

SLOUGH BOROUGH COUNCIL

REPORT TO: Planning Committee **DATE:** 23rd June 2021
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WARD(S): All.

PART I **FOR DECISION**

DEVELOPER CONTRIBUTIONS FOR NATURAL HABITAT AT UPTON COURT PARK

1. **Purpose of Report**

To seek agreement to the principle of seeking developer contributions via Section 106 planning obligations for increasing natural habitat at Upton Court Park and other recreation spaces in Slough to address the Council's duty under the Habitat Regulations as Local Planning Authority re reducing visitor pressure, as a result of new residential development, on sensitive habitat at Burnham Beeches (a Special Area of Conservation).

2. **Recommendation(s)**

The Committee is requested to resolve:

- (a) That the principle of seeking developer contributions via Section 106 planning obligations for increasing natural habitat at Upton Court Park and other recreation spaces in Slough is agreed.
- (b) That details of the precise contributions sought are incorporated in, initially, supplementary planning guidance and subsequently in a draft Supplementary Planning Document.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

3a. **Slough Wellbeing Strategy Priorities**

The decision being requested is associated with priority 1 Strong, healthy and attractive neighbourhoods. The proposal provides an opportunity for recreation spaces in the Borough to be enhanced.

3b. **Five Year Plan Outcomes**

The proposal contributes to :

- Outcome 2: 'Our people will be healthier and manage their own care needs'.

Creating more natural habitat can help people enjoy nature locally and encourage outdoor recreation.

- Outcome 3: ‘Slough will be an attractive place where people choose to live, work and stay’. Natural habitat is seen as attractive an attractive feature by many people.

4. **Other Implications**

(a) Financial

The proposal provides an opportunity to gain income specifically for enhancing recreation spaces.

(b) Risk Management

Recommendation from section 2 above (abbreviated)	Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
Principle of seeking developer contributions for natural habitat at Upton Court Park. Details of the precise contributions incorporated in supplementary planning guidance and subsequently in a draft supplementary planning	Non agreement risks Natural England objecting to some major developments.	Informal arrangement with Natural England and ad hoc requests to developers.		Adopt supplementary planning guidance and/or document to secure funding for natural habitat.

(c) Human Rights Act and Other Legal Implications - none

(d) Equalities Impact Assessment - none

5. **Supporting Information**

5.1 Burnham Beeches is designated a Special Area of Conservation under the European Habitats Directive¹ and is protected under the Habitats Regulations

(see 6.1 & 6.2 below for details). It is managed by the City of London and its southern boundary is just over 1 km from the north boundary of the Borough at Farnham Lane.

- 5.2 Under Habitat Regulations the Council as local planning authority has to take account of the impact of new development on Burnham Beeches as a Special Area of Conservation. Large new developments cannot be approved without a Habitat Regulations Assessment having been carried out to determine what impact new development might have on Burnham Beeches. And the Council has to be satisfied, through an Appropriate Assessment, that development can go ahead without a significant environmental effect on the Beeches either alone or in combination with other projects. National Planning Policy Framework para. 175 and Core Strategy policy 9 (Natural and Built Environment) are also relevant to this matter in terms of protecting natural habitat and biodiversity.
- 5.3 The City of London have found evidence of damage to biodiversity and the sensitive environment because of the number of visitors to the site (Footprint report Background Paper 4). They are now managing access to the site in various ways to limit further damage. New residential development in the surrounding area will create additional visitor pressure so the City of London, supported by Natural England and Buckinghamshire Council, seek ways to limit this pressure i.e. to mitigate it. In brief they seek ways to fund their continuing programme of access management, restoration work and creation of alternative natural or semi natural habitat spaces that can be used for informal recreation.
- 5.4 The aim of creating the above mentioned alternative recreation spaces is firstly to attract visitors who might have otherwise travelled to Burnham Beeches and secondly to improve biodiversity for the area in general that, in terms of context for the Beeches, helps support biodiversity as part of a network of spaces. 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.
- 5.5 The Council's Parks Team have prepared an Upton Court Park masterplan for general play/recreation enhancements including more natural habitat/biodiversity (details in Appendix A). Natural England have agreed that the natural habitat and related access improvements in the plan can make the Park more attractive for local recreation and improve its biodiversity in such a way that they would count as suitable mitigation regarding additional visitor pressure on Burnham Beeches linked to new development in the town. Other open spaces in the town can also be considered for similar enhancements in the future.
- 5.6 Where new residential development is likely to have significant environmental effects on Burnham Beeches to address the Council's duty regarding the Habitats

Regulations etc. it is proposed to require those residential developments to make contributions towards the identified Upton Court Park enhancements and potentially similar enhancements in other open spaces in the town. The contributions would be made via Section 106 planning obligations. It would only apply to development within a zone 5.6 km from Burnham Beeches (see plan at Appendix B;) a zone referred to in Footprint report (background paper 4) and used by Buckinghamshire Council. This zone covers the northern and western parts of the town up to and including the town centre.

- 5.7 This type of contribution requirement is found in other Council areas where development takes place near Special Areas of Conservation or similar environmentally sensitive sites. Buckinghamshire Council have introduced such a scheme (see 6.3 below).
- 5.8 Financial contributions for Upton Court Park have already been secured from the Akzo Nobel site redevelopment, agreed for the Montem Leisure Centre site and are under discussion for the Canal Basin/Stoke Wharf site. The earlier Horlicks site redevelopment secured contributions to Salt Hill Park enhancements and Burnham Beeches access management. This was agreed before the Upton Court Park masterplan had been prepared. The proposal for contributions is for money to be spent within the Borough of Slough not at Burnham Beeches.
- 5.9 Natural England have objected to some recent major new residential development planning applications. They withdrew their objection to the Horlicks and Akzo Nobel site schemes based upon the contributions secured as mentioned above. Whilst they agree the principle of contributions referred to above they have not withdrawn their formal objection to the Montem Leisure Centre and Canal Basin site planning applications (and some more recent applications) pending the Council formally adopting a Supplementary Planning Document to deal with the mitigation matter for all future residential development. Officers consider such a document whilst desirable is not necessary at present bearing in mind the principle of contributions is accepted and the existence of the Upton Court Park plan.
- 5.10 Subject to legal advice the Council believe current planning applications can be approved without the objections being withdrawn provided an Appropriate Assessment is carried out – a specific assessment, under the Habitats Regulations to show how any significant effects can be mitigated. But it is preferable for the objection to be withdrawn consequently it is proposed for the contribution requirement to be set out initially in published guidance and subsequently in a Supplementary Planning Document. It is hoped that Natural England will withdraw the objections if Planning Committee approve this developer contribution proposal or on publication of Guidance on the matter.
- 5.11 If approval is given by Planning Committee the contribution requirement proposal

can be published on the Council web site under the existing Developers Guide banner. This will make the Council's intentions clear to future applicants of residential developments. A full Supplementary Planning Document (SPD) (see 6.5 below for details) can be prepared for formal consultation and adoption by the Council later in the year. The resource and procedural implications of adopting this mean it cannot be done quickly. However an adopted SPD rather than just published guidance gives the contribution requirement greater weight when determining future planning applications. The SPD will be prepared under National Planning Policy Framework para. 174 & 175 plus Core Strategy policy 9 Natural and Built Environment and 10 Infrastructure (re leisure infrastructure).

5.12 The Council is already liaising with Natural England regarding the Upton Court Park Plan and the contributions. It will continue to do so in preparing the guidance and SPD. A draft SPD will be presented to Planning Committee before going out for consultation.

5.13 Before guidance or a SPD document is published some further work is required regarding the precise identification and costing of suitable Upton Court Park projects, or other projects in the town. The current Plan needs to separate out the natural habitat related projects. Further work is also needed to decide if a scale of charges is introduced dependent upon the type of development or its distance to the Beeches (See 6.4). And decide what threshold to use regarding size of development in relation to application of the requirement.

5.14 At present about £ 3.5 million worth of relevant enhancements at Upton Court Park have been identified. A final figure will be established. The proposal is for large residential developments (to be defined precisely re the further work referred to above) within the 5.6km zone to contribute to suitable projects in the Upton Court Park Plan to a value of at least £ 3.5 million.

5.15 Any further refinement of the proposal will be reported on the meeting amendment sheet.

6 Further detail or additional background information.

6.1 Special Areas of Conservation (SAC) are within the top tier of nature conservation sites within England and are protected under the Conservation of Habitats and Species Regulations 2017 (as amended, hereafter referred to as the Habitats Regulations) and are stipulated in the National Planning Policy Framework (NPPF). This affords SAC with the highest level of protection in England's hierarchy of sites designated to protect the important features of the natural environment

6.2 The Habitats Regulations contend with the impact of developments and the impact

of Development Plans upon the SAC. Local Planning Authorities are identified as the “competent authority” for the purposes of determining whether a proposed development scheme or development plan document is likely to have a significant effect upon a SAC. This assessment must have regard to the SAC conservation objectives. The effect of the Habitats Regulations is to require Local Planning Authorities to ensure that any proposed development scheme or Development Plan will not adversely affect the integrity of a SAC.

- 6.3 Buckinghamshire adopted in November 2020 a Supplementary Planning Document - Burnham Beeches Special Area of Conservation - Strategic Access Management and Monitoring Strategy. This document requires developers to contribute £2,024 per dwelling for mitigation irrespective of dwelling type or size of development in a zone between 0.5 and 5.6 km from Burnham Beeches. The sum was established by calculating total mitigation costs and dividing it by the current estimate of new homes proposed for the area within the zone.
- 6.4 Factors relevant to calculation of contribution . Whilst a flat charge per additional new home might be appropriate, as has been applied so far, consideration will be given to a sliding scale or criteria based charges. Criteria relevant to the charge per dwelling are type of home – house or flat, number of bedrooms, car ownership, distance to Burnham Beeches. All these factors could influence the likelihood of occupants visiting Burnham Beeches. Dog ownership is another factor but it is not practical for charges to reflect this other than reflecting separating houses and flats occupants of the latter being less likely to need to walk dogs. The threshold, in terms of size of development, when the contribution will apply needs to be established. Schemes of 100 net additional homes has been used as a threshold so far.
- 6.5 Supplementary Planning Documents cannot introduce new planning policy but provide more detailed advice or guidance on policies in an adopted local plan. They have to be prepared in accordance with Town and Country Planning (Local Planning) (England) Regulations 2012, which includes a requirement for consultation. Once adopted they can be treated as a material consideration in decision-making.
- 6.6 Contributions agreed so far. The range of contributions recently agreed or being discussed range from approximately £ 350 to £ 380 per dwelling with different circumstances applicable to each site. This level of charge would broadly cover the costs of enhancement works at Upton Court Park taking account of expected growth of new homes over the new Local Plan period – to 2040 and allowing for smaller development sites not being caught by the requirement and not all development being within the 5.6km zone.
- 6.7 Viability It should be noted that where there is evidence that a development will not

be viable if all Section 106 obligations are applied the Council can agreed reduced contributions and that might include reductions in the mitigation contributions proposed re natural habitat.

7. **Conclusion**

A combination of evidence of greater numbers of visitors to Burnham Beeches causing damage to the sensitive and protected habitat – a Special Area of Conservation- and the Council's duty under Habitats Regulations consideration of certain planning applications needs to address these matters. New residential development can increase visitor numbers to Burnham Beeches but to mitigate this, where necessary, developer contributions under Section 106 planning obligations can fund appropriate natural habitat enhancements within Slough, to attract residents to alternative open spaces such as the natural habitat enhancements identified at Upton Court Park. To implement these enhancements approval is sought for developer contributions via Section 106 planning obligations to be made. In particular it will identify Upton Court Park works, of a certain value, that relevant developments would contribute to. The contribution requirement can be outlined in initially published guidance and subsequently adoption of a Supplementary Planning Document (SPD). The latter carries more weight when deciding applications and in addition it will allow Natural England to withdraw their current objections to some planning applications. Natural England have agreed the principle of the Upton Court Park enhancements and the Council is working with them re drafting guidance and SPD.

8. **Appendices Attached**

'A' - Summary of Upton Court Park enhancements re natural habitat

'B' - Plan to show the Burnham Beeches 5.6 km zone.

9. **Background Papers**

'1' Proposals for the development of an Upton Court Park Master Plan November 2020. Slough Borough Council; Open Spaces and Allotments Team.

'2' Objection from Natural England re planning application ref. P/07383/010 Montem.

'3' Objection from Natural England re planning application ref. P/07584/011

'4' Liley, D. (2019). Impacts of urban development at Burnham Beeches SAC: update of evidence and potential housing growth, 2019. Report by Footprint Ecology for Chiltern and South Bucks Councils.

Appendix A

Upton Court Park masterplan – summary of enhancement elements and indication as to which are not supported by Natural England (NE) as mitigation re natural habitat/improved access .This is a draft list; it has not been finalised nor fully approved by the Council yet.

	Master Plan Elements		Elements not accepted by NE as relevant mitigation re natural habitat/access
1	Walking and cycling infrastructure	New walking path to main gate	
		Create continuous walking and cycling route in parks	
2	Blue infrastructure and wetlands developments	Central wetlands area	
		Pond and rill	
3	Improvements to the parks infrastructure	Removal of dead trees	
		Extra tree planting	
		New seating and bins	
4	Recreational landforms	Mounds and bunds	
5	Cycle sport, recreation and physical activity	Outdoor Velodrome	no
		BMX Track refurbishments	no
		Cycle training circuit	no
6	Assault Course	TuffMudder style	no
7	Play area improvements	Enhancements to existing play area	
8	Biodiversity and environment improvements	Bee corridors/ flower meadows	
		Interpretation boards	
		Community orchard and foraging trails	
9	Main Infrastructure	New main gate	
		New heritage style lights	
		Resurface main drive	
10	Events		
11	Park Ranger Service (per annum)	Vehicle, tools, ranger	
12	Visitor centre, café/restaurant and changing facility	New build - café / restaurant, changing facilities, community space / classroom.	no

Appendix B

Plan to show the Burnham Beeches 5.6 km zone overlapping Slough
(extract from Buckinghamshire Council SPD)

