

Adoption of Assets Policy and Procedures

November 2015



A. Policy

1. Introduction

Daventry District Council (DDC) is requested from time to time to 'adopt' 'assets' of various types. Probably the most common examples is public open space, but other cases arise, including aspects of drainage systems which statutory sewerage companies do not wish to take responsibility for.

The purpose of this policy (Part A of this document) is to provide a framework within which DDC can take decisions about which assets to adopt, and the terms on which it does so. DDC will also have procedures (Part B of this document) for the adoption of assets. These will be amended from time to time in the light of experience and changes in the organisational arrangements of the Council. Under the Council's Constitution, Part A, as policy, is adopted and may be amended by full Council, and Part B, an operational matter, by either full Council or the Chief Executive.

2. Definitions

In this document, the following terms are used:

- "Assets" means any land, building or structure on land or water. In most cases such 'assets' are in fact liabilities, in that they cost money to maintain and manage, but generate no or insufficient income to cover those costs. (This document does not apply to movable items e.g. historic artefacts, although it may provide some guidance on principles to be considered in such cases.)
- "Adopt" means to take ownership of and responsibility for. (In the case of highway and water/sewerage law, the term 'adopt' has a precise legal meaning. DDC is not a highway authority or a water/sewerage undertaker and accordingly cannot 'adopt' in either of those senses.)
- "Promoter" means the person or organisation seeking to have an asset adopted by DDC. This will normally be the person or organisation who owns the asset.

3. National Guidance

The question of adoption of assets is typically considered in the context of particular activities or issues, such as development control or highways, and such guidance as exists tends to follow this sectoral approach. However, the guidance does nonetheless contain useful material, much of which is actually applicable outside of the sector of focus. Two documents are of particular assistance.

Former ODPM Circular 5/05: Planning Obligations

Circular 5/05 represented Government policy in connection with the use of planning obligations in connection with development control. It has now been withdrawn with key points included in the National Planning Policy Framework, but without any suggestion that its approach was flawed. It contains provisions relating to the assets that are capable of wider use.

Paragraphs B18 to B20 discuss maintenance payments, which may reasonably be applied both within and outwith the context of development control.

- B18 states that in the case of “...facilities which are predominantly for the benefit of the users of the associated development, it may be appropriate for the developer to make provision for subsequent maintenance (i.e. physical upkeep). Such provision may be required in perpetuity.”
- B19, however, provides that “where an asset is intended for wider public use, the costs of subsequent maintenance and other recurrent expenditure ... should normally be borne by the body or authority in which the asset is to be vested. Where contributions to the initial support (“pump priming”) of new facilities are necessary, these should reflect the time lag between the provision of the new facility and its inclusion in public sector funding streams, or its ability to recover its own costs... Pump priming maintenance payments should be time-limited and not be required in perpetuity...”

These principles commend themselves in logic and accordingly are considered to apply even though Circular 5/05 has been withdrawn.

In the case of assets solely for a specific local use, no further issues arise. It is clearly right that the public at large should not be required to fund maintenance and management of an asset that is of benefit to only a small number of people or, in the extreme, to only one person, such as a developer. Payment of an in-perpetuity commuted sum avoids this situation arising.

However, further consideration is needed for assets in wider use; specifically, what is an appropriate ‘pump priming’ period? The Circular suggested this should be until ‘inclusion in public sector funding streams’. However, the structure of local government funding is such that such cash increases in general grants as are forthcoming are unlikely to cover the costs of providing existing DDC services. Council Tax income does not assist, because the grant arrangements deduct assumed income from these sources. Allocations of Non-Domestic Rates (NDR) are time limited. Accordingly, it would be possible to conclude that pump priming should be for an indefinite period, that is, in perpetuity. However, this conflicts with the express wording of the paragraph. Use of a period of ten years may represent an acceptable compromise between those two positions.

Commutated Sums for Future Maintenance in relation to Adoption and Transfer of Infrastructure Assets

This document was produced by the Chris Britton Consultancy for Department for Transport and others and exists in a draft version dated June 2008. Publication was expected under the banner of the UK Roads Liaison Group (UKRLG). Although it is understood this did not occur, the substance of the document remains valid.

Appendix 5 (p26) of the report states that an appropriate real long term interest rate when considering adoption of assets is 2.2%. This represents the difference between nominal interest rates and inflation rates in the UK, averaged over a long period of time. In other words, the formula to achieve a commuted sum (£Z) which provided an in-perpetuity annual sum of £Y per annum is as follows:

$$\text{£Z} = \frac{\text{£Y}}{0.022}$$

4. DDC's Approach

In considering adoption of assets, the Council will make reasoned decisions based on the facts of each case, guided by the following.

- AA1. Where an asset is proposed for adoption by the DDC and is of use predominately for a specific local area (rather than the wider District community or a substantial part of it) or if another person or organisation is already under a duty to maintain it the Council will:
- (i) Assess if there is a need for adoption at all (for example, if the promoter of the adoption is able to continue caring for the asset and will or can be compelled to do so), and there is no other reason to favour bringing the asset into DDC control.
 - (ii) Assess if there is a more suitable adopting body (for example, a statutory undertaker, parish council or estate management company), and there is no other reason to favour bringing the asset under DDC control.
 - (iii) If neither of the above applies, or there are substantial reasons for bringing the asset under DDC control, be willing on acceptable terms to adopt the asset.
- AA2. Where an asset is to be adopted by DDC under AA1 then a commuted sum covering the anticipated maintenance and management costs in perpetuity will be expected. This will be calculated by dividing a reasonable estimate of annual costs by 0.022. In addition, any costs that DDC has estimated it would incur in the process of adoption and bringing the asset into an acceptable state, including any necessary environmental works, shall be added.

- AA3. Where an asset proposed for adoption by DDC has a benefit for the general District community or a substantial part of it and no-one else already has a duty to maintain the asset then the Council will be willing on acceptable terms to adopt the asset.
- AA4. Where an asset is to be adopted by DDC under AA3 a 'pump priming' sum of ten times a reasonable estimate of annual management and maintenance costs will be expected. In addition, any costs which DDC has estimated it would incur in the process of adoption and bringing the asset into an acceptable state, including any necessary environmental works, shall be added.
- AA5. The sum calculated in AA2 or AA4 must be paid as part of the adoption undertaken by DDC unless the promoter and any other person who might financially benefit from the adoption is incapable of making payment and DDC judges that it would be in the public interest for the asset nonetheless to be adopted. In such cases the promoter shall pay as much as possible of the commuted sum it should have paid under AA2 or AA4 as it can afford.
- AA6. DDC may treat any sum paid as either capital or revenue depending on the proper accounting treatment of its expenditure.
- AA7. In the case that a commuted sum is paid under AA2, AA4 or AA5 no reimbursement will be payable by DDC in the event that less is expended than the estimate on which the commuted sum was based. This is because DDC has taken a downside risk in accepting a particular commuted sum will be adequate and is accordingly entitled to benefit from any upside risk.
- AA8. 'Adoption' of an asset by DDC will be means of freehold transfer of title which should only be encumbered by such restrictions as are necessary to enable the asset to perform the function(s) which it is intended to perform. In exceptional cases, such as where the promoter does not hold the freehold DDC may consider a lesser form of ownership e.g. long leasehold on a peppercorn rent. The transfer to DDC must include all necessary rights (e.g. of access) to enable the asset to be used as intended, maintained and managed.

The Council also commends this approach to the parish councils and meetings of the District of Daventry for their own use (with references to DDC and the District being substituted by references to the relevant parish council or meeting and parish).

B. Procedures

1. Introduction

These procedures for asset adoption are designed to ensure the efficient implementation of the policy set out in Part A of this document.

2. Procedures

The general procedure for considering adoption of assets by DDC is set out in the flowchart at the end of this document. The following should also be noted:

- a) Adoption of assets is inherently dealing in land and/or buildings or other items on land, and as such it is vital that professional property advice forms part of the process. That is the reason the Business Team (Property Services) takes the central role in the process set out.
- b) Nonetheless, depending on the nature of the asset, consideration of its current quality and ability to meet the user needs may well require the active involvement of one or more Teams of the Council. It is essential this is forthcoming or the process may be delayed and/or poor decisions made.
- c) Whilst the flowchart is expressed in reactive form (that is, the Council receives a request from a promoter) there is nothing to prevent the use of the same processes in a proactive form (that is, the Council initiates a proposal for adoption). However, if this is done officers must ensure that the landowner(s) in question are aware of the Council's expectations in terms of, for example, commuted sums at the earliest point possible in the process. This should prevent unrealistic expectations being raised, which the DDC may find itself under pressure to fulfil, and/or abortive work taking place.
- d) The legal agreement mentioned in the flowchart may be of various types including a planning obligation (which is often simply referred to as a 'legal agreement' in planning practice), a previous land sale agreement or a range of other arrangements entered into for a variety of reasons.

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Flowchart for Adoption of Assets by DDC

