

Slough Borough Council

REPORT TO: Cabinet

DATE: 17th October 2022

SUBJECT: Mitigation Strategy regarding Burnham Beeches and Upton Court Park masterplan

PORTFOLIO: Cllr Nazir, Transport & Local Environment
Cllr Mann, Housing & Planning

CHIEF OFFICER: Richard West, Executive Director Place and Community

CONTACT OFFICER: Jason Newman, Group Manager Asset Management
Danial Ray, Group Manager Planning & Building Control

WARD(S): All

KEY DECISION: YES

EXEMPT: NO

DECISION SUBJECT TO CALL IN: YES

APPENDICES: A Mitigation Strategy re new development and protection of Burnham Beeches
B Plan of Natural England agreed mitigation projects in Upton Court Park
C Proposals for the development of an Upton Court Park Masterplan (Masterplan Proposal)
D Summary list of masterplan enhancement projects.

1 Summary and Recommendations

1.1 This report relates to mitigation for the likely adverse effects of extra visitors, from Slough residential developments, on Burnham Beeches a protected site. Developer contributions can fund mitigation in the form of habitat enhancements, in Slough, at Upton Court Park as part of a wider park improvement plan.

Recommendations:

1.2 Cabinet is requested to:

- (a) Approve the Mitigation Strategy (re protection of Burnham Beeches) that proposes Upton Court Park be treated as a 'suitable alternative natural greenspace' (SANG) and for natural habitat enhancements in the Park (inclusive of maintenance) to be funded by developer contributions via the planning process.
- (b) To implement natural habitat enhancements identified in the Mitigation Strategy as soon as practical after mitigation related financial contributions have been received and to maintain those enhancements long term.
- (c) Approve the proposal for the development of an Upton Court Park masterplan to coordinate implementation of various recreation and natural habitat enhancements (inclusive of those referred to in (a) above).

Reason:

- (a) To allow the Council to approve certain planning applications for residential development through compliance with its duties under the Habitats and Species Regulations 2017 (Habitat Regulations). In particular to reduce visitor pressure on sensitive ecological habitat at Burnham Beeches (a Special Area of Conservation), as a result of new residential development, by creating suitable alternative natural greenspace. And to ensure those mitigation measures benefit Slough residents.
- (b) To help ensure mitigation work is in place before or soon after the potential impact on Burnham Beeches occurs (occupation of new homes). And that the mitigation work remains in the future.
- (c) To plan for better recreation opportunities to benefit residents health and well being and assist fundraising for the enhancements.

Commissioner Review

"The Commissioners have reviewed this report and are content with the proposals."

2 Report

Summary

2.1 Burnham Beeches is a Special Area of Conservation; a protected site under the Habitats Regulations. Greater numbers of visitors to Burnham Beeches is causing damage to its sensitive habitat. New residential development in Slough can increase visitor numbers to the Beeches. When considering residential development planning applications the Council has a duty under the Habitats Regulations to address the impact on the Beeches.

2.2 The mitigation strategy can address the impact by :

- treating Upton Court Park as 'suitable alternative natural green space' and
- implementing proposed natural habitat enhancement projects

with the intention of attracting visitors who might have otherwise gone to Burnham Beeches.

2.3 The initial mitigation projects agreed with Natural England as eligible as mitigation are summarised below and on a map at Appendix B :

- Create a continuous walking and cycling route in the park.
- Central wetlands restoration (core area, margins and access)
- New seating and bins (on walking routes)
- Interpretation boards (re wetland area biodiversity)

2.4 Separate to the Mitigation Strategy the Parks Team propose developing a long term masterplan for various recreation and natural habitat enhancements to be implemented when funding is available. It includes the above 4 mitigation projects above which are detailed within Appendix C (at Appendix A of the Masterplan Proposal).

2.5 Key points to note :

- This is an initial strategy to cover the expected number of new home completions over the next few years. A further strategy or updated strategy will follow to deal with further residential development.
- The Strategy is needed to allow the Council to approve current and near future planning applications for major residential development.
- Implementation of the Mitigation Strategy relies on developer contributions via Sec. 106 planning obligations. The contributions will include money for future maintenance.
- The Strategy provides for developer contributions to be spent on projects that will benefit Slough's residents and environment rather than fund projects at or around Burnham Beeches.
- Implementation of masterplan projects does not rely on the Council's General Fund.

Background

Mitigation Strategy

2.6 The key purpose of the Mitigation Strategy (Appendix A) is to set out how the Council as a Local Planning Authority is addressing its duties under the Habitats and Species Regulations 2017 (Habitats Regulations) in relation to certain planning applications for residential development. Addressing those duties, combined with Section 106 planning obligations on developers, allows for expected and needed residential development to be approved and built. And it avoids Natural England, a statutory consultee, objecting to those applications.

2.7 A second purpose of the Strategy is to ensure mitigation related developer contributions benefit Slough and its residents by stating what contributions can be spent on and where. Without a Slough orientated mitigation strategy developers

could propose contributions towards mitigation projects at or around Burnham Beeches.

- 2.8 Section 1 of the Strategy is an overview of why mitigation is needed and the approach proposed. For the former this extract is helpful :

Burnham Beeches is a Special Area of Conservation; a protected site under the Habitats Regulations. Greater numbers of visitors to Burnham Beeches is causing damage to its sensitive habitat. New residential development in Slough can increase visitor numbers to the Beeches. When considering residential development planning applications the Council has a duty under the Habitats Regulations to address the impact on the Beeches

- 2.9 The Section also points out the need for the Council as Park owner to agree the principle of specific enhancement projects referred to in the Strategy. These are the 4 projects listed at para. 2.3 above. It highlights that it is an initial Strategy to cover mitigation linked to residential development over the next few years. A future review of the Strategy will include mitigation proposals at other locations to cover development beyond the next few years.
- 2.10 The Strategy refers to the separate but associated Parks Team Masterplan Proposal (see para 2.23 and Appendix C). The specific enhancement projects of the Strategy come from the Masterplan Proposal to ensure they are coordinated with wider recreation and natural habitat improvements desired. Those wider improvements are summarised at Appendix D but only those in bold are eligible as mitigation for this initial Strategy. This has been agreed with Natural England. Other natural habitat projects in the Masterplan Proposal may become eligible when the Strategy is reviewed as indicated at para. 2.20.
- 2.11 Section 2 gives more detail on why mitigation is needed in connection with most new residential development in the town. Firstly it highlights the implications of the Habitats Regulations for the Council when deciding planning applications and refers to evidence of damage to biodiversity and sensitive habitat at Burnham Beeches due to the number of visitors to the site and additional pressures new residential development will bring. Seeking ways to limit this pressure is 'mitigation'. One form of mitigation is the creation of alternative natural or semi natural habitat spaces that can be used for informal recreation.
- 2.12 The aim of creating the above mentioned alternative recreation spaces is firstly to attract visitors who might have otherwise travelled to Burnham Beeches. People can enjoy regular walks in local woodland or an area with natural habitat without necessarily going to Burnham Beeches on a regular basis. This is particularly so for dog walkers.
- 2.13 Section 3 introduces firstly the SANG concept (suitable alternative natural greenspace) and Natural England's guidance/requirements such as a space large enough for a 2.3 km walk in natural, quiet surroundings. And secondly 'carrying capacity', meaning any SANG should only serve a set number of people in the area to ensure its not too busy. The 68 ha Park is large enough to incorporate a variety of recreation uses including quiet walks. And it is large enough to have different types of habitat in particular some woodland.
- 2.14 Section 4 of the report sets out how the mitigation proposals have been established. The scale and form of mitigation work needed in relation to new development and

carrying capacity of the park has been established in close liaison with Natural England; they have to agree the scale and form of mitigation etc. to avoid them objecting to future planning applications. Of the natural habitat related projects listed at Appendix D those in bold are those listed at para 2.3. It is those that have been judged as adequate in form and scale to mitigate the impact on Burnham Beeches of about 1720 new homes in Slough. In terms of developer contribution this is equivalent to £570 per new home. How this charge is to be applied will be set out in the supplementary planning guidance referred to in para 2.22 below. There will be a different charge depending upon property type. When the 1720 homes are built depends on progress by developers but the next five years is likely to see many completed.

- 2.15 It should be noted that new residential development that will trigger mitigation requirements relates to those of 10 or more homes within 5.6km of Burnham Beeches; this covers much of north and west Slough plus most of the centre.
- 2.16 A key implication for the Council as Park owner is the site being treated as a 'suitable alternative natural greenspace'. As explained in Implications below it has a long-term effect on the land. It effectively commits the Council to carry out natural habitat enhancement works and to maintain the enhancements long term. Hence the recommendations (a) and (b).
- 2.17 Regarding the above it should be noted works can only commence when sufficient developer contributions are received to fund both works and maintenance. Developer contributions will be requested at or before commencement of development. But there is an expectation of implementation of projects within a reasonable timeframe such that the enhancements are, where practical, in place before or soon after the associated residential development is occupied. This is to adhere to the principles of the Habitats Regulations and comments from Natural England. However, it is likely that for larger projects developer contributions will be linked to a specific project but only spent when sufficient funds are available, from more than one development, to complete the project. That would mean works, in some instances, would not be complete until after new homes are occupied.
- 2.18 Secondly the contributions will include a sum for maintenance money, determined by the Council, which, when invested, can provide an income stream intended to last at least 80 years. Calculation of the maintenance sum is based upon grounds maintenance industry published information and the Council's knowledge and of yearly costs and periodic renewals. And projected over at least 80 years by estimating inflation and interest rates. The latter has been informed by Wokingham and Bracknell Forest Council's recent experience re large scale mitigation projects linked to Thames Basin Heaths Special Protection Area. The proportion of the developer contributions making up the maintenance element varies depending upon the type of project ranging from 1.5 to 10 times the value of capital/project works.
- 2.19 Individual Sec 106 planning obligations linked to residential development will provide for financial contributions towards implementing Strategy projects. The obligations will require the Council to spend the money on natural habitat enhancement in accordance with the Strategy and on a named project(s). A regular review of income received or due and the practicalities of implementing projects will determine the precise order in which projects commence.
- 2.20 The Strategy, at para 3.10, says that it will be reviewed in the near future to allow it to cover further residential development in the town. And potentially also allow more of

the listed natural habitat enhancement projects in the Masterplan to be funded by developers in addition to enhancements elsewhere in and around Slough.

- 2.21 Planning Committee agreed at its 23rd June 2021 meeting to the principle of developer contributions being used for mitigation associated with protection of Burnham Beeches and for associated works to benefit Slough residents to avoid contributions going to mitigation projects outside the Borough. Upton Court Park was identified as being a suitable location for mitigation projects based upon an earlier draft of the Masterplan Proposal. But the Council as land owner needs to formally agree the Masterplan Proposal and for the Park to be used as a mitigation site – a 'suitable alternative natural greenspace'.
- 2.22 The Planning Committee also agreed that a Supplementary Planning Document or Guide be published to alert developers and be used as a consideration when determining planning applications. The Mitigation Strategy with the Masterplan Proposal will form the core of the Document or Guide with the addition of relevant planning policy matters and further details of the charge to be made and how it is to be applied.

Upton Court Park Masterplan Proposal

- 2.23 The Parks and Open Spaces Team have drawn up proposals for development of a masterplan for enhancing Upton Court Park covering both recreation and natural habitat enhancement projects at Appendix C and referred to in this report as the Masterplan Proposal. It is a vision for the Park and includes some very aspirational projects alongside simple and easily implemented works. Overall the projects aim to improve the quality of the experience for park users and improve biodiversity through blue and green infrastructure enhancements. When the Masterplan Proposal is worked up the final masterplan can coordinate future enhancement works to maximise the benefits and provide a basis for gaining funds from various sources.
- 2.24 Approval of the Masterplan Proposal is not intended to commit the Council to implement all the projects. Recommendation 1.2 (c) seeks only to agree to work up a full masterplan. It is a long term plan and implementation of any project will be dependent upon funds from external sources becoming available. There is no expectation of the Councils General Fund (revenue) being used. Section 4, Financial Implications, of the Masterplan Proposal (Appendix C) refers to funding opportunities.
- 2.25 The various drivers that prompted the Masterplan Proposal are listed at section 1 of the Masterplan . A key driver is a future flow of financial contributions from developers via planning obligations referred to above (para. 2.14). These contributions would only fund some of the natural habitat works.
- 2.26 The packages of enhancement projects listed in Appendix D are described in detail within Appendix C at Appendix A of that document - the Masterplan Proposal . The list flags projects related to natural habitat in some way; the remainder are solely recreation projects. But only those projects in bold are specifically linked to Burnham Beeches via the Mitigation Strategy. A map of the enhancements and initial cost estimates are appended to Appendix C. It is expected that the Masterplan will be reviewed occasionally to reflect changing priorities, the practicality of project implementation after more detailed feasibility design work has taken place and comments received from interested parties. The order in which projects are progressed can be decided at a future date but natural habitat projects linked to Burnham Beeches are expected to be first as funding will be available.

Relationship to Council Strategies.

- 2.27 The proposals will contribute to 3 of the Council's Corporate Plan Priorities. Firstly '*A Council that lives within our means, balance the budget, and delivers best value for taxpayers and service users*'. Implementation of the Mitigation Strategy will contribute to this priority through ensuring long term maintenance of new works is funded without reliance on Council funds. Both the Strategy and the Masterplan Proposal will make use of external funding sources for new works.
- 2.28 Implementation of the Park enhancement proposals will contribute to the health element of priority '*An environment that helps residents live more independent, healthier and safer lives*' through.
- 2.29 The enhancement proposals will contribute to achieving actions within the Climate Change Strategy and Action Plan 2021; firstly under 'natural environments' the goal of increased tree coverage & tree planting. Secondly under 'land management' the goal: Maintain and enhance green space and goal: Improve biodiversity in the local area.
- 2.30 The enhancement proposals will be incorporated into the emerging Parks and Open Spaces Strategy.

Options considered

- 2.31 Not have a Mitigation Strategy linked to the Park would mean :
- (a) Making use of other parks for mitigation works. But no other park in Slough has the scope for significant natural habitat enhancement without loss of existing recreation facilities. And some other Parks are likely to be needed for small scale enhancement to mitigate for housing development beyond that associated with Upton Court Park.
 - (b) Developer contributions would fund mitigation projects outside the Borough in particular access management and maintenance at Burnham Beeches. This would allow residential planning applications to be approved but would significantly reduce benefits for Slough residents.
- 2.32 Not have a Masterplan – This would reduce the chance of securing funding for enhancements. And lack of promotion of and coordination of projects would mean less benefit to park users and possible deterioration of the park and reduced use.
- 2.33 Have a Mitigation Strategy - benefits and risk as outlined in this report.
- 2.34 Have a Masterplan – benefits and risk as outlined in this report.
- 2.35 Regarding the possibility of a reduced Mitigation Strategy the comments at para 2.31 still apply. Having a reduced Masterplan is a possibility but the benefits and risks referred to in the report would be reduced. It should be noted the Masterplan may not be implemented in full as mentioned in Financial Implications.

3. Implications of the Recommendation

3.1 Financial implications

- 3.1.1 Implementation of enhancement projects listed in the Masterplan Proposal does not commit the Council to use General Fund (revenue) money. Implementation of individual projects referred to in the Masterplan Proposal will be dependent upon funding being available from other sources and, when a decision is made to progress any specific project, it will go through the Council's normal expenditure control and procurement procedures after detailed design and costing.
- 3.1.2 Working up the Masterplan Proposal into a final plan and detailed design and costing work for initial projects will be carried out by the Parks Team from within that Teams existing staff budget. Any need for external advice and design/costing work for projects beyond the initial 4 priority projects (at para 2.3) will go through the Council's normal expenditure control, budget setting and procurement procedures.
- 3.1.3 Regarding the Mitigation Strategy there are no financial implications for the General Fund other than detail design/costing/supervision work covered by the Parks Team existing budget. The Strategy provides for future developer contributions gained via Section 106 planning obligations to be spent partly on certain natural habitat works identified in both the Strategy and Masterplan Proposal and partly spent on long term maintenance of those project works. And any developer contribution to project works must be accompanied by a sum for associated long term maintenance.
- 3.1.4 The value of the 4 projects identified at para 2.3, inclusive of a lump sum for investment to cover maintenance, would amount to £980,000 and would require developer contributions to be received and the allocation approved in order to fund projects.
- 3.1.5 The maintenance money portion of developer contributions needs to be invested by the Council to gain sufficient income to fund long term maintenance inclusive of renewals. Natural England, who have to agree the Mitigation Strategy, request that funds provide for maintenance of enhancements in perpetuity - defined as 80 years or more. Costings (for mitigation projects) in the Masterplan Proposal provide for this long term maintenance.

3.2 Legal implications

- 3.2.1 The Habitats and Species Regulations 2017 (Habitat Regulations) are associated with the proposal but have no direct impact on the report recommendations. The proposal is a way of the Council, as Local Planning Authority, addressing its duties under the Habitats Regulations when determining certain planning applications.
- 3.2.2 The Town & Country Planning Act 1990 in particular Section 106 obligations and the Community Infrastructure Levy Regulations are relevant to developer contributions. When the Supplementary Planning Document or Guidance is prepared the contributions sought will have to comply with the Regulations. As will Section 106 planning obligations particularly in terms of specifying projects for money to be spent to mitigate the granting of individual planning permissions. These obligations are likely to require the Council to spend contributions on identified projects and their maintenance.
- 3.2.3 Provision for natural habitat enhancements helps meet the Council's general duty to increase biodiversity under Section 40 of the Natural Environment and Rural

Communities Act 2006. It “...places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity.”

3.3 Risk management implications

- 3.3.1 Not agreeing the Mitigation Strategy may prevent the Council making lawful decisions when determining planning applications for major residential development that potentially impact Burnham Beeches without appropriate mitigation being secured. Not agreeing the Mitigation Strategy would prevent the opportunity for developer funded enhancements at the Park and would increase the chance of developer contributions going to Burnham Beeches or other sites outside the Borough.
- 3.3.2 Not agreeing the Masterplan Proposal limits opportunities to seek funding of enhancements and may result in less beneficial outcomes if works are not coordinated. Not agreeing the Masterplan Proposal and Mitigation Strategy could also mean Natural England would object to some future planning applications or not withdraw their current objections.
- 3.3.3 Approving the Masterplan Proposal might raise unrealistic expectations of full implementation in the near future. There are several enhancement projects proposed and implementation can only take place if funds are available and detail design and costing work carried out. Consequently implementation is likely to take many years and some projects may not progress. Expectations can be managed by making clear statements in publicity or reports to the Council about progress and limitations on implementation.

3.4 Environmental implications

- 3.4.1 There are no adverse environmental implications. The proposals will provide the opportunity for Upton Court Park to be enhanced in terms of green space and biodiversity. The enhancements will be in line with actions in the Council’s Climate Change Strategy. The Mitigation Strategy will ensure compliance with Habitat Regulations when approving planning applications for certain residential developments.

3.5 Equality implications

- 3.5.1 None

3.6 Procurement implications

- 3.6.1 None.

3.7 Workforce implications

- 3.7.1 None

3.8 Property implications

- 3.8.1 Identification of the Park as a ‘suitable alternative natural greenspace’ (SANG) in relation to mitigation associated with new residential development, protection of

sensitive habitat at Burnham Beeches and the Habitats and Species Regulations 2017 (Habitat Regulations) means the habitat and features in the Park that allow it to qualify as a SANG, as advised by Natural England, should remain long term. Whilst this is not currently in a legal deed there is an expectation of compliance. Natural England keep track of land identified as SANG. The Council as Local Planning Authority will keep a register of SANG land. This means that a future Council proposal that involves significant loss of natural habitat might be restricted unless suitable mitigation is included.

4. Background Papers

Report to Planning Committee 23rd June 2021 Developer Contributions for Natural Habitat at Upton Court Park.

Appendix

Upton Court Park masterplan proposal enhancement projects summary list				
	Package	Project	Relevant to Natural habitat	Mitigation Strategy projects. Only these 4 projects are eligible for the initial mitigation strategy.
1	Walking and cycling infrastructure	New walking path to main gate		
		Create a continuous walking and cycling route in park	yes	yes
2	Blue infrastructure and wetlands developments	Central wetlands restoration (core area, margins and access)	yes	yes
		Pond and rill	yes	
		Improvements and restoration of stream corridor	yes	
3	Improvements to the parks infrastructure	Removal of dead trees	yes	
		Extra tree planting	yes	
		New seating and bins (on walking route)	yes	yes
4	Recreational landforms	Mounds and bunds	yes	
5	Cycle sport, recreation and physical activity	Outdoor Velodrome		
		BMX Track refurbishments		
		Cycle training circuit		
6	Assault Course	TuffMudder style		
7	Play area improvements	Enhancements to existing play areas		
8	Biodiversity and environment improvements	Bee corridors/ flower meadows	yes	
		Interpretation boards (wetland)	yes	yes
		Community orchard and foraging trails	yes	
9	Main Infrastructure	New main gate		
		New heritage style lights		
		Resurface main drive		
		Resurface East drive		
10	Events			
11	Park Ranger Service 5 years		yes	
12	Visitor centre, café/restaurant and changing facility	New build - café / restaurant, changing facilities, community space / classroom.		

(It should be noted some 'hard' projects are classed as linked to habitat because they encourage walking or interest in nature such as seating and interpretation boards)