

**TO:** PLANNING & REGULATORY COMMITTEE **DATE:** 15 October 2014  
**BY:** PLANNING DEVELOPMENT CONTROL TEAM MANAGER  
**DISTRICT(S)** ELMBRIDGE BOROUGH COUNCIL **ELECTORAL DIVISION(S):**  
Hinchley Wood, Claygate & Oxshott

**Mr Bennison**

**PURPOSE:** FOR DECISION **GRID REF:** 515441; 163508

**TITLE:** SURREY COUNTY COUNCIL PROPOSAL EL2012/3285

## **SUMMARY REPORT**

**Land at Claygate Primary School, Foley Road, Claygate, Surrey KT10 0NB**

**Construction of tarmac multi-use games area with fencing surrounds.**

Claygate Primary School caters for children aged 4 to 11 years and is located in a residential part of Claygate. The school has one vehicular and pedestrian access via a drive from Foley Road. The site is bordered by residential uses to the north, east and west, and partially to the south.

The current proposal is for the installation of a multi-use games area (MUGA) located in the northern part of the school site, adjoining an existing hard play area and near the edge of the school's extensive playing field. The MUGA would have a surface of porous tarmac and would be surrounded by a wire mesh fence with two gates for access.

Although the application was submitted in 2012, it has taken until now to resolve the issue of surface water drainage in the area where the MUGA is proposed. The solution involves works to the existing drainage infrastructure (some of which have already been carried out) and reaching agreement on the installation and maintenance of a drainage system for the MUGA.

Twenty representations have been received from seventeen residents and a housing group. The representations raise concerns with residential amenity and drainage. The design of the MUGA is considered to be compatible with the site and its surroundings in terms of mass, height and location, and to integrate satisfactorily with the site and the local area. Officers consider that the MUGA would have no negative visual or noise impact on the occupiers of neighbouring properties, subject to the times of use being limited to school hours by condition. Retained trees would be protected by the imposition of other planning conditions. The development would not result in a loss of active playing fields.

Officers are satisfied that improvements to the existing drainage system, further remedial works to this system, the installation and maintenance of the drainage system for the MUGA and the installation of the MUGA itself in accordance with agreed specifications, would not worsen the drainage situation in the vicinity, including on the adjacent residential land to the north. Recommended planning conditions will ensure compliance with the requirements relating to drainage.

The proposal is considered to comply with the Development Plan policies.

**The recommendation is to PERMIT subject to conditions**

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## **APPLICATION DETAILS**

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### ***Applicant***

Claygate Primary School

### ***Date application valid***

5 September 2012

### ***Period for Determination***

31 October 2012

### ***Amending Documents***

Arboricultural Implication Assessment dated April 2012, received on 28 August 2012 email dated 19 October 2012

Drawing Ref.: PFD14693 – A, Claygate Primary School: Developing the MUGA for Claygate – Option 2 showing Tree Protection Fencing and Root Protection Areas, received on 19 October 2012 email dated 5 April 2014

Plan titled Claygate Primary School: Muga & Drainage – Revision B, received on 5 April 2014 email dated 14 July 2014 with attached letter of the same date from the contractor email dated 16 September 2014

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## **SUMMARY OF PLANNING ISSUES**

This section identifies and summarises the main planning issues in the report. The full text should be considered before the meeting.

	<b>Is this aspect of the proposal in accordance with the development plan?</b>	<b>Paragraphs in the report where this has been discussed</b>
Design and Visual Amenity	Yes	22 - 24
Impact on Residential Amenity	Yes	25 - 37
Drainage Issues	Yes	38 - 45
Loss of Playing Fields	Yes	46 - 48
Transportation Considerations	Yes	49 - 51
Impact on Trees	Yes	52 & 53

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## ILLUSTRATIVE MATERIAL

### Site Plan

Plan

### Aerial Photographs

Aerial

### Site Photographs

Figure 1: Looking north from playing fields to location of proposed MUGA and adjoining housing, with The Firs development in the centre

Figure 2: View to the northwest from the location of proposed MUGA

Figure 3: Looking north from location of proposed MUGA

Figure 4: View to the east from hard play area towards the part of the trim trail to be relocated

Figure 5: Looking west from location of proposed MUGA

Figure 6: Looking south from the location of the proposed MUGA

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## BACKGROUND

### *Site Description*

1. Claygate Primary School caters for children aged 4 to 11 years and is situated in the mainly residential area of Claygate. Access to the school site is via a drive leading from Foley Road, providing the only vehicle and main pedestrian access.
2. The school site is roughly rectangular in shape and is oriented roughly north/south, with the main school buildings being located centrally towards the west site boundary. To the north of the school buildings are the hard play area and the demountable classroom unit permitted under Ref. EL/09/0561. There is a large playing field to the east and northeast of the main buildings. There are tree belts along the east and west site boundaries and beyond the wooded wildlife area (incorporating a pond) that occupies the southern part of the site. An allotment and a chicken run are situated between the playing fields and the wildlife area. Residential uses border the site on three sides whilst the Claygate Recreation Ground lies to the southeast.

### *Planning History*

3. EL11/0821 Erection of two new timber clad storage sheds (permitted in May 2011)
- EL09/0561 Installation of demountable classroom unit comprising two classrooms, toilets and store for a temporary period of five years; retention of existing demountable classroom and addition of an open sided canopy; extension to hard play area (permitted in June 2009)
- EL08/2352 Construction of new footpath within school site, new pedestrian gate on school/recreation ground boundary and link path to existing path within recreation ground (permitted in December 2008)

EL05/1972	Retention of existing demountable classroom until 31 August 2006 without complying with Condition 1 of planning permission reference EL03/1397 dated 6 August 2003 (permitted in October 2005)
EL05/0827	Details or proposed landscaping for school extension submitted pursuant to Condition 6 of planning permission ref EL04/0496 (Approved in June 2005)
EL04/1419	Details of investigation of potential land contamination issues submitted pursuant to Condition 9 of planning permission ref EL04/0496 (Approved in October 2004)
EL04/0496	Construction of a single storey extension to provide three new classrooms, group room, studio and ancillary cloakrooms, toilets and circulation space (permitted in May 2004)
EL03/1397	Installation of a single demountable classroom for a temporary period of two years (permitted in August 2003)

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## THE PROPOSAL

4. This proposal is for a multi use games area (MUGA) located on a grassed area north of the buildings and near to the site boundary. The MUGA would be an extension of an existing hard play area and would have a footprint of about 26m by 16m. The MUGA is proposed to have a 65mm deep top surface of porous tarmac laid on a base of porous stone 150mm deep. The development includes approximately 2m high green mesh fencing along the sides of the MUGA, approximately 3m high fencing along the ends including behind two goal areas and 2m high red mesh gates near the southwest corner nearest to the school buildings.
5. The MUGA is intended to be used as an extension to the school playground, by providing more flexible play space and a facility that could be used in wet weather. The MUGA would be used only during the normal school hours of 08:45 to 17:45. The facility is not intended to be used outside of school hours and would not have floodlights. The applicant considers that the MUGA would significantly increase the quality of physical activities available for the pupils without detracting from the overall use of the school site. Some minor adjustment may be needed to the marked playing pitches on the extensive playing field but there would be no reduction in the number and size of the pitches or the size of the running track. The proposal also involves the relocation of the portion of an existing trim trail to a little used grassed area in the northwest corner of the site.
6. The application was submitted in 2012. It became apparent from representations made by local residents that there was a significant issue with surface water drainage in the area where the MUGA is proposed to be located. Since this drainage problem has had a detrimental impact on adjoining residential property, Officers required the applicant to take measures to ensure that the drainage situation was not exacerbated by the proposed development. This situation has been improved markedly by repairs and improvements having been made to the existing drainage infrastructure in the area. Also substantial amplifying information has been submitted by the applicant addressing the drainage issue. This information includes details of further remedial work on the existing drainage infrastructure in the area and details of the installation and maintenance of the drainage system proposed for the MUGA.

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## CONSULTATIONS AND PUBLICITY

### *District Council*

7. Elmbridge Borough Council: No objection

### **Consultees (Statutory and Non-Statutory)**

8. County Highway Authority –  
Transportation Development Planning: No objection subject to a condition regulating the timing of construction related deliveries
9. County Noise Consultant: No objection provided the MUGA is not used regularly outside school hours
10. County Arboricultural Officer: No objection subject to conditions
11. County Flood and Water Services Manager: No objection subject to conditions

### **Parish/Town Council and Amenity Groups**

12. Claygate Parish Council: No response received

### **Summary of publicity undertaken and key issues raised by public**

13. The application was publicised by the posting of 2 site notices. A total of 106 owner/ occupiers of neighbouring properties were directly notified by letter. Six representations were received in 2012, four from residents living at The Firs sheltered housing development, which abuts the school site on the north. Of these residents, three have concerns with impact on their amenity in terms of loss of privacy, visual effect and nuisance from increased noise. All three of these residents suggested that the MUGA be relocated further south on the school site, two considering a location near to the swimming pool. Two of these residents and Paragon Community Housing Group Ltd. (the company that owns the sheltered housing development) have raised the issue of drainage and flooding.
14. The representation from the other resident of The Firs supported the application.
15. An additional representation was received, from a resident of Fawcus Close, whose property adjoins the northeast corner of the school site. This representation raised the issues of the accumulation of rubbish along the boundary fence, untrimmed hedges and noise from use of the swimming pool during school holidays. These matters are unrelated to the current proposal and are not addressed in this report, but the representation has been copied to the school to make them aware of the concerns.
16. A further notification of neighbours was carried out following receipt of amplifying information relating to drainage including the repairs and improvements that have been made to the existing drainage system in the area, with the final item being a letter dated 14 July 2014 from the contractor. This further notification has resulted in the receipt of fourteen additional representations. Thirteen of these were from residents of The Firs development, two of these residents having responded previously. The other representation was from another resident of Fawcus Close. All of the additional representations raised amenity issues and five suggested relocation of the MUGA. One resident also mentioned drainage and flooding, and the possibility of floodlighting. Another noted that there is a MUGA in the nearby recreation ground.

## PLANNING CONSIDERATIONS

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17. The County Council as County Planning Authority has a duty under Section 38 (6) of the Planning and Compulsory Purchase Act 2004 to determine this application in accordance with the Development Plan unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 (as amended) (1990 Act) requires local planning authorities when determining planning applications to “have regard to (a) the provisions of the development plan, so far as material to the application, (b) any local finance considerations, so far as material to the application, and (c) any other material considerations”. At present in relation to this application the Development Plan consists of the Elmbridge Core Strategy 2011 and the saved policies within the Replacement Elmbridge Borough Local Plan 2000.
  18. The National Planning Policy Framework (NPPF) was adopted in March 2012. This document provides guidance to local planning authorities in producing local plans and in making decisions on planning applications. The NPPF is intended to make the planning system less complex and more accessible by summarising national guidance which replaces numerous planning policy statements and guidance notes, circulars and various letters to Chief Planning Officers. The document is based on the principle of the planning system making an important contribution to sustainable development, which is seen as achieving positive growth that strikes a balance between economic, social and environmental factors. The Development Plan remains the cornerstone of the planning system. Planning applications which comply with an up to date Development Plan should be approved. Refusal should only be on the basis of conflict with the Development Plan and other material considerations.
  19. The NPPF states that policies in Local Plans should not be considered out of date simply because they were adopted prior to publication of the framework. However, the guidance contained in the NPPF is a material consideration which planning authorities should take into account. Due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF (the closer the policies are to the policies in the Framework, the greater the weight they may be given).
  20. The NPPF highlights that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. It continues by stating that Local Planning Authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. It states that Local Planning Authorities should, inter alia, give great weight to the need to create, expand or alter schools.
  21. The school site is in the urban area of Claygate. The application is to be assessed in terms of design and visual amenity, impact on residential amenity, drainage issues, loss of playing fields, transportation considerations and impact on trees.

### **Design and Visual Amenity**

#### **Elmbridge Core Strategy 2011**

Policy CS17 – Local Character, Density and Design

#### **Replacement Elmbridge Borough Local Plan 2000**

Policy ENV2 – Standard of Design

22. Core Strategy Policy CS17 requires new development to deliver high quality and inclusive sustainable design which responds to positive features and integrates sensitively with the locally distinctive townscape. Local Plan Policy ENV2 seeks to protect and enhance the character and the

environment of the surrounding area. Development should be sensitive to the scale, height, massing, character, design and materials of existing development.

23. Officers consider in design terms that the scale and materials of the proposed MUGA, and the height and materials of the fence, take due consideration of the scale and bulk of the existing school buildings, and the scope and situation of existing outdoor play areas. In addition the MUGA would be accessible by being an extension of an existing hard play area. Officers consider that the proposed development exhibits high quality and inclusive design and respects the character and appearance of the site and the area.
24. Officers therefore consider that the proposal complies with the Development Plan policies dealing with design and visual amenity.

### **Impact on Residential Amenity**

#### **Elmbridge Core Strategy 2011**

Policy CS17 – Local Character, Density and Design

#### **Replacement Elmbridge Borough Local Plan 2000**

Policy COM4 – Provision of Educational Facilities

### **Privacy and Visual Effect**

25. Core Strategy Policy CS17 requires new development to deliver inclusive sustainable design that protects the amenities of local residents. Local Plan Local Plan Policy COM4 permits extensions to existing schools provided that there is no significant adverse impact on local residential amenity.
26. The Firs sheltered housing development (three storeys high) adjoins the school site to the north. Immediately to the west of the Firs is a six unit two storey block of flats. The two closest residences to the school site, located in this block, are about 12m from the location of the proposed MUGA. The nearest flat in The Firs development is approximately 15m away. There is a post and wire fence and an intermittent low hedge on the property boundary shared with these flats. There are other houses to the east of the school site, located more than 50m from the MUGA. Mature trees on and near the shared property boundary provide screening between these dwellings and the development.
27. Part of the area where the MUGA is proposed is occupied by a trim trail which includes climbing apparatus and other equipment elevated above the ground. This part of the trim trail is proposed to be relocated further away from the shared property boundary, in the northwest corner of the school site adjacent to the demountable unit (Ref: EL09/0561).
28. Three residents of the sheltered housing development initially raised the issues of loss of privacy and adverse visual impact. One resident suggested installing a high fence to protect her privacy and reduce nuisance. Another resident suggested having green rather than black tarmac surfacing material. Yet another resident suggested that green mesh be used for the fencing surrounding the MUGA (the mesh being proposed is green and the double gates – these facing the school buildings – would be red).
29. On the issue of privacy, Officers consider that the installation of the MUGA would improve matters, since the pupils using the facility would be at ground level rather than at an elevated vantage point currently provided by some of the apparatus of the trim trail. The visual impact of the development would be limited by no buildings being proposed and by the wire mesh fencing allowing views across the open playing field. Officers consider that a high fence is not justified since the MUGA would continue the present use of the development area. Although the intensity of the use would be likely to increase, this use would occur only during school hours. The use of green tarmac surfacing is also not justified since the surface of the MUGA would effectively extend the black tarmac hard

play area and the extent of new tarmac would not significantly diminish the natural appearance of the school site provided by the extensive playing field and the trees which are to be retained. Overall Officers consider that the minor visual impact of the MUGA would be acceptable.

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30. Several of the residents of The Firs development have suggested that the MUGA be located further south, in order to reduce any nuisance effects by increasing the distance between the MUGA and their residences. Officers consider that any benefit from doing so would be negligible. Also, relocating the MUGA as suggested would reduce the area of playing field used for active sports, in contravention of the policies of Sport England and the policies of the Development Plan relating to the loss of playing fields. Two of these residents, one in a further representation, suggested that the chicken run and an allotment situated in the southern part of the site could be relocated, one suggesting the site proposed for the MUGA and the other a site south of the playing fields. Officers consider that there would be insufficient space in the southern area and that it would be unreasonable to expect the school to agree to this relocation because of the disruption that this would cause.
  31. Another resident of The Firs has suggested that the school could make use of an existing MUGA located in a nearby recreation ground. Officers consider that this would be impractical since there is no direct pedestrian access connecting the school site and the recreation ground. Also it is considered prudent to have as many primary school facilities as possible located on the school sites.
  32. Four representations mention the possibility of the installation of floodlighting at a future date. The current application does not include the erection of floodlights. These could only be installed following a further planning permission, that application considering any issues relating to floodlights. Therefore the MUGA would not be used in the late afternoon or evenings in autumn and winter, or on weekends or on bank or public holidays. Officers recommend the imposition of a planning condition restricting the hours of use to those of the existing school playing field (i.e. during the school hours of 08:45 to 17:45 on weekdays during term time).

## Noise

33. A number of representations raise the issue of noise emanating from the use of the MUGA. Residents are also concerned about the use of the MUGA beyond school hours (including in evenings and at weekends) although this is not part of the current planning application. One resident of the Firs considers that locating the MUGA close to the property boundary would contravene the rights of leaseholders to the quiet enjoyment of their flats. The County Noise Consultant (CNC) has commented that the school and the surrounding dwellings are well established, and noise normally associated with the use of the school is to be expected. He has observed that the proposed development would not significantly change the level of noise. There could be a slight change because of balls bouncing off the fencing, but he does not see this as a significant issue bearing in mind the ages of the pupils and the proposed hours of use, and the fact that the MUGA would directly adjoin an existing hard play area.
34. Officers endorse the views of the CNC, considering that the use of the MUGA would not materially increase the noise levels when compared with the current situation, with noise emanating from the use of the existing hard play area and trim trail.
35. The CNC would be concerned if the MUGA was used regularly outside of school hours, as the facility is quite close to residential properties in what is a reasonably quiet area outside of school hours, with just a little background noise from traffic on the distant A3 trunk road. The imposition of a condition limiting the hours of use and restricting the use only by the school is recommended to enable planning control to be maintained over any future changes in the use of the MUGA.



## Conclusions on Residential Amenity

36. In response to the suggestion that the MUGA be relocated towards the southern end of the school site, the applicant has stated that considerable thought has been given to the location of the MUGA and it was concluded that no other location is possible. The southern end of the site would not be feasible because it is not sufficiently accessible and this is where the chicken run and allotment are located. A suggested site in the centre of the school site also would not work, because situating the MUGA here would render the playing field unusable for sport and other activities such as the Summer Fete.
37. Officers consider that the proposal would have no material adverse impact on local residential amenity. The relocation of the MUGA further south is therefore considered to be unjustified, especially since this relocation would have an adverse impact on either the playing fields or the wooded wildlife area and the pond located in the southeast part of the school site. The proposal is considered to accord with the Development Plan policies relating to impact on residential amenity.

## Drainage Issues

### National Planning Policy Framework March 2012 (NPPF)

38. There are no Development Plan policies dealing with drainage. Paragraph 99 of the NPPF, under the heading of 'Meeting the challenge of climate change, flooding and coastal change', states that new development should be planned by local authorities to avoid increased vulnerability to the range of impacts arising from climate change. In areas that are vulnerable, care should be taken to ensure that any risks arising from development can be managed through suitable adaptation measures.
39. Three representations on the scheme as originally submitted raised the issue of drainage. The Paragon Community Housing Group Ltd, the owners of The Firs sheltered housing units, expressed concern with the possibility of increased water run-off from the school playing field onto their property. This representation noted that several of the flats experienced water ingress during a flood some years ago, owing to the lie of the land. Paragon requested that particular attention be paid to drainage in the area between the MUGA and their property. One resident of The Firs development mentioned the drainage problem on the school's playing field and the resulting surface water flooding, and suggested that the drainage of the northern part of the playing field be improved. Another resident also referred to the matters of drainage and flooding. He suggested that the drainage issue could be dealt with by excavation and the laying of hard core and drainage pipes. The representations relating to drainage were passed to the applicant to make the school aware of the degree and extent of concern.
40. In assessing the planning application Officers were concerned that without remedial work the existing surface water drainage system on the site, there would be a strong possibility that drainage from the MUGA would exacerbate the long standing issue of surface water flooding on the northern part of the school site and potentially on the adjoining land occupied by The Firs development. Officers made it clear to the applicant the importance of this not being allowed to happen. In response to concerns with drainage, the drains in this area were cleared and pipework was repaired, a catch pit was installed near the northwest corner of the school site and a trial pit was excavated to undertake an infiltration test.

41. Further measures are proposed including surface water draining into the existing on-site drainage system via an ACO drain, a specialty product for draining the surface of outdoor sports installations. The drain would be installed along one edge of the MUGA, and would incorporate a pot gully and a sump. The drain would be connected to the existing surface water chamber by a new pipe. The applicant proposes that these works be carried out when the MUGA is installed. A preventative maintenance regime is also proposed, comprising a monthly inspection of the ACO drain and the emptying of the sump.
42. Accordingly, the applicant has amended the application by revising the specification for the MUGA. The County Flood and Water Services Manager finds this amended specification acceptable in principle but he recommends that it be revised slightly to ensure that the surface of the MUGA is suitably porous in compliance with advice from the Lawn Tennis Association. Starting at the bottom and working upwards, the specification recommended by the Flood and Water Services Manager comprises the following elements:
- 1) a geotextile membrane,
  - 2) a minimum of 150mm of compacted and free draining aggregate (28mm diameter, non-frost susceptible and free draining),
  - 3) a 40mm compacted binder course (10mm, 14mm or 20mm open grade tarmacadam),
  - 4) a 25mm open grade porous macadam surface course (6mm diameter aggregate) and
  - 5) an acrylic or polyurethane colour coating.
43. The County Flood and Water Services Manager also recommends the imposition of planning conditions to ensure that the drainage system is installed in accordance with the recommendations of the contractor and that the maintenance regime is followed.
44. Officers are satisfied that the drainage situation would not be exacerbated if the MUGA is installed in accordance with the above noted specification, the necessary remedial work is carried out on the existing drainage system, the drainage system for the MUGA itself is installed and maintained in accordance with the contractor's recommendations.
45. Subject to the imposition of conditions detailing these requirements, Officers are satisfied that the development complies with the NPPF.

## **Loss of Playing Fields**

### **Elmbridge Core Strategy 2011**

#### **Policy CS14 – Green Infrastructure**

46. Core Strategy Policy CS14 seeks to protect a diverse network of accessible multi-functional infrastructure. The policy requires new development involving open space to be assessed against PPG17 'Planning for Open Space, Sport and Recreation'. This PPG has been superseded by paragraph 74 of the NPPF, which states that existing open space, sports and recreational land should not be built on unless one of three criteria is met. One of these is replacing the loss from development by equivalent or better provision in terms of quality or quantity in a suitable location.
47. The Sport England Policy Statement 'A Sporting Future for the Playing Fields of England' contains a presumption against development on playing fields, including those in educational use, unless one of five exemptions are met. Exemption E5 permits outdoor sports facilities, the provision of which would be of sufficient benefit to the development of sport as to outweigh the detriment caused by the loss of the playing field or playing fields.

- 48. The school has a large playing field. During the winter months it is marked out mainly for football, the pitches being predominantly at the southern end of the field, at the opposite end from the location proposed for the MUGA. The applicant has advised that some minor adjustments may be needed to the layout of the pitches as a result of this development, but he has demonstrated that the playing field is of sufficient size that the number and size of the pitches would not be impacted. Based on this information Officers are satisfied that although the proposal would reduce the overall extent of the playing field slightly, the provision of a play area with a consistent surface suitable for intensive play and the location of the MUGA at the northern end of the playing field, away from the portion used for the playing pitches, there would be no detrimental impact on the use of the school's playing field for sport and recreation. In fact the development would enhance the provision of outdoor sports and recreation available for pupils. Therefore the proposal is considered to qualify as development permitted under Exemption E5. The development is considered to comply with the above Development Plan policy.

**Transportation Considerations**

**Replacement Elmbridge Borough Local Plan 2000**

Policy MOV4 – Traffic Impact of Development Proposals

- 49. Local Plan Policy MOV4 states that all development proposals should minimise the impact of vehicle and traffic nuisance, particularly in residential areas.
- 50. Transportation Development Planning (TDP) have commented that the only impact in a highway context would be during the construction phase. A planning condition is recommended to ensure that there is no conflict between construction vehicles and pupils arriving and departing from school.
- 51. Officers endorse the conclusion of TDP and consider that the proposal is acceptable in transportation terms subject to the imposition of a condition restricting the timing of access by Heavy Goods Vehicles during the construction period. Officers consider that the development accords with the Development Plan policy relating to transport.

**Impact on Trees**

**Replacement Elmbridge Borough Local Plan 2000**

Policy ENV12 – Retention of Trees on Development Sites

- 52. Local Plan Policy ENV12 seeks to retain significant trees on sites proposed for development and states that planning conditions may be imposed in order to retain the maximum number of trees and to ensure their protection during construction.
- 53. The County Arboricultural Manager endorses the view of the arboricultural consultant, contained in an Arboricultural Implication Assessment dated April 2012, that a mature lime tree impacted by the proposed MUGA could tolerate the loss of roots in the outer part of its Root Protection Area (RPA), if ground work in this area is done in a controlled manner under the supervision of an arboricultural consultant. He subsequently recommended the installation of tree protection fencing as shown on a drawing. The County Arboricultural Manager recommends planning conditions. Officers consider that with the imposition of conditions, retained trees will be protected during construction. Therefore the proposal is considered to accord with the Development Plan policy relating to trees.

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**HUMAN RIGHTS IMPLICATIONS**

- 54. The Human Rights Act Guidance for Interpretation, contained in the Preamble to the Agenda, is expressly incorporated into this report and must be read in conjunction with the following paragraph.

55. Officers consider that while potential impacts on amenity caused by visual effects and noise emanating from the MUGA during its use are acknowledged, the scale of such impacts is not considered to engage Article 8 or Article 1 of the Protocol 1. The noise impact can be mitigated by a condition. As such, this proposal is not considered to interfere with any Convention right.
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## CONCLUSION

56. Officers consider that the proposed multi use games area will have no detrimental impact on visual and residential amenity provided that the use is restricted to school hours. Officers also consider the design of the development to be acceptable. The proposal is considered to have no adverse impact on the school playing fields. All relevant planning policy tests are considered to have been met. The proposal is recommended for permission subject to conditions including ones relating to the construction of the MUGA, remedial work on the existing surface water drainage system, the installation and maintenance of the additional surface water drainage measures relating to the MUGA, the timing of construction related deliveries, the protection of retained trees and restrictions on the usage of the MUGA.

## RECOMMENDATION

That pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992, Application No. EL2012/3285 be permitted subject to the following conditions:

Conditions:

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.
2. The development hereby approved shall be carried out in all respects strictly in accordance with the following plans/drawings:
  - Appendix 1: Site Location Plan, dated 16 April 2012
  - Appendix 2: Drawing Ref.: PFD14693 - A, Claygate Primary School: Developing the MUGA for Claygate - Option 2, dated 6 March 2012
  - Drawing Ref.: PFD14693 - A, Claygate Primary School: Developing the MUGA for Claygate - Option 2, showing Tree Protection Fencing and Root Protection Areas, received on 19 October 2012
  - Plan titled Claygate Primary School - Muga & Drainage - Revision B, received on 5 April 2014.
3. The development hereby permitted shall be installed in accordance with the following specification (from the bottom proceeding upwards):
  - 1) a geotextile membrane,
  - 2) a minimum of 150mm of compacted and free draining aggregate (28mm diameter, non-frost susceptible and free draining),
  - 3) a 40mm compacted binder course (10mm, 14mm or 20mm open grade tarmacadam),
  - 4) a 25mm open grade porous macadam surface course (6mm diameter aggregate) and
  - 5) an acrylic or polyurethane colour coating.
4. (a) Prior to the installation of the Multi-use Games Area hereby permitted in accordance with the specification contained in Condition 3, the applicant shall carry out remedial works on the existing drainage system in the northern part of the site, as set out by the applicant in an email dated 5 April 2014.

(b) The drainage system for the Multi-use Games Area (MUGA) hereby permitted, comprising an ACO drain (incorporating a pot gully and a sump) along the edge of the MUGA and a connecting pipe between this drain and the existing surface water chamber, shall be installed and maintained in accordance with details set out in the email dated 14 July 2014 and the attached letter dated 14 July 2014 from the contractor, and as shown on the plan titled Claygate Primary School: Muga & Drainage - Revision B, received on 5 April 2014.

5. The Multi Use Games Area shall be used by the school alone and only between the hours of 8.45 and 17.45 on Mondays to Fridays during term time. There shall be no use beyond the stipulated hours or on Saturdays, Sundays and public and bank holidays.
6. Before any equipment, machinery or materials are brought onto the site for the purposes of carrying out the development hereby permitted, protective fencing in accordance with the plan titled 'Claygate Primary School: Developing the MUGA for Claygate - Option 2, showing the location of Tree Protective Fencing and Root Protection Areas', received on 19 October 2012, shall be installed and thereafter maintained until all equipment, machinery and surplus materials have been removed from the site. For the duration of works on the site no materials, plant or equipment shall be placed or stored within the protected area.
7. Prior to commencement of construction a pre-start meeting shall be held between the Site Manager and the commissioned arboricultural consultant to agree all aspects of the tree protection measures, the sequencing of the construction process and the required level of supervision by the arboricultural consultant.
8. In carrying out the development hereby permitted, excavation within the Root Protection Area of tree T1, as shown on the plan titled Claygate Primary School: Developing the MUGA for Claygate - Option 2, showing the location of Tree Protective Fencing and Root Protection Areas, as attached to an email dated 19 October 2012, shall be carried out using only hand tools, under the supervision of the arboricultural consultant.
9. In carrying out the development hereby permitted, no HGV movements to or from the site shall take place between the hours of 8.30 and 9.15 am and 2.45 and 3.30 pm, nor shall the contractor permit any HGVs associated with the development at the site to be laid up, waiting, in Foley Road during these times

Reasons:

1. To comply with Section 91 (1) (a) of the Town and Country Planning Act 1990 as amended by Section 51 (1) of the Planning and Compulsory Purchase Act 2004.
2. For the avoidance of doubt and in the interests of proper planning.
3. In the interests of proper planning.
4. To ensure the proper drainage of the site and in the interests of the amenities of the site and the locality, in accordance with the National Planning Policy Framework and with Policy CS17 of the Elmbridge Core Strategy 2011 and Policy COM4 of the Replacement Elmbridge Borough Council Local Plan 2000.
5. To ensure the amenity of the occupants of neighbouring properties is protected in accordance with Policy CS17 of the Elmbridge Core Strategy 2011 and Policy COM4 of the Replacement Elmbridge Borough Local Plan 2000.
6. To ensure the protection of trees on the site, in the interests of the visual amenities of the site and the locality, in accordance with Policy ENV12 of the Replacement Elmbridge Borough Local Plan 2000.
7. To ensure the protection of trees on the site, in the interests of the visual amenities of the site and the locality, in accordance with Policy ENV12 of the Replacement Elmbridge Borough Local Plan 2000.
8. To ensure the protection of trees on the site, in the interests of the visual amenities of the site and the locality, in accordance with Policy ENV12 of the Replacement Elmbridge Borough Local Plan 2000.

9. To prevent conflicts between construction vehicles and pupils, parents and staff in accordance with Policy MOV4 of the Replacement Elmbridge Borough Local Plan 2000.

Informatives:

1. This approval relates only to the provisions of the Town and Country Planning Act 1990 and must not be taken to imply or be construed as an approval under the Building Regulations 2000 or for the purposes of any other statutory provision whatsoever.
2. The attention of the applicant is drawn to the requirements of Sections 7 and 8 of the Chronically Sick and Disabled Persons Act 1970 and to Building Bulletin 102 'Designing for disabled children and children with Special Educational Needs' published in 2008 on behalf of the Secretary of State for Children, Schools and Families, or any prescribed document replacing that note.
3. The County Planning Authority confirms that in assessing this planning application it has worked with the applicant in a positive and proactive way, in line with the requirements of paragraphs 186-187 of the National Planning Policy Framework 2012.

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## **HUMAN RIGHTS ACT 1998 GUIDANCE FOR INTERPRETATION**

The Human Rights Act 1998 does not incorporate the European Convention on Human Rights into English law. It does, however, impose an obligation on public authorities not to act incompatibly with those Convention rights specified in Schedule 1 of that Act. As such, those persons directly affected by the adverse effects of decisions of public authorities may be able to claim a breach of their human rights. Decision makers are required to weigh the adverse impact of the development against the benefits to the public at large.

The most commonly relied upon articles of the European Convention are Articles 6, 8 and Article 1 of Protocol 1. These are specified in Schedule 1 of the Act.

Article 6 provides the right to a fair and public hearing. Officers must be satisfied that the application has been subject to proper public consultation and that the public have had an opportunity to make representations in the normal way and that any representations received have been properly covered in the report.

Article 8 covers the right to respect for a private and family life. This has been interpreted as the right to live one's personal life without unjustified interference. Officers must judge whether the development proposed would constitute such an interference and thus engage Article 8.

Article 1 of Protocol 1 provides that a person is entitled to the peaceful enjoyment of his possessions and that no-one shall be deprived of his possessions except in the public interest. Possessions will include material possessions, such as property, and also planning permissions and possibly other rights. Officers will wish to consider whether the impact of the proposed development will affect the peaceful enjoyment of such possessions.

These are qualified rights, which means that interference with them may be justified if deemed necessary in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Any interference with a Convention right must be proportionate to the intended objective. This means that such an interference should be carefully designed to meet the objective in question and not be arbitrary, unfair or overly severe.

European case law suggests that interference with the human rights described above will only be considered to engage those Articles and thereby cause a breach of human rights where that interference is significant. Officers will therefore consider the impacts of all applications for planning permission and will express a view as to whether an Article of the Convention may be engaged.

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#### **CONTACT**

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#### **BACKGROUND PAPERS**

The deposited application documents and plans, including those amending or clarifying the proposal, responses to consultations and representations received as referred to in the report and included in the application file and the following:

Government Guidance: The National Planning Policy Framework March 2012 (NPPF)

The Development Plan: The Elmbridge Core Strategy 2011 and the Replacement Elmbridge Borough Local Plan 2000

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