

KENT COUNTY COUNCIL –RECORD OF DECISION

DECISION 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 was contained in the Committee report and was made available to the Cabinet Member for consideration before the decision was taken. 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:

The proposed decision was discussed by the Policy and Resources Cabinet Committee on 22nd February 2022 and the proceedings were as follows:

It was RESOLVED that the decision proposed to be taken by the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services to:

- a) 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:

"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";

- b) 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; and
- c) 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,

be endorsed, with two abstentions.

Views of Local Members:

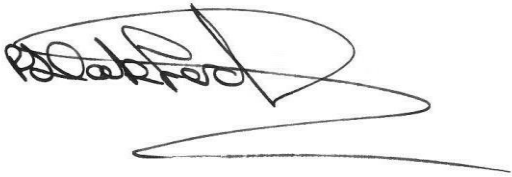
The views of local members were sought.

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: None.



16th March 2022

Signed:

date

**Peter J Oakford, Cabinet Deputy
Leader of Kent County Council and
Cabinet Member for Finance,
Corporate and Traded Services**