

stewardship of public green space – using land values for endowments



This is the fourth 'Off the Fence' column on the subject of the stewardship of public green spaces. In July 2018,¹ the reasons for making arrangements for positive management and maintenance in perpetuity were summarised, citing TCPA policy guidance on Garden Cities and Ministry of Housing, Communities and Local Government guidance on their derivatives, garden towns and communities. The iniquity of developers passing public spaces to a management company (often their own creation) with no endowment at all, leaving the neighbourhood residents with a legally covenanted obligation to pay an annual and typically arbitrary service charge, was spelled out.

In December 2018,² the government's review of sustainable drainage systems (SuDS) was exposed for neglecting long-term management and maintenance, as was the vagueness of wording on stewardship in the current National Planning Policy Framework (of 2018).

In February 2019,³ this column drew upon the House of Commons' Westminster Hall debate on 'fleecehold' which took place the previous month, and in which iniquitous service charges for public green space were reported by many MPs.

Some local planning officers are still nervous of promoting a policy that requires public green space to pass to an appropriate body with an endowment sufficient to enable positive management and maintenance in perpetuity; so let's focus on what might stiffen their resolve.

At the local level

A new Local Plan should be explicit. Weakness there may weaken any Supplementary Planning Document (SPD) that may follow. Drawing on local experience with my clients MK Parks Trust, after discussion at its Examination, the Milton Keynes

Local Plan, *Plan:MK 2016-2031* (2019),⁴ included within Policy L4 these words:

- 'C. The provision, future management and maintenance of open space, parks and any artificial grass pitches or surfaces should be an integral part of new development, which should be considered at the beginning of the design process. Proposals will include a management and maintenance strategy for new or extended open space and green infrastructure, outlining details of the owner, the responsible maintenance body, and how [a] long term financially suitable maintenance plan [...] can be implemented by contractors or organisations.*
- D. Proposals that include new areas of open space, green infrastructure and parks should include a management and maintenance strategy outlining details of future ownership and the responsible maintenance body (e.g. Parks Trust), and a long term financially sustainable maintenance plan that can be implemented.'*

MK Council must have felt this was as far as it could go. But any vague phrasing – 'contractors and organisations', as one example – can lower the expectations of case officers dealing with a planning application. More significant is omission of any mention of an endowment to cover stewardship in perpetuity.⁵ So the transfer of public green space without endowment to private management companies continues apace.⁶ Against that background, and with the national debate about stewardship and 'fleecehold' growing in volume, the approach to be taken in a planned SPD on planning obligations needed careful thought.

This was to result in a very constructive contribution in March 2020 in a new draft SPD on planning obligations,⁷ approved for public consultation (to occur at a date yet to be fixed, due to the COVID-19 hiatus). The proposed text includes these words, which may be of interest:

- '10.12 New, improved or enhanced open space, play areas and green infrastructure must be managed and maintained into the long term*



Photos: Katy Lock

Locked-down Victoria Park in East London during the COVID-19 hiatus - all playgrounds in England remain shut off at the time of writing

if it is to meet the requirements of Plan:MK. Developers are required to include a management and maintenance strategy for all new or extended open space and green infrastructure, which shall include details of the proposed ownership of the open space/green infrastructure; the identity of the responsible maintenance (stewardship) body (e.g. the MK Parks Trust; a local council, etc.), financial and public accountability, and a suitable and sustainable financial arrangement to enable the stewardship body to maintain the open space and green infrastructure to the required standard in perpetuity.

- 10.13 **It is MK Council's clear preference** that the financial arrangement for private communal space should take the form of an endowment or commuted sum paid to the management body, rather than a service charge to be levied on specific properties each year in perpetuity. In the case of strategic open space, including public open space, play areas and green infrastructure, **it is MK Council's clear preference** to sustain the

*proven MK approach. Here the freehold ownership of the land should pass to MKC but with the benefit of it being simultaneously let on a 999 year lease to a locally accountable and experienced charitable body (such as the Parks Trust). The financial arrangement would be in the form of an endowment or commuted sum, and not a service charge to be levied on specific properties each year in perpetuity. MKC would be concerned if charging nearby properties for the management and maintenance of un-endowed public amenities places an unfair burden on those homeowners. **It is also MK Council's preference** for an approach that seeks the transfer of all other new open spaces to MKC, with a long-term maintenance contribution, for onward transfer to an appropriate local body as MKC sees appropriate.'*

Encouragement of this approach had come from a Full Council Resolution during 2019, passed unanimously, which included these words:

*'That the Council calls upon the Cabinet ... to state publicly its preference, and use all powers at its disposal to ensure that future public open space in new housing developments is transferred to either Milton Keynes Council, parish councils or the Parks Trust...'*⁸

Reaching Cabinet a month later,⁹ the responsible member, Cllr Gowans, reported that advice (which still seems controversial to me) had been received that 'current legislation did not allow the Council to prevent developers from requiring maintenance agreements'. Nevertheless the Cabinet member recorded that:

'he would ask officer colleagues to investigate other possible solutions to the issues and the Cabinet would consider using all available powers at its disposal to ensure that future public open space in new housing developments was transferred either to the Council, the local parish or town council or the Parks Trust.'

Councillor Gowans also indicated that 'public open space areas the Council was developing [itself] would not be transferred to management companies'.

At the national level

Now that Jack Airey, Policy Exchange's Head of Housing Policy, is in No. 10 as a Special Adviser,¹⁰ it is significant that in June 2018 he wrote, with the

late Sir Roger Scruton (at the time Senior Adviser on Local Government, Skills and Housing at the Policy Exchange) and Sir Robin Wales (former Labour Mayor of Newham), a report entitled *Building More, Building Beautiful*.¹¹ The recommendations state that that 'planning should... always seek to secure high quality design and a good standard of amenity for all existing **and future occupants** of land and buildings...' [emphasis added]. Taking the longer view of how public places are cared for and used, rather than just the design process when they are first laid out, is the first essential in the stewardship debate.

Eighteen months later those arguments have been reprised at greater length in the Building Better, Building Beautiful Commission (BBBC) report (of January 2020) *Living with Beauty*.¹² In this elegantly argued extended essay, in which the hand of the late Sir Roger Scruton is again displayed, there is promotion of a culture in which decent landowners will cultivate the urbanisation of their landed estates with elegance and respect for future generations. We find that Chapter 8 is entitled 'Stewardship: incentivise responsibility to the future'. The authors say that there are six issues that must be confronted, expressed as follows:

- '1 We need to encourage management structures that can guide longer-term placemaking projects or stewardship projects, as well as the expertise to staff them;*
- 2 We should support and encourage sources of patient capital investment;*
- 3 We need to address ways in which the tax code unintentionally discourages landowners and developers from putting together stewardship projects;*
- 4 We need to use the spatial planning system to encourage the right stewardship projects and infrastructure in the right place (using improving geospatial data where possible);*
- 5 We need to help public bodies pool their land with private landowners for long-term schemes; and*
- 6 We need to encourage competent long-term stewardship (or trusteeship) of the result.'*

The authors of *Living with Beauty* go on to say that:

'Through our research we have observed that, very often, this commitment to quality has sat with the land interest. It has been enforced through contracts set up between the landowner, or land stewardship entity, and the various contractors and developers who built out the scheme. In this way, quality was driven not just by criteria and oversight set by the planning

system, but also through contracts that run with the land.'

This writing helps to substantiate the case for stewardship schemes of urban development generally (but who would know of these 'contracts' and who would enforce them?), so let us use it.

But beware, as the BBBC wanders from this good starting point. To achieve its objective the BBBC seeks to reshape the development industry so that it is driven by the desire to make and maintain beautiful places. To achieve this, it suggests supportive tax and funding regimes (including public investment and guarantees, and drawing down patient funding from institutions). Commitment to a 'stewardship kitemark' of excellence in design, delivery, and aftercare would be incentivised by every means, including fast-track permissions and protection from local planning authority interference.

Indeed, in this world in which nice people do nice things with a care for the long term, the whole planning system could be transformed, the BBBC says. Counties should be in charge because they are bigger and historic (forget real geography, which renders some ancient boundaries irrelevant); co-operation between neighbouring authorities should take place ('duty to co-operate', anyone?); and somehow (this bit of the story never quite works) Neighbourhood Plans will be ever more important. It reads a bit loftily rather than as rooted in practical experience.

The BBBC report in effect morphs from being the longer version of the Policy Exchange's *Building More, Building Beautiful* into also being the Policy Exchange's *Rethinking the Planning System for the 21st Century*.¹⁰ 'In short,' says the BBBC:

'our tax regime has unintentionally created a bias in favour of a short-term site-by-site approach to development (the volume housebuilder model) as opposed to a longer-term stewardship model of land and infrastructure investment. As longer-term investors are more incentivised to be interested in place quality and beauty, this cannot be right. The system should at the very least be neutral between these two approaches.'

This is such a well beaten track of thought. Yes, the pattern and infrastructure of urbanisation needs to be consciously and beautifully designed, sensitive to real geography, to create propitious places. But we have learned by demonstration at home and abroad that the land value created by the grant of planning permission must be fairly shared with the community that creates it – that is to say the people that will settle there – and part of that sharing



A haunting image of Victoria Park in East London in preparation for re-opening, having been closed after the overcrowding just before the COVID-19 lockdown – if only the 2 metre social distancing stencil on the pathway was actually 2 metres!

should be the endowment of stewardship of public green spaces in perpetuity.

Ebenezer Howard's Garden City invention was designed to achieve all that. He believed that he could attract investors who would have a low rate of return but who would be nice people who could see the advantage of doing the right thing. But the money didn't come in the quantities needed, and the factory builders and wealthy new residents wouldn't accept leases which would allow the community to capture value uplift on lease renewal (a fundamental Howard concept). Painful compromises had to be made.¹³

The struggling Garden City movement had to lend its shoulder to what became the New Towns Act 1946 and the Town and Country Planning Act 1947, by which the government could use its powers and resources to settle the location, size and function of proposed large developments. The government's Development Corporations would harvest the increase in land value arising from change of use from agriculture, to repay loans from HM Treasury that helped pay for all that was necessary to make the town. No better way has been found to create a platform for the making of beautiful places at scale and at pace, in the public interest, including the

opportunity to establish long-term stewardship arrangements endowed from land value gains.

The BBBC says that its recommended structure 'reflects the experience of the New Towns', but that isn't quite true. The BBBC imagines a private, possibly philanthropic, development industry taking the long view and using low-cost, long-term investment funds, and somehow keeping a grip on quality and aftercare for ever. That reflects the Garden City vision, but it was found that nice people are too few to shoulder responsibility for the development needs of the nation.

We need a strong Ministerial speech to say how endowed stewardship is the government's objective. So did the current Secretary of State for Housing, Communities and Local Government, Robert Jenrick, say something helpful when welcoming the BBBC report on 30 January 2020? Maybe – in getting past his talk (as he must, and should) about the need for thousands of additional houses to be built quickly, and how his new *National Design Guide* (October 2019)¹⁴ will help to secure quality, he said:

'So let's build more, but build better and in turning to the [BBBC] report's third aim, the need to

*promote the lost concept of stewardship – let's ensure that all those with a stake in this agenda take a longer-term, sustainable view of communities as communities that are places that must grow but must evolve, that must adapt but which can do so in a way that works for people.*¹⁵

OK, but a rather mangled understanding of the issues and not clear enough to be a material consideration in actual case work.

However, Jenrick's *National Design Guide* is slightly more helpful to the stewardship cause. Section N1 says we must 'Provide high quality, green open spaces with a variety of landscapes and activities, including play' and explain 'how they are to be managed and maintained... [with] well-considered maintenance and management regimes based on an understanding of the costs for occupants or users'. It is, frankly, still weak: no mention of endowment from the land value created by planning consent, and the weasel word 'costs' still makes it acceptable for developers to aim low and for case officers to be meek when it comes to stewardship.

Last, those interested in emerging government policy on stewardship of public green spaces might look for help in the report of the National Infrastructure Commission Design Group, *Design Principles for National Infrastructure* (February 2020).¹⁶ It sets out four headings (it calls them 'principles') – climate, people, places, and value – under which it gives headline guidance on good practice in the planning and delivery of future major infrastructure projects in the UK. It might sound harsh, but there is nothing new in what is said about creating better design processes (if a beneficent client can be found to pay accordingly), and nothing about the need to ensure that there are arrangements in place for the stewardship – in perpetuity – of any public spaces that might be created in or around national infrastructure.

So much energy keeps being expended on telling people how to design well, and even how to build well, and why this is good. But so little attention is being given in national policy about how to make sure that the public domain that is so carefully created is cared for, very well and lovingly, for ever. This we must change.

The first step is to draw on the land values created by planning approval to endow stewardship in perpetuity!

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Notes

- 1 D Lock: 'On stewardship'. *Town & Country Planning*, 2018, Vol. 87, Jul., 246-48
- 2 D Lock: 'Stewardship of SuDS'. *Town & Country Planning*, 2018, Vol. 87, Dec., 476-76
- 3 D Lock: 'Fleecehold – creeping forward on stewardship'. *Town & Country Planning*, 2019, Vol. 88, Feb., 48-51
- 4 *Plan:MK 2016-2031*. Milton Keynes Council, Mar. 2019. www.milton-keynes.gov.uk/assets/attach/59718/PlanMK-Adoption-Version-March-2019-.pdf
- 5 MK Parks Trust has explained that, because of the scale of its (well endowed) charity, the 'in perpetuity' sum per hectare it requires is calculated using English Partnerships Best Practice Note 2 (Sept. 2005), using current costs
- 6 In the particular expansion areas of MK that are covered by the MK Tariff – a negotiated fixed-charge planning obligation per unit of development – public green space areas indicated in the initial masterplan are transferred with endowment to the Parks Trust. That continues. Later new development allocations have the ordinary planning obligation regime
- 7 *Draft SPD Planning Obligations*, approved for public consultation by Milton Keynes Council, 24 March 2020 (the start of a new regime following adoption of the new Local Plan Plan:MK, Mar. 2019)
- 8 Minutes of the Meeting of Milton Keynes Council Held on Wednesday 19 Jun. 2019. Item CL32. <https://tinyurl.com/rzhco5x>
- 9 Meeting of the Milton Keynes Council Cabinet, held on 9 Jul. 2019
- 10 See D Lock: 'Radical reform at last?'. *Town & Country Planning*, 2020, Vol. 89, Feb./Mar., 51-54
- 11 J Airey, R Scruton and R Wales: *Building More, Building Beautiful: How Design and Style Can Unlock the Housing Crisis*. Policy Exchange, Jun. 2018. <https://policyexchange.org.uk/publication/building-more/>
- 12 *Living with Beauty: Promoting Health, Well-being and Sustainable Growth*. Report of the Building Better, Building Beautiful Commission, Jan. 2020. www.gov.uk/government/publications/living-with-beauty-report-of-the-building-better-building-beautiful-commission
- 13 For a rather grim perspective of practicality slamming into the Garden Cities vision, see R Beever: *The Garden City Utopia: A Critical Biography of Ebenezer Howard*. Macmillan Press, 1988 (Second Edition, Olivia Press, 2002)
- 14 *National Design Guide: Planning Practice Guidance for Beautiful, Enduring and Successful Places*. Ministry of Housing, Communities and Local Government, Oct. 2019. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843468/National_Design_Guide.pdf
- 15 Speech by the Housing Secretary on the Building Better Building Beautiful Commission report launch, 30 Jan. 2020. www.gov.uk/government/speeches/building-better-building-beautiful-commission-report-launch
- 16 *Design Principles for National Infrastructure*. Design Group. National Infrastructure Commission, Feb. 2020. www.nic.org.uk/publications/design-principles-for-national-infrastructure/ <https://www.nic.org.uk/publications/design-principles-for-national-infrastructure/>