



SOUTH
KESTEVEN
DISTRICT
COUNCIL



Non-key Decision

2nd September 2024

Report of Councillor Richard Cleaver
Cabinet Member for Property and Public Engagement

Land Transfer under a Section 106 Agreement

The purpose of this report is to seek approval to the adoption of seven areas of open space land contained within Title Number **LL208985 at Exeter Street, Bourne, PE10 9NJ**.

Report Author

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Approved
for
publication:

Cllr Richard Cleaver - Cabinet Member for
Property & Public Engagement

3 December 2024

Recommendation(s) to the decision maker (s)

- 1 **The Cabinet Member for Property & Public Engagement is asked to approve the acquisition of seven areas of open space land at Exeter Street, Bourne, PE10 9NJ contained within Title Number LL208985.**

1. Implications

- 1.1 The implications of this report are to ensure that land in Bourne, contained within a Section 106 Agreement (copy appended at Appendix One) can be maintained by the Council going forward.

Finance

- 1.2 The financial implications of the proposed land adoption are set out in the report including that a commuted sum will be paid to the Council to maintain the land when adopted.

Financial Implications reviewed by Richard Wyles, Deputy Chief Executive and S151 Officer.

Legal and Governance

- 1.3 The objectives of the S106 Agreement would be met, by the transfer of the areas of land to the Council, with the commuted sum, so that the development benefits from areas of public open space.
- 1.4 As identified in the report, there is an element of risk if the Council was to proceed with part of Area One where there is a potential contingent liability from possible tree root damage to an adjacent property.

Legal Implications reviewed by: Mandy Braithwaite, Legal Executive

2. The Purpose of the Report

- 2.1 The purpose of this report is to seek authority to take a transfer of seven areas of public open space contained within Title Number LL208985.
- 2.2 The developer of the Exeter Street development in Bourne, is obliged, under a Section 106 Agreement dated 19th December 2001 (**See Appendix One**) to transfer the land shown at Appendix Two to the Council.
- 2.3 The land in question has continued to be maintained by the original developer. Since the scheme was completed the land has been maintained at the expense of the developer.
- 2.4 The Council's Property and Grounds Maintenance teams have had various meetings over the past two years with the developers Barratt & David Wilson Homes North Midlands since 2023 to agree what works were needed before an adoption could be agreed.
- 2.5 Following the most recent meeting, the Council's officers have confirmed that the land is in an acceptable condition for adoption. The only exception to this, is a part of Area One (see Appendix Two) where there is a potential contingent liability from possible tree root damage to an adjacent property. The developer has agreed to retain the land and continue to maintain. The Council has confirmed that it would be willing to look at this

area again in the future but, will not be legally bound to adopt.

2.6 The Section 106 Agreement contained provision for the developers to pay a commuted sum of £60,000 in respect of future maintenance of the land.

2.7 The developers are covering the Council's reasonable legal fees in this matter.

3. Available Options Considered

3.1 Option 1 – To give approval to the adoption of seven areas, less a part of Area One of open space land contained within Title Number LL208985 at Exter Street, Bourne PE10 9NJ.

3.2 Option 2 – To agree to the adoption of all seven areas within the original S.106 including all of Area One.

3.3 Option 3 – To refuse to adopt any of the seven areas of land due to the above identified contingent liability.

4. Preferred Option

4.1 Approve Option One for the adoption of all seven areas, save the area with the contingent liability.

5. Reasons for the Recommendations

5.1 Adopting all of the land would mean the Council taking on the contingent liability for a future claim for tree damage to an adjacent property.

5.2 Refusing to adopt all of the land is not considered to be reasonable and would leave the Council in breach of its overall obligation to adopt, as contained within the S.106 Agreement.

6. Appendices

6.1 Section 106 Agreement

6.2 Transfer Plan

7. Background papers

None.

Report Timeline:	Date decision due to be made	16 December 2024
	Call-in deadline	23 December 2024
	Date decision effective (subject to call-in)	24 December 2024