

4.2 - SE/11/02722/CONVAR Date expired 26 December 2011

PROPOSAL: Application to vary: condition 4 (hours of use of the building) to 'the use of the building hereby permitted for the training of individuals partaking in physical training shall occur from 08:30 to 21:30 on weekdays and Saturdays and from 10.00 to 12.00 on Sundays, and the use of the building as an office shall only occur from 08:00 to 17:30 on weekdays and Saturday. The buildings shall not be used at any other times, including public holidays'; 6 (use of the building) to 'training of individuals for boxing, or boxing related exercise classes (boxercise); and 9 (no amplified music) to 'removal of this condition' of SE/05/00972/FUL.

LOCATION: Sevenoaks Boxing Club, Unit 19, Gaza Trading Estate, Scabharbour Road, Hildenborough

WARD(S): Leigh & Chiddingstone Causeway

ITEM FOR DECISION

The application has been referred to Development Control Committee by Councillor Alison Cook, who has concerns regarding the possible detrimental impact of the proposal on the residential amenities of neighbouring properties.

RECOMMENDATION: That planning permission be GRANTED subject to the following conditions:-

1) The following details previously approved under application 11/002874/DETAIL shall be maintained and retained hereafter: Windows: The glazing on the side facing south will be constructed as double glazed units with one pane of glass being at least 4 mm in thickness and the other being at least 6mm thick with an air gap of no less than 16 mm. Whilst the air gap can be air or Argon if the gap is filled with Krypton a further 5 dB reduction can be achieved. These windows will be fabricated so that they cannot be opened. For those windows facing north or west, conventional thermal double glazing will be used.

To preserve the residential amenity of the neighbouring dwellings, in accordance with Policy EN1 of the Local Plan.

2) The following details previously approved under application 11/002874/DETAIL shall be maintained and retained hereafter: Doors: The double doors on the rear elevation will be covered with a 20 mm thick block board or MDF that can be held tightly in place whilst the hall is being used but that can be removed when the doors are required. All other doors and windows should remain closed when the building is in use to prevent noise escape.

To preserve the residential amenity of the neighbouring dwellings, in accordance with Policy EN1 of the Local Plan.

3) No amplified music shall be played until details of a suitable noise level has been

submitted to and approved in writing by the Council. The approved scheme shall be implemented thereafter.

To preserve the residential amenity of the neighbouring dwellings, in accordance with Policy EN1 of the Local Plan.

4) Notwithstanding the provisions of any development order, any external equipment (e.g. air conditioning units) will require planning permission before installation which will allow consideration of the noise implications.

To preserve the residential amenity of the neighbouring dwellings, in accordance with Policy EN1 of the Local Plan.

5) The use of the building hereby permitted for the training of individuals partaking in physical training shall only occur from 08.30 to 21.30 hours on weekdays and Saturdays, and from 10.00 to 12.00 hours on Sunday, and the use of the building as an office shall only occur from 0800 to 1730 hours on weekdays and Saturday. The buildings shall not be used at any other times, including public holidays.

To safeguard the living conditions of neighbouring residential properties, as supported by Policy EN1 of the Sevenoaks District Local Plan.

6) The building shall only be used for office use (Use Class B1) and for the training of individuals for boxing or boxing related exercise classes (boxersize). The building shall not be used for any other Business (Use Class B1) or Assembly and Leisure Use (Use Class D2).

To safeguard the living conditions of neighbouring residential properties, as supported by Policy EN1 of the Sevenoaks District Local Plan.

7) No change in the use of the building other than as specified in condition 6 above is permitted.

To safeguard the living conditions of neighbouring properties, as supported by Policy EN1 of the Sevenoaks District Local Plan.

8) The details of the access ramp approved under 11/02905/DETAIL shall be maintained and retained hereafter.

To prevent inappropriate development in the Green Belt as supported by GB2 of the Sevenoaks District Local Plan

9) The development hereby permitted shall be carried out in accordance with the following approved plans: site plan dated 24th Oct 2011

For the avoidance of doubt and in the interests of proper planning.

In determining this application, the Local Planning Authority has had regard to the following Development Plan Policies:

The South East Plan 2009 - Policies CC6

Sevenoaks District Local Plan - Policies EN1, VP1

Sevenoaks District Core Strategy 2011 - Policies SP1, SP2, L08

The following is a summary of the main reasons for the decision:

The development would respect the context of the site and would not have an unacceptable impact on the street scene.

Any potentially significant impacts on the amenities of nearby dwellings can be satisfactorily mitigated by way of the conditions imposed.

Description of Proposal

- 1 Planning Permission (SE/05/00072/FUL) was granted for the use of a storage building to a boxing training facility, with administrative offices for a construction company.
- 2 Included as part of this permission were a number of conditions, (some of which were pre-commencement conditions which were discharged last year). As a result of the failure to comply with conditions it was questioned if SE/05/00072/FUL had in fact been lawfully implemented. Legal advice was sought – counsel’s advice was that as a s73A application the application was valid irrespective of the position as regards the implementation of the 2005 planning permission. This is because s73A covers both a retrospective amendment of conditions on a valid planning application and a retrospective application for something which has no planning permission whatsoever.
- 3 The Boxing Club is operating on site and has been for some time in breach of some conditions of this permission. This application is a section 73A application to gain planning permission retrospectively for unauthorised development on site, and seeks to vary three of these conditions, relating firstly to the opening hours of the business, secondly to the exact use permitted and finally to allow for amplified music. The application form for section 73 and section 73A applications is the same form where it also involves the variation of conditions. Following counsels advice this application is being treated as a section 73A application hence it is necessary to consider not just the proposed changes to the conditions but also the appropriateness of retaining the use at this location.
- 4 The relevant conditions are:

Condition 4 (hours of use), which restricts opening hours from 17:30 to 21:30 on weekdays and Saturdays, and the use of the building as an office from 08:00 to 17:30 on weekdays and Saturday.

It is proposed to vary this condition to allow for opening from 08:30 to 21:30 on weekdays and Saturdays and from 10.00 to 12.00 on Sundays, with the same opening hours for the office.

Condition 6 (use of building), which restricts the use to ‘office use (Use Class B1) and for the training of individuals for boxing. The building shall not be used for any other Business (Use Class B1) or Assembly and Leisure Use (Use Class D2).

It is proposed to vary this condition to allow for the ‘training of individuals for boxing, or boxing related exercise classes (boxercise)’.

Condition 9 (no amplified music). It is proposed to remove this condition to allow for amplified music.

Should the planning permission be granted, this would result in a new planning permission for the premises. The site is currently operating outside of the hours granted planning permission hence so this application is a retrospective application to gain permission for the continued use of the premises with variation of conditions.

- 5 A section 73A application requires the decision maker to look at the planning circumstances existing at the time of the decision is made, that is to say in this instance the date of the Committee meeting. All material planning considerations are relevant to the consideration of the application.

Description of Site

- 6 The application site relates to a detached wooden clad building set within the South- western side of the Gaza Trading Estate, which is set on the eastern side of Scabharbour Road, south of Sevenoaks Weald but within Leigh Parish boundaries.
- 7 The estate is located within the Green Belt and an Area of Outstanding Natural Beauty.
- 8 The nearest residential neighbour to the boxing club is St. Andrews Cottage, which is sited 68m from the club. There is a distance of over 100m to the property at the rear, 'Tanglewood', and approx. 130m to 'The Cottage' on the opposite side of the highway.

Constraints

- 9 Metropolitan Green Belt
- 10 Area of Outstanding Natural Beauty

Policies

Sevenoaks District Local Plan

- 11 Policies - EN1, VP1

Sevenoaks Core Strategy

- 12 Policies - SP1, SP2, L08

Others

- 13 NPPF

Planning history

- 14 11/02905/DETAIL Details pursuant to condition 5 (access ramp) of SE/05/00072/FUL. Granted
- 15 11/02874/DETAI Details pursuant to condition 2 (noise control) of SE/05/00072/FUL. Granted
- 16 11/02004/CONVAR Application to vary condition 4-(The use of the building hereby permitted for training of individuals shall only occur from 17:00 to 21:30

hrs on weekdays and Saturdays and the use of the building as an office shall only occur from 08:00 to 17:30 hrs on weekdays and Saturday. The building shall not be used at any other times including public holidays) of SE/05/00072/FUL - For hours of operation to be extended to 0830 to 2130 on Mondays to Saturdays and 0930 to 1230 on Sundays. Withdrawn

- 17 SE/05/00072/FUL Change of use from storage building to boxing training facility, with administrative offices for construction company. Granted.
- 18 Breach of Conditions Notice, served and currently held in abeyance.

Consultations

Parish Council

- 19 Leigh Parish Council objects to this application.

We understand that the Boxing Club has not yet adhered to the previously imposed conditions relating to the use of the property, as per the SDC Enforcement Notices. The Club has advised us that they will make every effort to comply with these conditions and it is also making an application to regulate what it does. We believe that, once the conditions have been fully complied with, SDC and the local residents must be given time to monitor the impact of the Club's activities, and on the satisfactory conclusion of the monitoring the Parish Council would be prepared to consider a further application perhaps to extend the opening hours, the use of amplified music and change of use to fitness training.

- 20 Following re-consultation

Leigh Parish Council believe that the Boxing Club has not fully complied with the conditions, so the Parish Council is submitting the same objection to the application as last time: We understand that the Boxing Club has not yet adhered to the previously imposed conditions relating to the use of the property, as per the SDC Enforcement Notices. The Club has advised us that they will make every effort to comply with these conditions and it is also making an application to regulate what it does. We believe that, once the conditions have been fully complied with, SDC and the local residents must be given time to monitor the impact of the Club's activities, and on the satisfactory conclusion of the monitoring the Parish Council would be prepared to consider a further application perhaps to extend the opening hours, the use of amplified music and change of use to fitness training.

KCC Highways

- 21 I refer to the above application and have no objection to the proposals in respect of highway issues.

Environmental Health

- 22 I have no adverse comments on this application although I do wish to raise the following points:

I am aware that the applicant's agent has already discussed the noise implications of this application with Environmental Health. The agent has provided a statement that includes recommendations for sound proofing the building and I

am satisfied that these recommendations will upgrade the building's structure sufficiently to avoid Statutory Nuisance. I have listed these recommendations below:

Windows: The glazing on the side facing south will be constructed as double glazed units with one pane of glass being at least 4 mm in thickness and the other being at least 6mm thick with an air gap of no less than 16 mm. Whilst the air gap can be air or Argon if the gap is filled with Krypton a further 5 dB reduction can be achieved. These windows will be fabricated so that they cannot be opened.

For those windows facing north or west, conventional thermal double glazing will be used.

Doors: The double doors on the rear elevation will be covered with a 20 mm thick block board or MDF that can be held tightly in place whilst the hall is being used but that can be removed when the doors are required.

All other doors and windows should remain closed when the building is in use to prevent noise escape.

Amplified Music: Provided the club continues to use amplified music at the present levels, the additional noise insulation measures, including keeping door(s) and windows shut at the appropriate times, should prove sufficient to avoid Statutory Nuisance.

Hours of use: Again, the hours requested, with the restrictions on weekend and public holidays should be sufficient to avoid Statutory Nuisance.

I would suggest that a condition requiring the work to be done is imposed if it has not already been undertaken by the applicant.

I have assumed that any external equipment (e.g. air conditioning units) will require planning permission before installation which will allow consideration of the noise implications

Representations

- 23 Neighbours - letters of objection from 6 properties have been received, which are summarised as follows:
- The applicant has been disregarding conditions and has ignored many direct complaints regarding noise.
 - The supporting statement exaggerates the separation distances between the gym and neighbouring residential properties.
 - There are other inaccuracies in the statement relating to parking areas within the estate and previous uses.
 - The residents should be able to enjoy their weekends.
 - The parking along Scabharbour Road is unsightly and dangerous.
 - This is an unsustainable site for such a business

- The lack of compliance with original conditions makes a mockery of planning law.
- 24 One letter of support has also been received, which is summarised as follows:
The boxing club is a fantastic place which provides a great deal of pleasure for many people, including disabled people who I accompany to the club.
- 25 A letter of response (to a number of objections) from the agent was also submitted.

Group Manager - Planning Services Appraisal

- 26 The main considerations of this application are:
- Whether the use is acceptable in Green Belt terms.
 - Impact of the development with the proposed amendments upon the amenities of adjacent properties
 - Impact on highway safety

Acceptability of the use in terms of Green Belt policy

- 27 The site lies within the Metropolitan Green Belt. Policy GB3A of the Local Plan in allowing the re-use of existing structures within the Green Belt, provided that the proposed use had no greater impact upon the openness of the Green Belt than the original use.
- 28 The original (pre-2005) unit was considered to be of substantial construction suitable for conversion into this particular use without major reconstruction. The unit is similar to most others within the trading estate. It is not considered that the access ramp or double glazed windows will alter the character and appearance of the unit or increase its impact upon the Green Belt.
- 29 As commented by the case officer in the appraisal for the 05/00072/FUL approval, the trading estate has a long and incomplete planning history. The site was previously a barracks, and since their closure has been used variously for car storage and keeping of chickens. There is no record of a formal planning permission granting a change of use to a specific Use Class. As such, the suite is currently in use by various businesses such as timber and builders merchant, a furniture business, 'Weald Coachworks' and other small industrial/commercial businesses.
- 30 The National Planning Policy Framework states (section 3) that 'planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development.'
- 31 The site in question is clearly not particularly sustainable, given its isolated location. However this relates to the entire trading estate. The unit (19) is part of this existing estate and along with the numerous other businesses.
- 32 NPPF goes on to state that to promote a strong rural economy, local and neighbourhood plans should:

- *support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;*
- *promote the development and diversification of agricultural and other land-based rural businesses;*
- *support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres; and*
- *promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.*

33 It is considered that the first criteria above is particularly relevant, as it supports the expansion of all types of business and enterprise in rural areas through the conversion of existing buildings.

34 It is therefore considered that the use as a boxing club, including the 'proposed training of individuals for boxing, or boxing related exercise classes (boxercise)' will not have an increased impact upon the Green Belt compared to the previous use (unit 19 has previously been used as storage, and been occupied by an artist as a studio).

35 The national policy support for the proposed use is considered to have been strengthened since the adoption of the NPPF, compared to when the previous application was submitted (2005).

36 The impact in terms of highways and parking (including the additional demand for parking due to the extended use/popularity proposed) is considered later in this report under impact upon highway safety.

Impact upon residential amenity

37 Policy EN1 from the Sevenoaks District Local Plan states that the proposed development does should not have an adverse impact on the privacy and amenities of a locality by reason of form, scale, height, outlook, noise or light intrusion or activity levels including vehicular or pedestrian movements.

38 The nearest residential neighbour to the boxing club is St. Andrews Cottage, which is sited 68m from the club.

39 Given this distance, it is not considered that the use or works to the building has a detrimental impact upon any neighbour in terms of overlooking, overbearing or overshadowing.

40 In terms of noise, given the use there is potential for noise disturbance, and conditions are recommended to prevent unacceptable noise levels disturbing nearby residential properties. The conditions recommended relate to double glazing of all windows, the doors and windows to remain shut (with a 20mm MDF

or blockwork board covering the rear double doors) and no amplified music above a level to be agreed.

- 41 It is considered that these conditions will ensure that the proposed use (including the expanded use proposed under the variation of condition 6) will not lead to a detrimental impact in terms of noise.
- 42 With respect to previous conditions imposed, when this application was submitted (October 2011), the noise mitigation measures imposed under condition 2 (scheme for the control of noise) of SE/05/00072/FUL for the Boxing Club had not been discharged or the mitigation measures installed. This condition was imposed to safeguard the living conditions of neighbouring residential properties.
- 43 As stated by the Parish Council, at this point, it was not considered that it was possible to accurately assess the impact of the extension of hours, the widening of the use and the use of amplified music whilst these conditions, and mitigation measures imposed to preserve and protect the amenities of neighbouring dwellings, had not been installed.
- 44 Subsequently, an application for the discharge of this condition was submitted and the details approved. The mitigation measures (involving the double glazing of all windows, with the southern side elevation windows filled with krypton and one pane at least 4mm thick, the other 16mm, and double doors to southern elevation covered in 20mm thick block board or MDF held in place whilst the hall is being used and can be removed when the doors are required) have now been completed on site (June 2012).
- 45 The Environmental Health Officer has no objection to the application to discharge condition 4 and also has no objection to this application for retrospective planning permission with varied conditions now that works have been completed.
- 46 In addition to these measures, the Boxing Club has erected a 2m (permitted development) close boarded screen adjacent to the southern side elevation of the unit.
- 47 Whilst this screen is not required as part of the noise mitigation scheme; it may have some impact in further reducing the noise levels.
- 48 Members should also be aware that since the premises originally received its planning permission back in 2005, the boxing club operated (without the noise mitigation condition being installed) until August 2011 without any complaints. The first complaint was received following the submission of the earlier application to extend the hours of use. As such the premises operated for 6 years without any complaints and without the noise mitigation measures that have now been installed.
- 49 In this context then it is considered that the variation of condition 4 to allow for the extension of the previously approved opening hours to include the day time hours from 8:30am rather than 5:30pm on weekdays and Saturdays (it is not proposed to extend the hours later in the evening than that previously approved) and two hours on a Sunday (10am-12pm), is not considered, on balance, to have a sufficiently increased detrimental impact upon the neighbours over that previously approved or in its own right to warrant a recommendation of refusal.
- 50 The Environmental Health Officer has no objection to the proposal.

- 51 It is also not considered that the variation of condition 6 to allow addition for 'boxercise' use (and no other use within D2) nor the variation of condition 9, the allowing of amplified music (given the noise mitigation measures completed on site), will have a sufficiently detrimental impact upon the neighbours over that previously approved or in its own right to warrant a recommendation of refusal. A condition is recommended requiring a suitable noise level limit to be agreed with the Council with regards to the amplified music.
- 52 It should also be noted that the wording of the previous condition is problematic, as it is difficult to differentiate between the impact of the training of 10 'individuals for boxing' in the club and the training of a group of 10 as a boxercise class.
- 53 It is therefore considered that the proposed variations of conditions 4 and 6 and the variation of condition 9 would not be contrary to the above policy.

Highways

- 54 Policy VP1 of the Local Plan states that vehicle parking provision in new developments will be made in accordance with the KCC adopted vehicle parking standards.
- 55 Policy L08 of the Core Strategy states that the distinctive character of the Kent Downs and High Weald Areas of Outstanding Natural Beauty and their settings, will be conserved and enhanced.
- 56 The Gaza Estate is open during normal working hours (there is no condition upon the original grant of planning permission for the estate regarding the hours of operation or the shutting of the gates at any particular times), and a certain amount of parking can take place within the site (along the access road) during these hours, which are stated on the entrance sign as being open 6am – 7pm Monday to Friday and shutting at 5pm on Saturday.
- 57 As stated above, the estate is not sited in a sustainable location, in terms of only being accessible by car.
- 58 The impact of the proposed use should be measured against that of the existing estate. The intensification of the use of the site with regards to unit 19 and in relation to its impact upon highway safety during the normal opening hours of the estate, is not considered to be sufficient over the existing estate to warrant a recommendation of refusal.
- 59 Turning to the extended hours proposed under the variation of condition 4, it is understood that the Boxing Club has a duty (under the terms of the lease) to ensure that the Estate is kept secure, which generally means that the gates are kept shut.
- 60 With regards to the existing opening hours in the evening (the gate closes at 9:30pm) parking takes place on Scabharbour Road, however the applicant states that during the busy evening times for the Boxing Club, which is Wednesday and Fridays, the gates are kept open to allow for collection and delivering of people who use the Club. This is apparently possible however due to the amount of staff on site at these busy periods and is not possible at other quieter times.

- 61 The parking along Scabharbour Road is raised by neighbours as being dangerous and detrimental visually.
- 62 There are no parking restrictions on Scabharbour Road and the KCC Highways Officer has no objection to the proposal.
- 63 The only period outside the opening hours of the estate (according to the entrance sign) that the Boxing Club is looking to operate is the Monday to Saturday evening hours (until 9:30pm) and Sunday 10am-12pm.
- 64 Whilst the KCC Highways Officer for the original application (SE/05/00092) stated that it was unlikely that parking along Scabharbour Road would occur and evidently it certainly does, given the lack of objection from KCC for this application, it is not considered that the proposal will lead to a highway safety problem.
- 65 In terms of the visual impact of the on road parking, whilst the site is located within the Green Belt and in an Area of Outstanding Natural Beauty, the cars are of course sited directly outside a Trading Estate and on balance, it is not considered that the transient nature of cars along the road that may occur on Saturday (from the additional 8 hours of opening) and Sunday (for the proposed two hours) in this location will have a detrimental effect on the wider landscape.
- 66 Whilst it is therefore considered that a formal arrangement between the Boxing Club and the Gaza Estate in terms of allowing the gates to be open would be preferable and is recommended to minimize the impact of on road parking, it is considered that the additional demand on parking from the development with the additional 2 hours opening on a Sunday and daytime opening hours during the week and Saturday will not lead to an unacceptable impact upon highway safety nor upon the visual amenity of the street scene or wider Area of Outstanding Natural Beauty.

Other matters

- 67 Notwithstanding the above, 6 letters of objection have been received, and the material planning considerations have been addressed above.
- 68 With regards to the separation distances, the agent did write to accept that the distances originally submitted in the Design and Access statement were inaccurate, and revised this to the correct distance put forward by the neighbour.
- 69 It should also be noted that issue was raised with the legalities of the Councils consideration of the application and specifically with regards to conditions precedent (the pre-commencement conditions that were not - at the point of application - discharged).
- 70 Legal advice was taken it was made clear that the Council is within its remit to validate and consider this application. This is a s73A application for retrospective planning permission in respect to development which has been carried out without permission, and for applications for planning permission to authorise development which has been carried out without complying with some planning consents to which it was subject.

Conclusion

- 71 In summary, it is considered that, on balance, the retention of the development with the proposed variation of condition 4, (hours of use of the building) to 'the use of the building hereby permitted for the training of individuals partaking in physical training shall occur from 08:30 to 21:30 on weekdays and Saturdays and from 10.00 to 12.00 on Sundays, and the use of the building as an office shall only occur from 08:00 to 17:30 on weekdays and Saturday. The buildings shall not be used at any other times, including public holidays'. 6 (use of the building) to ' training of individuals for boxing, or boxing related exercise classes (boxercise).and 9 (no amplified music) to 'removal of this condition' of SE/05/00972/FUL, will not on balance, have a detrimental impact upon the amenities of the neighbouring properties, nor have a detrimental impact upon highway safety or the visual amenity of the street scene and wider Area of Outstanding Natural Beauty and will not detract from the openness of the Green Belt.
- 72 The proposal therefore complies with Policy EN1, GB3A of the Local Plan, SP1 and L08 of the Core Strategy and the National Planning Policy Framework and retrospective permission should be granted.
- 73 The recommendation is to approve.

Background Papers

Site and Block Plans

Contact Officer(s): Ben Phillips Extension: 7387

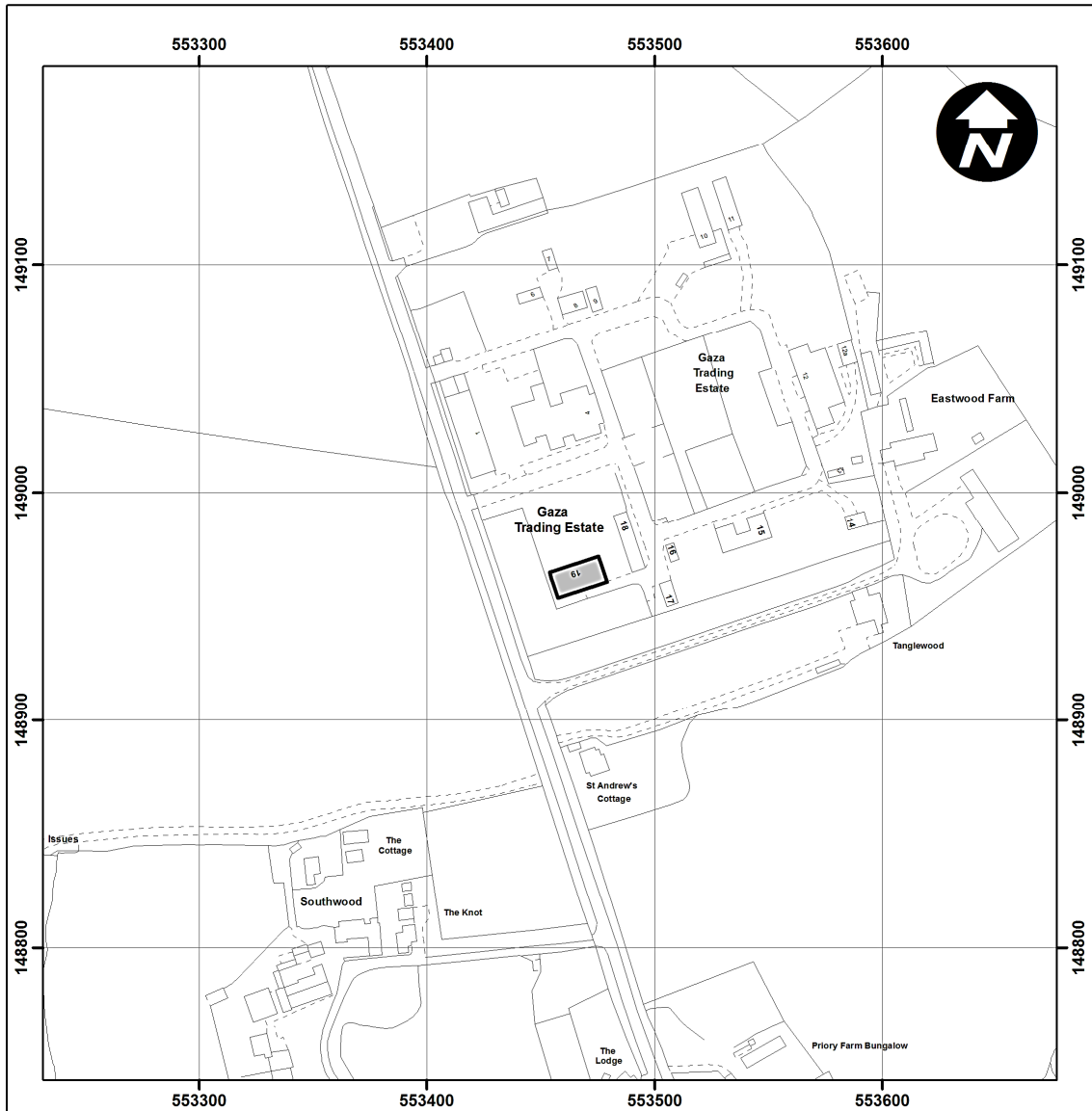
Kristen Paterson
Community and Planning Services Director

Link to application details:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=LTEM77BK8V000>

Link to associated documents:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=LTEM77BK8V000>



Site Plan

Scale 1:2,500
 Date 04.01.2013



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BLOCK PLAN

