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Ask for: Katy Reynolds  
Date: 5 July 2024

Dear Member

**POLICY AND RESOURCES CABINET COMMITTEE - WEDNESDAY, 10 JULY 2024**

I am now able to enclose, for consideration at next Wednesday, 10 July 2024 meeting of the Policy and Resources Cabinet Committee, the following report that was unavailable when the agenda was printed.

**Agenda Item No**

6 **24/00063 - Disposal of Boughton Mount, Boughton Monchelsea, Maidstone, ME17 4NA (Pages 1 - 30)**

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ben Watts', is written over a faint, circular watermark or stamp.

Benjamin Watts  
General Counsel

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

Rebeca Spore, Director of Infrastructure

**To:** Policy and Resources Cabinet Committee - 10 July 2024

**Subject:** Disposal of Boughton Mount, Boughton Lane, Boughton  
Monchelsea, ME17 4NA

**Decision no:** 24/00063

**Classification:** *Unrestricted report with exempt appendix, not for publication under Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).*

**Key decision:** Yes, involves expenditure or savings of maximum £1m – including if over several phases.

**Past pathway of report:** N/A

**Future Pathway of report:** Cabinet Member Decision.

**Electoral Division:** Maidstone Rural South, Lottie Parfitt-Reid

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**Is the decision eligible for call-in?** Yes

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**Summary:** This report considers the proposed disposal of Boughton Mount, Boughton Lane, Boughton Monchelsea, ME17 4NA.

**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 agree to:

1. the disposal of the property, Boughton Mount, Boughton Lane, Boughton Monchelsea, ME17 4NA; and
  2. 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 the disposal and execution of all necessary or desirable documentation required to implement the above.
- 

**1. Introduction**

- 1.1 This report addresses the Council's intention to sell Boughton Mount, which comprises of approx. 11.3 acres (4.6 hectares).

- 1.2 Boughton Mount is located south of Maidstone and north of The Quarries hamlet, sitting in the north-western corner of Boughton Monchelsea Parish. Boughton Lane is the only means of access; northwards is the A229 (Loose Road) and southwards lies Boughton Monchelsea. Farmland and some substantial residential dwellings surround the site. An aerial photograph below identifies the site:



- 1.3 The site sits on a ridge and slopes gradually from north to south, reflecting the topography of the wider area. As can be seen from the photograph in 1.2, the site is largely undeveloped. The northern 4.4 acres (1.8 hectares) originally contained a Victorian mansion house and gardens, a pool, stabling/barn and estate offices, a water tower and walled kitchen garden with glasshouses; these were partially replaced by what are now unused and dilapidated hostel/special care buildings. The southern part of the site is undeveloped; it formed the gardens and parkland to the original house, containing a Grade II Listed Folly incorporating a grotto and ha-ha with bridge. All remaining structures are covered with overgrown vegetation; these have suffered from vandalism and are blocked up against unauthorised entry.
- 1.4 A site plan is shown in Appendix B.

## **2. Background**

- 2.1 The Boughton Mount estate comprised a mansion house constructed in the 1820s with a stable block/estate office to the north and a walled garden with glass houses to the east. The grounds included a Folly, lawns and a grotto with specimen trees in parkland beyond the Ha-ha (which was a later addition). The Foster Clark family acquired the estate in 1901.
- 2.2 Kent County Council (KCC) was bequeathed the freehold interest in 1948 by Deed of Gift from members of the Foster Clark family with a restriction to use it for the education of delicate children.
- 2.3 The mansion house burnt down and in the 1960s/70s KCC constructed several buildings to serve as a residential hostel and children's special care unit. After use of the site for special educational needs ceased, options for its re-use were considered. Once no operational use for the site could be established, it was declared surplus and suitable for disposal in 2010. Given that the educational use of the site ceased more than 10 years ago, there is no requirement to comply with Schedule 77 of the School Standards & Framework Act 1988 (as amended) nor Schedule 1 of the Academies Act 2010.
- 2.4 A Key Decision (17/00034) was taken in June 2017, which agreed to commence the appropriation procedure in relation to the land at Boughton Mount, and the restrictive covenant. See appendices E and F for details of this decision.
- 2.5 Following a review of the potential for redevelopment, the site was included in Maidstone Borough Council's call for sites, as part of its Local Plan. The Boughton Monchelsea Neighbourhood Plan also supported proposals for a scheme of c.25 residential units on the northern-most part, with the remaining area being kept as parkland (available for public access) and the heritage assets restored.
  - 1.1. Having been allocated for future redevelopment in the Local Plan process, KCC engaged planning consultants to undertake a pre-app exercise for a residential scheme on the site, which received a favourable response from the planning authority.
- 2.7 The limited amount of developable land (c5 acres of the 11 acres which comprise the site) and the planning policy requirement for the parkland to be maintained (with public access), may require a future owner working in conjunction with a specialist organisation.
- 2.8 Following an abortive disposal in 2019/20, a fresh appraisal of the site's potential has been undertaken and advice sought from several agents regarding its appeal to developers to prepare the site for remarketing.

## **3. Options considered and dismissed, and associated risk**

- 3.1 Following internal consideration, no operational requirement for the site has been established, therefore other options to be considered were limited to holding the property for investment return or disposal.

- 3.2 Continuing to hold the site would leave the Council exposed to ongoing costs for securing it against unauthorised access and potential claims for injuries arising from any trespassing. The deterioration of the remaining buildings remains an inherent risk for KCC. Similarly, the frailty of the heritage assets has a heightened risk of the Conservation Officer's intervention and potential for requiring unbudgeted expenditure to make repairs. The site would also require significant investment either by the Council or an occupier prior to any re-occupation and use.
- 3.3 The exempt appendix A sets out the approaches by interested parties, which have been received by the Council, since the site was declared surplus in 2010.
- 3.4 A freehold disposal will allow a capital receipt to be generated for reinvestment back into the Council's stated capital priorities and support the delivery of the Council's statutory obligations.
- 3.5 A freehold disposal is the preferred option for the site, seeking offers on an 'all enquiries' basis to ensure all potential interest is explored in line with the Council's statutory duties.

#### **4. Financial Implications**

- 4.1 The sale of the property will result in a capital receipt which will be reinvested back into the Council's Capital Programme.
- 4.2 The disposal of the property will remove holding costs associated with the property easing pressure on revenue budgets.
- 4.3 Further financial information is set out in the exempt appendix A.

#### **5. Marketing**

- 5.1 Subject to the necessary approvals being forthcoming, KCC will appoint a suitably qualified agent to openly market the site in Q3/4 2024 on an 'all enquiries' basis to allow any interested parties to submit a bid for the site.
- 5.2 A marketing campaign to advertise the site through various media channels will be undertaken to ensure a wide audience is reached; appropriate due diligence will be undertaken on any bidders.
- 5.3 Bids will be appraised in line with the Council's legislative and fiduciary duties, and in compliance with any relevant Council policy.
- 5.4 Following the formal submission of bids, these will be assessed considering:
  - Overall price, any pricing caveats or exclusions
  - Any conditionality on the proposals and the deliverability of those
  - Compliance with the Local Plan affordable housing requirements, if appropriate
  - Deliverability of the proposals submitted, if they are reliant on the planning process.
  - Funding security

- Any factors of opportunity cost that KCC may wish to consider, other than those described above, which would deliver operational or policy returns.

- 1.1. Due diligence will be undertaken as appropriate which may include valuation, planning or other specialist advice.
- 1.2. Following the consideration of initial bids, best and final offers may be requested. It is proposed to select the best proposal that enables delivery of the maximum capital receipt for the Council, having given due consideration to all the factors described in 5.4 above.

## **6. Legal Implications**

- 6.1 The Council has a duty under s123 of the 1972 Local Government Act to obtain not less than best consideration in the disposal of property assets.
- 6.2 External legal advisors will be appointed in consultation with General Counsel.

## **7. Equalities implications (EqIA)**

- 7.1 The Key Decision to be taken by the Cabinet Member does not relate to a service delivery or change.
- 7.2 An Equalities Impact Assessment (EqIA) has been undertaken and identified no direct equalities implications arising from the disposal of the site. See Appendix D.

## **8. Data Protection Implications**

- 8.1 As part of this approval process and in the handling of marketing/conveyancing of the site Data Protection regulations will be observed.
- 8.2 A Data Protection Implication Assessment (DPIA) screener has confirmed that there are no DPIA implications and that a further DPIA assessment is not required in respect of this decision.

## **9. Governance**

- 9.1 A Key Decision is being sought in line with the constitution and the Council's governance processes. The views of the local Member in accordance with the property management protocol will be sought and will be reported to the Cabinet Member before a Key Decision is taken.
- 9.2 As shown in the recommendation, delegated authority is to be given 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 the disposal and execution of all necessary or desirable documentation required to implement the decision.

## 10. Next Steps and Conclusions

10.1 An indicative timetable for the planned disposal is set out below:

Stage	Timescale
Marketing	Q3/4 2024
Bid appraisal	Q4 2024/Q1 2025
Exchange	Q1/2 2025
Completion assuming unconditional sale	Q1/2 2025
Completion assuming conditional sale	Q4 2025 / Q1 2026

10.2 The site has been declared surplus to the Council's operational requirements. In accordance with the Council's strategy of recycling assets to produce capital receipts for reinvestment into capital project priorities it is recommended that this site is progressed for disposal.

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### 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 agree to:

1. the disposal of the property, Boughton Mount, Boughton Lane, Boughton Monchelsea, ME17 4NA; and
2. 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 the disposal and execution of all necessary or desirable documentation required to implement the above.

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## 11. Background Documents

11.1 Appendix A – Exempt Appendix

11.2 Appendix B – Site Plan

11.3 Appendix C – Proposed record of Decision

11.4 Appendix D – Equalities Impact Assessment

11.5 Appendix E - Record of Decision 17/00034

<https://democracy.kent.gov.uk:9071/documents/s77515/REcord%20of%20Decision%20-%20Land%20at%20Boughton%20Mount.pdf>

11.6 Appendix F – Executive Decision Report 17/00034

<https://democracy.kent.gov.uk:9071/documents/s77517/1700034%20-%20report%20Boughton%20Mount.pdf>



## 12. Contact details

**Lead Officer:**

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Caroline Vincent  
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**Relevant Director:**

Rebecca Spore  
Director of Infrastructure  
03000 41 67 16  
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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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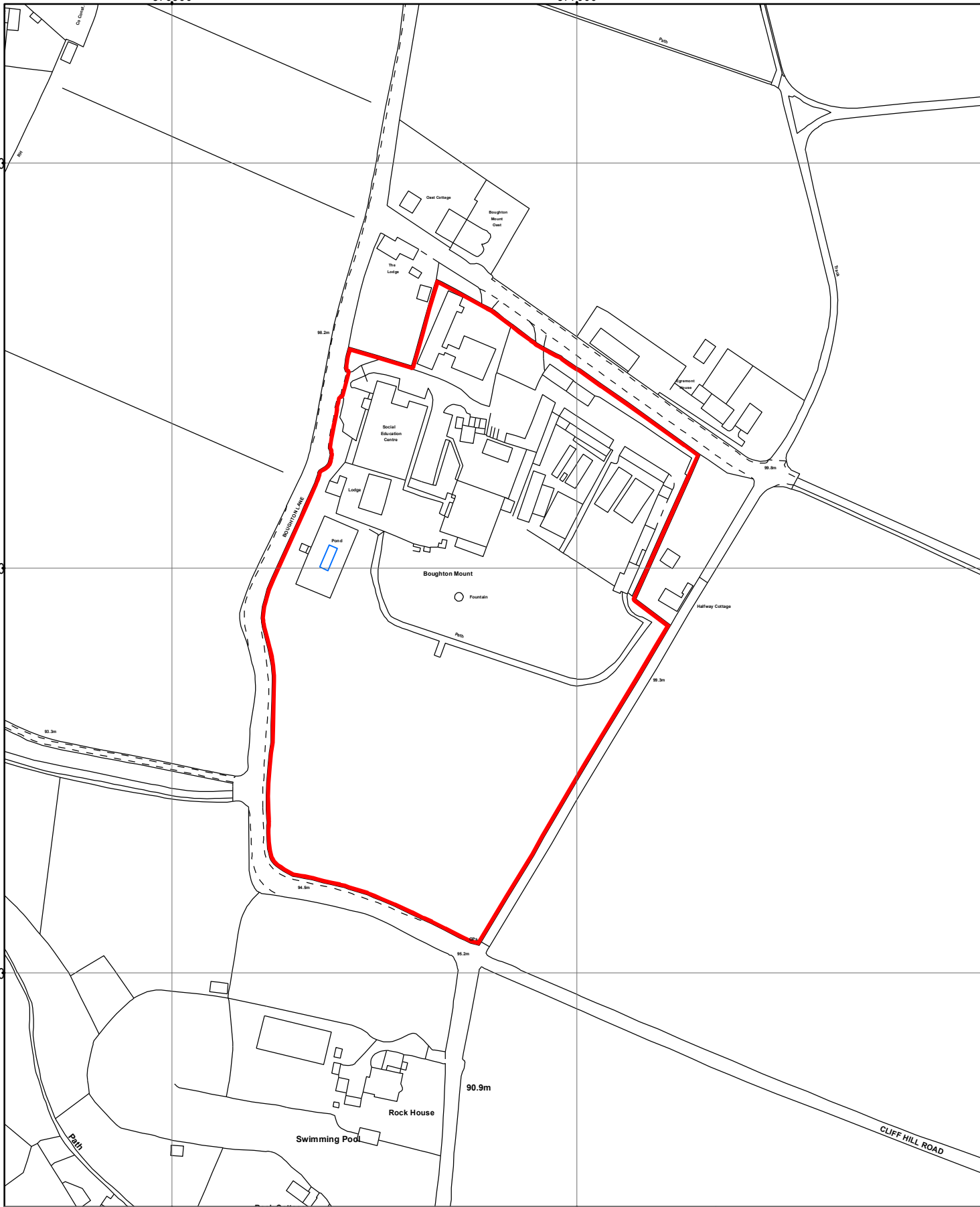
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**KCC FREEHOLD AT  
 BOUGHTON MOUNT  
 BOUGHTON LANE  
 BOUGHTON MONCHELSEA  
 ME17 2AN**



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

MasterMap

**AREA = 45,821 SQ M**

Drawing No.

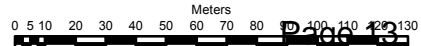
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# KENT COUNTY COUNCIL – PROPOSED RECORD OF DECISION

**DECISION TO BE TAKEN BY:**

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

**DECISION NO:**

24/00063

**For publication****Key decision: YES**

*The decision will result in savings or expenditure which is significant having regard to the budget for the service or function (currently defined by the Council as in excess of £1,000,000).*

**Title: Disposal of Boughton Mount, Boughton Lane, Boughton Monchelsea ME17 4NA**

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

1. the disposal of the property, Boughton Mount, Boughton Lane, Boughton Monchelsea ME17 4NA; and
2. 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 the disposal and execution of all necessary or desirable documentation required to implement the above.

**Reason(s) for decision:**

The property is surplus to the Council's operational requirements and due to the values requires a key decision as per Kent County Council's constitution.

The sale of the property will result in a capital receipt which will be reinvested back into the Council's Capital Programme.

**Cabinet Committee recommendations and other consultation:**

The matter is due to be considered at Policy and Resources Cabinet Committee 10 July 2024.

The views of the Local Member will be sought and reported to the Cabinet Committee and the decision taker.

**Any alternatives considered and rejected:**

The Council has an overarching duty under Section 123 of the Local Government Act 1972 to secure not less than best consideration in respect of property disposals. It also has a fiduciary duty to the residents of Kent.

As the property is not required for the Council's operational purposes, the only alternative option would be to seek an operator for the site, who would be willing to pay a market rent and take responsibility for security/holding costs, but this is considered an unrealistic prospect. Given that this approach does not align with the Council's investment strategy and a disposal provides an opportunity to reinvest capital in agreed priorities as set out in the Council's Capital Programme, it is proposed to proceed with the latter.

**Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:** None.

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signed

.....  
date

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## EQIA Submission – ID Number

### Section A

#### EQIA Title

Freehold disposal of Boughton Mount Boughton Lane Boughton Monchelsea ME17 4 NA

#### Responsible Officer

Caroline Vincent - DCED INF

#### Approved by (Note: approval of this EqIA must be completed within the EqIA App)

Hugh D'Alton - DCED INF

### Type of Activity

#### Service Change

No

#### Service Redesign

No

#### Project/Programme

No

#### Commissioning/Procurement

No

#### Strategy/Policy

No

#### Details of other Service Activity

Seeking authority as per KCC's constitution to dispose of surplus property in line with adopted policy

### Accountability and Responsibility

#### Directorate

Strategic and Corporate Services

#### Responsible Service

Infrastructure

#### Responsible Head of Service

Hugh D'Alton - DCED INF

#### Responsible Director

Rebecca Spore - DCED INF

### Aims and Objectives

To obtain authority to dispose of the property asset.

To seek the delegation of authority for agreein the specific terms of the disposal to the Director of Infrastructure in consultation with the Cabinet Member for Finance, Corporate and Traded Services

### Section B – Evidence

#### Do you have data related to the protected groups of the people impacted by this activity?

Yes

#### It is possible to get the data in a timely and cost effective way?

No

#### Is there national evidence/data that you can use?

No

#### Have you consulted with stakeholders?

Yes

#### Who have you involved, consulted and engaged with?

We are required to consult with the local division Member as per the Council's constitution.

As part of the Key Decision process, other members of the authority are made aware of the decision to be

taken and are able to raise queries in respect of the proposed decision.
It is our current intention that formal Member consultation will take place at the next Policy & Resources Cabinet Committee, on 10/7/2024.
<b>Has there been a previous Equality Analysis (EQIA) in the last 3 years?</b>
No
<b>Do you have evidence that can help you understand the potential impact of your activity?</b>
Yes
<b>Section C – Impact</b>
<b>Who may be impacted by the activity?</b>
<b>Service Users/clients</b>
No
<b>Staff</b>
No
<b>Residents/Communities/Citizens</b>
Residents/communities/citizens
<b>Are there any positive impacts for all or any of the protected groups as a result of the activity that you are doing?</b>
Yes
<b>Details of Positive Impacts</b>
A residential redevelopment on the site is expected to add to the well-being of the area in economic terms by employment generation and improvement of the local economy, due to the presence & increased spending of an increased local population. Social benefits will be derived from the redundant deteriorating site being brought back into beneficial use rather than being a target for vandalism and anti-social activities. It is anticipated that the environment will also be improved, as redevelopment should include the future restoration, management and preservation of the garden, Listed features and woodland areas - some of which will benefit the local public through local access.
<b>Negative impacts and Mitigating Actions</b>
<b>19. Negative Impacts and Mitigating actions for Age</b>
<b>Are there negative impacts for age?</b>
No
<b>Details of negative impacts for Age</b>
Not Applicable
<b>Mitigating Actions for Age</b>
Not Applicable
<b>Responsible Officer for Mitigating Actions – Age</b>
Not Applicable
<b>20. Negative impacts and Mitigating actions for Disability</b>
<b>Are there negative impacts for Disability?</b>
No
<b>Details of Negative Impacts for Disability</b>
Not Applicable
<b>Mitigating actions for Disability</b>
Not Applicable
<b>Responsible Officer for Disability</b>
Not Applicable
<b>21. Negative Impacts and Mitigating actions for Sex</b>
<b>Are there negative impacts for Sex</b>
No
<b>Details of negative impacts for Sex</b>

Not Applicable
<b>Mitigating actions for Sex</b>
Not Applicable
<b>Responsible Officer for Sex</b>
Not Applicable
<b>22. Negative Impacts and Mitigating actions for Gender identity/transgender</b>
<b>Are there negative impacts for Gender identity/transgender</b>
No
<b>Negative impacts for Gender identity/transgender</b>
Not Applicable
<b>Mitigating actions for Gender identity/transgender</b>
Not Applicable
<b>Responsible Officer for mitigating actions for Gender identity/transgender</b>
Not Applicable
<b>23. Negative impacts and Mitigating actions for Race</b>
<b>Are there negative impacts for Race</b>
No
<b>Negative impacts for Race</b>
Not Applicable
<b>Mitigating actions for Race</b>
Not Applicable
<b>Responsible Officer for mitigating actions for Race</b>
Not Applicable
<b>24. Negative impacts and Mitigating actions for Religion and belief</b>
<b>Are there negative impacts for Religion and belief</b>
No
<b>Negative impacts for Religion and belief</b>
Not Applicable
<b>Mitigating actions for Religion and belief</b>
Not Applicable
<b>Responsible Officer for mitigating actions for Religion and Belief</b>
Not Applicable
<b>25. Negative impacts and Mitigating actions for Sexual Orientation</b>
<b>Are there negative impacts for Sexual Orientation</b>
No
<b>Negative impacts for Sexual Orientation</b>
Not Applicable
<b>Mitigating actions for Sexual Orientation</b>
Not Applicable
<b>Responsible Officer for mitigating actions for Sexual Orientation</b>
Not Applicable
<b>26. Negative impacts and Mitigating actions for Pregnancy and Maternity</b>
<b>Are there negative impacts for Pregnancy and Maternity</b>
No
<b>Negative impacts for Pregnancy and Maternity</b>
Not Applicable
<b>Mitigating actions for Pregnancy and Maternity</b>
Not Applicable
<b>Responsible Officer for mitigating actions for Pregnancy and Maternity</b>
Not Applicable

<b>27. Negative impacts and Mitigating actions for Marriage and Civil Partnerships</b>
<b>Are there negative impacts for Marriage and Civil Partnerships</b>
No
<b>Negative impacts for Marriage and Civil Partnerships</b>
Not Applicable
<b>Mitigating actions for Marriage and Civil Partnerships</b>
Not Applicable
<b>Responsible Officer for Marriage and Civil Partnerships</b>
Not Applicable
<b>28. Negative impacts and Mitigating actions for Carer's responsibilities</b>
<b>Are there negative impacts for Carer's responsibilities</b>
No
<b>Negative impacts for Carer's responsibilities</b>
Not Applicable
<b>Mitigating actions for Carer's responsibilities</b>
Not Applicable
<b>Responsible Officer for Carer's responsibilities</b>
Not Applicable

## KENT COUNTY COUNCIL – RECORD OF DECISION

**DECISION TO BE TAKEN BY:**

**Mr Eric Hotson, Cabinet Member for Corporate and Democratic Services**

**DECISION NO:**

17/00034

**For publication**

**Key decision: NO**

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

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

**Governance:**

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

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

**Reason for decision:**

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

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

**Cabinet Committee recommendations and other consultation:**


The decision was considered by the Property Sub-Committee at its meeting on 21 March 2017, at which it was endorsed.

**Any alternatives considered and rejected:**

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

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

None

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 signed

.....  
 13<sup>th</sup> June 2017  
 date

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From: **Rebecca Spore, Director of Infrastructure**

To: **Cabinet Member for Corporate and Democratic Services**

Decision No. **17/00034**

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

Classification: **Unrestricted**

Past Pathway of Paper: **Property Sub-Committee, 21 March 2017**

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

Electoral Division: **Maidstone Rural South**

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

**Recommendation:** The Cabinet Member for Corporate and Democratic Services is asked to agree to commence the appropriation procedure.

## **1. Introduction**

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

occasions where illegal entry has taken place over the years while vacant. The entire property was fenced in 2016 following more regular trespassing issues.

## **2. Feasibility**

- 2.1 KCC undertook a feasibility exercise in 2013 to consider the relocation of Five Acre Wood school to this site. Five Acre Wood is a special needs school located within 0.5 mile along Boughton Lane and which was in need of improved and extended facilities.
- 2.2 This exercise concluded that it was not feasible to develop the Boughton Mount site as a special needs school largely because the developable area within the site is constrained in area and in order to provide sufficient floor area to meet the current standards a two storey building would be required which significantly increased costs.
- 2.3 KCC has therefore decided that Five Acre Wood School is refurbished and extended on its current site and this work is well under way.
- 2.4 The property at Boughton Mount is considered surplus to operational requirements and this declaration is currently being formalised.

## **3. Restrictive Covenant Release**

- 3.1 Without the release of the restrictive covenant it would not be possible to implement beneficial use of the site through development.
- 3.2 Discussions have been held with the family representatives related to the original donor of the land over several years as they are keen to see the land actively used for beneficial purposes. They would co-operate in releasing the restrictions on the basis that the net sale receipt is directed towards special needs education thus retaining the original nature of the gift.
- 3.3 Kent Legal Services have advised that although restrictive covenants usually relate to the land in this particular case they have also advised that the benefit of the covenant could also be held by the beneficiaries of the original donor through estate inheritance. This advice was also endorsed in Counsel's Opinion. KCC has therefore researched the respective Wills from the original donor identifying relevant beneficiaries through the generations to establish those living parties who would need to agree to the release of the restrictive covenant. This has demonstrated that at least eight parties (family and non-family) would need to be involved but there is an inherent risk that not all the parties are identified or are prepared to agree to the release. While agreement with these parties seems to offer a potential solution it is not completely failsafe.
- 3.4 Restrictive Indemnity Insurance cover can usually be obtained to cover restrictive covenant risk but these insurers stipulate that there is no contact whatsoever with any party likely to benefit from the restriction prior to cover being offered. Clearly this requirement cannot be met as discussions with



some of the family representatives have been in hand for many years and so it is unlikely that adequate insurance could be arranged.

- 3.5 Continuing with the covenant release by agreement with the family in the absence of suitable insurance will not provide a guaranteed solution and this would materially affect the marketability of the land and restrict the ability to sell the property. This means that there is an unacceptable risk in continuing with this option.

#### **4. Alternative solutions**

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

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

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

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

#### **5. The Appropriation process**

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

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

*5.4.1 The property is declared surplus*

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

*5.4.2 The property must be held for planning purposes*

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

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

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

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

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

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

## **6. Proposed development**

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

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

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

## **7. Procedure for appropriation**

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

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

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

## **8. Consultation**

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

## **9. Kent Legal Services**

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

## **10. Recommendation**

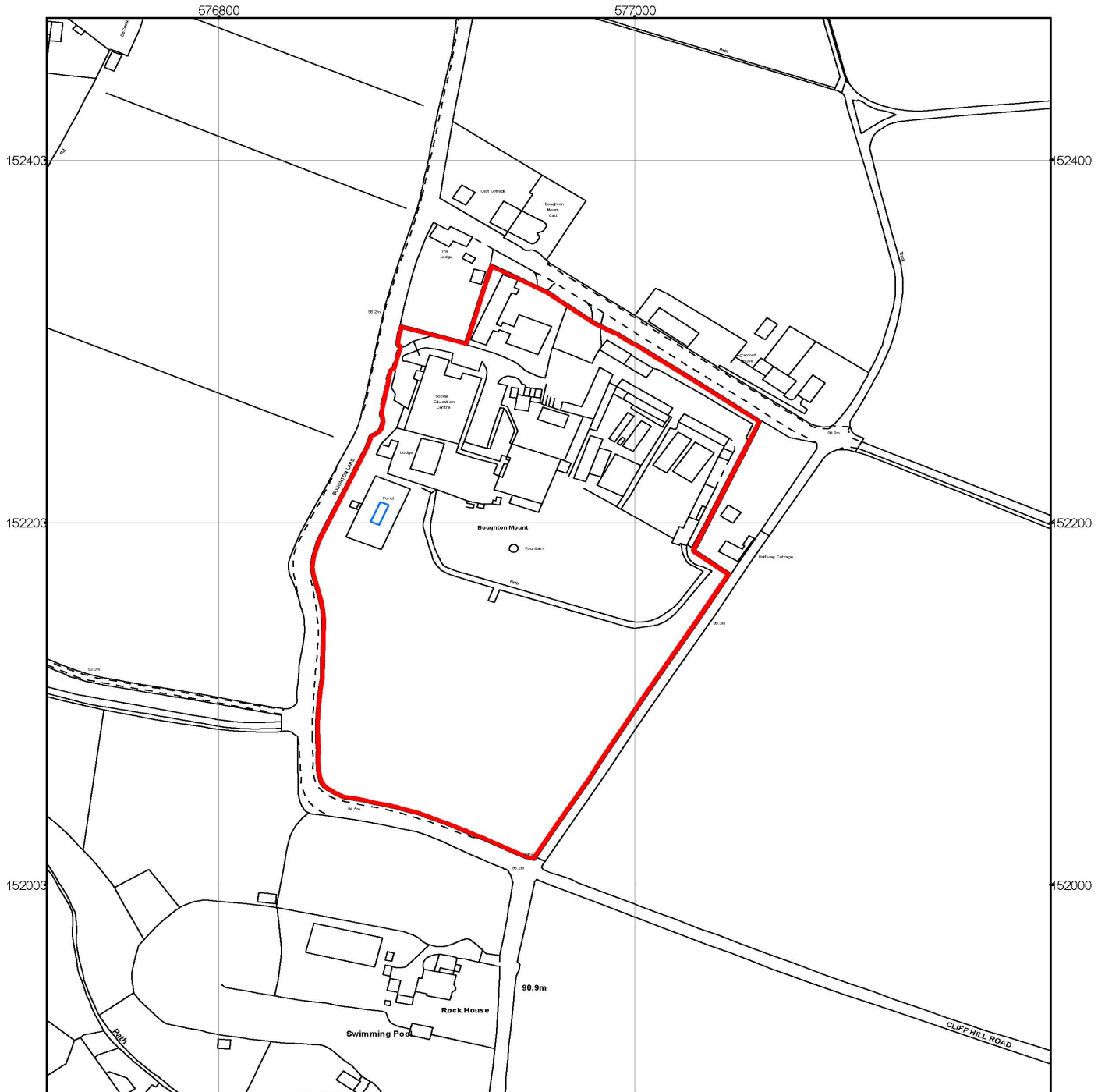
10.1 The Cabinet Member for Corporate and Democratic Services is asked to agree to commence the appropriation procedure

## **11. Background Documents**

Site plan attached.

## **12. Contact details –**

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



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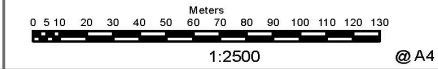
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**PROPERTY AND  
INFRASTRUCTURE SUPPORT**  
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Drawn By  
**KP**

Date  
**JAN 2013**



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