



Northam Town Council have erected a fence around the football pitch. There had been problems with dog fouling, broken glass and anti social behaviour on the football pitch and the Council/ Football club concluded a fence with lockable gate to restrict access would alleviate these problems.

The fence was erected under permitted development rights afforded to the Town Council so no planning application was required.

No consent was sought from Torridge District Council (as Transferor) in advance of the erection of the fence.

Fields in Trust have been retrospectively consulted about the erection of the fence and have indicated that they are unlikely to approve of a fence if it has a lockable gate that inhibits public access. No formal application for that has been made to Fields in Trust as a result of that informal feedback.

Torridge District Council had been waiting for an official response from fields in Trust before making a decision on how to proceed with enforcement of the restrictive Covenant. The Mayor of Northam Town Council has asked that TDC expedite their decision making in relation to the fence and gate in advance of an application to Fields in Trust.

### **3. IMPLICATIONS**

#### Legal Implications

None identified unless action is required to enforce the breach of covenant.

#### Financial Implications

None identified unless action is required to enforce the breach of covenant.

#### Lead Member Views

Cllr Hicks (Lead Member for both Property and Economy) consulted 23/11/22

### **4. CONCLUSION**

It is concluded that:

- No consent was sought by Northam town Council for the erection of the fence and gate at Burrough Farm
- The current fence with a lockable gate would prevent free access to the recreational land, playing pitch and public open space
- The points above would be considered to constitute breach of covenant
- Fields in Trust have not consented to the erection of a fence and lockable gate

There are options that the Council might consider proposing to Northam Town Council on how to proceed:

1. Take the fencing around the pitch down (nothing for Fields in Trust to consent to)
2. Leave the fencing up but unlocked at all times (nothing for Fields in Trust to approve as an unlocked fence around a sports facility doesn't require consent)
3. To apply to Fields in Trust to leave the fencing and lockable gate (this application will most likely be rejected unless it can be demonstrated the access by the public will not be constrained).

It is considered that options 1 and 2 would not constitute an ongoing breach of covenant with TDC but option 3 would (unless FiT could be satisfied that management arrangements were such that they were satisfied with that option).

## **5. RECOMMENDATIONS**

It is recommended that:

If an application to Fields in Trust for a fence with lockable gate (with arrangements for community access wider than just the pitch lease holder) is approved that the Council defer to the FiT decision and offer consent for its erection, or;

If Fields in Trust do not consent to the fence and lockable gate the Council should formally request that Northam Town Council either:

- Remove the lock on the gate to ensure unrestricted access to the field or;
- Remove the fence and gate in their entirety.

The intention of these recommendations is to ensure that the entirety of the transferred land at Burrough Farm remains appropriately managed, public open space.

## **SUPPORTING INFORMATION**

Consultations:	Date of Consultation – November 22 Officers Consulted – Chief Executive, Head of Legal and Monitoring Officer, S151 Officer, Major Projects Manager
Contact Officer:	Head of Communities and Place