

LONDON BOROUGH OF WALTHAM FOREST

Committee/Date:	Planning 12 th September 2012
Application reference:	2011/1560
Applicant:	London 2012
Location:	Leyton Marsh, Behind Lee Valley Ice Centre
Proposed development:	Discharge of Condition 1 of planning application 2011/1560 (site reinstatement post Olympic and Paralympic Games)
Wards affected:	Lea Bridge
Appendices:	Planning application 2011/1560

1 RECOMMENDATION

- 1.1 That the details be agreed.

2 SUMMARY OF REASONS FOR RECOMMENDATION

- 2.1 The details provided in relation to the reinstatement of the land including the proposed planting, phasing and timing is considered to be acceptable. The proposed turf specification, seed mix, site preparation, turf laying and maintenance will return the site to a satisfactory condition prior to its temporary use. As such, the proposed submission satisfies policies CS5, CS11, CS12, CS13 and CS15 of the LBWF Local Plan – Core Strategy 2012 and policies DM29, DM30 and DM36 of the LBWF Local Plan Development Management Policies Proposed Submission July 2012.

3 REASONS REFERRED TO COMMITTEE

- Members of the Council have requested Committee consideration
- There is significant public interest

4 DETAILS OF PROPOSAL AND SURROUNDINGS

- 4.1 The site currently comprises a temporary building that has been used as a basketball training facility for the 2012 Olympic and Paralympic Games as granted By Committee in February 2012 (ref: 2011/1560) within Leyton Marsh. The site is situated on the north side of Lea Bridge Road, in the south west of the borough where it borders with the London Borough of Hackney. The land is within Metropolitan Open Land (MOL), an Archaeological Priority Zone and partially within a Principal Site of Nature Conservation Importance. The site is in very close proximity to a Site of Special Scientific Interest (SSSI) Nature Reserve. The site is identified as a natural and semi natural Urban Green Space as per the Council's adopted Open Space Strategy and has been designated as a Special Protection Area (SPA).

- 4.2 The subject site amounts to approximately 1.5 hectares and prior to its current use the land was generally flat comprising rough and mowed grass. The site was heavily used by residents of Waltham Forest and London Borough of Hackney as well as those from further afield for recreational and ecological purposes. The remaining section of Leyton Marsh remains open to the public and is used for recreational purposes. In 2011 the site received a Green Flag Award, a national award that recognises the best green spaces in the country.
- 4.3 The application before Members seeks to discharge condition 1 of planning permission 2011/1560. Condition 1 states that: *This permission shall be for a limited period only, expiring on 15 October 2012 on or before which date the buildings and all associated works undertaken in implementing the permission (including any works installed pursuant to any condition of this permission) shall be removed and the land reinstated to its original state prior to the grant of this permission in accordance with a scheme of reinstatement works detailing the size, species, location, phasing and timing of replacement planting that shall be submitted to and approved by the local planning authority prior to its implementation, and thereafter fully implemented in accordance with the said details.*
- 4.4 Conditions 11, 13 and 14 were submitted at the same time but cover matters of technical fact only and are for the Council's Environmental Health Team, Environment Agency and other relevant bodies to consider. As such, this report is only concerned with the discharge of condition 1.

5 RELEVANT SITE HISTORY

- 5.1 **2012/1195** - Non - material amendment to planning permission 2011/1560. Variation of condition 19 to permit dismantling works to place between 08:00 hours and 22:00 hours monday to friday, 08:00 hours and 18:00 hours on saturday and 10:00 hours and 18:00 hours on sunday. **Pending consideration.**
- 5.2 **2012/1031/ADV** - Non - illuminated advertisements on temporary training venue. **Approved August 2012.**
- 5.3 **2012/0684** - Non-material amendment to planning permission 2011/1560 - variation of condition 19 to permit internal fit out works to take place between 08.00hrs and 22.00hrs Mondays to Fridays, 08.00hrs and 18.00hrs Saturdays and 10.00hr and 18.00hrs Sundays. **Withdrawn.**
- 5.4 **2012/0359** - Non-material amendment to planning permission 2011/1560 - Excavation of 2,100m³of material (equivalent of a 30cm depth across the excavation area) across the site to provide a stable sub-base, with an excavation depth ranging from 15cm-60cm. **Approved April 2012.**
- 5.5 **2011/1560** - Formation of a temporary basketball training venue comprising two 11 metre high modular court buildings, tented reception facility, access road, drop off area, car park, plant storage containers, perimeter fencing in association with the 2012 Olympic and Paralympic

Games, between 1st March 2012 and 15th October 2012. **Approved February 2012**

- 5.6 **2011/1346/EIA** - Request for a screening opinion regarding the construction of a temporary basketball training venue (Environmental Impact Assessment). **Negative screening opinion November 2011.**

6 PUBLIC CONSULTATIONS

- 6.1 There is no statutory obligation to consult on the surrounding occupiers on applications to discharge conditions, however, given the unique circumstances of the planning application and the significant level of interest, those who had expressed an interest in the reinstatement were invited to comment.

7 EXTERNAL CONSULTEES

- 7.1 Again, no statutory consultations are required but officers have sought views from relevant bodies who commented on the planning application including Environment Agency, Canal & River Trust (formerly British Waterways), Lee Valley Regional Park Authority, Thames Water, Natural England and London Wildlife Trust.

8 DEVELOPMENT PLAN

8.1 Adopted Waltham Forest Core Strategy 2012

- 8.2 The Waltham Forest Core Strategy (2012) was adopted on 1st March 2012. The Core Strategy contains 16 policies designed to deliver the Council's vision for the physical, economic, environmental and social development of the Borough. These policies will be used to direct and manage development and regeneration activity for the next 15 years, up to 2026.

- 8.3 The policies considered relevant to this application are as follows:

8.3.1 CS5: Enhancing Green Infrastructure and Biodiversity

8.3.2 CS6: Promoting Sustainable Waste Management and Recycling

8.3.3 CS11: Tourism Development and Visitor Attractions

8.3.4 CS12: Protecting and Enhancing Heritage

8.3.5 CS13: Promoting Health and Well Being

8.3.6 CS15: Well Designed Buildings, Places and Spaces

8.4 Saved UDP (2006) Policies

8.5 N/A

8.6 London Plan 2011

- 8.7 The London Plan is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2031. It was adopted in July 2011. The policies relevant to this application are:

- Policy 7.17 – Metropolitan Open Land

- Policy 7.18 – Protecting Local and Open Space and addressing local deficiency
 - Policy 7.19 – Biodiversity and Access to Nature
 - Policy 7.24 – Blue Ribbon Network
 - Policy 7.27 – Blue Ribbon Network: Supporting infrastructure and recreational use
- 8.8 The Lee Valley Regional Park Plan(2000)/the Lee Valley Park Development Framework 2012.

9 MATERIAL PLANNING CONSIDERATIONS

9.1 NPPF

- 9.1.1 The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. It is a material consideration in planning decisions. It contains a presumption in favour of sustainable development, described as "a golden thread running through both plan-making and decision-taking."
- 9.1.2 For decision-taking the NPPF states that the presumption means "approving development proposals that accord with the development plan without delay" and where the development plan is "absent, silent or relevant policies are out-of-date, granting permission unless adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; "
- 9.1.3 The whole of the NPPF is potentially material to this application, but the specific policy areas considered directly relevant are as follows
- 9.1.3.1. Protecting Green Belt land
 - 9.1.3.2. Meeting the challenge of climate change, flooding and coastal change
 - 9.1.3.3. Conserving and enhancing the natural environment
 - 9.1.3.4. Conserving and enhancing the historic environment
 - 9.1.3.5. Facilitating the sustainable use of minerals

9.2 Other policies

9.3 Waltham Forest Biodiversity Action Plan adopted July 2011

9.3.1 Waltham Forest Open Space Strategy 2010 to 2020 (adopted 2010)

9.4 Emerging Policy

9.4.1 The LBWF Local Plan (LP) Development Management Policies Proposed Submission (2012) was approved by Cabinet on 10th July 2012 and approved at Full Council on 19th July 2012. The document alongside the LBWF LP Core Strategy (2012) will be used in the consideration and determination of planning applications. Although the policies contained within the LBWF LP Development Management Proposed Submission (2012) are currently out to public consultation,

the policies now have further material weight in the consideration and determination of planning applications. The consultation runs from 30th July to 17th September 2012. The relevant policies for this application are:

- DM13 – Open Space, Sport and Recreation
- DM25 – Environmental Protection
- DM36 – Biodiversity and Geodiversity
- DM40 – Lee Valley Regional Park

9.4.2 Lee Valley Regional Development Framework

9.5 Northern Olympic Fringe Area Action Plan (Preferred Options January 2011)

9.6 Local Finance Considerations

9.6.1 Local Finance Considerations are a material consideration in the determination of all planning applications. Local Finance Considerations can include either a grant that has been or would be given to the Council from central government or money that the council has received or will or could receive in terms of Community Infrastructure Levy (CIL).

9.6.2 There are no grants which have been or will or could be received from central government in relation to this development.

9.6.3 The Council has not received and does not expect to receive any income from CIL in relation to this development. -

10 REPRESENTATIONS

10.1 Representations from External Consultees

10.2 Environment Agency – Comments have not been received at the time of writing this report. Comments will be included in an update report.

10.3 Lee Valley Regional Park Authority (LVRPA) – Have confirmed that the seed mix proposed for the turf is satisfactory and reflects their previous comments to the applicant.

10.4 Natural England – No objections raised.

10.5 Canal & River Trust (formerly British Waterways) – No comments or objections

10.6 Thames Water – No comments

10.7 London Wildlife Trust – No response at the time of writing this report. Any comment will be included in an update report

10.8 Representations from Residents

10.9 13 representations have been received. The main issues raised are:

- Only condition 1 is being presented at committee. Condition 14 which requires certification of development that any fill material brought onto site will be inert and not contaminated or prejudicial to the restored use of the site is not being presented at committee. Comment: Condition 1

is a matter for consideration as to merits. Condition 14 is a matter of fact.

- The reinstatement plan fails to take into account that the works cannot be completed by 15th October 2012 within the permitted hours. Comment: This is a matter for the applicants. However, a separate application to extend working hours for internal works is under consideration.
- Inconsistency in the documents regarding timescales for works. Comment: The permission is clear as to the completion date and it is for the applicants to determine how they will achieve this, and for the Council to consider appropriate action if they do not..
- Appendix A of the reinstatement plan isn't readable. Comment: officers are satisfied that the document is clear
- Concerns that the topsoil may be contaminated. Comment: Whilst issues regarding contaminated land are intrinsically linked to the reinstatement of the site, these issues fall principally to be dealt with under condition 14.
- Issues regarding where the liability falls if the reinstatement fails. Comment: This is not a planning matter but for the Lea Valley park Authority.
- Issues concerning who is responsible for the imported soil. Comment: Not relevant to the current scheme.
- Issues regarding the type of fill material being used. Comment: The Councils Tree Preservation & Nature Conservation Officer, the LVRPA and Natural England have viewed the submission and have not raised any objections. The fill will need to be sufficiently dense to prevent the overlaid soil from shifting and moving into the gaps between aggregate in the sub-base and this is a matter of technical detail primarily between the applicants and the LVRPA who will have future maintenance liability..
- How the vehicular movement of the reinstatement will ensure that the reinstated land or land outside of the licensed land will be protected. Comment: This will be dealt with under condition 11.
- Concerns that the (remediation) document states that the geotextile membrane will 'assist should further excavation take place' and that this could be an indication of future development on the site. Comment: The document also states that the geotextile membrane will be used to prevent the topsoil from mixing with the existing soil beneath. It is best practice to install a separating membrane between untreated ground and the clean imported material in the human health separation layer. It will prevent any mixing from settlement and will allow operatives (e.g. Thames Water or LVRPA maintenance workers) to visually identify the demarcation between the two layers in locating the potential for encountering contaminated material. Speculation about future development is little more than scaremongering.

- Inaccuracy of describing the short-mown grass as more species rich than the scrub grassland and that the frequency of wildflower species is also inaccurate. Comment: The Councils Tree Preservation & Nature Conservation officer, The LVRPA and Natural England have viewed the submission and have not raised such concerns.
- The survey undertaken by STRI in March and June 2012 should not supersede the surveys carried out in 1970 and 2002 because the existing site does not include the entire marsh. Comments: The LVRPA concur that the surveys undertaken by STRI should supersede previous surveys as there has been an opportunity for new species to have become established on site.
- The reinstatement of the site cannot be considered complete until the species that have been omitted from the seed mix invade naturally. Comment: It would be unreasonable to refuse discharge of the condition on these grounds.
- It is not clear who came up with the lists of wildflowers in Sections 2.1.1 and 2.1.2 and exceptional care should be taken to get the lists right as it is important not to introduce new species next to a SSSI. Comment: The scheme has been developed by a specialist consultant working with the LVRPA and this aspect of the proposal is considered acceptable.
- The application is going against the original intentions of dismantling the facility. Comment: The submission proposes to restore the land back to its previous condition.
- The applicants failing to use the name of the location in the document being a sign of disrespect. Comment: The location of the site is clearly identified.
- The surveys of November 2011 and January 2012 should have triggered an EIA. Comment: Not relevant to this submission, it was determined at the time of the original application that an EIA was not required..
- Lack of follow-up to well-know local historical awareness about the 1940-1960 landfill site. Comment: Not relevant to this submission.
- The unauthorised piling and hazardous storing of toxic waste for weeks before applying for a waste removal certificate, placing users of the Marsh at risk. Comment: Not relevant to this submission.
- Due to timescales, the quality of the reinstatement will be compromised. Comment: There is no evidence to support this, and it is a matter for the LVRPA and the applicants.
- Due to the inconvenience, compensation should be given to improve local basketball faculties. Comment: This is not a matter for the Council.
- The undisclosed length of time that the Marshes will be unavailable to visitors will be an inconvenience and this delay could also jeopardise

the wildlife in the area. Comment: Condition 1 clearly refers to the 15th October being the deadline.

11 ASSESSMENT

- 11.1 The main issues for this submission relate to the reinstatement of the land to ensure that it the site is returned to a satisfactory standard, particularly in relation to the size, species, location, phasing and timing of the replacement planting.
- 11.2 The reinstatement will be carried out in four phases:
1. Dismantling of the venue
 2. Removal of groundworks
 3. Replacement of groundworks with retained and imported soil / fill
 4. Completion of grass reinstatement
- 11.3 The reinstatement plan confirms that a site condition survey was carried out by specialist consultants Sports Turf Research Institute (STRI) in March 2012 and updated in June 2012. The survey notes that the species found in the short mown turf and rough uncut grass were commonplace.
- 11.4 Three options were considered for the reinstatement (1) seeding (2) standard turf (3) 'big roll' turf. Option 3 was chosen. The submitted details state that option 1 which involves seeding the topsoil once it has been laid (first week of October) would mean that the site would not be ready for use by 15th October and would unlikely to be ready until spring 2013. Option 2 involves turf to be laid across the whole site area which will then be fenced off to prevent public access so that the turf can settle. The submitted information states that the turf is unlikely to root sufficiently in 2012 and therefore the area will need to be fenced off until spring 2013. Option 3 involves the laying of thick cut 'big roll' turf, which when laid can be immediately brought back to public usage and therefore meet the October deadline. As such, Officers are satisfied that option 3 would be the most suitable to restore the site to a satisfactory standard within the given timeframe.
- 11.5 The same species mix will be introduced to the reinstated areas, to both the mown grass and the rough grassland. The LVRPA has confirmed that the proposed seed mix for the turf is satisfactory. It should be noted that a number of the species have not been included in the seed mix because they are aggressive colonisers and will invade naturally. If they were introduced to the seed mix, they would have a competitive edge to the detriment of the less vigorous species. All plants will be certified UK provenance.
- 11.6 With regards to harvesting the turf, the project agronomist will approve all turf used in the reinstatement. The turf will be transported and delivered to site within 24 hours of harvest. The turf will have a full and dense sward of the approved grass species. The turf will be cut into rolls each with an area of 75 sqm (2.5 metres wide by 30 metres long).

The submission involves a contingency plan should the weather prevent the 2.5 metre turf rolls from being installed, in which case 1.25 metre wide roll with a 40mm thickness will be installed.

- 11.7 In terms of site preparation, the imported topsoil and fill will be spread across the site and compacted between each layer to prevent subsidence. The land will be reinstated so that the ground is fairly level but includes some undulating as per the previous condition of the site. The undulations will be recreated with no more than 10cm lateral deviation over 2 metres.
- 11.8 The turf will be applied between 10th and 15th October. Following the installation of the turf, there will be a four week maintenance period (until 9th November) which will be determined by the project Agronomist based on weather and site conditions at the time. The ongoing maintenance is the responsibility of the land owner, the Lee Valley Regional Park Authority.

12 CONCLUSION

- 12.1 The works have been designed to ensure a speedy return of the land to public use. Turf has been specifically grown to reflect the mix of natural grasses existing on the Marsh both prior to the development taking place and in the surrounding area. While concerns are legitimately raised about contamination matters, these are being considered by the Contaminated Land Officer and whatever technical solution is reached, will not alter the fact that re-providing a grassed area of similar species to what was on the Marsh pre-construction is acceptable in planning terms.

13 ADDITIONAL CONSIDERATIONS

13.1 Public Sector Equality Duty

- 13.1.1 In making your decision you must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

- 13.1.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 13.1.3 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149 is only one factor that needs to be considered, and may be balance against other relevant factors.
- 13.1.4 It is not considered that the recommendation to grant permission in this case will have a disproportionately adverse impact on a protected characteristic.

13.2 Human Rights

- 13.2.1 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as the London Borough of Waltham Forest to act in a manner that is incompatible with the European Convention on Human Rights.

You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

14 **RECOMMENDATION**

The Planning Committee is requested to resolve that the details are agreed subject to the details contained in the submission being adhered to. Officers are authorised to issue final discharge on completion of works in accordance with the agreed details.

15 **BACKGROUND DOCUMENTS**

- 15.1 Committee report and decision notice of planning application 2011/1560.