

SUBJECT:	Beaconsfield Common Land Update
REPORT OF:	Environment Portfolio Holder Cllr Luisa Sullivan
RESPONSIBLE OFFICER	Head of Environment Chris Marchant
REPORT AUTHOR	Landscape Officer Simon Gray
WARD/S AFFECTED	Beaconsfield

1. Purpose of Report

This report is to update Members about the Common Land and Waste of the Manor land in Beaconsfield Old Town and the responsibilities/ limitations of the Council following detailed consideration by Environment PAG.

RECOMMENDATIONS that

1. **The Council changes its approach regarding the maintenance of the Beaconsfield Old Town Common Land by limiting its involvement only to ensuring that the land remains free from encroachment and no longer undertakes maintenance of areas of the Common Land that are owned by Bucks County Council and Hall Barn Estates.**
2. **That the Council no longer undertakes works on the Waste of the Manor**
3. **The Council communicates this change of approach to the landowners, Town Council and general public**
4. **Authority to agree the wording of any appropriate signage on the Common Land is delegated to the Head of Environment in consultation with the Portfolio Holder for Environment.**

2. Reasons for Recommendations

Following clarification of the Council's legal responsibilities for maintenance of the Common Land and Waste of the Manor a review of the management situation in Beaconsfield Old Town has been undertaken in view of insurance liabilities and budgetary pressures.

3. Content of Report

The Common Land has been subject to a Scheme of Management (under the Commons Act 1899) by Beaconsfield Urban District Council since 1911. A new Scheme of Management 1984 was made by SBDC under Commons Scheme Regulations 1982.

The common land, shown in Appendix A, is owned by Hall Barn Estates (HBE) and Bucks County Council (BCC). A clearer plan has been prepared at the request of the PAG and has

been attached as appendix A. Copy of the Scheme is attached at Appendix B, with Byelaws (made in accordance with the Scheme and introduced in 1998) at Appendix C.

The land owners have historically called on SBDC to deal with all issues on the common land, and on the adjacent Waste of the Manor land.

Following recent unsuccessful proposals to alter parking arrangements on the common land, and a need to limit Council expenditure, a review of the council's legal responsibilities was carried out. This identified certain responsibilities in the Scheme that the Council should no longer carry out on common land and the Waste of the Manor. In particular the review highlighted the difference in legal effect between wording in the scheme i.e. 'may' or 'shall' undertake and clarified when the Council had a duty or obligation to undertake functions, as opposed to a discretion or power to do so.

1. Common land Responsibilities

In previous years SBDC carried out tarmac and associated works such as white line painting to regulate parking on the Common land. However current legal advice states "The Council's duty is to keep the land free from encroachment i.e. to preserve open access for recreational purposes and not to permit any trespass or partial enclosure. There is no duty to maintain the surfacing as the Council do not own the land."

Also "There is no obligation to physically maintain the land in terms of surface repairs." (Paragraph 8 in the Scheme states "The Council shall have power to repair the existing paths and roads...other than highways..." but this does not impose an obligation on the Council to do so.)

Therefore officers have written to the two land owners (BCC and HBE) to inform them of that SBDC does not have a duty to undertake surfacing works and repairs etc. on the common Land and that its functions are limited to that specified in the Scheme of Management, as above. As land owners BCC and HBE are responsible for the maintenance/ surfacing/ cleaning of their land and have liability for its condition and maintenance.

With regard to legal responsibility for accidents on the land (e.g. for people tripping etc.) this falls to whoever is in control and occupation of the land in questions, which will be the landowner. It is considered that complaints therefore ought to be directed first to BCC. They should confirm whether they have responsibility either as Highways Authority or land owner. If they don't have responsibility they can direct the complaint to HBE as the relevant owner with responsibility.

The legal review also concluded that items placed on the Common Land without land owner permission should be removed by the landowners. The landowners are mistaken in thinking they have no right to remove unwanted items from their land as SBDC's powers to remove offending items are limited.

2. 'Waste of the Manor' Responsibilities

In recent years SBDC has also carried out surfacing works etc. on the 'Waste of the Manor' (the pavements) for the benefit of local residents and to ensure the pavements were in good repair (taking the view that the Council should do what it can to prevent accidents) as the owners were not doing this. However in this age of austerity it is increasing difficult to justify the

expenditure, with no way of raising revenue to fund this. It is therefore considered that the council should no longer undertake works on land that it does not have a legal interest in.

Legal advice confirms that "SBDC has no duty or responsibility in respect of the land outside the registered Scheme described as "waste of the manor" as it is not registered common. It belongs to Hall Barn Estates and is their responsibility, unless it is highway land."

Accordingly officers have informed the owners (BCC and HBE) of its intention to cease all involvement with the land not covered by the common land Status. It is the responsibility of the owner to clarify whether they are responsible for the maintenance of this land (Buckinghamshire County Council as Highways Authority is under a statutory duty to maintain adopted highway (s41 Highways Act) unless it can prove that someone else is responsible.)

In response HBE is arguing that SBDC 'has always' managed all the land and should continue to do so. However, despite the risk of legal challenge it is considered that the Council should resisted this having regard to limited resources and the legal advice received.

The matter of the ownership of the Waste of the Manor in London End was raised with the registered owners, HBE, in December 2015 but to date the estate has done nothing to acknowledge ownership of, or responsibility for, the land. Meanwhile the tarmac surfacing especially on the south side has deteriorated significantly and there is a risk that accidents will occur on the uneven surface for which BCC/ HBE should take full responsibility.

4. Consultation

Hall Barn Estates and BCC have been made aware of the Council's intentions to limit its responsibilities. HBE is disputing this and to date no response from BCC has been received.

5. Options

- Option 1. Do nothing and continue to suffer expenditure and insurance risks on land that is not the responsibility of the Council.
- Option 2. Limit the Council's involvement as set out above and insist that the land owners acknowledge their responsibilities. This is the preferred option but there could be a risk of legal challenge.

7. Corporate Implications

Financial - A saving to the Council as works would no longer be Council responsibility.

Legal – Comments included in the report above.

8. Links to Council Policy Objectives

This matter relates to the following council objectives -

- 1. Delivering cost- effective, customer- focused services
- 2. Working towards safe and healthier local communities

9. Next Step

Formal notification would be made to Hall Barn Estates (HBE) and Bucks County Council (BCC) to inform them of SBDC's position and responsibilities, and that they should accept responsibility for their land.

Background Papers:	None
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