

Draft Heads of Terms for Lease for Borden Nature Reserve
Q&A's between Borden Parish Council (BPC) and Kent County Council (KCC)
Updated October 2024

1. BPC

The NR S106 money which is designated for KCC as the Landlord, would be of huge benefit to the Parish Council in alleviating some of the future maintenance costs, which will naturally increase when the Wises Lane development is completed and a higher footfall is seen. The Parish Council would like to discuss this with KCC.

KCC

Please could you provide more information about the S106 specifically where full details can be found and viewed. This will allow us to assess the correct department that you will need to talk to on the matter.

BPC

The S106 information can be found on the public planning portal under the Inspector's report on planning application 17/505711/HYBRID, page 85 10.22 Financial Contributions Schedule 2 b.

KCC

The Section 106 monies have now been investigated, and the funds are understood to be currently with Swale Borough Council. These funds would need to be drawn down by either us or the Parish Council, although this is still to be confirmed.

KCC has no objection in principle to the £40,000 available as part of the S106 for land at Wises Lane being spent by the Parish Council, provided it is used for the 'Ecology Mitigation Works' for which it was awarded. The purpose stated in the S106 is 'to mitigate the impact of increased recreational use of the Nature Reserve as a result of the Development.'

It is expected that detailed records will be kept of the rationale and purpose for how the money is spent.

2. BPC

An updated survey on soil sampling at the north boundary on Cryalls Lane is required, due to the apparent decline of several Poplar trees on that boundary and the poor condition of the field opposite, which is a cause for concern.

KCC

Please do you have a tree survey report to back up these claims? We do not undertake soil testing as part of our routine monitoring. We do monitor the northern boundary for landfill gas. Our recent results do not show any change to the gas regime along the northern boundary with Cryalls Lane. Near atmospheric conditions continue to be recorded.

BPC

We would suggest that you arrange for a tree survey to back up the decline of the Poplar trees on the Cryalls Lane boundary. We would be happy to arrange a site visit to allow you to view the trees and discuss this further.

Before we can proceed with the lease renewal we would require a comprehensive soil survey to be completed, which should focus on the northern boundary adjacent to Cryalls Lane, with additional spot testing conducted across the rest of the site.

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KCC

KCC on their side, as part of their management of this site, ensures no adverse impacts on human health or the environment and are happy that this is still the case. The landfill is closed and hence does not have any permit to comply with, and is considered to be in suitable condition for its current use as a nature reserve. There are certain rules that we impose, such as not allowing fires on site, no digging into the surface, any water features to be agreed with KCC in advance and lined to prevent water ingress into the site, and the Parish Council should make sure all users are aware of these rules. The site is being offered for lease renewal on an as-is basis on similar terms to follow on from the Parish Council's previous 25-year tenure of the site.

The condition of the poplar trees is considered to be in keeping with their age and the pollarding that has been undertaken on them. There is no evidence of any stress or dieback to the trees and vegetation that surround them. If the tree reports that you have had done suggest otherwise, then please provide a copy of these reports so we can look at them. Otherwise, we are happy with the trees as they are.

3. BPC

The Parish Council requests indemnity against the consequences of contamination from the NR.

KCC

Please can the Parish Council expand on what exactly kind of indemnity against the consequences of contamination that they would want and give some specific examples of scenarios that they feel cover would be required for.

BPC

The Parish Council seeks indemnity against the potential consequences of contamination, particularly in scenarios where children or animals may come into contact with contaminated soil or water. Additionally, they require coverage for the costs associated with any trees lost due to contamination, as well as expenses related to tree maintenance in these cases such as pollarding or removal if necessary.

KCC

I have discussed your request with our internal insurance department, and they have confirmed that no such indemnity would be available. Their further opinion was that if the Parish Council were to lease the land, the responsibility for ensuring it is safe for visitors would rest with them. As for covering the costs associated with any trees lost, as well as expenses related to tree maintenance, the responsibility would also lie with the Parish Council.

4. BPC

At the site visit a longer lease than the current 25-year one was requested, one of the reasons being it would be more cost-effective considering the funding required to maintain the NR. However, the new draft lease is stating a reduction to a 20-year Lease. Can KCC explain its rationale around this and look to increase the term?

KCC

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- a. Owing to the specific complexities of this site associated with its previous use as a landfill, it is considered a 20-year term is a suitable time frame before KCC will need to re-assess the holding strategy.
- b. The granting of a lease of any longer duration of time would require a more involved, lengthy administrative decision process with greater costs that are not considered appropriate to the site.

BPC

- a. Could you please clarify what you consider the complexities associated with the site's previous use are and what is meant by the 'holding strategy' for the site? Understanding this will help us better grasp the reasoning behind the proposed 20-year term.
- b. Could you also explain why an extension from 20-25 years is regarded as significant? Specifically, why would these additional 5 years trigger a more involved administrative process with greater costs?

KCC

The complexity referred to is that the site still requires monitoring for the foreseeable future, and we are obliged to do this. This may not always be the case, and KCC is required to continually assess and re-assess its portfolio to ensure it is fulfilling its wider obligations. Twenty years is a very sizeable time-period, and requirements for monitoring may be very different by the end of the lease term. This may affect the Council's holding strategy.

The Council has a very prescribed decision process depending on the time frames involved. A decision by the Director of Infrastructure for a lease not exceeding 20 years is an operational decision sorted at Officer level.

The decision required to approve a longer lease involves the issuing of a public notice at least 28 days before the decision (which must include lots of information around the legal and financial implications of the decision), the production of public records of the decision, reports recommending the decision, and an equality impact assessment. In addition, the proposed decision should not be taken prior to it being discussed with the relevant Cabinet Committee as part of a formal meeting agenda.

Then a Cabinet Member has to sign the decision and then wait a week in case other Members want to 'call the decision in' to Scrutiny, which would delay implementation until the matter had been considered by the Scrutiny Committee.

This process is not considered relevant for this lease renewal as a 20-year time frame is considered appropriate for this lease because of previous mentioned reasons.

5. BPC

Consideration should be given to legal costs.

KCC

The usual arrangement in these circumstances is for the tenant to pay all legal costs. In this case, however, owing to the unique nature of the site, KCC may be willing for each party to pay their own costs. We will have to look into this though and confirm if that approach would be an option.

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The lease renewal is due in September, and given the significant issues that we have raised, we are concerned about the status of the lease during the interim period while these issues are being addressed, can you advise how this will be managed? Please also keep in mind that we have been actively pursuing the lease renewal process for at least a year now.

Additionally, can you confirm whether KCC has decided to pay their legal costs, as you mentioned this was under consideration. Can you also indicate the costs should KCC not pay their legal costs.

KCC

The lease has now been replaced by a Tenancy at Will

KCC will pay its own legal costs and the Parish Council will be responsible for their own. A quote for this would need to be sought.