

**Public
Key Decision - Yes**

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: Transfer of Public Open Spaces Policy

Meeting/Date: Cabinet – 14th November 2023

Executive Portfolio: Executive Councillor for Leisure, Waste and Street Scene

Report by: Assistant Director Strategic Insight and Delivery

Ward(s) affected: All

Executive Summary:

This report sets out a policy for the transfer of public open spaces of more than 0.25 acres owned by the District Council. Play areas contained within public open spaces exceeding 0.25 are included under the policy. The policy and process proposed are intended to ensure requests are managed in a consistent, effective, and efficient manner so any opportunities to work collaboratively for better community outcomes are explored. This supports the underlying principles of the Council's Corporate Plan 2023-2028 based on what the Council and its services can do, enable, or influence to achieve better outcomes.

There is no universal definition of public open space, for the purpose of this report and policy we refer to Public Open Space as defined in the Town and Country Planning Act 1990 as land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground.

S123 Local Government Act 1972 provides that a Council may dispose of land in any manner they wish but they must do so at best value. There are specific considerations within the Act such that surplus land may be disposed of to secure the promotion or improvement of the economic, social, or environmental well-being of its area. S123(2A) provides specifically that a Local Authority may not dispose of land forming part of a public open space without first advertising its intention.

Public open spaces are highly valued by the residents of Huntingdonshire and contribute directly to the achievement of the priority outcomes in our Corporate Plan. Access to play, recreation and nature within public open spaces are proven to improve the quality of life for local people, improving their happiness and wellbeing. The Council's Healthy Open Spaces Strategy 2020 recognised and prioritised community driven priorities to maintain and enhance our public open spaces. 95% of those surveyed had visited an open space in the last 12 months,

64% rated open spaces as essential to quality of life and 98% stated open spaces make themselves and other people happy. Public open spaces are also a key part of creating a better Huntingdonshire for future generations and contributing to the Councils priorities within the Climate Strategy adopted February 2023, lowering carbon emissions, and enhancing nature.

The Council's public open spaces also provide an opportunity to secure Biodiversity Net Gain Units, especially smaller units, which would ensure small developments contribute to local biodiversity net gain, supporting future management costs. The importance of retaining such land and how it is managed is therefore significant.

Given the unique nature and complexity of individual sites, their potential future uses, land values and benefits to our communities and nature; transfers of open spaces can be complex. Issues and costs often unique to the site in question. The benefits and outcomes delivered must therefore be satisfied through consideration of a business case and public committee as required.

Recommendation(s):

Cabinet is

RECOMMENDED TO

- (a) Adopt the Transfer of Public Open Spaces Policy set out in Appendix A. the key elements of this are:
 - (i) Not to ordinarily seek or pursue the transfer of public open spaces that the Council is responsible for, to ensure the appropriate use of Council resources and that Council remains custodian of public open spaces to be maintained for the benefit of communities and the natural environment, with due regard to the powers under which the land is held.
 - (ii) Only pursue any lease or public open space transfer proposal if the costs of doing so are fully met through the requestor as set out in a business case.
- (b) Adopt the Public Open Space Transfer Process set out in Appendix B:
 - (i) To enable swift determination of any proposals.
 - (ii) To ensure any proposal is screened consistently against the Transfer of Public Open Spaces Policy to ensure it has merit before investing resources in the detailed work required to achieve a transfer.

1. PURPOSE OF THE REPORT

- 1.1 To present a policy and process for any requests to transfer of title of Huntingdonshire District Council (HDC) owned public open space to another community organisation including but not limited to Town and Parish Councils.
- 1.2 This report and its recommendations do not cover the disposal/sale of surplus land for other purposes as this is covered by the existing policies that take account of the commercial considerations in such cases:
 - HDC's Disposal of Small Land Parcels and Disposal Policy (Appendix D)
 - HDC's Acquisitions of Land and Buildings Policy (Appendix E)
- 1.3 This report does not amend or change any of the requirements of the HDC's constitution and the delegations set out within it, which must be applied as appropriate to any proposal under consideration.
- 1.4 This report applies to public open spaces larger than 0.25 acres already owned by HDC.
- 1.5 Areas of play on public open spaces of more than 0.25 acres will be considered under this policy.
- 1.6 This report does not set out policy regarding the creation and ownership of public open space created by new developments as this is determined through the planning development process.

2. BACKGROUND

- 2.1 There is no universal definition of open/green space, in respect of size, quality or description. However open space is defined in the Town and Country Planning Act 1990 as land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground.

Open space may be managed under public or local acts of parliament (such as parks and open spaces held by local authorities under the Open Spaces Act 1906), or under schemes of management (made by local authorities for common land and town/village greens).

- 2.2 On occasions it may prove beneficial to achieve the outcomes that HDC and its communities would like by enabling or encouraging others to deliver enhancements or solutions within public open spaces owned by HDC. Other public bodies or community groups may be better positioned to interpret local need and raise funds from alternative sources. A local community organisation, parish or town council may also wish to deliver an enhanced level provision through by investing in public open spaces they do not own or when core play or open space requirements for an area have been met.
- 2.3 Open space is built into housing developments for two main reasons.

- 1) To provide 'incidental open space', smaller areas of land that break up blocks of housing to create a less dense pattern of housing (in a visual sense), literally breaking up the spaces; providing very local access to green space for residents to enjoy as open space, which creates an opportunity for local communities to develop in a social sense and benefit from access to nature.
 - 2) The second are more substantial areas of public open space which meet the recreational needs of places. These areas are larger and often more formally laid out, including footpaths, cycleways, sports pitches, and other facilities. All areas (towns and villages where new houses are built) are required to provide a minimum level of this type of space and our Local Plan, and associated Developer Contributions SPD 2011 sets out the policy directions on this matter.
- 2.4 HDC has a history of supporting local investment on its public open space when another public body does not hold suitable public open space/locations itself. In these situations, HDC has granted a licence or lease which enables the third party to progress and maintain an investment. This also allows HDC to maintain oversight that the use of the public open space is fulfilling the purpose for which the public open space is held, and the outcomes identified within HDC's Corporate Plan.
- 2.5 HDC itself holds leases with other landowners which allow for the maintenance and development of public open spaces for the benefit and access of the local community in keeping with the terms of that lease. Examples include Paxton Pits Nature Reserve (Part of) (St Neots), Hinchingsbrooke Country Park (Huntingdon), Berman Park (St Ives) and Spring Common (Huntingdon). HDC does so to deliver the objectives and outcomes of the Corporate Strategic Plan, Healthy Open Spaces and Climate Strategies.
- 2.6 S123 Local Government Act 1972 (see Appendix C) provides that a Council may dispose of land in any manner they wish but they must do so at best value. There are specific considerations within the Act such that surplus land may be disposed of to secure the promotion or improvement of the economic, social, or environmental well-being of its area.
- 2.7 S123 Local Government Act 1972 requires specific considerations and processes to be undertaken to achieve the lawful disposal of land which must be complied with.

3. CONSIDERATIONS

3.1 Green Open Spaces as Assets

The green open space held by HDC is an asset that supports both the community and nature. The community and health benefits of access to open space are well documented (Improving access to greenspace - A new review for 2020, Public Health England). HDC's Healthy Open Spaces Strategy (2020) recognised and prioritised community driven priorities to

maintain and enhance our public open spaces. 95% of those surveyed had visited an open space in the last 12 months, 64% rated open spaces as essential to quality of life and 98% stated open spaces make themselves and other people happy.

In addition to these community benefits, the public open spaces managed by HDC can contribute to the delivery of improved biodiversity in response to the climate and ecological crisis. Trees, hedges, and other natural landscape contribute to reduction in pollution, climate adaptation (reducing heat) and carbon emissions/sequestration. These sites therefore offer an opportunity for biodiversity net gain which can be supported by future housing developments, particularly those where the site of development may mean an off-site contribution is more appropriate. Such arrangements will support the delivery of increased biodiversity and its management.

Recommendations

Given the high value of public open space, HDC title is important to secure the on-going protection and management of those spaces for the benefits of our communities and nature.

Loss of title will reduce the bank of sites that HDC can offer for biodiversity net gain in the future. Retaining title ensures that the right mix of biodiversity and community benefit is maintained delivering the outcomes of the Climate Strategy, securing maintenance contributions through biodiversity net gain credits.

Retaining the title of land ensures that the wider benefits to our communities in terms of the health and wellbeing are maintained to deliver the outcomes of HDC's Corporate Plan.

3.2 Resources

HDC has finite resources and must use them to deliver the priorities of the Corporate Plan and its statutory functions. The disposal of any public open space may or may not align with these.

Regardless of the end lessor/recipient research is required to establish how complex and resource intensive a proposed transfer may be, potential costs and difficulty:

- Investigation of the source of title (reason the public open space is held).
- Investigation of any existing legal restrictions placed on the title of the public open space, covenants etc.
- Investigation of any public open space use restrictions such as Local Green Space, Field in Trust Designation, Community Asset registration
- Consideration of the value of the public open space via an official RICS survey
- Consideration of the proposed plan for public open space use in the future, including any existing restrictions.

- Evaluation of biodiversity net gain opportunity.

These must be considered against the business case made by the third-party seeking ownership.

Recommendations:

A lease or licence is the preferred enabler to support a third party to enhance the facilities of a public open space owned by HDC to ensure costs are minimised and the benefits and outcomes proposed deliver against the HDC's objectives and outcomes of its Corporate Plan, Healthy Open Spaces Strategy and Climate Strategy.

The transfer/disposal of a public open space is the exception and only if there are no additional costs to HDC and it is progressed on a cost recovery basis, the benefits outweighing any costs involved.

A structured process is required to ensure the requesting body is clear about why they are requesting the transfer, what they intend to deliver and what outcomes and benefit of the community will be delivered and how they meet HDC's objectives set out in the Corporate Plan. It will also request details of how any proposal is to be funded, both costs of transfer and on-going management.

3.3 Evaluation of Requests

A process proposed as set out in Appendix B to ensure a consistent, timebound process for an initial evaluation of any opportunities or requests to transfer ownership of green open space to another party.

STEP 1 – Outline Business Case: delegated to officers and SLT decision. This will be considered against the Open Spaces Transfer Policy (Appendix A).

STEP 2 – Detailed Business Case: this will be a detailed project, commissioned and resourced to undertake the activity required to conclude to transfer the public open space or not. This will include any formal consultation requirements and notices. The detailed business case will be presented alongside a formal report for cabinet via scrutiny which sets out the basis for decision proposed.

3.3.1 STAGE 1 - Outline Business Case

Clear reasons must be set out to justify the progression of any transfer of ownership, lease or licence including the anticipated work and costs required set against the benefits and desired outcome. An application form will be set up to ensure this information is captured, which must be completed by the requestor. A draft template is included as an appendix to the Policy.

An outline business case will be successful if it enables investment or enhancement not possible through any other means (including lease or licence) to deliver better outcomes for our communities. It should achieve these without additional financial cost to HDC.

Investigations will not be progressed if an enquiry is speculative and without a completed application form to inform the outline business case.

It is proposed that the outline business case and recommendation is delegated to the Senior Leadership Team member with responsibility for Open Spaces. This will take the form of a report (in consultation with the appropriate Executive Councillor for Open Spaces). This will draw on input from Planning and Estates. The outline business case consideration and recommendation will be based on the Transfer of Open Spaces Policy (Appendix A).

The expected outcomes of an Outline Business Case:

No transfer – this may be because there are negative financial implications, it does not deliver against the Corporate Plan objectives, there are already potential alternative plans for the site, the proposed use is contrary to the Council's Development Plan, or the enquiry has prompted an alternative course of action.

Propose a lease/licence – given the business case there is insufficient benefit to justify the progression of public open space transfer, all benefits may be obtained through an appropriate length of lease/licence which ensures HDC retains oversight of future uses. Full cost recovery principles will normally apply to the applicant depending upon the benefits/outcomes that will be achieved.

Transfer (requiring a detailed business case) – there are clear community benefits and transfer will deliver the best outcomes, linked to HDC's corporate plan. The proposed improvements would not be possible without transfer. The transfer delivers clearly articulated community need, providing resources and benefits which otherwise would not be delivered. The progression to detailed business case will require assignment of resources/funding and a project plan,

3.3.2 STAGE 2 - Detailed Business Case

If an outline business case is endorsed, a detailed business case will be resourced with funding agreed with the applicant. This will set out specific considerations including legal requirements, land values, protections on use and covenants alongside what is required to be in place to support a transfer. Progressing to detailed business case does not mean the transfer is agreed, just that the business case warrants investment of time and resources to see if the benefits proposed can be secured.

A detailed business case will be required to support the formal reporting of the proposal to Cabinet via Scrutiny.

Recommendations:

The detailed business case will be presented for formal decision through the HDC's reporting pathway. This will also require the approvals as set out in the HDC's Disposal of Small Land Parcels and Disposal Policy and the HDC's Constitution.

The expected outcome will be as before:

- No transfer
- Propose a lease given the detailed work; a transfer is not sustainable.
- Transfer confirmed.

If approved the transfer will be delegated to the Senior Leadership Team member with responsibility for public open spaces. An appropriate project will be established with appropriate governance and resources. It may be conditional on all costs being borne by the applicant depending upon the benefits/outcomes reviewed.

3.4 Financial Considerations

The impact of leasing/licensing or transferring any public open space must not generate additional cost for HDC. Any transfer must deliver additional benefit that may not be achieved through a simpler arrangement such as a lease or other agreement given the time, resources and costs involved in transferring/disposing of public open space.

There may be development agreements associated with any public open space for the provision of additional facilities to serve a growing community. The status of these and re-assignment of them must be considered which may involve negotiations with developers, the requirement of a planning application and a deed of variation to existing legal agreements incurring cost.

HDC does not have financial reserves or capital funding associated with its public open spaces unless to deliver an agreed project or action within its Corporate Plan. HDC is not able to provide funds to any applicant seeking a lease/licence or transfer of a public open space to support its future operation or development.

HDC will seek to recover any costs incurred. This applies in the development of the detailed business case and any lease or transfer if agreed.

HDC will require in any form of agreement that the on-going maintenance and re-provision at end of life of equipment falls to the lease/licence holder. This will include any costs of termination or making good at the end of life of any assets.

Recommendation:

- Any public open space transfer is without provision of any capital or revenue funding unless associated with wider project funding.
- An outline business case will confirm the funding requirements from the applicant, to support progression to detailed business case, the principle of cost recovery will apply.
- A detailed business case will be required that confirms the full funding required from the applicant to achieve a lease/licence or transfer if approved, the principle of cost recovery will apply.
- Any outstanding S106 development agreements which relate to the public open space will pass to a new owner.
- CIL is subject to separate application and approval that supports growth in Huntingdonshire. CIL awards cannot be associated directly with any open space lease/licence or transfer.
- All costs of maintenance and termination fall to the third party including making good at the end of any agreement.

4. COMMENTS OF OVERVIEW & SCRUTINY

- 4.1 The Panel discussed the Transfer of Public Open Spaces Report at its meeting on 2nd November 2023.
- 4.2 The Panel were assured, following a question from Councillor Shaw, that the intention of the policy was to create a set of rules to allow requests to be dealt with should they be received and that there were no specific parcels of land involved. The Panel were further assured that this policy purely covered open spaces and that there were a further two policies, all of which run concurrently, to enable the Council best management of its assets.
- 4.3 In response to a question from Councillor Alban, the Panel heard that the Council did not plan to approach local groups or organisations to offer to transfer land. It was further noted that a lease for open spaces would be preferable due to the complexities involved in transferring permanent ownership of assets.
- 4.4 Councillor Bywater praised the flowchart within the report as bringing clarity to the process and helping members to signpost residents should a query be received.
- 4.5 Following the discussion, the Panel were informed that their comments would be added to the Cabinet report in order for Cabinet to make a decision upon the report recommendations.

5. KEY IMPACTS

- 5.1 The transfer of public open spaces in Local Authority ownership can be a complex and time-consuming matter that requires legal investigation and support. Obtaining clear information about historic title and restrictions can determine specific courses of action to enable a lawful transfer.
- 5.2 The transfer of public open space if not surplus to the needs of the community can be a positive step to unlock investment and grant

opportunities not available should HDC retain ownership. However, upon transfer there is a requirement to ensure appropriate legal and other protections are in place such that the public open space continues to be managed for the benefit of Huntingdonshire, the local community's health and well-being needs as well as positively contributing to the environment and nature. HDC must be confident and assured, through legal remedy.

- 5.3 The transfer of public open spaces consumes operational resources which would otherwise be deployed in the development and enhancement of them, HDC needs to be assured that any transfer will deliver a better outcome than would otherwise be achieved and that the opportunity cost of the work not able to be progressed is less than those benefits.

6. TIMETABLE FOR IMPLEMENTATION

- 6.1 If the proposals are adopted an application form will be developed to allow proposals to be put forward from 1st December 2023.

7. LINKS TO THE CORPORATE PLAN

- 7.1 The delivery of good quality and accessible open spaces and play facilities has a direct impact on:

- Improving the quality of life for local people specifically improving happiness and wellbeing of residents;
- Creating a better Huntingdonshire for future generations specifically lower carbon emissions.

- 7.2 The Corporate Plan recognises the importance of enabling residents and businesses to thrive by listening and collaborating with them, opportunities to collaborate in the effective and efficient delivery of open spaces and play facilities is a priority to best meet the needs and wants of our communities.

- 7.3 The Corporate Plan also highlights the importance of influencing partner organisations and stakeholders by creating a shared vision benefiting Huntingdonshire. By providing evidence and sharing opportunity we can influence the provision of the right open spaces and play facilities for our communities.

8. LEGAL IMPLICATIONS

- 8.1 The requirements of S123 Local Government Act 1972 are set out in Appendix C and must be worked through in a logical manner. Failure to do so will lead to an unlawful transfer of public open space.

- 8.2 Any other restrictions or classifications placed on the public open space requested to be transferred must be identified with appropriate remedy and/or be written into the legal obligations of the prospective owner.

9. RESOURCE IMPLICATIONS

9.1 As set out in the main body of the report a transfer of public open space will require input from a project team at both outline and detailed business case stages. It is essential that the proposed outcome and use and/or investment enabled outweighs these. This will be decided at detailed business case stage.

9.2 The services required:

Service	Role
Legal	Advice on basis of public open space ownership Advice on required considerations based on the ownership. Any special applications for approval required e.g., Secretary of State approval if necessary
Open Spaces	Assessment of proposed benefits against community need and existing site benefits for the community Existing plans for the site
Ecology	Biodiversity value/opportunity on the site Any environmental designations
Grounds Maintenance	Consideration of current maintenance implications
Street Cleansing	Consideration of current maintenance implications
Estates	Consideration of any potential uses and implications of transfer such as linked access. Formal RICS public open space valuation
Planning	Status of Site in relation to Neighbourhood/Local Plan Any linked S106 development agreements
Finance	Any public open space valuation/asset valuations
Insurance	Any insurance/liability implications
Health & Safety	Any health and safety implications given nature of public open space/assets

9.3 A non-refundable minimum charge of £500 is required upon application to licence/lease or transfer public open space. This covers the cost of preparing the Outline Business Case.

9.4 The level of resource investment for a licence to occupy or lease is less than the potential needs for a public open space transfer which will be considered at the outline business case stage.

9.5 The financial costs of any transfer must be scoped at the outline business case stage, broadly these may be expected to be £6,000 to £9000:

- An estimated minimum cost for officer research and processing (£3,000, depending on the requirements to achieve a successful transfer).
- HDC's Legal costs (starting between £750 to £1,000)
- Any requirements to publicly advertise or notify official bodies (starting between £750 to £1,000)
- An official Royal Institution of Chartered Surveyors valuation (up to £1000).

- Additional formal reporting and associated administration of detailed business case (£500 to £3,000) based on financial and reporting thresholds required (as set out in the Disposal of Small Land Parcels and Disposal Policy).

The outline business case will need to confirm funding from the applicant for these additional costs.

- 9.6 HDC's Disposal of Small Land Parcels and Disposal Policy additionally has financial thresholds set which determine minimum administration charges ranging from £500 to £3,000 based on land value and decision-making level. These will also apply as per that policy.

10. HEALTH IMPLICATIONS

- 10.1 The provision of open spaces, managing them for the benefit of biodiversity, our environment and wellbeing benefits is critical to the delivery of our Corporate Plan. Access to play for all ages and nature which supports physical and mental health are key components of the wider determinants of health which impact the long-term sustainability, health, and economy of our district.
- 10.2 HDC adopted a Healthy Open Spaces Strategy in 2020 which set out our key priorities and actions to 2030 to ensure our open spaces are protected, that biodiversity and nature is enhanced and that they support healthy and active communities. 90% of our residents confirmed that greenspaces improved mental health and well-being with nature and wildlife being the most important aspects of greenspaces.

11. ENVIRONMENT AND CLIMATE CHANGE IMPLICATIONS

- 11.1 HDC adopted its Climate Strategy in February 2023 along with an action plan setting out short-, medium- and long-term actions. Following consultation and an evidence review the strategy identified increasing biodiversity and natural capital as one of the three district wide climate priorities.

12. REASONS FOR THE RECOMMENDED DECISIONS

- 12.1 The transfer of public open space into alternative ownership to facilitate better outcomes must always be considered, but in a structured and organised way to ensure the benefits and proposals are clear and that all benefits to the community and environment are legally preserved.
- 12.2 Public Open Space is highly valued by our communities and are significant assets that enable the delivery of health and well-being to our residents, linking directly to the objectives of the Corporate Plan.
- 12.3 Public Open Space is of great importance to support increased biodiversity. This links directly with our Climate Strategy and action plan. New developments will require biodiversity net gain and the enhancement

and management of HDC owned land presents an opportunity to support development and the costs of improving public open spaces for nature.

- 12.4 There are financial and resource implications of progressing a public open space transfer which must be considered in decision making so there is no adverse impact on HDC.

13. LIST OF APPENDICES INCLUDED

Appendix A – Transfer of Public Open Spaces Policy
Appendix B - Public Open Space Transfer Process
Appendix C - Circular LGA 1972 general disposal consent (England) 2003
Appendix D - HDC's Disposal of Small Land Parcels and Disposal Policy
Appendix E - HDC's Acquisitions of Land and Buildings Policy

14. BACKGROUND PAPERS

[Corporate Plan 2023-2028](#)

[Climate Strategy 2023](#)

[Healthy Open Spaces Strategy 2020-2030](#)

[Improving Access to Greenspace, A new review for 2020 – Public Health England](#)

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