

Brighton & Hove City Council

Cabinet

Agenda Item 34

Subject: Covenant on Plot 2 and 3 in West Saltdean

Date of meeting: Thursday 16 July 2026

Report of: Cabinet Member for Finance & City Regeneration

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Ward(s) affected: Rottingdean & West Saltdean

For general release

Key Decision: No

1. Purpose of the report and policy context

- 1.1 This report seeks a decision from Cabinet not to exercise its ability to take over two separate parcels of privately-owned Land, known as "Plot 2" and "Plot 3" of the Mount Estate in Saltdean ("the Land"), for use as public open space. This right is set out in Clause 4 of an Agreement dated 25 July 1938 between (1) Saltdean Estate Company Ltd and (2) the Mayor, Aldermen and Burgesses of the Borough of Brighton ("the 1938 Agreement").
- 1.2 Regard has been given to the Council Plan 2023-2027, which emphasises the need to make best use of council resources and assets, to ensure financial sustainability.
- 1.3 This report provides further information to Cabinet pursuant to a Notice of Motion passed in Full Council on 13 October 2025 to "request that officers prepare a report to be presented to Cabinet about the processes, timescale and costs of invoking Clause 4 of the Covenant [1938 Agreement] for plots 2 and 3 of The Mount Estate".

2. Recommendations

- 2.1 Cabinet agrees not to seek to take over/acquire the Land for the purposes of public open space at this time.
- 2.2 Cabinet is asked to note the contents of Part 2 of this report.

3. Context and background information

- 3.1 The Land which is the subject of this report comprises two privately-owned plots of land located in West Saltdean, a site plan has been provided in Appendix 1. Each plot has a different status, as set out below.
- 3.2 There are no Public Rights of Way on the sites. Should the public wish to request any existing informal footpaths be adopted as public rights of way, residents would need to make an application for a Definitive Map Modification Order (under the Wildlife & Countryside Act 1981) to have the footpath(s) added to the Definitive Map of Public Rights of Way for Brighton

& Hove. Any application would need to include a map or plan of the claimed route and be supported by evidence demonstrating that the route has been in continuous use for 20 years or more and/or historical evidence. It is the applicant's responsibility to serve notice on every landowner / occupier making them aware of the application. The relevant forms can be requested from the council via the city parks email: CityParks@brighton-hove.gov.uk

Plot 2

- 3.3 This was previously listed as an Asset of Community Value ("ACV"). Following the expiry of the appropriate moratorium period to enable community bids to purchase the land this property was removed from the ACV register in February 2024.
- 3.4 Following removal from the Council's ACV register, a further application was made on 21 August 2024 to register Plot 2 as an ACV but that application was unsuccessful. In its decision not to list the property as an ACV dated 23 October 2024, the Council determined that the site was deemed to be "overgrown and inaccessible" and that the Council as Registration Authority could not realistically foresee any future community use promoting social wellbeing or interests of the local community". The freehold interest was then sold to the current owner, a private company, on 26 March 2025.
- 3.5 The current owner of Plot 2 has confirmed that they first submitted a pre-application to the Council's planning department and have now progressed to an outlined planning application. Their proposal sets out a mixed-use scheme that combines low-impact eco homes with accessible local green space and allotments.
- 3.6 Prior to this property being purchased by the current owner, local residents had access to it; however, whilst there is some evidence of historic use by residents, the nature and extent of that use is unknown. The owner has indicated they would be willing to discuss a potential disposal of Plot 2 either to the Council or to local residents at market value which we estimate to be £65,000 plus the costs they have incurred to date including the planning applications which is estimated to be £10,000. Local residents are aware of the landowner's intention to develop part of the site for housing but are keen for the site to be used as amenity space for the benefit of the community.

Plot 3

- 3.7 This is currently owned by a private owner. The site has been listed as an ACV since 29 November 2021. The owner has confirmed its intention to submit a planning application for a residential development of not more than 3 houses to be constructed at the southern entrance to the site. At the date of this report a full planning application has not yet been submitted for this proposed development.
- 3.8 Site 2 and 3 are designated as Open Space in Brighton & Hove's City Plan and are also identified as Local Green Space within the West Saltdean Neighbourhood Plan. There is a statutory process by which an application to register land as a Village Green. Details can be found on the Government website ([Town and village greens: how to register - GOV.UK](https://www.gov.uk/guidance/town-and-village-greens-how-to-register)).

Covenant

- 3.9 Both plots are subject to a covenant set out in Clause 4 of the 1938 Agreement which allows the Council to serve notice on the Owner to take over (which is taken to mean “acquire”) the Land as “public open spaces”.
- 3.10 In accordance with the Notice of Motion agreed, the implications of invoking the covenant in respect of the Land have been explored. If the Council was to proceed to acquire Plot 2 and/or Plot 3, in addition to the costs associated with the acquisition of the Land (details of which are set out in Part 2 of this report), the Council would become responsible for managing and maintaining the site/s. At present the potential costs of owning and maintaining the land as open space are unknown but would include:
- (1) Immediate costs to survey the site(s) to identify any issues
This would include a tree survey, soil check and a Health and Safety Risk Assessment. The cost of this is unknown but estimated to be circa £5,000.
- (2) Rectification of any issues identified
This could include tree safety works, removal or cutting back of vegetation; removal of fly tipping; removing or regularising incidences of adverse possession/trespass claims (there is evidence on Google Maps this may have taken place) and removal of any invasive species if present (e.g. Japanese Knotweed). The cost of this is unknown until surveys can be carried out but assuming minimal issues this is estimated to be £25,000.
- (3) Investment to improve public amenities and standard of provision
This would be dependent upon the scope for the open space. A natural green space would be most cost effective with minimal work needed. If formal paths, planting schemes and infrastructure were needed this would require further capital expenditure. As no direction has yet been provided the cost is unknown. However, if kept as is, there would be no additional cost.
- (4) Ongoing maintenance of the site(s)
This would include ongoing tree surveys and maintenance, grass cutting, maintenance to vegetation, potentially maintenance of boundary walls and fences and supporting community engagement. Parks and Leisure are unable to accommodate maintenance of these site(s) within their existing resources and therefore their acquisition would require the employment of an additional member of staff, the acquisition of an additional vehicle and the purchase of additional equipment. This would mean a capital cost initially as well as ongoing annual costs for staffing, plus vehicle and machinery repairs and replacements in further years.
- 3.11 The maintenance costs cannot be accurately quantified at this stage; however, they are anticipated to be significant and would place additional pressure on the Council’s already constrained revenue budgets. Therefore this is not considered a viable option for the Council.
- 3.12 The residents have proposed a maintenance and management model, particularly for Plot 2. While the community has offered to maintain the plots,

the Council would need to invoke the covenant to enable this arrangement. Should the community group cease to operate, responsibility for maintenance would revert to the Council.

4. Analysis and consideration of alternative options

4.1 The alternative options outlined below would apply to each of Plots 2 and 3:

4.2 Option 1: Council negotiates the removal of the 1938 Agreement open space provisions from each of the Land Registry titles for the Land

The Council could negotiate with each of the current owners of the Land to release the 1938 Agreement open space provisions in return for the payment of a premium to the Council. The amount of premium payable for this release would be subject to negotiation and would typically reflect the uplift in value arising from the removal of the provisions.

4.3 Option 2: Council exercises the 1938 Agreement clause 4 provisions and acquires the Land for the purpose of Public Open Space

This would require the Council to purchase the Land for open space purposes by negotiation and agreement with each of the current owners. There would be the legal and acquisition costs together with survey, rectification and ongoing costs associated to this option.

4.4 Option 3: Council Purchases the Land for housing

Acquisition of the land by the Council for the purposes of housing would need to be by negotiation with the current owners. The owner of Plot 2 has indicated a willingness to dispose of the land to the Council at market value plus the costs they have incurred to date (costs of which have been estimated in paragraph 3.5 above). However, there is risk in achieving planning consent and viability of a development has not been tested. The Council is not aware that the owner of Plot 3 would be willing to dispose of their land.

4.5 Option 4: Residents Purchase the Land Directly

The residents could approach and negotiate and agree the purchase price of Plot 2 and Plot 3 respectively directly with each of the current owners. The current owner of Plot 2 has already advised that they would be open to such an approach. It is unclear whether the current owner of Plot 3 would be open to such an approach.

4.6 Option 5: Council takes enforcement action against the current owners in respect of the covenant in clause 2 of the 1938 Agreement

Clause 2 of the 1938 Agreement contains a positive covenant by the original party to that Agreement to: *'...cause the open spaces delineated and coloured pink on the said plan to be kept in good order and condition the turf thereon duly mown and when necessary reseeded weeded and generally kept in good order and clear of all debris and rubbish.'* The drafting of the 1938 Agreement is such that further legal consideration would be needed to assess how and if the Council could proceed with enforcement action for any breach of this covenant.

5. Community engagement and consultation

- 5.1 The current owner of Plot 2 held a meeting with the community on 26 April 2025 to answer any questions or concerns the residents had regarding developing the land. At the meeting residents expressed their opposition to the landowner's development proposals.
- 5.2 Ward Councillors have been briefed and consulted on the recommendations of this report.

6. Financial implications

- 6.1 There are no direct financial implications for the Council arising from the recommendation as set out in paragraph 2 of this report.
- 6.2 The option set out in paragraph 4.2 ("Option 1") of this report is likely to result in additional capital receipt for the Council. Until terms are formally agreed for removal of the restrictive covenant from Plots 2 and 3, the financial implications of this option are not yet known.
- 6.3 The full financial implications of the options set out in paragraph 4.3 ("Option 2") and in paragraph 4.4 ("Option 3") of this report are not yet known. However, such costs are likely to be significant given that they will include legal fees, acquisition costs and will carry the risk of rectification works and ongoing maintenance/management costs (highlighted in 3.8 and 3.9).
- 6.4 There are no direct financial implications arising from the option set out in paragraph 4.5 ("Option 4") of this report.
- 6.5 There are likely to be significant legal and surveyor costs associated with the option set out in paragraph 4.6 ("Option 5") of this report.
- 6.6 Currently, no budgetary allowance has been made for the cost of acquisition or additional ongoing revenue costs of activities to support the options outlined in this report.

Name of finance officer consulted: James Hengeveld
Date consulted: 14/05/2026

7. Legal implications

- 7.1 There are no direct legal implications arising from the recommendations set out in this report.
- 7.2 If the Council were to seek to acquire the Land, Section 120 of the Local Government Act 1972 gives power to Local Authorities to acquire land for the purpose of their statutory functions or for the benefit, improvement or development of their (administrative) area, which could include the negotiation and agreement with the owners of Plot 2 and of Plot 3 of terms for the for acquisition of the freehold Land.
- 7.3 Local authorities also have the power under section 9 of the Open Spaces Act 1906 to acquire any open space, such as plots 2 and 3 and to undertake the care, management and control of any such open space.

- 7.4 The definition of Open space under section 336(1) of the Town and Country Planning Act 1990 includes any land laid out as a public garden or used for the purposes of public recreation. This definition is used across various statutory provisions governing the disposal and use of open space by public authorities.
- 7.5 In addition, Section 26 of the Town and Country Planning Act 1932 (1932 Act) provides that a local authority may acquire land for the purpose of open space where a relevant scheme has been made under the provisions of that Act and approved by the Minister of State. The 1938 Agreement refers to the 1932 Act and not section 26 itself, however given that the 1932 Act has been repealed, it is unclear whether this compulsory purchase power remains available to the Council and expert legal opinion should be sought before deciding whether to proceed with such an approach. Again, it should be noted that the 1938 Agreement is silent as to which specific provision of the TCPA 1932 is to apply to that Agreement.
- 7.6 The legal position is complex and full advice in relation to the 1938 Agreement is contained in the Part 2 report.

Name of lawyer consulted: Hannah Bassett
Date consulted: 21 May 2026

8. Risk implications

Loss of public open space

- 8.1 By not exercising its rights under Clause 4 of the 1938 Agreement, the Council will forgo the opportunity to guarantee that the Land is brought into public ownership and secured for use as public open space. Once alternative uses are established, this opportunity is unlikely to arise again.

Future development of the sites

- 8.2 The Land is in private ownership and may be subject to future planning applications. While such applications would be determined in accordance with the development plan, there is a risk that development could be permitted which changes the character of the sites and limits potential future community access.

Reduced influence over future land use

- 8.3 Without ownership or control of the Land, the Council's ability to directly influence how the sites are used and managed will be limited to its role as local planning authority. This reduces the Council's ability to secure specific outcomes relating to open space provision, accessibility, or community use.

Equality and wellbeing impacts

- 8.4 As set out in Section 9, not securing the Land as public open space may limit the potential health, wellbeing and social benefits typically associated with accessible green space.

9. Equalities implications

- 9.1 The provision of open green space can have positive equality impacts. Access to green space is associated with physical and mental health benefits and can support social interaction and community wellbeing. As such, the decision not to enact the covenant to secure the land as green space may limit these benefits. However, given the uncertainty around the extent to which the space was previously used by residents, the equality impact is considered limited.
- 9.2 The provision and location of green spaces, together with the investment required to support them, requires careful consideration to avoid creating inequalities in access. Access to green space is often unevenly distributed and can be influenced by socio-economic factors, with some communities benefiting more than others. Ensuring equitable distribution of investment is therefore important so that all demographic groups can benefit.

10. Sustainability implications

- 10.1 Green spaces provide critical habitats for urban wildlife, helping to maintain ecological balance within densely populated environments. These spaces also assist drainage by providing natural drainage systems (SUDS) to manage flood risk and stabilise the soil substrata.
- 10.2 If the land were to be acquired by the Council for the purposes of public open space this would support physical activity and social interaction, improving mental and physical wellbeing. Green landscaping enhances air quality and reduces noise for the local residents. The Sustainability Implications Checklist is attached at Appendix 2.
- 10.3 Where the Council's decision is not to enact the covenant, the future status of the Land will be determined by future planning applications

11. Social Value

- 11.1 Public open space can deliver social value by supporting physical activity, mental wellbeing, and social interaction. While these benefits are recognised, the Council's decision not to enact the covenant means it will not be securing or managing the land as public open space, and therefore these benefits will not be delivered through this site as a result of the decision.

12. Conclusion

- 12.1 As highlighted in this report, the only mechanism by which the Council may guarantee the enactment of the covenant contained in Clause 4 of the 1938 Agreement to make Plot 2 and Plot 3 public open space would be for

the council to acquire the Land through agreement with the current landowners.

- 12.2 In the absence of agreement, the Council could choose to assess further the legal position around the acquisition of the Land through the use of compulsory purchase powers. If the Council decides to pursue this approach, such a process is likely to incur considerable time and expense on the Council's part and there is no guarantee that such a scheme would ultimately result in a successful application for the relevant Minister's approval.
- 12.3 There may be a possibility that the Council could take external legal advice about how any enforcement action against the current owner of Plot 2 and Plot 3 respectively for the breach of the covenant to keep the Land clean and tidy (Clause 2 in the 1938 Agreement). Such an approach is also likely to incur considerable expense and time in the Council obtaining expert advice and then carrying out pre action and then enforcement proceedings. There is no guarantee as to whether such an enforcement action would ultimately prove to be successful.
- 12.4 Given the Council's current financial constraints, and the uncertainty surrounding acquisition costs, long-term upkeep of the Land, as well as the uncertainty as to the extent of public benefit of the Council acquiring the Land, it is not considered proportionate or appropriate to pursue acquisition of the Land or to enforce the covenant in the 1938 Agreement.

Supporting Documentation

Appendices

1. Appendix 1 - Site Plan
2. Appendix 2 – Sustainability Implications Checklist