

# Cherwell District Council

## Executive

3 November 2014

### Local Management Organisations

## Report of Head of Environmental Services

This report is public

### Purpose of report

The purpose of this report is for the Council to determine a clear policy regarding developers setting up local management organisations which own and maintain public open space, outdoor sports pitches and play areas on new developments, which then levy a service charge on residents for the maintenance & upkeep of such areas.

### 1.0 Recommendations

The meeting is recommended:

- 1.1 To approve the policy that the Council's strong preference is that public open space, outdoor sports pitches and play areas on new developments continue to be adopted by the Council in conjunction with the relevant town or parish council with a commuted sum based on accurate costs which reflects the Council's tendered rates for maintenance.
- 1.2 To approve the policy that the Council will only consider a local management organisation proposed by any developer, if all the conditions set out in Appendix 1 are met.

### 2.0 Introduction

- 2.1 Historically public open spaces, outdoor sports pitches and play areas in Cherwell built by developers on new housing developments have been adopted by Cherwell District Council along with a commuted sum to fund the on-going maintenance for fifteen years. Most of these facilities are transferred to Banbury Town Council, Bicester Town Council or the relevant Parish Council along with the commuted sum.
- 2.2 In the most recent proposed developments, the developer has often expressed a desire to set up a local management organisation (LMO), to carry out many of the services currently delivered by the Council and then impose a management service charge on residents. This will be an annual charge in addition to their Council Tax.

- 2.3 These proposals have often taken up extensive amounts of officer time but so far the traditional approach with a commuted sum has largely been followed.
- 2.4 LMOs can result in a number of issues for residents. Residents have to pay a service charge to cover services. These charges often seem to rise rapidly beyond inflation. Often these rises come from poor planning for future on-going costs such as replacement of play equipment.
- 2.5 It is even possible for a gated community ethos to develop as residents who are paying a service charge believe that residents nearby who are not paying a service charge should not be using these paid for facilities.
- 2.6 The Town & Parish Councils which the Council provide current services for and which are usually responsible for such sites after adoption are opposed to any LMO arrangements.
- 2.7 Local accountability can be eroded as elected members have no control of local facilities and services provided by a LMO.
- 2.8 Another concern is the standard of maintenance that is delivered. There is the potential for different standards to be delivered in different developments and that that there can be no certainty that the areas of green infrastructure will be improved in line with any district wide Green Infrastructure Strategy.
- 2.9 Developers have yet to be able to demonstrate that they can maintain areas cheaper to the same standard as in most cases they do not have the same economies of scale that the Council can achieve through a District wide approach. The Council has extensive information on grounds maintenance rates from its Landscape Management contract and it is these rates which are used to calculate the necessary commuted sum for developers.
- 2.10 Officers are currently involved in protracted discussions/negotiations with developers, having to explain the Council's position on LMOs, relying on the Council's previous successful track record of the management and maintenance of public open space, outdoor sports pitches and play areas. Therefore, adopting a clear policy on such arrangements will be beneficial in future negotiations with developers.

### **3.0 Report Details**

- 3.1 The majority of open spaces and play areas are maintained by Town or Parish Councils. Customer satisfaction with how these spaces are maintained is high with the latest 2014 customer satisfaction survey showing 77% satisfied.
- 3.2 On new developments, the developer is usually required to provide a commuted sum covering the maintenance of open spaces for 15 years. The sum is calculated from rates the Council achieved through competitive tendering the Landscape Maintenance Contract. These rates are regularly benchmarked and have always been shown to be extremely competitive.
- 3.3 However, developers can perceive that the commuted sums when calculated over 15 years to be large especially when required to be paid in full and therefore if this

payment can be avoided through a LMOs, it directly improves the profitability of their developments. They can achieve this by setting up a LMOs which will maintain open spaces and play areas. They are funded by levying a charge on residents on the development, this is in addition to the normal Council Tax charges.

- 3.4 For the Council, these arrangements lead to loss of local accountability as local members then have no control over facilities on these developments. The standards on such developments can be variable and may not fit into any district wide Green Infrastructure Strategy.
- 3.5 For residents, such arrangements inflict a service charge onto residents in addition to Council tax. These service charges can often rise significantly above inflation and residents can feel they have no influence over them. Residents can also feel that since they are paying such service charges then nearby residents not from their development should not be using facilities such as play areas since they are not paying for them. Sometimes, residents living in developments where a management company is set up feel they are paying twice – their Council Tax goes towards maintaining public open space, outdoor sports pitches and play areas and then they will have to pay a service charge as well.
- 3.6 Within new developments there are elements of affordable housing, implementing service charges which seem to rise above inflation could make affordable housing more challenging. Although provisions within a Section 106 Agreement can be used to stop any service charge making the affordable housing unaffordable, this may result in the service charge for private homeowners going up or the cost being passed on to the Registered Providers.
- 3.7 For developers these arrangements may seem attractive as they can avoid a commuted sum and the future costs of maintaining open spaces can be passed onto residents via LMOs. Developers regularly challenge the commuted sums requested since these can be significant sums of money. These challenges can be addressed through the detailed evidence base of operations and the rates the Council incurs in the current competitive landscape maintenance contract.
- 3.8 There are a number of risks associated with LMOs included standards. Having a LMO doesn't mean that standards will be low and a sufficiently resourced LMO may deliver good standards. However, if the LMO fails to deliver the required standards or goes into administration, the Council it will be difficult for the Council to influence improvement or may have to become the service provider of last resort with no funding. In these circumstances, it is important to make provisions within the Section 106 Agreement to ensure the developer agrees to step in rights for the Council.
- 3.9 To gauge how LMOs are viewed in other areas, the Association of Public Service Excellence (APSE) carried out a short survey with other members on behalf of the Council. A response was received from five authorities. The experiences from the five authorities were varied. The details of the responses received are set out in Appendix 2. There are small examples of LMOs in operation in the District and the Council does have evidence of dissatisfaction of many aspects with one of these.
- 3.10 Town & Parish Councils who are usually responsible for the on-going maintenance of open spaces, play areas and sports pitches are opposed to LMOs. The views of Banbury Town Council are set out in Appendix 3.

- 3.11 The proposed policy in Appendix 1 clearly sets out the requirements on developers if they choose to set up a LMO rather than pay a commuted sum.

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 LMOs maintaining open spaces and play areas can be satisfactory but they can sometimes bring few benefits to residents and usually levy an additional charge to residents. However, there can be potential savings to a developer for such an approach in avoiding a large up front development cost.
- 4.2 Therefore, it is important that a policy on LMOs is in place to ensure adequate safeguards and standards are established and certainty is provided for residents if a developer seeks to follow this approach.
- 4.3 In recent public inquiries, the Council's technical specifications and rates for landscape maintenance were endorsed by the inspector. Consequently the commuted sums requested on new developments have a strong basis for provision.

## **5.0 Consultation**

Banbury Town Council  
Bicester Town Council  
Association for Public Service Excellence  
The Council's Planning Team

## **6.0 Alternative Options and Reasons for Rejection**

- 6.1 The following alternative options have been identified.

Option 1 Approve the policy that the Council's strong preference is for adoption of open spaces, parks and sports pitches with a commuted sum to cover the on-going maintenance.

Option 2: To reject the proposed policy

Option 3: To ask officers to develop alternative proposals

## **7.0 Implications**

### **Financial and Resource Implications**

- 7.1 If the Council does not have a policy on LMOs or a requirement for developers to meet certain conditions through a Section 106 Agreements, the financial implications could be significant if that organisation later failed. The impact would depend on the size of the development. However, if the Council had to pick up the on-going maintenance, the costs would be in line with the rates tendered in the

Councils Landscape Maintenance Contract but with no funding to support such costs.

Comments checked by: Joanne Kaye, Interim Strategic Finance Accountant  
joanne.kaye@cherwellandsouthnorthants.gov.uk 01295 221545

### **Legal Implications**

- 7.2 Whilst this decision will not have the weight of a Supplementary Planning Document through the Local Plan process, it will send a clear message to developers that the Council's preference is for parks, play areas and open spaces to be transferred into public ownership. If these areas must be transferred to a Private Management Company, the requirements for such bodies will be governed through a Section 106 Agreement

Comments checked by: Kevin Lane, Head of Law and Governance  
[kevin.lane@southnorthants.gov.uk](mailto:kevin.lane@southnorthants.gov.uk) – 0300 0030107

### **Risk**

- 7.3 The risks will be reviewed and managed as part of the operational risk register and if and when necessary will be escalated to the corporate risk register in a timely manner.

Comments checked by: Louise Tustian, Acting Corporate Performance Manager,  
0300 0030113, [louise.tustian2@cherwellandsouthnorthants.gov.uk](mailto:louise.tustian2@cherwellandsouthnorthants.gov.uk)

## **8.0 Decision Information**

### **Key Decision**

<b>Financial Threshold met</b>	<b>No</b>
<b>Community Impact Threshold Met</b>	<b>Yes</b>

### **Wards Affected**

All

### **Links to Corporate Plan and Policy Framework**

This report directly links to all four of the corporate priorities and objectives set out in the Cherwell District Council Business Plan 2014-15 as follows:

Cherwell - A District of Opportunity  
Cherwell – Safe, Clean and Green  
Cherwell – Thriving Communities  
Cherwell – Customer focussed Council

### **Lead Councillor**

Councillor Tony Ilott, Lead Member for Clean and Green

## Document Information

<b>Appendix No</b>	<b>Title</b>
1	Proposed conditions for Local Management Organisations
2	Responses received from APSE
3	Banbury Town Council
<b>Background Papers</b>	
None	
<b>Report Author</b>	Ed Potter Head of Environmental Services
<b>Contact Information</b>	0300 003 0105 ed.potter@cherwellandsouthnorthants.gov.uk