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## **Environment and Communities Committee**

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<b>Date of Meeting:</b>	29 <sup>th</sup> September 2022
<b>Report Title:</b>	Maintenance of Green Spaces
<b>Report of:</b>	Jayne Traverse, Executive Director of Place
<b>Report Reference No:</b>	EC/22/22- 23
<b>Ward(s) Affected:</b>	All wards

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### **1. Purpose of Report**

- 1.1. The Council has learned that it has for many years been maintaining areas of amenity green space on land that are not owned by the Council. The report recommends that a review is undertaken to identify options for the future maintenance of these green spaces. It also recommends that the Council continues to maintain these green spaces until that review is concluded.

### **2. Executive Summary**

- 2.1. The Council has identified 547 parcels of land open to the public that it currently maintains through Ansa Environmental Services Ltd, a company wholly owned by the Council, which are not in the ownership of the Council.
- 2.2. This issue first came to light in relation to plots of open space on a residential estate in Elworth, Sandbach that was completed in the 1970s. There are around 50 plots of amenity green space throughout the estate open to the public that at some point in time were included on the predecessor council's schedule for grounds maintenance and have since continued to be maintained by the predecessor council and now Cheshire East Council.
- 2.3. The Council became aware in 2021 that some of these green spaces were being marketed for sale on the open market. Investigations were undertaken and it was established that the process to transfer the land comprising these green spaces across the estate to the Council was never undertaken. The ownership of this land was retained by the developer and later sold onto a third party. That party was seeking to dispose of some of these plots of land as development plots on the open market.
- 2.4. The sale of this type of land is becoming more common in the UK, where estate management companies acquire the land and then attempt to sell it to adjoining

property owners or to dispose of the land at auction. These plots are bought to extend gardens or in the hope they may have development potential, but typically development is not possible for planning policy reasons.

- 2.5. This situation led to a broader exercise to review land registered in the Council's ownership against land it knows it maintains through Ansa Environment Services Ltd across the borough. This review has identified 547 parcels of land that are currently maintained by Ansa but not registered as owned by the Council. This total includes the c.50 plots of land on the Elworth estate.
- 2.6. In principle, it is not appropriate for the Council to use public funds to maintain land it does not own. There are instances where the Council may have a duty to maintain land. For example, where a graveyard is full these can be statutorily closed, and the management of these grounds can be transferred to the Council.
- 2.7. When the Council initially became aware of the change in ownership of parcels of land on the estate in Elworth, it reviewed the risks in maintaining this land and decided to withdraw maintenance from six parcels of land. However, the Council has continued to maintain all the other parcels of land that it has subsequently established are also not in its ownership. The decision by the Council to withdraw maintenance from these six plots of land prompted a negative reaction from residents. Their wish is for the Council to restart maintenance on all plots of land. They find it difficult to understand why the Council is differentiating between one privately owned plot and another.
- 2.8. It is now proposed that the Council undertakes a review to identify options for the future maintenance of the 547 green spaces that are not in the ownership of the Council. It is also proposed that, until the review is completed, the Council continues to maintain those green spaces it has historically maintained.

### **3. Recommendations**

- 3.1. That the Committee:
  - 3.1.1. Approves a review of those plots of land not in the ownership of the Council that it has historically maintained to identify options for future management and maintenance. The review will report back to the Committee within 12 months.
  - 3.1.2. Approves the continued maintenance of those plots of land it has historically maintained until the review is completed unless the landowner withdraws permission for the Council to maintain it.

### **4. Reasons for Recommendations**

- 4.1. It is important to establish appropriate responsibility for the future management and maintenance of these green spaces because it is not appropriate for the Council to use public funds to maintain land it does not own.
- 4.2. Although the Council and the predecessor local authority have maintained these plots of open amenity land for 50 years, it is important to establish

appropriate responsibility so residents are clear on who will maintain these plots of land in the future.

## **5. Other Options Considered**

- 5.1.** The Council could immediately withdraw maintenance from all the parcels of land it has identified are not in its ownership. This would not provide appropriate time to explore and put in place suitable alternatives to ensure preservation, future maintenance and development of the open spaces for benefit of residents who use them. It would also likely result in a negative reaction from residents.
- 5.2.** If the Council chose to withdraw maintenance, and maintenance was not undertaken by the landowner, it is likely that the Council would receive complaints from residents about the untidy nature of the land with an expectation that the Council uses appropriate powers to enforce the landowners to maintain it. The Council would be required to investigate each complaint and consider whether enforcement action was proportionate and expedient. The Council has already investigated a complaint into one of the plots of land not being maintained and concluded that enforcement action would not be expedient or proportionate to the level of harm.
- 5.3.** The Council could maintain the current inconsistent approach of not maintaining a small number of the amenity green spaces on the Elworth estate, but this would continue to frustrate residents and is difficult to explain.

## **6. Background**

- 6.1.** Of the six plots of land which the Council has ceased to maintain on the Elworth estate:
  - A boundary fence or hedge has been erected around three of the plots by the new owners to prevent public access.
  - Three of the plots of land remain open to the public. The Council has written to the new owners of the land asking them to maintain their land. They have either declined to do so or not responded. These plots are not currently being maintained.
- 6.2.** The Council received a planning application on one of these plots of land for permission in principle for a detached property with off street parking. Planning permission was refused. The application was the subject of an appeal which was dismissed by the Planning Inspectorate.
- 6.3.** Figures 1 and 2 below provide examples of plots of land on the Elworth estate that continue to be maintained by Ansa and land which has ceased to be maintained.



**Figure 1 – Example of land maintained by Ansa**



**Figure 2 – Example of land no longer maintained by Ansa**

## **7. Implications**

### **7.1. Legal**

**7.1.1.** Whilst re-starting maintenance on the three plots of land achieves consistency, if the Council continues to maintain the land that is owned by third parties, it will be using public funds to do so. In maintaining the land it will have to ensure that it is regularly inspected, and maintenance carried out on trees on the land as the council will be assuming the responsibility and liability for any trees or structures on the land.

**7.1.2.** It is noted that the Council will be writing to the landowners of those plots of land (that have not been enclosed) asking for proposals as to how they intend to maintain their land and will in the meantime continue to maintain these plots. If consent is explicitly refused and the plots (and any structures on those plots) are open to the public and fall into disrepair advice should be taken on any actions that may need to be taken to protect residents' health and safety.

### **7.2. Finance**

**7.2.1.** The maintenance of amenity green spaces on the Elworth estate is undertaken as part of the overall package of works commissioned through Ansa. As the maintenance on this estate has been undertaken by the predecessor council (pre-2009) and continued with Cheshire East (2009-2014) and then with Ansa (2014 to present day), the cost is included within the overall management fee paid by the Council to Ansa.

**7.2.2.** If the decision to continue maintenance on all the plots of land the Council has historically maintained is approved, there will be a one-off cost of £3,750 to restart maintenance on three plots of land on the Elworth estate to bring them back to a mow-able standard. This would be funded from the Environmental Services budget. There would be no incremental cost to the ongoing maintenance of these areas as this would be only a small part of the work undertaken by Ansa across the estate.

### **7.3. Policy**

**7.3.1.** The Cheshire East Council Corporate Plan 2021-25 sets out the Council's vision for an open, fairer, greener Cheshire East. It includes a priority for welcoming, safe and clean neighbourhoods, with improved green spaces for all, enabling people to exercise and socialise in our parks and open spaces.

### **7.4. Equality**

**7.4.1.** There are no equality implications arising from this report.

### **7.5. Human Resources**

**7.5.1.** There are no implications for human resources.

### **7.6. Risk Management**

**7.6.1.** By maintaining land that is not within its ownership, the Council will be accepting responsibility for risks associated with the land:

- Condition of Trees and their impact on adjoining land and property.
- Other issues, such as invasive species or ground conditions, which may affect adjoining land.
- Reputational risk of land owned by a third party continuing to be maintained by the Council.

**7.6.2.** The position in relation to the Council continuing maintenance on land which it does not own has been explored with the relevant insurers, who have indicated that they will support the continuance of maintenance and deal with any claims arising from the activity.

## **7.7. Rural Communities**

**7.7.1.** There are no implications for rural communities.

## **7.8. Children and Young People/Cared for Children**

**7.8.1.** The amenity green spaces are frequently used by children. The withdrawal of maintenance would make them less accessible to children.

## **7.9. Public Health**

**7.9.1.** There is increasing evidence that public green spaces and nature in towns and cities has a proven impact on our physical health and wellbeing, by offering space to exercise and relax. They are free and open to all and provide shared spaces for people and communities to meet and get to know each other.

## **7.10. Climate Change**

**7.10.1.** There are no climate change implications arising from this report.

<b>Access to Information</b>	
Contact Officer:	Paul Bayley, Director of Environment and Neighbourhood Services <a href="mailto:paul.bayley@cheshireeast.gov.uk">paul.bayley@cheshireeast.gov.uk</a>
Appendices:	None
Background Papers:	None