

**Ward** Seaton

**Reference** 21/2167/FUL

**Applicant** Mr Tom Bosworth

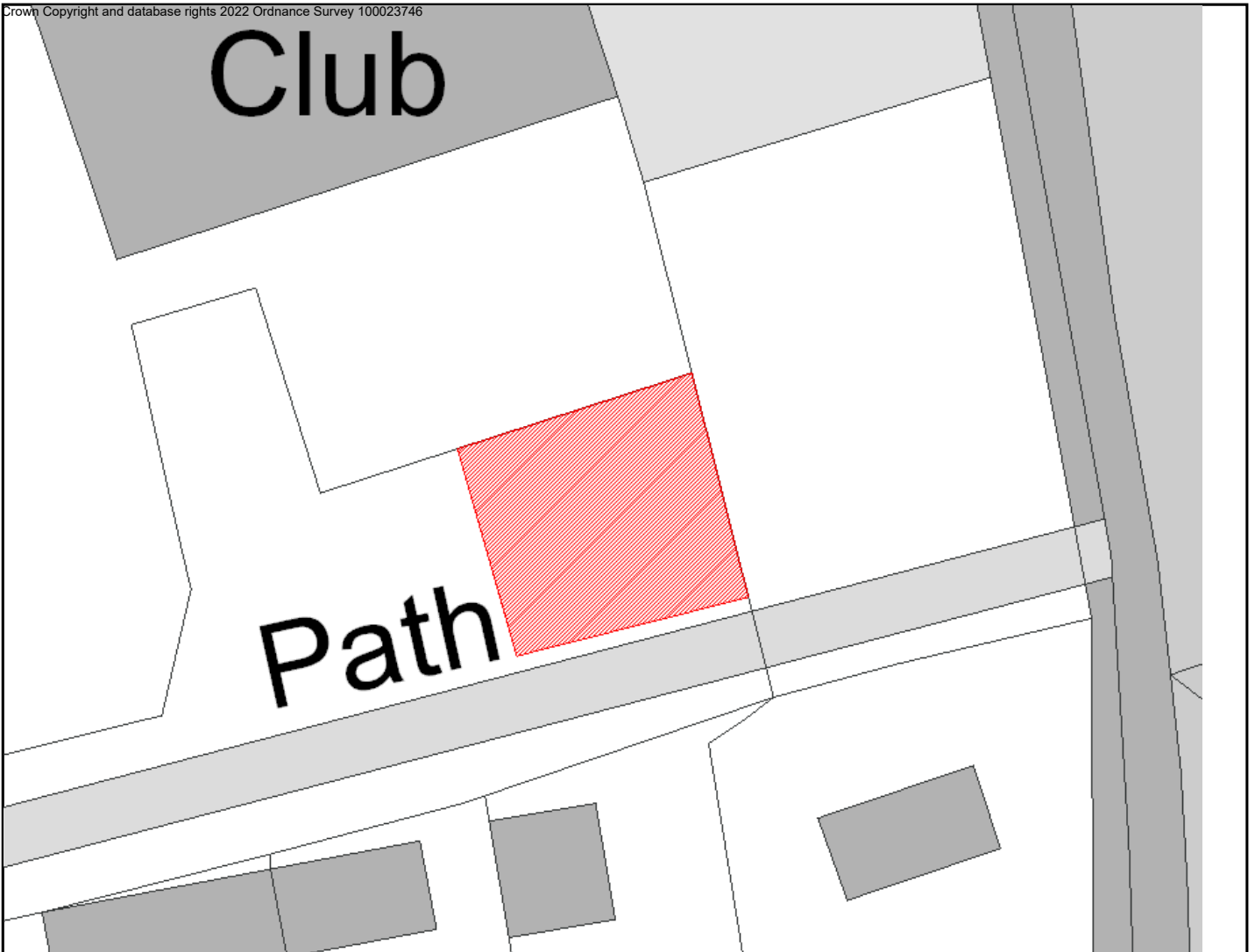
**Location** Playing Fields Scalwell Lane Seaton

**Proposal** A compound comprising of a kiosk unit to house data exchange for telecommunications (Jurassic Fibre) including concrete slab for placement, and timber perimeter fencing.



**RECOMMENDATION: Approval with conditions**

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		<b>Committee Date: 16<sup>th</sup> March 2022</b>
<b>Seaton (Seaton)</b>	<b>21/2167/FUL</b>	<b>Target Date: 12.10.2021</b>
<b>Applicant:</b>	<b>Mr Tom Bosworth</b>	
<b>Location:</b>	<b>Playing Fields Scalwell Lane</b>	
<b>Proposal:</b>	<b>Kiosk unit to house data exchange for telecommunications (Jurassic Fibre) including concrete slab for placement.</b>	

**RECOMMENDATION: Approval with conditions**

#### **EXECUTIVE SUMMARY**

**This application is before the Committee because the proposal development departs from the policy of the East Devon Local Plan.**

**The proposal is for a cabin to house a data exchange, to support the delivery of ultrafast fibre broadband within Seaton. The cabin would be a green, powder coated steel container 2.35m high, and 3.2m by 2.2m in area, set on a concrete base. It would be located on a grassed area within the Elizabeth Road playing field, just to the south of the Martial Arts Centre. This area forms part of an area designated as a 'recreation area, allotment or accessible open space' in the East Devon Local Plan, which extends across the wider playing field to the west.**

**Seaton Town Council raise no objection and the proposal is supported by a Ward Member.**

**Policy RC1 of the East Devon Local Plan protects designated recreation areas, allotments and accessible open spaces from development, except in certain circumstances. Given that no alternative provision or enhancement of facilities would be offered by the development and that there is a shortfall of open space provision within Seaton, none of those circumstances apply in this case and the proposal conflicts with this policy.**

**The provision of full fibre broadband is encouraged within Seaton through Strategy 25, due to the support it provides for sustainable job opportunities. The expansion of the fibre broadband network is also supported by the National Planning Policy Framework. Alternative sites have been considered by the applicant however the Local Planning Authority were not involved in the appraisal of alternatives and cannot conclude that the proposed site is the best option in planning terms. However, in considering the impact of the development at this site, given that the area of open space that would be lost would be small and that**

**the open character of the immediately surrounding area has already been eroded by the erection of the pre-school and timber fenced enclosures, it is considered that the impact on the open space would be minimal if any.**

**The proposed compound has industrial appearance, however, it would mainly be seen in passing and in the context of the pre-school development and fenced enclosures nearby. With conditional control of the external colour of the cabin it is considered that its visual impact within this context would be acceptable.**

**On balance, it is considered that the economic, environmental and social benefits associated with improved broadband provision in the area would outweigh the minor harm to the open space such that the proposal is acceptable.**

## **CONSULTATIONS**

### **Local Consultations**

#### **Parish/Town Council**

Seaton Town Council have no objections to this application.

Seaton Town Council would like it recorded that the Council is the landlord of the Playing Fields in Scalwell Lane and is receiving a rental income from Jurassic Fibre.

#### **Seaton - Cllr Marcus Hartnell**

I'd like to support this application. I believe that the harm caused to the recreational space is minimal and the benefit of fibre broadband to the wider community is a justified reason to ignore policy on this occasion. The applicant has submitted a document that demonstrates other sites have been considered and that this location is preferred and deliverable within the desired timescales.

### **Technical Consultations**

#### **Environmental Health**

I have considered the application and do not anticipate any environmental health concerns

#### **South West Water**

With reference to the planning application at the above address, the applicant/agent is advised to contact South West Water if they are unable to comply with our requirements as detailed below.

#### **Asset Protection:**

Please find attached a plan showing the approximate location of a public 225mm sewer in the vicinity. South West Water will need to know about any building work over or within 3 metres of a public sewer or lateral drain.

We will discuss with you whether your proposals will be affected by the presence of our apparatus and the best way of dealing with any issues as you will need permission from South West Water to proceed.

Further information regarding South West Water's build over of sewers process can be found on our website via the following link:  
[www.southwestwater.co.uk/buildover](http://www.southwestwater.co.uk/buildover)

Should you require any further information, please contact our Asset Protection Team via email: [DeveloperServicesAssetProtection@southwestwater.co.uk](mailto:DeveloperServicesAssetProtection@southwestwater.co.uk).

(Office Note: Please see above mentioned plan under the 'documents' tab)

#### EDDC Trees

Having reviewed the supplied information I have no objections to the proposed development.

#### Sports England

Thank you for consulting Sport England on the above application.

The proposed development does not fall within either our statutory remit (Statutory Instrument 2015/595), or non-statutory remit (National Planning Policy Guidance (PPG) Par. 003 Ref. ID: 37-003-20140306), therefore Sport England has not provided a detailed response in this case, but would wish to give the following advice to aid the assessment of this application.

General guidance and advice can however be found on our website:  
[https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport#planning\\_applications](https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport#planning_applications)

If the proposal involves the loss of any sports facility then full consideration should be given to whether the proposal meets Par. 99 of National Planning Policy Framework (NPPF), link below, is in accordance with local policies to protect social infrastructure and any approved Playing Pitch Strategy or Built Sports Facility Strategy that the local authority has in place.

If the proposal involves the provision of a new sports facility, then consideration should be given to the recommendations and priorities set out in any approved Playing Pitch Strategy or Built Sports Facility Strategy that the local authority may have in place. In addition, to ensure they are fit for purpose, such facilities should be designed in accordance with Sport England, or the relevant National Governing Body, design guidance notes:  
<http://sportengland.org/facilities-planning/tools-guidance/design-and-cost-guidance/>

If the proposal involves the provision of additional housing then it will generate additional demand for sport. If existing sports facilities do not have the capacity to absorb the additional demand, then new and/or improved sports facilities should be secured and delivered in accordance with any approved local policy for social infrastructure, and priorities set out in any Playing Pitch Strategy or Built Sports Facility Strategy that the local authority has in place.

In line with the Government's NPPF (including Section 8) and PPG (Health and wellbeing section), consideration should also be given to how any new development, especially for new housing, will provide opportunities for people to lead healthy lifestyles and create healthy communities. Sport England's Active Design guidance

can be used to help with this when developing or assessing a proposal. Active Design provides ten principles to help ensure the design and layout of development encourages and promotes participation in sport and physical activity.

NPPF Section 8: <https://www.gov.uk/guidance/national-planning-policy-framework/8-promoting-healthy-communities>

PPG Health and wellbeing section: <https://www.gov.uk/guidance/health-and-wellbeing>

Sport England's Active Design Guidance: <https://www.sportengland.org/how-we-can-help/facilities-and-planning/design-and-cost-guidance/active-design>

Please note: this response relates to Sport England's planning function only. It is not associated with our funding role or any grant application/award that may relate to the site.

#### Other Representations

None received.

### **PLANNING HISTORY**

<b>Reference</b>	<b>Description</b>	<b>Decision</b>	<b>Date</b>
10/1088/CM	Construction of single storey pre-school building with associated landscaping DCC/3065/2010	Approved	26/5/2010
75/C1511	Plot of land on southern side of scout hut building for judo training	Approved	6/8/1975
76/C0887	Judo training hall	Approved	12/4/1977

### **POLICIES**

#### Adopted East Devon Local Plan 2013-2031 Policies

Strategy 6 (Development within Built-up Area Boundaries)

Strategy 25 (Development at Seaton)

D1 (Design and Local Distinctiveness)

RC1 (Retention of Land for Sport and Recreation)

TC1 (Telecommunications)

EN14 (Control of Pollution)

#### Government Planning Documents

NPPF (National Planning Policy Framework 2021)

National Planning Practice Guidance

### **Site location and description**

The site is approximately 900m north of Seaton Town Centre. It lies within a strip of land at the eastern end of the Elizabeth Road playing field which links the larger playing field and play area to the west with Scalwell Lane to the east. Like the playing field and play area, this strip of land is designated as a recreation area, allotment or accessible open space in the East Devon Local Plan.

There are various community facilities in the vicinity, including a martial arts centre and an associated fenced enclosure to the north, a car park and scout hut to the northeast, the Pink Hippo day nursery and preschool to the northwest (which also has a fenced enclosure on its southern side), and Seaton Primary School to the south west. The site itself is part of a flat area laid to lawn with trees to the east, between the site and Scalwell Lane, and a pedestrian path to the south with housing beyond. The wider context of the site is moderate to high density housing.

### **Proposal**

Planning permission is sought by Jurassic Fibre to install a cabin to provide a data exchange for telecommunications to support the delivery of ultrafast fibre broadband in Seaton. The cabin would be 2.35m in height by 3.2m in length and 2.2m in width and would have an air conditioning unit attached. It would be sited on a concrete slab. It would be powder coated and coloured green. The proposal has been changed, since the application was originally submitted, to omit the timber palisade fencing originally proposed and a freestanding power unit.

### **ANALYSIS**

Having regard to the content of the relevant policies listed above the main issues for consideration include the principle of the proposal, its impact on open space within Seaton, the provision of high speed broadband connectivity, visual impact and impact on residential amenity.

### **Principle**

The site being within the built up area of Seaton development here is acceptable in principle. Telecoms infrastructure is also specifically supported by Policy TC1 of the Local Plan, subject to a number provisos which are discussed under the relevant headings below.

### **Open Space**

LP Policy RC1 seeks to prevent the loss of open space currently or previously used for recreation and/or sports uses, play areas and playing fields and only allows loss where :

1. Alternative provision of equivalent community benefit is made available and will be appropriately laid out by the applicant as a replacement. Or
2. Sports and recreational facilities can best be retained and enhanced through the redevelopment of a small part of the site. Or
3. Locally there is an excess of public open space, children's play areas or sports pitch provision in the area as the case may be.

Circumstances 1 and 2 would not be met in this case since no alternative provision is proposed and sports or recreational facilities will not be best retained or enhanced through the proposal. Within Seaton, there is an under-provision of public open space, and therefore circumstance 3 is not met either. The proposal therefore conflicts with LP Policy RC1 and represents a departure from the Development Plan, and it has been advertised as such.

There is nothing in the application documents to indicate any regard for the impact of the development on the designated open space. When this constraint and the provisions of LP Policy RC1 were drawn to the applicant's attention, the response indicated the NPPF and local policy support for broadband provision and did not offer any mitigation for the loss of the open space. The Local Planning Authority (LPA) requested that the applicant justify the selection of the proposed site as opposed to alternative locations, e.g the open areas north of the martial arts centre and pre-school, which lie outside of the designated open space area. In response the applicant, Jurassic Fibre, indicated that in selecting sites to locate electronic equipment to form their core network (referred to as 'Point of Presence' (PoP) sites) they rely on existing 'Physical Infrastructure Access' (PIA) i.e. locations where existing telecoms ducts and poles are available, together with a power supply. The applicant indicated that the following alternative sites had been considered but rejected for the reasons summarised below:

- Seaton Long Stay Car Park – Unsuitable due to flood risk, as is within Flood Zone 3;
- Harepath Road – Unsuitable due to being an active development site for houses, making the build more complex;
- Land adjacent to Court Lane – Unsuitable due to the amount of civils work required to access the PIA and power, which would cause disruption, including as a result of the road closures.

The applicant also indicated that they considered the installation of multiple cabinets within Seaton, through Permitted Development rights, but that they rejected this option due to the negative impact this would have in terms of the addition to street furniture within the town, compared to the erection of a single cabin. With regard to the possibility of using open areas to the north of the application site, the applicant indicates that they have been in touch with the landowner about this (Seaton Town Council) but that due to existing leases with other parties, this land cannot be used by Jurassic Fibre.

On balance, it is accepted that the applicant has given consideration to alternative sites and that there may be various difficulties, impacts and additional costs associated with them.

The LPA has not been involved in the appraisal of different sites and on the basis of the information submitted it is has not been possible for the LPA to form an opinion as to whether the proposed site is the best option in terms of various potential impacts.

However, in considering the impact of the proposal on the designated open space it is noted that the area affected does not form part of a playing pitch, is used more as an access to the community facilities rather than for recreation, and that the footprint of

the proposed development is small, such that the loss of open space would be minor. It is also noted that the area of designated open space has already been reduced to some degree by the erection of the pre-school.

In addition, previously open grassed areas have been enclosed by wooden fences immediately to the south and southwest of the Martial Arts Centre, very close to the proposed site and this, in combination with the pre-school development, has undermined the quality of what was once a connected and attractive open space extending from Scalwell Lane to the east to the wider playing pitch area to the west.

Whilst the conflict with LP Policy RC1 weighs against the proposal, taking all the above points into account it is considered that the harm associated with the development of a small area of the playing field in this location would be minor and not worthy of a refusal of planning permission.

### **Broadband Connectivity**

The provision of high speed broadband within Seaton is specifically encouraged within the preamble to LP Strategy 25. Paragraph 2 of that strategy, under the heading 'Jobs', states "Improvements to broadband provision and to public transport for commuters will be sought to help provide, retain and make more sustainable job opportunities for the town." Paragraph 114 of the NPPF states that "Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections."

Measures for the improvement of broadband connectivity are therefore supported by local and national planning policy, with the local plan recognising the economic, social and environmental benefits (in terms of reduced need to travel) this can bring about, which also weighs in favour of this proposal.

### **Visual Impact**

LP Policy TC1 requires that proposals are sited designed and landscaped so as to minimise their visual impact on the surrounding area. Though relatively small scale, the proposed cabinet would be clearly visible from adjacent footpaths at close range and from Scalwell Lane over a slightly greater distance. The cabinet has no particular merit in terms of its design merit, having a utilitarian block-like appearance. A condition could be imposed to ensure that its colour is visually recessive.

Given that the immediate area has, to a large degree, lost its former open undeveloped character due to the erection of the pre-school and timber fences enclosing various areas it is not considered that the proposal would cause significant additional visual harm. It is not considered that additional landscape planting is needed to mitigate the visual impact of the cabin given that there are scattered trees to the east of the site which help to break up views from Scalwell Lane and that existing fencing breaks up approach views from the west. In addition, given the use of the area as a public space and thoroughfare, any attempt to more fully screen the cabin through planting additional trees and shrubs may cause issues in relation to the safety and security of the public space. Overall, the visual impact is considered to be acceptable.



## **Amenity**

The air conditioning unit has the potential to generate a noise impact affecting nearby dwellings however the environmental health officer has considered this and raises no concerns.

## **Other Issues**

The omission of the fence around the cabin, as originally proposed, could increase the vulnerability of the cabin to trespass or misuse, given that the site is within a public space and unlikely to benefit from natural surveillance at all times. However the cabin appears to be of robust construction and it is not considered that it would be unacceptably vulnerable to damage. It is therefore considered that the proposal would be compliant with LP Policy D1 with regard to reducing the potential for crime.

In accordance with LP Policy TC1 it is recommended that a condition be imposed to require removal of the cabin when it is no longer required.

## **CONCLUSION**

The proposal would facilitate the provision of improved broadband connectivity within Seaton with associated economic and environmental benefits. Whilst it would entail the loss of an area of designated public open space, the area lost would be small and the given the area is only used as an access to the adjoining facilities, with erosion of the open character of that public space already taken place, this impact is considered to be minor and outweighed by the economic and environmental benefits.

## **RECOMMENDATION**

APPROVE subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved. (Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The works hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice. (Reason - For the avoidance of doubt.)
3. The cabinet shall not be installed until details of its external colour, including photographic imagery and manufacturer's or supplier's references, have first been submitted to, and approved in writing by, the Local Planning Authority. The cabinet shall be installed and maintained in accordance with the details so approved. (Reason: In the interests of mitigating the visual impact of the development in accordance with Policies D1 - Design and Local Distinctiveness and TC1 - Telecommunications of the East Devon Local Plan).
4. Upon the cessation of the use of the cabin hereby permitted the cabin and the concrete platform beneath it shall be removed and the land restored to its

original condition i.e. levelled and grass seeded. (Reason – In the interests of mitigation the visual impact of the development and its impact on public open space once it has ceased to carry out its original function, in accordance with Policy TC1 of the East Devon Local Plan).

#### NOTE FOR APPLICANT

Informative:

##### South West Water

With reference to the planning application at the above address, the applicant/agent is advised to contact South West Water if they are unable to comply with our requirements as detailed below.

##### Asset Protection:

Please find attached a plan showing the approximate location of a public 225mm sewer in the vicinity. South West Water will need to know about any building work over or within 3 metres of a public sewer or lateral drain.

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Should you require any further information, please contact our Asset Protection Team via email: [DeveloperServicesAssetProtection@southwestwater.co.uk](mailto:DeveloperServicesAssetProtection@southwestwater.co.uk).

##### Plans relating to this application:

JFL103.101	Location Plan	11.08.21
JFL103.102 P2	Proposed Block Plan	17.02.22
JFL.103.001	Proposed Site Plan	17.02.22
JFL.103.004	Proposed Elevation	17.02.22

##### List of Background Papers

Application file, consultations and policy documents referred to in the report.