

SECTION D  
DEVELOPMENT TO BE CARRIED OUT BY THE COUNTY COUNCIL

Background Documents: the deposited documents; views and representations received as referred to in the reports and included in the development proposals dossier for each case; and other documents as might be additionally indicated.

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**Item D1**

**Erection of fencing, with vehicular and pedestrian gates,  
The Malling School, East Malling – TM/11/192**

A report by Head of Planning Applications Group to Planning Applications Committee on 10 May 2011

TM/11/192 - Application by The Malling School for the erection of 1.8m high steel fencing, finished in dark green, with vehicular and pedestrian access gates at The Malling School, Beech Road, East Malling (Resubmission of withdrawn application TM/10/846).

Recommendation: Planning permission be granted subject to condition

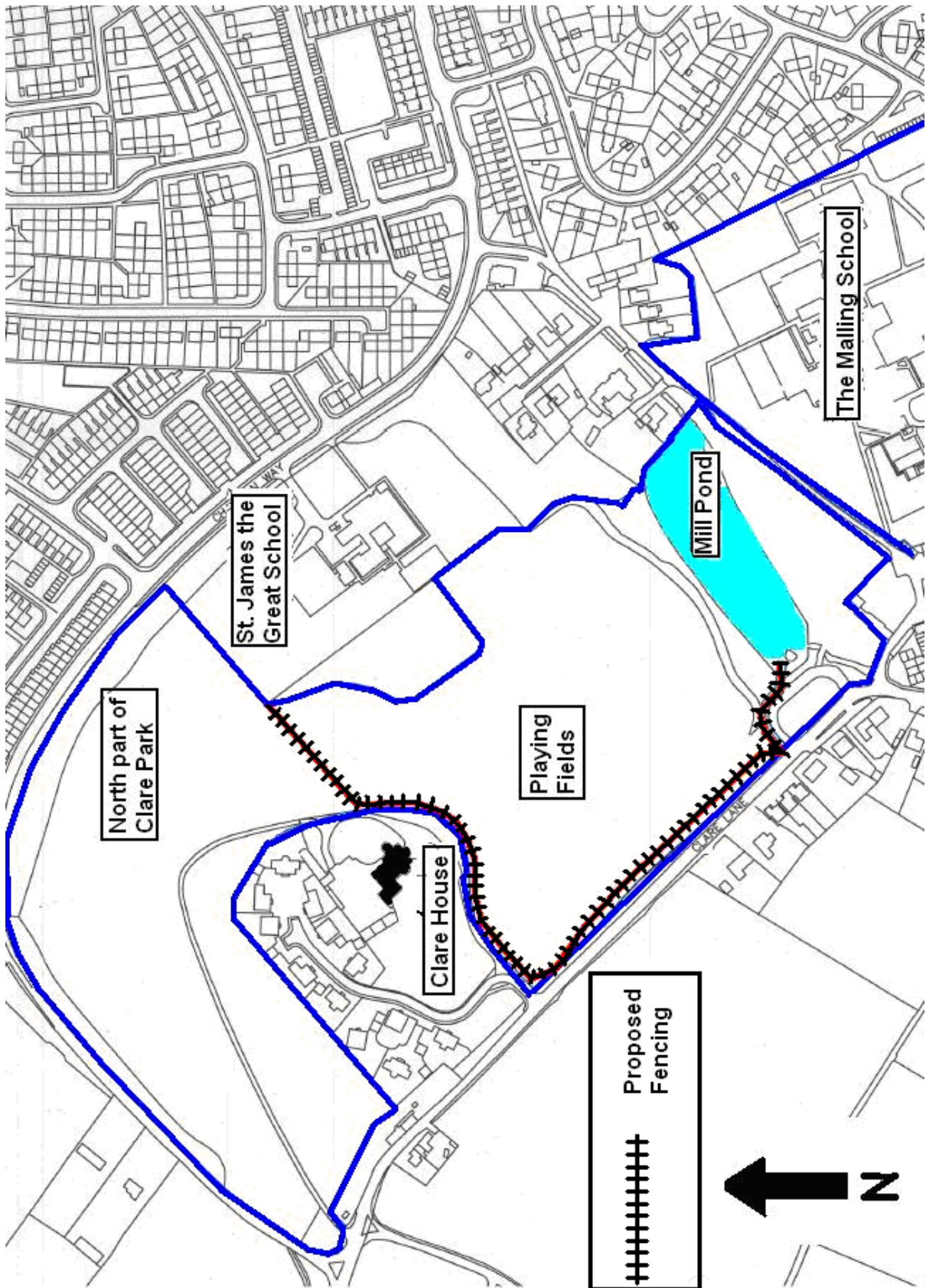
**Local Member(s): Mrs T.Dean**

**Classification: Unrestricted**

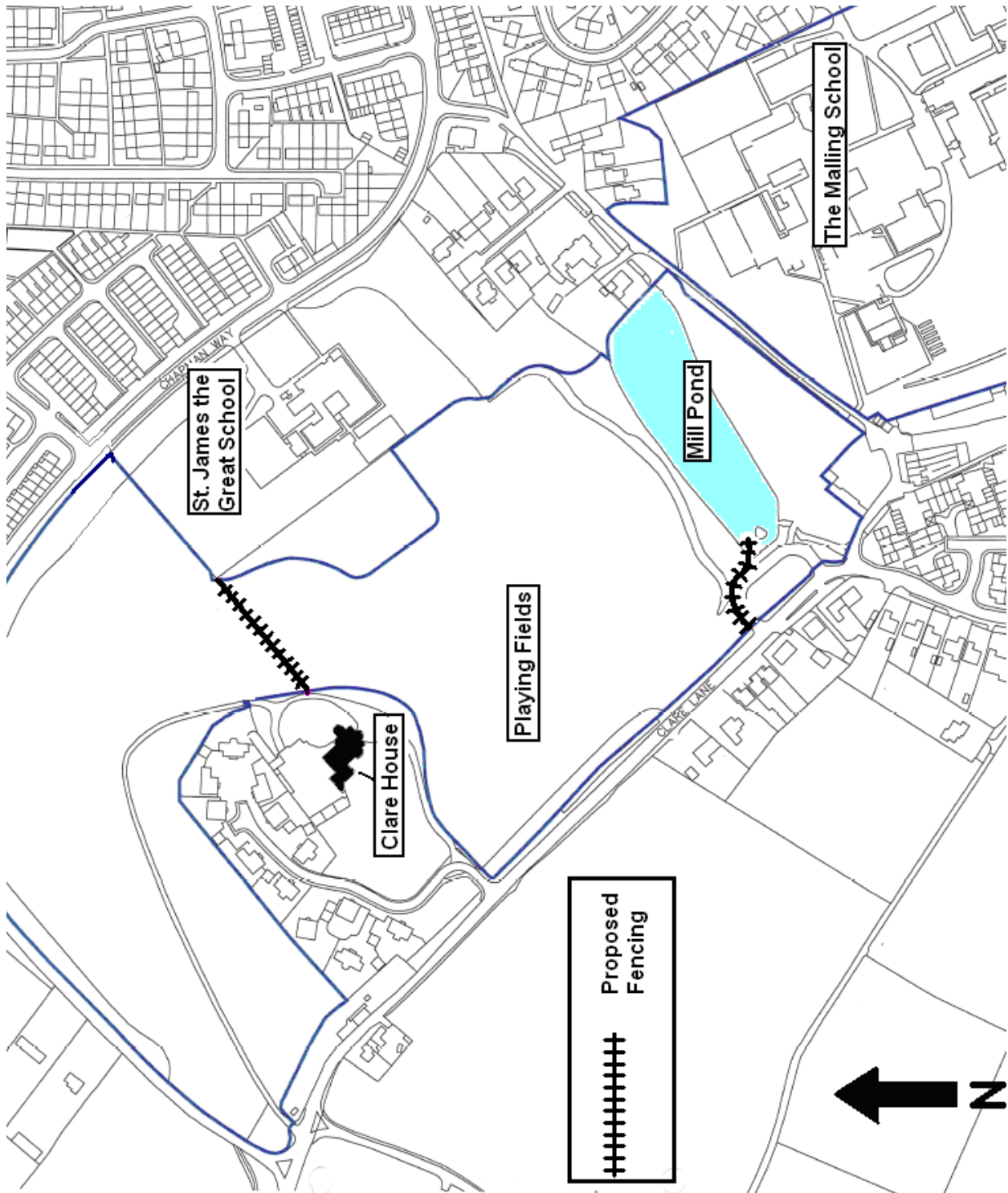
**Site**

1. The Malling School is a recently constructed PFI secondary school occupying land which was formerly part of the grounds of Clare House, a Grade 1 Listed Building and prominent local feature. The fencing is proposed to be erected within the School's playing fields, which once formed the main grounds around Clare House and is known as Clare Park. The fields are located to the South West of East Malling, with Clare House in the centre; they slope down eastwards towards a lake and are bordered by Clare Lane to the South and East and Chapman Way and Winterfield Lane to the North. The new St James the Great School lies within the old boundary of the park, adjacent to Chapman Way. Clare House is largely obscured by mature woodland and hedges, and has a high density development of large detached houses within its immediate former grounds, known as Clare Wood Drive. The application site lies within the Conservation Area which encompasses the former Clare Park grounds.
2. Access to the playing fields is made to the South East of the fields, between the lake and the pick-up/drop-off point off Clare Lane. There are no Public Rights of Way within the playing fields, although there is a restricted bridleway running north-south down Blacklands, between the main buildings of The Malling School and the lake and playing fields.
3. The playing fields are enclosed by mature hedgerow and trees, and old wooden fencing. Several access points through broken parts of the fencing have been worn-in by regular use and there is one open section of fencing to Chapman Way, adjacent to St. James the Great School, which allows unrestricted access to the upper part of the fields.
4. The lower part of the grounds, adjacent to the lake, is well kept and marked out for sport. The upper part adjacent to Chapman way is largely overgrown, apart from footpaths mowed into the long grass and an additional sports pitch further behind Clare House and Clare Wood Drive.

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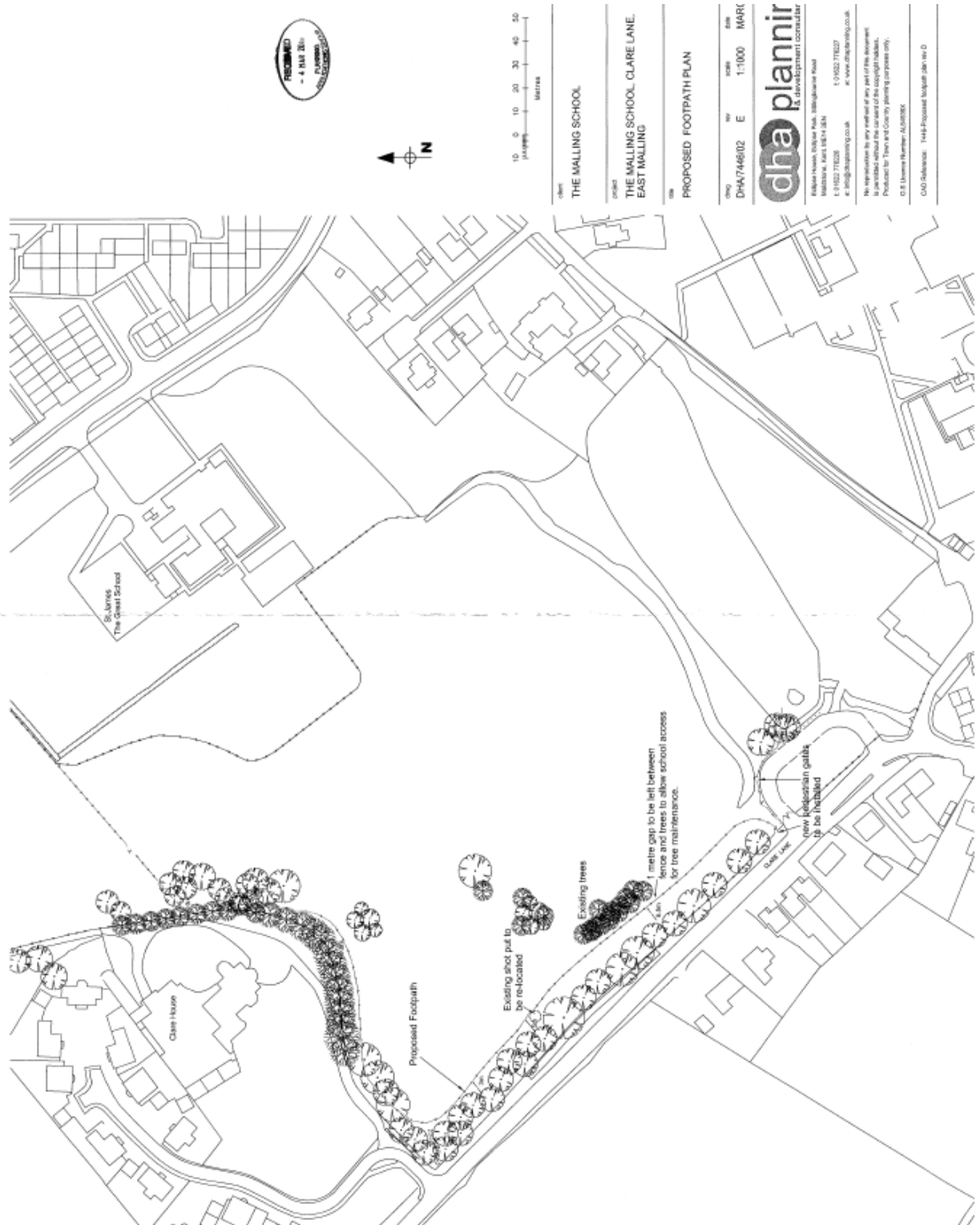


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**SITE LOCATION PLAN FOR PREVIOUS APPLICATION – TM/10/846**

**Erection of fencing, The Malling School, East Malling – TM/11/192**



client  
**THE MALLING SCHOOL**

project  
**THE MALLING SCHOOL CLARE LANE,  
EAST MALLING**

title  
**PROPOSED FOOTPATH PLAN**

client  
DHA7446/02 E 1:1000 MARC

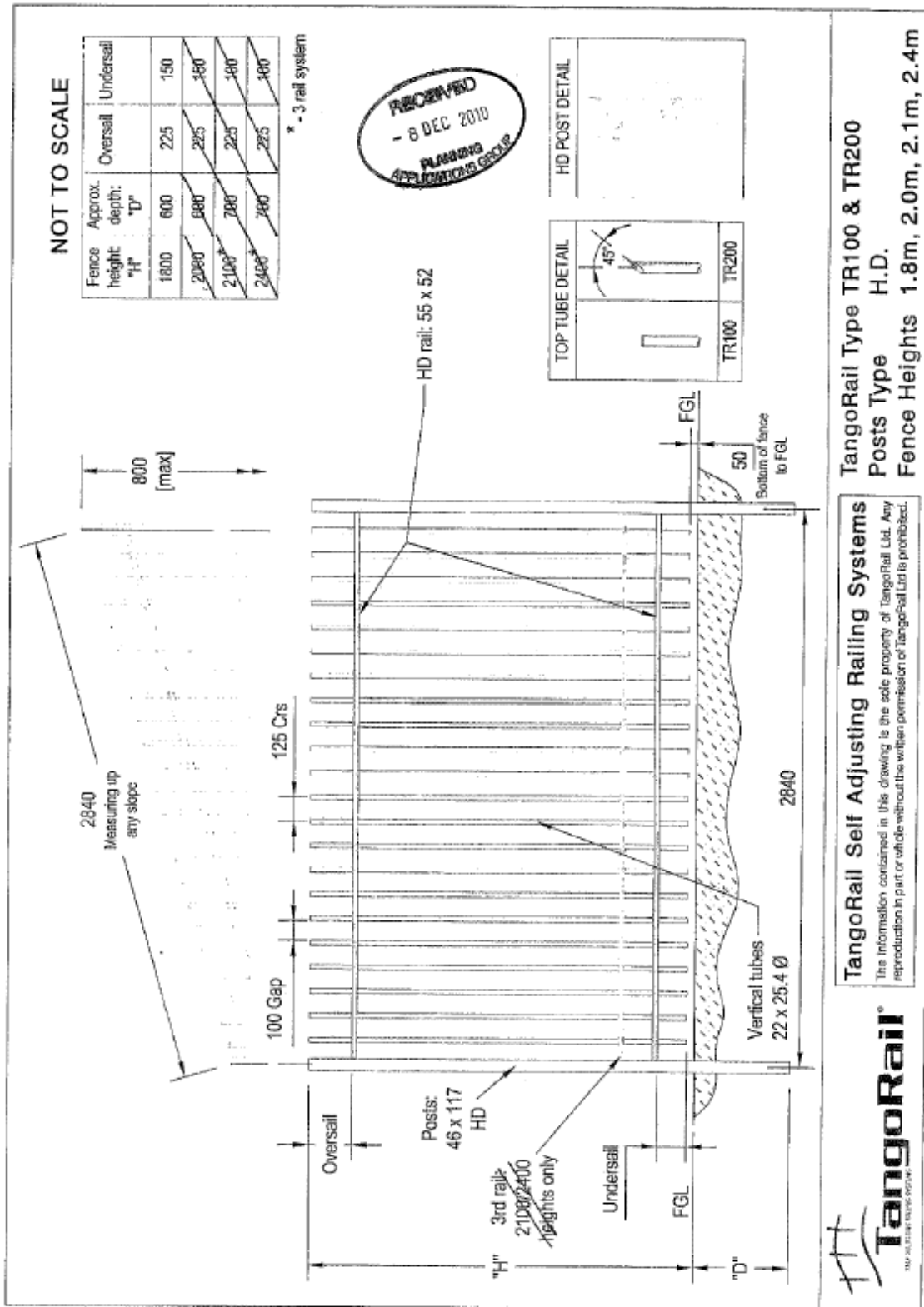
**dha plannir**  
planning & development consultants  
Millers House, Millers Park, Millingdown Road  
Maidstone, Kent ME14 3EN  
t: 01622 776228 e: info@dha-plannir.co.uk  
www.dha-plannir.co.uk

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GDH Reference: 1464-Proposed Footpath plan rev D

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**Item D1**



**PROPOSED FENCING DETAIL**



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5. The main school site has a long list of planning permissions, none of which are directly relevant to this proposal. The St. James the Great Primary School lies within the grounds of Clare Park and was granted permission in 2007. This building is separated from the sports pitches by 1.8m high steel green fencing, similar to that proposed within this application.

**Proposal and Background**

6. This application is for the erection of approximately 500m of 1.8m high steel railing fencing, finished in dark green, to the school playing fields in Clare Park. It would start in the south west corner of the playing fields, from within the lake, extending across to the existing fencing and running along the western boundary, but leaving a gap of approx 6.5m to allow for public access. The fencing then curves around to follow the boundary of Clare House, within the tree line, but leaving a gap of approx 3m, before joining the corner of the boundary with the St. James the Great School. The fencing would have gates to allow for access for pupils, maintenance vehicles/equipment and emergency vehicles. As this fencing is proposed to be below 2m in height, and does not abut a public highway use by vehicles, it can be argued that this fencing constitutes permitted development not requiring planning permission. However, the applicant has included it within the application so as to give an open picture of the works intended.
7. The applicant has proposed this development in order to secure the playing fields and make the grounds safer for the school children, as well as to prevent nuisance to neighbours caused by fly-tipping, anti-social behaviour and use by motorbikes caused by the unrestricted access at present. A main concern highlighted is the level of dog fouling on the school playing fields. The applicant has stated that the ideal solution to securing the fields would be to repair and update the entire perimeter fencing; however this solution is not financially viable. The current development has been proposed as making the playing field area of Clare Park protected, whilst allowing public access to the northern area of the grounds.
8. This application is a resubmission of a previously withdrawn application. The original application proposed two sections of fencing, in the south west and north east of the grounds, which would have sealed off the entire south section of Clare Park. Following objections and consultation with local residents and the local parish council, the applicants decided to withdraw the application and resubmit a proposal reflecting those concerns. The main change is that the new proposal would involve a significant increase in the quantity of fencing; however a parcel of land is proposed to be left open in order to avoid restricting public access to the site, and allow movement along the boundary adjacent to Clare Lane. The residents of Clare Wood Drive – a condensed development of regency style large detached houses within the grounds of Clare House, built in the 1990s – objected as there is currently no footpath from their development leading down to East Malling, and residents used the playing fields to avoid walking on the road. The site is also often used by dog walkers and local people.

**Planning Policy**

9. The Development Plan Policies summarised below are relevant to consideration of the application:
  - (i) National **Planning Policy Statement 5: Planning for the Historic Environment**

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**HE7** In decision-making, local planning authorities should seek to identify and assess the particular significance of any element of the historic environment that may be affected by the relevant proposal.

(ii) The adopted (2009) **South East Plan**

Regional policy is contained within the South East Plan 2009. However, it is important to note that as a result of the judgement in the case brought by Cala Homes in the High Court, which held that the powers set out in section 79 [6] of the Local Democracy, Economic Development and Construction Act 2009 could not be used to revoke all Regional Strategies in their entirety, Regional Strategies (the South East Plan in the case of Kent) were re-established as part of the Development Plan on 10 November 2010. Notwithstanding this, DCLG's Chief Planner Steve Quartermain advised Local Planning Authorities on 10 November 2010 that they should still have regard to the Secretary of State's letter to Local Planning Authorities and to the Planning Inspectorate dated 27 May 2010. In that letter he had informed them of the Government's intention to abolish Regional Strategies in the Localism Bill and that he expected them to have regard to this as a material consideration in any planning decisions. As a result of the legal challenge Members will be aware that they have to have regard to the policies in the SEP and the Government's intention to abolish the RSS as material considerations. However the weight to be accorded is a matter for the decision makers. Members should also note that Cala Homes has been granted leave to appeal the recent High Court judgement and are seeking clarity on how much weight should be given to the RSS in light of the intention to revoke. The relevant policies to this application are:

**Policy CC1** Seeks to achieve and maintain sustainable development within the region.

**Policy CC4** Expects that all development will adopt and incorporate sustainable construction standards and techniques.

**Policy CC6** Seeks sustainable and distinctive communities that respect the character of settlements and landscapes, and achieve a high quality built environment.

**Policy S6** States that local planning authorities, taking into account demographic projections, should work with partners to ensure adequate provision of pre-school, school, and community learning facilities.

**Policy BE1** In managing an Urban Renaissance, Local Authorities will promote and support design solutions relevant to context and which build upon local character and distinctiveness and sense of place.

(iii) The adopted **Tonbridge and Malling Managing Development and the Environment Development Plan Document** (2010)

**Policy OS1** Development that would result in the loss of, or reduce the recreational, nature conservation, biodiversity, carbon sink, landscape, amenity and or historic value of, existing open spaces (listed in Policy OS1A/B and

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identified on proposals map) will not be permitted unless a replacement site is provided.

**Policy OS4** The Council will support Parish Councils, landowners and developers who wish to provide publicly accessible open space in locations which will address local deficiencies, as identified in the Open Space Strategy.

**Policy SQ3** Development will not be permitted where it would harm the overall character, integrity or setting of the Historic Parks and Gardens identified on the proposals map, or which might prejudice their future restoration.

**Consultations****10. Tonbridge & Malling Borough Council:**

(A) OBJECT to the proposed fencing unless:

1. The County Council is able to satisfy itself that the proposal would not decrease public safety through the siting of the proposed footpath which would discharge onto a part of Clare Lane without a footpath to the road edge.
2. The County Council is satisfied that the proposal would not result in any anti-social behaviour being forced closer to the residential properties in Clare Wood Drive
3. Additional planting is to be carried out on each side of both lengths of proposed fence (including the permitted development fence). The planting should be used to soften the impact of the fencing and also to reduce the impact of the interface between the fence and the lake margin.

(B) Request that a County Members' site inspection be carried out prior to the application being determined so that Members of the County Planning Committee can familiarise themselves with the special nature of the landscape.

(C) Recommend that the school be invited to enter into discussions regarding the future maintenance and use of the northern piece of land and the potential for transferring it to the Parish Council.

**East Malling and Larkfield Parish Council:**

Initial comments were received on 24 February asking for further details, and commented as follows:

- The path is too narrow and should be at least 5m wide at all areas.
- The footpath exists onto Clare Lane on the bottom of the field where there is no pavement, and it should join the existing turning area and allow people to access the small bridge to the Blacklands footpath.
- A new entrance path needs to be cut into the trees for the Clare Wood Drive residents.
- The PC is disappointed that the application was submitted without further consultation and would like another meeting with the School and residents to work out a solution.



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- Ask the application to be deferred to the TMBC planning committee.

Additional information was submitted by the applicants to address a number of misunderstandings and questions, the Parish then submitted 'interim' comments on 30 March as follows:

- Pleased to see 6.5m path, but consider the 3m path is too narrow and would be dark under the trees
- Welcome the new gates, but lacks details. Will there be access for disabled/pushchairs?
- There does not appear to be an access point with gate at the corner of Clare Wood Drive/Clare Lane
- Will this be a permitted path available 24/7 and during school holidays?

Full comments were indicated to be submitted by the end of March, however to date no further comments have been received.

**Divisional Transport Manager:** No comments received

**KCC Conservation Officer:** No comments received.

**Local Member**

11. The local County Member for Malling Central, Mrs T. Dean, was notified of the application on the 21 January 2011, and has made the following points:

- Members need to visit the site to appraise themselves of the effect of this proposal.
- Supports the purpose of the fence.
- The School has generously responded to the wishes of local residents.
- There is a water pipe with a covenant requiring no building on it.
- The 3m width path is too narrow and would be difficult to maintain and put people off using it; the sandpits should be relocated to allow a wider path.
- It is important that the area outside the fenced off area remains open for public use.

**Publicity**

12. The application was advertised by the posting of a 2 site notices and the notification of 33 neighbours.

13. The application was also advertised in the Kent Messenger on 4 February 2011.

**Representations**

14. There have been 10 letters of objection from nearby residents, and the main points of objection can be summarised as follows:

- The problems cited for reasons for the fencing have reduced recently and enclosing such a large area is an overreaction to a perceived problem
- The path is too narrow and the sand pits should be moved to allow it to be made wider and the paths that would be created would be unsafe to use
- Public access should continue to the lake
- Closing the turning area to pedestrians would force people to walk on the road
- Objectives could be achieved by fencing a smaller area

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- There is a restrictive covenant for building over the water pipes which run across the land
- The fencing is unnecessary and would create an 'iron curtain'
- Local planning policy provides that the site is publicly accessible
- The public has been using the land for a long time, and the proposal would prohibit this
- The northern part of the site would become disused and therefore are worried it would be put forward for further development
- Will the land be handed over to KCC?
- The School has a hidden agenda and the reasons given for needing the fencing are a smokescreen to justify it
- 'A frame' gates and dog bins should be installed instead
- The fence runs through the trees at the northern edge which would make it unsafe and unsuitable for access and the fence should be outside the treeline
- The fence should cut across the Clare Wood Drive corner opening up more land to the public
- The current application only marginally reflects the discussions between locals, the Parish and the School
- The land outside the fencing should be transferred to the Parish and registered as public open space.

**Discussion**

14. In considering this proposal regard must be had to Development Plan Policies outlined in paragraph (4) above. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Therefore, this proposal needs to be considered in the context of Development Plan Policies, Government Guidance and other material planning considerations arising from consultation and publicity.
15. This application has been brought for determination by the Planning Applications Committee following the objections of a number of local residents, and the Parish Council. The objections raise a number of issues and concerns relating to the proposed fencing, and to wider issues. It is important when considering this application to focus on the planning merits.
16. The proposal seeks to erect fencing with vehicular access gates to the north, south and west of the playing field, to restrict unauthorised access to the playing field areas used by pupils due to anti-social behaviour, littering and dog fouling. A newspaper article recently published, tells of an incident where part of the playing field was set on fire. It is the case for many schools across Kent, that Ofsted has recommended enclosure of playing fields, with suitable fencing, in order to secure the safety of pupils. The applicant submitted a health and safety statement highlighting recorded incidents of broken glass, syringes, motorbikes, fires and dog fouling.
17. The School originally submitted an application last year, for two sections of fencing which would have divided the site in two. The application was due to be heard by the Planning Applications Committee, but was withdrawn in order to allow the School to liaise with local residents and find a compromise. The current application is the result of these discussions, and the main concession is that members of the public would be

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able to access part of the playing field site, around the edges of the formal playing field area as shown in the plans. The proposed fencing would be 1.8m in height, and matching the design of the fencing which encloses the adjacent St. James the Great School. It is noted that most of this fencing would fall under Schedule 2 Part 2 Class A of the General Permitted Development Order 1995, so would therefore be permitted development. Whilst that Part essentially relates to residential fencing, the Part relating to local authority developments is even more generous in terms of its height tolerances. However, for transparency and consultation reasons, the School has included all the fencing within the application.

**Visual Impact**

18. The proposed fence would be approximately 500m long, and set into the field by between 3m and 6.5m. It would be 1.8m high and of the same design and materials as the fencing around the St. James the Great School. The fencing would be set within the trees and shrubs at the northern part of the site.
19. The fencing is proposed to be located within the former grounds of the Grade 1 listed Clare House, a 1793 neoclassical country house. The school playing fields constitute what is left of its former gardens, and are designated as a historic garden within the Kent Gardens Compendium - although not registered with the national English Heritage register of Historic parks and Gardens. The former grounds extended far to the North East, beyond Chapman Way, which is now covered with residential development. In the 1980s the immediate setting of Clare House was encroached upon by the enabling development of Clare Wood Drive – in order to help fund restoration of the building. English Heritage was consulted on the previous application in order to assess the impact on the listed building, and passed no comments and for the application to be determined in accordance with planning policy.
20. The entire site lies within a conservation area and is in the former grounds of Clare House, a grade I listed building. I am of the opinion that the proposed fencing line would minimise the impact on the views from the listed building, in recognition of the compromising objectives of the fencing. If it were moved further into the field, it may impinge upon views from Clare House down across the park. The design of the fencing, being dark green metal railing, is considered appropriate for the context of the conservation area. Should consent be granted, I would recommend that a condition is applied however, to request a scheme of planting to soften the interface with the pond.
21. Objectors to the proposal have indicated that the 'pathway' created by the proposal is not sufficient. Whilst I sympathise with the residents within the locality, it is not the remit of the planning system to force a landowner to formalise public access to what is essentially private land with no public rights of way. The applicant has made it clear that the objective in allowing space around the fencing is not to create a formal access arrangement, but to not preclude access. Currently members of the public access Clare Park by various gaps in the fencing along Clare Lane, and by more open areas along Chapman Way. The previous application would have closed off the southern area of Clare Park, whereas the current proposal encloses the playing field area itself.
22. Residents have objected that the gaps left by the fencing could be made wider by moving the sand pits and giving more room than 3m, considering the height of the fencing, as they feel it will create an intimidating and unsafe pathway. I would reiterate my previous comments that the School are not intending to create a public footpath, and therefore are not obligated to create a formal pathway, but are allowing access to

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those who choose to use it. Further to this, 3m is more than adequate space for a footpath, considering the majority of public footpaths are considerably less than this, and are also surrounded by trees and shrubs. It would not be reasonable, nor enforceable through planning, to demand that the School moves their long jump pit for no other reason but to provide formal access to the residents of Clare Wood Drive. I understand the concerns of these residents in having no footpath to walk on from their houses down to East Malling, however these houses were built, and bought, with this knowledge. The existing access that the residents use would be still available.

23. Residents are also concerned that the 3m path would be inaccessible to mowers and therefore become overgrown. In my opinion, 3m is more than enough space for a mower to access (a standard car park space is only 2.6m) and this would not be a problem. The PFI arrangements mean that a maintenance contract is currently in place, however these issues are down to the ongoing management of the school.

**Need**

24. The fencing has been proposed by The Malling School in order to prevent unauthorised access to the site, and to prevent incidents of nuisance and anti-social behaviour and long-standing misuse of the site. The School has recorded incidents of dog fouling, with a Tonbridge & Malling Borough Council 'bag and tag' exercise producing 181 bags of dog foul from the playing fields alone. There are also recorded incidents of illegal motor cycle use as well as uncontrolled dogs disturbing P.E. lessons. I am advised that the site also experiences littering, with broken bottles and other rubbish being found.
25. Local residents have disputed the basis of these claims and suggest alternative solutions. However, it is a site management issue for the owners of the land to decide on the most appropriate solution, and the Planning Authority can only consider the proposals put before it. Under the circumstances, I would urge caution in attaching too much weight to the need arguments over the material considerations of visual impact and effect on the conservation area and listed building.
26. The School has stated that they have duty to protect and secure the safety and wellbeing of their pupils, and that the 'Kent Template: Schools for the Future' guidance note recommends that all school playing fields are now securely enclosed. Planning authorities also have a duty to consider the effects a proposal would have on crime and disorder, and I consider that the safety of the pupils in preventing the incidents mentioned above is a material consideration in this regard.

**Public Access**

27. Many local residents have argued that the land constitutes public open space to be protected, and that the fencing would prevent access to this land. Clare Park appears to have enjoyed unrestricted informal access for a number of years, including the area which constitutes the formal playing fields. The grounds are also argued to be used as a formal pedestrian route. Whilst I sympathise with the concerns of the local residents, the land in question is effectively privately owned land, and the owners are entitled to apply to erect fencing to restrict access if they see fit, just as any other landowner. Clearly, the fact that open access to the school playing fields has been tolerated for many years has clouded the issue here, but the applicant has stated that a large area of land would still be available for public use in the northern area of the site, thereby supporting Policy OS4 of the Tonbridge and Malling 'Managing Development and the

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Environment Development Plan Document' 2010 in that 'The Council will support Parish Councils, landowners and developers who wish to provide publicly accessible open space in locations which will address local deficiencies, as identified in the Open Space Strategy'. The scheme would also allow access around the fenced off area, linking East Malling to Clare Wood Drive and the northern part of the grounds.

28. Another concern raised is that the park provides an informal pedestrian route which is necessary as there is no pedestrian footway along Clare Lane. Whilst I understand the safety concerns here, and do not wish to hamper the walking habits of the local residents, there are many Public Footpaths in the area that allow routes between East and West Malling, and this scheme would allow access to those who choose to use it, whilst not creating a formal footpath in itself. The northern area of the site would still allow people to walk between Clare Wood Drive and Chapman Way. The main residents who may be disadvantaged are those who live in Clare Wood Drive who wish to walk into East Malling. Their route would be extended if they wish to avoid walking on Clare Lane, but the development of these houses was built with the knowledge that there was no pedestrian footway along what is essentially a country lane at this point. It is not within the remit of Planning Authorities to impose a duty on private landowners to keep open an informal route where there is no officially designated Public Right of Way. Moreover, it would be unreasonable to expect any neighbouring landowner to remedy the access deficiencies of an earlier development proposal that arguably should have been addressed at the time of its development.
29. If there are any covenants or obligations on the part of the School to allow Clare Park to be open to the public, and to not build over the water pipes, then these are matters that are to be dealt with under other legal processes. This planning application needs to be considered bearing in mind the planning merits, given that other factors and rights are protected and enforced by other methods.

**Alternative Solutions**

30. A number of solutions have been proposed by objectors to the scheme, including the installation of dog bins, kissing gates and working with the community warden to reduce anti-social behaviour. Whilst the merits of these ideas can be debated, they are not material for this application as the application can only be determined on the basis of the development proposed. I am also aware that the alternative solutions would require additional expense on the part of the School for continuing to allow unauthorised access on to their private land.

**Division of the site**

31. Objectors and consultees have commented that the erection of fencing would result in a division of the site. They are concerned that the northern part of the site would fall into disrepair and subsequently be considered as superfluous and sold off for development. In visual and conservation terms, the division of the site runs along the historic line of the former access road to Clare House, therefore it can be seen as acceptable in this sense. The potential for redevelopment of the northern section of the site is not a relevant material consideration for this planning application. Any future redevelopment would be subject to a separate planning application and would be determined on its own merits, and would have to address the relevant planning constraints relating to its Conservation Area and playing field status. The proposed fencing includes vehicle access gates in order to allow maintenance vehicles to access the northern part of the fields, so I am satisfied that the proper infrastructure is in place.

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However, the physical maintenance of the fields is a school management decision and an issue for their duty to keep their grounds in a good condition.

**Borough Council comments**

32. Tonbridge and Malling Borough Council object to the scheme unless the County Council is satisfied the points as set out in paragraph 10 above are met. In particular, they would like the County Council to satisfy itself that the proposal would not decrease public safety through the siting of a footpath which would discharge onto a part of Clare Lane without a footpath to the road edge. I would suggest that there are many footpaths and pedestrian routes in the area which discharge onto country lanes. The residents of Clare Wood Drive would be able to use the park to avoid Clare Lane if they choose, by accessing the park through the existing informal access points. In my opinion, the planning process cannot impose a duty to accommodate informal walkways on private land where there is no public right of access, and it would not be equitable to refuse an application on these grounds. I also conclude that on balance, the proposal would not affect public safety as the School is allowing access to the site to avoid walking on Clare Lane, and would also serve to protect the safety of pupils by preventing adverse use of the playing field area. There is also no objection from Kent Highway Services on highway safety grounds.
33. The Borough Council would like the County Council to be satisfied that the proposal would not result in any anti-social behaviour being forced closer to the residential properties of Clare Wood Drive. I sympathise with the residents in this aspect and acknowledge their concerns; however I do not believe that the development can be a key deciding factor in the location of anti-social behaviour. It is also not the duty of a private landowner to 'absorb' levels of anti-social behaviour in the locality by allowing unrestricted access to their land. That would also create liability issues for the School in relation to injuries occurring on their land. For this reason I consider that this is not a material consideration that warrants refusal of the application, and on balance the prevention of crime and disorder by protecting the wellbeing of pupils, outweighs any potential effects of moving the problem to another area.
34. The Borough Council recommends conditions are attached to any planning permission relating to planting and ensuring that the fencing is painted dark green. I would support this request as these conditions would serve to reduce the visual impact of the proposed fencing.
35. It has also recommended that the School be invited to enter into discussion regarding the future maintenance and use of the northern piece of the land and the potential for transferring it to the Parish Council. Whilst I support this recommendation in principle, in order for the School to maintain good community relations, I do not consider that this can be enforced by condition as it is not directly relevant to the development proposed. This is a School management issue which they should be encouraged to fulfil. If members are so minded, this could be addressed by an informative.

**Conclusion**

36. In my opinion the proposed fencing at The Malling School would be acceptable on its individual planning merits. The fencing would not materially harm the Conservation Area or the setting of the Listed Building, and the visual impact on neighbouring properties is minimal. With the exception of the section of fencing adjacent to the



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public highway, the fencing would benefit from permitted development rights. There are other divisive issues relating to the fencing which are not material planning considerations, but have been considered nevertheless. Since the original application, the School has demonstrated that they have made many concessions in formulating this current proposal. I conclude that the School's duty to provide a safe and secure environment for its pupils, in light of the reasons given, outweighs the other considerations put forwards by objectors. If the installation of fencing does contravene any legal duties imposed on the School by covenant or grant, then this is a separate legal issue between the parties concerned and not for determination in the planning sphere.

**Recommendation**

37. I RECOMMEND that PERMISSION BE GRANTED to the proposal as now amended, subject to conditions:

- The standard time condition for implementation;
- The development to be completed in accordance with the approved plans;
- A scheme of landscape planting be adopted, to include planting on the margins of the lake; and
- The fencing be painted dark green;

and SUBJECT TO the following informative:

The School to be advised to enter into dialogue with local representatives regarding the use and access to the land to be unfenced on the western end of the school land, and be reminded of the need to observe any existing covenants and/or access rights relating to School owned land, and to ensure maintenance agreements are abided by.

Case officer – Jeff Dummett	01622 221975
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Background documents - See section heading
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