

## REPORT 4

### HARBOROUGH DISTRICT COUNCIL

### REPORT TO THE CABINET MEETING OF 9<sup>th</sup> MARCH 2020

PUBLIC REPORT: Y

EXEMPT REPORT: N

<b>Report Title</b>	Adoption of Open Space at KB1, Kibworth
<b>KEY DECISION</b>	<b>N</b>
<b>Report Author</b>	Matthew Bills
<b>Purpose of Report</b>	For Cabinet to consider the adoption of the open space areas (excluding the play area) at the development known as KB1, Warwick Road, Kibworth Harcourt ("KB1") shown on Appendix A (i) and (ii) attached to this report, subject to the Parish Council adopting the play area
<b>Reason for Decision</b>	<p>The development site known as KB1 was permitted as part of application 04/00319/OUT and was allowed on appeal. The original site was for 549 dwellings and the Unilateral Undertaking was signed on 19/5/2005.</p> <p>Legal advice has been obtained in 2015 that that there was no obligation in the Unilateral Undertaking for Harborough District Council to adopt the open space for management and maintenance.</p> <p>The Open Space is now deemed to be up to an adoptable standard and the developer has informed the Parish Council and District Council that they will place it in the hands of a management company if the Councils are not willing to adopt.</p> <p>Experience has demonstrated that Management Companies can lead to an increase in complaints concerning the standard of maintenance of open space.</p> <p>The Parish Council has agreed to adopt the play area for ongoing maintenance.</p> <p>A commuted sum for 15 years maintenance of £55,214.50 (plus indexation) per hectare is provided for in the Unilateral Undertaking if adopted by the Council. This was the requirement in the Council's policy at the time that the Unilateral Undertaking was provided in 2005.</p>

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	<p>The total area of open space for adoption is approximately 4.5 ha.</p>
<p><b>Portfolio (holder)</b></p>	<p>Cllr Bateman</p>
<p><b>Corporate Priorities</b></p>	<p><b>The place:</b> An enterprising and vibrant place. CO1, CO5  <b>The people:</b> A healthy, inclusive and vibrant community. CO6, CO7, CO8, CO9  <b>The council:</b> Innovative, proactive and efficient. CO10</p>
<p><b>Financial Implications</b></p>	<p>A commuted sum of £380,000 has been offered by the developer.</p> <p>The commuted sum calculated from the agreement including indexation is £376,848 based on the calculation below:</p> <p style="padding-left: 40px;">£55,214.50 Per Hectare  4.5 Hectares  £248,465.25 Unindexed Value</p> <p>Index = All Items RPI</p> <p style="padding-left: 40px;">Unindexed Value: £248,465.25  Base Index Date: 19/05/2005  Base Index Figure: 191.60  Final Index Figure: 290.60 <i>Using Jan 2020 rate as most recent published value</i>  Indexation Rate: 1.517  Indexed Value: £376,847.61</p> <p>The cost of annual maintenance for the open space is £16,613.22 based on grass cutting, shrub maintenance, hedge cutting, and tree works. (This figure is taken from current bill of quantities rates).</p> <p>Adopting the open space will place a financial burden on the Grounds Maintenance Contract. The 15-year commuted sum will offset that burden but after the 15 years has expired the maintenance will be an increased cost to the Council's revenue budget. The Council faces significant financial pressures over the medium to longer term and the S151 Officer advises that this overall financial situation needs to be taken into account when</p>

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	Cabinet makes its decision
<b>Risk Management Implications</b>	Not adopting the open space at KB1 may lead to additional complaints from residents and is a reputational risk to the Council.
<b>Environmental Implications</b>	None associated with this report.
<b>Legal Implications</b>	<p>It is not an obligation of the Council to adopt the open space, but provision has been made within the Unilateral Undertaking for the transfer to take place. The requirement for a 15 year commuted sum payment was the requirement when the Unilateral Undertaking was provided in 2005.</p> <p>Cabinet will make the decision based on the Corporate Property Strategy adopted by the Council in January 2020. The Disposals and Acquisitions Procedures provide the circumstances in which the Council will adopt areas of public open space. The relevant extract is referred to below:</p> <p><b>5. ADOPTION OF PUBLIC OPEN SPACE</b></p> <p>5.1 The maintenance liability of each parcel of land must be considered in full before any adoption agreement will be agreed.</p> <p>5.2 The Council will not adopt areas of Public Open Space unless one of the following applies;</p> <ol style="list-style-type: none"> <li>1. A commuted payment is available from the developer in accordance with extant Planning Guidance for developer contributions;</li> <li>2. The area is of interest to a charitable trust or a Parish Council which will maintain the land; or</li> <li>3. The Council will utilise an Assessment Toolkit to determine whether the land will be accepted by the Council as shown in the Appendix. A score below 30 is likely to be considered unsuitable for adoption.</li> </ol> <p>5.3 Exceptional circumstances to the above will be considered after other options have been considered e.g. community organisation or Parish Council maintenance where there is an overriding public interest. These exceptions will be considered on a case by case basis without setting a precedent.</p>
<b>Equality Implications</b>	None as far as this report is concerned. Open space is available for all.

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<b>Data Protection Implications</b>	None associated with this report.
<b>Consultation</b>	Consultation with the Parish Council has taken place. The Parish Council has resolved to adopt the play area and it is recommended that any decision to adopt the open spaces would be conditional on this.
<b>Options</b>	To not adopt the open space
<b>Appendices</b>	Appendix A (i) and (ii)
<b>Background Papers</b>	Corporate Property Strategy 2020
<b>Recommendation</b>	<ol style="list-style-type: none"> <li>1. <b>To consider whether to adopt the open space at KB1 as set out on the adoption plan at Appendix A (i) and (ii): and,</b></li> <li>2. <b>Subject to the decision in 1 above to exclude the play area for adoption by the district council; and,</b></li> <li>3. <b>If members resolve to adopt the open space that the play area should be directly transferred to the Parish Council with the pro rata commuted sum based on the total area.</b></li> </ol>

### 1. Introduction

- 1.1 The development at KB1 was allowed on appeal. The appeal decision required on site open space to be provided, including a play area.
- 1.2 A second play area was not installed after renegotiations and variation of the original Unilateral Undertaking on behalf of the Parish Council. An off-site contribution was made in lieu of the second play area and is now being used to provide a multi-use games area on the adjacent recreation ground.
- 1.3 Officers have monitored the open space delivery since 2008 and have made numerous site visits and audits during the site delivery.
- 1.4 In 2012 the completed Open Space was virtually up to adoptable standard; however it was a decision of the Assets Manager that HDC would not adopt open space unless it was compelled to do so.
- 1.5 The developer has maintained the open space in the meantime until the entire development was completed.
- 1.6 An opportunity presented itself in 2019 to adopt the open space at KB1 after discussions with the developer.
- 1.7 An offer of a commuted sum for maintenance has been made by the

developer. The offer from the developer is £380,000.

- 1.8 The Commuted sum for maintenance after indexation is **£376,847.61**
- 1.9 The Parish Council have agreed to be responsible for maintenance of the play area only, with the district council taking responsibility for the remaining open space.
- 1.10 The open space areas offered by the developer are shown on the plan at Appendix A (i) and (ii).

## **2 Key Facts**

- 2.1 The Unilateral Undertaking was signed on 19/5/2005 and required open space to be delivered as part of the development.
- 2.2 Confirmation has now been received from the Grounds Maintenance Team that the open spaces are up to adoptable standard.
- 2.3 Agreement has been reached with the Parish Council that they will take responsibility for the play area along with a commuted sum for maintenance that is calculated pro rata based on the area.
- 2.4 The cost of maintenance of the open space could be added to the ground's maintenance contract.