

**Agenda Item No:** 14  
**Report To:** Cabinet  
**Date of Meeting:** 13 July 2017



**Report Title:** **Approval to Spend S106 Funding – Hamstreet Open Space, Play Area and Multi Use Games Area**

**Report Author & Job Title:** Michelle Byrne, Funding & Partnerships Officer

**Portfolio Holder** Cllr Mike Bennett, Portfolio Holder for Culture, Leisure,  
**Portfolio Holder for:** Environment and Heritage

**Summary:**

Section 106 funding has been secured from the Redrow development at Lancaster Close in Hamstreet. After extensive consultation with Orlestone Parish Council and residents, it is proposed to use the provisions for informal/natural green space and young people's play to improve the village green and redevelop the play area located on the green near Hamstreet Victory Hall, managed by the Hamstreet Victory Hall Committee. Consequently, the play area at Lancaster Close, owned by the Borough Council, will be gradually decommissioned. It is proposed to use the contribution for outdoor sports pitches to resurface the existing Multi Use Games Area as the current surface has reached the end of its natural life.

**Key Decision:** Yes

**Significantly Affected Wards:** Weald South

**Recommendations:** **The Cabinet is recommended to:-**

- I. approve spend of S106 funding of £143,645 (subject to any further indexation) on the projects detailed in this report;**
- II. agree transfer of the contribution for outdoor sports pitches of £20,200 subject to a funding agreement, to the Hamstreet & District Sports & Leisure Association in order for them to arrange resurfacing of the Multi Use Games Area;**
- III. give authority to the Director (Legal & Governance) and the Head of Culture to complete all tasks and to execute and complete all documentation necessary to deliver the projects and give effect to the above recommendations.**

<b>Policy Overview:</b>	This project meets Priority 3 of the Corporate Plan to provide a range of leisure and sports facilities.
<b>Financial Implications:</b>	Project costs totalling £143,645 (subject to indexation) will be covered by appropriate S106 contributions and additional grant funding will be sought where needed. The Victory Hall Management Committee will maintain the play area and the Hamstreet and District Sports and Leisure Association will maintain the Multi Use Games Area.
<b>Legal Implications</b>	The appropriate S106 contributions will be subject to funding and service level agreements as required.
<b>Equalities Impact Assessment</b>	See Attached
<b>Other Material Implications:</b>	-
<b>Exempt from Publication:</b>	<b>NO</b>
<b>Background Papers:</b>	-
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## Report Title: Approval to Spend S106 Funding – Hamstreet Open Space, Play Area and MUGA

### Introduction and Background

1. Section 106 funding has been secured from the Redrow development at Lancaster Close in Hamstreet. For the purposes of this report, the following contributions totalling £143,645, will be available (subject to any further indexation):
  - **£42,453** for the provision of, improvements to and maintenance of informal/natural green space and associated facilities in the Parish;
  - **£80,992** for the provision of, improvements to and maintenance of children's and young people's play space and associated facilities in the Parish;
  - **£20,200** for the provision of, improvements to and maintenance of outdoor sports pitches and associated facilities in the borough of Ashford.
2. These contributions are yet to be received by the Council (due later in the year) and may be subject to further indexation.
3. Officers have been working closely with the Parish Council, Hamstreet Victory Hall Committee and Hamstreet & District Sports and Leisure Association (the partners) to look at the options for spending these contributions.

### Current Position/Proposed Approach

#### Play and Open Space

4. There were three possible sites where improvements to the current play and open space facilities available to the local community could be provided. These sites were the Lancaster Close play and open space area, owned by Ashford Borough Council; the main village green with the Victory Hall play area, owned by Orlestone Parish Council with the play area managed by the Hamstreet Victory Hall Committee; and Pound Lees recreation ground, owned by Orlestone Parish Council.
5. After an assessment of all three sites on a number of issues including accessibility, opportunities for improvement and extension, quality of current facilities and site visibility, it was agreed that Pound Lees was not a viable option to take forward for development of open space and play facilities due to its location, difficult pedestrian access and other recreational uses. The Lancaster Close and Victory Hall play and associated open space sites were therefore chosen to take forward for possible redevelopment/improvement. A location map of these areas is at Appendix 1.
6. Given the relatively small amount of funding available, it was also agreed with the Parish Council to focus spend for open space and play on one area only in order to improve the open space and accommodate all ages in one

location. This will particularly mean that families with children of different ages can all use the play area at the same time and enjoy the informal open space. Also, it is unusual for a village of Hamstreet's size to accommodate two play areas in such close proximity.

7. Project scope, funds available and community benefits will also be maximised by investing in one site only. This approach allows for the desired increased capacity and improvements for the community.
8. Lancaster Close play area will be gradually decommissioned as play equipment would not be replaced if it were to fail. This would leave an informal open space for residents to continue to enjoy.

### **Multi Use Games Area**

9. Investigations on the current sports offer in Hamstreet identified a need for the resurfacing of the existing Multi Use Games Area (MUGA) situated on the Pound Lees Recreation Ground and owned by the Hamstreet & District Sports & Leisure Association (the Association).
10. Activities at the MUGA include tennis coaching and matches, adult netball, adult and youth football, fitness sessions and it is also used by individuals and the local primary school. Priority use is given to local clubs and residents and it can be floodlit to maximise usage.
11. The current MUGA was funded by previous S106 contributions and this included a 10 year maintenance sum. As the project was completed in December 2004, the maintenance contribution ran out in 2014, so officers have agreed that it is appropriate to now use current S106 funding to resurface the MUGA. However, the Association is being asked to ensure a reserve is built up by either fundraising or profit from use to ensure the funds for further maintenance and resurfacing costs are available.
12. The full cost of resurfacing is £23,660 so further funding will be sought by the Association to fill the gap.
13. As the Association have previously successfully managed and delivered a partly self-build project to provide a new community sports pavilion, they have the experience and knowledge to manage this project. It is proposed, therefore, that the S106 contribution for sport is transferred to them, under a Service Level Agreement based on that previously used for the transfer of S106 contributions to community groups.
14. This approach is fully supported by Orlestone Parish Council.

### **Implications and Risk Assessment**

15. Possible risks include delays in project delivery due to a shortfall in required project funding and an inability to meet the shortfall, inability to meet community expectations, failure for partners to agree on play area design, failure to inspect and maintain facilities to safe levels once delivered, underuse of facilities by residents, accessibility issues for users with protected characteristics.

## Equalities Impact Assessment

16. Members are referred to the attached assessment. There are no issues arising.

## Consultation Planned or Undertaken

17. Discussions were had at an early stage with Orlestone Parish Council to identify eligible open space, play and sports projects on which to spend the S106 funding.
18. These discussions eventually identified two possible projects on which to spend the play and open space contributions as described under the proposed approach above.
19. A public consultation undertaken via leaflets/flyers identified residents' preferred site for development. A further consultation via an open day for residents to come and speak to Council officers and partners about the proposals was held in November. Participants were asked to vote on their preferred option. Every household in Hamstreet was informed of the open day and invited to attend.
20. The open day was well attended and consultation results were as follows:

Number of returns	164	
Number for improving Lancaster Close	38	23.17%
Number for improving Victory Hall	117	71.34%
Number who abstained	9	5.49%

21. The results show the Victory Hall Play Area and the associated open space which requires better drainage and furniture was chosen by residents attending the open day as the site they would like developed using S106 funding. This result reflects the results of the previous consultation via flyers distributed by the Parish Council, which also showed Victory Hall play area to be the preferred location for S106 investment.

## Other Options Considered

22. Other options were considered as part of initial discussions with Orlestone Parish Council including the Council retaining S106 play and open space contributions to improve Council owned play facilities at Lancaster Close. Public consultation demonstrated this was not a favoured option.

## Reasons for Supporting Option Recommended

23. It is the Council's policy to involve the relevant Parish/Town Council where appropriate on the use of S106 funding due to their knowledge of local need and resident's wishes. Consulting the community ensures a consensus on the use of S106 funding for the widest community benefit.
24. Whenever possible, it is the Council's preference to use S106 funding from local developments to benefit the local community.

## **Next Steps in Process**

25. If Members agree with the proposed allocation of S106 contributions the partners will focus on consulting on the type of equipment children and young people would like to see in the newly developed play area. The Parish Council will undertake day to day co-ordination of the consultation via a flyer produced by the Council and distributed to, among others, the local school, youth groups and other local clubs.
26. The flyer will allow people to indicate the top five play activities they would like to see available in the play area.
27. The Play and Open Spaces Project Officer will develop a design for the play area and associated open space improvements such as drainage, landscaping and furniture and provide a tender brief from the results of the consultation which will be agreed with the partners before going out to tender.
28. The Parish Council and Victory Hall Management Committee will help oversee management of the project with the Play and Open Spaces Project Officer and Funding and Partnerships Officer. Once in the ground, responsibility for the new play area will transfer to the Hamstreet Victory Hall Committee subject to agreement with the Orlestone Parish Council who own the open space. This arrangement will be subject to the appropriate legal and funding agreements.
29. If approved, S106 funding for sports pitches will be transferred to Hamstreet & District Sports & Leisure Association using an appropriate funding agreement. The association will deliver and monitor the resurfacing project, providing project delivery updates to the Council. S106 funding will not be transferred until all necessary agreements and supporting documentation, e.g. insurance certificate, are in place.

## **Conclusion**

30. After extensive consultation with the Parish Council and residents, it is proposed to use the S106 provisions for green space and play to redevelop the play area and improve the associated open space located at the village green and Victory Hall play area. Consequently, the play area at Lancaster Close, owned by the Borough Council, will be gradually be decommissioned.
31. It is proposed to use the contribution for outdoor sports towards the resurfacing of the existing MUGA as the current surface has reached the end of its natural life.
32. The Hamstreet Victory Hall Committee will cover the ongoing maintenance costs of the play area and the Hamstreet & District Sports & Leisure Association will cover the ongoing maintenance costs of the Multi Use Games Area. A commuted sum from S106 funding will be available for this purpose
33. This approach is supported by Orlestone Parish Council and by both Ward Members, Cllr Aline Hicks and Cllr Brad Bradford.

## **Portfolio Holder's Views**

Cllr Mike Bennett comments as follows:

"I welcome this approach for the use of S106 contributions which reinforces our commitment to consult with the local community and work closely in partnership with Parish Councils and local clubs to improve facilities".

## **Contact and Email**

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# Equality Impact Assessment

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1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

## Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation;
  - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

## Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership\*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

\*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

## Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
- removing or minimising disadvantages suffered by people due to their protected characteristics.
  - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
  - Encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the



potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.

8. In terms of timing:

- Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
- Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
- The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

### Case law principles

9. A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a

policy, for example, is being developed and agreed but also when it is implemented.

- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

<b>Lead officer:</b>	Michelle Byrne
<b>Decision maker:</b>	Cabinet
<b>Decision:</b> <ul style="list-style-type: none"> <li>• Policy, project, service, contract</li> <li>• Review, change, new, stop</li> </ul>	Approve the use of S106 funding for the redevelopment of the Victory Hall play area and resurfacing of the Multi Use Games Area, both located in Hamstreet
<b>Date of decision:</b> The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	13 July 2017
<b>Summary of the proposed decision:</b> <ul style="list-style-type: none"> <li>• Aims and objectives</li> <li>• Key actions</li> <li>• Expected outcomes</li> <li>• Who will be affected and how?</li> <li>• How many people will be affected?</li> </ul>	<p>To ask for Member's approval to use S106 funding as above in order to increase capacity and improve sports and play facilities in Hamstreet for the benefit of the local and wider community.</p> <p>Expected outcomes will be</p> <ul style="list-style-type: none"> <li>• an improved and modern play facility bringing maximum benefits to local communities and adhering to current best practice</li> <li>• the retention for the foreseeable future of a well-used community sports facility with the potential to develop the sports provision offered to residents.</li> </ul> <p>The decision will mostly affect residents of Hamstreet but also those in neighbouring villages and visiting sports teams and pupils of the local school.</p>
<b>Information and research:</b> <ul style="list-style-type: none"> <li>• Outline the information and research that has informed the decision.</li> <li>• Include sources and key findings.</li> </ul>	<p>The decision has been informed by current council policy on use of S106 funding, discussions with the parish council and Victory Hall Management Committee, an assessment of the currently available play and sports facilities and extensive consultation with residents.</p> <p>Key findings include the Parish Council's and residents preferred options for use of S106 funding in Hamstreet.</p>
<b>Consultation:</b> <ul style="list-style-type: none"> <li>• What specific consultation has occurred on this decision?</li> <li>• What were the results of the consultation?</li> <li>• Did the consultation analysis reveal any difference in views across the protected characteristics?</li> </ul>	<p>The Parish Council, Victory Hall Management Committee, Hamstreet and District Sports and Leisure Association and Hamstreet residents have been consulted extensively on proposals to spend S106 funding.</p> <p>The consultation has resulted in the key findings above as detailed in the summary of the proposed decision, above</p> <p>No- information on protected characteristics was not asked for in consultation feedback</p>

<ul style="list-style-type: none"> <li>What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics?</li> </ul>	<p>By its nature, delivery of the play and sports project will have a higher relevance to certain characteristics e.g. young adults and children than others e.g. sexual orientation. Every effort will be made to ensure accessibility to the projects by those people with protected characteristics that have a positive impact on delivery.</p>
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**Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.**

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

<b>Protected characteristic</b>	<b>Relevance to Decision High/Medium/Low/None</b>	<b>Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral</b>
<u>AGE</u> Elderly	MEDIUM	POSITIVE
Middle age	HIGH	POSITIVE
Young adult	HIGH	POSITIVE
Children	HIGH	POSITIVE
<u>DISABILITY</u> Physical	HIGH	POSITIVE
Mental	MEDIUM	POSITIVE
Sensory	LOW	POSITIVE
<u>GENDER RE-ASSIGNMENT</u>	NONE	NEUTRAL
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	NONE	NEUTRAL
<u>PREGNANCY/MATERNITY</u>	NONE	NEUTRAL
<u>RACE</u>	NONE	NEUTRAL
<u>RELIGION OR BELIEF</u>	NONE	NEUTRAL
<u>SEX</u> Men	NONE	NEUTRAL
Women	NONE	NEUTRAL
<u>SEXUAL ORIENTATION</u>	NONE	NEUTRAL

<b>Mitigating negative impact:</b> Where any negative impact has been identified, outline the measures taken to mitigate against it.	N/A
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<b>Is the decision relevant to the aims of the equality duty?</b> Guidance on the aims can be found in the EHRC's <a href="#">Essential Guide</a> , alongside fuller <a href="#">PSED Technical Guidance</a> .	
<b>Aim</b>	<b>Yes / No / N/A</b>
1) Eliminate discrimination, harassment and victimisation	YES
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	YES
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	YES

<p><b>Conclusion:</b></p> <ul style="list-style-type: none"> <li>Consider how due regard has been had to the equality duty, from start to finish.</li> <li>There should be no unlawful discrimination arising from the decision (see guidance above).</li> <li>Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified.</li> <li>How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?</li> </ul>	<p>We have aimed to make the public consultation accessible to and understood by all. Improved sports facilities will be as accessible as possible and the new play area will be designed to respond to national guidance on design with protected characteristics such as disability and age being taken into consideration</p> <p>There will be no unlawful discrimination arising from the decision</p> <p>The proposal meets the aims of the equality duty as all sections of the community, including those with protected characteristics where relevant, will benefit from improvements to local play and sports facilities.</p> <p>Monitoring of the policy, procedure or decision and its implementation will be undertaken by officers at the Council in partnership with the Parish Council and based on outcomes and targets detailed in a funding agreement/grant offer</p>
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	<i>The council's revised policy register will assist services to meet this</i>
<b>EIA completion date:</b>	09/06/17



Lancaster Close

Victory Hall