

Report to: PLANNING COMMITTEE **Date of Meeting:** 30th June 2021

Subject: [DC/2017/01528](#)
[Land Bounded By School Lane To The North, A Railway Line To The West And Whinny Brook To The South, Maghull](#)

Proposal: Hybrid application seeking full planning permission for the demolition of existing buildings, a new vehicular access off School Lane, a new distributor road, flood relief, drainage and landscaping works to Whinny Brook and ancillary infrastructure and outline planning permission with some matters reserved (scale, appearance, layout & landscaping) for the erection of up to 855 residential dwellings (C3), an older persons housing scheme with access also reserved (C2, C3), a mixed-use Local Centre (Uses A1-A5, C3, D1, D2); together with associated public open space, landscaping, highways, Sustainable Drainage Systems, and all ancillary infrastructure works.

Applicant: The East Maghull Consortium **Agent:** Mr Christopher Garratt
White Peak Planning Limited

Ward: Sudell Ward **Type:** Outline application - major

Reason for Committee Determination:

Request for condition to be added and Section 106 to be varied

Summary

This application was considered at Planning Committee on 17 March 2021 when it was resolved that the application be approved subject to conditions and a legal agreement. The legal agreement is currently being drafted so the decision has not yet been issued.

The agenda, supplementary agenda and minutes for the Planning Committee on 17 March 2021 can be viewed here

<https://modgov.sefton.gov.uk/ieListDocuments.aspx?CId=134&MId=10013&Ver=4>

The applicants for the adjacent development site to the south, which has planning permission allowed on appeal, wish to commence works on Whinny Brook once the details of pre-commencement conditions are approved. This involves the provision of infrastructure shared with this development site to the north. However, the approval notice for the development site to the north cannot be issued due to a delay in the completion of the Section 106 agreement.

This report requests that an extra planning condition is added to application DC/2017/01528 and the legal agreement is varied to enable the planning decision notice to be issued thereby enabling works to proceed on Whinny Brook once pre-commencement conditions are approved.

Amendments to payment triggers within the legal agreement are also requested.

Recommendation: Approve

Case Officer Diane Humphreys

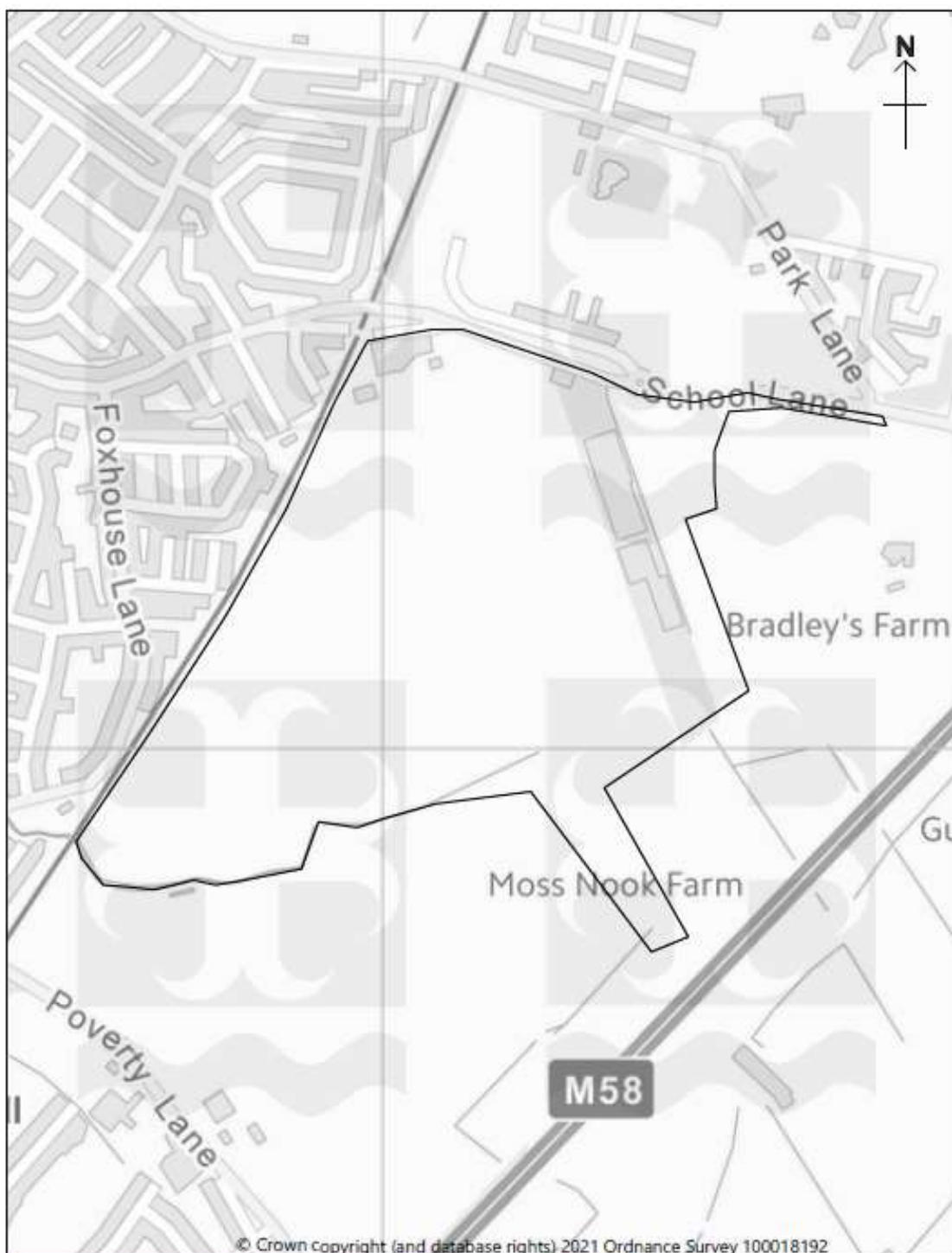
Email planning.department@sefton.gov.uk

Telephone 0345 140 0845

Application documents and plans are available at:

<http://pa.sefton.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=OUODCDNW05R00>

Site Location Plan

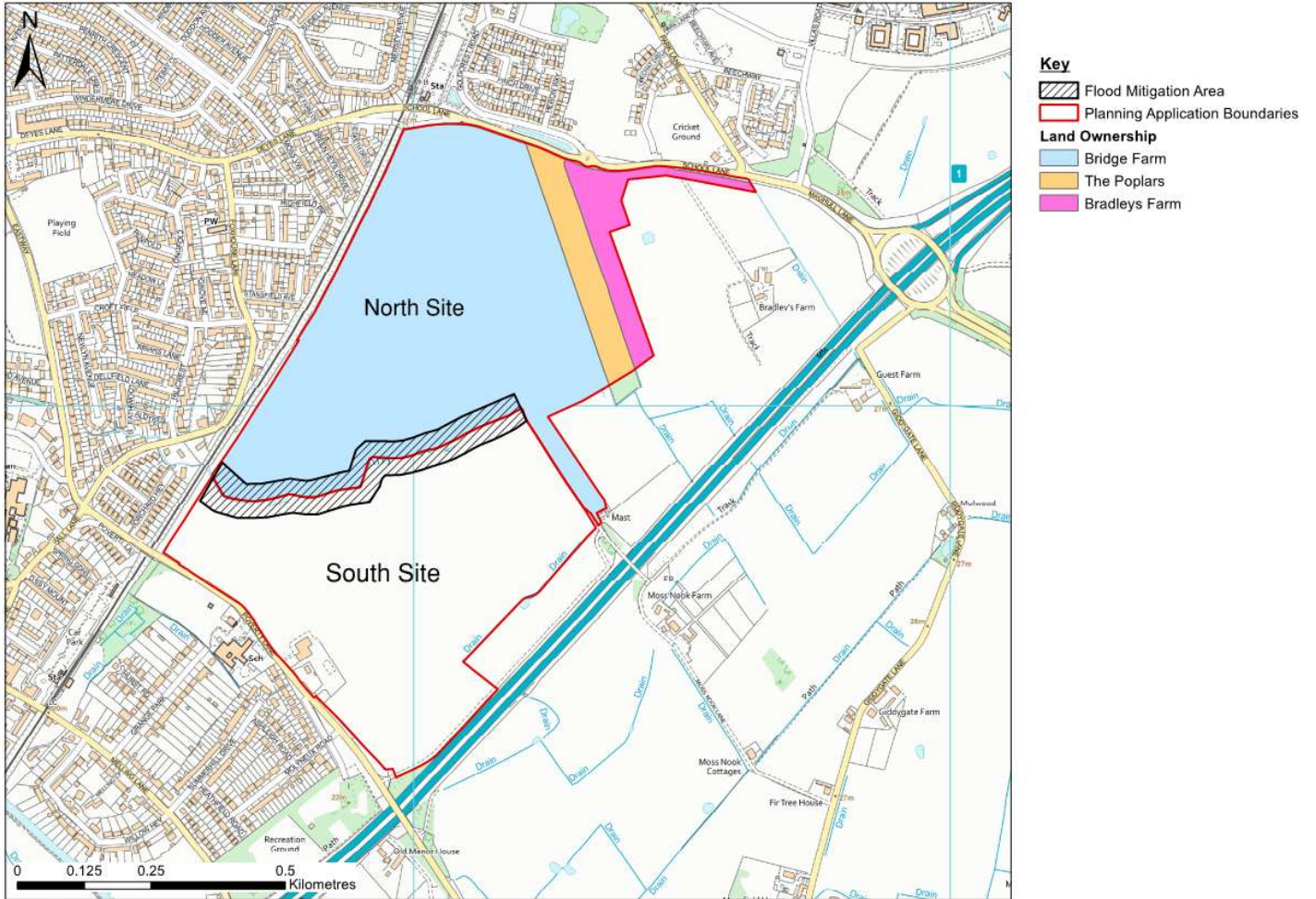


Sefton Council



Reference: Map reference
Date: 18/06/2021
Scale: Scale: 1:7000
Created by: Initials

Plan Showing the Two Development Sites, Whinny Brook Works and Land Ownership



The Site

The application site lies to the south of School Lane in Maghull and is bounded to the west by the Liverpool to Ormskirk railway line. Whinny Brook forms the southern boundary of part of the site.

History

The application subject to this report, DC/2017/01528, was considered at Planning Committee on 17 March 2021 together with an application for 841 homes covering land to the south, DC/2020/01778. Planning Committee resolved that both applications be approved subject to conditions and a legal agreement. Legal agreements are currently being drafted for both applications so the decisions have not yet been issued.

An application relating to the development site to the south for 841 homes, DC/2017/01532, was allowed on appeal on 22 February 2021 subject to conditions and a Section 106 legal agreement. This is a similar proposal to that subject to application DC/2020/01778.

Consultations

Not applicable

Neighbour Representations

Not applicable

Policy Context

The application site lies within an area designated as a Strategic Mixed Use Allocation in the Sefton Local Plan which was adopted by the Council in April 2017.

Assessment of the Proposal

Introduction

The developers for application DC/2017/01532, the 'south site', wish to commence works on Whinny Brook in mid-September due to ecological constraints which impact timing. The works at Whinny Brook are shared with the development on this, the 'north site', application DC/2017/01528. However, there is a delay in completing the Section 106 legal agreement for this latter application, and hence issuing the permission, as one of the landowners has passed away. A delay in obtaining all landowner signatories has the potential to significantly delay the Whinny

Brook works.

Proposed Condition

The applicants for the north site are requesting that a condition is added to the planning permission for DC/2017/01528 so that the permission can be granted once the Section 106 agreement is signed by the landowners who have sole ownership and control of the land required for the Whinny Brook works. This would enable works to proceed at Whinny Brook once pre-commencement conditions have been approved. The proposed 'Grampian' style condition would prevent development commencing on land on the north site comprising The Poplars and Bradleys Farm, which are not required for the Whinny Brook works, until all those with an interest in this remaining land have entered into a supplementary Section 106 legal agreement.

The suggested wording for the condition is:

'No development (including demolition, ground works and site clearance) shall take place on land comprising 'The Poplars, School Lane, Maghull', as shown edged red on Title Plan MS205452, or Bradleys Farm, School Lane, Maghull, as shown edged red on Title Plan MS601527, unless and until all parties with a legal or equitable interest in that land have been joined as parties to the Section 106 Agreement on the basis of which this permission is granted, and the title to such land has been properly deduced to the local planning authority.'

Reason: The local planning authority would have refused the planning application in the absence of the Section 106 Agreement and at the time of this permission being issued the applicant is not able to bind all relevant interests in the site to the terms of the planning obligations that it contains.'

The condition above is worded based on a planning condition used for the Emirates Stadium permission in Islington (ref: P01/1500) and is referred to as the 'Arsenal condition'.

Proposed Variation to the Section 106 Legal Agreement

In order to complement the additional condition, it is proposed to provide for a "Confirmatory Deed" clause requiring the adjacent owners to enter into the Section 106 agreement at some future point, before development could commence, with a clause substantially in the following form:

'Countryside and Persimmon (the Developers) and the Swifts (the Owners) together further covenant with the Council not to Commence Development (save for the Whinny Brook works which will be excluded from the Definition of the Development) unless and until all parties with a legal or equitable interest in the Adjacent Land (comprising 'The Poplars, School Lane, Maghull', as shown edged red on Title Plan MS205452, and Bradleys Farm, School Lane, Maghull, as shown edged red on Title Plan MS601527) have been joined as parties to the S106 Agreement in the form (or substantially in the form) of the Confirmatory Deed annexed to this 106 Agreement.'*

Implications of the Condition and Varied Section 106 Legal Agreement

The condition will have no impact on the actual proposals for the development sites. However, it will have a significant benefit in terms of facilitating delivery of the shared infrastructure across both sites, namely the proposed flood relief channel at Whinny Brook, which is required to be delivered in the first phase of the development. It is considered that the failure to agree the extra condition could delay the delivery of this key infrastructure.

Section 106 Payment Triggers

The applicants for this north site are also requesting that commencement of the Whinny Brook works would not trigger payments through the Section 106 agreement that are required to mitigate the effects of occupation of the development. This is because the land has not yet been sold to a developer who would be responsible for the payments.

It is considered reasonable to delay payment triggers for such financial contributions until homes are being built on the site as the payments would contribute to matters such as education, healthcare and transport services which are linked to occupation of the development. The wording of the Section 106 legal agreement can accommodate the timing and phasing of financial contributions and this is not uncommon on larger development sites. Payment phasing has been used for the Section 106 legal agreement completed and agreed on appeal for the south site.

Recommendation - Approve

It is recommended that the following condition 57 is added to planning permission DC/2017/01528:

57. No development (including demolition, ground works and site clearance) shall take place on land comprising 'The Poplars, School Lane, Maghull', as shown edged red on Title Plan MS205452, or Bradleys Farm, School Lane, Maghull, as shown edged red on Title Plan MS601527, unless and until all parties with a legal or equitable interest in that land have been joined as parties to the Section 106 Agreement on the basis of which this permission is granted, and the title to such land has been properly deduced to the local planning authority.

Reason: The local planning authority would have refused the planning application in the absence of the Section 106 Agreement and at the time of this permission being issued the applicant is not able to bind all relevant interests in the site to the terms of the planning obligations that it contains.

In addition, it is recommended that a clause is added to the Section 106 Legal Agreement

substantially in the following form:

'Countryside and Persimmon (the Developers) and the Swifts (the Owners) together further covenant with the Council not to Commence Development (save for the Whinny Brook works which will be excluded from the Definition of the Development) unless and until all parties with a legal or equitable interest in the Adjacent Land (comprising 'The Poplars, School Lane, Maghull', as shown edged red on Title Plan MS205452, and Bradleys Farm, School Lane, Maghull, as shown edged red on Title Plan MS601527) have been joined as parties to the S106 Agreement in the form (or substantially in the form) of the Confirmatory Deed annexed to this 106 Agreement.'*