

POLICY FOR DISPOSAL OF PUBLIC OPEN SPACE TO PRIVATE INDIVIDUALS

1.0 Introduction

- 1.1 The Council seeks to protect and retain public amenity open spaces in the Borough whether they are for visual amenity, formal or informal leisure use or have a value for wildlife conservation and the preservation of biodiversity. ('Public Open Space' land is not always 'open' to public use, but is nevertheless of public value due to biodiversity, hydrology and other reasons.) Areas may also have a potential value for promoting accessibility for connections between footpaths, bridleways and cycle routes or for addressing local road safety and parking needs. Areas of open space are often integral to the design and landscaping of developments, e.g. the spacing and relationships of built and non-built forms in the environment.
- 1.2 Areas of vegetation can help to cool the microclimate and provide shelter for local species of plant or animal as well as reduce pollutants in the air and reduce the rate of surface water run-off and provide natural filtration for pollutant run off before it reaches our valuable river systems of the Itchen and Hamble.
- 1.3 These parcels of land, irrespective of size, are covered by this policy and preserved by the provisions contained in the Local Plan. The Council's policies seek to protect and secure additional provision of open space.
- 1.4 Open space is provided for the benefit of the public as a whole and its disposal to private individuals for their exclusive use is not consistent with this principle. There is therefore a presumption against disposal of public open space for private use.
- 1.5 When planning permission for new large major residential development is granted, it is made conditional upon the developers providing suitable landscaping and adequate areas of open space. These requirements are usually protected in legally binding planning or open space agreements.
- 1.6 The legal title of land transferred to the Council under such agreements by developers usually contains restrictive covenants, requiring the land to be used only for open space purposes and not sold or developed for financial gain by the Council.
- 1.7 In addition to areas of land transferred in this way, the Council also holds title to other areas of public open space acquired in different ways and not connected to specific planning agreements.
- 1.8 The applications for the Council to dispose of small parcels of Council owned public open spaces are usually made by homeowners adjoining such areas of open space.

1.9 Disposal - a disposal for the purposes of this policy means any freehold disposal, by sale or exchange of Council owned land or any disposal by granting or assigning of a lease or any disposal of an interest in the land.

2.0 Grounds for disposal of public open space

2.1 The Council recognises that occasionally there may be exceptional circumstances which should be taken into account when considering applications.

2.2 The Council will consider disposal of public open space on a case by case basis, depending on the exceptional circumstances where the application is in the opinion of the Lead Asset Manager, Head of Direct Services and Head of Environment in relation to a small parcel of public open space.

2.3 Such exceptional circumstances include:

- a. Public access to (or views of) the open space is severely restricted and as such the land has little benefit to the public;
- b. The open space has little biodiversity, hydrology, shading or air quality value;
- c. The use of or management of the open space is giving rise to a serious nuisance to adjoining property owners, e.g. where the land intrudes into the logical boundary of a dwelling, or where balls can be kicked against a flank wall;
- d. The open space is needed to adapt a particular property or provide access to a particular property occupied by an individual with specific requirements as a result of severe disabilities or other health problems;
- e. The cost of managing the open space is prohibitive when set against the public benefits of retaining the land as open space, i.e. irregular boundaries result in the need for manual rather than mechanical maintenance;
- f. The open space is required to provide an access to enable a housing site to be accessed for development;
- g. The open space is required to provide access to allow off street parking to be provided where this would benefit highway safety.

3.0 The process for evaluating applications for the Council to dispose of public open space

3.1 The Asset Management team will apply this policy on receiving the initial application and only allow applications where exceptional circumstances apply.

- 3.2 The applicant should ensure that the land they are requesting the Council dispose of is owned by the Borough Council by undertaking a Land Registry search. They should submit a copy of this with their application stating the grounds for disposal together with supporting evidence and payment of an administration fee in line with the Council's fees and charges.
- 3.3 In considering requests for the Council to dispose of public open space and whether exceptional circumstances do apply, the Lead Asset Manager will consult with relevant stakeholders, Local Area Manager, Local Area Committee Chair and ward councillors on the principle of disposal including whether these circumstances can be effectively dealt with in alternative ways that do not result in the disposal of public open space. This consultation process will be undertaken within 8 weeks of the original valid application being received.
- 3.4 Once an application has been consulted on if ward councillors support the principle of disposal and it is also agreed with the relevant Local Area Committee Chair and portfolio holder, the Council will notify the applicant and adjacent neighbours of the land of their intention to dispose of the land. In addition the Council will place an advert in the local press for two consecutive weeks announcing the Council's intention to dispose of the public open space. A period of 28 days from the date of the second advertisement has to be allowed for any objections from the public.
- 3.5 A report will be prepared by the Lead Asset Manager with their recommendation setting out any objections received. This report will be prepared within 8 weeks of the end of the period for objections from the public and presented to the next relevant Local Area Committee meeting for a final decision on the application.
- 3.6 All reasonable costs of advertising the proposed disposal will be payable by the applicant whether or not the disposal proceeds to completion as a result of public objections.
- 3.7 In cases where the principle of disposal is not agreed, the Lead Asset Manager will advise the applicant that the Council do not consent to disposal and outline the reasons including providing information where alternative solutions are agreed to deal with exceptional circumstances.
- 3.8 Examples of alternative solutions to deal with exceptional circumstances include:
- 3.9 Where it has been claimed that the land is untidy and unmanaged, the Council will review the condition and Council's maintenance programme of the land to ensure it is properly maintained.
- 3.10 Where it is claimed that there is a nuisance from public open space, the Council will seek to eliminate or reduce the nuisance.
- 3.11 Where it is considered that a disposal is not in the interests of the Council the Lead Asset Manager may decide that a temporary licence of the land would

be more appropriate. In these cases the Lead Asset Manager may grant a licence to use the public open space; the terms on which it is granted will be agreed by the Lead Asset Manager in consultation with the relevant Stakeholders including the relevant Local Area Manager and Local Area Chair.

4.0 Terms and Conditions for the disposal of public open space

- 4.1. The terms for disposal will be determined by the Lead Asset Manager in consultation with the relevant Stakeholders including the Head of Direct Services, Head of the Environment, Head of Housing and Development and Local Area Manager and will be subject to conditions including covenants to ensure that the land is only used for the agreed purposes.
- 4.2. It will be subject to the following conditions:
 - a. No building, shed, greenhouse, wall or other structure shall be erected on the land unless prior agreement has been obtained from the Council;
 - b. No fence or hedge over 1 metre in height shall be erected (except away from the highway where planning consent has been obtained for a higher fence or where a fence or hedge exists with approval of the Council);
 - c. No commercial operation (eg the growing of plants for sale) shall take place on the land;
 - d. Planning permission for change of use from public open space to principle garden will need to be obtained by the applicant before the disposal can be completed;
 - e. Maintenance of land must be in accordance with the recommendations of the Head of Environment;
 - f. Transfer of all liabilities arising from land ownership and rights reserved.
- 4.3. These conditions are intended to:
 - a. Maintain the amenity of the land;
 - b. Ensure that no material change of use occurs that would contravene planning regulations;
 - c. Protect underground services from damage;
 - d. Protect the local environment, natural drainage and the biodiversity within the area.

- 4.4. The disposal price shall be determined by the Lead Asset Manager and the purchaser shall pay all the Council's reasonable costs in the disposal including an initial administrative charge.
- 4.5. The law requires that the Council should seek best financial value for the disposal of land. The proceeds from such disposals under the value of £10,000 are treated as revenue income, in the event of a disposal being agreed above this figure, the proceeds are treated as capital receipts.

5.0 Where disposal refused and temporary licence proposed

- 5.1. Where the Council agrees to grant the applicant a temporary licence for use of public open space, the terms will be agreed including the licence fee payable by the Lead Asset Manager in consultation with relevant Stakeholders including the relevant Chair of the Local Area Committee and Local Area Manager. It is likely that any such temporary use will be subject to the following conditions:
- a. The licence will be personal to the applicant and non transferable;
 - b. No building, shed, greenhouse, wall or other structure shall be erected on the land;
 - c. No fence or hedge over 1 metre in height shall be erected (except away from the highway where planning consent has been obtained for a higher fence or where a fence or hedge exists with approval of the Council);
 - d. The land must be maintained so that it remains of a satisfactory appearance at all times;
 - e. Where the land is deemed of ecological value it is maintained in such a way as agreed by the Council's Ecologist as of benefit for wildlife conservation and the protection of biodiversity;
 - f. No trees shall be planted or removed without written agreement of the Council;
 - g. No fires shall be lit, nor rubbish dumped, nor materials stored (including compost) nor vehicles parked on the land;
 - h. No commercial operation (eg the growing of plants for sale or rearing of livestock) shall take place on the land;
 - i. No digging or excavation that would adversely affect the hydrology or stability of the soil or subsoil in the surrounding area;
 - j. Obtain planning permission to the licence holder for change of use from public open space to principal garden.

5.2 These conditions are intended to:

- a) Maintain the amenity of the land and ensure its visibility and enjoyment by the public;
- b) Ensure that no material change of use occurs that would contravene planning regulations;
- c) Protect underground services from damage;
- d) Protect biodiversity;
- e) Protect hydrology, drainage and stability of the land.

5.3 If any of these conditions are breached, the Council will reserve the right to terminate the licence and reoccupy the land.

5.4 On termination of the licence agreement by the Council or the surrender of the licence by the licensee, the Council will, at its discretion, require the removal of all or any plant materials and reinstatement of the land to a satisfactory condition at the expense of the licensee or shall undertake works itself and charge the costs to the licensee.

6.0 Dispute resolution

6.1 Any dispute over the Lead Asset Manager's rejection of an application for the Council to dispose of public open space where it is considered that either it does not relate to a small parcel of open space, no exceptional circumstances exist or where they cannot be addressed in alternative ways shall be passed to the Chief Financial Officer in consultation with the relevant Portfolio Lead/Local Area Committee to determine.