

COMMUNITIES OVERVIEW & SCRUTINY PANEL

MONDAY, 25 OCTOBER 2021

PRESENT: Councillors John Bowden (Chairman), Greg Jones (Vice-Chairman), Gurpreet Bhangra, Helen Price and Del Campo

Also in attendance: Councillor Donna Stimson, Councillor Simon Werner, Councillor David Hilton, Councillor David Cannon, Councillor John Baldwin, Councillor Christine Bateson, Councillor Mandy Brar, Councillor Gerry Clark, Councillor Karen Davies, Councillor Phil Haseler, Councillor Ewan Larcombe, Councillor Sayonara Luxton, Councillor Gurch Singh, Councillor Geoffrey Hill, Councillor Clive Baskerville and Councillor Maureen Hunt

Officers: Oran Norris-Browne, Mark Beeley, Chris Joyce, Emma Duncan and Andrew Durrant

WELCOME FROM THE CHAIRMAN

The Chairman welcomed all panel members, officers and members to the call-in.

APOLOGIES FOR ABSENCE

No apologies for absence were received.

DECLARATIONS OF INTEREST

There were no declarations of interest received.

CALL IN - BATTLEMEAD COMMON

The Panel considered the report regarding the Call-In of the Cabinet decision of Battlemead Common of 30 September 2021.

The Chairman began by reading out the procedures of the call-in, which the panel noted. The Chairman then invited the first of five members who initiated the call-in to speak.

Call-in Member 1

Councillor Baldwin started by drawing the panel's attention to the Natural Environment and Rural Communities Act 2006. He said that in the Cabinet paper there was no mention of this act even though it directly impacted the decision that was taken.

Councillor Baldwin then quoted paragraph 5 on page 13 of the document bundle from the 30th September 2021, with regards to legal implications and it not mentioning the act. He then declared that Cabinet members could not have possibly been correctly briefed due to this.

Councillor Baldwin said that the approved pathway bisects a section 41 listed habitat of principal importance for the purpose of preserving biodiversity. He then went on to state the large number of species that would exist in this habitat and that these would range from reptiles and mammals to vertebrates and invertebrates.

Councillor Baldwin continued by stating that many species under section 41 were threatened and that protecting England's section 41 was key, with independent ecologists having confirmed this. Councillor Baldwin then concluded that none of what he had discussed, could have been discussed by Cabinet due to the failings in mentioning it within the report.

Call-in Member 2

Councillor Brar began by stating that she would be speaking as a member of the Battlemead Steering Group. On behalf of the Steering Group, she stated her disappointment in the Council after working closely with Battlemead for over 2 years and now the sudden reversal of key commitments had occurred.

Councillor Brar said that Cabinet had not made any real commitments and no funds had been set aside for any works. She said that only the works creating the new Causeway path had been authorised by Cabinet's decision. Councillor Brar then went on to disclose what was included in the briefing note sent to the Steering group in August 2021.

Councillor Brar said that it would cost a lot less than £14,000 to replace the gate that currently failed to keep people out of the area, with a permanent natural barrier.

Councillor Brar asked why this could not be the thing that was first started with, with a prioritization of funding being key before new paths were created.

Call-in Member 3

Councillor Davies said that as a Council, they approved the borough's Environment and Climate Strategy 2020 to 2025, with a main aim being to create a biodiversity action plan for the borough. She says that any decisions taken that would impact this, so they should wait until the Council decides what will be in the action plan as anything agreed to before this, would limit the action plan's contents.

Councillor Davies said that in the absence of the action plan, the Council should have followed the commissioned ecological management plans for the various habitats within the Battlemead site, but this had not happened.

Councillor Davies said that the path had been agreed formally to be opened and for funding to be provided to create it, however no formal commitment had been made to create the additional extra habitat element of the plan, which Councillor Davies said meant that the aim to enhance biodiversity was not being met.

Councillor Davies said that the Local Transport Plan 2012-2026, required the Council to actively seek the impact of movement on the natural environment by routing traffic and people away from sensitive sites. She said that the original path met this, however the new agreed path does not.

Call-in Member 4

Councillor Hill said that the current local plan recognised the need for a link from Wildbrook Common to the River Thames creating an additional path between the Thames path and the Greenway enabling circular walks around Cookham. Councillor Hill then quoted the leader of the Council's remarks involving the recreational benefits that a new path would have.

Councillor Hill referred to planning application 19/00972/FULL that was made in April 2019 to change the use of the site from agricultural to assembly and leisure, but it was withdrawn. He then referred to the then leader of the Council's remarks on recreation again and said that a new planning application should need to be submitted for the new path to be built.

Call-in Member 5

Councillor Werner said that the new agreed path went against national legislation, it departed from the briefing note supplied to the Battlemead Steering Group, it was non-compliant with the climate strategy and the Local Transport Plan and the need for a planning application.

Councillor Werner said that a boundary walk currently existed, giving residents great joy and views. He then questioned why another path close to it needed to be created. Councillor Werner then said there were amazing educational benefits to the site and suggested that educational boards were erected on the current pathway to utilise this educational benefit.

Councillor Werner expressed his concerns with regards to the proposed fencing and especially with regards to dogs by stating that a dog proof fence if erected would need to be deep, tall, and solid to properly protect the habitats either side of the pathway. He said that the Council was in danger of ignoring the law, planning, Council policy and undermining the credibility of the consultations that were carried out. He asked for the panel to refer the decision back to full Council.

The Chairman then invited the Lead Member of the Cabinet to speak.

The Lead Member for Climate Change, Sustainability, Parks and Countryside said that a lot of dramatic language had been used in the call-in member's statements. She said that the proposals had been reviewed and developed with biodiversity in mind.

The Lead Member said that lots of work had gone into these proposals, which members and the friends of Battlemead were aware of and that extensive surveys had been commissioned and all parties had been engaged with.

The Lead Member said that the director of Rewilding Britain believed that in time, many paths could be created, which would encompass dogs on a large area of Battlemead. She then stated that dogs would be on leads, which would therefore eliminate the issues raised by Councillor Werner of dogs jumping over fences and roaming free.

The Lead Member then referred to the biodiversity action plan that was mentioned by Councillor Davies and said that although not produced, it did not mean that it was not written and that members were aware of what was included in it. She then also confirmed that the fencing and screening that was proposed had been approved by independent ecologists, who were fully behind it.

Councillor Hill expressed concern at The Lead Member's remarks by stating that the path could not be built without planning permission as this would of course be illegal.

The Head of Infrastructure, Sustainability and Economic Growth (Chris Joyce) said that the site in question was bought by the Council in December 2018 and they set up a friends of Battlemead Common Group to provide guidance in June 2019. He then said that there had been extensive surveys and that biodiversity had been at the heart of any proposal and that everybody in the Place team were aware of the need to promote this to support the wider objectives and to resist backlash from the local community.

The Head of Infrastructure, Sustainability and Economic Growth reiterated that independent advice had been obtained to ensure any impacts would be mitigated, which included the seasonal access to the path and the fencing and screening against dogs. He also acknowledged that the habitats currently residing there were not at the level that were desired.

The Head of Infrastructure, Sustainability and Economic Growth said that an ecological management plan had been developed for the site to support ecology and nature conservation.

The Executive Director of Place Services (Andrew Durrant) said that regarding questions on planning permission for the sight, he believed that screening and fencing to this nature would be considered as permitted development and therefore the proposal would not require any form of planning permission.

Councillor Del Campo asked the Monitoring Officer if there were any justifications for omitting discussions on biodiversity from the Cabinet report and if all the legal implications were considered when making the decision.

The RBWM Monitoring Officer (Emma Duncan) said that it was not always possible for officers to identify every piece of legislation that would apply to every Council decision made within a meeting. She said that in this case, biodiversity and the protection of the environment was a common theme throughout the report and therefore if a court was to look at the decision process, evidence would suggest that Cabinet did consider all legal implications.

Councillor Del Campo asked if the decision was safe in terms of a legal challenge. The Monitoring Officer confirmed that the provision of a footpath would mean that it would be safe.

Councillor Del Campo expressed concern that Battlemead Common was named this when it was deemed not to be a common. The Monitoring Officer suggested this be addressed offline.

Councillor Del Campo asked if there were any legal obligations on the Council to open access through the east field from the original purchase of the land. The Monitoring Officer said that she was not familiar with any specific details such as this, but that the Council would apply anything that had been set out when purchased.

Councillor Del Campo asked if there was a need for new planning permission due to the land being given a change of use, being now recreation. The Monitoring Officer confirmed that no indication had been made so far that a change of use was being implemented, meaning that no new planning permission was required.

The Executive Director of Place Services said in response to Councillor Del Campo's question that he was unsure of this, however he reiterated that the proposed path in discussion would indeed be classed as permitted development and this had been confirmed by the RBWM planning team.

The Head of Infrastructure, Sustainability and Economic Growth said that his understanding was that the previous planning application was for a large car park and that there were numerous objections to the size of this, hence it had been withdrawn.

Councillor Del Campo asked if the management prescriptions from August 2020 had been followed in full. The Head of Infrastructure, Sustainability and Economic Growth said that his understanding was that the ecological management plan was being followed.

Councillor Del Campo said that the habitats that were present at the site had been identified in field studies in 2019 and 2020, but not in the latest 2021 report.

Councillor Del Campo asked if it had deteriorated in recent years, hence it not being included.

The Head of Infrastructure, Sustainability and Economic Growth said that the previous uses of the site had deteriorated the quality of the habitats at the site over time. He added that the approach they had taken here was the best way forward for biodiversity and that a much larger investment was needed to restore the site as a floodplain grazing marsh than the £14,000 being quoted currently and was not the one that was recommended.

Councillor Del Campo asked if the Cabinet decision authorised the creation of the wetland or if it was restricted to simply the creation of the pathway.

The Head of Infrastructure, Sustainability and Economic Growth said as the report stated, that it was just at this stage to merely create the pathway. Future plans were to be discussed with consultations and a focus on the benefits it would produce and the financial cost of it, but these were not close at this stage.

Councillor Del Campo expressed concern at this due to the lack of knowledge as to what the financial costs would be in the future.

Councillor Del Campo asked the Lead Member on what the formal advice was and how it was handled. The Lead Member said that the formal advice was 50/50.

Councillor Del Campo asked if it was fair to say that Austin Foot had been briefed to answer the question on 'how could a path be constructed there' and that if the question was instead 'should a path be constructed there' then may the answer have been different? The Lead Member replied by saying yes possibly.

Councillor Del Campo asked why the Lead Member believed it was so important to have a biodiversity plan. The Lead Member said that England was one of the most deprived countries of biodiversity and that she wanted to get as many people as possible on board with the idea of biodiversity.

Councillor Del Campo asked if it was possible to incorporate limiting access to the site into the biodiversity action plan or did the Cabinet decision restrict this possibility.

The Lead Member replied first by referring to a previous comment that the site had depleted as grazing land due to grazing no longer taking place there, but there had been an increase now in biodiversity. She added that it had been agreed that the plan would be reviewed annually, and if any decrease in biodiversity was noticed then this would be addressed.

Councillor Price asked The Head of Infrastructure, Sustainability and Economic Growth for some clarity on the proposal. The Head of Infrastructure, Sustainability and Economic Growth then supplied this by stating that there would be dog proof fencing and some screen planting, which formed the basis of the decision made by Cabinet.

Councillor Price said that the education part of the proposal was very important and asked how this would be encompassed and carried out.

The Head of Infrastructure, Sustainability and Economic Growth said in response, that this was a project that was occurring currently at both Battlemead and Braywick, to improve the educational information boards in both locations. Councillor Price asked for consideration of accessible features on these such as large text for persons with visual impairments and colourful pictures and sound to engage children.

Councillor Price asked what was being done to stop people from entering the site, even more so if an attractive path was built. The Head of Infrastructure, Sustainability and Economic Growth said that there was nothing that could be done to prevent people from accessing the site but said that it was important to raise awareness of why it would not be a good idea to access the site during the winter months.

Councillor Price asked about the movement of wildlife between the north and south areas of the site. The Head of Infrastructure, Sustainability and Economic Growth said that he had been advised that this pathway should not prevent this movement. He also stated that the screening was being put in place to limit the scaring of birds and intruding too much on the wildlife.

The Chairman said that questions needed to be more streamlined specifically to the Cabinet's decision regarding the pathway, rather than to each individual component.

Councillor Price asked for some information on the dates of closure. The Head of Infrastructure, Sustainability and Economic Growth said that discussions were ongoing as to what these dates of closure would be and that it would be evidence led.

Councillor Jones asked about planning permission for paths and that he believed Battlemead Common to be more commonly known as just merely Battlemead.

Councillor Werner said that currently people were able to walk around the edge of the field and not have to compromise any of the habitats or species and that implementing the Cabinet proposal would harm this biodiversity. He also expressed concern again of dogs causing destruction on the biodiversity of the area.

Councillor Del Campo asked the Lead Member if they shared her disappointment that Cabinet did not include wetlands in the decision that was made.

The Lead Member replied by saying that she did not, as the decision made at Cabinet, was specifically about the pathway.

Councillor Price asked for reassurance that biodiversity would be upheld. The Lead Member said that the screening that would be erected would protect the animals from danger and that the path would be the width of the gate with screening either side.

The Chairman invited the Lead Member to make a summarising statement to the panel.

The Lead Member said that lots of work had been put into the plans over the last 2 and a half years and she acknowledged that it was very difficult to please everybody. She added that biodiversity would be enhanced and that there would be increased educational benefits for the site.

Councillor Del Campo proposed a motion to enact upon option 3.1 iii, which would see the decision be moved to full Council. This was seconded by Councillor Price.

However, the Monitoring Officer advised the panel that the decision did not fall outside of the Council's framework and therefore could not be brought to full Council, leaving only 2 options available to the panel.

Councillor Del Campo said that she was disappointed with this, however accepted the Monitoring Officer's advice and then proposed that the decision be referred back to Cabinet for reconsideration, having heard the views discussed within the call-in. This was seconded by Councillor Price.

To refer the matter back to Cabinet (Motion)	
Councillor John Bowden	Against
Councillor Greg Jones	Against
Councillor Gurpreet Bhangra	Against
Councillor Helen Price	For
Councillor Catherine del Campo	For
Rejected	

Councillor Jones proposed that no further action would be taken, and this was seconded by Councillor Bhangra.

To take no further action (Motion)	
Councillor John Bowden	For
Councillor Greg Jones	For
Councillor Gurpreet Bhangra	For
Councillor Helen Price	Against
Councillor Catherine del Campo	Against
Carried	

The meeting, which began at 7.00 pm, finished at 8.40 pm

CHAIRMAN.....

DATE.....