

Briefing Note on Ken Stimpson playing fields, Werrington - August 2022

Context

The City Council continues to proceed with the project to erect a fenced area of playing field serving the pupils of Ken Stimpson.

The intent is to improve safeguarding of children and, by doing so, we will be ensuring that the Council is meeting its statutory responsibilities.

In terms of legislative compliance, the Council is under various statutory obligations in relation to land held for education purposes:

- a) Under Regulation 10 of the School Provision (England) Regulations 2012, “suitable outdoor space must be provided in order to enable:
 - (1) physical education to be provided to pupils in accordance with the school curriculum; and
 - (2) pupils to play outside.
- b) Under Section 175 of the Education Act 2002:
 - (1) A Local Authority shall make arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting the welfare of children; and
 - (2) The governing body of a maintained school shall make arrangements for ensuring that their functions relating to the conduct of the school are exercised with a view to safeguarding and promoting the welfare of children who are pupils at the school.
- c) Under the Keeping Children Safe in Education 2022 statutory guidance for schools and colleges, all staff have a responsibility to provide a safe environment in which children can learn. In addition, education settings are directly responsible for ensuring they have the appropriate level of security protection procedures in place.

It is felt that the best way to ensure that both the Council and the school are meeting their statutory responsibilities with regard to keeping children safe is to enclose part of Werrington fields with a 2m high fence and offer managed access to the enclosed fields to members of the community outside of school operating hrs.

Legal Protection for the land

School playing fields have protection under Section 77 of the School Standards and Framework Act 1998 and any disposal or change of use of school playing fields is subject to Secretary of State consent.

As part of the Academy conversion process, the Council will enter into a 125-year lease with the 4Cs Trust using the model lease provided by the DfE as this protects the Council's interest by ensuring that:

- the land and buildings remain in the freehold ownership of the Council and would be returned to the Council when the lease ends; and
- use is restricted to educational purposes, or for community, fundraising and recreational purposes which are ancillary to the educational use. The Academy conversion will not take place until 2023.

The whole area has been used as playing fields for the school with public access to the playing fields. The intention is to fence part of the playing fields , with continued public access controlled under a Community Use Agreement with the remaining land outside of the fenced area available for open public access at all times. The Council sought legal advice as to the approvals/statutory requirements the Council needed to comply with in terms of the proposed land use.

Current Update - Section 77 Change of Use

Following legal advice, the education department have sought further advice from the DfE as per the need for a section 77 change of use consent , for part of the playing field to be fenced in, given that the current intention is to fence only part of the land currently designated as playing field.

The DfE have confirmed that the Council need to pursue a section 77 change of use application if part of the existing playing field is proposed to be excluded from the fenced area unless the school still intend to use the unfenced area for playing fields.

The school are clear that they will not be able to use the unfenced area as playing field due to safeguarding concerns and therefore , a section 77 consent for change of use of part of the playing field must be sought, as the school have used the land as playing fields within the last 10 years.

Had the intention been to fence the entirety of the land that has been used as playing fields, the DfE has confirmed that the Council would not need to seek section 77 consent as the land would remain in its entirety as school playing fields .

The Education department has now made a section 77 application to the Secretary of State for consent to change the use of that part of the playing field that will be excluded by the fencing and no longer available for use as school playing field.

Next Steps

Following the outcome of the Section 77 application to the Department for Education, the next steps in the decision-making process will be the publication of the Cabinet Member for Children's Services, Education, Skills and University, Councillor Lynne Ayres, Cabinet Member Decision Notice.

This will include a recommendation that the Council should seek planning permission for a material change of use of that part of Werrington fields which would be enclosed by the fence from dual use to education use, with public access out of school hours under a Community Use Agreement. This will be subject to the council call in process for decision making.

The decision on whether to approve the planning application and grant approval to enclose that part of Werrington fields would rest with the Council's Planning Committee.

To deal with the dual use aspect of the playing fields and its use by the public as open space, the Council will also need to advertise its intention to change (appropriate) the use of the land from unrestricted open space to enclosed land for education purposes and consider any objections made.

At that stage, anyone with an interest in this project, will have the opportunity to submit comments to the planning application and to the proposal to appropriate the land.

If planning permission is granted and a decision made as regards appropriation, following the end of the consultation period and consideration of any objections received, implementation of the plans to erect the fencing would be dependent on approval from the Council's Cabinet to fund the cost of purchasing and erecting the fence. If the funding is approved, the Council would then place an order with a company for the materials and associated work. The Council is not under any contractual obligation with a third party currently.

If the Secretary of State does not grant consent to change the use of the area of land outside of the proposed fenced area, the Council will give further consideration as to the extent of the fencing before the application for planning permission for change of use is submitted and the proposed change of use (appropriation) is advertised. It is likely that if the Secretary of State does not grant content, the fencing of the entirety of the area to ensure safeguarding may be the only viable option left. The decision on whether to proceed on that basis will be sought through a Cabinet Member Decision Notice.