

EAST HERTS COUNCIL

EXECUTIVE – 17 JULY 2018

REPORT BY LEADER OF THE COUNCIL

THE MANAGEMENT OF COMMUNITY ASSETS ASSOCIATED WITH NEW DEVELOPMENT

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WARD(S) AFFECTED: ALL

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**Purpose/Summary of Report**

- In a period of growth, to put in place planning guidelines that will ensure that new community assets are effectively managed in perpetuity without adding pressure on the Council's finances.
- To consider the particular proposal that has come forward from a developer for the management of community assets at Stortford Fields, Bishop's Stortford North.

**RECOMMENDATIONS FOR EXECUTIVE: That**

<b>(A)</b>	<b>planning guidelines are prepared that will inform developers about the Council's requirements in respect of the management of community assets in new developments; and</b>
<b>(B)</b>	<b>it endorses the determination by officers of the community assets management arrangements at Stortford Fields, including:</b>  <b>(i) the establishment of a Stortford Fields Community Trust in the role of the community assets management body;</b>  <b>(ii) a board of trustees comprising up to 15 members,</b>

	<p><b>including at least one member representing the Council;</b></p> <p><b>(iii) the revenue funding of the Trust being provided by a management covenant on residential and commercial properties at Stortford Fields, fees and charges for services and the commuted sum from the developer (secured through the s106 Agreement); and</b></p> <p><b>(iv) a two-tier service charge according to property size.</b></p>
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## **1.0 The scope of community assets**

1.1 The scope and nature of the assets in a development that need to be managed in perpetuity has expanded in recent years to include:

- Green infrastructure, including open spaces and woodland.
- Play areas and informal outdoor sports facilities.
- Sustainable Drainage Systems (SuDS) that store and carry storm water in accordance with flood risk assessments and strategy. (The Government has introduced regulation whereby management and maintenance responsibilities for SuDS must be determined through the planning process).
- Community centres.
- Allotments.
- Unadopted streets, footpaths and cycleways and associated lighting and drainage.

1.2 This is an extensive list of assets that brings with it significant governance and financial implications. As well as day to day maintenance, provision must be made for the replacement of some assets such as play equipment and for the long term maintenance of unadopted streets and courtyards. There are also expectations in planning and environmental policy about the improvement of biodiversity assets.

## 2.0 Options for the management of community assets

2.1 Given the level of development set out in the District Plan and the understanding that statutory bodies are ceasing to adopt open space, SuDS and even roads, an approach is required for the management of liabilities that arise from planning permissions for development. This will also necessitate working with other neighbouring authorities in the cases of Gilston, East of Stevenage and Birchall Garden Suburb where liabilities overlap or where they are the responsibility of Herts County Council.

2.2 For the most part, developers are currently leading. In the majority of cases they are starting their own management companies with associated service charges or partnering with established Stewardship Trusts without any oversight or monitoring from either EHDC or HCC. Examples in East Herts include the following in Buntingford:

*Redrow, North Buntingford*

Managed by Trinity

Service charge £298 p.a.

*Fairview, former Sainsbury's depot*

Managed by RMG

Service charge £278 p.a.

*Wheatley, South of Hare Street Road*

Managed by GEM

Service charge £150 p.a.

2.3 Oversight by the Council is necessary to ensure that the managing body has not only the know-how to manage the assets but also a sustainable financial model and governance arrangements that involve and protect those who pay the service charges from a wide range of potential issues from affordability and quality of service through to insolvency.

2.4 The following are the broad options for the management of community assets by different types of community assets management body (CAMB). A summary of precedents from around the country is included in **Essential Reference Paper 'B'**. The options are:

- Local Councils
- Private asset management companies
- Established regionally or nationally based stewardship trusts
- A bespoke local community trust.

2.5 Local councils. Traditionally, in exchange for a commuted sum, local councils (town, district and county) have taken on the task of managing the community assets associated with new development. This has generally been limited to open spaces and woodland, play areas, surface-based drainage systems and community buildings. The commuted sums are anticipated to earn enough interest to enable a council to undertake the work for a period of 15-20 years without a significant top-up from the public purse.

2.6 The advantages of a local council taking on the CAMB role include:

- operational expertise and know-how in relevant areas of service provision;
- as an elected body, a tradition of responding quickly to public concerns about matters such as standards of maintenance and public safety;
- financial services that have experience of managing tight operational budgets and of investing and benefitting from commuted sums;
- experience of engaging with the public on budget and service delivery matters;
- experience of encouraging the use of assets by the local community to improve health and well-being; and

- the likelihood of a long term presence in the community.

## 2.7 The disadvantages include:

- The limited life of commuted sums put pressure on revenue budgets in the long term and there is therefore a need to consider taking on liabilities only where a service charge or another sustainable form of income can be relied upon.
- Public relations issues flow from the introduction of service charges:
  - those paying for the services may see the service charge as duplicating what they pay in Council Tax;
  - conversely, those whose community assets are maintained by a council whose only dedicated income stream is a dwindling commuted sum, with a possible top-up from the Council Tax, may protest about a marked reduction in the quality of service received, compared to assets managed with the benefit of a service charge. The gap will grow in the context of increasing pressure on service budgets.
- An additional burden on management and governance arrangements within a council.

2.8 Private asset management companies. There is a long history of private companies managing the communal areas of small developments, particularly flats. In those cases where councils have declined to adopt community assets in larger schemes developers will often use a limited company and, as with flats, the operations will be funded from a service charge imposed on the estate properties. There may or may not be a commuted sum.

2.9 Private companies have the advantage of technical expertise and know-how in respect of the day to day maintenance of buildings and green infrastructure and benefit from the economies of using existing administrative processes and

management resources. These economies may help offset the need to make a return to shareholders.

- 2.10 However, there is likely to be a focus on the efficiency of operations with less likelihood of engaging with residents and businesses regarding service charges, operational plans and capital improvements. There is also less likely to be a focus on community development, which is a special opportunity on larger scale developments. Compared with other forms of CAMB such as local councils and trusts there will be uncertainty about the long-term commitment and uncertainties about future ownership of the company.
- 2.11 Established asset management trusts. There are stewardship trusts established for the purpose of managing community assets on new development, a well-established example being the Land Trust, set up by English Partnerships in 2004 as *The Land Restoration Trust to create a new organisation that could take on the ownership and develop a long term sustainable land management solution.* They now have 50 sites nationwide.
- 2.12 The Land Trust has a national Board of Trustees so residents and businesses on the estates they manage have no direct control over the policies and operations of the Trust but they establish a residents' forum in order to encourage participation. Their sources of funding are service charges, interest on capital, fees for services and grants. Published data shows a very good level of overall satisfaction with the Trust's services on the part of the communities they serve.
- 2.13 The advantage of using an established trust to manage assets is that it is likely to have a considerable body of know-how, including community engagement and development, which is a Council priority. They should also benefit from economies in administration and management, similar to commercial providers. It should be noted that Countryside Properties have appointed the Land Trust to manage the green infrastructure,

parks, SuDS and unadopted streets at St Michael's Hurst, an arrangement that has been approved via the planning process.

- 2.14 A bespoke local community trust. The Council and a developer may work together to establish a trust that optimises the balance of advantages and disadvantages seen in other forms of CAMB. In particular, the degree of local control over the policies and operations of the trust is maximised by ensuring that the board of trustees includes residents and businesses in the new development and local councillors and other experts in the community.
- 2.15 The trust should be especially effective at engaging with residents and businesses and in encouraging community cohesion and development. The Council can ensure that the purposes of the trust include local priorities such as health and well-being.
- 2.16 **Essential Reference Paper 'B'** includes the precedent of Chilmington Green in Ashford, where the developer has worked closely with the Council on the governance of the trust, creating an appropriate balance of interests and control. The funding arrangements are also unique to the circumstances of the development and do not rely solely on a service charge, albeit an essential component.

### **3.0 Proposed community trust at Stortford Fields**

- 3.1 Stortford Fields has planning permission for 2,200 homes and is being developed by Bishop's Stortford North Consortium (BSNC), which comprises Bovis, Kier Living, Persimmon and Taylor Wimpey. An application (X/17/0511/CND) has been submitted by the Bishop's Stortford North Consortium for the Council's approval of a CAMB for Stortford Fields, which is the greater part of Bishop's Stortford North. Following a review of various options for the CAMB, the Consortium recommends that a bespoke community trust should be established for the purpose.

- 3.2 The Consortium has submitted a second application (X/17/0630/CND) for the Council's approval of a Community Trust Plan, which sets out the possible constitution, staffing, financial and operational considerations of a Community Trust should the Council agree that would be the most appropriate body to manage the assets. The full text of the Plan is attached at **Essential Reference Paper 'C'**.
- 3.3 The applications would normally be dealt with by officers in accordance with the Development Management Committee's Scheme of Delegation. In this case it is considered that there are significant implications for the Council in the establishment and support of a bespoke community trust. Officers are therefore seeking in the recommendation endorsement by the Executive of the principle of a community trust before making decisions on the detailed proposals in the applications themselves.
- 3.4 A CAMB for Stortford Fields would be taking responsibility for the full range of assets listed in para. 1.1 above, with the possible addition of a sports facility to the west of Hoggate's Wood. If a community centre is based on the Foxdells Farm buildings there may be added responsibility for the care of listed buildings. The Trust would therefore be taking on very substantial responsibilities.
- 3.5 The Community Trust Plan (see **Essential Reference Paper 'C'**) includes the following provisions:
- A Board of Trustees of up to 15 members drawn from EHDC (1), environment (1), voluntary/community sector (1), housing associations (1), commercial development (1), Consortium (4), residents (6). As the development progresses, the increasing number of completions would trigger additional residents being brought into the Board and the Consortium members would eventually



withdraw, to leave 11 trustees with residents in the majority.

- Staffing would comprise a chief officer, accounts clerk, community relations officer, community development officer, and a treasurer (possibly EHDC).
- Funding for the trust would come from a mix of sources comprising:
  - 1) A service charge on residential properties.
  - 2) A charge on commercial property (5% of rental values).
  - 3) Interest earned on a commuted sum of £3.725m, secured by the s.106 agreement.
  - 4) Fees for lettings and services.
  - 5) grants.

3.6 The contribution of the main sources of income to the estimated budget would be as follows:

<i>Income</i>	£
Residential covenants	426,250
Commercial covenants	100,000
Investment income	103,000
Total	629,250

<i>Expenditure</i>	
Operational costs + admin	426,250
Subsidies contingency fund	120,000
Sinking fund	71,000
Total	617,250

Balance	12,000
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3.7 To achieve a positive balance, the Consortium proposes that the initial service charge would be £175 p.a. for one and two bedroom properties and £200 p.a. for properties of three to five bedrooms. Taking into account the scope of the operational works, fee levels have been benchmarked with Chamonix, RMG and Developer Eyes (via Kier Living), all experienced in community asset management. Comparing

with fees elsewhere, such as Buntingford (para. 2.2 above), the Stortford Fields initial fees appear to be reasonable.

- 3.8 The Executive's approval in principle is sought to the above arrangements, including the principle of a service charge being used as a means of securing sustainable funding for the trust in the long term. Whilst service charges are being levied in developments across the District, where arrangements for a CAMB have been put in place without the need for planning approval, this would be an occasion when the Council was giving specific approval to a service charge on a very large site.
- 3.9 The section 106 agreement for Stortford Fields makes provision for a management charge as an option but not a requirement, there being other potential sources of income, as indicated by some of the precedents outlined in **Essential Reference Paper 'B'**. These include commuted sums and other payments made by the developers and the income derived from commercial property assets that may be transferred to the management body. Various grants may also be available for biodiversity projects and community development activities.
- 3.10 The precedents do suggest that there may be public relations issues when a management body chooses to levy a service charge:
- The first residents may query why they must pay a charge when there are few community assets to be enjoyed.
  - Residents may be concerned that they pay an additional charge for the maintenance of assets that are covered by commuted sums and the Council Tax elsewhere in the area.
  - Residents outside the development may perceive a higher standard of maintenance compared to their own neighbourhoods and criticise the local council.

- 3.11 However, a service charge is likely to be the CAMB's most certain means of raising revenue over the long term. Detailed work undertaken by Ashford Council showed that even where the Chilmington Community Trust benefitted from the transfer of commercial assets from the developer, together with financial contributions, it was necessary for the Trust to levy a service charge to cover its costs.
- 3.12 It is very important that the funding of the management of community assets on such a large development as Stortford Fields is soundly based because there would be serious implications if funding were to dry up. However, some comfort should come from the fact that the work of the community trust and the level of service charge it requires to carry out that work would be very much shaped by the residents on the board of trustees and residents involved in wider consultation on the business plan and the level of the service charge.
- 3.13 It should also be noted that The Community Trust Plan recognises that in the circumstances of a significant failure to perform on the part of the trust, either through internal division or a failure to maintain assets to the required standards, the Council should have a step-in power that it could exercise at its discretion.

#### **4.0 Planning guidance**

- 4.1 It is proposed that the Council puts in place planning guidance for developers that will set out clear expectations as to how CAMB's should be constituted and funded and how they should operate in order to meet the Council's objectives. (It should be noted that Harlow and Gilston Garden Town and the Districts are proposing to seek advice from consultants on the stewardship of green infrastructure, open spaces and SuDS, which may inform the preparation of the Council's planning guidance). Developers would need to seek Council approval to their proposals via planning conditions or section 106 agreements and they would be enforceable. It is clear,

however, that one size does not fit all and that different sites and scales of development will benefit from different solutions. However, certain principles should apply to all.

4.2 The Land Trust has a set of charitable objectives that are a useful start point in setting out the Council's requirements of a CAMB since they express a wide social purpose. With some amendment to them and the addition of operational and financial objectives, the following might be a suitable component of planning guidance:

- Economic vitality – creating opportunities for local jobs and enterprise as well as ensuring property values are enhanced by creating an attractive and desirable neighbourhood.
- Health – providing safe environs for access, exercise and volunteering and to promote the use of green-space for healthy activities.
- Environment and Biodiversity – seeking to protect and enrich the local flora and fauna in accordance with a Green Infrastructure and Biodiversity Management Plan required by planning condition.
- Education and Learning – creating opportunities for the land to be of value to local schools and colleges as well as for “lifelong learning”.
- Cohesion of communities and individuals – working with the new community to ensure all can play a part in how the community assets are managed.
- Operations - to ensure that operational tasks and contracts are efficiently tendered and obtain best value.
- Finance and budgets - to ensure that financial arrangements are in place to secure the funding in perpetuity of the CAMB's services to the community.

4.3 Planning guidance will need to include best practice examples that show how CAMBs can be put in place with a high level of confidence that they will be funded and fit for purpose in

perpetuity without any necessity of funding from the public purse.

## **5.0 Conclusions**

- 5.1 The District Plan focuses housing growth on sites that are large enough to provide open space and community buildings that should benefit residents and visitors over the long term and it is therefore timely that the Council should formulate guidance for developers, which can be enforced through the planning process. It will ensure that the public assets will be managed by a CAMB that has both the technical expertise and financial security that will ensure the assets are well managed in perpetuity.
- 5.2 In the meantime, a proposal has been received from the Bishop's Stortford North Consortium for a community trust to be established as the CAMB for Stortford Fields. The s.106 agreement gives the Council a number of opportunities to support the trust, especially needed in its early years, by approving the role of treasurer, approving business plans and budgets and taking one (or more) places on the board of trustees.
- 5.3 The proposals show good practice in the proposed constitution and financial arrangements and may be approved in principle with confidence that the details of the arrangements will prove to be satisfactory following further discussion with the Consortium.

## **6.0 Implications/Consultations**

- 6.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

### Background Papers

None

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