

**REPORT TO THE PLANNING COMMITTEE  
MEETING OF 24th May 2022**

---

**Status:** Public

**Title:** Review into the Council's Development Management Service handling into the implementation of the approved landscape plan, at Hursley Park, Great Bowden, with the specific reference to the adopted 'Terms of Reference'

**Report of:** David Atkinson – Director of Planning and Regeneration;  
Adrian Eastwood – Development Manager; and  
Christine Zacharia – Planning Enforcement Team Leader.

**Portfolio Holder:** Cllr J Bateman, Planning and Regulatory Cabinet Member

**1. Purpose of Report**

- 1.1 The purpose of this report is to deliver the findings of the review of the Development Management service's handling into the implementation of the approved landscape plan (and any approved associated Landscape Management Plan (LMP)) relating to the Mulberry Homes development at Hursley Park, Great Bowden: planning reference 15/01801/OUT & 16/02083/REM, with specific reference to the agreed Terms of Reference as agreed in the Committee Report presented to the Planning Committee on the 5 April 2022
- 1.2 A copy of the full report is included in Appendix 1.

**2 Recommendations**

- 2.1 **It is recommended that the Planning Committee considers the report and the specific recommendations 2.2 – 2.4 below.**
- 2.2 **That each planning application case officer report concerning major development proposals includes a section in the report with the heading; '*Equality Implications (Equality Act 2010)*' (or similar), in order to demonstrate that the process of considering the Public Sector Equality Duty (PSED) is set out in those reports in a transparent and public manner.**
- 2.3 **That the Council's website relating to, 'material and non-material amendments' be reviewed and updated as necessary to ensure this reflects the legal position set out in law.**
- 2.4 **That all procedures and training be put in place, where necessary, to ensure all matters associated with applications for planning permissions and other permissions are fully recorded on the Council's IDOX/Uniform system.**

### **3. Background**

- 3.1 The Planning Committee at its meeting on the 5 April 2022, agreed a report to agree the Terms of Reference (ToR) into the review of the implementation of the landscape management plans at Hursley Park. The ToR agreed by the Planning Committee are:
- a. To investigate if the Landscape Plans been implemented effectively with specific regard to the installation of the pathways and other omissions / defects as raised by the residents including but not limited to aspects such as allotment fencing, hedges and hedgerows, areas of planting.
  - b. To determine if the change from tarmac paths (as specified in the Landscape Plans) to the gravel surface, (as constructed at Hursley Park and considering the quality suggested defects raised to the council by residents) was appropriate.
  - c. To review and determine if the process undertaken by which the surfacing of the pathways was changed from tarmac to gravel was compliant with the requirements set out in the Equality Act 2010, including meeting with residents with accessibility considerations, who are most directly impacted by the omission of tarmac.
  - d. To review and determine what planning amendment process, if any, was followed when the paths were constructed from gravel rather than from tarmac, and whether that process was consistent and appropriate given usual planning procedures (considering the conditions of the planning application). Considerations should be given to the specific context of Hursley Park, including that the residents are expected to take a maintenance responsibility for the paths and that construction was part of a park, the ownership of which was known to be transferring to residents who were purchasing properties based on published and approved detailed landscape plans.
  - e. To evaluate the approach taken to ensure the delivery of wildflower meadows was appropriate and robust.
  - f. To formally assess if the planning compliance approach been appropriate and proportional.
  - g. To determine whether the council has the ability to carry out enforcement action (subject to other findings) to ensure the original Landscape plans are complied with.
  - h. To accommodate residents' concerns around this matter.
- 3.2 As part of the review, an independent review of the implementation of the approved Landscape Plan at Hursley Park Great Bowden was commissioned. This was completed by Ian Stemp Landscape Associates (ISLA).
- 3.3 The ISLA review involved a full detailed walkover inspection of the Hursley Park site, which took place on the 31 March 2022.
- 3.4 A copy of the ISLA report is attached at Appendix 2.

#### **4. The Planning Conditions - Landscape Management Plan (LMP) and associated documents**

4.1 Outline planning permission was granted for residential development with associated access, landscaping, open space, a country park and drainage infrastructure (access not reserved) on 21 July 2016. Condition 1 of this consent required that the landscaping of the site was carried out in accordance with the (subsequently) approved details. Also worth noting are conditions 6 and 7:

“6. The landscaping details to be submitted in accordance with Condition 1 shall include details of the position and design (dimensions and materials) of all boundary and surface treatments (including details of paths, driveways and all public areas). The boundary and surface treatments shall be provided to each dwelling before that dwelling is first occupied, or in accordance with an approved phasing plan.

REASON: To enhance the appearance of the development, in the interest of visual amenities and to accord with Policies CS1, CS8, CS11 and CS17 of the Harborough District Core Strategy.

7. The landscaping details to be submitted in accordance with Condition 1 shall include a Landscape Management Plan which shall include the specification, the timing of the completion of and the arrangements for the management and maintenance of:

- I. All areas of informal and formal open space to be included within the development
- II. Playing fields / sports pitches
- III. Other outdoor sports facilities
- IV. Children's play areas including all LEAP's and NEAP's
- V. Allotment areas
- VI. Sustainable Urban Drainage Systems, watercourses and other water bodies
- VII. Green Infrastructure linkages including pedestrian and cycle links, public rights of way and bridleways.

The Landscape Management Plan shall thereafter be implemented in accordance with those details.

REASON:

To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area and to accord with Policy CS8 and CS11 of the Harborough District Core Strategy.”

4.2 Landscaping details pursuant to condition 1 of the outline consent were approved as part of the reserved matters consent granted on 4 May 2017. The approved plans were (so far as relevant): Boundary and Material Treatment Plan P16-0864\_09 Rev C, Detailed Landscape Proposals P16-0864\_05C, 06C, 04B, and 07B. Condition 1 of the reserved matters consent, as with Condition 1 of the outline consent, required that the development was carried out in accordance with the approved plans. For the avoidance of any doubt, Condition 2 also stated “the development hereby permitted shall be constructed entirely of the materials as detailed in the approved plans”.

4.3 Condition 4 of the reserved matters consent stated that:

“... no horse chestnut (*Aesculus hippocastanum*) trees shall be planted on site, and English oak (*Quercus robur*) shall be planted in their place.

REASON: In the interests of wildlife and nature conservation to secure an appropriate native species for the site and to accord with Harborough District Core Strategy Policy CS11.”

4.4 Condition 5 then provided for any trees or plants which, within a period of five years from the date of first occupation of the development, die, are removed, or become seriously damaged or diseased are to be replaced in the next planting season with others of a similar size and species. All hard landscaping was to be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Council. The reason for imposing condition 5 was specified as Harborough District Core Strategy policy CS11 (“promoting design and built heritage”). This policy requires (so far as relevant) the highest standards of design in new development will be sought to create attractive places for people to live, work and visit, development should respect the context in which it is taking place and respond to the unique characteristics of the individual site and the wider local environment beyond the site’s boundaries to ensure that it is integrated as far as possible and reflect the landscape or streetscape in which it is situated and include an appropriate landscaping scheme where needed.

4.5 Condition 6 also cited policy CS11, as well as CS8 (“protecting and enhancing green infrastructure”) when it required that the development was implemented in accordance with the Landscape Management Plan P16-0864 LMP 01 (Dec 16) and is retained as such in perpetuity.

4.6 Condition 12 requires:

“Prior to commencement of development, details of the position and design (dimensions and materials) of all boundary and surface treatments (including details of paths, driveways and all public areas), shall be submitted to and approved in writing by the Local Planning Authority. The details shall clearly show the delineation between public and private space. The boundary and surface treatments shall be provided to each dwelling before that dwelling is first occupied.

REASON: To enhance the appearance of the development, in the interests of visual amenity and the character and appearance of the area and to accord with the Harborough District Council Core Strategy Policies CS1, CS8, CS11 and CS17.”

- 4.7 The development was then completed. The Council did not adopt the public open space (“POS”)/country park. The developers (Mulberry Homes) elected a management company (Ground Solutions) to maintain these areas going forward. The maintenance charges are covered by a service charge paid by the residents of the Hursley Park estate.
- 4.8 In May 2021, the Council’s open spaces officer inspected the site. He completed a report into the POS, noting some minor issues but concluded that most of these could be dealt with through good management practice. Part of this inspection report noted the construction of gravel paths even though the specification was that they were to be tarmac. Whilst this change was not noted in the report, the need for some repair was noted. No issues were noted with the wildflower meadow.
- 4.9 In or around June 2021, the residents of the Hursley Park estate formed a management company called the Great Bowden Residents Management Company (“RMC”), terminating the services of Ground Solutions. RMC are now responsible for the management and upkeep of the POS / country park.

## **5. Ian Stemp Landscape Associates (ISLA) Review**

- 5.1 As part of the Council’s review into the handling of its implementation of the approved landscape plan (and any approved associated Landscape Management Plan (LMP)), the Council duly commissioned the services of an independent consultant to review the implementation of the approved landscape plans. ISLA, completed this review on the 1 April 2022.

In its review ISLA concluded:

“It was apparent in many places that the rolled gravel surface has not been adequately laid, with large stones and sub-grade visible in many places leading to surface degradation and trip hazards that will only worsen over time. The surface had not hardened in many areas as should be expected and there were many areas of loose and large size material instead of a smooth finish of hard stone fines. Some loose chippings are inevitable with this surface type as a natural process of scarification takes place, however the large amount of loose material is not acceptable.

In many areas there appears to be a insignificant or non-existent camber or fall to the footpaths and in wet conditions there are indications that lying water is causing surface damage. In one specific area significant water damage was clear, with large gouges in the footpath surface creating a significant trip hazard.

Additional features such as water bars could have been incorporated to prevent this.

In many areas surface finish was not level with the timber edgings preventing water from flowing off into adjacent areas and causing additional surface damage as well as creating trip hazards.”

- 5.2 ISLA noted sub-surface breakthrough was also visible, suggesting the surface depth was not the standard 100 to 150mm of compacted MOT Type 1 with compacted 50mm depth of stone finish.
- 5.3 With respect to the replacement trees, ISLA noted no bark mulch was evident around each tree as per the specification, and that not all tree avenue planting through the estate had been planted, presuming they were removed from the scheme. Almost all the proposed semi-mature trees within the Central Green had failed. ISLA attributed this to their size at planting and lack of watering. ISLA rightly noted that under the terms of the consent they should be replaced with appropriate native specimens for the open space such as oak or field maple. On this matter the Council did request replacements in early 2021, but the replacements were with smaller species. Ground Solutions advised the Council at the time that they tried to source the largest replacements available, but that the long pandemic caused major issues regarding the importation of trees and there was a severe lack of availability generally at the time. Additionally younger species were, in any event, more likely to survive in the long term.
- 5.4 Native hedges were found by the ISLA review to be generally planted in single lines rather than double staggered row as per the specification. No double line support as per the specification had been provided. However, the ISLA review found the native hedges were in generally good order and forming up well. As above, where hedging had to be replaced it was being replaced with smaller plants than the originals. The key importance was / is aftercare and keeping trimmers away from the base of plants (and trees) through good control of landscape operatives. ISLA noted that some replacement of beech hedges remained outstanding and some planting that had been undertaken was not in accordance with the specifications.
- 5.5 With regard to the wildflower meadow, it was noted that wildflower meadows are notoriously difficult to establish and will require careful management to establish and ensure they are sustainable. The management and cutting regime for wildflower meadows is set out in the approved landscape management plan. It was noted by ISLA that areas within the POS adjacent to Plot 50 and Plots 7, 21 & 22 were laid to amenity grass instead of the approved meadow grass.
- 5.6 Finally in terms of implementation of the approved landscaping details, ISLA noted a small area of native shrub planting is missing adjacent to Plot 40, and the amenity grass areas were generally in good condition with the only matter noted being the need for ongoing maintenance.

## **6. The Terms of Reference (ToR)**

6.1 ***a. To investigate if the landscape plans have been implemented effectively with specific regard to the installation of the pathways and other omissions / defects as raised by the residents including but not limited to aspects such as allotment fencing, hedges and hedgerows, areas of planting.***

6.2 The ISLA independent review is summarised in Section 4 above and relevant to this ToR is the following:

6.3 Pathways

There is no dispute that the approved landscape paths indicate a tarmac surface with pre-cast concrete edging, and that the footpaths have been laid to a crushed stone/gravel finish (Breedon gravel) with timber edgings, resulting in a change to the approved plans. However, Breedon gravel is quite a common and acceptable material used in country park settings. Importantly, the ISLA report findings are that it was apparent in many places that the rolled gravel surface has not been adequately laid, 'with large stones and sub-grade visible in many places leading to surface degradation and trip hazards that will only worsen over time'. This indicates that the key reason for the paths (in the key thoroughfare areas), showing some deterioration is that they have not been laid correctly, and not an indicator that Breedon gravel is not suitable in this location. The laying and maintenance of the pathways is not a material planning consideration but a matter for the RMC and the developers (Mulberry) to resolve. Notwithstanding this, the Council's Development Management Service is working with the RMC and Mulberry, to reach an amicable solution.

6.4 Allotments

The allotments (0.3ha) are located to the western side of the estate and accessed via a principal road within the estate. The ISLA report states that in general the allotments are in accordance with approved plans but makes no reference to the absence of the approved boundary treatment as shown on the approved plan P16-0864\_06C. The boundary treatment, as approved is green 1.8m weld mesh fencing to provide 'a secure boundary to the allotment area' (extract allotment key drawing P16-0864\_06C). The access gates are also approved as green weld mesh at a height of 1.8m. It is visible on site that 1.8m weld mesh fencing has been provided to some boundary areas; the remainder boundary areas are formed by dense vegetation. The gates are just over 1m in height and constructed of wood. The Council consider that an adequate boundary exists, if it were to insist on full compliance with the approved plans, the weld mesh fencing would cause an obstruction to the ditches, making it difficult to keep them clear. The wooden gates form a visually acceptable solution, however, should the RMC wish to replace these to the approved green weld mesh in the future they may do so.

6.5 Hedges and hedgerows

In the main, the ISLA report concluded that Beech hedges were generally in good order and establishing well, but that there were some areas where replacement is necessary. This was drawn to Mulberry's attention previously by

the Council and the RMC. The RMC will arrange for replanting to take place in relevant areas. It is understood that Mulberry's will financially support some of this work.

#### 6.6 Tree planting

ISLA conclude that tree planting across the site was generally in accordance with the positions and species shown on the approved plans. Reference is made in the report to missing watering pipes, lack of bark mulch and tree guards. This will be a matter for the RMC to address as the management company now responsible for maintenance of the POS areas.

#### 6.7 Amenity grass areas and meadow grass areas

The ISLA report findings are that all amenity grass areas are in good condition and well established. The meadow grass areas appeared to have been sown with a meadow seed mix and laid out in accordance with the approved plans.

#### 6.8 ***b. To determine if the change from tarmac paths (as specified in the landscape plans) to the gravel surface, (as constructed at Hursley Park and considering the quality suggested defects raised to the Council by residents) was appropriate.***

6.9 Breedon Gravel is a high-quality surface and is used in numerous locations across the County and elsewhere e.g.

- The Park Estate Nottingham
- RHS Garden in Bridgewater
- Housing development, Farndon Road, Market Harborough
- Daventry Country Park
- Housing development, Jackson Road, Bagworth
- Leicester University Arboretum Leicester
- Spinney Hill Park, St Saviours Road Leicester

An extract from the Breedon Group website<sup>1</sup> states:

**“Once installed in accordance with our laying instructions** [emphasis added], Breedon Golden Amber Gravel knits together to form a solid base and a surface which self-scarifies with use leaving a fine dressing of chippings. This is an ideal choice not only for pedestrian and vehicular use, but also for cycleways, bridle paths, golf courses and many other leisure and recreation uses. Due to the strength and durability of Breedon gravel it is also perfect for buggy and wheelchair use – meaning that pathways and driveways are accessible for all”.

6.10 Breedon gravel is not an alien material and quite appropriate for a countryside location. Emphasis is however on the laying of the path, which would be the case even if it were a tarmac path. As previously referred to in this report, ISLA's

---

<sup>1</sup> <https://www.breedon-special-aggregates.co.uk/breedon-golden-amber-gravel/>

findings is that in many places the paths had not been adequately laid. This does not suggest that the change from tarmac to Breedon gravel was inappropriate but rather a case of poor workmanship.

- 6.11 ***c. To review and determine if the process undertaken by which the surfacing of the pathways was changed from tarmac to gravel was compliant with the requirements set out in the Equality Act 2010, including meeting with residents with accessibility considerations, who are most directly impacted by the omission of tarmac.***
- 6.12 This ToR relates to the Council's responsibilities under s.149 of the Equality Act 2010 (better known as the Public Sector Equality Duty, "the PSED"). There is considerable case law on this subject that sets out and assists in understanding the scope of the Council's public law obligations in relation to private sector property (even where this comprises space open to the public).
- 6.13 Having reviewed the PSED and relevant case law it is clear that there is no duty on the Council to make reasonable adjustments here, nor does the PSED directly apply, because the land in question is privately owned albeit publicly accessible.

Section 149 provides (so far as relevant):

"149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it;

...

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

...

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are... age...disability...pregnancy and maternity...sex” [emphasis added]

- 6.14 The PSED would only be engaged in three circumstances: (1) where a provision, criterion or practice puts a person with a protected characteristic at a substantial disadvantage in relation to a relevant matter in comparison with persons who do not share that characteristic, (2) where a physical feature puts such a person at a substantial disadvantage in relation to a relevant matter in comparison with persons who do not; and/or (3) where such a person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who do not share that protected characteristic. The Council is obliged to have due regard to equalities objectives under the PSED when carrying out all of its functions, save for when they would be ultra vires or otherwise prohibited by statute.
- 6.15. It then follows from the above that where questions of equality arise the Council should bear the PSED in mind even when considering whether to enforce against steps taken by private individuals on privately owned land. In this regard, the Council's review has as part of its process, considered the change from tarmac to Breedon gravel paths and how this affects residents and users of the POS with accessibility considerations.
- 6.16 It is however recommended that going forward, officers planning reports on major development proposals include within them a section headed 'Equality Implications (Equality Act 2010)' (or similar), which will demonstrate that the process of considering the PSED is set out in a transparent and public manner.
- 6.17 Notwithstanding the above, and in the light of case law the Council do not have any further case to answer in terms of allowing the change in path surface from tarmac to Breedon gravel, without public consultation, under the PSED. Whilst residents have claimed that the change in surface has an impact on groups with protected characteristics identified under the PSED, that does not remotely suffice to automatically give rise to a breach of the Council's duty. The duty is only to pay due regard; not a mandatory obligation to take positive steps in all cases.

- 6.18 ***d. To review and determine what planning amendment process, if any, was followed when the paths were constructed from gravel rather than from tarmac, and whether that process was consistent and appropriate given usual planning procedures (considering the conditions of the planning application). Considerations should be given to the specific context of Hursley Park, including that the residents are expected to take a maintenance responsibility for the paths and that construction was part of a park, the ownership if which was known to be transferring to residents who were purchasing properties based on published and approved detailed landscape plans.***
- 6.19 There is no definition in the Town and Country Planning Act 1990 (the 1990 Act) of “non-material” for the purposes of an application for a non-material amendment (“NMA”) to a planning consent under s.96A. Whether the Council invites a NMA or s.73 application is wholly dependent on the context of the overall scheme.
- 6.20 The question of whether the change to the path surface in the POS/country park areas was material or not (so, whether it ought to be subject to a NMA (s96A) or s.73 application) is entirely a matter for the Council as the Local Planning Authority (LPA) to decide. Any decision on this basis could only be challenged on the basis of public law error, and subject to the Wednesbury irrationality threshold for the court’s interference with matters of planning judgment.
- 6.21 Either way the Council decided that it was neither a case where a s96A or s73 should be invited.
- 6.22 Furthermore, the Council as the LPA is not legally obliged to invite an application. Whether to submit an application to regularise details is entirely a matter for the developer (or whomever has assumed their relevant responsibilities). There are obvious reasons why a person potentially subject to enforcement action would want to make such an application, not least to ensure there is certainty on whether or not they would be subject to enforcement action. But that is a matter for them.
- 6.23 The Council’s guidance on ‘material and non-material amendments’ can be found on its website.<sup>2</sup> Here the Council sets out a number of examples of material amendments. Most of the examples refer to changes in building design and layout and description of development. The change of materials i.e., from tarmac to Breedon gravel paths does not sit within any of the examples given. However, it is recommended that this section of the Council’s website is reviewed to reflect the legal position set out above. Ultimately, it remains for the Council to exercise their planning judgment on whether to request a s73 or s.96A application.
- 6.24 In this instance, the Council did not invite a s73 or s96A application, the change of path material was agreed verbally on site between the Council’s planning

---

<sup>2</sup> [https://www.harborough.gov.uk/info/20001/planning\\_applications/215/material\\_and\\_non-material\\_amendments](https://www.harborough.gov.uk/info/20001/planning_applications/215/material_and_non-material_amendments)

case officer and the developer. There is no written record of this agreement, but those concerned remember the conversation. Whilst it is entirely the Council's planning judgement as to whether to invite an application for this change, there should have been at the very least some written record, whether it be by email or letter. Here the planning officer dealing with the planning application on behalf of the Local Planning Authority and Council has failed.

6.25 A further recommendation of this review will be that procedures are in place to ensure all matters of this nature are recorded. It should be noted however, this lapse of record keeping in the Development Management service is rare, and in the main all records are kept in the Council's IDOX/Uniform system.

6.26 ***e. To evaluate the approach taken to ensure the delivery of wildflower meadows was appropriate and robust.***

6.27 The ISLA report advises that all meadow areas appeared to have been sown with a meadow seed mix and have been laid out in accordance with the approved plans. The report further confirms that wildflower meadows are notoriously difficult to establish and will require careful management to establish and ensure they are sustainable. The management and cutting regime for wildflower meadows is set out in the approved landscape management plan (LMP) and is for the RMC to manage as the body responsible for ensuring compliance with the approved LMP.

6.28 ***f. To formally assess if the planning compliance approach has been appropriate and proportional.***

and

***g. To determine whether the Council has the ability to carry out enforcement action (subject to other findings) to ensure the original landscape plans are complied with.***

6.29 ToR f and g, above, are in essence linked as they both relate to the Council's planning enforcement service. The main concern expressed by residents being the change in path material and that the approved landscape management plans showed a tarmac surface.

6.30 Whether the change in path material from tarmac to gravel warrants enforcement action is a classic question of planning judgment for the Council. This is, as is known, entirely discretionary. There are sound reasons to conclude that such action would not be expedient, noting that the Council's officers have informally agreed to the change, and in the Council's view Breeden gravel is a better surface material in its setting.

6.31 Whether the 'informal agreement' means the Council is precluded from taking enforcement action on the basis that a legitimate expectation that the matter would not be enforced against arises. Two legal principles are in play here: legitimate expectation, and the rule against fettering the discretion of a public decision maker. Having regard to the case law on legitimate expectation, in order for such to be generated, their needs, in summary, to be a promise and

that promise needs to be unambiguous. An officer's opinion, given informally, conceding that gravel was a suitable alternative to tarmac and not touching on the question of enforcement at all does not, suffice to generate any legitimate expectation that the Council would never enforce against the use of gravel. Moreover, a very strong case for a legitimate expectation would have to exist in order to displace the rule that a public decision maker (here the officer) cannot fetter their discretion for the future (here the determination whether to take enforcement action), such a case does not exist here.

- 6.32 Whilst on the question of planning compliance, the cost of maintaining the paths (be they Breeden gravel or tarmac) is not, prima facie, a planning consideration. There is no policy or law which makes such a consideration mandatory.
- 6.33 With regard to who is responsible now for adhering to the approved LMP: RMC and not Mulberry, would be responsible for issues relating to the maintenance and management of the landscaping on the site.
- 6.34 Notwithstanding the above, RMC did not carry out the initial works and so they themselves may well have a legal cause of action against the contractors who carried out the initial landscaping works, i.e., the construction of the Breeden gravel paths. In terms of ensuring ongoing replacement planting for the remainder of the five-year period, mulching, watering replacement trees, and maintaining the paths, these matters are RMC's responsibility under the terms of any agreement. This means if they are not carried out it is RMC, not Mulberry or Ground Solutions, who would be subject to enforcement action.
- 6.35 ***h. To accommodate residents' concerns around this matter.***
- 6.36 The Council has provided this review due to the concerns raised by residents. It has and will continue to provide support to residents and Mulberry in achieving acceptable solutions to all matters with regard to the implementation of the LMP and approved landscape scheme. The Director of Planning and Regeneration, the Development Manager and the Planning Enforcement Team Leader have been working with ward members, the developer of the site, Mulberry Homes, and the RMC to achieve the best possible outcome for all concerned regarding the county park.

## **7. Next Steps**

- 7.1 The recommendations and findings of this report are being incorporated within officers regular working practices and procedures and the website is also being updated.

## **8. Resource Issues**

- 8.1 To be met from within existing resources.

**9. Financial Implications**

- 9.1 There are no financial implications arising from the contents of this report: giving effect to all recommendations can be managed from within existing budgets.

**10. Legal Implications**

- 10.1 None are identified

Background papers:

Appendices:

Appendix 1 - Planning Committee report: 5 April 2022 and associated addendum

Appendix 2 - Ian Stemp Landscape Associates (ISLA) report: April 2022.