

Report to	-	Cabinet
Date	-	15 January 2018
Report of the	-	Executive Director of Business Operations
Subject	-	Public Open Space – Brede Lane, Sedlescombe

---

**Recommendation:** It be **RESOLVED:** That Sedlescombe Parish Council be advised of the reasons for the previous resolution and Rother District Council's commitment to transfer the land to Sedlescombe Parish Council subject to the necessary legal processes being followed.

---

**Service Manager: Tim Hickling**

**Lead Cabinet Member: Councillor G P Johnson**

---

## **Introduction**

1. On 5 October 2017 Rother District Council received a request from Sedlescombe Parish Council that the land designated as 'open space' in the S106 agreement relating to Street Farm planning application (RR/2016/1837/P) be transferred to Sedlescombe Parish Council.
2. On 6 November 2017 (Minute CB17/40) Cabinet resolved:

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

  - a. 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 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
  - b. report any objections to a future meeting of Cabinet; and
  - c. 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
3. This resolution is now being challenged by Sedlescombe Parish Council and they are seeking it to be amended.

## **Public Open Space – Considerations**

4. The Planning Committee at its meeting in October 2016 resolved (RR/20161837/P) to grant planning permission for 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, 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.

5. The S106 agreement states that once the development has started that **no later than:**
  - the occupation of the **5<sup>th</sup> open market House** – the open space shall be transferred to RDC for £1
  - the occupation of the **9<sup>th</sup> house** a payment of £37,500 (index linked) shall be made to RDC for future maintenance of the open space
  - the occupation of the **14<sup>th</sup> house** all landscaping required to the public open space shall be completed
6. Following a series of challenges by SPC in relation to this planning application between October 2016 and October 2017, including an application for a Judicial Review, which on 18 September was not granted, RDC received a request from SPC that the land designated as 'open space' in the s106 Agreement be transferred to SPC.
7. 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'. In response to SPC's request, Cabinet resolved (Minute CB17/40) as cited as paragraph 2 above.
8. SPC are now disputing this recommendation and have requested that it be amended as per their e-mail attached at Appendix 1.

## Considerations

9. Further to 6 November Cabinet resolution above, the transfer of the land to Rother (and then to the parish council/or trust) cannot take place until the planning permission is activated and the development has gone through the triggers set out as paragraph 5 above.
10. Once the land is transferred to RDC as public open space the Council must then go through a due legal process under section 123 of the Local Government Act 1972 as it will be disposing open space owned by the Council. If there are no objections then the Executive Director of Business Operations will have the delegated authority to transfer the land as either a leasehold or freehold whichever is considered to be the most appropriate. Therefore whilst it is every intention of RDC to dispose of the land to SPC, it can only give 'in principle agreement' at this time as the Council is required by law to advertise its disposal and take due consideration of any objections.

## Conclusion

11. Further to the November Cabinet resolution SPC has requested the freehold of the public open space be transferred from RDC to SPC or a Trust to be specifically set up, together with the commuted sum to maintain the land into the

future, 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. Such a transfer is not unusual but until the land has first been transferred to RDC and then gone through due process under section 123 of the Local Government Act 1972 this can only be at this stage an undertaking of approval in principle.

12. The November cabinet resolution has already given authority (after the S123 stage if there are no objections) to the Executive Director of Business Operations to deal with all aspects of the disposal of this public open space and this is the furthest RDC can go in giving its commitment to SPC as governed by the legal framework.

Dr Anthony Leonard  
Executive Director of Business Operations

**Risk Assessment Statement**

There are no risks to RDC associated with this report.

## Sedlescombe Parish Council's Request

**From:** [clerk@sedlescombe.org.uk](mailto:clerk@sedlescombe.org.uk) [<mailto:clerk@sedlescombe.org.uk>]

**Sent:** 05 December 2017 13:33

**To:** Tony Leonard

**Cc:** Cllr Tony Ganly; 'Cllr Vine-Hall'; Cllr. Carl Maynard (County); Cllr Carl Maynard; Jane McCullough; Shirley Jordan

**Subject:** Cabinet Meeting 18Dec17

Dear Tony

With reference to Cllr. Vine-Hall's earlier emails in relation to the s106 agreement for planning application RR/2016/1837/P - Brede Lane - land at, Sedlescombe TN33 0PY.

I can confirm that the resolution Sedlescombe Parish Council asks you to put to the Cabinet at the meeting on the 18th December 2017 is as follows:

'That the freehold of the land allocated as an open space at Street Farm in relation to planning application RR/2016/1837/P be transferred to Sedlescombe Parish Council or a trust specifically set up to manage this land with SPC as corporate trustee for £1 with the associated maintenance fund as set out in the section 106 agreement for that planning application as soon as the clause in the section 106 relating to the transfer of this land is triggered'.

If you require any further information, please let me know.

Kind regards

Carol

Mrs Carol Hodgson  
Clerk/Financial Officer  
Sedlescombe Parish Council  
April Cottage  
Church Road  
Catsfield  
East Sussex  
TN33 9DP