

Decision date:	24 June 2016
Title of report:	Adoption & maintenance of new public open space
Report by:	Principal countryside officer (strategy)

Classification

Open

Key Decision

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the county.

Wards Affected

Countywide

Purpose

To approve the change to the council's guidance to developers on adoption and future maintenance of public open space associated with new development, to recognise that the council will no longer normally adopt or take on the maintenance of new public open space, play or sports facilities that form part of new developments.

Recommendation(s)

THAT:

- (a) To support local alternative and sustainable management options the council will no longer actively adopt or take on the maintenance of new public open space, play or sports facilities that form part of new developments;**
- (b) In exceptional circumstances and if no reasonable alternative option is available the council may still adopt open space, play or sporting facilities providing that a full cost recovery 'lifetime' (minimum 60 years) commuted sum is paid by the developer in advance of any adoption taking place and any such adoption will be the subject of a cabinet member decision; and**
- (c) this approach be reflected in all future council planning permissions, development advice and guidance notes.**

Alternative options

- 1 Continue adopting new open space related to new developments. This is not

recommended as it continues to increase the council's ongoing open space asset management requirements and subjects the council to increased liabilities in perpetuity.

Reasons for recommendations

- 2 The council faces unprecedented financial pressures in the short and medium term. It is reviewing all of its services to reduce cost and transform the council from an organisation which has primarily seen itself as a service provider to one which acts as a strategic commissioning organisation. It is doing this in the context of ensuring it continues to fulfil its statutory responsibilities and prioritises investment which contributes to sustaining and strengthening the local economy.
- 3 Alternative, sustainable maintenance arrangements are available to developers – eg establishing a management company; which will in practice increase resident participation, local consideration of needs and community cohesion.
- 4 Should the council be requested to adopt any new areas of open space, play facilities, sports facilities or Sustainable Drainage Scheme (SuDS) areas, then the future management and ownership responsibility is for the lifetime of the new development and cost neutral to the council through receipt of individually calculated commuted sum payments from the developer. This commuted sum is generally agreed in the sector as being calculated on a minimum period of 60 years.
- 5 The recently adopted Property Strategy identifies a project to review and seek alternative management arrangements including community asset transfers and open market disposal of council owned assets. Continuing to adopt new areas of land is contradictory to this project.

Key considerations

- 6 Through the Public Realm savings plan and Countryside Service review the council's current open space asset portfolio has been looked at with a view to promoting the alternative management of existing public open space, sporting facilities and play areas to local communities through the established community asset transfer process. As part of this undertaking, assets have been identified along with potential interested parties whom may have the capacity and capability to undertake the ongoing maintenance of the open space. Examples of this include the completed transfer of Queenswood Country Park & Bodenham Lake and public open space in Ross-on-Wye.
- 7 There are no legal requirements for local authorities to adopt open space arising as part of new development activities. There is a developing industry presumption towards alternative management arrangements for such areas and many developers are already implementing options such as employing local land management companies; setting up site specific management companies, or reaching agreements with parish and town councils. These alternative options are proving more viable for the developer than paying the substantial commuted sums required by local authorities to adopt and manage the areas.
- 8 In perpetuity management of open space areas can be achieved and enforced through Section 106 planning obligation agreements and management plans

approved as part of planning permission conditions.

- 9 Future planning guidance, advice and notes to developers will recognise and communicate this way of working.
- 10 Current Draft Heads of Terms/Section 106 agreements are already being written and agreed by developers supporting this new direction. The current wording is:

“The maintenance of any on-site Public Open Space (POS) will be by a management company which is demonstrably adequately self-funded or will be funded through an acceptable on-going arrangement; or through local arrangements such as the parish council and/or a Trust set up for the new community for example. There is a need to ensure good quality maintenance programmes are agreed and implemented and that the areas remain available for public use.

NOTE: Any attenuation basin and/or SUDS which may be transferred to the Council will require a commuted sum calculated in accordance with the Council’s tariffs over a 60 year period”

- 11 Sustainable Drainage Schemes (SuDS) are schemes which are designed to reduce the potential impact of new, and existing, developments, with respect to surface water drainage discharges. Areas of open space on new development that include a proportionally significant area of Sustainable Drainage Scheme (SuDS) may still be adopted by the council as part of the formal adoption of highway assets on a new development subject to receipt from the developer of an appropriate “lifetime” (60 year) commuted management fee. This will be identified within the developing SuDS guidance.
- 12 If new areas of public open space are adopted, management will be to the council’s standard public realm contract prescription as at time of the transfer or subsequently amended in light of any legal obligations and financial constraints. This level of maintenance is likely to be a significantly lower level of maintenance than the developer undertakes when selling the new house. This new presumption against adoptions will ensure local residents have a continued level of maintenance of their adjacent green space and/or some choice of management levels.

Community impact

- 13 Open space, sports and play facilities will still be requested from new developments through national & local policies and identified local deficiencies in quality or quantity of facilities.
- 14 Through increased ownership of, and participation in, ‘their’ local open space the physical & mental health and the wellbeing of the residents will be maintained and enhanced.
- 15 Encouraging the alternative management of smaller, local areas of open space and sports facilities will open up business opportunities for local contractors to become more involved in their management.

Equality duty

- 16 There are no equality issues raised by these recommendations as there will be no

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change to the current requirement on a developer to provide open space, play and sports facilities on a development site (or an agreed of-site financial contributions) as identified in any currently active planning obligations schedule. The move from Herefordshire Council ownership and liability to local responsibility and liability for management and enhancement of community recreational facilities is considered to have no impact on any equality issues.

Financial implications

- 17 There are no direct financial impacts associated with this decision. However the decision does ensure that the council is not subject to any increased financial liabilities associated with public open space, play or sports facilities and SuDS areas.

Legal implications

- 18 There are no statutory legal requirements for the council to adopt open space on new developments but it is noted the report makes reference to the possible risks of no formal adoption of such open spaces, and ways in which such risks can be successfully managed, through the planning process.

Risk management

- 19 On new developments there is a risk that the planning permission conditioned 'in perpetuity' for private/community management may fail and if this occurs there will be a pressure placed upon the council by local residents to take on the management of the area without any accompanying financial consideration or commuted sum. This risk can be minimised by ensuring that when such conditions are signed off by the planning authority the accompanying plans, company details, business plan & financial statement and hence the sustainability of the proposal are fully explored and checked. Appropriate enforcement of planning conditions will also assist in mitigating this risk.
- 20 Continuing with a policy of open space asset disposal/transfer/alternative management/reduced management; and continuing to adopt open space on new developments may set a precedence where existing users of open space consider the Council's actions unreasonable and request the matter be referred to the Local Government Ombudsman for review.

Consultees

- 21 Developers have already taken on board the new proposed system through their acceptance of recent draft/agreed Heads of Terms/Section 106 agreements. There has been no negative responses reported through their direct discussions on this matter with development control officers.

Appendices

None

Background papers

- None identified

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