



Leicester
City Council

WARDS AFFECTED
ALL

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:
Overview and Scrutiny Management Board
Cabinet Briefing
Cabinet

17 March 2011

**Regeneration and Transportation Task Group Review of
Land Management Companies in Leicester**

Report by Cllr Paul Newcombe, chair of the Task Group

1. Purpose of Report

- 1.1. To ask the Overview and Scrutiny Management Board to approve the recommendations set out below
- 1.2. To seek Cabinet support for the recommendations set out in section 2 below
- 1.3. To refer to the Department for responses to the recommendations

2. Recommendations

2.1 Community and residential issues

- a. Where possible common land within an estate development shall be in the ownership of the community: ownership models should include management committees and residents' local enterprises.
- b. Where land is in community ownership, the transfer of land into community ownership shall be contingent on the sale or occupation of a specified number of homes.
- c. The developer shall until then be responsible for maintenance of the community land. This should be a technical standards and performance contract which can be enforced through the planning enforcement regime
- d. Local residents' groups shall have the right to consultation on contract terms and conditions, and on which contractors can tender, for work on their communal areas
- e. Contractors shall comply with technical standards and performance specifications and regularly consult with residents who pay for the work done on their behalf. An identified

local contact should be named by the contractor. Consultation meetings between LMCs and residents' groups should take place at least twice a year.

- f. Where the land is owned by another organisation (developer or land management company) local residents' groups should have access to a named individual representing the land owner who will also be responsible for reporting back to such groups, and to receive reports on problems, concerns and possible contractual breaches.
- g. The appointment of LMCs by a developer should be time limited to allow future residents' organisations to be able to influence the appointment of a long-term LMC, to establish stable relationships between the LMC and local residents, and to test maintenance contracts in the open market on a regular basis.

2.2 Behaviour and performance of land management companies (LMCs)

- a. LMCs and their contractors shall maintain open spaces and community facilities such as play equipment to a technical and performance specification and standards which comply with Leicester City Council's open spaces adoptable standards and in line with the terms set out in Appendix 3
- b. LMCs shall maintain Sustainable Urban Drainage Systems (SUDS) within such developments to standards which would comply with Severn Trent adoption standards
- c. Irrespective of land ownership LMCs should comply with recommendations in Section 1, specifically recommendations d, e, f and g.

2.3 The planning and development role

- a. The City Council should recognise the issues surrounding the creation of communal spaces within private developments by specifying required (adoptable) standards of such communal spaces within design and access statements for project developments
- b. These should include performance specifications for the upkeep of common green and hard spaces and specifications for the development of facilities such as sustainable urban drainage systems (SUDS) and facilities such as play areas.
- d. Design and access briefs should be reinforced by take into account future ownership models of common amenity space on developments, planned development programmes and trigger points for the provision of community facilities. This will allow developers to take decisions on land acquisition prices with a clear vision of how common amenities will be paid for and managed as well as helping those living on estates to understand what will be provided and when.
- e. Specifications for future management and care of communal sites should form part of the detailed development control conditions or be specified as part of Section 106 agreements with developers.
- f. Council enforcement of planning and development control conditions and of Section 106 terms and conditions relating to the provision and maintenance of common spaces shall

be a significant mechanism for residents to get developers and management companies to comply with those terms and conditions

2.4 Other issues

- a Developers shall comply with the terms of the Consumer Code for Home Builders (issued in 2010), in particular relating to pre-purchase information setting out the future commitments of a home buyer and an estimate of their costs (Section 2.1 of that Code refers)
- b Other agents - specifically lawyers and estate agents - acting in relation to the sale or rent of homes where future land management charges are involved shall make it clear well ahead of the point of commitment to a contract the nature and extent of those commitments.

3 Summary

3.1 This Review was prompted by complaints and concerns by Members and by communities across the city about the performance and actions of land management companies.

3.2 It explored the nature of those complaints and concerns and also examined

- The behaviour and performance of individual land management companies (LMCs)
- Reasons underlying the growing use of LMCs by developers to manage communal open spaces
- Different models of ownership, management and control of community spaces
- Ways of improving communications between different groups with varying and often conflicting interests
- Ways in which the planning, development and control processes could be used to maintain, strengthen and enforce the quality and standards of public open spaces and other amenities (such as play areas) provided through the development process.

4 Report

4.1 Across the city, and in particular the Humberstone and Hamilton and the Beaumont Leys wards, communities and Councillors have confronted by a series of problems relating to the performance of LMCs.

4.2 The issue was by no means a local matter and the local and national picture is set out in Appendix 1, which formed the basis for the report to the first Task Group meeting. Appendix 2 constitutes the minutes for the last evidence-taking session, which included evidence provided by directors of LMC Greenbelt.

4.3 The Office of Fair Trading (OFT) launched its own review of issues created by land management companies and an extensive précis of the report is contained in Appendix 1.

- 4.4 The issue of land management has arisen in recent years because of the growth, through the planning process, of the provision of common or communal land and amenities on what are usually private housing developments.
- 4.5 This is partly due to the increasing reluctance, due to budget pressures, of local authorities to become responsible for the future upkeep of common land
- 4.6 There are a number of ways in which the facilities can be managed. In Leicester two distinct models were found. On Bradgate Heights the developer, David Wilson Homes, paid a considerable up-front sum to The Greenbelt Group, probably the biggest UK LMC, to carry out maintenance of the land. Home-owners were not required to pay annual costs for maintenance of the communal amenities.
- 4.7 In Humberstone and Hamilton, a major development, running across more than a decade, involved several developers and land-owner the Humberstone and Elms Farm Trust. The developers were required to provide a number of play facilities, while common land is maintained by a small number of LMCs, most notably Greenbelt and Exclusive Property Management (EPM). In this model the communal land will be transferred to the LMC.
- 4.8 In Bradgate Heights residents were frustrated by the lack of clarity about who was responsible for various aspects of infrastructure from roads and pavements to safety of ponds and grass maintenance.
- 4.9 This stemmed ultimately from a failure to perform of various agencies, including the developer. The confusion was not helped by a loss of documentation setting out Council planning terms and conditions relating to the site.
- 4.10 Evidence to the Task Group suggested that clearer lines of responsibility, and clearer lines of communication, would have helped in the past and would help in the future. Greenbelt suggested that a central customer relations number was best for their organisation, but members and residents felt there should also be a named local representative. This is reflected in the recommendations above.
- 4.11 In Humberstone the position is more complicated. Development of the site will take up to 15 years, work has been and is being done by a number of developers and there is no clear lead developer.
- 4.12 The model here is of the land management company owning the land (eventually) and residents paying an annual charge. Two different LMCs operate on different parts of the estate.
- 4.13 This highlights the importance of the relationship between the developer and the LMC, and the difficulty residents have in influencing or, more importantly, being part of that relationship.
- 4.14 The LMCs currently working there are Greenbelt and Exclusive Property Management (EPM). EPM was appointed after a number of problems with previous LMCs which led to a deterioration in the common space, with grass not being cut and growing to what residents felt were unacceptable heights.

- 4.15 The failure to perform of previous LMCs was a significant factor in the formation of the New Hamilton Residents' Association. However, an issue on these developments was the failure of developers to provide play equipment on a number of locations which had been required by the terms of the development controls. LMCs felt that the local authority should have been more proactive in enforcing the development control conditions.
- 4.16 A number of meetings, public and otherwise, on North Hamilton led to the threat of a payments strike by residents. (It should be noted that LMCs can claim back non-payments out of mortgage settlements when a property is re-sold).
- 4.17 EPM, which was most recently appointed to the so-called Quakesick site development on North Hamilton, spent some time and effort in establishing relations with the local community. Annual charges to residents were reduced, partly by cutting the management charges passed on to residents. The level of withholding of charges by residents has started to fall significantly.
- 4.18 The issues of contract performance, transparency, accessibility to the LMC and charges imposed for late payments were discussed by the OFT. EPM agreed residents had little influence in the appointment of LMCs by residents. This was partly reinforced by the OFT observation that there was little competition for LMCs.
- 4.19 Developers were asked about a range of models for community involvement. Most were against the idea of community-based ownership and management. It was suggested that some community local enterprises fell victim to factional in-fighting or, over time, sheer lack of interest and commitment (an issue seen over time in many tenants and residents' associations).
- 4.20 There was some support from residents and members for the idea of transferring control of common spaces and facilities to a local enterprise, despite the reservations of developers.
- 4.21 A typical model would see each home having a share in a local entity which in turn would have the power to employ and oversee LMCs as well as setting and monitoring maintenance standards and providing new amenities through agreed annual service charges
- 4.22 There was some evidence to the Task Group to suggest that residents were left unaware of future service charges until the point of signing a mortgage contract. This was also referenced by the OFT. The recommendations reinforce the requirement of solicitors and estate agents to make clear from the outset what charges are involved, and what services can be expected from those charges.
- 4.23 However the potentially difficult relationships between planners, developers, LMCs and residents will not be solved without all sides going beyond the straitjackets of legal requirements and building better relationships, clearer understanding of who is responsible for what and a higher level of trust. The recommendations are aimed at defining the relationships in a way acceptable and understandable to all.

Jerry Connolly

Member Support Officer

25th February 2011

5 FINANCIAL, LEGAL AND OTHER IMPLICATIONS

5.1 Financial Implications

[Click here to type financial implications]

5.2 Legal Implications

[Click here to type legal implications]

5.3 Climate Change Implications (Contact Climate Change Environment team on 29-6776 for guidance)

[Click here to type legal implications]

6 Other Implications

OTHER IMPLICATIONS	YES/ NO	Paragraph/References Within the Report
Equal Opportunities		
Policy		
Sustainable and Environmental		
Crime and Disorder		
Human Rights Act		
Elderly/People on Low Income		
Corporate Parenting		
Health Inequalities Impact		

7 Risk Assessment Matrix

Delete if not required. This only needs to be included if appropriate with regard to the Council's Risk Management Strategy

Risk	Likelihood L/M/H	Severity Impact L/M/H	Control Actions (if necessary/appropriate)
1			
2			
3			
4			
5			
6 etc			

8 Background Papers – Local Government Act 1972

8.1 [Click here to type background papers]

9 Consultations

9.1 [Click here to type consultations]

10 Report Author

10.1 Jerry Connolly

REGENERATION AND TRANSPORTATION SCRUTINY TASK GROUP

9TH NOVEMBER 2010

LAND MANAGEMENT COMPANIES

1 INTRODUCTION

- 1.1 Land management companies (LMCs) are employed by private housing developers to maintain common amenity spaces and facilities within Leicester and across the United Kingdom.
- 1.2 The growing use of LMCs, both locally and nationally, arises from the way in which planning processes have placed greater emphasis on providing public or common space when considering major housing schemes.
- 1.3 The issues and concerns relating to the use and performance of LMCs was set out in a report by head of planning Mike Richardson to the Overview and Scrutiny Management Board (OSMB) in December 2009.
- 1.4 The paper was a response to a petition by homeowners within the city to the Council to take over ownership and management of public open spaces which were the responsibility, in some form, of the developer. That paper constitutes Appendix 2 to this report.

- 1.5 The petition followed a number of complaints from homeowners about what is seen to be a failure of LMCs to do their job properly. In some cases these complaints were supported by Keith Vaz, M.P. for Leicester East.
- 1.6 The paper recommended that the petition be rejected by the City Council, with the effect that LMCs would continue to manage private developments' public open spaces and LMCs would continue to charge residents an annual fee for that service.
- 1.7 However there has continued to be confusion and arguments over who is responsible for the maintenance of open land, the standards which maintenance should achieve and who exactly home-owners with a grievance over the quality of grounds maintenance should complain to.
- 1.8 Funding of the maintenance work is normally through an annual charge to home-owners by the LMC for the work to be carried out. In total these charges amount to tens of thousands of pounds a year. In some cases the developer has made a large up-front payment to an LMC or agent for and LMC to fund future maintenance work.
- 1.9 This review is aimed at establishing how LMCs are performing, the relationship between the Council and LMCs, and other relationships involving LMCs and the way they are doing their work.
- 1.10 Most LMC work is based in Scotland, but there is a significant drive to expand business in England. Leicester is one market which has been identified and in which LMCs have started to operate.
- 1.11 The largest LMC in the UK, with an overwhelming majority of the market, is The Greenbelt Group (Greenbelt). Greenbelt operates within Leicester.
- 1.12 There have been concerns about the effectiveness of LMCs in general, and particular concerns about Greenbelt's performance. These include an [Office of Fair Trading inquiry \(OFT\)](#) and a [Commons adjournment debate](#). There is also web-based concern raised by communities and community associations about LMCs which required further research.
- 1.13 They include a critical [Glasgow Herald report](#) and the setting up of a [Greenbelt Action Group](#) which is not whole-heartedly dedicated to supporting Greenbelt and its activities. Scottish First Minister [Alex Salmond intervened](#) when constituents were concerned about Greenbelt's performance.
- 1.14 The OFT report, published in February 2009, found that while most people "were happy with their property manager, around one in three said they were not. Two-thirds of consumers who had made a complaint about their management firm were dissatisfied with the way their complaint was handled.
- 1.14 The OFT study said that:
 - many people do not understand their complex legal rights and are unsure about the standard of service they should expect, and
 - there is limited scope for redress when things go wrong, and

- owners rarely switch their property manager – and at the same time, there is little evidence of active competition between property management companies to attract business.
- 1.15 In addition, the OFT found problems in the market for land maintenance companies, with consumers experiencing particularly extreme barriers to switching land maintenance suppliers when ownership of open spaces had been transferred to private companies.
- 1.16 The OFT concluded that a system of self-regulation would be the best solution to the problem. Subsequently Member of the Scottish Parliament (MSP) Patricia Ferguson introduced a proposed bill – the Property Factors Bill - to regulate the industry.
- 1.17 This Task group review intends to highlight the planning, legal and contractual issues involved - for the benefit of home-owners who have raised concerns, and the Council which though having nothing to do with the contract arrangements, has been asked to pick up the bill.
- 1.18 The Review hopes to shape policies which will improve the management arrangements of existing and future open spaces within the city of Leicester. For example, the development of Ashton Green will involve the extensive use of

2 CURRENT ISSUES

- 2.1 In parts of the city – notably the Beaumont Leys and Humberstone and Hamilton wards - major private sector housing developments have taken place and in some places are still far from completed.
- 2.2 Typically these have involved construction of several phases over several years. Planning conditions have been imposed which require good standards of roads, public open spaces and other facilities such as SUDS (Sustainable Urban Drainage Systems).
- 2.3 SUDS are increasingly being used as a way of reducing the flood impact of major developments. Typically they are designed to leave run-off into rivers and streams at a level no greater following development than before the development took place.
- 2.4 One of the first SUDS in the East Midlands was at North Hamilton. This SUDS is typical in that it involves a wedge of green natural landscape through a housing development with catchment pools to act as soakaways for water cascading through the site.
- 2.5 Wider policy dictates that SUDS are adopted by Water Companies once they are established. Indeed, Severn Trent Water (STW) has stated that it strongly supports SUDS.
- 2.6 However to date STW has refused to adopt SUDS established in North Hamilton, and the system remains part of the property managed by LMCs within the area.
- 2.7 A number of LMCs, including Greenbelt, are working in North Hamilton. Greenbelt is working specifically for Humberstone and Elms Farm Trust which is overseeing the development of 1,500 homes in several phases since 2001.

2.8 Greenbelt has cited the project as [a case study](#) on its web site, managing

“27 hectares of open space linked by a network of green corridors providing habitats for biodiversity. Extensive sustainable urban drainage system (SUDS) are located within these areas, providing storage and treatment of surface water runoff from the housing area.

“The SUDS network includes attractive swales, ponds and wetlands which have been designed by the client's team and independently audited by Greenbelt. All areas will be progressively transferred to Greenbelt as the site develops and matures. The transfer, through an agreed phasing plan, started in spring 2003.” Source: Greenbelt

- 2.8 The failure of the appointed LMC to perform on the Quakesick development led to an intervention by Leicester East MP Keith Vaz. He called on Leicester City Council to adopt the land in question.
- 2.9 The Council declined (see Appendix 3 par 3.1). Residents were incensed by the LMC's high charges and poor performance and involved a form of rent strike.
- 2.10 Appendix 4 explains some of the background to the change of LMC and measures taken to improve performance and value for money on the site. This included developer Persimmon essentially sacking the previous LMC and bringing in a new manager.
- 2.11 Evidence from the manager, Mr James Moorman, is in Appendix 4 below. Mr Moorman was also to provide further information from an LMC operator's point of view and his comments are in Appendix 5.

3 FUTURE ISSUES

- 3.1 Current planning guidance will see further expansion in the integration of public or community spaces and community facilities where large-scale housing developments take place.
- 3.2 By their nature these schemes take a significant period to develop out and often community facilities come at the end rather than the start of a project. Residents, however, will normally be paying for maintenance and facilities from the outset.
- 3.3 The biggest housing development project within the city is likely to be Ashton Green. A policy framework for this development which gives clear guidelines about open space policy and how it is managed could be an important part of the work of this Task Group.
- 3.4 At local level development agreement should define, perhaps as part of development control:
- Open space maintenance standards
 - A clear relationship between home owners who pay for the work and the contractor carrying out the work
 - This relationship should include an arbitration procedure acceptable to both sides to mediate and if necessary impose solutions.
 - Recommendations on the above issues should be made to the City Council in respect of planning and development control and the relevant agency (the OFT, for example, is facing

closure as part of the Government's review of QUANGOs and considering transferring functions and responsibilities to local trading standards departments)

- A clear commitment from Severn Trent Water that if it is going to encourage and promote the use of SUDS in major developments they should also take responsibility for adopting them. In other words to do what they say that their policy is.
- Information should be obtained from solicitors and estate agents about their role in advising prospective buyers about the use of land management companies on homes that are being bought and leased, the costs involved and how they are likely to change over time, and the standards of maintenance which residents are entitled to expect.

Jerry Connolly: Member Support Officer 2nd November 2010

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APPENDICES

Appendix 1:

**Office of Fair Trading Report into Property managers in Scotland
A market study (summary). [Link to full report](#)**

Appendix 2

Note of comments by Martin Ward, representative of Humberstone and Elms Farm Trust

Appendix 3

Report by Mike Richardson on land management companies to Scrutiny Management Board Overview and

Appendix 4

Note of evidence from James Moorman, director Exclusive Property Management

APPENDIX 1

OFFICE OF FAIR TRADING REPORT (AS RELATED TO LAND MANAGEMENT COMPANIES):

1 KEY POINTS

- 1.1 70% of people were happy with their LMC (1.6. References are to specific paragraphs of the OFT report)
- 1.2 Two-thirds of those who were unhappy were unhappy with the response to their complaints (1.6).
- 1.3 The relationship between the property manager and the owners in a shared property is defined by complex legislation, property deeds and agreements. Many consumers do not understand their rights and obligations and are unsure about what they should expect from their property manager or the standards of service that should apply (1.7).
- 1.4 “We found a very low level of switching in this market, even compared to some other markets such as banking, communications or energy where switching is either currently, or has historically, been low” (1.8).
- 1.5 In part this is due to the difficulty of co-ordinating individual owners...but is also due to the problems these consumers have in understanding the processes involved in switching to another property manager (1.8).
- 1.6 We have also found that where consumers are organised and have a clear strategy for engaging with their property manager there are clear benefits. Consumers organised in an association or similar are better able to represent their collective interests effectively and assertively (1.11).
- 1.7 The Office of Fair Trading has looked for a voluntary agreement involving, in Scotland, property managers, housing associations and consumer protection groups. It says that a voluntary code is probably a better way of achieving improvement than through

2 KEY RECOMMENDATIONS BY THE OFFICE OF FAIR TRADING

- 2.1 The lack of effective competition in this market, difficulties with switching and the complexity of the legal situation means there is a need for an effective complaints and redress mechanism which is easily accessible to the owners of shared property (1.12).
- 2.2 In order for this to work effectively this scheme needs to operate within a framework which lays down minimum requirements for best practice so that complaints are assessed against clear standards.
- 2.3 We recommend that these standards should provide for property managers to:
 - Set out in writing the details of the services they will provide and the relevant delivery standards.
 - Encourage property owners to form an organised body (either a formal residents' association or a limited company).
 - The provision, as a matter of course, of a detailed financial breakdown and description of the services provided by the property manager and such supporting documentation as is appropriate (such as invoices where appropriate)

- Proactive explanations of how and why particular contractors have been appointed, demonstrating that the services being procured are charged at a competitive market rate.
- Automatically return flats to owners at the point of settlement of final bill without consumers needing to request the return of the float
- Have and operate a complaints procedure and to proactively make details of it available to consumers
- At a minimum follow Financial Services Authority (FSA) guidelines on disclosure of commission on insurance, whether FSA authorised or not
- In addition there should be a mechanism to allow the audit of payments to contractors, either on a random basis or in response to complaints, to reassure consumers that no improper payments are involved

3 LAND MAINTENANCE

- 3.1 Land maintenance services are typically provided on new housing developments where open space requirements may be included as part of the obligations associated with planning permission. These open spaces may also include play areas, grass verges, drainage systems (SUDS), lighting or woodland (1.18).
- 3.2 The property developer will choose the arrangements for land maintenance, including the appointment of a land maintenance company. Obligations on property owners to pay for the land maintenance services are often incorporated into the deeds of conditions (1.18).
- 3.3 “We found very similar issues around land maintenance to those found in property management. There are some differences, particularly where ownership of the land is transferred to the land maintenance company but property owners are tied by the deeds to pay for that maintenance(1.19).
- 3.4 “In these cases it is even harder to change supplier and there is very limited protection for the property owners against price rises or the failure of a company to deliver services (1.19).”
- 3.5 The report referred to the role of local authorities. “In designing arrangements for management of the open spaces both property developers and local authorities need to be aware of the risks of certain models which transfer ownership to private companies and involve payments in the form of a commuted sum.
- 3.6 “Developers and local authorities should take steps to mitigate the risk that these arrangements may be unsatisfactory or indeed may fail altogether (1.21).”
- 3.7 The report devotes a chapter (Ch 6) specifically to land management issues – many of which are the same as or similar to property management issues.
- 3.8 It says: “Open spaces on housing developments have traditionally been owned and maintained by local authorities but in recent years various arrangements for maintenance of open spaces on new housing by the private sector have developed” (6.1).

- 3.9 One reason why LAs have traditionally taken on the maintenance responsibilities (of open spaces) is that open space areas often have characteristics of a 'public good.' (6.5)
- 3.10 That is, provision and maintenance of a play park (or other open space facility) may be seen to benefit more people than the property owners.
- 3.11 "So property owners on a development may place a lower value on the provision than the community as a whole. Leaving provision to just one group of home owners could in principle lead to under provision. This may be exacerbated where some owners do not use the facility so may not be inclined to pay for provision of it.
- 3.12 Such arguments usually imply there are advantages to LA provision of parkland and playgrounds since the LA is in a better position to gauge overall demand and is also able to charge all members of the community for its maintenance (6.5).
- 3.13 "This issue can be more acute with land maintenance than property management since the advantage of a well maintained property typically accrues to the owners of the property and relatively little to the community at large" (6.6).
- 3.14 The report outlined three land management models – council ownership, communal ownership and land maintenance company ownership. Under LMC ownership the developer transfers ownership of the open space to a LMC. (6.14).
- 3.15 "A service agreement is agreed with the LMC. Ongoing maintenance may be funded in one of two ways or a combination of both. The developer may pay a lump sum to the LMC which is similar to the commuted sum payable to the LA (6.14).
- 3.16 "Alternatively a requirement for property owners to pay the LMC a service charge for maintenance in perpetuity is written into the title deeds of the properties. The level of service charges payable is agreed between the developer and LMC and is typically indexed to some measure of inflation (6.14).
- 3.17 "The developer may separately pay the LMC for initial work to develop the open space (for example, installation of landscaping). Developers will see the attraction of not having to pay a commuted sum where LMCs levy service charges to pay for maintenance. (6.15)
- 3.18 Under this arrangement...there is no simple mechanism for home owners to switch supplier at some point in the future since the LMC and not the home owners own the open space land (6.16).
- 3.19 Greenbelt manages open space on behalf of nearly 24,000 home owners while the two other dedicated LMCs established in Scotland have a total of around 1,000 (6.20). Annual maintenance charges range from £100-£200 (6.21).
- 3.20 Developers tended to select LMCs on the basis of price and reputation. Greenbelt told the OFT that a proven track record was needed to win business (6.22).
- 3.21 In analysing causes of complaint, the OFT found that work quality featured in almost 80% of submissions, followed by charges – including transparency (28%) and debt management,

including late payment charges (27%). Complaints about the complaints system featured in 16% of comments and poor communications in 15% (6.26 table 6.1).

- 3.22 The report said developers had little incentive to take into account the views of home buyers when deciding which model of land management it was going to put in place (6.33).
- 3.23 “One developer told us (the OFT) the LMCs provided details before appointment which indicated the anticipated level of annual charges and the standard of maintenance” (6.34).
- 3.24 The OFT looked at what the role local authority might be expected to take. “The LA can influence the developer’s choice by varying the level of commuted sum in return for which they would take on the land (6.39).
- 3.25 “LA planning departments may also be able to promote measures that lower the costs of maintaining the land (thereby making it more attractive for Las to take on. For example one LMC told us the planning authority could influence the amount of infrastructure on a site. However it cannot dictate what arrangements the developer makes for maintenance” (6.39).
- 3.26 One model for maintenance is for the transfer of responsibility for managing open space to a group of residents. However, this has caused problems, according to the report.
- 3.27 One LA “cited an area that had reverted to wasteland due to a failure among residents to agree a way forward for maintenance...input by the LA to progress matters would involve negotiations with individual owners and use up significant staff resource” (6.46). And it is easier to serve enforcement notices where the land is owned by one company (as under the LMC model) than if the land is owned in common by individual householders (6.46).
- 3.28 Another LA told the OFT that the “sensitivities and difficulties in enforcing planning conditions against residents when they are responsible for the breach of a planning condition to enforce maintenance meant it was unlikely the Council would enforce planning conditions” (6.46).

4 CONSUMER CHOICE

- 4.1 Would-be-buyers discount almost completely the cost and implications of land management agreement when considering buying a home. The main factors are location and purchase price.
- 4.2 “In considering whether to purchase a home...arrangements for future maintenance of open spaces are unlikely to be the main ones...We were told by a property manager ..that house purchasers paid very little attention to prospective common open spaced areas at time of purchase generally as there was far more to concern them in relation to the house they were buying than communal landscaped areas” (6.49).
- 4.3 However there was also a lack of information about such arrangements when a home purchase was being considered. A mystery shop of new developments found that:

- 12% of sales staff did not discuss whether maintenance fees were payable even after prompting, 60% of shoppers were told only after prompting and 28% were told unprompted
- Where maintenance fees were payable and this information was provided nine per cent of shoppers were not given the level of fees. 50% were given it only after prompting and 41% were provided with it spontaneously
- Of those shoppers provided with the level of maintenance fees on 16% were told these were subject to review
- Just 16% of all shoppers were provided with written material on maintenance fee coverage (6.50).

4.4 One LMC acknowledged that lack of clarity with regard to information provided by developers at the time of purchase was 'a major source of consumer dissatisfaction' (6.51).

5 STANDARD OF MAINTENANCE

5.1 The developer and LMC draw up the agreement specifying the maintenance to be carried out on a site along with any payments from the developer and the level of the annual charge home owners will pay. The developer constitutes the deeds of condition for each property which includes a maintenance specification and establishes obligations between the LMC and the home owners. (6.70)

5.2 According to an LMC this means that the LMC is legally obliged to carry out work and the home owners have a legal right to enforce performance by the LMC to the standard set out in the specification. However, an LMC agreed that it might have a fair degree of flexibility in the amount of work it could do in order to meet the maintenance specification (6.70).

6 LOCAL AUTHORITY ENFORCEMENT OF STANDARDS

6.1 Planning conditions are the Scottish Government's preferred method of ensuring land is maintained to a certain standard where this is to be achieved through planning legislation.

APPENDIX 2

Meeting with Martin Ward

Note of Martin Ward of Jamie Mather
 Conversation with Jerry Connolly Member Support Officer
 Re: Land Management Companies: Task Group Review

2.1 Martin was responding to a note asking for information and background to the creation of the land management company arrangements in North Hamilton.

- 2.2 He said the developer wanted to install a sustainable urban drain system (SUDS) for the development. There were very few examples around then – in 1999-2000. At that time it was an innovative design feature. Now they are common.
- 2.3 Anglian Water were enthusiastic but didn't want to adopt it. Severn Trent were also keen but would not adopt above-ground structures, and the City Council did not want to adopt it either.
- 2.4 The (Humberstone and Elms Farm) Trust would not be able to keep it on an on-going basis so we opened discussions with Greenbelt. Martin had heard about their work and went to Scotland to see their projects and to see that they did what they said they were doing.
- 2.5 "We reached an agreement and it involved Greenbelt being paid by homeowners on the development. The payment was through an annual charge to the company.
- 2.6 "It is index-linked with a five-yearly review. However I don't think the full amount is being charged yet. That is subject to the introduction of further facilities as the development grows.
- 2.7 "Because it was such a new approach we were not sure whether home-buyers would want to pay the charge. They could go five miles down the road and buy a home which didn't have a deed of covenant. In the end, everyone who bought a home has had the choice and been aware of the covenant.
- 2.8 "The contract is essentially between Greenbelt and the home-owner. There is a specification for management of the open space and if there are problems there is a helpline which is run by Greenbelt.
- 2.9 "There are open spaces managed by Greenbelt and by the City Council and it would be worth looking on site to see how these were operating."

Jerry Connolly: Member Support Officer

APPENDIX 3:

Report to the Overview and Scrutiny Management Board

Report author: Mike Richardson

1 PURPOSE OF REPORT

- 1.1 To set out the implications of a petition presented to Council on behalf of residents in Hamilton asking the council to take on responsibility for open space currently maintained by a management company on behalf of the residents.

2 SUMMARY

- 2.1 As an alternative to adoption by the council developers can choose to set up management arrangements for open space on housing developments, the cost of which is borne by occupiers of the homes.

- 2.2 Where the council takes on such maintenance it requires the open space to be brought up to an acceptable standard and a commuted sum equivalent to 10 years maintenance to be paid.
- 2.3 After 10 years the maintenance cost falls to the revenue budget. Residents of The Woodlands have petitioned the council to take on maintenance of their open space. A response to the petitioners is needed.

3 RECOMMENDATION

- 3.1 My intention to advise the petitioners that the council is unable to accept responsibility for ownership and maintenance of open spaces and play areas because of the financial and other implications set out in the report be supported.

4 REPORT

4.1 The Woodlands

- 4.1.1 A petition was presented to council in September by Councillor Shah: 'We, the undersigned residents of Hamilton call on Leicester City Council to take full responsibility for the ownership and maintenance of shared facilities and open spaces at The Woodlands, Hamilton to bring arrangements for Hamilton in line with the rest of the city.'
- 4.1.2 This reflects the view of residents that they should not pay for maintenance of areas that elsewhere, including in other parts of Hamilton, are maintained by the council.

4.2 Costs

- 4.2.1 I understand that residents paid around £130 in 2008, £160 in 2009. The cost of maintenance by the council is estimated at £15,500 a year. A commuted sum for 10 years maintenance is estimated at £188,100.
- 4.2.2 In addition a large play area would need to be refurbished to a standard that the council could adopt: the estimate for this work is £80,000. Unless the residents or the developer pay for this work and the commuted sum the full cost would fall on the council. Even if they do, after 10 years the annual cost would fall to the council.

4.3 Implications for other developments

- 4.3.1 I understand that private maintenance is used at Glenfrith, at a development on Blackbird Road, and at North Hamilton. With a total of 2,300 homes built or approved the annual cost of maintenance is likely to be £870,000, with potential commuted sums of over £1,000,000 based on the cost per home at The Woodlands.
- 4.3.2 A detailed survey of each development would be needed before a more accurate cost can be given, particularly if there are special features in the developments, and the cost of any remedial work assessed. Contractual arrangements may be in for the maintenance and the land may no longer belong to the original developers. Financial implications could arise from changing these contractual arrangements.

4.4 Response to the petitioners

4.4.1 In view of the legal and financial implications, including the potential implications for other developments, the City Council is not in a position to accept ownership and maintenance responsibility for the open space and play areas, and I propose to send a written response to this effect.

5 BACKGROUND

5.1 Provision and maintenance of open space

5.1.1 Open spaces and play areas contribute to the amenity of residential areas and meet the needs of residents for informal recreation. They contribute to sustainable communities.

5.1.2 Policies in the City of Leicester Local Plan support their provision, they are included in site development briefs and they are secured as part of the planning application process.

5.1.3 On completion of residential developments, the developer usually offers the highways and open spaces for adoption by the council, in return for payment of commuted sums.

5.1.4 Subject to agreement of these sums and to the highways and open spaces being constructed, laid out and maintained to the required standard, ownership and responsibility is transferred to the council.

5.1.5 There is not normally a requirement through planning permission for this to be done, and developers can choose alternative arrangements for maintenance. The use of private companies to manage land is a distinct alternative to traditional arrangements for the long-term management of open space on new developments.

5.2 North Hamilton

5.2.1 North Hamilton was seen by the City Council as an area which could benefit from this alternative approach especially given its rich and varied landscape.

5.2.2 As part of the development of the site, it was intended to protect and enhance the existing features of value, and create a strong sustainable landscape structure of old and new planting and play areas.

5.2.3 Part of this involved the creation of swale parks, linear open spaces that provide surface water drainage (SUDS, or sustainable urban drainage system). They are seen as a sustainable alternative to the traditional drainage systems: when proposed at Hamilton they were uncommon. They are now routinely sought by the Environment Agency.

5.2.4 Because of the innovative nature of this landscaping, the planning permission required submission of a maintenance plan for the landscaping, to ensure that appropriate arrangements were in place.

5.2.4 The landowner, Trustees of Hamilton, have a contractual arrangement with a maintenance company that requires the transfer of the open space to that company. Each householder has signed a deed of covenant that they will pay an annual charge for maintenance.

5.3 The Woodlands

- 5.3.1 The Woodlands is a development of approximately 400 homes in the Quakesick area by Persimmon Homes. Although there was not a specific requirement in the planning permission for submission of a maintenance plan, and there are no 'special' features involved in the landscaping, the developer made similar arrangements for the long-term maintenance of the open space.
- 5.3.2 This involved setting up a management company of which each home purchaser automatically becomes a member. The company is responsible for maintenance of the open space and, to recover the expenditure involved, it collects a charge from each home. I understand that individual property charges were around £130 in 2008, £160 in 2009.
- 5.3.3 Persimmon will transfer the open space areas to the management company on completion of the development and control of the management company will transfer to the residents. The council is to adopt the highways and some small areas of landscaping associated with them.
- 5.4 Request from residents
- 5.4.1 Residents of The Woodlands have asked the City Council to take full responsibility for all green spaces and children's play areas within The Woodlands development and for the full cost of maintaining these areas to be incorporated into the council tax charged by Leicester City Council.
- 5.4.2 This was discussed at a public meeting arranged by Keith Vaz MP, and is the subject of a petition presented to Council on 3rd September by Councillor Shah.
- 5.4.3 The residents consider it unfair that they pay council tax and a service charge to receive services that are provided in full by the council elsewhere, including in West and East Hamilton.
- 5.4.4 It is claimed that the average council tax band in Hamilton is higher than the average council tax band across the City, and that as such, the people of Hamilton already contribute a higher share to the City Council's expenditure. A rebate on the council tax equivalent to the service charge has been suggested as an alternative to adoption by the council.
- 5.4.5 At a meeting with Keith Vaz and Councillor Shah residents' representatives said some residents of North Hamilton have similar concerns.
- 5.4.6 The residents are critical of the level of service charge, the standard of maintenance and the way in which the maintenance contract has been handled. Persimmon is responding to these concerns by changing the maintenance contractor, clarifying the use of the charges and providing details of the accounts of the management company.
- 5.5 Costs
- 5.4.1 The council will normally adopt open space, including play space, providing there is a clearly identified and sustainable revenue budget to cover the cost. This is normally provided through a commuted sum calculated after a detailed survey of the areas offered for adoption.
- 5.4.2 Appropriate maintenance rates are applied, calculated over 10 years and allowing for inflation. Maintenance costs beyond the 10-year period must be met from the council's revenue budget.

- 5.4.3 Once received the commuted sum is incorporated into the Parks and Green Spaces service budget and can be affected by budget decisions.
- 5.5 Maintenance requirements
- 5.5.1 The cost of maintaining play spaces and open space is assessed from a schedule of rates.
- 5.5.2 Maintenance of SUDS: The draft Floods and Water Management Bill proposed that unitary and county councils had an obligation to adopt and maintain new SUDS that affect more than one property, provided they have been constructed to proposed national standards. It is not clear how this obligation will relate to existing SUDS, but authorities already have discretion to adopt them.
- 5.6 Contractual obligations
- 5.6.1 The developer of The Woodlands set up a management company responsible to maintain and repair the open spaces. It appears that the company is controlled by Persimmon at the moment.
- 5.6.2 Purchasers automatically become members of the company on completion. An 'estate rent charge' is payable to the management company. Similar arrangements exist for North Hamilton, but there the landscaped areas are transferred to a third party company, not one 'owned' by the residents.
- 5.7 Other areas of the city
- 5.7.1 Private maintenance is used at Glenfrith and the former Marconi site on Blackbird Road, as well as at North Hamilton.
- 5.6 Council tax
- 5.6.1 Part of the residents' case for the city council taking on maintenance of these areas is the income from council tax generated from the development.
- 5.6.2 The majority (around 65%) of the Council's general funding comes from Government grant, which is based on a complex formula assessing the Council's need to spend and its ability to raise income from Council tax.
- 5.6.3 Any assumed additional income from new properties will be deducted from the grant income we receive from the Government when the grant is recalculated in 2011. After that date, the net benefit from Council Tax from the properties goes to the Government.
- 5.6.4 The number of properties of each council tax band in each road at The Woodlands, and the total numbers for the city have been supplied to a representative of the residents.
- 5.6.5 The percentage of properties in Band C and above is higher for The Woodlands than for the city as a whole. Council tax bands for individual homes are set by the Valuation Office. There is no discretion in the council tax legislation for the council to give a rebate as suggested by the residents.
- 5.7 NEXT STEPS

- 5.7.1 With support from ward councillors and the MP, residents are pursuing improvements to the current arrangements for The Woodlands, including seeking the information about the contract, what it should cover, and how the charges have been spent, from Persimmon.
- 5.7.2 Officers have been asked to supply details of the areas of Hamilton adopted/due to be adopted by the council and those maintained by others. The latter will include all developments in North Hamilton.

APPENDIX 4

Quakesick development

Note of conversation with James Moorman:
Director: Exclusive Property Management
28th October 2010

- 1 We first became involved with the Quakesick Valley project in October last year. We were contacted by the developer, Persimmon, who had become concerned about the failure to perform of the previous management company on the site called Mainstay.
- 2 There were a number of problems relating to Mainstay. They appeared not to have done the work they were supposed to have done as maintenance agent for the community space.
- 3 Mainstay were then faced with an almost 100% rent strike from residents on the estate, and had issued final demands coupled with admin charges of £50-£60 for issuing the final demands.
- 4 Persimmon had become concerned about the breakdown in relationships and as we had rescued a similar project from similar problems asked us to come in.
- 5 When we got here the grass on the common spaces was three feet high because of the lack of maintenance work. It took us four to five cuts to get the site back to where we were supposed to be.
- 6 Main objectives from the outset were:
 1. To do what we said we promised we would do
 2. Review charges
 3. Provide demonstrable value for money.
- 7 In the first instance we removed the existing contractors and employed local firms, managed by our local agent. It was important in the establishment of trust with the community on the estate that we had a high visibility on site so that people felt that if they were making payments for maintenance the work was being done.
- 8 There are 458 homes on the site and annual charges had been round £160 a year (giving a charge for the site of around £73,000 a year. This included a management charge of £35,000 a year).

- 9 We looked at costs and reduced management charges by two thirds and contractor costs by almost half. We set annual charges at £83 for 2010 and expect to hold that figure in 2011.
- 10 Within those costs we will be expected to cut grass areas every two weeks between March and October and be on site once a month between November and February to litter pick the site and maintain the open areas.
- 11 The cost includes care and maintenance of play areas, including inspection and insurance costs and costs relating to vandalism and improving and replacing equipment on the areas.
- 12 When we started there was just about a 100% strike among private home-owners. The payment rate is now 70-75% as we have improved consumer confidence. Land management of areas like this is an area of business we would probably like to expand in over the next few years as we establish a track record of reliability and value for money.
- 13 The management and ownership structure at Quakesick is as follows. We are employed by the developer. Management of the land is however in the hands of the Woodlands Amenity Management Company Ltd who are lessees on the community land.
- 14 Each home-owner has one share in this company and over time as the estate matures the ownership of the open spaces will transfer to this company. There is a tenants and residents' association which acts as the board for Woodlands Amenity Management and we have ongoing meetings and discussions with the association.
- 15 We are aware that Greenbelt manages another, much larger, site nearby. The tenants and residents' association covers both Quakesick and the North Hamilton estate.

Jerry Connolly: Member Support Officer
28th October 2010

Additional note by JC:
Mainstay has been the subject of a number of complaints about customer service (http://www.reviewcentre.com/r248445_3_Mainstay_Group.html) though comments on this site includes a couple of five star reports praising the company.

APPENDIX 5

Further comments from EPM

- 1 I think that in reality there are only two real problems.
- 2 The first being that a lot of residents that move into these types of development do not understand their commitment, they are unaware that they have to pay a service charge for the upkeep of the private land.
- 3 In a perfect world all solicitors would underline this to prospective purchasers when they purchase and make it clear that the land is owned privately by them as shareholders in a Company and that they need to pay for this land to be maintained.

- 4 This also needs more input from developers. Even now we have to say to people that it is in their deeds to pay for this type of maintenance and they are still unaware.
- 5 The second problem is that people presume that their Council Tax will pay for this, which is untrue. I think that maybe more information from the Council as to how their taxes are spent would assist, and that residents need to be made aware that for the council to look after these areas a fairly large commuted sum would need to be paid over to the council.
- 6 They just presume that the Council has an endless pot of money with which to maintain new developments.
- 7 Management Companies like EPM operate differently and this is the hard thing, you need to have an agent that is willing to do the legwork and display the benefits of a privately managed site, they need to have co-operation from a strong residents association who are the main voice for the residents and ensure they deliver a cost effective method to the residents.

James Moorman: 29th October 2010

APPENDIX 2

Minutes of the Meeting of the Land Management Companies theme of the REGENERATION AND TRANSPORT TASK GROUP

Held: WEDNESDAY 11TH FEBRUARY at 5.00pm

P R E S E N T :

Councillor Newcombe – Chair

Councillor Dempster

Councillor Hunt

Officers Present:

Alison Bowen	- Planning Policy
Jerry Connolly	- Members Support Officer
David Cotton	- Planning Management and Delivery
Mike Keen	- Democratic Services Officer

Bob Mullins - Parks and Green Spaces

Hamilton Residents Association

Martin Lester - Hamilton Residents Association

*** ** ***

12. APOLOGIES FOR ABSENCE

Apologies were received from Nick Logan – Planning Policy and Design.

13. DECLARATIONS OF INTEREST

The Chair disclosed a personal and non-prejudicial interest in the business to be discussed as a resident of Bradgate Heights.

14. MINUTES OF PREVIOUS MEETING

RESOLVED:

that the minutes of the meeting of the Land Management Companies theme of the Regeneration and Transport Task Group held on 8th December 2010, as previously circulated, were agreed as a correct record.

15. GATHERING OF EVIDENCE

The Chair gave a brief introduction and Jerry Connolly stated that he had met with representatives from Greenbelt, the Land Management Company involved with the maintenance of land at North Hamilton and other sites within the City, on Wednesday 9th February. Copies of the notes of the meeting were circulated at the meeting.

Greenbelt Group

Represented by: -

Andrew Hampton – Greenbelt England Regional Development Director and

Gareth Davies – Greenbelt Business Development Director

Andrew Hampton opened the discussion by stating that he had seen a set of the Minutes from the first meeting and wished to present a balanced view to the Task Group.

The company had started over 12 years ago as a result of funding made available from Strathclyde Regional Council. Now Greenbelt was a private limited company which managed a range of sites from Scotland to Cornwall,.

The size of sites managed varied enormously.

Around. 31k properties on managed sites paid an annual management charge to Greenbelt, these equated to an average of £125 per property. In addition, a further 25k properties were contracted and would transfer to Greenbelt soon.

Councillor Dempster – questioned whether there was one person at Greenbelt who was responsible for the open space at Bradgate Heights.

Andrew Hampton – stated that each region had a Regional Operations Manager (ROM) who visited all sites to inspect work carried out. However, all complaints and issues regarding maintenance of sites were to be directed through the Glasgow based Customer Care Department, the main reason for this was to enable close monitoring of performance to be carried out. Any concerns highlighted then could be referred direct to the appropriate ROM.

Councillor Dempster – asked how Greenbelt knew that all residents on their managed developments fully understood about Greenbelt and their responsibilities, particularly in properties that were rented or purchased second hand.

Andrew Hampton – stated that Greenbelt did not have direct contact with residents at Bradgate Heights, but on the sites where direct contact was in place a Residents' Pack was provided which contained all relevant information. Greenbelt realised that there was a problem keeping in touch with all residents

Councillor Dempster – stated that a Residents Association was in place at Bradgate Heights and they had their own website. It was suggested that Greenbelt forward relevant information to the Residents Association for inclusion on the website as this would be a way of allowing residents to better understand Greenbelt.

Andrew Hampton – stated that this seemed to be to be a very good idea that would be pursued. The site at Bradgate Heights was provided by a commuted sum from the developers but Greenbelt were moving towards those sites provided by way of Greenspace funding as direct contact could then be established with residents. It was further agreed that arrangements would be made for the Greenbelt ROM to attend a Residents Meeting at Bradgate Heights and establish dialogue with residents.

Hamilton was an open space within a developing site that was likely to take 14/15 years to complete and was being developed in phases.

Martin Lester – stated that there were different issues at Hamilton where there were 3 separate areas of open space, 1 EPM, 1 no-charge area and Greenbelt. Residents did not see Greenbelt staff on site but sub-contractors. Residents then questioned why they were paying a charge to Greenbelt.

Andrew Hampton – stated that Greenbelt had decided at an early stage to

employ local contractors to carry out work and the points raised were valid and could be addressed by badging contractors vehicles and their personnel. It was also **agreed** that Greenbelt would establish contact with the Hamilton Residents Association.

Dave Cotton – in response to a query regarding making residents aware of LMC's and whether Land Management Companies would appear on local land searches it was stated that it was not likely that our staff would reveal LMC's as the searches were more about disclosing planning applications pending near the sites being searched. It was stated that it was ironic that the recently abolished Home Owner packs might well have disclosed LMC's.

Chair – stated that earlier in the meeting regular inspections by Greenbelt had been referred to and questioned whether public attendance by the public at these inspections would be welcomed.

Gareth Davies – stated that Greenbelt would prefer to engage prior to the inspections, as involving the public in the inspection process relied on the ROM being on site at a certain time and day, from experience these times could vary depending on issues found on sites visited.

By engaging prior to the meeting at set times of the year, issues raised by residents could be taken up by the ROM.

It was **agreed** that Greenbelt would liaise with the relevant Residents Associations and set a series of dates, say every 3 months, when concerns could be fed through to Greenbelt.

Martin Lester – stated that there were some issues around some of the Sustainable Urban Drainage Sites (SUDS) that could be lethal at certain times of the year to children.

Andrew Hampton – responded by stating that adequate signage was provided and the danger aspect should really be addressed by parents. There were further issues around SUDS in that some residents were siting washing machines in their garden sheds and piping the outlet into their roof water drains, this led to pollution of the SUDS that meant specialists had to be called in to cleanse the SUD.

Jerry Connolly – questioned whether Greenbelt would be averse to their performance, contract conditions and standards being written into the City Council's planning conditions.

Andrew Hampton – felt that this was a good idea and suggested that some standardisation between local authorities regarding planning procedures and conditions would be helpful.

Dave Cotton – stated that the City Council's planning conditions were still largely geared to assuming that open space areas would be adopted by the City Council and that certain standards would be assumed before they were adopted. There was a need to consider what standard of work was required in

the case of LMC's. A way forward might be for LMC's to submit their Management Plan to the City Council for approval.

Bob Mullins – questioned whether, once the planning condition had been discharged, would ongoing monitoring be carried out.

Dave Cotton – stated that at up to what point could a Council enforce conditions, as once there is an assurance that the appropriate mechanism was in place then the Council could not go beyond that.

Gareth Davies – stated that LMC's found it difficult when developers did not comply with specific planning conditions regarding open spaces. After the developers left the site LMC's then got the blame by residents for the non-compliance.

Councillor Hunt – stated that by engaging with Residents Associations then this problem would be greatly reduced as residents would be that much better informed.

Jerry Connolly – questioned whether Greenbelt felt that the S.106 process was the best way of setting out the long term management plans for open space.

Dave Cotton – stated that it would be a question of when the LMC's came onboard.

Andrew Hampton – stated that Greenbelt would like to become involved in a Working Group of relevant partners to develop Management Plans to form part of the planning process.

Jerry Connolly – stated that there were several models of relationships between LMC's, residents and developers that included Social Enterprises.

Andrew – stressed that Greenbelt were a land owning company and, as such, would not want to become a contractor to a residents group as conflicts were then not easily resolved.

Andrew Hampton and Gareth Davies representing Greenbelt were thanked for their contribution to the Review.

16. DATES OF FUTURE MEETINGS

It was suggested that a further meeting be arranged in March 2011 to conclude the Review and make recommendations to the Overview and Scrutiny Management Board.

17. CLOSE OF MEETING

The Chair declared the meeting closed at 1.28 pm.

Further evidence to the meeting

Note of evidence from James Moorman, Exclusive Property Management

I don't think there is much that can be done to alter the planning policy to reduce the amount of communal / shared land from future developments. In fact it should be encouraged as it enhanced the overall look and feel of developments.

The problem is the implementation of maintenance. This is either passed over to the Council or managed privately. At present the developer has to pay for the adoption of the land to the council so in most cases the alternative of private management for no cost is obviously the way developers will go, especially in the current climate.

The problem with private management is that residents then have to pay for this. In principle this gives them an element of control and this should be encouraged. However the usual question arises, "what do I pay my Council Tax for".

Where you have smaller schemes it is easier for residents to setup resident associations and this in turn makes the management easier. The problem lies with large schemes where the community is so large that the setting up of resident associations does not reach all the residents and that this control makes things very difficult.

I think the way forward is that the developers set up a private Resident Management Company and that the freehold of the common land is transferred to this company and that each resident has a share in the company which they lose if they move house.

They then control the agents that are used to manage their development. I think that the Council need to support the residents by assisting them in the process of change and or management of their areas.

This should of course be done by the developers and it may well be something that can be properly implemented in the planning stage between the Council and the developers.

At the very least there should be a handbook or leaflet that is given to every owner of these schemes printed either by the developer but controlled by the Council, this will answer a lot of the questions that cause problems later on so every resident moving in is totally aware of their liabilities and their rights.

I have on many occasions been told by residents who purchase their properties by using the developer's solicitors to save costs that they were not told they had to pay a service charge. Of course all this is sorted out if the agents appointed by the developers do what they are instructed to do, and that the residents pay the agents to do the work.

The communication is a problem – I look after The Woodlands development and in conjunction with their residents association. However as a lot of residents say that they are not aware they have to pay us or that their MP has said they don't need to.

If we don't have the funds to pay the contractors we cannot service. We have subsidised the account to keep the development running properly and not left to ruin. If communication were there from the outset all this would be sorted out.

Asked the subsidiary question:

One thing that isn't necessarily clear is how an LMC gets to be appointed in the first place.

The response was:

The appointment of the LMC would be 100% down to the developer and yes the developer can choose whom he wants. However under current legislation the contract cannot be anything longer than 12 months without full Section 20 Consultation with all the residents which they would not grant. Plus the cost has to be reasonable, if not then this can be determined by the Leasehold Valuation Tribunal.

Appendix 3

1 A form of words has been agreed which would allow for a definition of the expected standards and contract performance to be set out at pre-development stage. It is as follows:

“Before the development authorized by this permission is begun, a detailed landscaping scheme showing the treatment of all parts of the site which will remain unbuilt upon shall be submitted to and approved by the City Council as local planning authority.

“This scheme shall include details of:

1. The position and spread of all existing trees, shrubs and hedges to be retained or removed;
2. New tree and shrub planting, including plant type, size, quantities and locations;
3. Means of planting, staking and tying of trees, including tree guards;

4. Other surface treatments;
 5. Fencing and boundary treatments;
 6. Any changes of levels;
 7. The position and depth of service and/or drainage runs (which may affect tree roots);
 8. A programme for carrying out the scheme;
 9. Details of arrangements for maintenance and management of landscaped and other public or shared areas. The approved landscaping scheme shall be carried out before any dwelling/building is occupied or in accordance unless specified in the agreed programme.”
- 2 For a period of not less than five years from the date of planting the applicant or owners of the land shall maintain all planted material.
- 3 This material shall be replaced if it dies, is removed or becomes seriously diseased. The replacement planting shall be completed in the next planting season in accordance with the approved landscaping scheme.
- 4 The maintenance and management arrangements shall be in place before any dwelling/building is occupied and shall remain unless otherwise agreed in writing with the City Council as local planning authority (in the interests of amenity, and in accordance with policy UD06 of the City of Leicester Local Plan and Core Strategy policy CS3).

Note 1

A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas other than small privately-owned domestic gardens shall be submitted to an approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.

Note 2

No development shall take place until a schedule of landscape maintenance for a minimum of (x) years has been submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.