

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 clarify to Members about the Common Land in Beaconsfield Old Town and to ask for Members' agreement to restrict the Council's management of the land in line with the clauses set out in the Scheme of Management and Council Legal advice.

RECOMMENDATIONS

That Cabinet agrees following recent Legal Advice, that SBDC should only undertake certain responsibilities on the Common Land in old Beaconsfield, and that the owners of the land take on their responsibilities.

2. Reasons for Recommendations

The need for the Council to limit expenditure of public money has identified a need to review the management situation in Beaconsfield Old Town.

A recent Legal Review has clarified the responsibilities of the Council with regard to Common Land and Waste of the Manor land.

3. Content of Report

3.1 In response to the questions raised in the PAG meeting on 19th June 2017:

- i) Greater clarity be provided on what parcels of land the Council is responsible for, including Parcels CL36, CL37, CL38, CL39.

The Common land that is covered under the Scheme of Management is as follows:

CL36; land at Longbottom Lane, Seer Green, Beaconsfield – managed by Beaconsfield Golf Club.

CL37; Town Hall Green, Beaconsfield Town Hall, Penn Road, Beaconsfield - managed by Beaconsfield Town Council.

CL38; Land at Davenies, Station Road, Beaconsfield - managed by Beaconsfield Town Council.

CL39; Land and pond at Candlemas Lane, Beaconsfield - managed by Beaconsfield Town Council and adjacent owner.

CL40; Land at Aylesbury End, Beaconsfield.

CL41; Land at Windsor End, Beaconsfield.

CL262; Land at London End, Aylesbury End and Wycombe End, Beaconsfield.

ii) that information be provided on what parts of the land the Council has already devolved maintenance to;

CL36, CL37, CL38, and CL39 are managed by other parties.

iii) that clarification also be provided on section 6(e) of the Copy of the Scheme in connection with the regulation of motor vehicles;

Powers under the Scheme of Management para 6(e) to make Byelaws to control or regulate nuisance parking are limited. This power has been considered many times since 1989 when the Scheme was introduced and has never been utilised due to the prohibitive method of enforcement through prosecution of individual offences punishable by a fine. The District Council's only responsibility on these land parcels is to keep the areas clear of encroachments.

iv) that the Council enters into further discussions with the other parties to discuss possible ways forward.

Following the meeting the discussions will take place with the other parties (Buckinghamshire County Council and Hall Barn Estates.).

3.2 The common land in Beaconsfield Old Town, shown in Appendix A, is owned by Hall Barn Estates (HBE) and Bucks County Council (BCC). 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. A copy of the Scheme of Management is attached at Appendix B, with Byelaws (made in accordance with the Scheme and introduced in 1998) at Appendix C.

3.3 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.

3.4 The report dated 19th June 2017 set out the issue of the Waste of the Manor land. Members agreed that SBDC should not undertake further works on the Waste of the Manor land as it is not covered by the Scheme of Management and that Hall Barn Estates (HBE) or Bucks County Council (BCC) is required to undertake these works.

3.5 Members are advised of the limitations of the Council to issues new Byelaws to control parking and of the Legal advice that the Council's responsibility is limited to keeping the Common Land areas clear of obstructions for public access (and Not the Waste of the Manor land). Any works to the fabric- surfacing, trees etc. - are the responsibility of the land owners. The Council will no longer undertake such works.

3.6 SBDC will from now on inform any calls for maintenance etc. that their concern/ complaint should be forwarded to the land owner which is either Bucks County Council or Hall Barn Estates, so BCC and HBE need to find a way forward to deal with the issues.

3.7 The Council could expect negative responses from these two parties but our response to them will be for them to prove otherwise with documentation why they think they are not responsible.

3.8 In addition, this report does not concern the parking situation. The Council has already consulted on the parking situation and a possible way forward – there was no support for this so the Portfolio Holder does not want to pursue this issue any further.

3.9 SBDC will continue to litter pick in this area.

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 SBDC 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 SBDC has written to the two land owners (BCC and HBE) to state that it will no longer undertake surfacing works and repairs etc. on the common Land and will limit its work to that specified in the Scheme of Management, as above. BCC and HBE are responsible for the maintenance/ surfacing/ cleaning of the land in their ownership and have liability for its condition and maintenance.

Responsibility (for people tripping etc.) falls to whoever is in control and occupation, which will be the landowner. 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.

Items placed on land without land owner permission should be removed by the landowners – SBDC Legal advice concludes that the landowners are mistaken in thinking they have no right to remove unwanted items from their land. The District Council's powers to remove offending items are limited.

'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, and no way of raising revenue to fund this. The council can no longer afford to undertake works on land that it does not have a legal interest in.

The recent Legal Review has advised 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."

Therefore SBDC has informed the owners (BCC and Hall Barn) 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.)

However Hall Barn is arguing that SBDC 'has always' managed all the land and should continue to do so, but due to limited resources and legal advice the council is resisting this. There is a risk of legal challenge about this.

The matter of the ownership of the Waste of the Manor in London End was raised with the registered owners, Hall Barn Estates, 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 Bucks County Council/ Hall Barn Estates 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. Further contact will be made.

5. Options

- Option 1. Do nothing and continue to suffer expenditure 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 is a risk of legal challenge.

7. Corporate Implications

Financial – The Council has an annual budget of £11k for the management of all its open spaces. This is stretched over several sites and the Council can no longer afford to fund works in Beaconsfield out of this very limited budget.

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

That following Members' approval to make this policy, Hall Barn Estates (HBE) and Bucks County Council (BCC) will be informed accordingly of SBDC's position and responsibilities, and that they should accept responsibility for their land.

Background Papers:	None
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