

Chesterton Community Centre
2 Geminus Road
Chesterton
Bicester
OX26 1BJ

17/02333/F

Applicant: Chesterton Parish Council

Proposal: Change of Use from informal to formal play including the installation of play equipment (part retrospective)

Ward: Fringford And Heyfords

Councillors: Cllr Ian Corkin
Cllr James Macnamara
Cllr Barry Wood

Reason for Referral: Due to level of local interest in the application

Expiry Date: 24 January 2018 **Committee Date:** 15th February 2018

Recommendation: Approval

1. APPLICATION SITE AND LOCALITY

1.1. The application site is an area of open space to the west of the existing playing field located in the southern part of the village of Chesterton. Residential properties exist to the north of the site which back onto the playing field and a new housing development exists immediately to the west of the site where a number of residential properties face onto the western boundary of the site. A children's play area exists immediately to the south of the site beyond which lies a new community hall. These elements were secured as part of the planning application for the residential development to the west of the site.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

2.1. The current application seeks permission to use the application site as an equipped area of play. This area was previously designated to be used for informal open space as part of the original application for the housing to the west of the site.

2.2. The proposal is partially retrospective and includes the retention and construction of a number of pieces of play/exercise equipment. In the southern part of the site, in the area closest to the existing play equipment, a number of pieces of play equipment for older children have been erected including a zip wire, windmill rotor and birds nest swing. In the norther part of the site 6 pieces of outdoor gym equipment have been erected.

2.3. The applicant is also proposing to erect further equipment in these areas including a Supernova (W 3.4mtrs. H 77cms), a Rota Bounce (W 2.8mtrs H 2.0mtrs), and a Net Climb (L 2.2mtrs H 2.5mtrs) or Balanced Walk (L 3.3 m W 1.8mtrs)

3. RELEVANT PLANNING HISTORY

3.1. The following planning history is considered to be most relevant to the current proposal:

| <u>Application Ref.</u> | <u>Proposal</u> | <u>Decision</u> |
|-------------------------|--|--|
| 12/00305/OUT | Erection of 44 dwellings, village hall/sports pavilion and associated car parking, enlarged playing pitches, new children's play area, access and landscaping | Application Refused and Appeal Allowed |
| 13/01525/REM | Reserved Matters to Outline application 12/00305/OUT - Erection of 44 dwellings, village hall/sports pavilion and associated car parking, enlarged playing pitches, new children's play area, access and landscaping | Application Permitted |
| 14/00107/DISC | Discharge of conditions 4, 5, 6 and 9 of 13/01525/REM. | Application Permitted |
| 17/00632/F | Erection of perimeter security fence around playing fields (retrospective) and application for the erection of an additional 20 metres of fencing | Application Permitted |

4. PRE-APPLICATION DISCUSSIONS

4.1. Officers have advised that planning permission would be required for the development.

5. RESPONSE TO PUBLICITY

5.1. This application has been publicised by way of a site notice displayed near the site and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was 30.12.2017, although comments received after this date and before finalising this report have also been taken into account.

5.2. The comments raised by third parties are summarised as follows:

8 letters of objection have been received. These raise the following issues:

- Loss of open space for informal play.
- Equipment is unattractive and detracts from the character and appearance of area including its materials, appearance and colours.
- The equipment dominates outlook from nearby houses
- Equipment is not safe.
- Noise and disturbance from people using the equipment including those leaving the community centre late at night

- The equipment is in breach of existing Section 106 agreement and needs to be removed. It is a breach of contract and if approved would set a precedent. The Council would be endorsing breaches if they permit the scheme.
- Purchased property on basis of area being open green space.
- If the equipment is retained the neighbouring properties will expect damages and may seek judicial review.
- The parish council have written inflammatory articles in their newsletter regarding the retention of the equipment resulting in residents feeling vulnerable and isolated.
- The equipment should be moved further from the housing and constructed of a more appropriate material such as wood.
- The additional play equipment should have been subject to consultation and fails the basic principles regarding ongoing and active consultation.
- The proposal is a waste of public money.
- Meetings between residents and the parish did not find a compromise.
- A fence has already been granted retrospectively.

In excess of 200 letters of support have been received. These have raised the following issues:

- There is urgent need to ensure that older children in the village have necessary play provision who feel disadvantaged
- There has always been an understanding that play equipment would be provided for all children under the S106.
- The parish have acted in good faith throughout.
- The equipment is required to replace the equipment which was situated on the land prior to the residential development taking place.

5.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

6. RESPONSE TO CONSULTATION

6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

STATUTORY CONSULTEES

6.2. **SPORT ENGLAND: No objections.** Sport England's policy is to oppose the granting of planning permission for any development which would lead to the loss of, or prejudice the use of, all/part of a playing field, unless one or more of the five exceptions stated in its policy apply.

6.3. Having assessed the application, Sport England is satisfied that the proposed development meets the following Sport England Policy exception:

- 6.4. *E3 - The proposed development affects only land incapable of forming, or forming part of, a playing pitch, and does not result in the loss of, or inability to make use of any playing pitch (including the maintenance of adequate safety margins), a reduction in the size of the playing area of any playing pitch or the loss of any other sporting/ancillary facility on the site.*

NON-STATUTORY CONSULTEES

- 6.5. LANDSCAPE OFFICER: **Objects.** This development was originally for 44 dwellings which would only require a LAP under our SPD.
- 6.6. It appears that the case officer at the time was aware that the Parish wished to relocate existing equipment. I advised against this in an email to her on the grounds that it wouldn't meet current standards. I asked for clarification about where this equipment was to go but received none. The LAP was approved by the case officer without checking with SS&LS that it was acceptable. However once approved there was nothing more we could do.
- 6.7. The PC has now located some additional equipment on land in front of dwellings who were expecting to look over a grass area.
- 6.8. Had this application for the gym and LEAP equipment been submitted before installation I would have advised refusal on the following grounds:
- The gym equipment is not suitable for children. It is adult equipment.
 - The equipment is poorly sited. The layout doesn't appear to have been designed.
 - Some items are too similar in terms of play value. eg The windmill rotator and the rota bounce. Others are more suited to a LAP. The net climb and balance walk
 - There doesn't appear to be any safety surfacing. Have critical fall heights been checked? The equipment doesn't have dry surfacing under any items. The equipment is not in a safe fenced area. The equipment should have had a RoSPA inspection on it before children were allowed to use it, otherwise it won't be known if it has been installed correctly and safely. This isn't CDC's responsibility as we didn't install the equipment.
- 6.9. As a compromise solution it might be possible to install some of the equipment in the existing fenced LAP? There is a generous piece of grass which could be used to put 3 or 4 items such as the rotor, birds nest swing and supernova, possibly a couple of pieces of gym equipment. The LAP and LEAP could be separated by some additional planting.
- 6.10. ENVIRONMENTAL PROTECTION: **Comments.** The best guidance document is "Fields In Trust Guidance for Outdoor Sport and Play: Beyond The Six Acres Standard" (<http://www.fieldsintrust.org/Upload/file/Guidance/Guidance-for-Outdoor-Sport-and-Play-England.pdf>) which gives guidance for the size of buffer zones for play areas and residential properties and having looked at it the recommended zone for an area such as this is at least 20m. Some of the equipment appears to be closer than 20m. Therefore the guidance has not been followed so there is higher chance that noise complaints will be made in the future.
- 6.11. No "teenager shelter" has been included in the plan which may well reduce the chance of noise and ASB associated with teenagers gathering rather than playing on the equipment.

- 6.12. It is the decision of the planners if the benefit will outweigh the possible noise issues though in my opinion it would be better sited further away from the residential properties.

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- BSC8 – Securing Health and Well-Being
- BSC10 – Open space, outdoor sport and recreation provision
- BSC11 – Local Standards of Provision – Outdoor Provision
- ESD15 - The Character of the Built and Historic Environment

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- ENV1 – Pollution Control

- 7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

8. APPRAISAL

- 8.1. The key issues for consideration in this case are:

- Background
- Principle of development
- Design, and impact on the character of the area
- Residential amenity
- Other matters

Background

- 8.2. The application is made by the Parish Council. The equipment which is already present on the site was erected under the belief that the development would be Permitted Development under The Town and Country Planning (General Permitted Development) (England) Order 2015. However further investigations were undertaken and the Councils legal team advised that planning permission is required for the development as the open space was secured by way of condition and legal agreement to the original housing development to be used as informal local space. The current proposal is therefore in breach of these existing agreements and the Parish Council have submitted a planning application in order to remedy this

breach. If the application were to be approved the original legal agreement would also need to be modified. The retrospective nature of the application and the previous understandings of the parish council are not considerations which attract weight in the determining the planning considerations of the application. They are therefore not matters to be considered further.

Principle

- 8.3. Policy BSC8 of the Cherwell Local Plan seeks to support development which contributes to health and well-being. Policy BSC10 states the Council will encourage partnership working to ensure that sufficient quantity and quality of, and convenient access to open space, sport and recreation provision is secured through:
- Protecting existing sites
 - Addressing existing deficiencies in provision through qualitative enhancement of existing provision, improving access to existing facilities or securing new provision, and
 - Ensuring new development contributes to open space, sport and recreation provision commensurate to the need generated by the proposals.
- 8.4. These are in line with the objectives of the NPPF which seek to support vibrant and healthy communities and provide high quality built environment and notes access to high quality space can make an important contribution to the health and well-being of communities.
- 8.5. The application site formed part of the wider planning application for the residential development to the west of the site and during the course of the applications for the outline permission and reserved matters it was provided as an area of informal open space laid to grass. The current application would change the use of this land to a more formalized play area. However, the overall use would remain for recreational purposes available to the general public.
- 8.6. The informal open space allowed for an area informal play and also provided some visual amenity to the area through the provision of the open space albeit this was limited as the area was only laid to grass with a small earth bund to the west of the site and did not include any structural landscaping. The development has led to the loss of this area to local residents. It is noted that there is some other informal open space in the locality including an area to the western edge of the wider housing site which is available to residents. Furthermore the proposal is located immediately adjacent to the playing field and when this area is not in formal use for organised sport it can be used for informal play being open to the public. Therefore whilst the loss of the informal space would be unfortunate there are some alternatives for informal use in the local area for residents.
- 8.1. The current proposal provides play area for older children (8 years and up) and adult exercise with the provision of the outdoor gym. The parish council and residents have noted that prior to the construction of the residential development to the west a childrens play area including equipment for older children was provided on the site. This was removed as part of the wider development which included an extension to the playing field. This has resulted in the village having no publicly accessible play equipment in the vicinity for older children. The current application seeks to go some way to address this existing shortfall and this weighs in favour of the proposal as it provides a facility for the village which is not currently available and it is noted that there is considerable support from the wider locality for the scheme as is evidenced by the number of letters of support. Clearly the play equipment offers an amenity to

the residents of the village which did not previously exist and this is a benefit which officers considered carries significant weight in determining the current planning application.

- 8.7. The parish council has also raised concerns that in approving the details for the new play area secured under the new residential development (i.e. the existing authorised play area immediately to the south of the site) their views were meant to be considered. It has implied that it would have sought equipment for older children if this had happened; unfortunately it appears that the case officer dealing with the site at the time approved the scheme without the consultation. However, this is not a matter which can be capable carrying weight in the planning decision.
- 8.8. Sport England has been consulted on the application and has raised no objections to the proposal as the proposal does not result in the loss of any playing pitch.
- 8.9. Overall, the principle of providing this type of facilities to serve the residents of the village is supported and for the reasons outlined above it is considered that the loss of the informal open space is outweighed by the benefits of providing a new play space for older children and the community when there is limited other provision in the village. Therefore subject to other material considerations the principle of development is considered to be acceptable.

Design and impact on locality

- 8.10. Policy ESD15 of the Cherwell Local Plan Part 1 (2015) states that new development should complement the character of its context through sensitive siting, layout and high quality design. It goes on to state that development should be designed to deliver high quality safe, attractive, durable and healthy places to live and that development should be designed to improve the quality and appearance of an area and the way it functions.
- 8.11. A number of concerns have been raised by occupiers of the properties adjacent to the site regarding the visual impact of the development and it having a detrimental impact on the locality. The play equipment is clearly visible from the adjacent new development to the west however it is seen in the context of a modern playing field, community centre and existing play equipment and is not considered to appear unduly prominent or stark in this context. The design and colour of the play equipment is clearly different to the surrounding properties however this is not unusual in such a setting and the maximum height of the equipment is approximately 4 metres and officers do not consider it appears incongruous in its surroundings. Therefore in this context the visual impact of the development on the amenity of the area is considered to be acceptable.
- 8.12. Concerns have been raised that the proposal would impact on the Conservation Area. However the site is not within the conservation areas and is separated by the existing playing field. Having regard to the distance and scale of the equipment it is not considered that the proposal would impact on the setting of the Conservation Area.
- 8.13. The concerns of the landscape officer are noted regarding the layout, type and detailing of the scheme however given that the play area is not to be adopted by the district Council it is not considered that the same level of rigour can be applied to these matters as if the area were to be formally adopted and the responsibility of the district council. The parish council needs to satisfy itself that the play equipment is fit for purpose and that it has the relevant insurances in place regarding the public use of this equipment. Officers therefore consider this is therefore not a matter which can be given significant weight in any planning decisions. Furthermore it

must be borne in mind that the play area is an additional facility that the Parish Council is seeking to provide and there is no formal planning requirement to provide such a facility. Therefore any form of play provision is likely to be beneficial to the wider community and it is not considered that the concerns of the landscape officer could justify refusal of the application.

- 8.14. Overall the development is considered to comply with the relevant planning policies in this respect.

Residential amenity

- 8.15. Saved Policy ENV1 states that development which is likely to cause materially detrimental levels of noise or other type of environmental pollution will not normally be permitted. Both the NPPF and Policy ESD15 of the Local Plan seek to ensure development proposals provide a good standard of amenity for both existing and proposed occupants of land and buildings relating to privacy, outlook and natural light and paragraph 123 of the NPPF advises that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life.
- 8.16. The play equipment is considered to be a sufficient distance from the neighbouring properties given its height and design to ensure it would not significantly impact on the outlook or light to the properties in Geminus Road or those properties to the north backing onto the site. It is a long established planning principle that there is no right to a private view over land and therefore the concerns residents have raised regarding the loss of a view over an open space are not matters that carry significant weight in the consideration of the application.
- 8.17. Officers consider that the main issue in this case is whether the siting of the equipment has or would lead to an unacceptable level of noise and disturbance to the residents of the neighbouring properties. In this respect it is considered that given the nature of the adult gym equipment to the north and its likely usage this is unlikely to result in significant levels of noise and disturbance to residents.
- 8.18. However, the other pieces of play equipment in the area to the south of the site are more likely to generate noise and disturbance from users given their nature. The Council does not have any formal adopted planning guidance relating to how far such equipment should be situated from the closest residential property and it is therefore assessed on a case by case basis. In this case the Environmental Protection Officer (EPO) has raised concerns that the equipment is closer to the neighbouring houses than the national best practice guidance provided by Fields in Trust: 'Guidance for Outdoor Sport and Play: Beyond the Six Acre Standard'. This recommends that there should be a minimum of 20 metre between the activity area of a local equipped area of play (LEAP) and the habitable room façade of dwellings.
- 8.19. In this case the proposal conflicts with this guidance as it would be closer to the front of the properties to the west of the site in Geminus Road and this is where the majority of the residents objecting to the scheme live. For example the closest piece of equipment, the zip wire, is situated within approximately 17 metres from the front façade of the closest dwellings in Geminus Road. The Environmental Protection Officer has advised that given this there is a higher chance that noise complaints will be made in the future and in their view it would be better placed further from residential properties. However, he notes that a "teenager shelter" has not been included in the plan which may well reduce the chance of noise and possible anti-social behaviour associated with teenagers gathering rather than playing on the equipment.

- 8.20. In this case the location and nature of the play equipment is likely to generate some additional noise and disturbance to residents which is far from ideal given the proximity to the neighbouring properties. However, this harm needs to be considered in the context that the area was previously used as an area of informal open space so some noise and disturbance from outdoor play is likely to have occurred. Furthermore the site is adjacent to an existing play area which has a similar relationship to residential properties to the south of the site. The play equipment also has a high level of surveillance for the neighbouring properties which is likely to detract anti-social behaviour to some extent and as noted by the EPO there is no shelter provided on the site. In addition to the above, the equipment is only situated slightly closer to the neighbouring properties than the best practice guidance outlined above. Concerns have also been raised that people leaving the community centre could use the equipment later into the evening however the instances of this are likely to be rare and could equally occur on the permitted play equipment to the south.
- 8.21. Overall it is acknowledged that the equipment will lead to some additional noise and disturbance to the neighbouring properties. However, the Council has to assess the planning application before them and, given the context and details of the proposal (outlined above), on very fine balance this is not considered to result in such a significant impact that would justify refusal of the application. Officers have considered whether measures could be put in place to moderate this harm; however, such methods would be likely to include erecting a fence around the equipment to restrict access to the equipment at night time and this is likely to result in further concerns for the closest residents.

Other matters

- 8.22. Concerns have been raised that the proposal would breach the existing legal agreement on the site as the area is only to be used as informal open space. This in itself is not a reason to refuse the scheme and if the Council are minded to approve the application this legal agreement would be required to be modified.
- 8.23. The issues relating to the Council's handling of previous process or the Parish Council action being in good faith are not material to the consideration of the application.

9. PLANNING BALANCE AND CONCLUSION

- 9.1. The current proposal is extremely finely balanced. The development makes provision for play and exercise equipment in the village to address a lack of existing facilities and this brings with it social benefits by offering facilities to local residents to promote health and well-being and social inclusiveness. Whilst the proposal will lead to the loss of an existing informal open space and area will remain for general recreation proposes and the benefits of the scheme are considered to outweigh this harm. The design and appearance of the proposal is considered to be acceptable in terms of environmental impacts however there would be some environmental harm associated with noise and disturbance to neighbouring properties however this has to be viewed in the context of the site and existing play equipment. In this case the benefits of the scheme are considered to outweigh the harm and it is recommended that planning permission be granted.

10. RECOMMENDATION

That permission is granted subject to the following conditions and officers are delegated authority to vary the existing legal agreement:

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: Application form, location plan, site plan CPC 1 showing location of equipment, details of equipment and document entitled Dimensions of play equipment.

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

3. Prior to the installation of any of the proposed play equipment (i.e. supernova, rota bounce net climb or balance walk) scale plans showing the location of the equipment and dimension of the equipment shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be undertaken in accordance with the approved details and retained as such thereafter.

Reason: In order to protect the character and appearance of the locality and in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1.

4. Notwithstanding the provisions of Class A of Part 12, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and its subsequent amendments, no further equipment, buildings or structures shall be erected on the land without the grant of further specific planning permission from the Local Planning Authority.

Reason: In order to retain control of the land, protect the amenity of residents and the amenity of the locality in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and advice in the NPPF.