

<b>Agenda item no.</b>	13
<b>Report to</b>	Burwash Parish Council (BPC)
<b>Subject</b>	Main Village Car Park
<b>From</b>	The Clerk

### **Summary**

In April 2016 Rother District Council (RDC) wrote to the Parish Council stating they were devolving assets and if the Council had any interest in taking over the Burwash Car Park and Public Conveniences. The letter also stated that “in the event that there was no interest in taking on the asset, then an alternative use would be implemented. Alternative uses may include the closure of facilities and disposal of the land on the open market.”

Due to the importance of the car park for local residents Councillors resolved to look into taking on the car park. Rother sent over their standard lease agreement. Having reviewed the lease Councillors felt that the Council should be allowed the option to take on the freehold rather than the leasehold. Last August the Clerk asked on behalf of Council for the matter to be taken to Cabinet as officers would not agree to discussing the option for Freehold. After agreeing to this Malcolm Johnston then reversed his agreement stating that it would not go to Cabinet after all in December 2018.

Cllrs McBride and Moore went to meet officer Ben Hook, Head of Service – Acquisitions, Transformation and Regeneration to discuss a way forward. Since that date very little has happened. A survey has been done on the toilets but not the car park or the parish huts.

The offer from RDC has been:

1. Pay towards maintenance costs sliding scale over ten years. In years one this would be 100% year two 90% down to year ten at 10%.
2. Instead of a sliding scale a lump sum would be paid at the beginning of the hand over and then no further funding. Previous offer in April 2006 from Rother to the PC just to take on the public conveniences was £8,000.

### **Latest Correspondence**

The Clerk and the Chair spoke to Ben Hook in a conference call on the 25/07/19. The freehold was discussed again. Mr Hook said that officers will not recommend that the freehold is given and Cabinet are likely to take officers advice. Council has never been given a conclusive answer as to why they cannot have the freehold and it seems to change in each correspondence. Now the reason is due to the potential covenants and they wish to keep the recycling in the car park. Council has previously resolved to agree to a long lease (999 years) as long as the terms of the leasehold were acceptable.

When asked about the lease Mr Hook said that the legal team had found nothing from the meeting with Cllrs McBride and Moore that required the lease to change. The Clerk mentioned that the current lease provided by RDC was not at all fit for purpose for the Burwash Car Park for the following reasons after a conversation she had with Graham Burgess, Property Investment and Regeneration Manager end of May 2019:

1. Access into the car park – Graham stated the pub was responsible up to 10%. He also didn't know if the Parish Council would be asked to maintain the access in the lease. I also noted that the repairs sink on a three year basis and a proper conditional survey would be needed. Deborah Kennelly (Neighbourhood Services Manager) said this was being actioned but there has been no further communication.
2. Condition Surveys on the huts – Graham said he'd organise people to come out and view these when I was back from holiday so I could let them in. At the point of writing this report I have not had any further contact from Graham on this matter.
3. Footpath – Graham said that there was the footpath at the side which Rother owed maintained and didn't know if that would be a part of the lease.
4. Private accesses and the surgery access – he was unsure how this should be mentioned in the lease. To confirm the Surgery has in the title deed Title Number ESX 186418 "the right for the Grantee her successors in the title...(access) at all times day or night to pass and repass with or without motor vehicles to or from the Dominant Land (Surgery) over and along the hatched area (village car park).
5. Recycling centre – this is an area for Deborah if there would be any conditions in the lease about these but they want to keep it in the car park.
6. Lines in the car park – these would be for further discussion with Cllrs. It seems that Rother would reline the existing lines but Councillors may wish to have the car park layout reviewed to make better use of the space to allow for more parking.

### **A Way Forward**

Due to the lack of progress on Rother's side Mr Hook promised if a refreshed 'Head of Terms' was submitted they would turn the lease around within ten working days. Council are therefore asked to consider the below list as a starting point:

1. Access into the car park – RDC need to confirm how the access will be maintained between RDC, BPC and the Bear Inn.
2. Condition Surveys on the huts, toilets and car park are all sent over to Council as soon as possible along with an idea of annual running costs for each.
3. Public Conveniences – The lease would allow the Parish Council without Rother's consent subject to planning permission, to remove the existing toilet block on the condition that it was replaced within the car park site or became incorporated into one of the main buildings on the car park site (ie Parish Huts or Surgery) as long as the toilets remained open to the public 7 days a week at a minimum during the hours of 7am to 7pm.
4. Footpath – Confirmation how the footpath will be written into the lease and that Rother will continue to maintain this.
5. Private accesses and the surgery access – Besides the surgery no other access seems to have any paperwork allowing private accesses onto the land. Rother needs to write this in and confirm that the Parish Council will be the only authority to allow any additional access onto the Car Park

6. Recycling centre – Parish Councillors will have the right to downsize and move the recycling centre a) to a different part of the car park and or b) removed from the car park site if a suitable alternative site could be found.
7. Lines in the car park – Councillors will be given the freedom to have the car park layout reviewed to make better use of the space to allow for more parking.
8. Rother to confirm the cleaning contract situation and if the Parish Council will be required to carry on that contract.
9. Miscellaneous Items – Parish Councillors will be able to add in or remove items including bins for rubbish, dog and grit, seating, lighting and other public realm items without consent from RDC.
10. CCTV – The Parish Council will be able to install CCTV in line with all current GDPR and legal guidelines in the car park without the consent of RDC.
11. Power to regulate the proper use of the car park without RDC's prior consent however any regulatory or material change in the use of the car park (permits, huts, public conveniences will be consulted on in full with residents).

### **Conclusion**

Councillors need to review and discuss the proposed Head of Terms as listed above. Note any concerns or missing items. Once agreed The Clerk will send onto Ben Hook to incorporate into the new proposed 999 year lease.

### **Resolution(s)**

Councillors are asked to resolve the following:

1. Agree to review and compile a new Heads of Term
2. To discuss whether the matter of the freehold to still be taken to Cabinet despite the unlikely support from officers in the matter.
3. To ask Rother to clarify the funding amounts and options on offer.

**Useful Background Paper – submitted to Council 2016 by the Clerk after some initial fact finding**  
(please note some of the sums and details will need updating):

- Our freedom to act once the lease is transferred
  - According to the lease as it stands we need to seek prior permission from Rother for any 'real' changes to the car park ie planning, removal of buildings, etc.
  - If it is the intention of the Parish to develop the site we could request a longer lease (999yrs) or freehold title of the land. Any decisions on what RDC would permitted with a leasehold would be Officer lead if delegated powers were in place to do so.
- Maintenance
  - We would be wholly responsible from plumbing in the toilets to relining car park and potholes, re-tarmacking etc. The entrance is jointly owned by The Bear but RDC pay in full the maintenance obligation for the access even though the land is not theirs. The RDC legal team are looking into any paper work on this issue.
  - General Maintenance Costs over the last four years (in total)
    - Public Convenience's: £1,895.49

- Car Park: £888.59
- Right of way issues and who has rights of way over the car park? If not clear how do we find out?
  - My understanding is that there is nothing formal in place except the Surgery. Any other rights of way from the private properties, the majority being the properties along the High Street that back onto the car park, it is likely these are prescriptive rights that have occurred over time not a formal arrangement. Lisa is looking into any formal agreements RDC legal may have.
- Contract for maintaining the public WC
  - With the current supplier this is £2,279k per year to open and close and clean 7 days a week a cost RDC would recharge to us. A new contract goes out in 01/04/17 which the Parish Council would be advised of the cost and continue (if they chose to) to have the cost recharged to us. There is no TUPE involved in this it is a simple recharge when we are in a contract. TUPE may only come into play if we agree to have the costs recharged to us and then try and find a different supplier whilst the contract is in place. Having spoken to Icklesham they said that the contract through RDC was by far the most cost effective option they found.
- Status of the recycling bins
  - Rother would like to keep the facility there and will maintain.
- Status of the grit bins
  - The grit bins would remain however the Parish would be responsible for the replenishment. ESCC provide a service.
- Status of the current rubbish bins on the car park site
  - The bins on the site owned by Rother they are happy for us to keep but it would be our responsibility to empty them.
- What liabilities will be transferred to us?
  - All though we have a lot of coverage under our current insurance policy
- What responsibilities will we have for the media (supply pipes)?
  - This ties in with the liabilities and if current lease stands if we take this on everything becomes our responsibility for any pipes going into the buildings and toilets. The surgery would need to sort their own issues with media. It would seem that issues before the meter the supplier will sort and after the meter would be our responsibility.
- What restrictions on our ability to manage the property would be in place (both under the lease and under the law)?
  - In law we will be bound by the lease we sign. I would assume we are then bound by any planning laws on the site. This is something more for the solicitor to look into. This of course would not be an issue if the PC had the freehold.
- If we bought the lease presumably Rother would have two powers over the land. Planning control and landlord control? If we wanted to develop the building what amendments to the lease should we seek?
  - As far as the current lease reads this would be possible via permission first with Rother. I have checked with Ticehurst and asked 'we take all the liabilities pay for all the upkeep and they have the overall hold of the site' and yes was the reply. That of course is if we have just the leasehold again not an issue besides regular planning consent if the PC owned the freehold.
- Re Buildings. Subject to the new 24-year lease by the scouts what rights are there? What is the status of the Parish building?

- Rother would have the information on this but it seems that as with our hut the lease are full repairing therefore the scouts would have to repair their own building for any damage. I have asked Rother if they have a copy of the Scot Hut lease to seem what it says in there. We must have one somewhere so I will look through the files to see if I can find it.
- If the Rother District Parking Places Order 1983 would not apply, would we need to substitute a similar order or would we just apply tenant's powers, or do we have amendments inserted in the lease.
  - Rother at our meeting with them said we can charge for the car park but would need a formal mechanism to do this and would need permission from Rother if we just have the leasehold. It would be different if we had the freehold but what we would need to legally do I do not know as the other Clerks I have spoken to do not charge for their car parks. One suggested donations instead of charges if that is the route the Parish Council choose to go down.