

Harborough District Council



Report to: Communities Overview & Scrutiny Panel Meeting of: 13th June 2024

Title:	The Future of Public Open Space Management Across the District
Status:	Public
Key Decision:	N/A
Report Author:	Director for Planning, David Atkinson
Portfolio Holder:	Cllr Simon Galton: Planning, Environment and Waste
Appendices:	Appendix A - Estate Charges Rates Appendix B - Case Studies Appendix C - Corporate Policy Framework Considerations. Appendix D - Biodiversity Net Gain

Summary

- i. To scrutinise potential alternative models for the management and maintenance of new Public Open Space across the district in the light of current models giving rise to some concerns across the community as to their effectiveness and value for money.

Recommendations

1. That Panel consider an alternative approach to the provision of new public open space management and maintenance and make recommendations to be included in a future report to Cabinet.

2. The Panel to discuss the following questions and any other questions before providing comments to Cabinet on this report:

i) Does Scrutiny have any suggested additional topic areas for inclusion in the scope of the review?

ii) Is the suggested hierarchy of maintenance responsibilities as outlined in para 2.7 of the report appropriate?

iii) Are the risks associated with the change in policy approach appropriate? Have any risks been overlooked?

3. The Communities Overview and Scrutiny Panel is asked comment on this report and its appendices.

Reason for Recommendations

To scrutinise the current policy approach to the maintenance and management of new public open spaces across the district and to consider a new approach to improve resident satisfaction.

1. Purpose of Report

1.1. To consider whether changes need to be made to the adoption, maintenance and management of new public open space across the district.

2. Background

2.1 Since 2013 new public open space in Harborough District has predominantly been adopted and managed by Management Companies (ManCos) appointed by developers.

2.2 The performance of ManCos has been inconsistent. Some ManCos have performed well and present no issues to residents, whilst others, in combination with poor developer performance, have created issues for residents which are difficult to resolve through enforcement or legal action.

- 2.3 This is frustrating for residents, officers and elected members as time is spent trying to resolve issues, often without any mechanism to enforce landscape plans or landscape management plans.
- 2.4 Public open space is highly valued by communities and provides opportunities for formal and informal recreation as well as a haven for biodiversity.
- 2.5 Public open space, when handed to a ManCo, is maintained with funds collected directly from residents of the new development. This can lead to ‘double charging’ of residents who are already paying their Council Tax being charged additionally for maintenance of their open spaces. These open spaces must also be accessible by any resident and is not for the sole use of ManCo service charge contributors. Examples of Estate Charges for open space can be found at Appendix A.
- 2.6 There are a number of Case Studies regarding adoption of public open space in the district. Details can be found at Appendix B.
- 2.7 Scrutiny is asked to scrutinise whether the current arrangements for the management and maintenance of new public open space should be amended to be, in the first instance, parish or town councils; secondly the district council if the town or parish are not able to, or do not wish to take an open space area for some reason, or if the open space is of greater than local significance. The final choice would be an arm’s length Management Company (ManCo).
- 2.8 Under this new arrangement, it is expected that the parish or town council would fund open space management from a commuted sum paid by the developer for 15 years on transfer of the open space. The parish or town council concerned would build in time build a charge for continued onward maintenance into the parish precept, and thereby pay for onward maintenance through council tax.
- 2.9 If the town or parish council did not want to maintain open space of local significance, or did not have the wherewithal to do so, then the district council could step in to undertake the maintenance. In this scenario, the district council would take receipt of the 15-year commuted maintenance sum from the developer. When the 15-year maintenance period expired, the Council would build in an ongoing charge to residents through the Special Expense Area funding framework and thus fund new public open space maintenance through council tax.
- 2.10 The above (para 2.7 to 2.9) is subject to whether developers can be compelled to pay a commuted sum for maintenance and is reliant on the council’s policy framework being suitably amended, (see para 3.3 below).
- 2.11 Scrutiny is asked to consider reviewing the corporate policy framework for this area of operation to enable a greater emphasis on public authorities, in the form of town and parish councils and the district council, in managing and maintaining public open space across the district. Do scrutiny consider this new approach would lead to greater service transparency and resilience.

3. Details

- 3.1 A review of the policy framework for managing new public open space across the district is being considered and it is important Scrutiny Panel consider this. These new open spaces often arise associated with new development through S106 obligations. There can be a commuted sum associated with them also through the S106 to support their maintenance for a pre-determined period of years.
- 3.2 The corporate policy framework approach to managing new public open spaces coming forward is linked to the delivery of development and associated open space across the district.
- 3.3 To give effect to this sort of change there would be a need to consider changing the council policy framework for the management and maintenance of new public open space coming forward. This policy framework is mainly enshrined in the following documents:
- The Open Spaces Strategy document. This document is adopted as a formal policy document by Council.
 - The Protocol for the Delivery of New Public Open Space, 2023 (adopted January 2023).
 - The Provision for Open Space Sport and Recreation – Delivery Plan 2021.
 - The Corporate Property Strategy, Supplementary Policy and Procedures Disposal & Acquisition Procedure (which provides a mechanism for adoption of open space).
 - Appendix C, Section 5: Adoption of Public Space of the Corporate Property Strategy (which outlines the criteria under which HDC will adopt Public Open Space).

Proposed Scope of the Corporate Policy Framework Review

- 3.4 The main areas to consider concerning this review are set out between paragraphs 3.5 and 3.13 below.
- 3.5 There will likely to be the need to explore how a changed policy approach will be funded, potentially through a combination of commuted sums from the developer, Parish Precept and/or District Council Special Expenses funding for open space of local significance and any that is of more than local significance.
- 3.6 There will also, likely to be the need to revisit developments currently in the pipeline that perhaps have planning permission but are not yet built out. Potentially seek to renegotiate and vary the S106 obligations linked to those developments to change the approach to the management and maintenance of public open space from a management company basis to the alternative approach outlined in this report.

- 3.7 It may also be necessary to ensure that any new policy approach to the management and maintenance of public open space is applied in every site case moving forward.
- 3.8 It may also be necessary to make clear to all that changing this approach, should it be agreed, will not be a quick process. It could take 5 – 10 years for sites currently going through the development process to complete and for the new policy approach to be applied to open space delivery moving forward. This will especially be the case where attempts to renegotiate and vary S106 obligations on existing sites are not successful.
- 3.9 There will also be a need to consider our approach to consultation with communities, Town and Parish Councils, developer partners and other similar stakeholders, on any proposed policy and/or governance changes, including the media we choose to access our audiences. A second aspect of this relates to how it is communicated to Town and Parish Councils and how they perceive it. Ideally, they need to see this as an opportunity and not as an additional burden. This will ensure they are more likely to see the change positively.
- 3.10 It is also likely to be important to consider the role that Biodiversity Net Gain, and links to Local Nature Recovery Strategies, as they emerge, may play in helping to sustain any new policy/governance approach adopted.
- 3.11 It will be likely to be necessary to ensure that we maintain flexibility around the sites maintained, and not to succumb to 'one size fits all', to ensure we maintain positive behaviours from developers in terms of them, for example, not holding either parish, town or district council to ransom around open space maintenance.
- 3.12 It will also be important to consider establishing likely timelines to when the changes can be given effect to, perhaps via a phased delivery approach. This would need to relate to both changing the delivery and maintenance approach concerning sites already benefitting from planning permission and changing the policy and governance background for sites coming forward in future through the changed policy framework.
- 3.13 Consider the financial dimension of this work for the district council
- 3.14 Each of the areas briefly set out above is considered in more detail in Appendix C to this report.

4. Implications of Decisions

Corporate Priorities

- 4.1 Review of the adoption, maintenance and management responsibilities of open space across the district will assist the delivery of the following corporate priorities.
- CO3: The rural nature of the district will be recognised, and our heritage and cultural assets are preserved.

- CO4: Our local communities, the voluntary and charitable sector are more engaged and actively managing their own localities and shaping their own places.
- CO5: The district will be shaped through good design, that addresses local needs and promotes healthier life choices.

Consultation

- 4.2 Consultation took place for the preparation of the Open Spaces Strategy (adopted in 2021) with residents, Parish Councils, officers, other stakeholders and developers. Further consultation was undertaken with 4 resident groups to consider amongst other issues the adoption of open space from developers by the Council.
- 4.3 It is proposed that a similar level of consultation would be undertaken during the review of this element of the Open Spaces Strategy, should this work be taken forward, with particular emphasis on Parish Councils, developers and representative resident groups.

Financial

- 4.4 Financial resources would be required to undertake the consultation and preparation of the new Open Spaces Strategy and Corporate Property Strategy. The preparation of the strategy approach will need to be considered against all equality implications.
- 4.5 There would be additional costs associated with maintenance of new open spaces adopted by either Parish Council or District Council. It is intended that these costs are covered by additional charges through the parish precept or Special Expenses budgets on an area basis.
- 4.6 There will be additional costs associated with the renegotiation of S106 agreements. These costs will include officer time and legal expenses for both the council and other signatories to the S106 agreements.

Legal

- 4.7 Legal Services will advise whether developers can be compelled to transfer open space to either Parish Councils or District Councils.
- 4.8 Legal Services will be required to undertake the negotiations for variations of existing S106 agreements should that be feasible. Any new S106 agreements will need to be negotiated in accordance with the updated policy and strategy approach to adoption of open space.

Environmental Implications

- 4.9 Changes to the approach towards adoption of open space is unlikely to have detrimental effects on the environment.
- 4.10 There is a possibility that positive environmental effects could be achieved through sites being more proactively managed for biodiversity by responsible authorities, and through opportunities that might be realised for Biodiversity Net Gain.

4.11 More details concerning Biodiversity Net Gain can be found at Appendix D.

Risk Management

4.12 The risks associated with the change in approach to adoption of open space can be mitigated by:

- Ensuring the open spaces strategy plan remains up to date and delivers what communities want.
- Ensuring that the reputational risk to the Council has been considered.
- Provision of certainty to key stakeholders, including developers, local authority partners, communities and site promoters, enabling effective delivery of public open space.
- Ensures compliance with the NPPF, guidance and recommendation for provision of open space.

Equalities Impact

4.13 An Equalities Impact Assessment (EIA) for the updated open space strategy will be prepared and regularly reviewed as part of the Open Spaces Strategy review.

Data Protection

4.14 All consultations on the Open Spaces Strategy and review of the adoption, maintenance and management of open space will be carried out in compliance with the provisions of the UK GDPR and the Data Protection Act 2018.

5. Alternative Options Considered

- 5.1 **Do Nothing** – this is not considered appropriate. The number of complaints concerning management and maintenance of open space is rising since the policy approach of the Council was changed in 2013 and ManCos became the primary source of maintenance of new open spaces. The number of communities that are adversely affected by the current approach of the Council to not adopt open space is likely to rise in the future. This is a reputational risk to the Council which needs to be taken seriously.
- 5.2 **District Council to adopt all open space** – this is not preferred as the Management of local facilities at a local level by a parish or town council is considered to be the best approach for communities. Responsible bodies are accessible to communities and when and if things go wrong, they can be easily contacted. Decisions concerning improvements or changes of use of open space can also be made locally for the benefit of communities.
- 5.3 The costs to the District Council of adopting and managing all new open space would be recharged to parish taxpayers via Special Expenses.

6. Recommendations

1. **That Panel consider an alternative approach to the provision of new public open space management and maintenance and make recommendations to be included in a future report to Cabinet.**

2. The Panel to discuss the following questions and any other questions before providing comments to Cabinet on this report:

- **Does Scrutiny have any suggested additional topic areas for inclusion in the scope of the review?**
- **Is the suggested hierarchy of maintenance responsibilities as outlined in para 2.7 of the report appropriate?**
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3. The Communities Overview and Scrutiny Panel is asked comment on this report and its appendices.

7. Background papers

- [Open Spaces Strategy 2021](#)
- [Provision for Open Space Sport and Recreation – Delivery Plan 2021](#)
- [Protocol for the Delivery of New Open Spaces 2023](#)