

Relevant Portfolio Holder	Councillor Adam Kent , Portfolio Holder for Planning and Regulatory Services/ Councillor Phil Thomas, Portfolio Holder for Leisure, Cultural Services and Community Safety
Relevant Head of Service	Head of Planning and Regeneration and Interim Head of Leisure and Cultural Services
Non-Key Decision	

1. SUMMARY OF PROPOSALS

To consider and review where and if appropriate the Council's responsibilities with regard to the management of Section 106 Agreements and how the Council will adopt new public open space and, play area development.

2. RECOMMENDATIONS

- 2.1 Officers continue to consider applications on a case by case basis and agree where appropriate as a preferred option, off site provision thereby enhancing already existing facilities and what strategically is appropriate for adoption;**
- 2.2 Where it is not possible to agree that there will be a presumption that the Council will adopt land where it meets the adoptable standard as agreed by the Council. That the Developer does all agreed works prior to handover, and that an acceptable commuted sum for the long term maintenance is agreed and paid to the Council;**
- 2.3 As part of a review of the relevant Supplementary Planning Guidance, Officers are tasked with the development of an open space adoptions and S106 policy. To incorporate standards and a cost calculator to enable a more standardised calculation to be achieved; and**
- 2.4 Members note the situation nationally with regard to open space provision and the need to exercise the Council's role as community leader in writing to the Government to express its concern on behalf of its residents and to encourage a more regulated environment to be established in order that residents be safeguarded in situations where a developer chooses to retain these responsibilities**

3. KEY ISSUES

- 3.1 Leisure services have traditionally led on the adoption of open space in the Bromsgrove District Council area. The Head of Leisure Services as a consultee in the planning process considers and determines the play and open space provision for each relevant application, informed by the**

policies and guidance approved by Council in the District Plan and Supplementary Planning Guidance 11 (SPG11)

- 3.2 This enables officers to establish the appropriate commuted sum if it is considered appropriate and/or if it is the wish of a developer for the Council to adopt the open space.
- 3.3 Members will be aware that between 2004 and 2007 the Council had a moratorium on granting planning permission for most forms of new residential development which meant the opportunities to consider new open space requirements were very limited.
- 3.4 in 2007 when the policies in the Regional Spatial Strategy allowed for residential development to be positively considered again, the provision of open space and play areas continued to be assessed on a case by case basis by the Head of Leisure Services in the context of the application and the provisions established in the now expired Bromsgrove District Local Plan 2004.
- 3.5 It was however clear that the landscape may have changed and that developers were reluctant to pay the sums that had traditionally been deemed to be appropriate for the ongoing maintenance of these areas.
- 3.6 It is also fair to say that the liabilities in respect of these areas had also changed with regard to the maintenance and ongoing safety responsibilities for play and open space areas.
- 3.7 When considering the requirements under a section 106 agreement for these areas the Council can agree an onsite or off site provision.
- 3.8 This again will need to be considered on a case by case basis in line with the District Plan policies as it will be clear from the application which would be most appropriate.
- 3.9 When considering these officers have regard to the open space and play area provision, and other leisure amenities in the locality and the scale and quality of the provision being proposed by the developer.
- 3.10 It is also necessary for officers to consider the costs associated with the maintenance of the area, and its proximity to others already within the Council's ownership as this will have an impact on the costs.
- 3.11 It is also important to note that a developer is not obliged to consider passing the open space or play area provision to the Local Authority and that it is entirely their choice if they wish to retain and operate alternative arrangements.
- 3.12 Indeed in some cases developers have done this nationally to ensure a better quality of provision although it is accepted that this is not generally the case and in some cases the developers have passed the ongoing

maintenance of these areas onto the residents via a formally constituted residents' group.

3.13 Members are also aware that the Supplementary Planning Guidance that exists has not been reviewed since 2007. Revised supplementary planning guidance is being proposed by the recommendations of this report.

3.14 Members are advised that over the last ten years Off-site contributions have been received where there has been an under provision of play/open space and/or sport pitches provided on site. Receipts for Leisure off site S106 contributions for the past 10 years have been spent or are being allocated as follows:

Play: £1,248,212

POS : £ 299,982

Sport: £ 283,000

Total: £1,831,694

3.15 In terms of more recent major applications, officers are liaising with developers on both the Whitford Road and Perryfields Road sites below regarding adoption of the on-site provision and terms for adoption.

3.16 Members will be aware that there is an ongoing review within central government with regard to a number of issues that have emerged on more recent housing developments nationally.

3.17 Whilst the majority of these issues remain outside of the Council's control there is an opportunity for Council to inform and influence any changes proposed.

4. Financial Implications

4.1 Following calculation of the commuted sum the developer will then consider this in relation to the viability of the site. It is assumed that the commuted sum will be received as part of the S106 agreement.

4.2 In circumstances where the Council accept that the commuted sum is not deliverable from the developer due to the impact on the overall viability of the site, but planning permission is still granted, the Council will need to consider the financial cost over the next 20-25 years and build this into financial projections.

5. Legal Implications

5.1. Traditionally, Councils have secured the adoption and future maintenance of public open spaces through Section 106 Agreements. There is no legal requirement for Councils to take on the maintenance of open space and no legal basis (primary legislation) to compel developers to hand over ownership of open space to Councils and pay a contribution for its future

maintenance. Therefore, if the developer does not wish to have the open space adopted by the Council then alternative sustainable arrangements for its long-term maintenance will need to be made with another appropriate party (e.g. establishing a Management Company).

5.2. The Council has no powers to retrospectively adopt areas that a developer established a management company to look after.

5.3 There are examples of where developers have handed open space over to management companies run by local residents.

6. Service / Operational Implications

6.1 Making sure the open space and/or play adopted is viable and needed, this is by using the Greenspaces Strategy and Supplementary planning guidance.

6.2 Developers will be required to make contributions towards the provision and improvement of open spaces. Any revised SPG is not intended to be site-specific, It is a guide to the scale and kind of contribution (both financial and in kind) that developers will be required to make towards the provision of new, and the improvement of existing, open spaces.

7. Customer / Equalities and Diversity Implications

7.1 The revised Supplementary planning guidance / document will be subjected to a period of public consultation to ensure all those how have an interest can have their say on the future direction the Council takes.

8. RISK MANAGEMENT

8.1 The management of the land raises some concerns that the council need to be sure before any adoption of the land that it is clear of any contamination.

AUTHORS OF REPORT

Name: Ruth Bamford - Head of Planning and Regeneration and Dave Cove
Interim Head of Leisure and Cultural Services

e-mail: ruth.bamford@bromsgroveandredditch.gov.uk

dave.cove@bromsgroveandredditch.gov.uk