

Strategy and Resources Committee

30 July 2019

STONES ROAD ALLOTMENT SITE

Head of Service/Contact:	Mark Shephard, Head of Property and Regeneration
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	NA
Annexes/Appendices (attached):	Annex 1 - Plan of Stones Road Allotment Site including buffer zone and pond installed in 2013
Other available papers (not attached):	Leisure Committee 5 July 2010 Item 03: Restoration of Stones Road Allotments

Report summary

This report summarises a number of options considered in seeking to propose a long-term future for the former Stones Road Allotment site and ultimately recommends that an application should be made to remove the site from its statutory designation as allotment land.

Recommendation (s)

The Committee is asked to:

- (1) note the options that have been considered in arriving at the suggested way forward for the Stones Road Allotment site;
- (2) approve the removal of the Stones Road Allotment site from its classification as statutory allotment land by way of an application to the Secretary of State;
- (3) delegate authority to the Chief Legal Officer to take all necessary steps to secure the declassification of Stone Road Allotment as allotment land.

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1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy

- 1.1 A key corporate priority is 'Keeping our Borough clean and green' by 'providing quality parks, nature reserves and other public spaces that are safe, pleasant and well maintained'. The proposals in this report seek to ensure that the Stones Road Allotment site is managed in a way that supports this key priority.

2 Background

- 2.1 The purpose of this report is to bring to a resolution the ongoing uncertainty over the future of the Stones Road allotment site, which has not been cultivated for almost 18 years.
- 2.2 The Stones Road allotment land was transferred to Epsom Urban District Council from the Wandsworth and District Gas Company in 1934.
- 2.3 The site is bordered by the Conifer Park gypsy site to the North, the Stones Road Pond - a Site of Special Scientific Interest to the East, Copthorne Place to the South and the railway line to the West. The allotment land can accommodate approximately 15 plots. No plots have been in active cultivation since 2001.
- 2.4 English Nature (now Natural England) designated the adjoining Stones Road Pond, as a Site of Special Scientific Interest (SSSI) in 1985 due to the presence of a significant colony of Great Crested Newts. Surrey County Council and Epsom and Ewell Borough Council own this site jointly.
- 2.5 On 5 July 2010, the Leisure Committee received a report entitled 'Restoration of Stones Road Allotment'. The Committee agreed:
 - 1.) That an application is made to the Secretary of State for permission to create 1540 square metre buffer zone (as described and shown in the plan provided – see Annex 1) and
 - 2.) Negotiate an agreement with the owners of Area E on the plan, for its incorporation in to Stones Road Allotment to compensate for the loss of allotment land to the proposed buffer zone.
- 2.6 Work to create the buffer zone, separating the SSSI from the allotment site, and excavation of the new pond, to provide foraging land for the newt population was completed in 2013.
- 2.7 The Council attempted to acquire the land adjoining the allotment site, so as to replace the plots lost with the creation of the buffer zone and pond. However, these attempts did not prove successful.

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- 2.8 Residential development at Copthorne Place (former Lintons Lane School site) necessitated the translocation of the resident newts on that site to the Stones Road Pond SSSI land and the newly created buffer zone. The licence granted by Natural England covered a period between 2014 and 2016.
- 2.9 The Lower Mole Partnership (a charitable organisation concerned with countryside management) have been actively managing the SSSI since 2004 and have continued to manage and maintain both the SSSI and 'new' buffer zone to date. Operational Services have continued to deal with issues of fly tipping on the allotment land.

3 Development Potential

- 3.1 Set against the backdrop of acute housing need across the Country, the Government has stipulated that a minimum number of new homes will need to be delivered to meet the national housing requirement. In the case of Epsom and Ewell this is 695 homes per annum.
- 3.2 Every site capable of delivering housing must therefore be considered for its housing development potential. An Ecology Survey was commissioned in 2018 to provide advice on the ecological significance of the allotment land and to detail any mitigation measures that could apply if development were considered.
- 3.3 The ecology survey found that the Great Crested Newt population at the Stones Road Pond SSSI is in decline. The report points to successive development on sites surrounding the SSSI having reduced the terrestrial habitat of the newt population and concludes that:

“..it is important that the remaining surrounding (non SSSI) habitat is protected and where possible managed for the benefit of the GCN population....The possible proposal to restore the adjacent abandoned allotment site would involve a loss of some of the remaining terrestrial habitat” (Sullivan, 2018)
- 3.4 The ecology report also advised that were the allotment site to be considered for development, an alternative receptor site for the newts would need to be found. It would need to be within the vicinity of the original habitat and be of a better size and quality than the existing habitat if the necessary permissions from Natural England are to be secured.
- 3.5 Advice from the Borough Council's Countryside Manager is that it is extremely unlikely that such a habitat exists, even if Natural England were minded to issue the necessary licences.

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- 3.6 The SSSI designation of the adjoining land, confers a number of duties on Epsom and Ewell Borough Council, chief among which is the duty to further the conservation and enhancement of the SSSI as set out in Section 28 of the Wildlife and Countryside Act 1981 as amended by the Countryside and Rights of Way Act 2000. Development of the allotment land could be considered to be in conflict with the duties referred to.
- 3.7 The Natural Environment and Rural Communities Act also places a duty on Local Authorities to conserve biodiversity.
- 3.8 Alongside ecological duties and considerations, there are known to be significant utilities (water and gas pipelines) running underneath the allotment site. Whilst access to enable development can be negotiated, there are costs and significant risks associated.
- 3.9 Any future proposal for the development of the site would need to evaluate the planning constraints at that time, and these would include ecological matters as well as access, site area, and proximity to adjoining development.

4 Re-instatement of the remaining allotment plots

- 4.1 Section 23 of the Small Holdings and Allotments Act 1908 refers to an evidenced demand for allotments, which activates the mandatory obligation of provision and letting of allotment plots, on a local authority.
- 4.2 When the Stones Road site ceased operation, eight plot holders elected to remain on the waiting list and expressed a preference for a plot at Stones Road in the event that the issues leading to its closure were resolved.
- 4.3 As at April 1st 2019, there were 21 vacant allotment plots in the Borough, all of which are at the Alexandra Road allotment Site, less than ¾ of a mile from the Stones Road Allotment Site.
- 4.4 Although the Stones Road allotment site has been out of cultivation for more than 18 years, in 2013, the Council established a new allotment site at Eleanor Avenue, comprised of six plots, which partially mitigated the loss of Stones Road allotment plots to the Borough-wide supply.
- 4.5 A privately run allotment site at Noble Park has also added plots to the Borough wide supply of allotments during the period since the Stones Road site ceased operation.
- 4.6 There are two principle reasons for the Stones Road allotment site ceasing operation: the proliferation of incidents of anti-social behaviour affecting plot holders and the presence of a nationally significant population of Great Crested Newts (GCN) on the adjoining Site of Special Scientific Interest (SSSI).

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- 4.7 The allotment site was blighted by anti-social behaviour for many years leading up to its eventual closure. Incidents included regular fly tipping, grazing of horses, theft of produce, foul and abusive language, missiles being thrown and regular use as a latrine.
- 4.8 The buffer zone was intended to secure the allotment site and reduce the impact of anti-social behaviour. Spoils from the excavation work allowed for the creation of a bund to provide both protection for the newt pond, but also to act as natural screening between adjoining neighbours and what was intended to become the remaining active allotment plots.
- 4.9 Natural England stipulated that any future cultivation must be on a wholly organic basis, preventing the use of any chemicals or pesticide or mechanical diggers. As the plots have been out of cultivation for some 18 years, returning them to use whilst complying with the above stipulations could prove challenging.
- 4.10 The water supply to the site was disconnected in 2001, and would cost in the region of £10,000 to re-establish.
- 4.11 Despite the added security measures, incidents of trespass continue resulting in recent incidents of fly tipping and human and canine excrement within the buffer zone. The carcasses of cockerels have also been found on the allotment land.
- 4.12 The continued incidents of trespass and anti-social behaviour on the land suggest that one of the root causes leading to the closure of the allotment site has not been addressed by the mitigation measures approved by Committee in 2010.
- 4.13 Added to the advice from the ecologist who suggests that the allotment land should be managed for the benefit of the remaining Great Crested Newt population, reestablishment as an allotment site may not therefore be feasible in light of the challenges described above.

5 Managing the land for the benefit of the Great Crested Newt population

- 5.1 The Stones Road Pond, adjoining the Allotment site, is of National importance as at the point of designation it had one of the largest colonies of Great Crested Newts in England.
- 5.2 Successive ecology surveys have confirmed that the newts rely on the adjoining allotment land as a terrestrial habitat. The latest ecology survey has re-confirmed this and also advised that the Council protect and maintain this habitat in light of the declining newt population.
- 5.3 Natural England as the government's nature conservation overseeing body, are tasked with ensuring that all SSSI are maintained in 'Favourable' condition and will act to protect a SSSI where necessary.

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- 5.4 The Borough Council are also subject to a duty to ‘further the conservation and enhancement of the SSSI’ in accordance with the Countryside and Rights of Way Act 2000.
- 5.5 In light of the on-going issues associated with re-opening the allotment site, and more importantly the ecological concerns around the fragility of the Great Crested Newt population, it is proposed that the allotment site remains closed and is instead managed for the benefit of the Great Crested Newt population.
- 5.6 Natural England have advised that carefully managed restricted public access to the site could be possible. Restricted public access could both ensure the preservation of the land for the benefit of the newt population but also provide a valuable additional greenspace for the Borough at a time of unprecedented levels of housing development. This is a clear opportunity to deliver against the key priority ‘Keeping our Borough clean and green’ and to delivery of the borough wide Biodiversity Action Plan.
- 5.7 By taking action to safeguard the habitat of the newt population, the Council will be seen to be taking its duties towards this European Species seriously and will be greatly reducing the risk of any externally imposed solutions in the future.
- 5.8 Any planned change of use would need consent of the Secretary of State who will consider three mandatory criteria in arriving at a decision over whether a site shall be released from its designation as allotment land:
 1. The Secretary of State is satisfied that adequate provision will be made for allotment holders displaced by the action of a local authority; or
 2. The Secretary of State is satisfied that such provision is unnecessary; or
 3. The Secretary of State is satisfied that such provision is not reasonably practicable.
- 5.9 In the case of the Stones Road site, it has not operated as an allotment site for almost 18 years, and so there are no displaced plot holders to accommodate elsewhere. It might therefore be reasonable for the Secretary of State to conclude that replacement provision is unnecessary, particularly given the 21 vacant plots on a site less than 1 mile away.
- 5.10 Surrey County Council, as an adjoining landowner, will be informed of the Council’s intentions in this regard and support will be sought to accompany any subsequent application to the Secretary of State. Natural England have already set out, in writing, their advice that the former allotment land should be managed for the benefit of the Great Crested Newt population.

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6 Proposal

- 6.1 Having regard for the history and site context it is proposed that the Stones Road Allotment Site remains closed indefinitely and is instead, managed as a terrestrial habitat for the benefit of the Great Crested Newt population.
- 6.2 Furthermore it is recommended that an application is made under Section 8 of the Allotments Act 1925 to the Secretary of State for permission to remove the Stones Road allotment site from its statutory designation as such.
- 6.3 Continued work of the Countryside Manager and Operational Services in partnership with the Lower Mole Partnership and local volunteers would ensure and maintain both the SSSI and the vacant allotment land.

7 Financial and Manpower Implications

- 7.1 The cost associated with managing the site for the benefit of the newt population is currently being met and can continue to be met within existing resources available to the Operations Team and through the Lower Mole Partnership.
- 7.2 In the event additional costs arise that are associated with enhanced protection of the newt population, they would be the subject of a future report to this Committee. Surrey County Council as an adjoining landowner may be asked to contribute towards the cost of meeting any additional security fencing or measures identified.
- 7.3 If the site was to be re-established as an allotment site, there would be a charge of approximately £10,000 to re-connect the water supply. As the site must be worked by hand to protect the GCN population, it might also be reasonable for potential plot holders to expect the Council to undertake at its own cost, the necessary hand-digging to prepare the plots.
- 7.4 If all 15 of the existing allotment plots were let, the annual income would be c. £570 per annum.
- 7.5 **Chief Finance Officer's comments: The costs to re-instate and manage the site as allotments would appear prohibitive when compared to the annual income that allotments would generate.**
- 7.6 **Officers should work to ensure that the proposal to manage the site as a terrestrial habitat is achievable within existing resources.**

8 Legal Implications (including implications for matters relating to equality)

- 8.1 Section 8 of the Allotments Act 1925 requires that local authorities seek the Secretary of State's consent if they propose to sell, appropriate, use or dispose of the land for any purpose other than as allotments.

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- 8.2 Statutory Guidance, “Allotment disposal guidance: safeguards and alternatives” 2014, sets out the processes the Council must follow to release allotment land from such designation. The Council will need to consult with the National Allotment Society before it can apply to the Secretary of State for consent. The application process to the Secretary of State can take around 13 weeks. There can be no presumption that the Secretary of State will approve a council’s application. A refusal of consent does not affect a council’s right to re-apply for consent to dispose of the land.
- 8.3 **Monitoring Officer’s comments: None arising from the contents of this report.**

9 Sustainability Policy and Community Safety Implications

- 9.1 The preservation of the allotment land as a terrestrial habitat for the newt population will help to safeguard the adjoining Site of Special Scientific Interest, assisting the council in fulfil its statutory duties in this regard.
- 9.2 It is evident that some incidents of anti-social behaviour are still taking place in and around the protective buffer zone that was installed in the hope of reducing such issues. This suggests that the re-establishment of the site as allotment plots may not be practical from a community safety perspective as plot holders may well still be subjected to the treatment that lead to the site closure in 2001.

10 Partnerships

- 10.1 As described above the Lower Mole Partnership are a key partner in working with Epsom and Ewell Borough Council to safeguard and maintain the SSSI and the allotment land. They would continue in this role if the allotment land were removed from its statutory designation and managed for the benefit of the newt population instead.

11 Risk Assessment

- 11.1 There is a risk that the Secretary of State may not approve the application to remove the Stones Road Allotment Site from its designation as allotment land. However, the mandatory criteria for consideration are set out at 2.39 above, and it would appear that the council can comfortably fulfil the tests applied. In the event that the application is unsuccessful, the former allotment land could still be managed for the benefit of the Great Crested Newt population, but the allotment site would still not be feasible for re-opening.

12 Conclusion and Recommendations

- 12.1 As set out above, the Great Crested Newt population is in decline at the Stones Road Pond SSSI. Any plan to re-open the Stones Road Allotment site could further erode their habitat and threaten the nationally important SSSI and the colony of newts that it plays host to.

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- 12.2 A number of factors suggest that re-opening the allotment site as once intended may no longer be feasible and it is proposed that the site should be removed from its designation as statutory allotment land.
- 12.3 Having regard for the history and site context it is proposed that the Stones Road Allotment Site remains closed indefinitely and is instead, managed as a terrestrial habitat for the benefit of the Great Crested Newt population.
- 12.4 This course of action will help the council to achieve a key priority; 'Keeping our Borough clean and green' by protecting an ecological asset, whose importance is highlighted in the borough-wide Biodiversity Action Plan.
- 12.5 Furthermore it is recommended that an application is made under Section 8 of the Allotments Act 1925 to the Secretary of State for permission to remove the Stones Road allotment site from its statutory designation as such.
- 12.6 Continued work of the Countryside Manager and Operational Services in partnership with the Lower Mole Partnership and local volunteers would ensure and maintain both the SSSI and the vacant allotment land.

Ward(s) affected: (All Wards);