

## POLICY FOR THE DISPOSAL OF PUBLIC OPEN SPACE

### **1 Introduction**

- 1.1 The City Council seeks to protect and retain public amenity open spaces in the city whether they are for visual amenity, formal or informal leisure use or have a value for wildlife conservation and the preservation of bio-diversity. (“Public open space” land is not always “open” to public use, but is nevertheless of public value due to bio-diversity, hydrology and other reasons.) Areas may also have a potential value for promoting accessibility for connections between footpaths, bridle-ways and cycle routes and for addressing local road safety and parking needs. Areas of open space are often integral to the design and landscaping of developments, e.g. the spacing and relationships of built and non-built forms in the environment.
- 1.2 Areas of vegetation can help to cool the micro-climate and provide shelter for local species of plant or animal as well as reduce pollutants in the air and reduce the rate of surface water run-off, providing natural filtration for pollutant run-off before it reaches our waterways.
- 1.3 These parcels of land, irrespective of size, are covered by this Policy and preserved by the provisions contained in the Local Plan. The Council’s policies to seek to protect and secure additional provision of open space.
- 1.4 Open space is provided for the benefit of the public as a whole and its disposal to private individuals for their exclusive use is not consistent with this principle. There is therefore a presumption against disposal of public open space for private use.
- 1.5 When planning permission for new large major residential development is granted, it is made conditional upon the developers providing suitable landscaping and adequate areas of amenity space. These requirements are usually protected in the legally-binding planning or open space agreements.
- 1.6 The legal title of land transferred to the Council under such agreements by developers usually contains restrictive covenants requiring the land to be used only for open space purposes and not sold or developed for financial gain by the Council.
- 1.7 In addition to areas of land transferred in this way, the Council also holds title to other areas of public open space acquired in different ways and not connected to specific planning agreements.
- 1.8 The applications to the Council to dispose of small parcels of council-owned public open spaces are usually made by home-owners adjoining such areas of open space.
- 1.9 Disposal: a disposal for the purposes of this Policy means any freehold disposal, by

sale or exchange of council-owned land or any disposal by granting or assigning of a lease or any disposal of an interest in land.

## **2.0 Grounds for Disposal of Public Open Space**

- 2.1 The Council recognises that occasionally there may be exceptional circumstances which should be taken into account when considering applications.
- 2.2 The Council will consider disposal of public open space on a case-by-case basis depending on the exceptional circumstances where the application is in the opinion of the City Surveyor and head of the landholding service as appropriate.
- 2.3 Such exceptional circumstances include: a) public access to (or views of) the open space is severely restricted and as such the land has little benefit to the public; b) the open space has little bio-diversity, hydrology, shading or air quality value; c) the use of or management of the open space is giving rise to severe nuisance to adjoining property owners (e.g. where the land intrudes into a logical boundary of a dwelling or where balls can be kicked against a flank wall, etc); d) the open space is needed to adapt a particular property or provide access to a particular property occupied by an individual with specific requirements as a result of severe disabilities or other health problems; e) the cost of managing the open space is prohibitive when set against the public benefits of retaining the land as open space (i.e. irregular boundaries resulting in the need for manual rather than mechanical maintenance); f) the open space is required to provide an access to enable a housing site to be accessed for development; g) the open space is required to provide access to allow off-street parking to be provided where this would benefit highway safety; and (h) such other exceptional circumstance that might occur in individual cases.

## **3.0 The Process for Evaluating Applications for the City Council to Disposal of Public Open Space**

- 3.1 The Corporate Property Service will apply this Policy on receiving the initial application and only allow applications where exceptional circumstances apply.
- 3.2 The applicant should ensure that the land they are requesting the Council dispose of is owned by the City Council by undertaking a Land Registry search. They should submit a copy of this with their application stating the grounds for disposal together with supporting evidence and payment of an administration fee, currently £100, in line with the Council's fees and charges.
- 3.3 In considering a request for the Council to dispose of public open space and whether exceptional circumstances do apply, the City Surveyor will consult with relevant stakeholders, the Service area, Portfolio Holder and Ward Councillors on the principle of disposal, including whether the circumstances can be effectively dealt with in alternative ways that do not result in disposal of public open space.

This consultation process will be undertaken within 8 weeks of the original valid application being received.

- 3.4 Once an application has been consulted on, if Ward Councillors support the principle of disposal and it is also agreed with the relevant Portfolio Holder, the Council will notify the applicant and adjacent neighbours of the land of their intention to dispose of the land. In addition, the Council will place an advertisement in the local press for two consecutive weeks announcing the Council's intention to dispose of the public open space. A period of 28 days from the date of the advertisement has to be allowed for any objections from the public.
- 3.5 A Briefing Note will be prepared by the City Surveyor with their recommendations setting out any objections received. This note will be prepared within 8 weeks of the end of the period for objections from the public and presented to the appropriate Portfolio Holder for a final decision on the application.
- 3.6 All reasonable costs of advertising the proposed disposal will be payable by the applicant whether or not the disposal proceeds to completion as a result of public objections.
- 3.7 In cases where the principle of disposal is not agreed, the City Surveyor will advise the applicant that the Council do not consent to disposal and that other reasons including providing information for alternative solutions are agreed to deal with exceptional circumstances.
- 3.8 Examples of alternative solutions to deal with exceptional circumstances include:
  - i. Where it has been claimed that the land is untidy and unmanaged, the Council will review the condition and maintenance programme of the land to ensure that it is appropriately maintained;
  - ii. Where it is claimed that there is a nuisance from public open space land, the Council will seek to eliminate or reduce the nuisance;
  - iii. Where it is considered that disposal is not in the interest of the Council, the City Surveyor may decide that a temporary licence of the land would be more appropriate. In these cases the City Surveyor may grant a licence to use the public open space and the terms on which it is granted will be agreed by the City Surveyor in consultation with the relevant stakeholders including the Operational Service and Portfolio Holder.

#### 4.0 **Terms and Conditions for the Disposal of Public Open Space**

- 4.1 The terms for disposal will be determined by the City Surveyor in consultation with the relevant stakeholders including the appropriate Service head and will be subject to conditions including covenants to ensure that the land is only used for the agreed purposes.
- 4.2 It will be subject to the following conditions:

- i. No building, shed, greenhouse, wall or other structure shall be erected on the land unless prior agreement has been obtained from the Council;
- ii. No fence or hedge over 1 metre in height shall be erected (except away from the highway where planning consent has been obtained for a higher fence or where a fence or hedge exists with approval from the Council);
- iii. No commercial operation can take place on the land;
- iv. Planning permission for change of use from public open space to private garden will need to be obtained by the applicant before the disposal can be completed;
- v. Maintenance of the land must be in accordance with any specific recommendations of the City Council;
- vi. Transfer of all liabilities arising from land ownership and rights reserved.

4.3 These conditions are intended to: a) maintain the amenity of the land; b) ensure that no material change of use occurs that would contravene planning regulations; c) protect underground services from damage; d) protect the local environment, natural drainage and the bio-diversity within the area.

4.4 The disposal price shall be determined by the City Surveyor and the purchaser shall pay all the Council's reasonable costs in the disposal including an initial administrative charge.

4.5 The law requires that the Council should seek best financial consideration for the disposal of land. The proceeds from such disposals under the value of £10,000 are treated as revenue income, in the event of a disposal being agreed above this figure, the proceeds are treated as capital receipts.

## 5.0 **Where Disposal is Refused and Temporary Licence Proposed**

5.1 Where the Council agrees to grant the applicant a temporary licence for use of public open space, the terms will be agreed, including the licence fee payable, by the City Surveyor in consultation with the Service Area Portfolio Holder. It is likely that any such temporary use will be subject to the following conditions:

- i. The licence will be personal to the applicant and non-transferable;
- ii. No building, shed, greenhouse, wall or other structure shall be erected on the land;
- iii. No fence or hedge over 1 metre in height shall be erected (except away from the highway where planning consent has been obtained for a higher fence or where a fence or hedge exists with approval from the Council);
- iv. The land must be maintained so that it maintains a satisfactory appearance at all times;
- v. Where the land is deemed to be of ecological value it be maintained in such a way as agreed with the City Council as a benefit for wildlife conservation and the protection of bio-diversity;
- vi. No trees shall be planted or removed without the written agreement of the Council;
- vii. No fire shall be lit, nor rubbish dumped, nor materials stored, nor vehicles

- parked on the land;
- viii. No commercial operation (e.g. the growing of plants for sale or rearing of livestock) shall take place on the land;
  - ix. No digging or excavation that would adversely affect the hydrology or stability of the soil or sub-soil in the surrounding area;
  - x. Obtaining of planning permission by the licence holder for change of use from public open space to private garden.
- 5.2 These conditions are intended to: a) maintain the amenity of the land and ensure its visibility and enjoyment by the public; b) ensure that no material change of use occurs that would contravene planning regulations; c) protect underground services from damage; d) protect bio-diversity; e) protect hydrology, drainage and stability of the land.
- 5.3 If any of these conditions are breached, the Council will reserve the right to terminate the licence and re-occupy the land.
- 5.4 On termination of the licence agreement by the Council or the surrender of the licence by the licensee the Council will, at its discretion, require the removal of all or any plant materials and re-instatement of the land to a satisfactory condition at the expense of the licensee or shall undertake works itself and recharge the costs to the licensee.
- 6.0 **Dispute Resolution**
- 6.1 Any dispute over the City Surveyor's rejection of an application for the Council to dispose of public open space where it is considered that either it does not relate to a small parcel of open space, no exceptional circumstances exist or where they cannot be addressed in alternative ways, shall be passed to the appropriate Service Director in consultation with the relevant Portfolio Holder to determine.

**Michael Carson**  
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