

SECTION D
DEVELOPMENT TO BE CARRIED OUT BY THE COUNTY COUNCIL

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

Item D1

**Erection of fencing, with vehicular and pedestrian gates,
The Malling School, East Malling – TM/10/846**

A report by Head of Planning Applications Group to Planning Applications Committee on 15 June 2010

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

Recommendation: Planning permission be granted subject to condition

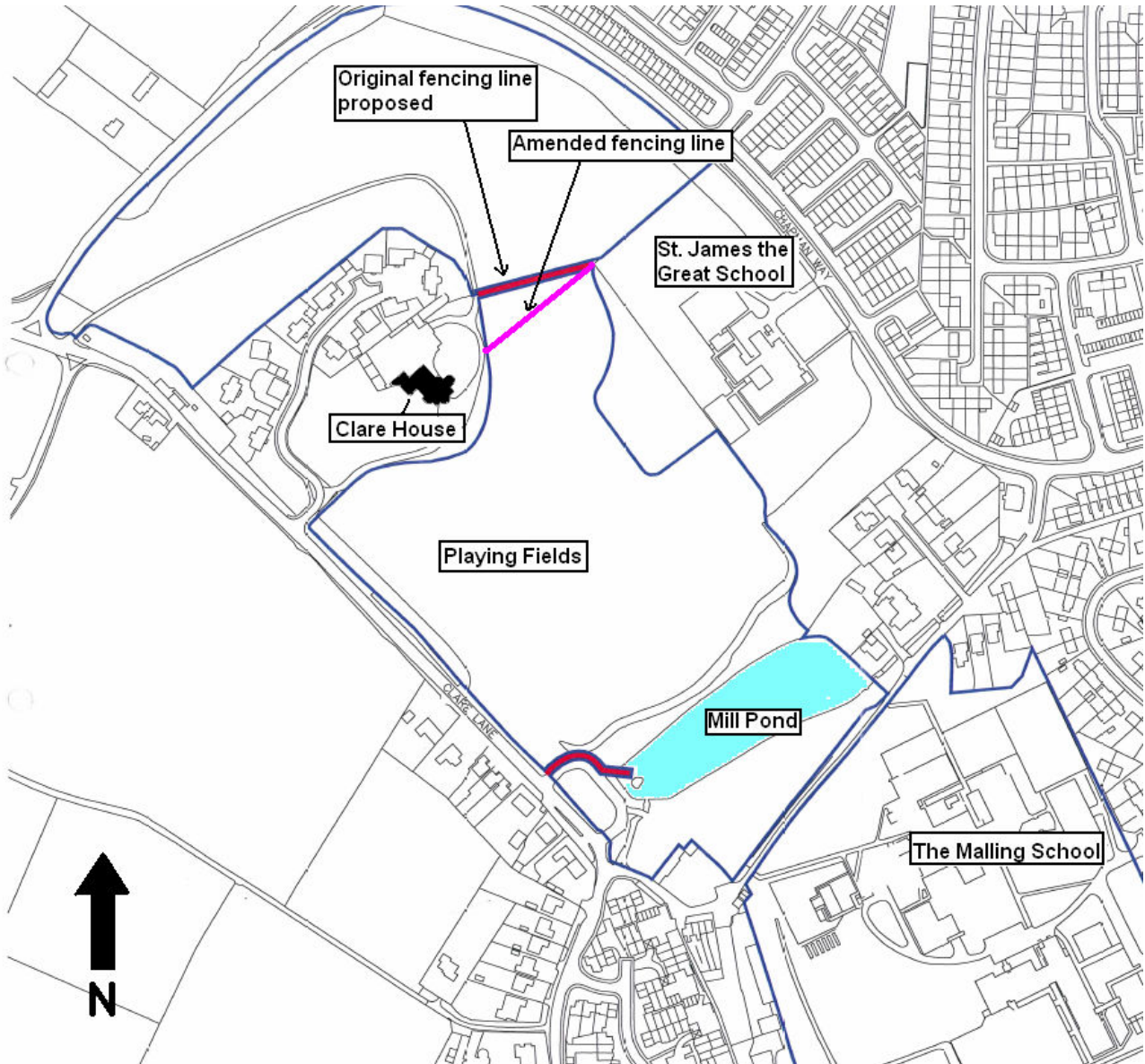
Local Member(s): Mrs T.Dean

Classification: Unrestricted

Site

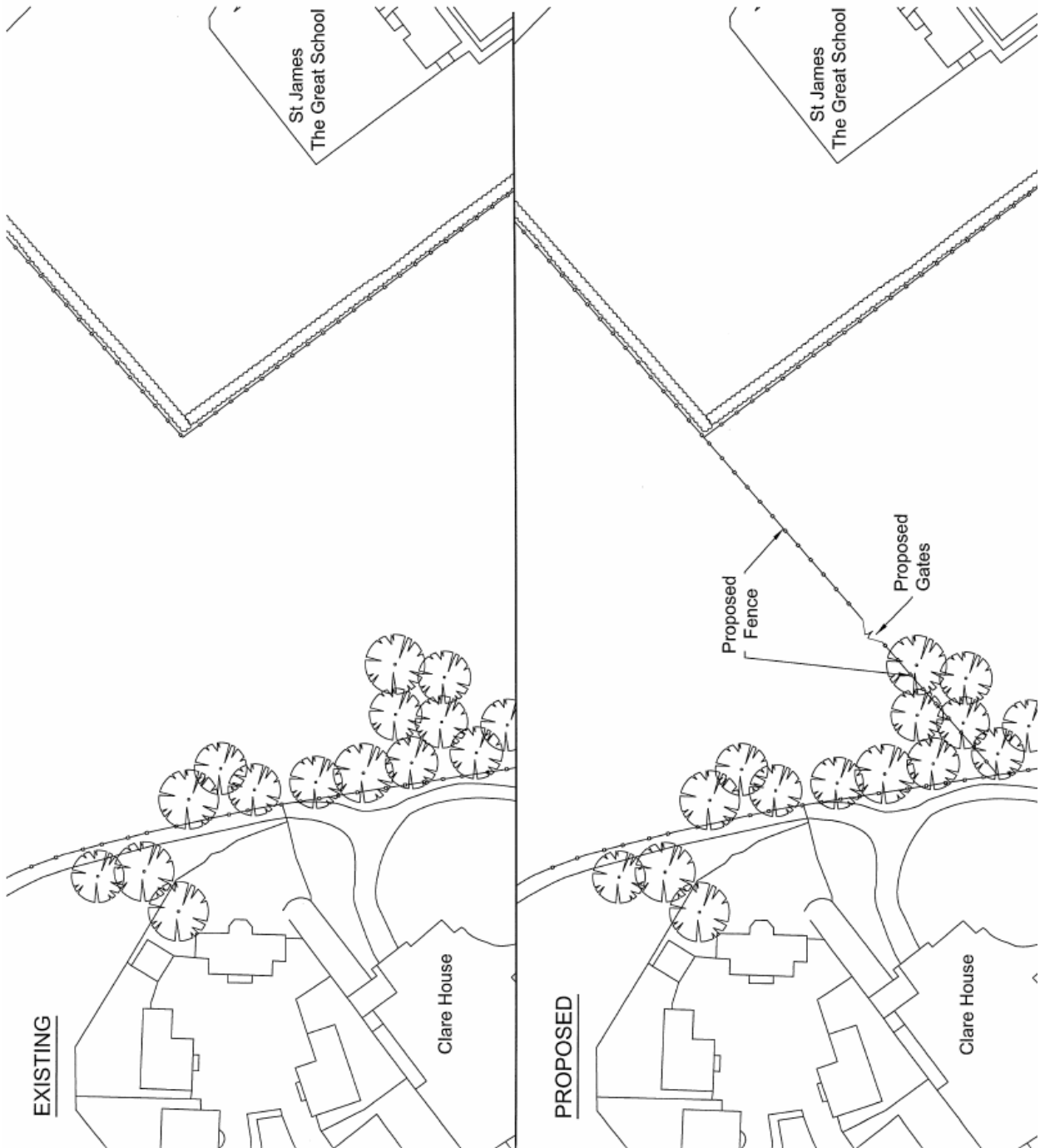
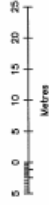
1. The Malling School is a recently constructed PFI secondary school occupying land which was formerly part of the grounds of Clare House, a Grade 1 Listed Building and prominent local feature. The fencing is proposed to be erected within the School's playing fields, which once formed the main grounds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

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SITE LOCATION PLAN

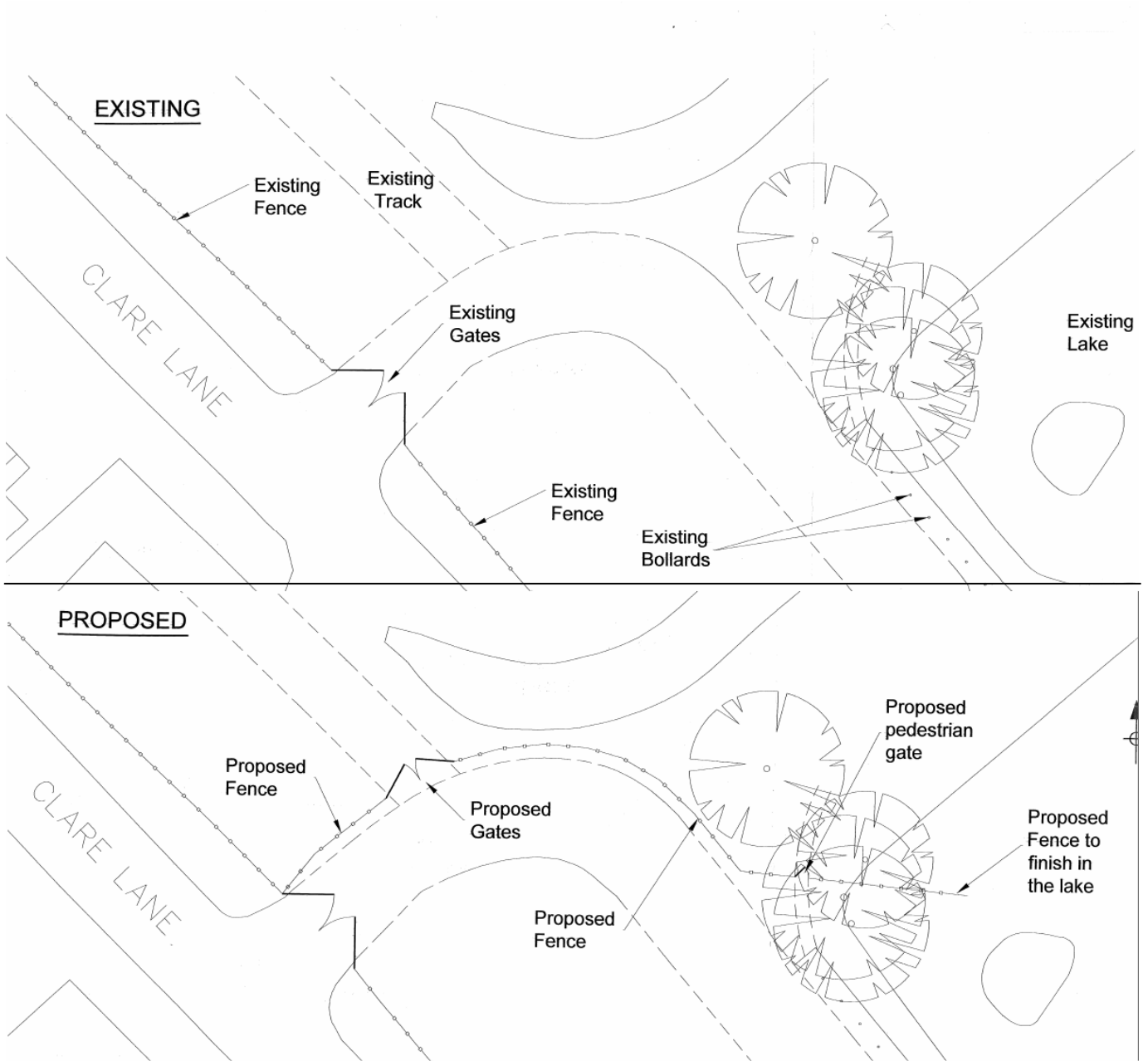
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client	THE MALLING SCHOOL
project	THE MALLING SCHOOL, CLARE LANE, EAST MALLING
site	EXISTING & PROPOSED LAYOUT PLAN
drawn	DHA/7446/03 A
scale	1:500
date	JUNE 2010
8000 Lakeside, Bishops Cleeve, Birmingham Road Malsbrough, West Mids. LE14 1EN T 01827 716206 F 01827 716207 e info@dha-planning.co.uk w www.dha-planning.co.uk	
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CAJ Reference:	TM/10/846 Existing & proposed layout plan 03/ Rev A
	A2

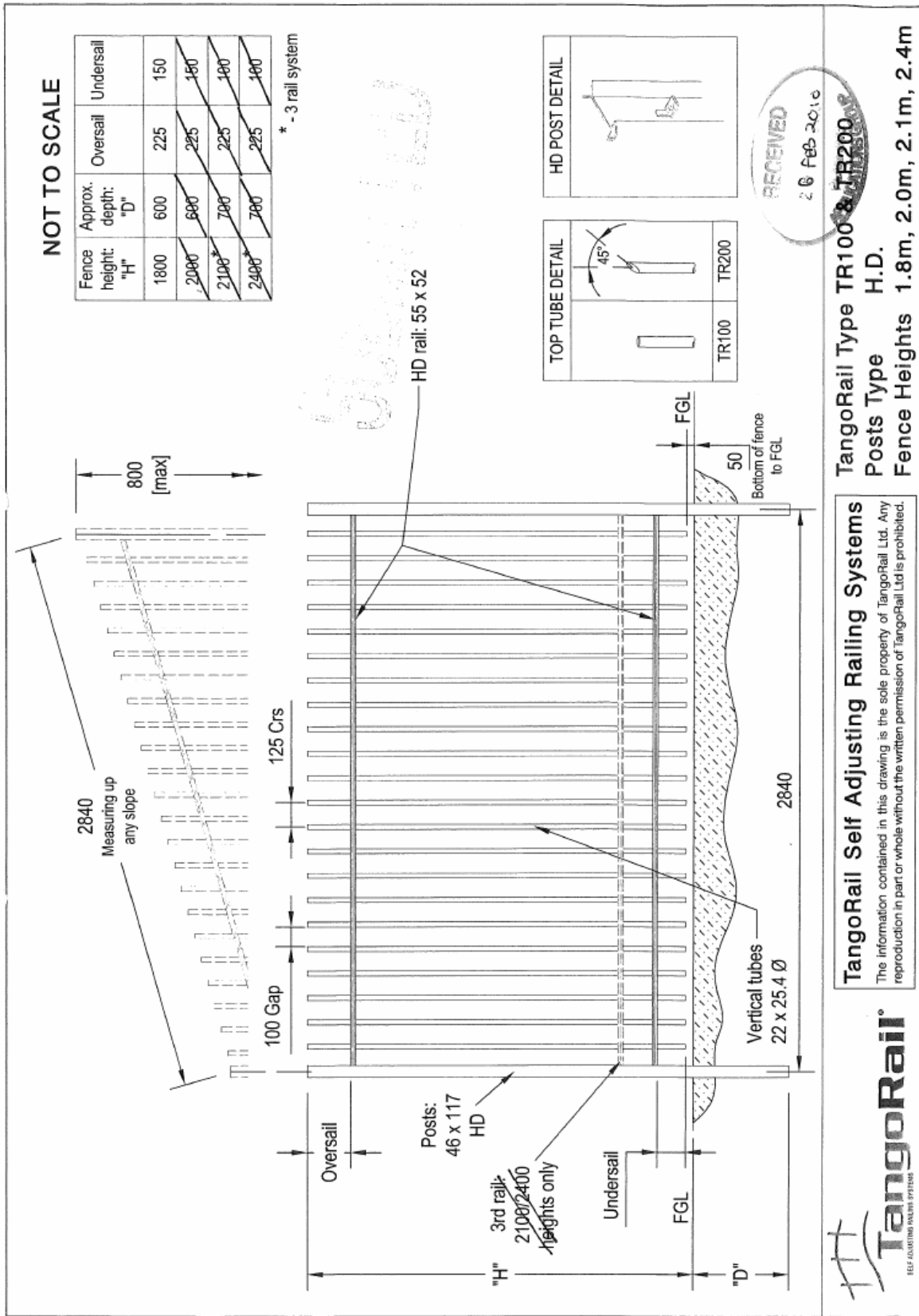
EXISTING AND PROPOSED NORTHERN FENCING

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EXISTING AND PROPOSED SOUTHERN FENCING

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PROPOSED FENCING DETAIL

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

Proposal

6. This application is for the erection of two sections of 1.8m high steel railing fencing, finished in dark green, to the school playing fields in Clare Park. The first section is to the South East of Clare Park, joining the existing boundary fencing and vehicle access gates, and then sweeping around in a curve to finish within the lake. The fencing would have gates to allow for access for pupils, maintenance vehicles/equipment and emergency vehicles.
7. The second section of fencing is proposed to block the route through the grounds from the lower part of the fields to the upper part, and would extend from the corner of the fencing of St. James the Great Primary School, to the boundary fencing to the rear of 9 Clare Wood Drive. This fencing would also have gates to allow for access to the upper part of the fields. As this fencing is proposed to be below 2m in height, and does not abut a public highway use by vehicles, it can be argued that this fencing constitutes permitted development not requiring planning permission. However, the applicant has included it within the application so as to give an open picture of the works intended.
8. The applicant has proposed this development in order to secure the playing fields and make the grounds safer for the school children, as well as to prevent nuisance to neighbours caused by fly-tipping, anti-social behaviour and use by motorbikes caused by the unrestricted access at present. A main concern highlighted is the level of dog fouling on the school playing fields. The applicant has stated that the ideal solution to securing the fields would be to repair and update the entire perimeter fencing; however this solution is not financially viable. The current development has been proposed as making the playing field area of Clare Park protected, whilst allowing public access to the northern area of the grounds.

Planning Policy

9. The Development Plan Policies summarised below are relevant to consideration of the application:
 - (i) National **Planning Policy Statement 5: Planning for the Historic Environment**
HE7 In decision-making, local planning authorities should seek to identify and assess the particular significance of any element of the historic environment that may be affected by the relevant proposal.
 - (ii) The adopted (2009) **South East Plan**
 - Policy CC1** Seeks to achieve and maintain sustainable development within the region.
 - Policy CC4** Expects that all development will adopt and incorporate sustainable construction standards and techniques.

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- Policy CC6** Seeks sustainable and distinctive communities that respect the character of settlements and landscapes, and achieve a high quality built environment.
- Policy S6** States that local planning authorities, taking into account demographic projections, should work with partners to ensure adequate provision of pre-school, school, and community learning facilities.
- Policy BE1** In managing an Urban Renaissance, Local Authorities will promote and support design solutions relevant to context and which build upon local character and distinctiveness and sense of place.
- (iii) The adopted **Tonbridge and Malling Managing Development and the Environment Development Plan Document (2010)**
- Policy OS1** Development that would result in the loss of, or reduce the recreational, nature conservation, biodiversity, carbon sink, landscape, amenity and or historic value of, existing open spaces (listed in Policy OS1A/B and identified on proposals map) will not be permitted unless a replacement site is provided.
- Policy OS4** The Council will support Parish Councils, landowners and developers who wish to provide publicly accessible open space in locations which will address local deficiencies, as identified in the Open Space Strategy.
- Policy SQ3** Development will not be permitted where it would harm the overall character, integrity or setting of the Historic Parks and Gardens identified on the proposals map, or which might prejudice their future restoration.

Consultations**10. Tonbridge & Malling Borough Council:****(A) Objects** to the proposal unless:

- The County Council is able to satisfy itself that the proposal would not decrease the public safety through the loss of informal pedestrian routes and that there are alternative and safe walking routes bearing in mind the lack of safe footways along Clare Lane.
- The County Council is satisfied that the proposal would not result in any anti-social behaviour being forced closer to the residential properties in Clare Wood Drive.
- Additional planting is to be carried out on each side of both lengths of proposed fence (including the permitted development fence). The planting should also be used to soften the impact of the fencing and also to reduce the impact of the interface between the fence and the lake margin.
- A condition is attached to any consent requiring the fence to be painted dark green.

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

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

Divisional Transport Manager: Raises no objection on highway grounds.

East Malling and Larkfield Parish Council: Raises the following concerns:

- This land is seen as informal public open space and people have been using this site for in excess of 20 years
- The land ownership position is not clear
- There may be covenants associated with a deed of grant which require the landowners to keep the land available for public use, or rights may have been created by prescription
- Is the fence adjacent to Clare House 'permitted development' as it is near a Grade 1 Listed Building?

English Heritage: Raises no objection. The application should be determined in accordance with national and local policy guidance and on the basis of our specialist conservation advice.

KCC Conservation Officer: Recommends that the line of the Northern section of fencing is amended to follow and continue the NE boundary of the St. James the Great School, as this would mean the fencing runs parallel to the original entrance road to Clare House. Also recommends that some native planting is included.

East Malling Conservation Group: Raises the following concerns:

- The fencing would leave little incentive to maintain the upper field, and are concerned that this would be sold off for development
- The parkland has been used by the public for many years and could be registered as a 'village green'.
- The parklands are used by pedestrians to avoid walking along Clare Lane which has no footpath.
- Suggest alternative solutions including extra dog bins, kissing gates to allow walkers through, moving the playing fields to Mills Street/South Ward playing field and hand over Clare Park to TMBC.
- If permission is granted there should be access gates for maintenance equipment and the fence should be softened with planting.

Sport England: Raises no objection.

Local Member

11. The local County Member for Malling Central Mrs T.Dean, was notified of the application on the 22 March 2010.

- Mrs. Dean supports the Borough Council's call for a site meeting. There are a number of unresolved issues on this site, notably the public access which has been available, unobstructed, over a long period of time to Clare Park, its status as the historic park of a Listed Building, the future of the Mill Pond, and any alterations to the Clare Lane entrance to the school. Opposition of local residents is strong and they should be given an opportunity to voice their concerns.

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Publicity

12. The application was advertised by the posting of a 3 site notices and the notification of 33 neighbours.
13. The application was advertised in the Kent Messenger on 2 April 2010.

Representations

14. There have been 21 letters of objection from nearby residents, and the main points of objection can be summarised as follows:
 - The fencing would result in the loss of attractive amenity space used by local residents for many years.
 - The fencing will split the park, and the northern section will become derelict and open to further development.
 - The fencing may affect nesting birds and wildlife.
 - The fencing will prevent local residents from using the park as a safer alternative walk route, as there is no footpath along Clare Lane.
 - The fencing will harm the character of the conservation area and the setting of Clare House, a Grade 1 Listed Building.
 - There is no supporting evidence relating to the level of nuisance to support the requirement for the fencing.
 - If there is a problem, then the whole site should be fenced, as partial fencing would result in other parts of the grounds falling into disrepair, and anti-social behaviour would be shifted closer to the properties in Clare Wood Drive.
 - The land has been freely used by the public for over 40 years and is recognised as public open space.
 - The public use the grounds 365 days a year, whereas the School only uses it intermittently, and in the summer only the public use it.
 - The fencing would deny the public access to the lake, a valued local feature.
 - Policy P8/3 of the TMBC Local Plan states that Clare Park is for joint use as open space.
 - There are other methods possible to prevent the problems highlighted.
 - There was a previous dual-use scheme proposed which proposed for the parklands to become official public open space. This scheme should be reinstated.
 - Gates should be large enough for machinery.
 - The fences should include landscaping.

Discussion

14. In considering this proposal regard must be had to Development Plan Policies outlined in paragraph (4) above. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Therefore, this proposal needs to be considered in the context of Development Plan Policies, Government Guidance and other material planning considerations arising from consultation and publicity.
15. This application has been brought for determination by the Planning Applications Committee following the objections of a number of local residents, and the objections of the Tonbridge & Malling Planning Committee. The representations received raise a number of issues surrounding this application, some of which are not directly relevant

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as material planning considerations. This report will attempt to address the principle issue which is the effect the fencing would have on the character and appearance of the Conservation Area and the surrounding residential properties, whilst having regard to the other issues raised.

16. It is prudent first to address a couple of minor points that have been a consistent theme across the letters received. A number of consultation responses and neighbour letters have questioned the ownership of playing fields and as to whether correct notice has been served upon the landowners. The grounds are owned by The Malling & Holmesdale Federation Trust, to which The Malling School is a member and trustee, therefore I am satisfied that the applicants were correct in completing ownership Certificate A on the application form (ie. site owned by applicants). Some letters also stated that the location plan was incorrect as it did not show the St. James the Great School. I am satisfied that the location plan submitted showed the proposed fencing in an easily identifiable position, and its relation to the boundary with St. James the Great School is accurate.

Conservation Area ImpactNorthern Fence

17. The proposed fencing is proposed to be steel railing and finished in dark green. This would match the existing fencing which currently encloses the recently built St. James the Great School. The applicant has indicated that they would be willing to soften the impact of the fencing with planting, as recommended by the Conservation Officer. The fencing is also proposed to be finished in dark green, which would reduce the visual impact in relation to the greenfield and parkland surroundings, and is a generally acceptable and inconspicuous colour for fencing within a Conservation Area. Therefore it can be considered that the fencing would preserve the character and setting of the Conservation Area by not harming the visual amenity of the area, as it is in keeping with the site.
18. The proposal originally proposed the fencing to start at the corner of the St. James the Great School, and then head west to join the boundary fencing to the rear of 9 Clare Wood Drive. Following recommendations from the KCC Conservation Officer, the line of this fencing has been amended in the proposal to follow a line heading south west, thereby continuing the line of the fencing to the North West boundary of the St. James the Great School. The Conservation Officer recommended these changes as the proposed fence would then run parallel to the former access road to Clare House, and thereby follow a pre-existing line of division of Clare Park.
19. Therefore I would recommend that the northern section of fencing is acceptable in terms of its effects on the character and appearance of the Conservation Area and the nearby listed Clare House. I would recommend that if a condition for planting is imposed, that the species closely match those proposed in the boundary treatment scheme for the St. James the Great School.

Southern Fence

20. The proposed southern section of fencing would join the boundary fencing adjacent to the access gates to the pick-up and drop-off zone. The fence would then follow the

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curve of the road before finishing within the lake. This area of fencing would follow the natural boundary to the grassed area of Clare Park.

21. The design of the fencing, proposed to be steel railing and finished in dark green, is considered in this case suitable for a Conservation Area; it would match the existing fencing around the St. James the Great School. The Conservation Officer has recommended that this fencing is also softened with planting in order to reduce the visual impact. The Borough Council has requested that particular attention is applied in planting to reduce the impact of the interface between the fence and the lake margin, and I would agree that this would be very important. In the event that planning consent was granted, then this particular detail could be covered by a landscaping condition

Listed Building

22. The fencing is proposed to be located within the former grounds of the Grade 1 listed Clare House, a 1793 neoclassical country house. The school playing fields constitute what is left of its former gardens, and are designated as a historic garden within the Kent Gardens Compendium - although not registered with the national English Heritage register of Historic parks and Gardens. The former grounds extended far to the North East, beyond Chapman Way, which is now covered with residential development. In the 1980s the immediate setting of Clare House was encroached upon by the enabling development of Clare Wood Drive – in order to help fund restoration of the building. English Heritage was consulted on this application in order to assess the impact on the listed building, and passed no comments and for the application to be determined in accordance with planning policy and our specialist conservation advice.
23. The Southern section of fencing is to the boundary of the South Eastern edge of the site, with the existing car drop-off area and trees as a back drop. Therefore this section of fencing would not easily be visible from Clare House, and would not therefore harm the setting of the listed building.
24. The Northern section of fencing, following comments from the KCC Conservation Officer, has been amended within the proposals to run parallel to the former access road to Clare House. Therefore this section of fencing can be seen to follow an existing line of division of the garden and not harm the setting of the Listed Building. The major orientation of Clare House is to the south east, and therefore this section of fencing would not be readily visible. Clare House is also well screened by mature trees and hedgerows and would not be directly affected by the proposed additional fencing in the park.

Need

25. The fencing has been proposed by The Malling School in order to prevent unauthorised access to the site, and to prevent incidents of nuisance and anti-social behaviour and long-standing misuse of the site. The School has recorded incidents of dog fouling, with a Tonbridge & Malling Borough Council 'bag and tag' exercise producing 181 bags of dog fowl from the playing fields alone. There are also recorded incidents of illegal motor cycle use as well as uncontrolled dogs disturbing P.E. lessons. I am advised that the site also experiences littering, with broken bottles and other rubbish being found.
26. Local residents have disputed the basis of these claims and suggest alternative solutions. However, it is a site management issue for the owners of the land to decide on the most appropriate solution, and the Planning Authority can only consider the

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proposals put before it. Under the circumstances, I would urge caution in attaching too much weight to the need arguments over the material considerations of visual impact and effect on the Conservation Area.

27. The School has stated that they have duty to protect and secure the safety and wellbeing of their pupils, and that the 'Kent Template: Schools for the Future' guidance note recommends that all school playing fields are now securely enclosed. Planning authorities also have a duty to consider the effects a proposal would have on crime and disorder, and I consider that the safety of the pupils in preventing the incidents mentioned above is a material consideration in this regard.

Public Access

28. Many local residents have argued that the land constitutes public open space to be protected, and that the fencing would prevent access to this land. Clare Park appears to have enjoyed unrestricted informal access for a number of years, including the area which constitutes the formal playing fields. The grounds are also argued to be used as a formal pedestrian route. Whilst I sympathise with the concerns of the local residents, the land in question is effectively privately owned land, and the owners are entitled to apply to erect fencing to restrict access if they see fit, just as any other landowner. Clearly, the fact that open access to the school playing fields has been tolerated for many years has clouded the issue here, but the applicant has stated that a large area of land would still be available for public use in the northern area of the site, thereby supporting Policy OS4 of the TMBC MDEDPD in that 'The Council will support Parish Councils, landowners and developers who wish to provide publicly accessible open space in locations which will address local deficiencies, as identified in the Open Space Strategy'.
29. Another concern raised is that the park provides an informal pedestrian route which is necessary as there is no pedestrian footway along Clare Lane. Whilst I understand the safety concerns here, and do not wish to hamper the walking habits of the local residents, there are many Public Footpaths in the area that allow routes between East and West Malling. The northern area of the site would still allow people to walk between Clare Wood Drive and Chapman Way. The main residents who may be disadvantaged are those who live in Clare Wood Drive who wish to walk into East Malling. Their route would be extended if they wish to avoid walking on Clare Lane, but the development of these houses was built with the knowledge that there was no pedestrian footway along what is essentially a country lane at this point. It is not within the remit of Planning Authorities to impose a duty on private landowners to keep open an informal route where there is no officially designated Public Right of Way. Kent Highways Services has also raised no objections to the proposals from a highway safety viewpoint.
30. If there are any covenants or obligations on the part of the School to allow Clare Park to be open to the public, then these are matters that are to be dealt with under other legal processes. This planning application needs to be considered bearing in mind the planning merits, given that other factors and rights are protected and enforced by other methods.

Alternative Solutions

31. A number of solutions have been proposed by objectors to the scheme, including the installation of dog bins, kissing gates and working with the community warden to reduce

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anti-social behaviour. Whilst the merits of these ideas can be debated, they are not material for this application as the application can only be determined on the basis of the development proposed. I am also aware that the alternative solutions would require additional expense on the part of the School for continuing to allow unauthorised access on to their private land.

Division of the site

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

Borough Council comments

33. Tonbridge and Malling Borough Council has objected to the scheme unless some points are met. In particular, they would like the County Council to satisfy itself that the proposal would not decrease public safety through the loss of informal pedestrian routes and that there are alternative and safe walking routes bearing in mind the lack of footways along Clare Lane. I would suggest that the proposal would result in the loss of an informal route, however, as discussed above, there are many Public Footpaths in the area, and the northern area of the site would continue to have access to Chapman Lane. The residents of Clare Wood Drive would not be able to use the park to avoid Clare Lane, however these house were built with the knowledge that there was not a roadside footway and it is unreasonable to expect the School to remedy such a deficiency. In my opinion, the planning process cannot impose a duty to accommodate informal walkways on private land where there is no public right of access, and it would not be equitable to refuse an application on these grounds. I also conclude that on balance, the protection of the safety and security of the pupils outweighs the loss of this walking route, when considered with the alternative footpaths available and the maintenance of public access to the northern section of the park.
34. The Borough Council would like the County Council to be satisfied that the proposal would not result in any anti-social behaviour being forced closer to the residential properties of Clare Wood Drive. I sympathise with the residents in this aspect and acknowledge their concerns; however I do not believe that the development can be a deciding factor in the location of anti-social behaviour. It is also not the duty of a private landowner to 'absorb' levels of anti-social behaviour in the locality by allowing unrestricted access to their land. That would also create liability issues for the School in relation to injuries occurring on their land. For this reason I consider that this is not a material consideration that warrants refusal of the application, and on balance the prevention of crime and disorder by protecting the wellbeing of pupils, outweighs any potential effects of moving the problem to another area.

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35. The Borough Council recommends conditions are attached to any planning permission relating to planting and ensuring that the fencing is painted dark green. I would support this request as these conditions would serve to reduce the visual impact of the proposed fencing. I would suggest that any planting to the northern section of fencing matches the scheme of planting proposed for the perimeter fencing to the St. James the Great School.
36. The Borough Council also recommends that Members conduct a site visit to familiarise themselves with the special nature of the landscape. Whilst this is a decision for the Committee to make, I would advise that a visit would not be appropriate in this instance. In particular, a site visit may serve to detract from the material planning considerations relevant to this planning application, and the concerns of local residents have been well voiced already. The main determining issues relate to planning policy considerations and the effects on the Conservation Area and I have included a number of photos within the presentation to allow Members to fully understand the impact that the fencing would have on the landscape and the Conservation Area.
37. They have also recommended that the School be invited to enter into discussion regarding the future maintenance and use of the northern piece of the land and the potential for transferring it to the Parish Council. Whilst I support this recommendation in principle, in order for the School to maintain good community relations, I do not consider that this can be enforced by condition as it is not directly relevant to the development proposed. This is a School management issue which they should be encouraged to fulfil.

Conclusion

38. In my opinion the proposed fencing at The Malling School would be acceptable on its individual planning merits. The fencing would not materially harm the Conservation Area or the setting of the Listed Building, and the visual impact on neighbouring properties is minimal. There are other divisive issues relating to the fencing which are not material planning considerations, but have been considered nevertheless. However, I conclude that the School's duty to provide a safe and secure environment for its pupils, in light of the reasons given, outweighs the other considerations put forwards by objectors. If the installation of fencing does contravene any legal duties imposed on the School by covenant or grant, then this is a separate legal issue between the parties concerned and not for determination in the planning sphere.

Recommendation

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

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

and SUBJECT TO the following informative:

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

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