

Delegated Decisions report



24 March 2020

LANDSCAPE MANAGEMENT COMPANIES

Name of Cabinet Member	Councillor Martin Gowans Cabinet Member for Planning and Transport
Report sponsor	Stuart Proffitt Director Environment and Property Tracy Darke Director Growth, Economy and Culture
Report author	Nick Hannon Head of Environment and Waste (01908 252577) Sarah Evans Infrastructure Policy and Programme Manager (01908 253326)

Exempt / confidential / not for publication	No
Council Plan reference	Ref number 8.6
Wards affected	All wards

Executive summary

This decision describes the options the Council will consider in addressing ‘the practice of management companies of levying maintenance charges on homeowners for the long-term maintenance of the wider green estate in a development’. The Council has placed on record its concern at the issues arising from commercial companies levying annual charges on both leasehold and freehold properties as opposed to investing in locally based, non-commercial bodies for long term stewardship (Minute CL32 from the 19 June full Council meeting refers). The Council has few formal powers available to require the latter from developers but this decision sets out the steps it can take to encourage it using the powers it does have.

The current planning policy basis for aggressively pursuing an approach that seeks transfer of open spaces to the Authority (or other bodies) is not strong. There are potentially powers to bring this into effect (Compulsory Purchase Orders [CPO] and

other Government legislation), however these would be time consuming and costly arrangements, potentially 12 to 18 months and c£100k in legal fees per location.

Like for most other local authorities, the best current outcome(s) continues to be found in early engagement and negotiation, albeit this cannot fully mitigate against 'fleecehold' activities in Milton Keynes.

1. Decision/s to be made

It is recommended:

1. That for either the Council or Milton Keynes Development Partnership (MKDP) when pursuing development proposals using the Council's own land, it will in the first instance seek to transfer suitable open spaces to an appropriate local body (Parks Trust, Town Council or Parish Council) for long-term maintenance, with an appropriate commuted sum, reflecting the Council's clear preference for this type of arrangement.
2. That the Council and MKDP look to secure the practice in 1. by stating this within all Section 106 agreements, citing good practice and the Council's preferred approach in the emerging Planning Obligations Supplementary Planning Document, noting that this is negotiable.
3. That the Planning Service review Local Plan Policy to test the soundness of a policy approach that seeks the transfer of all new open spaces to the Council, with a long-term maintenance contribution, for onward transfer to an appropriate local body as the Council sees appropriate.
4. That, in addition to formal powers through the Landlord and Tenant Act (which allows tenants to challenge unreasonable service charges), the Council will encourage developers to voluntarily sign the Government pledge aimed at the rights of leaseholders. (Note: Both the Act and pledge only extend to the rights of leaseholders and not freeholders.)
5. That Cabinet be updated yearly where specific developers choose not to transfer landscaping to the Council, with the purpose of deploying management companies or similar, as noted from their submitted management and maintenance strategies.
6. That it be reported to Cabinet yearly where developers / management companies have been highlighted by Ward Councillors and Town and Parish Councils to be exploiting residents, in order that the Cabinet can consider the evidence on a case by case basis and whether the use of Compulsory Purchase Order powers would be an appropriate course of action for the Council to consider.
7. That the Council undertake an audit of existing management company arrangements.

2. Why is the decision needed?

There are two distinct models for open space management and maintenance. Developers may opt to hand responsibility for new open spaces over to a management company (a 'ManCo), with the costs for maintenance being levied from residents as an annualised charge. This charge can apply to freehold owners of properties as well as leaseholders, leading to the phrase 'fleecehold' locally, although nationally this can also refer to wider landlord poor practises.

Alternatively, a developer can agree a maintenance or 'commuted' sum, paid in full to the Council, which can be used by the Council or another body to undertake the maintenance.

Where land is transferred to a public body and therefore 'adopted' then traditionally it is done to encourage more clarity and consistency over maintenance practices. Local authority delivery has traditionally provided:

- **Accountability** and **assurance** of service provision;
- **Best Value** in terms of economies of scale for procurement for schedule of rates from outsourced or insourced contractor (the lower the schedule of rates the lower the tariff placed on the developer);
- **Control** of land use by Local Authority (biodiversity, flood control mitigation);
- **Democracy** – any issues can be escalated and changed through the Local Democratic Process;
- **Equity** – all land is managed the same across all developments in both new and old parts of the city;
- **Finality** - prevents market failure from Management Companies and / or Trust Companies.

The Council can encourage this model, through early engagement with developers, joint working with the Parks Trust and Town and Parish Councils, and citing good practice in the emerging Planning Obligations Supplementary Planning Document.

The Council Planning and Landscape Teams are already working together to move developers to consider the sustainable long-term maintenance of open spaces as part of their development proposals. The Council also continues to work with the jointly funded post, the Parks Trust Green Infrastructure Co-ordinator, for early developer engagement in the planning process and to encourage the long-term maintenance of open spaces through local devolution models or the Parks Trust, whichever is appropriate.

Arrangements for developer contributions and the payment of commuted sums/ endowments for open space maintenance can be secured through an agreement under Section 106 of the Town and Country Planning Act 1990 (a s.106 agreement).

The provision of open space to local standards set out in the Local Plan (Plan:MK) is a necessary requirement of new development, covered by Policy L4 in the Plan. The policy also requires proposals to be accompanied by ‘a management and maintenance strategy...’. At the public examination of Plan:MK the independent Inspector considered representations by the Parks Trust to make policy L4 more prescriptive in terms of applying the Parks Trust standards, including maintenance options, but found that this was not considered necessary to make the Local Plan policy sound.

The Council cannot force developers to enter into s.106 agreements to transfer open space to the Council (or another body) and pay a commuted sum for maintenance – this would be an unlawful planning obligation under current Local Plan Policy and relevant Government Legislation. We are aware of moves to potentially provide new legislation in this area and we will keep a watching brief for any changes.

Officers have followed up suggestions that other authorities have put local obligations onto developers, effectively banning the use of landscape management companies, although no evidence of this has been found to have been put into practise through planning or other similar processes.

The Council will opt in the first instance to transfer appropriate open spaces on its own development sites to the Parks Trust, a Town Council or a Parish Council.

3. Implications of the decision

The Council will continue to engage its resources to fully mitigate ‘fleecehold’ arrangements, as described in the officer summary.

Financial	Yes	Human rights, equalities, diversity	No
Legal	Yes	Policies or Council Plan	Yes
Communication	Yes	Procurement	No
Energy Efficiency	No	Workforce	No

a) Financial implications

Where it is agreed to transfer services to the Parks Trust, Town Councils or Parish Councils resulting from development, the sum payable will equate solely to the ‘Community Infrastructure Levy’ (CIL) complaint level of s106, which will form the capitalised sum transferred to the local body agreeing to undertake the services. This will be a fixed sum and will be a straight pass-through of monies so as to not burden the Council in any way.

Some developers may take commercial views on their wider deals, particularly where these landscape management companies have made income considerations in lieu of other contributions.

b) Legal implications

Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) requires that a planning obligation under section 106 of the Town and Country Planning Act 1990 may only constitute a reason for granting planning permission for the development if the obligations is:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development

c) Other implications

N/A.

4. Alternatives

To do nothing would see the continuation of a mixed solution between a 'fair and justifiable deal' for residents and commercially exploitive positions of 'fleecehold'

In the longer term the Planning Service will look at changes to planning policies, through a review of the Local Plan, in line with relevant parts of the National Planning Policy Framework, specifically paragraph 92 (a), which refers to the need to plan positively for the provision and use of shared spaces. Paragraph 96 deals in detail with open space and recreation. Although the last Local Plan Inspector did not consider the Council's policies 'unsound' by not supporting the Parks Trust standards, a policy position could be pursued that sought transfer of open spaces to the Local Authority (with a maintenance contribution) for us to determine the most appropriate body to maintain them.

5. Timetable for implementation

Implementation is effectively underway: this decision will formalise the approach.

List of annexes

N/A

List of background papers

[Minutes of Full Council 19 June 2019](#)