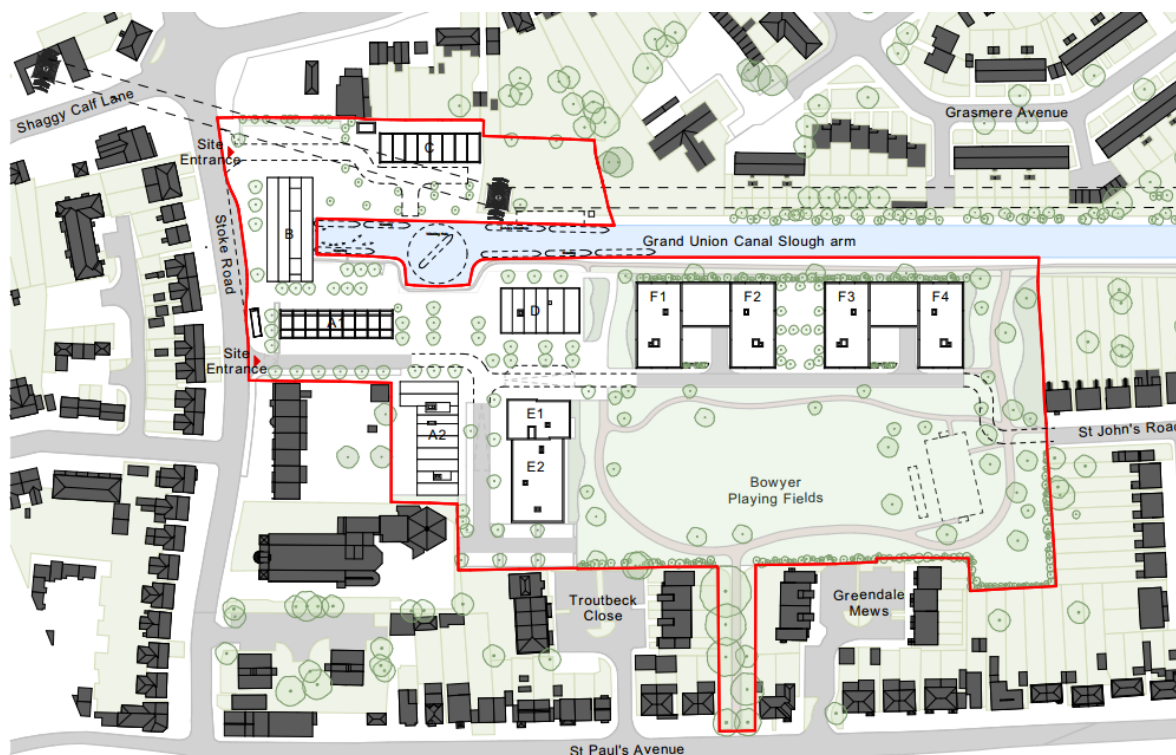


Registration Date:	23-Oct-2020.	Application No:	P/07584/011
Officer:	Alistair de Joux	Ward:	Central and Elliman
Applicant:	Stoke Wharf Development LLP	Application Type:	Major
		13 Week Date:	22-January 2021.
Agent:	Savills, 33 Margaret Street, London, W1G 0JD.		
Location:	Land at Stoke Wharf, Stoke Road & Land to west of 9 to 17 Kendal Close &, Former builders merchants to rear and north of 132-144 Stoke Road &, Bowyer Recreation Ground, Slough.		
Proposal:	Comprehensive redevelopment to provide 312 residential units, 329 sq.m. commercial floor space, canal side recreational facilities and public realm improvements, including enhanced recreational facilities within the retained open space at Bowyer Playing field.		

Recommendation: To agree an amendment to the original Planning Committee resolution and defer for approval to the Planning Manager.



## 1.0 **SUMMARY OF RECOMMENDATION**

1.1 That Members agree to an amendment to the original Planning Committee resolution. It is recommended that the requirement for the S106 Agreement to be completed prior to the decision notice being issued, is replaced by the suggested condition, which would require a planning obligation pursuant to S106 of the Act to be entered into prior to the commencement of development (other than site preparation works).

1.2 That the following condition be included on the decision notice:

“No development [other than the Site Preparation Works] shall take place on the Obligation Land unless and until all parties with an interest in the Obligation Land have entered into a planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) in order to bind the Obligation Land. This planning obligation must be in the form of, and must secure the same obligations as, the draft planning obligation appended to this decision notice.

[For the purposes of this condition “Site Preparation Works” shall mean:

- a) site clearance works;
- b) demolition;
- c) remediation works;
- d) archaeological investigations;
- e) erection of hoardings and fences;
- f) erection of temporary facilities associated with the construction of the Development;
- g) site investigations or surveys; and
- h) decontamination works.<sup>1]</sup>

For the purposes of this condition the ‘Obligation Land’ shall mean all that land shown edged red on Plan [x]<sup>2</sup> appended to the decision notice. For the avoidance of doubt, the Obligation Land does not include the land shown edged green on Plan [x].

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<sup>1</sup> This list reflects the exceptions identified in the definition of “Commencement of Development” on page 2 of the draft obligation.

<sup>2</sup> A Plan should be prepared and appended to the planning permission which would identify the ‘Obligation Land’ (to be edged in red) and also the Canal Land (to be edged in green) so as to make clear which land was and was not to be made subject to the obligation.

Reason: To ensure that the planning obligations that are necessary to mitigate the impacts of the proposed development are appropriately secured.”

1.3 That the application is deferred for approval by the Planning Manager.

## **PART A: BACKGROUND**

- 1.0 This report does not seek to revisit the merits of the proposed development, which remains as agreed in principle by the Planning Committee and then as I agreed on 24 January 2022. The sole purpose of reporting this application back to Planning Committee, is to seek Members’ agreement to an amendment of the original resolution, from the meeting on 10 February 2021.
- 1.1 Members will recall that at that meeting, it was resolved to delegate to the Planning Manager, following consultation with the Chair of the Planning Committee, to approve, pending:
1. Referral to the Planning Casework Unit for the casework team to decide if the application would be called in either for decision by the Secretary of State, or the application remained to be decided by the Local Planning Authority.
  2. The receipt of formal amended plans for consultation.
  3. Consultation by site notice with residents and Ward Members (Central and Elliman by email) on the amended plans referred to in the Amendment Sheet.
  4. Completion of the Section 106 Agreement.
  5. Agreement of pre-commencement conditions.
  6. Any changes to conditions.
- 1.2 All of the above requirements have been undertaken and addressed, with the exception of item 4, which is the focus of this report.
- 1.3 The Section 106 Agreement is at a highly advanced stage and was envisaged as being a trilateral agreement between the Council, the Canal and River Trust (CRT) and Stoke Wharf Development LLP.
- 1.4 However, as progress was being made on the S106 agreement it has become apparent that a change of approach is required. This is down to the fact that the Council as the major landowner of the site, cannot lawfully covenant with itself, as it is also the enforcing authority (Local Planning Authority) for the purposes of the S106 agreement.
- 1.5 The CRT has significant concerns that if it entered into the Section 106 Agreement, it would be the only party bound by the obligations. The CRT only owns a minority of the

application site and their solicitors have advised that *“it is unwilling to accept the potentially significant liability for the obligations.”* In an attempt to assist in the progressing of the application, the CRT suggested a suitably worded (Grampian) condition coupled with a complete draft section 106 obligation appended to the planning permission.

- 1.6 Officers acknowledged the predicament of the CRT, and in response to the issue being raised, have continued to work positively with the applicant, noting that the National Planning Practice Guidance allows for the approach outlined in the preceding paragraph to be utilised. It is imperative that the Local Planning authority’s position is safeguarded and in undertaking due diligence on the alternative approach, an opinion from Kings Counsel was sought. Instructions requested advice that the approach suggested on behalf of the CRT would be valid and enforceable. Secondly, if Counsel considered that it would be, he was requested to draft a suitable condition.
- 1.7 Counsel has confirmed that *“it is my view that the imposition of a suitably worded Grampian condition of the sort proposed would be lawful, applying the Newbury tests, and enforceable.”* This confirmation then triggered the second part of the instructions and the condition drafted by Counsel is outlined in full below:

*“No development [other than the Site Preparation Works] shall take place on the Obligation Land unless and until all parties with an interest in the Obligation Land have entered into a planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) in order to bind the Obligation Land. This planning obligation must be in the form of, and must secure the same obligations as, the draft planning obligation appended to this decision notice.*

*[For the purposes of this condition “Site Preparation Works” shall mean:*

- i) site clearance works;*
- j) demolition;*
- k) remediation works;*
- l) archaeological investigations;*
- m) erection of hoardings and fences;*
- n) erection of temporary facilities associated with the construction of the Development;*
- o) site investigations or surveys; and*
- p) decontamination works.<sup>3]</sup>*

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<sup>3</sup> This list reflects the exceptions identified in the definition of “Commencement of Development” on page 2 of the draft obligation.

*For the purposes of this condition the 'Obligation Land' shall mean all that land shown edged red on Plan [x]<sup>4</sup> appended to the decision notice. For the avoidance of doubt, the Obligation Land does not include the land shown edged green on Plan [x].*

*Reason: To ensure that the planning obligations that are necessary to mitigate the impacts of the proposed development are appropriately secured."*

- 1.8 Officers have reviewed the draft condition suggested by Counsel and consider that it would safeguard the Local Planning Authority's position in delivering the requirements contained within the S106 obligation. It can be confirmed that the applicant has agreed to the wording of the condition.

### **PART C: RECOMMENDATION**

- 2.0 It is recommended that Members agree to an amendment to the original Planning Committee resolution and that the requirement for the S106 Agreement to be completed prior to the decision notice being issued, is replaced by the suggested condition. This would require a planning obligation pursuant to S106 of the Act to be entered into prior to the commencement of development (other than site preparation works).

- 2.1.1 That the application is deferred for approval by the Planning Manager.

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<sup>4</sup> A Plan should be prepared and appended to the planning permission which would identify the 'Obligation Land' (to be edged in red) and also the Canal Land (to be edged in green) so as to make clear which land was and was not to be made subject to the obligation.