



**Report to: Environment Committee, 7 June 2022**

**Report of: Corporate Director – Operations, Homes and Communities**

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**Subject: MANAGEMENT AND PROTECTION OF PUBLIC OPEN SPACE**

**1. Recommendation**

**1.1 That the Committee notes the content of this report.**

**2. Background**

- 2.1 This report intends to provide Members with details of the remedies available to the Council to deal with instances where land used or intended for use as public open space is taken out of use without necessary permissions being sought. This is often referred to as 'land grabbing'.
- 2.2 The report has been developed in response to several concerns that have been raised by Ward Councillors to various services across the Council, that would ordinarily investigate such claims including Property Services, Legal Services, Planning Services and Environmental Operations.
- 2.3 The subject of this report is one that could naturally sit within more than one Committee of this Council (i.e. Place & Economic Development Committee) and Members may wish to consider whether there are any recommendations they wish to make to another Policy Committee depending on the nature of the recommendation.

**3. Information**

- 3.1 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.
- 3.2 Subject to the local policies in a local development plan, if land is held as public open space it cannot be disposed of unless the process under section 123 of the Local Government Act 1972 (as amended) is used. The disposal must be advertised, and objections considered before any disposal can take place.
- 3.3 Land may also be protected by legal covenants governing use of the land as public open space, as is the case with much land that forms part of housing led planning applications.
- 3.4 The benefits of green spaces whether in public ownership, or private ownership but accessible without payment, have never been more important. This became evidently apparent through the four COVID-19 lockdown periods where people (many for the first time) spent extended times outdoors in the fresh air, often in the variety of local green amenity space the UK has to offer.

Publicly accessible green spaces are critically important to supporting health & well-being whether that be exercising or socialising and there is a growing sense that people have reconnected with such areas as a result of the Pandemic.

- 3.5 In addition, green spaces have become of critical importance to environmental sustainability and in particular enhancing biodiversity. The Council has approved an Environmental Sustainability Strategy with one of its aims being 'To protect Worcester's natural environment and enhance its biodiversity'. There are several commitments within the strategy to protect and enhance biodiversity and encourage and facilitate access to public open spaces across the City.
- 3.6 It is important therefore that public open space owned by or designated for ownership by the council is protected and not taken out of use unless there is a justifiable 'public interest' argument that is brought forward for Members to consider, and that due process has been followed.
- 3.7 It should be noted that the Council has no formal policy on the disposal of land held as public open space and such a policy is not a legal requirement. Currently the Council will judge each case on its merits where a request for disposal of public open space is received from another party or where the Council considers it necessary to dispose of public open space to enable development, or to facilitate the delivery of essential or identified services.
- 3.8 Two such cases where the Council has deemed it in the public interest to dispose of public open space include a parcel of land at Hopton Street (St. Johns Ward) which had been identified within the South Worcestershire Development Plan for housing and was subsequently sold to Platform Housing for the development of 25 affordable homes. This scheme was completed in 2021.
- 3.9 The second case was a parcel of land within the St Peters Ward (Begonia Close) which had become land-locked as a result of Worcestershire Highways purchasing land to widen the A4440 and Ketch roundabout and install an acoustic fence to mitigate noise. The remaining public open space (trees / shrubs) had become increasingly inaccessible from the public footpath as a result of the acoustic fence and adjoined the front and side of private properties on Begonia Close. Given it was providing no community benefit it was agreed to sell the land to the adjoining 3 property owners with a restrictive covenant for use as garden only.
- 3.10 Where the Council has received requests to dispose of small areas of public open space and officers have determined it would not be appropriate, the applicant has been advised that such a disposal would not be recommended for approval, and it has not been necessary for the application to be referred for further consideration.
- 3.11 In accordance with the Council's Constitution, minor land sales are approved/refused under the delegated authority of the Corporate Director - Finance and Resources and the Corporate Director - Planning and Governance.
- 3.12 In respect of cases where a third party has encroached on public open space within the Council's ownership without consent, then the Council will take appropriate action to remedy any unauthorised access, trespass or adverse possession. It would not be appropriate to consider planning contravention in such cases as that is not the primary issue at play, whereby unauthorised access, illegal trespass, or adverse possession is.

- 3.13 There are four active planning enforcement cases for such instances in the Warndon Parish South Ward at present with enforcement action having commenced or pending in each of the cases.
- 3.14 Similar issues of 'land grabbing' can also arise where the Council has granted planning permission for a development and part of that permission is the provision of green open space, commonly referred to as green infrastructure, that may in some instances be transferred to the Council at some point in the future.
- 3.15 Some local issues that have been brought to the attention of officers have related to land that is due to be transferred to the Council pursuant to the terms of a planning agreement for use as public open space only, but that transfer has not yet been completed. Such arrangements can take months and in some cases years to complete.
- 3.16 Where there are outstanding transfers of public open space to the Council, the more likely it is that residents perceive that no one organisation is taking responsibility for such land, which therefore presents an opportunity for them to enclose land within their property boundary. However, in many cases even where ownership has not transferred, the Council will be maintaining the land – grass and hedge-cutting – pending freehold transfer and so any works to hedgerows encroachment onto land which is the Council's responsibility is picked up and investigated by the Council.
- 3.17 It is also worth pointing out therefore, that where the Council has adopted the land via a planning agreement, the Council would have to ensure the land is used as public open space in line with the restrictive covenant. If at some future stage the Council wished to take the land out of public use, it would be required to formally request a release of covenant in addition to the formal advertisement process as already set out within this report. This is a potentially a costly process for the purchaser and the costs may outweigh the value of the land.
- 3.18 The planning enforcement position is relatively straight forward on such cases regardless of whose ownership the land 'gained' is in. If land has been taken out of use as 'open space' and has become used for 'garden', i.e. there has been a material change of use, then this would trigger a planning enforcement investigation. It is likely that where such an unauthorised change of use is confirmed that a Planning Enforcement Notice would be issued requiring that the land be returned to its previous use and condition and where necessary any associated means of enclosure such as walls or fences and any domestic paraphernalia be removed.

**Ward(s):** All  
**Contact Officer:** Lloyd Griffiths – Corporate Director (Operations, Homes & Communities)  
**Tel:** 01905 722371  
**E-mail:** [lloyd.griffiths@worcester.gov.uk](mailto:lloyd.griffiths@worcester.gov.uk)  
**Background Papers:** N/A