

Meeting: Cabinet

Date: 14 July 2020

Wards Affected: Preston and Blatchcombe

Report Title: Amendment to boundaries of Ocombe Farm Local Nature Reserve

Is the decision a key decision? No

When does the decision need to be implemented? Immediately

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1. Purpose of Report

- 1.1 On 20 September 2019 Cabinet approval was sought for de-registration of Preston Down Road as a Local Nature Reserve. At this time the Cabinet confirmed:

“That the land at Preston Down Road, shown on Plan EM3172 attached at Appendix 1 to the submitted report, be de-registered as a Local Nature Reserve (LNR) as the land no longer meets the requirements to be designated as a LNR and to enable housing to be developed on the site.”
- 1.2 Subsequent to obtaining Cabinet approval, the Council was required to consult with Natural England (‘NE’) prior to formalising the de-registration. NE was formally notified on 13 January 2020. A letter of response, dated 9 June 2020 has been received which concludes that “Natural England accept that the land proposed for de-declaration appears to have very limited environmental value”.
- 1.3 It is necessary for the Natural England response to be considered by Cabinet, prior to the final steps in the de-registration process.

2. Reason for Proposal

- 2.1 PDR was designated as part of the larger Ocombe Farm LNR at the request of TCCT in order to support it in applying for additional grant funding to improve the site. It is not evident whether this funding was ever forthcoming, however, as is evidenced at Appendix 2 none of the species or habitats present at the PDR site warrant its designation as a LNR.
- 2.2 Consent to designation of the LNR was granted on the basis that there would be no financial or conservation burden on the Council and that TCCT would be responsible for its management. This situation has since changed. As from 31

March 2020 the Council is responsible for management of the PDR.

- 2.3 PDR is no longer managed as a nature reserve. A suite of ecological surveys has been undertaken and confirm that none of the habitats or species present at the PDR warrant categorisation as part of a LNR and that there are no grounds to support the ongoing designation of PDR as part of a LNR.
- 2.4 If land within a LNR ceases to be managed as a nature reserve, it is the duty of the local authority to make a declaration of the fact.
- 2.5 The proposals contained in this report will not result in any financial commitments for the Council.

3. Recommendation(s) / Proposed Decision

- 3.1 That Cabinet notes that the land comprising 4.06 ha at Preston Down Road, Paignton and shown edged red on the plan at Appendix 1 is no longer managed as a nature reserve and does not contain habitats or species that warrant its designation as part of a Local Nature Reserve and, as a result, approves the making of a formal declaration removing the PDR land from the Occombe Farm Local Nature Reserve designation.

Appendices

Appendix 1: Plan of land at Preston Down Road

Appendix 2: Evidence to support de-registration of the site as a Local Nature Reserve

Appendix 3: Cabinet Paper, dated 20 September 2019

Appendix 4: Cabinet Record of Decision, dated 15 October 2019.

Appendix 5: Email from Natural England, dated 31 January 2020.

Appendix 6: Letter from Natural England, dated 9 June 2020.

Background Documents

Torbay Local Plan: <https://www.torbay.gov.uk/media/6836/lp-2012to2030.pdf>

Supporting Information:

1. Background:

- 1.1. The Council owns the freehold of 4.06 hectares (10.03 acres) of land at PDR as shown verged red at Appendix 1.
- 1.2. PDR was designated as a LNR in 2005 at the request of TCCT, on the basis that there would be no financial or conservation burden on the Council and that TCCT would be responsible for its management.
- 1.3. The former lease to TCCT was surrendered on 28 February 2019 and the Council is now responsible for management of PDR.
- 1.4. PDR is not managed as a nature reserve. There are no grounds to support the ongoing designation of PDR as a LNR.
- 1.5. If land within a LNR ceases to be managed as a nature reserve, it is the duty of the local authority to make a declaration of the fact.
- 1.6. Natural England has been consulted and has confirmed that “the land proposed for de-declaration appears to have very limited environmental value”.
- 1.7. Following this consultation response, consent is sought to confirm the earlier decision of Cabinet to de-register PDR as a LNR as none of the habitats or species present at the site warrant designation as a LNR and the land is not managed as a nature reserve.

2. Alternative Options:

- 2.1 The alternative option would be for PDR to remain designated as a LNR. If the LNR designation were to remain the land would have to be managed solely for a conservation purpose, or a conservation/recreation purpose. Bearing in mind that ecological surveys have shown that the site is of very limited ecological value this is not considered to be a reasonable course of action.
- 2.2 Retention of the LNR designation on this area of land may result in the Council breaching the terms of the LRF grant and would also make it more difficult for the Council to meet its future housing land supply targets and putting the Council at risk of unfavourable developments on alternative sites.

3. Contribution to delivery of Council's priorities:

- 3.1 This Council's ambition is:
 - We want Torbay and its residents to thrive.
 - We want Torbay to be a place where we have turned the tide on poverty and tackled inequalities; where our children and older people will have high aspirations and where there are quality jobs, good pay and affordable housing for our residents.

- We want Torbay to be the premier resort in the UK, with a vibrant arts and cultural offer for our residents and visitors to enjoy; where our built and natural environment is celebrated and where we play our part in addressing the climate change emergency.

3.2 The proposals in this report will support:

- Thriving people. De-registration of the land as a LNR will facilitate release of the land for residential development thereby helping to address an identified shortfall in housing need in Torbay, including the provision of new affordable homes.
- Thriving economy. Bringing the site forwards for residential development will provide a mix of new homes for local residents, to encourage people to live and work within Torbay, thereby working towards a more prosperous Torbay.
- Council fit for the future. The site is contiguous with existing residential areas thereby providing sustainable growth of the urban environment within Torbay and ensuring Torbay remains an attractive and safe place to live and visit. The development of the site will also enable the Council to utilise its resources to best effect.
- The Council's responsibilities as corporate parents.

4. Financial Implications:

4.1 There are no financial implications of de-registration of PDR as a LNR.

5. Legal Implications:

5.1 There are no legal implications of de-registration of PDR as a LNR.

6. Consultation:

6.1 Briefings on the wider proposals for PDR have been held with the Cabinet and Group leaders and briefings with all political groups will take place throughout the process and as part of the planning process the community will be fully consulted on the detail of any development proposed.

6.3 Whilst the Natural England consultation response references the potential need for there to be wider consultation on the proposal for de-registration, Officers do not believe this to be necessary. This is because the National Parks and Access to the Countryside Act 1949 (as amended as recently as 2006) clearly stipulates the consultation process that the local authority must carry out, which is to consult with NE (only). The Court of Appeal has held where Parliament has decided who should be consulted prior to the making of a particular administrative decision, the idea that a simultaneous common-law duty to consult more widely was highly unlikely to exist (*R (Hillingdon LBC) v Lord Chancellor* [2008] EWHC 2683 (Admin)). As such, whilst considering the legal position, recognising the advice from NE and the fact that ecological surveys have shown that the site is of very limited ecological value, wider public consultation is not considered to be a necessary course of action.

- 6.4 In terms of the procedure that the Council must follow for formal de-registration, legal advice has been obtained which confirms that the next steps are:
- a) The Council is to draw up a formal declaration and de-declaration document accompanied by the LNR map at a scale which accurately shows the LNR boundary.
 - b) The formal document is signed according to the Council's scheme of delegation.
 - c) The local authority shall formally notify Natural England of the LNR amendment of boundaries in writing and send them a copy of the signed legal document, together with a map.
 - d) Natural England will then update the LNR Records.

7. Risks:

- 1.1. If the LNR designation were to remain the land would have to be managed solely for a conservation purpose, or a conservation/recreation purpose.
- 1.2. Retention of the LNR designation on this area of land may result in the Council breaching the terms of the LRF grant.
- 1.3. Retention of the LNR designation would make it more difficult for the Council to meet its future housing land supply targets putting Torbay at risk of unfavourable developments on alternative sites.

8. Public Services Value (Social Value) Act 2012

- 8.1 The Act does not apply to this decision because the proposal does not require the procurement of services or the provision of services together with the purchase or hire of goods or the carrying out of works.
- 8.1 Legal advice has been procured in accordance with the Council's protocol.

Equality Impacts

15.	Identify the potential positive and negative impacts on specific groups		
	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people			There is no differential impact
People with caring Responsibilities			There is no differential impact
People with a disability			There is no differential impact
Women or men			There is no differential impact
People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			There is no differential impact
Religion or belief (including lack of belief)			There is no differential impact
People who are lesbian, gay or bisexual			There is no differential impact
People who are transgendered			There is no differential impact
People who are in a marriage or civil partnership			There is no differential impact
Women who are pregnant / on maternity leave			There is no differential impact

	Socio-economic impacts (Including impact on child poverty issues and deprivation)			There is no differential impact
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)			There is no differential impact
16.	Cumulative Impacts – Council wide (proposed changes elsewhere which might worsen the impacts identified above)	None		
17.	Cumulative Impacts – Other public services (proposed changes elsewhere which might worsen the impacts identified above)	None		