

PROPERTY SUB-COMMITTEE

Tuesday, 21st March, 2017

10.00 am

**Council Chamber, Sessions House, County Hall,
Maidstone**





AGENDA

PROPERTY SUB-COMMITTEE

Tuesday, 21 March 2017, at 10.00 am Ask for: **Theresa Grayell**
Council Chamber, Sessions House, County Telephone: **03000 416172**
Hall, Maidstone

Tea/Coffee will be available 15 minutes before the start of the meeting

Membership (7)

Conservative (4): Mr A J King, MBE (Chairman), Mr N J D Chard,
 Mr L B Ridings, MBE and Mrs P A V Stockell

UKIP (1) Mr C P D Hoare

Labour (1) Mr D Smyth

Liberal Democrat (1): Mrs T Dean, MBE

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

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A - Committee Business

- A1 Apologies and Substitutes
 To receive apologies for absence and notification of any substitutes present

- A2 Declarations of Interest by Members in Items on the Agenda

In accordance with the Members' Code of Conduct, Members are requested to declare any interests at the start of the meeting. Members are reminded to specify the agenda item number to which it refers and the nature of the interest being declared

- A3 Minutes of the meeting held on 21 February 2017 (Pages 7 - 8)
To consider and approve the minutes as a correct record

B - Key or significant Cabinet Member Decision(s) for recommendation or endorsement

- B1 Appropriation of Land at Boughton Mount, Boughton Lane, Maidstone, comprising Boughton Mount Hostel, Boughton Mount Grounds and former Maidstone SEC and Special Care Unit, to override a restrictive covenant. (Pages 9 - 18)

To receive a report from the Cabinet Member for Corporate and Democratic Services and the Director of Infrastructure which asks the Property Sub-Committee to consider and endorse or make recommendations on the Cabinet Member's proposed decision to commence the appropriation procedure.

- B2 Cross-Party Security Working Group (Pages 19 - 28)

To receive a report from the Cabinet Member for Corporate and Democratic Services which updates Members on the work of the Cross Party Security Working Group and sets out options for work going forward.

- B3 Priority School Building Programme - Local Delivery (Pages 29 - 38)

To receive a report from the Cabinet Member for Corporate and Democratic Services providing details of requests from the Education Funding Agency (EfA) for Kent County Council to deliver construction projects as part of the Priority Schools Building Programme Round 2.

Motion to exclude the press and public

That under Section 100A of the Local Government Act 1972 the press and public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act.

C - Performance Monitoring

- C1 Outcomes of Property Disposals - an update report on progress relating to disposals brought to the Property Sub-Committee in 2014, 2015 and 2016 (Pages 39 - 46)

To receive a report from the Cabinet Member for Corporate and Democratic Services and the Director of Infrastructure, providing an update on the outcome and progress of various property disposals which had been presented to the Property Sub-Committee during 2014, 2015 and 2016, detailing the final terms agreed, where applicable.

John Lynch,

Head of Democratic Services
03000 410466

Monday, 13 March 2017

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KENT COUNTY COUNCIL

PROPERTY SUB-COMMITTEE

MINUTES of a meeting of the Property Sub-Committee held in the Darent Room, Sessions House, County Hall, Maidstone on Tuesday, 21 February 2017.

PRESENT: Mr N J D Chard (Vice-Chairman in the Chair), Mrs T Dean, MBE, Mr C P D Hoare, Mr M J Northey, Mr D Smyth and Mrs P A V Stockell

ALSO PRESENT: Mr G Cooke

IN ATTENDANCE: Ms V Seal (Interim Head of Property Commissioning and Strategy) and Miss T A Grayell (Democratic Services Officer)

UNRESTRICTED ITEMS

90. Apologies and Substitutes

(Item A1)

Apologies for absence had been received from Mr A J King and Mr L B Ridings.

Mr M J Northey was present as a substitute for Mr L B Ridings.

The Vice-Chairman, Mr N J D Chard, took the chair for the meeting.

91. Declarations of Interest by Members in Items on the Agenda

(Item A2)

There were no declarations of interest.

92. Minutes of the meeting held on 29 September 2016

(Item A3)

RESOLVED that the minutes of the meeting held on 29 September 2016 are correctly recorded and they be signed by the Vice-Chairman. There were no matters arising.

93. Meeting Dates, 2017 - 2018

(Item A4)

RESOLVED that the dates reserved for meetings of the Sub-Committee in 2017 and 2018 be noted.

94. Motion to exclude the press and public for exempt items of business

The Vice-Chairman asked Members if, in discussing the two items on the agenda, they wished to refer to the information contained in the exempt appendices and hence consider the items in closed session. Members agreed that they wished to proceed on this basis.

Accordingly, it was RESOLVED that, under Section 100A of the Local Government Act 1972, the press and public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act.

EXEMPT ITEMS (OPEN ACCESS TO MINUTES)

95. Report of Urgent Decision - Sale of land at Kings Hill - Parcels 1, 12 and 63 (Item B1)

Mr M Hyland, Kings Hill Project Coordinator, Economic Development, was in attendance for this item.

1. Mr Hyland responded to questions of detail from Members and explained that it was usual to include in land transactions a delegation to the Director of Infrastructure to negotiate a variance in sale price, and the scope for this level of variance would normally be in the region of 15%, as was the case in this transaction.

2. The Cabinet Member, Mr Cooke, explained that the decision had been taken under the County Council's procedure for taking urgent decisions to allow the Council to achieve best value from the sale of the parcels of land concerned. Although it was always preferable to avoid urgent decisions whenever possible, it was occasionally necessary to proceed quickly to achieve best value for public money. He added that he hoped not to have to take further urgent decisions in relation to this issue.

3. RESOLVED that the information set out in the report be noted.

96. Total Facilities Management (TFM) - Biannual Review (Item C 1)

Ms K Ripley, Commissioning Team, was in attendance for this item.

1. Ms Ripley and the Cabinet Member, Mr Cooke, responded to questions of detail from Members and assured them that monitoring of contractors' performance was very rigorous

2. At the Sub-Committee's meeting in September 2016, concern had been expressed about the performance of one of the three TFM contractors, and it had been hoped then that further information on their performance might by now be available. It was hoped that a further report would instead be available for the Sub-Committee's next meeting on 21 March 2017.

3. Ms Ripley and Mr Cooke clarified that there were two strands of work currently going on: a report by internal audit of the County Council's monitoring procedures and processes, and the regular monitoring of the TFM contractors' performance, which was undertaken as part of the contract arrangements. The internal audit report had not been commissioned by this Sub-Committee so would be reported, when ready, to the Governance and Audit Committee.

4. RESOLVED that the current performance of the Total Facilities Managements contractors be noted.

From: **Gary Cooke, Cabinet Member for Corporate and Democratic Services**
Rebecca Spore, Director of Infrastructure

To: **Property Sub-Committee - 21 March 2017**

Decision No. **17/00034**

Subject: **Appropriation of Land at Boughton Mount, Boughton Lane, Maidstone comprising Boughton Mount Hostel, Boughton Mount Grounds and former Maidstone SEC and Special Care Unit to override a restrictive covenant.**

Classification: **For Publication**

Past Pathway of Paper: **None**

Future Pathway of Paper: **Cabinet Member Decision**

Electoral Division: **Maidstone Rural South**

Summary: The report considers the proposed appropriation of Land at Boughton Mount, Maidstone comprising Boughton Mount Hostel, Boughton Mount Grounds and former Maidstone SEC and Special Care Unit to override a restrictive covenant

Recommendation: The Property Sub-Committee is asked to consider and endorse or make recommendations on the Cabinet Member's proposed decision to commence the appropriation procedure

1. Introduction

- 1.1 The KCC property comprises land and buildings within a site of approximately 11 acres including the former Maidstone SEC and Special Care unit (UPRN 01450300), Boughton Mount Hostel (UPRN 01450100) and Boughton Mount Grounds (UPRN 01450500). The buildings are generally situated in the northern part of the holding with former formal gardens, woodlands and Listed Ha Ha and Folly in the southern half.
- 1.2 The entire property was originally gifted to KCC in 1948 by Henrietta Foster Wheeler and Joan Foster Pickering with a covenant restricting the use of the property to "the education of delicate children". In 1963 this restriction was broadened to include use as a residential hostel and training centre under the National Health Act 1948 and Mental Health Act 1959 including horticultural training purposes. There is a prohibition against building within the gardens and woodland.
- 1.3 The property has been used by KCC for some years for the prescribed uses with the last use of this site by KCC terminating in approximately 2010 following which the land has remained vacant.

1.4 The property requires substantial expenditure to reinstate the existing buildings to acceptable modern standards so they are fit for purpose. The buildings have been boarded up but as it is an open site there have been occasions where illegal entry has taken place over the years while vacant. The entire property was fenced in 2016 following more regular trespassing issues.

2. Feasibility

2.1 KCC undertook a feasibility exercise in 2013 to consider the relocation of Five Acre Wood school to this site. Five Acre Wood is a special needs school located within 0.5 mile along Boughton Lane and which was in need of improved and extended facilities.

2.2 This exercise concluded that it was not feasible to develop the Boughton Mount site as a special needs school largely because the developable area within the site is constrained in area and in order to provide sufficient floor area to meet the current standards a two storey building would be required which significantly increased costs.

2.3 KCC has therefore decided that Five Acre Wood School is refurbished and extended on its current site and this work is well under way.

2.4 The property at Boughton Mount is considered surplus to operational requirements and this declaration is currently being formalised.

3. Restrictive Covenant Release

3.1 Without the release of the restrictive covenant it would not be possible to implement beneficial use of the site through development.

3.2 Discussions have been held with the family representatives related to the original donor of the land over several years as they are keen to see the land actively used for beneficial purposes. They would co-operate in releasing the restrictions on the basis that the net sale receipt is directed towards special needs education thus retaining the original nature of the gift.

3.3 Kent Legal Services have advised that although restrictive covenants usually relate to the land in this particular case they have also advised that the benefit of the covenant could also be held by the beneficiaries of the original donor through estate inheritance. This advice was also endorsed in Counsel's Opinion. KCC has therefore researched the respective Wills from the original donor identifying relevant beneficiaries through the generations to establish those living parties who would need to agree to the release of the restrictive covenant. This has demonstrated that at least eight parties (family and non-family) would need to be involved but there is an inherent risk that not all the parties are identified or are prepared to agree to the release. While agreement with these parties seems to offer a potential solution it is not completely failsafe.

- 3.4 Restrictive Indemnity Insurance cover can usually be obtained to cover restrictive covenant risk but these insurers stipulate that there is no contact whatsoever with any party likely to benefit from the restriction prior to cover being offered. Clearly this requirement cannot be met as discussions with some of the family representatives have been in hand for many years and so it is unlikely that adequate insurance could be arranged.
- 3.5 Continuing with the covenant release by agreement with the family in the absence of suitable insurance will not provide a guaranteed solution and this would materially affect the marketability of the land and restrict the ability to sell the property. This means that there is an unacceptable risk in continuing with this option.

4. Alternative solutions

- 4.1 Apart from the course already pursued in seeking agreement to the release with insurance cover, there are two further options available which are as follows:

4.1a Apply to the Lands Tribunal to seek release or modification of the restrictive covenant under Section 84 of the Law of Property Act 1925. There are four grounds for such an application to be pursued but only one of these is relevant for this property namely that there is agreement with the parties entitled to the benefit to discharge or modify the restriction. Essentially the Lands Tribunal will consider the application to override the restriction by agreement and although this can potentially reduce the risks mentioned earlier, this would entail significant cost and delay (at least a year or more) with uncertainty of the decision the Lands Tribunal would make when considering the application.

4.1b Utilise legislative powers granted to Public Authorities under a combination of the Town and Country Planning Act 1990 (now amended by provisions in the Housing and Planning Act 2016) and the Local Authorities Act 1972 to appropriate land subject to meeting certain criteria. If the criteria are met this process, known as appropriation, can provide a guaranteed outcome.

- 4.2 As the option stated in 4.1b provides certainty it offers the preferred solution. The family representatives have been kept fully informed and have no objection to this course of action as they appreciate it provides a failsafe outcome if approved.

5. The Appropriation process

- 5.1 Section 122 of the Local Government Act 1972 together with Section 237 of the Town and Country Planning Act 1990 (TCPA 1990) provide powers to Local Authorities to override easements or other restrictions when the property is held for planning purposes. Section 237 of the TCPA 1990 has recently been amended by Section 203 of the Housing and Planning Act 2016 which is a similar provision making such powers available to a wider number of public bodies. These powers have been used by other Authorities on numerous occasions. The effect of Section 203 is to

authorise the development notwithstanding any interference with those rights as the rights still exist but are overridden.

- 5.2 Section 203 also states that consideration be given to the extent to which the redevelopment may impact upon the human rights of owners and residents who may be affected and to balance those against the overall benefits to the community and from the regeneration of the area. The redevelopment could involve interference under article 1 of protocol 1 of the European Convention of Human Rights as well as article 8 but after due consideration it is believed that the balance of the public benefit substantially outweighs the protection of rights of the individuals who may be affected.
- 5.3 As a public authority KCC's entitlement to use these powers to override the restrictive covenant has been confirmed in Counsel's Opinion.
- 5.4 The four criteria which must be met to enable appropriation to be pursued are as follows:

5.4.1 The property is declared surplus

Occupation of the property by KCC for operational purposes ended in 2010. The feasibility exercise considering the development of a Special Needs school at this location in 2013 concluded that this was not an economic proposition. As a result the site is no longer required for operational purposes and is formally being declared surplus.

5.4.2 The property must be held for planning purposes

This requires that planning consent will be obtained for development to override the restriction although it is not a pre-requisite that consent is obtained prior to commencing the appropriation process. The earlier discussions with the family representatives considered residential development on the north/north-west part of the site only (the brown field element of the land) and it is intended that residential development will be pursued by KCC. The site is included in the list of sites for residential allocation currently under consideration by Maidstone Borough Council through the Regulation 19 consultation started in 2016 following a Call for Sites as part of the Local Plan review providing approximately 25/30 units.

5.4.3 The development should contribute towards any of the economic, social or environmental well-being of the area

The proposed residential development will add to the well-being of the area in economic terms due to employment generation and improvement of the local economy due to the presence and spending of increased local population. The development of part of this land will also improve social benefits as the redundant deteriorating site will be brought back to beneficial use and not be a target for vandalism and unwanted activities. The environment will be improved as the value created will allow the future restoration, management and preservation of the garden, Listed features and woodland areas to be fulfilled some of which will benefit the local public through local access.

5.4.4 Compensation for the loss of the benefit of the restrictive covenant will be payable.

Compensation will be assessed through formal independent valuation of the loss of the benefit of the restrictive covenant and will be payable to the beneficiaries of the covenant.

5.5 In summary all four criteria can be met with regard to this property.

6. Proposed development

6.1 Although the site comprises approximately 11 acres development is likely to be restricted through planning policy to the north/north-western area of the property comprising approximately 5 acres. Maidstone Borough Council are currently considering the formal allocation for approximately 25/30 units in the northern part of the site. Development would not be possible in the southern half of the site as this comprises woodland with some specimen trees.

6.2 Conceptual schemes have been considered along these lines during KCC's discussions with the family representatives and these will be evolved further as part of the consideration prior to any pre-application submission following successful appropriation. Supporting site surveys will need to be undertaken as part of the evolution of the scheme proposals and application process.

6.3 KCC is prepared to direct the net sale proceeds towards special needs education and primarily as a contribution towards the refurbishment of Five Acre Wood School as requested by the family representatives in order to preserve the nature of the original gift to KCC.

7. Procedure for appropriation

7.1 The procedure for the appropriation process must be strictly followed. Following endorsement to proceed there is a consultation period of six weeks in which notices are erected on site and placed in the local press for at least two weeks advising that it is intended that KCC progress appropriation seeking any comments from the public.

7.2 Following completion of this period any comments will be considered as part of the ratification process and, if approved, the Record of Decision confirms that appropriation has been concluded and the restriction will be overridden. Any future planning consent can then be implemented without fear of the restrictive covenant being upheld.

7.3 The KCC paperwork records that the restriction no longer applies and will be the evidence required to confirm this for KCC and future successors in title. Usually the Land Registry does not amend its records.

8. Consultation

8.1 The local KCC Member is being advised about the intended appropriation procedure.

9. Kent Legal Services

- 9.1 Kent Legal Services confirms the proposed appropriation procedure does meet all the criteria to enable the use of the land to be changed by overriding the restriction on the legal title. Kent Legal Services also endorses proceeding with the appropriation as the most effective means to secure the intended outcome for the site's future use.

10. Recommendation

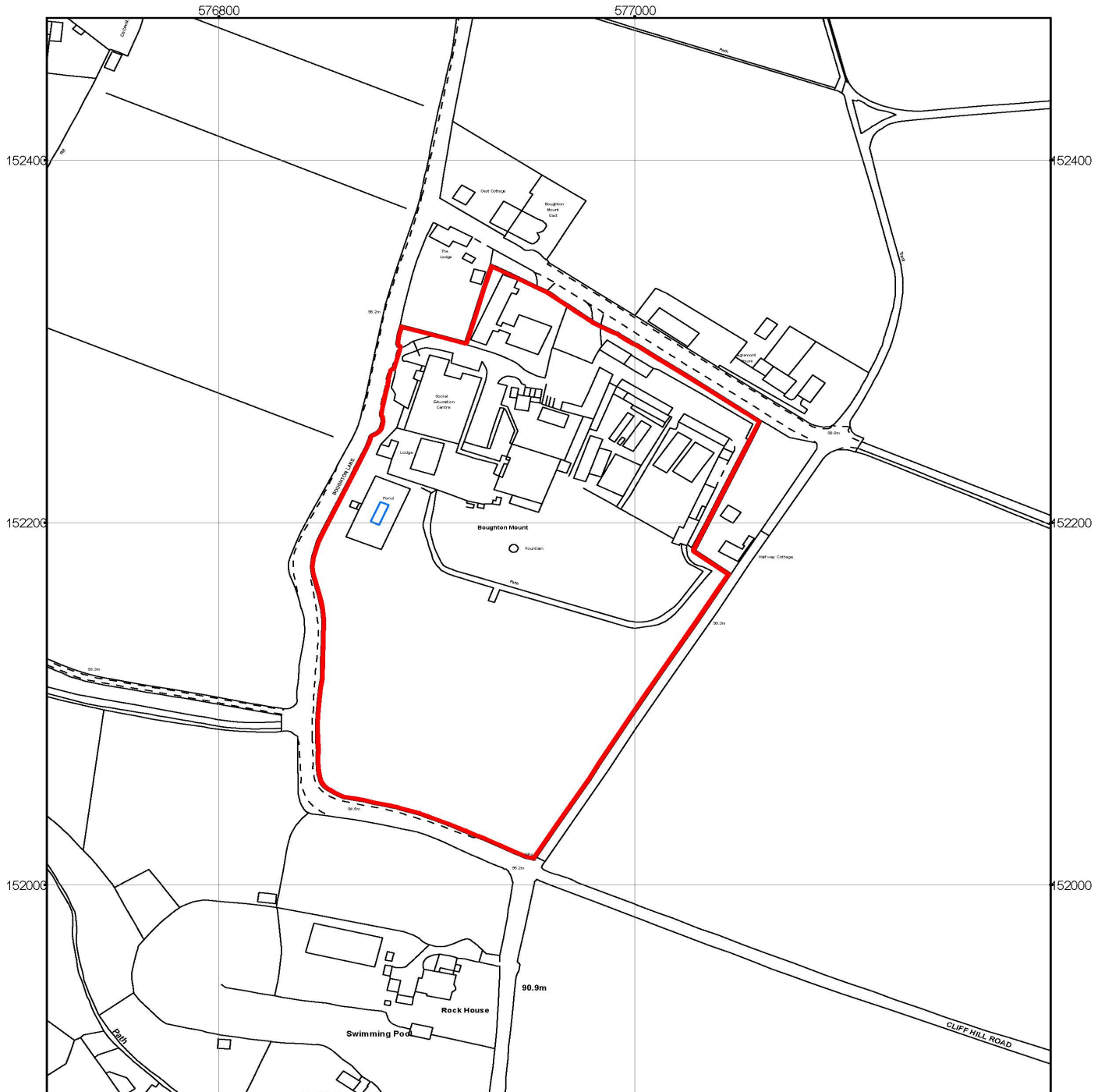
- 10.1 The Property Sub-Committee is asked to consider and endorse or make recommendations on the Cabinet Member's proposed decision to commence the appropriation procedure.


11. Background Documents

Site plan attached.

12. Contact details –

Rebecca Spore, Director of Infrastructure
03000 416716
Rebecca.spore@kent.gov.uk




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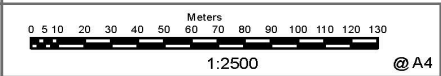
**KCC FREEHOLD AT
 BOUGHTON MOUNT
 BOUGHTON LANE
 BOUGHTON MONCHELSEA
 ME17 2AN**
 MasterMap **AREA = 45,821 SQ M**



**PROPERTY AND
 INFRASTRUCTURE SUPPORT**
 County Hall, Maidstone
 Kent ME14 1XQ
 Tel:08458 247247

Drawn By
KP

Date
JAN 2013



Drawing No.
TQ7652/9B

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KENT COUNTY COUNCIL – PROPOSED RECORD OF DECISION

DECISION TO BETAKEN BY:

Mr Gary Cooke, Cabinet Member for Corporate and Democratic Services

DECISION NO:

17/00033

For publication

Key decision: NO

Appropriation of Land at Boughton Mount, Boughton Lane, Maidstone
Decision:

As Cabinet Member for Corporate and Democratic Services, I agree to commence the appropriation procedure in relation to land at Boughton Mount, Boughton Lane, Maidstone, comprising Boughton Mount Hostel, Boughton Mount Grounds and former Maidstone SEC and Special Care Unit, to override a restrictive covenant.

Governance:

The Executive Scheme of Delegation for Officers set out in Appendix 2 Part 4 of the Constitution (and the directorate schemes of sub-delegation made thereunder) provide the governance pathway for the implementation of this decision by officers as it assumes at 1.9 of the scheme that once a Member-level decision has been taken, the implementation of that decision will normally be delegated to officers, so that multiple Member decisions are not required in respect of the same matter.

In this instance, the Director of Infrastructure will be the lead officer who will ensure that all such steps as are necessary to implement the decision are undertaken.

Reason for decision:

The property at Boughton Mount is considered surplus to operational requirements and this declaration is currently being formalised, in order to properly assess the next steps for the land it is necessary to secure the release of the restrictive covenant as with it in place it would not be possible to implement beneficial use of the site through development.

Delegations within the Council's constitution, specifically within the Property Management Protocol do not explicitly include the power for officers to utilise legislative powers granted to public authorities under a combination of the Town and Country Planning Act 1990 (now amended by provisions in the Housing and Planning Act 2016) and the Local Authorities Act 1972 to appropriate land and it is therefore considered necessary for the Cabinet Member to agree the course of action in order for officer to progress.

Cabinet Committee recommendations and other consultation:

The decision will be considered by the Property Sub-Committee 21 March 2017 and comments will be included here for consideration by the Cabinet member on taking the decision.

Any alternatives considered and rejected:

Alternatives considered and rejected are fully explained within the report to the Committee.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

None

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signed

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date

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item B2

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of the Local Government Act 1972.

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of the Local Government Act 1972.

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From: Gary Cooke, Cabinet Member for Corporate and Democratic Services

Rebecca Spore, Director of Infrastructure.

To: Property Sub Committee, Policy and Resources Committee

Subject: Delivery of construction projects under the **Priority School Building Programme** Round 2 at Swadelands School, Lenham and Benenden C of E Primary School, Benenden, on behalf of the Education Funding Agency.

Key decision

Classification: Unrestricted

Past Pathway of Paper: None

Future Pathway of Paper: None

Electoral Division: Jenny Whittle; Maidstone Rural East for Swadelands School
Sean Holden; Cranbrook for Benenden C of E Primary School

Summary: The Education Funding Agency (EfA) has asked Kent County Council to deliver construction projects within Kent as part of the Priority Schools Building Programme Round 2. Kent County Council will receive the necessary funding for the construction project at each school and a Project Delivery Grant to cover all appropriate costs to manage the project.

Recommendation(s):

The Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member for Corporate and Democratic Services on the proposed decision to:

- a) Authorise the Director of Infrastructure in Consultation with the General Counsel to enter into any necessary contracts/agreements on behalf of the County Council and
- b) Authorise the Director of Infrastructure to ensure that the appropriate level of funding is received from the Education Funding Agency to cover the costs of these projects to ensure the Kent County Council does not incur any unforeseen costs and
- c) Authorise the Director of Infrastructure to be the nominated Authority Representative within the relevant contracts/agreements and to enter into variations as envisaged under the contract terms.

1 Introduction

- 1.1 On 1 May 2014, the Minister of State for Schools announced that the Government would fund a further phase of the Priority School Building Programme (PSBP), with a value of around £2 billion. The new phase, known as PSBP2, will be a five year programme operating between 2015 and 2021 and will undertake major rebuilding and refurbishment projects in schools and sixth form colleges in the very worst condition.
- 1.2 The Priority School Building Programme is not intended to replace those wider efforts to support local authorities, dioceses, sixth form colleges, academies and multi-academy trusts in addressing the condition needs of their estates. Rather it will run alongside these in order to address individual projects that are of such a significant scale that it would be difficult to pay for them through regular formulaic maintenance allocations.
- 1.3 On 9 February 2015, The Secretary of State for Education and the Minister of State for Schools, , announced that 277 schools across the Country have been successful in their applications. KCC were successful for 7 of the schools in addition 6 further schools across Kent where Academies bid directly.
- 1.4 This programme and its predecessor PSBP Round 1 was instigated following the demise of the Building Schools for the Future Programme in 2012. The PSBP1 successfully secured investment into 13 schools across Kent, all being delivered directly by the Education Funding Agency (EFA), which in the main are whole school replacement projects.
- 1.5 For PSBP2 the criterion has been amended and does not always replace all of the school's accommodation. The emphasis is more upon a block replacement and is based on poor condition rather than any other criteria such as suitability or sufficiency. Only in exceptional circumstances will a whole school be replaced.
- 1.6 To allow for KCC to include Basic Need expansion on PSBP schools, where this was appropriate, a budget allocation was set aside for these particular projects. A budget amount of £9.6million has been approved within the Budget Book in total for both the PSBP1 and PSBP2 schemes.
- 1.7 To aid the delivery of the PSBP2 programme, the EfA have decided to offer Local Authority's the opportunity to deliver a scheme locally, using local procurement arrangements and local supply chains. These schemes will be funded by the EfA, but the opportunity for the Local Authority to contribute additional funds for basic need expansion is also available.
- 1.8 It is being proposed that two schemes proceed through this Local Delivery approach:

- 1.8.1 Swadelands School, Lenham – replacement of Science Block
- 1.8.2 Benenden C of E Primary School – relocation and expansion on a new site
- 1.9 KCC has entered into a Memorandum of Understanding to develop the schemes and will receive up to £150K for each scheme to manage the design and construction of each project through a Project Delivery Grant.
- 1.10 KCC will be the contracting body and will receive the capital funding to deliver each scheme. This is an agreed approach and a Funding Approval Letter will be issued prior to KCC entering into a construction contract.
- 1.11 A Risk profile will be agreed with the EfA to ensure that all risks and costs are understood and risk to KCC has been mitigated.
- 1.12 KCC has a good working relationship with the EfA, following the successful delivery of the Batched Academy's programme between 2009 and 2014, together with the Trinity Free School in Sevenoaks in 2015/16.

2 Swadelands School, Lenham

- 2.1 The PSBP2 project is to replace the Science Block, which is in poor condition throughout the building. The roof and roof lights are in bad condition and leak frequently. The structure of the building is an old style CLASP building with metal crittal windows, single glazed and drafty. The building has a large amount of asbestos and suffers from poor insulation to the walls and floor. The Science facility is undersized for current standards.
- 2.2 Swadelands School is currently transferring to Academy status with the Valley Invicta Academy Trust (VIAT). The project was successful under PSBP2 prior to the change to Academy status. The new Academy Trust are very keen for this project to be delivered as part of the transformation of the school from Ofsted Special Measures status.
- 2.3 A feasibility report has been issued to the EfA for approval which is expected imminently.
- 2.4 Subject to appropriate agreement in place, it is proposed that the project is procured using KCC's Principal Contractor Framework. At this point the EfA will then agree a funding package and issue a Funding Approval Letter. KCC will then enter contract and manage demolition and construction of the new Science Block.
- 2.5 KCC have worked well with the EFA and have secured additional classroom space taking the new building to a size of 1,068m² from the original size of 651m². Planning Approval has already been granted for the new Science Block.

3 Benenden C of E Primary School, Benenden

- 3.1 The PSBP2 project is a full replacement of the school to a new site within the Benenden village. The current school consists of 4 undersized and poor quality buildings. The school also uses the local village hall and playing fields for sports and assemblies.
- 3.2 This project has been an aspiration of the school and governors for some time and the successful bid to the EFA under PSBP2 has brought this to reality. However due to the new site being in an Area of Outstanding Natural Beauty there are a number of site constraints and local objections which need to be managed; thereby making this scheme more expensive than other similar projects. There have been lengthy discussions with the local parish council about additional parking on the Village Hall site, although these discussions have not proved successful as yet.
- 3.3 KCC require through Basic Need funding the pupil numbers at the school to increase to 210 from the current 175. An additional 35 places are required. KCC and the EFA are in discussion about the extent of KCC's contribution to this scheme, but will be commensurate with the increased size of building.
- 3.4 This scheme is currently at the Feasibility stage, and is expected to be approved by the end of March 2017. At this stage, it will be procured through the Kent Contractors Framework. There is an existing Planning Approval for this scheme which expires in October 2017, so every effort is being made to ensure this date is met for start on site.
- 3.5 The extent of external works on the new site have increased the cost of this project considerably, but following an extensive site search, no other site offered the benefit of the current proposed new site, with the additional space required to enable the school to expand to a full 1FE PAN.
- 3.6 Costs are currently being negotiated with the EFA, and there is acknowledgement of the unique factors that may increase the overall costs of this scheme above what would normally be expected. This could be up to £2.4 million. This is however over and above the normal EFA levels and agreement is required on how these additional costs will be apportioned between the parties and within the funding that is available to KCC through its Basic Need contribution and PSBP budget line.

4 Financial Implications

- 4.1 The cost of the Swadelands School, Lenham project is expected to be in the region of £2.5 to £3 million, which will be fully funded by the EFA.
- 4.2 The cost of the Benenden Cof E Primary School project is expected to be in the region of £5.5 million, of which KCC will contribute to the additional Basic Need requirement of 35 pupils. The EFA will fund the majority of the project costs and there is also discussion to be held with the diocese who will have a land receipt against the land sale.. Any additional capital requirement from KCC will be through agreement from the Cabinet Member for Education and Health Reform.

4.3 The EFA will provide KCC with a Project Support Grant, which gives sufficient funds to cover initial feasibility report costs, surveys and pre-contract investigations, together with the Project Management costs to manage the scheme from the start to completion.

5 Legal implications

5.1 KCC has a statutory duty to provide pupil places and at Benenden a need for an additional 35 spaces has been highlighted.

5.2 KCC will accept the contractual responsibilities for the construction contracts to deliver the Swadelands School and Benenden C of E Primary School projects. These responsibilities are within the standard risk profile for a school construction contract and include issues such as asbestos and Section 278 works. We will mitigate the asbestos risk by undertaking early surveys to identify any asbestos that is present in the buildings and Section 278 by liaising with Planners and Highways .

6 Equalities implications

6.1 There are no equalities issues as these projects both replace existing facilities.

7 Risks

The following table provides an indication of the top 5 current risks associated with the PSBP2 local delivery schemes:

Risk Event	Impact 1-5 (a)	Likelihood 1-5 (b)	Risk Rating (a) x (b)	Mitigating Action	Risk Owner
Swadelands EFA funding contribution	5	2	10	Agreement of full contribution to scheme costs.	Esther Larner
Swadelands – Gas Pipe	4	4	16	Gas Diversion is required before the new building is constructed. To be fully funded by the EFA	Esther Larner
Benenden – Agree contract sum and funding envelope	5	4	20	Following tender process – detailed consideration of apportionment of costs between KCC for Basic Need expansion and EFA for school replacement.	Matthew Webster
Benenden – Site conditions	4	3	12	Detailed analysis of extent of external works to be finally agreed, as current proposal is for a considerable amount of ground works to level the site.	Matthew Webster

All PSBP schemes – S278 works, contractual claims.	4	2	8	All schemes will be reviewed to ensure that KCC is not exposed to unforeseen risks. However, the EFA expect KCC to accept an element of risks with this programme. Where appropriate these risks will be managed. On the Swadelands and Benenden schemes no risks of this nature are expected.	Esther Larner
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8 Other corporate implications

- 8.1 The Education and Young People Services (EYPS) Directorate are fully informed and engaged with the over PSBP programme support the delivery of both Swadelands and Benenden School projects.

9 Governance

- 9.1 The Director of Infrastructure in Consultation with the General Counsel will be authorised to enter into any necessary contracts/agreements on behalf of the County Council.

10 Conclusions

- 10.1 The opportunity for KCC to deliver construction projects directly for the EFA continues the working relationship which began with the delivery of the Batched Academy programme and the Trinity Free School project in Sevenoaks.
- 10.2 Swadelands School and Benenden C of E Primary School both have serious condition issues with the current school accommodation and the opportunity to deliver new accommodation is vital to both school's continued success.
- 10.3 KCC will have appropriate funding provided by the EFA to cover the costs related to these schemes. For the Basic Need requirement at Benenden C of E Primary School, funds have already been allocated within the Budget Book to fund the basic need element.
- 10.4 The EFA will provide a Project Support Grant to cover resources costs to deliver this scheme.

9. Recommendation(s):

The Property Sub-Committee is asked to consider and endorse, or make recommendations to the Cabinet Member for Corporate and Democratic Services on the proposed decision to:

- a) Authorise the Director of Infrastructure in Consultation with the General Counsel to enter into any necessary contracts/agreements on behalf of the County Council and
- b) Authorise the Director of Infrastructure to ensure that the appropriate level of funding is received from the Education Funding Agency to cover the costs of these projects to ensure the Kent County Council does not incur any unforeseen costs and in consultation with the Cabinet Member for Education and Health Reform agree apportionment of costs in excess of the £1million currently budgeted
- c) Authorise the Director of Infrastructure to be the nominated Authority Representative within the relevant contracts/agreements and to enter into variations

10. Background Documents

10.1 Forward Executive Decision notice to be issued in March 2017.

11. Contact details

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Relevant Director: Rebecca Spore
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KENT COUNTY COUNCIL – PROPOSED RECORD OF DECISION

DECISION TO BE TAKEN BY:

Gary Cooke,

Cabinet Member for Corporate and Democratic Services

DECISION NO:

17/00036

For publication**Key decision**

KCC will enter into construction contracts and other related agreements to enable pre-agreed projects under the Priority School Building Programme to be managed by KCC at Swadelands School, Lenham and Benenden C of E Primary School, Benenden, on behalf of the Education Funding Agency.

Subject Matter / Title of Decision

The Education Funding Agency has asked Kent County Council to deliver construction projects within Kent as part of the Priority Schools Building Programme Round 2. Kent County Council will receive the necessary funding for the construction project at each school and a Project Delivery Grant to cover all appropriate costs to manage the project.

Decision:

As Cabinet Member for Corporate and Democratic Services I propose to agree to:

- a) Authorise the Director of Infrastructure in Consultation with the General Counsel to enter into any necessary contracts/agreements on behalf of the County Council and
- b) Authorise the Director of Infrastructure to ensure that the appropriate level of funding is received from the Education Funding Agency to cover the costs of these projects to ensure the Kent County Council does not incur any unforeseen costs and
- c) Authorise the Director of Infrastructure to be the nominated Authority Representative within the relevant contracts/agreements and to enter into variations as envisaged under the contract terms.

Reason(s) for decision**Cabinet Committee recommendations and other consultation:**

The decision will be considered by the Property Sub-Committee at its meeting scheduled 21 March

2017

Any alternatives considered and rejected:

Full details are contained within the report.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

None

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signed

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date

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item C1

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