

POLICY AND RESOURCES CABINET COMMITTEE

Tuesday, 22nd February, 2022

10.00 am

online





AGENDA

POLICY AND RESOURCES CABINET COMMITTEE

**Tuesday, 22 February 2022, at 10.00 am
online**

Ask for: **Theresa Grayell**
Telephone: **03000 416172**

Membership (16)

- Conservative (12): Mr R J Thomas (Chair), Mr R A Marsh (Vice-Chairman), Mr P V Barrington-King, Mr P Bartlett, Mr T Bond, Mr T Cannon, Mr N J D Chard, Mr G Cooke, Mr P C Cooper, Mr M Dendor, Mr R C Love, OBE and Mr J P McInroy
- Labour (2): Mr A Brady and Dr L Sullivan
- Liberal Democrat (1): Mr A J Hook
- Green and Independent (1): Mr P Stepto

UNRESTRICTED ITEMS

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

- 1 Introduction
- 2 Apologies and Substitutes
- 3 Declarations of Interest by Members in items on the Agenda
- 4 22/00013 - Use of s203 powers in respect of Land in Sevenoaks contained in titles TT47148 and K971987. Implementation of planning consent KCC/SE/0045/2021 (Pages 1 - 38)

Motion to exclude the press and public for exempt business

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 paragraphs 3 and 5 of part 1 of

Schedule 12A of the Act.

Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information)

Paragraph 5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings

EXEMPT ITEMS

(At the time of preparing the agenda, the only exempt material was an appendix to agenda item 4. During discussion of this and any other such items which may arise, the meeting is likely NOT to be open to the public)

Benjamin Watts
General Counsel
03000 416814

Monday, 14 February 2022

From: Peter Oakford, Deputy Leader and Cabinet Member for Finance,
Corporate and Traded Services

Rebecca Spore, Director of Infrastructure

To: Policy and Resources Cabinet Committee - 22nd February 2022

Subject: DECISION 22/00013 - Use of s203 powers in respect of Land in
Sevenoaks contained in titles TT47148 and K971987.
Implementation of planning consent KCC/SE/0045/2021.

Decision type: Key Decision: it affects more than 2 Electoral Divisions

Classification: UNRESTRICTED Report and EXEMPT Appendix F.

EXEMPT Appendix F – not for publication. Paragraph 3 and
paragraph 5 of Schedule 12A of the Local Government Act 1972,
as amended, refers.

Division: Sevenoaks Town and Sevenoaks North and Darent Valley

Local members: Richard Streatfield and Roger Gough.

Summary: The report provides the rationale for the use of the Council's powers contained in the Housing and Planning Act 2016 in respect of the specific sites and details how necessary legislative prerequisites have been met and presents the public interest case for use of the powers.

Recommendation(s):

The **Policy and Resources Cabinet Committee** is asked to **consider and endorse or make recommendations** to the **Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services** on the proposed decision to:

1. Exercise the Council's powers granted by section 203 of the Housing and Planning Act 2016 ("Section 203") to override restrictive covenants relating to Land on the South Side of Seal Road (**TT47148**) and adjacent site occupied by Trinity School and Tunbridge Wells Grammar School (**K971987**), as necessary to facilitate the implementation of planning permission ref **KCC/SE/0045/2021**:

"New external sports facilities - comprising of two multi-use games areas and two all-weather floodlit pitches on the existing school playing fields, and change of use of an area of land to the east of the school site to grass playing field, together with associated landscaping and access works"

2. To delegate authority to the **Director of Infrastructure**, in consultation with the **Deputy Leader and Cabinet Member for Finance, Corporate and Traded services**, to formalise terms and authorise the execution of any necessary or desirable legal documentation to give effect to the above decision.
3. To delegate authority to the **Director of Infrastructure**, in consultation with the **Deputy Leader and Cabinet Member for Finance, Corporate and Traded services**, to finalise the terms of any compensation agreement in relation to Kent County Council exercising its statutory powers to override the restrictive covenants in relation to the implementation of the planning permission.

1. Introduction

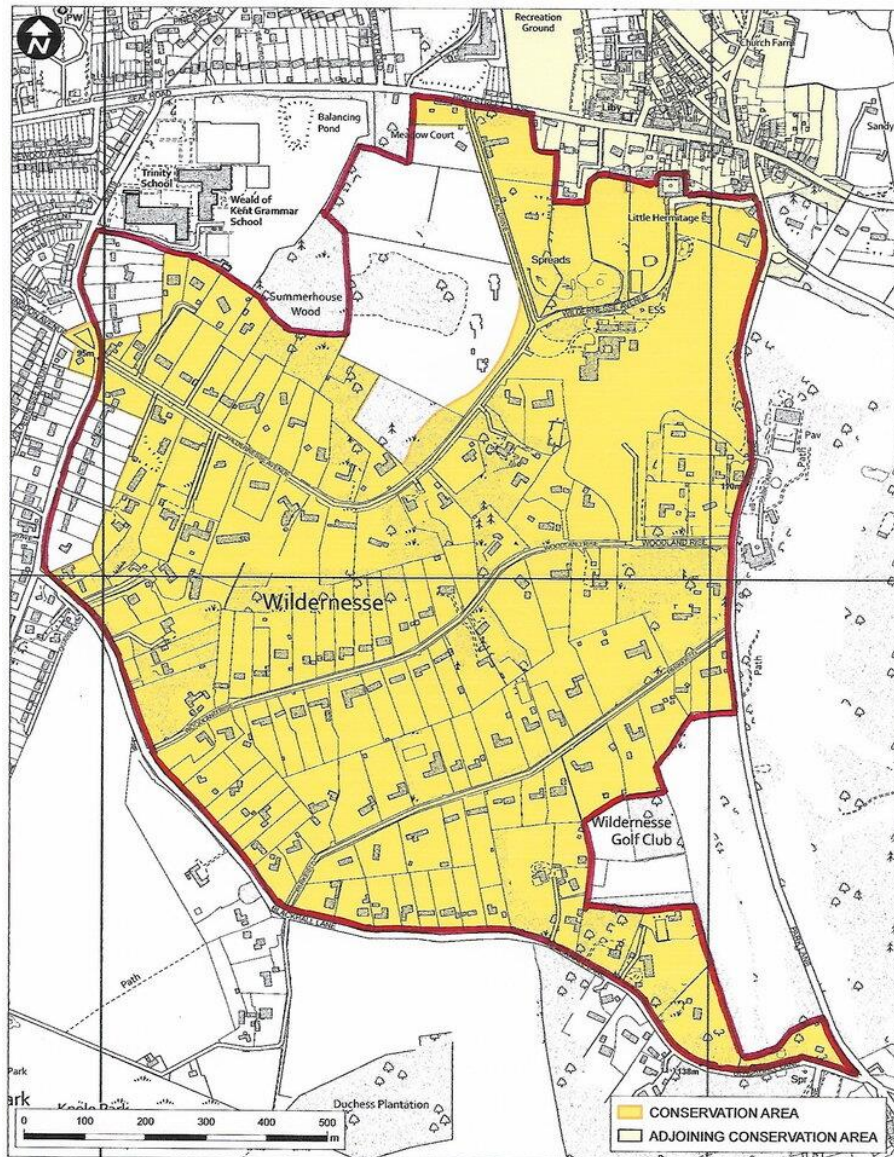
- 1.1 The report sets out the background for the Council's acquisition of *The Land* contained in title **TT47148** and the proposals for its use set out in *Planning Permission* ref **KCC/SE/0045/2021** (“**Planning Permission**”).
- 1.2 The legal context of *The Land* and the adjoining *School Site* are then discussed, including the implications which may arise if the Council were to implement the Planning Permission in the absence of exercising its Section 203 powers.
- 1.3 The report then outlines the Council's relevant powers contained in the Housing and Planning Act 2016, their application, their limitations, and repercussions arising from their use.
- 1.4 The positive public interest case for the use of the powers is discussed.

2. The Land, the School Site, and the Planning Consent

- 2.1 Kent County Council holds the freehold title of land contained in title **K971987**, the “*School Site*”. This site is occupied by the Trinity School, the Tunbridge Wells Boys Grammar Annexe, and the Weald of Kent Grammar School annexe.
- 2.2 In 2020 the Council acquired the freehold of “*The Land*” contained in title **TT47148** adjacent to the existing *School Site*. Following feasibility investigations, *The Land* was considered suitable for the creation of additional grass sporting facilities for use by the schools on the *School Site*.
- 2.3 Planning Permission was sought for a scheme to deliver new sporting facilities across both *The Land* and the *School Site*. The Planning Permission was granted under ref **KCC/SE/0045/2021** in December 2021.
- 2.4 The Planning Permission included the creation of new MUGAs and All-weather pitches on the *School Site*, and the creation of grass playing pitches on *The Land*.

3. The Legal Context of The Land and School Site

- 3.1 *The Land* was acquired from the Royal Society for Blind Children (RSBC), who had operated a residential education facility from the original manor house currently known as Wildernesse House, and formerly as Dorton House when under the RSBC's ownership.
- 3.2 The Land forms part of the original Wildernesse Estate (“Estate”) located to the northeast of Sevenoaks. When the land surrounding the original manor house was sold in the 1920's, various restrictive covenants were put in place to control and limit the form of development which could take place across the Estate.
- 3.3 These covenants included plot density restrictions, residential usage restrictions, and plot setbacks among others.
- 3.4 Due to the nature of the estate as a building scheme the restrictive covenants which burden/benefit the Estate are mutually enforceable by any benefitting landowner against any other landowner.



- 3.5 The Estate is typified by substantial detached properties, c160 over the Estate's c300acre area. Density in the centre is higher, where a recently developed residential 'care village' is located.
- 3.6 The above plan provides an indicative red line showing the extent of the Estate however subsequent legal advice indicates that further properties outside the periphery may also be benefitted / burdened by the covenants. This does not materially impact the decision to be taken.
- 3.7 If the Council were to implement the *Planning Permission* in the absence of legal agreements to release the restrictive covenants, or a decision by the Council to exercise the specific statutory powers within Section 203, there is a risk that any individual beneficiary of the covenants (or a total c.283 identified potential beneficiaries) could seek injunctive relief from the courts to prevent the Council using the land for the intended purpose.

4. The Powers contained in the Housing and Planning Act 2016

- 4.1 The Council has statutory powers to override restrictive covenants affecting *The Land and School Site* pursuant to Section 203.

- 4.2 The use of such powers relies on the Council first satisfying various conditions before a decision is taken to exercise the powers and implement the planning permission.

The key conditions are:

- 4.2.1 There must be planning permission for the proposed use.
 - 4.2.2 The land has become vested in a specified authority or has been appropriated by a local authority for planning purposes.
 - 4.2.3 The authority could acquire the land compulsorily for the purposes of carrying out any works, for that use.
 - 4.2.4 The use is for purposes related to the purposes for which the land was vested, acquired, or appropriated.
- 4.3 The effect of the Council exercising the use of Section 203 powers, as provided for under S204 of the same act, is that the beneficiaries' right to seek injunctive relief in relation to breach of the covenants, is replaced with a statutory right to compensation. Any claim for compensation would need to be made on an individual basis.
 - 4.4 The level of compensation individual beneficiaries of the covenants would be entitled to is directly linked to the diminution in the value of their property as a result of the covenants being breached in relation to the implementation of the Planning Permission.
 - 4.5 It is important to note that there is a geographic element to the level of compensation, with those located closest to the Land arguably being the most likely to be able to demonstrate the value of their property has been impacted.
 - 4.6 Specialist valuation advice has been sought, as set out in the exempt appendix F, and will be available to the Cabinet Member when making a final decision. It is however anticipated that the level of compensation and the diminution in value of properties that benefit from the covenants that will be able to be demonstrated is low.

5. The application of The Powers in relation to The Land and School Site

- 5.1 The Land was acquired for, and is held for, educational purposes and the implementation of the Planning Permission would be in accordance with those purposes. The County Council has multiple relevant powers of compulsory acquisition and the public interest case for the use of the powers is set out in the attached appendix. All the conditions within Section 203, and as set out in Section 4 have, therefore, been met.
- 5.2 Following the grant of the Planning Permission in December 2021, the Council arranged for all, reasonably identifiable, potential beneficiaries of the covenants to be contacted inviting their views on the Council's proposal to use its Section 203 powers.
 - 5.2.1 54 responses were received from potential beneficiaries contacted.
 - 5.2.2 The majority of responses followed a standard format acknowledging the Council's powers under the Act however requesting the Council enter into a dialogue with the Wildernesse Residents Association with a view to entering into a Deed of Covenant to 'resurrect' the

covenants if the Council subsequently intended to use for the site different purpose to that contained in the Planning Permission.

- 5.3 Due to the mechanics of the legislation, it is not necessary for the Council to enter a Deed of Covenant to give effect to the request made by a number of the potential beneficiaries. The covenants themselves are not extinguished by the use of Section 203 powers; they are only overridden in relation to the specific *Planning Permission*.
- 5.4 Other responses were received including those making it clear they did not object to the proposals, and some objecting fundamentally to the use of Section 203 powers.
- 5.5 A full list of comments will be shared with the relevant Cabinet Member prior to the decision being taken.

6. Options considered

- 6.1 Kent County Council do not exercise powers granted by the 2016 Housing and Planning Act. This would result in a perpetual risk that injunctive relief could be sought to prevent the Council implementing the Planning Permission and using the Land for the stated purposes in the Planning Permission including the delivery of sporting facilities for educational use. If injunctive relief was sought, and obtained, the Council would be compelled to cease use of the Land for the stated purpose; this would have an unacceptable impact on the Council's delivery of its statutory education functions.
- 6.2 Kent County Council to enter individual legal negotiations with all identified beneficiaries of the covenants with a view to coming to discrete agreements, removing the risk of injunctive relief without exercising Section 203 powers. Due to the number of potential beneficiaries identified (c.283) this is not considered viable. The Council's powers granted in the 2016 Act provide for a clearly documented and transparent legal route for dealing with the restrictive covenants.

7. Financial Implications

- 7.1 As detailed earlier in the report the exercising of Section 203 power gives rise to a statutory route to compensation claims under section 204 of the Housing and Planning Act 2016.
- 7.2 Legal advice has clarified that such compensation claims would be linked to the diminution in the value of the property benefitting from the covenants as a result of the covenants being breached.

8. Legal implications

- 8.1 The Council has taken extensive legal advice in relation to the intention to use Section 203 powers, and the implications are discussed throughout the body of this report and the exempt appendix F.

9. Other corporate implications

- 9.1 If the decision is not taken to exercise the Council's Section 203 powers, the planning consent cannot be implemented without the risk of beneficiaries of the restrictive covenants seeking injunctive relief through the courts.
- 9.2 If injunctive relief was obtained this would have a direct impact on the Council's ability to use the sporting facilities, impacting the ability of the schools on the School Site to function and having a detrimental impact on the delivery of the Council's statutory Education functions.

10. Governance

- 10.1 The governance process is being followed in relation to the Council's decision making procedure and the use of its Section 203 powers. The proposed decision incorporates several delegations to the Director of Infrastructure, in respect of the execution of legal documentation and the finalising of terms of any claims to compensation which may arise from the Council exercising its Section 203 powers.
- 10.2 Data Protection best practice has been followed, the public consultation process with potential beneficiaries involved the collation and storage of personal information.
- 10.3 This decision relates solely to the exercising of statutory powers in relation to covenants, no adverse Equality Impacts have been identified.

11. Conclusions

- 11.1 Following the proposed decision, the Council intends to implement Planning Permission **KCC/SE/0045/2021** relating to the delivery of new sporting facilities for the three schools operating from the *School Site* in Sevenoaks.
- 11.2 The sites to which the *Planning Permission* relates to is burdened with restrictive covenants limiting the use of the Land. It appears that the Council may breach these restrictive covenants if it were to implement the *Planning Permission*. This would give rise to an ability for beneficiaries of the covenants to seek injunctive relief. If injunctive relief was obtained, the Council would not be able to use the Land for the intended purpose.
- 11.3 The Council has powers contained within the Housing and Planning Act 2016 which allow it to override restrictive covenants subject to meeting the requirements contained in the legislation.
- 11.4 The use of these powers would allow the Council to implement the *Planning Permission* without the risk of injunctive relief being obtainable.
- 11.5 The requirements in relation to exercising the Council's Section 203 powers will have been met at the point the decision to use them is taken.
- 11.6 There is a compelling public interest case for the use of the Council's Section 203 powers in order to deliver the Council's education statutory responsibilities.

11.7 Once the powers are exercised the beneficiaries' ability to seek injunctive relief is replaced with a statutory right to compensation. The level of compensation is related to the diminution in their property's value as a result of the restrictive covenants being breached.

12. Recommendation(s)

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The Policy and Resources Cabinet Committee is asked to **consider and endorse or make recommendations** to the **Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services** on the proposed decision to:

1. Exercise the Council's powers granted by Section 203 of the Housing and Planning Act 2016 to override restrictive covenants relating to Land on the South Side of Seal Road (**TT47148**) and adjacent site occupied by Trinity School and Tunbridge Wells Grammar School (**K971987**) as necessary to facilitate the implementation of planning permission ref **KCC/SE/0045/2021**:

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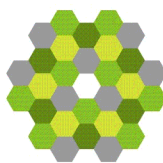
13. Appendices

- 13.1 Appendix A - Title Plan **TT47148**
- 13.2 Appendix B - Title Plan **K971987**
- 13.3 Appendix C - Decision notice **KCC/SE/0045/2021**
- 13.4 Appendix D - Public interest argument
- 13.5 Appendix E - Proposed Record of Decision.
- 13.6 Appendix F - Exempt appendix

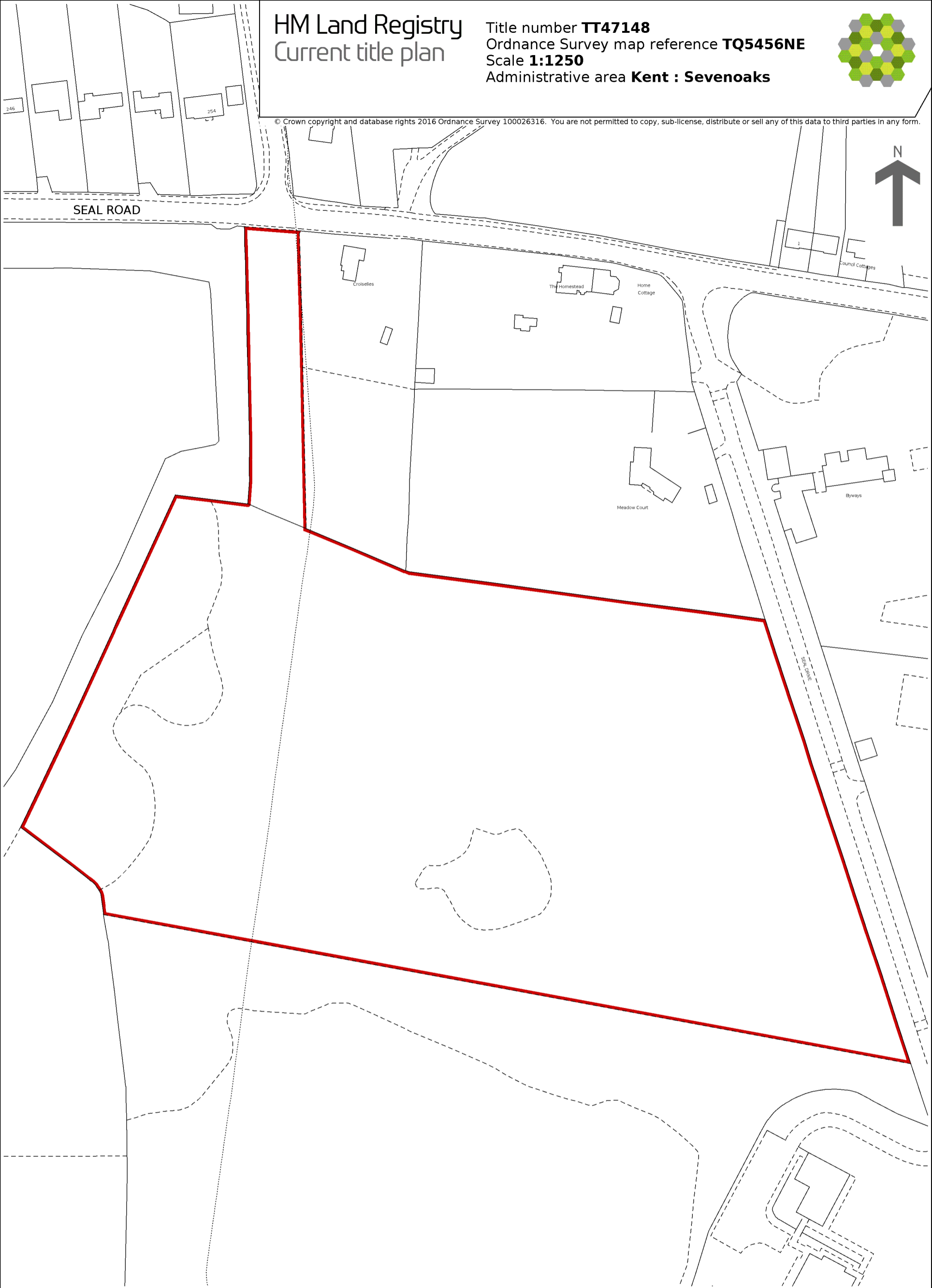
14. Contact details

Report Author:	Relevant Director:
Hugh D'Alton, Investment and Disposals	Rebecca Spore, Director of Infrastructure
Telephone 03000 418 835	Telephone 03000 416 716
Email Hugh.D'Alton@kent.gov.uk	Email rebecca.spore@kent.gov.uk

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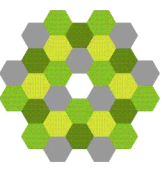


This is a print of the view of the title plan obtained from HM Land Registry showing the state of the title plan on 10 February 2022 at 12:48:51. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

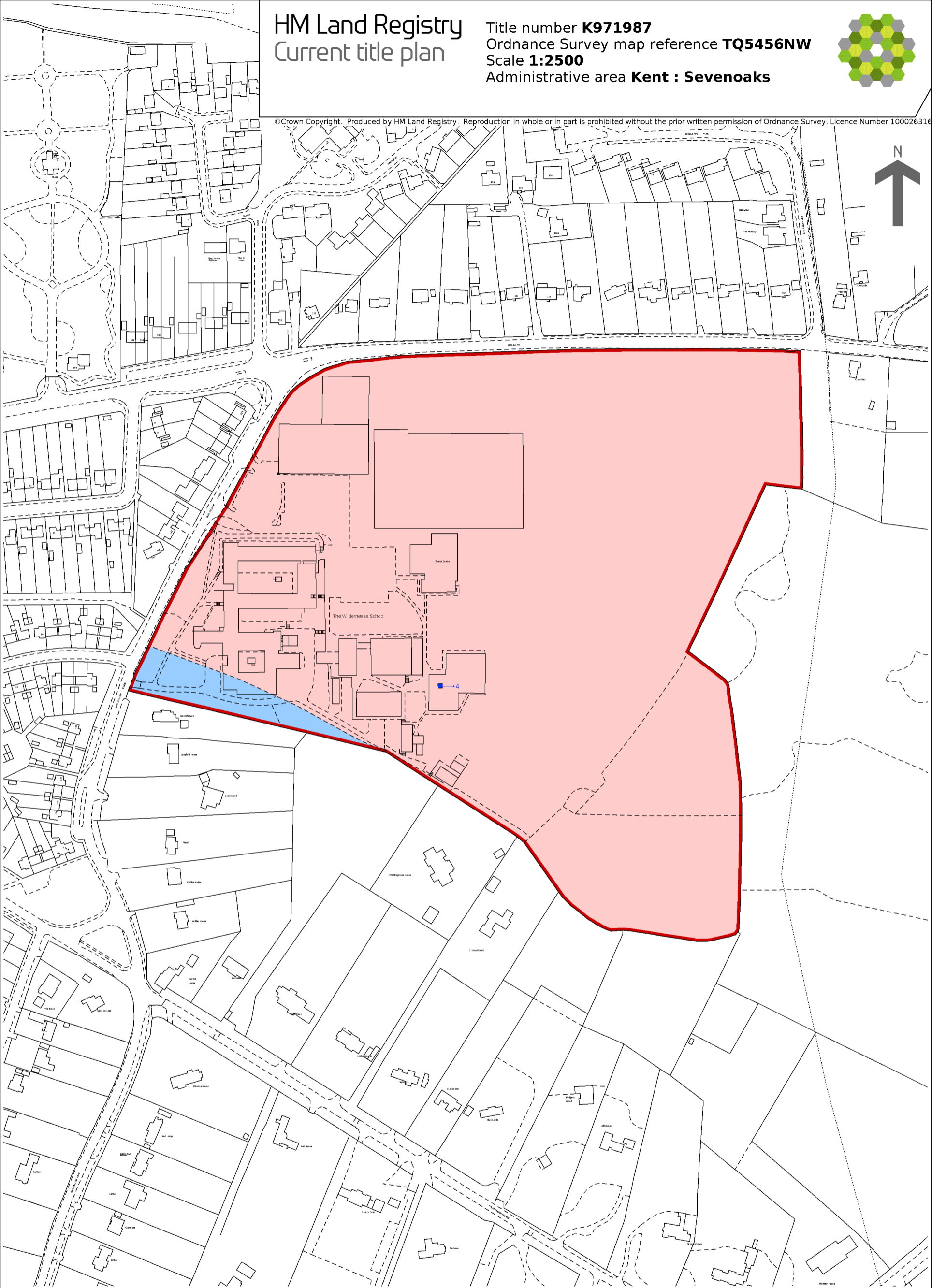
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HM Land Registry Current title plan

Title number **K971987**
Ordnance Survey map reference **TQ5456NW**
Scale **1:2500**
Administrative area **Kent : Sevenoaks**



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This is a print of the view of the title plan obtained from HM Land Registry showing the state of the title plan on 10 February 2022 at 12:49:28. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

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KCC Infrastructure Division
c/o 3BM Planning
Beckett House
14 Billing Road
Northampton
NN1 5AW

Planning Applications Group
First Floor, Invicta House
County Hall
Maidstone
Kent ME14 1XX
Tel: 03000 411200

Website: www.kent.gov.uk/planning
Email: planning.applications@kent.gov.uk
Direct Dial/Ext: 03000 413379
Text Relay: 18001 03000 417171
Ask For: Miss Mary Green
Your Ref:
Our Ref: SE/21/891
Date: 08 December 2021

FAO: 3BM Planning

TOWN AND COUNTRY PLANNING GENERAL REGULATIONS 1992

Dear Sir/Madam

APPLICATION: SE/21/891 (KCC/SE/0045/2021)

PROPOSAL: New external sports facilities - comprising 2 multi use games areas & 2 all weather floodlit pitches on the existing school playing fields, and change of use of an area of land to the east of the school site to grass playing field, together with associated landscaping and access works

LOCATION: Sevenoaks Grammar Annexe/Trinity School site, Seal Hollow Road, Sevenoaks, Kent TN13 3SN

The above mentioned planning application received for the formal observations of the County Council, as County Planning Authority has now received consideration. The County Council's Planning Applications Committee considered the application at its meeting on 10 November 2021

I write to inform you that the County Planning Authority resolved that planning permission be Granted with Conditions as set out in the attached formal notification.

Please note the conditions imposed and any informatives as described.

Yours faithfully

Sharon Thompson
Head of Planning Applications Group



Reference Code of
Application: SE/21/891

KENT COUNTY COUNCIL

TOWN AND COUNTRY PLANNING ACTS
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(ENGLAND) ORDER 2015
TOWN AND COUNTRY PLANNING GENERAL REGULATIONS 1992 (as amended)

NOTIFICATION OF GRANT OF PERMISSION TO DEVELOP LAND

To: KCC Infrastructure Division
c/o 3BM Planning
Beckett House
14 Billing Road
Northampton
NN1 5AW

TAKE NOTICE that the KENT COUNTY COUNCIL, the County Planning Authority under the Town and Country Planning Act, HAS GRANTED PERMISSION for development of land situated at Sevenoaks Grammar Annexe/Trinity School site, Seal Hollow Road, Sevenoaks, Kent TN13 3SN and being new external sports facilities - comprising 2 multi use games areas & 2 all weather floodlit pitches on the existing school playing fields, and change of use of an area of land to the east of the school site to grass playing field, together with associated landscaping and access works, referred to within the application for permission for development dated 27 February 2021, received on 1 March 2021, as amplified and amended by details referred to in the attached Schedule 1, SUBJECT TO THE FOLLOWING CONDITIONS:

Time Limit

1. The development to which this permission relates shall be begun not later than the expiration of 3 years beginning with the date of this permission;

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

The development to be carried out in accordance with the permitted details

2. The development hereby permitted shall be carried out and completed in all respects strictly in accordance with the submitted details, documents and plans referred to in **Schedule 1 attached** and/or as otherwise approved pursuant to the conditions below;

As part of the Council's commitment to equalities if you have any concerns or issues with regard to access to this information please contact us for assistance.

Reason: For the avoidance of doubt and to maintain planning control over the development.

Removal of Permitted Development Rights

3. Notwithstanding the provisions of Parts, 2A, 7M, 7N and 12 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, replacing or re-enacting that Order), no buildings, plant, machinery, structures and erections, whether fixed or moveable, including fencing, or hard surfacing, shall be located at the eastern playing field site accessed via Seal Drive;

Reason: In order to protect the visual amenities of the area.

Landscaping

4. The hedge and tree planting scheme detailed in the application and shown on drawing numbers SGAE BBA ZZ 00 DR L 8021 P06 Proposed Soft Landscape 2 of 6, SGAE BBA ZZ 00 DR L 8022 P06 Proposed Soft Landscape 3 of 6, SGAE BBA ZZ 00 DR L 8023 P05 Proposed Soft Landscape 4 of 6, SGAE BBA ZZ 00 DR L 8024 P04 Proposed Soft Landscape 5 of 6, & SGAE BBA ZZ 00 DR L 8025 P02 Proposed Soft Landscape 6 of 6, shall be implemented within the first planting and seeding seasons following the completion of the development hereby permitted, and maintained for a period of not less than 5 years, unless otherwise approved by the County Planning Authority;

Reason: In the interests of visual amenity and in order to achieve high quality sustainable development.

5. In the event of any trees and hedges included in the landscaping scheme, approved pursuant to condition (4) above, or any replacement trees or hedges being removed, destroyed or dying or dead within 5 years of the planting, they shall be replaced within 12 months in the same places by large nursery stock of the same species;

Reason: In the interests of visual amenity.

Protection of Trees to be Retained

6. The development hereby permitted shall be carried out in such a manner as to avoid damage to any existing trees/hedges to be retained, including their root system by providing/installing tree protection measures in accordance with the submitted details, and by observing the following:
 - all trees to be preserved shall be marked on site and protected during any operation on site by fencing to height and construction detail in accordance with British Standard: BS 5837:2012 (*Trees in relation to design, demolition and construction - recommendations*), and located in accordance with BS 5837, or as otherwise agreed by the County Planning Authority;
 - no fires shall be lit within the spread of the branches of the trees;
 - no materials or equipment shall be stored within the spread of the branches of the trees;
 - any damage to trees shall be made good by pruning in accordance with good arboricultural practice, in accordance with BS 3998 2010 (*Tree work – recommendations*);
 - no roots shall be cut and no works whatsoever shall be constructed or carried out within the protected zone, in accordance with British Standard: BS 5837:2012; and
 - ground levels within the protected zone shall not be raised or lowered in relation to the existing ground level, except as may be otherwise agreed in writing by the County Planning Authority.

Reason: In order to protect existing trees and hedging.

Ecology

7. Any vegetation clearance and/or works that may affect possible nesting sites shall be **undertaken outside the bird breeding season, mid-March to August inclusive, or be supervised by a suitably qualified ecologist during the breeding period;**

Reason: To ensure that nesting birds are not unduly disturbed or killed.

8. The development hereby permitted shall be carried out in strict accordance with the precautionary measures, recommendations, and mitigation works, detailed in the submitted Protected Species Surveys/Scoping Reports.

Reason: In the interests of the environment and wildlife.

9. **Within 3 months of the date of this decision**, a detailed mitigation and enhancement strategy, to include details of the reptile receptor site, details of how the remaining grassland within the eastern field would be enhanced and details of ecological enhancement features within the wider site, shall be submitted to and approved in writing by the County Planning Authority and shall be implemented as approved;

Reason: In the interests of nature conservation and to ensure the habitat areas are managed appropriately throughout the life of the development.

10. **Within 6 months of the date of this decision**, a woodland management plan, setting out how the woodland on site would be managed to benefit biodiversity, shall be submitted to and approved in writing by the County Planning Authority and shall be implemented as approved;

Reason: In the interests of nature conservation and to ensure the habitat areas are managed appropriately throughout the life of the development.

Access by Community Users of the Facilities

11. All community users of the facilities must access the site via the main site access on Seal Hollow Road and the car parking on site shall be available for use by community users at all times.

Reason: In the interests of highway safety.

Use of Seal Drive

12. The existing vehicular access to the eastern field on Seal Drive shall be used by emergency and large maintenance vehicles only. All other access to the eastern field must be via the main school site.

Reason: In the interests of highway safety and to protect the amenity of local residents.

Standard of Facilities and Registration

13. **Prior to first use of the development hereby permitted**, the following details shall be submitted to and approved in writing by the County Planning Authority, in consultation with Sport England:
- (a) certification that the Artificial Grass Pitches hereby permitted have met FIFA Quality Concept for Football Turf – FIFA Quality or equivalent International Artificial Turf Standard (IMS) and World Rugby Regulation 22 standard; and
 - (b) confirmation that the facilities have been registered on the Football Association's Register of Football Turf Pitches;

Reason: To ensure the development is fit for purpose and sustainable, and provides sporting benefits.

14. **Prior to the commencement of any works relating to the formation of the new playing field to the east of the main school site**, the following documents shall be submitted to and approved in writing by the County Planning Authority in consultation with Sport England:
- (a) a detailed assessment of ground conditions (including drainage and topography) of the land proposed for the playing field which identifies constraints which could adversely affect playing field quality; and
 - (b) where the results of the assessment to be carried out pursuant to (a) above identify constraints which could adversely affect playing field quality, a detailed scheme to address any such constraints. The scheme shall include a written specification of the proposed soils structure, proposed drainage, cultivation and other operations associated with grass and sports turf establishment and a programme of implementation.

The development shall thereafter be carried out in accordance with the approved details, and the land maintained and made available for playing field use in accordance with the scheme.

Reason: To ensure that the playing field is prepared to an adequate standard and is fit for purpose.

Management and Maintenance Scheme

15. **Prior to first use of the development hereby permitted**, a Management and Maintenance Scheme for the facilities including management responsibilities, a maintenance schedule and a mechanism for review shall be submitted to and approved in writing by the County Planning Authority in consultation with Sport England. For the all-weather pitches, the Scheme shall include measures to ensure the replacement of the surfaces within a specified period. The approved Scheme must thereafter be implemented and complied with,

Reason: To ensure that the new facilities are capable of being managed and maintained to deliver facilities that are fit for purpose, sustainable and to ensure sufficient benefit of the development to sport..

Community Use Agreement

16. **Prior to first use of the development hereby permitted** a Community Use Agreement, to be prepared in consultation with Sport England, which shall apply to the 2 all-weather floodlit pitches and any available ancillary facilities, and include details of pricing policy, hours of use, access by non-educational establishment users, management responsibilities and a mechanism for review, shall be submitted to and approved in writing by the County Planning Authority. The development shall thereafter be used in compliance with the approved agreement.

Reason: To secure well managed safe community access to the sports facilities, to ensure sufficient benefit to the development of sport and to accord with Development Plan Policy

Hours of Community Use

17. The development hereby permitted shall be used for Community Use only in accordance with the hours set out within the application documentation and as follows unless otherwise approved in writing by the County Planning Authority:

ALL WEATHER PITCHES (AWPs)

Every month of the year as follows: 5pm to 9pm (Term Time Weekdays), 10am to 9pm (Non-Term Time Weekdays) & 10am to 8pm (Term Time and Non-Term Time Weekends)

NEW GRASS FIELD TO THE EAST OF THE SITE

May to September as follows: 4pm to 6pm (Term Time Weekdays), 8am to 6pm (Non-Term Time Weekdays) & 8am to 6pm (Term Time and Non-Term Time Weekends)

October to April as follows: No community use during Term Time Weekdays, 8am to 4pm (Non-Term Time Weekdays) & 8am to 4pm (Term Time and Non-Term Time Weekends)

Reason: In the interests of the amenities of the locality and to accord with the application details.

Erection of Acoustic Barrier

18. **Prior to first use of the development hereby permitted** the Acoustic Barrier detailed in the application and shown on drawing number SGAE BBA ZZ 00 DR L 8035 P04 Fencing Arrangement, must be erected and thereafter retained and maintained as hereby approved.

Reason: In the interests of the amenities of the locality and to accord with the application details.

Installation of the Floodlighting

19. The floodlighting hereby permitted shall be installed, set up and maintained as detailed in the application, and before it is first brought into use it shall be checked by a lighting engineer, and should it be deemed necessary the applicant shall adjust the set-up of the floodlighting, and there shall be no deviation from these details without the prior written approval of the County Planning Authority.

Reason: In order to protect the amenities of the locality.

20. The lighting levels of floodlighting hereby permitted shall not exceed those specified in the submitted lighting calculations.

Reason: In order to protect the amenities of the locality.

Hours of Use of the Floodlighting

21. The hours of use of the floodlighting hereby permitted shall be limited to between the hours of 08.00 and 21.00 Monday to Friday, and to between the hours of 10.00 and 20.00 on Saturdays, Sundays and Bank Holidays unless otherwise approved in writing by the County

Planning Authority.

Reason: In the interests of the amenities of the locality and to accord with the application details.

22. The floodlighting hereby permitted shall be completely extinguished when the all-weather pitch is not in use, and in compliance with the permitted hours of use.

Reason: In order to protect the amenities of the locality.

Cricket Nets

23. **Prior to their installation on the school site** details of the location and specification of the Cricket Nets shall be submitted to and approved in writing by the County Planning Authority.

Reason: In order to protect the amenities of the locality.

Sustainable Drainage (SuDs)

24. **Prior to first use of the development hereby permitted** a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, shall be submitted to and approved in writing by the County Planning Authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of paragraph 169 of the National Planning Policy Framework.

Construction

25. The construction of the development hereby permitted, and associated operations including the deliveries of plant or materials, should take place only between the hours of 0800 and 1800 Monday to Fridays, and 0900 and 1300 on Saturdays, with no works on Sundays or Bank Holidays, unless otherwise approved in writing by the County Planning Authority;

Reason: In order to protect the amenities of the locality.

26. The construction of the development hereby permitted shall be undertaken in accordance with the submitted and approved Construction Management Strategy Rev E, including Appendices A to C, prepared by Willmott Dixon, dated 17 August 2021.

Reason: In order to protect the amenities of the locality and in the interests of highway safety.

27. The Construction Access shall be controlled to avoid arrivals and departures during the AM and PM peak school times, including use of the bus drop off access by construction vehicles during school bus operating times of 7:45 – 09:00am and 3:00pm – 4:15.

Reason: In the interests of highway safety.

Town and Country Planning (Development Management Procedure) (England) Order 2015

Where necessary the planning authority has engaged with the applicant(s), the District Council, the Highway Authority, and other interested parties, including the local community, to address and resolve issues arising during the processing and determination of this planning application, in order to deliver sustainable development, to ensure that the details of the proposed development are acceptable and that any potential impacts can be satisfactorily mitigated.

Summary of policies in the Development Plan relevant to the decision to grant planning permission:

This application has been determined in accordance with the Town and Country Planning Acts, and in the context of the Government's current planning policy guidance and the relevant Circulars, including the National Planning Policy Framework (NPPF) and associated planning practice guidance, together with the relevant Development Plan policies, including the following:

The National Planning Policy Framework (July 2021) and National Planning Policy Guidance (March 2014)

Policy Statement – Planning for Schools Development (August 2011)

Sevenoaks District Core Strategy: Adopted 2011 - Policies LO1, LO2, LO8, SP1, SP2, SP9, SP10 & SP11

Sevenoaks Allocations and Development Management Plan: February 2015 – Policies SC1, EN1, EN2, EN4, EN5, EN6, EN7, G12, GB8 & T1

Green Belt Supplementary Planning Document (February 2015)

The summary of reasons for granting permission is as follows:

Although, the development is regarded as inappropriate development within the Green Belt, in the County Council's judgement, it is considered that the following matters are overriding material considerations that justify permitting the proposal in this instance:-

- i) The identified educational and community need for the development;
- ii) Provision of improved school, sporting and community facilities; and
- iii) The siting and design, and level of mitigation proposed, would ensure that the impact on the openness of the Green Belt would be limited.

The County Council is otherwise of the opinion that the proposed development gives rise to no material harm, is in accordance with the development plan and that there are no material considerations that indicate that the decision should be made otherwise. The County Council also considers that any harm as a result of the proposed development would reasonably be mitigated by the imposition of the attached conditions.

Informatives

In addition please be advised of the following informatives:

1. The applicant is asked to draw to the attention of the Clerk of Works on site the conditions attached to the planning permission, particularly those relating to tree protection.
2. The applicant is asked to give consideration to an alternative colour to the proposed fencing to minimise visual impact.

Dated this Eighth day of December 2021



(Signed).....
Head of Planning Applications Group

KENT COUNTY COUNCIL
PLANNING APPLICATIONS GROUP
FIRST FLOOR
INVICTA HOUSE
COUNTY HALL
MAIDSTONE
KENT ME14 1XX

Schedule 1

Schedule of Documents permitted under Planning Permission: SE/21/891

Drawings / Number / Title:	Received: 1 March 2021
SGAE BBA ZZ 00 DR L 1100 P01 Location	
SGAE BBA ZZ 00 DR L 1101 P01 Existing Site Plan	
SGAE BBA ZZ 00 DR L 8005 P05 Proposed Sports 3 of 5	
SGAE BBA ZZ 00 DR L 8006 P02 Proposed Sports 4 of 5	
SGAE BBA ZZ 00 DR L 7004 P02 Landscape Details Sheet 4	
SGAE BBA ZZ 00 DR L 8003 P05 Proposed Sports 1 of 5	
SGAE BBA ZZ ZZ DR L 4502 P03 Proposed Site Sections	
SGAE BBA ZZ 00 DR L 3003 P01 Aerial View 2 of 3	
SGAE BBA ZZ 00 DR L 3004 P01 Aerial View 3 of 3	
SGAE BBA ZZ 00 DR L 3002 P01 Aerial View 1 of 3	
SGAE BBA ZZ 00 DR L 3001 P01 Views - Night And Day	
Document Title / Description / Reference	Received: 1 March 2021
Agent's Covering Letter, prepared by Resolution Planning, dated 27 February 2021	
Application Form	
Design And Access Statement, prepared by Bond Bryan, dated 15 February 2021	
Planning And Heritage Statement, prepared by Resolution Planning, dated February 2021	
Statement Of Community Involvement, prepared by Resolution Planning, dated February 2021	
UXO Risk Assessment (DA1721-01), prepared by 1 st Line Defence, dated 15/12/20	
Flood Risk Assessment, reference A6815/SCM/Flood Risk Assessment Rev F3, including appendices 1 – 4, prepared by CTP Consulting Engineers, dated 16 February 2021	
Archaeological Desk Based Assessment, reference 3627 20 07 Rpt 01 Rev A SDW BB, prepared by Sevenoaks Environmental Consultancy Ltd	

<p>Written Scheme of Investigation for Archaeological Evaluation & Watching Brief, reference 3889 21 02 15 Rpt 01 Rev A SDW DR, prepared by Sevenoaks Environmental Consultancy Ltd</p> <p>Tree Constraints Plan, reference 20_1552_TCP_NT, prepared by Green Link Ecology Ltd, dated 18 December 2020</p> <p>Tree Protection Plan, reference 20_1552_TPPX02_NT, prepared by Green Link Ecology Ltd, dated 4 January 2021</p> <p>Botanical Survey Report, prepared by Dr Lesley Mason ACIEEM, dated June 2020</p> <p>Great Crested Newt Licensing Certificate</p> <p>Reptile Survey And Mitigation Strategy Area C, reference 2020/02/14, prepared by KB Ecology, dated 17 August 2020</p> <p>Preliminary Ecological Appraisal Area A, reference 2020/03/14, prepared by KB Ecology, dated 22 May 2020</p> <p>Preliminary Ecological Appraisal Area C, reference 2020/03/14, prepared by KB Ecology, dated 22 May 2020</p>	
As amended and/or amplified by:	Received: 12 March 2021
<p>Tree Survey Report, reference 20_1552_ReportX02_NT, prepared by Green Link Ecology Ltd, dated 4 January 2021</p>	
As amended and/or amplified by:	Received: 19 March 2021
<p>External Lighting Report, reference C2005-VZV-ZZ-ZZ-RP-ME-001 Rev 3, prepared by Van Zyl & de Villiers Consulting Engineers, dated 18 March 2021</p>	
As amended and/or amplified by:	Received: 7 July 2021
<p>Email from Agent, Resolution Planning, dated & received 7 July 21</p> <p>SGAE-CTP-XX-XX-DR-C-7020-T01-External Details</p> <p>SGAE-CTP-XX-XX-DR-C-6002-T04- Drainage Layout Sheet 2</p> <p>A6815 - Rugby Pitch 1 in 100+40</p> <p>A6815 - Infiltration Rate Calculations - BRE01</p> <p>A6815 - Infiltration Rate Calculations - BRE02</p>	

As amended and/or amplified by:

Received: 4 August 2021

Agent's Covering Letter for Additional Information, prepared by Resolution Planning, dated 3 Aug 2021

Sinkhole Trial Pitting Investigation, reference 4232 21 06 28 Ltr 02 Rpt 02 Rev C SDW BB, prepared by Sevenoaks Environmental Consultancy, dated 28 June 2021

Tree Protection Plan (July 2021) reference 20_1552_TPPX03_NT, prepared by Green Link Ecology Ltd, dated 5 July 2021

Tree Survey Report (July 2021) reference 20_1552_ReportX03_NT_WC, prepared by Green Link Ecology Ltd, dated 5 July 2021

Lighting Impact on Bats Statement, reference 2020/03/14, prepared by KB Ecology, dated 4 June 2021

SGAE BBA ZZ 00 DR L 8004 P06 Proposed Sports 2 of 5

SGAE BBA ZZ 00 DR L 8007 P04 Proposed Sports 5 of 5

SGAE BBA ZZ 00 DR L 8015 P05 Landscape Levels 1 500 1 of 2

SGAE BBA ZZ 00 DR L 8016 P03 Landscape Levels 1 500 2 of 2

SGAE BBA ZZ 00 DR L 8023 P05 Proposed Soft Landscape 4 of 6

SGAE BBA ZZ 00 DR L 8025 P02 Proposed Soft Landscape 6 of 6

SGAE BBA ZZ 00 DR L 8030 P06 Proposed Sports Provision

SGAE BBA ZZ 00 DR L 8031 P03 Ecology Restraints

As amended and/or amplified by:

Received: 7 September 2021

'Applicant Responses to Consultation Feedback' Document

Transport Statement, reference 66202025-MLM-ZZ-XX-RP-TP-0001 Rev 03, prepared by MLM Consulting Engineers Limited, dated 2 September 2021

SGAE BBA ZZ 00 DR L 1102 P03 Red Line - Sports

SGAE BBA ZZ 00 DR L 1111 P03 Proposed Site Plan

Construction Management Strategy Rev E ,including Appendices A to C, prepared by Willmott Dixon, dated 17 August 2021

As amended and/or amplified by:	Received: 6 October 2021
Email from Agent, Resolution Planning, dated & received 6 October 2021, addressing queries raised by Highways and Transportation.	
As amended and/or amplified by:	Received: 14 October 2021
Email from Agent, Resolution Planning, dated & received 14 October 2021, addressing queries raised by local residents.	
As amended and/or amplified by:	Received: 18 October 2021
Email from Agent, Resolution Planning, dated & received 18 Oct 202, addressing outstanding queries from consultees and confirming inclusion of an Acoustic Fence	
MUGA Noise Impact Assessment Rev P02, including Appendices A &B, prepared by MACH Acoustics, dated 15 October 2021	
Screenshot relating to Ancient Woodland	
SGAE BBA ZZ 00 DR L 8021 P06 Proposed Soft Landscape 2 of 6	
SGAE BBA ZZ 00 DR L 8022 P06 Proposed Soft Landscape 3 of 6	
SGAE BBA ZZ 00 DR L 8024 P04 Proposed Soft Landscape 5 of 6	
SGAE BBA ZZ 00 DR L 8035 P04 Fencing Arrangement	

Public Interest Case

Sports Facilities on the Wildernesse (Seal Hollow Road) Campus

Background

The Wildernesse School was an 8 Forms of Entry (FE) secondary school for boys situated on the site of the old Wildernesse Farm. The school closed in July 2010 and although the buildings were past their useful life, they were utilised by the Knole Academy for two years while their own school site was being expanded.

The Wildernesse School site was developed in 2016 for a new 4FE Trinity School and for a 3FE satellite expansion for the Weald of Kent Grammar School for girls. In 2017, Trinity school expanded to 6FE. It was always the intention that a boy's grammar school would be co-located at the site as well. In September 2021, this intention was realised when Tunbridge Wells Grammar School for Boys opened a 3FE satellite on the Campus.

Site Size & Constraints

The site survey conducted in 2019 indicated that indicated that the gross site area of the Wildernesse Campus, for a pupil population of the site of 2,400 (12FE) was just within the range for a 12FE site according to Building Bulletin 103. However, the net area was below that suggested, because large areas were not suitable for formal sporting facilities, being habitat areas or protected woodland.

Curriculum studies indicated that although challenging, the three schools could offer a relatively balanced sports curriculum on the site, but it was understood that the availability of facilities was dependent on weather, avoiding over-use, maintenance and very carefully managed scheduling. It was not an ideal situation, but the schools felt that it was manageable with the use of external hired facilities and with the two Grammar schools bussing students to the school main sites in Tonbridge and Tunbridge Wells.

The opportunity to acquire The Land gave rise to the potential to increase the available space available to create new sports facilities. This allowed for new grass sports area and permitted the creation of two additional all-weather artificial pitches.

The Land on Seal Drive

The opportunity to increase the total sports area was identified when land adjacent to the school was offered for sale by the Royal Society for Blind Children.

To the Council's knowledge land and has never been developed, while it was maintained by the former owners, the Council is not aware of any particular historic usage. The land is private and not open to members of the public.

The land is entirely within the Metropolitan Green Belt. The Council's intention was for the land to be used for sports and other educational purposes, with no permanent buildings being erected in line with planning policy guidance relating to the Green Belt.

There is a strong public interest case for the establishment of playing fields on this formerly unused, land. According to the Department for Education, more than 400 school playing fields have been sold or re-purposed since 2001. The creation of two new pitches is therefore in the interests of the students and wider community.

Education Provision in Sevenoaks

This chapter considers whether it was necessary and desirable to establish new secondary provision in Sevenoaks, and whether there is council support.

The need for additional secondary school places in Sevenoaks District has been well publicised in the annual Kent Commissioning Plans since the first Commissioning Plan was published in 2012. The 2012 plan stated:

“The number of Year 7 places in secondary schools in Sevenoaks is 510. Forecasts indicate an increase in Year 7 intakes for the next seven years. The increase is exacerbated by corresponding increases in the forecasts for year 7 students in Tunbridge Wells and Tonbridge, where half of Sevenoaks children travel to receive their education. As demand increases in these areas, Sevenoaks pupils will find their ability to access a secondary education of their choice becoming challenged.”

This has been a consistent message in every subsequent plan.

The aspiration to create specific Grammar provision in Sevenoaks district has been a KCC ambition since 2012, when a parental petition was presented to Kent County Council on 29 March 2012 which asked the following:

“We the undersigned petition the council to establish a grammar school in Sevenoaks.

Sevenoaks does not have a grammar school at present. Instead, every day, 1150 Sevenoaks children travel to grammar schools in Tonbridge and Tunbridge Wells, a round trip of up to 25 miles. Many of these children spend up to two hours commuting each day from a young age. This has a negative effect on their learning, on their opportunities for hobbies and sport, on their opportunities to develop friendships, and on the time they spend with their families.

The County Council responded by determining:

“The recommendation is that in response to an ePetition, Kent County Council pursues proposals to provide 2FE of selective secondary provision for boys, 2FE of selective secondary provision for girls and 2FE of mixed non-selective provision for students resident in the Sevenoaks south area, that would meet legal requirements.”

This was subsequently increased to 3FE for both boy’s and girl’s Grammar provision due to continuing reports of increased demand.

At that time, there were no alternative sites for new schools due to much of Sevenoaks being designated as Metropolitan Green Belt (93%), and the cost of buying more than seven hectares of new land, compared to the more cost-effective opportunities by reusing the Wildernesse site.

The evidence for the need for these new schools is clear and consistent, coupled with the local and council desire for some of these places to be Grammar places, is underpinned by the full Council decision of 12 March 2012.

School Sporting Curriculum Needs

Three schools now use the Campus. Trinity School (6FE all-ability, co-educational school), Weald of Kent Grammar School (3FE satellite, selective, girls) and Tunbridge Wells Boys Grammar School (3FE satellite, selective, boys). All three schools have robust sporting curricula, including outdoor sports such as hockey, football, cricket, athletics and rugby.

KCC has consulted extensively with the three schools to ensure that the facilities being proposed will be appropriate for each school's curriculum.

The existing provision includes a single all-weather pitch that has reached the end of its lifespan and needs replacement. The remainder of the land that can be used for sports is limited and would be heavily used, even rendering them unusable in wet weather.

The acquisition of the land on Seal Drive, and the increase in available land, creates the potential for an additional two new all-weather pitches. This will enable KCC to provide an all-weather pitch to each school, with a different playing surface, depending on the school preference and curriculum. The pitch surfaces are different for hockey, football and rugby, reflecting the demands of each sport.

“Third generation or 3G artificial grass pitches are recognised as durable, safe, year-round playing surfaces, able to withstand intensive use and all kinds of weather. They mean more people can benefit from all the associated social and health benefits of physical activity.” Sport England Statement

Depending on the season and the curricula of the schools, the new grassed areas will be marked out for rugby or football, and in summer, athletics and cricket. There is also potential for several smaller training areas, such as marked squares for rugby or football, football goals, rugby kicking posts, cricket nets, softball squares, etc. The additional land would also offer opportunities for cross country running around the perimeter, offering a total running distance of more than 1.5km, through a challenging mix of vegetation, gradients and direction changes. A summary of the intended new sports offer on the Campus is as follows:

- Two 4-court indoor sports halls.
- Seven MUGA (Multi-Use Games Areas) marked for tennis, netball, basketball, five a side football and other sports.
- One all-weather pitch surfaced for hockey
- One all-weather pitch surfaced for football or hockey

- One all-weather pitch surfaced for football or rugby
- Levelled grassed areas for use with summer and winter markings, to facilitate:
 - Winter
 - Two grassed football / rugby pitches.
 - Training squares.
 - Summer
 - Cricket wicket and field
 - Athletics track
 - 100m straight sprint track.
 - Long jump and field athletics areas for javelin, discus & shot.
 - Two rounders squares.
- Cricket nets
- Cross country circuit, approx. 1.5km

The loss of daylight in winter months, coupled with the potential for grassed areas to be unusable in wet weather, means that the all-weather pitches will be heavily used and will require lighting to get maximum use by the students.

The benefit to the three schools and the community cannot be overstated, with the capability to offer a wide sport curriculum being the main benefit.

Benefit of Sports in schools

The importance of daily physical activity has been known for many years, but the challenge in a world of fast food and sedentary screentime has never been greater. According to HM Government statistics indicate that one third of children are overweight or obese by the time they leave primary school, and according to Sport England¹, only 17.5% of children meet the Chief Medical Officers' ²guidance for how much activity children should be doing.

Three government departments (Department for Education (DfE), Department for Digital, Culture, Media and Sport (DCMS), and Department for Health and Social Care (DHSC) have collaborated to ensure that sport and physical activity are an integral part of both the school day and after-school activities, so that all children have the opportunity to take part in at least 60 minutes of physical activity every day. The creation of the School Sport and Activity Action Plan (July 2019)³ is designed to promote sport and physical activity and advert the importance of sport in improving children's physical and mental wellbeing, and help them to develop important skills like teamwork and leadership.

The creation of new grassed pitches will therefore be entirely in line with existing Government policy, and mindful of the advances that the country has made in the last ten

¹<https://www.sportengland.org/know-your-audience/data/active-lives>

²<https://www.gov.uk/government/publications/physical-activity-guidelines-uk-chief-medical-officers-report>

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848082/School_sport_and_activity_action_plan.pdf

years in all areas of sport and physical recreation, can only encourage more and more students to take up a sport or fitness activity to at least, hobby level.

Community Sports and Physical Activity

The primary purpose of the new pitches and facilities are to enable the three schools to fulfil their sports and physical education curriculum separately and without impacting on the neighbouring schools. However, such facilities will require constant maintenance, with an understanding that the all-weather pitches will eventually need to be re-laid, periodically. The cost of this can often run into hundreds of thousands of pounds and therefore the schools need a mechanism by which they can ensure the requisite funding is available at the appropriate time, without their delegated budget being negatively affected. It is proposed that the majority, if not all, of these expenses can be offset by permitting the hire of facilities by community and sporting groups, with such charges being re-invested into the maintenance and development of the sports facilities.

Before embarking on this project, KCC needed to consider whether there was sufficient interest from the community to hire the new facilities. KCC conducted extensive consultation with sporting bodies and sports clubs, nationally and in Kent.

National and county sporting bodies, such as Sport England, Kent Cricket and the Football Association were supportive, but by far the most interest came from local sports clubs, particularly hockey and football. Early communication indicates that the three all-weather pitches would be widely used by the local community.

The ambition is to achieve accreditation for the all-weather pitches to club standard for Rugby Football Union, Football Association and England Hockey.

A Joint User Agreement between the three schools will outline the offer to local sports clubs as well as groups of individuals, to hire the sports facilities at times when they are not in use by the schools. A Community User Agreement will be made with Sevenoaks District Council to ensure that the facilities are made available whenever possible.

The benefit to the local community, for individuals, groups and clubs is therefore significant. The facilities will therefore not only benefit the students during their curriculum and for after school activities but will provide huge benefits to the local community to increase sports and physical recreation.

Sevenoaks District Council

KCC has collaborated with Sevenoaks District Council to part fund the establishment of the new sporting facilities.

KCC put in a Community Infrastructure Levy (CIL) bid to Sevenoaks District Council, to enable the proposal to be fully funded. Sevenoaks District Council considered the matter during the CIL Funding Board meeting. Every aspect of the project was considered, not only the benefit to the three schools, but also the benefits to the people of Sevenoaks.

The result was that Sevenoaks District Council felt the bid fulfilled their award criteria. The bid was determined to be providing for the demand for more local sporting facilities which meets the requirements, aspirations and shortfalls indicated in Sevenoaks District Council's Playing Pitch Strategy Full Analysis⁴ and the Allocations and Development Management Plan.⁵

This indicates that at a more local level, Sevenoaks District Council recognise the benefits of the project and support the aims.

Sevenoaks Town Council

KCC have contacted Sevenoaks Town Council, who were able to provide us with a statement from the town Mayor that they support the project.

Facilities for Blind Children

The local history of provision of care and teaching for blind and partially sighted children at Dorton House through the Royal Society for Blind Children, is one that KCC would like to perpetuate. To this end, the three schools would be willing, by prior arrangement, to make available such sports or forest school facilities that might be of use to the RSBC as part of their Health and Well-being Club⁶ programme.

All sports facilities will be fully accessible according to the provisions in the Equality Act 2010 and the RSBC have expressed an interest in working with us to make sporting facilities more blind-friendly. This demonstrates that KCC is committed to working with organisations that provide services to young people with disabilities.

Environment, Ecology and Habitat

Our feasibility study indicates that the site is a habitat, or potential habitat for many types of flora and fauna, but of particular note, Turtle Dove, Twite, Yellow Dove, Lapwing, bats and amphibians. These would be of tremendous interest to the Forest School and as study material for biology and humanities students.

KCC and the schools would seek to preserve these habitats and would consider further action to enhance and create new habitats.

As a general principle, KCC would seek to preserve the existing woodland as much as possible whilst creating new sports provision. KCC believes that the woodland adds to the education offer from the three schools.

⁴ https://www.sevenoaks.gov.uk/download/downloads/id/1533/os004_playing_pitch_strategy_-_main_report_april_2018.pdf

⁵ https://www.sevenoaks.gov.uk/info/20069129/current_local_plan/248/allocations_and_development_management_plan

⁶ <https://www.rsbc.org.uk/get-our-help/live-life-go-further/>

There are trees benefitting from 'Tree Preservation Orders' on the site. KCC would not seek to get a TPO reviewed, unless it was a danger. As part of a detailed survey, KCC will appoint an Arboriculturist to advise.

The new sports facilities will not compromise the habitat areas, and in fact, will augment them by adding additional woodland to the overall habitat land area. KCC have demonstrated that this project will improve the ecological footprint in the area.

Community Engagement

KCC has involved the community at every stage of the project. In addition to the statutory planning consultation work, KCC has reached out to local resident groups, to explain the project and worked with them to limit or mitigate negative impacts.

There have been three key areas of discussion. Pitch lighting, out of school hours use and permanent building on the new land.

The three all-weather pitches will have state of the art directional lighting installed to enable the schools to fully utilise the facilities, both during curriculum time and after school, for clubs and practices. Lighting will also enable the facilities to receive accreditation from the National sporting bodies for football, rugby and hockey.

However, following discussion with local councillors and residents, the lighting has been designed to ensure that light pollution and light spill have been minimised. KCC has held discussions with Parish and District Councillors to explain the designs, and has appointed consultants to create light maps and models that show the impact of the new lighting. Indications are that the impact of the new lighting will be negligible because the A25 road already has LED street lighting.

The out of hours usage has been integrated with the planning application to ensure that all views and opinions can be captured. As part of the planning application process the impact on surrounding properties was assessed, including any noise disturbance, the planning application encapsulated mitigation measures including usage limitations to contain usage to specific times of the day and evening.

KCC has also consulted with KCC Highways to ensure that the existing road network can manage any additional traffic.

Finance

As stated above, the maintenance of the new sporting facilities is intended to be fully funded by the community hire charges. This has the effect on not being an additional charge on school or KCC budgets.

Summary

This paper is written to provide context around the public interest case for the overriding the restrictive covenants pursuant to section 203 of the Housing and Planning Act 2016.

The land is undeveloped and has never been used for the residential purposes referred to in covenants. KCC's intended purpose for the land facilitates the establishment of new grassed sporting areas; a use that does not compromise the constraints of the Metropolitan Green Belt.

The argument for new education provision has been made annually for the last nine years. Sevenoaks residents need the places that have been created, and the KCC policy for more Grammar places has been fulfilled. The sports facilities that are currently on offer, while adequate, do not permit the three schools to offer a wide sports and physical activity curriculum. In addition, such a curriculum could potentially be further constrained by weather or surface water.

The benefit of sports and physical activity for young people is well evidenced in several national organisations and supported by three departments of HM Government. That benefit is extended by this project, to the local community, with guarantees that facilities will be available for individuals, groups and clubs to hire when not in use by the schools. This includes consideration to provide facilities to blind young people.

The project has been supported and co-funded by Sevenoaks District Council and has received support from Sevenoaks Town Council. In addition, KCC has reached out to residents and worked to allay concerns that they have had in respect of usage and design.

KCC has fully considered the local ecology and will take steps to preserve and enhance habitat areas. Finally, the project will require no public funding for its maintenance.

KCC Officers therefore consider that the public interest case is robust and that the Cabinet Member should agree to overriding the restrictive covenants in relation to the site.

Report Author:

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Lead Director:

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Director of Education
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KENT COUNTY COUNCIL – PROPOSED RECORD OF DECISION

DECISION TO BE TAKEN BY:

Peter Oakford, Deputy Leader and Cabinet Member for Finance, Corporate and Traded services

DECISION NO:

22/00013

For publication

Key decision: YES

Key decision criteria. The decision will:

- a) *be significant in terms of its effects on a significant proportion of the community living or working within two or more electoral divisions – which will include those decisions that involve:*
- the adoption or significant amendment of major strategies or frameworks;*
 - significant service developments, significant service reductions, or significant changes in the way that services are delivered, whether County-wide or in a particular locality.*

Use of s203 powers in respect of Land in Sevenoaks contained in titles TT47148 and K971987. Implementation of planning consent KCC/SE/0045/2021.

Decision:

As **Deputy Leader and Cabinet Member for Finance, Corporate and Traded services**, I agree to:

1. Exercise the Council's powers granted by section 203 of the Housing and Planning Act 2016 ("Section 203") to override restrictive covenants relating to Land on the South Side of Seal Road (TT47148) and adjacent site occupied by Trinity School and Tunbridge Wells Grammar School (K971987) as necessary to facilitate the implementation of planning permission ref **KCC/SE/0045/2021**:

"New external sports facilities - comprising of two multi-use games areas and two all-weather floodlit pitches on the existing school playing fields, and change of use of an area of land to the east of the school site to grass playing field, together with associated landscaping and access works"

2. To delegate authority to the **Director of Infrastructure**, in consultation with **the Deputy Leader and Cabinet Member for Finance, Corporate and Traded services**, to formalise terms and authorise the execution of any necessary or desirable legal documentation to give effect to the above decision.

3. To delegate authority to the **Director of Infrastructure**, in consultation with **the Deputy Leader and Cabinet Member for Finance, Corporate and Traded services**, to finalise the terms of any compensation agreement in relation to Kent County Council exercising its statutory powers to override the restrictive covenants in relation to the implementation of the planning permission.

Reason(s) for decision:

A decision is required to exercise the Council's statutory powers under s203 of the Housing and Planning Act 2016 to override restrictive covenants and remove the risk of injunctive relief in relation to the implementation of planning permission **KCC/SE/0045/2021**:

"New external sports facilities – comprising of two multi-use games areas and two all-weather floodlit pitches on the existing school playing fields, and change of use of an area of land to the east of the school site to grass playing field, together with associated landscaping and access works"

Cabinet Committee recommendations and other consultation:

Public Consultation:

Public consultation was carried out in relation to the determination of the Planning Consent. Identified consultees were notified by the Planning Authority of the Council's planning application. Supporting paperwork to the planning application contains details of consultation responses and the applicant's response / amendments following these representations.

KCC has arranged for all reasonably identifiable potential beneficiaries of the covenants to be contacted by retained legal advisors, with an invitation to provide feedback on the proposed use of s203 powers. A summary of these responses will be contained in the Committee report and Proposed Record of Decision. This form of Consultation is not mandated by the 2016 Act and was carried out voluntarily as part of the Council's decision making in relation to the exercising of s203 powers.

Cabinet Committee Consultation Planned:

To be discussed at the Policy and Resources Cabinet Committee on 22nd February 2022.

Views of Local Members:

The views of local members will be sought and reported to the Cabinet Committee and the Cabinet Member taking the decision.

Any alternatives considered and rejected:

Option 1 - Kent County Council not to exercise powers granted by the 2016 Housing and Planning Act. This would result in a perpetual risk that injunctive relief could be sought to prevent the Council implementing the planning consent and using the Land for the stated purposes in the planning permission including the delivery of sporting facilities for educational use. If injunctive relief was sought, and obtained, the Council would be compelled to cease use of the Land for the stated purpose; this would have an unacceptable impact on the Council's delivery of its statutory education functions.

Option 2 - Kent County Council to enter individual legal negotiations with all identified beneficiaries of the covenants with a view to coming to discrete agreements, removing the risk of injunctive relief without exercising s203 powers. Due to the number of potential beneficiaries identified (c.283) this is not considered viable. The Council's powers granted in the 2016 Act provide for a clearly documented and transparent legal route for dealing with the covenant matter.

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

.....
signed

.....
date

By virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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