

Report to	-	Cabinet
Date	-	6 November 2017
Report of the	-	Executive Director of Business Operations
Subject	-	Public Open Space - Brede Lane, Sedlescombe

Recommendation: It be **RESOLVED:** That subject to the requirements of the Section 106 planning obligation in respect of planning application RR/2016/1837/P, land at Brede Lane, Sedlescombe:

- 1) it be agreed in principle that the land transferred as a freehold interest from MJH Homes to Rother District Council, as Public Open Space, be transferred to Sedlescombe Parish Council for the sum of £1, together with the maintenance contribution of £37,560.00 (plus the Council or its nominee's reasonable legal fees on the transfer of the Public Open space), in accordance with the necessary procedures under disposal of land held as Public Open Space, as required by Section 123 of the Local Government Act 1972; and
 - 2) report any objections to a future meeting of Cabinet; and
 - 3) if no objections are received, the Executive Director of Business Operations be granted delegated authority to proceed with and undertake all necessary steps to dispose of the land without further recourse to Cabinet.
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Service Manager: Tim Hickling

Cabinet Portfolio Holder: Councillor G.P. Johnson

Introduction and Background

1. The Planning Committee at its meeting in October 2016 resolved (RR/20161837/P) to grant planning permission, delegated to the Service Manager subject to conditions and completion of a planning obligation under Section 106 (s106) Town and Country Planning Act 1990 in relation to provision of affordable housing, highway improvements (footway/access), transfer of land to the Education Authority for school use and transfer of land for public open space with commuted sum; and subject to planning conditions. The application relates to the erection of 16 residential dwellings, together with the creation of a new access onto Brede Lane, Sedlescombe and provision for car parking, landscaping, and the transfer of land to be used as school playing fields and public open space with a commuted sum of £37,560.
2. Sedlescombe Parish Council (SPC) then made an approach to the Secretary of State (SoS) requesting the application be "called in" to allow the SoS to determine the application as SPC considered the proposal did not conform with their emerging Neighbourhood Plan (NP). The request was however declined.
3. In the intervening period between the original determination and the SoS's consideration and adjudication, the publicity period for SPC's emerging NP

was completed and this, amongst other matters was considered a change in circumstances and the application was therefore reconsidered by the Planning Committee in March 2017, in light of these changes.

4. At the March Planning Committee meeting, Members confirmed their previous decision that full planning permission be granted subject to completion of the s106 and conditions. The s106 agreement was completed on 17 May 2017 and requires the Public Open Space and the associated maintenance contribution to be transferred to Rother District Council.
5. SPC then applied for a Judicial Review on this application which on the 18 September 2017 was not granted.
6. RDC has now received a request from SPC that the land designated as 'open space' in the s106 Agreement be transferred to SPC (Appendix 1). The s106 planning obligation requires the freehold interest of the public open space be transferred from the developer, MJH Homes to RDC. Thereafter, RDC can transfer the land so long as it is protected as 'public open space'.

Considerations

7. Devolution – in line with RDC's devolution of assets to parish and town councils across the district, it is unlikely that RDC would wish to retain this public open space and take on responsibility for its upkeep and maintenance, despite the commuted sum which will accompany the transfer. RDC would naturally be looking for an appropriate body, such as SPC, to take responsibility for this land within its location that would be able to manage the asset more effectively at a local level.
8. Legal – once in receipt of the land, RDC will have to give notice in accordance with Section 123(2A) of the Local Government Act 1972 that it intends to dispose of the public open space, even if this is by way of a long lease or freehold interest to SPC and consider any objections to the proposed disposal. Legal advice will be sought on the best form of disposal, whether this is by way of long lease or freehold interest.
9. There will be a restriction on the land, imposed by the developer, limiting its use to public open space and for it to be kept open and not developed in the future. RDC may wish to consider imposing a similar obligation directly between RDC and SPC to further ensure and safeguard the future use of the site as public open space.

Conclusion

10. SPC has requested an approval in principle from RDC that it will transfer the public open space, together with the commuted sum to maintain the land into the future, to SPC, at the appropriate time in accordance with the planning obligation in respect of this planning application in order to safeguard the land as public open space. This would not be unusual and officers would normally recommend that Cabinet provide this approval in principle and to authorise the Executive Director of Business Operations to deal with all aspects of the disposal of this public open space as and when it comes into this Council's ownership.

Dr Anthony Leonard
Executive Director of Business Operations

Risk Assessment Statement

There are no risks associated with this report.

Appendix 1



Sedlescombe Parish Council

April Cottage, Church Road, Catsfield, East Sussex. TN33 9DP

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Dr. A. Leonard
Executive Director of Business Operations
Rother District Council
Town Hall
Bexhill-on-Sea
East Sussex
TN39 3JX

5th October 2017

Dear Tony,

Re: Street Farm - S106 Agreement and the 'Open Space'

Following Sedlescombe Parish Council's May 2017 meeting we wrote to ask you to put before the Cabinet, Sedlescombe Parish Council's request that the land designated as 'Open Space' in the Section 106 agreement of the Street Farm Planning Application - RR/2016/1837/P be transferred to Sedlescombe Parish Council with the sum of money set aside (£37,560) for contribution to the maintenance of the open space as soon as the specific clause in the Section 106 had been triggered (section 1.11 page 34 of the Section 106).

With reference to our discussions and follow up emails earlier this year you confirmed that you would have no objection to both putting this before the Cabinet and recommending the transfer of the land but decided to defer this until after the outcome of the Judicial Review. As you know the Judicial Review was not granted and Sedlescombe Parish Council has not requested an oral hearing.

As you will recall the Section 106 varied from the draft in that the draft specified the land be transferred to the District Council or another suitable body for £1. The final agreement removed 'another suitable body'. However, yourself, David Marlow and Sarah Sheppard have all at different times confirmed that it is not the intention of the District Council to hold this land and the removal of the reference to 'another suitable body' was to give comfort to the developer that the Parish Council would not become a party to the Section 106 which we can understand given our objection to the development.

Could we now ask you again to take the proposal to transfer the Open Space to the Parish Council (for the sum of £1 plus the £37,560 for maintenance directly after the land is transferred to the District Council) to the next Cabinet meeting.

We would appreciate you confirming your proposed action on this.

Yours sincerely

Carol Hodgson

Mrs Carol Hodgson
Acting Clerk / Responsible Financial Officer
Sedlescombe Parish Council