
Motion Adopting Open Space in New Development

Committee considering report:	Executive
Date of Committee:	3 July 2025
Portfolio Member:	Councillor Denise Gaines
Report Author:	Laura Callan
Forward Plan Ref:	EX4686

1 Purpose of the Report

- 1.1 The purpose of this report is to respond to the Motion from Cllr Amirtharaj which proposed to ensure that public open spaces on new developments are taken on by the Council (where possible).
- 1.2 A motion was put to Council by Cllr Amirtharaj as follows:
- 1.3 *“That Council notes that:*
- 1.4 *A. Developers are not always owners of a development site, as is the case with Sandleford East in south Newbury;*
- 1.5 *B. Section 106 Legal Agreements are between the Local Planning Authority and the landowner, not necessarily the developer;*
- 1.6 *C. Landowners routinely retain freehold ownership of communal areas of a site, including “public open space” (POS) and some estate roads, which gives the Council little or no control over their management and what happens there but allows them to charge high fees to residents for management over which residents have little or no control;*
- 1.7 *D. This causes conflict, confusion and problems for councils, e.g. east of Tull Way Thatcham, where local residents of the new estate tried to ban non-residents from a Public Open Space which only the residents were paying for;*
- 1.8 *E. The outgoing Government’s commitment to abolish leasehold on new housing has failed to pass into law because of the early dissolution of Parliament and without any proposals being announced by the new Labour Government.*
- 1.9 *Council believes that, in principle:*
- 1.10 *a. “public” must mean public and that there is a distinction between communal areas and facilities (which are not for the public but for sharing between residents)*

Motion Adopting Open Space in New Development

- 1.11 *and public facilities such as community centres and in particular Public Open Spaces, which can contain public footpaths and sustainable drainage systems (SUDS) for which the Council as Lead Local Flood Authority (LLFA) must have overall responsibility.*
- 1.12 *b. Communal facilities not available to other residents or the public at large should not be a financial burden on the local taxpayer;*
- 1.13 *c. Residents of every major new housing development should be enabled and encouraged to play a part in how the estate is managed, especially with communal areas, so as to enhance the sense of ownership of their community.*
- 1.14 *Council therefore resolves to:*
- 1.15 *1. Adapt our policies to work with Developers, such that Public Open Spaces in new developments can be taken on by the Council depending on affordability and after being considered on a case-by-case basis, and in such cases where the Council decides to take ownership, it should also take a lead role in initially managing and disposing of community facilities on new housing estates, during the S106 negotiations.*
- 1.16 *2. Instruct officers to investigate the financial and legal implications of this change in our policies, in consultation with all interested parties, and report back to Council,*
- 1.17 *3. Ensure that all policies commit the Council to work with Town and Parish Councils in determining how such Public Open Spaces will be funded and managed when adopted.*
- 1.18 *4. We will press the West Berkshire MPs to lobby the Government to resolve this issue through legislation.*
- 1.19 This report considers the contents of the motion and identifies where the Executive are recommended to support the motion and also recommends some amendments to the motion.

2 Recommendations

- 2.1 For Executive to support the motion in principle, but with amendments to 1 to 4 of the Motion as follows (reasons are set out in the main body of the report);
- 2.2 It is recommended that 1 and 2 above are combined and worded as follows;
- To endorse a review of the application of the Council's policies regarding securing and adopting public open space including an investigation into the financial and legal implications of any change in approach.
- 2.3 It is recommended that 3 of the motion is amended as follows;
- To enhance the approach to engaging with Town and Parish Councils regarding funding, management and adoption of public open space.
- 2.4 It is recommended to support point 4 of the motion

3 Implications and Impact Assessment

Implication	Commentary			
Financial:	There would be cost implications arising from increased responsibilities of adopting more open space as commuted sums do not support maintenance of the open space for its lifetime which results in a financial burden to the Council. This will be further explored and an approach developed which provides an appropriate balance.			
Human Resource:	Any increased responsibilities arising may impact upon resources and will be required to be addressed accordingly through agreement of a defined approach.			
Legal:	Adoption of open space is secured through the planning process via appropriate clauses within S106 agreements and this would continue.			
Risk Management:	Refining the councils approach to open space would result in a positive approach to risk management and this will be further explored and addressed through future proposals.			
Property:	It is possible refining the approach may result in additional assets coming into control of the council and part of the process of refining the approach will need to fully explore the implications of this. On occasions where private management companies are created, tensions can arise with residents but the Council cannot always control these issues, and can only have control in so far as ensuring compliance with the S106 agreement.			
Policy:	National Planning Policy Framework Local Plan Review Policies SP10 and DM40 Planning Obligations SPD 2014			
	Positive	Neutral	Negative	Commentary

Motion Adopting Open Space in New Development

Equalities Impact:				
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		The proposal is to further explore the councils approach to adopting open space and as such the impact of the decision to proceed with exploration would have a neutral impact. EQIA will form part of the exploration.
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		The proposal is to further explore the council's approach to adopting open space and as such the impact of this decision to proceed with exploration would have a neutral impact. EQIA will form part of the exploration.
Environmental Impact:		X		The proposal is to further explore the council's approach to adopting open space and as such the impact of this decision to proceed with exploration would have a neutral impact.
Health Impact:		X		The proposal is to further explore the council's approach to adopting open space and as such the impact of this decision to proceed with exploration would have a neutral impact until the next steps are known.
ICT Impact:		X		Adopting open space is already part of business as usual. No additional impacts anticipated.
Digital Services Impact:		X		Adopting open space is already part of business as usual. No additional impacts anticipated.

Motion Adopting Open Space in New Development

Council Strategy Priorities:		X		Priority Area 1: Services We are Proud Of Priority Area 5: Thriving communities with a strong local voice
Core Business:		X		Adopting open space is already part of business as usual.
Data Impact:		X		Adopting open space is already part of business as usual. No additional impacts anticipated.
Consultation and Engagement:	<p>Countryside Team – the financial impact of maintaining public open space has become increasingly challenging and commuted sums do not support maintenance of the open space for its lifetime which results in a financial burden to the Council. The adoption of open space that has a public benefit, and where financially viable, is supported. Offering the open space to Parish and Town Councils for adoption and maintenance responsibilities is also supported. However there will likely remain a role for private management companies to deliver maintenance of smaller open spaces or landscaped areas.</p> <p>Legal – support the development of a refined procedure</p>			

4 Executive Summary

- 4.1 The purpose of this report is to respond to the Motion from Cllr Amirtharaj which proposed to ensure that public open spaces on new developments are taken on by the Council (where possible).
- 4.2 The motion is supported with amendments and recommends that Executive endorse a review of the application of the Council's policies regarding securing and adopting public open space including an investigation of the financial and legal implications.
- 4.3 It is also recommended that the approach to engaging with Town and Parish Councils regarding funding and management of adoption is enhanced and to lobby West Berkshire MPs to resolve the relevant issues through legislation.

5 Supporting Information

- 5.1 This report sets out details of the Motion and the recommended response to the Motion and reasons for the amendments.

Background

- 5.2 A motion was put to Council by Cllr Amirtharaj as follows:

- 5.3 *“That Council notes that:*

- 5.4 *A. Developers are not always owners of a development site, as is the case with Sandleford East in south Newbury;*

- 5.5 *B. Section 106 Legal Agreements are between the Local Planning Authority and the landowner, not necessarily the developer;*

- 5.6 *C. Landowners routinely retain freehold ownership of communal areas of a site, including “public open space” (POS) and some estate roads, which gives the Council little or no control over their management and what happens there but allows them to charge high fees to residents for management over which residents have little or no control;*

- 5.7 *D. This causes conflict, confusion and problems for councils, e.g. east of Tull Way Thatcham, where local residents of the new estate tried to ban non-residents from a Public Open Space which only the residents were paying for;*

- 5.8 *E. The outgoing Government’s commitment to abolish leasehold on new housing has failed to pass into law because of the early dissolution of Parliament and without any proposals being announced by the new Labour Government.*

- 5.9 *Council believes that, in principle:*

- 5.10 *a. “public” must mean public and that there is a distinction between communal areas and facilities (which are not for the public but for sharing between residents)*

- 5.11 *and public facilities such as community centres and in particular Public Open Spaces, which can contain public footpaths and sustainable drainage systems (SUDS) for which the Council as Lead Local Flood Authority (LLFA) must have overall responsibility.*

- 5.12 *b. Communal facilities not available to other residents or the public at large should not be a financial burden on the local taxpayer;*

- 5.13 *c. Residents of every major new housing development should be enabled and encouraged to play a part in how the estate is managed, especially with communal areas, so as to enhance the sense of ownership of their community.*

- 5.14 *Council therefore resolves to:*

- 5.15 *1. Adapt our policies to work with Developers, such that Public Open Spaces in new developments can be taken on by the Council depending on affordability and after being considered on a case-by-case basis, and in such cases where the Council decides to*

Motion Adopting Open Space in New Development

take ownership, it should also take a lead role in initially managing and disposing of community facilities on new housing estates, during the S106 negotiations.

- 5.16 *2. Instruct officers to investigate the financial and legal implications of this change in our policies, in consultation with all interested parties, and report back to Council,*
- 5.17 *3. Ensure that all policies commit the Council to work with Town and Parish Councils in determining how such Public Open Spaces will be funded and managed when adopted.*
- 5.18 *4. We will press the West Berkshire MPs to lobby the Government to resolve this issue through legislation.*
- 5.19 The Motion has been reviewed and it is considered that appropriate existing planning policy exists to secure adoption of public open space. As such, it is not necessary to update planning policies, but there would be benefits to reviewing the approach of the Planning and Countryside Services in the application of these policies. As such, resolution 1 and 2 of the motion is proposed to be amended to secure a review of the application of these policies. With regards to resolution 3 and 4 these are recommended to be supported with amendments. The following considerations have been identified which support this recommendation.

Current Planning Policy and Approach to Adoption of Open Space

- 5.20 Planning Policy requires public open space to be provided on major development of 10 or more dwellings. Saved Policy RL1 (2007) states that the council will seek to transfer public open space to the control of the Council in a condition appropriate for such use together with any appropriate sum for ongoing maintenance. In addition, the Council's Planning Obligations SPD (2014) includes a topic paper on public open space which elaborates on saved policy RL1 and provides information regarding calculating commuted maintenance sums.
- 5.21 The Local Plan Review, adopted by the Council on 10th June 2025 contains policies which will replace the existing planning policies. These policies SP10, Green Infrastructure and DM40 emulate the requirements of the previous policies and continues the requirement for public open space provision on major developments and gives options for on-site provision, off-site provision, or financial contributions in lieu.
- 5.22 The supporting text of Local Plan Review policy DM40 states the following;
- 5.23 *'This policy may be satisfied through on-site provision, off-site provision, financial contributions or a combination of the three, taking into account local circumstances. In general terms, provision on site is preferred, but it is acknowledged that this is not suitable on all sites or for all types of open space. Ideally public open space provision should be grouped into larger 'park areas' where both formal and informal recreation activities can be properly integrated and managed. Particularly smaller sites are unlikely to be able to provide useable good quality space to the required standard. In applying the public open space standard the Council will not normally accept areas of less than 0.2 hectares (0.5 acres) in size, unless adjoining an existing area where the total together would exceed the minimum viable size.'*

Motion Adopting Open Space in New Development

- 5.24 *'Public open space should be genuinely available in perpetuity to the public at large. The Council will normally seek the transfer of public open space areas into local authority ownership/control in a condition appropriate for such use, and together with a reasonable sum for their ongoing maintenance.'*
- 5.25 Where a developer proposes public open space for adoption or to be retained in private ownership, the Council's Countryside Team are consulted to advise on the suitability of the public open space for adoption. If it is considered suitable for adoption then an appropriate financial contribution is calculated, in accordance with the Planning Obligations SPD which is secured through the S106 legal agreement.
- 5.26 Whether open space is considered suitable for adoption is at the discretion of the Council having regard to the Open Spaces Act and planning policy, however it is not possible to compel a developer to allow for the open space to be adopted. Adoption is a landownership matter and provided that the developer meets the policy requirements for the open space in terms of amount and type and identifies a suitable management plan and approach, it would be unreasonable for the Council to refuse a planning application for failure to enable adoption of the open space. A S106 agreement will be entered into whether or not the open space is to be adopted, with relevant clauses to secure appropriate fallback provisions in the event of failure to set up a management company.
- 5.27 In response to point 1 and 2 of the resolution of the Motion, it is considered that the new planning policy is sound and provides an appropriate and proportionate approach, allowing for flexibility in adoption of open space where necessary. In addition, irrespective of the landowner, the terms of any S106 legal agreement to secure public open space will ensure that the land is provided, maintained and kept available as public open space in perpetuity. Any breach of the legal agreement can be enforced through civil legal action taken by the Council if necessary. In the case referenced within the Motion, at Tull Way, compliance was secured through discussion without needing to resort to legal action. It is considered that the current planning policy meets the aims of the Motion in respect of securing the quality of open space and allowing the council to negotiate adoption of open space in appropriate circumstances.
- 5.28 To improve the consistency of the application of these policies, it is recommended that the Planning and Countryside teams review the current approach to the application of the policies and establish opportunities to adapt the Council's approach, including a review of the financial and legal impacts.

Role of Town and Parish Councils

- 5.29 At present, Town and Parish Councils are able to comment on planning application proposals as consultees of the planning process, however they are not routinely consulted or offered the option of adopting open space. The approach to this will be further explored to establish options and a defined process.

New Housing Development Ground Rents/Leasehold Charges

- 5.30 The difficulties faced by residents regarding ground rents and management company fees are noted however this sits outside of the planning system and cannot be controlled

Motion Adopting Open Space in New Development

through local government policy change. It is recommended to the Executive to support point 4 of the motion and lobby West Berkshire MP's for the necessary changes.

Proposals

- 5.31 The proposal is to amend points 1-4 of the motion as follows;
- 5.32 To endorse a review of the application of the Council's policies regarding securing and adopting public open space including an investigation of the financial and legal implications of any change in approach and where necessary report back to Council.
- 5.33 To enhance the approach to engaging with Town and Parish Councils regarding funding and management of adoption.
- 5.34 To lobby West Berkshire MPs to resolve the relevant issues through legislation.

6 Other options considered

- 6.1 The Executive may consider the option to not support the motion and continue to approach as per business as usual. This would have a neutral impact given that adoption of open space takes place on an existing case by case basis.

7 Conclusion

- 7.1 The council has appropriate existing planning policy to secure adoption of public open space. As such, it is not necessary to update planning policies but there would be benefits to reviewing the approach of the Planning and Countryside Services in the application of these policies. As such, resolution 1 and 2 of the motion is amended to secure a review of the application of these policies. With regards to resolution 3 and 4 these are recommended to be supported. In respect of resolution 4, this is necessary as at the moment, the planning system is not able to control that all open space is adopted by the Council.

8 Appendices

None

Subject to Call-In:

Yes: ☒ No: ☐

The item is due to be referred to Council for final approval ☐

Delays in implementation could have serious financial implications for the Council ☐

Delays in implementation could compromise the Council's position ☐

Considered or reviewed by Scrutiny Commission or associated Committees, Task Groups within preceding six months ☐

Motion Adopting Open Space in New Development

Item is Urgent Key Decision

☐

Report is to note only

☐

Wards affected: All

Officer details:

Name: Laura Callan

Job Title: Planning Service Lead

E-mail: laura.callan1@westberks.gov.uk
