

Investigating Officer Report

Relating to issues raised by:

Martin Stuart

Investigator:

Andrew Maslen

May 2018

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1. History of Complaint

Martin Stuart is the Vice Chairman of Great Denham Parish Council. Great Denham alongside a neighbouring area, referred to as the Land West of Kempston (LWOK), is a new development where home owners are required to pay an annual sum (AS) in order to cover the costs of open space management.

The developer initially intended that a private management company would be used to undertake this activity. However Bedford Borough Council decided to explore with the developer the potential for the Council to carry out the maintenance if the Council could have the benefit of the AS and take a lump sum from the developers for the Country Park. It was considered that this would offer better value and a robust model for local residents because private management companies are commercial enterprises and, like housebuilders, have the commercial objective of making money; the Council is not making any profit from this exercise.

An Executive decision (number 716) was made in 2009 confirming that the Council would take on this role. The land was transferred to the Council from the developer in November 2016. The investigator understands that the AS was not levied by the developers up to the point of transfer. However, when the Council took ownership of the land it was decided that the charge would be made to residents from April 2017.

Mr Stuart's role at Great Denham Parish Council includes addressing issues concerned with the AS charge. From the time the bills were first sent by the Council to homeowners in Great Denham, Mr Stuart has been in regular contact with Officers and Members at Bedford Borough Council. It is clear that Mr Stuart, for reasons detailed below, believes the AS is unfair and has expressed dissatisfaction with elements of how the matter has been handled.

Following a meeting with the Mayor and the Chief Executive, and several emails being exchanged, it was decided by the Council on 29 March 2018 that the outstanding issues would be best addressed via the Council's Corporate Complaints Procedure. Given the significant amount of communication that has taken place and the involvement of Senior Officers, it will be considered at stage two of the Council's Corporate Complaints Procedure.

2. The Complaint

When Mr Stuart, alongside the Parish Chair, met with the Chief Executive and the Mayor on 19 February 2018 they submitted a 'Discussion Document' detailing issues they wanted addressed - this can be found in Appendix 1. When it was confirmed that the matter was being considered as a complaint Mr Stuart sent an email on 4 April 2018 detailing the outstanding issues, this can be found in Appendix 2. Mr Stuart also spoke with the investigator over the telephone on 11 April 2018.

It is recognised that Mr Stuart offered to meet with the investigator. However, the investigator felt that sufficient information about the complaint could be found in the submissions referred to above, and therefore a meeting was not required.

The complaint issues can be summarised as follows:

- 1) The original decision from 2009 was flawed

- 2) That it is unfair to have a joint scheme for Great Denham and the Land West of Kempston, particularly given the inequity of land maintained.
- 3) That there is a lack of clarity around the purpose of collecting the AS. There is a 'common understanding' in Great Denham that the AS is used to fund the Country Park caused by the wording of the Transfer Documents and the sales material
- 4) That the promise of the AS money being ring-fenced is not being kept, with work maintenance being undertaken on the land covered by the charge and the land not covered by the charge (The 'Old Denham' land maintained by the Council and the verges maintained by the developer) not being correctly split
- 5) That the play areas should not be maintained by the AS, as they are located within the Country Park
- 6) That the inspection regime of the parks is unfair, and the charging is inaccurate. There is also a lack of clarity around whether providing replacement equipment should be included in the AS
- 7) That there is an overall lack of transparency

3. Investigation Process

This investigation has been undertaken at Stage Two (Senior Level Investigation) of the Council's Corporate Complaints Procedure which states the following:

If a complaint is deemed serious enough then either the complainant or the Council can decide to start the complaint at Stage 2. This will ensure that it is responded to by a suitably senior member of staff and that enough time can be allocated for the investigation.

The complaint will normally be investigated by a senior manager of the service being complained about. However there may be times when it is appropriate for a senior manager not responsible for the area being complained about to investigate

The investigation has involved a thorough review of communication in relation to the seven complaint issues outlined above.

4. Investigation Findings

- 1) The original decision from 2009 was flawed

The decision was made on 22 September 2009, as an Executive Decision by the Deputy Mayor at that time, Councillor Nicky Attenborough. Mr Stuart believes that the reason the decision is flawed is that insufficient information was made available to the decision maker at the time.

The decision was supported by a report from the Executive Director (Environment and Sustainable Communities). The report recommended setting up an arrangement with the developers and considered the legal, policy and resource implications.

Matters relating to Executive decisions fall outside the scope of the Corporate Complaints Procedure. Any challenge to this decision would need to be made via a legal route.

No finding can therefore be made for this element of the complaint.

- 2) That it is unfair to have a joint scheme for Great Denham and the Land West of Kempston, particularly given the inequity of land maintained.

As above this relates to decisions made a number of years ago, however, it is useful to provide some context to this. This area has always been treated in a planning context as one development, referred to at the time as 'Kempston West & Biddenham Loop' (KWBL), hence the costs to maintain the sites were proposed and calculated together and worked out as "one charge" across the whole scheme. Mr Stuart believes that as there is more land to maintain in the LWOK area than Great Denham, the AS is unfair to the residents of Great Denham. Mr Stuart has provided his own calculations indicating that he believes residents of Great Denham are paying £7.40 per square metre and residents of LWOK only £1.67.

There is no distinction between any of the residents living in Great Denham or LWOK areas – all contribute equally irrespective of the location or type of the amenity areas which are available within the areas they reside. The AS is payable by all property owners and the charges are levied at the same rate for all properties. The number of people living within a property does not impact on the AS charge. Given the area has been legally defined as one area, the above calculations are moot. It should also be noted that the areas of land covered by the AS are public land, and therefore are open to all members of the public to use.

Furthermore, even if it wished to do so, the Council could not reasonably 'unpick' a contractual arrangement, which was and continues to be entered into between the developers and residents across the whole development. The Council was not, and is not, in a position to dictate to a developer how it maintains open space and similar areas within its development. The Council believes, however, that the arrangements are robust and capable of providing a permanent arrangement for residents.

I give a finding of not upheld for this aspect of the complaint.

- 3) That there is a lack of clarity around the purpose of collecting the AS. There is a 'common understanding' in Great Denham that the AS is used to fund the Country Park caused by the wording of the Transfer Documents and the sales material

The wording used in the Transfer Deeds and sales material was the responsibility of the developers. It is regrettable if this has caused some residents to misunderstand the purpose of the AS. It is evident that the Council has attempted to clarify matters via its website (a link is provided below) and is willing to consider other means of assisting residents in understanding the AS.

The AS is set out in documentation that would have been available to purchasers before they bought a property within the development.

I can find no evidence of anything being sent by the Council that would suggest that the AS will be used to fund the Country Park. This includes any communication to either the Parish Council or individual property owners.

This aspect of the complaint is therefore not upheld.

- 4) That the promise of the AS money being ring-fenced is not being kept, with work maintenance being undertaken on the land covered by the charge and the land not covered by the charge (The 'Old Denham' land maintained by the Council and the verges maintained by the developer) not being correctly split

I can find no evidence that the Council is charging any costs to the residents at Great Denham nor those at LWOK for any works undertaken outside of the amenity areas for which the AS applies. Whilst the same workforce may be undertaking work on the 'Old Denham' land which has been transferred and taken on by the Council, this activity doesn't fall under the AS, so it is not charged to the ring fenced budget maintained by the Council. The charges (schedule of rates) calculated for maintaining the David Wilson Homes (DWH) scheme are the same as those the Council uses for other development sites, this has been explained to the Parish Council.

Following requests from Mr Stuart for how many people were going to be employed on the DWH scheme data was provided outlining staff and maintenance costs. Going forward the Council will look to change the format of the quarterly information provided to the Parish Council to make sure this information is provided in a clear and easy to understand format.

This aspect of the complaint is not upheld

- 5) That the play areas should not be maintained by the AS as they are located within the Country Park

The Country Park is as defined on the plans available on the Council's website (link below) and reflects the agreed position between the developer and the Council in respect of the amenity area (including the play area) and the Country Park.

It is recognised that confusion could have been caused by the fact that earlier plans for the area placed the play parks geographically outside of the Country Park, however, the decision to locate them inside the Country Park does not alter how they are to be funded in terms of maintenance and general upkeep.

This element of the complaint is not upheld.

- 6) That the inspection regime of the parks is unfair, and the charging is inaccurate. There is also a lack of clarity around whether providing replacement equipment should be included in the charge

The inspections regime is based on the Council's assessment of what is required in order to ensure the play parks remain safe and fit for purpose. This does not depend solely upon the initial design of the site and the selection of equipment.

There is no specific legal responsibility to provide inspection and maintenance programmes but such procedures are recommended by various organisations including the Department for National Heritage and the Welsh Office, the British Standards Institute, the Health and Safety Executive, Insurers and the Royal Society for the Prevention of Accidents. Playground managers (in this case Bedford Borough Council) have a legal and moral responsibility for the care of the children using the sites.

If equipment in the play parks have been vandalised or damaged by misuse then, to meet the Council's responsibilities the replacement equipment and time and resources will be charged to the AS. Should the equipment fail due to a manufacturer problem then it may be replaced under any warranty with the manufacturer/ supplier of the play equipment.

This aspect of the complaint is not upheld

- 7) That there is an overall lack of transparency

It is accepted that there may have been some confusion amongst residents about what the funds raised by the AS are for. Furthermore Mr Stuart has requested various information relating to how the AS will be spent, some of which Mr Stuart continues to query. Residents have also addressed this matter through a petition which has been debated at Full Council on 12 July 2017.

In addition to responding to Mr Stuart's queries, efforts have been made to ensure transparency around the AS:

- A 'Frequently Asked Questions' section included on the website at http://www.bedford.gov.uk/leisure_and_culture/parks_and_open_spaces/great_denham_west_kempston/frequently_asked_questions-1.aspx
- A letter was sent out to all those residents of both Great Denham and Land West of Kempston providing information on the scheme
- The Council has had regular meeting with the Parish Council on site to address any points they may have and also to provide the Parish Council with any updates on the management/ maintenance of the areas covered by the AS from the Council.
- The Council has sent regular (at least quarterly) spreadsheets to the Parish Council on the spend, and forecasted spend, of the AS.
- Senior Officers have spent a large amount of time responding to all Mr Stuart's communication.
- The Council has dealt with a few resident communications and acted to get matters addressed on behalf of the resident by the developer, as the Council has a better stance with the developer to get matters progressed much more speedily.
- Officers of the Council have endeavoured to answer any points from the Parish Council to ensure the information is clear and transparent around the AS.

This aspect of the complaint is not upheld**5 Conclusion**

It is recognised that many people are dissatisfied with paying an annual charge on top of their Council Tax. However the charge was included in the deeds and homeowners would be required to pay the AS regardless of who carries out the maintenance.

6. Recommendations

That Mr Stuart is provided with a copy of this report, and is written to by a Chief Officer from Bedford Borough Council, with this report.

The Council continues to maintain up to date information on the AS on its website to support its drive to provide transparency.

Great Denham Parish Council

Discussion Document – Open Space Management in Great Denham

Prepared for meeting between Mayor and Chief Executive Bedford Borough Council and
Chairman and Vice Chairman, Great Denham Parish Council, 19th February 2018

1. The Transfer of Open Space – Kempston West and Biddenham Loop (now Great Denham)

1.1. On 22 September 2009, Councillor Attenborough, the then Deputy Mayor, was asked to consider a Report¹ authored by the then Executive Director (Environment and Sustainable Communities) on the subject of the Management of the Country Park and Open Space – Kempston West and Biddenham Loop (KWBL). The paper outlined the David Wilson Homes (DWH) development of the land in Kempston West and Biddenham Loop and the provision of over 2,700 homes over the following 10 years. It talked specifically about the ownership and management of the Open Space (OMS) and made two recommendations, that;

- a) *The Council negotiates with DWH to set up an arrangement whereby the Council accepts a transfer of open space within KWBL and undertakes the management of the open space through a contract with DWH which is financed by way of a service charge payable by the residents;*
- b) *The Executive Director of Environment and Sustainable Communities is authorised to negotiate and approve agreements for the transfer and the management of open space within the Borough including that which is to be undertaken through a contract arrangement financed by a service charge payable by residents whether pursuant to a planning obligation or otherwise.*

1.2. The paper, crucially, makes (at para. 4.3) the very clear distinction between the ‘*Management of the Country Park*’ for which the Council was to receive £3.554m and the ‘*Management of the Open Space*’ where it is made plain that DWH would not pay a commuted sum to the Council but would instead require each purchaser of a property to enter into a deed upon completion of their purchase to pay an annual service charge to cover the costs of open space management within the development. The paper (para. 4.4) goes on to state that ‘*the amount recoverable would (be) variable according to the actual management requirements and costs from time to time*’. The paper simply states that DWH has calculated that the initial service charge would be £105 per property (but that VAT would likely apply to this figure).

1.3. The Decision Paper goes on to articulate the perceived risks to acceptance of the two recommendations above. Rightly, it describes a likely ‘*risk of disgruntlement amongst property owners*’ in that ‘*all the facilities within KWBL will be available to the general public but will be maintained only by funding from the property owners*’. It continues; ‘*A further point of contention might arise that the Council would be seen to maintain other open space at no cost to the residents local to that open space beyond Council tax*’. The Author was absolutely right in both respects but in our view does not go far enough in identifying additional risk.

1.4. Councillor Attenborough agrees the recommendations on the 22 September 2009 and an implementation date of 2 October 2009 is set. The decision is made despite the paper failing to;

- a) Append a map to show the areas to be managed under the Commuted Sum;
- b) Append a map to show the areas to be managed within the proposed OMS;
- c) Identify the land mass (m²) across the OMS area (encompassing both Kempston West / Biddenham Loop (now Great Denham));
- d) Identify the land mass (m²) / percentage split between Kempston West and Biddenham Loop;
- e) Identify the contributing households upon development completion across the KWBL area and split between Kempston West / Biddenham Loop;

¹ Record of Executive Decision taken by an Executive Member or Officer – Decision number 716, 22 September 2009

- f) Identify the likely revenue receipt from the residents of Kempston West and Biddenham Loop (as a total and divided by Parish);
- g) Provide any commentary on the projected cost of maintenance of the Open Space (the *'actual management requirements'* and likely *'costs'* of maintenance;
- h) Provide any breakdown of cost per household per m2 for residents of Kempston West and those in Biddenham Loop;
- i) Discuss any need to consult and take cognizance of the views of the respective Parish Councils in terms of the proposals and recommendations within the Paper.

1.5. One of the key (7) Principles of Public Life is that of Objectivity; *'Holders of public office must act and **take decisions impartially, fairly and on merit using the best evidence and without discrimination** (our emphasis) or bias'*. In the view of Great Denham Parish Council, the decision making here simply fails to demonstrate such objectivity. It was not a well evidenced, informed decision and as a consequence it has failed to recognise the biggest single risk, that of a completely unfair apportionment of charges between the Parishes of Great Denham and Kempston.

1.6. Whilst the paper does delineate clearly between the funding of maintenance of the Country Park / OMS, somewhere in the implementation process such clarity is lost. Within Great Denham, a common understanding existed that the £120 charge related directly to the maintenance of the Country Park. A number of factors influenced this perception:

- a) The Transfer Documents (TP1s) for the majority of households refer to the OMS charge as a *'Parkland Management Fee'* and go on to define the *'Parkland Management Company'* as *'a body appointed or to be appointed by the Transferor in the upkeep of the amenity areas defined in the Schedule'*. The schedule defines the *'Amenity Areas'* as *'those parts of the estate from time to time set out or intended to be set out as 'leisure facilities'*. It then goes on to define the Annual Management and Maintenance Cost as *'the total sum **properly and reasonably incurred** (our emphasis) in any year by the Transferor or their successors in title to the amenity areas in connection with the managing and maintaining of the Amenity Areas'*.
- b) The sales material generated by DWH² was categorical in terms of the £120 charge and the rationale for it. It stated *'DWH has designed and will be laying out a 200 acre Country Park, open to the public, it will include formal and informal open space areas, 6 formal playing fields, an all-weather multi-use pitch, youth facilities and a new pavilion including changing rooms. **The park and all of the public open space areas will be managed by a professional management company in return for an annual maintenance charge** (our emphasis). This will start at £120 per dwelling, then rise with inflation each year and be adjusted for out-turn maintenance costs every five years'*.

1.7. In addition, you (the Mayor) may recall our correspondence on this issue when the specific question was asked in terms of the rationale for the charge. In the email sent on 10 May 2015 (to Martin Stuart) you made clear your understanding of the rationale in that it related directly to the *'provision of and **laying out of appropriate parkland and formal play spaces'**(our emphasis)*.

1.8. The Parish Council would argue that the three examples given above adequately explain the confusion in terms of what the charge related to and the overwhelming belief was that it was to cover the maintenance of the Country Park. Of course, it is now clear that the Country Park will be maintained entirely separately and from within the £3.554m commuted sum receipt (we understand, following further communication from Paul Pace, that this was later reduced to some £2.6m).

² DWH A4 Fairways Amenity Brochure, page1 1 April 2010

2. The Annual Charge for Maintenance of Open Spaces

2.1. On 28 February 2017, Lee Phanco (Assistant Chief Finance Officer) wrote to all residents to explain the 'Annual Charge for Maintenance of Open Spaces'³ and informed residents that the charge of £120 would be invoiced separately. The letter stated that the charge was for the maintenance of green spaces on the development and includes 'landscape management; grass cutting; (hard and soft); litter bin emptying, play area checks and shrub pruning; maintenance of hedgerows and trees, future planting etc.'

2.2. The letter also made crystal clear that 'all money received through payments of the annual sum will be kept in a separate ring-fenced fund and can only be used to meet the costs of the ongoing management of the open spaces..'

2.3. The invoice to residents was sent (dated 1.4.17) which led to an array of complaints on Twitter; Facebook; via email and in public parish meetings. Initiated through the Residents Association, a petition (from Great Denham RA and separately, those residents of Kempston) led to a debate at the Full Council meeting of 12 July 2017. As a consequence the Council resolved to 'provide **maximum possible transparency** (our emphasis) to residents in respect of the use of funds raised via the charge, including accounts displaying income and expenditure'.

2.4. Despite the promised openness and transparency, it is fair to say that the process has been somewhat fraught. Whilst numerous examples of delay; prevarication and open defensiveness could be evidenced through the now historical email / meeting exchanges, there is little point in documenting this grievance here. Suffice to say, it has taken months to get to the position we now find ourselves in and there are a number of issues that remain unresolved.

3. The consequences of the Charge for Open Space Management

3.1. What has transpired, eventually, through the (necessarily repeated) questions posed by email to Paul Pace (Chief Officer – Environment) and through meetings with him and Lee Phanco (on 27 April 2017; 29 June 2017; 16 October 2017 and 29 January 2018 (although Lee Phanco didn't arrive on the latter date) with respect to the Open Space Area is as follows:

Total Land Mass – Great Denham and LWOK	115,112m ²
Total Land Mass – Great Denham	24,324m ² or 21% of total (rounded)
Total Land Mass – Land West of Kempston	90,788m ² or 79% of total (rounded)

Table 1 – Land Mass

Total Receipt – Total OMS area (in 2019/20)	£331,200 (£120 charge per household)
Total Receipt – Great Denham (planned 1500 houses)	£180,000 or 54% of total (rounded)
Total Receipt – Land West of Kempston	£151,200 or 46% of total (rounded)

Table 2 – Total Receipt

Total Charge per m ²	£2.88 per m ²
Total Charge to Great Denham residents	£7.40 per m ² (£4.52 over average charge)
Total Charge to Land West of Kempston residents	£1.67 per m ² (£1.21 under average)

Table 3 – Total Charge

3.2. In the view of Great Denham Parish Council, it is exactly this sort of data that should have been made available to Councillor Attenborough to better inform the decision making on 22 September 2009. Even if not articulated within the paper submitted by the then Executive Director (Environment and Sustainable Communities), Councillor Attenborough should have recognised that (in covering two separate Parishes), greater granularity of data was necessary on which to make a professional judgement in terms of fairness and reasonableness. The data, no matter

³ Letter to Residents from L Phanco, 28 February 2017 – Annual Charge for Maintenance of Open Spaces

how much you look at it, demonstrates a complete inequality in terms of the value for money afforded to residents of Great Denham when compared to those of Kempston.

4. Lack of Clarity in terms of Large Play Park inclusion

4.1. In preparing this discussion document it became clear that there was a lack of clarity as to whether the two large play parks within the Country Park were to be maintained from the Commuted Sum fund or the OMS fund. The decision paper⁴ considered by Councillor Attenborough makes clear that the £3.554m (at the then current rates) would sustain the maintenance of the Country Park for some 18 years. It is specific (para. 4.3) when commenting on the *'Management of the Country Park'* that the commuted sum *'will not cover for major maintenance of footways/buildings or replacement of play areas at the end of the term'* (our emphasis) and that this will have to be subsumed within Council budgets (mitigated by the increase in the Council tax base from the new development).

4.2. It is, in the view of Great Denham Parish Council, clear from this narrative, that the maintenance of the two large play parks within the Country Park is to be funded through the use of the Commuted Sum and not the funding received as a consequence of the Open Space Management (OMS) charge. Indeed, this position is strengthened by the OMS Area Land Registry Transfer (TP1) dated 20 June 2017⁵ which highlights the small play parks within the residential development in the plan attached to the Transfer of Title (edged clearly in red) but does not incorporate the two large Country Park Play Areas.

4.3. Paul Pace and Lee Phanco have maintained, throughout our meetings in 2017/18, that the two large play parks are to be maintained through the OMS funding. Indeed at our last meeting, when presented with the data above (tables 1-3) Paul Pace attempted to argue that, as Great Denham had a bigger play park than Kempston, the figures were in some way justifiable.

4.4. In an attempt to clarify the position with regard to the play areas (and their maintenance) we wrote to Paul Pace to seek a definitive position. In his response of 9 February 2018 he has been unable to provide any certainty on this issue, instead making assumptions on historical plans (which still show 2 play areas but not a large Hub in the Country Park) and some meeting notes dating back to 2013 but without any recourse to any definitive legal documentation or title transfer. The fact remains that play facilities are specifically mentioned in the s106 Agreement and the two large play areas within the Country Park do not feature in the Land Registry title transfer of the OMS (from the Developer to Bedford Borough Council).

4.5. Additionally, your very own website⁶ (under Great Denham and Land West of Kempston Developments) reinforces this position still further. The map of the Great Denham development (on your website) shows just 4 SLAP parks (small areas of play) within the residential development (shaded dark green) and clearly excludes the two larger play parks (shaded light green) within the Country Park. The accompanying text (on the rationale for the annual charge to property owners) is unambiguous; *'The open spaces that will be maintained under the agreement are the areas shown in green on the following maps but the charge will only relate to the darker green areas'* (our emphasis).

5. A failure to Ring Fence OMS Funds

5.1. Earlier in this paper, we referred to the correspondence (Lee Phanco) of 28 February 2017⁷ and more specifically, the comment that *'all money received through payments of the annual sum will be kept in a separate*

⁴ Record of Executive Decision taken by an Executive Member or Officer – Decision number 716, 22 September 2009

⁵ TP1 – Land Registry Transfer of Part of Registered Title – BD260950/BD259711

⁶ Bedford Borough Council website: www.bedford.gov.uk

⁷ Letter to Residents from L Phanco, 28 February 2017 – Annual Charge for Maintenance of Open Spaces

ring-fenced fund and **can only be used to meet the costs of the ongoing management of the open spaces.**' (Our emphasis). This has proven not to be the case. Having directly witnessed Council / Contract staff interchangeably working on the OMS Area; currently un-adopted verges in Great Denham and the older residential areas of the development, this issue was raised directly with Paul Pace at our meeting with him (Lee Phanco not attending) on 29 January 2018.

5.2. Some context is necessary here. On 14 June 2017 the Parish Council met with both Paul Pace and Ian Bennett (David Wilson Homes - DWH) to discuss the better co-ordination of grass cutting on both the OMS Area and the grass verges on the myriad roads running through the development (but awaiting adoption and transfer to Bedford Borough Council). At that meeting it was agreed that the staff maintaining the OMS Area would, additionally, take over the maintenance of the wider verges to bring about both greater consistency and a higher standard of maintenance (which, subsequently, did transpire). It was, however, assumed (following the withdrawal of the Parish Council representative from that meeting), that Paul Pace would negotiate a fee from DWH for this additional work. It is now clear (acknowledged by Paul Pace at our 29 January 2018 meeting) that no such negotiation did take place and that both employed and contract staff (of Bedford Borough Council) were deployed on this wider verge management work with no DWH recompense for the time / equipment deployment. It was simply coded to the OMS Account. The area of land maintained on behalf of DWH amounted to 14,596m². This number is significant in the context of the OMS Great Denham area (at just 24,324m²). Paul Pace was asked if the deployment of staff (paid for by OMS monies) to DWH verge areas would result in a cross-charge back from Council funds to the OMS Account. He has argued that, for the period June – December 2017, the DWH verge management would have only cost about £2,000 to maintain and as yet, to our knowledge, there has been no re-credit to the account.

5.3. The important point to note here is that if an area of 14,596m² can be maintained for nearly 6 months and throughout the main grass-growing period for just £2,000 (which equates to 13.7p per m²) then 24,324m² would be calculated at £3,332.38 on that same basis (13.7p per m²). Whilst it is appreciated that there is a degree of border maintenance to add to that, there can simply be no justification for the £180,000 figure to be collected. It also raises a significant question as to how (see Table 1 at 3.1 above) a total charge average of £2.88p per m² across the whole OMS area can in any way be justified, and worse still, an effective charge of £7.40 per m² for residents of Great Denham.

5.4. At that same 29 January 2018 meeting it was also put to Paul Pace that the considerable spend on capital equipment (vehicles / equipment) had also been diverted to maintain both the wider DWH verge maintenance and the older parts of Great Denham (which should be wholly funded through Council Tax provision). This, eventually, was also conceded. Vehicles and equipment purchased with monies received through the OMS charge have been deployed outside of the OMS, a position totally contrary to assurances given by Bedford Borough Council.

5.5. Repeated requests to secure the deployment dates of permanent / contract staff to the OMS area itself (rather than the DWH verges / older part of Great Denham) have been largely ignored (since our June 2017 meeting) and as a consequence, the Parish Council cannot, in any way be reassured that staff deployment data is accurate. In truth, in the continued absence of deployment data (which was made available prior to June 2017), we suspect that both permanent / contract staff have been deployed to the wider DWH verges; the older parts of the development and possibly elsewhere outside of the Parish and that that such deployment may have been wrongly coded to the OMS Account.

5.6. Finally, at that same meeting (29 January 2018), Paul Pace was good enough to concede, because of the '*flak*' taken both here and in Wootton, that you, as Mayor, have stated you would not be engaging in any similar arrangement on future housing developments. This is entirely understandable in our view and a reflection of the total unfairness of the scheme. What it doesn't do, however, is deal with the inherent unfairness in terms of the imposition of the charge on residents of Great Denham.

6. Summary and Conclusions

6.1. This paper, in our view, clearly demonstrates significant failings in the now historical decision making process within Bedford Borough Council in terms of acceptance of this Open Space Management arrangement. Councillor Attenborough, at the time of making the Executive Decision should have either been furnished with the relevant data to determine the fairness and equitability of the charge across both Great Denham and Land West of Kempston or, having not been so furnished should have recognised the shortcomings of the paper and asked some searching questions of the Author before simply signing off the decision and Officer recommendations.

6.2. The decision paper recognised a generic risk of disgruntlement amongst property owners but fails, due to the lack of granularity of data, to recognise the more specific disgruntlement now evident and arising from the comparative analysis at 3.1 (above) on the part of Great Denham residents. It highlights the very real contention that residents here (and in Kempston) rightly feel that the imposition of the Open Space Management Charge is both unfair and unreasonable, not least when the Council routinely maintains other open spaces right across the Borough from an ever increasing Council Tax receipt. This feeling of unfairness is exacerbated in Great Denham by the relatively small parcels of land as a percentage of the whole.

6.3. What has emerged from an often fraught process of openness and transparency is the fact that, far from the annual sum being kept in a *'separate ring fenced fund'*, one that *'can only be used to meet the costs of the ongoing management of the open spaces'*, the polar opposite is evident. Vehicles and equipment (purchased with OMS funds) and indeed permanent and contract staff charged to the OMS Account have been routinely deployed to the wider areas of Great Denham (and possibly beyond) which is hugely disappointing and a clear misuse of the OMS funds.

6.4. Furthermore, it now appears that the two large play parks (maintained, inspected and charged to the OMS Account) do not actually sit within the OMS Area at all and should be maintained from the Commuted Sum receipt from the Developer. They do not form part of any legal Land Registry Transfer and the Chief Officer responsible cannot lend on any documented legal position to the contrary.

6.5. This paper has highlighted significant shortcomings and clear reputational risks for Bedford Borough Council, not least in terms of the quality of decision making and management practice. The degree of openness and transparency, and the evident accounting practices, leave much to be desired.

6.6 It is the firm view of the Parish Council that the arrangement for OMS was, from the outset, based on an inadequate proposal, one that on the above analysis has proven to be both a logistical headache for the Council in terms of administration, but also one that has led to the imposition of a wholly unfair, unjust and unreasonable charge to the residents of Great Denham. We feel the decision to impose this charge should be rescinded before the commencement of the 2018/19 financial year and that responsibility for the relatively small area of land (just 24,324m²) should be funded entirely through Council Tax receipt.

14 February 2018

APPENDIX 2

From: Martin Stuart [mailto:ms.consulting@btinternet.com]
Sent: 04 April 2018 11:58
To: Andrew Maslen
Cc: jrweir@btinternet.com; Philip Simpkins; Mark Minion
Subject: Open Space Management - Great Denham - Outstanding Issues

Dear Andrew,

I understand that you have been asked to look at the numerous outstanding issues in relation to the Open Space Management (OMS) Area in Great Denham under your Councils' Corporate Complaints mechanism. I know that you have been copied in to some of the email correspondence but for ease we thought it useful to set out the key points at issue (expanding in some areas on my email to the Chief Executive on 29 March 2018. I had presumed that you would want to meet and discuss these issues but that may not be the case. To aid your understanding I have attached the Discussion Document we prepared, shared and discussed with the Mayor / Chief Executive (CEX) of the Council on Monday 19 February 2018:

Originating Decision on OMS

In the record of Executive Decision (number 716 – 22 September 2009), Councillor Attenborough agrees a recommendation made by the then Executive Director (Environmental and Sustainable Communities) in relation to the creation of Open Space and its' management. At 1.4 of the attached discussion paper we make clear the failings of that paper (points a – i on pp 1-2). At 1.5 of that paper, we point to a key principle of public life, that of Objectivity. The decision paper has clearly failed to recognise the unfairness of a blanket charge of £120 falling to residents of Great Denham *vis a vis* those of Kempston (Land West of Kempston – LWOK) and in our view lacks such objectivity. At 3.1 of our discussion paper that unfairness is laid bare (the figures for land mass having been provided by Paul Pace in various emails). The following questions arise;

1. Do the Mayor / CEX accept that the decision paper lacked such objectivity and that because of it, the implementation of the recommendations has led directly to a detriment to the residents of Great Denham?
2. Why did the Decision Paper not seek to identify the disparity between the two parishes through the provision of data showing the impact of the charge on residents of the two distinct parishes?
3. Why, when the Decision Paper lacked such granularity of data required to make a well informed, professional and reasonable judgement (all the data now having been provided from Paul Pace and therefore always within Bedford Borough Council), did Councillor Attenborough not recognise the shortcomings in the decision paper and seek such data to better inform her decision?
4. Why was the transfer of land undertaken as a single area (then Biddenham Loop / LWOK) when two entirely separate parishes were in existence (GD Parish being formed in 2007)?
5. In his email to me of 21 March 2018 the CEX has said that this '*must remain as one scheme and it should not be viewed as Great Denham and Kempston*'. Bearing in mind the failings of the decision paper and the clear detriment to GD residents highlighted within our Discussion Document and reiterated at our meeting with the Mayor / CEX on 19 February 2018 (where the Mayor readily acknowledged the unfairness of the scheme to GD residents), why are the Mayor / CEX maintaining this view? Can you please give the clear rationale for this position? We would ask that you set out clearly why it is deemed impossible to revisit the original decision and delineate between two entirely separate Parishes?

6. What considerations (post our meeting of 19 February 2018) have been given by the Mayor / CEX to re-assessing the original decision making and the flaws within it, not least the lack of objectivity and any impact assessment on local Great Denham residents and for implementing an altogether fairer system that better reflects the OMS maintenance requirement in Great Denham?

Confusion of intended purpose of the Charge

At 1.6-1.8 of our discussion paper we make clear the confusion over what the £120 charge was to be used for. A common understanding was that it was a contribution to the maintenance of the Country Park (which as we now know is funded entirely separately from the Section 106 Commuted Sum receipt).

1. Do the Mayor / CEX accept that such confusion is understandable in the circumstances?

Two large Play Areas within the Country Park

At 4.1 – 4.5 of the Discussion Document we argue strongly that the two play parks within the defined Country Park area should be maintained with funding from the Section 106 Commuted Sum receipt. This issue is central to this process and I have asked (3 April 2018) the CEX to answer this point directly. I await his response but would hope that he has the courtesy to respond fully prior to our forthcoming Parish Council meeting on 9 April 2018. In the light of the significance of this single issue I have also asked the CEX whether (and if so on what date) invoices are to be issued for 2018/19. We would strongly urge against this pending his response on the two large play parks. If the CEX fails to respond, then the following questions arise;

1. Why, bearing in mind his promise to respond on this issue following his discussions with Officers, has he failed to provide any certainty over the status of these two play areas?
2. From which funding source are these two large play areas to be maintained?
3. If the Mayor / CEX are maintaining that they are to be funded through OMS funding, on what legal basis has this decision been made?
4. If it is accepted that these two large play areas do indeed sit within the S106 Commuted Sum Country Park Area, there are huge implications for the current OMS 2017/18 outturn and projections for the OMS Budget for the years to 2022/23. This budget data was provided by way of email to me on 21 March 2018 from the CEX. I pointed to the wider financial implications (play inspections, projected staff costs etc.) in my email to the CEX on 2 April 2018 (you were copied in). We would ask that you are clear in your determination on this process how the budgets are to be amended to reflect this issue?

Failure to ring-fence funds

At 5.1 – 5.4 of our Discussion document we set out the admitted use of staff, equipment and vehicles purchased with OMS generated funds on areas outside of the OMS Area.

1. There does not appear to be any amendment to the current outturn data to reflect this use of people, equipment and vehicles. We have not been provided by the Mayor / CEX with any indication as to what adjustments are to be made to reflect this deployment?
2. This will crucially be dependent on deployment data. At 5.5 of our Discussion Document we point to repeated requests to secure deployment data of permanent and contract staff (provided prior to June 2017). We would like to have sight of accurate and reliable data of deployment to the OMS Area in Great Denham, not least as we have had no sight of staff

here for over a month. We are keen to understand the process on which deployments of both staff, equipment and vehicles to the OMS are recorded and would want to be reassured that the process accurately reflects actual OMS deployment and not deployment to other areas of Great Denham (not covered by the OMS) / Bedford Borough. We would want to be clear that such deployment data is then accurately recorded within the accounting processes to manage the OMS Fund. Finally, on this point, we want to be clear what cross-charging (from BBC Council Tax funds) is to occur as a consequence of the admitted deployment of staff, vehicles and equipment to both the older parts of Great Denham (not subject to the OMS Charge) and the David Wilson Homes verge areas (see point 5.2 of our Discussion Document)?

3. How can we be reassured that staff, equipment and vehicles dedicated to the OMS are not to be routinely used elsewhere in the future (or if vehicles / equipment are to be so used, what process will be put in place to ensure that the OMS fund is recompensed accordingly)?
4. In the light of the CEX not responding to my earlier questions, we are still unsighted on whether Paul Pace has negotiated an arrangement with David Wilson Homes to undertake the maintenance of verges not yet transferred to the Council through the adoption process. Can this be clarified with some urgency as there appears to be no maintenance currently to either these verges or the OMS Areas?

Play Park Inspection Regime

1. In my email to the CEX of 29 March 2018 (you were copied in) I raised the apparent (and observed) light touch inspection regime (point 5 of that email). What is the statutory requirement for such inspections for both the large play areas (those under dispute in terms of funded maintenance) and the small local areas of play (SLAPs) such as the one next to my property?
2. What is the statutory guideline for the regularity / robustness of such inspections?
3. What is the BBC process for recording such inspections (time allocated / findings etc.)?
4. On what basis can a 0.5 FTE post be allocated to such an inspection regime within the OMS?

Future Openness and Transparency

Whilst I am awaiting confirmation of a meeting with Adrian Tott next week to discuss the poor state of OMS maintenance can you outline who now is the senior officer responsible for providing Great Denham Parish Council with the promised transparency on all of the above. Historically it has been through meetings with both Paul Pace and Lee Phanco but in the light of this process I recognise it may have changed.

Kind regards, Martin

Martin Stuart : ms.consulting@btinternet.com : Tel : 07785 311624