

RECORD OF EXECUTIVE DECISION TAKEN BY AN EXECUTIVE MEMBER

This form **MUST** be used to record any decision taken by the Elected Mayor or an individual Executive Member (Portfolio Holder).

The form must be completed and passed to the Chief Officer Legal and Democratic Services no later than NOON on the second working day after the day on which the decision is taken. No action may be taken to implement the decision(s) recorded on this form until 7 days have passed and the Chief Officer Legal and Democratic Services has confirmed the decision has not been called in.

1. Description of decision

Having due regard to the Council's statutory duties, including its public sector equality duty, the following be approved:

- (1) To waive the Council's right to receive 50% (£60) of the open spaces management annual sum from property owner/occupiers in the Great Denham and Kempston West development with effect from the 2024/2025 financial year.**
- (2) To waive the Council's right to receive 50% (£60) of the open spaces management annual sum from property owners who let out their property in the Great Denham and Kempston West development with effect from the 2024/2025 financial year where the property owner provides evidence that they have reduced the tenant's rent or service charge by the same amount.**
- (3) That where a property is unoccupied, for the purposes of (1) and (2) above, the property shall be treated as occupied in the same manner as when it was last occupied.**
- (4) To waive the Council's right to receive a further 50% of the original charge (being £120, 100%, in total) of the open spaces management annual sum from property owners in the Great Denham and Kempston West development from the 2025/2026 financial year onwards in the same manner as set out in (1), (2) and (3) above, subject to there being adequate provision in the Council's general fund budget to meet the cost of its maintenance obligations.**
- (5) To note that there is no proposal at this time to seek to amend the individual property titles to remove the obligation to pay an annual sum and that an amount of £40.00 will remain payable to the Council on the sale of each property to meet its administrative costs.**
- (6) To note that the developers will still be entitled to receive a sum of £120 in respect of any newly completed property when it is first sold.**

2. Date of decision

25 March 2024

3. Reasons for decision

- i. To reduce the cost to owner/occupiers in the development of maintenance of the open spaces so that the arrangements are more equitable with the cost incurred by the majority of Council Taxpayers in the Borough that do not pay a specific charge for maintenance of open spaces.
- ii. To ensure that businesses and similar organisations are no better off and no worse off due to the Council's decision to waive its rights to receive the annual sums, and that tenants renting properties in the development benefit from the reduction in the same way as owner/occupiers.
- iii. To ensure that the reduction in charges is applied fairly where a property is unoccupied based on its most recent form of occupation.
- iv. To fully remove the maintenance charges subject to the financial resources being available to maintain the open spaces.
- v. There are insufficient resources available to seek to amend approximately 2,700 property titles, and there is an ongoing requirement for the Council to provide information in connection with property sales and to maintain its records.
- vi. The agreement with the developer allows them to retain the initial sum payable on first completion of each plot transfer.

4. Alternatives considered and rejected

The alternative of not waiving part or all of the annual sum payable by property owners was considered and rejected.

5. How decision is to be funded

The Council's general fund budget includes an allowance of £170,000 for the review and reconsideration of the charges which will be sufficient to offset the reduction in income in 2024/2025. Further reductions in the charges will be subject to adequate provision being made in the Council's general fund budget to undertake the required maintenance of the open spaces.

6. Conflicts of interest

Name of all Executive members who were consulted AND declared a conflict of interest.	Nature of interest	Did Standards Committee give a dispensation for that conflict of interest? (If yes, give details and date of dispensation)	Did the Chief Executive give a dispensation for that conflict of interest? (If yes, give details and the date of the dispensation).

The Mayor has been consulted on this decision

Not Applicable

Signed Tom Wootton

Date: 25 March 2024

Name of Decision Taker:

Mayor Tom Wootton

This is a public document. A copy of it must be given to the Chief Officer Legal and Democratic Services as soon as it is completed.

Date decision published:26 March 2024.....

Date decision can be implemented if not called in:8 April 2024.....

(Decision to be made exempt from call in.....NO.....)

BEDFORD BOROUGH COUNCIL – THE MAYOR

25 March 2024

Report by the Interim Monitoring Officer & Chief Officer for Assessment, Application & Business Support

Subject: REVIEW OF OPEN SPACES MANAGEMENT CHARGES FOR GREAT DENHAM AND KEMPSTON WEST

1. EXECUTIVE SUMMARY

- 1.1 The Council owns the land comprising the open spaces in the Great Denham and Kempston West development having accepted the transfer of the land from the developer. The title to the land requires the Council to maintain the land and allows the Council to receive the benefit of an annual sum which is required to be paid by the owner of each property to meet the cost of maintenance.
- 1.2 The arrangement for maintenance of the open spaces in the Great Denham and Kempston West development is unique in the Borough, in that it is the only open space land that is owned and maintained by the Borough where there is an obligation upon property owners to pay an annual sum to the Council towards the cost of maintenance.
- 1.3 Full Council has previously considered concerns from residents from across the Borough at the proliferation of the practice of developers imposing obligations on property owners to contribute towards future maintenance of developments through covenants in the property titles.
- 1.4 At its meeting on 28 February 2023 Full Council noted:
 - The lack of powers it has on this issue and the need for national action soon, as recognised by local MPs recently.
 - That there is no word as to when the redress scheme or further legislation will be forthcoming from the Government, despite an initial promise back in 2017 to resolve this.
 - The calls of local residents at this meeting regarding the issue.

- 1.5 Full Council resolved to “push Government to take action to enable residents to seek redress and give local authorities powers to support residents in taking control of management companies. This includes a letter from the Mayor to the relevant Secretary of State, but also to encourage all Councillors particularly those whose party is in government to help lobby the Government to take action”.
- 1.6 The Council’s direct involvement with the arrangements for the Great Denham and Kempston West development, where it effectively acts as the maintenance company, places it in a position to take action in respect of this particular developments. Consequently, the General Fund Revenue Budget, that was approved by the Full Council on 7 February 2024, included a budget of £170,000 to facilitate the review and reconsideration of open space management charges for Kempston West and Great Denham (over a two-year period).
- 1.7 The review, as set out in this report, concludes that the budget allocation of £170,000 will enable the Council to reduce the amount paid by property owners by 50%, which is a reduction of £60, without any impact on the level of maintenance. Therefore, this report makes recommendation to the Mayor to implement a reduction of £60 to the annual sum payable with effect from the 2024/2025 financial year and, subject to a further budget allocation, to reduce the charge to nil with effect from the 2025/2026 financial year.

2. RECOMMENDATIONS

- 2.1 The Mayor is recommended to consider the report and having due regard to the Council’s statutory duties, including its public sector equality duty, to agree:**
- i. To waive the Council’s right to receive 50% (£60) of the open spaces management annual sum from property owner/occupiers in the Great Denham and Kempston West development with effect from the 2024/2025 financial year.**
 - ii. To waive the Council’s right to receive 50% (£60) of the open spaces management annual sum from property owners who let out their property in the Great Denham and Kempston West development with effect from the 2024/2025 financial year where the property owner provides evidence they have reduced the tenant’s rent or service charge by the same amount.**
 - iii. That where a property is unoccupied, for the purposes of (i) and (ii) above, the property shall be treated as occupied in the same manner as when it was last occupied.**

- iv. To waive the Council's right to receive a further 50% (being £120, 100%, in total) of the open spaces management annual sum from property owners in the Great Denham and Kempston West development from the 2025/2026 financial year onwards in the same manner as set out in (i), (ii) and (iii) above, subject to there being adequate provision in the Council's General Fund budget to meet the cost of its maintenance obligations.
- v. To note that there is no proposal at this time to seek to amend the individual property titles to remove the obligation to pay an annual sum and that an amount of £40.00 will remain payable to the Council on the sale of each property to meet its administrative costs arising from the conveyance.
- vi. To note that the developers will still be entitled to receive a sum of £120 in respect of any newly completed property when it is first sold.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To reduce the cost to owner/occupiers in the development of maintenance of the open spaces so that the arrangements are more equitable with the cost incurred by the majority of Council Taxpayers in the Borough that do not pay a specific charge for maintenance of open spaces.
- 3.2 To ensure that businesses and similar organisations are no better off and no worse off due to the Council's decision to waive its rights to receive the annual sums, and that tenants renting properties in the Borough benefit from the reduction and that tenants benefit in the same way as owner/occupiers.
- 3.3 To ensure that the reduction in charges is applied fairly where a property is unoccupied based on its most recent form of occupation.
- 3.4 To fully remove the maintenance charges subject to the financial resources being available to maintain the open spaces.
- 3.5 There are insufficient resources available to seek to amend approximately 2,700 property titles, and there is an ongoing requirement for the Council to provide information in connection with property conveyances and to maintain its records.
- 3.6 The agreement with the developer allows them to retain the initial sum payable on first completion of each plot transfer.

4. THE CURRENT POSITION

- 4.1 When a property developer applies for planning approval to construct a new residential development, they are required to put in place arrangements for the future maintenance and management of the open spaces in the development. Traditionally, developers have met this requirement by entering into agreements with the Council under section 106 of the Town and Country Planning Act 1990 to transfer the ownership of the open spaces to the Council and to pay a commuted sum to meet the cost of maintaining the spaces for an agreed period of years, normally 20 years.
- 4.2 In recent years a different approach has been taken by some developers. Rather than paying a commuted sum to the Council, the developers have formed companies to hold the ownership of the land and undertake the maintenance. A covenant has then been incorporated into the title for each property in the development when it is first sold, requiring the owner and any subsequent owners of the property to pay an annual contribution to the company to meet the company's costs in maintaining the land. The reason for such payment was to ensure that each maintenance company was resourced adequately and to avoid a situation where no maintenance was carried out as a result of companies being formed without funding or the ability to raise any funding.
- 4.3 When determining a planning application, the Council, in its capacity as a Local Planning Authority, has no power to require the form of arrangement to be put in place for management and maintenance of the open spaces. Where the Council is satisfied that any proposed arrangements are sufficiently robust to provide for the future management and maintenance, it must accept them.
- 4.4 The development at Great Denham and Kempston West was amongst a number of developments in the Borough to utilise covenants in the property title to require property owners to fund future costs of open spaces maintenance. The title to each property in the development imposes an obligation upon the owner of the property to pay an annual sum to the developer on first completion of a sale and then annually to the body responsible for the maintenance.
- 4.5 At the time that the planning application was submitted, the Council provided the developer with an estimate of the annual cost it would incur in maintaining the open spaces to a similar standard as that to which it maintained existing open spaces in its ownership and, therefore, an estimated commuted sum under a section 106 agreement. The developer chose not to pay a commuted sum and to instead utilise covenants in the property titles to require the owners of properties in the development to pay an annual sum to meet the cost of managing and maintaining the open space in the development. It is understood that based on the estimated commuted sum for the purposes of a section 106 agreement, the developer set the initial annual sum at £120 taking into account the anticipated number of properties in the final development. The covenants allow for annual indexation of the annual sum and for the amount to be reviewed every five years and increased to the actual share of the total cost if it is greater than the annual sum at that time.

- 4.6 The amount payable under the covenant is the same amount for all properties in the development, regardless of the value or size of the property.
- 4.7 The developers had originally considered setting up a company to be responsible for maintenance and management of both the open spaces and Great Denham country park. However, in negotiation with the Council an alternative approach was agreed whereby the developer would enter into a section 106 commuted sum agreement in respect of the country park. It was also agreed that rather than a maintenance company being established to maintain the open spaces, the Council would accept a transfer of the land into its ownership together with the transfer of the maintenance obligations and the right to receive the annual sums from property owners.
- 4.8 It was agreed by way of Executive Decision 716, on 22 September 2009, for the Council to enter into negotiations with the main developer with the aim of accepting a transfer of the open spaces in the development to the Council, with the maintenance to be financed by way of a service charge. It is understood that at the time it was considered appropriate for the Council to take on the de facto role of an open spaces management company for the development because the Council would operate on a value for money, not-for-profit basis and the arrangement would provide for greater transparency and accountability regarding the charges. It would also ensure that the land in the development was maintained to the same high standards as other open spaces owned by the Council. This approach has since proved beneficial to the property owners as the Council has been able to keep the annual sum at £120 since the Council began collecting the charge from April 2017.
- 4.9 There has been a proliferation of developers choosing not to arrange for future maintenance of open spaces through a commuted sum and transfer of the open space land to the Council. The Council is not directly party to any of these arrangements; however, it is understood that in many developments the cost of maintaining the open spaces is met through an obligation upon owners of properties in the development to contribute toward the costs of maintenance.
- 4.10 The Council has not entered into agreements on any other sites to accept transfers of land and the right to receive payments required through a covenant in the property titles. Therefore, the arrangement in respect of Great Denham and Kempston West development is unique in the Borough insofar as it involves the Council acting as a maintenance body.
- 4.11 The imposition on the owners of properties in some of the newer developments in the Borough to pay a charge toward maintenance of open spaces was considered by the Full Council at its meeting on 28 February 2023, where it noted:
- The lack of powers it has on this issue and the need for national action soon, as recognised by local MPs recently.
 - That there is no word as to when the redress scheme or further legislation will be forthcoming from the government, despite an initial promise back in 2017 to resolve this.
 - The calls of local residents at this meeting regarding the issue.

- 4.12 Full Council resolved to “push Government to take action to enable residents to seek redress and give local authorities powers to support residents in taking control of management companies. This includes a letter from the Mayor to the relevant Secretary of State, but also to encourage all Councillors particularly those whose party is in government to help us lobby the government to take action”.
- 4.13 The Council’s direct involvement with the arrangements for the Great Denham and Kempston West development, where it effectively acts as the maintenance company, places it in a position to take action in respect of this particular developments. Consequently, the General Fund Revenue Budget, which was approved by the Full Council on 7 February 2024, included a budget of £170,000 to facilitate the review and reconsideration of open space management charges for Kempston West and Great Denham (over a two-year period).

5. DETAILS

- 5.1 Due to the Executive Decision originally taken in 2009, the Council is the owner of open spaces in the Great Denham and Kempston West development and is the beneficiary of the obligation for property owners to pay an annual sum towards the maintenance of those spaces. This places it in a unique and unusual position compared to its position with respect to all other residential developments in the Borough. However, it also places it in a position to take actions to make immediate changes to the imposition placed on owners of properties in the development.
- 5.2 Full Council has previously expressed its general objection to the imposition of this form of estate management charges and has approved a sum of £170,000 in the 2024/2025 General Fund Budget to facilitate a review and reconsideration of the charges. This budget is considered sufficient to enable a reduction in the amount paid by property owners by 50%, which would be £60, for 2024/2025.
- 5.3 The current arrangements and the proposal to reduce the annual sum by £60 have been reviewed and it has been concluded that there is no legal impediment to the Council waiving its right to receive part or all of the annual sums. Therefore, this report makes recommendations to the Mayor for proposed arrangements to implement a reduction of 50% in the charge for 2025/2025 and for a total reduction of 100% from 2025/2026, subject to their being sufficient funding in the general fund revenue budget to enable the Council to continue to meet its maintenance obligations.
- 5.4 Consideration has been given to negotiating amendments to the property titles with each property owner to remove the obligation upon owners to pay an annual sum. However, given that there are approximately 2,700 properties it is not practicable to do so with existing staffing resources.
- 5.5 The obligation in respect of the annual sum is upon the property owner to make payment to the Council, rather than upon the Council to issue a demand for payment. However, in practice the Council issues invoices each year to remind property owners to

make the payment, facilitate ease of payment and to maintain accurate accounting records. Therefore, should the Mayor approve the recommendations invoices will be issued for £60 only for the 2024/2025 annual sum.

5.6 Where a property is being sold the purchasers solicitor will normally contact the Council to seek confirmation that no charges are outstanding. Should the recommendation be approved, in future the response will include reference to the waiving of part or all of the charge as appropriate. The Council will continue to be entitled to a sum of £40.00 towards its administration costs upon the sale of any of the properties.

6. ALTERNATIVES CONSIDERED AND REJECTED

6.1 The alternative of not waiving part or all of the annual sum payable by property owners was considered and rejected.

7. KEY IMPLICATIONS

<p>7.1 Legal Issues</p>	<p>The Open Spaces Act 1906, sections 9 and 10, give the Council a power to acquire and maintain open spaces. The Executive Decision taken in September 2009 to enter into negotiations to accept the transfer of the land indicates that the Council will be exercising these powers.</p> <p>The Council is the legal owner of the open spaces in the development having previously accepted transfer of the title to the land it currently owns from the developer. The Council took on an obligation to maintain the open spaces as part of the transfer agreement.</p> <p>The title to each property in the developments contains a covenant requiring the property owner to pay an annual sum to the Council to meet the cost of maintaining the open spaces (although the wording of individual covenants may vary slightly).</p> <p>Should the Council notify property owners that it is waiving its right to receive some or all of the annual sum, this will not alter the covenant contained in the property’s title and, therefore, legally the obligation to pay an annual sum will remain.</p> <p>Amending the title to each property to remove the covenant and register the revised title with the Land Registry would be a significant amount of work which cannot currently be resourced. Therefore, it is not proposed to seek to amend the property titles.</p>
<p>7.2 Policy Issues</p>	<p>Consideration has been given to whether the recommendation as set out in this report would amount to a key decision under the Council Constitution. It has been concluded that this would not be a key decision for the following reasons:</p>

	<ul style="list-style-type: none"> • The recommendations would not result in unbudgeted income or expenditure of over £50,000 since the approved budget for 2024/2025 includes an allowance of £170,000 for reviewing and reconsidering the charges. • Any proposals for future years will be dependent upon future budget approvals. • Whilst the proposals will affect communities living in an area comprising one or more Wards in the Borough, the effect on those communities is not considered to be significant.
7.3 Resource Issues	<p>The general fund budget agreed by the Full Council on 7 February 2024 allows for a reduction in income of £170,000 which is equivalent to waiving the right to receive 50% of the annual sums due for 2024/2025.</p> <p>The Council currently exercises its powers under sections 34 and 35 of the Local Government Finance Act 1992 to treat certain types of expenditure as special items for the purpose of the calculation of Council Tax charges (i.e. “Special Area Charges”). This process currently allocates the cost of community centres and some parks to part only of the Council’s area, since they are considered to be of particular benefit to that area and similar concurrent services are provided by parish councils. The charges for 2024/2025 were agreed by Full Council on 7 February 2024.</p> <p>The Council normally reviews these arrangements every five years with the assistance of expertise from CIPFA. In view of the proposals set out in this report, the five yearly review will be brought forward one year so that consideration can be given to the implications, if any, for Council Tax special items arising from the recommendations set out in this report.</p>
7.4 Risks	<p>There is a risk, as with any decision taken by the Council, that a person or body dissatisfied with the decision may seek to challenge the decision by way of judicial review. It is considered unlikely that any judicial review would succeed since no legal impediment to the proposals has been identified and the arrangements recommended through this report are considered reasonable having regard to the Council’s wider statutory obligations, including its public sector equality duty.</p>
7.5 Environmental Implications	<p>The Council will continue to maintain the open spaces to the same standards as at present, consistent with the level of maintenance it provides for other open spaces in its ownership.</p>

7.6 Equalities Impact

In preparing this report, due consideration has been given to the Borough Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

A relevance test for equality has been completed which determined that the activity has no relevance to Bedford Borough Council's statutory equality duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relation an equality impact assessment is not needed.

In undertaking the relevance test it was recognised that the equalities demographic of property owners affected in the Great Denham and Kempston West developments was unlikely be similar to the equalities demographic of the Borough as a whole. For example, property owners were likely to be more affluent than tenants, and whilst financial resources are not a protected characteristic in law, people from certain groups with protected characteristic may be more likely to have lower or higher incomes than other groups.

However, the impact of the recommendations on residents is not considered to be significant for the following reasons:

The proposals, if agreed, would result in property owners in the Great Denham and Kempston West Development being allowed to forego their obligations to pay an annual sum to the Council to meet the cost of maintaining open spaces in the development. The financial obligation waived by would be from £60 to £120 per year. This equates to between £1.15 and £2.31 per week. Therefore, the impact on property owners is not considered to be significant.

The cost of the maintenance will, instead, be met from the Council's general fund, which is funded in part by Council Tax payments from local residents. Whilst it would not necessarily be correct to attribute the entire cost of the maintenance to Council Tax income (as the general fund expenditure is not exclusively met from Council Tax income), if the full cost of £170,000 was attributed to solely to Council Tax income, this would equate to a weekly amount ranging from £0.03 per week per property in Band A with a single adult occupier, to £0.10 per week per property in Band G.

If the impact of full annual cost of £340,000 was assessed in that way, the range would be from £0.05 per week to £0.20 per week per household.

Furthermore, households on very low incomes would not contribute at all due to the Council Tax Reduction Scheme.

	<p>Therefore, the impact on Council Taxpayers across the Borough is not considered to be significant.</p> <p>The proposal recognises that the property owners who let out their properties, including housing associations and other corporate entities, would benefit from the waiving of the obligations but that the actual costs of the obligation was most likely being met by the tenant through a service charge or their rent. Therefore, the proposal is to only waive the owner’s obligation where the financial benefit is passed on to the tenant. This will ensure that businesses and similar organisations will be no better off and no worse off as a result of the waiving of charges.</p>
7.7 Impact on Families	No significant impact on families has been identified as arising from the recommendations set out in this report.
7.8 Community Safety and Resilience	No impact on Community Safety and Resilience has been identified as arising from the recommendations set out in this report.
7.9 Impact on Health and Wellbeing	Green open spaces are beneficial to people’s health and wellbeing. The Council will continue to maintain the open spaces in the development to the same standard which will ensure they can be enjoyed by residents of the development and the wider general public.

8. SUMMARY OF CONSULTATIONS AND OUTCOME

8.1 The following Council Units or Officers and/or other organisations have been consulted in preparing this report:

Assistant Chief Executive (Finance) and Chief Finance Officer
Chief Officer for Finance
Chief Officer for Environment
Service Manager (Governance, Planning, Property and Litigation)
Collection Hub Manager

No adverse comments have been received.

9. WARD COUNCILLOR VIEWS

9.1 The open spaces management charges for Great Denham and Kempston West affect properties in the following wards:

Great Denham Ward
Kempston West Ward

The Ward Members for each of these wards have been consulted and are supportive of the recommendations made in this report.

10. CONTACTS AND REFERENCES

Report Contact Officer	<i>Lee Phanco, Chief Officer Chief Officer for Assessment, Application & Business Support & Interim Monitoring Officer E-mail: lee.phanco@bedford.gov.uk</i>
File Reference	<i>None</i>
Previous Relevant Minutes	<i>Minute 111 – Full Council – 7 February 2024 Minute 106 – Full Council – 28 February 2023 Executive Decision 716 – 22 September 2009</i>
Background Papers	<i>None</i>
Appendices	<i>None</i>