playing field [1.64ha] agreed with Sport England that this proposal would need to replace.

6.36 In respect of the original application and at appeal, Sport England’s objection (Appeal Document 26) referred to the statement in the Appellant’s sports mitigation report (Document 7, Paragraph 1.1.42) to the effect that *‘the creation of new pitches at Prenton RFC will provide new playing field land’* and stated that:

‘This is not correct because the area is used for some rugby training and aerial imagery shows a mini football pitch has been marked out in the recent past with disused floodlights located to the south of the training area.’

6.37 This position is factually inaccurate, the area of land Sport England refer to is currently barely usable [only in the Summer] due to drainage issues – a position that is validated within the PPOSS 2021. Therefore, it cannot be considered equivalent in quality of quantity to that at Noctorum Field at the current time.

6.38 If Sport England continue to retain this view, then it is necessary to highlight that the existing undrained and unusable training area comprises circa 0.6252ha and is not identified within the PPOSS [2021] as a pitch at the site.

6.39 **Table 6.1** considers the respective provision of ‘playing field’ and ‘playing pitch’ at Noctorum Field alongside that being formed as a result of the mitigation proposal at Prenton RUFC.

	Playing Field (ha)	Playing Pitch (ha)
Noctorum Field	1.64 (existing)	0.63 (existing)
Prenton RUFC	1.68 - comprising the creation of +1.06ha new)	0.83 (new)
Difference	+0.04	+0.20

6.40 This evidence demonstrates that the mitigation proposed at Prenton RUFC would see, overall, the creation of an additional 0.04ha of playing field land greater than the position agreed with Sport England and an increase in playing pitch area of 0.20ha.

6.41 The applicant and Prenton RUFC remain strongly of the view that the existing training area is not usable and therefore should be considered new rather than existing playing field.

- 6.42 In that sense the proposed mitigation at Prenton RUFC alone satisfies Sport England's requirement to provide a directly comparable hectareage of land, the requirement of Exception 4 and Paragraph 99 (b) of the Framework in terms of the quantity of replacement provision.
- 6.43 Despite this reality, and in light of Sport England's position when accounting for the undrained and unusable training area comprises circa 0.6252ha considered to be 'playing field' the mitigation at Prenton alone would see the creation of 1.06ha of new playing field.
- 6.44 If Sport England are to interpret this as a 'loss of playing field' and therefore a failure to satisfy Exception Four of their Playing Field Policy and Guidance then attention is to be drawn to the application of the Mapledurham judgment and the allowance that needs to be made for one to be set off against the other is to be made [in terms of quantity and quality] and ultimately that their application in that sense is different to (and more onerous than) the that of Paragraph 99(b). Therefore, it is clear that National Policy carries the greatest weight in the determination of planning applications in England.
- 6.45 In that sense, the additional quantity equivalence / benefits of both the Prenton RUFC and Old Parkonians Mitigation are considered below.
- 6.46 **Table 6.2** summarises the quantitative of existing and proposed functional playing sports pitches of the respective sites.

Facility	Current Pitch Provision (sq.m) [Based upon the analysis of quantitative capacity, as detailed within the PPOSS]	Proposed Pitch Provision (sq.m)
Noctorum Field (non-community)	6,264 [0]	6,264 (lost) [0]
Prenton RUFC (1st XV)	8,120	8,120 (unchanged)
(2nd XV)	6,489	6,489 (unchanged)
New 3rd pitch		8,307
Old Parkonians (1XV)	9,028	9,028
2nd XV	7,480	7,480
Total	37,401 [31,137]	39,444
Difference	-	+2,043 [+ 8,307]

- 6.47 **Table 6.2** demonstrates the quantitative increase in functional playing pitch area that would be created as a result of the mitigation proposals proposed by the applicant and respective landowners (S106 Signatories). Despite the loss of Noctorum Playing Field pitch, which is not available for community use (our emphasis), the proposed mitigation will result in 1,556 sq.m of additional functional, drained, laid out and formalised grass playing pitch to Prenton RUFC and the local community.
- 6.48 In fact, as a result of the PPOSS which recognises that Noctorum Field has a disused status and does not incorporate it within the assessment of no. pitches, does not consider the quality of pitch, nor does it recognise its ability to provide match carrying capacity (match equivalent sessions / MES). Therefore, in reality the formation of the additional playing pitch at Prenton RUFC will increase the playing pitch provision by 8,307 sq.m.
- 6.49 Taking into consideration the RFU advice in respect of the standard number of matches that each pitch should be able accommodate per week, the introduction of an additional useable playing pitch, and significant drainage improvements will add significant additional capacity - In total, improvements will create an additional 4.5 MES sessions capacity per week and in quantitative terms this is significantly greater than the capacity that is currently available at Noctorum Fields⁵ – which given its disused status is zero [in light of its omissions from the 2021 PPOSS assessment of capacity.
- 6.50 In addition to increasing the quantum of functional useable playing pitch the provision of new usable training area (4,000 sq.m) will provide an additional quantitative benefit– given that the PPOSS highlights that the Prenton training area is largely unusable due to existing drainage issues. This is a significant qualitative betterment.
- 6.51 Overall, the quantitative betterment achieved as a result of the proposed mitigation is undeniable.

Equivalent or Better Qualitative Provision

- 6.52 In addition to the identified considerable quantitative betterment, the proposed mitigation at Prenton RUFC and Old Parkonians will achieve significant qualitative betterments.
- 6.53 As highlighted in the 2021 PPOSS recognises that Noctorum Field is disused, therefore it is concluded that the senior rugby pitch and a grass cricket square represent no qualitative provision.
- 6.54 Therefore, as this is entitled to considerable weight as a measure of current and anticipated playing field provision and demand the resulting qualitative benefits of both Prenton and Old

⁵ Or when considered in the context of the previous PPOSS 2016 (4 grass cricket wickets, capacity for circa 20 junior cricket matches) – this equated to 1 -2 cricket teams per season, (1 MES per week at peak time) and M1/D1 rugby pitch – (capacity 2 MES);

Parkonians, which are in accordance with the PPOSS aims and objectives for both clubs, is inherently a betterment of provision.

6.55 The qualitative betterment(s) achieved are as follows:

- Will not cause displacement of any existing activity – the previous cricket pitches have already been provided at Mcallaster Fields [as acknowledged by the Inspector] and there is no existing use of the playing field at Noctorum Playing Fields;
- The new provision will be secured on existing club sites that are fully accessible to the local community – which in the content the current disused status and/or previous private use of Noctorum Field represent a significant qualitative improvement.
- Investment into pitch quality will ensure that the standard of facilities at both clubs is significantly better than the current disused / previous quality of provision at Noctorum Fields.
- The drainage improvements at both Prenton and Old Parkonians will increase the quality of playing pitch provision at the sites, which ultimately results in an increased capacity for rugby at the disposal of local clubs at the locations where they wish to play.
- A qualitative improvement at Prenton RUFC through the creation of new functional useable training area (4,000 sq.m), which is a direct betterment that the largely unusable training area is due to existing drainage issues [as acknowledged within the PPOSS].
- At Prenton the mitigation proposal will direct contribute, alongside the proposal for the club extension and renewal (APP/22/00788) will enable the development of the site into a Community hub and its ability to accommodate a variety of a sporting groups. A position the Council recognised in approving the aforementioned extension / renewal scheme.
- The delivery of qualitative aims and objectives for both clubs as set out within the PPOSS 2021 – as considered in detail below.
- Enabling the delivery of a new sports hall, which will be open for community use and therefore will bring further sporting benefits to local residents through the realisation of capital funds from the sale of Noctorum Field. Despite this not being directly relates to the loss of provision of Noctorum it benefits can be given limited weight, as noted by the Inspector.

6.56 The proposed betterment achieved through the quality of mitigation proposed will also help to deliver upon the aims and objectives of the Sport England Strategy, Uniting the Movement. The enhancement in quality of both rugby clubs will deliver significant improved opportunities for sport and physical activity, enabling increased participation and supporting health and well-being.

Overall Quantitative and Qualitative Position

6.57 As highlighted in the Lang.J Judgement, the consideration of the quantitative and qualitative provision and whether or not the requirement to provide ‘*equivalent or better*’ is met is a matter of planning judgement, having regard to both, but allowing for one to be set off against the other.

6.58 Taking into consideration the above, the exception as set out in Paragraph 99(b) will be met to justify the loss of Noctorum Field through the following quantitative and qualitative provisions:

- The **provision of 1.68ha of playing field**, a 0.04ha larger than the quantity of playing field [1.64ha] agreed with Sport England that would need to be replaced;
- **8,307 sq.m of increased playing pitch provision** at Prenton RUFC, when compared with the existing poor-quality training area.
- A **2,043 sq.m increase in the provision of proposed functional playing sports pitches**, when accounting for the loss of the disused 6,264 sq.m pitch at Noctorum Field with the new 8,307 sq.m pitch at Prenton RUFC *[or an increase 8,307 sq.m when accounting for the assessment of provision / capacity at Noctorum Field]*.
- The creation of **new functional useable training area (4,000 sq.m)**, which is a direct betterment that the largely unusable training area is due to existing drainage issues [as acknowledged within the PPOSS].
- The creation of **an additional 4.5 MES sessions capacity per week** which will increase the amount of playing field that is available for community use
- The **new provision** will be secured on existing club sites that are **fully accessible to the local community**
- **An increase in quality of playing pitch provision** at the sites, which ultimately results in an **increased capacity for rugby** at the disposal of local clubs at the locations where they wish to play.
- **Contribution to the creation of a community sports hub at Prenton RUFC** alongside the Club's extension and renewal scheme (APP/22/00788).
- The **delivery of qualitative aims and objectives** for both clubs as set out within the **PPOSS 2021**.

Other Considerations

Compliance with the PPOSS

6.59 Section 5 considers in detail the Council's PPOSS, to which the Inspector entitled 'considerable weight as a measure of current and anticipated playing field provision and demand'.

6.60 The summary set out below demonstrates how the proposed mitigation directly aligns with the key aims and objectives of the PPOSS for the delivery of quantitative and qualitative improvements at both clubs.

Prenton RUFC

6.61 The PPOSS clearly highlights that Prenton RUFC is working to convert its training area into a full-size, floodlit senior pitch. Alongside the aspirations for the creation of a new full-size pitch,

it is highlighted that Prenton RFC has ambitions to develop the clubhouse at its site into a community hub. To facilitate this, it aspires to improve and extend the changing facilities (including dedicated women and girls changing), expand the social space, and create a kitchen within the clubhouse.

- 6.62 It is considered that the development of the clubhouse into a community hub is advancing, with the first stages of the vision now benefiting from planning permission pursuant to application ref: APP/22/00788. Indeed, Prenton RUFC are receiving relatively unique support from the RFU (one of three nationally) to become a “community hub” not just for rugby, but for other sports as well, and community activities within their clubhouse. They have a queue of sports clubs awaiting the provision of new pitch / training facilities.
- 6.63 The proposed mitigation works at Prenton addresses the aims of the PPOSS for the site, and directly satisfies the need to sustain pitch quality to ensure no future capacity issues through the creation of an additional, adequately drained full size playing pitch, and the creation of a floodlit senior pitch in place of its current training area. The mitigation works therefore directly address the Council's PPOSS aims for Prenton Rugby Club by protecting, enhancing, and providing playing pitches and outdoor sports facilities at the Site.
- 6.64 As highlighted the proposed mitigation [and standalone planning application] is being progressed with the support of the RFU, a party identified as a key stakeholder in facilitating the aims for Prenton RUFC. The PPOSS, however, fails to recognise the important role the School will play in delivering the key aims for Prenton. Without Prenton RUFC working in partnership with the School, as a key partner, the aims, and objectives for Prenton RUFC would be unlikely released without the need to leverage public funding.

Old Parkonians RUFC

- 6.65 With regards to Old Parkonians RUFC [as referred to in the PPOSS as 'Oxton Parkonians RFC', with an interest in the 'HM Curphey Memorial Ground'] the PPOSS Assessment Report highlights that 'Oxton Parkonians RFC is saving and fundraising to replace the drainage on the playing pitches at HM Curphey Memorial Ground. The Club indicates that the existing drainage system has degraded in recent years and was originally installed in the 1990s'. The current facilities are rated as standard quality.
- 6.66 The proposed financial commitment to funding mitigation works of Old Parkonians RUFC 1st XV pitch at the HM Curphey Memorial Ground' addresses the aims of the PPOSS for the site, and directly satisfies the recommended actions of improving pitch quality to eradicate overplay and supporting Oxton Parkonians RFC to improve drainage on site.
- 6.67 As highlighted the proposed mitigation [and standalone planning application] is being progressed with the support of the RFU, a party identified as a key stakeholder in facilitating

the aims for Old Parkonians RUFC. The PPOSS, however, fails to recognise the important role the School will play in facilitating the improvement in quality and drainage of the site.

- 6.68 The key aims and objectives for Prenton RUFC and Old Parkonians of the PPOSS provide further evidence that the mitigation works proposed will deliver considerable qualitative, and quantitative benefits by directly protecting, sustaining, and providing facilities required by existing clubs that will allow them to grow and thrive from their existing locations and extend their excellent reputation in the North West and beyond.

Engagement with the RFU

- 6.69 Discussions have taken place with the RFU, which has confirmed its support for the proposals subject to a legal agreement and Sport England support. Its support acknowledges the net improvement to the quality and enjoyment for rugby in this locality and for Birkenhead overall. It concludes within its letter of support to Sport England that the proposed solution as a result of the loss of Noctorum Field for sports use will lead to a demonstrable equivalent and better rugby provision in terms of both the quantity and quality as well as being well connected to existing and well-established facilities. This in their view will allow both clubs to grow and thrive from their existing locations and extend their excellent reputation in the North West and beyond. The letter of support is provided in due course.

Delivery of the Proposed Mitigation

- 6.70 As highlighted in the appeal decision, the Inspectors only outstanding reason for dismissal related to the failure to provide a legitimate mechanism to secure the necessary mitigation works. The legitimate mechanism for securing the necessary works is as follows:
- The proposed mitigation at Prenton RUFC is submitted in conjunction with the re-submission of this application;
 - The proposed drainage improvements at Old Parkonians does not require planning permission;
 - The applicant will acquire the 'third-party land' required at Prenton RUFC upon the grant of planning permission;
 - The delivery of the necessary mitigation works will be secured as detailed within the draft S106 Agreement;
 - All relevant parties, including the current Third-Party Landowner at Prenton RUFC are signatories to the draft S106 HoTs.
- 6.71 This application therefore provides absolute clarity that there is a legal and legitimate mechanism, that meets the test of Paragraph 57 of the Framework, that gives certainty as to the delivery of respective mitigation proposals.

6.72 **The Inspectors only outstanding reason for dismissal of the appeal is therefore considered to be resolved.**

Demonstrating the exception to Paragraph 99(b)

6.73 This section, as highlighted, demonstrates that the mitigation schemes at Prenton RUFC and Old Parkonians RUFC and by virtue of the S106 Agreement, alongside other benefits are unequivocally sufficient to replace the loss of playing fields and facilities resulting from the proposed Noctorum Field when accounting for Paragraph 99(b) of the Framework and the criteria of Sport England's Exception 4.

6.74 In addition to this, the quantitative and qualitative improvements are fully support by the RFU, a key stakeholder, and fully align with the aims and objectives of the most recent PPOSS Strategy [2021], to which the inspector gave considerable weight as a measure of current and anticipated playing field provision and demand within the Borough.

6.75 On the basis of the above, it is concluded that the mitigation proposed achieves in the round a significant betterment in provision in terms of both quantity and quality. The exception of Paragraph 99(b) has been met and is demonstrably deliverable.

7 Planning Policy Assessment

- 7.1 The proposal remains entirely consistent with that previous submitted. During consideration of the appeal the Inspector considered all other matters prohibiting a positive determination of the application and found these to be in accordance with Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 and demonstrates the proposals conformity with the Development Plan, relevant national policy, and guidance, as well as any other material considerations. Therefore, it is not necessary to reconsider these matters during the determination of the re-submission of this outline application.
- 7.2 With that in mind and when accounting for the Inspector's Appeal Decision this assessment considers the only outstanding reasons prohibiting a positive determination of the outline application as detailed in the preceding sections of the Statement. The conclusions reached entirely accounts for the Inspectors conclusions of the issue detailed within the Appeal Decision.
- 7.3 For the avoidance of doubt this application is also supported by updated technical information which demonstrates that the conclusions reached in respect of Highways, Ecology and Flood Risk / Drainage remain valid and consistent with the preceding. Therefore, the context in which the application was original considered remains accurate.
- 7.4 In assessing the proposal, it is necessary to reaffirm that Wirral Council, as the Local Planning Authority, consider that *'the proposal site is acceptable 'in principle' as a residential proposal in urban location within the urban fabric of Birkenhead, in a predominantly residential area'* [LPA Local Planning Authority's Statement of Case – Para 4.1, Page 14]. This is a clear position of fact that was put forward by the Council.

The Effect of the Loss of the Existing Playing Fields with regard to Local Provision

- 7.5 The Inspector, in dismissing the appeal found that the adverse impacts arising as a result of the uncertainty surrounding the mechanism for delivery of the proposed mitigation works at both Prenton RFC and Old Parkonians would significantly and demonstrably outweigh the benefits as a result of conflict with the adopted Development Plan (UDP Policy RE6) and the Framework.
- 7.6 Section 6 of this report addresses the inspectors only outstanding reason for dismissal of the Appeal and unequivocally demonstrates that the proposed quantity and quality of mitigation is sufficient to satisfy the exception criteria of Paragraph 99(b) of the Framework.

7.7 The submitted draft S106 Agreement provides absolute clarity that there is a legal and legitimate mechanism, that meets the test of Paragraph 57 of the Framework, for securing the respective mitigation proposed. To reaffirm the position, this application:

- Is being pursued in tandem with a connected and respective full planning application for proposed quantitative and qualitative mitigation improvements works at Prenton RUFC (PP-Ref: 1199335), thereby providing both quantitative and qualitative benefits justifying the loss of existing provision at Noctorum Field.
- Will facilitate the implementation of qualitative drainage improvements at Old Parkonians RUFC [which do not require planning permission], thereby providing benefits that justify the loss of existing provision at Noctorum Field.
- Is accompanied by a draft S106 legal agreement whereby all parties [including the third-party landowner at Prenton RFC] will be signatories, thus creating the legal mechanism requiring the delivery of the respective works in connection with the delivery of residential development at Noctorum Field.

7.8 Given that the approach to the re-submission of this application directly addresses the Inspectors only outstanding reasons for dismissal it can be concluded that the development proposed can be found compliant with the adopted Development Plan and the Framework, thereby enabling Wirral Council to provide a positive resolution.

Other Matters

Highways

7.9 Mode Transport Planning have been commissioned to update the Transport Statement in support of the re-submission of this outline planning application.

7.10 The updated Statement confirms again assesses the development proposal in the context of trip generation, accessibility by sustainable modes of travel, servicing arrangements, onsite car parking provisions and local highways capacity impact. In considering this the Statement confirms that based on the updated evidence and analysis there should be no highways or transport planning reasons that prevents this planning application from being approved.

7.11 This conclusion, therefore, confirms that the Inspectors conclusions that “... *the proposals would provide for a safe means of access to the public highway network and make adequate provision for accessibility, including to public transport services. It would align with Policy TRT1 of the UDP and the aims of the Framework to promote sustainable forms of transport*” remains accurate and valid. It can therefore be concluded that the scheme is entirely-acceptable in terms of highways and transportation.

Ecology

- 7.12 RSK Biocensus have been commissioned to undertake an updated ecological constraints walkover undertaken for the Site in support of the re-submission of this outline planning application.
- 7.13 The walkover has been undertaken to update those previously undertaken in April 2019 and November 2021 to confirm whether the habitats on the site, and their suitability for protected species, remain the same.
- 7.14 The supporting letter confirms that the assessment of the habitats at the site and their suitability for protected species remains the same as the assessments carried out in 2019 and 2021 [these are also submitted alongside this application]. They are therefore not repeated in full within the letter, however a brief summary is provided. The letter details any notable updates to the assessments, or changes in protected or notable species found at the site are provided below.
- 7.15 The only noticeable change that has occurred since the previous assessment relates to the preliminary roost assessment of the building. The updated letter confirms that in 2019 the pavilion building was initially assessed with regard to its potential for use by roosting bats and was considered to provide low potential at this time. The building was subsequently subject to one emergence survey on 29 July 2019, during which no bats were seen emerging from or re-entering the building. The 2021 building re-assessment confirmed that building should maintain its low potential classification.
- 7.16 In 2023 as part of the updated site walkover, the main building was assessed as low potential for roosting bats, as the exterior of the building still offers a limited number of potential roosting features (PRFs) that are suitable for roosting bats. No additional features further to those noted in 2021 and no evidence of roosting bats was recorded.
- 7.17 The building attached to the main building is a boiler room, the room was found to have two desiccated bat droppings within cobwebs on the wall. This building was likely used by an opportunistic bat and is classified as having a roost of low conservation status.
- 7.18 Other than two droppings, no other signs of habitation were present at the time of survey and all cavities inspected with endoscope had no bats present.
- 7.19 In light of this finding the ecological update recommends that due to the age of the data and in line with the low potential rating of the main building, it is recommended that one updated presence / absence survey should be carried out between May and August, as the boiler room has a confirmed roost of low conservation status, it is recommended that two presence / absence survey should also be carried out between May and August. These surveys would need to be undertaken prior to the demolition of the buildings.

- 7.20 RSK Biocensus have confirmed that an appropriate and suitable strategy can be implemented to facilitate the demolition of the buildings – whether that be the ‘de-classification’ of the roost and demolition under a method statement, or under a bat mitigation class licence or earned recognition scheme. The findings of the survey, at the appropriate time, will ultimately determine the approach measure. This should not however, prevent the Local Planning Authority from a positive determination of the application – as the necessary measures could be secured via a condition and actioned at the appropriate time.
- 7.21 As highlighted all other ecological matters are considered to remain consistent with the previous assessment. Therefore, additional bat surveys are to be completed in line with the ecological recommendations prior to any demolition works commencing at the appropriate point in time.

Flood Risk / Drainage

- 7.22 LDE (and RSK Company) have been commissioned to undertake and update the Flood Risk Assessment and Drainage Strategy in support of the re-submission of this outline planning application.
- 7.23 The update of the Assessment buildings upon the further evidence provided by the applicant’s technical team to the LLFA and United Utilities as part of the Appeal.
- 7.24 On that basis, it remains the case that FRA and Drainage Strategy confirms that drainage is no longer an appropriate reason to withhold planning permission (and previously justifying the reason for refusal five of the Appeal. This is a position reflect in the Council’s Statement of Case [Paragraph 2.46].
- 7.25 In that sense the FRA and Drainage Strategy reflects the agreement reached with United Utilities that will ensure the site can drain in perpetuity, subject to a number of conditions and informative. The approach remains appropriate, and the condition is incorporated within the draft schedule of conditions put forward with this application and relates to the inclusion of proposals for a sustainable surface water drainage system; and a condition covering the construction, operation, and maintenance of approved sustainable surface water drainage system as part of a future Reserved Matters application.
- 7.26 Given the updated FRA and Drainage Strategy’s consistency with the information provide, it can be concluded [an as highlighted within the Council’s Statement of Case - Paragraph 2.47], that the proposal it is therefore compliant with the relevant policy, guidance, and legislation.

Policy Assessment

- 7.27 In light of all other components of the proposal remaining consistent with those considered by the Inspector in dismissing the Appeal which have been found to be in accordance with in accordance with Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 and are considered to compliant with the Development Plan, the Framework, and other material considerations, the assessment of the re-submission of this application **focuses entirely upon the Inspectors only outstanding reason for dismissal of the Appeal.**
- 7.28 As a matter of clarity, and for the avoidance of doubt this application is support by updated technical information relevant to Highways, Ecology and Drainage / Flood Risk. The updated reports demonstrate that the conclusions reached previously remain valid and consistent with the preceding, or appropriate mitigation can be implemented to ensure that the proposal remains consistent with the Development Plan.
- 7.29 Therefore, there is no reason as to why the planning application should not be determined positively and efficiently.
- 7.30 Having now satisfied all aspects relating to the proposed development a draft suite of planning conditions is put forward to enhance the quality of development and enable it to proceed. The conditions put forward reflect the previous feedback from Statutory Consultee Responses, by the Council within their Statement of Case, and as suggested by the applicant during the appeal.
- 7.31 The conditions proposed are considered to be acceptable in the context of Paragraph 55 of the Framework and deemed satisfy the six tests [as required by NPPG] with regards to being: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.

8 Conclusions

8.1 This Planning Statement has been prepared by Lambert Smith Hampton, on behalf of Birkenhead School to support the re-submission of an outline planning application for the demolition of the existing pavilion and erection of up to 33 dwellings and associated infrastructure on Noctorum Field, Noctorum Road, Noctorum CH43 9UQ. The proposed description of development is as follows:

“The demolition of the existing pavilion and erection of up to 33 dwellings and associated infrastructure. All matters reserved except for access”

8.2 The application remains entirely consistent with that previously submitted (LPA Ref: OUT/21/01516) to the Council, and that considered by the Planning Inspectorate pursuant to the appeal for non-determination (Appeal Ref: APP/W4325/W/22/3291997).

8.3 This application is submitted in the context of the Inspectors dismissal of the appeal and represents a direct response to the only outstanding issues prohibiting a positive determination of the proposal – that being the failure to provide a legitimate mechanism for the delivery of quantitative and qualitative mitigation works to justify the loss of existing playing fields at Noctorum Field as a result of the proposal.

8.4 In respect of the other three matters, the Inspector found in favour of the applicant and concluded that proposal in those regard would be compliant with the requirements of the Development Plan. Therefore, it is not necessary to reconsider these matters during the determination of the re-submission of this outline application.

8.5 In that regard this Statement comprehensively and unequivocally demonstrates that the quantity and quality of the proposed mitigation at both Prenton RUFC and Old Parkonians RUFC is sufficient to satisfy the exception criteria of Paragraph 99(b) of the Framework in terms of providing equivalent or better replacement provision in terms of quantity and quality in a suitable location to justify the loss of playing field at Noctorum Field.

8.6 Furthermore, having accounted for the Inspectors consideration of the failure to provide a legitimate mechanism for the delivery of quantitative and qualitative mitigation works this Statement, alongside the draft S106 Agreement provides absolute clarity that this application is being:

- pursued in tandem with a connected and respective full planning application for proposed quantitative and qualitative mitigation improvements works at Prenton RUFC (PP-Ref: 1199335), thereby providing both quantitative and qualitative benefits justifying the loss of existing provision at Noctorum Field;

- will facilitate the implementation of qualitative drainage improvements at Old Parkonians RUFC [which do not require planning permission], thereby providing benefits that justify the loss of existing provision at Noctorum Field; and,
 - is to be accompanied by a S106 legal agreement [a draft of which has been submitted with this application] whereby all parties [including the third-party landowner at Prenton RFC] will be signatories to the Agreement.
- 8.7 The legal and legitimate mechanism for securing the necessary mitigation works is considered to directly address the Inspectors reason for dismissal of the Appeal. The mechanism meets the test of Paragraph 57 of the Framework, for securing the respective mitigation proposed.
- 8.8 Therefore, it can be concluded that the development proposed can be found compliant with the adopted Development Plan and the Framework, thereby enabling Wirral Council to provide a positive resolution.
- 8.9 In addition to satisfying the Inspectors only outstanding reason for dismissal, as a matter of clarity, and for the avoidance of doubt this application is also support by updated technical information relating to Highways, Ecology and Drainage / Flood Risk that demonstrates that the conclusions previously reached remain valid and consistent with the preceding, or that appropriate mitigation can be implemented to ensure that the proposal remains consistent with the Development Plan.
- 8.10 Therefore, there is no reason as to why the planning application should not be determined positively and efficiently.
- 8.11 Having now satisfied all aspects relating to the proposed development a draft suite of planning conditions is put forward to enhance the quality of development and enable it to proceed. The conditions proposed are considered to be acceptable in the context of Paragraph 55 of the Framework and deemed satisfy the six tests [as required by NPPG] with regards to being: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.
- 8.12 Therefore, we trust that this application can be dealt with in a timely manner with planning permission being granted without delay. The applicant looks forward to working proactively work with the Council to facilitate the significant collective benefits that the proposal facilitates.

Appendix 1 – Sport England 1.64ha Email

From: [Fiona Pudge](#)
To: [Shuker Paul](#)
Cc: [carolyn.wilkinson](#); [Turner M J](#); [dale@psdagronomy.com](#); [Janet Belfield](#)
Subject: RE: Birkenhead School - Prenton Rugby Club (Private and Confidential)
Date: 05 January 2021 10:54:25
Attachments: [image012.png](#)
[image013.png](#)
[image014.png](#)
[image016.png](#)

Hello Paul

Thank you for the update. I was going to say Happy New Year but given last night's announcement I'll change that to I hope you are well and safe.

I note from the plan provided that the car park has not been included in the calculations. As this is ancillary to the main use of the playing field it needs to be included. A measurement from aerial imagery shows this area to be approximately 240sqm which makes the existing playing field area 1.64ha, can we agree to this figure?

I note from your email dated 4th January 2021 that the mitigation area is 1.25ha, part of which will be improvement to existing and part will be a new creation of playing field land. As I explained during our calls last year, unless the Council's Playing Pitch Strategy shows an excess of pitch provision then any loss of playing field needs to be provided to an equivalent or greater quantity as well as an equivalent or better quality. To accept a partial quantitative replacement and the remainder as qualitative improvements would set a precedent that would be very difficult to defend for other similar projects in the area.

I completely understand and acknowledge that the qualitative improvements put forward will have a sports development benefit but sports development only applies to policy Exception E5. This is where a development is a non pitch sports facility the benefits of which outweigh the loss of playing field. As it is a housing development and not an alternative sports facility that will result in the loss of playing field then policy E4 does need to apply. As I mentioned in our call, there is some flexibility in that but I will need to see the final PSD reports before I can make a fully informed decision.

At present I have availability on the 20th and 21st January, morning and afternoon but avoiding 12-2pm. I'll pencil those dates in now and await confirmation of your preference.

Kind Regards

Fiona Pudge Planning Manager **T:** 07747 763534 **M:** 07747 763534

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From: Shuker Paul <PShuker@lsh.co.uk>
Sent: 18 December 2020 17:48
To: Fiona Pudge <Fiona.Pudge@sportengland.org>
Cc: Janet Belfield <Janet.Belfield@sportengland.org>; [carolyn.wilkinson <carolyn.wilkinson@wvg.com>](mailto:carolyn.wilkinson@wvg.com); Turner M J <MJT@birkenheadschoo.co.uk>; dale@psdagronomy.com
Subject: RE: Birkenhead School - Prenton Rugby Club (Private and Confidential)

Dear Fiona


Thanks for the call on Tuesday, just to confirm we have reviewed the net area of the site, and we estimate it to be 1.62ha not 1.74ha as suggested, once you allow for the tree coverage and a number of area to the north that are not playing pitches.

I can confirm that we have agreed with the school to review the PSD reports and have instructed them to review the scrub land to the east of the training area to see if this can sustain further grass pitches. PSD will also provide a cost estimate to treat and drain this subject area to an appropriate standard if it is suitable for grass pitches. We estimate at this stage that the whole area including this scrub land and the training ground would be around 1.15ha possibly 1.2ha, but would still need to net off the training area.

As a result the Trustees of the School have reluctantly delayed the submission of the two planning application (s) until the end of January, they were ready to be submitted next week and before the holidays. This is to allow the work by PSD to be completed and so can we review whether this is a viable option or not. I suggest we set up a meeting in mid-January to discuss this further and once we have the PSD results. We are committed to submitting to the end of January, as we have spent 18 months to date on his project and further delay is not addressing the Schools objectives of improving access to excellent sporting facilities for pupils and the wider community. We have also kept the clubs up to date with this position.

We trust that you can agree to a meeting in mid-January so we can keep up the momentum, as we trust that you agree, despite this specific Policy E4 position, the improvement to sporting assets as a result of the initiative is significant and should not be under estimated on the wider balance of a real world scenario that affects people access to sporting facility.

**Paul Shuker**
Director - Planning, Development and Regeneration
6th Floor - 3 Hardman Street, Spinningfields, Manchester, M3 3HF
Direct: 0161 242 7056
Office: 01612367056
Mob: 07769727394
Email: PShuker@lsh.co.uk

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From: Fiona Pudge [<mailto:Fiona.Pudge@sportengland.org>]
Sent: 11 December 2020 07:49
To: Shuker Paul
Cc: Turner M J; Tom Morrison; Janet Belfield; Brian Elkerton; Allen, Neil; [carolyn.wilkinson](mailto:carolyn.wilkinson@wvg.com)
Subject: RE: Birkenhead School - Prenton Rugby Club (Private and Confidential)

Hello Paul

Thank you for the update. I look forward to reading WYG's submission.

Kind Regards

Fiona Pudge Planning Manager **T:** 07747 763534 **M:** 07747 763534 **PLEASE NOTE I DO NOT HAVE ACCESS TO A PHONE AT PRESENT**

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From: Shuker Paul <PShuker@lsh.co.uk>
Sent: 10 December 2020 12:52
To: Fiona Pudge <Fiona.Pudge@sportengland.org>
Cc: Turner M J <MJT@birkenheadschoo.co.uk>; Tom Morrison <Tom.Morrison@becg.com>; Janet Belfield <Janet.Belfield@sportengland.org>; Brian Elkerton <brianelk@live.co.uk>; Allen, Neil <Neil.Allen1@tetrattech.com>; [carolyn.wilkinson <carolyn.wilkinson@wvg.com>](mailto:carolyn.wilkinson@wvg.com)
Subject: RE: Birkenhead School - Prenton Rugby Club (Private and Confidential)

Dear Fiona

Further to our upcoming meeting next week, I wanted to confirm that we have instructed Neil Allen at WYG to consider the quantitative position of the mitigation measures and they are going to provide a note on this in advance of the meeting as well as attend. We are keen to resolve this policy as we have significant support at club and RFU levels and the current position is holding up the excellent solution that the school have put together over the course of the evolution of this project.

We trust this is acceptable to you and Janet.

Kind Regards



Paul Shuker
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From: Fiona Pudge [<mailto:Fiona.Pudge@sportengland.org>]
Sent: 03 December 2020 17:24
To: Shuker Paul
Cc: Turner M J; Tom Morrison; Janet Belfield; Brian Elkerton
Subject: RE: Birkenhead School - Prenton Rugby Club (Private and Confidential)

Hi Paul

I think at this point I think the call should just be between Sport England and the planning consultancy team because we need to have quite a technical discussion around our policy. Once I am confident you fully understand the policy requirements then we may be able to include the Rugby Club at later date.

Please note both myself and Janet live in Tier 3 areas so we are both unable to travel outside of our respective areas, so a site visit is not possible at this time.

Kind Regards

Fiona Pudge Planning Manager **T:** 07747 763534 **M:** 07747 763534

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From: Shuker Paul <PShuker@lsh.co.uk>

Sent: 03 December 2020 16:39

To: Fiona Pudge <Fiona.Pudge@sportengland.org>

Cc: Turner M J <MJT@birkenheadschool.co.uk>; Tom Morrison <Tom.Morrison@becg.com>; Janet Belfield <Janet.Belfield@sportengland.org>; Brian Elkerton <brianelk@live.co.uk>

Subject: RE: Birkenhead School - Prenton Rugby Club (Private and Confidential)

Hi Fiona

Given the lack of availability then we are going to have to accept the 15th December call to discuss this.

Do you require us to include Prenton RUFC in these discussions, they are also keen for you to visit the site, as it will demonstrate to Sport England that the subject area is not a formal playing pitch as alleged.

We can also update you on dialogue we have had this week with Old Parkonians RFUC.

Kind Regards



Paul Shuker
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From: Fiona Pudge [<mailto:Fiona.Pudge@sportengland.org>]
Sent: 03 December 2020 16:08
To: Shuker Paul
Cc: Turner M J; Tom Morrison; Janet Belfield
Subject: RE: Birkenhead School - Prenton Rugby Club (Private and Confidential)

Hello Paul

I have spoken to my Line Manager, Janet Belfield, and we feel it would be more appropriate if she was on the call rather than Ian as he is dealing with the Rugby Club funding award and not the planning application.

Unfortunately, we both have priority commitments next week but we can offer the morning of the 15th December from 10am.

Please let me know if that date and time suits you and I will send a Teams invite.

Kind Regards

Fiona Pudge BA(Hons) BTP MRTPI

Planning Manager

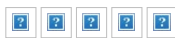
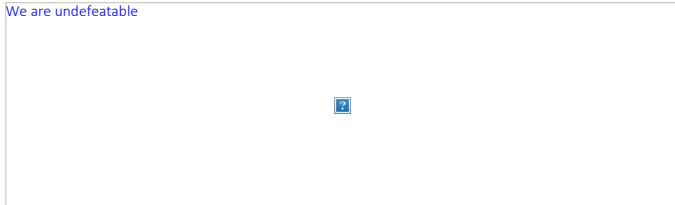
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From: Shuker Paul <PShuker@lsh.co.uk>

Sent: 01 December 2020 10:39

To: Fiona Pudge <Fiona.Pudge@sportengland.org>

Cc: Turner M J <MIT@birkenheadschool.co.uk>; Tom Morrison <Tom.Morrison@becg.com>; Ian Silvera <Ian.Silvera@sportengland.org>

Subject: RE: Birkenhead School - Prenton Rugby Club (Private and Confidential)

Dear Fiona

Thanks for the email, can I please suggest that we set up a call on this after your national project has completed later this week. It would be useful to have Ian on the call as well. I can set up a virtual call on Monday or Tuesday if that works for you.

Kind Regards



Paul Shuker

Director - Planning, Development and Regeneration

6th Floor - 3 Hardman Street, Spinningfields, Manchester, M3 3HF

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Office: 01612367056

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From: Fiona Pudge [<mailto:Fiona.Pudge@sportengland.org>]

Sent: 01 December 2020 08:29

To: Shuker Paul

Cc: Turner M J; Tom Morrison

Subject: RE: Birkenhead School - Prenton Rugby Club (Private and Confidential)

Good morning Paul

I apologise for the delay in responding but I'm currently working on a national project which is due to finish at the end of this week

The reason for the call on the 3rd November 2020 was because there was a realisation that the advice given to you last November and earlier this year was based on the scrubland to the west of the Prenton RUFC site.

As I've pointed out on several occasions Sport England protect the whole of a playing field site not just the pitches currently marked out. The mitigation you are proposing are qualitative improvements only to existing playing field land and does not provide the quantitative element. This aspect was clearly explained to you by myself and my colleague Ian Silvera during the meeting. Despite the poor quality of the land that is the subject of the PSD report it is none the less existing playing field and has been used for pitch purposes in the past. The aerial below shows a junior football pitch marked out in June 2018:



As I said in my correspondence of the 18th November if the scrubland to the west of this area is brought into use then I can make a case for the quantitative and qualitative elements of the policies being broadly met, subject to the required planning permissions and s106 agreement.

The table provided below only sets out the areas of current playing field land and improvements to existing playing field. It does not provide the case for a new quantity of playing field land being created.

I'm afraid I am unable for the remainder of this week but if you could review my email of the 18th November it does set out what you need to do to resolve the situation.

Kind Regards

Fiona Pudge Planning Manager **T:** 07747 763534 **M:** 07747 763534

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From: Shuker Paul <PShuker@lsh.co.uk>
Sent: 18 November 2020 12:42
To: Fiona Pudge <Fiona.Pudge@sportengland.org>
Cc: Turner M J <MJT@birkenheadschool.co.uk>; Tom Morrison <Tom.Morrison@becg.com>
Subject: RE: Birkenhead School - Prenton Rugby Club (Private and Confidential)

Hi Fiona

Thanks for your comprehensive and considered response on this point. Thanks for confirming in writing that qualitatively the policy position is reached and that the overall approach to sports development is welcomed by SE, these are on both useful considerations.

The Wirral Playing Pitch strategy (WPPS) produced by Knight, Kavanagh and Page (KKP) in 2016 (attached) sets out the recognised pitches across the Borough more specifically this is contained in the statistical tables in the appendices of the report. KKP confirm that Prenton RUFC (item 58 on page 71) only has two senior poor quality pitches, and both are over played. Therefore, the proposition of a new grass pitch on the subject site will facilitate the creation of three senior pitches overall at Prenton (and not 2) and therefore quantitatively (and qualitatively) will be an improved position to that currently existing. This also addresses the recommended actions in the WPPS which looks to explore options to improve pitch quality and look to reduce training on the floodlit pitches.

Our position is further strengthened at Old Parkonians where qualitative improvements that are to be made. We also note that in the WPPS, item 34 in the statistical tables it confirms that in the recommendations actions it seeks to explore options to improve the pitch quality and to reduce training on the floodlit pitches, our proposed mitigation facilitates the KKP recommendation and should be supported. For your benefit I have attached correspondence from Old Parkonians confirming that they are fully supportive of the mitigation proposed for their club.

We should also note that on item 148 of the WPPS in relation to the NF site, KKP confirm that the pitch is not available for community use but for school use. The school will use their facilities at McAllester Fields to play rugby in the future. Therefore there is question mark whether we are actually losing a community grass pitch as the LPA's own evidence doesn't demonstrate that it is community use.

I have discussed the position with Club Design who considered the original mitigation position and they are of the view that the land at Prenton cannot be considered an existing pitch as it does not meet Sports England or the RFU own guidance, KKP must have considered this position in their report and validates this. This is validated by the Club who have consistently said it is used for training purposes despite posts being up, it is clearly not a recognised pitch as defined.

This is really an important point, as the preparation of and sign off the WPPS we assume a document validated by Sport England and the Local Planning Authority at that time.

LSH can also confirm that the NF pitch measures 87m x 72 m only and therefore the current pitch to be lost is 6,264 sq.m and not 1.76 ha as set out below, although we note the Pavilion buildings will be lost.

Notwithstanding our position that we believe that the mitigation does create a new additional playing pitch. but to assist in your deliberations we have sought to summarise the position taking the size of the pitches from the PSD reports to show that there is a quantitative increase.

Facility	Size (sq.m)	Size
NF	6,264	6,264
Prenton RFU (1 st XV)	8,120	
(2 nd XV)	6,489	
New 3 rd pitch		6,500 (see page 13 of PSD report)

Old Parkonians (1 st XV)	9,028	
(2 nd XV)	7,480	
Total	37,401	37,637
Difference		+236

I would need to liaise with the School to see if we can draw up the proposed pitches at the two clubs to help you visualise the scale of the new pitches.

The below email, did not recognise that the School have also relocated a new cricket grass wicket over at McAllester Fields sports area. I have attached the photos of the new replacement grassed pitch, this was at a cost of £35,000.

I think it would be useful to discuss this further as we believe that from review of the Council's own evidence we are creating a new grass pitch at Prenton with an improved pitch size to that lost. We can also confirm that this investment would also help with further improvements which you rightly confirm benefits and improves sports overall. There also needs to be acknowledgement of the wider investment in the Sports Hall at the school.



Paul Shuker
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From: Fiona Pudge [<mailto:Fiona.Pudge@sportengland.org>]
Sent: 18 November 2020 09:38
To: Shuker Paul
Cc: Turner M J; Tom Morrison
Subject: RE: Birkenhead School - Prenton Rugby Club (Private and Confidential)

Hello Paul

Thank you for the additional information, however it has created far more questions than it answers. I have not copied in everyone at this stage because I wanted to make sure you fully understand my concerns before bringing anyone else into the conversation. I'm afraid my previous correspondence was based on the understanding that the PSD Agronomy Report was based on the scrubland to the west of the PRUFC site and not the existing playing field land. It was only discussions with my colleagues about the Business Plan for PRUFC that alerted me to the fact that there had been a misunderstanding about the area of land in question. I did set out in my correspondence to you dated 11th December 2019 that I required plans of the existing and proposed playing field sites with areas (sqm) clearly marked and that has not been submitted. If those plans had been submitted sooner then the advice contained within this email could've been issued in time to enable you to fully review and resolve the mitigation requirements well ahead of the proposed planning application submission deadline.

I should reiterate the point I made in our call of the 3rd November 2020, that Sport England's statutory remit is to protect the whole of a playing field site and not just the pitches currently or historically marked out. I note you refer to:

"the main issue surrounds the loss of natural grass pitches, however, it was recognised that that there is a qualitative improvement through the improved drainage and floodlit, it also needs to be remembered that the mitigation results from a new improved pitch at Prenton and at Old Parkonians. Therefore, the result means there are two improved pitches for the loss of one. Prenton confirmed that the proposed pitch is not used as pitch but may have traditionally many years ago been used, but has not due to site constraints."

As the loss of playing field at Birkenhead School is due to a non sports development the area of playing field being lost needs to be quantified. It is that area of playing field loss that needs to be mitigated and not just the loss of one pitch. Although I acknowledge the qualitative improvements proposed would be beneficial to those sports involved it does not replace the quantity of playing field lost. As a reminder the following exception to Sport England Playing Fields Policy and paragraph 97(b) of the National Planning Policy Framework needs to be complied with in full:

EXCEPTION 4

The area of playing field to be lost as a result of the proposed development will be replaced, prior to the commencement of development, by a new area of playing field:

- of equivalent or better quality, and
- of equivalent or greater quantity, and
- in a suitable location, and
- subject to equivalent or better accessibility and management arrangements.

Having looked at aerial imagery Nocturnum Playing Fields is approximately 1.76ha (including the pavilion) so it is that area that needs to be replaced. I am currently having the Agronomy Reports for Prenton RUFC independently reviewed to establish whether the area of improvement is genuine creation of new playing field land or qualitative drainage improvements to existing playing field. Historic aerial imagery show a small sided football pitch marked out June 2018 and rugby posts shown in 2007. Although I acknowledge the condition may be poor at present the area has been used to accommodate a rugby and football pitch in the past so falls within the definition of a playing field. Even if the Agronomy Report shows new playing field land will be created this only equates to 9,150sqm (according to the Agronomy Report) so there would still be a need to find approximately 8,450sqm of playing field land. This would mean some of the scrubland previously earmarked for playing field to the west of the Prenton RUFC site would also need to be brought into use. I've attached the plan that I referred to in our call showing the scrubland area. Throughout our discussions over the last year or so I had assumed this was the land in question because you have previously referred to it as scrubland yourself.

To be clear the Agronomy Report for Old Parkonians identifies the rugby pitch as extensively used for senior and junior rugby matches with improvements required to increase it's capacity. As this is only a qualitative improvement to an already well used rugby pitch it cannot be considered as part of the mitigation package to meet planning policy requirements. However, as a sports development opportunity it is welcomed.

Wirral's Playing Pitch Strategy shows a deficiency of pitches so it is important any current playing field land is replaced where development is proposed so the pitch deficiencies are not exacerbated. If only qualitative improvements are proposed and replacement playing field land cannot be found then it does call into question whether Nocturnum Playing Fields should be developed for a non sport use. It might be beneficial to delay submission of the planning application until Wirral's emerging updated Playing Pitch Strategy has been finalised to see if the supply/demand balance has changed to the extent that there is sufficient pitch provision to meet current and future demand. If it transpires that is now the case then qualitative improvements to existing pitches can be considered instead. There is also the issue of additional demand for sport generated from the housing development where qualitative improvements to existing pitches may be required to help build capacity to accommodate that additional demand.

Proposed Artificial Grass Pitch

Sport England can only accept an Artificial Grass Pitch (AGP) as mitigation for loss of natural turf playing field where there is a proven strategic need and sporting benefits that outweigh the loss of natural turf playing field. In addition the AGP cannot be placed on existing natural turf playing field, even if that area is poor quality, because it compounds the loss of playing field

(loss of playing field due to housing plus loss of natural turf playing field due to a fixed sports structure). Sport England's statutory remit is to protect natural turf playing field that can be used to accommodate a variety of pitch types and sizes to meet changes in demand over time. An AGP is a fixed structure that cannot be resized or moved and depending on the surface can only accommodate 1 or two pitch sports rather than the 15 or more pitch types that natural turf can accommodate. In addition an AGP is only 7,000sqm in area so cannot mitigate the playing field quantity loss (1.76ha) element of the policy. As mitigation for Noctorum Playing Fields an AGP cannot be considered at this stage, the mitigation will need to be natural turf pitches. I have attached Sport England's Policy Exception E5 briefing note for reference in the event the Rugby Club want to pursue the AGP as an independent project in the future. The AGP, in its own right, would need to meet the following Exception to Sport England Playing Field Policy (paragraph 97(c) of the NPPF):

EXCEPTION 5

The proposed development is for an indoor or outdoor facility for sport, the provision of which would be of sufficient benefit to the development of sport as to outweigh the detriment caused by the loss, or prejudice to the use, of the area of playing field.

Conclusion

The quantitative loss of playing field has not been considered, only qualitative improvements to existing playing field. Should an independent review of the Prenton RUFC Agronomy Report conclude the improvements to the existing area constitute genuine creation of new playing field land then 9,150sqm of the 1.76ha lost will be mitigated. To mitigate the remaining 8,450sqm then some of the scrubland to the west of the PRUFC site would also need to be brought into use. The Old Parkonians improvements cannot mitigate the loss but as a sports development opportunity is welcomed.

If bringing the scrubland into use to the west of the PRUFC is not feasible then I advise the planning application is delayed until the Wirral Playing Pitch Strategy has been finalised and that used to inform the mitigation required. If a full quantitative and qualitative replacement cannot be found then it does call into question whether the site should be developed for a non sport use.

Kind Regards

Fiona Pudge Planning Manager **T:** 07747 763534 **M:** 07747 763534

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From: Shuker Paul <PShuker@lsh.co.uk>

Sent: 04 November 2020 08:55

To: Ian Silvera <Ian.Silvera@sportengland.org>; Tom Morrison <Tom.Morrison@becg.com>; Brian Elkerton <brianelk@live.co.uk>; Daniel Green <daniel.green@footballfoundation.org.uk>; Fiona Pudge <Fiona.Pudge@sportengland.org>; Alex Bowden <AlexBowden@RFU.com>; Matt Cogle <MattCogle@RFU.com>; Vesta Pear <Vesta.Pear@cheshirefa.com>; tdouglas@merseysidesport.com

CC: Turner M J <MIT@birkenheadschool.co.uk>; Melissa Flynn <Melissa.Flynn@wardhadaway.com>

Subject: Birkenhead School - Prenton Rugby Club (Private and Confidential)

Dear All

Thanks for all your time yesterday, I hope you all found it a useful discussion, and I'm hopeful that we all appear to be on the same page in that we want to support improvements to the club and importantly the wider Wirral community. We need to ensure we don't lose sight of this important element.

As agreed, I have attached for everyone's benefit the agronomy reports for both clubs (Prenton and Old Parkonians) as well as the flood lighting estimates also for both clubs. These have been provided to the clubs and to Sport England and the RFU. However, I appreciate there have been changes since last summer and the delays associated with CV19.

We also have also attached a draft letter prepared by Old Parkonians RFC in February 2020 that confirms that the mitigation monies will make a significant improvement to the access to rugby for all groups. This has yet to be submitted to the LPA at this stage, due to obvious delays.

I have also attached the RFU letter from October that we have provided to the LPA (Wirral Council), this sets out the proposed mitigation to be provided to the Council is they are minded to approve. Equally we have a prepared a draft s106 agreement to legal agree this, but this is yet to be fully

It is clear from the positivity, that the main issue surrounds the loss of natural grass pitches, however, it was recognised that that there is a qualitative improvement through the improved drainage and floodlit, it also needs to be remembered that the mitigation results from a new improved pitch at Prenton and at Old Parkonians. Therefore, the result means there are two improved pitches for the loss of one. Prenton confirmed that the proposed pitch is not used as a pitch but may have traditionally many years ago been used, but has not due to site constraints.

Fiona is going to circulate further information for the applicant to consider and strategic need for the improvements. Matt at the RFU confirmed that if the proposals meet world rugby compliance there would be support. Equally, we need to consider the possibility of football.

From the travel of the discussion, I felt that the introduction of the 3G pitch which is something that we should all be targeting in the medium to long term; however, I sense that the 3G pitch may be causing us a short term policy issue that could affect the outcome of the consideration of any application at Noctorum Fields for the School. I think we collectively need to consider this, as it may have an adverse impact on the long term solution. I may discuss this separately with Ian and Fiona.

There was a lot of positives to take from the call, and only by working together I believe we can get to a solution that works for all. Given the sensitivities of the proposals can we please treat the discussion as P&C for now and until we have a clear position and consensus on moving forward.

Kind Regards



Paul Shuker

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Appendix 2 – Prenton RUFC Site Area



- Notes:
1. Do not scale from this drawing. All dimensions to be checked on site. Do not make assumptions.
 2. Earthworks Volumes
 Cut = 3069m³
 Fill = 3069m³
 Net = 0m³ (Balanced)
 3. Graded Plateau = 16770m²
 4. Earthworks Area (Plateau and Batter Slopes) = 17860m²

Revisions				
Rev	Date	Description	Drawn By	Checked By
P1	22/02/2023	Released for comment	OM	DF
P2	28/02/2023	Rugby pitch safety margins amended to 3m. Graded plateau adjusted. Volumes recalculated	OM	DF

Legend

Proposed Features

- Major Contours - 2m Intervals
- Minor Contours - 50cm Intervals
- 1:3 Fill Batter Slope
- 1:3 Cut Batter Slope
- Proposed Gradient
- Graded Plateau (16770m²)
- Proposed Rugby Pitch
- Training Grids

Existing Features

- Major Contours - 2m Intervals
- Minor Contours - 50cm Intervals
- Spectator Fence
- Fence
- Ball Stop Netting
- Container / Tool Store
- Flood Light
- Inspection Chamber
- Brook / Site Boundary
- Car Park

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CLIENT
Birkenhead School

PROJECT
Prenton RUFC

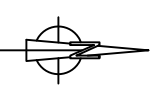
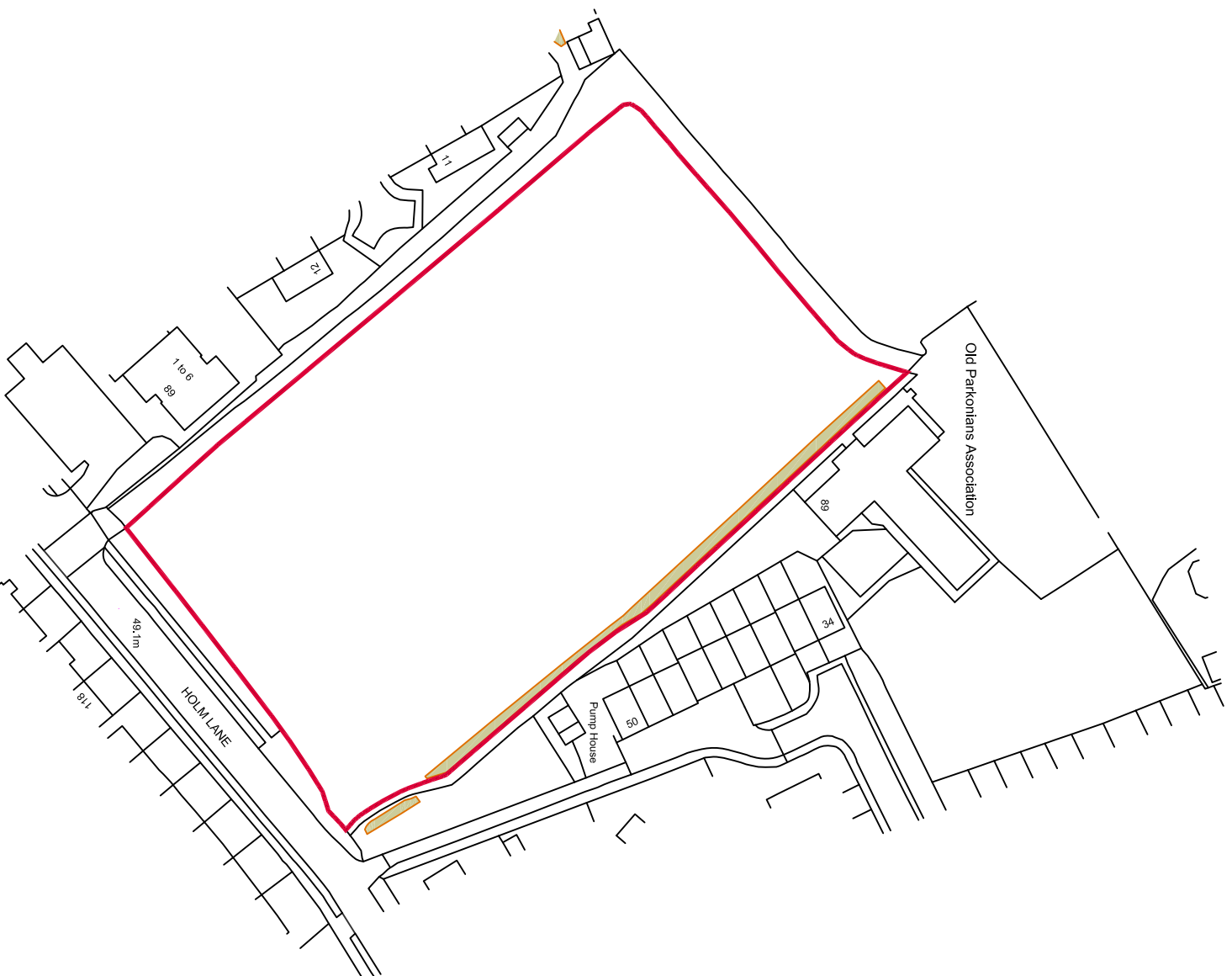
DRAWING
Proposed Levels and Layout

Status	Prelim	Issued by	DF	Revision	P2
Project No	1571	Date	Feb 2023	Drawing No	1571/008
Paper Size	A3	Scale:	1:1000		

Appendix 3 – Old Parkonians RUFC Site Area

NOTES:
 1. Do not scale from this drawing. All dimensions to be checked on site. Do not make assumptions.

Revisions			
Rev	Date	Description	Drawn By / Checked By



0 10 20 30 40
 Scale: 1:1250 @ A3

PSD
 AGRONOMY
 LABSPORT
 Professional Sportsturf Design (North West) Ltd.
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CLIENT
Birkenhead School
 PROJECT
Old Parkonians RUFC

DRAWING

Site Plan			
Status	Issued By	Revision	
Prelim	NYB	Rev/dwn	P1
Project No	Date	Drawing No	
1571	MAR 2023	1571/011	
Paper Size	Scale		
A3	1:1250		

Appendix 4 – Draft S106 Legal Agreement

Dated

2023

WIRRAL COUNCIL

and

BIRKENHEAD SCHOOL

and

PRENTON RUFC LIMITED

and

THE OLD PARKONIANS ASSOCIATION LIMITED

and

RUGBY FOOTBALL FOUNDATION

and

FRITHMERE LIMITED

SECTION 106 AGREEMENT

pursuant to Section 106 of the Town and Country
Planning Act 1990 (as amended) in respect of
Noctorum Field, Noctorum and Prenton RUFC
Grounds, Prenton

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This Deed is dated the

day of

2023

Between

- (1) **WIRRAL COUNCIL** of Town Hall, Brighton Street, Wallasey, Wirral, CH44 8ED ("**the Council**");
- (2) **BIRKENHEAD SCHOOL** (CRN 4492250) care of The Bursar, Birkenhead School, 58 Beresford Road, Prenton, Wirral, Merseyside, CH43 2JD ("**the Owner**"); and
- (3) **PRENTON RUFC LIMITED** (CRN 8295033) whose registered office is at Prenton RUFC The Clubhouse, Prenton Dell Road, Birkenhead, CH43 3BS ("**Prenton**");
- (4) **THE OLD PARKONIANS ASSOCIATION LIMITED** (CRN 8670419) whose registered address is HM Curphey Memorial Ground And Clubhouse, Holm Lane, Birkenhead, Merseyside, CH43 2HU ("**Old Parkonians**");
- (5) **RUGBY FOOTBALL FOUNDATION** (CRN 4608134) (Charity No. 1100277) whose registered address is Rugby Football Union, 200 Rugby House, Twickenham Stadium, 200 Whitton Road, Twickenham, TW2 7BA ("**the Mortgagee**"); and
- (6) **FRITHMERE LIMITED** (CRN 02420072) whose registered address is New Hey Chester Road, Great Sutton, Ellesmere Port, Cheshire, England, CH66 2LS ("**Frithmere**").

Background

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and is the authority by whom the obligations hereby created are enforceable.
- (B) The Owner is the freehold owner of Noctorum Field registered at HM Land Registry with title number MS251606.
- (C) Prenton is the freehold owner of the Prenton Site registered at HM Land Registry with title number MS598701.
- (D) Old Parkonians is the freehold owner of the Old Parkonians Site registered at HM Land Registry with title number MS597139.
- (E) The Mortgagee has the benefit of a legal charge over the Old Parkonians Site dated 11 December 2013.
- (F) Frithmere is the freehold owner of the Frithmere Land.
- (G) The Owner submitted the Application in respect of Development of Noctorum Field to the Council on [] and it was validated by the Council on [].
- (H) The parties have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council against the Owner, Prenton, Old Parkonians and Frithmere and their successors in title in relation to their interests (respectively) in Noctorum Field, the Prenton Site, the Old Parkonians Site and Frithmere Land

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It is agreed:

1. **Definitions and Interpretation**

1.1. For the purposes of this Deed the following expressions shall have the following meanings:

- “Act”** the Town and Country Planning Act 1990;
- "Affected Unit"** means any Affordable Rented Unit or Shared Ownership Unit that the Owner is unable to dispose of to a Registered provider and in lieu of the onsite provision of which an Off-Site Affordable Housing Contribution is to be paid to the Council in full accordance with the provisions of paragraph 1.4 of Part 1 of Schedule 2 hereof;
- “Affordable Housing”** housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any successor policy or legislation in respect of affordable housing);
- "Affordable Housing Units"** means those dwellings designated as Affordable Housing by the Affordable Housing Scheme;
- "Affordable Housing Scheme"** means a scheme for the provision of Affordable Housing within the Development to be approved in writing by the Council;
- "Affordable Rented Unit"** means Affordable Housing to be let at an Affordable Rent;
- "Affordable Rent"** means a rent which is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80% of the local market rent or such other rent that may be permitted by Homes England (or any successor body to which the function of regulation of registered providers is transferred) including target rents;
- “Application”** the [outline] planning application for the demolition of the existing pavilion and erection of up to 33 dwellings (Use Class C3) and associated infrastructure (all matters are reserved with the exception of access) at Noctorum Field validated by the Council [] and allocated reference number [];
- "Chargee"** means any mortgagee or chargee of a Registered Provider and its successors in title or

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any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver") or any persons or bodies deriving title through such mortgagee or chargee or Receiver;

**"Commencement
Development"**

of the date on which development pursuant to a relevant planning permission is commenced on a part of the Site (and where for the avoidance of doubt "planning permission" as defined for the purposes herein comprises more than one such Planning Permission the earliest date after the date hereof on which any such said planning permission is commenced on the Site) and/or the carrying out of any material operation in accordance with Section 56(4) of the Act (whichever is the earlier) provided that the following shall not amount to a material operation:

- (a) operations consisting of site clearance;
- (b) demolition work;
- (c) archaeological investigations;
- (d) investigations for the purpose of assessing ground conditions;
- (e) remedial work in respect of any contamination or other adverse ground conditions;
- (f) diversion and laying of services;
- (g) erection of any temporary means of enclosure; and
- (h) the temporary display of site notices or advertisements;

and "Commence Development" shall be construed accordingly;

"Development"

the development of Noctorum Field pursuant to the Planning Permission;

"Dwelling"

a unit of residential accommodation to be constructed pursuant to the Planning Permission;

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"Frithmere Land"	means that part of the Site edged [] on [];
"Index"	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation and "Indexation" and "Index Linked" are to be construed accordingly;
"Noctorum Field"	means that part of the Site edged [] on [];
"Occupation"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly;
"Off-Site Affordable Housing Contribution"	means the sum of £[] ([] pounds) to be paid by the Owner to the Council and to be applied by the Council towards Affordable Housing within the administrative area of the Council the need for which arises as a consequence of the Development;
"Old Parkonians Site"	means that part of the Site edged [] on the Plan X;
"Old Parkonians Works"	means the installation of drainage at the Old Parkonians Site more specifically comprising: (a) []; (b) []; (c) [etc];
"Plan X"	the plan marked "Plan X" attached to this Deed at Appendix 1;
"Planning Permission"	the planning permission to be granted by the Council in substantially the same form as the draft attached at Appendix 2;
"Practical Completion"	the date upon which a certificate of practical completion is issued by the Owner's architect or such other person who is monitoring the

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development to which the term relates on behalf of the Owner

and "Practically Completed" shall be construed accordingly;

"Prenton Application"

means the application for planning permission for the formation of a turf playing pitch, associated drainage and the installation of [] no. floodlights submitted to the Council with reference number [];

"Prenton Site"

means that part of the Site edged [] on Plan X;

"Prenton Works"

means the creation of a new floodlit, natural turf pitch pursuant to planning permission granted by the Council further to Prenton Application on the required parts of the Prenton Site and the Frithmere Land;

"Protected Tenant"

means as the case may be:

- (a) a tenant who has exercised the right to acquire pursuant to the Housing Act 1996 or any other statutory provision for the time being in force (or equivalent contractual right) in respect of an Affordable Rented Unit; or
- (b) a tenant who has exercised a statutory right to buy (or equivalent contractual right) in respect of an Affordable Rented Unit.
- (c) has been granted a Shared Ownership Lease (where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit; or
- (d) has acquired an Affordable Rented Unit from a Registered Provider through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, or any amendment or replacement thereof;

AND FOR THE AVOIDANCE OF DOUBT any person or body and/or their mortgagee deriving

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title through or from any of the parties mentioned in paragraphs above;

"Registered Provider"	means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 who is registered with Homes England and has not been removed from the register.
"Secretary of State"	means the Secretary of State for Levelling Up, Housing and Communities;
"Shared Ownership Lease"	means such lease as shall from time to time be substantially in accordance with Homes England model form of shared ownership lease or such other successor bodies model form of lease;
"Shared Ownership Unit"	means the Affordable Housing Units that are to be owned and managed by a Registered Provider such that they shall be occupied on the basis of a Shared Ownership Lease;
"Site"	the parcels of land comprising Noctorum Field, the Frithmere Land, the Prenton Site and the Old Parkonians Site against which the obligations within this Deed may be enforced as shown edged red on Plan X and described in Schedule 1.

2. **Construction of this Deed**

- 2.1. Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed (unless the context otherwise requires).
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.5. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.6. The headings and contents list are for reference only and shall not affect construction.

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2.7. Any covenant by the Owner or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

2.8. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

3. **Legal Basis**

3.1. This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all powers so enabling.

3.2. The covenants, restrictions and requirements imposed upon the Owner, Prenton, Old Parkonians and Frithmere under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner, Prenton, Old Parkonians and Frithmere as further particularised in clause 5 of this Deed.

4. **Conditionality**

4.1. The obligations in this Deed in Schedule 2, are conditional upon:

4.1.1. the grant of the Planning Permission; and

4.1.2. the Commencement of Development.

5. **Covenants**

5.1. The Owner covenants with the Council so as to bind the Site to fully observe and perform the obligations in this Deed and hereby agrees that the Site shall be subject to the obligations, restrictions and covenants herein, such obligations being planning obligations for the purposes of Section 106 of the Act.

5.2. The Council covenants with the Owner to observe and perform the obligations on its part in this Deed including those obligations more particularly set out in Part 2 of Schedule 2.

5.3. Old Parkonians, Prenton and Frithmere covenant separately with the Council to observe and perform the obligations in this Deed including those obligations set out in Part 3 of Schedule 2 as they separately affect their respective parts of the Site.

6. **Local Land Charge**

6.1. This Deed shall be registrable as a local land charge by the Council.

6.2. Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

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7. **Communication and Council's Consent or Approval**

- 7.1. Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Director of Planning and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

8. **Termination of this Deed**

- 8.1. This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn (without the consent of the Owner) or it is modified by any statutory procedure or expires prior to the Commencement of Development.

9. **The Contracts (Rights of Third Parties) Act 1999**

- 9.1. Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the Council this Deed shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims whatsoever thereto.

10. **Liabilities**

- 10.1. No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Deed after it shall have parted with all or part of its interest in the Site (or the part of the Site to which the breach relates) but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 10.2. No purchaser or tenant of any Dwelling to be constructed on the Site or any mortgagee thereof or a statutory undertaker shall be liable for any of the covenants contained in this Deed.
- 10.3. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission granted after the date of this Deed.

11. **Mortgagee's Consent**

- 11.1. The Mortgagee acknowledges and declares that this Deed has been entered into by Old Parkonians with its consent and that the Old Parkonians Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Old Parkonians Site shall take effect subject to this Deed

PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Old Parkonians Site in which case it too will be bound by the obligations as if it were a person deriving title from Old Parkonians.

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12. **Council's Powers**

12.1. Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authority.

13. **Waiver**

13.1. No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

14. **Dispute Provisions**

14.1. In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

14.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the Owner.

14.3. Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

14.4. The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

15. **Indexation**

15.1. The Old Parkonians Contribution and Prenton Contribution shall each be increased by an amount equivalent to the increase in the Index from the date of this Deed until the date on which such sum is payable.

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16. **Jurisdiction**

16.1. This Deed is governed by and interpreted in accordance with the law of England and Wales.

17. **Delivery**

17.1. The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

18. **Future / Amended Planning Permission(s)**

18.1. In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the Act this Deed shall continue in full force in respect of the Planning Permission with the relevant condition or conditions so varied.

18.2. In the event that an application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission and planning permission is granted in respect of that application references to Planning Permission in this Deed shall include the new planning permission granted pursuant to Section 73 of the Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the Act.

19. **Exemptions**

19.1. Subject to clause 19.2 below from the date of Practical Completion of the Affordable Dwellings they shall not be used other than for Affordable Housing in accordance with the Affordable Housing Scheme.

19.2. Clause 19.1 of this Deed shall not be binding on a Protected Tenant or a Chargee (or any receiver (including an administrative receiver) appointed by such Chargee or any other person appointed under any security documentation to enable such Chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such Chargee or Receiver

PROVIDED THAT (in the case of a Chargee):

19.2.1. such Chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider for a reasonable consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

19.2.2. if such disposal has not completed within the three month period, the Chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the provisions in this Deed which provisions shall determine absolutely.

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20. **Legal Fees**

20.1. The Owner covenants to pay to the Council on the date of completion of this Deed the sum of £[] ([] pounds) in respect of the Council's legal costs in the preparation of this Deed.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

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Schedule 1 – The Site

[DESCRIPTION HERE]

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Schedule 2 – Planning Obligations

Part 1 – The Owner's Covenants with the Council

The Owner covenants with the Council as follows:

1. **Affordable Housing**

- 1.1. Prior to Commencement of Development the Owner shall submit an Affordable Housing Scheme to the Council for approval which shall deal with the provision of Affordable Housing Units pertaining to the Development and which shall include the following:
- 1.1.1. The numbers, type, size and location of the Affordable Housing Units save that nothing shall require the total number of Dwellings to be provided as Affordable Housing Units across the whole of the Site to be greater than seven (7) in number;
 - 1.1.2. Arrangements for the marketing of the Affordable Housing Units;
 - 1.1.3. The timing of the construction of the Affordable Housing Units in relation to the Occupation of the Open Market Dwellings;
 - 1.1.4. Details of arrangements the Council may reasonably require to ensure that the Affordable Housing Units remain as Affordable Housing to first and all subsequent occupiers including (but not limited to) details of any restrictions on title to secure affordable housing provisions in perpetuity save where the exemptions in clause 19 of this Deed apply;
 - 1.1.5. The basis on which any of the Affordable Housing Units may be occupied whether in respect of their first becoming occupied and/or in relation to subsequent occupations or disposals to include the occupancy criteria to be used for determining the initial and subsequent Occupiers of the Affordable Housing Units;
- 1.2. The Owner shall carry out the Development in accordance with the terms of the Affordable Housing Scheme as approved by the Council for the purpose of paragraph 1.1.
- 1.3. To the extent that the Affordable Housing Scheme is approved in a form that authorises the construction and delivery of Affordable Rented Units or Shared Ownership Units all such Affordable Housing shall be disposed of to a Registered Provider.
- 1.4. Where, despite having used reasonable endeavours over a continuous period of three months proceeding the Commencement of the Development to transfer any of the Affordable Housing for the purposes of paragraph 1.3 hereof to a Registered Provider the Owner has been unable to secure such disposal then the Owner shall be entitled to pay the Off-Site Affordable Housing Contribution to the Council in lieu of the on-site provision of Affordable Housing by way of those Affected Units.

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1.5. Upon payment of the Off-Site Affordable Housing Contribution the Owner shall be free to dispose of any Affected Units free from the restrictions in this paragraph 1 of Part 1 of this Schedule 2 of this Deed and the Affordable Housing Scheme.

2. **Prenton Works**

2.1. The Owner shall submit the Prenton Application to the Council for the laying out and improvement of the Prenton Site and Frithmere Land comprising the Prenton Works no later [than the Commencement of the Development] and shall not Commence the Development until such planning permission has been duly granted by the Council.

2.2. The Owner shall not cause or permit the [Commencement/the Occupation of more than [x]no. Dwellings at Noctorum Field] unless and until the Prenton Works are substantially complete in full accordance with the planning permission granted by the Council pursuant to paragraph 2.1 hereof.

3. **Old Parkonians Works**

3.1. The Owner shall not cause or permit [Commencement/the Occupation of more than [x]no. Dwellings at Noctorum Field] unless and until the Old Parkonians Works are substantially complete

Part 2 – The Council’s Covenants with the Owner

The Council covenants with the Owner as follows:

1. At the written request of any party, the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed to that party.
2. To use (or procure the use of) all sums received under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.
3. In the event that all or part of the Off-Site Affordable Housing Contribution remains unexpended at the end of the period of 5 years from the date when the contribution was received in full by the Council then the Council shall within 28 days of a written request to do so repay any unexpended sums to the person who made the payment.
4. At the written request of the Owner the Council shall provide written confirmation of whether and how the Off-Site Affordable Housing Contribution has been spent and shall provide such evidence of expenditure as reasonably requested.
5. To issue the Planning Permission on the date hereof or as soon as reasonably practicable thereafter.

Part 3 – Prenton and Frithmere Covenants

1. **Prenton Works**

1.1. Prenton covenants with the Council to substantially complete the Prenton Works upon the Prenton Site no later than []

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1.2. Frithmere covenants with the Council to substantially complete the Prenton Works upon the Prenton Site no later than [].

2. **Old Parkonians Works**

2.1. Old Parkonians covenant with the Council to substantially complete the Old Parkonian Works on the Old Parkonian Site no later than [].

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Appendix 1 – Plans

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Appendix 2 – Draft Planning Permission

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The Common Seal of)
WIRRAL COUNCIL)
was hereunto affixed)
in the presence of:)

.....
Duly Authorised Signatory

Signed as a Deed by
BIRKENHEAD SCHOOL

In the presence of:

Signature of Witness:

Name:

Address:

.....

Occupation:

Signed as a Deed by
PRENTON RUFC LIMITED

In the presence of:

Signature of Witness:

Name:

Address:

.....

Occupation:

Signed as a Deed by
THE OLD PARKONIANS ASSOCIATION LIMITED

In the presence of:

Signature of Witness:

Name:

Address:

.....

Occupation:

**Signed as a Deed by
FRITHMERE LIMITED**

In the presence of:

Signature of Witness:

Name:

Address:

.....

Occupation:

**Signed as a Deed by
RUGBY FOOTBALL FOUNDATION**

In the presence of:

Signature of Witness:

Name:

Address:

.....

Occupation: