

Implementing Open Space Requirements



Exeter City Council

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2006
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Introduction

1. The aim of this document is to advise prospective developers of the processes needed to enable the Council's public open space requirements to be met. It advises on practice to be followed and not on the policy or its interpretation.

2. These requirements are set out in the Exeter Local Plan First Review policies (see Appendix I) and the Open Space Supplementary Planning Document which provides clarification of these policies. The extent to which these policies and the guidance apply will depend on the quality and availability of open space facilities to serve the development concerned. Information on this is provided by the Audit of Outdoor Recreation Facilities. All these documents can be purchased or viewed at the Civic Centre or by visiting the Council's web site www.exeter.gov.uk

3. The main steps involved are set out below. Appendix II lists Council contacts and explains how the process is managed and the roles of different officers. The basis for calculating contributions and bonds is explained by Appendix III. The actual figures used here will be brought up to date regularly. Appendices IV and V are the Open Space Scheme and Adoption Certificates referred to in the text.

Pre-Application Inquiries

4. The Area Planner will make sure that prospective developers are fully aware of Local Plan policies, relevant supplementary planning documents, and appropriate Government advice. He or she will advise them of the importance of making sure that the public open space provided on site is satisfactorily designed, durable and can be readily maintained and, together with any contributions required, meets the recreational needs generated by the proposed development and takes account of neighbouring provision and needs. Depending upon the facilities likely to be required, the nature of the site and the level of advice required, the Area Planner may consult Estates Services, the Parks and Open Spaces Manager, the Leisure Manager and the Landscape Architect (and possibly others) on the requirements. It is desirable that the Council is involved before public open space proposals are worked up in order to minimize abortive costs to the developer. The Area Planner will make sure that relevant officers are consulted as and when revised or more detailed proposals are introduced.

Outline Applications

- 5 The Leisure Manager and the Parks and Open Spaces Manager and other officers will, if necessary, be consulted directly by the Area Planner on outline applications that do not include details such as the layout and the number of dwellings to be provided. This will inform negotiations with the applicant(s) about possible planning conditions affecting the location of public open space; the extent and nature of facilities to be provided on the site by the developer; the size of any bond required and the contributions expected towards future maintenance and, where appropriate, off-site provision. Rather than stipulating a fixed amount, the Section 106 Agreement will usually require contributions towards off-site open space facilities to be provided according to a formula, linked to the eventual detailed permission.

Approval of Reserved Matters

- 6 When detailed plans are available the Area Planner will consult as appropriate with Estates Services, the Leisure Manager and the Parks and Open Spaces Manager on the location, design, preparation and equipping of public open space to be provided on the site. Direct discussions between the developer and these officers in the company of the Area Planner may be desirable before the detailed plans have been drawn up.

Applications for Full Permission

- 7 It is anticipated that most applications will be for full planning permission and that therefore the size of any contribution and/or bond, subject to indexation, will be fixed by the Section 106 Agreement. It is highly desirable for an applicant to submit full details of proposed open spaces at the time of applying for Full Permission or Approval of Reserved Matters.

Section 106 Agreement

- 8 The Area Planner will endeavour to agree the content of a Section 106 Agreement with the applicant before a proposal is considered by the Council's Development Control Committee, if approval subject to an agreement is being recommended. A specimen agreement and sample clauses can be obtained from the Planning Solicitor and are displayed on the Council's web site.

The Open Space Scheme

- 9 The Section 106 Agreement will require the submission of full details regarding the on-site public open space to the Head of Planning Services (in practice this will be the Area Planner acting on his behalf) before development commences. In this document those details are called "the Open Space Scheme" and will comprise the following:
 - a) the Open Space Scheme and Certificate (See Appendix IV) giving information required to enable adoption of the open space to take place including any written material needed to supplement information shown

on the plan in c) below or as otherwise might be required by the Agreement at this stage;

- b) a draft transfer of the open space to the Council;
 - c) a scale plan of the site showing as accurately and clearly as possible:
 - the extent of the areas to be adopted;
 - who is responsible for maintenance of the boundaries to these areas; (the Council will normally require boundary structures to be retained by or conveyed to adjoining owners);
 - the location of any easements, wayleaves or other constraints affecting the land;
 - the intended finished levels of the open space(s);
 - d) the proposed detailed design and layout of the open spaces to be adopted;
 - e) details and specification of all equipment, surfacing, fencing, benches, bins and other items to be provided, where these are to be provided by the developer;
 - f) any further drawings and written material needed to adequately explain the proposals;
 - g) details of measures to preserve existing trees, hedges, etc which are to be retained.
- 10 Developers are strongly advised, in order to avoid delay, to submit the Open Space Scheme well before they plan to commence development and only after detailed consultation with the Area Planner and other Council officers where the Area Planner has advised that they should be included in the process.

- 11 The Area Planner will return the certificate to the developer, either signed indicating that the Public Open Space Scheme is accepted by the Head of Planning Services, or specifying changes to it that are considered necessary. If changes are required this should be discussed by the developer with relevant officers if clarification is needed and to explore possible alternatives. Amended proposals should be submitted to the Area Planner who will arrange any further consultations needed and certification of acceptance when all the Council's requirements have been met.

Commencement of Development

- 12 The Section 106 Agreement will require the developer to notify the Head of Planning Services when development commences (in practice this notice will be given to the Area Planner). It will also normally provide that development must not commence until:
- any contributions needed towards the provision of off-site open space

- facilities have been paid to the Council;
- a bond has been entered into covering the anticipated cost to the Council of providing the on site open space facilities;
 - the Open Space Scheme has been approved.

Adoption of Open Space

- 13 The developer will normally be expected to phase development in such a way that open spaces become available as soon as possible after nearby dwellings are occupied. On smaller sites it should be completed by the time 50% of the dwellings which it is intended to serve have been occupied. There will also be a requirement that the legal transfer is ready to complete at this stage. At this stage the Council will have the option of accepting the land (with or without a formal transfer) and completing the work itself and recovering the cost from the developer (or the bond in case of default).
- 14 Upon completion of the open space on the site and the installation of any equipment to be provided on it, the developer should supply the Pre-Adoption Certificate (see Appendix V) to the Area Planner who will pass it to the Head of Estates Services. He will complete and return the certificate countersigned by the Head of Contracts and Direct Services and, if appropriate in view of any other facilities being adopted, by the Head of Leisure and Museums and/or other relevant Head of Service. The Certificate will either accept the land and equipment as being ready for adoption or specify works which need to be done if it is to be accepted. It will be the developer's responsibility to maintain the open space in adoptable condition during the period between submission of the Pre-Adoption Certificate and the transfer of the land to the Council.
- 15 The developer will normally be requested to carry out within 30 working days any remedial works identified. New or replacement planting may, by agreement, be postponed until the next planting season. The Council will estimate how much it will cost them to carry out any outstanding planting work and any other remedial work not carried out within the 30 days. The developer will be required to pay this sum to the Council before adoption of the land takes place. The bond will not be released until this sum has been paid.
- 16 The Section 106 Agreement will specify a timetable for completion of the transfer of the land beginning on the date when the Pre-Adoption Certificate is signed by the Council. The developer will be required to pay the Council the contributions required for future maintenance before the transfer takes place. The Council will only authorise the release of the bond when the open space is in a satisfactory condition, and all sums due to the Council have been paid.

Use of Contributions

- 17 Money received by the Council for future maintenance of public open space is added to a single interest bearing account into which all payments of this kind are made. A fixed percentage of the total amount in the account is paid to the Parks and Open Spaces Manager every year to be applied specifically for the maintenance of public open space. Other contributions are each paid into a

separate interest bearing account. Progress with expenditure of this money is monitored regularly. The results of this are reported to the Council's Development Control Committee every 6 months.

Ensuring implementation

- 18 The provision of public open space requires close co-operation by all involved. The process is designed to apply pressure on both the Council and developer to ensure that progress is made. It also includes mechanisms to record when key stages are reached so that, if there are disputes, disagreement about material facts is minimized.
- 19 The Council will use its enforcement powers if the Section 106 Agreement is not complied with. In addition, the fact that a development is taking place despite non-compliance with a Section 106 Agreement will be included as a standard response to searches from prospective purchasers of dwellings being provided. Other measures could include publicity in the local press and warning Local Authorities in the area of persistent offenders.

APPENDIX I

LOCAL PLAN FIRST REVIEW POLICIES

- **L3** Development on open space will only be permitted if:
 - a) the loss of the open space would not harm the character of the area; and
 - b) the open space does not fulfil a valuable, recreational, community, ecological or amenity role; and
 - c) there is adequate open space in the area; or
 - d) the loss of open space is outweighed by its replacement in the area by open space of at least equivalent recreational, community, ecological or amenity value (including in particular, the provision and enhancement of equipped play space).

- **L4** Residential development of 10 or more dwellings should contribute to the provision of youth and adult play space (directly related to, and necessary for, the development) having regard to the type of residential development proposed and considered against a standard level of provision of playing pitches of 1.2 hectares for every 450 dwellings. (Policy L5 relating to the location of synthetic turf pitches and multi-use games areas [MUGAs] near housing should be noted).

- **L5** Development that would result in the loss of a playing field will not be permitted if it would harm recreation opportunities in the area.

- **L7** Development that would result in the loss of sporting facilities which serve a local area will not be permitted if it would harm sports opportunities in the area.

- **DG5** Family housing proposals should provide 10% of the gross development area as level open space, including equipped children's play space unless there is open space and play provision in the area which is well located and of sufficient size and quality to serve the development.

3. Other Roles

Planning Services

The Area Planner dealing with the planning proposal concerned is the main point of contact and has responsibility for co-ordinating the process under the overall direction of the Head of Planning Services and the Development Control Manager. He or she will have particular interest in ensuring that the open space is well related to the surrounding development. He or she will also coordinate consultations prior to the signing of the Open Space and Pre-Adoption Certificates. The Landscape Architect and the Landscape and Tree Officer provide specialist advice. The Senior Enforcement and Projects Officer deals with breaches of planning control and instructs the Planning Solicitor to take legal action where this is necessary.

Leisure Team

The Leisure Manager will advise on requirements for equipped play areas, youth facilities and countryside areas and on the suitability for adoption of what is provided. Where sums are provided for the Council to install play facilities the Leisure Manager will implement the work.

Parks and Open Spaces Team

The Parks and Open Spaces Manager is responsible for the future management and maintenance of the land and equipment which is adopted, and will advise on the suitability of proposals put forward. Accordingly he or she will have to be satisfied with the condition of the land and equipment such that the open space can be maintained within the budget arising as a result of the Section 106 Agreement before adoption takes place.

Legal Services

The Head of Legal Services is responsible for commissioning the legal work required. The Planning Solicitor generally drafts all Section 106 Agreements and adoption work is undertaken by the Council's Conveyancers.

Financial Services

The Corporate Financial Adviser oversees the collection and expenditure of developer contributions.

Estates Services

The Head of Estates, (in practice usually a Senior Valuer), is responsible for checking that land on the ground matches that shown on the plans and that there are not any significant boundary problems. This service will provide instructions to the Conveyancers and offer advice and support to other sections as required.

The Head of Estates is also responsible for certifying land and facilities as fit for adoption, in conjunction with Heads of those services which will be taking on responsibility after adoption.

APPENDIX III

FINANCIAL CALCULATIONS

Schedule A of this Appendix contains benchmark figures covering the provision and maintenance of public open space facilities. These reflect current average costs and will be updated regularly. They provide a basis for negotiation and variations may be necessary reflecting particular characteristics of the site.

SCHEDULE A

Type of contribution	Amount	Schedule B paragraph(s)
a) Provision and maintenance of off-site playing pitches	£440 pd(1) (see notes below)	(i) & (ii)
b) Provision and maintenance of open space for family housing on the development site (no play equipment)	£380 pd(2)	(iii) & (v)
c) Provision and maintenance of open space for family housing off the site (no play equipment)	£680 pd(2)	(iv) & (v)
d) Creating a new play area (various age groups including youth facilities) on or off the site: <ul style="list-style-type: none"> • facilities are to be provided on site on developments of 50 or more dwellings; • a contribution towards off site play areas will be required from smaller developments (see (e) below); • where a facility is provided to serve the neighbourhood or larger area, contributions from section 106 agreements may be pooled. 	See Schedule B, paragraph (d) for approximate costs. Type of play area will depend on nature of development including mix of dwellings.	(vi)
e) Improving a play area on or off the site including provision for its future maintenance	£270 pb(-1)	(vii)
f) Improving youth facilities on or off the site including provision for its future maintenance	£82 pb(-1)	(viii)
g) Maintaining play area on or off site -		(ix)
Minor	£9600	
Neighbourhood	£12,480	
Major	£19,200	
Youth	£21,120	

Notes:

Contributions apply to developments of 10 or more dwellings. On such developments:-

- pd(1) = per dwelling.
- pd(2) = per dwelling having 2 or more bedrooms.
- pb(-1) = per bedroom (excluding the first bedroom in each dwelling).

Special factors may result in increased contributions, eg. loss of existing open space or sports facilities as a result of the development.

The contributions in Schedule A are calculated on the following basis:

SCHEDULE B

<i>Purpose</i>	<i>Amount</i>	
(i) Provision of off-site playing pitches	Value of the land at 3 x good quality agricultural land value + average cost of construction including allowance for ancillary facilities such as changing rooms etc .	
(ii) Maintenance of playing pitches	Annual cost of maintaining the open space x 14; including a contribution towards infrastructure items requiring maintenance at intervals greater than one year, e.g. sports furniture.	
(iii) Provision of open space for family housing on the site (no play equipment):	Cost of construction by the Council in lieu of the developer.	
(iv) Provision of open space for family housing off the site (no play equipment):	Cost of acquiring the land at average residential land value for the City + cost of construction by the Council	
(v) Maintenance of open space for family housing (no play equipment):	Annual cost of maintaining open space for housing x 14; including a contribution towards items requiring maintenance at intervals greater than one year, e.g. retaining walls or fences.	
(vi) Equipping play area on or off the site:	Cost of provision and installation of equipment and ancillary items. Typical costs at December 2005 (in all cases add railings at £75 per linear metre):-	
	“Minor” area for age 0-4	£20,000 - £30,000
	“Minor” area for age 5-8	£25,000 - £35,000
	“Minor” area for age 9-12	£40,000 - £50,000
	“Neighbourhood” area for 0-8	£36,000 - £46,000
	“Neighbourhood” area for 5-12	£52,000 - £64,000
	“Major” area for age 0-12	£62,000 - £76,000
“Youth” area for 13+	Up to £80,000	
(vii) Improving play area (without youth facilities):	Cost per child aged 0-12 based on existing level of provision in Exeter.	
(viii) Improving youth facilities.	Cost per child aged 13+ based on existing level of provision in Exeter.	
(ix) Maintaining play area on or off site: (Same calculation for each type)	Annual cost of maintenance of play equipment x 14; including a contribution towards items requiring maintenance at intervals greater than one year, e.g. paths or fences. Figures for Neighbourhood, Major and Youth facilities are the “Minor” figure multiplied by 1.3, 2.0 and 2.2 respectively.	

10% will be added to the total to cover administrative costs. The annual maintenance estimates are currently multiplied by 14 to ensure that payments are sufficient, together with any interest earned, to cover costs in perpetuity.

All figures are correct at December 2005 and will be reviewed regularly.

The size of contributions will be index linked to allow for inflation in accordance with Schedule C below:

SCHEDULE C

The size of contribution/bond will be fixed by the Section 106 Agreement but it will include arrangements to allow for inflation. If contributions are not made when the Agreement is signed the actual amount will be determined by the following formula:

$$\text{Where } C = Y \times \frac{B}{A}$$

And :

- A. is the value of the relevant index (usually the [Retail Prices Index](#)) last published by the Government before the date of the Agreement (as specified in the Section 106 Agreement);
 - B. is the value of the Index last published before the contribution has been paid;
 - C. is the contribution or bond to be paid
- Y is the base figure for the contribution or bond

The method of payment is set out below:

SCHEDULE D

Contributions can be paid by cheque, debit card or transfer. Cheques should be made payable to Exeter City Council and sent or delivered to the Head of Planning Services. Debit card or transfer payments can be arranged by telephoning 01392 265223 or e-mailing planning@exeter.gov.uk. It is absolutely essential that the planning application number and a description of the purpose of the contribution accompanies payment.

APPENDIX IV

OPEN SPACE SCHEME AND CERTIFICATE

Part I To be completed by the prospective developer .

Please find attached the open space scheme required by the Section 106 Agreement in connection with:

application no:

for development at:

Attached are:

- Drawing no(s) showing the proposed layout and design of the open space(s);
- Drawing no: shows the area(s) to be adopted including boundary responsibilities, the line/location of any service or other obligations/constraints affecting the site.
- Additional information to supplement the above drawings as follows:
 -
 -
- Details and specification of all equipment to be provided, namely:
 -
 -
 -
- Any further drawings and written material needed to adequately explain the proposals:
 -
 -
- Details of measures to preserve existing trees, hedges, etc which are to be retained:
 - attached: Y / N
- The draft transfer document, subject to contract:
 - attached: Y / N

The following will be acting for us in connection with the transfer of the land:

.....
(Please provide name of firm **and** individual, and (if known) their reference, telephone number, and e-mail address)

We agree to meet the legal costs incurred by the Council in connection with the transfer.

SignedName
Date

On behalf of:

PART II To be completed by the Council.

The open space scheme described above meets the requirements of the planning application and associated Section 106 Agreement [subject to the conditions and variations set out in the attached documents]. (Delete if inapplicable)

Signed.....Date:.....
Head of Planning Services

APPENDIX V

PRE-ADOPTION CERTIFICATE

Part I To be completed by the prospective developer.

This is notification that in my view the open space shown on the attached plan provided as part of development at

.....

in accordance with application no:

is now ready for adoption.

Signed Date

On behalf of:

.....

PART II To be completed by the Council

I confirm that the open space described above is ready for adoption [subject to the conditions and variations set out below]. (Delete if inapplicable)

For the avoidance of doubt, this certificate (either on its own or in conjunction with other documents) does not constitute a contract for the transfer of an interest in land.

Signed Date
Head of Estates

[Signed..... Date
Head of Contracts and Direct Services]

[Signed..... Date
Head of Leisure and Museums]

[Signed..... Date
Head of

Once signed by all parties this certificate is to be copied to each relevant Head of Service (above) and the original passed to the Head of Legal Services