

Great Denham Parish Council

Discussion Document – Open Space Management in Great Denham

Prepared for meeting between Mayor and Chief Executive Bedford Borough Council and
Chairman and Vice Chairman, Great Denham Parish Council, 19th February 2018

1. The Transfer of Open Space – Kempston West and Biddenham Loop (now Great Denham)

1.1. On 22 September 2009, Councillor Attenborough, the then Deputy Mayor, was asked to consider a Report¹ authored by the then Executive Director (Environment and Sustainable Communities) on the subject of the Management of the Country Park and Open Space – Kempston West and Biddenham Loop (KWBL). The paper outlined the David Wilson Homes (DWH) development of the land in Kempston West and Biddenham Loop and the provision of over 2,700 homes over the following 10 years. It talked specifically about the ownership and management of the Open Space (OMS) and made two recommendations, that;

- a) *The Council negotiates with DWH to set up an arrangement whereby the Council accepts a transfer of open space within KWBL and undertakes the management of the open space through a contract with DWH which is financed by way of a service charge payable by the residents;*
- b) *The Executive Director of Environment and Sustainable Communities is authorised to negotiate and approve agreements for the transfer and the management of open space within the Borough including that which is to be undertaken through a contract arrangement financed by a service charge payable by residents whether pursuant to a planning obligation or otherwise.*

1.2. The paper, crucially, makes (at para. 4.3) the very clear distinction between the ‘*Management of the Country Park*’ for which the Council was to receive £3.554m and the ‘*Management of the Open Space*’ where it is made plain that DWH would not pay a commuted sum to the Council but would instead require each purchaser of a property to enter into a deed upon completion of their purchase to pay an annual service charge to cover the costs of open space management within the development. The paper (para. 4.4) goes on to state that ‘*the amount recoverable would (be) variable according to the actual management requirements and costs from time to time*’. The paper simply states that DWH has calculated that the initial service charge would be £105 per property (but that VAT would likely apply to this figure).

1.3. The Decision Paper goes on to articulate the perceived risks to acceptance of the two recommendations above. Rightly, it describes a likely ‘*risk of disgruntlement amongst property owners*’ in that ‘*all the facilities within KWBL will be available to the general public but will be maintained only by funding from the property owners*’. It continues; ‘*A further point of contention might arise that the Council would be seen to maintain other open space at no cost to the residents local to that open space beyond Council tax*’. The Author was absolutely right in both respects but in our view does not go far enough in identifying additional risk.

1.4. Councillor Attenborough agrees the recommendations on the 22 September 2009 and an implementation date of 2 October 2009 is set. The decision is made despite the paper failing to;

- a) Append a map to show the areas to be managed under the Commuted Sum;
- b) Append a map to show the areas to be managed within the proposed OMS;
- c) Identify the land mass (m2) across the OMS area (encompassing both Kempston West / Biddenham Loop (now Great Denham);
- d) Identify the land mass (m2) / percentage split between Kempston West and Biddenham Loop;
- e) Identify the contributing households upon development completion across the KWBL area and split between Kempston West / Biddenham Loop;

¹ Record of Executive Decision taken by an Executive Member or Officer – Decision number 716, 22 September 2009

- f) Identify the likely revenue receipt from the residents of Kempston West and Biddenham Loop (as a total and divided by Parish);
- g) Provide any commentary on the projected cost of maintenance of the Open Space (the '*actual management requirements*' and likely '*costs*' of maintenance);
- h) Provide any breakdown of cost per household per m2 for residents of Kempston West and those in Biddenham Loop;
- i) Discuss any need to consult and take cognizance of the views of the respective Parish Councils in terms of the proposals and recommendations within the Paper.

1.5. One of the key (7) Principles of Public Life is that of Objectivity; '*Holders of public office must act and **take decisions impartially, fairly and on merit using the best evidence and without discrimination** (our emphasis) or bias*'. In the view of Great Denham Parish Council, the decision making here simply fails to demonstrate such objectivity. It was not a well evidenced, informed decision and as a consequence it has failed to recognise the biggest single risk, that of a completely unfair apportionment of charges between the Parishes of Great Denham and Kempston.

1.6. Whilst the paper does delineate clearly between the funding of maintenance of the Country Park / OMS, somewhere in the implementation process such clarity is lost. Within Great Denham, a common understanding existed that the £120 charge related directly to the maintenance of the Country Park. A number of factors influenced this perception:

- a) The Transfer Documents (TP1s) for the majority of households refer to the OMS charge as a '*Parkland Management Fee*' and go on to define the '*Parkland Management Company*' as '*a body appointed or to be appointed by the Transferor in the upkeep of the amenity areas defined in the Schedule*'. The schedule defines the '*Amenity Areas*' as '*those parts of the estate from time to time set out or intended to be set out as *'leisure facilities**'. It then goes on to define the Annual Management and Maintenance Cost as '*the total sum **properly and reasonably incurred** (our emphasis) in any year by the Transferor or their successors in title to the amenity areas in connection with the managing and maintaining of the Amenity Areas*'.
- b) The sales material generated by DWH² was categorical in terms of the £120 charge and the rationale for it. It stated '*DWH has designed and will be laying out a 200 acre Country Park, open to the public, it will include formal and informal open space areas, 6 formal playing fields, an all-weather multi-use pitch, youth facilities and a new pavilion including changing rooms. **The park and all of the public open space areas will be managed by a professional management company in return for an annual maintenance charge** (our emphasis). This will start at £120 per dwelling, then rise with inflation each year and be adjusted for out-turn maintenance costs every five years*'.

1.7. In addition, you (the Mayor) may recall our correspondence on this issue when the specific question was asked in terms of the rationale for the charge. In the email sent on 10 May 2015 (to Martin Stuart) you made clear your understanding of the rationale in that it related directly to the '*provision of and **laying out of appropriate parkland and formal play spaces***'(our emphasis).

1.8. The Parish Council would argue that the three examples given above adequately explain the confusion in terms of what the charge related to and the overwhelming belief was that it was to cover the maintenance of the Country Park. Of course, it is now clear that the Country Park will be maintained entirely separately and from within the £3.554m commuted sum receipt (we understand, following further communication from Paul Pace, that this was later reduced to some £2.6m).

² DWH A4 Fairways Amenity Brochure, page1 1 April 2010

2. The Annual Charge for Maintenance of Open Spaces

2.1. On 28 February 2017, Lee Phanco (Assistant Chief Finance Officer) wrote to all residents to explain the 'Annual Charge for Maintenance of Open Spaces'³ and informed residents that the charge of £120 would be invoiced separately. The letter stated that the charge was for the maintenance of green spaces on the development and includes 'landscape management; grass cutting; (hard and soft); litter bin emptying, play area checks and shrub pruning; maintenance of hedgerows and trees, future planting etc.'

2.2. The letter also made crystal clear that 'all money received through payments of the annual sum will be kept in a separate ring-fenced fund and can only be used to meet the costs of the ongoing management of the open spaces..'

2.3. The invoice to residents was sent (dated 1.4.17) which led to an array of complaints on Twitter; Facebook; via email and in public parish meetings. Initiated through the Residents Association, a petition (from Great Denham RA and separately, those residents of Kempston) led to a debate at the Full Council meeting of 12 July 2017. As a consequence the Council resolved to 'provide **maximum possible transparency** (our emphasis) to residents in respect of the use of funds raised via the charge, including accounts displaying income and expenditure'.

2.4. Despite the promised openness and transparency, it is fair to say that the process has been somewhat fraught. Whilst numerous examples of delay; prevarication and open defensiveness could be evidenced through the now historical email / meeting exchanges, there is little point in documenting this grievance here. Suffice to say, it has taken months to get to the position we now find ourselves in and there are a number of issues that remain unresolved.

3. The consequences of the Charge for Open Space Management

3.1. What has transpired, eventually, through the (necessarily repeated) questions posed by email to Paul Pace (Chief Officer – Environment) and through meetings with him and Lee Phanco (on 27 April 2017; 29 June 2017; 16 October 2017 and 29 January 2018 (although Lee Phanco didn't arrive on the latter date) with respect to the Open Space Area is as follows:

Total Land Mass – Great Denham and LWOK	115,112m2
Total Land Mass – Great Denham	24,324m2 or 21% of total (rounded)
Total Land Mass – Land West of Kempston	90,788m2 or 79% of total (rounded)

Table 1 – Land Mass

Total Receipt – Total OMS area (in 2019/20)	£331,200 (£120 charge per household)
Total Receipt – Great Denham (planned 1500 houses)	£180,000 or 54% of total (rounded)
Total Receipt – Land West of Kempston	£151,200 or 46% of total (rounded)

Table 2 – Total Receipt

Total Charge per m2	£2.88 per m2
Total Charge to Great Denham residents	£7.40 per m2 (£4.52 over average charge)
Total Charge to Land West of Kempston residents	£1.67 per m2 (£1.21 under average)

Table 3 – Total Charge

3.2. In the view of Great Denham Parish Council, it is exactly this sort of data that should have been made available to Councillor Attenborough to better inform the decision making on 22 September 2009. Even if not articulated within the paper submitted by the then Executive Director (Environment and Sustainable Communities), Councillor Attenborough should have recognised that (in covering two separate Parishes), greater granularity of data was necessary on which to make a professional judgement in terms of fairness and reasonableness. The data, no matter

³ Letter to Residents from L Phanco, 28 February 2017 – Annual Charge for Maintenance of Open Spaces

how much you look at it, demonstrates a complete inequality in terms of the value for money afforded to residents of Great Denham when compared to those of Kempston.

4. Lack of Clarity in terms of Large Play Park inclusion

4.1. In preparing this discussion document it became clear that there was a lack of clarity as to whether the two large play parks within the Country Park were to be maintained from the Commuted Sum fund or the OMS fund. The decision paper⁴ considered by Councillor Attenborough makes clear that the £3.554m (at the then current rates) would sustain the maintenance of the Country Park for some 18 years. It is specific (para. 4.3) when commenting on the '*Management of the Country Park*' that the commuted sum '*will not cover for major maintenance of footways/buildings or replacement of play areas at the end of the term*' (our emphasis) and that this will have to be subsumed within Council budgets (mitigated by the increase in the Council tax base from the new development).

4.2. It is, in the view of Great Denham Parish Council, clear from this narrative, that the maintenance of the two large play parks within the Country Park is to be funded through the use of the Commuted Sum and not the funding received as a consequence of the Open Space Management (OMS) charge. Indeed, this position is strengthened by the OMS Area Land Registry Transfer (TP1) dated 20 June 2017⁵ which highlights the small play parks within the residential development in the plan attached to the Transfer of Title (edged clearly in red) but does not incorporate the two large Country Park Play Areas.

4.3. Paul Pace and Lee Phanco have maintained, throughout our meetings in 2017/18, that the two large play parks are to be maintained through the OMS funding. Indeed at our last meeting, when presented with the data above (tables 1-3) Paul Pace attempted to argue that, as Great Denham had a bigger play park than Kempston, the figures were in some way justifiable.

4.4. In an attempt to clarify the position with regard to the play areas (and their maintenance) we wrote to Paul Pace to seek a definitive position. In his response of 9 February 2018 he has been unable to provide any certainty on this issue, instead making assumptions on historical plans (which still show 2 play areas but not a large Hub in the Country Park) and some meeting notes dating back to 2013 but without any recourse to any definitive legal documentation or title transfer. The fact remains that play facilities are specifically mentioned in the s106 Agreement and the two large play areas within the Country Park do not feature in the Land Registry title transfer of the OMS (from the Developer to Bedford Borough Council).

4.5. Additionally, your very own website⁶ (under Great Denham and Land West of Kempston Developments) reinforces this position still further. The map of the Great Denham development (on your website) shows just 4 SLAP parks (small areas of play) within the residential development (shaded dark green) and clearly excludes the two larger play parks (shaded light green) within the Country Park. The accompanying text (on the rationale for the annual charge to property owners) is unambiguous; '*The open spaces that will be maintained under the agreement are the areas shown in green on the following maps but the charge will only relate to the darker green areas*' (our emphasis).

5. A failure to Ring Fence OMS Funds

5.1. Earlier in this paper, we referred to the correspondence (Lee Phanco) of 28 February 2017⁷ and more specifically, the comment that '*all money received through payments of the annual sum will be kept in a separate*

⁴ Record of Executive Decision taken by an Executive Member or Officer – Decision number 716, 22 September 20009

⁵ TP1 – Land Registry Transfer of Part of Registered Title – BD260950/BD259711

⁶ Bedford Borough Council website: www.bedford.gov.uk

⁷ Letter to Residents from L Phanco, 28 February 2017 – Annual Charge for Maintenance of Open Spaces

*ring-fenced fund and **can only be used to meet the costs of the ongoing management of the open spaces..***' (Our emphasis). This has proven not to be the case. Having directly witnessed Council / Contract staff interchangeably working on the OMS Area; currently un-adopted verges in Great Denham and the older residential areas of the development, this issue was raised directly with Paul Pace at our meeting with him (Lee Phanco not attending) on 29 January 2018.

5.2. Some context is necessary here. On 14 June 2017 the Parish Council met with both Paul Pace and Ian Bennett (David Wilson Homes - DWH) to discuss the better co-ordination of grass cutting on both the OMS Area and the grass verges on the myriad roads running through the development (but awaiting adoption and transfer to Bedford Borough Council). At that meeting it was agreed that the staff maintaining the OMS Area would, additionally, take over the maintenance of the wider verges to bring about both greater consistency and a higher standard of maintenance (which, subsequently, did transpire). It was, however, assumed (following the withdrawal of the Parish Council representative from that meeting), that Paul Pace would negotiate a fee from DWH for this additional work. It is now clear (acknowledged by Paul Pace at our 29 January 2018 meeting) that no such negotiation did take place and that both employed and contract staff (of Bedford Borough Council) were deployed on this wider verge management work with no DWH recompense for the time / equipment deployment. It was simply coded to the OMS Account. The area of land maintained on behalf of DWH amounted to 14,596m². This number is significant in the context of the OMS Great Denham area (at just 24,324m²). Paul Pace was asked if the deployment of staff (paid for by OMS monies) to DWH verge areas would result in a cross-charge back from Council funds to the OMS Account. He has argued that, for the period June – December 2017, the DWH verge management would have only cost about £2,000 to maintain and as yet, to our knowledge, there has been no re-credit to the account.

5.3. The important point to note here is that if an area of 14,596m² can be maintained for nearly 6 months and throughout the main grass-growing period for just £2,000 (which equates to 13.7p per m²) then 24,324m² would be calculated at £3,332.38 on that same basis (13.7p per m²). Whilst it is appreciated that there is a degree of border maintenance to add to that, there can simply be no justification for the £180,000 figure to be collected. It also raises a significant question as to how (see Table 1 at 3.1 above) a total charge average of £2.88p per m² across the whole OMS area can in any way be justified, and worse still, an effective charge of £7.40 per m² for residents of Great Denham.

5.4. At that same 29 January 2018 meeting it was also put to Paul Pace that the considerable spend on capital equipment (vehicles / equipment) had also been diverted to maintain both the wider DWH verge maintenance and the older parts of Great Denham (which should be wholly funded through Council Tax provision). This, eventually, was also conceded. Vehicles and equipment purchased with monies received through the OMS charge have been deployed outside of the OMS, a position totally contrary to assurances given by Bedford Borough Council.

5.5. Repeated requests to secure the deployment dates of permanent / contract staff to the OMS area itself (rather than the DWH verges / older part of Great Denham) have been largely ignored (since our June 2017 meeting) and as a consequence, the Parish Council cannot, in any way be reassured that staff deployment data is accurate. In truth, in the continued absence of deployment data (which was made available prior to June 2017), we suspect that both permanent / contract staff have been deployed to the wider DWH verges; the older parts of the development and possibly elsewhere outside of the Parish and that that such deployment may have been wrongly coded to the OMS Account.

5.6. Finally, at that same meeting (29 January 2018), Paul Pace was good enough to concede, because of the '*flak*' taken both here and in Wootton, that you, as Mayor, have stated you would not be engaging in any similar arrangement on future housing developments. This is entirely understandable in our view and a reflection of the total unfairness of the scheme. What it doesn't do, however, is deal with the inherent unfairness in terms of the imposition of the charge on residents of Great Denham.

6. Summary and Conclusions

6.1. This paper, in our view, clearly demonstrates significant failings in the now historical decision making process within Bedford Borough Council in terms of acceptance of this Open Space Management arrangement. Councillor Attenborough, at the time of making the Executive Decision should have either been furnished with the relevant data to determine the fairness and equitability of the charge across both Great Denham and Land West of Kempston or, having not been so furnished should have recognised the shortcomings of the paper and asked some searching questions of the Author before simply signing off the decision and Officer recommendations.

6.2. The decision paper recognised a generic risk of disgruntlement amongst property owners but fails, due to the lack of granularity of data, to recognise the more specific disgruntlement now evident and arising from the comparative analysis at 3.1 (above) on the part of Great Denham residents. It highlights the very real contention that residents here (and in Kempston) rightly feel that the imposition of the Open Space Management Charge is both unfair and unreasonable, not least when the Council routinely maintains other open spaces right across the Borough from an ever increasing Council Tax receipt. This feeling of unfairness is exacerbated in Great Denham by the relatively small parcels of land as a percentage of the whole.

6.3. What has emerged from an often fraught process of openness and transparency is the fact that, far from the annual sum being kept in a *'separate ring fenced fund'*, one that *'can only be used to meet the costs of the ongoing management of the open spaces'*, the polar opposite is evident. Vehicles and equipment (purchased with OMS funds) and indeed permanent and contract staff charged to the OMS Account have been routinely deployed to the wider areas of Great Denham (and possibly beyond) which is hugely disappointing and a clear misuse of the OMS funds.

6.4. Furthermore, it now appears that the two large play parks (maintained, inspected and charged to the OMS Account) do not actually sit within the OMS Area at all and should be maintained from the Commuted Sum receipt from the Developer. They do not form part of any legal Land Registry Transfer and the Chief Officer responsible cannot lend on any documented legal position to the contrary.

6.5. This paper has highlighted significant shortcomings and clear reputational risks for Bedford Borough Council, not least in terms of the quality of decision making and management practice. The degree of openness and transparency, and the evident accounting practices, leave much to be desired.

6.6 It is the firm view of the Parish Council that the arrangement for OMS was, from the outset, based on an inadequate proposal, one that on the above analysis has proven to be both a logistical headache for the Council in terms of administration, but also one that has led to the imposition of a wholly unfair, unjust and unreasonable charge to the residents of Great Denham. We feel the decision to impose this charge should be rescinded before the commencement of the 2018/19 financial year and that responsibility for the relatively small area of land (just 24,324m²) should be funded entirely through Council Tax receipt.

14 February 2018