

ECONOMIC DEVELOPMENT COMMITTEE

20 NOVEMBER 2019

COUNCIL POLICY FOR MANAGEMENT OF OPEN SPACE

1.0 Purpose of Report

1.2 To provide Members with an overview of current arrangements for securing the long-term management and maintenance of new open space provided as part of new (predominately housing) development proposals and to seek clarity on a preferred approach. An update is also provided on the arrangements for maintaining new open space on the next phase of the Barratts David Wilson Homes (BDW) development at Fernwood.

2.0 Background and Concerns with Management Companies (ManCo's)

2.1 Members may be aware that new major residential developments (normally schemes of more than 10 dwellings in size) are often accompanied by on site public open space(s). Such space(s) can range in size and function from informal grassed areas, play areas, new sports pitches, and new country parks. Historically the District Council has taken on the maintenance of such spaces after the development (or each phase) is completed, alongside a one-off 'commuted sum' payment to cover an initial 'x' years maintenance (NSDC currently seek this for a 20 year period). The Councils Policy is captured in the adopted Developer Contributions SPD¹.

2.2 In recent years there has been a trend by developers to decline any agreement for the District Council to take on maintenance of open space, negating any requirement to provide a 'commuted sum'. The replacement maintenance vehicle has been a Management Company (ManCo). Typically a ManCo will be paid for by each house on a new development paying an annual charge which covers its running costs of maintaining land to a pre-agreed minimum standard. Many ManCo's are run ethically having an annual charge to household which are directly attributable to the costs of maintaining the open space in question on an ongoing basis. Some ManCo's are less ethical, 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.

2.3 As a Council there was a change in our own policy position in 2016, when the Economic Development Committee resolved to change the focus to an 'exception' rather than a 'rule' for the District Council adopting new open space/equipment. The text below is still extant guidance, to be read alongside the aforementioned Developer Contributions SPD. For the avoidance of doubt the text inserted in 2016 is in **bold**, with the previous text in ~~strikethrough~~.

2.4 "Following the agreement of on-site provision, the District Council will need to satisfy itself that the open space has been properly laid out and completed and that suitable contractual arrangements for its long term maintenance have been put in place.

¹ <https://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/planningpolicy/pdfs/draftdevconspd/Adopted%20Developer%20Contributions%20&%20Planning%20Obligations%20SPD%20December%202013.pdf>

Under normal circumstances this will involve either:

- 1. The land being dedicated to the Town/Parish Council and a commuted sum being paid to cover its future maintenance for 20 years; or**
- 2. An alternative arrangement being presented by the applicant, usually in the form of a Management Company to satisfy the Council that maintenance of the land will be guaranteed for the foreseeable future.**

Should the latter option be pursued the Council would expect applicants to consider how Town/Parish Council views could be considered, including the ability for representation via governance arrangements on larger schemes.

In exceptional circumstances the District Council may consider taking adoption of the open space. This will be determined on a case-by-case basis following discussion with the applicants and/or relevant Town/Parish Council(s).

~~Under normal circumstances this will involve the land being dedicated to the Local Authority and a commuted sum being paid to cover its future maintenance. Council policy requires that the commuted sum cover maintenance for 20 years. This is considered an appropriate balance between the maintenance costs being covered by both the new development and ultimately the local authority.~~

~~If developers do not wish to dedicate the open space to the Local Authority then the District Council will want to be assured that the alternative arrangements will guarantee the maintenance of the land for the foreseeable future.~~

The costs for maintenance of the various areas are as follows (2016 prices):

	<u>£ Per m²</u>		<u>£ Per Dwelling</u>
Provision for children and young people (at 18m ² /dwelling)	57.29	=	1031.30
Amenity green space (at 14.4m ² dwelling)	19.63	=	282.79
Outdoor Sports facilities (at 52.8m ² /dwelling)	21.74	=	1148.05
Natural & Semi Natural green space	n/a		102.66
Allotments and community Gardens (at 12m ² /dwelling)	12.31	=	147.83

The full 20 year commuted sum is calculated by multiplying the relevant open space area(s) by the cost per square metre or by multiplying the cost per dwelling by the number of dwellings.

These costs will be revised annually in line with the index for the soft landscaping work category of the Building Cost Information Service published by the Royal Institute of Chartered Surveyors.”

2.5 Whilst some would argue that concerns regarding ManCo's can be eradicated by the way in which they are constituted and monitored in circumstances when the operation is a cause for a concern there are additional resource requirements which fall upon the council, residents, and often towns/parishes to try and rectify an issue. It is considered that the Council has an opportunity to make a clear statement of intent on how we wish to approach the management and maintenance of our open spaces.

3.0 Options for the Future

3.1 A Council first approach to maintaining open space?

3.2 Fundamentally Members are asked to address whether management and maintenance of land by the District Council or the relevant Town/Parish Council is preferable to a ManCo, and whether the Council itself should ever become a ManCo (as a 'safety net' in circumstances where a developer is insistent on pursuing a ManCo route).

3.3 Members will be well aware of the importance of 'Place' and how public and green spaces contribute to this. Open spaces are also critical to recreation, health, and well-being of residents. The advent and proliferation of ManCo's has resulted in multiple open space maintenance providers, each maintaining open space(s) to different timetables and standards across the District. In some areas, there is likely to be multiple providers and regimes within single parish boundaries, one notable example being Fernwood. In simple terms, the District Council's ability to influence and manage the quality of open space is removed. If the Council were responsible for maintenance it would allow for direct control and accountability for residents, particularly in terms of creating an appropriate 'Place'. Council maintenance of open space(s) potentially allows for the development of 'add-on' services for residents, such as the cutting of grass in private gardens. This will be a matter for the Council's ground maintenance service to consider in the future.

3.4 Do ManCo's need to remain?

The ability of a developer to create a ManCo remains within their gift as a matter of law. A ManCo is not currently 'banned' and they have become mainstream practice for large numbers of new housing estates across the UK.

3.5 Notwithstanding the above, **a clear policy steer** on the Council's preferred method of maintenance (and why), alongside realistic costs of maintenance, phased over a reasonable development period (i.e. linked to phased delivery of open spaces and associated new housing) will allow developers to have regard to this in presenting their proposals to the Council, as Local Planning Authority. Clear guidance will also allow developers to factor such requirements into land purchase negotiations.

3.6 Should Members agree that the Council is best placed to manage and maintain open space on new developments there are two routes to secure this:

1) Commuted Payment

As has been done historically the Council, through its S106 Planning Obligation negotiations can seek to secure a commuted payment to cover 20 years maintenance. The level of payment sought will need to be clearly set out, as will expectations for when the open space(s) is transferred and when this will be paid. The host Parish Council will need to be part of any agreement to cover the period

after the initial 20 years maintenance, ensuring that maintenance costs are precepted (or some other form of funding is secured) or that the land is transferred to the host parish or town council after that time.

Phasing of payments will be critical in order to assist the cash-flow of developers. Any developer costs would need to be factored into the viability of any scheme, which may lead to, if robustly tested via a viability process, a reduction and/or deletion in other S106 contributions.

The majority of Local Planning Authorities who have adopted S106 planning guidance continue to operate this as an approach. Most are clear in stating that this approach is open to developers to pursue, with grounds maintenance teams providing detailed costs such that a developer is fully aware up-front of any financial commitments. This route is already captured in the Councils SPD. A withdrawal of the 2016 policy changes will again make clear that Council management and maintenance is the preferred route.

2) The Council becomes a ManCo

If a developer is insistent on a ManCo route, despite a clear policy statement and preference to the contrary, the Council will consider refusing planning permission. Alternatively, and if circumstances require, the Council will seek to be invited, via a competitive process, to set a pricing schedule to be the ManCo for residents. Nearby authorities have adopted a similar approach.

4.0 Proposal

- 4.1 It is considered that the Council needs to make a clear policy statement that the management and maintenance of open space should fall to a Council rather than a ManCo, given the growing concerns with a ManCo approach. If open spaces is publicly owned and managed the relevant tier of local government can be directly accountable for and to the delivery of a sense of place.
- 4.2 If a 'Council first' approach is agreed the preferred vehicle to achieve this is option 1 (commuted payment) above, which already exists within the Council's SPD. The Council will simply withdraw its statement in 2016 and re-affirm in negotiations with developers that this is the preferred approach. This can apply to pending applications where the S106 agreement is yet to be executed. Providing maintenance costs, when these will be paid, handover process (of the space from the developer to the Council), and the overall maintenance period clearly and unambiguously will allow developers to factor this into development costs. It is accepted that this may increase viability challenges, a route which is already open to developers.
- 4.3 If a developer refuses to follow option 1 and elects pursues a ManCo the Council will seek an ability to 'bid', via a competitive process, for the right to be a ManCo (which will normally be some time after the grant of any planning permission). It is not proposed that the level of charging regime or profit generated will require a separate vehicle/company model. If this position changes further proposals will be brought to Members via the relevant decision-making Committees.

4.4 Fernwood Open Space

Members will be aware that Barret David Wilson Homes (BDW) have commenced works on implementing a 1050 house scheme at Fernwood North. As part of the development a ManCo had been negotiated, following the model of the existing ('original') Fernwood. As will be detailed to the Policy and Finance (P&F) Committee the Council has decided to intervene to prevent another ManCo. BDW have agreed that at the end of each phase of the development open space for that development will be transferred to the Council. The terms of this agreement will be reported as an exempt item to the P&F Committee. The terms of this deal were agreed as an urgent decision with the Leader, Deputy Leader, and Leader of the Opposition.

5.0 Financial Implications

In the event that Members agree the preferred recommended that the District Council (or if agreed the relevant Town or Parish Council) should adopt open space in the first instance the costs of maintaining the open space will, in the initial years of maintenance, be covered by any commuted maintenance sum payment secured via a S106 agreement with developers. Any commuted maintenance sum will be finite, meaning that at some point the costs of managing, maintaining, and replacing (equipment, pitches, etc.) will need to be absorbed into precept or the land asset and its maintenance being transferred to the relevant Town or Parish Council.

6.0 RECOMMENDATIONS that:

- (a) **the Committee endorses the proposals at paragraph 4.2 above to withdraw the Statement made in 2016, making it clear as a matter of policy and preference to developers that the Council will seek to take on open space alongside a commuted payment to the Council to cover a period of 20 years maintenance. This is in accordance with the already published Developer Contributions SPD;**
- (b) **the Committee endorses the ability of the Council, where appropriate, to competitively tender to operate as a Management Company in circumstances where it is not possible or appropriate to follow a commuted payment route; and**
- (c) **the Committee notes the decision, as agreed with the Leader, Deputy Leader, and Leader of the Opposition of the Council to take on the ownership and management of open space delivered at the end of each phase of Fernwood North.**

Reason for Recommendations

To ensure clarity on the issues surrounding the management and maintenance of new public open space across the District.

Background Papers - Nil

Appendices - Report and Appendix to Economic Development Committee 14th September 2016

For further information please contact Matt Lamb on Ext. 5842

Matt Lamb
Director – Growth & Regeneration

PLANNING PROCESSES IN RELATION TO THE ADOPTION OF PUBLIC OPEN SPACE

1.0 Purpose of Report

- 1.1 To consider the adoption of an advisory note in relation to the Developer Contributions and Planning Obligations Supplementary Guidance (SPD) highlighting to developers the latest position in relation to Public Open Space adoption.

2.0 Background Information

- 2.1 As part of the sustainable development of new housing schemes it is important to secure good design and integrate appropriate greenspace. To that end the District Council requires developers to provide public open space on site in line with Policy DM3 of the Allocations & Development Management DPD and the Developer Contributions & Planning Obligations SPD (hereafter referred to as the SPD).
- 2.2 The SPD was adopted by Economic Development Committee in December 2013 and will be reviewed following the completion of the Plan Review (currently underway) in 2017/18. The SPD sets out in detail the types of open space required on site and the levels of financial contribution required to support maintenance of it over the medium term. It also sets out that in normal circumstances the District Council will take ownership of the open space upon completion.
- 2.3 Since the adoption of the SPD the District Council has begun a process of devolution, including offering to transfer public open space and associated maintenance contributions to Town and Parish Councils where they are willing to take on this responsibility. Given this approach, it is suggested that Town or Parish Councils should be offered the opportunity to take on open space as part of new development in their own communities rather than the District Council. Alternatively an applicant can elect (as is their right to do) to promote a Management Company, whereby the costs of future maintenance of open space (and communal areas) for a site are covered in perpetuity by costs levied at individual dwellings. Accordingly the District Council would in future, only take on responsibility for the maintenance of areas of open space as a point of last resort or where there were exceptional circumstances to justify it doing so (for example if an area of open space was strategically significant) Members should be aware that whilst, where responsibility is transferred to the Town or Parish or to the District Council, a commuted sum is received from the developer, this only covers future maintenance costs over a defined period (currently 20 years in accordance with the formula currently used by the Council), with the local authority meeting any maintenance costs thereafter. The continued adoption of open space by the District Council, without any amendment to the current policy, would therefore represent an ongoing and increasing future liability to the Council.
- 2.4 Whilst this change of approach is relatively small in scale in terms of the overall content of the SPD a number of developers have requested clarification of the District Council's position on the matter.

3.0 Proposals

- 3.1 Whilst any review of the SPD will address these policy changes this will however not be undertaken in the short term. It is therefore proposed to prepare a short amended section of the SPD in the form of an advisory note to reflect the Council's current approach. The proposed note's content is attached at Appendix A.
- 3.2 The note sets out that an applicant can explore either the option to transfer land (with an appropriate maintenance payment over 20 years) to the relevant Town/Parish Council(s) or promote a Management Company. For the avoidance of doubt an applicant can choose to explore either or both options (eg. some open space or community facilities could be transferred to the Parish with other areas such as open space or communal areas in apartment blocks being transferred into a Management Company). The note does set out that in certain circumstances it may be that the District Council will take on the land. This catch all statement is intended to ensure that there is always a back stop position. It also allows for circumstances where the new open space provision would expand an existing open space in the District Council's ownership or is a strategic piece of open space which is more appropriately maintained by the District Council. In these circumstances the District Council will inform the developer as soon as possible in the development process of this position.
- 3.3 It should also be noted that developers will continue to have the option, in all cases, to make their own arrangements for the maintenance of public open space through a management company as they are entitled to.

4.0 Equalities Implications

- 4.1 None identified

5.0 Impact on Budget/Policy Framework

- 5.1 The proposal sets out reflects the Council's approach to seek to devolve responsibility for the maintenance of open space where appropriate the Town and Parish Councils.

6.0 Comments of Director

- 6.1 Public open spaces play a vitally important role in ensuring the quality of 'Place' and have a direct impact on Wellbeing and Health. It is in recognition of this that Planning policies require the provision of public open space as part of a development. Once created the traditional model was for the District Council to take on the responsibility for and maintenance of these open spaces.
- 6.2 As the report states, it is proposed to change this traditional approach and offer such maintenance to local parishes or let the developer make their own maintenance arrangements with the District Council retaining a backstop position enabling it to adopt land in exceptional circumstances. What remains constant is the requirement for quality public open spaces to be created as part of any development.

7.0 RECOMMENDATIONS that:

- (a) the contents of the report are noted; and**
- (b) Appendix A be adopted as an Advisory Note to accompany the Developer Contributions and Planning Obligations SPD for the purposes of determining planning applications.**

Reason for Recommendations

To clarify for developers the current circumstances around the adoption of public open space secured as part of new residential development.

Background Papers

Planning Obligations & Developer Contributions SPD

For further information please contact Matthew Norton on Ext 5852 or Phil Beard on Ext 5714

Kirsty Cole
Deputy Chief Executive