

Public Document Pack

Southend-on-Sea Borough Council

Legal & Democratic Services

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09 June 2020

CABINET - TUESDAY, 16TH JUNE, 2020

SUPPLEMENTARY REPORT PACK: PROTECTION OF PUBLIC OPEN SPACE

Please find enclosed, for consideration at the next meeting of the Cabinet taking place on Tuesday, 16th June, 2020, the following report that was unavailable when the agenda was printed.

Agenda No Item

4 Protection of Public Open Space (Pages 1 - 10)

Report of Executive Director (Neighbourhoods and Environment) attached

Robert Harris
Principal Democratic Services Officer
Legal & Democratic Services

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Southend-on-Sea Borough Council

Executive Director Neighbourhoods & Environment

to
Cabinet

on
16 June 2020

Report prepared by: Paul Jenkinson, Head of Parks and
Open Spaces

Agenda
Item No.

4

The Protection of Public Open Space

Relevant Scrutiny Committee(s): Place Scrutiny
Executive Councillor: Councillor Carole Mulroney
Part 1 (Public Agenda Item)

1. Purpose of Report

- 1.1 To highlight that the availability of parks and public open spaces within the Borough of Southend-on-Sea are limited and the current provision falls below recommendations by Natural England.
- 1.2 To highlight the importance of access to public open space, the beneficial impact on the health and wellbeing of residents and those who enjoy the public open spaces and to highlight the wider benefits of these spaces to the environment.
- 1.3 To highlight the increasing pressure on existing public open spaces arising not least from increasing population numbers.
- 1.4 To highlight the increasing number of requests being received from sports clubs and other organisations to lease public open space and to limit, restrict or reduce public availability.
- 1.5 To establish clear and consistent guidance which can be applied by officers in dealing with requests for the disposal of Public Open Spaces.

2. Recommendations

- 2.1 **That Cabinet agrees to continue the general presumption against the disposal of public open space in Southend-on-Sea and the ongoing protection of these areas.**

- 2.2 That Cabinet agrees that existing agreements relating to areas of public open space or buildings within them continue during their term and on renewal or re-letting/procurement can be agreed when applicable.
- 2.3 That Cabinet agrees that requests for the council to dispose (by any means) of areas of Open Space to enable their enclosure (or any other restrictions on public use) by sports clubs or other organisations and the exclusion of the public from enjoying those spaces are not considered to ensure that free public access to open space is maintained. Whilst exceptions are not expected, should they arise, such exceptions will be a matter for Cabinet to decide upon.
- 2.4 That Cabinet notes that from time to time, the granting of easements and wayleaves for services or highway widening or realignment may be required. In these situations, the preferred position is that public access is maintained or replacement land is sought.
- 2.5 That Cabinet agrees that in a situation where an area of open space has been identified as a location which could enable the delivery of a key council outcome, and the council has determined that the area has no or minimal recognised benefit to the public, or a replacement space of the same or enhanced value can be provided, the disposal will be considered to enable the council to deliver its Outcomes.

3. Background

- 3.1 Southend-on-Sea is a densely populated urban borough with a population of 182,500 as of 2018 with a population density of 39.4 persons per hectare compared to the national average of 4.1 persons per hectare and the East of England average of 3.1 persons per hectare.
- 3.2 Southend-on-Sea has a variety of green spaces and parks across the borough. However, the distribution of these areas is not even with some wards having minimal or no publicly accessible green space. Although the town has a mix of green space, the availability and quantity are well below the national average.
- 3.3 The borough occupies an area of 4175.60 ha (up to high watermark (the level reached by sea at high tide)) with green space, made up of approximately 600 hectares of parks, woods and green public open space, only accounting for up 14.36% of the area. For comparison, London's percentage of green space is 38.9%.
- 3.4 Natural England adopted the following standards concerning access to open space:
- That no person should live more than 300m from their nearest area of natural green space of at least 2ha in size.
 - Provision of at least 1ha of Local Nature Reserve per 1,000 population.
 - That there should be at least one 20ha site within 2km from home.
 - That there should be at least one 100ha site within 5km from home.

- That there should be at least one 500ha site within 10km from home.
- 3.5 The high population density of the borough means that access to public open space, especially green space, for leisure and recreational activities is of considerable importance to the health and wellbeing of the town's residents. Due to the rising population and the corresponding need to provide housing within the town, the number of flats and houses have increasingly been constructed with limited or no outdoor space placing an increased demand on parks and green spaces. Therefore the protection of existing green space and maintaining free public access is essential to support our growing population.
- 3.6 The recent COVID-19 pandemic has highlighted the importance of outdoor public spaces, especially parks and green, in supporting communities and the ongoing need for these areas to support social interaction and wellbeing.
- 3.7 During 2019/20 the council has received several requests from sports clubs and other organisations looking to lease existing sports pitches they play on in the borough, looking to relocate into Southend and set up new facilities.
- 3.8 For clarity within this report, lease, refers to a legal agreement by which the council conveys land or property to another. A lease is the grant of legal interest in land which gives exclusive possession for a fixed period of time. This form of agreement is deemed as disposal of open space. A licence is merely a permission granting licence by the council for another to occupy or do something on its property.
- 3.9 Within the Borough's parks we provide and maintain facilities to create opportunities for winter and summer outdoor sports. These facilities are available for clubs and other users able to hire. During the pre-booked games and matches, the user has exclusive use of the pitch. However, outside of these times, the space is freely available for the public to access as part of the green space.
- 3.10 The increase in clubs and organisations looking to take over areas of the town's parks and green spaces is likely to be for several reasons, which are as follows:
- 3.10.1 A number of funders have changed their requirements, now requiring applicants to own or have a long-term lease on any ground or facility they wish to apply for funding for. Historically we have been able to support clubs by offering a licence for the use of an area of a park for a set number of games per season, which has previously been accepted by funders but maintained the area as public open space.
- 3.10.2 Clubs and organisations that currently use privately owned and run facilities have been refused longer-term leasing arrangements.
- 3.10.3 Clubs and organisations are unwilling to look for sites on the open market as they are unable to pay, or do not wish to pay market rates.
- 3.10.4 To date all clubs and organisations who have approached the council have been advised that leasing of an area of one of the town's parks or green spaces would be a disposal of public open space and against current policy.

- 3.10.5 If all approaches received during 2019/20 had been agreed our residents and visitors would have lost free public access to up to four areas of green space within the borough.
- 3.11 Access to a network of high-quality open spaces and opportunities for sport and physical activity is vital for the health and wellbeing of communities, and this is considered under planning policies.
- 3.12 Current planning policy states that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:
- 3.12.1 An assessment has been undertaken, which has clearly shown the open space, buildings or land to be surplus to requirements.
- 3.12.2 The loss resulting from the proposed development would be replaced by an equivalent or better provision in terms of quantity and quality in a suitable location.
- 3.12.3 The development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.
- 3.13 It is recognised that sports clubs and other organisations can provide sports and leisure opportunities for our communities. The council continues to offer facilities within its parks and green spaces that these groups can use and hire. However, it is important to ensure that public access to green space is maintained for all the borough's residents.
- 3.14 It is also recognised that without long term leases or ownership of grounds, clubs may not be able to access funding from some funders. The availability of funding may have an impact on the nature and operation of some clubs and facilities. However, all funders have different requirements which are specific to particular sports or applicants. It is not feasible for the council to accommodate all the different funders' requirements or therefore to support clubs and their applications. Were the council to do so, it would be at the expense of the provision of public open space for all to enjoy.
- 3.15 Not leasing areas of public open space does not prevent clubs and other groups accessing funding, as many funding opportunities are available. With flexibility from clubs and funders, workable solutions are possible in most situations.
- 3.16 In some situations, public parks are not a viable home for sports clubs who wish to progress beyond grass root levels. In some cases, governing bodies, such as the Football Association have conditions on ground-grading and other restrictions that are more suited to private grounds and cannot reasonably be accommodated in a public park without detrimental impact for residents and other park users.
- 3.17 In addition to clubs and organisations looking for land, other demands that are not sports and recreation related also put pressure on the limited green space within the borough such as housing and commercial development. Therefore it is essential to recognise the importance green spaces have on the health and wellbeing of the town's residents and visitors and also the benefits for the

environment including the contribution they make to the council's response to climate change.

- 3.18 It should be noted that a blanket 'no disposal of open space' may impact on the way the council delivers and meets outcomes, including housing targets. It is important, therefore that while the council maintains a general presumption against the disposal of open space, those circumstances where Government targets and Council Outcomes require, appropriate consideration can be given.
- 3.19 For the avoidance of doubt the reference to open space in this report relates to parkland, woodland, sports pitches, amenity open spaces and those green spaces which are managed by the council and to which the public have access. Private land, school playing fields and farmland are not included in the remit of this report.
- 3.20 It should also be noted that the recommendations in this report do not prevent the short term hire of parks and open spaces for outdoor events, sports matches and activities associated with the normal use of open space.

4. Other Options

- 4.1 **Alternative Option 1.** The council could take a more open view on the disposal of land forming part of its parks and open spaces
- 4.2 Alternative Option 1 has not been recommended for the following reasons:
- 4.2.1 It would result in a significant reduction of public open space in the borough to the disadvantage of all residents.
- 4.2.2 It is unlikely to comply with planning policy.
- 4.2.3 The Council is obliged to meet its best consideration requirements pursuant to section 123 Local Government Act 1972 and this is likely to present financial challenges for local clubs.
- 4.3 **Alternative Option 2.** Allow the closure of areas of Public Open Space under licence.
- 4.4. Alternative Option 2 has not been recommended for the following reasons:
- 4.4.1 It would result in a loss of free access to areas of public open space on the assumption public access is not likely to continue to be unrestricted.
- 4.4.2 Due to the restriction to public access, the granting of a licence would still be seen as a loss of public open space.
- 4.4.3 A licence may still provide exclusive possession of the relevant area of land, presenting Landlord and Tenant risks and the possibility of the creation of an unintended permanent right or tenancy.

- 4.5 **Alternative Option 3.** Purchase commercial sites on the open market and make these available to lease by clubs and organisations directly from the council.
- 4.6 Alternative Option 3 has not been recommended for the following reasons:
- 4.6.1 There is nothing stopping the council from acquiring any land so it could acquire for any purpose if appropriate.
- 4.6.2 The purchase of land would place financial pressure on the council and would need to be subject to a satisfactory business case
- 4.6.3 The break-even point to recover the purchase cost of land via a lease for a sports pitch use would take a significant number of years to reach making the business case to do so very challenging
- 4.6.4 Clubs and organisations could purchase or lease areas of available land directly without the need for the council to be involved, and this is a preferable route.
- 4.7 **Alternative Option 4.** Community use agreements with public access maintained.
- 4.8 Alternative Option 4 is not recommended for the following reasons:
- 4.8.1 Community use agreements would need to be considered individually on their own merits, including but not limited to the location and the proposed use. This type of agreement would not be suitable for all locations.
- 4.8.2 Nothing in this paper or the recommendations would prevent community use agreements being negotiated, and such arrangements are in place with, for example, some school facilities.

5. Reasons for Recommendations

- 5.1 Maintaining the current availability of publicly accessible green space has a long term benefit to the health and wellbeing of residents.
- 5.2 The available green space within the borough is limited, and any loss is unlikely to be replaceable.
- 5.3 Greenspace has benefits to the local environment and is a benefit to the council's commitment to reducing its impact on the environment and tackling the local effects of climate change.
- 5.4 Clubs and organisations wishing to develop into more commercial operations have the opportunity to find a private location keeping the borough's green spaces available for use by all.

6. Corporate Implications

- 6.1 Contribution to Council's Vision & Corporate Priorities

- 6.1.1 Pride and Joy. “Our Streets and Public Spaces are clean and inviting.”
- 6.1.2 Our parks and green spaces are well used the town’s residents and visitors. Maintaining green spaces within the communities across the borough helps support the provision of clean and inviting town.
- 6.1.3 Safe and Well. “Green City - We act as a green city with outstanding examples of energy-efficient and carbon-neutral buildings, streets, transport and recycling”.
- 6.1.4 Climate Change Declaration. It is widely recognised that green infrastructure is an integral part of tackling climate change in the urban environment. The volume of green space within an area has a direct impact on issues such as heat, air quality and surface water runoff.

6.2 Financial Implications

- 6.2.1 Not leasing out areas of our parks and green spaces will not have an identifiable impact on the council’s financial position.
- 6.2.2 Maintenance of sports pitches and green spaces and the associated fees and charges income are accounted for in the council’s budget. However, the leasing of pitches could reduce maintenance costs.
- 6.2.3 The leasing or other disposal of areas of our parks and green spaces is unlikely to generate notable sufficiently high income to justify the loss to the wider community.

6.3 Legal Implications

- 6.3.1 Disposals of public open space are covered by legislation in the Local Government Act 1972.
- 6.3.2 The Council is certainly under no legal obligation to agree to any disposal of open space to any local sports clubs or other bodies.

6.4 People Implications

- 6.4.1 No people implications have been identified at this time.

6.5 Property Implications

- 6.5.1 Clubs opting to find alternative private grounds may leave existing pavilions vacant (subject to lease/surrender arrangements) and these may be difficult to re-let.
- 6.5.2 The Council would have additional security considerations arising from vacant buildings in parks.

6.5.3 Vacant pavilions could be hired out as part of sports pitch booking or informally (subject to Planning and contract) or released to another sports club, but as noted above the liability for the security, fixed overheads etc. would be at the council's expense. Therefore income would need to offset this.

6.5.4 The Councils Corporate Property and Asset Management Section have highlighted that not disposing of public open space may have an impact on the delivery of Council outcomes not focused on the green infrastructure and the environment. The main outcomes that may be affected are those related to the building of new housing.

6.6 Consultation

6.6.1 No public consultation has been undertaken at this time. However, if a decision was taken to dispose of public open space, it would need to go through due process, including advertising the proposal locally.

6.6.2 Local residents have responded to a recent planning application that was submitted to fence off an area of a park by setting up a petition against the development. Therefore public interest is likely to be high in cases concerning disposals of public open space and any consultation concerning this subject.

6.7 Equalities and Diversity Implications

6.7.1 The town's public open spaces are accessible to all sectors of the community. Any reduction in available space may have an impact. However, this would need to be assessed on a site specific bases.

6.8 Risk Assessment

Risk	Mitigation
Loss of access to public open space.	General presumption against the disposal of public open space.
Loss of reputation as a result of disposal of public open space.	General presumption against the disposal of public open space.
Sports Clubs unable to secure funding from some funders.	Work with clubs and funders on ways to accommodate funding applications without closing off access to public open space.

Negative impact of the health and wellbeing of residents due to limited availability of public open green space.	Protect and retain public green space within the borough.
Negative impact on the delivery of outcomes including housing and infrastructure impacted on.	Consideration taken on a case by case basis. Any impact on open space will be considered by council and disposal considered based on relevant information at the time.
Council unable to deliver on its commitments to minimising its impact on the environment and the climate change emergency if green space is disposed of.	General presumption against the disposal of public open space.

6.9 Value for Money

6.9.1 No issues identified at this time

6.10 Community Safety Implications

6.10.1 No community safety implications have been identified at this time.

6.11 Environmental Impact

6.11.1 Maintaining the existing green public open spaces within the borough will have a benefit on the local environment including, wildlife and biodiversity, local climate, air quality and surface water flooding as well as the environmental wellbeing of residents.

7. Background Papers

7.1 There are no background papers.

8. Appendices

8.1 There are no Appendices

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