

CABINET – 15TH NOVEMBER 2018

Report of the Head of Strategic Support

ITEM 7 MANAGEMENT OF PUBLIC OPEN SPACE – RECOMMENDATIONS OF SCRUTINY MANAGEMENT BOARD

Purpose of Report

To consider the recommendations of the Scrutiny Management Board arising from the recommendations of the Policy Scrutiny Group relating to the management of open spaces (which arose during the Group's consideration of the Open Spaces Strategy), alongside officer advice and recommendations in response, with a view to the Cabinet deciding which recommendations it wishes to agree, if any.

Recommendations and Reasons

Set out below is each recommendation and reason of the Board, followed by the officer advice and recommendation in each case.

Board Recommendation 1

That the Cabinet be asked to note that the fact that developers could choose not to offer open spaces for adoption by the Council and the increasing use of management companies to manage open space on developments as an alternative to adoption by the Council were of concern to the Policy Scrutiny Group.

Reason

To draw the Cabinet's attention to an area of concern.

Response of the Head of Cleansing and Open Spaces

No comment.

Officer Recommendation 1

That the Cabinet decides whether it wishes to note this matter.

Board Recommendation 2

That the Cabinet be asked to also note that the Policy Scrutiny Group identified the following particular issues with the operation of the management company model in addition to its general concerns:

- the service charges that were levied by management companies could be significant for local residents affected by them;
- there could be a lack of transparency in the way in which service charges were increased;
- there was no consideration of ability to pay when service charges were levied;

- there was evidence that maintenance work was of low quality in some cases.

Reason

To draw the Cabinet's attention to an area of concern.

Response of the Head of Cleansing and Open Spaces

No comment.

Officer Recommendation 2

That the Cabinet decides whether it wishes to note this matter.

Board Recommendation 3

That the Cabinet be asked to draw the attention of local MPs and the Government to the issues identified above so that a change in the law could be considered to require developers to offer areas of open space to local authorities for adoption.

Reason

While acknowledging that the current system could only be altered through a change in the law, to request that the Cabinet seek to influence Government policy regarding the matter.

Response of the Head of Cleansing and Open Spaces

The current Open Spaces Strategy states that the Council will continue to seek alternative funding mechanisms to minimise the long-term impact on the Council Tax payer.

This Council's current policy for the adoption of open space requires developers to pay a commuted sum that equates to the cost of 20 years maintenance. The calculation period for the commuted sum varies between local authorities. Some local authorities effectively refuse to adopt any new open spaces regardless of the payment of a commuted sum.

Most, if not all, developers are willing to offer open space for adoption by the Council; however, many are unwilling to pay the commuted sum and elect to establish a Management Company to oversee and arrange the ongoing maintenance. The costs of maintenance are recovered from local residents through a service or management charge.

In the current financial climate, and with the expected rate of housing growth, it is not viable for the Council to adopt new open spaces without a commuted sum, or with a change to the calculation methodology that leads to the commuted sum being reduced.

The concerns identified by the Policy Scrutiny Group, as set out in recommendation 3 and the reason, are ones that are not within the Council's powers to address and would require a change in legislation.

Officer Recommendation 3

That the Cabinet decides whether it wishes to take the action set out.

Background

In accordance with the Scrutiny Work Programme and given the Group's remit to engage with reviews of Council policies and undertake scrutiny of those policies, the Policy Scrutiny Group, at its meeting on 25th September 2018, considered a report updating the Group on work to deliver the adopted Open Spaces Strategy 2013-2028 and the need to produce a revised Strategy and action plan. Arising from its scrutiny of the matter, the Group considered the issue of responsibility for the maintenance of open spaces on new developments and the increased use of management companies for this as an alternative to offering the land for adoption by the local authority. Following its scrutiny of the matter, the Policy Scrutiny Group asked the Scrutiny Management Board to make the above recommendations to the Cabinet, which the Board supported at its meeting on 24th October 2018. An extract from the minutes of the meeting of the Policy Scrutiny Group setting out the Group's consideration of the issue is attached as an Annex to this report.

Policy Justification and Previous Decisions

Scrutiny Committee Procedure 11.12 sets out the procedure by which a report of a scrutiny committee should be considered by the Cabinet.

Implementation Timetable including Future Decisions and Scrutiny

The Council's Open Spaces Strategy is currently being reviewed, and updated Playing Pitches, Open Spaces and Built Facilities Strategies are due to be considered by the Cabinet at its meeting on 13th December 2018.

Report Implications

The following implications have been identified for this report.

Financial Implications

There are no financial implications associated with the recommendations of the Scrutiny Management Board.

Risk Management

There are no specific risks associated with the recommendations of the Scrutiny Management Board.

Key Decision:

No

Background Papers:

None

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MINUTE EXTRACT

POLICY SCRUTINY GROUP
25TH SEPTEMBER 2018“17. OPEN SPACES STRATEGY”

A report of the Head of Cleansing and Open Spaces, providing an update on work to deliver the adopted Open Spaces Strategy 2013-2028 and the need to produce a revised Strategy and action plan, was submitted (item 8 on the agenda filed with these minutes).

The Head of Cleansing and Open Spaces and the Policy and Green Spaces Development Manager assisted with consideration of the item and provided the following responses to issues raised:

- (i) There was no requirement for developers to offer open spaces to the Council for adoption. For the Council to adopt an area of open space the developer was required to pay a commuted sum equivalent to 20 years of maintenance costs which would be secured through a Section 106 Agreement. It was becoming more common for developers to choose to transfer open spaces to a management company which could levy a service charge on residents to cover the cost of maintenance. Service charges could also be levied to fund the cost of maintenance of other communal facilities such as lighting, parking and unadopted roads.

[part of minute omitted]

The following comments were made by members of the Group:

- (i) The levying of service charges for the maintenance of open spaces could come as a shock to residents. There were also concerns regarding the way in which service charges increased and the quality of the work that was undertaken to maintain some open spaces managed in that way.
- (ii) It would require a change in the law to require developers to offer open spaces to councils. Given the increasing use of management companies rather than adoption by councils and concerns about that model it would be appropriate for the Borough Council to ask the Government to consider amending the law.

RESOLVED

1. that the report be noted;

2. **that it be recommended to the Scrutiny Management** that the following recommendations be submitted to the Cabinet in respect of the Open Spaces Strategy:
 - a) that the Cabinet be asked to note that the fact that developers could choose not to offer open spaces for adoption by the Council and the increasing use of management companies to manage open space on developments as an alternative to adoption by the Council were of concern to the Policy Scrutiny Group;
 - b) that the Cabinet be asked to also note that the Group identified the following particular issues with the operation of the management company model in addition to its general concerns:
 - the service charges that were levied by management companies could be significant for local residents affected by them;
 - there could be a lack of transparency in the way in which service charges were increased;
 - there was no consideration of ability to pay when service charges were levied;
 - there was evidence that maintenance work was of low quality in some cases;
 - c) that the Cabinet be asked to draw the attention of local MPs and the Government to the issues identified above so that a change in the law could be considered to require developers to offer areas of open space to local authorities for adoption.

Reasons

1. To acknowledge the information received.
2. To draw the Cabinet's attention to an area of concern and, acknowledging that the current system could only be altered through a change in the law, to request that the Cabinet seek to influence Government policy regarding the matter."