

Call in - Decision Number W/ENV/005/16-17 - Proposed Fencing at the Manor Sports Ground

Decision of the Worthing Borough Council Executive Member for the Environment

Report by the Monitoring Officer

1.0 Summary

- 1.1 A decision was made and published on 14 October 2016 by Councillor Roberts, Worthing Borough Council Executive Member for Resources, with reference number W/ENV/005/16-17. The decision concerned the proposed erection of fencing at Manor Sports Ground, Worthing. The decision was taken by Councillor Roberts, following receipt and consideration of an Officer report, written by James Appleton, Head of Economic Growth and Andy Edwards, Head of Environment, and published on 4th October 2016.
- 1.2 On 21st October 2016 the Council's Monitoring Officer received a request for a 'call-in' of the decision from three Council Members. The request was accepted by the Monitoring Officer and is referred to this meeting of the Worthing Borough Council Overview and Scrutiny Committee for consideration.

2.0 Background

- 2.1 The report dated 4th October 2016, 'Proposed Fencing at the Manor Sports Ground', sought the approval of the Executive Member for the Environment to erect a fence in Manor Sports Ground to provide some separation between the formal sports facilities and the more informal areas of the sports ground. The proposal was that all areas of the Sports Ground would be open to the public but the fence, together with Orders recently made relating to the control of dogs, would ensure that dogs off leads would be restricted to the area outside of the formal sports area.

A copy of the report 'Proposed Fencing at the Manor Sports Ground' can be found at appendix 1 to this report.

The Councils' Joint Strategic Committee on 5th February 2015 considered a proposal by Bohunt Academy to have exclusive use of the Manor Sports Ground during the school day and shared use at other times. A consultation event was held in connection with this proposal. Joint Strategic Committee, as part of their decision, asked Officers to consider the scope for zoning part of the Manor Ground for dog walkers away from the formal sports areas, and consider further enforcement to

ensure dogs were kept on a lead. The proposal to fence the formal sports area follows the Joint Strategic Committee resolution.

- 2.2 The decision was taken by the Executive Member for the Environment and published on 14th October 2016. The decision was that he:

“Agreed that no further public consultation was necessary and approved the erection of fencing as set out in Appendix 1; and

Delegated authority to the Head of Economic Growth and the Head of Environment to determine the appropriate level of indemnity required to proceed with erecting the proposed fencing”.

The reasons for the decision were *“as outlined in the report”.*

Consultation considered included *“comments received in connection with the Public Space Protection Order Consultation Exercise (held between 25 July and 5 September 2016) relating to the Manor Ground”.*

A copy of the decision notice, reference W/ENV/005/16-17 can be found at appendix 2 to this report.

- 2.3 The Council’s Overview and Scrutiny Rules provide, at paragraph 16.0, that between the date of a decision of an Individual Executive Member being made, and it coming into force, the Monitoring Officer may call in the decision for scrutiny if any three Members of the Council submit in writing a request for call in. The request must be made within 5 clear working days from the date upon which the record of decision is published. This decision made by Cllr Roberts was published on 14th October 2016; a request for call in for scrutiny was received in writing by the Monitoring Officer from Cllrs Thorpe, Smytherman and Doyle on 21st October 2016.
- 2.4 Upon receipt of a request for call in, the Monitoring Officer, or their Deputy, shall determine whether or not the call in is in accordance with the Overview and Scrutiny Procedure Rules.
- 2.5 The procedure rules state at paragraph 16.7 that a decision may be called in:
- If it conflicts with Council policy
 - If it conflicts with the Council’s Budget Strategy
 - Where there is evidence to suggest the principles of decision making have not been complied with.

The principles of decision making are set out in Article 12 of the Worthing Borough Council constitution and state as follows:

“All decisions of the Council will be made in accordance with the following principles:

- *There should be clarity of aims and desired outcomes;*
- *Proper regard should be paid to professional advice from Officers;*
- *All decisions shall be in accordance with the law;*

- *Proper regard should be paid to the outcome of any internal or external consultation;*
- *There should be a presumption in favour of openness, accountability and transparency;*
- *There should be respect for Human Rights;*
- *There should be proportionality*
- *There should be an explanation of the alternative options considered; and*
- *There should be proper and documented reasons given for all decisions.*

In exercising discretion, the decision-maker must:

- *Understand the law that regulates the decision-making power and gives effect to it. The decision-maker must direct itself properly in law;*
 - *Take into account all relevant matters,*
 - *Leave out of account irrelevant considerations*
 - *Act for a proper purpose, exercising its powers for the public good*
 - *Not reach a decision which no Authority acting reasonably could reach*
 - *Comply with the rule that Local Government Finance is to be conducted on an annual basis, save to the extent authorised by Parliament , ‘live now, pay later, and forward funding are unlawful, and*
 - *Act with procedural propriety in accordance with the rules of fairness.”*

2.6 Cllrs Thorpe, Smytherman and Doyle requested a call in for scrutiny of the decision, for the following reasons:

Cllr Doyle stated:

“I wish to call in decision W/ENV/005/16-17: Proposed Fencing at the Manor Sports Ground on the following grounds:

A decision may be called in under section 7.6(iii) ‘where there is evidence to suggest the principles of decision-making (as set out in Article 12 of this Constitution) have not been complied with, for example the absence of appropriate consultation’).

In the report to the Executive Member, section 5.12 indicates that 658 questionnaires were returned following a single drop-in event. Not only did this constrain responses to those attending the event, it should be weighed against the over 800 signatories to a petition against the fencing. If these signatories had been notified a significant number of extra responses would have been returned. To weigh this, as the report does against the hypothetical ‘it is likely that Bohunt would seek to encourage all current and prospective parents to respond’ is to engage in speculative reasoning against full consultations.

Normally consultation would require notice to anyone with a possible concern that they can respond, and in other circumstances the Council has considered it proper to write to residents, and/or publicise consultation on the Council website.

A decision may be called in under section 7.6 (i) ‘if it conflicts with Council policy’.

The Council's Core Strategy states, in Policy 14, that 'Worthing's areas of green infrastructure will be improved and enhanced to maintain their quality and accessibility for residents and visitors, and that there should be no loss without alternative provision, which has not been made. This is the heart of the argument by MAG and SBRA against the fencing - the loss of accessibility by large sections of the community to benefit a single section. The Core Strategy and its policies are completely omitted from the report to the Executive Member, and therefore his ability to make a fully informed decision is compromised.'

Cllr Smytherman and Thorpe state:

"I believe the grounds are policy as there is no current policy to cordon off a shared space so this is important to this issue. Communication and consultation surely the precedent was set by Victoria Park and Helene First School re use by WSCC as opposed to an open shared space for the public. The tax paying public preferred an open space. I think that this decision to ignore public concerns could give us issues and complications further down the line when we want to keep other public spaces open and not ripe for development".

- 2.7 The Deputy Monitoring Officer considering this matter determined that there was evidence to suggest that the principles of decision making may not have been complied with, and / or the decision may have been contrary to Council policy. The request for call in was therefore accepted.
- 2.8 Consequently the decision cannot be implemented at the current time, until the outcome of the scrutiny process.

3.0 Proposals

- 3.1 This meeting of the Worthing Borough Council Overview and Scrutiny Committee is advised to scrutinise the decision and determine whether or not they consider the decision has been made contrary to the principles of decision making and/or Council policy. It is important to note that it is not the decision itself that is to be scrutinised, but the decision making process and whether or not the decision maker complied with the principles of decision making and gave due consideration to Council policy.
- 3.2 The procedure to be followed at the meeting is set out at Appendix 3 to this report.
- 3.3 Having considered the decision, the Overview and Scrutiny Committee may refer the decision back to the Executive Member for the Environment for reconsideration, setting out in writing the nature of its concerns. The decision-making person must reconsider the decision within a further 5 clear working days, and may or may not amend the decision.
- 3.4 Once the decision is published following the call-in procedure, the decision cannot be called in again. The decision following the call in procedure cannot be acted upon until 5 clear working days after the publication of the Record of Decision.

4.0 Legal

4.1 The Council's principles of decision making are set out at Article 12 of the Constitution.

4.2 The Procedure for Call in of Executive decisions is set out in the Council's Overview and Scrutiny Procedure Rules which can be found in Part 4 of the Constitution.

5.0 Financial implications

5.1 There are no financial implications arising from this report.

6.0 Recommendation

6.1 The Overview and Scrutiny Committee are recommended to scrutinise the decision and determine whether or not they consider the decision has been made contrary to the principles of decision making and/or Council policy. If so, they are recommended to refer the decision back to the Executive Member for the Environment for reconsideration, setting out the nature of their concerns in writing.

Local Government Act 1972

Background Papers:

Worthing Borough Council Constitution
Joint Strategic Committee decision 5th February 2015

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Schedule of Other Matters

1.0 Council Priority

1.1 Matter considered and the issue of the Call-In relates to the Council priorities relating to Patnership working

2.0 Specific Action Plans

2.1 Matter considered and no issues identified

3.0 Sustainability Issues

3.1 Matter considered and no issues identified

4.0 Equality Issues

4.1 Matter considered and no issues identified

5.0 Community Safety Issues (Section 17)

5.1 Matter considered and no issues identified

6.0 Human Rights Issues

6.1 Matters considered and no issues identified

7.0 Reputation

7.1 It is necessary to demonstrate that Council decision making is made in a transparent way and in compliance with the principles of decision making, to avoid reputational damage.

8.0 Consultations

8.1 Matters considered and no issues identified

9.0 Risk Assessment

9.1 Any areas of risk are identified within the appendices to this report.

10.0 Health & Safety Issues

10.1 Matter considered and no issues identified

11.0 Procurement Strategy

11.1 Matter considered and no issue identified

12.0 Partnership Working

12.1 Matter considered and the issue of the Call-In relates to Partnership working

Key Decision: Yes / No

Proposed Fencing at the Manor Sports Ground

Report by the Director for the Economy

1.0 Summary

- 1.1 This report seeks the approval of the Executive Member to erect a fence in Manor Sports Ground to provide some separation between the formal sports facilities (cricket squares, athletics and football pitches) and the more informal areas of the sports ground. All areas of the Sports Ground would be open to the public but the fence, in combination with amendments to the current Dog Control Order (to be replaced by a Public Space Protection Order) would allow for dogs off their leads outside the formal sports area.
- 1.2 The report also provides details of the recent consultation on the Public Space Protection Order in relation to the Manor Sports Ground.

2.0 Background

- 2.1 The County Council granted itself planning permission for a new Academy School on the 7th October 2014. At the time it was indicated that the new Academy would seek to have shared use of the Manor Sports Ground. However, following Bohunt's appointment as the Sponsor for the new Academy the Council was requested to consider an exclusive use of the Manor Sports Ground during the school day with shared use at other times. In connection with this proposal a consultation event was undertaken by West Sussex County Council (WSCC) for local residents and a questionnaire was published on the WSCC website.
- 2.2 At its meeting on the 5th February 2015 the Joint Strategic Committee (JSC) considered the proposal by Bohunt for exclusive use of the Manor Sports Ground during the school day. The Committee:
- i) affirmed its support for the principle of school sports use on the Manor (Sports) Ground;*
 - ii) affirmed its desire to be a reliable partner to the Education Sector in the Borough of Worthing;*
 - iii) was sympathetic to the concerns of Bohunt School and requested that Officers consider the scope for zoning part of the Manor Ground for dog walkers away from the formal sports areas, review existing byelaws and consider further enforcement to ensure dogs were kept on a lead;*

- iv) *agreed that Worthing Borough Council (WBC) shall enter into a new Licence agreement to enable the Bohunt Academy to use the Manor Ground together with the existing users (including the Worthing Cricket and Hockey Clubs) with the precise terms to be agreed by the Director for the Economy in consultation with the Leader and Executive Member for the Environment of Worthing Borough Council;*
- v) *agreed that Worthing Borough Council shall enter into a lease with Worthing Cricket and Hockey Clubs for the use of the Pavilion building, the precise terms to be agreed by the Director for the Economy in consultation with the Leader of Worthing Borough Council.*

- 2.3 Following the meeting various discussions have taken place with Bohunt about how the Manor Sports Ground could be zoned for various activities and the Manor Action Group (MAG) was informally consulted about the proposal to erect a fence to help zone different areas of the sports ground last summer. Representatives of MAG expressed considerable concern about the idea of a proposed fence and felt that this would not address issues of uncontrolled dogs. MAG also felt that any fence would be contrary to a restrictive covenant on the Manor Sports Ground and that the Council should in any event consult local residents before erecting the proposed fence.
- 2.4 There are two conveyances covering the Manor Sports ground. The majority of the Manor Ground was transferred to the Council in 1924. A number of restrictive covenants were placed on the land however none of these are relevant to the use of the land proposed. Further land to the rear of the properties in Sompting Road was transferred to the Council in 1930 and this land has a restrictive covenant that states that, *'they will not use the said land....except as a public pleasure or recreation ground.'* A plan is attached to this report identifying the two parcels of land as **Appendix I**. The land transferred by the 1924 conveyance is shown coloured blue on the said plan and the land transferred by the 1930 conveyance is shown coloured pink on the plan.
- 2.5 An existing licence has been in place for the last 28 years with Worthing Cricket and Hockey Club. The licence allows the Clubs to use the main pavilion building and the grounds for cricket and hockey (although the hockey use is now limited to the use of the Pavilion and to two all day tournaments each year). The Manor Ground has been used as a first class cricket venue and hosted 43 first-class matches between 1935 and 1964. There remains an aspiration to return first class cricket to the site, and since 1999 minor Sussex matches have been played at the Manor Ground. The Licence was amended in 1998 to allow junior football matches to take place (under 11's football teams). The licence expired on 31st March 2015 but has been extended whilst negotiations on a lease of the Pavilion building continue with the Club.
- 2.6 The new Academy opened in September last year and has approximately 180 pupils rising to 900 when at full capacity. The Academy is currently accommodated in temporary classrooms on Queen Street Car Park whilst the new Academy is completed. It was originally intended that the Academy would vacate the temporary classrooms at the beginning of June but delays in the project, most notably a pedestrian crossing across the Broadwater Road, has put back this timetable and it

is now envisaged that the new Academy buildings will not be occupied until this September.

- 2.7 The new Academy has been hiring the Sports Ground for various formal sports activities since last September and Heads of Terms (HoTs) for a new licence are being negotiated with Bohunt.

3.0 Proposal

- 3.1 The proposal, supported by Bohunt and the Hockey and Cricket Club, is to erect a 1.2 metre (4ft) high fence from the north-east side of the Sports Ground arching around the two cricket pitches and linking to the existing fence in the south west corner of the Sports Ground. The fence, similar to that erected around childrens' play areas would be green in colour and would have 4 swing gate access points. A plan is attached to the report indicating the line of the proposed fence and the additional sports facilities likely to be accommodated to meet the Bohunt's future sporting requirements (**Appendix II**).
- 3.2 The Academy feels that the fence would help to implement the recommendation of JSC last year to zone different areas of the Manor Sports Ground. The fence would help to manage different users of the site and with appropriate signage explain why dogs are to be kept on the lead within the formal sports area and not on the cricket squares. The Cricket Club supports the proposal as it often finds people walking dogs across the pitches and even the cricket squares when matches are in progress.
- 3.3 The County Council has also supported the proposal and has confirmed that it would pay the costs of erecting the fence. An initial tender identified the cost of the fence to be approximately £25,000 although this has recently increased to £27,593. WSCC has agreed to meet the construction/installation costs of the fence and has offered a contribution of £10,000 (inc VAT) to cover the legal costs of a challenge to the fence. The Manor Action Group has indicated that it will take legal action if the fence is erected, and if the Council does not obtain a full indemnity from West Sussex County Council there is a possibility of incurring substantial costs in dealing with attempted challenges. Your Officers would prefer a full indemnity. It should also be clarified that the indemnity covers challenges to the fence on any grounds, and that it covers any Counsel's fees and compensation as well as the Council's legal fees.
- 3.4 One of the main concerns of the Academy in seeking exclusive use of the Sports Ground was the potential danger from uncontrolled dogs. The current Dog Control Order in force at the Sports Ground prohibits dogs off the lead and no dogs are allowed on the two cricket squares. There is a need to convert the Dog Control Orders to the new Public Space Protection Orders under the Anti-social Crime and Disorder Act 2014 and this needs to be in place by October 2017.
- 3.5 At its meeting on the 13th July the Joint Strategic Committee (JSC) agreed to approve the public consultation exercise in connection with the new PSPO's and consider any representations received at the Joint Strategic Committee on 13th September 2016. In relation to the Manor Ground the report stated,

Another amendment proposed is for Manor Sports Ground in Worthing, to take into account the proposal to install a fence to provide some separation between the formal sports facilities (cricket squares, athletics and football pitches) and the more informal areas of the sports ground. This is subject to a report being submitted to the Executive Member Environment being approved.

- 3.6 The erection of the fence proposed would provide the opportunity to relax the current controls (which have been difficult to enforce) and allow dogs off the lead away from the formal sports pitches. The consultation exercise on the PSPO closed on the 5th September 2016 and the representations received will be considered by the Joint Strategic Committee at its meeting on the 11th October. The consultation in connection with the proposed changes to the dog control order affecting the Manor Ground came out in favour of the proposed changes with 56% of those responding supporting the proposal. A number of detailed objections were, however, received particularly in connection with the proposed fence and a summary of the objections received is attached as **Appendix III**.
- 3.7 As mentioned earlier, the existing licence with the Cricket and Hockey Club has been extended whilst negotiations continue in connection with a new licence with Bohunt which would reflect the principal users of the Sports Ground (Bohunt and the Cricket and Hockey Club). It is still intended that the Sports Ground would be available for other schools and enhancing the range of formal sports facilities may increase demand for such facilities. Bohunt has also indicated that its indoor sports facilities could be used by the Cricket Club – in particular for indoor nets.
- 3.8 Negotiations are also proceeding with the Cricket Club in connection with a lease for the cricket pavilion. It is intended that the Club will have first use of the cricket pitches outside of school hours reflecting the Club's long association with the Manor Sports Ground.

4.0 Objections to the Proposed Fence

- 4.1 In considering the proposal, your Officers met representatives of the Manor Action Group last year and to assist in the consideration of this report the Executive Member for the Environment met representatives of the Manor Action Group and South Broadwater Residents' Association. At this meeting the representatives set out their key objections to the proposal and have subsequently submitted the following,
- a. *It is not needed, and is a poor solution to a poorly-defined and unsubstantiated "issue"***
- i. There is no danger, and fencing will not protect it from the risks identified (There is confusion over whether the fencing is to protect against faeces or against strays)*
- ii. The school does not require it:*

- *The school already meets national standards for sports area in schools, and while there can be no restriction on usage of the ground, it is not for anyone to appropriate.*
 - *If there is a genuine duty to safeguard, then the Manor Ground is probably not the right place to use in any event. There is all manner of potential risks beyond dogs that cannot be addressed on this land, used as it is by so many locals, and overlooked by so many houses*
- iii. *This ground, and others in the wider area, are already used by schools, and have been for years with no fencing (e.g. Victoria Park)*
- iv. *If there is an issue with dogs off leads, then signage needs to be improved, and wardens deployed*
- *It seems that with increasing pressure on all parks and grounds in the region, then more wardens will be required in the town in any event*
- v. *The proposed design is a danger to cricketers and aesthetically inappropriate in this pleasing open space*
- *The cricket club does not need the fence, as it has been playing there for years with no issue*
- vi. *Around the Borough, and around the country, there is no precedent for fencing in such circumstances*
- *Children play daily and weekly in Victoria Park and on Broadwater Green alongside dogs with no issue.*
 - *There are many grounds around the country where schools and local users co-exist with no issue e.g. Parker's Piece in Cambridge, and many London grounds and parks.*

b. *It is against the Deeds*

- i. *The deeds stipulate against fencing*
1. *We have requested legal opinion from specialists in property law working in London on the validity of the deeds and that opinion is that the deeds are valid and enforceable*
- *We have checked both the deeds on the land itself and the deeds of adjacent property owners.*
 - *Formal school lessons in sport, while supported by all locals, are not sport, leisure or recreation in their true sense, and fencing constitutes a change of use that will*

have to go through Planning and be run through the Community Asset process

- *It is no-one's interest for the Council to make the wrong decision as it will be costly for all involved, financially and otherwise, but wrong decisions will be challenged.*

c. Public opinion is against it

- 800+ local signatories representing all kinds of users by age, disability, and sport, leisure activities and recreation are against reducing their utility*
- Worthing is already significantly under-provided for against national guidelines for open space, and this proposal reduces that figure and the utility further still.*
- Victoria Park was also considered for fencing, but the consultation was very much against it, and will be at the Manor Ground.*

d. We recommend and request no fencing and additional actions by the Council:

- *We recommend better enforcement against the perceived risks (e.g. Dog Wardens).*
- *We recommend Worthing Borough Council contacting the Open Spaces Society to get definitive advice to assure themselves.*
- *To ensure public involvement, we recommend a consultation.*

4.2 The Chairman of the South Broadwater Residents' Association (SBRA) also comments that,

'We represent about 1500 residents. What has come out of our meetings and inter reactions with residents is that the proposed fence is not wanted and is felt to be unnecessary. You stated in the FOI answers that there would be free access to members of the public at all times. The proposed fence has therefore swing gates which in turn renders the fence as pointless. We would be utterly opposed to those gates being locked of course. For our part we would redouble our support for dogs to be kept on leads and would request further and larger signs stating this. Perhaps there could be a fine for non-compliance.'

As a comment we don't think letting dogs off leads in what would be a confined space anyway is a particularly great idea from the practical point of view.'

5. Considerations

5.1 As the Executive Member will recall when the Committee refused the Academy's request to have exclusive use of the Sports Ground there was a desire to find a

compromise solution so that different users of the open space could co-exist. The site has been used for many years for formal sports facilities as well informal recreation. Whilst, these uses have largely co-existed there have been reported problems with dogs off leads affecting the formal sports use on the Sports Ground. Since the School has used the site for formal sports and PE use there have been concerns about dog mess and the Head of Whytemead School expressed concerns about dogs off leads during their Annual Sports day held earlier in the summer.

- 5.2 The key difference here is that there will be greater formal sports use of the open space following the construction of the Academy and other local schools as they expand (Whytemeads in particular). Whilst, the objectors point to the fact that the Academy does not need to use the open space, this is disputed by the Head and in any event JSC resolved last year to agree to the principle of the Academy using the open space (along with other schools).
- 5.3 In supporting the exclusive use of the facility last year, the Academy cited a number of areas of concern including child protection and safeguarding issues. Whilst these concerns would still exist with a shared use of the open space, the Academy feels that a fence with signs and revised dog controls would help to reduce some of the risks to school children having lessons and playing various matches and athletic events on the formal sports area of the Manor Ground.
- 5.4 In terms of issues with dogs, the guidance issued by the National Playing Fields Association (NPFA - now operating as Fields in Trust) states that,
- ‘there are areas which the NPFA believes should be dog free (except for guide dogs):*
- *All equipped playgrounds*
 - *Sports pitches and outdoor sports facilities such as courts and greens*
 - *School playing fields and grounds and recreational land which is primarily used by schools*
 - *Land which is held on charitable trust especially for the ‘recreational benefit of children and young people ‘rather than the broader category of ‘the public at large’.*
 - *Areas intended for, or commonly used by, children at play such as grassed and hard surfaced areas within housing estates’.*
- 5.5 The above guidance does suggest, therefore, that formal Sports Grounds should be dog free irrespective of any school use. This is of course one option but this would be very controversial amongst dog walkers in the area. In this respect, the enclosed nature of the Manor Ground makes it more suitable and attractive for dog walkers than, for instance, Broadwater Green albeit this only encourages dog owners to let their dogs off the lead in contravention of the current Dog Control Order. Given the limited green space available within the town, it is considered that the proposed fence would create the zones recommended by JSC last year and provide an opportunity implement the recommendations of the recent PSPO consultation allowing dogs off the lead within a defined area for the first time on the Sports Ground.

- 5.6 It is recognised that on the majority of the towns open spaces various informal and formal sports and recreation facilities co-exist. However, there are no open spaces that would have the same level of school use once Bohunt has grown to its full size of 900 students and, therefore, this is rather a unique situation. Whilst the Academy was approved without any agreement on the use of the Manor Ground, since Bohunt's involvement it is clear that the Manor Sports Ground is necessary to provide a full sport and recreational curriculum for future pupils. As stated by JSC last year, it is important to support the educational sector in the town and help to maximise the educational attainment for young people.
- 5.7 Regarding some of the other objections to the proposal the Head of Environment has considered various alternatives to address the Academy's concerns but comments that the limited number of dog wardens hampers the ability to patrol and enforce the current Dog Control Orders. The new enforcement provisions of PSPOs are better and the proposed relaxation on part of the Manor Ground to allow dogs off the lead would help enforcement in the future particularly with signs explaining why the controls are required.
- 5.8 The erection of a green coloured fence would not have a detrimental impact on the appearance of the Manor Ground. Furthermore, the distance from the edge of the cricket pitch meets national ECB standards and would not cause any safety issues for the Cricket Club (who support the proposal in any event).
- 5.9 It is not considered that the proposed fence would breach the restrictive covenant as the land would still be used as a public pleasure or recreation ground. Given that the public would still share the open space with school use it is not considered that the fence means that any change of use has occurred requiring planning permission.
- 5.10 If the Executive Member considers that there is some benefit to proceeding with the fence, notwithstanding the objections of resident groups, there is still a need to assess whether any decision should be the subject of a public consultation exercise. This is particularly relevant as a similar proposal was the subject of consultation exercise in Victoria Park and following local opposition the Executive Member decided not to agree to erect a fence. Whilst the circumstances are different, this matter has been referred to by the Residents' Association and they feel a precedent has been set which should be followed.
- 5.11 In considering whether to consult, it is important to consider what consultation has already been undertaken regarding the Academy's use of the site and the principle of fencing. Whilst the current fence line has not been the subject of consultation the County Council did run a consultation exercise on the principle of a fence running along the northern line of the two covenants.
- 5.12 Following a drop in event 658 questionnaires were returned 31% were prospective parents and 52% local residents. The results of the consultation showed that there was no objection to the Academy and other schools using the Manor Ground (75% agree). In terms of whether fencing should be installed, 60% agreed with the statement that fencing should be provided. Whilst 75% disagreed with the statement that fencing should not be provided but dogs should be kept on a lead at

all times. However, when asked whether respondents objected to the Academy having exclusive use of the Manor Ground during the school day, 53% agreed with this statement.

- 5.13 This consultation exercise was criticised at the time and since by the two main residents' groups. Nevertheless, its results have some relevance. Of perhaps more relevance is the informal consultation undertaken by SBRA and MAG which has resulted in a petition signed by over 800 residents opposed to the proposal. There has been consultation undertaken by SBRA and MAG which suggests considerable opposition to the proposed fence. If a formal consultation exercise on the principle of the fence shown in Appendix I was undertaken, it is likely that Bohunt would seek to encourage all current and prospective parents to respond and this would be likely to counterbalance, to some extent, the current level of opposition. Given the current level of public engagement it is questioned what further value would be gained from a further consultation event.
- 5.14 Given that there has now been consultation on the PSPO and this, in itself, prompted representations about the proposed fence, your Officers do not feel that further consultation is necessary in this instance. The support for the new dog controls for the Sports Ground following the recent PSPO consultation is clearly a material consideration in reaching a decision on this matter.

6.0 Legal

- 6.1 The 1930 conveyance provides that the Council should not use the land coloured blue on the plan attached to this report as Appendix 1 except as a "public pleasure or recreation ground". The Council obtained advice from Counsel regarding whether the proposed fence would be in breach of this restrictive covenant, and Counsel concluded that if the Council permits free public access to and use of the fenced land, it is likely to be able to resist an argument by the neighbouring owners who have the benefit of the covenant that there has been a breach of the same by fencing the land in this manner. There is no guarantee that the Council would successfully be able to resist such an argument.
- 6.2 Section 123 of The Local Government Act provides that a Council shall not dispose of land forming part of an open space unless they advertise the disposal for two consecutive weeks in a newspaper circulated in the area in which the land is situated, specifying the land in question and identifying its extent. The Council is under an obligation to consider any objections that are received to the proposed disposal. In this case neither the proposed licence nor the fencing of the land would count as a disposal for the purposes of section 123 of The Local Government Act.
- 6.3 Legal consider that there is a risk of considerable costs being incurred by the Council in dealing with attempted challenges to the fence as set out in paragraph 3.3, and would advise that a full indemnity is obtained from West Sussex County Council.

7.0 Financial implications

- 7.1 As the report states, the majority of the costs incurred with the project would be covered by the County Council, however, some risk remains to the Council if a legal challenge is mounted and it is always difficult to quantify such matters.
- 7.2 The other costs to the Council relate to the ongoing maintenance of the fence and subsequent replacement costs (possibly in the next 15 years). However, these costs would be met by the additional income secured through greater use of the Manor Ground by Bohunt and other local schools.

8.0 Recommendation

- 8.1 The Executive Member for the Environment is recommended to,
- i) Determine whether a separate public consultation will be required for the erection of the proposed fence.
 - ii) If it is determined that no further public consultation is necessary, to approve the erection of fencing as set out in Appendix I (subject to iii below).
 - iii) Determine whether the level of indemnity proposed is sufficient or, alternatively, what level of indemnity would be required from WSCC in order to proceed with erecting the proposed fencing.

Local Government Act 1972

Background Papers:

JSC Report in connection with the use of the Manor Ground by Bohunt Academy - 5th February 2016

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Schedule of other matters

1.0 Council Priority

- 1.1 1) Provide and develop customer driven cost effective services.
- 2) Fulfil statutory obligations for delivery of front line services.
- 3) Adopt more sustainable ways of delivering services.

2.0 Specific Action Plans

- 2.1 Implement the recommendations of the Adur Worthing Sports Strategy to improve and enhance the range of sports facilities available to local communities and work with local schools to encourage community use.

3.0 Sustainability Issues

- 3.1 Matter considered and no issues identified.

4.0 Equality Issues

- 4.1 Matter considered and no issues identified.

5.0 Community Safety Issues (Section 17)

- 5.1 Matter considered and no issues identified.

6.0 Human Rights Issues

- 6.1 Matter considered and no issues identified.

7.0 Reputation

- 7.1 The proposed fencing is controversial and potentially whatever decision is taken could in some ways affect the reputation of the Council. However, it is important that the Council takes into account the importance of the new Academy for educational provision in the town and also the risks associated with dogs being allowed onto an important sports ground which has in the past hosted first class cricket matches and continues to be used extensively by Worthing Cricket Club.

8.0 Consultations

- 8.1 As the report indicates there has been various consultations undertaken in connection with the Academy use of the Manor Sports Ground and options around fencing. The report has also been circulated internally.

8.2 In addition the Executive Member in considering this matter met representatives of the Manor Action Group and South Broadwater Residents Association to listen to their concerns about the proposal. The report also sets out in full the concerns of these local groups and a summary of the objections received to the amendments to the PSPO consultation.

9.0 Risk Assessment

9.1 Matter considered and position of fence adjusted to ensure compliance with ECB recommendations. Fence to be installed is the same type approved for enclosing childrens play areas.

10.0 Health & Safety Issues

10.1 Potential health and safety issues were considered particularly risks to users of the cricket pitches and appropriate guidance from the English Cricket Board website sought to clarify the distances necessary from the edge of the cricket pitch to any fencing.

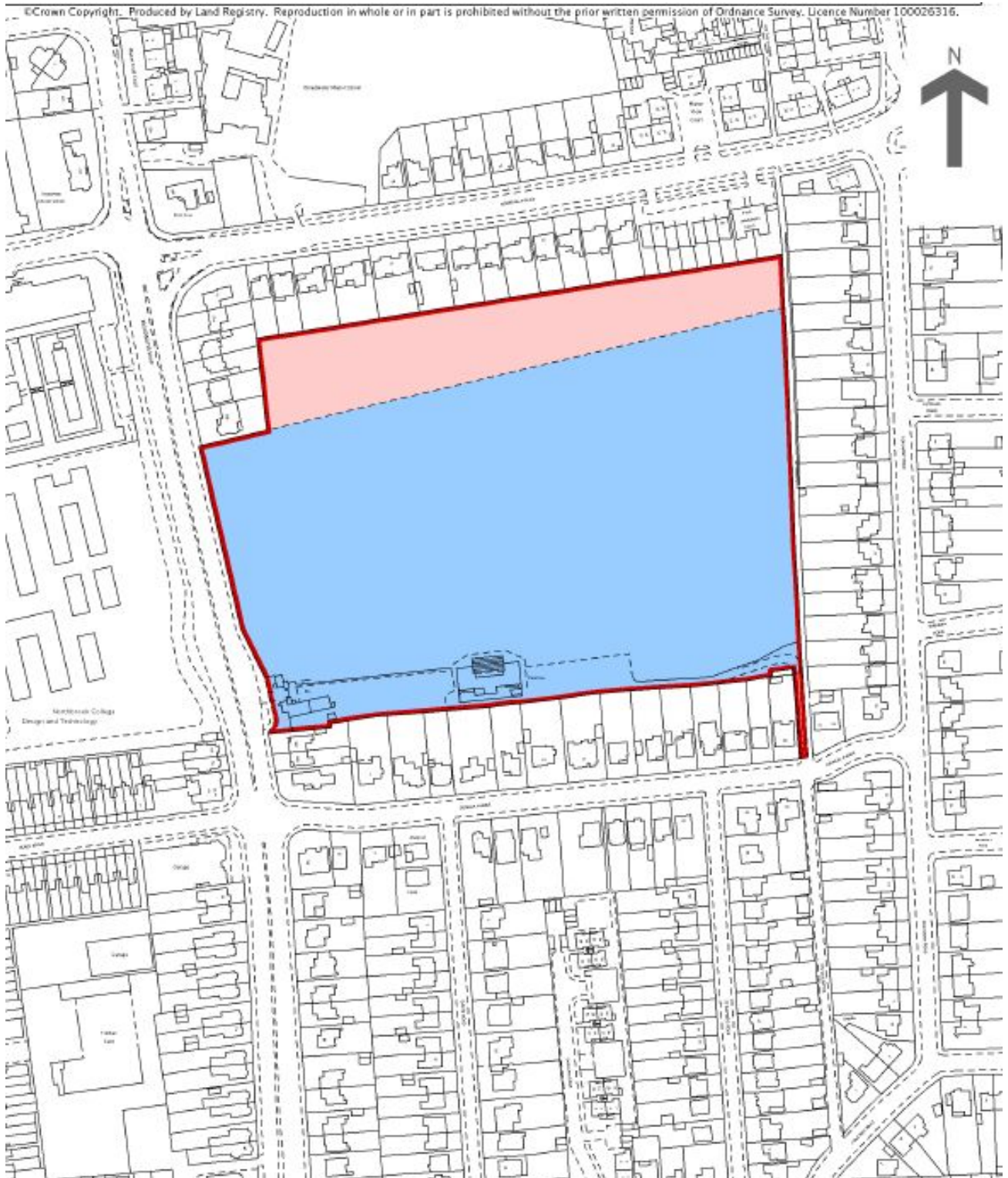
11.0 Procurement Strategy

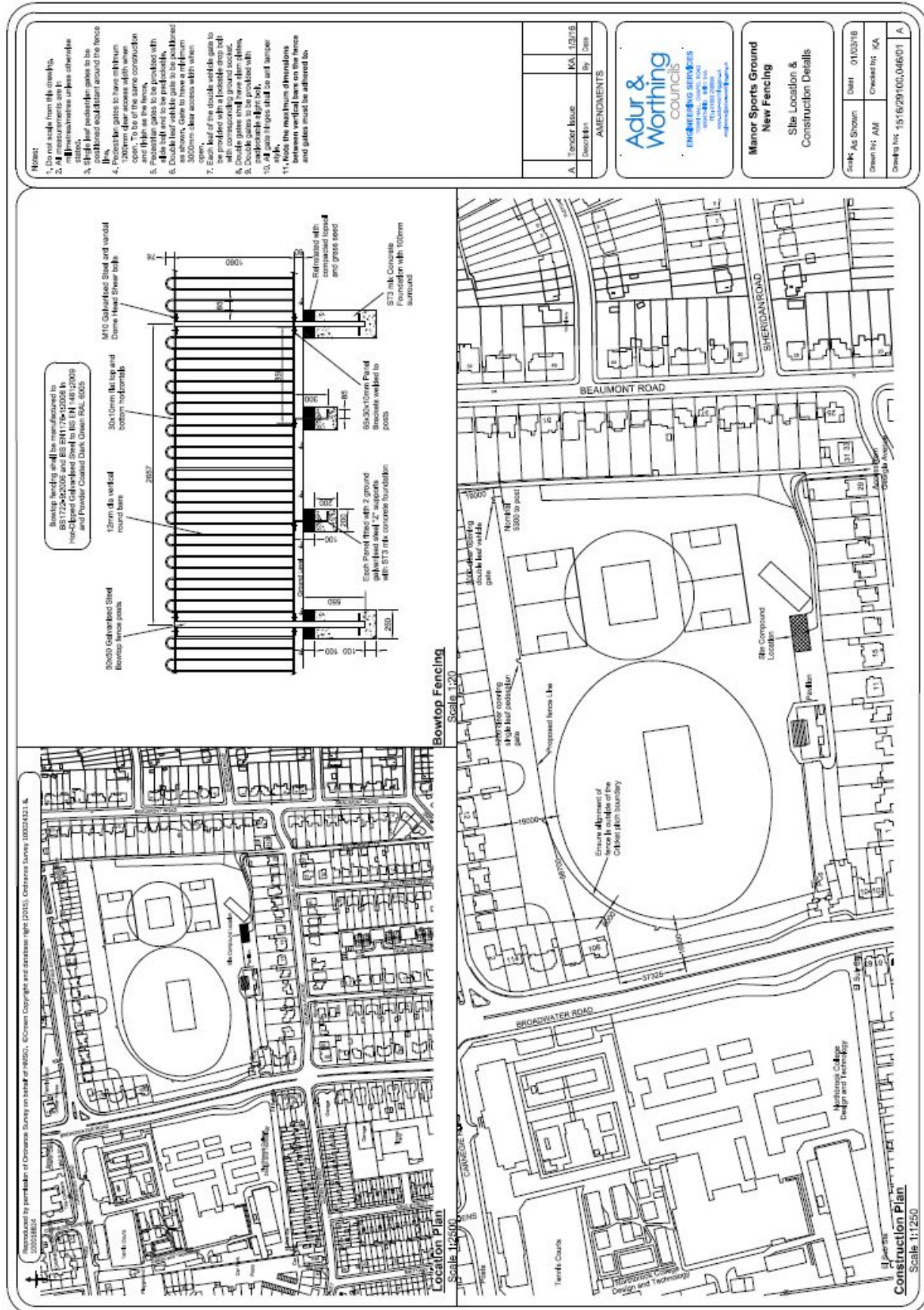
11.1 Councils Contract Standing Orders were followed to procure a fencing contractor.

12.0 Partnership Working

12.1 The Council has worked closely with WSCC and the Bohunt Academy in considering the proposal.

APPENDIX I





**Comments received in connection with the Public Space Protection Order
Consultation Exercise relating to the Manor Ground.**

1	<p>Manor Sports Ground This appears to be the Bohunt School Worthing (BSW) plan for the sports ground area being delivered by stealth. During the consultation for the BSW plans, for sharing the area, this was roundly rejected.</p> <p>2. Where else is there that dogs can be exercised off the lead within a reasonable distance - Not by car.</p> <p>3. I think we can all accept evidence based solutions to problems - What is the problem that this order seeks to rectify? What is the Community Trigger?</p> <p>4. There is currently an understanding that if dog owner clear up after their dogs then they can access the park this may be eroded by proscriptive controls.</p> <p>5. If the status quo is maintained I.e. dogs should be on a lead but nobody really minds as long as nobody complains, then I think it could work.</p> <p>6. I believe the Home Office guidance talks about 'aggressive dogs' why therefore is this directed at all dogs? Who was the community trigger? What early intervention actions have been taken? Also has the necessary threshold been achieved?</p> <p>7. How does the PSPO sit with the covenants on the land?</p> <p>8. Why does the PSPO not address the impromptu barbecues, and the like, which lead to significant litter?</p>
2	<p>Manor Sports Ground With regards to the Manor Sports Ground I strongly disagree with the proposed dogs on leads amendment.</p> <p>This sports ground is a well used facility by responsible dog walkers and recreational users. The dogs on lead proposal would make absolutely no difference to the minority of irresponsible dog owners that allow their dogs to foul and nuisance. Those owners that don't clear up after their dogs are no more likely to do it if the dogs are on leads or not. The proposed fencing of the area would leave far too little for an average sized dog to be exercised off lead. I am fully aware that this proposal is due to the usage granted to Bohunt school during the school day. Can there not be a compromise situation whereby dogs can be off leads during off peak times - before 9am, after 4.30pm? This surely would be a happy compromise for all parties and cover the popular times for dog walkers. The multi use ground has been shared with cricket, football, recreational and dog walkers for many many years with no issues. It would be a shame for this to stop as it is also a social time for many dogs and their owners. The fenced area is disproportionate to the whole area and should be reconsidered,</p> <p>There is also large issue in the sports ground with anti social behaviour of individuals, drug dealing and litter. This is never addressed despite many complaints.</p>

3	<p>Manor Sports Ground</p> <p>I strongly disagree with having to keep dogs on leads on The Manor Recreation Ground. I have lived in the area for 30 years, The Manor has always been used by a wide variety of people at different times very successfully. The Bohunt School was given permission to build on a site that was not big enough and so has also been given permission to use a public space for their sporting activities and so now excluding the public from this area. Public were not consulted over this? It is bad enough that we will now only be able to walk our dogs in a small fenced off area, but to have to keep them on a lead as well is very unfair. I have always cleared up after my dog and have no issue with this and support efforts to ensure all dog owners clear up after their dogs and so not give all dog owners a bad name. I also dread the congestion there will be in and around Broadwater roads once the school is fully open, it is already really busy and slow to get through this area in rush hour/school drop off and pick up times.</p>
4	<p>Manor Sports Ground</p> <p>Dogs on leads would be acceptable during times when the ground is used by school, for cricket matches or when other official groups are training.</p> <p>Can you confirm if the 'dogs on lead area' just covers the area within the cricket boundaries or the whole area - from the map/description it is a little unclear</p>
5	<p>Manor Sports Ground</p> <p>Manor Sports Ground does not need to change to dogs on lead. It is one of the very few places dogs can run around safely and have been doing so for years. I agree with people clearing up after their dogs but that should be everywhere not just here. There is more of a problem with general litter every morning because of the youth that seem to spend their evenings/nights there than there is with dog mess. The local people should not be penalised just because someone made the wrong and stupid decision to put a school in the wrong place. If there wasn't room for a playing field on the site it shouldn't have been built. Don't take away our field!</p>
6	<p>Manor Sports Ground</p> <p>Local residents have been walking their dogs at this ground along side cricket club users for many years with no problems. The current proposals for excluding dogs from certain areas has all come about since the new school opposite was built. Cricket users only use this park in the summertime on the weekends, whereas dog users use this all year round. We feel the problem is that you want to have the park as a school playing field, as you did not have space for one when building it. Local residents should not be inconvenienced by the school and the school should be adapting to the local residents. I feel the biggest problem with this park is not the dog faeces but littering, as broken bottles which I see regularly in the mornings should be more of a concern for a sports field.</p>
7	<p>Manor Sportsground</p> <p>I feel that the new Bohunt school have this year used the Manor sports ground along with everyone else with no negative effects I see no reason that a fence will be erected and therefore restrict access to the general public including dog owners to a piece of land that was given to the council with the intent that it was for the use of everyone.</p>

8	<p>Manor Sportsground</p> <p>The PSO is as it is written for the Manor Sports Ground (73) is abuse of this consultation. From my reading of the proposal the clause about the use of a fence has been inserted into this specific area of public land and not others. This consultation should not be used an excuse to slip Bohunt's demand for a fence to separate the area of the ground they use from the dog walkers. Other schools in Worthing use public land without the need for a 'dog walker' fence and Bohunt or the Council should not be forcing the erection of a fence through the 'back door'. In other respects the PSDO is appropriate for the Manor Sports Ground. The 'fence' clause must be removed.</p>
9	<p>Manor Sportsground</p> <p>Agree that areas should be fenced off but feel making the rest lead only once again reduces the off lead areas available in the area. I am lucky enough to have a car so I can drive to the downs but others are not so lucky so apart from the beach the free areas are being more and more eroded. Even the beach is not accessive to all as some people cannot manage the stones so this area is out for them too. We need to have off lead areas for dogs available to all too.</p>
10	<p>Manor Sportsground</p> <p>I haven't looked at every site. I feel it's completely reasonable to request dogs be on leads on the pier, or in ornamental gardens, and to be excluded from children's play areas. I disagree that dogs should be on leads in Manor park, where so many dogs and owners play. They can't play on leads.</p> <p>It is the only park in walking distance to my home that offers this kind of safe playing space. Homefield park is much less appropriate for free running dogs. Is there any way that a covering could be put on the cricket squares to prevent damage?</p>
11	<p>Manor Sports Ground</p> <p>I disagree with keeping dogs on leads in this public open space on the basis that many dogs are walked there on a daily basis, year round, and have been for many years with no adverse issues. The vast majority of dog walkers keep their dogs away from areas where and when sport is taking place. The local community have been sharing this space with local schools and sports clubs for many years without a problem until Bohunt arrived and tried to get exclusive access. Considering the hours they are open and would require access compared to the overall time it is available to the community this seems a very heavy handed approach. The ground is available to the local community for potentially 168 hrs a week, these measures are to accommodate someone who may use the space for 10 to 15hrs a week and probably less in the winter when floods. Why can we not all share the space responsibly in the spirit of community cohesion.</p>
12	<p>Manor Sportsground</p> <p>While I agree that dogs should not be permitted in the childrens play areas, as long as they are under control they should be free to come off the lead in other areas of the park. Green areas for dogs to run are disappearing and to bring in these new rules for manor park is unfair to owners who control their dogs and clear up after them. I do agree that dog walkers should be limited on the number of dogs they walk.</p>

13	<p>Manor Sportsground</p> <p>a) Manor Sports Ground is actually the Manor Sports and Recreation Ground.</p> <p>b) adding a fence with swing gates to the Grounds is not going to stop dogs from entering the larger part of the grounds</p> <p>c) adding a fence is unnecessary, all dogs should be kept under reasonable control at all times anyway - that is the law</p> <p>d) requiring dogs be kept on a lead is unnecessary, all dogs should be kept under reasonable control at all times anyway - that is the law - if some people are unable to control their dogs off-lead so they don't interfere with other parties using the field then they should have their dogs on a lead but to severely restrict those that can control their dogs off-lead by have a law seems to be overkill</p> <p>. I strongly object to a fence and to any dog control order that prevents people from sharing the park and exercising their dogs in the same way they have for nearly a century</p>
14	<p>Manor Sports Ground</p> <p>Numerous local residents & dog walkers are unhappy with the proposals regarding the potential restrictions & access to Manor Park hence local action team meetings that have taken place over the last 18 months.</p> <p>If fences were erected to separate the Cricket field, (only used at weekends generally) I see no requirement for the small remaining "corridor" of allowed access to require dogs to be kept on a lead.</p> <p>I feel that Dog Wardens, only 2 of which I know of on the Worthing & Adur District, namely Michael Barnard & Russell Akehurst should continue to concentrate on dangerous dogs and should not be responsible for penalising innocent people who are responsible dog owners and use their limited resources effectively.</p>
15	<p>Manor Sportsground</p> <p>My sister is in a wheelchair and has an assistance dog which she has to exercise daily. This is the most local park to us where she is able to exercise her dog on her own. To ban dogs from the Manor sports ground, would mean that she is not able to be independent when allowing her dog off lead as she is not able to travel long distances. The nearest local site at Homefield, would mean that she would have to be driven and have someone with her. The loss of this park would be highly detrimental to her ability to care for her assistance dog and to her ability to socialise with other dog owners. Most owners who use this park are conscientious about mess and it would be a shame to remove this site from the use of local dog owners. Please do not decide to ban dogs from Manor sports as it would be a loss to the community who use it.</p>
16	<p>Manor Sportsground</p> <p>Stay as it is or have days when dogs are not allowed off lead as it is one of the few wheelchair accessible parks where dogs can go off lead.</p>

17	<p>Manor Sportsground My house backs onto the Manor Sports Ground. I have lived here for almost twenty years. Dog walkers on the Manor have co-existed with other users of the Manor for decades, without the need for a fence. There has never been a dog attack to my knowledge, and the cricket club have never requested a fence to separate them from other users.</p> <p>This situation has only been brought about because WSCC promised the Manor Ground to Bohunt School, because they were desperate for a sponsor, after Durrington High School pulled out. There are covenants protecting the land directly behind my house, which are sited on the deeds of my property. I have had a Barrister overlook these covenants. I am advised they legitimate and enforceable. A fence will solve nothing, and be an eyesore. We have limited green spaces in Broadwater. The vast majority of dog owners are responsible and considerate of other users. I strongly object to having to keep my dog permanently on a lead in such a large open space. I feel it is unnecessarily restrictive to local users, and surely difficult to enforce.</p>
18	<p>Manor Sportsground The proposals for the Manor Sports Ground cannot be justified in respect of controlling dogs but appear to be a result of the need to accommodate the outdoor play requirements of the Bohunt Secondary School at Northbrook College. This public open space is a popular destination for dog owners and is one of the few enclosed locations where it is possible for dogs to be let off the lead, without risk to the public or drivers.</p> <p>Previous proposals to fence off areas of the open space for the use of the new school were controversial given the restrictions that would have been imposed on the public use. This open space has operated well, with no apparent conflict between the sports use and wider public and dog access. This underlines the reason behind the changes to the control being a need to accommodate the recreation needs of the new school and cannot be justified in terms of the wider public interest.</p>
19	<p>Manor Sportsground Obviously the Manor recreation ground being part of this order is because of the Bohunt school, which certain members of the council were found out to have lied about regarding their involvement and are now trying to get their own back via any other means. This is a scandalous, petty underhand tactic and another example of councils not working for the people, but themselves !!</p>
20	<p>Manor Sports Ground I strongly object to the plans for Manor Playing Field. The proposal to fence off an area along 2 sides of the park for dogs is a significant and material change to the character and structure of the space. This proposal is effectively giving 80% of our space to the new Bohunt Academy despite assurances to the contrary. The school does not need to have this space 24/7. The REAL COMPROMISE that helps the school to provide for sport education whilst still allowing the public to use this site is for there to be 'On the lead' rules during [agreed] set class times, Monday to Friday, when the school can show that it needs provision for a large group of students to use the space safely. The fence proposal totally ignores the fact that this has been a very widely used safe space for dog owners to socialise their pets and to train them for many years. (We have used it regularly for the last 4 years without seeing any problems.) Dog ownership, for a lot of people (myself included) has been transformational in terms of personal health and also in socialising with others through the common interest of dogs. The council needs to make an attitude adjustment on this issue and see dog owners as people too.</p>



Executive Member for Environment
Ref. No: W/ENV/005/16-17
Date of Decision: 14 October 2016

If you have any questions about this decision please contact Democratic Services on 01903 221006 or email democratic.services@adur-worthing.gov.uk

Record of Decision: Proposed Fencing at the Manor Sports Ground			
Decision taken by: WBC Executive Member for Environment			
Declaration of Disclosable Pecuniary Interests: I hereby confirm that I do not have any disclosable pecuniary interest in this item.			
Decision:			
The Executive Member for the Environment:-			
<ul style="list-style-type: none"> (i) agreed that no further public consultation was necessary and approved the erection of fencing as set out in Appendix I; (ii) delegated authority to the Head of Economic Growth and the Head of Environment to determine the appropriate level of indemnity required to proceed with erecting the proposed fencing. 			
Key Decision: Yes/No			
Reasons for Decision:			
As outlined in the report.			
Alternative Options Considered: None			
Other Matters Considered:			
Legal Advice and Issues	x	Financial Advice and Issues	x
Sustainability Issues	x	Equality Issues	x
Community Safety Issues	x	Human Rights Issues	x
Reputation	x	Risk Assessment	x
Health & Safety Issues	x		

Consultation:

This report was circulated to Councillors, and published on the Council's website on 4 October 2016.

Comments received in connection with the Public Space Protection Order Consultation Exercise (held between 25 July and 5 September 2016) relating to the Manor Ground.

Background Papers:

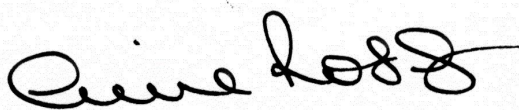
JSC Report in connection with the use of the Manor Ground by Bohunt Academy - 5th February 2016.

Contact Officers:

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Andy Edwards
Head of Environment
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Tel: 01273 263137
Email: andy.edwards@adur-worthing.gov.uk

Call-in: The call-in deadline for this decision will be 5:00pm on 21 October 2016



Signed:

Date: 14 October 2016

Name: Councillor Clive Roberts, Executive Member for Environment

Decision Ref No: W/ENV/005/16-17

CALL-IN PROCEDURE

The following shall be the procedure for considering Call-Ins. The procedure may be amended, if necessary, to reflect the business being considered, but only with the agreement of the Chairman of the Committee, and in consultation with the Monitoring Officer.

This procedure must be used in conjunction with the Council's existing Procedure Rules applying to Overview and Scrutiny function.

1.0 Arrangements prior to the consideration of the Call-In by the Overview and Scrutiny Committee

- 1.1 No less than seven calendar days prior to consideration of the Call-In by the Overview and Scrutiny Committee, the Elected Members who have called-in the item, and/or the Executive Member/Leader, and/or the Chairman of the Overview and Scrutiny Committee, should provide a list of all witnesses, up to a maximum of three, whom they propose to call to give evidence at the Call-In meeting. If external witnesses are proposed to be called, the relevant Member calling that witness, must contact the witness to seek their consent to giving evidence, prior to notifying the Monitoring Officer of the details of the witness.
- 1.2 In exceptional cases where new evidence comes forward, in the seven calendar days prior to the Overview and Scrutiny Committee meeting, additional witnesses may be allowed, with the consent of the Chairman of the Overview and Scrutiny Committee, in consultation with the Monitoring Officer.
- 1.3 If the Chairman of the Overview and Scrutiny Committee questions the relevance of a reason put forward for Call-In, or a witness proposed to be called to give evidence at the Call-In meeting, his/her view will be communicated to the Members who have called the item in. The Chairman will take a final view at the meeting as to relevance, after hearing any case made by Members as to relevance, and may exclude the presentation of that evidence or that witness, if considered appropriate.

2.0 Arrangements at the Overview and Scrutiny Committee

- 2.1 The Elected Members who have called in the item will be given the opportunity to address the Committee on their reasons for the Call-In.

- 2.2 The relevant Executive Member or Leader of the Council, will be asked by the Committee to speak on the issue to explain the reasons for making the decision.
- 2.3 Subject to the agreement of the Chairman, witnesses may be called to give evidence firstly by the Members who have called the item in, secondly by the Executive Member or Leader, and thirdly by Members of the Committee. Following each witness's evidence, Members of the Committee will have the opportunity to ask questions of that witness.
- 2.4 The Committee will debate the Call-In and can ask questions of the Elected Members who have called in the item and the relevant Executive Member or Leader.
- 2.5 The Elected Members who have called in the item will have the opportunity to make a concluding statement.
- 2.6 The relevant Executive Member or Leader will have the opportunity to conclude the discussion.
- 2.7 The Committee will then make a decision on the item.

3.0 Miscellaneous

- 3.1 The principle author of the report, likely to be a Council Officer, will be in attendance for the meeting and is likely to act as a witness for the relevant Executive Member or Leader.
- 3.2 The Overview and Scrutiny Committee can choose to agree with the Elected Members who have called the matter in and request that the matter be reconsidered, giving its reasons why. If this is the case, the Executive Member or Leader decision cannot be acted upon until it has been formally reconsidered.
- 3.3 Alternatively the Committee may choose not to agree with the Elected Members who have called the item in. In which case, the decision may be acted upon forthwith.
- 3.4 Once the decision has been formally reconsidered and a further decision reached, the matter is not subject to a further Call-In.