

REPORT TO:	FINANCE AND MANAGEMENT COMMITTEE	AGENDA ITEM:6
DATE OF MEETING:	28 APRIL 2022	CATEGORY: RECOMMENDED
REPORT FROM:	ALLISON THOMAS STRATEGIC DIRECTOR - SERVICE DELIVERY	OPEN
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SUBJECT:	PUBLIC OPEN SPACE (POS) – HISTORICAL ADOPTIONS	
WARD(S) AFFECTED:	ALL WARDS	TERMS OF REFERENCE: (FM01)

1.0 Recommendations

1.1 That the Committee agrees to officers negotiating the transfer of parcels of unadopted land at the following locations:

- Grampian Way/Nairn Close, Stenson Fields
- Auden Close, Church Broughton
- Eureka Park, Belmont Primary School
- Kingfisher Lane, Willington
- Bretby Heights, Newhall.

1.2 That the Committee agrees to the Strategic Director – Service Delivery negotiating the transfer of land at Manor Farm Cadley from the developer into the Council's ownership with an accompanying additional S106 contribution.

1.3 That the Committee endorses the process by which land is transferred to Management Companies and monitored thereafter be fully reviewed and a new policy statement be included in the new Local Plan.

1.4 That Committee confirms the Council's general policy not to sell public open space and authorises officers to take all appropriate action to recover land subject to encroachment.

2.0 Purpose of the Report

2.1 To seek approval to resolve a number of historical issues related to the adoption of Public Open Space. The report has been previously considered and approved by the Housing and Community Services Committee on 19 April 2022.

- 2.2 To outline work being undertaken to review the processes and procedures by which land is transferred to Management Companies and monitored thereafter to form part of a future policy in the District's new Local Plan.

3.0 Executive Summary

- 3.1 The Council can acquire land by agreement or gift under section 120 of the Local Government Act 1972 for the purposes of any of their functions under this or any other enactment or the benefit, improvement, or development of their area.
- 3.2 In addition, the Council can adopt new POS as part of the section 106 planning process.
- 3.3 There are several examples across the District, where for a variety of historical reasons land was not initially adopted by the Council. This has resulted in subsequent issues for the Council and residents. In addition, there are 'buffer strips' and boundaries disputes that have raised concerns for the Council and residents.
- 3.4 This report outlines some of the challenges and issues associated with the Council's current position relating to several outstanding historical land adoption issues and recommends action to address these.

4.0 Detail

- 4.1 There are a number of sites across the District, where for a variety of historical reasons land was not initially adopted by the Council. These are posing some challenges for the Council and for local residents in that there is a lack of clarity as to ongoing maintenance obligations regarding POS. These include:
- a) Public Open Space in residential areas left unadopted following developer liquidation:

Grampian Way/ Nairn Close, Stenson Fields

A small number of parcels of land have been transferred to the Crown due to the developer (FE Woods Bros Ltd) becoming insolvent. The Crown will not maintain the land; therefore, the Council has been maintaining the site for several years, pro bono publico.

It is proposed to negotiate the transfer of these parcels of land from The Crown into the Council's ownership.

Auden Close, Church Broughton

POS is unadopted in part, due to Company liquidation. This is now with The Crown who will not maintain it. The Parish Council does not want to take on responsibility for the POS. Additionally, residents do not want to form a Management Company to have land transferred to. The site contains several mature trees which require safety work. The Council has been undertaking grounds maintenance for several years.

It is proposed to negotiate the transfer of this land from The Crown into the Council's ownership.

Bretby Heights, Newhall

The POS has been maintained by the Council for a number of years despite there being no agreement under s106 or otherwise to maintain. This has been raised with the Developer who is keen to transfer the land to the Council together with an appropriate commuted sum. The land is planted with mature trees and there are also retaining walls.

It is proposed to negotiate the transfer of this land to the Council, with an appropriate commuted sum for maintenance and negotiations are undertaken regarding the repair and possible transfer (together with a commuted sum) of the retaining wall(s).

b) Unregistered Public Open Space which impacts on Council land/ activities:

Eureka Park/Belmont Primary School.

There is a parcel of 'unregistered' land between the park and the school. It was planted many years ago with a row of approximately 40 Lombardy Poplar trees which became dangerous, many falling in recent storms. The trees provide a screen/shelter for the benefit of the school. Due to the potential risk of harm to school children and park users the Council arranged for the trees to be pollarded pro bono publico. The parcel of land is a valuable wildlife/biodiversity corridor with a ditch/water course flowing from nearby Swadlincote Woodlands and the trees and hedges provide good nesting and roosting habitat. The ditch has overflowed on occasions causing flooding in the park.

It is proposed to apply to HM Land Registry (HMLR) for possessory title of the parcel of land.

Kingfisher Lane, Willington

The Council is due to adopt the POS associated with this development. There is a small parcel of unregistered land adjacent to POS which could be considered for inclusion in the land holdings on the site. It has a large willow next to a busy footpath which the Council recently pollarded to make safe pro bono publico. The land adjacent to POS is a valuable wildlife site with a brook flowing through it and the trees and grassland provide good nesting opportunities for birds. The land is prone to flooding.

It is proposed to apply to HMLR for possessory title of the area.

c) Public Open Space designed as 'buffer strips' as part of developments which the Council is being asked to adopt.

Many developments require/include 'buffer strips', usually of tree or hedgerow planting to act as visual screens, noise insulation barriers and/or green corridors as part of the ecological network required by the Local Plan. These can prove to be problematic and costly in terms of future maintenance if not well-designed and/or well-managed.

The Council has been approached by the developer of Manor Fields, Cadley requesting that in addition to adopting the POS as provided for under the S106 agreement, the Council also adopts the areas of landscape buffer planting with the provision of additional S106 contributions.

If the Council refuses, as it is quite able to do, it is likely that the buffer planting areas will be transferred to a management company to maintain.

Management companies often fail to maintain buffer planting properly and the Council receives complaints regarding them.

It is proposed to negotiate the transfer of this land from the developer into the Council's ownership.

d) Challenges for the Council relating to the adoption of POS by Management Companies (ManCos).

Typically, where the Council adopts POS land, there is a S106 maintenance sum for 10 years and the Council retains the site assets (and potential problems) in perpetuity:

Typically, where POS land is transferred to a ManCo, there will be funding in perpetuity from a contractual levy on each household. The Council is required to monitor the ManCos compliance to the agreed maintenance plan.

The Council cannot dictate whether it should adopt POS. If the developer is minded to transfer land to a ManCo the Council cannot prevent this.

The transfer of land from a developer to a ManCo is a different process to transfer to the Council for adoption. The transfer to a ManCo and discharge of conditions and implementation of the agreed management plan requires authorisation from a Planning Officer and there is an ongoing need for this to be monitored to ensure compliance. There are currently over thirty such sites in this process.

It is proposed that the process by which land which is transferred to Management Companies and monitored thereafter is fully reviewed and a new policy statement be included in the new Local Plan.

e) Encroachments of POS

The Committee will be familiar with this issue, it resolved to refuse to dispose of land at Sandholes on 21 October 2021

The Council has identified another encroachment and subsequently a request to transfer the POS land. The owner of the adjacent land has enclosed part of the neighbouring POS by planting a laurel hedge. The owner cannot succeed with an adverse possession claim as the appropriation is not of sufficient length.

It is requested that the Committee confirms the Council's general policy not to sell public open space and authorises officers to take all appropriate action to recover land subject to encroachment.

5.0 Financial Implications

5.1 The costs of adopting the sites identified in the report at 4.1a and 4.1b are de minimus in terms of their impact of the Grounds Maintenance budget given that these sites have historically been subject to maintenance by the Council.

- 5.2 Negotiating an appropriate additional S106 contribution for the land at 4.1c Manor Fields, Cadley, will offset the costs of future ongoing maintenance on this site.
- 5.3 Negotiating a relevant commuted sum for the land at 4.19a) Bretby Heights will offset the costs of future ongoing maintenance on this site.

6.0 Corporate Implications

Employment Implications

- 6.1 None arising from this report.

Legal Implications

- 6.2 The Council has power to acquire public open space by virtue of a planning agreement or otherwise by agreement pursuant to s120 Local Government Act 1972. The Council has the power to prevent encroachments by way of possession proceedings or an action in trespass.
- 6.3 The Council has duties to the public in relation to the POS it maintains as follows
- Occupiers Liability Acts of 1957 & 1984
 - Highways Act 1980 (especially section 130),
 - The Miscellaneous Provisions Act 1976 'Dangerous Trees and Excavation'
 - Health & Safety at Work Act 1974 (for bystanders sec 3(1)).

Corporate Plan Implications

- 6.4 Both the Policy and Management Plan contributes significantly to the Corporate Plan Priorities and Key aims including:

Our Future

Support economic growth and infrastructure

- Enable the delivery of housing across all tenures to meet Local Plan targets.
- Influence the improvement of infrastructure to meet the demands of growth.

Transforming the Council

- Provide modern ways of working that support the Council to deliver services to meet changing needs.

Our People

Supporting and safeguarding the most vulnerable

- Promote health and wellbeing across the District
Deliver excellent services
- Ensure consistency in the way the Council deals with its service users
- Have in place methods of communication that enables customers to provide and receive information
- Ensure technology enables us to effectively connect with our communities
- Invest in our workforce.

Our Environment

- Improve the environment of the District
 - Enhance biodiversity across the District.
- Tackle Climate Change
 - Strive to make South Derbyshire District Council carbon neutral by 2030.
- Enhance the attractiveness of South Derbyshire
 - Enhance the appeal of Swadlincote town centre as a place to visit
 - Improve public spaces to create an environment for people to enjoy.

Risk Impact

- 6.5 Entering into negotiations to adopt the sites identified in this report will mitigate the risks of this Public Open Space not being appropriately managed.

7.0 Community Impact

Consultation

- 7.1 None directly required for this report, however, any future policies contained in the next Local Plan will be subject to extensive statutory consultation.

Equality and Diversity Impact

- 7.2 None specifically related to this report.

Social Value Impact

- 7.3 Use of local contractors can promote local businesses.
- 7.4 Working closely with developers to enable the delivery of housing across all tenures to meet Local Plan targets.
- 7.5 Potential to involve communities in planting schemes etc.

Environmental Sustainability

- 7.6 Once the areas of public open space are formally adopted they can be managed appropriately and sustainably in line with corporate policies on biodiversity.

8.0 Conclusions

- 8.1 That there are a number of historic issues associated with the adoption of public open space that require resolution. By adopting the sites identified in the report will provide local residents with certainty about their future management.

9.0 Background Papers

None.

