

REPORT TITLE: PUBLIC OPEN SPACE AT KINGS BARTON

18 JULY 2023

REPORT OF CABINET MEMBER: Cllr Kathleen Becker, Cabinet Member for
Community and Engagement

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WARD(S): THE WORTHY, ST BARNABAS

PURPOSE

The Kings Barton development will deliver 24 hectares of recreational and public open space, the first of which has been completed and is ready for transfer to the relevant body for long-term management and maintenance.

A s106 legal agreement sets out a number of options for the future management and maintenance of the open space land. Agreement has been reached between Cala Homes, Winchester City Council and Headbourne Worthy Parish Council (HWPC), under the terms of the agreement as to the long-term ownership, maintenance and management of the open space land. This report seeks approval of the arrangements that will apply to the transfer of the first of the open space but also to all further open space that will be transferred over the life of the development.

It also sets out the terms negotiated with the developer for the funding that will come with all land transferred over the life of the development to meet the maintenance costs for a number of years.

RECOMMENDATIONS:

1. That all areas of public open space within the Kings Barton development that fall within the boundary of Headbourne Worthy parish (the area marked A in appendix 1) are transferred directly from Cala Homes to HWPC, or its successor together with the appropriate proportion of the commuted sum to meet the costs of future management and maintenance of the areas of open space. This includes land ready now and which will become available in later phases.
2. That all areas of public open space within the Kings Barton development that fall within the boundary of St Barnabas ward (the area marked B in appendix 1) are transferred from Cala Homes to Winchester City Council, together with the appropriate proportion of the commuted sum to meet the costs of future management and maintenance of the areas of open space, and allocated to the Town Account. This includes land ready now and which will become available in later phases.
3. That £75k costs incurred by Cala Homes in establishing the Barton Meadows nature reserve are met by reducing the overall commuted sum payable for management of public open space at Kings Barton.
4. That the commuted sums for the future maintenance of all public open space within the Kings Barton development will be calculated as follows:
 - a. Phase 1a = $43,233\text{m}^2 @ £11.79/\text{m}^2 = £509,717.07$, less £25k = £484,717.07
 - b. Phase 1b = $26,279\text{m}^2 @ £11.79/\text{m}^2 = £309,829.41$, less £25k = £284,829.41
 - c. Phase 2a = $12,652\text{m}^2 @ £11.79/\text{m}^2 = £149,167.08$, less £25k = £124,167.08
 - d. For all subsequent phases, using the council's standard rate for public open space maintenance at the date of transfer (which currently stands at £13.77/m²)
 - e. All of the rates above apply as at the date of this approval and will be subject to inflation at the point of transfer from the developer.
5. That, the Service Leads Legal and Built Environment be authorised to enter into all necessary legal agreements in order to formalise the commuted maintenance payments, the future management of the open space within St Barnabas ward on behalf of the city council by HWPC and any other consequential amendments arising from the approved recommendations.

IMPLICATIONS:

1 COUNCIL PLAN OUTCOME

- 1.1 Tackling the Climate Emergency and Creating a Greener District
- 1.2 The open space created as part of the King's Barton development (and the subject of this transfer) comprises areas of grassland, swales and detention basins, shrubs and a number of established and newly planted trees which will remain and be protected under the management arrangements described in the report.
- 1.3 Living Well
- 1.4 The Kings Barton development includes a network of high quality and easily accessible open spaces which are important for the health and wellbeing of the local community.
- 1.5 Your Services, Your Voice
- 1.6 Management of this open space by the parish council empowers and enables local people to have more direct control and a greater say in how their local open spaces are managed and maintained.

2 FINANCIAL IMPLICATIONS

- 2.1 The basis of the council's position when agreeing sums for open space management and maintenance is an agreed formula, based on the actual cost of maintaining such land through the grounds maintenance contract with idverde. This formula generates a representative figure that currently stands at £13.77/m², which reflects the actual cost at this time of maintaining a normal mix of open space types.
- 2.2 Cala Homes has proposed to pay a reduced figure of £11.79/m² in relation to phases 1a, 1b and 2a, following which they would pay the full rate for the remaining seven phases. This represents an overall reduction of £162,684 on the total figure calculated using the standard rate, which should be seen in context of a total commuted sum in excess of £2.5M that will be payable over the life of the development and would represent something like a 6% reduction over an estimated 20-year period. The exact sum is unknown as it will increase in line with inflation and the dates of future land transfer are uncertain, but the total maintenance sum for the whole development will be more than £2.5M (see section 11.20).
- 2.3 The majority of the open space falls within the Parish of Headbourne Worthy and the proposal is for the land and funding to transfer to Headbourne Worthy Parish Council. The maintenance sums involved are significant and this council would also be transferring the majority of the risks and financial implications to the parish council. This is explored further in section 11.8).

- 2.4 A proportion of the open space falls within St Barnabas ward, in the area of land marked B in appendix 1. The exact total area of this open space land is unknown at this stage as some of the phases are yet to be designed in detail, but it is likely to represent approximately 3% of the total open space provision at Kings Barton. A proportion of the £2.5M+ sum for future maintenance will be linked to this land, based on the rate per square metre of land proposed in this report. Based on the estimated 3% of open space, this would equate to a sum of approximately £75k. Under the proposed arrangements, the appropriate and proportional maintenance sum would be transferred to HWPC each year to meet the costs it incurs in maintaining this land. This would continue until such time as a Community Governance Review determines the long-term governance arrangements for the area.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The Local Government Act 1972 defines open space by reference to the definition given in s336(1), Town and Country Planning Act 1990, as: *“any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground”*. The land at Kings Barton falls within this definition.
- 3.2 The open space at Kings Barton is being laid out by the developer Cala Homes and will be transferred at no cost, in accordance with a s106 agreement linked to the planning permission.
- 3.3 A legal agreement will be required between the council and Headbourne Worthy Parish Council setting out the terms of the arrangement by which the parish council will maintain and be responsible for the areas of open space at Kings Barton that fall within St Barnabas ward.
- 3.4 There are no direct procurement implications related to this decision.

4 WORKFORCE IMPLICATIONS

- 4.1 Should this land be adopted by the council, it would be maintained and paid for via the grounds maintenance contract. By transferring the land to the parish council, the work involved in overseeing and monitoring this maintenance does not become a long-term obligation for the council.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The open space has been secured at nil cost through an s106 agreement between the council and the developer to meet the needs of the new community.
- 5.2 The council's 'Open Space Assessment', a supporting policy document to the Local Plan, identifies the land as protected open space, which would see the land remain as accessible public open space in perpetuity.

- 5.3 It is proposed that the freehold of the open space land within the boundary of Headbourne Worthy parish (excluding the Barton Meadows land to the east of the railway line) is transferred directly from Cala Homes to Headbourne Worthy Parish Council, or its successor.
- 5.4 It is proposed that the freehold of the open space land within the town ward of St Barnabas is transferred to the council, with responsibility passed to the town account. The management and maintenance for the land would be undertaken by Headbourne Worthy Parish Council, via a legal agreement with the council, in order for it to be managed with all other amenity open space at Kings Barton.
- 5.5 These arrangements would remain in place until the outcome of a future Community Governance Review, which would determine the future ownership of land and assets within the area.

6 CONSULTATION AND COMMUNICATION

- 6.1 The proposals for management and maintenance of open space at Kings Barton have been developed through ongoing dialogue with Headbourne Worthy Parish Council. The parish council resolved to agree to these proposals at its meeting on 22 May 2023.
- 6.2 Cala Homes is also aware of the intention to transfer the freehold of some land, and the management and maintenance responsibility of the remainder, to Headbourne Worthy Parish Council.
- 6.3 Report WTF318 to Winchester Town Forum on 15 June 2023 set out the proposal for Headbourne Worthy Parish Council to maintain the open space at Kings Barton that sits within St Barnabas ward, and was noted.

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 A management plan and/or maintenance schedule will be made available for the site by the developer, and this will be passed the parish council who will undertake management in substantial accordance with this plan.
- 7.2 The land will remain as protected open space through the S106 legal agreement and Local Plan and will continue to function in such a way as to deliver benefits for both wildlife and people. In addition, the site provides a range of other environmental services including flood attenuation, carbon capture and urban cooling.

8 PUBLIC SECTOR EQUALITY DUTY

- 8.1 An EQIA has been completed, which highlights potential in open space provision and management for discrimination on the basis of age, gender or disability. However, mitigation measures are in place to ensure these are managed and addressed. A copy of the EQIA can be found at appendix 2.

9 DATA PROTECTION IMPACT ASSESSMENT

9.1 None required.

10 RISK MANAGEMENT

10.1

Risk	Mitigation	Opportunities
<p><i>Financial Exposure</i> WCC does not have sufficient funds to meet maintenance cost of land within the town area.</p>	<p>Funds are available through s106 and will be ring fenced for this purpose.</p> <p>Agreement with Cala Homes is index linked to ensure future contributions are adequate.</p>	.
<p><i>Exposure to challenge</i> The decision is challenged.</p> <p>Appropriate legal arrangements cannot be completed.</p>	<p>The proposal is in accordance with the options set out in the s106 agreement.</p> <p>Discussions have been ongoing with the parish council, who have agreed to take the land including responsibility for its maintenance. The parish council have appointed a solicitor.</p>	
<p><i>Innovation</i> N/A</p>	N/A	N/A
<p><i>Reputation</i> That there may be a need for the parish council to seek advice in the management of the site.</p>	<p>The council will provide support at the outset to the parish council to ensure they have all the necessary tools to undertake effective and</p>	<p>Council reputation is enhanced through successful transfer and empowerment of the parish council.</p>

	efficient management of the site.	
<p>Achievement of outcome</p> <p>That the parish council fails to maintain the land to the expected standard.</p> <p>That the commuted sum is invested unwisely and is unable to sustain maintenance for the expected length of time.</p>	<p>The council will provide support at the outset to the parish council to ensure they have all the necessary tools to undertake effective and efficient management of the site.</p> <p>A maintenance schedule will be provided to the parish council, which will form part of the terms of the agreement and ensure the site continues to be effectively managed.</p> <p>Direction from the council on the type of investment advice that the parish council should seek.</p>	<p>The parish council's ability to respond to local need/demand ensures the open space is managed more effectively.</p> <p>This council can focus its resources on securing and delivering new areas of open space as they become available through the development management process.</p>
<p>Property</p> <p>That the land owned by this council is not maintained to the expected standard.</p>	<p>A maintenance schedule will be provided to the parish council, which will form part of the terms of the agreement and ensure the site continues to be effectively managed.</p> <p>The legal agreement will contain conditions related to the rectification of any poorly maintained land.</p>	<p>The parish council's ability to respond to local need/demand ensures the open space is managed more effectively.</p> <p>This council can focus its resources on securing and delivering new areas of open space as they become available through the development management process.</p>
Community Support		

<p>That the parish council does not have or does not retain support of the community.</p>	<p>Ongoing discussion at parish meetings and development forum ensures community awareness.</p> <p>The council to provide advice where necessary.</p>	<p>There is a likelihood of greater community involvement in the site and increased sense of ownership.</p>
<p>Timescales Delay in decision and completion of the agreement.</p>	<p>Inspections undertaken to identify any remedial work required ahead of transfer.</p> <p>All other parties have already approved the terms of the agreement.</p> <p>Fallback position is initial maintenance rests with WCC.</p>	<p>Previous discussion has allowed the parish council to fully prepare for the transfer.</p>
<p>Project capacity Additional council time required if transfer is prolonged.</p>	<p>Council officer work programme to accommodate possible additional time.</p>	

11 SUPPORTING INFORMATION:

- 11.1 Once complete, the Kings Barton development will comprise 2,000 new homes, along with a range of amenities including 24 hectares of recreational and public open space. The site was granted outline consent by the Secretary of State on 2nd October 2012 ref. 09/02412/OUT and was subject to a number of conditions and two s106 Legal Agreements (WCC and HCC). The current phasing plan for the development is shown in appendix 1.
- 11.2 The vast majority of the development sits within the Parish of Headbourne Worthy, with a small parcel of land sitting within the town ward of St Barnabas (marked B in appendix 1).
- 11.3 The long-term governance arrangements for the area have not yet been decided and it is likely that this will not be resolved until 2025 or 2026. This will be achieved via a governance review that may lead to a change in

boundaries and responsibility for Kings Barton but, in the meantime, there is a need to formalise arrangements for open space maintenance and management.

Ownership of the land

- 11.4 A s106 agreement sets out a number of options for the future management and maintenance of the open space land:
- a) The ownership management and maintenance of the features by a management company; or
 - b) The ownership management and maintenance of the features by a trust that has sufficient capital resources to ensure its ability to manage the features in the long-term; or
 - c) The ownership management and maintenance of the features to the (City) Council following the Council certifying the completion of the open space and the maintenance thereof for a period of 12 months thereafter by the owner to the reasonable satisfaction of the Head of Planning Management... and including the payment by the owner to the Council of a reasonable commuted sum in relation to their future maintenance; or
 - d) A combination of any of the options referred to above; or
 - e) Any other mechanism agreed between the Council and the owner.
- 11.5 In Winchester district, normal practice is for parish councils to own and manage public open space within their parish. This allows the local community to have more control and influence over the management of open space and for it to be able to enhance the area going forward, in a way which best meets local needs. This approach sees both resident management companies and parish councils manage public open space successfully in many areas.
- 11.6 Headbourne Worthy Parish Council is keen to take on responsibility for the public open space within its boundary at Kings Barton and 11.5(e) above reflect the option within the s106 that allows this, subject to the agreement of both the City Council and the owner. Cala Homes has confirmed its willingness to agree to this.
- 11.7 There are risks to this approach, one being the inexperience of the parish council in managing public open space. While there will eventually be 24 hectares of recreational and public open space, this will come in phases so the parish council will initially be managing only small areas, reducing the risk of problems. There will be a detailed maintenance plan provided by the developer so the required specification of works will be clear, and council officers with experience of managing open space will offer advice and

assistance during the early stages to ensure a smooth transition when the land is transferred.

- 11.8 The maintenance sums involved are significant so there are also risks around the protection of large financial reserves, particularly in context of a small parish council who are unable to be treated as a “professional” investor for treasury management purposes. These risks have been explained to the parish council and it has been advised to seek treasury management advice.
- 11.9 The measures proposed above should support the parish council and mitigate risk to the successful management of the open space. The benefits of management at a local level far outweigh the risks, so it is recommended that the freehold of the open space land within the Parish of Headbourne Worthy is transferred directly from Cala Homes to Headbourne Worthy Parish Council, along with the associated maintenance sum, for management in perpetuity as public open space.

Land within the Winchester Town area

- 11.10 The area marked B in appendix 1 sits within St Barnabas ward and will include a small amount of public open space land, which represents approximately 3% of the open space across the whole development. This land comprises areas of grassland, swales and detention basins, shrubs and a number of established and newly planted trees. Part of this land falls within phase 1a and will be ready for transfer to the council in the near future.
- 11.11 The principle of parish councils owning and managing public open space is applied within the town wards by this responsibility sitting with Winchester Town Forum. In line with that established approach, it is recommended that any open space within the area marked B in appendix 1 is transferred to the City Council when ready and responsibility is allocated to the Town Account, along with a share of the commuted sum for open space maintenance that is proportionate to the size of the land.
- 11.12 Should the freehold of the majority of the open space be transferred to Headbourne Worthy Parish Council, this would leave amenity open space in Kings Barton in two different hands. The parish council has offered to also take on management and maintenance responsibility for the open space land within St Barnabas ward, to simplify open space management and bring all amenity land under a single management regime. There would be additional advantages in not having multiple contractor teams visiting the site to maintain different pieces of land, which would be less cost-effective and also confusing to residents and other stakeholders.
- 11.13 It is therefore proposed that the City Council enters into a management agreement with Headbourne Worthy Parish Council in relation to the maintenance of open space at Kings Barton that sits within St Barnabas ward. This agreement would also see an appropriate and proportional amount of the commuted sum paid to the parish council which is to be used towards the maintenance of the land. The agreement would be for a period of between

two to three years and would be reviewed once the outcome of the governance review is known.

Barton Meadows nature reserve

- 11.14 The land to the east of the railway line falls outside of the boundary of the Kings Barton development site and has been used to create a nature reserve known as Barton Meadows, which enabled Cala Homes to mitigate the environmental impact of its development. This nature reserve is being [managed by Hampshire and Isle of Wight Wildlife Trust](#) due to the specialist nature of the management required, and will eventually be transferred to the City Council, so is not included within the land that will transfer to Headbourne Worthy Parish Council.
- 11.15 When the nature reserve was established it was agreed with Cala Homes that the cost of establishing the site would be reimbursed through an equivalent reduction in the commuted sum payable for future maintenance of the public open space at Kings Barton. This agreement was confirmed by an exchange of letters in 2014 and the cost has subsequently been confirmed as £75k..
- 11.16 It is recommended that the sum of £75k is deducted from the sums payable for phases 1a, 1b and 2a and that the sum for each phase is reduced by a sum of £25k.

Commuted sum for future management and maintenance

- 11.17 The s106 agreement requires, “payment by the owner to the Council of a **reasonable** commuted sum in relation to their future maintenance”.
- 11.18 This is unusual, in that other s106 agreements for similarly large developments have set out a specific sum that would be payable in respect of a commuted sum for future maintenance, and means that the council has had to negotiate with Cala Homes on this matter. The basis of the council’s position is an agreed formula, based on the actual cost of maintaining such land through the grounds maintenance contract with idverde. A representative figure of £13.77/m² has been calculated, which reflects the actual cost at this time of maintaining a normal mix of open space types. This formula is used successfully with various developers when agreeing commuted sums for new public open space.
- 11.19 Phases 1a and 1b of the development are well progressed and the first tranches of public open space are almost ready for transfer by Cala Homes. Negotiations on the commuted sum have not been easy and viability issues mean that the developer feels unable to pay the usual £13.77/m² for all public open space across this large development. Following prolonged negotiation, Cala Homes has proposed to pay a reduced figure of £11.79/m² in relation to phases 1a, 1b and 2a, following which they would pay the full rate for the seven phases that follow.

11.20 The proposed commuted sums for management and maintenance of open space at Kings Barton are summarised as follows:

	Area	Rate	Negotiated sum	Sum payable after deduction of £75k for Barton Meadows
Phase 1a	43,233m ²	£11.79/m ²	£509,717.07	£484,717.07
Phase 1b	26,279m ²	£11.79/m ²	£309,829.41	£284,829.41
Phase 2a	12,652m ²	£11.79/m ²	£149,167.08	£124,167.08
Phase 2b				
Phase 3a				
Phase 3b	120,500m ²	£13.77/m ²	£1,659,285.00	£1,659,285.00
Phase 4a				
Phase 4b				
	202,664m²		£2,627,998.56	£2,552,998.56

11.21 All of the rates above would apply as at the date of this decision and would be subject to inflation at the point of transfer. They are also subject to the deduction of £25k from each of the three phases 1a, 1b and 2a as described in section 11.16.

11.22 Headbourne Worthy Parish Council has been involved in the negotiations, as a key stakeholder and recognising its potential role in managing the open space and therefore as the potential recipient of this money. The parish council is particularly keen to secure agreement with Cala Homes so that transfer of land can commence and to have certainty over future ownership of the land. In particular, the parish council is keen to avoid potential for the land to end up in the ownership of a management company – an outcome which it doesn't feel is in the best interests of local residents. For those reasons, the parish council is satisfied that the latest proposal agreed by Cala Homes represents the best possible outcome and is supportive of the recommendation that this be approved.

12 OTHER OPTIONS CONSIDERED AND REJECTED

12.1 The s106 agreement does not specify the sum to be paid by Cala Homes for the future maintenance of the land, but instead requires Cala to provide a 'reasonable sum'. The terms set out in the recommendations have been

negotiated with Cala but fall a little short of the amount that would normally be expected for open space of this scale. There was an option to continue negotiating in the hope of a better settlement but, with no obligation to pay a specific rate, Cala could have refused to offer more. The likely outcome of this scenario was a transfer of the land to a private management company, which is the least preferred option for the parish council as they feel it would not be in the best interests of residents. For that reason, it was agreed with the parish council that the negotiated figure was the best outcome that could be achieved and terms with which they would be happy to manage the land.

12.2 There is an option for the council to retain the freehold and management responsibility for all open space at Kings Barton, rather than it being transferred to the parish council. This has been discounted for the following reasons:

- a) Whilst the council has an effective grounds maintenance contract, it does not allow for local variation and/or subtlety of management. This can be more readily achieved when land is managed by local people for local people.
- b) The council is no longer the default recipient or transferee of new residential on-site open spaces, where those open spaces could be more appropriately managed by a local parish council or a resident management company.
- c) Allowing local people to have a more direct say in how their open space is managed engenders a better sense of ownership and responsibility and reduces issues such as anti-social behaviour and vandalism.
- d) The existing commuted sum is sufficient to help support the management of the site for the foreseeable future but there will be a need to use local precept at some point to sustain effective management of the site.

12.3 The default option for management and maintenance of open space land within the town wards is for responsibility to sit with the City Council and be managed as part of the Town Account budget. This could be done for the 3% of Kings Barton's open space but would mean an additional maintenance regime being introduced for land at the development. This would be an inefficient use of resources, as the council's grounds maintenance contractor IdVerde would be required to visit the site to maintain this relatively small amount of land, when other contractors were already visiting the site. It would also be simpler for residents to know that all open space issues at Kings Barton were the responsibility of the parish council.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

WTF318 - Public open space at Kings Barton – 15 June 2023

Other Background Documents:-

1. Section 106 Barton Farm final executed agreement –
https://planningapps.winchester.gov.uk/online-applications/files/0FEEA5D0275BA0E4E480E052812155DE/pdf/09_02412_OUT-S106_Barton_Farm_final_executed_agreement_080311-257106.pdf

APPENDICES:

Appendix 1: Site plan

Appendix 2: Equality impact assessment

