

POLICY ON THE DISPOSAL OF PUBLIC OPEN SPACE TO PRIVATE INDIVIDUALS

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Policy & Resources (minute P977)**

Introduction

Hedge End Town Council seeks to protect and retain public amenity open spaces in the area whether they are for visual amenity, formal or informal leisure use or have a value for wildlife conservation and the preservation of biodiversity. ('Public Open Space' land is not always 'open' to public use, but is nevertheless of public value due to biodiversity, hydrology and other reasons.) Areas may also have a potential value for promoting accessibility for connections between footpaths, bridleways and cycle routes or 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.

Areas of vegetation can help to cool the microclimate 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 and provide natural filtration for pollutant run off before it reaches the River Hamble.

These parcels of land, irrespective of size, are covered by this policy.

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.

When planning permission for residential development is granted, it is made conditional upon the developers providing suitable landscaping and adequate areas of open space. These requirements are usually protected in legally binding planning or open space agreements.

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.

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.

The applications for the Council to dispose of small parcels of Council owned public

open spaces are usually made by homeowners adjoining such areas of open space.

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 the land.

Grounds for disposal of public open space

The Council recognises that occasionally there may be exceptional circumstances which should be taken into account when considering applications.

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 Town Clerk and Operations Manager has the potential for being an exceptional circumstance.

Such exceptional circumstances may 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 biodiversity, hydrology, shading or air quality value.
- c) The use of or management of the open space is giving rise to a serious nuisance to adjoining property owners, e.g. where the land intrudes into the logical boundary of a dwelling, or where balls can be kicked against a flank wall.
- 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 result 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.

The process for evaluating applications for the Council to dispose of public open space

1. The Town Clerk and/or the Operations Manager along with the Ward Councillor/s will apply this policy on receiving the initial application and only allow applications to progress where exceptional circumstances apply.

2. The applicant should ensure that the land they are requesting the Council dispose of is owned by the Town 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.
3. In considering requests for the Council to dispose of public open space and whether exceptional circumstances do apply, the Town Clerk and/ or the Operations Manager will consult with relevant stakeholders.
4. Once an application has been consulted on if ward councillors support the principle of disposal the Town Clerk will prepare a report for the Policy & Resources Committee. Subject to the committee agreeing the exceptional circumstances the Council will notify the applicant and the adjacent neighbours of the land of their intention to dispose of the land. In addition the Council will advertise this for two weeks announcing the Councils intention to dispose of public open space. A period of 28 days from the last advertisement has to be allowed for any objections from the public.
5. 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.

In cases where the principle of disposal is not agreed, the Town Clerk will advise the applicant that the Council do not consent to disposal and outline the reasons including providing information where alternative solutions are agreed to deal with exceptional circumstances.

Examples of alternative solutions to deal with exceptional circumstances may include:

Where it has been claimed that the land is untidy and unmanaged, the Council will review the condition and Council's maintenance programme of the land in line with the type of amenity space to ensure it is properly maintained.

Where it is claimed that there is a nuisance from public open space, the Council will work with partners to seek to eliminate or reduce the nuisance.

Where it is considered that a disposal is not in the interests of the Council the Policy & Resources Committee may decide that a temporary licence of the land would be more appropriate. The terms on which it is agreed will be granted by the committee taking into consideration relevant stakeholders.

Terms and Conditions for the disposal of public open space

The terms for disposal will be determined by the Policy & Resources Committee in consultation with the relevant stakeholders including the Borough Council 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:

- a. No building, shed, greenhouse, wall or other structure shall be erected on the land unless prior agreement has been obtained from the Council;
- b. 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 of the Council);
- c. No commercial operation (eg the growing of plants for sale) shall take place on the land;
- d. Planning permission for change of use from public open space to principle garden will need to be obtained by the applicant before the disposal can be completed;
- e. Maintenance of land must be in accordance with the recommendations of the Head of Environment;
- f. Transfer of all liabilities arising from land ownership and rights reserved.

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 biodiversity within the area.

The disposal price shall be determined by the Policy & Resources Committee and the purchaser shall pay all the Council's reasonable costs in the disposal.

The law requires that the Council should seek best financial value 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.

Where disposal refused and temporary licence proposed

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 Policy & Resources Committee.

It is likely that any such temporary use will be subject to the following conditions:

- a) The licence will be personal to the applicant and non-transferable.
- b) No building, shed, greenhouse, wall or other structure shall be erected on the land.
- c) 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 of the Council).
- d) The land must be maintained so that it remains of a satisfactory appearance at all times.

- e) Where the land is deemed of ecological value it is maintained in such a way as agreed by the Operations Manager as of benefit for wildlife conservation and the protection of biodiversity.
- f) No trees shall be planted or removed without written agreement of the Council.
- g) No fires shall be lit, nor rubbish dumped, nor materials stored (including compost) nor vehicles parked on the land.
- h) No commercial operation (eg the growing of plants for sale or rearing of livestock) shall take place on the land.
- i) No digging or excavation that would adversely affect the hydrology or stability of the soil or subsoil in the surrounding area.
- j) Obtain planning permission to the licence holder for change of use from public open space to principal garden.

These conditions are intended to:

Maintain the amenity of the land and ensure its visibility and enjoyment by the public:

- a) Ensure that no material change of use occurs that would contravene planning regulations.
- b) Protect underground services from damage.
- c) Protect biodiversity
- d) Protect hydrology, drainage and stability of the land.

If any of these conditions are breached, the Council will reserve the right to terminate the licence and reoccupy the land.

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 reinstatement of the land to a satisfactory condition at the expense of the licensee or shall undertake works itself and charge the costs to the licensee.