

Decision under Delegated Powers

Officer Requesting Decision

Head of Cleansing and Open Spaces

Officer Making the Decision

Head of Strategic Support

Recommendation

That the Borough Council proceeds with the adoption of public open space phase I comprising a linear park and recreation ground at Grange Park, Loughborough, without receiving a commuted sum towards the cost of maintenance.

Reason

During the negotiations over the section 106 agreement in 2002, a requirement for a commuted sum was not included from the agreement, reflecting the position of an earlier Section 106 agreement for the development dated 1991. The section 106 agreement is a legally binding agreement.

Authority for Decision

Part 3 of the Council's Constitution delegated authority to the Head of Strategic Support to adopt for a nominal consideration recreation/amenity/water balancing areas on new developments subject to consultation with the relevant Head of Service (item 24 on page 3-47 of the Constitution).

Decision and Date

Background

A Cabinet decision on 9th August 2001 required commuted sums to accompany all open space land to be transferred to the council. This was to cover the first 15 years maintenance cost for all adopted land.

The section 106 agreement with the developer, William Davis Ltd, for Grange Park, Loughborough, Phase I was signed 2nd May 2002. The negotiations over the section 106 agreement led to the construction of the Epinal Way Extension from the Park Road roundabout to the A6 at the northern end of the Mountsorrel/Quorn bypass and Off-site Highway improvements. As part of the negotiation, the requirement for

a commuted sum for the adoption of the linear park and recreation ground was removed from the section 106 agreement. At the same time there was a similar Supplemental Agreement with Miller Homes.

Since the construction, phase I and the recreation ground have been maintained by the developer. Discussions to transfer the land in recent months have stalled over the issue of a commuted sum. This Delegated Decision allows the Borough Council to adopt Phase I and the recreation ground.

Charnwood Borough Council has no other obligations to adopt land without a commuted sum that post dates the Cabinet decision on 9th August 2001. In 2007 the Council adopted the Section 106 Developer Contributions Supplementary Planning Document. This states: 'Where contributions are secured for the provision of facilities primarily for the people who will reside on the development or neighbouring residents, it will usually be appropriate for the developer to contribute to their subsequent maintenance costs. As a general rule, where an asset is intended for wider public use, the costs of ongoing maintenance and other recurrent expenditure associated with the developer's contributions should normally be borne by the Borough Council or relevant public sector body'.

Financial Implications

This adoption creates a service pressure identified in the 2013/14 budget.

The areas of the Linear Park I and Recreation Ground is as follows:

Linear Park I	58,144 m ² (William Davis Ltd)
Recreation Ground	<u>31,100 m²</u> (William Davis Ltd)
Total	89,244 m ²

The estimated annual cost is £41,430 for Grounds Maintenance and £3,570 for Litter Picking. A budget pressure for the total amount of £45,000 was approved as part of the 2013/14 Budget process (Cabinet item 14 February 2013).

Risk Management

List risks in table below or state that 'No specific risks have been identified with this report'.

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
Legal action by William Davis Ltd and Miller Homes if land not transferred	High	High	Delegated Decision allowing the Borough Council to adopt

Key Decision: No

Background Papers:
Cabinet Report 9th August 2001

**Section 106 agreement for Further Agreement pursuant to S106 relating to land south of Loughborough dated 2nd May 2002 (William Davis Ltd).
Subsidiary Agreement relating to land to the south of Loughborough (William Davis Ltd/Miller Homes).
Cabinet Report 14th February 2013**