



CHIPPENHAM
TOWN COUNCIL
Improving the quality of town life

Adoption of New Public Open Space (POS) Policy

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Date Adopted:	5 March 2025

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1. BACKGROUND

- 1.1 The purpose of this Policy is to set out the Town Council's position on adopting public open space (POS) in new residential development as it comes forward.
- 1.2 POS is land that is open to the public and is used for recreation or other public purposes. POS can include parks, play areas, public gardens, playing fields, and civic spaces.
- 1.3 The Town Council already manages and maintains the majority of POS in Chippenham on behalf of Wiltshire Council (the landowner in most cases) through a 2019 devolution deal.
- 1.4 Historically, POS in new housing developments in Chippenham was handed over by developers to Wiltshire Council for adoption. However, in the last 5-10 years Wiltshire Council have no longer wanted to adopt new POS because of cost/resource pressures and so developers have had to transfer new POS to management companies instead, where residents have to pay an annual fee. This is the default model that exists today.
- 1.5 It is important to note that developers are under no obligation, or cannot be forced by Wiltshire Council, to offer up new POS to a town or parish council to adopt.
- 1.6 Where a management company adopts a POS, residents will have signed a legally binding agreement when they purchased their properties, which will run with the property in perpetuity. Management companies tend to be set up and populated by the developer's directors. It is possible for residents who are not satisfied with the maintenance of the POS to form a Residents Association and be ready to remove the developer's directors who populate the management company with resident directors, once all areas are adopted by the management company. However, not all developments will have residents with the time or capacity to be able to do this.
- 1.7 The management company will often appoint a third party company (usually a multi-activity facilities type management company) to collect the annual fee and manage the grounds contractors (they should also be building up a reserve that will facilitate major repairs and replacement to play areas and other infrastructure). Often the management company sits in the background issuing instruction to the third party agents who tend to get blamed by residents for everything.
- 1.8 A recent report (Feb 2024) by the Competition & Markets Authority (CMA) identified significant consumer detriment arising from the private management of public amenities on housing estates, and that if the status quo is maintained, aggregate detriment is likely to worsen over time.
- 1.9 Following recommendations by the CMA to government, the government responded as follows:

'We intend to consult publicly on the best way to bring the injustice of 'fleecehold' private estates and unfair costs to an end, gathering evidence to supplement the CMA report...This work will consider a variety of options for reforming this system in order to deliver reforms to protect homeowners. These will include looking at the quality

of private amenities, what amenities should be adopted by local authorities, and improved consumer protections¹.

1.10 The national conclusions reached by the CMA/Government are echoed locally in Chippenham, with complaints being received from residents often frustrated with the default management company model for the following reasons:

- The quality of maintenance and management they have experienced e.g. litter bins not being emptied, 30-50% of new trees planted dying in the first year
- Lack of transparency/difficulty finding out contact details of those in the management company responsible for maintaining POS
- The cost of management fees, which have risen dramatically in some cases
- The weak mechanisms to enforce implementation and/or maintenance regimes set out in approved landscape plans or landscape management plans
- Triple charging of residents who are already paying council tax to Wiltshire Council and the Town Council

1.11 A number of unitary and district councils have already, or in the process of, reviewing the adoption of POS in new development, taking the option away from management companies.

1.12 The Draft Wiltshire Local Plan Review is progressing to examination and Paragraph 5.94 of the Regulation 19 Version recommends that new POS is offered to town and parish councils in the first instance:

'It is important to note that the council no longer adopts public open space. Developers will be encouraged to discuss with town and parish councils, in the first instance, before setting up a company to manage new public open space in accord with a term to be agreed and secured through the development management process.'

1.13 Paragraph D4 of the Chippenham Design Guide, which forms part of the Chippenham Neighbourhood Plan, echoes this sentiment:

'Developers must engage with the Town Council at an early opportunity to discuss and potentially secure the long term management of green spaces in the public interest.'

1.14 A number of town and parish councils in Wiltshire currently look to adopt any new POS that is offered to them e.g. Trowbridge Town Council. Some, such as Shrewsbury Town Council, have produced a guidance document, which includes their own local requirements and checklist for the adoption of POS.

1.15 A Management Plan for larger areas of POS that are adopted will often be submitted with a planning application, conditioned or included within a Section 106 Agreement. Whilst the planning process, through any S106 Agreement, can set up mechanisms for the legal management and transfer of new POS, the maintenance of POS thereafter, particularly once the Management Plan expires, cannot be controlled through the planning system.

¹ 'UK government response to the Competition and Markets Authority's (CMA) market study into housebuilding', October 2024

2. POS CURRENTLY MAINTAINED BY MANAGEMENT COMPANIES

- 2.1 The Town Council has not been offered up, or been party to, any conversations about the adoption of any POS in new residential development for some years (except for the adoption of new allotments), with the main areas of new POS being transferred directly to management companies at Birds Marsh, Rowden Park and Hunters Moon.
- 2.2 Now these POS's are being run by management companies it may be difficult legally for them to be transferred from a management company to the Town Council, and a deed of variation to the relevant S106 Agreements would be required.
- 2.3 The Town Council would unlikely take over the management of these POS unless a financial contribution is made from the management company to cover the cost of maintaining these spaces for the next 15-20 years. In addition, play areas in these public open spaces would not be built to the same Town Council standards/specifications and may incur additional costs to maintain or replace.

3. MANAGEMENT OF FUTURE POS

- 3.1 In respect of new POS the Town Council will:
 - In its comments on major planning applications and through pre-application discussions with developers, express a wish to be offered new POS for adoption in the public interest, subject to future maintenance funding
 - Be amenable to adopting new POS as long as:
 - The provision meets the appropriate quality standards at the time of adoption
 - The developer provides a commuted sum to the Town Council on or before the date of adoption sufficient to fund the management and maintenance for a period of 15-20 years (which is deemed not unreasonable bearing in mind that the Town Council will be responsible for maintaining the open space in perpetuity)
 - The developer pays all legal costs relating to the transfer of the land or facilities to the Town Council
 - Consider the size, function and public accessibility of any POS offered to them
- 3.2 With regard to size, it may not be worth the Town Council adopting small POS e.g. Local Areas of Play (LAPs) within housing estates as these are usually of benefit only to the immediate residents and not the wider public.
- 3.3 With regard to function, if the POS is multi-functional and therefore attracts a wide cross section of the community it is more likely to be attractive to the Town Council to adopt. The function of any POS will vary, and the management regime and associated costs will vary accordingly. For example, if a POS contains attenuation ponds as part of a SuDS drainage system for new houses the Town Council would need to consider any drainage/flooding liabilities. Whilst the cost of a management regime would be an important consideration in adoption there may be other benefits of

adopting a POS, such as the potential to increase biodiversity and reduce carbon (new tree planting opportunities) which would need to be factored into any consideration.

- 3.4 With regard to public accessibility, if the POS is mainly inaccessible to the public e.g. there are no paths or PRoW going through it, it may be of limited public benefit to the community and that should be factored into the Town Council's consideration on whether to adopt it or not.
- 3.5 The technical process of adopting new POS, and any negotiations with developers and Wiltshire Council, shall be delegated to the Chief Executive, who in consultation with who in consultation with appropriate officers (including the RFO) will determine in each case whether the adoption of POS would be in the interests of the Town Council bearing in mind the criteria in Paragraph 3.1, with the presumption in favour of adopting POS unless there are strong grounds for not doing so.
- 3.6 It is intended that this Policy document will be updated in due course once the Town Council have gone through the process of adopting its first POS and have a better understanding of this process. The Town Council may also consider setting out its own technical specifications in an updated Policy i.e. specifications for individual pieces of play equipment, grass mowing regimes etc.