



Report to: Cabinet Meeting: 24 September 2024

Portfolio Holders: Councillor Emma Oldham, Biodiversity & Environmental Services
 Councillor Paul Peacock, Strategy, Performance & Finance

Director Leads: Matthew Finch, Director - Communities & Environment
 Matt Lamb, Director - Planning & Growth

Lead Officer: Ben Stacey, Street Scene Manager, Environmental Services, Ext 5738

Report Summary	
Type of Report	Open report, key decision
Report Title	Proposal to Adopt the Land and Ongoing Maintenance of the Middlebeck Phase One Development
Purpose of Report	To put forward a proposal for Member consideration that would see land from the first phase of the Middlebeck Development being maintained by NSDC over the next 20 years through a commuted sum payment of £2million.
Recommendations	<p>That Cabinet:</p> <ul style="list-style-type: none"> a) approve, subject to appropriate legal mechanisms and formal decision from Newark Town Council it does not wish to take on the land, the Council entering into a long-term arrangement to adopt and maintain the open space from the first phase of the Middlebeck development in Newark; b) approve the maintenance of the land in return for a £2million commuted sum agreed with the developer, Urban & Civic; c) agrees that, at the end of the 20-year period, ongoing maintenance of the land would be funded from the Council's own resources; d) approves that delegated authority be given to the Council's Directors - Communities & Environment and Planning & Growth, in consultation with the Portfolio Holders, to enter into an appropriate legally-binding contract with the developer Urban & Civic, as detailed at paragraph 2.6 of the report; and e) approves that Newark Town Council be formally approached for a decision about whether it wishes to take on responsibility for the future ownership and

	<p>maintenance of the land in line with the principles set out in the Devolution Agreement.</p>
<p>Alternative Options Considered</p>	<p>The existing S106 Planning legal agreements set out that the land will be passported to Newark & Sherwood District Council in stages when certain housebuilding milestones are reached. A management company option, which exist in some other parts of the district, is not deemed to be viable by the developer, with sales in the first phase not having this mechanism incorporated. Homeowners would understandably have an expectation that an additional charge in this regard would not be placed upon them. The Council could look to passport the land and the funding to the Town Council which does have precepting powers to fund the maintenance of the land once the commuted sum has been defrayed. This was envisaged in the devolution deal with the Town Council in that they would have the first option on any new space in their administrative boundary. The Middlebeck Open Space crosses town and parish boundaries, stretching beyond the devolution agreement. Moreover, Members may be aware of the financial challenges the Town Council faces, irrespective of the additional challenge that comes with an asset of the size and scale of future Open Space cumulatively across Middlebeck which incorporates open space in every phase and new country parks. Informal discussions with the Town Council have seen these concerns raised, but there is not yet a formal decision from the Town not to take on the land or otherwise.</p>
<p>Reason for Recommendations</p>	<p>The recommendations align with the Community Plan objectives in relation to biodiversity, the environment and climate change. As set out in the report, the development has the potential to help the Council meet objectives set out in the community plan, thereby offering value beyond the £2-million commuted sum to maintain the open spaces.</p>

1.0 Background

- 1.1 Land south of Newark is one of the strategic sites included with the Newark & Sherwood Core Strategy, which aims to provide a significant element of the growth in Newark & Sherwood over a 25-year period.
- 1.2 Outline planning permission was granted to Catesby Estates (Residential) Ltd in November 2011 for the development and the proposal included provision for 3150 dwellings, two local centres, two primary schools, community buildings, 50 hectares of commercial development, open space and access roads, including the Southern Link Road. Subsequently, in January 2014, a number of variations were made to the earlier permission which sought to address various phasing and delivery issues. Catesby Estates (Residential) Ltd was also subsequently purchased by Urban & Civic.
- 1.3 At the time land south of Newark was consented the District Council agreed to take on the public open space as part of the new development, something it now does not

normally do. In the agreement, which was signed in November 2011, it was envisaged that the public open space would be transferred to the district council in three distinct phases when a certain number of houses were built and the Council was satisfied that the elements of open space had been delivered satisfactorily.

- 1.4 Urban & Civic are close to reaching that first milestone of 650 homes which has led to conversations between the developer and the district council about when and how the transfer would occur and to revisit the commuted sum calculations that would have been undertaken in 2011. It is clear that the some of the assumptions at the time of consent have now moved on significantly, alongside the developer providing more open space that originally envisaged, which is a welcome change from a place-making perspective. This has also provided NSDC with an opportunity to consider how the public open space can further enhance the ambitions set out in the Council's new Community Plan.

2.0 Proposal/Details of Options Considered

- 2.1 The Community Plan 2023/27 references a number of objectives which would be enhanced through the potential of the public open space in both Phase 1 and subsequent phases. Within Phase 1, the Council would take on core Street Scene services such as litter collection, street sweeping and litter bin emptying, but also the following:

- Tree maintenance for 267 juvenile trees
- Maintenance for 572 linear metres of hedgerow
- More than 1,000 metres squared of planted shrubbery
- 35,000 metres squared of amenity grass
- 14,500 metres squared of meadow grassland
- More than 600 metres squared of wildflower meadows
- 150 linear metres of water planting
- 1 Large Children's Play Area
- Cycle and pedestrian bridleways in excess of 2,500 linear metres.

- 2.2 Through the development, the Council would be taking on assets which would have the potential to meet the following aspirations set out in the Community Plan:

- Improve health and wellbeing
- Protect and enhance the district's natural environment and green spaces
- Reduce the impact of climate change

- 2.3 Furthermore, members will be aware that the latest Resident Survey showed the growing importance our residents were placing on parks and open spaces. Over recent times this has led the Council to plant or giveaway in excess of 20,000 trees, invest £350,000 in improving play parks at ten sites across Newark and Sherwood and work in partnership with Newark Town Council to deliver a £500,000 transformation of Sherwood Avenue Park in Newark. The Council also operates five green flag parks across the district – Sconce and Devon Park, the Castle Gardens and the Queen Elizabeth Memorial Gardens in Newark and Vicar Water at Clipstone and Sherwood Heath in Ollerton.

- 2.4 As a result, there are very practical advantages that taking on the open land would enable. These include:

- Ownership of play parks to continue our drive to maintain and improve standards and accessibility across the district
- More directly owned open space to deliver or enable tree planting initiatives
- Similarly, the Council would have more available land to deliver other greening initiatives such as wetland, habitat recovery, wildflower meadows, orchards and naturalised rain gardens
- The ability to do more in partnership with others including those within the Council's Biodiversity and Conservation Opportunities Partnership
- As Phase 1 neighbours the Sustrans, enabling control of bridleways and pathways to encourage active travel including cycling to school
- Delivering a base similar to the one at the Queen Elizabeth Memorial Garden to provide outreach services from our Park Rangers, including Forest Schools and build a relationship with the primary school in Middlebeck
- Working towards a 'Friends Group' to have residents directly involved in the future development of the site
- Linked to the above, there would be scope to work towards another Green Flag park for Newark and Sherwood
- New employment opportunities within the district council, including an apprentice.

2.5 Subject to contract, Newark & Sherwood has agreed a commuted sum of £2million to take on and maintain the public open land for a period of 20 years. This is inclusive not just of maintenance costs, but also repairs and renewals which would be required over that period. The figure is also inclusive of annual inflation.

2.6 From a procedural perspective, the open space within Phase 1 that would be subject to this £2-million sum covering the next 20 years comprises some maintenance costs from those envisaged (and therefore covered by) the original S106 agreements, together with the additional quantum of open space which have gone in over-and-above that S106 requirement.

2.7 There remain two possible ways to secure the £2million payment, either via a revised Planning S106 agreement or a contract for works agreement, which would sit outside of any planning agreement. At the time of writing it is considered that both options should be kept open, allowing the respective legal teams to determine the appropriate mechanisms. However, the critical outcomes are to:

- a) To secure the £2m payment to take on the Phase 1 Public Open Space on the terms detailed at paragraph 2.5;
- b) To ensure sufficient funding remains within the S106 Planning Agreements after this £2m payment (the original S106 agreements contain various 'capped' amounts with respect to payments which any £2m should not unreasonably prejudice)
- c) To ensure that a schedule of costs for future open space, based on those negotiated for Phase 1 inform future phases, plus indexation.

2.8 Subject to appropriate legal mechanisms being agreed, the commuted sum methodology and handover process would also repeat for the subsequent delivery of

Phases 2 and 3, which currently have outline planning position. These would see the potential addition of sports pitches and country parks. Building a relationship with the developer to take on those further phases will also enable the Council to shape their delivery in line with greater strategic and operational alignment.

Alternative Options Considered

- 2.9 As set out in paragraph 1.3, Newark & Sherwood agreed to take on the open public land, although this is not something it would normally now do. Whilst there are good examples of Management Companies, many residents simply do not understand the model and are often looking to NSDC to resolve issues that simply are not in our gift to fix. Delivering the service in-house will drive up service standards, ensure greater consistency of approach and accountability to residents. Gaining a legal agreement at the outset of phase 1 to guide subsequent phases will also mitigate the risk of future residents being asked to pay a ManCo contribution as well as Council Tax.
- 2.10 An alternative approach would be to passport the land and the commuted sum to the Town Council who would then be able to tender the works, which the Council could bid for, or they could directly deliver themselves. This would not apply for the full Middlebeck site given the open space crosses other parish boundaries. Irrespective, the main advantage of this model to NSDC would be that the Town Council would be responsible for the ongoing maintenance of the land when the commuted sum had been defrayed through its precepting powers. However, over the intervening period, the Council would be unable to control standards, promote consistency and take advantage of the opportunities outlined above as they link to the Community Plan. At this time, the Town Council has informally raised concerns about their ongoing ability to finance the services into the longer-term. Nevertheless, given the Devolution Agreement, it is considered necessary to approach the Town Council for a formal decision about whether they wish to take on responsibility for its future ownership and maintenance. If they wish to, they could then seek to enter into their own negotiations with the developer for a commuted sum to do so.
- 2.11 At the present time there are many developments linked to Middlebeck or around it which could deliver open space. Having control over the future development of the open space at Middlebeck will give Newark and Sherwood District Council greater ability to control how these developments may link together and be coordinated.

3.0 Implications

In writing this report and in putting forward recommendations, officers have considered the following implications: Data Protection; Digital & Cyber Security; Equality & Diversity; Financial; Human Resources; Human Rights; Legal; Safeguarding & Sustainability and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

Financial Implications (FIN24-25/4958)

- 3.1 The commuted sum has been calculated in consultation with both Environmental Services and Financial Services, including estimates for running costs, repairs and

renewals (such as fencing, benches, play areas, bridleways and Paths) and maintenance, averaged out across the 20-year period.

- 3.2 The costs associated with completing the legal agreement will be passed on to the developer, in line with normal practice.
- 3.3 Once agreed, the land to be transferred to the Council will need an independent valuation and added to the asset register, in order for it to be recognised in the Council's Balance Sheet within Property Plant and Equipment. The cost of this valuation can be contained within existing budgets.
- 3.4 Once the Legal agreement is finalised, this will set out the terms of the payment and once received, will be held on the Council's balance sheet and drawn down in equal annual instalments to cover the additional running costs, including staffing, maintenance and machinery required in taking on the additional land. At the end of the 20-year period, these additional costs will need to be funded from the Council's own resources.

4.0 Legal Implications

- 4.1 There are a number of clauses within the relevant s106 agreement as varied by the deeds of variation which would require further variation to facilitate the proposals set out in this report and to not prejudice the Council in future transactions relating to the wider site. The responsibility of this function falls within the remit of the Planning Committee with further delegation to the Director of Planning and Growth within the constitution. In addition to this there is a delegation to the Business Manager – Planning Development in the Planning Committee Scheme of Delegation to Officers which would provide the authority for the required variation to the original s106 agreement.
- 4.2 The original s106 agreement requires that the transfer of the land under the agreement be for a nominal consideration. It would be anticipated that the Council would recover their costs for the legal transaction required for the land transfer from Urban & Civic but this would have to be negotiated.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

None