

**East Malling &
Larkfield**
East Malling

569749 157408 24 March 2010

TM/10/00846/CR3

Proposal: Erection of 1.8m high steel fencing, finished in dark green, with vehicular and pedestrian access gates (TM/10/TEMP/0009)
Location: The Malling School Beech Road East Malling West Malling Kent ME19 6DH
Applicant: The Malling School

1. Description:

- 1.1 This is an application that is to be determined by KCC and not an application that the Borough Council is the determining Authority for. KCC has, as required, consulted the Borough Council on the proposal and the purpose of this report is to establish the Borough Council's response to that consultation.
- 1.2 The application shows the erection of a 1.8m high fence, with a pair of vehicular and pedestrian gates, which are 1.8m in height and 1.9m each in width within The Malling School's grounds.
- 1.3 The proposed fencing will be located to the south of the existing playing fields, running from the existing Clare Lane gate around the edge of the playing field, finishing in the south west corner of the lake. The proposed fencing and gates are to be constructed of steel and painted green to match the school's existing boundary treatments.
- 1.4 There is also a section of fencing proposed to the north of the existing playing field, between Clare Wood Drive and St James the Great County Primary School. This section of fence falls within the schools permitted development entitlement, as a result of its height and location. Therefore, it is shown on the plans *for information only*.
- 1.5 The applicant has stated that fencing is required due to concerns regarding the amenity and safety of school pupils and neighbouring properties, due to abuse of the school playing fields from vehicles being abandoned, unauthorised and informal use by motorcycles and quad bikes, broken glass, fires being lit and dog fouling.

2. Reason for reporting to Committee:

- 2.1 The application has received a high level of responses from local residents, and is reported to Committee as the subject of particular local controversy.

3. The Site:

- 3.1 The site comprises The Malling School and more particularly its associated grounds, which are located outside the built confines of East Malling. The proposed fence that is the subject of this application is within the Clare Park and Blacklands Conservation Area. The Malling School is positioned at the south of the site, with the open grassland, used as playing fields, and lake located to the north west of it.
- 3.2 Access to the site is currently partially restricted by existing fencing and gates, and boundary treatments which include trees and hedges.
- 3.3 North east and south west of the application site are residential developments. North west of the site is Clare House, which is a Grade I Listed Building, and a small development of detached, residential dwellinghouses.

4. Planning History:

- 4.1 There is a lengthy history of planning applications relating to the school and its grounds, but none is directly relevant to the current proposal.

5. Consultees: (Responses received by KCC)

- 5.1 PC: Raises the following concerns:
- The public have been using this space for in excess of 20 years.
 - The blue line includes the Blacklands path which is believed to belong to Mrs Leonard of Blacklands House.
 - The site plan is not up-to-date as it does not include St. James the Great School.
 - The position of land ownership should be clarified.
 - There may be covenants to keep the land available for public use.
 - English Heritage may have an interest as the land forms part of the parkland and setting of Clare House.
 - Is the fence near to Clare House permitted development?
- 5.2 Sport England: No objections raised.
- 5.3 English Heritage: No objections raised. The application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice.

5.4 East Malling Conservation Group: Raises the following concerns:

- Little incentive for the school to maintain the upper part of the playing fields, which if unused could result in the land being sold for development,
- The parklands have been used by the public for recreational use for many years and could possibly be registered as a "Village Green",
- The parklands are used by pedestrians to avoid Clare Lane, which has no footpath,
- There are other ways to deal with the issues faced by the School.

5.5 Private Reps: 21/0X/9R/0S. 21 letters of objection received, raising the following concerns:

- Loss of attractive amenity space and recreational land used by local residents for many years.
- Safety concerns as restriction of access will mean local residents will need to walk along Mill Street/Clare Lane, where there is no pavement and poor visibility - a pathway should be provided.
- The existing fencing is out of character and does not integrate the school into the community and the proposed 6ft steel fence will change the character of the area and have a detrimental impact on the Conservation Area and neighbouring Grade I Listed Building.
- The fencing will subdivide the park and is likely to lead to disuse and possible redevelopment of part of the land.
- The only way to protect the school is to fence the whole boundary, as the erection of only partial fencing may protect the school, but is likely to mean other areas of the park fall into disrepair and anti-social behaviour is shifted closer to residential properties in Clare Wood Drive.
- Other measures are possible to prevent problems such as motorbike access, dog fouling, misuse of sandpits.
- The previous Dual Use scheme, which was not implemented, which allowed for the parklands to become official public space should be reinstated.
- Gates should be large enough to allow for mowing machinery.
- Fences should include landscaping.
- The location plan is out of date and does not show the new St James the Great School and also has some inaccuracies.

- The land appears to be owned by the Malling Holmesdale Federation Trust, not The Malling School.
- Possible breach of a deed of grant entered into between the governing body of The Malling School and Berkeley Homes.
- The proposed works may affect nesting birds and other wildlife.

6. Determining Issues:

- 6.1 The main considerations in dealing with this planning application are the impact that the proposed fencing will have on the character and appearance of the Conservation Area and on the existing school and the surrounding residential properties.
- 6.2 The relevant Policies for consideration are Policy OS1 of the Managing Development and the Environment DPD, 2010, which has replaced Policy P3/7 of the Tonbridge and Malling Local Plan, 1998, and Policy OS4 of the Managing Development and the Environment DPD, 2010, which has replaced Policy P8/3 of the Tonbridge and Malling Local Plan, 1998.
- 6.3 Policy OS1(1) requires that development which 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 Annexes OS1A and OS1B and identified on the Proposals Map, and any other open spaces that are provided during the lifetime of the LDF, will not be permitted unless a replacement site is provide which is equivalent or better in terms of quantity, quality and accessibility. Policy Annex OS1A, Open Spaces to be Protected, includes the outdoor sports facilities at The Malling School and the natural and semi-natural green space at Clare Park.
- 6.4 Policy OS4 states 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.
- 6.5 The intention of the proposed fence is to control access to this part of the school grounds following concerns regarding the safety of school pupils and a reduction in the environmental quality and amenity value of this land, including impact on the amenity of neighbouring properties, due to abuse of the school playing fields, from abandoned vehicles, use by motorcycles and quad bikes, broken glass, fires being lit and dog fouling. Both this Council and the County Council are required to consider the crime and disorder implications of a proposal and in this case the need to prevent the above activities is clearly one such matter. The balance is whether the proposed solution is acceptable in other respects.
- 6.6 Confirmation has been received that the northern area of the field, beyond Clare House, will remain accessible to members of the public. This remains a sizeable area available for public recreational use, and the remainder of the grounds will

continue to be used as school grounds, unaltered in terms of its physical characteristics, nature conservation and biodiversity value and the other criteria set out in policy OS1. As mentioned in para 1.4 above, the northern fence is permitted development and therefore not part of the consideration of this application. In all these circumstances, it would be difficult to put forward a case that the *fencing proposed in the current application* would conflict with policy OS1.

- 6.7 Concern has been raised that the restriction of access will mean that local residents need to walk along Mill Street/Clare Lane, which has no pavement and poor visibility. As Ownership Certificate A has been completed, The Malling School would be within their rights *under planning legislation* to erect a fence to prevent unrestricted access to their land. If there are concerns that the details of the land ownership are incorrect, or there is a claim of public rights of access *arising a history of uncontrolled public access* then these matters should be submitted to KCC for consideration.
- 6.8 Concern has been raised that the location plan is out of date. However, as the site plan clearly shows the site area where the proposed fence is to be erected, it is not considered to be necessary that the new St. James the Great School is included within it, as it is quite clear where the fence the subject of the application lies .
- 6.9 As the proposed fencing is shown to be dark green painted steel, to match the existing school fencing, it is not considered that it will have a detrimental impact on the Conservation Area, as it is in keeping with the site. Furthermore, as the element of fencing which requires the grant of planning permission by the County Council is located some distance from Clare House, it is not considered that it will have a detrimental impact on the Listed Building.
- 6.10 Concern has been raised that the subdivision of the site will leave the north section of the parkland disused, which may lead to anti-social behaviour and the subsequent redevelopment of the site. In the context of this application the Borough Council can only comment on the development which is the subject of the application, which in this case relates only to the erection of fencing. Concern has also been raised that the proposed gates should be wide enough to allow access for mowing equipment. As the proposed gates are stated to be 1.9m each in width, it is considered that these are adequate for access for this purpose. Any proposal for development of the land would have to be judged on its own merits but LDF policy presumes against built development.
- 6.11 Various measures have been suggested as alternatives to the erection of fencing, to overcome the problems that the school is encountering, as well as requests that the previous Dual Use scheme is reinstated. As explained above, the Borough Council can only comment on the development which is the subject of the application. The previous Dual Use Scheme referred to is, I believe, a reference

to the former policy P8/3(b) of the TMBLP. This has now been superseded, and Figure 5 of Annex D to the MDEDPD does not identify this as a locality where there is a deficiency in Open Space Provision.

- 6.12 Concern has been raised by local residents that the proposed fencing should include the provision of additional landscaping. As the proposed fencing does not include the removal of any of the existing trees, it is not considered that additional landscaping is required. However, the Borough Council can seek to ensure that KCC is satisfied that the erection of the fence will not have a detrimental impact on the roots of the existing trees which the fence will be located between, which are located to the west of the lake. Furthermore, as the plans do not include the removal of any of the existing trees and the application form states that there are no protected species at the site, it is not considered that the proposals will have a detrimental impact on the existing wildlife at the site.
- 6.13 In relation to concerns raised that the proposals represent a possible breach of a deed of grant, this would be a legal matter between any parties that consider that they enjoy such rights and The Malling School and is not one which can be considered as part of the planning application.
- 6.14 Therefore, in light of the above considerations, I believe it would be difficult to substantiate on planning grounds an objection to the fence that is the subject of this application. So far as the wider safety and amenity issues facing the School are concerned, it does appear that these are real and pressing, and they should not be underestimated. Whilst I appreciate that some may find it disappointing that these have led to the current package of proposals, I consider that the conditions suffered do justify the proposed works.

7. Recommendation:

- 7.1 KCC to be advised that the Borough Council **RAISES NO OBJECTION**, subject to KCC being satisfied that the erection of the fence will not have a detrimental impact on the roots of the existing trees.

Contact: Vicky Bedford