



Report on behalf of Andrew Crookham, Executive Director - Resources and Heather Sandy, Executive Director – Children’s Services

The Report and Appendices A, B, C and D are open.

Appendix E is not for publication by virtue of paragraph 3 of part I of Schedule 12A of the Local Government Act 1972

The public interest in maintaining the exemption outweighs the public interest in disclosing the information because the Appendix contains confidential information of a third party relating to a land transaction that the third party has not consented to being put into the public domain. If the Council discloses the information, it may leave itself open to legal action and the ability of the Council to undertake negotiations for land transactions in future may be undermined

Report to:	Executive
Date:	3 October 2023
Subject:	Lincolnshire Secure Children’s Home – Land Purchase and Section 203
Decision Reference:	I029669
Key decision?	Yes

Summary:

This paper follows on from the Business Case for the new Lincolnshire Secure Children’s Home (“LSCH”) that was presented to and approved by the Executive Councillor for Children’s Services, Community Safety, Procurement and Migration on 4th July 2022, which set out the rationale behind the replacement of the existing secure unit with a new, larger facility.

Lincolnshire County Council has been running a 12-bedded children’s secure unit in Sleaford since 1997. This has generally been regarded as being highly successful and has been commended for the provision made and the service offered in the building currently used for that purpose. Unfortunately, that building is no longer capable of meeting these high expectations and given the desire to continue to offer that service, there is no realistic option to continue to use that building.

The service has regularly received positive feedback from Ofsted and national

recognition, which the Council is keen to maintain, but it has been agreed by all involved in the service that the current building and the facility which it offers is preventing the service from providing the best service it could. Fundamental change is required to enable the service to care for the increasingly complex and vulnerable children in its care and those presenting wider in the system itself. In reality, and as was accepted in 2022, that means a replacement building needs to be delivered with the modern facilities it can accommodate.

In addition, the current site is problematic and does not offer the opportunity for expansion. It is surrounded by residential properties and the operation of the secure unit has led to some issues with neighbours, with objections being raised to previous planning applications, complaints over noise and external lighting and parking of cars on the residential streets around the unit.

The DfE has been working with Lincolnshire to progress an opportunity for a new build secure children's home since 2017. This project has national significance to become the flagship for the DfE, as both the design of the building and the operational delivery of the service, incorporates sector best practice and learning from homes across the UK and Europe, and input from key stakeholders, covering education, both mental and physical health, the secure estate and other specialist providers. It is centred around the young person's journey while in a secure placement, bringing wrap around professional support and educational opportunities.

The original plan was for a 22 bed unit, but, following discussions with DfE, it was agreed that a 28 bed facility would better address the shortfall in places and would present better value for money. This option has been taken forward and was the design which gained planning approval. As the business case set out both the 22 and 28 bed options and demonstrated how both would be viable, it was accepted that this was still valid and did not need to be revisited.

An extensive, countywide, analysis of over 400 sites was undertaken by Kier Estates in conjunction with the service, to identify a site for the new facility. The specific requirements of the new secure home meant that a vast majority of sites were not suitable and a site at Bonemill Lane, Sleaford ("the Site") emerged as the only suitable site which was available. LCC took an option to purchase the Site earlier this year.

A planning application for the new facility was submitted to LCC as planning authority in April 2023. It went before the Planning and Regulation Committee on 31 July 2023 and formal approval was granted on 1 August 2023. Whilst there are a number of conditions attached to this planning permission, none of these fundamentally affects the viability or deliverability of the project.

The Site is the subject of a restrictive covenant that would prevent use of the Site for residential purposes which would include the secure children's home. This Report sets out the legal basis on which the Council can proceed to construct the LSCH notwithstanding the existence of the covenant and seeks approval to purchase the site and enter into an enabling works contract as the first stage of eventual construction all on the specific legal basis set out in the Report.

The project will continue to move forward, by entering into this enabling works contract, whilst the value and detail of the final build contract are established. This will enable the new home to be delivered as close as possible to the very tight timescale requested by the DfE as a condition of the grant approval.

Recommendation(s):

That the Executive:

1. Subject to the planning permission remaining free of challenge until expiry of the statutory challenge period approves the acquisition for planning purposes, pursuant to Section 227 of the Town and Country Planning Act 1990, of the freehold interest in the land at Bonemill Lane in Sleaford, Lincolnshire shown edged blue on the plan attached at Appendix A
2. Resolves that it is the intention of the Council in acquiring a freehold interest in the relevant land for planning purposes to engage the provisions of Section 203 of the Housing and Planning Act 2016, to the extent of the land in respect of which planning permission was granted on 4 August 2023, shown edged red on the Plan at Appendix A in order to override the restrictive covenants to the full extent of that section, to enable the Council to carry out the development and use of the new Lincolnshire Secure Children's Home.
3. Subject to the planning permission remaining free of challenge until expiry of the statutory challenge period delegates to the Executive Director Resources in consultation with the Executive Councillor for People Management, Legal and Corporate Property the authority to enter into a contract for the detailed design of a 28 bed Lincolnshire Secure Children's Home and enabling works of a value not exceeding the approved DfE grant, with a full scheme appraisal to follow once a greater degree of cost certainty is available.

Alternatives Considered:

- Not to proceed with the purchase, the engagement of Section 203 and carrying out of enabling works.

This is not recommended as it would effectively mean abandoning the business case for the new Secure Unit and the loss of the benefits identified in the business case. It would also mean, in due course, that the current unit would become unviable and would need to close, with a significant negative impact on the children within the secure estate.

Reasons for Recommendation:

- An extensive search of sites throughout Lincolnshire was carried out in 2018 and revisited in 2022. This search used a number of criteria set by the service and narrowed suitable sites down to the land at Bonemill Lane. If this land is not purchased, then it is highly unlikely another suitable site will be found within the timeframe available for the DfE grant funding.
- Planning permission was granted for the Development on the Site in August 2023. There are considerable public and economic benefits associated with the Development but there are covenants associated with the land which currently restrict development of the type proposed.
- There is a significant benefit to Lincolnshire from the DfE funding, which has been allocated for this development. This multi-million pound investment will support local employment, with approximately 65 existing jobs projected to increase to 178, creating another 113 jobs within the new secure children's home. This is in addition to jobs that will be supported within the local supply chain during construction, with a commitment being made from the main contractor to ensure a degree of local spend.
- Planning Permission and land purchase is required to enable works to commence on site and for the S203 powers to be engaged.
- The need for both welfare and youth-justice beds across the country is increasing at an unprecedented rate. DfE have committed funding in excess of £200 million to tackle this issue and have worked closely with existing providers and other agencies to bring forward proposals for new units. Lincolnshire County Council, as one of these existing providers, submitted a grant application in 2021 to carry out a feasibility study and this was approved by DfE. Working closely with DfE, Lincolnshire County Council has developed the scheme proposal and has now reached the detailed design stage with planning approval in place to deliver the project.
- The provision of an additional 16 beds and the creation of a new fit-for-purpose home will help to directly address this national shortfall and is a high priority for both Central and Local Government. The construction of the new home will have a direct public benefit both locally and nationally, giving a desperately needed home for some of the most challenging and at risk children in society.
- There is therefore a compelling case in the public interest for the Council to acquire the Site for planning purposes under S227 of the 1990 Act, to engage S203 of the 2016 Act and enable the development to proceed and the public benefits to be realised. The engagement of these powers is considered to be proportionate and justified, notwithstanding the interference with the private rights of the landowners affected by the overriding of the covenants associated with the land.

- The entering into of the enabling works contract will enable the programme set down by DfE to be met, leading to the new unit being opened in early 2026. It has been a condition of the DfE grant funding that a programme which completes as close as possible to the end of the 2024/25 financial year is vital, otherwise funding could be lost in the next Comprehensive Spending Review (CSR).

1. Background

1.1 Lincolnshire County Council has been running a highly successful 12-bedded secure children's home in Sleaford since 1997. The service has received positive feedback from Ofsted and is well regarded on a national level both by Ofsted and the Ministry of Justice.

1.2 Lincolnshire's secure home has a track record of delivering high quality provision to children and young people in its care over the past two decades. However, over the past few years, the context in which secure units operate has changed:

- The number of children requiring criminal justice and welfare placements has increased (there were approximately 70 more children a day referred than secure units can cater for as of 05/06/23). This new secure children's home will accommodate an additional 16 children.
- There is emerging evidence showing that more children are being placed on welfare grounds (particularly females), and that children placed on welfare grounds have different needs to those placed on criminal grounds. A new unit could reflect the most recent research and evidence base and target these different needs more effectively through in-depth one to one work as well as group work due to the additional rooms available.
- The types of crime that children have committed have changed from minor to major crimes, such as murder or manslaughter, and the behaviour they are displaying is more violent. A new unit would provide a safer environment for children and staff through a better layout, reducing the number of incidents that occur and the amount of time spent managing behaviour, instead enabling staff to focus on effective engagement with children.
- Children are presenting with increasingly complex and multiple needs and vulnerabilities (such as child sexual exploitation, gang-related violence, mental health issues, substance misuse). A new unit could employ more staff with a diverse skillset to support children with varying and multiple needs.
- Technology has advanced in the education and health sectors. A new unit could have integrated systems to reduce staff inefficiency and increase interaction

time with children, signs of life cameras could be introduced to improve child safety, video conferencing could be introduced for children to speak to their families, and ICT could be used for learning online.

1.3 Central government, via the DfE, has committed to addressing the above issues and has allocated a budget in excess of £200 million for the delivery of new secure children's homes across the country. Lincolnshire County Council submitted a successful bid for initial feasibility funding in 2021.

1.4 Exempt reports outlining proposals and a business case for replacing the existing secure children's home with a new facility were subsequently submitted to the Executive Councillor for Children's Services, Community Safety, Procurement and Migration on 4th July 2022 and the Executive Councillor for People Management, Legal and Corporate Property on 17th May 2022 following scrutiny by the Children and Young People's Scrutiny Committee, which led to approval being granted for:-

- the Council progressing the provision of either a new 22 or 28 bed Secure Children's Home on Bonemill Lane, Sleaford;
- the completion and submission by the Council of an application to the DfE for capital funding of up to £63.6m from the c.£65m grant (depending on the decision being a 22 or 28 bed and subject to future uplifts – the DfE's latest preference being a 28 bed home); and
- the signing of an option agreement for the purchase of the Site at Bonemill Lane in Sleaford,

These reports are referred to in the Background Section of this Report and the Executive are referred to those Reports for the detail of the business case for the project. The rest of this Report deals with the specific decisions now required to progress the project in accordance with the approved business case.

1.4 On the basis of these approvals the following actions have been pursued:-

- An option has been secured for the acquisition of the land at Bonemill Lane, from the current landowners;
- An application was made to DfE for grant funding to meet the costs of the detailed design and enabling works for a replacement Children's Home. This grant has now been secured.
- A planning application was made and subsequently approved for the development of the new children's secure unit on the Bonemill Lane site.

- 1.5 The immediate requirement now, to maintain progress with the project is therefore to secure the land, meet the relevant pre-commencement planning conditions and enter into a contract for enabling works.

2 Land Purchase

- 2.1 Following a wide-ranging search for suitable sites across the whole of Lincolnshire, which was led by the Council's professional land agents in 2018 and re-visited again in 2022, the proposed site on Bonemill Lane in Sleaford was identified. The search had focused on sites of 10 acres (4.1 hectares) which would be large enough to accommodate the new home. These needed to be available to purchase or with landowners willing to discuss a potential sale. Sites which did not have an allocation for development were discounted as planning permission would not have been granted. The site needed to have proximity to a sizeable town for access and transport but could not be surrounded by residential neighbours as per the current site, with the associated issues this has caused. This accessibility caused an issue with many of the larger sites as they were remote agricultural land or in industrial areas.
- 2.2 A further relevant consideration was the desire, which has significant weight, to stay as close as reasonably possible to Sleaford so as retain in so far as it can be achieved the experienced and informed staff that work at the current home. In addition there is benefit from the site being well located within the county, making recruitment of new specialist staff easier.
- 2.3 Over 300 sites were examined by Kier Estates and the service and initial approaches made to a handful of owners of sites which were felt to be suitable. The site on Bonemill Lane in Sleaford was finally selected as the preferred site as it met all of the above criteria and the landowner was prepared to discuss a sale.
- 2.4 An agreement with the landowners was reached in February 2023 and an Option fee was paid to secure the land and enable LCC to purchase it once planning had been granted and the project was in a position to proceed. This was the subject of an exempt report which was presented to the Executive Councillor for Children's Services, Community Safety & Procurement in December 2022 and for which approval was granted on 13 December (Decision ref. I026118)
- 2.5 The Option fee was paid to the landowner in 2022/23 and the remainder of the purchase price and associated costs will be met through the new development capital contingency budget in 2023/24. The breakdown of costs and fees relating to the purchase are set out in exempt Appendix E
- 2.6 Now that planning approval for the new Secure Children's Home has been granted, acquisition is needed so that the DfE grant can be formally secured and the contract with the main contractor drawn up and finalised so that the enabling works can commence in October this year.

- 2.7 An early date for the commencement of the enabling works is important due to the works required to stop up a badger sett on site, which can only be carried out between the end of March and the end of November. The necessary licence has been obtained but the carrying out of the works within the allowed window remains critical to the timely delivery of the project.
- 2.8 The Site at Bonemill Lane comprises 24.78 acres/10.03 hectares and located to the northeast of Sleaford town centre, close to the A17 and the River Slea and shown edged blue on the plan attached at Appendix A ("the Site Plan") The Site is larger than is needed to accommodate the proposed LSCH development. The land required for the LSCH development ("the Development Site") is shown on the Plan at Appendix A edged red. At this stage there are no other specific proposals identified for the remainder of the Site as not used for the Development.

Covenants and Legal Basis for the Land Purchase

- 2.9 Whilst the said Site at Bonemill Lane has been identified as the best option available for the construction of the new Secure Children's Home, it currently has a covenant preventing use of the land for residential development, which would preclude the project going ahead. The nature of the covenant was only discovered upon the release of documents from the landowners, when negotiations on the land were already at an advanced stage. The covenant which is found within a Transfer dated 02nd November 2000 between The Farming Investment Company Limited (1) and British Energy Investment (No.2) Limited (2) ("The Covenant") is expressed as follows:

"The Transferor as owner of the Retained Premises hereby covenants with the Transferee and its successors in title the owners and occupiers from time to time of the Property with the intent to bind the Retained Premises into whosoever hands the same may come and with the intent to benefit the Property and each and every part thereof as follows:

13.6.1. Not to permit allow or suffer the construction of any residential building or structure on the Retained Premises or the use of the Retained Premises or any part or parts thereof for residential use nor to permit suffer or allow shop retail use of the Retained Premises or any part or parts thereof which lies to the west of East Road, Sleaford."

- 2.10 The land that has the benefit of The Covenant, originally one parcel of land, has been subsequently sold off and divided into smaller parcels since the year 2000 and now exists as a commercial trading estate known as Sleaford Enterprise Park with each of these landowners having the ability to enforce the covenant on the Bonemill Lane site. There are approximately 20 freehold owners who have the benefit of the covenant and consequently the legal ability to take enforcement action against the Council in the event of a breach of covenant by virtue of the

development and use of the new Secure Children's Home. A Plan is attached as Appendix D showing the extent and position of the Sleaford Enterprise Park in the context the position of the Site.

- 2.11 In addition there is a further covenant (The Further Covenant") preventing nuisance or disturbance from the Site which may be shown to prejudice the owners of land benefitting from this Further Covenant. This is expressed as follows:

"Not to do or suffer to be done on the property any act matter or thing which may be or become a nuisance or damage to the Transferor or the owners or occupiers of any adjoining land or which may prejudice the development of the retained land".

- 2.12 For the avoidance of doubt when this Report discusses below the engagement of S203 of the Housing and Planning Act 2013 it is in terms of The Covenant only and not The Further Covenant. It is not considered that the powers under S203 can assist to override The Further Covenant and consequently the burden of this will continue to affect the Site. However, any allegation of breach of this Further Covenant by the operation of LSCH will need to be proven against an objective test and will only arise once the LSCH is operational and in the light of the way it is actually operated. This covenant does not therefore have the potential to entirely prevent the use of the building for the purpose for which it has been constructed. It is considered the risk presented for any breach of The Further Covenant which may be alleged by the presence and operation of the LSCH is small and as such will instead remain a matter for indemnity insurance, should the same be available.

- 2.13 Powers to override rights over land acquired or appropriated for planning purposes were previously provided in section 237 of the Town and Country Planning Act 1990 ("the **1990 Act**"). These have more recently been replaced by the provisions of section 203 of the Housing and Planning Act 2016 ("the **2016 Act**").

- 2.14 By virtue of the said powers under s203 of the 2016 Act, LCC does have the power to carry out building or maintenance work or use even if it involves interfering with a relevant right or interest providing it can demonstrate the following:

- i) the land has become vested in or acquired by a specified authority [LCC] on or after 13 July 2016 (or appropriated by a local authority for planning purposes) or the land is 'other qualifying land' as defined in s. 205.
- ii) there is planning consent for the building or maintenance work or use
- iii) LCC could acquire the site compulsorily for the purposes of the building or maintenance work or for the purposes of erecting or constructing a building or carrying out any works, or for the use and

iv) the building or maintenance work or use is for purposes related to the purposes for which the land was vested or acquired by the specified authority [LCC].

2.15 Where the Council engages the section 203 power, the Council must compensate those affected by the exercise of it. Under Section 204 of the 2016 Act there is a liability to pay compensation for any interference with a relevant right or interest or breach of a restriction that is authorised by Section 203 of the 2016 Act. The compensation is calculated on the same basis as compensation payable under the Compulsory Purchase Act 1965 i.e. based on the diminution of the value, if any, of the affected property because of the interference with the right. In the use of the power it is considered that it should be consistent with the Ministry of Housing Communities and Local Government's Guidance on Compulsory Purchase and Crichel Down Rules (July 2019).

2.16 Professional advice has indicated that any loss suffered by landholders would be anticipated to be negligible as the LSCH development is considered to have little or no impact on landholdings who benefit from The Covenant which are in some cases several hundred metres away, on the other side of both a main road and railway line.

Invoking Section 203

2.17 In terms of the first limb of the section 203 requirements as set out in paragraph 2.14, now approval has been granted for the acquisition of the Site, the works for the construction of the secure children's home will be carried out on land which has been acquired after 13th July 2016.

2.18 In terms of the second limb of the section 203 requirements as set out in paragraph 2.14, there is a planning permission for the construction of the proposed secure children's home on the land at Bonemill Lane as referred to at paragraph 1.4 above. The Council recognises it will not be able to proceed until such time as the statutory challenge period for the planning permission has expired. This period will expire on 12th September 2023. Whilst there are conditions attached to the grant of planning, none of these are considered to present a problem in carrying out the project.

2.19 In terms of the third limb of the section 203 requirements as set out in paragraph 2.14 above, Section 226 of the Town and Country Planning Act 1990 provides that a local authority (subject to the authorisation of the Secretary of State) has power to acquire compulsorily any land in their area, if they think that this will facilitate the carrying out of development, re-development, or improvement on or in relation to the land; or which they consider is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area.

2.20 Under Section 226 (1A) of the 1990 Act, a local authority may not acquire land compulsorily, for the purpose of facilitating the carrying out of development,

unless they consider that the development is likely to contribute to the achievement of one or more of the following objectives:

- i) The promotion or improvement of the economic well-being of their area;
- ii) The promotion or improvement of the social well-being of their area;
- iii) The promotion or improvement of the environmental well-being of their area

2.21 Section 227 of the 1990 Act provides that the Council may acquire by agreement any land which it requires for any purpose for which it may be authorised to acquire land under Section 226 of the 1990 Act.

2.22 Section 246 of the 1990 Act provides, in this case, that reference to the acquisition of land for planning purposes is a reference to the acquisition of it under section 226 or 227 of the 1990 Act.

2.23 The explanatory note relating to the 2016 Act provides guidance that the requirement of this third limb that the authority 'could' acquire the land compulsorily for the purposes of the building work was intended only to require that the authority had the relevant enabling powers, not that on the facts of the case a compulsory purchase order would be confirmed for the compulsory acquisition of the land.

2.24 As a result of these provisions the Council will meet the requirements of the third limb if:

- The Council thinks that this will facilitate the carrying out of development, re-development, or improvement on or in relation to the land; or they consider it is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area; and
- The Council considers that the development is likely to contribute to the achievement of one or more of the following objectives:
 - The promotion or improvement of the economic well-being of their area;
 - The promotion or improvement of the social well-being of their area;
 - The promotion or improvement of the environmental well-being of their area

2.25 The Council, mindful of the decisions to obtain planning permission for a Scheme, to obtain finance for it with the full support of the DfE, is firmly of the view that the acquisition of the land at Bonemill Lane for the purpose of the secure children's home will facilitate development of the land and improve the land. The land is currently bare arable land which has been used for many years for the storage of agricultural machinery and hay bales for a nearby power station. The proposed development will construct an access road which will enable future development on a site which is allocated for commercial use, as well as carrying out measures to increase the biodiversity of the site in line with planning guidance.

- 2.26 It is also considered that the proposed development meets all of the criteria in section 226(1A) as it will support in excess of 174 jobs, both during construction and in the long term; it will support some of the most vulnerable children in society, within Lincolnshire and beyond. The proposed development will see a new £70 million building constructed, with long term investment in the Sleaford area by both DfE, LCC and the Ministry of Justice who will have a long-term contract with the new home.
- 2.27 In addition, the environmental improvements that will be carried out as part of the project will result in a net improvement to the biodiversity of the site and immediate area. The standard improvement required as part of a planning application is 10%, this project is currently showing a net biodiversity improvement of 36%
- 2.28 In terms of the fourth limb of the section 203 requirements as set out in paragraph 2.13 above, the Council is acquiring the land for planning purposes in accordance with section 227 of the 1990 Act and the construction of the LSCH on the land will be for the purposes for which the land was acquired.
- 2.29 The land in question will be acquired by agreement but, in order to carry out the required works, the covenant will need to be over-ridden.
- 2.30 As a result of the above, the Council can properly conclude that if the recommendations of this Report are approved its construction of the LSCH on the land at Bonemill Lane will meet the requirements of section 203 of the 2016 Act.

Engagement with beneficiaries of The Covenants

- 2.31 Because of the impact of section 203 of the 2016 Act on their rights under The Covenants the Council is required to seek the views of those landowners who have the benefit of the covenants and to take into account their representations (if any) in deciding how to proceed.
- 2.32 LCC has taken active steps to contact the owners of all land benefitting from the covenant and is fully committed to agreeing reasonable compensation to secure release of the affected rights by agreement. A 6-month period of consultation has taken place, with 3 separate letters being issued and direct visits to affected properties being undertaken to alert of the Council's development proposals and the conflict of this with the existing covenant. Whilst LCC is still committed to continuing the discussions with affected landowners it is likely given the lack of engagement to date experienced that agreement will not be reached with all parties in time for the DfE grant funding to be drawn down, thus preventing the development from proceeding.
- 2.33 A summary chronology of the discussions between LCC and the landowners is attached to this report as Appendix C. Only a handful of responses were received

to the initial letter and several of these were only to say that the respondents no longer had any interest in the land. Of the replies received, only two stated that they had engaged agents to look at the proposed development and would respond in due course. Other letters were issued over the course of the planning period, spaced over 6 months, with no further response.

2.34 The Council has taken extensive steps to contact potential beneficiaries of The Covenant to inform them of the Council’s proposal to develop the LSCH in reliance on S203 of the 2016 Act and the consequences of this for their rights under the covenant. No recipient of these communications has chosen, within the clear timeframes set out by the Council, to alert LCC to any concerns and it is therefore considered that LCC is justified in proceeding on the basis that the provisions of S203 will override The Covenant, subject to the compensation considerations.

2.35 In addition, because the effect of the acquisition would be to engage the overriding provisions of Section 203 of the 2016 Act it is necessary to consider whether the facilitation of the development would justify an interference with the rights of third parties. In making that decision regard should be had to the advice and guidance contained in the current DCLG Guidance on Compulsory Purchase (October 2015). Fundamentally, the decision to acquire land in order to engage Section 203 should only be made where it is necessary and there is a compelling case in the public interest. Table 2 below sets out and addresses the relevant considerations in this respect.

Table 1 – Section 203 Considerations

Consideration	How Addressed
i) The infringements cannot reasonably be avoided.	i) The construction of a secure residential home will directly contravene the covenant on the land. No other suitable site is available within the County.
ii) The covenant that is to be interfered with cannot reasonably be released by agreement with the affected owners.	ii) Attempts have been made to contact all affected owners (see Appendix C) but many have not responded. The issue cannot be left unresolved for an indefinite period so the use of S203 powers is considered necessary to meet the timeframes of the development of the LSCH.
iii) The development is prejudiced due to the risk of injunction and adequate attempts have been made to remove the injunction risks.	iii) If an injunction was enforced against the project, then the project could not be completed. DfE funding could not be drawn down in time and the development would be unable to proceed. Three letters (Appendix C)

	have been written to all landowners; visits have been made to all affected properties in order to engage them in this process.
2) The use of the statutory powers will facilitate the carrying out of the development.	If S203 is successfully used then the possibility of an injunction halting development will be removed, therefore removing the risk of the project being unviable. This will enable the DfE funds to be drawn down and the secure home to be constructed and opened without the possibility of challenge from the beneficiaries of the covenant.
3) The benefits of the development would not be achieved without giving rise to the infringement of the identified covenant.	The residential nature of the new home is such that it would be in breach of the covenant against residential development. If the project is to proceed, then there would be no way to avoid breaching the covenant
4) Is it in the public interest that the development be carried out?	The need for both welfare and youth-justice beds across the country is increasing at an unprecedented rate. The provision of an additional 16 beds and the creation of a new fit-for-purpose home will directly address this shortfall and is a high priority for both Central and Local Government. The investment of approximately £70 million into Lincolnshire will help support jobs and contribute substantially to the local economy.
5) Is the public interest to be achieved proportionate to the private rights being infringed by the action of Section 203?	The construction of the new home will have a direct public benefit both locally and nationally, giving a desperately needed home for some of the most challenging and at-risk children in society. The loss to the beneficiaries is considered to be negligible as the development of the site is thought to have no negative impact on them. The residential nature of the home will not cause nuisance, reduce the value of their landholding or otherwise affect them.

2.36 The Council should also be sure that the purposes for which the powers are being exercised justify interfering with the human rights of those whose human rights would be affected. Particular consideration should be given to the provisions of Article 8 (right to home life) and Article 1 of the First Protocol (peaceful enjoyment of possessions) to the European Convention on Human Rights.

- 2.37 Article 8 provides that there should be no interference with the existence of the right to home life except in accordance with the law and, as necessary in a democratic society in the interest of the economic well-being of the country, protection of health and the protection of the rights and freedoms of others. Article 1 of the 1st Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.
- 2.38 In determining the level of permissible interference with enjoyment the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation to affected persons is relevant in assessing whether a fair balance has been struck.
- 2.39 The Council has considered Article 8 and does not consider this Article to be engaged. As set out above, the land having the benefit of the covenant now exists as a commercial trading estate known as Sleaford Enterprise Park. None of the land is occupied by residential properties and there is no home life capable of being affected by the LSCH development. If the Council is wrong about this and Article 8 is engaged then as a matter of fact there is no impact on any person's home life both by reason of the lack of homes on the benefitting land but also on the basis of the distance between the LSCH development and the land having the benefit of The Covenant.
- 2.40 The Council considers that Article 1 of the First Protocol is engaged. However, given the distance of the benefitting land from the LSCH development, any interference with the possessions of the landowner is minimal if non-existent. The Council recognises that the benefit of the covenant is itself capable of being a possession for these purposes and there will be interference with this as a result of section 103 being triggered. However, again because of the distance from the LSCH Development Site and because of the commercial nature of the use to which the benefitting land has been put there is minimal impact of this interference both practically and in terms of the value of the land for the reasons given before. In addition, a statutory right to compensation exists which is a sufficient remedy for any interference there may be. Given this entitlement to compensation, the public interest in the development of the LSCH is considered to be sufficient to render lawful any interference with the possessions of the beneficiaries of The Covenant there may be.
- 2.41 The proposed acquisition by the Council of an interest in the relevant land for planning purposes is considered to accord with the statutory requirements for the application of section 203. There is considered to be a compelling case in the public interest for engaging section 203 to deliver the development in this case, and this

is considered to justify the consequent interference with the relevant rights, and to be proportionate to the level of benefits to be delivered.

- 2.42 Given the existence of The Covenant, there is still a residual risk that the development is challenged once it is constructed. It is felt though that the Council's ongoing attempts to contact beneficiaries and give them opportunity to engage with the authority, will reduce the risk of challenge and the likelihood of success to a minimal level. It is therefore considered that the Executive may proceed to approve the recommendations on the basis that future challenge on the basis of The Covenant will not be capable of preventing the development from proceeding. As beneficiaries would need to show demonstrable loss as a result of the development, it is felt highly unlikely that compensation claims will have a significant financial impact.

3 Enabling Works Contract

- 3.1 The Council's Corporate Property team delivers capital projects using the Royal Institute of British Architects (RIBA) 7 stages as a guide for works and planning. This methodology offers a best practise framework for capital project delivery.
- 3.2 In broad terms RIBA Stages 1-4 constitute the design process. The project is taken from an initial idea and concept through to a detailed design whereby the building is designed to the smallest detail and all elements are incorporated.
- 3.3 A preconstruction contract is signed with a contractor at RIBA stage 0/1 to pay for design, and a 'main works' contract is typically signed with a contractor at the end of RIBA stage 4 to pay for construction.
- 3.4 For some projects, to preserve timescales and deliver within overarching project constraints (like funding deadlines), it is essential to commence 'Enabling Works' on site. The contract for this is usually signed during RIBA stage 3. In the construction industry, enabling works refers to following types of activity:
- Site clearance including removing underground obstructions
 - Asbestos surveying and removal
 - Temporary works including haul roads, scaffolding, hoarding and diversion of services
 - Opening up works and strip outs
 - Propping
 - Full and part demolition of buildings and structures
 - Dismantling of old machinery
- 3.5 Enabling works does not constitute main construction (RIBA stage 5), but it will make the site ready to allow construction to start immediately. The enabling works contract will be procured under the Pagabo construction framework and forms part of the previous mini-competition which was used to select the contractor for

Undertake potential vibro-piling to prepare ground for foundations.	
Installation of new electrical connection for temporary building supply.	
Enabling Works Total	£4.66 million
Total Grant	£7.26 million

3.9 These early enabling works will mean that the project can carry on at a pace that will enable the completion of the building within DfE's agreed timescales. If this work cannot be carried out early, and has to wait until full cost certainty is achieved, then it is likely that the programme will not be achieved and grant funding may be withdrawn.

4. Legal Issues:

Equality Act 2010

4.1 Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

4.2 The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

4.3 Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- 4.4 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 4.5 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.
- 4.6 Compliance with the duties in section 149 may involve treating some persons more favourably than others.
- 4.7 The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision-making process.

The formal Equality Impact Assessment is in progress for this project and will be finalised as part of the ongoing design process, both in terms of service delivery and the construction of the building.

The building itself will be highly accessible, even though it is very specialised in nature and must above all provide a safe and secure environment. All public areas will be on the ground floor with no steps, wide corridors and clear signage being an integral part of the design.

Whilst the design of the building is focussed on security there will be allowances made for residents who may have mobility issues or other impairments. For example demountable handrails and other aids will be available to be installed in residents' bathrooms if required.

The development of a new building, with up-to-date systems and carefully designed spaces, both internal and external, will help staff support children with a wide range of needs.

The location of the building is also felt to be as accessible as possible with the distance to public transport being one of the prerequisites in the choice of site. Whilst the building is on the edge of Sleaford it is still within walking distance of the town centre and access improvements will be made to the local roads as part of the project.

5. Joint Strategic Needs Analysis (JSNA and the Joint Health and Wellbeing Strategy (JHWS)

- 5.1 The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

The proposed process will enable the Council to explore improved secure facilities within the county which will equip the Council to better support young people with complex needs and vulnerabilities.

6. Crime and Disorder

- 6.1 Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

The new build Lincolnshire Secure Children's Home will improve Education and Health opportunities for children and young people and also support their transition back into the community. It will also provide secure facilities for young people who are either within the criminal justice system or who need to be accommodated securely to protect themselves or others. The facility would therefore directly contribute to reductions in crime and disorder.

7. Conclusion

- 7.1 The three recommendations made within the body of this paper are all essential for the Lincolnshire Secure Children's Home project to proceed. The ownership of the land needs to be secured, the risk of challenge from beneficiaries of the covenant is required to be removed and the contract for the enabling works is required to be drawn up and signed, so that LCC can take advantage of the funding offered by DfE to deliver a groundbreaking new facility.
- 7.2 The Executive of the Council is therefore requested to approve these recommendations and support the further development of the project, through to main contract stage.

8. Legal Comments:

The Council has the power to acquire the land and enter into the enabling works contract as proposed.

The legal powers available to the Council to acquire the relevant Land for planning purposes, in order to engage the provisions of Section 203 of the 2016 Act and override third party rights are identified and explained in paragraphs 2.9 – 2.42 of this report.

The decision is consistent with the Policy Framework and within the remit of the Executive

9. Resource Comments:

The recommendations in the report that the Executive to approve the acquisition of the freehold interest at Bonemill Lane in Sleaford, Lincolnshire, and to engage the provisions of Section 203 of the of the Housing and Planning Act 2016, in order to override covenants, as a result of planning permission being received and the consultation exercise, will support the delivery of the new Lincolnshire Secure Children’s Home. The remainder of the land acquisition costs including associated costs to meet legal fees and stamp duty costs is being funded through the Council’s new development capital contingency budget in 2023/24. The Development would contribute to the economic, social, or environmental well-being of the area.

The Department for Education (DfE) has granted funding to the Council for the enabling works together with the detailed design works, professional fees and surveys, to the value of £7.266m in total. This will enable the Council to enter into a contract for the detailed design and enabling works. The capital build project for the new Lincolnshire Secure Children’s Home is funded through DfE monies.

10. Consultation

a) Has Local Member Been Consulted?

Yes

b) Has Executive Councillor Been Consulted?

Yes. Both the Executive Councillor for Children’s Services and the Executive Councillor for Corporate Property have been consulted on this project.

c) Scrutiny Comments

At its meeting on 8 September 2023, the Children and Young People Scrutiny Committee considered the report and unanimously agreed to support the recommendations to the Executive.

Support was given to the new secure children's home and its proposed location which would help to generate economic growth in this area. It was recognised that the existing secure unit was very dated, and the current location did not allow for any expansion.

During its discussion, the Committee explored the following topics:

Invoking Section 203 Powers

- Assurance was provided that invoking Section 203 to override the restrictive covenants was a managed risk, and was a power that had been used by other local authorities to also override restrictive covenants. The process used at other local authorities had been examined to ensure the Council followed the same route and was not doing anything different. Several lawyers in Legal Services Lincolnshire have been working on this issue and external barristers have also been consulted with on multiple occasions.
- Any challenge to the engagement of the Section 203 provisions would be from an adjacent landowner if they felt the value of their land had suffered a loss. Legal advice had confirmed that there would be no loss suffered by overriding the restrictive covenants due to the nature of the development. All the landowners had been contacted on a regular basis to provide them with an opportunity to comment on the proposals. As this was evidenced, the Council would have a very strong case if any challenge was received and would be able to demonstrate that the Council had acted reasonably and taken every step to mitigate the risk and engage adjacent landowners.

Enabling Works Contract

- The cost for the enabling works was being negotiated and had already been reduced from the £7.26 million stated in the report. Legal advice had confirmed that the formal decision would still give the Council authority to continue with the scheme even if the final value was less.

Timescales and Next Steps

- In relation to the timescales for completion, it was confirmed that the plan was to start construction on site in early 2024, with the new secure home being completed at the start of 2026.
- With regards to next steps, a full scheme appraisal would be brought through the Children and Young People Scrutiny Committee and then for a decision towards the end of 2023. This would set out the main works contract and would be for the totality of the project and include the full cost for construction.

d) Risks and Impact Analysis

There are considerable risks associated with a project of this scale and value. The design process and early engagement with a wide range of stakeholders, statutory authorities and other interested parties has helped to mitigate and reduce this but several do remain:

Table 4 – Risk Register

Risk	Mitigation
Resources inadequate and funding not expended prior to DfE grant expiry date: resulting in damage to reputation	Constant dialogue with DfE has managed expectations over delivery timescales. A programme has been agreed which is both achievable and acceptable to all parties. Resources have been dedicated to oversee delivery of the project.
Land acquisition of site does not progress as planned; prolongation of programme / cost increases	The Option agreement has been completed enabling the Council to require the land transfer to be completed with a realistic completion date triggered upon the Council's exercise of the option. Both parties remain keen for completion to take place as soon as possible following exercise of the option notice. In the event the Council chose not to exercise the option and proceed to purchase of the land the option fee which has been paid would be forfeited.
Utility supplies cannot meet the requirements of the project: gas, electric or water supplies require upstream enhancement or relocation and cost allowance insufficient	Design of the building has focussed on reducing power consumption. Gas has been removed completely, electricity load has been more than halved. Upgrade works will be required to ensure continuity of electrical supply but this is now factored into project costs.
Achieving carbon neutral design increases cost to meet funder / stakeholder requirements not currently captured in Indicative Order of Cost Estimate	Costs of Net Zero design changes and upgrades to specifications have now been captured by the design team. These are estimated at over roughly £6 million. This has been accepted by DfE as scope change and included within funding envelope.
DfE do not agree grant funding to the level required to complete the project. Project cannot proceed	Dialogue has continued with DfE from the very early stages of the project. They have been made aware of the cost estimates at

	every stage and have agreed with the proposals. Commitment has been given to over £9 million in grant already and the likelihood of DfE withdrawing support after this level of expenditure is increasingly low.
LCC purchases the site and carries out enabling works but final project does not proceed.	If LCC purchased the site and carried out the upgrade work to access road, electrical supply, site drainage and boundaries then an enhanced asset would be available either for LCC use in future or sale to others, potentially at a higher value.
Legal challenge is made by a beneficiary of the covenants. Delaying the project and potentially preventing the home opening.	Detailed investigation into the powers available to LCC under S203 of the Housing and Planning Act 2016 has been undertaken. This supports the actions of LCC and the communications with beneficiaries over several months reduce the likelihood of successful challenge to a level that is felt to be extremely low.

12. Appendices

These are listed below and attached at the back of the report:	
Appendix A	Plans and elevations of proposed new home
Appendix B	Planning approval document
Appendix C	Correspondence issued to beneficiaries over covenant.
Appendix D	Plan showing location of Beneficiary sites.
Appendix E (EXEMPT)	Details of land transaction

13. Background Papers

No Background Papers within section 100D of the Local Government Act 1972 have been used in the preparation of this Report

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