

GRASS CUTTING AND MANAGEMENT OF OPEN SPACES IN NEW DEVELOPMENTS

1 PURPOSE OF REPORT

- 1.1 While the District contains large amounts of open green space, it is important that new development incorporates accessible public open spaces.
- 1.2 It is becoming increasingly common on new-build private estates for freeholders to be required to contribute to the maintenance of the estate's communal areas and facilities. However, concerns have been raised as to the suitability of this model of delivery for the long-term management of the new estates.
- 1.3 This report provides a brief overview of these concerns, and possible alternative solutions to address the potential problems associated with the establishment of these private management companies.

2 INTRODUCTION

- 2.1 While the District contains large amounts of open green space, it is important that new development incorporates accessible public open spaces. The delivery of major planning applications often requires the provision of public open space and play areas as part of the scheme. The sustainable drainage provisions are usually part of the open space and management arrangements.

- 2.2 This is reflected on the Rochford District Adopted Core Strategy (December 2011) which states under Policy CLT5-Open Space:

New public open space will be required to accompany additional residential development, having regard to local current and projected future need. Standard Charges may be applied to developments as necessary...

- 2.3 The CLT7-Play Space policy, however, states clearly the Council position regarding the adoption of new plays spaces stating:

New residential developments will incorporate appropriate communal play space which complies with the Council's Play Strategy, is accessible and subject to natural surveillance. Play space within developments should be maintained by an appropriate management company. The Council will usually protect existing play spaces and enhance them through the provision of additional fixed play equipment. Standard Charges will be applied to secure play space enhancements as per Policy CLT1.

- 2.4 This policy of transfer of new play spaces to a management company is applicable to the wider open space, as explicitly stated in the Open Spaces Strategy – October 2015:

6.7 Ensure that all new Green Spaces will be transferred by the developer to a private management company. All future maintenance will be carried out by this organisation and the developer will make sure that they are provided with adequate funding.

- 2.5 Therefore, there is presently a clear policy that the Council will not adopt and maintain new open spaces but that developers must make provisions for a private management company to oversee the upkeep. These communal areas are to be open to any person, even though the upkeep is paid for by the residents of that new estate; this can cause conflict between the neighbouring existing community and the new community.
- 2.6 As part of planning process, a Section 106 legal agreement will set out who will own, maintain and manage the developer's site, including the sustainable drainage scheme. The management company will be responsible for the recovery from property owners of the service charge to cover the costs of maintenance and management for the open spaces on the development.

3 Private Management Companies

- 3.1 It is relatively common for private estates with freehold houses to include a provision in the deed of transfer which places a duty on the owners to contribute to the maintenance of the estate's communal areas and facilities, including the sustainable drainage scheme. The deed of transfer should state:
- What the freeholder is expected to contribute towards;
 - The proportion of costs they should pay; and
 - Dates on which payment is due.
- 3.2 The developer can set up a Residents' Management Company that owns the communal areas and facilities. The Residents' Management Company may upkeep the communal areas and facilities itself or employ a managing agent to act on its behalf. Alternatively, the developer can retain the ownership of the communal areas and facilities, and the responsibility for their maintenance. As in the case of a Residents' Management Company, the developer can carry out the maintenance directly or through a managing agent, who is accountable to the developer under the terms of the management contract.
- 3.3 Either of the above approaches are acceptable to the Council in terms of being able to finalise a Section 106 agreement that clearly outlines responsibility for the communal areas. With this approach, the Council has very little influence on the company chosen, or the level of charges that are levied by the emerging Management Company.

4 ‘Fleece-holds’?

- 4.1 The use of private management companies as a vehicle for the delivery of the maintenance of new estates has received considerable criticism in the national press; for example, a BBC article in 2019 outlines what it describes as the ‘fleece-hold culture’. The article comments that ‘Paying unexpected costs on new-build homes has been dubbed the next PPI scandal waiting to happen, and has homeowners and MPs alike wanting solutions’.

- 4.2 Helen Goodman summarised freeholders’ complaints during a Westminster Hall debate on Freehold Estate Fees which took place on 29 January 2019:

This is a scandal. There has clearly been mis-selling. The public perception of freehold is deliberately exploited by the property companies in their sales materials. Many homebuyers are not made aware of the arrangements for the management of open spaces until the completion of the sale. One of my constituents reported that the first they had heard of their management company, which was Greenbelt, was a threatening late payment letter. They had not received a bill, let alone a welcome pack.

- 4.3 It should be noted that, despite the national coverage, many estates are managed successfully by management companies. The number of direct complaints to this Council regarding the management of such estates has been low and in the main related to one specific incident.
- 4.4 The developer Countryside, for example, has appointed The Land Trust, a not for profit charitable organisation set up specifically to oversee maintenance at such sites as Beaulieu Park in Springfield, Chelmsford; and it is proposed that the same set up will be used upon the Countryside site, West of Rayleigh. Anecdotal accounts would suggest that this arrangement at the Beaulieu Park site has been viewed as highly successful.
- 4.5 There is a view that the increasingly negative publicity regarding private management companies, and political momentum, is causing most developers to now reconsider the nature of the management companies appointed.

Further Potential Risks

- 4.6 The amount of service charge will obviously vary from development to development depending on the number of properties and the size and nature of the communal areas/services. Some might be just a couple of hundred pounds a year where others might be a couple of thousand. Without provision to collect service charges many developments would fall into disrepair, especially the crucially important sustainable drainage scheme, but the need to pay them, particularly in difficult economic times, can lead to problems of its own.
- 4.7 If a significant number of properties default on their service charge payments, this can leave the management company unable to settle its debt and force it

into administration and eventually liquidation. This can be a major issue for other householders on that estate as it means that the grounds and drainage scheme are unmanaged and, worse, potentially uninsured. This can render properties devalued.

- 4.8 Where the management company becomes insolvent, the first step is to acquire the freehold title of the estate via a process called enfranchisement, or by approaching the Treasury Solicitor (in whom the assets of a dissolved company vest) to purchase the freehold. However, it would seem unlikely that any household is going to wish to take on the ownership and management of the estate in that situation. It is in this scenario that the Council may have to consider adopting the communal spaces and take on the responsibility for managing the drainage scheme. It should be noted that the risk of liquidation of the management companies appears, at this time, relatively low.

Adoption of Communal Facilities by the Council

- 4.9 It has been argued that local authorities should be compelled to adopt all communal facilities on a new estate. At this point it is worth pausing to consider planning arrangements and how they support new developments. When a new development is granted planning permission, local authorities can use conditions, or a section 106 planning obligation, to secure a commitment from developers to provide and maintain open and communal space. This means that the local authority does not have to adopt or maintain the land at its own expense.
- 4.10 It is up to developers and the local planning authority to agree appropriate funding arrangements as part of those commitments. The local authority has powers to ensure that developers build and maintain communal facilities to the standards and quality set out in the planning permission.
- 4.11 There is only so much capital that can be extracted from a housing development before it begins to conflict with other policy demands, such as the provision of 35% affordable housing, or the entire viability of the scheme. It is therefore at the discretion of a local authority to decide the balance of a section 106 contribution, the cost to them of adopting those measures, and where and when maintenance should fall on residents rather than on the local authority.
- 4.12 To adopt and maintain the communal areas, including drainage, at no additional expense to the Council would require a substantial section 106 contribution that could be invested to provide a financial return that covers any future costs in perpetuity. With low return on investments, a significant sum would be required that in all likelihood would result in the development not being viable.
- 4.13 Therefore, should the Council be minded to adopt future communal spaces in new developments there is a distinct possibility that to do so would be at an ongoing maintenance cost to the Council. Although a further contribution from

the developer could be sought to secure maintenance, either for a fixed period (for example 5 years) or in perpetuity, any such contribution is in excess of the existing contributions that are provided by developers, and would in all likelihood result in other contributions being reduced to maintain viability of the development. It is also important to note that the integration of sustainable drainage schemes into open space may significantly increase the maintenance costs and liabilities over time.

Council Owned Management Company

- 4.14 It is possible that the Council could develop a LATCo to offer an alternative management company for developers to adopt for the management of the estate; however, the developer would not be duty bound to appoint the LATCo. The process by which management companies are appointed by the developer appears opaque; therefore, the question of conflict and transparency may arise if the Council were to offer the LATCo services.
- 4.15 The development of a LATCo to oversee the management of the open, communal space and sustainable drainage may draw further criticism, with the Council being viewed as charging twice, once through council tax and secondly through the service charge through the LATCo.
- 4.16 The legality of establishing this approach would need further clarification if Members believed that it warranted merit.

Historic Developments

- 4.17 A related problem is the historic lack of specific management arrangements for the transfer of development sites. This has resulted in small parcels of land, rear access routes and boundary features being in the ownership of development companies that have ceased trading. The legality of the responsibility of such areas is often complex, with shared ownership and covenants for adjacent properties often needing to be considered. In areas of roadside open space, greens, etc. the Council has taken the pragmatic approach of adopting such areas into the existing grass cutting regime. The costs are minimal to schedule into the existing cutting rounds.
- 4.18 With regard to trees and walls, a different approach is taken. Should there be public safety matters the Council will intervene and undertake works to make safe. Usually in this situation the Powers delegated to the authority would allow the landowner to be recharged; clearly in this situation where a landowner cannot be established such costs have to be absorbed by the Council.

5 Conclusion

- 5.1 The use of private management companies to oversee the maintenance costs of communal spaces in new developments is not without controversy, although experience within the district would suggest that the national coverage does not necessarily reflect the local situation, with a lack of

complaints and lack of local press coverage suggesting that the problem may be overstated.

- 5.2 Any decision to seek an alternative should be mindful that additional on-going cost will be incurred by the local authority or, if a further contribution is sought by the developer, at the expense of other contributions, such as affordable housing.

6 RESOURCE IMPLICATIONS

- 6.1 There are no direct resource implications arising from this report since the options are just for noting at this stage. Should any of the options set out in the report be pursued, further detailed financial analysis would need to be completed before they are formally agreed to ensure they are financially sustainable for the Council.

7 LEGAL IMPLICATIONS

- 7.1 None arising out of this report.

8 EQUALITY AND DIVERSITY IMPLICATIONS

- 8.1 An Equality Impact Assessment has not been completed as no decision is being made.

9 RECOMMENDATION

It is proposed that the Committee **RESOLVES** to note the content of this report.



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Background Papers:-

None.

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