

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 28 June 2006

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APPLICATION REF. NO:	06/00214/FUL
STATUTORY DECISION DATE:	25 April 2006
WARD/PARISH:	EASTBOURNE
LOCATION:	Darlington Football Stadium, Neasham Road, Darlington, DL2 1DL
DESCRIPTION:	Application under Section 73 and Section 106B of the Town And Country Planning Act to vary planning conditions and Section 106 legal agreement of planning permission reference number 99/00496/FUL dated 15 June 2000 to permit ancillary uses at football stadium and revised capacity constraints and off site highways works
APPLICANT:	DARLINGTON FOOTBALL CLUB LIMITED

APPLICATION AND SITE DESCRIPTION

The application relates to the Darlington Football Club Stadium site on Neasham Road to the south of the town.

The application seeks variations to the planning conditions and the terms of the Section 106 legal agreement approved on 15 June 2000.

In summary the proposal seeks planning permission to vary the operation and restrictions on the stadium to permit:

- The staging of other sports events other than football;
- The staging of non-sports related events;
- The removal/variation of some parts of the existing planning permission in respect of Planning conditions and the Section 106 Legal Agreement.

(A copy of the original planning permission is **attached** at Appendix A for information.)

The application is submitted with two key documents:

A planning statement titled "*Plan for Success*" which summarises the background to the application and explains the detail of the proposed additional uses and planning restrictions to be agreed and a Transport Assessment (TA) and draft Transport Strategy Plan.

PLANNING HISTORY

99/00494/FUL - Construction of 25,000 capacity all-seater stadium. Approved 15 June 2000.

02/00625/FUL – Variation of condition (5) to planning permission 99/00496/FUL to permit revisions to club shop, supporters bar, lounge bar and two restaurant units. Approved 26 September 2002.

03/01098/FUL – Use of Stadium Car Park for holding of car boot fairs. Approved 21 January 2004. (Temporary planning permission for 1 year.)

03/01116/CU – Use of part of south stand concourse as a nightclub. Withdrawn.

The site has also been the subject of various applications relating to advertisements and telecommunications development which are not relevant to this application.

PLANNING POLICY BACKGROUND

The following main policies in the Borough of Darlington Local Plan are relevant:

E2 - Development Limits
E46 - Safety and Security
E48 - Noise Generating/Polluting Development
H15 - The Amenity of Residential Areas
T12 - New Development Road Capacity
T28 - Residents Parking Schemes

RESULTS OF CONSULTATION AND PUBLICITY

24 letters of objection have been received objecting to the application for the following reasons:-

- *The stadium was granted permission against the residents wishes.*
- *A 25,000 seat stadium was never going to be economically viable, the scheme was based on the wild projections of the Chairman.*
- *We were given a catalogue of assurances that concerts would never be allowed but because of the financial position of the club they are now applied for.*
- *The Council has broken its promises.*
- *The Council has already been reprimanded by the Ombudsman and we are writing to her again.*
- *Parking restrictions are not the answer to the local problems experienced as a result of the stadium, many still park illegally.*
- *We will fight this plan and not allow the Council to blight our lives anymore.*
- *The noise from the stadium is getting louder all the time, noise at night would be horrendous.*
- *Homes have been de valued and this scheme if approved would make them worthless.*
- *Cleveland Club have been refused a licence for live music because of impact on residents, why should the stadium be any different.*
- *When I bought my house I was told the area of the stadium was Green Belt land which would not be built on.*

- *There is already disruption from match day activities including traffic disruption and noise and residents are really happy when the season ends.*
- *If any further events are permitted then parking restrictions should remain in place.*
- *Only one concern, noise from concerts.*
- *If events are held in the summer they will be more intrusive with open air concerts being a real problem.*
- *We argued the stadium should be built along with other leisure facilities such as a swimming pool, is this not the way forward.*
- *The stadium is not helpful to trade in Darlington.*
- *The infrastructure cannot cope with the Carlisle game at 8,400 how can it cope with non-sports events, if permitted, capacity should be less not more.*
- *It is inevitable the Council will eventually approve concerts.*
- *Planning permission must not be given for this development.*
- *Why were controls put in, in the first place if they are not to be enforced and monitored.*
- *Please address local problems do not add to them.*
- *DFC is a private company and should not be propped up by the Council.*
- *We expect a quality of life as other parts of Darlington have.*
- *No objections to sporting events but object to car rallies, concerts and religious events.*
- *The Council is already turning a blind eye to events such as computer fairs etc but the restrictions should remain.*
- *Noise controls are very difficult to enforce e.g. Croft Circuit.*
- *Who will pay for the additional congestion.*
- *The Club and the stadium are owned separately, who makes the money from this.*
- *Boxing matches have been banned from the Council because of violence at the Dolphin Centre, why allow them at the stadium.*
- *Provided it is restricted to sport, no objections.*
- *If 24 hour drinking is permitted this could create real problems.*
- *Concern about litter.*
- *Religious functions should be held in churches.*
- *This is altering the agreement through the back door.*
- *Controlled Parking Zone needs to be extended to cover all events.*
- *The off site highway works proposed are a danger to traffic.*
- *A limit of 93 decibels is too high and injurious to health, anything over 85decibels is damaging to health.*
- *The financial status of the club is not a material planning consideration.*
- *Who owns the club now.*
- *The stadium has breached several restrictions with no action being taken by the Council.*
- *The section 106 has been breached by the installation of 25,000 seats.*
- *Local residents are suspicious as to how the planning applications have been dealt with.*
- *Impact on the trunk road network on match days forces HGVs through the town.*
- *Will the controls through the Section 106 be carried through or scrapped altogether.*
- *This will lead to more anti social behaviour.*
- *Could it not be that after many years this is a mediocre team that nobody wants to support.*
- *There has been a failure to enforce the terms of the Section 106 in respect of controlled parking, traffic regulation orders, and highway works.*
- *If music events are so popular why don't Newcastle, Middlesbrough and Sunderland hold them.*
- *Monitoring of the CPZ is not good enough.*
- *Does review of controls mean removal of controls.*

- *If restrictions are lifted there will be no restriction on the number of other events to be held.*
- *If approved the decision will be a breach of the Human Right Act and the right to peaceful enjoyments of private homes.*
- *Strong objection to shooting events.*
- *No objections to other sports.*
- *The transport strategy was not available for review and no decision should be taken unless all information has been provided.*
- *There has been no consultation on the terms of the new Section 106 – have the Council not learned from the Ombudsman decision.*
- *Why has the application not been the subject of consultation with the Eastbourne Community Partnership, this is contrary to the advice given by the Ombudsman to the Borough Solicitor in January 2006.*
- *The potential loss of the club has no bearing on the application decision.*
- *There is no monitoring of the local caravan site during matches.*
- *Residents concerns have not been properly tested.*

CPRE object to the application for the following reasons:

- *Restrictions should remain in force, such restrictions would be unnecessary if the stadium had been built in the right location.*
- *Spectator restrictions were introduced to address local transport issues and the inadequacy of the local road network, the position on this application is a contradiction, acknowledging the reduced levels of spectators but promoting events to increase numbers.*
- *There is no indication of the number of events proposed.*
- *Who bears the cost of the extra policing etc.*
- *Nothing above the current level of spectators should be allowed without off site highways works as proposed.*
- *The financial viability of the club is not a material planning consideration in deciding the application.*
- *The Carlisle match showed the inadequacy of the local transport system, how will the club control transport provision for unexpectedly large non sports related events.*
- *What reliance can be placed on the traffic forecasts if they were wrong in 1999.*
- *The sports uses are less objectionable than non-sports uses but these could still cause problems with large crowds. The non sports events are particularly worrying from a noise pint of view.*
- *It is noted there is a history of obligations and requirements not being in place when they should be e.g. controlled parking zone and on which there was no action.*
- *The stadium is located in open countryside and the original decision was treated a departure from policy, this application should be treated the same and as such is unacceptable.*
- *The original decision was the subject of control partly to justify the departure from planning policy and they should remain in force.*
- *Known non-compliance with planning conditions is a reason to refuse this planning application.*

114 letters of support have been received and a petition with 139 signatures which has been collected “on-line”

Most of the letters simply state we “support” the application, others make the following comments in support of the application:

- *The loss of the club would be a serious blow to the town.*
- *If the application is approved it would increase the attractiveness of the stadium and create more activities.*
- *The stadium is a community asset the be protected.*
- *The club cannot move forward without the additional activities.*
- *Under responsible management, the club need not have the impact feared.*
- *The scheme will bring revenue to the town.*
- *We do not want another empty vandalised stadium.*
- *The Borough Council have the opportunity the help the club or kill it.*
- *As a resident living near the club I have not experienced any disturbance from the ground.*
- *The stadium and club will bring investment to the town.*
- *The loss of the club and its heritage would be a blow to the town.*
- *We have travelled to similar events at other stadiums and they do not cause problems if properly managed.*
- *In my opinion the residents who live closest to the ground had been given too much say, no such influence was apparent from residents who lived adjacent to Feethams.*
- *The approval of the application will make new marketing options available to the club.*
- *The stadium is an asset to be developed for the benefit of the whole community.*
- *The new management run the club for the benefit of the club and the community.*
- *Promotion will only be an option based on sound finances.*
- *Put the club on the map for more positive reasons.*

Hurworth Parish Council

Recommend approval subject to an impact assessment being carried out into the noise, traffic and crowd control for the holding of these events.

North East Assembly

The application has been considered by the Assembly's Planning and Transport Advisory Group (PTAG).

- *Changing the planning conditions imposed on Darlington FC would be in general conformity with RPG1 and the emerging RSS provided any increase in numbers of visitors to the stadium was carefully managed and concerns about local traffic were considered.*
- *The principle of similar numbers of people travelling to and using the stadium for other events would be in general conformity with RPG1 and the emerging RSS, provided that the aims of the emerging RSS to reduce parking provision at non residential developments and to encourage public transport use was taken into account.*

Highways Agency (HA)

The HA comment in relation to trunk road impacts:

- *The HA has reviewed the Transport Assessment and Transport Strategy Plan prepared for DFC.*
- *The Agency generally accepts the principle of revising the off site highway improvements requirements in order to accommodate the new threshold of 6,000 spectators for weekend events and an attendance threshold of 4,500 spectators for other events.*

- *The Agency is mindful to accept the variation of the planning conditions, however, would wish the following revised conditions, in connection with the A66 Trunk Road, to be applied to the planning permission for the football stadium. Notwithstanding this, the Agency is extremely concerned that the football club has been in operation for a number of years without having implemented the previous planning conditions, in relation to the Section 278 off-site highways improvements for the A66, and would wish to be re-assured that any revised conditions are complied with.*
- *The response then goes on, under Article 14 of the GDPO to Direct four highways related planning conditions. The wording of the final condition has been amended slightly to comply more with planning guidance on the use of planning conditions, but HA have agreed to the terms of the conditions set out in this report.*

CE Electric – No comments.

Environment Agency – No comments.

Northern Gas Network – No comments.

Sport England

- *Comment that, if approved, the permission should be the subject of a planning condition to protect the quality of the playing pitch for the primary use of football.*

DBC Building Control

- *The structure was approved for sporting uses only because of the super imposed loads created. Subsequent investigation has shown that the steel frame could withstand dynamic loading generated by a pop concert crowd but the concrete seating decks would not be adequate.*
- *Therefore any approval for other uses of the stadium must restrict the events to a use which would not generate excessive dynamic loading above the design criteria for football.*
- *Safety at Sports Ground Comments- with regard to traffic movements/car parking, the SAG have minuted at their meetings that with an average crowd it is when the away supporters exceed 1,000 supporters that the car park is full and this causes congestion to the surrounding roads. Therefore any event generating a lot of traffic from outside Darlington could cause problems.*

Highways and Transport Section

- *The Transport Assessment demonstrates that the traffic generated from the revised attendance threshold of 6,000 spectators and the proposed threshold of 4,500 for non-football related events can be accommodated within the surrounding highway network provided the following works are undertaken:*
 - *improvements to the A66(T) at the A66(T)/Neasham Road junction;*
 - *expand the capacity of the car park to 1470.*
- *There is also a requirement that cycle parking is provided (the number to be provided should be established from the predicted modal split - i.e. 22 spaces for 6000 spectators) and that*

the signing and lining works to new roads within the existing 'Initial Residents Parking Zone' be carried out.

- *Provided the above works are included as conditions of approval there is no highway objection in principle to the proposal. However, in relation to the proposed alterations to the Section 106 (in particular proposals for dealing with one-off events) and the Transport Strategy Plan there is insufficient detail on many issues, as follows: contingency planning for one-off events, monitoring regimes for proposed green travel measures, penalties for not meeting target measures, pricing structures (particularly in relation to charging for parking at non-football related events), attendance by Police at events (football and non-football: there is a presumption that they will attend all events and this may not be the case) etc. In general there are few highway problems at football matches where the crowds are in the region of 4,500, the problems are created where the proposed threshold of 6,000 is exceeded the planning permission should therefore only be granted when there are agreed procedures in place for these one-off events . The submitted proposals do not deal with this.*

PLANNING ISSUES

The main planning issue to be considered in the determination of this application is whether it is appropriate, in the context of issues of highway safety and residential amenity and all material planning considerations, to approve the application as submitted with the associated changes to planning conditions and the existing Section 106 Legal Agreement relating to the operation and use of the stadium.

The following section of this report first summaries the main points of the "Plan for Success" document and Transport Assessment submitted by the applicant.

The Planning issues raised by the application are then considered under the following headings:

- **Highways Implications**
- **Controlled Parking Zone (CPZ)**
- **Introduction of Other Uses at the Stadium**
- **Music Events**
- **Proposed Amendments to the Section 106 Agreement**
- **The Possible Consequences of the Loss of the Football Club**

Plan For Success

The application is supported by a planning statement (Plan for Success) which sets out the reason for the application, the history of the site and the proposed changes to the restrictions on the sports and non-sports events at the stadium.

In summary the submission makes the following points:

The Club are experiencing severe financial difficulties as a result of the over ambitious attempt to develop the arena. The changes proposed in the application will allow the club to raise additional revenue and be released from onerous planning conditions and obligations which no longer serve a proper planning purpose. The key to this is a new transport assessment which analyses impact on the basis of actual attendances and not projections as in the 1999 study, this allows accurate prediction of impacts based on actual use of the stadium. The application

proposes an expansion of sports related activities and non-sports activities. The report shows that both uses can be accommodated with little or no impact on the road network and nearest residential properties.

The report points to a number of specific conditions which it is felt need to be removed or altered, these are:

- (2)(3) Which deal with capacity;
- (4) Off site highway works linked to capacity constraints;
- (5) Limits on use, size of floor areas and hours of opening;
- (6) Car park/management plan.

In addition certain obligations in the Section 106 Agreement require review including; subsidised bus services from outside the Darlington area, highway improvements, additional public transport measures, stadium capacity, restriction on use, restriction on space and use, community use and wording to the third schedule which refer to 10,000 seats capacity restriction.

Possible variations to the planning conditions and Section 106 agreement

In summary these are:

- Variation of condition 5 (2) (3) and (4) to permit the use of the stadium for non-football sports and non-sports events with capacity limits of 4,500. Variation of condition (5) to allow the use of the stadium for sports and non- sports events including: archery, athletics, boxing and fight nights, cycling, hockey, rugby, table tennis and volleyball.
- Non-sports events including; business exhibitions, music events, religious events, theatre productions and modern and vintage car rallies.
- Other non sports events may take place subject to agreed management arrangements with the Council and other services including police etc and subject to other regulatory requirements e.g. licensing.
- Music events will be subject of agreed noise limitations to limit the impact of any event on the nearest residential properties.
- A revised Transport Strategy will be agreed for exceptional one-off events and to promote sustainable access to the site for all activities.
- Condition (5) should be removed or varied as it does not serve a planning purpose.

The Applicant's Transport Assessment - Conclusions

The study then makes reference to the new Transport Assessment submitted with the application its concludes that for football events an attendance of up to 4000-4,500 do not adversely impact on the local or trunk road network. In addition the TA concludes that attendances of 6,000-6,500, which are more sustainable for the club, can take place with limited impact on the network.

The TA concludes different patterns of traffic generation for different uses, the applicants confirm that limitations of 6,000 for football events and 4,500 for non-football sports events and other events will be the new attendance thresholds at the stadium.

For “exceptional” events that may exceed these numbers special consultation and management arrangements will be in place with the Council, police and other authorities along with a revised Transport Strategy to reduce reliance on the private motor vehicle.

Amenity

The submission comments that music events in particular will be subject to noise limitations to limit impact on the nearest residential properties.

The Plan for Success document concludes that without the additional activities to generate revenue, the club may well go into receivership and go out of business with economic and social consequences for the town.

Assessment of the “Plan for Success” Proposals, Application of Planning Policy and Consideration of Planning Issues Raised

The issues to be considered in the determination of this application may be narrowed down to the impact of the use and operation of the stadium in terms of highway safety and amenity for non-football related uses and other non-sports events as described.

Highways Implications

The Transport Assessment carried out has concluded that in terms of impact on the local network an audience of 6000 for football matches can be accommodated without undue impact on the local network. Football activity will attract fewer cars at a ratio of 1 car to 5 spectators and non-football sports and non-sports events will attract more cars at a ratio of 1 car per 3 spectators. The figures and conclusions of the Transport Assessment are acceptable to the Council's highways officers and the trunk road authority, the Highways Agency.

The existing planning permission is the subject of restrictions within the Section 106 agreement and the planning conditions (2) (3) and (4). These set a limit of 10,000 on capacity after which additional off site highways works and the transport strategy were to be in place including park and ride facilities. Since the average home gate at the ground has not approached the 10,000, limit except on the opening of the stadium, and it is more likely to be at an average level of below 6,000, some of these obligations/restrictions, whilst still material planning considerations, are no longer a practical requirement.

The general conclusions of the Transport Assessment (TA) are accepted by the Council and the Highways Agency (HA) and the position now is that the club will accept new attendance restrictions being placed on any grant of planning permission to restrict football attendances to 6,000 without any additional highways works except those to be carried out at the junction of the A66/Neasham Road, which although not required in terms of the assessment, will be carried out by the club. The Highways Agency consider these works necessary and have Directed a planning condition to this effect. Also proposed are some revisions to the Section 106 obligations in respect of transport provisions which will not practically be met e.g. the provision of bus services from Yarm/Stockton etc. This is considered acceptable since the service from those areas are not considered critical to achieving sustainability objectives.

Restrictions on attendances for non-football sports activities and non-sports events will be set at 4,500 because of the different level of traffic generation for different uses.

In so far as events that may exceed these limitations, special arrangements are to be in place through a revised Section 106 Agreement and this will include the adoption of a new Transport Strategy which will both revisit the operation of the stadium for sports and non-sports events and seek to promote more sustainable transport choices to reduce reliance on the private motor vehicle. The applicant has confirmed that this will include, if necessary, Park and Ride facilities for non-football related events that exceed the limits set by any grant of planning permission.

A draft of the Transport Plan has been submitted with the application and examined by the Councils Transport Policy Section. There is a concern that the application proposes changes to the transport arrangements that dilute what were considered to be worthwhile elements of the transport strategy agreed on the original planning permission, which would promote non-car access to the site. In addition, the application represents an opportunity to make good some deficiencies on the site such as cycle parking. The Transport Strategy document is submitted in draft form and will be the subject of further discussion and consultation so that an agreed strategy can be drawn up; this can be the subject of a planning condition or Heads of Term of a revised Section 106 Agreement.

The Highways Agency have been consulted in respect of trunk road matters and have raised no objections subject to a number of planning conditions.

Controlled Parking Zone (CPZ)

It is proposed to continue to operate the CPZ on any sports or non-sports event held at the stadium where attendances justify.

In summary in respect of highway/capacity matters, it is entirely appropriate for the Council to consider using planning conditions to set new thresholds for attendances at football and non-football events alike which reflect the average attendances at the stadium which are accurately established since the stadium opened and, if Members are minded to grant planning permission, officers are satisfied such conditions meet the requirements of the relevant Circular relating to the use of planning conditions.

Introduction of Other Uses at the Stadium

Key to the future of the Club according to the submission is the consideration of allowing other uses both **sports** and **non sports** to be carried out at the stadium and these have been set out above and include additional sport uses (archery, athletics, boxing, fight nights, cycling, hockey, rugby, table tennis and volleyball) and non-sports uses including business exhibitions, music concerts, religious events, theatre production and modern and vintage car rallies.

The introduction of such uses would require changes to planning condition (5) and the terms of the existing section 106 Agreement.

In so far as the non-football sports uses are concerned these have been listed in the *Plan for Success*. The application has, however, been amended to remove shooting events from that list.

The stadium building is designed as a sports arena, and will lend itself to a number of sports related uses with little or no physical alterations. The results of local consultation clearly

demonstrates a concern mainly with the proposed use of the site for a music venue rather than the additional sports uses. The view of officers is that there is no strong planning reason why the stadium should not be used for non-football **sporting events** and that the variation of the condition that strictly limits the use of the site to football can be varied subject to the capacity limitations outlined above with little or no impact on local residential amenity or highway implications subject to the new capacity restrictions agreed.

One of the main issues for the applicants consultants has been to adequately define what other sports uses will be carried on at the site and market testing has resulted in the initial list set out in the Plan For Success document.

On this point planning officers feel the Planning (Use Classes) Order 1997 is helpful.

Class D2 (Assembly and Leisure) of the Order is defined as:

Use as:

- a) a cinema;*
- b) a concert hall;*
- c) a bingo hall or casino;*
- d) a dance hall;*
- e) a swimming bath, skating rink, gymnasium, or area for other **indoor or outdoor sports** (Council's emphasis) or recreation not involving motorised vehicles or firearms.*

Officers take the view that planning condition (5) could be removed and replaced with a condition that limits the use of the stadium to a definition limited to the last section of the class (e) which permits "*indoor or outdoor sports*". This will allow the club the flexibility it needs to promote other sports uses at the site without the need to define specifically on each occasion what sports event will be held.

The impact of those uses directly from an amenity point of view will be negligible, since they do not include firearms, which have been deleted from the application, or the use of motorised vehicles for trials of speed and racing which is precluded from the specified use class .

The attendance limits of 4,500 unless by special arrangements, will ensure that the activities do not adversely impact on the local and trunk road networks as concluded in the Transport Assessment and the Controlled Parking Zone will, where necessary, continue to limit the impact of any use in terms of off-site parking.

The applicant's agents also comment that condition (5) deals with two other matters, hours of opening of bars etc and floorspace limitations of the club shop etc. These they suggest should be removed.

Officers agree, that in view of the new licensing powers arrangements, it is acceptable to delete reference to hours of opening. In fact, the present licence granted for the stadium allows for opening hours beyond those set out in the original planning permission, the enforcement of that condition from a planning point of view is no longer reasonable or necessary because licensing controls are now in force.

On the issue of the floor areas of the club shop and other hospitality uses the officer view is that some form of control needs to be retained to enable it to monitor and control the scale of the retail floorspace and/or the range of goods sold and the extent of the floor space of the other

restaurant uses in particular, so that the stadium does not begin to adversely impact on the town centre as a “*destination leisure use*”. It has been agreed the appropriate way forward is for the stadium to be the subject of a more up to date survey that defines these areas and for the planning condition to restrict those areas and the nature of the goods sold as at present.

In view of the above comments officers are agreeable to recommending the amendment of condition (5) in respect of the other sports uses, subject to capacity limitations as agreed, subject to the continued operation of the CPZ as at present where necessary and, subject to more limited control over use/floor areas in respect of the club shop and restaurant/bar areas.

Music Events

The plan submitted also proposes the use of the stadium for music events subject to the limitations outlined above and subject to additional limitation in terms of the maximum level of noise generated from the stadium. Once again the events will be subject to an attendance threshold of 4,500 and the CPZ will continue to operate for these events where necessary.

One of the main planning issues to be considered in respect of such a use is the impact the noise may have on the nearest residential property. In view of these concerns the applicants have arranged for a trial run of such an event using a PA system of the power envisaged and this has been the subject of a report produced by a firm of specialist noise consultants. In addition to the main report the Consultants have submitted a Noise Management Plan for the Councils consideration. The report and the plan has been assessed by the Councils Public Protection Section. Their observations are set out below:

The Concert Noise Management Plan (in particular Section 6) describes an assessment of how much amplified music played at the Darlington TFM Arena can be heard at the residential properties. The music noise is reduced (attenuated) to some degree by the structure of the arena and the distance between the arena and the identified properties, and this has been calculated using recognised standard acoustic procedure.

The degree of this noise attenuation has been quantified by measurement of the music noise inside the arena (on the centre spot of the pitch, approximately 80m from the speakers), then measuring the same music noise level at the noise sensitive properties. At each of the properties, the noise environment was affected by other noise sources, principally the road traffic on the A66. The sound level meter used in the assessment measures sound as an air pressure, but cannot distinguish between different noise sources - it merely presents a sound pressure level for all the sources present, i.e. the music and the road traffic. To discount this extraneous (residual) noise from the assessment of the music noise, two measurements are taken:

all non-music noise sources plus the music noise from the arena;
all non-music noise sources.

The actual level of the music noise from the arena can be calculated, the resultant noise levels being presented as the “Music Noise Level (corrected for residual noise) LAeq,T”.

The human ear is capable of detecting a very large range of sound pressures. To accommodate this range, noise levels are measured using the decibel (dB) scale, which is calculated from the air pressure to gives a range of 0 (theoretical threshold of hearing) to 140dB (threshold of pain). This is a logarithmic scale, not an arithmetic scale. The calculations are not straightforward e.g. 2 noise sources each with a sound level of 60dB would give an overall sound level of 63dB

and 2 noise sources, one 50dB and the other 60dB would give an overall sound level of 60dB ie the lower noise source would not have a measured effect.

To calculate the individual noise level, say for the music noise, the measured noise levels can be converted back to their corresponding air pressures, one taken from the other, then converted back to dB...

The noise levels for each noise sensitive property detailed in the executive summary of the Concert Noise Management Plan can then be used both as a monitoring guide by the football club and also as an enforcement tool by officers.

Public Protection's specific comments with regard to the actual application are:

I have studied the Concert Noise Management Plan supplied by Wardell Armstrong and am happy that its contents are realistic and give an accurate representation of the impact of the noise on the residents in the vicinity of the stadium. Nevertheless it must be stressed that the noise from concerts will be audible at the identified noise sensitive properties and possibly beyond, depending on prevailing weather conditions.

The mitigation and noise management measures detailed in section 8 of the Management Plan, if implemented in full, would give adequate control over the events to minimise the disturbance to residents. It is recommended that a condition be imposed to ensure that the action plan is implemented for all music or similar events. I would also recommend that the Noise Management plan is reviewed on an annual basis or at any other time where breaches of the noise limits are identified.

I would also propose an additional measure which prohibits the playing of music through the tannoy system during breaks in the music events as this would not be afforded any degree of attenuation by the structure of the stadium. All music at events should only be played through the PA system provided for the concert. The tannoy system should only be used for emergency announcements.

No detail has been provided on the number of events that are proposed and I am informed by the consultant that he has not been informed by his client. Using the recognised guidance quoted in the report the measurement data would be representative for up to 12 events annually. It is recommended that a specific number of events is provided by the club and imposed as a condition on the planning consent.

Additional consideration must be given to a calendar of events e.g. 10 events held on a monthly basis would be perceived to have less impact on the community than the same number of events held throughout the "close-season" i.e. July/August.

It is recommended that a condition be placed on the consent requiring a schedule of proposed music events to be provided, perhaps on an annual or six monthly basis, including details of the artists, dates etc. This condition could be extended to include all non-music events subject to this application but with a shorter timescale (perhaps every 3 months) to allow officers the assess the impact of proposed events on the community.

Music events/concerts should only be permitted within the stadium.

The current planning consent imposes a noise limit of 98dB(A) for emergencies and 93dB(A) at other times. This noise level was determined on the basis of approximately 24 home games staged throughout the football playing season. The current application would allow for a far greater number of events and if the tannoy/internal music system were to be employed at all events then the noise level would be intrusive to residents at the quoted level. It is recommended that a condition be imposed on the consent that requires a noise management plan to be provided for the use of the tannoy/internal music system at all events.

Consideration should be given to imposing control over the duration of a concert/event and for the time of day it is held. The guidance used for recommendations in the Noise Management report uses 23:00 as the terminal hour. However, given that dispersal of the audience could also lead to disturbance it is recommended that the terminal hour for playing of music be 22:00 and the duration of the concert should be no more than 3 hours.

I would refer to the comments made by the Building Control Manager and the contents of the letter from Blackett Hart and Pratt dated 6th June 2006 relating to the fact that the stands are not suitable for use by audiences at music concerts. A condition should be imposed relating to this matter.

As a result of this study it is concluded that subject to appropriate limitations on the number of events per year and the level of noise generated by the site the use of the stadium for music events will not give rise to conditions so prejudicial to residential amenity to merit a refusal of planning permission. In addition to the normal planning conditions that can be used to regulate this element of the permission it is proposed to include a requirement for a Sound Management Plan in the heads of terms of the new Section 106 Agreement. Planning officers are also satisfied that most of the planning conditions suggested by the Public Protection Team can be added to the planning permission or included in the Section 106 Agreement.

In respect of the comments made by the Public Protection Team and the Building Control Manager on the use of the stands for audiences the following comments are made:

The applicants had intended to use the main (west) stand for concert audiences facing out over the football pitch with the stage and PA system facing onto the stand. Given the comments of the Building Control Manager it is clear there is a concern that whilst the structural steel elements are capable of taking the dynamic loadings of a concert audience, the concrete sections are not. The applicant has been advised of this issue and has continued that music events will now accommodate audiences on the pitch surface with the sound stage facing south, located in the smaller north stand. This is, however, a detailed issue that is dealt with more appropriately by licensing controls than planning but some of the matters, eg the location of the sound system will be covered by the Noise Management Plan.

Applicant's Proposed Amendments to the Section 106 Legal Agreement

There are a number of changes proposed to the Section 106 legal agreement which essentially deal with matters related to the issues outlined above.

In the first instance it should be noted that, wherever possible, the amendments to the planning permission and associated Section 106 Agreement, will be dealt with through revision of the planning permission and conditions themselves. This is consistent with planning guidance issued by the Department of Communities and Local Government (DCLG) which states that

wherever possible planning conditions should be used to regulate development and it will not normally be necessary to duplicate these controls in a legal agreement.

Such an approach will result in a simpler planning permission, easier to interpret and monitor.

The following is a summary of the main changes proposed by the applicant to the existing Section 106 Agreement and officer comments on each element:-

- (i) The discharge of the obligation to provide bus services from Yarm and Stockton (paragraph 2) This is not a practical nor necessary requirement at this time.
- (ii) The discharge of paragraph 6 (Signing Strategy) and its replacement with the obligation to carry out road markings as explained in the above report. The Highways officers comment that the signing strategy needs to remain in place and to be reviewed and completed and this has been agreed with the applicants. This element will remain in a modified form.
- (iii) The modification of paragraph 7 with a new obligation relating to public transport measures. This is acceptable subject to the comments of the Transport and Highways officers.
- (iv) The discharge of paragraph 9 (Stadium Capacity Restrictions). This is now dealt with through the imposition of planning conditions at the thresholds set out above in the report.
- (v) The discharge of paragraph 10 (Financial contribution to Nature Reserve and Rights of Way). This obligation has been discharged.
- (vi) The discharge of paragraph 11 (Financial contribution to public art). This obligation has been discharged and dealt with through planning conditions.
- (vii) The discharge of paragraph 12 (Restrictions on Use) This is now dealt with through revised planning conditions.
- (viii) The modification of paragraph 13. The study support centre is now complete, the club estimates annual running costs of £30,000 per annum.
- (ix) The discharge of paragraph 14.5 and 15 which relate to the Feethams site. The applicants no longer have a legal interest in the Feethams ground.

With the exception of the transport strategy issues none of the changes proposed to the Section 106 agreement raise any planning concerns. Members will be aware that planning permissions and Section 106 Agreements are tools not only to regulate the use of land but to control building development in the first place.

Now that the stadium is complete there are some planning conditions and obligations which are no longer relevant to the day-to-day operation of the site either because they have been discharged or because they no longer serve a planning purpose.

Changes to the terms of the section 106 and the planning conditions relate solely to those matters and issues raised by this application.

More importantly the new Section 106 will retain, for example, the use of the CPZ (Controlled Parking Zone) for all events at the stadium where necessary and an opportunity to revisit the

transport and accessibility issues relating to the use of the site. More importantly the planning permission will be a simpler clearer document which will be easier to interpret and monitor but will retain the necessary level of planning control over the impact of the use of the stadium. Others controls will exist through the Councils licensing and related functions.

The proposed Heads of Terms of the revised Section 106 Agreement are set out below in the normal manner in the recommendation of the Director.

Implications if the Club were to Cease Trading

The Plan for Success document has stated that because of the financial position of the club the application to widen the use of the stadium for specified events is essential if the clubs financial viability is to be stabilised. Indeed the study comments that the Club could easily fold if such other income earning uses were not permitted.

The application is submitted against a historical background where the investment of the previous chairman in the arena, combined with lower than expected average attendances have resulted in significant losses at the club. Such losses cannot be sustained.

Although the applicants readily acknowledge there is limited research that links the presence of a football club to other community and economic interests, they draw from a study completed on behalf of Cardiff City Council prepared by the Cardiff Business School.

The report states:

The potential for sport as a driver for economic growth is well documented. According to one source, "exploiting the interface between tourism and sport is set to become a major focus for tourism development on a global basis over the next twenty years". Similarly, it has been argued sport makes a significant contribution to national, regional and local economies.

It goes on to state:

Experience shows that sport can be a leading player in attracting inward investment, both through the direct benefits it brings and, perhaps even more importantly, through the changing culture and image that it can generate in cities and regions. In this respect, a successful football club can play an important role in terms of raising the profile of the city on the international stage. The economic consequences of this "intangible" benefit is difficult to quantify with any precision. Yet there is no doubt that the marketing of a city can be significantly enhanced as a result of the achievements of a football team.

The Plan for Success document goes on to point out that as well as the issue of civic pride and the club does have a role in promoting economic growth in the town through conferencing etc. The arena is a positive statement of investment in the town.

The Plan for Success states:

While direct economic issues or questions of competition may not be strictly planning issues I consider the overall impact of the loss of the Football Club would have on the economic well being of the town that is clearly a relevant material planning consideration. Through support of the Football Club the Local Planning Authority may not necessarily see an obvious direct economic benefit for Darlington, though in indirect benefits would be substantial.

The Cardiff City report goes on to comment on the social links between football clubs and the wider community, it states:

Football Clubs – and indeed other sporting clubs – are well placed to put in place initiatives that serve to encourage young people to better themselves and to understand the links between sport, hard work and self-development.

This approach has been developed by the previous Chairman of the Club (Stuart Davies) who has sought to forge links with the local community and to promote community engagement through for example, the study support centre, OAP luncheon clubs, after school clubs and a Young Peoples Convention in conjunction with the Education Authority and Youth Service.

The work of the football club within the local community emphasises the role that the Club plays with Darlington and the impact that would be felt by the town if it were to be lost.

Officer advice is, that whilst it is clear the economic viability and the issue of finances is not a material planning consideration on which a decision on this application should turn, Members are entitled to give whatever weight they may consider appropriate to the potential social and economic consequences of the loss of the club. The officer view concurs broadly with that set out in the Plan for Success document and that the loss of the club in terms of economic and particularly, social impacts, would be negative and extensive given the long history of the club and its association with the town.

SECTION 17 OF THE CRIME AND DISORDER ACT

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

CONCLUSIONS

The application proposes changes to the planning permission and Section 106 legal agreement which will allow the use of the stadium for a range of sports and non-sports activities whilst at the same time acknowledging that a degree of planning control needs to be retained in the interests of highway safety and local amenity.

The submitted Transport Assessment (TA) shows that for normal football events the network is capable of accommodating up to 6,000 visitors without undue impact on the local and trunk road network subject to a nominal increase in on site parking and the provision of limited off site highway works. Similarly, the TA demonstrates that non-football sports activities and the proposed non sports events can be accommodated on the same basis with a reduced attendance threshold of 4,500.

The applicant has agreed to carry out the additional off-site highway works at the junction of Neasham Road/A66(T).

For events that exceptionally exceed these thresholds new arrangements will be in place via a revised Section 106 Agreement to allow full liaison and consultation with the Council and other

service providers along with an approved Transport Strategy Plan to encourage access to the site by means other than the private car including, where necessary, Park and Ride provisions. These controls are in addition to those exercised by the Council as Licensing Authority.

In respect of the proposed uses the additional sports activities raise no planning policy or development control issues and officers are satisfied that these can take place subject to the limitations set out, without impact on amenity and highway safety.

In respect of the other proposed uses the business exhibitions, religious events, theatre productions and car rallies raise no particular issues subject to appropriate planning conditions on capacity also.

The main use that is of concern to officers and is reflected in the results of consultation is the use of the stadium as a music venue for live performances. To address these concerns a consultants noise report has been completed and a sound management plan provided to the Council for consideration. Such events have been the subject of a noise test and Consultants Report which has been considered jointly by Public Protection and planning officers. The report concludes that subject to an appropriate noise management plan and restrictions on the numbers of events to be held annually and related controls, there would be no undue loss of amenity to the nearest residential properties by reason of noise. Coupled with the additional arrangements to be agreed in a revised section 106 agreement, on balance, the view is that such events are acceptable.

RECOMMENDATION

THAT THE DIRECTOR OF DEVELOPMENT AND ENVIRONMENT BE AUTHORISED TO ENTER INTO AN AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTY PLANNING ACT TO SECURE THE FOLLOWING:

1. THE SUBMISSION OF A MANAGEMENT PLAN TO SET OUT THOSE MEASURES TO BE ADOPTED IN THE EVENT THAT A FOOTBALL EVENT EXCEEDS THE AGREED THRESHOLD OF 6,000 PERSONS OR A NON-FOOTBALL SPORTS USE/NON-SPORTS USE EXCEEDS THE AGREED THRESHOLD OF 4,500;
2. THE SUBMISSION OF A TRANSPORT STRATEGY TO PROMOTE ACCESS TO THE SITE BY MEANS OTHER THAN THE PRIVATE CAR AND PROCEDURES FOR THE MONITORING AND REVIEW OF THE STRATEGY;
3. THE SUBMISSION OF A NOISE MANAGEMENT PLAN IN RESPECT OF MUSIC EVENTS AND THE USE OF THE EXISTING PUBLIC ADDRESS SYSTEM AND ARRANGEMENTS FOR THE REGULAR REVIEW OF SUCH A PLAN;
4. PROCEDURAL ARRANGEMENTS FOR THE SUBMISSION OF A CALENDAR OF EVENTS;
4. THE COMPLETION OF A SIGNING STRATEGY FOR THE STADIUM SITE;
5. THE SUBMISSION OF A CAR PARK MANAGEMENT PLAN WHICH SEEKS TO ENSURE THE MOST EFFICIENT USE OF THE AVAILABLE CAR PARKING ON THE SITE;

6. ARRANGEMENTS FOR THE ONGOING SUPPORT OF THE STUDY SUPPORT CENTRE PROVIDED AS PART OF THE ORIGINAL DEVELOPMENT;

AND, THAT SUBJECT TO THE COMPLETION OF THE AGREEMENT THE DIRECTOR BE GRANTED DELEGATED AUTHORITY TO GRANT PLANNING PERMISSION FOR THE DEVELOPMENT APPLIED FOR SUBJECT TO THE FOLLOWING CONDITIONS AND REASONS:

General

- 1) A3 Implementation Limit (Three Years)
- 2) Within 3 calendar months of the date of this planning permission a detailed survey of the stadium shall be submitted to the Local Planning Authority. The survey shall indicate those areas used for ancillary retail, hospitality and the sale and consumption of food and drink and any other uses. Once submitted and agreed the use of the stadium shall be in accordance with that survey in terms of land use and no material change to the use of any part of the stadium shall be carried out without the prior written approval of the Local Planning Authority.

REASON – The Local Planning Authority considers it appropriate at this stage to ensure the use of the stadium is consistent with approved plans for the site in terms of land use and to restrict the expansion of retail and other activity so as not to prejudice development plan policy.

In respect of Association Football and other football events

- 3) The football sports activities shall be limited to a spectator capacity of 6,000 on Saturday and Sundays and 4,500 on weekdays unless written approval of the Local Planning Authority is agreed to an increased number in accordance with the Management Plan for Exceptional Events agreed under the terms of the attached Section 106 Agreement.

REASON - In order that the attendance at the stadium is appropriately restricted in accordance with the finding of the Transport Assessment, submitted as part of the planning application, in the interests of highway safety on the local and trunk road networks.

In respect of other non-football sports related activity

- 4) The planning permission hereby granted permits the use of the stadium and its associated grounds for the following non-football sports uses namely: archery, athletics, boxing and wrestling, cycling, hockey, rugby, table tennis, tennis and volleyball in accordance with the terms of the application and permits any other sports use only, as defined by Class D2(e) (Assembly and Leisure) of the Schedule to the Town and Country Planning Use Classes Order 1987.

REASON – Whilst the Local Planning Authority is satisfied that the use of the stadium for sports events, other than football is acceptable, it considers in appropriate to restrict the use of the stadium for leisure uses defined in Class D2(e) of the Use Classes Order, in the interests of residential amenity, highway safety on the local and trunk road network

and to ensure planning policy in respect of leisure and related used in the development plan is not prejudiced.

- 5) The non-football sports use permitted by condition (2) above shall be limited to a spectator capacity of 6,000 on Saturdays or Sundays or 4,500 on weekdays unless written approval of the Local Planning Authority is agreed to an increased number in accordance with the Management Plan for Exceptional Events agreed under the terms of the attached Section 106 Agreement.

REASON - In order that the attendance at the stadium is appropriately restricted in accordance with the finding of the Transport Assessment, submitted as part of the planning application, in the interests of highway safety on the local and trunk road networks.

- 6) The non-sports activities at the stadium shall be restricted to those specified in the application namely; business exhibitions, music events, religious events, theatre productions and modern and vintage car rallies and such uses as maybe agreed in writing, from time to time with the Local Planning Authority.

REASON – Whilst Local Planning Authority is satisfied that the use of the stadium for the specified non-sports event is acceptable, it considers it necessary to retain control over any other non-sports events in the interests of residential amenity, the impact on the local and trunk road network and to ensure planning policy in the development plan is not prejudiced.

In respect of Trunk Road Matters

- 7) Within three months of the date of the approval hereby granted, the applicant shall secure and implement the Section 278 Highways works for the A66 (T)/Neasham Road roundabout, shown on the submitted approved plan Drawing No. 34476-HA278-002.

REASON – In the interests of highway safety and to safeguard the capacity of the A66 Trunk Road.

- 8) The attendance threshold shall be as set out in conditions (2) and (4) above for sporting and non-sporting events. Any event, where it is likely these prescribed thresholds will be exceeded shall not take place unless the Influencing Behaviour/Traffic Management Measures identified in the Transport Strategy Plan have been agreed in writing with the local planning authority and implemented for the event.

REASON – In the interests of vehicular and pedestrian safety and to promote access to the site by more sustainable transport modes.

- 9) A Transport Strategy Plan monitoring review report shall be submitted to the Council for consideration by it and the trunk road authority (Highways Agency) on a bi-annual basis or as requested by either of these authorities and the report shall contain written evidence of the effectiveness of the Influencing Travel Measures identified in the Transport Strategy Plan. In the event the monitoring report indicates the influencing travel behaviour targets are not being achieved, the applicant shall submit details of those additional measures to be adopted, to achieve identified targets, and the measures shall

be implemented after they have been agreed in writing by the Council and shall continue to operate for all events until agreed otherwise by the Council.

REASON – In the interests of vehicular and pedestrian safety and to promote access to the site by more sustainable transport modes.

- 10) Prior to the implementation of this planning permission and before the first non-football event, details shall be submitted and approved of secure cycle parking at the stadium within the car park/stadium complex and the approved cycle parking shall be provided prior to that first event or in such extended time as may be agreed in writing with the Local Planning Authority.

REASON – To ensure adequate cycle parking provision to promote sustainable access to the stadium.

Protection of Pitch Playing Surface

- 11) Prior to the use of the stadium for the first non-football event, or in such extended time as may be agreed in writing with the Local Planning Authority, details shall be submitted of measures to protect the quality of the playing surface of the pitch at the stadium and any event which is held which involves the use of the pitch for non-sports use shall be carried out in accordance with those agreed measures.

REASON – To ensure the quality of the playing pitch surface is protected during non-sports events in order that the primary purpose of the stadium as a venue for association football is not prejudiced as a significant community facility.

Car Parking on the Site

- 12) Prior to the implementation of the planning permission hereby approved, details shall be submitted and approved of the additional on site parking provision identified as being required by the submitted Transport Assessment. The additional car parking shall be provided on the site prior to the first non-football event the subject of this planning permission and maintained on the site in the approved manner.

Reason – To ensure satisfactory provision is made for car parking on the site to mitigate the impact of the development on the local road network as identified in the Transport Assessment.

- 13) The Public Address System (PA) shall continue to operate at the site in accordance with the details previously approved on 14 April 2004 under the terms of condition 9 of the planning permission dated 15th June 2000 (Council's Reference 99/00496/FUL).

REASON - To protect the amenities of the nearest residential properties.

Noise and Residential Amenity

- 14) Music Events shall take place within the confines of the stadium only and there shall be no playing of amplified music outside the stadium at any time without the prior written approval of the Local Planning Authority.

REASON – To protect the amenities of the nearest residential properties.

- 15) In the event the stadium is used for an approved music event, music shall not at any time be played through the existing tannoy system installed at the stadium. All music is to be played only through the music system in use for the event. The tannoy system at these events should only be used for emergency announcements.

REASON – To protect the amenities of the nearest residential properties

- 16) The stadium shall be used for no more than 12 music events annually unless otherwise agreed in writing with the Local Planning Authority.

REASON – The Noise report and noise management plan are representative of up to 12 events per year based on established measurement techniques and guidance. It is considered necessary to limit the number of music events at the stadium to twelve or less in order to minimise any disturbance to the nearest residential properties.

- 17) Any music events held at the stadium which involve the playing of music or live performances in the ground (excluding the existing licensed parts of the stadium complex) through a temporary sound system shall cease at 22.00 hours unless the written agreement of the Council is given to an extension of this time.

REASON – Although the noise report is based on the cessation of a music event at 23.00 hours, the Council considers that there could be additional impacts from the dispersal of the audience and a time period should be included to consider such an impact in the interests of protecting the amenities of the nearest residual properties.

SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION

The application proposes changes to the planning permission and Section 106 legal agreement which will allow the use of the stadium for a range of sports and non-sports activities whilst at the same time acknowledging that a degree of planning control needs to be retained in the interests of highway safety and local amenity.

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The applicant has agreed to carry out the additional off-site highway works at the junction of Neasham Road/A66(T).

For events that exceptionally exceed these thresholds new arrangements will be in place via a revised Section 106 Agreement to allow full liaison and consultation with the Council and other service providers along with an approved Transport Strategy Plan to encourage access to the site by means other than the private car including, where necessary, Park and Ride provisions. These controls are in addition to those exercised by the Council as Licensing Authority.

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- E2 - Development Limits
- E46 - Safety and Security
- E48 - Noise Generating/Polluting Development
- H15 - The Amenity of Residential Areas
- T12 - New Development Road Capacity
- T28 - Residents Parking Schemes