

REPORT TO INFRASTRUCTURE SERVICES COMMITTEE – 23 AUGUST 2018

NEW HOUSING DEVELOPMENT OPEN SPACE MAINTENANCE - MEMBER PROMOTED ISSUE

1 Recommendations

The Committee is recommended to:

- 1.1 Consider the Member Promoted Issue attached as Appendix 1;
- 1.2 Consider and comment on the feasibility for the re-introduction of a mechanism for the Council Adoption of open spaces.

2 Background / Discussion

- 2.1 In accordance with the Scheme of Governance, a Member Promoted Issue has been raised in relation to the current policy/practice not to adopt open spaces within new developments. The full text of the Member Promoted Issue (MPI) is included in **Appendix 1**.
- 2.2 In essence, the MPI asks that the decision taken in 2011 to cease adopting all open spaces within new housing developments be reviewed with the intention of re-introducing a formal mechanism for the adoption of open space. This review is requested due to some concerns received by elected members regarding ongoing dissatisfaction of residents with current private factoring services.
 - Where developers have chosen to transfer ownership of open spaces to other landowners/managers (e.g, The Greenbelt Company) or as many have, made other arrangements for the maintenance of open spaces since 2011, it would be extremely complex and difficult if not impossible to retrofit the adoption process for these.
- 2.3 The remainder of this report is structured to provide background information and comment on the current position, challenges and potential future options for consideration and comment.

2.4 Parks & Open Spaces Strategy

- 2.4.1 Aberdeenshire Council's Parks & Open Spaces Strategy vision is to:

“Provide high quality multifunctional open space that is easily accessible, safe, welcoming, rich in biodiversity and sustainably managed for the future, which encourages a sense of belonging, and enhances the quality of life of those people who live, work in and visit Aberdeenshire”.

Currently, Landscape Services are responsible for over 3,200 hectares of open space, of varying styles and classifications, including:

- Country Park / Premier park;
- Civic spaces – Town centres, village greens, town parks, village parks, HQ, etc;
- Organised Sports open space – Football, rugby, cricket, hockey;
- Recreational - Play parks, natural play areas, Kick-about areas;
- Neighbourhood green/open spaces – housing developments, School grounds, urban road verges, SUDS, etc;
- Low amenity open spaces, - blue/green corridors, buffer strips, banking's, etc;
- Semi natural – Structure planting, Wildflower meadows, species rich;
- Natural – Wetlands, aquatic, conservation areas;
- Community food growing & allotments; and
- Woodlands & forests.

2.4.2 The current Open Space Strategy was reviewed, updated and then approved in January 2011 and is available via this link:

<http://www.aberdeenshire.gov.uk/media/6077/approvedpandospacesstrategy.pdf>

2.4.3 The adoption of this Strategy removed the mechanisms by which the Developer could request that the green space be adopted by the Council. This has been important in insulating the Council from additional financial pressures that would have occurred as more open space is created as part of major residential development taking place across Aberdeenshire.

2.4.4 At this point is it important to note that Local Authorities have no statutory duty to take over the maintenance of greenspace in any new development.

2.4.5 The current Strategy does confirm that the Council will continue to provide appropriate open space maintenance associated with developments for which we are otherwise responsible, such as associated with burial grounds, schools and offices.

2.4.6 Under the current policy the manner in which “new” public open space is maintained is a matter that has to be agreed between the developer and the persons purchasing the properties within the development.

2.4.7 There are different models by which this agreement is managed. However, in general terms there would appear to be two main options, namely a requirement for the land to be managed by a contractor appointed by the Developer, or that each property is allocated a “share” of the open space. These arrangements are normally included within the property title deeds.

2.4.8 Under either of these arrangements there is normally some form of property factoring arrangement in place to manage the works and accept the payments. More detail on property factoring is included later in this report.

2.4.9 In some smaller developments it may be the case that the land is transferred but the maintenance is carried out on a voluntary basis by residents through informal agreement.

2.5 Former Policy on Adoption of Open Space

2.5.1 Until the Policy concerning adoption of open space in housing schemes was changed in 2011 it was the practice to include a clause within Section 75 Agreements to the effect that a developer **could** retain maintenance liability for the open space **or** transfer ownership of the open space to the Council for future maintenance. If the latter option were chosen by the Developer such transfer was conditional on that;

- (1) the open space being first brought up to adoptable standard;
- (2) agreement being reached on the level of a capitalised maintenance sum;
- (3) the transfer of land title (ownership) to the Council.

2.5.2 To invoke this choice the Developer was required to agree the adoptable standard with Landscape Services, undertake the necessary works, and reach agreement on the level of the capitalised sum payable to the Council. This was normally in the region of the annual maintenance cost for a 15 year period.

2.5.3 With the change of Policy in 2011 the option for the transfer of open spaces to the Council was removed.

2.6 Property Factoring

2.6.1 As set out above it is common for Developers to require residents to enter into factoring arrangements in relation to open space as part of the conditions of sale. The arrangements are normally included in the Title to the property.

2.6.2 Historically, once entered into such an arrangement, residents found it particularly difficult to take action to address poor performance, of either the Factor or the maintenance contractor.

2.6.3 Legislation in relation to property factoring was amended in 2011, partly in response to these concerns, and the amendments strengthened the options open to residents.

2.6.4 Where a factoring arrangement is in place, it must comply with the 3 main elements of the Property Factors (Scotland) Act 2011, which are;

- The Code of Conduct (sets out minimum standards of practice for registered property factors);
- The register of property factors (a property factor operating in Scotland without registration is committing a criminal offence in terms of section 12 of the Act);
- A dispute resolution mechanism (the homeowner housing panel).

2.6.5 An important strengthening of the Act over the previous version was in relation to dispute resolution. Section 16 of the Act establishes a dispute resolution system, by which a homeowner may apply to the homeowner housing panel for a determination. If the homeowner believes that his or her

property factor has failed to comply with the Code, or otherwise failed to carry out their duties, this mechanism would be open to them.

2.7 Funding of Open Space Maintenance

- 2.7.1 Landscape Services are responsible for the management, maintenance and development of Council owned/managed parks and open spaces. The annual budget for this is around £5.6 million.
- 2.7.2 While there are differing maintenance requirements for the various types of open space, APSE Performance Networks calculate that Aberdeenshire's spend per hectare of maintained open space is £5,178.00, just below the Scottish average of £5,400.00.
- 2.7.3 Since the change in policy in 2011 no new areas of open space have been adopted. However, if that option were to be reintroduced it would lead to more open space being added to the current portfolio. This would lead to a pressure on this budget line, either requiring additional funding to be made available or service levels reduced to keep within current budget provision.
- 2.7.4 Looking further ahead, housing sites allocated in the current Local Development Plan cover an area of 874 Hectares. Current guidance expects 40% of that area to be open space, equating to around 350 Hectares.
- 2.7.5 Using the current APSE calculated figure as a guide this would equate to an additional cost of between around £1.8m, depending on the amenity classification applied to the area.

2.8 Council Involvement in Maintenance of Non Adopted Open Space

- 2.8.1 The Parks and Open Spaces Strategy does make provision for the Council's trading arm (Grounds) to carry out open space maintenance for private parties or organised groups such as residents associations. This would be on a full cost recovery basis, payable by the private parties involved.
 - 2.8.2 There are certain conditions that groups need to meet (e.g, a constituted group with a single point of contact for invoicing purposes on behalf of all residents in the development) if they wish to access this option. To date this is an option that has rarely been requested.
 - 2.8.3 Whilst a large uptake of this option would see a significant pressure on existing resources (staff, plant & equipment), the additional income generated from this activity could be used by the Service to engage the additional resources required. The full implications of such an approach would have to be considered further before being in a position to commit to offer such a service in a significant way across Aberdeenshire.
- 2.9 The Head of Finance and Monitoring Officer within Business Services has been consulted and their comments are included in this report.

3 Scheme of Governance

- 3.1 The report is submitted for committee consideration in accordance with the Scheme of Governance Part 2A – List of Committee Powers, F.1.1.d and in terms of Standing Orders, Appendix A – Member Promoted Issues, section 3. The Committee has power to undertake a formal scrutiny process in terms of Part 2A – List of Committee Powers, F.7.1.1. Following consultation with Area Committees (except in the case of minor changes), it can review the effectiveness of Council policy implementation and Council service delivery in respect of any function within its remit and identify and where appropriate implement potential improvements. This power is exercisable in accordance with Part 4A Scrutiny at Aberdeenshire.

4 Implications and Risk

- 4.1 An equality impact assessment is not required because the content of this report does not have a differential impact on any of the protected characteristics.
- 4.2 There are no direct financial or staff implications arising from this report however significant addition budget or funding would be required should the adoption of open spaces in new housing developments be re-introduced.
- 4.3 The following Risks have been identified as relevant to this matter on a Corporate Level:-
- ACORP006 Reputation Management – Resulting from poor service provision.
 - ACORP001 Budget Pressures – Potential for cost increase due to more labour intensive operation.
(Corporate Risk Register).

Stephen Archer
Director of Infrastructure Services

Report prepared by Graham Wall, Business Development Manager
13 August 2018

MEMBER PROMOTED ISSUE FORM

SUBMITTED BY MEMBER Councillor Martin Ford, WARD 12.

FULL DESCRIPTION OF THE ISSUE TO BE PROMOTED:

The feasibility of the Council again agreeing to adopt public open space in new developments in the light of widespread dissatisfaction with private factoring arrangements for such areas.

IS THIS ISSUE CONNECTED OR RELATED TO ANY OTHER PROJECT CURRENTLY BEING PROGRESSED, PLEASE OUTLINE:

Not to my knowledge.

HAS THIS ISSUE ARISEN AS THE RESULT OF ANY REPRESENTATION BY CONSTITUENTS OR OTHER PARTIES, PLEASE IDENTIFY ANY INTERESTED PARTIES:

There have been many complaints from residents of schemes where private factoring is in place for the public open space. Issues of poor maintenance by factoring companies have been raised at Community Councils. I believe some complaints have been referred to Trading Standards.

HAS THIS ISSUE BEEN CONSIDERED IN THE PAST AND IF SO, WHEN AND BY WHOM (OFFICER OR COMMITTEE):

I know of no recent formal consideration.

SIGNED:

DATED:

