

Appendix A

Adoption of land by Bromsgrove District Council and the management of Commuted Sums for off-site provision.

Purpose

The purpose of this policy is to set out a clear process for the transfer and adoption of open space land from a developer to Bromsgrove District Council. The provision of the land will have already been determined as part of the Planning process in accordance with all of the relevant Council policies i.e., Open Space Strategy, SUDS schemes, Play and Sport provision as well as any other relevant guidance or requirements within the Planning process.

The transfer of this land to the Council is exclusive of any Section 38 Agreements (including adoption of footpaths, highway, and associated lighting), Wayleaves and Easements etc. which may have been negotiated, managed and confirmed by the developer separately with appropriate organisations. The developer will inform the adopting Authority of any such agreements if they are pertinent to the adoption and may thereby impact on any future access or maintenance.

Objectives

It is the intention of the Council to accept the transfer of public open space land and associated assets from the developer in the form of a S106 agreement under normal circumstances subject to the open space being laid out to the appropriate standard and subject to agreeing an appropriate commuted sum for its maintenance.

The objective of the Policy is therefore to clarify for developers what is required of them in a clear and consistent manner early in the Planning process to secure the adoption by the Council of high quality and appropriate POS.

To achieve this relevant Service areas will be required to comment on the areas for proposed adoption to agree the intended layout and to set out requirements.

When the principle and extent of what is to be included has been agreed with the developer each Service area will determine and agree with the developer the relevant standards and specifications.

This will take the form of prescriptive requirements for all hard and soft landscaping and for example will include:

- type of grass areas – i.e. natural, semi-formal or formalised
- type, quality, size and number of all trees, shrubs and any other planting
- position and maintenance of features such as ditch lines, ponds, SUDS, and ecological/bio-diversity areas
- type, quality and number of fixtures and fittings such as fences, trip rails and litter /dog bins
- type, construction and quality of any play equipment, play area and sports pitch requirements
- type, construction and quality of any hard standing/surfaces

- to agree in advance the future maintenance and longevity of what is to be transferred and to consider the future refurbishment and replacement costs
- along with any other such items that the developer may want to transfer via adoption
- to agree in advance an appropriate 30 year commuted sum to be transferred to the relevant Authority

Process

Each Service area will provide details of their requirements, via the allocated Planning Officer for the site, which must be agreed with the developer. This may require a level of negotiation.

If agreement cannot be reached or the developer is unable to provide what is required the Council will not agree to the adoption/transfer and the developer will have to make alternative arrangements i.e., a management/maintenance company, private service provider, charity, parish council management, etc.

If agreement is reached the developer will be subject to a defects/rectification period of 12 months from the date of practical completion (or an alternative date as agreed between all parties) when any failures, defects or incidental damage requires the items to be repaired or replaced at the developers cost or unless otherwise agreed by exception. Failure to do so will result in the adoption/transfer process being cancelled and the land/assets will remain with the developer.

The developer will supply electronic copies of final documents and scaled as built drawings depicting what is to be transferred along with the necessary electronic or paper documentation required by Legal Services to complete the transfer.

When agreement is reached the relevant Service area will provide a commuted sum calculation for all the assets that they will be accepting as part of the adoption/transfer. This sum will be calculated over a 30-year maintenance period with a year-on-year compound inflationary increase based on the national average CPI rate. There will also be an additional sum for any identified future refurbishment or replacement costs as well as a one-off management fee of 28% of the first year commuted sum value.

The commuted sums, refurbishment/replacement costs and management fees are to be paid upon the practical completion of the works when it is mutually agreed that all works have been done to the prescribed standard/specification. Practical completion of any tree/shrub planting and the germination of any newly seeded areas may be dependent on the season and may therefore differ from the completion of the construction and installation of any fixtures and fittings.

When practical completion has been achieved and, the relevant officers have agreed that all requirements and standards have been met, the final part of the process will be for the designated Heads of Service to agree that Legal Services can be instructed to commence the process of adoption/transfer. The transfer of open space must be free of any encumbrances and should be completed as soon as reasonably practicable and, the Council will not accept responsibility for any of the planned adoptions included in the S106 Agreement until the commuted sum has been received in full. A delay in payment may result in the areas for adoption not remaining in an acceptable condition and the adoption process will halt until such time as a new practical completion date has been agreed. If the new date is not agreed the transfer will not take place.

In the event of POS, play and sports provision not being either achievable or required within the site the developer will negotiate an appropriate commuted sum contribution to off-site provision as part of the Planning process and, will be subject to the same conditions with regard to specifications, standards, commuted sums and timescales. The offsite provision requirements based on local needs, identified improvement requirements, etc to existing provision will be detailed for the developer by the relevant Service area via the allocated Planning Officer.

Upon receipt of the commuted sum, it should be held in a defined income code for each service area separate of any Capital or other income codes. This will allow the relevant Service to manage the sums appropriately and to ensure that the funding is spent correctly and in a timely manner so as not to contravene any constraints imposed by the developer for the claw back of monies not spent within an agreed timescale and/or as per the S106 Agreement.

The Council must also be made aware of all other relevant arrangements such as S38 Agreements which may impact on future maintenance or partnership arrangements.

Non-compliance by the developer to any of the above stipulations will also mean that the adoption/transfer will not be accepted unless all changes are mutually agreed in advance by all parties.

A checklist for comments and timelines for each part of the process is set out in Appendix 1.

Appendix 1 - S106 Checklist for use by Officers to track progress

	Comments/dates
Site location/name/Planning ref no.	
Designated Planning Officer	
Env Services Officer	
Leisure Services Officer	
Legal Services Officer	
Type and quality of all soft landscaping provided	
Type, construction and quality of all hard standing/surfaces provided	
Type, quality and number of all fixtures and fittings provided	
Type, construction and quality of all play equipment, play area and sports pitch requirements provided	
All necessary plans and documents detailing "as built" provided	
Future maintenance and replacement/refurbishment programme agreed	
25 year commuted sum for annual maintenance agreed	
One off 28% management fee agreed	
Practical completion date agreed	
S106 transfer date agreed	