

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EXEMPT Appendix F – not for publication.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

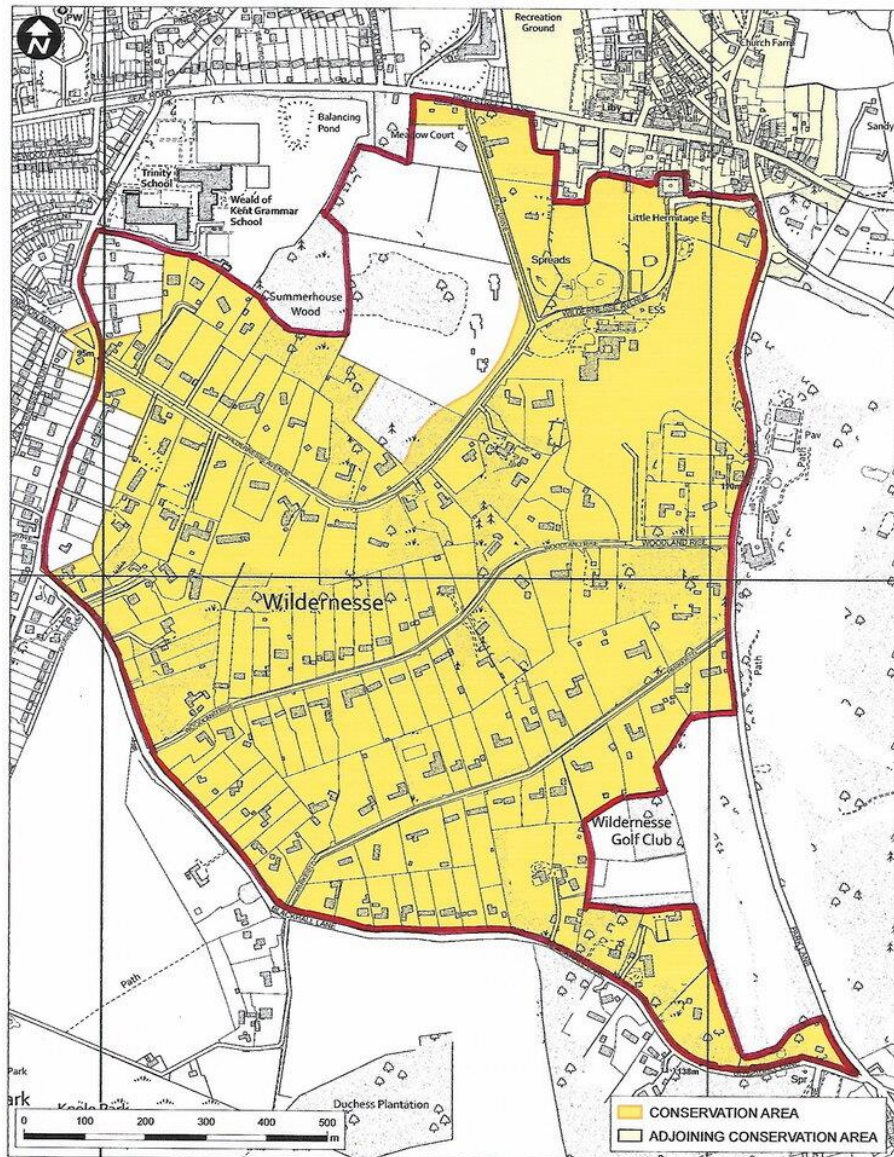
- 1.1 The report sets out the background for the Council's acquisition of *The Land* contained in title **TT47148** and the proposals for its use set out in *Planning Permission* ref **KCC/SE/0045/2021** (“**Planning Permission**”).
- 1.2 The legal context of *The Land* and the adjoining *School Site* 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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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

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