

LONDON BOROUGH OF WALTHAM FOREST

Committee/Date:	Planning – 1 st March 2022
Application reference:	210866
Applicant:	Lillian Gerber
Location:	Cheney Row, E17
Proposed development:	Installation of containers enclosed by fencing to facilitate the creation of a flexible temporary space (Use Class F2(c)) ancillary to Cheney Row BMX Track (Revised Proposal).
Wards affected:	Higham Hill Ward
Appendices:	None

1 RECOMMENDATION

- 1.1 It is recommended the application be approved, subject to conditions and informatives.

2 REASONS REFERRED TO COMMITTEE

- 2.1 The site is council owned.
- 2.2 There is significant public interest in the application, triggering the threshold of objections to an application requiring presentation to the planning committee.

3 SITE AND SURROUNDINGS

- 3.1 The application site is part of the wider Cheney Row Park whereby the BMX track is located to the eastern edge of the park.
- 3.2 The surrounding area is predominately residential to the south of Cheney Row park and mainly open/green space to the north, east and west.
- 3.3 The site has undergone recent regeneration with a play park, wildflower meadow and formalised parking area created. The site sits adjacent to the new Banbury Park residential development which has direct access to the Park via a new footpath.
- 3.4 The site not located within a Conservation Area, is not listed and is not subject to an Article 4 direction.
- 3.5 The site is located within Metropolitan Green Belt Land, Banbury Reservoir SINC and the Lee Valley Park Authority. The site is also a designated Park with the Local Plan.

4 APPLICATION PROPOSAL

- 4.1 The application is seeking planning permission for the installation of containers to be used in association with the existing BMX Track. The containers would create a flexible space for the community lead BMX track run by the social enterprises Community Outdoor Cycling Group [COG] & Pinpoint Incorporated. The containers would be used for storage to support the use of the BMX Track and create an area for parents to sit to wait for the children using the facility.
- 4.2 The proposed containers would measure 2.5m deep and 15.6m wide with an area of 42sq.m outside. The containers and outside area would be bounded by metal fencing similar to that surrounding the BMX Track.

5 RELEVANT SITE HISTORY

A. Planning

- 5.1 2006/1302/LA - Formation of children's play area for under 7's and 7-12 years old with fixed metal equipment safety surface, 0.9m high metal railings and gates, seats and litter bins as shown on drawing number L13A received on 29th August 2006 – (Granted 8/11/2006)

B. Pre-Application

- 5.2 None.

C. Enforcement

- 5.3 None.

D. Adjacent Site

- 5.4 None.

6 PUBLIC CONSULTATIONS

- 6.1 The Council circulated 114 consultation letters to local residents on 13th April, for an initial scheme which was later revised to a different location for the proposal. Whilst the initial consultation created 8 objections, the re-consultation on the 8th October 2021 via letter and 14th October via site notice for the new location did not create any objections from neighbouring properties. A number of letters of support were also received during the course of the application (11 letters in total).
- 6.2 The initial objections received are outlined within the table below:

Objections	Response
Safety and Security	The proposal would be fenced and locked securely both via the gate and the containers themselves. Lighting is also proposed to ensure a safe environment. It is considered

	that the proposal would be only in use whilst activities are taking place and secure after that time.
Visual Impact	The proposal would be sited directly outside the existing BMX Track. It would have a visual presence however it would be of a scale and design that would be suited to the current context.
Loss of Trees	The current proposal would not result in a loss of trees.
Noise/Disturbance	The current proposal would be sited approx.16m from the nearest residential properties. Whilst there would be a level of activity and noise associated with the proposal it would be like that of existing activities within the park and not considered harmful or unacceptable in noise/amenity terms.
Impact on wildlife	The current proposal given its siting on an existing grass area it would result in minimal impact to the wildlife, this is also mitigated by measures implemented such as bat sensitive lighting.

7 OTHER CONSULTATIONS

7.1 Internal and external consultation:

Consultees	Response
Lee Valley Authority	No objection.
Secured by Design	Comments received to ensure development would be secure.
Sports England	No objection.
Tree and Nature Conservation Officer	No objection
Natural England	No objection.
Parks	No objection to location however object to the fencing as reduces public accessibility and contamination risk.

8 DEVELOPMENT PLAN

National Planning Policy Framework (2021)

- 8.1 The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. It is material consideration in planning decisions. It contains a presumption in favour of sustainable development, described as at the heart of the framework.
- 8.2 For decision-taking the NPPF states that the presumption means "approving development proposals that accord with an up-to-date development plan without delay" and where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless "...any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".
- 8.3 The NPPF gives a centrality to design policies; homes should be locally led, well-designed, and of a consistent and high-quality standard. Local planning authorities (LPAs) are to make sure that the quality of approved developments does not materially diminish 'between permission and completion, as a result of changes being made to the permitted schemes'
- 8.4 The specific policy areas of the NPPF considered to be most relevant to the assessment of this application are as follows:
 - Achieve well-designed places
 - Protecting Green Belt land

The Publication London Plan (2021)

- 8.5 On Tuesday 2nd March 2021 The Mayor of London published the replacement London Plan. From this date, it forms part of the Development Plan for the purpose of determining planning applications.
- 8.6 The 2021 London Plan supersedes the 2016 London Plan, which no longer has any effect. The relevant policies within the London Plan 2021 are:
 - GG2 Making Best Use of Land
 - D4 Delivering good design
 - D14 Noise
 - G2 London's Green Belt
 - G6 Biodiversity and access to nature
 - G7 Trees and woodlands
 - T5 Cycling

Waltham Forest Local Plan Core Strategy (2012)

- 8.7 The Waltham Forest Core Strategy (2012) was adopted on 1st March 2012. The Core Strategy contains 16 policies designed to deliver the Council's vision for the physical, economic, environmental, and social development of the Borough. These policies will be used to direct and manage development and regeneration activity up to 2026.
- 8.8 The policies considered relevant to this application are as follows:

- CS5: Enhancing Green Infrastructure and Biodiversity
- CS13: Promoting Health and Well Being
- CS15: Well Designed Buildings, Places and Spaces

Waltham Forest Local Plan Development Management Policies (2013)

8.9 The Local Plan Development Management Policies Document was adopted in November 2013. This sets out the borough-wide policies that implement the Core Strategy and delivering the long-term spatial vision and strategic place shaping objectives. There is an emphasis on collaboration and a positive proactive approach to reaching a balance agreement that solves problems rather than a compromise that fails to meet objectives. The following policies are relevant in this case:

- DM12 - Open Space, Sports and Recreation
- DM29 - Design Principles, Standards and Local Distinctiveness
- DM32 - Managing Impact of Development on Occupiers and Neighbours
- DM35 - Biodiversity and Geodiversity

Lee Valley Park Authority's Park Development Framework Strategic Policies

8.10 The Strategic Policies were adopted in April 2019. The policies inform the Park's own Area Proposals and any development within or outside these areas put forward by the Authority itself. The following policies are relevant in this case:

- Effective use and management of land
- Conserve and enhance the Park's landscape character, key views, and openness
- Conserve and enhance the Park's biodiversity

Lee Valley Park Authority's Park Development Framework Area Proposals

8.11 Area proposals to provide greater detail on appropriate future use and development for the whole of the Park.

- 4.A.1 Banbury Reservoir and Folly Lane Triangle

9 MATERIAL PLANNING CONSIDERATIONS

Other policies

- Supplementary Planning Document Urban Design (2010)

Emerging Policy

Shaping the Borough – London Borough Waltham Forest Draft Local Plan Part One Submission Draft April 2021)

- 9.1 The Draft Local Plan underwent Regulation 18 public consultation between July 2019 and September 2019 and consultation on the proposed Submission Version between 26th October 2020 and 14th December 2020. It has now been submitted to the Secretary of State for examination. This is an early stage of the plan making process and less weight will be given to its policies.
- 9.2 The Draft new Local Plan proposes to be a “combined” document comprising 12 thematic policies and a revised spatial strategy, splitting the borough into North, South and Central Waltham Forest.
- 9.3 The Draft Local Plan clearly sets out the Council’s growth agenda which seeks to facilitate the sustainable delivery of 27,000 new homes and 46,000sqm of employment floorspace over the next plan period. The draft policies relating to housing type and mix are reflective of the London Plan (2021).
 - Policy 1 - Presumption in Favour of Sustainable Development
 - Policy 56 Delivering High Quality Design
 - Policy 59 Amenity

Local Finance Considerations

- 9.4 Local Finance Considerations are a material consideration in the determination of all planning applications. Local Finance Considerations can include either a grant that has been or would be given to the Council from central government or money that the council has received or will or could receive in terms of Community Infrastructure Levy (CIL).
 - i) There are no grants which have been or will or could be received from central government in relation to this development.
 - ii) The Council has not received and does not expect to receive any income from LBWF CIL in relation to this development.
 - iii) The Council has not received and does not expect to receive any income from Mayoral CIL in relation to this development.

10 ASSESSMENT

- 10.1 The main issues for consideration, in relation to the proposed development are as follows:

- A. Principle of Development
- B. Urban Design
- C. Amenity Impact
- D. Contaminated Land

A. The Principle of Development

- 10.2 Paragraph 147 sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 sets out the exceptions to inappropriate development in the Green Belt which includes b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries, and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
- 10.3 London Plan Policy G2 seeks development proposals to not harm the Green Belt should be refused except where very special circumstances exist and subject to national planning policy tests, the enhancement of the Green Belt to provide appropriate multi-functional beneficial uses for Londoners should be supported.
- 10.4 Policy CS5 seeks to protect Green Belt and Metropolitan Open Land (MOL) and improving access where appropriate. Development and regeneration activity should be delivered principally through the use of brownfield land and buildings.
- 10.5 DM12 seeks that proposals for inappropriate uses within the Green Belt or Metropolitan Open Land (MOL) would be contrary to planning policy and where development proposals are considered appropriate in accordance with national policy and the London Plan they must additionally: implement a high standard of design in accordance with the principles set out in Policy DM29 (iv) and complement and improve the quality of the open space uses.
- 10.6 The Lee Valley Park Authority's Park Development Framework Area Proposals for Sport and Recreation state that, "*Work with the London Borough of Waltham Forest and other stakeholders to protect and enhance sporting and outdoor recreational use of land east of Folly Lane. Explore options for a BMX/Scrambler track within the area*" (4.A.1. Banbury Reservoir and Folly Lane Triangle).
- 10.7 The proposal seeks to provide two containers and outdoor area with seating for the use by the BMX Track which is used by the social enterprises Community Outdoor Cycling Group [COG] & Pinpoint Incorporated. The area is currently grass which is sited to the front of the BMX Track, which currently also has another container sited to the east of the proposal. The proposal would be used in conjunction with the BMX use for the purpose of storage and an area for parents to sit and wait for their children taking part in activities at the track by COG and Pinpoint Incorporated. The proposal would therefore create the provision of facilities for outdoor sport and outdoor recreation that would be in line with the use of the land. Further to that the proposal would mean that the current park that sits in Green Belt land is multi-functional providing additional facilities for the BMX Track that has become a popular and well used part of the park.

- 10.8 The Lee Valley Park Authority has confirmed that the proposal would be in line with their Framework Area Proposals confirming that they consider the location, design and temporary nature of the development is unlikely to impact unduly on the Regional Park or the openness of the green belt and are associated with the outdoor sporting use existing on site.
- 10.9 Given the existing container near the site, the raised levels of the BMX track that the proposal would sit in front of and that the proposed buildings are single storey in nature, it is not considered that the proposal would be a detriment to openness of the Green Belt and would be an appropriate use in line with NPPF Paragraph 147 and 149, London Plan Policy G2 and Local Plan Policies CS5 and DM12.

B. Urban Design

- 10.10 DM12 seeks that proposals for inappropriate uses within the Green Belt or Metropolitan Open Land (MOL) would be contrary to planning policy and where development proposals are considered appropriate in accordance with national policy and the London Plan they must additionally: implement a high standard of design in accordance with the principles set out in Policy DM29 (iv) and complement and improve the quality of the open space uses.
- 10.11 Policy DM29 paragraph iv sets out that proposals should respond to their context in terms of scale, height, and massing.
- 10.12 The proposal would use two containers that would be single storey in nature, there is currently an existing container near the site, fencing of the BMX track and the BMX track itself that sits higher than the surrounding ground. As such the scale, height and massing of the proposal would be considered acceptable in that context.
- 10.13 The proposal would be readily visible within the site, it would sit along the newly created public footway and would be visible when entering the park however the design would be in line with the surrounding park, including the fencing and as such would be considered within the character of the park and appropriate.
- 10.14 The Secured by Design officer was consulted as part of the application, they raised concerns in relation to the proposed planters and the security of the site. Whilst it is noted that the planters could aid someone to climb the fencing, this area is naturally surveyed by residential development, and given that the containers themselves would also be secured, it is not considered that the proposed design would raise security concerns. Lighting of the site would also add as a deterrent.
- 10.15 Lighting has been shown on the proposed plans. There is a concern that lighting could have an impact on wildlife, especially bats which the previous ecology report showed were present nearby, if not carefully considered, which is echoed by comments received from the Lee Valley Park Authority who consider conditions should be imposed to ensure impact is limited to bats. Conditions will be included as part of any grant of permission.
- 10.16 Overall, it is considered that proposal would meet local plan policies DM12 and DM29.

C. Neighbour Amenity Impact

- 10.17 Policy DM32 seeks for any proposal to ensure that daylight/sunlight, outlook and privacy is maintained for neighbouring occupiers.
- 10.18 The proposal would be sited approximately 16ms from nearest residential properties that side the park. Given the proposal would be single storey in nature, the separation from the residential use and would provide facilities for existing activities at the park, and the park is well used it is not considered that the provision would create a concern in terms of impact to daylight/sunlight, outlook, privacy and noise. As such, it is considered that there would no harm from the proposed development in line with policy DM32 of the Local Plan.

D. Contaminated Land

- 10.19 Policy DM24 sets out that when considering applications for development on sites which are potentially contaminated, the Council will need to be satisfied that the development can safely be constructed and used. Where historical use, proximity to landfill, or an Environmental Consultants report indicates a risk of contamination, any planning permission will be subject to planning conditions or obligations to ensure the final development is fit for its proposed end use.
- 10.20 The park is situated upon contaminated land, the site was historically landfill. The main works in terms of the base surface and containers would be placed on top of the existing ground and would not require the breaking of the ground. The proposed fencing however would require the ground to be broken, it is considered that for this element that a condition would be required for investigation and potential remedial works to considered prior to the installation of the fencing and any use of the site would be paused during the implementation of the fences.

11 CONCLUSION

- 11.1 The scheme would have a positive public benefit and would result in facilities for outdoor sport to be created which would be in line with National, Regional and Local policy and as such would be acceptable in principle.
- 11.2 The design of the scheme would be consistent with Policies CS15, DM29 of the Local Plan and the SPD Urban Design.
- 11.3 As such, it is recommended the application be approved, subject to conditions and informatives.

12 ADDITIONAL CONSIDERATIONS

Public Sector Equality Duty

- 12.1 In making your decision you must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
- a. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

- b. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
 - c. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 12.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 12.3 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149 is only one factor that needs to be considered and may be balance against other relevant factors.
- 12.4 It is not considered that the recommendation to grant permission in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

- 12.5 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as the London Borough of Waltham Forest to act in a manner that is incompatible with the European Convention on Human Rights.
- 12.6 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

13 RECOMMENDATION

- 13.1 The Planning Committee is requested to resolve that planning permission be granted subject to the following conditions:

Conditions and Reasons:

1. This permission shall ensure for a limited period not exceeding five years from the date of this decision. Prior to the 5 year temporary permission expiring the use hereby permitted shall cease and any development carried out under this permission or other enabling development shall be removed and the land restored to its former state or as otherwise agreed with the Local Planning Authority and thereafter retained as such. Any remedial measures required for ground contamination shall be submitted to the Local Planning Authority prior to the land

being restored, and agreed in writing and works thereafter, carried out as approved.

Reason: To enable the Local Planning Authority to review the suitability of the development in the light of circumstances prevailing at the end of the above period and in the interests of the amenities of the area, in accordance with Policy CS15 of the adopted Waltham Forest Local Plan – Core Strategy (2012) and Policies DM29 and DM32 of the adopted Waltham Forest Local Plan – Development Management Policies (2013).

2. The development hereby permitted shall be carried out in accordance with the following approved plans and supporting documents and thereafter maintained as such for the lifetime of the development:

- CBL-DR-A-00-0100_P03, CBL-DR-A-00-0100_P04, CBL-DR-A-00-0300_P06, CBL-DR-A-00-0301_P03 and CBL-DR-A-00-0110_P07 dated 14th February 2022.

Reason: For the avoidance of doubt and in the interests of proper planning.

3. The LED lighting provided on site should be in accordance with drawing ref CBL-DR-A-00-0300_P06 dated 14th February 2022 unless otherwise agreed with the Local Planning Authority.

Reason: To protect from light pollution/impact wildlife in order to comply with Policy CS5 and CS15 of the Waltham Forest Local Plan – Core Strategy (2012) and Policies DM12 and DM29 of the Waltham Forest Local Plan – Development Management Policies (2013).

4. Prior to the installation of the fencing, suitable and sufficient site investigation to determine the presence of contaminants shall be carried out, and the full methodology and full results of the investigation and details of remedial measures proposed for the treatment of the contamination on the site shall be submitted to and approved by the Local Planning Authority. Any remedial measures shall be implemented in accordance with the approved details with the use of the site paused while works are undertaken.

Reason: In the interests of health in accordance with Policy CS13 of the adopted Waltham Forest Local Plan - Core Strategy (2012) and Policies DM24 and DM34 of the adopted Waltham Forest Local Plan Development Management Policies (2013).

Informatives:

1. To assist applicants the Local Planning Authority has produced policies and provided written guidance, all of which is available on the Council's website and which have been followed in this instance.
2. This notice is without prejudice to your responsibilities under any other legislation.