



Cabinet

Tuesday, 14 May 2024

Management of Open Spaces in New Developments

Report of the Director – Development and Economic Growth

Cabinet Portfolio Holder for Planning and Housing, Councillor R Upton

1. Purpose of report

- 1.1. This report sets out the Council's current position with regards to the management of open spaces on new developments within the Borough, with detail provided about concerns reported by Councillors and residents concerning the practices of private management companies.
- 1.2. The report summarises the issues as the Council understands them and considers what role the Council can play in improving the situation for residents. The report also outlines what is happening nationally to improve management company practices, as there is currently no regulation for the governance of management companies.
- 1.3. This report is seeking Cabinet's approval for the proposed future approach to the management of open spaces on new developments.
- 1.4. This issue has been considered most recently at Growth and Development Scrutiny Group on 3 January 2024. Further detail on this is provided in section 4.4.

2. Recommendation

It is RECOMMENDED that Cabinet:

- a) reaffirms the Council's position not to adopt open spaces on new developments due to the significant financial burden this entails;
- b) supports the proposal for the Council to take a more active role working with developers and management companies to encourage good practice, as outlined in section [4.36];
- c) requests that Growth and Development Scrutiny Group reviews progress against the proposal set out section [4.36] in spring 2025; and
- d) lobbies the Government to regulate the governance of management companies to ensure transparency, remove charges unrelated to the

management of open spaces, mandate engagement with homeowners and to expedite the adoption of the Leasehold and Freehold Reform Bill.

3. Reasons for Recommendation

- 3.1. As set out in the report, the practices of management companies and arrangements for the management of open space on new developments are a cause of concern for some residents. The Council has taken this on board in a review of current practices. Rushcliffe Borough Council is not unique in the way open spaces are managed, with this approach adopted across the country.
- 3.2. While the Council historically adopted new open space, due to the increased complexity of open spaces and the risk to the Council's financial position, officers cannot recommend that the Council revert to adopting open spaces.
- 3.3. Since commencing this project, there has been a significant movement nationally to improve management company practices in the form of the forthcoming Leasehold and Freehold Reform Bill and the New Homes Quality Board. However, there is still a role for Rushcliffe to play in working with developers and management companies to promote good practice. This role is set out in section [4.36] of this report.

4. Supporting Information

Background

- 4.1. Historically, the Council adopted open space on housing developments with no cost to developers or residents of that development. Open space at this time was generally small in scale and grassed land with trees. Over time, the Council continued to adopt open space on new housing developments but sought a commuted sum from the developer that covered the first 15 years of the costs associated with the maintenance and management of the open space. After 15 years, the responsibility became a financial obligation for the Council. Whilst the Council offered to adopt these open spaces, there was a negotiation with the developer about the value of the commuted sum and some developers decided to retain the open space.
- 4.2. In more recent years, in consideration of the financial burden to the Council of increasingly complex and greater quantum of open space and associated infrastructure, the Council has stopped adopting new open spaces. Currently developers are required to submit an Open Space Scheme as part of the planning process. This requires the method for securing the management and maintenance of the open space by an 'appropriate organisation' and that management and maintenance of the open space should be through a 'management company or by transfer to some other appropriate organisation', with suitable provision for funding the future management and maintenance. This process does not allow for the Council to have a say on who the management company/appropriate organisation should be. This process is now common practice among local authorities.

- 4.3. It is generally the case that developers pass the maintenance responsibility onto a management company with the financial responsibility for paying the management company passed on to the residents of the new developments.

Growth and Development Scrutiny Group January 2024

- 4.4. This issue has been considered most recently at Growth and Development Scrutiny Group on 3 January 2024. The outcomes of this discussion are captured in table 1. The recommendations set out in table 1 were presented by officers as ways in which the Council can play an active role in improving outcomes for residents locally, while awaiting the outcome of work, which is taking place at a national level.
- 4.5. Members of Growth and Development Scrutiny Group expressed the feeling that the Council should have a greater role in the management of open spaces than it currently has. This is a complex issue which the Group wishes to consider again. It is proposed that the Group reviews progress against the proposals set out in section 4.36 of this report, in spring 2025.

Table 1 - Growth and Development Scrutiny Group January 2024 Recommendations

Recommendation	Comment
a) Acknowledges the complexities of the management of open spaces and the multiple factors at play leading to no simple solution	Growth and Development Scrutiny Group supported this recommendation.
b) Accepts the conclusions arrived at regarding the financial risks to the Council in pursuing the adoption of open spaces or acting as the management company and supports the conclusion arrived at.	Growth and Development Scrutiny Group did not support this recommendation. Further detail on this is presented to Cabinet for consideration in this report, with particular detail included in sections 4.25
c) Supports the proposal for the Council to take a more active role working with developers at the Planning stage to establish the Council's expectations regarding the service expected for its residents.	Growth and Development Scrutiny Group supported this recommendation. To return to scrutiny. This role is outlined in section 4.36 of this report.
d) Seeks to raise the general issues and concerns raised by residents on new housing estates with developers and management companies to raise the profile of the issues being experienced.	Growth and Development Scrutiny Group supported this recommendation.

<p>e) Investigate the legal position on whether a commuted sum to cover maintenance for 15 years could be legally enforced by Rushcliffe Borough Council</p>	<p>This was an additional recommendation added and supported by Growth and Development Scrutiny Group.</p> <p>The Council’s Monitoring Officer has considered this and confirms that the Council cannot forcibly adopt open space on new developments. The Council can offer to adopt spaces with a commuted sum paid by the developer but cannot force the developer to do this.</p> <p>If the developer were to agree to hand the open space over to the Council, the calculation of any commuted sum would be a matter for negotiation. Once a developer signs a s106 agreement then they would be legally bound by the terms as per any contract and the Council would have various legal remedies to enforce any breach.</p>
<p>f) Investigate the work carried out by Stratford on Avon District Council and invite a guest speaker from the District Council to attend a Growth and Development Scrutiny Group meeting</p>	<p>This was an additional recommendation added and supported by Growth and Development Scrutiny Group.</p> <p>RBC officers have spoken with officers from Stratford, who confirmed that their Cabinet took a decision in 2020 that the Council would adopt open space (in the event that a Town or Parish Council do not). It has taken a number of years for Stratford to work through the complexities associated with implementing this decision.</p> <p>In April 2024 Stratford published a Supplementary Planning Document (SPD) setting out their approach to the management of open spaces.</p> <p>The SPD sets out that:</p> <p>Where the Parish/Town Council do not accept the transfer, the District Council will consider the management of certain types of public open space (not including SUDs, allotments, community gardens), with a 30-year commuted sum. This will be subject to ensuring the open space can be effectively maintained under the current management programme in operation. Where any of these types of spaces cannot be managed by the Town/Parish Council or District Council, they are to be retained by the developers or transferred to a management company.</p>

	<p>While Stratford has established a willingness to adopt certain types of open space under the right circumstances, this approach still leaves developers free to hand open space over to management companies and creates an even more mixed picture for residents in terms of who maintains what and at what cost.</p> <p>NB Stratford will only take on land with a 30-year commuted sum.</p>
<p>g) Provide a detailed forecast for revenues received by Rushcliffe Borough Council from an example development (for example Fairham) over the 15-year period.</p>	<p>This was an additional recommendation added and supported by Growth and Development Scrutiny Group.</p> <p>Officers have provided more information in section 4.25, which demonstrates the financial impact of adopting an open space on the scale of Fairham.</p> <p>Whilst housing growth results in additional Council Tax receipts this also creates additional demand on statutory Council services which the Council Tax receipts are not sufficient to cover. The maintenance of open spaces would be an additional (and discretionary) service, the costs of which would have to be found from new revenue streams.</p>

Residents' Concerns

4.6. Concerns have been reported by residents, which can be broadly captured under the following three themes:

- **Transparency and fairness** – While it appears that most residents are aware of a service charge upon buying their new home, a number have stated that they were not aware of the variety of charges they would be subject to, which do not directly relate to the maintenance of open spaces. In some cases, homeowners are charged for external home improvements. In other cases, permission of the management company is required, along with a fee, when a homeowner re-mortgages or sells their home, as a result of a covenant placed on the house deeds. While all of this will have been included in contracts signed by the purchaser, it appears the information is not always presented in a sufficiently transparent and user-friendly way.
- **Quality of Maintenance** – A number of residents have reported dissatisfaction with the quality of maintenance work carried out, or reportedly not carried out in some cases. Examples have been shared of poor quality or careless work taking place, and also where work is not taking place in line with the agreed maintenance schedule.
- **Poor customer service with no right to challenge or hold to account** – Reports have been shared of poor customer service with regards to

resolving complaints; however, more significantly, residents have reported frustration that freeholders do not have the same rights as leaseholders, which means there is currently no access to redress schemes or mechanism for taking a case against a management company to tribunal or an ombudsman.

- 4.7. These concerns and reports are mirrored across the country and are being considered by Government with an intention to legislate to improve homebuyers' experience.

The Council's Powers

- 4.8. From a planning perspective, the Council's powers are limited. As explained above, developers are required to secure the management and maintenance of an open space by an 'appropriate organisation'. This process does not allow for the Council to have a say on who that appropriate organisation should be. With regards to other planning powers, officers have considered the use of planning conditions and obligations.
- 4.9. A local planning authority should only grant permission subject to conditions where those conditions are required to make the development acceptable in planning terms. Most approvals have conditions relating to the time frame to start a development and materials to be used. Conditions must be fair, reasonable and practicable and tailored to tackle specific problems.
- 4.10. A planning obligation is a tool, in the form of a legal agreement otherwise known as a section 106 agreement which commits the developer to specific actions to minimise the impact of the development on the local community (for example, to carry out tasks which will provide community benefits and can include the payment of sums of money).
- 4.11. It is important to note that with either of these tools, there are tests to be met in order for it to be appropriate for officers/Planning Committee members to attach either a condition to a permission or impose a contractual requirement on the developer in the section 106 legal agreement. The National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following six tests: 1. necessary; 2. relevant to planning; 3. relevant to the development to be permitted; 4. enforceable; 5. precise; and 6. reasonable in all other respects.
- 4.12. It is important to consider how the Council would enforce any lack of compliance with a condition or obligation. The Council would have to pursue prosecution or a court injunction, action which the Council could not undertake lightly. The Council would be required to evidence a breach which would be a significant and costly undertaking which could be deemed disproportionate to the scale of the issue.
- 4.13. Neither conditions nor obligations are currently felt to be appropriate tools to bring to bear in response to concerns about management company practices.

UK Government Position

- 4.14. In 2017, the Government announced an intention to legislate in this area, particularly with regard to freeholder rights.
- 4.15. Leaseholders who pay service charges in England and Wales have a statutory right to challenge unreasonable service charges and the standard of work carried out. Freeholders do not currently have an equivalent statutory right.
- 4.16. In November 2023, the Leasehold and Freehold Reform Bill was introduced to parliament. The Bill seeks to grant freehold homeowners on private estates the same rights of redress as leaseholders by extending equivalent rights to transparency over their estate charges and to challenge the charges they pay by taking a case to a Tribunal, just like existing leaseholders.
- 4.17. In February 2023, the Competition and Markets Authority (CMA), an independent non-ministerial department, launched a market study into housebuilding in England, Scotland and Wales, a significant focus of which has been on private management of public amenities on housing estates. In November 2023, the CMA published for consultation a working paper on this topic. The paper can be viewed here - [CMA market study](#). The goal of the consultation is to provide greater protection to households living under current private management arrangements.
- 4.18. The Council submitted a response to this consultation in support of providing greater consumer protection to households.
- 4.19. In February 2024, the CMA published its final report, in which it expresses concerns around estate management charges. The report can be viewed here - [CMA market study final report](#). The CMA has made three recommendations to Government:
 - Requiring councils to adopt amenities on all new housing estates.
 - Introducing enhanced consumer protections for homeowners on existing privately managed estates.
 - Establishing a New Homes Ombudsman and setting a mandatory consumer code so homeowners can better pursue homebuilders over any quality issues they face.
- 4.20. The CMA does not suggest how the mandatory adoption of amenities should be funded and, in the report, recognises concern about how councils will finance adoption, suggesting that the Government will need to consider how best to ensure that appropriate funding is provided to local authorities.
- 4.21. Following publication of the report the Council wrote to Secretary of State for Department of Local Government, Housing and Communities, Michael Gove MP, on 4 March 2024, urging the Government to investigate further and put in place some regulatory controls to manage estate management companies. This letter can be viewed in full in Appendix B.

4.22. A response was received, dated 17 April 2024, which states that the Government will be considering the CMA’s findings and recommendation and will respond formally to the CMA within 90 days of its February 2024 Report. This response can be viewed in Appendix C.

RBC adoption of Open Spaces on New Developments

4.23. Prior to the CMA’s report, officers considered whether the Council could reverse its position and revert to adopting public open spaces on new developments. This approach would provide the Council with control over the maintenance of open spaces. Residents would not be required to pay a fee to a management company.

4.24. When the Council historically adopted new open spaces, it did so with a commuted sum paid by the developer. This commuted sum was intended to cover maintenance for 15 years, with the financial burden falling on the Council after this. The sum was calculated based on maintenance of hard and soft landscaping along with a sum for sustainable drainage systems. However, it did not allow for play areas, allotments and existing woodlands, which introduce additional maintenance costs, and staff time and expertise. This was also at a time when requirements for public open space were less extensive than they are now. National Planning Policy has led to an increase in the overall quantum of open space and complex nature of facilities on new housing estates than historically.

4.25. In considering whether it would be possible for the Council to revert to adopting open spaces, officers have considered, as an example, the commuted sum that would be required were it to adopt the open space at the Fairham development. Fairham will have 97ha of green infrastructure (excluding play provision, sports pitches, allotments), 110ha in total. The open space at Fairham will be 1.4 times the size of Rushcliffe Country Park in Ruddington, with the addition of sports provision, allotments, more play areas, and substantial areas of watercourse and balancing ponds all of which will be maintenance intensive. Based on the Council’s historic commuted sum calculation, taking into account the latest RPI index, the sum would be in excess of £11m (see figure 2). This is without the additional costs for watercourses and paths which would increase it further. This would be intended to cover maintenance for 15 years, after which time the Council would be responsible for maintenance which would present a significant financial liability.

Figure 2 – estimated commuted sum calculation for Fairham:

Description	Quantity	Rate	Total
Total area of open space	1,101,900 m ²	£10.20	£11,239,380
Hard Surfacing	Not currently known m ²	£44.62	?
Open Watercourses	Length not currently known	£152.10	?
Dry Balancing Area	Number not currently known	£6,692.41	?
Wet Balancing Ponds	Number not currently known – estimate of 20	£16,731.00	£334,620
Total			£11,574,000

4.26. The Council will receive additional income from the new homes at Fairham via Council Tax (note – the Council receives 10% of Council Tax, with the remainder going to fund Nottinghamshire County Council, Adult Social Care, Combined Fire Authority and Police). Council Tax generated is considered as part of the overall Medium Term Financial Strategy along with other funding streams and finances expenditure across the Borough, so cannot be considered as ‘additional’ income, which could be used to cover the maintenance of the open space at Fairham. Council Tax income alone is not sufficient to fund the Council’s services, hence the need for additional income streams and even with additional income streams, the Council is projecting a budget deficit. If the Council were to take on responsibility for the maintenance of open space at Fairham alone, just one of the upcoming new developments, this deficit would increase, as set out in figure 3.

Figure 3 – Budget deficit position with addition of maintenance responsibility for Fairham

	2026/27	2027/28	2028/29
Council Tax Base Growth 1.6% pa (included in income)	48,505.50	49,281.60	50,070.10
Council Tax Income (included in income below) £'000	8065	8437	8818
	2026/27 Estimate (£'000)	2027/28 Estimate (£'000)	2028/29 Estimate (£'000)
Income	(37,936)	(38,410)	(39,192)
Expenditure	39,193	39,663	40,281
Deficit	1,257	1,253	1,089
Fairham Open Space maintenance +3% inflation (based on estimated £11m commuted sum)	800	824	849
Revised Budget Deficit	2,057	2,077	1,938

4.27. While the above example reflects the picture were the Council to be financially responsible for the open space from 2026/2027 rather than at the end of 15 years once the commuted sum had expired, it clearly demonstrates the pressure that a financial obligation of this scale would put the Council under and there is no reason to expect that this would be any less of pressure in 15 years.

4.28. This is just one example of the developments that are being completed across the Borough. It is important to note that while Fairham is currently the largest development forthcoming, Gamston SUE delivers a greater number of houses and combined, they only represent 50% of the housing growth expected across the Borough by 2041. If the Council changed its position, it is difficult to see how this could be affordable.

4.29. If the Council did decide to adopt open space, developers currently would be under no obligation to agree to this arrangement. Developers would be in a

position to consider whether to hand the open space over to the Council with a commuted sum, or to a management company, requiring no financial contribution from the developer. Where the developer to agree to a commuted sum, it would affect viability of the scheme, offsetting other obligations, such as s106 and CIL contributions and affordable housing numbers being reduced.

- 4.30. As referenced at 4.13, the complexity of open spaces is far greater than maintaining soft landscaping and it would not be appropriate for the Council to consider accepting responsibility for key infrastructure that would better sit with other agencies, e.g. Local Lead Flood Authority, Severn Trent Water, NCC Highways.

Proposed Role for RBC

- 4.31. Consideration has been given to where the Council might more effectively use its influence to improve the situation for residents, where it lacks planning powers, or the finances to take a more active approach.
- 4.32. Officers have met with both management companies and developers this year to better understand their perspective in relation to the concerns raised by residents. This has been a constructive experience, with management companies and developers alike both keen to build good relationships with the Council and our residents to ensure they have a positive experience in their new homes.
- 4.33. Officers have been pleased to learn that the majority of developers are already registered with [The New Homes Quality Board \(NHQB\)](#), an independent body set up to create a framework to ensure new homes are built to a high standard and good customer service is provided by developers. The NHQB is particularly relevant to transparency of estate management arrangements, requiring developers to:
- In describing the new home, properly inform and not mislead consumers including in relation to management services and service charges.
 - Provide an affordability schedule of any costs that are likely to be directly associated with the tenure and management of the new home over the 10 years following the sale.
- 4.34. While non-statutory, 90% of all large and medium housebuilders are signed up, and up to the 80% of all new builds in England, Scotland and Wales will be delivered under the requirements of the NHQB. By registering, developers are also signing up to the New Homes Ombudsman Service – a new route for disputes.
- 4.35. The protections set out under the NHQB go a long way to addressing concerns raised from residents about transparency and access to an Ombudsman service. The Council will be speaking to developers at planning stage and encouraging them to register with NHQB if they are not already.

- 4.36. The Council is committed to working more proactively with developers and management companies at a much earlier stage than has been done historically, to establish our expectations regarding the service we expect our residents to receive. Specific actions the Council is committed to include:
- Officers to develop a Supplementary Planning Document, which will include guidance on open space provision, management and maintenance. This is expected to be considered by the Local Development Framework Group in 2024.
 - Officers to look into developing a 'Good Practice Code', which developers could be asked to sign up to. This would set out the Council's expectations around the developer's appointment of an appropriate management company.
 - Management companies to be invited to join Development Boards.
 - The Council to make contact with management companies on behalf of existing residents' groups with concerns or disputes, and where appropriate convene a meeting with a view to achieving positive resolution.
- 4.37. See Appendix A for more detail on these actions.
- 4.38. The Council is also committed to continuing to lobby the Government to regulate the governance of management companies to improve practices, particularly in regard to:
- transparency – ensuring that homeowners know the full extent of their obligations and the charges they will be subject to and clear itemised invoicing;
 - reasonable charges - removing charges which are not directly related to the management of open spaces e.g. fees for remortgaging; and
 - engagement with homeowners – ensuring homeowners have access to good quality information and clear lines of communication for resolving issues and complaints, regular meetings and the right to establish Residents' Management companies.

Conclusions

- 4.39. This is a subject that is being considered at national level. The Leasehold and Freehold Reform Bill clearly sets out an intention to legislate to provide freeholders on new estates greater powers and protections, which would address many of the concerns reported by Rushcliffe residents.
- 4.40. The recently published [CMA market study final report](#) clearly reflects concerns about estate management charges and practices, which the Council does not in any way dispute. The Council shares these concerns and wholly supports the recommendations regarding enhanced consumer protections and a New Homes Ombudsman. However, as is presented above and acknowledged in the CMA report, the Council is not in a financial position to adopt amenities on new housing estates. If the CMA's recommendations are supported by

Government, then consideration will need to be given by the Government to how they will be funded.

- 4.41. Whilst regulation and legislation need to come from Central Government, the Council recognises it has a role in improving outcomes locally. Whilst the recommendations do not support the Council adopting open space, it is clear the Council can play a much more active role at the outset of proposed developments to influence and encourage management companies to adopt fair and transparent processes and arrangements.
- 4.42. With regard to existing residents, the Council can raise concerns with the developers and management companies in order to seek a better service for these residents.
- 4.43. Officers are continuing to work to understand exactly what the Council's role can be moving forward and what can be done locally to have the most impact for residents. The action set out in paragraph 4.32 gives a clear sense of the direction of travel. The scope of this work will continue to grow and evolve as officers work more closely with developers and management companies and as greater changes occur nationally.

5. Alternative options considered and reasons for rejection

- 5.1. As outlined above, officers have explored the option of reverting to adopting public open space on new developments. For the reasons detailed, this is not believed to be financially possible. Equally, even if the Council were willing to adopt open space, the Council could not force the adoption of open spaces, it is a choice for developers to make.
- 5.2. Officers have considered whether RBC could adopt public open spaces on new developments by establishing its own management company or creating a new in-house service. These options were outlined in the report to Growth and Development Scrutiny Group in January 2024. Although there would be some advantages to residents in ensuring proper governance, quality of work, transparent costs and a clearly defined complaints procedure, the financial risk is too significant to ignore and does not outweigh the benefits.

6. Risks and Uncertainties

The risk to the Council of becoming more involved in a matter which is technically not its responsibility, is managing expectations in how much the Council can influence going forward and retrospectively. As outlined in the report, the Council has little power in this regard but is committed to encouraging good practice and advocating for residents. There is, of course, the risk that management companies and developers will not choose to engage with the Council on this topic, although engagement to date does not suggest that this would be the case.

7. Implications

7.1. Financial Implications

Paragraph 4.25 highlights the potential financial implications of the introduction of the management of open spaces. This considerably worsens an existing projected budget deficit position in the medium term, with efficiencies already required. Currently this is not affordable, sustainable or prudent.

7.2. Legal Implications

There are no legal implications associated with the recommendations. As is detailed in the report, the Council does not have the legal power to oblige developers to hand over open space with a commuted sum, this is a matter for negotiation with individual landowners/developers.

7.3. Equalities Implications

The recommendations aim to improve the experience of all new home owners in relation to management companies.

7.4. Section 17 of the Crime and Disorder Act 1998 Implications

Not applicable.

7.5. Biodiversity Net Gain Implications

Not applicable.

8. Link to Corporate Priorities

The Environment	Well-managed open spaces on new developments have a positive impact on the environment, increasing the amount of green space in the Borough and improving biodiversity.
Quality of Life	The improvement in management company practices will have a significant positive impact of the quality of life of Rushcliffe residents living on new estates.
Efficient Services	Were the Council to adopt open spaces, this would have a significant impact on the Council's ability to deliver efficient services. By taking a more active role in working with developers and management companies, the Council will work to improve the experience for our residents without impacting on existing Council services.
Sustainable Growth	Ensuring the management companies operate fairly and transparently on new development is key to our commitment to sustainable growth.

9. Recommendation

It is RECOMMENDED that Cabinet:

- a) reaffirms the Council's position not to adopt open spaces on new developments due to the significant financial burden this entails;
- b) supports the proposal for the Council to take a more active role working with developers and management companies to encourage good practice, as outlined in section [4.36];
- c) requests that Growth and Development Scrutiny Group reviews progress against the proposal set out section [4.36] in spring 2025; and
- d) lobbies the Government to regulate the governance of management companies to ensure transparency, remove charges unrelated to the management of open spaces, mandate engagement with homeowners and to expedite the adoption of the Leasehold and Freehold Reform Bill.

For more information contact:	Leanne Ashmore Director of Development and Economic Growth lashmore@rushcliffe.gov.uk 0115 914 8578
Background papers available for Inspection:	Growth and Development Scrutiny Group - January 2024
List of appendices:	Appendix A – 2024 actions Appendix B – Letter to Secretary of State for Department of Local Government, Housing and Communities. Appendix C – Response to letter to Secretary of State for Department of Local Government, Housing and Communities