



Report to: Cabinet Meeting: 8 July 2025

Portfolio Holder: Councillor Simon Forde, Climate and the Environment

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Report Summary	
Type of Report	Open Report / Key Decision
Report Title	Management and Maintenance of Public Open Space on New Residential Developments
Purpose of Report	To provide Cabinet with a background to some challenges with regard to the different models for securing the appropriate long-term management and maintenance of Public Open Space within new residential developments and to provide recommendations for future stated preferences.
Recommendations	<p>That Cabinet:</p> <ul style="list-style-type: none">a) note that Management Companies are a lawful and legitimate model for the ongoing management and maintenance of Public Open Space which can continue to be promoted by developers;b) endorse the recommendation of the Planning Policy Board to produce guidance on Public Open Space Management Company Best Practice to cover instances where a Management Company is promoted by the developer;c) endorse the recommendation of the Planning Policy Board to continue to promote the Council managing and maintaining Public Open Space on Strategic Urban Extension (SUE) sites in the first instance; andd) endorse the recommendation of the Planning Policy Board to continue to promote for all non-SUE residential housing developments the principle of public ownership of Public

	Open Space, either via the District Council alongside an appropriate commuted payment to cover 20 years maintenance or via the host Town or Parish Council where they have the appetite, capacity and capability to do so. Should the developer insist on a Management Company, it shall accord with the guidance detailed at b) above.
Alternative Options Considered	The Council could allow market forces and developer preferences to dictate future approaches to the management of Public Open Space on new development. This is discounted in favour of clear guidance and preference such that the development industry, Town and Parish Council's and future residents are clear on expectations and limitations. Moreover, guidance will ensure appropriate practices are secured as far as reasonably possible.
Reason for Recommendations	Addressing the appropriate and ongoing management and maintenance of Open Space will ensure ongoing quality and equity for new residential developments, in accordance with Ambitions 2, 3 6 and 7 of the Council's Community Plan.

1.0 Background

- 1.1 The Planning Policy Board recently asked Officers to revisit our approach to the ongoing management and ownership of Public Open Space with a particular focus on Management Companies which are now commonplace for new housing estates across much of the UK. This report provides an overview of the current arrangements for securing the long-term management and maintenance of new POS provided as part of residential developments over 10 houses, which is the trigger for providing on-site POS on new developments.

The Current Approach

- 1.2 Members will be aware that new major residential developments (schemes of more than 10 dwellings in size) are often accompanied, in accordance with our planning policies, by on site POS. Such space(s) can range in size and function from informal grassed areas, play areas, new sports pitches, and new country parks. Up until the late 1990's the District Council (and in some circumstance Town/Parish Councils) would have historically taken on the ownership and maintenance of POS after the development (or each phase) is completed, alongside a one-off 'commuted sum' payment from the developer to the Council to cover an initial 'x' years maintenance. NSDC currently seek this for a 20 year period, as detailed within the adopted [Developer Contributions and Planning Obligations SPD](#)¹.
- 1.3 In recent years there has been a trend by developers to decline any agreement for the District Council to take on maintenance of POS, negating any requirement to provide a 'commuted sum'. This can be for a variety of reasons, including development viability.

¹ Costs are subject to indexation to account for the time elapsed between the date any legal S106 agreement is signed and the day any commuted sum payment is made based on hitting an agreed build-out trigger.

- 1.4 The replacement maintenance vehicle has been a Management Company (ManCo). Typically, a ManCo will be funded by each house on a new development paying an annual charge which covers running costs of maintaining land to a specified minimum standard. It is not always the case that the land upon which the open space sits is owned by the residents who pay into it. There are examples where the ManCo takes on ownership of the land, in addition to maintenance responsibility.
- 1.5 Setting up a ManCo is lawful and within any developer's gift. There is no national regulation on ManCo's but many are set up and run ethically, having an annual charge to household which are: a) directly and transparently attributable to the costs of maintaining the open space in question on an ongoing basis and b) owned by all of the households who are effectively joint 'shareholders' having an say and management stake for the future on standards and overall costs.
- 1.6 Some ManCo's are less transparent or straightforward, with charges levied for issues such re-mortgaging (given that ManCo's are interested parties to the freehold of land) and seeking permission for the erection of conservatories or satellite dishes.
- 1.7 The Council's current position is that the Council will seek to take on POS alongside a commuted payment to the Council to cover a period of 20 years maintenance for the larger Strategic Urban Expansion (SUE) sites of Middlebeck, Greater Fernwood, Land East and Thoresby Vale unless alternative appropriate arrangements are agreed. To date the District Council is looking to take ownership and management of all open space at Middlebeck and the Barratt/David Wilson and Persimmon phases at Fernwood. At Thoresby Vale, it has been agreed that negotiations with the Nottinghamshire Wildlife Trust could secure an alternative arrangement given that the Trust already successfully manage some important restored open space which is of high biodiversity value.
- 1.8 For other sites the Council, as the Local Planning Authority, currently promotes that either the host Town or Parish Council take on the land, alongside the associated 'commuted sum' for 20 years. If that is not agreed by both the host Parish/Town Council, the developer can legitimately promote a ManCo, subject to certain safeguards which are then secured via the S106 legal agreement for matters such as minimum maintenance schedules and transparency of payments being secured.
- 1.9 Irrespective of ownership and maintenance regimes in place for POS within residential estates residents often contact the District Council when they are unhappy with the level of service and/or charges levied. In other words, we remain a public go-to Council when assumptions are made on who is the custodian of managing public open space.

2.0 Proposal/Details of Options Considered and Reasons for Recommendation

- 2.1 It is open to the Council to explore appetite to go beyond the current approach of seeking to own and management POS only on the SUE sites. This was previously resisted as a first preference on the basis that: a) developers were increasingly insisting on a ManCo, as they are legally entitled to do; and/or b) developers were successfully demonstrating that a non-ManCo route would impact on development viability given that a 'commuted sum' for 20 years would mean a reduction of other developer contributions types (eg. Affordable housing, education, community facilities).

- 2.2 Should the Council elect to try and secure land and its ongoing maintenance it will not be able to resist a reasonable viability argument which has regard to the commuted payment burden a developer needs to pay. Concerns around being able to cushion the impact in 20 years (or sooner depending on inflation) when any commuted sum is exhausted is mitigated on the basis that any the Council would add interest earned on any commuted sum into a reserve to be used to support the budget after year 20. This relies on the initial commuted payment being negotiated at an appropriate level.
- 2.3 On this basis, it is recommended that this Council extends its current position to welcome taking on Open Space on all major residential developments in addition to the SUE sites. This is subject to securing an appropriate 20 year maintenance contribution.

The need for guidance should ManCo's be promoted by developers or encouraged/accepted by the LPA.

- 2.4 There are best practice Community Owned ManCo models. One example is where the households who each pay annually into the ManCo effectively collectively own the ManCo and the land upon which the POS sits (which itself is subject to a covenant that the land shall always remain open space). This means residents collectively commission contractors to maintain the space, turning up or down any preferred maintenance regimes which are then paid for by all households in a transparent way. It is recommended that the Council could produce guidance for what we expect ManCo's to look and operate like moving forward, including matters we will seek to control via a S106 legal agreement in order to grant a planning permission. If the guidance is not followed the Council would not seek to enter a S106 agreement, unless successfully challenged at appeal.

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 (FIN25-26/3634)

- 3.1 The recommended approach on S106 Agreements is that the Council is willing to own and maintain open space for all new major residential developments subject to securing at least 20 years maintenance. Subject to this commuted sum being at an appropriate level, a matter that will be informed by colleagues in Environmental Services, it is considered this approach is acceptable. The Council would seek to add interest earned on any commuted sum into a reserve to be used to support the budget after year 20.
- 3.2 Financial considerations for the Council taking on the maintenance of POS on SUE sites are subject to separate agreements via the planning application process or bespoke agreements. Examples on the latter include the recent decision by the Council to take on the maintenance of POS associated with the residential Phase 1 of the Middlebeck development. It is understood that a further report will be presented to Cabinet in due

course with respect to POS at Fernwood North (Barrat David Wilson) which will address any further financial implications.

- 3.3 There are no financial implications for the Council via the Management Company route.

Legal Implications – LEG2526/6848

- 3.4 Cabinet is the appropriate body to consider the content of this report.
- 3.5 The legal team always support the drafting and execution of S106 Agreements so no additional resource is required. Legal support will be required to produce the Public Open Space Management Company Best Practice detailed at recommendation b) but this can be absorbed and will offer clarity when negotiating with developers moving forward. The current precedent wording regarding public open space includes requirements for the creation of any ManCo and its purposes and this can be updated accordingly.

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.